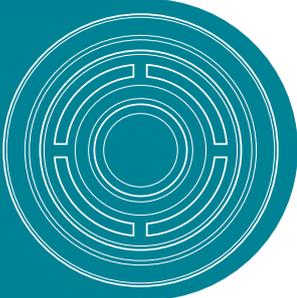


A REVIEW INTO THE METHODS THE POLICE  
SERVICE OF NORTHERN IRELAND USE TO  
DISCLOSE INFORMATION IN RESPECT OF  
HISTORIC CASES TO THE OFFICE OF THE POLICE  
OMBUDSMAN FOR NORTHERN IRELAND

April 2020





# 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





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## List of abbreviations

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

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

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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 CJJ 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<sup>1</sup>) 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<sup>2</sup> within one year of the publication of this Review (*paragraph 3.76*).

**3** The *Op Turnel*<sup>3</sup> 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*).

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<sup>2</sup> See strategic recommendation 2

<sup>3</sup> *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.



# Review Report



# Introduction

## Background to the Review

- 1.1 On 14 February 2019 the former Police Ombudsman for Northern Ireland (PONI)<sup>4</sup> reported publicly that his investigators had identified sensitive material held by the Police Service of Northern Ireland (PSNI) which had not been made available to the Office of the Police Ombudsman for Northern Ireland (OPONI). The discovery was made during the OPONI investigation into the murder of five people at a betting shop on the Ormeau Road in Belfast on 5 February 1992, and had also begun new OPONI lines of inquiry into the activities of Loyalist paramilitaries in the north west between 1988 and 1994, and the murder of Damien Walsh at a coal depot in west Belfast in 1993.<sup>5</sup> The PSNI acknowledged the disclosure failings, apologised to those affected, and said that it had not sought to deliberately withhold the information.<sup>6</sup>
- 1.2 The Justice (Northern Ireland) Act 2002<sup>7</sup> outlined the circumstances under which inspection of organisations could be carried out by the Chief Inspector of Criminal Justice in Northern Ireland. Section 46 listed the organisations which could be inspected and these included the PSNI and the OPONI. Under section 47(3), as amended by Schedule 13 to the Justice (Northern Ireland) Act 2002, the Department of Justice (DoJ) may require the Chief Inspector to carry out an inspection of an organisation specified in section 46. Additionally, under section 47(4) the DoJ may require the Chief Inspector to carry out a review of any matter relating to the criminal justice system in Northern Ireland (apart from a matter relating to a court or tribunal). Section 47(6) further stated that the Chief Inspector may not carry out inspections or reviews of individual cases.
- 1.3 On 19 February 2019 the DoJ asked the former Chief Inspector of Criminal Justice in Northern Ireland to undertake an independent review of the methods the PSNI use to disclose information in respect of historic cases<sup>9</sup> to the OPONI and that it be given priority within the Inspection Programme.

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4 Dr Michael Maguire CBE retired as Police Ombudsman for Northern Ireland with effect from 16 July 2019. He was succeeded with effect from 17 July 2019 by Marie Anderson, the fourth person to hold the office.

5 Police Ombudsman for Northern Ireland. <https://www.policeombudsman.org/Media-Releases/Police-did-not-disclose-sensitive-information>

6 Police Service of Northern Ireland. <https://www.psnipolice.uk/news/Latest-News/140219-psni-look-to-give-poni-full-and-unfettered-access-to-psnis-legacy-systems/>

7 The Justice (Northern Ireland) Act 2002. <https://www.legislation.gov.uk/ukpga/2002/26/contents>

8 Brendan McGuigan CBE retired as Chief Inspector of Criminal Justice in Northern Ireland with effect from 29 November 2019. His successor Jacqui Durkin was appointed to the role from 30 November 2019.

9 For the purposes of this Review the term 'historic' covers the period referred to as 'The Troubles' and related to the period between 1968 and the signing of the Belfast Agreement (also called the Good Friday Agreement) on 10 March 1998.

- 1.4 In accepting, the Chief Inspector of Criminal Justice in Northern Ireland developed Terms of Reference in direct response to the DoJ request. These are included in Appendix 1.

## Dealing with Northern Ireland's Past

- 1.5 Criminal Justice Inspection Northern Ireland (CJI) has previously said that, as a society, we have struggled to find acceptable and appropriate mechanisms for dealing with our past and it has largely fallen to the criminal justice system to try and find closure for those who seek it.<sup>10</sup> Dealing with our history was mired in controversy and at the time of writing, there was no political consensus as to the solution.
- 1.6 The PSNI was the primary source of information associated with all deaths during 'the Troubles'. It had a statutory responsibility to provide disclosure of all relevant material to the OPONI for its historical investigations.
- 1.7 The former Chief Constable's stated position was that the investigation of historic cases was not mentioned in the Patten Report<sup>11</sup>, which led to the transition from the Royal Ulster Constabulary (RUC) to the PSNI, and that the PSNI was not adequately resourced to properly fulfil this function. From his appointment in 2014,<sup>12</sup> he had warned of the impact the legacy of the past had for current and future policing. It was the PSNI's preference that all information and disclosure responsibilities would be transferred to an independent Historical Investigation Unit (HIU).<sup>13</sup>
- 1.8 It was clear that legacy issues, in particular the disclosure of information on historic cases, impacted on current day-to-day delivery of police services in Northern Ireland, as was demonstrated by the reaction to the PSNI failure to disclose information to the OPONI, which prompted this Review. This had manifested itself in the levels of confidence in policing, and had the potential knock-on effect for the effectiveness of community and neighbourhood policing and police recruitment.
- 1.9 In the Stormont House Agreement<sup>14</sup> in December 2014, the United Kingdom (UK) Government gave a commitment to establish new institutions in an effort to meet this wide range of needs in a way that secured confidence across the community in Northern Ireland.

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10 *Coronial Processes. An inspection of the arrangements in place in the Police Service of Northern Ireland to manage and disclose information in support of the Coronial process in Northern Ireland*, CJI, December 2016, available at <http://www.cjini.org/getattachment/45098860-9917-48bc-93ac-ffec70960e84/report.aspx>

11 *A New Beginning: Policing in Northern Ireland*. The report of the Independent Commission on Policing for Northern Ireland (Patten Report), September 1999

12 Chief Constable Sir George Hamilton QPM retired from the PSNI with effect from 30 June 2019. He was succeeded by Simon Byrne QPM as Chief Constable of the PSNI with effect from 1 July 2019.

13 Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019, available at <https://www.psni.police.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

14 Stormont House Agreement, Northern Ireland Office, 23 December 2014 available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/390672/Stormont\\_House\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf)

The Northern Ireland Office (NIO) subsequently undertook a public consultation on addressing the legacy of Northern Ireland's past which ended on 5 October 2018, which sought views on addressing the Government's proposal to legislate to establish the institutions in the Northern Ireland (Stormont House Agreement) Bill, a draft of which was published with the consultation paper.<sup>15</sup>

- 1.10 The Bill set out draft legislation for *inter alia*<sup>16</sup> a Historical Investigations Unit – an independent institution to take forward outstanding investigations into 'Troubles-related' deaths. The HIU would take on the outstanding work of the PSNI's Historical Enquiries Team (HET)<sup>17</sup> and the outstanding legacy work of the OPONI. The HIU would have policing powers and the UK Government and its agencies would be legally compelled to provide it with full disclosure of information. After completing an investigation, the HIU would provide a report to the family of the deceased. The HIU would have a dedicated family support function to assist families through the process.<sup>18</sup>
- 1.11 At the time of writing the outcome of the consultation exercise was not known, however the Northern Ireland Assembly was restored from 10 January 2020<sup>19</sup> and the DoJ advised the Justice Committee that it estimated it would take about two years from the legislation being passed to setup the HIU.<sup>20</sup>

## PSNI Internal Review

- 1.12 The PSNI was acutely aware of the impact the failure to disclose information to the OPONI in the case which prompted this Review, and of legacy matters in general, on public confidence in policing. It had declared it as a critical incident and instigated an internal response plan, which was called *Op Turnel*.<sup>21</sup> There had been an internal PSNI review established, under the Assistant Chief Constable (ACC) Legacy and Legal, to critically examine the failings which had been identified in relation to the failure to disclose information to the OPONI.
- 1.13 The purpose of the internal review was to understand how the failings occurred; to identify organisational learning and potential misconduct; to complete a full inventory of all PSNI legacy and data sources; to implement remedial systems to minimise the risk of reoccurrence; and to form a single unit to manage disclosure and discovery requests.

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15 NIO Consultation Paper Addressing the Legacy of Northern Ireland's Past, available at <https://www.gov.uk/government/consultations/addressing-the-legacy-of-northern-irelands-past>

16 The other Institutions were an Independent Commission on Information Retrieval (ICRC); an Oral History Archive (OHA); and an Implementation and Reconciliation Group (IRG)

17 The Historical Enquiries Team was a unit within the PSNI set up in September 2005 to investigate unsolved murders committed during the Troubles, specifically 1968-98. It operated until September 2014.

18 NIO Consultation Paper Addressing the Legacy of Northern Ireland's Past. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/709091/Consultation\\_Paper\\_Addressing\\_the\\_Legacy\\_of\\_Northern\\_Irelands\\_Past.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709091/Consultation_Paper_Addressing_the_Legacy_of_Northern_Irelands_Past.pdf)

19 The Northern Ireland Assembly collapsed in January 2017. There was full restoration of the Executive and Northern Ireland Assembly on 10 January 2020.

20 Official Report Minutes of Evidence Committee for Justice 23 January 2020. <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=20552&evidID=11522>

21 <https://www.psnipolice.uk/news/Latest-News/040419-chief-constables-report-to-nipb/>

Inspectors viewed the internal review's Terms of Reference and project plan which had short; medium and long-term actions running up to December 2019. At the time of writing the short-term actions were either completed or were under implementation. A fortnightly Project Board chaired by ACC Legacy and Legal was established to manage the work.<sup>22</sup>

- 1.14 The former Chief Constable offered CJI the opportunity to oversee, and be a part of, the PSNI internal review. The former Chief Inspector of Criminal Justice declined as; it was considered as potentially impinging on the independence of the Inspectorate; had the potential to be a conflict of interest in respect of this Review; and strayed into section 47(6) of the Justice (Northern Ireland) Act 2002 which specifically precluded CJI from carrying out inspections or reviews of individual cases. Inspectors did attend a number of the PSNI Internal Review meetings, not as participants, but to observe and assess progress.
- 1.15 The PSNI had re-stated its commitment internally to openness and transparency and to the maximum disclosure that was possible, not just in line with the organisations statutory responsibilities; but also as part of its desire to provide as much information as possible to victims and survivors and to support reconciliation within Northern Ireland society.<sup>23</sup>

## The CJI Review

- 1.16 As part of the Review CJI Inspectors examined the processes applied to requests for disclosure of information by the OPONI. The process for requests for disclosure of information was tracked in order to evaluate the processes currently undertaken and to identify potential improvements. Hard copy and computerised systems were examined.
- 1.17 There had been engagement with relevant stakeholders, which included meetings with a number of representative organisations. These discussions focused on issues of commonality rather than individual cases for the reasons outlined previously.
- 1.18 Inspectors were confident that both the PSNI and the OPONI gave full access to their systems and documents as required for Inspectors to undertake this Review. Both the PSNI and the OPONI were fully cooperative with Inspectors given full and unrestricted access to staff, policy, papers, documentation and IT systems as required.
- 1.19 The nature of this Review meant that much of the material in question, and much of that which was reviewed by Inspectors, was classified, sensitive and protectively marked. Many of the IT systems and documentation that Inspectors had to access as part of this Review were also classified. As a result, Inspectors had to be cognisant of this level of classification when reporting.

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22 PSNI response to critical incident following identified failings in the disclosure of information by PSNI to PONI. Project Initiation Document. PSNI Internal document.

23 PSNI response to critical incident following identified failings in the disclosure of information by PSNI to PONI. Project Initiation Document. PSNI Internal document.

## Previous Inspection Reports

- 1.20 There had been a number of previous CJI Inspection Reports of the OPONI which looked at areas related to this Review.
- 1.21 In 2013 an inspection<sup>24</sup> was carried out following concerns expressed by non-governmental organisations, the Northern Ireland Policing Board (NIPB) and some families of victims of the 'Troubles' that the PSNI was being unhelpful in supporting the OPONI investigations of historical cases. Questions had also been raised about whether the OPONI was able to access all sensitive intelligence material held by the police in respect of historical cases.
- 1.22 The report confirmed that the PSNI co-operated fully with the OPONI in providing sensitive information. It stressed that a clear protocol was essential to further developing the professional working relationship between the two organisations and made the strategic recommendation 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."*<sup>25</sup>

- 1.23 CJI stressed the need for clarity within the PSNI about the powers of the OPONI to ask for material that was relevant to its investigations. There needed to be trust that material requested was relevant to any investigation that the OPONI was carrying out. Inspectors said that 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 [Human Rights Act 1998] obligations of the PSNI."*<sup>26</sup>

- 1.24 The report also recommended as an area for improvement that the OPONI should introduce a formal tracking and monitoring system for requests based on the existing informal systems in use by individual Senior Investigating Officers (SIOs), to provide feedback to the OPONI, SIOs and the PSNI, as well as assessing the effectiveness of processes and systems.<sup>27</sup> At the time of this Review, a process was in place but it was not capturing all the relevant areas, i.e. the 20-day periods for the PSNI to supply material and for the OPONI to commence viewing the material (see Chapter 3).

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24 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland.* CJI, December 2013 available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

25 Ibid.

26 Ibid.

27 Ibid.

1.25 Although not directly involving the OPONI, a further CJI Report in 2016<sup>28</sup> examined the arrangements in place in the PSNI to manage and disclose information in support of the Coronial process in Northern Ireland. The report related specifically to the disclosure of material to the Coroner's Office, however a number of the areas it covered were relevant to this Review. In particular, Inspectors highlighted that much of the information which was relevant to legacy inquests was contained on computer systems, which were now obsolete and not compatible with each other. They were often difficult to search and required the researcher to enter precise details to identify relevant material.<sup>29</sup> More modern systems could search on much wider, and even imprecise, parameters. The CJI report recommended that within 18 months of publication of the report:

*"...the use of technology by the PSNI Legacy Support Unit needed to be expanded to:*

- *transfer data onto media which will adequately preserve it for future use;*
- *provide researchers with adequate means of searching for and reading material stored on legacy systems; and*
- *provide for seamless transfer of material to be disclosed by reducing the reliance on hard copy material.*<sup>30</sup>

1.26 These recommendations remained *extant* more widely in the PSNI (see Chapter 3).

## The PSNI/OPONI relationship

1.27 In respect of current investigations, i.e. complaints made to the OPONI about police behaviour or performance of duty by members of the public, relationships between the PSNI and the OPONI were good, and there was generally a constructive and professional working relationship which allowed the OPONI to undertake its role to provide impartial, independent investigation of complaints against the police.

1.28 Tensions between an organisation and its complaints body were not uncommon, and in Northern Ireland there had been tensions between the PSNI and OPONI over the years, particularly about historic cases. This could lead to strained working relationships and a loss of trust on both sides. Both organisations had independence considerations which could further complicate effective cooperative practices, and where the overseen organisation was involved in wide-ranging policing activities requiring the Chief Constable to retain clear operational independence, the relationship became even more complex.<sup>31</sup>

28 *Coronial Processes. An inspection of the arrangements in place in the Police Service of Northern Ireland to manage and disclose information in support of the Coronial process in Northern Ireland.* CJI, December 2016. <http://www.cjini.org/getattachment/45098860-9917-48bc-93ac-ffec70960e84/report.aspx>

29 See also Chief Constable's report to the NIPB which identified this as an element of the incident which led to this Review. Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psnipolice.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

30 *Coronial Processes. An inspection of the arrangements in place in the Police Service of Northern Ireland to manage and disclose information in support of the Coronial process in Northern Ireland.* CJI, December 2016, available at <http://www.cjini.org/getattachment/45098860-9917-48bc-93ac-ffec70960e84/report.aspx>

31 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland,* CJI, December 2013, available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

- 1.29 Dealing with the legacy of the ‘Troubles’ had always been divisive: it was a space that neither organisation wished to occupy. The 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.<sup>32</sup>
- 1.30 Equally, the Chief Constable’s view as outlined in February 2019 was that the investigation of historic cases was not mentioned in the Patten Report, that the PSNI was not adequately resourced to properly fulfil this function, and he had warned of the impact the legacy of the past had for current and future policing. It was the PSNI’s preference that all information and disclosure responsibilities would be transferred to an independent Historical Investigation Unit (HIU).<sup>33</sup>
- 1.31 The former Chief Inspector of Criminal Justice in Northern Ireland was also on record<sup>34</sup> as saying that the role of CJJ was forward-focussed to improve the effectiveness of the criminal justice agencies and outcomes for users of the criminal justice system now and into the future. The former Chief Inspector agreed to undertake this Review, following the DoJ’s request, as it was considered that the PSNI’s failure to disclose was impacting on current public confidence in policing.
- 1.32 These tensions have been demonstrated particularly in respect of historic cases and some failed OPONI prosecution cases,<sup>35</sup> while more generally the Police Federation for Northern Ireland (PFNI) had asserted the lack of police officer confidence in relation to the operation and credibility of the OPONI in 2017. The PFNI had called for the reform of the OPONI and the need for an independent avenue of appeal, whereby officers would have meaningful redress against malicious complaints and inept investigations.<sup>36</sup>

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32 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland*, CJI, December 2013, available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

33 Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psnipolice.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

34 CJI meeting with the Northern Ireland Policing Board 6 March 2019

35 <https://www.bbc.co.uk/news/uk-northern-ireland-42429104> and <https://www.policfed-ni.org.uk/media-centre/2017/december/pfni-ombudsman-s-office-has-questions-to-answers-over-failed-casen> The Chairman of the PFNI again stressed the strained nature of the relationship with the Police Ombudsman’s office in his address to the PFNI Annual Conference on 5 June 2019. He went on to say that police confidence that OPONI investigations had been conducted thoroughly and impartially had been in very short supply.

36 PFNI Chairman’s speech to Conference 2017 available at <https://www.policfed-ni.org.uk/media-centre/2017/may/chairmans-address-to-conference>

- 1.33 Against this, the OPONI survey of police officers, who were subject to an investigation that was closed during 2017-18, showed relatively high levels of officer satisfaction on being treated with respect (89%) and fairly (78%). These officer perceptions of Ombudsman staff had been consistent over the past four years of the survey. A total of 71% of officers felt that their complaint was dealt with independently in 2017-18.<sup>37</sup>
- 1.34 There had been similar tensions between the Police Federation of England and Wales (PFEW) and the Independent Police Complaints Commission (IPCC), which became the Independent Office for Police Conduct (IOPC) in January 2018, although there was not the same historic context. In evidence to the Home Affairs Select Committee the PFEW expressed concerns about IPCC communications with the press and officers under investigation; the quality of IPCC investigations; and the IPCC oversight arrangements,<sup>38</sup> and more recently for example in relation to investigation delays, poor practice and the mistreatment of officers,<sup>39</sup> and in the investigation of firearms incidents involving the police.<sup>40</sup>
- 1.35 In a previous report, CJI referred to concerns expressed from non-governmental organisations, the NIPB and some families of victims of the 'Troubles' that the PSNI was being unhelpful in supporting the OPONI investigations of historical cases.<sup>41</sup>
- 1.36 The OPONI also had concerns about the co-operation of police officers in its investigations and the disclosure of material to support an effective OPONI investigative process. The PONI was quoted as saying that his "*office does not do investigations by negotiation*".<sup>42</sup> This issue came to a head in 2014 when the PONI served notice on the PSNI that he was to take legal action for its refusal to provide his investigators with information following repeated requests.<sup>43</sup>
- 1.37 For police oversight and accountability to be effective and contributing to public confidence in the two organisations, there needed to be trust on both sides for an effective collaborative, productive and professional working relationship.

37 Annual Report on police officer satisfaction with services provided by the Police Ombudsman's office in Northern Ireland in 2017-18. <https://www.policeombudsman.org/getmedia/75ded473-b64a-4ba1-8966-ec67c72855d2/Police-Officer-Satisfaction-Report-201718.pdf> Results were from a response rate of 35% (273) of officers who were subject to an investigation which were closed during 2017/2018. During the period 2561 complaints were received; 170 were informally resolved; 887 were fully investigated; 6 were recommended for prosecution; and 197 recommended for discipline or performance action. Annual statistical bulletin of the Police Ombudsman for Northern Ireland 2017/2018. <https://www.policeombudsman.org/getmedia/37e06a5e-28e1-43e1-93b7-d6f023471344/Annual-Statistical-Bulletin-2017-18.pdf>

38 Written evidence submitted by the Police Federation of England and Wales [IPCC 08] to the Home Affairs Select Committee. <https://publications.parliament.uk/pa/cm201213/cmselect/cmhaff/494/494we05.htm>

39 <http://www.polfed.org/newsroom/4199.aspx>

40 <http://www.polfed.org/newsroom/4370.aspx> Also <https://publications.parliament.uk/pa/cm201213/cmselect/cmhaff/494/494we05.htm>

41 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland*, CJI, December 2013. Available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

42 BBC News online. <https://www.bbc.co.uk/news/uk-northern-ireland-27692349>

43 PONI Media Release <https://www.policeombudsman.org/Media-Releases/2014/Police-Ombudsman-takes-legal-action-against-the-PS>

- 1.38 The importance of the relationship between heads of the PSNI and the OPONI was clear to CJI in 2013,<sup>44</sup> as it was to a number of the stakeholders spoken to as part of this Review.
- 1.39 For OPONI investigations to be effective it needed to have confidence that the PSNI had supplied it with all the relevant material asked for as part of the investigation. Equally the PSNI held some very sensitive material with Article 2 and other legal implications and, whilst acknowledging its obligation under law to provide the material, the disclosure of such material to another body created risks and heightened concerns that the material requested by the OPONI was necessary, proportionate and justified for the purposes of its investigation. The alleged incidents of breaches of sensitive information from the OPONI<sup>45</sup> which, at the time of fieldwork were under investigation by Durham Constabulary, had created suspicion and increased the concerns within the PSNI about the security of disclosed material, due to the sensitivity and extent of the material disclosed to the OPONI over time.
- 1.40 The legislation which established the PONI (see Chapter 2) specified that the Ombudsman must exercise his (sic) powers in such a manner that was best calculated to secure, *inter alia*, the confidence of the public and members of the police force in that system. It would be the view of CJI that this was critical to address the concerns of the PSNI and should continue to be a key priority for the OPONI.
- 1.41 CJI had previously been clear that it was in the interest of both the OPONI and the police that a mutually respectful working relationship was developed. The police needed to be confident that complaints made against officers would be investigated thoroughly and fairly, and the Police Ombudsman's investigators needed to be confident that the police were co-operating fully with their investigations.<sup>46</sup>
- 1.42 CJI had also made clear that it was incumbent on the leadership of the PSNI and the OPONI to ensure that the statutory responsibilities both organisations had to each other, and to the law, and the operational relationships - which both need to be successful - were not affected by the investigation of historical cases.<sup>47</sup>

44 See also *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland*, CJI, December 2013, available at: <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

45 <https://www.durham.police.uk/news-and-events/Pages/News%20Articles/Two-arrests-in-Durham-Constabulary-investigation-into-suspected-theft-of-confidential-documents.aspx> See also <https://www.nipolicingboard.org.uk/questions/investigation-alleged-theft-documentation-police-ombudsmans-office-relating-loughinisland> and other NIPB questions at [https://www.nipolicingboard.org.uk/questions?search\\_questions=Ombudsman&Search-exposed-form=go&as\\_sfid=AAAAAWYmLtZmQNEKLOCdt-Dw0I2vVCGpoH3BhayQo1dv9Jwe0eSY6auoJcb9IYbNvKo6jByTBpublCHwV-SFEctEyM2aNHvYnS-65oTdfIfrtHY7P6okziYEBZDopcjAxt38%3D&as\\_fid=ddd8cd556dd8f05e9781cd59c167590e09ed8180](https://www.nipolicingboard.org.uk/questions?search_questions=Ombudsman&Search-exposed-form=go&as_sfid=AAAAAWYmLtZmQNEKLOCdt-Dw0I2vVCGpoH3BhayQo1dv9Jwe0eSY6auoJcb9IYbNvKo6jByTBpublCHwV-SFEctEyM2aNHvYnS-65oTdfIfrtHY7P6okziYEBZDopcjAxt38%3D&as_fid=ddd8cd556dd8f05e9781cd59c167590e09ed8180)

46 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland*, CJI December 2013 available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

47 Ibid.

- 1.43 Inspectors have said previously that work remained to be done by both organisations in building the appropriate trust in their respective systems and processes<sup>48</sup> to provide a productive and effective 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 (see chapter 4).

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48 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland*, CJI December 2013 available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>



# Strategy and governance

## Police Ombudsman for Northern Ireland

- 2.1 The Police (Northern Ireland) Act 1998<sup>49</sup> abolished the Independent Commission for Police Complaints for Northern Ireland and created the Police Ombudsman for Northern Ireland to exercise his (*sic*) powers in such manner and to such extent as appears to him (*sic*) to be best calculated to secure -
- (a) the efficiency, effectiveness and independence of the police complaints system; and
  - (b) the confidence of the public and of members of the police force in that system.
- 2.2 In addition to giving the Police Ombudsman powers to investigate complaints against members of the police service, the 1998 Act allowed for the NIPB, the DoJ or the Secretary of State for Northern Ireland to refer to the Police Ombudsman any matter which:
- (a) it appears that a member of the police force may have -
    - (i) committed a criminal offence; or
    - (ii) behaved in a manner which would justify disciplinary proceedings; and
  - (b) is not the subject of a complaint, if, after consultation with the Ombudsman and the Chief Constable, it appeared to the NIPB or the Secretary of State that it was desirable in the public interest that the Ombudsman should investigate the matter.
- 2.3 The Chief Constable (section 55(2)) shall refer to the Ombudsman any matter which appears to the Chief Constable to indicate that conduct of a member of the police force may have resulted in the death of another person. The Chief Constable (sections 55 (4)) may also refer any matter to the Police Ombudsman in similar circumstances to 2.2 above<sup>50</sup>.
- 2.4 In addition, the Police Ombudsman may of his (*sic*) own motion (s55 (6)) investigate any matter in similar circumstances to the above, if it appears to the Ombudsman that it was desirable in the public interest that he (*sic*) should do so.<sup>51</sup>

49 The Police (Northern Ireland) Act 1998. <https://www.legislation.gov.uk/ukpga/1998/32/contents>

50 That is (a) it appears that a member of the police force may have (i) committed a criminal offence; or (ii) behaved in a manner which would justify disciplinary proceedings; and (b) is not the subject of a complaint, if it appears to the Chief Constable that it is desirable in the public interest that the Ombudsman should investigate the matter.

51 The Police (Northern Ireland) Act 1998. <https://www.legislation.gov.uk/ukpga/1998/32/contents>

## Obligations on the PSNI to provide information to the PONI

- 2.5 Section 66 of the Police (Northern Ireland) Act 2000 stated that the Chief Constable shall supply the Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of his (*sic*) functions.
- 2.6 Section 76A provided that for the purposes of Section 66, the grounds on which information ought not to be disclosed were that -
- (a) it was in the interests of national security;
  - (b) the information was sensitive personnel information;
  - (c) the information would, or would be likely to, prejudice proceedings which had been commenced in a court of law.<sup>52</sup>
- 2.7 In the MoU between the PSNI and the OPONI there was also an undertaking that the PSNI, in responding to OPONI requests for sensitive information:
- will also disclose any other sensitive material of which the Chief Constable is aware and that may be relevant to the request; and
  - on receipt of a written request, the PSNI will conduct comprehensive searches of the records to determine whether any such sensitive material is available.<sup>53</sup>

## Disclosure of Information by the PSNI to the OPONI

- 2.8 The PSNI Chief Constable's briefing to the NIPB<sup>54</sup> outlined the legal obligations on the PSNI in respect of the disclosure of information to the OPONI. These included:

### Article 2 of the European Convention on Human Rights (ECHR)<sup>55</sup>

- 2.9 Everyone's right to life shall be protected by law. No one shall be deprived of his (*sic*) life intentionally save in the execution of a sentence of a court following his (*sic*) conviction of a crime for which this penalty is provided by law.<sup>56</sup>

52 The Police (Northern Ireland) Act 1998. <https://www.legislation.gov.uk/ukpga/1998/32/contents>

53 The Memorandum of Understanding between PONI and the Chief Constable PSNI regarding the sharing of 'sensitive material'. Internal Document June 2018.

54 Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psnipolice.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

55 Also in the Human Rights Act 1998. The European Convention on Human Rights. European Court of Human Rights. [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

56 The second paragraph of Article 2 stated: Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

### **Regulation of Investigatory Powers Act (2000)<sup>57</sup> (RIPA)**

2.10 Section 29 related to authorisations for the conduct and use of covert human intelligence sources (CHIS), and in particular part (5) required arrangements to ensure, *inter alia* that records maintained by the relevant investigating authority that disclose the identity of the source, will not be available to the persons except to the extent that there is a need for access to them to be made available to those persons.

2.11 Both the PSNI and the OPONI were designated as relevant public authorities under Schedule 1.<sup>58</sup>

### **Criminal Procedure and Investigations Act 1996 (Section 23(1)) (CPIA) Code of Practice<sup>59</sup>**

2.12 Paragraph 6.15 stated that subject to paragraph 6.16, the disclosure officer must list on a sensitive schedule any material the disclosure of which he (*sic*) believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief. The schedule must include a statement that the disclosure officer believes the material is sensitive.<sup>60</sup>

2.13 Paragraph 6.16 stated in exceptional circumstances, where an investigator considers that material is so sensitive that its revelation to the prosecutor by means of an entry on the sensitive schedule is inappropriate, the existence of the material must be revealed to the prosecutor separately. This will apply only where compromising the material would be likely to lead directly to the loss of life, or directly threaten national security.

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57 The Regulation of Investigatory Powers Act 2000. <https://www.legislation.gov.uk/ukpga/2000/23/contents>

58 Schedule 1. Relevant Public Authorities. Part 1 Relevant authorities for the purposes of ss.28 and 29. The Regulation of Investigatory Powers Act 2000. <https://www.legislation.gov.uk/ukpga/2000/23/contents>

59 Criminal Procedure and Investigations Act 1996 (Section 23(1)) Code of Practice. Revised in accordance with section 25(4) of the Criminal Procedure and Investigations Act 1996 available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/447967/code-of-practice-approved.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/447967/code-of-practice-approved.pdf)

The PSNI had advised OPONI that the CPIA point does not bear directly on PSNI disclosure to OPONI. It arises tangentially where a document provided to OPONI falls for revelation or has already been revealed in any related/subsequent criminal proceedings.

60 Depending on the circumstances, examples of such material may include the following among others:

- material relating to national security;
- material received from the intelligence and security agencies;
- material relating to intelligence from foreign sources which reveals sensitive intelligence gathering methods;
- material given in confidence;
- material relating to the identity or activities of informants, or undercover police officers, or witnesses, or other persons supplying information to the police who may be in danger if their identities are revealed;
- material revealing the location of any premises or other place used for police surveillance, or the identity of any person allowing a police officer to use them for surveillance;
- material revealing, either directly or indirectly, techniques and methods relied upon by a police officer in the course of a criminal investigation, for example covert surveillance techniques, or other methods of detecting crime;
- material whose disclosure might facilitate the commission of other offences or hinder the prevention and detection of crime;
- material upon the strength of which search warrants were obtained;
- material containing details of persons taking part in identification parades;
- material supplied to an investigator during a criminal investigation which has been generated by an official of a body concerned with the regulation or supervision of bodies corporate or of persons engaged in financial activities, or which has been generated by a person retained by such a body;
- material supplied to an investigator during a criminal investigation which relates to a child or young person and which has been generated by a local authority social services department, an Area Child Protection Committee or other party contacted by an investigator during the investigation;
- material relating to the private life of a witness.

### **RIPA Codes of Practice on CHIS<sup>61</sup>**

- 2.14 Section 7.7 stated the records kept by public authorities should be maintained in such a way as to preserve the confidentiality, or prevent disclosure of the identity of the CHIS, and the information provided by, that CHIS.

## **Other Relevant Legislation**

### **The Official Secrets Act 1989**

- 2.15 The Official Secrets Act was legislation to protect State information relating to national security and intelligence.
- 2.16 Section 1 (3) of the Official Secrets Act 1989 provided that a person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority, he (*sic*) makes a damaging disclosure of any information, document or other article relating to security or intelligence which is or has been in his (*sic*) possession by virtue of his (*sic*) position<sup>62</sup>.
- 2.17 Section 12 defined 'Crown servant' and 'government contractor', and section 12 (1) (e) established<sup>63</sup> any constable and any other person employed or appointed in or for the purposes of any police force (including the PSNI) as a 'Crown servant'.
- 2.18 The OPONI, as a body, was not specified under the legislation as a 'Crown servant' or 'government contractor'.<sup>64</sup>

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61 *Covert Human Intelligence Sources. Revised Code of Practice*. Home Office. August 2018 available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/742042/20180802\\_CHIS\\_code\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742042/20180802_CHIS_code_.pdf)

62 Section 1 Security and Intelligence (1) A person who is or has been (a) a member of the security and intelligence services; or (b) a person notified that he is subject to the provisions of this subsection, is guilty of an offence if without lawful authority he discloses any information, document or other article relating to security or intelligence which is or has been in his possession by virtue of his position as a member of any of those services or in the course of his work while the notification is or was in force. Official Secrets Act 1989. <https://www.legislation.gov.uk/ukpga/1989/6/section/1>

63 It also included the Northern Ireland Executive etc. (12 (1) (b)), NI Ministers and junior Ministers (12 (5)), the civil service of Northern Ireland and the Northern Ireland Court Service (12 (1) (c)).

64 The Independent Office for Police Conduct in England and Wales is specified under the Official Secrets Act. The Independent Office for Police Conduct (Transitional and Consequential) Regulations 2017. <http://www.legislation.gov.uk/uksi/2017/1250/made> as was the Police Investigations and Review Commission in Scotland. The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013. <https://www.legislation.gov.uk/uksi/2013/602/schedule/2/paragraph/71/made>

- 2.19 Section 5(2) of the Official Secrets Act 1989<sup>65</sup> made it an offence for a person to disclose any information, document or other article without lawful authority knowing, or having reasonable cause to believe, that it was protected from disclosure.<sup>66</sup>
- 2.20 Section 63(1) of the Police (Northern Ireland) Act 1998<sup>67</sup> specifically made it an offence for a member of OPONI to disclose information received by them in connection with the functions of the Office except under certain circumstances.

### **Cabinet Office Government Security Classifications**

- 2.21 This policy<sup>68</sup> described how Her Majesty's Government (HMG) classified information assets to:
- ensure they were appropriately protected;
  - support Public Sector business and the effective exploitation of information; and
  - meet the requirements of relevant legislation and international/bilateral agreements and obligations.
- 2.22 It applied to all information that government collected, stored, processed, generated or shared to deliver services and conduct business, including information received from or exchanged with external partners. Everyone who worked with government had a duty to respect the confidentiality and integrity of any HMG information and data that they accessed, and was personally accountable for safeguarding assets in line with this policy. The policy would apply to the PSNI and the OPONI.

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65 Information resulting from unauthorised disclosures or entrusted in confidence. (1) Subsection (2) below applies where— (a) any information, document or other article protected against disclosure by the foregoing provisions of this Act has come into a person's possession as a result of having been—(i) disclosed (whether to him or another) by a Crown servant or government contractor without lawful authority; or (ii) entrusted to him by a Crown servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the Crown servant or government contractor could reasonably expect that it would be so held; or (iii) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in sub-paragraph (ii) above; and (b) the disclosure without lawful authority of the information, document or article by the person into whose possession it has come is not an offence under any of those provisions. (2) Subject to subsections (3) and (4) below, the person into whose possession the information, document or article has come is guilty of an offence if he discloses it without lawful authority knowing, or having reasonable cause to believe, that it is protected against disclosure by the foregoing provisions of this Act and that it has come into his possession as mentioned in subsection (1) above. (3) In the case of information or a document or article protected against disclosure by sections 1 to 3 above, a person does not commit an offence under subsection (2) above unless— (a) the disclosure by him is damaging; and (b) he makes it knowing, or having reasonable cause to believe, that it would be damaging; and the question whether a disclosure is damaging shall be determined for the purposes of this subsection as it would be in relation to a disclosure of that information, document or article by a Crown servant in contravention of section 1(3), 2(1) or 3(1) above. (4) A person does not commit an offence under subsection (2) above in respect of information or a document or other article which has come into his possession as a result of having been disclosed— (a) as mentioned in subsection (1)(a)(i) above by a government contractor; or (b) as mentioned in subsection (1)(a)(iii) above, unless that disclosure was by a British citizen or took place in the United Kingdom, in any of the Channel Islands or in the Isle of Man or a colony.

66 Official Secrets Act 1989. <https://www.legislation.gov.uk/ukpga/1989/6/section/1>

67 <https://www.legislation.gov.uk/ukpga/1998/32/section/63>

68 *Government Security Classifications Version 1.1*. Cabinet Office, May 2018 available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/715778/May-2018\\_Government-Security-Classifications-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715778/May-2018_Government-Security-Classifications-2.pdf)

## Memorandum of Understanding between the PONI and the Chief Constable PSNI regarding the sharing of 'sensitive material' (MoU)

2.23 As outlined earlier, the 2013 CJI inspection made the strategic recommendation that:

*'...leaders of both PSNI and OPONI agree and implement a revised protocol that satisfied each organisation's obligations and enabled a productive and professional working relationship.'*<sup>69</sup>

2.24 The current MoU had been agreed and was signed by the former Chief Constable and the former PONI on 8 and 13 of June 2018 respectively.

2.25 Whilst it was recognised that the obligations on the PSNI to provide information to the OPONI under Section 66 Police (Northern Ireland) Act 2000 were clearly set out in statute, the MoU was important to manage the day-to-day process.

2.26 The MoU set out the core principles agreed between the PSNI and the OPONI in respect of the disclosure of sensitive information, i.e.

- The Chief Constable shall on request supply all sensitive information to the Police Ombudsman; and
- The Police Ombudsman shall manage all sensitive information provided to him (*sic*) in such a way that ensures compliance with all relevant legislation.

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69 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland*. CJI, December 2013 available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

- 2.27 The MoU then outlined *inter alia* the statutory responsibilities<sup>70</sup> of the two organisations on both parties, defined 'sensitive information', points of contact in the two organisations and the escalation arrangement in the event of a disagreement.
- 2.28 It should be noted that the MoU covered all requests by the OPONI to the PSNI for the disclosure of sensitive information, and not just in respect of historic cases which was the subject of this Review.
- 2.29 The procedure for requesting sensitive information by the OPONI stated that requests would be made in writing by or on behalf of the OPONI Head of the Confidential Unit (CU), in the form of a specific intelligence requirement and using the agreed templates, to the police OPONI Liaison Office (LO).

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70 These were:

- Sec 51(4) Police (Northern Ireland) Act 1998: i.e. The Ombudsman shall exercise his powers under this Part in such manner and to such extent as appears to him to be best calculated to secure - (a) the efficiency, effectiveness and independence of the police complaints system; and (b) the confidence of the public and of members of the police force in that system.
- Sec 32 and 66 Police (Northern Ireland) Act 2000: i.e. Sec 32 - (1) It shall be the general duty of police officers (a) to protect life and property; (b) to preserve order; (c) to prevent the commission of offences; (d) where an offence has been committed, to take measures to bring the offender to justice. (2) A police officer shall have all the powers and privileges of a constable throughout Northern Ireland and the adjacent United Kingdom waters. (3) In subsection (2) - (a) the reference to the powers and privileges of a constable is a reference to all the powers and privileges for the time being exercisable by a constable whether at common law or under any statutory provision, (b) "United Kingdom waters" means the sea and other waters within the seaward limits of the territorial sea, and that subsection, so far as it relates to the powers under any statutory provision, makes them exercisable throughout the adjacent United Kingdom waters whether or not the statutory provision applies to those waters apart from that subsection.
- Section 66: (1) The Chief Constable and the Board shall supply the Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of his functions. (2) Subsection (3) applies if - (a) the Chief Constable or the Board supplies information to the Ombudsman under subsection (1) for the purposes of or in connection with an investigation under section 60A of the 1998 Act; and (b) the person supplying the information is of the opinion that it is information which ought not to be disclosed on the ground mentioned in section 76A(1)(a). (3) The person supplying the information must (a) inform the Secretary of State that the information has been supplied to the Ombudsman; and (b) inform the Secretary of State and the Ombudsman that, in his or its opinion, the information is information which ought not to be disclosed on the ground mentioned in section 76A(1)(a). (4) Subsection (5) applies if - (a) the Chief Constable or the Board supplies information to the Ombudsman under subsection (1) for the purposes of or in connection with an investigation under section 60A of the 1998 Act; and (b) the person supplying the information is of the opinion that it is (i) information the disclosure of which would be likely to put an individual in danger, or (ii) information which ought not to be disclosed on any of the grounds mentioned in section 76A(1)(b) or (c). (5) The person supplying the information must - (a) inform the Minister of Justice that the information has been supplied to the Ombudsman; and (b) inform the Minister of Justice and the Ombudsman that, in his or its opinion, the information is information of a kind mentioned in sub-paragraph (i) or (ii) of paragraph (b) of subsection (4).
- Regulation 8 RUC (Complaints etc.) Regulations 2000: i.e. The appropriate authority shall supply the Ombudsman with such material as he may require relating to a complaint under Section 52 of the Act of 1998, or investigation under Section 55 of the Act of 1998, whether or not such complaint or matter is the subject of an investigation by the Ombudsman or supervised by the Ombudsman, for the purpose of enabling the Ombudsman to fulfil his functions under the said Act
- Regulation of Investigatory Powers Act 2000
- Official Secrets Act 1989
- Human Rights Act 1998
- Criminal Procedures and Investigation Act 1996
- Data Protection Act 1998
- Freedom of Information Act [2000]

- 2.30 Requests for the identities of CHIS and Part 1 RIPA<sup>71</sup> material would be authorised by the OPONI Chief Executive.
- 2.31 To allow the PSNI to deal efficiently and effectively with OPONI requests and to comply fully with its statutory responsibilities, the MoU stated that the OPONI would (unless there are exceptional circumstances) provide:
- *'the suspected/alleged misconduct under investigation including a brief background to the case;*
  - *confirmation of the PONI Chief Executive's belief as to the necessity, lawful basis of complaint and proportionality for the request.'*<sup>72</sup>
- 2.32 The MoU also provided that in considering the request, the Chief Constable will also disclose:
- '...any other sensitive material of which he (sic) is aware and that may be relevant to the request.'*
- 2.33 On receipt of a written request the PSNI would conduct comprehensive searches of the records to determine whether any such sensitive material was available. The OPONI may indicate where it believed such material was held, however the PSNI would search all appropriate databases for the requested material.
- 2.34 It was expected that the material would be supplied by the PSNI within 20 days, if not, any estimation for provision of the material should allow it to be provided within a reasonable timeframe. This may depend on the volume of material being requested and the complexity of the request.

### **Review of sensitive material held by the PSNI by OPONI CU Staff**

- 2.35 The MoU covered arrangements for OPONI staff to review the material. Once the PSNI had confirmed that the material was ready to be viewed, the OPONI would commence the viewing of the material within 20 days of the confirmation. If this was not possible, the PSNI may return the material to storage and a fresh request under this MoU would be required.
- 2.36 The MoU contained provisions and processes for the material to be viewed by Developed Vetted staff from the OPONI CU on PSNI premises.<sup>73</sup>

### **Storage and dissemination of sensitive information within the OPONI**

- 2.37 It was a fundamental principle of the OPONI that sensitive information would only be shared on a 'need to know' basis. It would be stored and handled in accordance with the Government Security Policy Framework.

71 Part 1 RIPA refers to communications data. Regulation of Investigatory Powers Act (2000). <https://www.legislation.gov.uk/ukpga/2000/23/contents>

72 The Memorandum of Understanding between PONI and the Chief Constable PSNI regarding the sharing of 'sensitive material'. Internal Document June 2018.

73 In exceptional circumstances this can be by other Developed Vetted OPONI staff.

2.38 Internal dissemination was *via* a Secret Intelligence Report (SIR) or a Disseminated Intelligence Report (DIR) (see below) or an analytical product (AP) with internal OPONI procedures for their handling.

2.39 The MoU stated that:

*'...under OPONI record management processes as soon as OPONI ceased to need the sensitive information for the proper discharge of its statutory functions, the OPONI CU staff would agree with the police arrangements for the secure return to the PSNI. Original material must be repatriated. Secondary material may be disposed of under OPONI information disposal policy but PSNI should be notified.'*

### **Escalation Arrangements**

2.40 The MoU provided for regular meetings between the OPONI Head of CU and the PSNI D/Insp in Crime Operations Department to discuss the progress of requests and outstanding casework. If material was not being progressed as agreed, then the escalation arrangements would be implemented.<sup>74</sup>

2.41 Inspectors had previously stressed the need for collaborative working between the two organisations to produce effective outcomes, and in the 2014 CJI Report, Inspectors once again reiterated that the effective operation of the MoU regarding the provision of sensitive information by the PSNI to the OPONI required continued commitment from both parties.<sup>75</sup>

2.42 The MoU contained separate arrangements for the OPONI to view sensitive material held in the Murder Archive Stores. On a case-by-case basis the PSNI would agree with the OPONI the most effective way to progress the requirement.<sup>76</sup>

## **Memorandum of Understanding between the PONI, the Security Service and the PSNI**

2.43 A separate MoU existed between the PONI, the PSNI and Security Service regarding the disclosure of information held by the Security Service, which was outside the scope of this Review, but provided for the security measures to be adopted by the OPONI when Security Service information was disclosed to the OPONI. The existing MoU was dated May 2008 and had been signed by the three parties. At the time of this Review there was a new version in draft format which had been signed by the PSNI and the Security Service in June 2018, but had not been signed by the PONI.

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74 The Memorandum of Understanding between the PONI and the Chief Constable PSNI regarding the sharing of 'sensitive material'. Internal Document June 2018.

75 *The Office of the Police Ombudsman for Northern Ireland: A Process Verification Assessment*, CJI, September 2014, available at <http://www.cjini.org/getattachment/a8bb24bc-7b40-401f-a329-9227f416b523/report.aspx>

76 The Memorandum of Understanding between PONI and the Chief Constable PSNI regarding the sharing of 'sensitive material'. Internal Document June 2018.

- 2.44 The standard for the OPONI to make requests to the Security Service for sensitive information differed from the standard to make requests to the PSNI. Requests to the Security Service had to provide more narrative than the criteria to request information from the PSNI as outlined previously. The MoU stated that requests from the OPONI to the Security Service must include the following information:
- a. *Details of the PONI investigation, including whether the investigation is being conducted on a criminal and/or disciplinary basis, the factual background to the investigation and the full identifying particulars of all relevant individuals and incidents, and such other information as the Security Service may reasonably require to enable it to deal with the request.*
  - b. *What information PONI considers the Security Service may hold that is relevant to that organisation and why it considers the Security Service may hold it.*
  - c. *How the disclosure of that information would assist PONI in the discharge of its statutory functions.<sup>77</sup>*
- 2.45 The OPONI had to explain in much greater detail than it did to the police, to justify its request for material in terms of its necessity, proportionality and justification, as OPONI had no accountability role over the Security Service and because the Security Service generally had little or no knowledge of the OPONI investigation. The position was different in the case of requests to the PSNI for sensitive material under the MoU and a senior member of the Ombudsman's office advised Inspectors that it was the OPONI view that it was a case of the PSNI supplying whatever information the OPONI requested.
- 2.46 Inspectors understand that other parties were not under the same statutory obligation as the PSNI in terms of section 66 of the Police (Northern Ireland) Act 2000, however the requirement on the OPONI under the MoU to provide:
- '...the factual background to the investigation and the full identifying particulars of all relevant individuals and incidents, and such other information as the Security Service may reasonably require to enable it to deal with the request'*
- gave the Security Services' researchers a more detailed background to the search criteria to enable a more informed search to be undertaken, and potentially provided a basis for a more productive and effective search and outcome (see Chapter 3 regarding the PSNI's ability to respond to OPONI requests for information).
- 2.47 CJI has previously said that there was a need for the OPONI and the PSNI to *"build 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"*, and these criteria would assist in providing that assurance.

77 Memorandum of understanding between the Police Ombudsman for Northern Ireland, the Security Service and the Police Service for Northern Ireland. 2018 internal draft document still to be signed by the PONI at the time of writing.

## PONI Confidential Unit – Standard Operating Procedure (SOP)

- 2.48 The CU was the primary point of contact within the OPONI to liaise with the PSNI regarding the disclosure of sensitive information for historic investigations.
- 2.49 The procedure covering the operation of the OPONI CU was governed by a SOP dated August 2011.
- 2.50 For the CU to request sensitive information from the PSNI it required the OPONI Investigators to apply a thought process as to why the material was sought in relation to the complaint. Consideration should be given by Investigators to what was ‘not known’ and what was required to ‘be known’, rather than what was ‘desirable’. A balanced argument as to the necessity, proportionality and justification for the material should be recorded in the application.<sup>78</sup>
- 2.51 The application would then be made to the PSNI<sup>79</sup> and on receipt of the information the CU compiled an assessment from which a classified intelligence report was created and revealed to appropriately vetted SIOs against signature and the signing of a confidentiality agreement but retained in the CU, or disseminated to the SIO/Deputy SIO for use in the investigation.
- 2.52 There were more stringent criteria for OPONI Investigators to require a CHIS identity.

### PSNI/OPONI Meeting Structure

- 2.53 In addition to the regular meetings between the PSNI and the OPONI provided for in the MoU to discuss the progress of requests and outstanding casework (see previous), there was a quarterly meeting between the PSNI and the OPONI at Deputy Chief Constable and Chief Executive level respectively, which discussed issues of mutual interest or concern, and was to aid communication between the two organisations.
- 2.54 The minutes of these meetings provided to Inspectors referred to various issues of concern to both organisations but did not specifically refer to the governance, oversight or effectiveness of the MoU arrangements, whether it was operating to the satisfaction of both parties, or any identified areas that were working well, where there were areas of concern, or the need for improvements. A number of the issues raised in this Review were of concern to both parties but had not been escalated to the agenda.
- 2.55 It would be the view of CJI that this would be the appropriate forum to provide strategic governance and management of the operation of the MoU between the two organisations.

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78 Confidential Unit – Standard Operating Procedure. August 2011. PONI Internal document.

79 To allow the PSNI to deal efficiently and effectively with OPONI requests and to comply fully with its statutory responsibilities, the MOU stated that OPONI would (unless there are exceptional circumstances) provide:

- the suspected / alleged misconduct under investigation including a brief background to the case
- confirmation of the PONI Chief Executive's belief as to the necessity, lawful basis of complaint and proportionality for the request.

### OPONI Access to PSNI Systems

- 2.56 Following the incident which initiated this Review, the PSNI had sought to give the OPONI full access to the PSNI's legacy systems.<sup>80</sup> In the absence of a HIU, the former Chief Constable has stated his intention to give appropriately vetted OPONI staff full and unfettered access to the PSNI legacy systems and with that, the OPONI would also take full responsibility for the information it had access to. The former Chief Constable had sought legal advice as to how to make this possible and the PSNI said it would work with the Ombudsman to make progress towards this solution as quickly as possible.<sup>81</sup> At the time of writing this work was continuing.
- 2.57 The former Chief Constable was mindful of the perception that the PSNI was the gatekeeper for sensitive and secret information associated with 'Troubles-related' deaths. He had clearly stated that public confidence in policing was of paramount importance to the PSNI, and he had no selfish ambition to retain exclusive control over the material during the life of a HIU.<sup>82</sup>
- 2.58 The Police (Northern Ireland) Act 2000 stated that:
- 'the Chief Constable shall supply the Ombudsman with such information and documents as the Ombudsman may require for the purposes of, or in connection with, the exercise of any of his functions'*
- and Inspectors understand that the OPONI would have concerns about the potential resourcing implications of a change to the current arrangements.
- 2.59 Inspectors acknowledge the former Chief Constable's offer and understand the spirit of openness with which it was made. It would be the former Chief Constable's view, and CJJ's view, that this would be the ideal scenario to provide the public with confidence that the OPONI had access to all the relevant information to effectively undertake its function. Indeed, this would be the proposed model on which any future HIU would operate.
- 2.60 However, in addition to the need to consider any potential legislative implications in respect of Section 66 of the Police (Northern Ireland) Act 2000; the PSNI report to the NIPB confirmed that *'there was no central reference or inventory for every piece of information gathered over many years'*,<sup>83</sup> and information was held at a number of locations within the police estate. All the PSNI electronic and hardcopy material, including deteriorating media, was not indexed, catalogued and in an easily searchable system, and there was the potential for issues of corporate memory, which were a factor in the PSNI failure to disclose information which led to this Review, to be exacerbated for the OPONI staff searching for material.

80 Police Service of Northern Ireland. <https://www.psni.police.uk/news/Latest-News/140219-psni-look-to-give-poni-full-and-unfettered-access-to-psnis-legacy-systems/>

81 Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psni.police.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

82 Submissions by the Police Service of Northern Ireland. Draft Northern Ireland (Stormont House) Bill. <https://www.psni.police.uk/news/Latest-News/04.10.18-psni-response-to-legacy-public-consultation-paper/>

83 Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psni.police.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

It would be the view of Inspectors that OPONI staff would not currently be trained, skilled or resourced to competently undertake this task, although these issues could be addressed and work would be needed between two organisations to agree what would be required. Whilst CJI would be fully supportive of the former Chief Constable's position, the above areas would need to be addressed before this role could be effectively transferred to the OPONI.

## Other UK and Republic of Ireland Police Complaints Authorities

2.61 The legislation and procedures in comparable jurisdictions are outlined in the following paragraphs, although it should be noted that there was not the same background context of historic investigations as existed in Northern Ireland.

### *England and Wales*

2.62 In January 2018, the IPCC was replaced by the IPOC, which investigated the most serious and sensitive incidents and allegations involving the police.<sup>84</sup> There was comprehensive Statutory Guidance on the handling of complaints and investigations against police officers.

2.63 The Police Reform Act 2002 provided the statutory basis for Police to provide information<sup>85</sup> or documents as required by the IPOC.<sup>86</sup>

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84 The IPOC also carried out investigations into serious complaints and conduct matters relating to staff at: National Crime Agency (NCA); Gangmasters and Labour Abuse Authority (GLAA); Home Office; Her Majesty's Revenue and Customs (HMRC); Mayor's Office for Policing and Crime (MOPAC); Police and Crime Commissioners (PCCs). Independent Office for Police Conduct <https://www.policeconduct.gov.uk/investigations/what-we-investigate-and-next-steps>

85 Section 15 (4) also contains a duty to provide assistance. It shall be the duty of - (a) every local policing body maintaining a police force, (b) the chief officer of police of every police force, and (c) the National Crime Agency, to provide the Commission and every member of the Commission's staff with all such assistance as the Commission or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of any investigation by the Commission under this Part.

86 Section 17 (1) it shall be the duty of (a) every local policing body, and (b) every chief officer, at such times, in such circumstances and in accordance with such other requirements as may be set out in regulations made by the Secretary of State, to provide the Commission with all such information and documents as may be specified or described in regulations so made. Section 17(2) It shall also be the duty of every local policing body and of every chief officer (a) to provide the Commission with all such other information and documents specified or described in a notification given by the Commission to that body or chief officer, and (b) to produce or deliver up to the Commission all such evidence and other things so specified or described. Police Reform Act 2002. <https://www.legislation.gov.uk/ukpga/2002/30/contents>

- 2.64 The subsequent Policing and Crime Act 2017 amended the Police Reform Act 2002 and contained provisions to restrict disclosure of sensitive information received by the IPCC which could *inter alia* cause damage to national security or jeopardise the safety of any person, unless the relevant authority consented to the disclosure.<sup>87</sup>

### Scotland

- 2.65 In Scotland there was a Police Investigations and Review Commissioner (PIRC). Its role was to independently investigate incidents involving the police and independently review the way the police handled complaints from the public.<sup>88</sup> Statute provided that a relevant person<sup>89</sup> must, where required to do so by the Commissioner for the purposes of an investigation, *inter alia*<sup>90</sup> produce in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require.
- 2.66 The MoU between the PIRC and Police Scotland recognised that both organisations were charged with duties that were complex. It recognised that their obligations needed to be discharged in a spirit of mutual cooperation. The organisations committed themselves to the spirit of independent scrutiny as intended by the Act. The MoU committed the PIRC and Police Scotland to working together in an environment of mutual trust and respect and in promoting a culture of openness.<sup>91</sup>

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- 87 19 (2) Restriction on disclosure of sensitive information: (1) Where the Commission receives information within subsection (3), the Commission must not disclose (whether under section 11, 20 or 21 or otherwise) the information, or the fact that it has been received, unless the relevant authority consents to the disclosure.  
(2) Where a person appointed under paragraph 18 of Schedule 3 to investigate a complaint or matter (a “paragraph 18 investigator”) receives information within subsection (3), the paragraph 18 investigator must not disclose the information, or the fact that it has been received, to any person other than the Commission unless the relevant authority consents to the disclosure.  
(3) The information is (a) intelligence service information; (b) protected information relating to a relevant warrant; (c) information obtained from a government department which, at the time it is provided to the Commission or the paragraph 18 investigator, is identified by the department as information the disclosure of which may, in the opinion of the relevant authority - (i) cause damage to national security, international relations or the economic interests of the United Kingdom or any part of the United Kingdom, or (ii) jeopardise the safety of any person.  
(4) Where the Commission or a paragraph 18 investigator discloses to another person information within subsection (3), or the fact that the Commission or the paragraph 18 investigator has received it, the other person must not disclose that information or that fact unless the relevant authority consents to the disclosure.  
(5) In this section - “government department” means a department of Her Majesty’s Government but does not include - (a) the Security Service, (b) the Secret Intelligence Service, or (c) the Government Communications Headquarters (“GCHQ”); “intelligence service information” means information that was obtained (directly or indirectly) from or that relates to - (a) the Security Service, (b) the Secret Intelligence Service, (c) GCHQ, or (d) any part of Her Majesty’s forces, or of the Ministry of Defence, which engages in intelligence activities. Policing and Crime Act 2017. <http://www.legislation.gov.uk/ukpga/2017/3/section/19/enacted>
- 88 Police Investigations and Review Commissioner <https://pirc.scot/about-us/>
- 89 Relevant Person includes any constable and any member of police staff.
- 90 The section also includes: (b) permit the Commissioner or a member of the investigation staff to (i) enter any premises which are used by the Authority or the Police Service; (ii) inspect those premises and anything on those premises which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and (iii) remove from those premises anything which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and (c) provide such other assistance as the Commissioner may reasonably require. The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013. <http://www.legislation.gov.uk/ssi/2013/118/regulation/5/made>
- 91 Memorandum of understanding between the Police Investigation and Review Commissioner, the Police Service of Scotland and the Scottish Police Authority. [https://pirc.scot/media/1284/mou\\_police\\_scotland\\_and\\_spa.pdf](https://pirc.scot/media/1284/mou_police_scotland_and_spa.pdf)

2.67 The MoU referred to a number of procedures and protocols agreed, and the Protocol for the provision of information provided for the PIRC, in the pursuance of an investigation, to require such information, including sensitive information, and access to systems on which the information was held.

### **Republic of Ireland**

2.68 The Garda Síochána Ombudsman Commission (GSOC) had a similar role to the OPONI and dealt with complaints against An Garda Síochána (AGS) concerning Garda conduct, and also conducted investigations into circumstances where it appeared that the conduct of a member of AGS may have resulted in death or serious harm to a person.<sup>92</sup>

2.69 There was a MoU<sup>93</sup> between the two organisations covering operational matters which recognised that the sharing of information was a key requirement for both organisations to ensure good corporate governance, transparency and accountability. In the MoU it was also recognised by the GSOC and AGS that their obligations would be best discharged in a spirit of mutual cooperation.

2.70 Where access was required to information that was considered sensitive, arrangements would be made to have the requested information viewed, or accessed, in the presence of personnel from both AGS and the GSOC at AGS Headquarters, or other agreed location.

2.71 In the MoU the GSOC and AGS recognised their duty of care in the management of sensitive information and there was a provision for AGS to request, at the time of transmission of the sensitive information, the GSOC to provide reasonable advance notice (usually no less than five working days), of its intention to disclose that information to a third party, so as to allow AGS time to consider its legal position.<sup>94</sup>

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92 Garda Síochána Ombudsman Commission. <https://www.gardaombudsman.ie/about-gsoc/gsocs-functions/>

93 Memorandum of understanding, Protocols and agreement on operational matters between the Garda Síochána Ombudsman Commission and An Garda Síochána. <https://www.gardaombudsman.ie/about-gsoc/garda-oversight/>

94 Memorandum of understanding, Protocols and agreement on operational matters between The Garda Síochána Ombudsman Commission and An Garda Síochána. <https://www.gardaombudsman.ie/about-gsoc/garda-oversight/>



# Delivery

## Background to the Review

- 3.1 It was outside the terms of reference of this Review to look at the specific circumstances which led to the PSNI failure to disclose information to the OPONI regarding its investigation into the murders on the Ormeau Road in 1992. The Justice (Northern Ireland) Act 2002 specifically precluded CJI from carrying out inspections or reviews of individual cases.
- 3.2 Nevertheless the circumstances surrounding the failure were important to provide a broader context and were relevant to Inspectors in coming to an assessment of the methods the PSNI use to disclose information to the OPONI in respect of historic cases.
- 3.3 These were outlined by the former Chief Constable in his report<sup>95</sup> to the NIPB and the relevant sections have been reproduced below:
- 3.4 *During 2014-2016, the PSNI's PONI Liaison Office responded to a large volume of specific requests for information from PONI. As is normal practice for requests submitted by PONI, the requests were not all necessarily specific to one particular incident. For example, in this particular case, many requests for material connected to the Sean Graham Bookmaker's atrocity were part of a wider PONI investigation, known as Operation Achille, which PONI described on their requests for information as a "series of murders believed to have been carried out by Loyalist paramilitaries in the late 1980's and 1990's". The PSNI researcher may therefore not necessarily have known that a particular request for information was specific to the Sean Graham Bookmaker's atrocity.*
- 3.5 *In 2014, there were a total of 347 requests for information to PSNI by PONI, of which 101 related to Operation Achille. Similarly in 2015, there were a total of 569 requests for information from PONI to PSNI, of which 136 requests related to Operation Achille. Each request from PONI may ask several questions and seek multiple pieces of information, covering many years.*
- 3.6 *The research in response to these requests appears to have been completed in good faith given the knowledge and understanding of the researchers at that time. What was believed by the researchers to be the full extent of the relevant material was made available to PONI, however it appears that human error and a lack of familiarity of the myriad of our legacy data sources meant that this disclosure was incomplete.*

95 Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psni.police.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

- 3.7 *It appears that the researchers focussed their checks on paper files and believing these to be comprehensive, did not check the legacy computer files that they would sometimes examine as part of their searches. A check of this system would have revealed a small number of additional documents which would have been pertinent to the Ombudsman's enquiry. This was compounded by the fact that the researchers appeared to be unaware of another legacy computer system which if they had checked would have revealed another small number of relevant documents.*
- 3.8 *It should also be noted that the staff working in PSNI's PONI Liaison Office did not have an intimate knowledge of legacy cases and their research was dependent on Intelligence Requests from PONI. If, from their personal knowledge, they were aware of additional information which may support the PONI search for information, such as an incorrect address, or a misspelt name, this information would be provided to PONI. The officers working in our PONI Liaison Office had varying levels of policing service, some of whom had only ever served in the PSNI and had no corporate memory of legacy related matters.*
- 3.9 *In 2018, the PSNI's Legacy Support Unit was involved in researching and preparing information for disclosure to the Court as part of Civil Proceedings in relation to the Sean Graham Bookmaker's atrocity.*
- 3.10 *The researcher on this occasion was a person with significant corporate memory and prior to applying for this role had 30 years policing experience in the RUC and PSNI, approximately half of which had been in covert policing.*
- 3.11 *This researcher was very familiar with the various sources of legacy related information, within the PSNI. As an illustration, this individual knew that during 'the troubles' some people referred to a VZ58 weapon by calling it an AK47. So, instead of just researching the term VZ58, the researcher on their own volition, also used the search term AK47. This search led to additional relevant information which was then prepared for disclosure to the Court. At this point, the PSNI did not yet understand that there was a variance in the level of information disclosed to PONI in 2014, as compared with what was being prepared for Civil Proceedings in 2018. This was because the disclosure exercises were being conducted four years apart, by two different teams within the PSNI and under different legal regimes.*
- 3.12 *During ongoing Civil Proceedings, the PSNI's Legacy Support Unit wrote to the Court as part of a disclosure review in the case, informing the Court that there were 30 folders of sensitive material and 45 folders of non-sensitive material for disclosure. The letter was sent in the knowledge that it would be shared with the solicitor who was acting for the families of the Sean Graham Bookmaker's atrocity, in both the Civil Litigation and the Police Ombudsman Investigation. When the solicitor saw the letter, he made the Police Ombudsman aware of the extent of material being made available to Civil Proceedings.*

- 3.13 *In June 2018, the Police Ombudsman contacted the PSNI and requested an inventory of material relating to the Civil Proceedings. Arrangements were subsequently made for PONI staff to view the folders, which took place in August 2018. After viewing the folders, PONI indicated to PSNI in September 2018 that some material within the folders had not previously been disclosed to PONI.*
- 3.14 *From this point onwards, we have worked expeditiously to ensure that PONI has had full access to all of the material.*
- 3.15 *On 19 October 2018, the Chief Constable commissioned detailed work and fast track actions to establish if these failings could be mitigated and not negatively impact on the Ombudsman's ability to complete his investigations and publish his reports.*
- 3.16 *Recognising the seriousness of the PSNI's error, and in order to support the pace at which this work could be done, the Chief Constable also agreed to material being shared with PONI outside of the MoU.*
- 3.17 *The Chief Constable's decision was taken at significant risk against information security requirements and legal obligations to protect the material. It was however taken on balance, in a sincere attempt to limit the damage to the confidence of the victims' families who had been given timescales for the publication of the PONI report.*

### **Challenges in Accessing Legacy Material**

- 3.18 *Preparing material for disclosure is a very difficult and complex process due to the volume of material held and the limitations of the IT systems on which the research must be conducted.*
- 3.19 *Some of these challenges in accessing material for disclosure are outlined in more detail below.*
- 3.20 *The volume of material gathered by the Police Service over decades is immense. We assess that there are over 44 million pages of paper and microform (microfiche and microfilm) records in existence. This does not include the many millions more computer-based records that exist on multiple computer systems. Many of the paper and microform records have deteriorated due to the passage of time. This makes the reading and scanning of those records challenging. It should be noted that Troubles related material starts in 1968.*
- 3.21 *The material is not stored in one place. It is held on computer systems, on paper and in microform at a number of locations within the police estate. Computerisation began in the 1990s and the systems will reflect the technology of the time.*
- 3.22 *There is no central reference or inventory for every piece of information gathered over many decades.*

- 3.23 *There are many separate computer systems and access to some of these is limited to only a small number of computer terminals – this is because the systems are no longer in operational use and, as a result, the computer components/software are no longer manufactured. Some of these systems have not been in operational use for 16 years and this causes particular problems when it comes to maintaining them.*
- 3.24 *Given the age of some of the computer systems, the PSNI has had to continue to invest in IT support to ensure that they continue to function. Despite this investment, it has not been possible to transfer all material onto more modern systems as they are not compatible with one another. This means that some legacy material can only be found on unstable and archaic systems which lack the advanced search facilities of modern computers. These systems will therefore only return results if the exact term is used. By way of example this means, if a researcher enters the search term ‘Cook’, if it is saved on the database as ‘Cooke’, it could reveal no results.*

### **Corporate Memory Loss**

- 3.25 *The volume of the material held, together with the limitations of the IT systems, means that the accuracy, experience and knowledge of the person who is searching the systems can have a considerable effect on the results that they achieve. Training, peer support and line management supervision is used to support staff working in disclosure. However, this does not ameliorate the challenge of corporate memory loss.*
- 3.26 *Corporate memory loss is a problem for many large organisations but it is one that is felt acutely for the PSNI, given the importance of being able to access and disclose information relating to policing in the past. Today, almost four in every five police officers have only ever served in the PSNI, leaving only one in four officers with any knowledge or experience of serving as a police officer prior to 2001 in the Royal Ulster Constabulary.*
- 3.27 *Up until 2014, the PSNI used temporary workers, the majority of whom were retired police officers with RUC experience, in order to increase corporate memory and support the organisation in responding to many of our legal obligations relating to the past. However, in 2014, the temporary worker contract was brought to a conclusion following a loss of public confidence in the use of temporary workers and significant budgets cuts.*

### **Legal Obligations in Managing and Disclosing Sensitive Material**

- 3.28 *The legal framework within which the PSNI makes material available for disclosure is characterised by complexity.*
- 3.29 *In the management and disclosure of information, the PSNI must meet its duties by balancing a number of competing legal obligations – some of which oblige us to disclose information and others which oblige us to protect information. The Police Ombudsman, the Coroner and the Court Service will always have full access to all material available. However, depending on the content of the information, other legal obligations are triggered.*

**Examples of how the PSNI balances this competing legislation are outlined below:-**

- 3.30 *In the disclosure of information to the Police Ombudsman, under the Police Act (2000), the PSNI will supply all required information (sensitive and non-sensitive) to PONI. However, legal obligations, including those under Article 2 of the European Convention on Human Rights (ECHR), Section 29 of the Regulation of Investigatory Powers Act (2000) and the Criminal Procedures and Investigations Act (1996) means that the manner in which the information is shared is carefully managed by both organisations, for example in terms of the vetting of staff who have access to the information and the security of the locations and systems on which the information is held. A Memorandum of Understanding between the two organisations sets out how all sensitive material should be supplied to PONI.*
- 3.31 *In the disclosure of information to a Coronial Inquest, under the Coroners (Northern Ireland) Act 1959, the PSNI will prepare information for disclosure. However, PSNI's obligations under Article 2 and Article 8 of the ECHR means it must consider if redactions should be suggested to the Coroner in order to protect life or safeguard an individual's right to privacy. The Coroner sees all the information and it is entirely the Coroner's decision as to whether to accept our suggested redactions or not.*
- 3.32 *This complexity and the competing legislative demands are outlined to assist with a wider understanding of the scale and challenge of disclosure for the PSNI. They are not cited as specific causation factors of our failures in this case, but part of the overall context of the extreme challenges faced by PSNI in legacy disclosure.*

## PSNI Response

- 3.33 The PSNI response to the failure to disclose the information to the OPONI was to declare a critical incident and an immediate internal review was commenced, called *Op Turnel* which was referred to in Chapter 1. Part of the immediate work of *Op Turnel* was to develop a standardised model across all disclosure and discovery processes to include:
- a single point of registration records management for all information requests and information sharing;
  - a central process for quality assurance of information requests and information sharing management;
  - a centralised case management and progress review meetings; and
  - the adoption of a standardised search guide.
- 3.34 It was also to conduct an audit of all available IT systems, databases and any other sources of information across the PSNI estate in order to:
- ensure a clear understanding of the existence of all available material;
  - ensure the IT systems are stable and secure; and
  - establish the extent and search capabilities of those IT systems.
- 3.35 There was also work to establish demand levels in order to better understand corresponding resource needs.

Reference is made to these areas below.

## PSNI Systems

### *The OPONI Liaison Office (LO)*

- 3.36 The primary point of contact for the PSNI with the OPONI in respect of requests for sensitive information was the OPONI Liaison Office (LO) in the Crime Operations Department.<sup>96</sup>
- 3.37 The LO dealt with requests from the OPONI CU with 667 in 2017 and 513 in 2018. The research required for these requests varied from relatively straightforward requests for an individual piece of information, to requests spanning many years which could require considerable research and the preparation for a viewing of significant volumes of material from various sources.
- 3.38 Under the MoU it was expected that the PSNI would supply the material to the OPONI within 20 days. There was no reliable PSNI management information to monitor the organisation's performance in meeting this target and this needed to be developed.
- 3.39 At the time this Review commenced, the LO was staffed by three Detective Constables working on a part-time basis which equated to 1.8 full time equivalents. The D/Sergeant was covering the post on a part-time basis in addition to performing other duties with Crime Operations Department. One full time member of staff had left the LO and the person had not been replaced. The LO had an agreed staffing level of one D/Sergeant and four D/Constables. At the time of the fieldwork the LO staff had a caseload of *circa* 15-20 per officer.
- 3.40 All of the staff were experienced officers with previous experience in the Crime Operations Department which was advantageous in undertaking this role. Inspectors understand that the officers were appointed to the LO role primarily as a result of their requests for more flexible working arrangements. The officers did not have a thorough understanding of what the role involved prior to their appointment to the LO.
- 3.41 There was no role-specific training provided to the officers on appointment as a LO and no role-specific training or guidance was available in relation to searching for the required material. The officers learned the role by peer-to-peer training and support, and the part-time nature of the role meant that it took the officers a longer period to feel confident in the role than would have been the case if working on a full-time basis.
- 3.42 The staff in post at the time of the fieldwork were experienced officers, they were committed to undertaking the role as effectively as possible and Inspectors were impressed by their knowledge and professionalism.

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<sup>96</sup> The Liaison Office transferred to Legacy and Legal Department on 23 May 2019.

- 3.43 The LO staff had a good understanding of the paper registry and the IT systems which required to be searched, although one of the key IT systems which OPONI required to be searched for legacy-related intelligence was System C-3. There was no search guidance available for this system and none of the LO staff had any formal training in the system or on how to undertake searches.
- 3.44 System C-3 was a very archaic system which could not be easily searched. It was extremely cumbersome to navigate, could only search for 'exact matches' and many of the source documents which Inspectors viewed were characterised by misspelled words, typographical errors and inconsistent formatting of dates etc. The outcome of a search relied on the knowledge and experience of the person undertaking the search. As a result it was possible for two independent searchers for the same OPONI request to produce varying results due to the permutations of, for example, the spelling of names, locations, dates, vehicles or addresses.
- 3.45 In addition, up until very recently, the LO staff were not aware of the existence of another legacy computer system, System C-4, which was a sub-function of System C-3. This was referred to in the Chief Constable's Report to the NIPB.
- 3.46 System C-4 contained a variety of documents and had been used in the past by officers as a word processing function. Some of the content contained intelligence-related legacy material, many of the documents did not. The search function of system C-4 was similar to that of system C-3. Both systems were unstable, had a very limited number of terminals on which they could be accessed, and there was a significant risk to the organisation if they malfunctioned or collapsed. The other IT systems which contained legacy-related intelligence and operational material which were regularly accessed by the LOs were systems C-5, C-6 and C-7 and these were stable, modern and had a good level of search functionality.
- 3.47 When viewing the files Inspectors saw evidence of thorough searches by the LO staff including of the various permutations of spellings of names and locations. There was also evidence that the LO staff had searched using permutations of a combination of search terms.
- 3.48 There was further evidence that the LO staff had sought additional information from the OPONI, had clarified for example, incorrect dates of birth supplied by the OPONI in an attempt to fully meet the OPONI request and to be as effective as possible in the search.

## Operational recommendation 1

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

- 3.49 This should include a selection and appointment process tailored to the needs of the role in terms of officer experience, corporate knowledge/memory etc., detailed training and guidance to officers on appointment to ensure that staff were confident and effective in performing the role.
- 3.50 The D/Inspector in charge of the LO had introduced a research sheet for the LO staff to record their search activity. Inspectors saw this as good practice as it provided a degree of confidence to the LO staff; allowed supervisory dip-sampling and quality assurance of the search; and it allowed the search to be replicated if necessary.
- 3.51 Inspectors were aware that there was some dip-sampling and the quality assurance of the material produced by the LO staff as a result of their search, although this was very limited. More needed to be done to provide this corporate assurance (see strategic recommendation 1).
- 3.52 There was general agreement on both sides that there was a very constructive working relationship between the LO staff and the OPONI CU staff at the operational level. This was very positive and CJI sees merit in continuing to strengthen these working arrangements.

#### **PSNI's ability to respond to OPONI requests for information**

- 3.53 There was concern about the ability of the LO staff to meet the MoU commitment which stated that the PSNI, in responding to the OPONI requests for sensitive information, *'will also disclose any other sensitive material of which the Chief Constable is aware and that may be relevant to the request.'*
- 3.54 The LO staff searched the relevant systems for the records as specified in the OPONI request. They were not equipped to search for other relevant material as they had no knowledge of the OPONI investigative strategy, the background to the search, or the OPONI lines of investigation. The PSNI considered it inappropriate for the LO staff to apply a 'relevancy test' to OPONI requests for information. The PSNI could not therefore provide a corporate assurance that it was fulfilling this aspect of the MoU.
- 3.55 At the time of the Review there was a growing realisation by the OPONI and the PSNI that for both organisations to fulfil their obligations, this area of the MoU needed to be revisited. The current Police Ombudsman assured Inspectors, that as part of a suite of measures to enhance the efficiency with which the OPONI secures access to sensitive material from the PSNI, at the outset of historic investigations and only where appropriate, there may be value in furnishing the PSNI with Terms of Reference and the nature of the complaint.

- 3.56 OPONI staff advised Inspectors that they saw merit in the OPONI providing the police with greater clarity as to what was being investigated, and that the PSNI could best fulfil its function to assist and resource OPONI investigations if the OPONI were to provide clear communication containing sufficient information to allow an effective search by the PSNI.<sup>97</sup> The OPONI would have to consider requests on a case-by-case basis, and it was acknowledged that in some cases due to the sensitivities or nature of the case, very little information could be disclosed and in others, there may be more scope for increased or partial information to be provided to facilitate a more effective search.
- 3.57 Inspectors understand the OPONI independence issues, the potential to prejudice investigations and the rationale why the OPONI could not always disclose this information. It does however need to be recognised that it had an impact on the ability of the PSNI to resource the OPONI investigative function, and to properly support the 'investigative mind-set' of the OPONI SIO in the absence of the discussion and briefing one would expect with a researcher for example, in a police criminal investigation.<sup>98</sup> This needed to be addressed by the PSNI and the OPONI (see strategic recommendation 2).
- 3.58 CJI understands that the PSNI and the OPONI have commenced discussions to review this issue and this is an extremely positive development.

#### ***PSNI Provision of Requested Material to the OPONI***

- 3.59 When the LO staff had completed the searches and compiled the material for disclosure, the PSNI wrote to the OPONI to advise that the material was available for viewing.
- 3.60 Under the MoU, OPONI undertook to view the material within 20 days. This was not always done expeditiously and when Inspectors visited the PSNI secure storage facility, there were almost 100 unread files from 2017 and 2018 which had not been viewed by OPONI staff. PSNI records showed there were a further 15 from 2016. There were also a number of 2019 files which were in storage outside the 20-day period. Inspectors were advised that the PSNI had also weeded-out additional unread files that the OPONI had confirmed were no longer required, and this comprised 21 files marked as 'no longer required.' Of these, some had been viewed or partially viewed by the OPONI, others had not. The Police Ombudsman assured Inspectors that none of the unread files related to cases that had been publicly reported on.
- 3.61 Inspectors viewed this quantity of unread material which the PSNI had prepared for OPONI viewing as a matter of concern. At one level, this was nugatory work for the PSNI and it was perceived in the PSNI as a signal that the work done by the LO staff was not valued by the OPONI.
- 3.62 At another level, police were concerned about the necessity and proportionality of the OPONI requests for sensitive material if it was not being accessed and viewed either in a timely manner, or on occasions, not at all.

97 Making a request analogous to the form of a statement of claim see paragraph 3.103 is one approach that could be considered.

98 See also comments above re criteria for the OPONI to request information from the Security Service.

- 3.63 But most importantly it affected trust. CJI had previously said that the OPONI needed to provide continued assurance that the material it requested would always be relevant to an investigation.<sup>99</sup>
- 3.64 There were concerns expressed by a number of PSNI officers about the existence of unread sensitive material which created the perception among police that this could impact on OPONI investigations. These were crucial matters affecting trust.
- 3.65 The Police Ombudsman advised CJI that her office had been communicating with the PSNI in relation to this backlog of files, and the underlying reasons for delays in the material being viewed, since the summer of 2018. The situation had largely arisen as a result of the PONI redefining investigative priorities, not least of which was the focus the Office brought to the issues identified in the PSNI legacy disclosure processes in the summer of 2018, which ultimately led to the CJI review.
- 3.66 At the time of the review, the OPONI was unable to provide Inspectors with management information to clarify the extent of this issue. Inspectors were subsequently told that this was due to a loss of staff within the Confidential Unit as well as its need to divert resources to deal with issues arising from the PSNI disclosure failings. Inspectors understand the resourcing issues associated with this, and it needed to be effectively managed by OPONI.
- 3.67 It would be the view of CJI that the OPONI needed to review the process in place to monitor its performance in viewing disclosed material within the 20-day limit, and should take account of the resources available to view disclosed material before making requests to the PSNI.

### ***PSNI/OPONI Meetings under the MoU***

- 3.68 There were regular meetings between the PSNI and the OPONI to discuss and update the progress of requests, any outstanding actions, ongoing issues between the two organisations regarding OPONI requests, the disclosure of information by the PSNI and the viewing arrangements for the OPONI to access PSNI material. These meetings discussed operational matters and did not look at issues affecting the operation of the MoU or its effectiveness at meeting the needs of the two organisations.
- 3.69 The liaison between the two organisations was working well at an operational level and both organisations advised Inspectors that there were constructive working relationships in respect of historic case disclosure between the LO and the CU.

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99 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland*, CJI, December 2013, available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>.

### ***PSNI Corporate Coordination and Quality Assurance of Disclosed Material***

- 3.70 The circumstances which led to this Review whereby one part of the PSNI, i.e. the Legacy Support Unit, disclosed material for a civil litigation which was not disclosed by another part of the organisation, the LO, showed that the PSNI needed a mechanism to provide corporate assurance that its disclosure and discovery regimes were effective and consistent across the organisation. (Reference has also been made previously for the need for quality assurance of the material provided by the LO to the OPONI.) This was recognised by the PSNI as a central element of the standardised model.
- 3.71 Inspectors understand that the introduction of a case management system will provide this function. The PSNI estimated that it would take around one to two years to develop and implement the system which would have an external-facing element to allow, for example, the OPONI to make requests direct. Due to the timescales required to develop the new case management system the PSNI intended to introduce an interim solution, based on an existing internal case management system, which would be in place by the end of August 2019. Any new systems would not be retrospective. The timescales meant that Inspectors were unable to comment on the proposed new or interim technology, but it was the view of CJI that it was a critical issue for the PSNI to address going forward.

### **Strategic recommendation 1**

**The PSNI should urgently put in place an effective system to provide corporate assurance that:**

- **all material provided by the LO was that required in the original request from the OPONI; and**
- **the disclosure and discovery regimes were effective and consistent across all Departments.**

### ***PSNI Restructuring***

- 3.72 To further standardise the response, the PSNI restructured this area within its Legacy and Legal Department from 23 May 2019. The LO was moved from the Crime Operations Department to Legacy and Legal Department and with the Criminal Trial Disclosure Unit, comprised a new unit called Sensitive Disclosure Governance under a Senior Legal Advisor. CJI viewed this as a positive development.
- 3.73 The three groups which were responsible for disclosure and discovery now came under the command of ACC Legacy and Legal Department, i.e:
- Complex Cases;
  - Legacy Support Unit; and
  - Sensitive Disclosure Governance.

- 3.74 The PSNI was acutely aware of the issues which lead to this Review and had taken a number of steps to address the underlying causes. The need for corporate assurance of consistent disclosure and discovery was referred to above. However prior to the implementation of the interim case management solution, the new structure had facilitated improved communication between the three units. In the interim, it should go some way to improve the oversight, coordination and management of disclosure and discovery across the PSNI.
- 3.75 From 23 May 2019 the LO had been strengthened with the addition of a full-time D/Sergeant and a full-time D/Constable. At the time of writing the LO was one D/Constable short of its full staff complement, however Inspectors were assured that work was underway to fill the remaining post.
- 3.76 Part of the *Op Turnel* work was to establish demand levels to better understand the corresponding resource needs and Inspectors would agree that this was required.

## Operational recommendation 2

**The PSNI should review its PSNI liaison (OPONI LO) staffing levels against current, and potential future demand<sup>100</sup> within one year of the publication of this Review.**

### *PSNI Research Guide for Sensitive Information*

- 3.77 One of the strands of the *Op Turnel* standardised model was the adoption of a standardised Search Guide. In addition to being of considerable benefit to the staff working in the LO, it was a document for all PSNI researchers for civil litigation, disclosure, Coroner's Courts etc.
- 3.78 At the time of writing, the Guide was at a very advanced stage with a draft in the final stages of development. The development of the Guide had taken account of the outcomes of the PSNI internal review into the reasons for the non-disclosure in the incident which led to this Review.
- 3.79 The nature and content of the Search Guide meant that it was a classified document: Inspectors have had full and unrestricted access to it.
- 3.80 The purpose of the document was to provide assistance and guidance for the day-to-day operation of the research function. It outlined:
- the relevant legal requirements;
  - the mechanism to facilitate consistency and quality and information provided to internal and external recipients of PSNI information; and
  - the potential of the Guide as a training tool.

100 See strategic recommendation 2

- 3.81 It was a 'live' document to be amended and updated as the law, policy or practice changed. It acknowledged that searches of PSNI material could never be exhaustive because of the volume and complexity of the legacy material, its historic storage and access, the varying levels of search ability in the legacy systems, and the potential for human error.
- 3.82 The staff searching for the information needed to use their professional experience and judgement to satisfy themselves that they had conducted all reasonable searches of the relevant systems to provide the material requested by the OPONI.
- 3.83 The Guide provided researchers with the date ranges and an outline of the intelligence-related material stored on each of the PSNI IT systems (and followed on from the full inventory of all legacy systems and data sources) and included paper-based systems, with a process map to guide the person searching for the information of where and how to search for it. It provided contact points in the various departments holding relevant information inside and external to the PSNI, together with the relevant email links and request for access pro forma.
- 3.84 A section of the Guide related to the OPONI LO role and provided guidance on where and how to access the relevant information.
- 3.85 There had been significant resources and effort committed to developing the Guide and it would be the view of Inspectors that it was a comprehensive document which although long overdue, addressed the identified need. It would facilitate consistency and quality in the information provided by the PSNI to internal and external recipients (including the OPONI) and would be a valuable guide and training aid for PSNI personnel working in this area, now and in the future.
- 3.86 Searches for information on archaic IT and paper-based systems, where the base material had not been quality or accuracy assured, which demanded a degree of 'corporate memory', and had not been catalogued, classified and linked to modern standards could never be guaranteed. The potential for human error will always exist, no matter how sophisticated the IT system. In terms of archive practices Inspectors considered processes elsewhere and had discussions with the Public Records Office of Northern Ireland (PRONI) and National Archives as part of this Review; and many of the archives of historic material held by them would face similar issues. Many of the PRONI and National Archive paper-based historic archives could be searched against an index, but not for content. There was no way of searching for content unless this had been created and formatted from the source material.
- 3.87 Nevertheless, Inspectors would be assured that the implementation and embedding of the Search Guide in PSNI practice, and its use as the basis for the training and familiarisation of staff working in this area, together with the other elements of the standardised model, and corporate disclosure regime, when implemented and embedded in practice, would allow the PSNI to undertake its disclosure obligations with a much higher degree of certainty.

### PSNI Data Sources

3.88 The Chief Constable's report to the NIPB<sup>101</sup> referred to a 'myriad of legacy data systems'. In a large organisation like the PSNI, and formerly the RUC, for the purposes of this Review operating since pre-1968 in a pre-digital world, this was not entirely unexpected.

### PSNI IT systems

3.89 As part of *Op Turnel* one of the work areas was:

*'...to conduct an audit of all available IT systems, databases and any other sources of information across the PSNI estate.'*

3.90 The IT aspect of this had been completed and at the time 190 IT systems were identified: 21 systems contained legacy-related material. Some of these were not solely PSNI systems and were shared with other national police and security agencies. Search and access procedures were covered in the Search Guide. Two of the main systems identified by the OPONI as relevant to its requests, system C-3 and system C-4 were archaic, unstable systems which were in the process of stabilisation and transfer to a modern searchable platform.

3.91 Inspectors viewed the PSNI Information and Communication Services (ICS) processes for the identification, verification and transfer of the data and were assured that this was a rigorous, verifiable process.

3.92 This included detailed data export processes from the two source systems to audit, record and validate the export processes; detailed records of the data metrics, volumes and types; industry standard checksum processes for assurance and validation of the completeness and accuracy of the datasets being exported; and 'gold' archive copies created for each of the source systems.

3.93 The data import onto the new platform comprised a similar process with checks that the metrics, volumes and types matched the data exported; and checksum identifiers to ensure the accuracy and integrity of the data migration.

3.94 Inspectors had a detailed preview of systems C-3 and C-4 on the new platform and can confirm that: it was fully searchable; would significantly reduce the requirement for corporate knowledge to effectively interrogate systems C-3 and C-4; and contained a fully auditable record of searches - a feature not available on the original systems.

3.95 The new system would also significantly improve the search times and the business processes for the LO and should also improve efficiency.

3.96 Inspectors understand that, at the time of writing, the PSNI was working internally on developing an accredited training programme for the new C-3 and C-4 platform for the staff in the LO and for any future staff. This was a very positive development. Inspectors will be interested to see how this develops and assists the LO staff to undertake their role.

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101 Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psni.police.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

### **PSNI Paper Copy Archives and Microform**

- 3.97 The PSNI held a considerable volume of paper archives and microform (microfiche and microfilm) records. A proportion of the older material was in poor condition and was deteriorating.
- 3.98 The intelligence-related records alone was estimated by the PSNI to comprise at the time 44 million pieces of paper and microform.
- 3.99 In 2016 the PSNI prepared a scoping document for back record conversion of this intelligence-related material. For effective back record conversion of the material, including repairing and protecting pages; scanning onto digital format with minor optical character recognition (OCR) capability; indexing the file to allow search ability with meta tags to identify content, which was a manual process; and to then re-construct the file in its original form, the estimated cost was £45.7 million for 199 staff over an eight year period.<sup>102</sup>
- 3.100 Inspectors understand that the back record conversion of the intelligence-related material remained a live issue and that ICS was revisiting the 2016 position to test the market. The Chief Constable advised the NIPB that the PSNI Digital Program Board was currently revisiting this work as part of the PSNI's internal review and he would keep the Board updated.<sup>103</sup> It was the ICS view that technology was not currently available to provide what the PSNI required, largely because of the quality of the source material, and there was little optimism that there would be a solution available in the short-term.
- 3.101 The above referred to intelligence-related documents and did not include for example other paper and hard-copy documents throughout the police estate, or recovered from police stations which had been closed over the years, for much of which there was no accurate record of what material was in existence before the station closed or where it was transferred to within the PSNI estate. There was no central inventory within the PSNI of hard-copy historic material.

## **Operational recommendation 3**

**The *Op Turnel* 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.**

102 Project scoping document. Intelligence back record conversion. July 2016. Internal PSNI document. See also Northern Ireland Policing Board. <https://www.nipolicingboard.org.uk/questions/confirmation-resources-and-preparations-being-made-make-44-million-archived-documents>

103 Northern Ireland Policing Board. <https://www.nipolicingboard.org.uk/questions/confirmation-resources-and-preparations-being-made-make-44-million-archived-documents>

### **PSNI LO and PSNI Legacy Support Unit (LSU)**

- 3.102 The Chief Constable's report to the NIPB, above, referred to the distinction in roles between the LO and the Legacy Support Unit (LSU). Reference has been made above to the role of the LO to supply information on the basis of the request made by the OPONI.
- 3.103 Part of the role of the LSU was to search for material to defend the Chief Constable against a civil legal action. Searches were based on what was pleaded in the statement of claim in legacy civil actions, and on the directions of the PSNI legal advisor.
- 3.104 Statements of claim could be detailed and lengthy documents containing the details of the alleged negligence case against the Chief Constable, particulars of offences allegedly committed by police officers, alleged breaches of statutory duties etc.. The LSU therefore based its work on potential relevance to the matters raised in the statement of claim, across the broad scope of the allegations. The LSU would also search for all avenues of material which could defend the Chief Constable against the allegations, which could negate the issues raised in the statement of claim, and which would be taken from sources wider than that pleaded in the statement of claim.
- 3.105 So while there was a distinction in the roles of the LSU and the LO, the purpose of outlining the distinction was not in any way to excuse or explain the failure to provide the OPONI with information in the case which led to this Review. The material should have been disclosed when asked for by the OPONI. The person doing the search for the documents that were not disclosed to the OPONI did have access to the systems where they could have found the documents had the search been done thoroughly and properly.<sup>104</sup>
- 3.106 It does however further make the case for the PSNI to have an effective mechanism to provide corporate assurance of its discovery and disclosure across the organisation (see strategic recommendation 1).
- 3.107 On the specific issue of resourcing for disclosure, in July 2018, the PSNI submitted a business case to the DoJ requesting additional resources for the establishment of a Legacy Litigation and Inquest Unit. This business case sought to address the current levels, as well as anticipated future levels, of legacy disclosure work which required an additional 110 staff to support PSNI inquest legacy disclosure. At the time of writing the business case had been approved and the PSNI was recruiting staff to undertake this role.

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104 See Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psnipolice.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

## OPONI Procedures

### *OPONI Internal Applications for Disclosure*

- 3.108 Inspectors examined a number of the OPONI files for making application to the PSNI for disclosure of historic information for the investigation of historic cases. In most of the files examined the procedures in the CU SOP were adhered to, and there was sufficient justification and balanced argument as to the necessity, proportionality and justification for the material recorded in the application. In addition, most of the cases examined showed how the material would assist the investigation of the complaint, details of the nature of the complaint/allegation were included, and the request was clear as to exactly what information was required.
- 3.109 Applications to the PSNI were generally in line with the MoU, in the form of a specific intelligence request and included details of the suspected/alleged misconduct under investigation including a brief background to the case, together with confirmation of the OPONI Chief Executive's belief as to the necessity, lawful basis of complaint and proportionality for the request. The time periods of the requests that Inspectors viewed were mostly reasonable, although for a linked series of investigations, this could extend to a lengthy time period. In one case that Inspectors examined the application to the PSNI was for information over a timeframe which was longer than that requested by the SIO. There was no explanation as to why this had been the case, however this appeared to be an exception.
- 3.110 Similarly, files requesting the identity of CHIS, were generally well completed, and contained the additional justification in line with the SOP. Inspectors saw examples where the SIO's application was refused by the OPONI Director as they were not adjudged to have met the threshold, which demonstrated that they were receiving a level of internal scrutiny.

### *OPONI Internal procedures for SIOs and the CU*

- 3.111 The rationale for the operation of the OPONI CU was a separation, or 'firewall' between OPONI staff viewing sensitive material and those who were in public-facing roles and in particular, remained free of contact with complainants and/or their representatives. If SIOs were engaged in such contact they would be specifically briefed by senior OPONI staff and a record kept of what information may/may not be disseminated.<sup>105</sup>
- 3.112 Whilst Inspectors understand the rationale for this arrangement, it produced inefficiencies and potentially limited the effectiveness of the OPONI SIO role in investigations. The process whereby SIOs made information and sensitive information request applications to the CU, with the disclosed material then viewed by CU analysts/researchers who produced intelligence documents on a 'need to know' basis via Intelligence Assessments; DIRs or SIRs placed an intermediary step between the SIO and the disclosed material. The researchers had to assess the relevance of the disclosed material to the investigation and the SIO's lines of enquiry and wider linkages across the investigation. In some cases the quantity of disclosed material could be vast and in the case of historic investigations, could straddle a series of interlinked crimes over sometimes lengthy time periods.

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105 The Memorandum of Understanding between PONI and the Chief Constable PSNI regarding the sharing of 'sensitive material'. Internal Document June 2018

- 3.113 Central to the effectiveness of the OPONI investigative process was the role of the analyst. The analyst would be involved in regular meetings with the SIO regarding the investigation. Inspectors understand that in the past there had been an analyst attached to each major historic OPONI investigation. However, with the reduction in analysts this was no longer possible and the analysts had to broaden their work load across a number of investigations. It was crucial to the role that the analyst had a full understanding of the investigation, lines of enquiry and the SIO's working hypothesis, to which the analyst was providing analytical support. The analyst also had to be aware of the relevance of other related material, previously viewed as a result of associated OPONI requests to the PSNI for additional material over time. The OPONI needed to ensure that the staff shortages did not impact on the analysts' ability to effectively support the SIO.
- 3.114 The SIO would make the case to the CU to request sensitive material from the PSNI. The PSNI would then research the request and notify the OPONI that the material was ready for a viewing. For historic investigations there could be multiple OPONI requests for information potentially resulting in extensive quantities of intelligence related material to be viewed by the analyst.
- 3.115 It was agreed in the MoU that the OPONI staff would make:
- '...a summary note to record on an accredited secret laptop of the reviewed sensitive material.'*
- 3.116 This meant that it was the analyst who chose what material to record in the summary note and was in fact applying a 'relevancy test' to the disclosed intelligence.
- 3.117 This was a fundamental element of the investigative process and crucial to informing future enquiries. Within the OPONI there was no mechanism to quality assure or dip-sample this summary product against the original disclosed material<sup>106</sup> to assure the SIO and OPONI that all material relevant to the investigation had been identified and captured.
- 3.118 Inspectors understand that this issue had been identified and raised within the OPONI by the senior Director of Historic Investigations in 2017 but it had not been progressed.
- 3.119 There was precedence for SIOs to review the material as provided for in the MoU and Inspectors understand that on occasions OPONI SIOs had viewed sensitive material directly, and had directed PSNI system operators as to the documents required.

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106 HMIC made a similar observation in its Inspection of HET although this was in a different context around HET's ability to demonstrate independence in the intelligence process which was undermined by the involvement of former RUC and PSNI officers working for the HET in managing the information from the PSNI C3 intelligence branch. The Report recommended a dip-sampling process which in addition to safeguarding the independence element would also providing a measure of confidence for families that reviewing officers are undertaking their work on the basis of full access to all appropriate intelligence material. *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*. HMIC 2013. <https://www.justiceinspectorates.gov.uk/hmicfrs/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf>

3.120 It would be the view of Inspectors that the OPONI should review the arrangements for its viewing of disclosed material.

#### Operational recommendation 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 SIO and the OPONI that all material relevant to the investigation was identified and captured.**



## Outcomes

- 4.1 The PSNI has, rightly, been criticised, and accepted its culpability for its failing to disclose sensitive material to OPONI staff investigating the murder of five people at a betting shop on the Ormeau Road in Belfast on 5 February 1992. The reason that the material came to light was because it was found by the PSNI as part of a separate search of material for disclosure to the Court as part of civil litigation proceedings.
- 4.2 Whilst it could be alleged that the police had not disclosed material germane to the OPONI investigation; the fact that the information came to light as a result of the PSNI disclosure process, albeit in another part of the organisation, as the former Chief Constable said *"if it was a cover-up we weren't very good at it because we disclosed it for the civil litigation"*.<sup>107</sup> Had the information come to light by some other means then it would be much more difficult for the PSNI to make the case that the incident was due to human and procedural failing. Nevertheless, this would be cold comfort for families involved in this and other OPONI investigations.
- 4.3 The risk for the PSNI going forward was that until it implemented an effective system of records management and had effective corporate oversight and quality assurance of its disclosure and discovery processes, a future failure to disclose information could never be ruled out.
- 4.4 There was absolutely no doubt that PSNI senior management were acutely aware of the implications the failure to disclose sensitive information to the OPONI had on public confidence and trust in policing. There was an immediate declaration of a critical incident and significant work had taken place under *Op Turnel* to effectively deal with the incident, its ramifications, and the remedial action required to prevent a recurrence. There had been significant resources committed to the process, which had come at the expense of other areas of contemporary policing. Senior PSNI management had repeated its commitment to openness and transparency and to the maximum disclosure possible in line with the organisation's statutory responsibilities.

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107 Interview given by the Chief Constable in UTV View from Stormont 18 February 2019.

- 4.5 It would be the view of CJI that the work within the PSNI to introduce structures for management and oversight, the standardised model for disclosure and discovery, together with the recommendations of this Review, provide the basis to more effectively deliver the material required by the OPONI for its historic investigations, and to substantially reduce the risk to the organisation of a recurrence of the incident which led to this Review. However, many of the underlying structural issues, for example records management, back record conversion etc. will not be resolved in the short-to medium-term.
- 4.6 Lack of corporate knowledge had also been referred to as a factor in the failure to disclose which led to this Review;<sup>108</sup> and when dealing with archaic systems and records this will always be a factor. In the PSNI it was a resource which was diminishing over time. Taking steps to mitigate areas where corporate knowledge was a factor, for example, the transfer of systems C-3 and C-4 onto a modern searchable platform, would help to reduce the requirement for corporate knowledge, but it will never be entirely eliminated.
- 4.7 Any further failures of this nature have the potential to further damage the PSNI's reputation and public confidence in the organisation's ability to perform its statutory duties in an effective and impartial manner. The PSNI was acutely attuned to this.
- 4.8 In respect of the question 'could it happen again?', it would be the view of Inspectors that until all the work to introduce structures for management and oversight, the standardised model for disclosure and discovery, together with the recommendations of this Review were fully implemented, and embedded in operational practice, then that risk remained, albeit mitigated by the ongoing actions of the PSNI.

## The Memorandum of Understanding

- 4.9 CJI previously recommended a revised protocol which satisfied each organisations' obligations and enabled a productive and professional working relationship.<sup>109</sup> The current MoU between the PSNI and the OPONI set the basis for the working relationship however, as was outlined previously, in some areas there were still points of friction.
- 4.10 The MoU had no legal standing and was open to interpretation and both the PSNI and the OPONI had differing interpretations of various aspects of the MoU.
- 4.11 The former Chief Constable had made a formal case that the relationship should be governed by rules and statutory guidance. This would provide both organisations with a legislative tool to which they both could refer and which it would be for the Courts to decide in the event of a disagreement: this could incorporate timelines for the provision and viewing of material. CJI would see the merit in formalising this relationship but it was not something which would happen in the short-to medium-term.

108 Report to the Northern Ireland Policing Board regarding PSNI Failings in Legacy Disclosure. 21 February 2019. <https://www.psnipolice.uk/news/Latest-News/260219-report-to-the-nipb-regarding-psni-failing-in-legacy-disclosure/>

109 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland*. CJI, December 2013, available at <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

- 4.12 The OPONI did not consider that additional rules and statutory guidance were necessary as the legislation and MoU, as it currently stood, was sufficient. Inspectors understand that the current appointed Ombudsman considered that the current legislation was outdated and needed to reflect modern Ombudsman legislation with regards to penalties for noncompliance and disclosure requests.
- 4.13 As an interim measure the PSNI and the OPONI should revisit and revise the MoU to take account of the issues raised in this Review and in the light of the standardised model proposed by the PSNI.

## Strategic recommendation 2

**Within one year of the publication of this Review, the PSNI and the OPONI should revisit and revise the 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.**

### Public Confidence

- 4.14 Reference was made earlier about the difficulties with dealing with Northern Ireland's past and this extended to confidence in policing.
- 4.15 In contemporary policing there was confidence in the PSNI and the Northern Ireland Crime Survey showed the level of public confidence in the police and police accountability arrangements was 81%, while overall confidence in the PSNI was 68%.<sup>110</sup> The Northern Ireland Omnibus Survey found that over two thirds (68%) indicated that they thought that the police were doing a very/fairly good job in their area, and a large majority (86%) indicated either total, a lot or some confidence in the PSNI's ability to provide an ordinary day-to-day policing service for everyone in Northern Ireland.<sup>111</sup>

110 *Perceptions of Policing and Justice: Findings from the 2017/18 Northern Ireland Crime Survey*. Research and Statistical Bulletin. Rice and P Campbell. May 2019. <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/p-p-j-17-18-nics-findings-may.pdf>

111 Public perceptions of the Police, PCSPs, the Northern Ireland Policing Board and the NCA. Report based on the Northern Ireland Policing Board module of the May 2018 Omnibus Survey. Published by the Northern Ireland Policing Board <https://www.nipoliceboard.org.uk/sites/nipb/files/publications/omnibus-survey-may-2018.PDF>

- 4.16 The situation in respect of 'Troubles'-related legacy issues was different and reflected the wider societal difficulties in dealing with Northern Ireland's past. The failure of the PSNI to disclose the information to the OPONI had significantly undermined confidence in policing, with one of the main Northern Ireland political parties publicly stating that 'Nationalist confidence in policing was at rock bottom'; that it had implications for recruitment of Catholic officers to the PSNI; and that it had completely undermined public faith in the PSNI's handling of legacy cases.<sup>112</sup>
- 4.17 It was critical that the PSNI, supported by the OPONI, did everything possible to rebuild public trust and confidence in the organisation's ability to effectively resource OPONI historic investigations.

### Trust between the PSNI and the OPONI

- 4.18 As referred to in Chapter 1, relationships were generally good between the PSNI and the OPONI in respect of current OPONI investigations. In respect of historic OPONI investigations, at the operational level there were good working relationships between the OPONI CU and the PSNI LO and the respective staff had an understanding of each other's position. There was a professional working relationship which Inspectors would see as positive and this should continue.
- 4.19 Inspectors however were aware of an underlying level of concern across the two organisations about the relationship and their respective processes and functions.
- 4.20 The OPONI concerns were around the independence of the office and the requirement for the OPONI to undertake very clear and robust, independent investigations into historic cases. At the time of the Inspection fieldwork, there was a suspicion within OPONI that generally and including the incident which led to this review, that the PSNI was not disclosing the information that the OPONI required for its investigations, and that the LO function was under-staffed and delayed the OPONI's work: more needed to be done by the PSNI to build trust in these arrangements.
- 4.21 The PSNI had a duty to provide the information under section 66 of the Police (Northern Ireland) Act 2000 and this was not in dispute. All PSNI staff that Inspectors spoke to expressed their full commitment to this principle and without exception understood the necessity to do so in a transparent and effective manner, not only as a resource for OPONI investigations, but also in respect of the wider issues of public trust and confidence. The former Chief Constable had led this approach from the top and CJI would acknowledge his commitment and leadership on the issue.

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112 <https://www.bbc.co.uk/news/uk-northern-ireland-47324733>

4.22 The PSNI concerns were not in respect of the principle of disclosure: they were about its outcomes. CJI had previously made reference to this:

*'...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.'*<sup>113</sup>

4.23 PSNI concerns were about the release of intelligence-related material which had potential Article 2 and other legal implications; that material released would always be relevant to investigations; and with appropriate security; which would not expose the PSNI to charges of contravening its legal obligations: more needed to be done by the OPONI to build trust in these arrangements.

4.24 The relationship between an oversight body and the overseen body always has the potential to be strained and complex, especially when both organisations are independent. When 'Troubles'-related legacy cases were involved, the complexity increased. This situation would continue until the establishment of a HIU: it would be the view of CJI that a HIU was unlikely to be established and fully operational in the short-term.

4.25 In 2013 CJI stated that 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 Human Rights Act 1998 obligations of the PSNI.<sup>114</sup>

4.26 This remained *extant* and building and sustaining an effective working relationship should be a key strategic priority for the Chief Constable of the PSNI and the Police Ombudsman.

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113 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland.* CJI, December 2013. Available at: <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>

114 *The relationship between the Police Service for Northern Ireland and the Office of the Police Ombudsman Northern Ireland.* CJI, December 2013. Available at: <http://www.cjini.org/getattachment/b97d8f4a-295f-42d5-8e63-ecc2199307c8/report.aspx>



# Appendix

# Appendix 1 Terms of reference

## 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

### Terms of reference

#### Introduction

Criminal Justice Inspection Northern Ireland (CJI) proposes to undertake a Review of the methods the Police Service of Northern Ireland (PSNI) use to disclose information about historic<sup>115</sup> cases to the Police Ombudsman for Northern Ireland (PONI).

The Police Act (Northern Ireland) 1998 set out the role and powers of the PONI to investigate complaints about the police in NI. The office was established in November 2000 and dealt with current and historical investigations. The PONI Historical Investigations Directorate investigated complaints of a grave or exceptional nature relating to the actions of police officers during the time described as 'The Troubles' and related to the period between 1968 and the signing Good Friday Agreement in 1998.<sup>116</sup>

There was an onus on the PSNI to fully disclose relevant information to allow the PONI to effectively investigate cases and the Police (Northern Ireland) Act 2000 stated that the Chief Constable shall supply PONI with such information and documents as the PONI may require for the purposes of, or in connection with, the exercise of any of his functions.

#### Context

On 14 February 2019 the PONI reported that his investigators had identified significant sensitive material held by the PSNI but which was not made available to PONI staff investigating the events. The discovery was made during the PONI investigation into the murder of five people at a betting shop on the Ormeau Road in Belfast on 5 February 1992, and had also begun new PONI lines of inquiry into the activities of Loyalist paramilitaries in the north west between 1988 and 1994, and the murder of Damien Walsh at a coal depot in west Belfast in 1993.<sup>117</sup> The PSNI acknowledged the disclosure failings, apologised to those affected, and said that it had not sought to deliberately withhold the information.<sup>118</sup>

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115 For the purposes of this Review the term 'historic' covers the period referred to as 'The Troubles' and related to the period between 1968 and the signing of the Belfast Agreement also called the Good Friday Agreement on 10 March 1998.

116 Police Ombudsman for Northern Ireland website. [www.policeombudsman.org](http://www.policeombudsman.org)

117 Police Ombudsman for Northern Ireland. <https://www.policeombudsman.org/Media-Releases/Police-did-not-disclose-sensitive-information>

118 Police Service of Northern Ireland. <https://www.psni.police.uk/news/Latest-News/140219-psni-look-to-give-poni-full-and-unfettered-access-to-psnis-legacy-systems/>



On 19 February the Department of Justice asked CJI to undertake an independent review of the methods the PSNI use to disclose information in respect of historic cases to the PONI and that it be given priority within the Inspection Programme.

The Justice (Northern Ireland) Act 2002 specifically precludes CJI from carrying out inspections or reviews of individual cases. This Review will therefore look at the methods the PSNI use to disclose historic information to PONI: it will not report on the disclosure failings in the specific case which led to the request for this Review or circumstances of other individual historic cases.

## Aims of the Review

Whilst not reviewing individual historic cases, the aims of the Review are to:

- Assess the effectiveness of the PONI policy, procedures and practice for requesting the disclosure of information from the PSNI.
- Assess the effectiveness of the PSNI policy, procedures and practice to preserve and retrieve information held in respect of historic cases.
- Assess the PSNI oversight, governance and quality assurance of its archive material management arrangements, and the disclosure of information on historic cases to the PONI.

## Methodology

The Review will be based on the CJI Inspection Framework for each inspection or review that it conducts. The three main elements of the framework are:

- Strategy and governance;
- Delivery; and
- Outcomes.

Constants in each of the three framework elements and throughout each review are equality and fairness, together with standards and best practice. CJI methodology can be found at [www.cjini.org](http://www.cjini.org)

## Research and review

Collection and review of relevant documentation such as previous inspection, review and other reports, the PSNI, PONI policies and procedures, MoUs, management information, data, minutes of meetings and related documentation.

Inspectors carried out a series of engagements with stakeholders and criminal justice agencies. These included<sup>119</sup>:

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119 The list of engagements and interviews was added to the TOR post-publication

### **March 2019**

- Meeting PSNI Chief Constable
- Meeting Police Ombudsman for Northern Ireland and OPONI staff
- Meeting Law Society Criminal Law Committee
- Meeting Northern Ireland Policing Board
- VCS Stakeholder discussion re CJINI Business Plan
- Meeting PSNI ACC and Legacy and Legal staff
- Meeting Northern Ireland Bar Council
- Meeting Commissioner of Victims and Survivors for NI
- Meeting OPONI Head of Confidential Unit and SIO
- Briefing, viewing and demonstration from PSNI re legacy and current IT systems.
- Meeting SIO OPONI
- Meeting Sinn Féin Representatives

### **April 2019**

- PSNI Op Turnel Gold Group – CJJ Inspector observed the meeting
- Visit to Murder Archive Seapark
- Meeting with Head of the Legacy Support Unit Seapark
- Review of OPONI files and applications for PSNI Disclosure for historic cases
- Meeting OPONI Head of Confidential Unit
- Meeting PSNI D/Chief Inspector PSNI Crime Ops Department
- Meeting PSNI ACC and Legacy and Legal staff
- Meeting D/ Inspector PSNI Crime Ops Department
- Meeting D/ Sergeant PSNI PONI Liaison Office
- PSNI Op Turnel Gold Group – CJJ Inspector observed the meeting
- Meeting Senior Investigator Durham Constabulary
- Meeting Head of ICO Regions Information Commissioner Office for Scotland and Northern Ireland
- Meeting PSNI Senior Legal Adviser
- Meeting D/Constable PSNI PONI Liaison Office

### **May 2019**

- Meeting D/Constable PSNI OPONI Liaison Office
- Meeting D/Constable PSNI OPONI Liaison Office
- PSNI Op Turnel Gold Group – CJJ Inspector observed the meeting
- Meeting OPONI Head of Confidential Unit and review of OPONI documentation
- Meetings PSNI staff and review of PSNI documentation
- Meeting Director and staff Public Records Office Northern Ireland
- Meetings PSNI staff and review of PSNI documentation
- Meeting PSNI Head of ICS and ICS Staff
- Meeting D/ Inspector PSNI OPONI Liaison Office and review of PSNI documentation
- Meeting PSNI ICS Staff and review of PSNI documentation
- Meeting PSNI Corporate Development Staff
- Meeting PSNI ACC Crime Ops
- Meeting Commissioner of Victims and Survivors for NI and Victims and Survivors Forum



- Meeting Senior Investigating Officer Op Kenova
- Meeting PSNI ACC and Legacy and Legal staff
- PSNI Op Turnel Gold Group – CJI Inspector observed the meeting
- Meeting Chief Executive OPONI and review of OPONI documentation
- Meeting SIO OPONI
- Meeting SIO OPONI
- Meeting Senior Director Historic Investigations OPONI
- Meeting SIO OPONI
- Meeting Chief Executive OPONI
- Meeting PSNI Senior Legal Adviser
- Viewing of PSNI IT Systems
- Meeting with ICS PSNI and viewing of in-development IT System
- Meeting PSNI Senior Legal Adviser
- Meeting PSNI Senior Legal Adviser and Legacy and Legal staff
- Viewing of PSNI documents and records
- Meeting Police Ombudsman for Northern Ireland
- Video meeting Head of Strategic Compliance and staff from National Archives.
- Meeting Deputy Chief Constable and ACC Legacy and Legal

### Fieldwork

- Terms of reference will be prepared and shared with the PSNI and PONI prior to the commencement of the Review. Liaison officers from the PSNI and OPONI should be nominated for the purposes of this Review.
- PSNI as the primary organisation will be given the opportunity to complete a self-assessment of its approach to methods it uses to disclose information in respect of historic cases to the OPONI and any policy, procedures and management information deemed relevant.
- Interviews and focus groups will be conducted with the PSNI, the OPONI and other relevant stakeholders to give an insight into the issues affecting the disclosure of information in respect of historic cases to the OPONI.
- Relevant management information and performance management data will be examined.
- Evidence of planning and decision-making leading to performance improvement and recognition of future development will be gathered.

### Feedback and writing

Following completion of the fieldwork, analysis of data and the presentation of emerging findings to the OPONI and the PSNI, a draft report will be shared with the PSNI and the OPONI for factual accuracy check. The Chief Inspector will invite the PSNI and the OPONI as necessary to complete an action plan within two weeks to address any recommendations. If the plan has been agreed and is available it will be published as part of the final Review report. The Review report will be shared, under embargo, in advance of the publication date with the PSNI and the OPONI.

## Review publication and closure

- The final report is scheduled to be completed within six months.
- A report will be sent to the Department of Justice (DoJ)<sup>120</sup> for permission to publish.
- When permission is received the report will be finalised for publication.
- Any CJI press release will be shared with the PSNI, the OPONI and the DoJ prior to publication and release, and
- A suitable publication date will be agreed and the report will be issued.

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120 In the event that there is no Minister of Justice.



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First published in Northern Ireland in April 2020 by  
**CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND**  
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