

An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland

September 2011





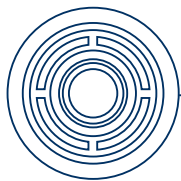
An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland

September 2011

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.

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







Contents

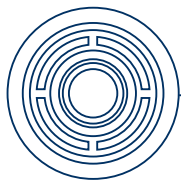
List of abbreviations	iv
Chief Inspector's Foreword	v
Recommendations	vii

Section 1: Inspection Report

Chapter 1	Introduction	3
Chapter 2	Legislation, policy and procedures	7
Chapter 3	Review of reports	11
Chapter 4	Leadership and management	21
Chapter 5	Relationships with stakeholders	27
Chapter 6	Conclusions	31

Section 2: Appendices

Appendix 1	Terms of reference	36
Appendix 2	OPONI organisational chart	38



List of abbreviations

ACPO	Association of Chief Police Officers
ATP	OPONI Accredited Investigator Training Programme (delivered by the University of Portsmouth)
BIRW	British Irish Rights Watch
CAJ	Committee on the Administration of Justice
CEO	Chief Executive Officer
CJI	Criminal Justice Inspection Northern Ireland
DFP	Department of Finance and Personnel
DIR	Disseminated Intelligence Report
DoJ	Department of Justice
ECHR	European Convention on Human Rights
GB	Great Britain
HET	Historical Enquiries Team (PSNI)
HOLMES	Home Office Large Major Enquiry System
IO	Investigating Officer
MoU	Memorandum of Understanding
NGO	Non-Governmental Organisation
NIO	Northern Ireland Office
NPIA	National Policing Improvement Agency
OPONI	Office of the Police Ombudsman for Northern Ireland
PIP	ACPO/NPIA Professionalising Investigation Programme
PSD	PSNI Professional Standards Department
PSNI	Police Service of Northern Ireland
RUC	Royal Ulster Constabulary
SDI	Senior Director of Investigations
SIO	Senior Investigating Officer
UK	United Kingdom



Chief Inspector's Foreword

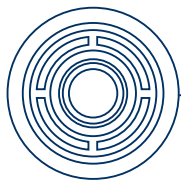
This inspection arose because of concerns raised in relation to a lowering of the operational independence of the Office of the Police Ombudsman for Northern Ireland (OPONI).

The purpose of the inspection was to assess the operational independence of the OPONI and examine any issues that could be said to undermine its independence.

In the context of Northern Ireland the perception of independence as well as its reality is critical as it impacts directly on the confidence of those who engage with the organisation. In this inspection we have considered whether the independence of the OPONI has been or can be reasonably seen to have been reduced in terms of its decision-making capacity.

The inspection report makes a number of findings. Firstly, that the legislative base for the work of the Police Ombudsman's Office is solid and provides the necessary framework for the operation of an independent police complaints body. Moreover, there are a number of operational protocols in place that help define the nature of the relationship between the OPONI and the Police Service of Northern Ireland (PSNI). Again these help to secure the nature of the work of the organisation in relation to, for example, how complaints are dealt with. During the course of the inspection – with some exceptions – we did not hear any significant concerns over the ways in which the OPONI deals with current cases. This work comprises the vast majority of the work of the Police Ombudsman's Office.

The inspection did however identify a number of significant concerns over the ways in which the OPONI conducts investigations into historical cases. They include an inconsistent investigation process, a varied approach to communication with stakeholders and differences in quality assurance. In addition, we found a senior management team divided around the production of reports in this area and a fractured approach to governance and decision-making. The handling of sensitive material was also considered problematic. These issues have undermined confidence in the OPONI among some key stakeholders within the Non-Governmental Organisation (NGO) sector and a range of staff within the organisation. What is clear from the inspection is the flawed nature of the investigation process used in historical cases which seems to be buffeted from a number of different directions. This has led to a lack of confidence among many of those involved in the process including some investigators themselves, victims' families and their representatives, and the police. The way in which the OPONI deals with the investigation of historic cases has led to a lowering of its operational independence.



The investigation of historic cases has the capacity to undermine the entire work of the OPONI and serve to decrease public confidence in the work that it undertakes. It is essential that these issues are addressed in response to this report.

The inspection was led by William Priestley and Brendan McGuigan. It was carried out over a relatively short period of time in May – June 2011 and I would like to thank all those who made themselves available to facilitate the Inspection Team.

Michael Maguire

Dr Michael Maguire

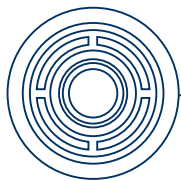
Chief Inspector of Criminal Justice in Northern Ireland
September 2011





Recommendations

- The Police Ombudsman should suspend the consideration of historical cases through the Critical Review Panel and initiate an immediate review to consider the most effective way of managing those investigation reports which are awaiting publication.
- The Police Ombudsman should suspend historical case investigations except those currently being pursued jointly with the PSNI until the Strategic Plan for the Historic Investigations Directorate has been adequately resourced and becomes fully operational.
- The Police Ombudsman should commission a full review of the Confidential Unit and the protocol for dealing with sensitive information ensuring that the needs of the OPONI as a civilian oversight body, are fully represented in the review and integrated within the recommendations.
- The OPONI policy for the investigation of State related deaths (Article 2 European Convention on Human Rights) should be reviewed and clarified. Clear and unambiguous guidance on the policy should be provided to all staff.
- The Police Ombudsman should carry out an immediate skills and competency audit of everyone having significant input into complex cases to ensure that staff are appropriately equipped to deal with such investigations.
- The prioritisation regime contained in the Strategic Plan for the Historic Investigations Directorate should be reviewed and consulted on to reflect the needs of victims' families, the police and the wider public interest.



Section



Inspection Report



CHAPTER 1:

Introduction



- 1.1 At a meeting on 21 April 2011 the Police Ombudsman asked the Chief Inspector of Criminal Justice in Northern Ireland to undertake an urgent independent review of the relationship between the Office of the Police Ombudsman for Northern Ireland (OPONI) and the Police Service of Northern Ireland (PSNI). This followed allegations made by the OPONI Chief Executive of a *“significant lowering of the professional independence between our operations (OPONI) and those of our key stakeholder, the PSNI”*. These allegations were set out in the Chief Executive’s resignation letter of 31 March 2011 to the Permanent Secretary of the Department of Justice (DoJ) in which it was further alleged that DoJ officials:

- *“have interfered and meddled in the affairs and governance of the Office;”* and
- *“have made false and malicious allegations against the Chief Executive.”*

A review of the allegations concerning the DoJ, to be conducted by Tony McCusker, was announced by the DoJ on 20 April 2011. This report was published in June 2011.

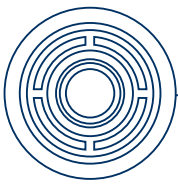
- 1.2 The Chief Inspector wrote to the Minister of Justice on 3 May 2011 stating

his intention to carry out an inspection into the independence of the OPONI from the PSNI. In accordance with Criminal Justice Inspection Northern Ireland’s (CJI’s) governing legislation, on 17 May 2011 the Minister of Justice acknowledged the Chief Inspector’s intention to conduct such an inspection. On 10 May 2011 CJI forwarded proposed terms of reference for the inspection to the Police Ombudsman who advised CJI on 13 May 2011 that they were acceptable to him. The Police Ombudsman undertook to advise key staff in the OPONI of the terms of reference and advised CJI that the organisation was open to the inspection team.

- 1.3 The full terms of reference for this inspection is set out in Appendix 1 but the broad aim of the inspection is to:

‘Assess the operational independence of the Office of the Police Ombudsman in its relationships with the PSNI and examine any specific issues that could be said to undermine the independence of the Office.’

- 1.4 Inspectors interviewed the OPONI Chief Executive about the specific allegations concerning the relationship with the PSNI and the undermining of the independence of the OPONI.



The Chief Executive outlined a number of concerns including:

- the impact of the review of the intelligence function;
- the restriction of access by the Critical Review Panel to sensitive material and its impact on published and unpublished historic cases;
- restrictions on criticising the Royal Ulster Constabulary (RUC) Special Branch in reports;
- breach of the Article 2 (European Convention on Human Rights) policy;
- a stalled complaint of maladministration against the OPONI; and
- inappropriate relationships between the OPONI and PSNI staff.

1.5 This report sets out the findings and analysis of CJI based on fieldwork which took place during May and early June 2011. The fieldwork comprised interviews with the Police Ombudsman, the OPONI Chief Executive, the Senior Director of Investigations (SDI) and the acting SDI. All of the OPONI Directors were interviewed as well as several Senior Investigating Officers (SIOs) dealing with historic and current cases. A range of other OPONI staff including investigators and administrators were interviewed. The former Police Ombudsman, a former Director of Investigations and a former SIO were also interviewed. A range of statistical data was examined along with administrative records, current and historical investigation reports and correspondence including e-mails. Members of the Committee on the Administration of Justice (CAJ), British Irish Rights Watch (BIRW) and The Pat Finucane Centre were interviewed. Families' legal representatives were interviewed and the PSNI Chief

Constable and other senior PSNI officers were also spoken with.

Inspectors reviewed investigation reports as part of this inspection to obtain a view as to whether the operational independence of the OPONI had been reduced. Inspectors are not investigators and this exercise did not amount to the reinvestigation of any specific reports. They were examined only to assist in addressing the inspection aim and objectives and to explore specific allegations made by the OPONI Chief Executive relevant to the terms of reference.

1.6 The findings are organised into four main areas which take into account the specific allegations made by the Chief Executive. They are:

1. Legislation, policy and procedures;
2. Review of reports;
3. Leadership and management; and
4. Relationships with stakeholders.

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

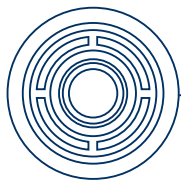
1.8 One of the core functions of the Police Ombudsman is to exercise their powers in such a manner and to such an extent as appears to them best calculated to secure:

- the efficiency and effectiveness and independence of the police complaints system; and
- the confidence of the public and of members of the police force in that system.

1.9 In the context of Northern Ireland the perception of independence is critical as it impacts directly on the confidence of those who engage with the organisation. The police need to believe that complaints against them will be treated fairly and impartially, while the community require confidence that the accountability mechanisms are sufficiently robust to deal with concerns over policing. It is a necessary, indeed obligatory, dimension to the work of the OPONI that it develops a good working relationship with all stakeholders, including the PSNI in order to maintain confidence in the working of the OPONI. Complete independence (isolation) is no more satisfactory than the police investigating themselves.

1.10 In considering the ways in which independence may be reduced, they encompass a wide range of factors from direct intervention in the decision-making of the OPONI to more subtle inappropriate influences, often with the best intentions in mind, that impact on the work of the organisation. In recommending the establishment of the Office of the Police Ombudsman, Dr Maurice Hayes stated: *“The overwhelming message I got from nearly all sides and from all political parties was the need for the investigation to be independent and to be seen to be independent”*. Thus perception as well as reality is an important consideration.

1.11 A consideration of the “*significant lowering of operational independence*” therefore can mean a number of things to different people. In the context of this inspection, we have taken it to mean a consideration of whether the independence of the work of the OPONI has been, or can be reasonably seen, to have been reduced in terms of its decision-making capacity. We considered a range of issues raised in the course of interviews including the use of intelligence material, the investigation of historic cases and the relationships between the PSNI and the OPONI.



CHAPTER 2:

Legislation, policy and procedures



2.1 The Police Ombudsman for Northern Ireland operates in a quasi-judicial manner. The position of Police Ombudsman is enshrined in legislation and as a system for dealing with police complaints is unique in the United Kingdom (UK) and rare in democracies across the rest of the world. The position of an Ombudsman as the arbiter of complaints against the police is a strong element in securing and protecting independence and was recommended by Dr Maurice Hayes in his 1997 report 'A Police Ombudsman for Northern Ireland'¹.

2.2 Following the Belfast Agreement of 1998 and the report of the Independent Commission into Policing in 1999 (*The Patten Report*)², legislation bringing the Office of the Police Ombudsman into effect was enacted in 2000. The Patten Report stated that the Office of the Police Ombudsman was:

'...critical to the question of police accountability to the law, to public trust in the police and to the protection of human rights.'

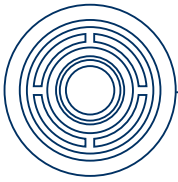
2.3 Founding legislation for the OPONI is contained in the Police (Northern

Ireland) Act 1998 and further legislation was brought forward in the Police (Northern Ireland) Acts 2000 and 2003. The legislation is considered to be comprehensive and robust and there has only been one successful judicial review against the OPONI since its formation in 2001. Officers of the OPONI have all the powers of a Constable with regard to the investigation of complaints within its remit.

2.4 The Police Ombudsman is excluded from conducting investigations into matters that have occurred more than a year before the complaint is reported. However, legislation allows for complaints older than one year to be investigated if the Police Ombudsman considers that new evidence is available or the case is considered to be grave or exceptional. The Police Ombudsman may also investigate alleged police misconduct without a complaint being received by calling himself in. Alternatively, the Chief Constable, the Northern Ireland Policing Board, the Department of Justice or the Secretary of State (in excepted or referred matters) may also refer matters to the OPONI. Independence of the system in Northern Ireland is further secured by

¹ A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland. Dr Maurice Hayes 1997

² Independent Commission on Policing in Northern Ireland. (1999), *A New Beginning: Policing in Northern Ireland - The Report of the Independent Commission on Policing in Northern Ireland*.



excluding serving PSNI officers from investigating complaints. The legislative framework for dealing with police complaints in Northern Ireland is considered robust and independent.

2.5 The first holder of the Office of Police Ombudsman considered that legislation should be enhanced in several areas. These observations formed part of the review of the operation of legislation under Article 61(4) Police (Northern Ireland) Act 1998 presented to the Northern Ireland Office (NIO) in 2007. This review contained 26 recommendations which included suggested legislative change to extend the powers of the Police Ombudsman to compel retired police officers to submit to witness interview, answer questions and provide relevant documentation. There was also a recommendation to bring within the remit of the Police Ombudsman posts previously held by police officers which had subsequently been civilianised.

2.6 Senior OPONI staff provided Inspectors with different accounts about the process by which these 26 recommendations were subsequently reduced to four which, it was stated, would be revisited during the next review period. This issue is reported on at length in the Police Ombudsman Investigation Report by Tony McCusker.

2.7 There is a comprehensive range of protocols and memoranda of understanding (MoU) in place between the OPONI and relevant stakeholders including the PSNI. These help to support the independence of the OPONI at an operational level by providing a framework for a professional working relationship between the

organisations. The protocol and MoU cover issues such as;

- Post Incident Management (PIM);
- duty of care and deployment of PSNI PIM;
- suspension/repositioning of police officers;
- Security Operating Procedures for OPONI users of the PoliceNet system;
- agreement for sharing of personal information;
- medical services;
- investigation of accidents involving police vehicles;
- requests for information from the OPONI;
- Ombudsman interview of police officers;
- access to information from RUC Human Resources;
- access to information held on the RUC information system;
- liaison with the Police Ombudsman; and
- report sharing for factual accuracy.

2.8 However, a protocol with the PSNI regarding the handling of sensitive information had not been updated since 2005 and at the time of this inspection, a new draft protocol was in the process of being developed and agreed. Other protocol regarding the naming of police officers in reports by the OPONI had been agreed and signed off by all relevant stakeholders. A joint MoU between the PSNI, the OPONI and the Security Service to cover requests for disclosure of information was in place and case reviews carried out by Inspectors, together with feedback from SIOs suggest that it is being implemented effectively and supports a professional working relationship. It specifies a framework for requesting



information, for security measures to be adopted to comply with legislative requirements and provides for nominated points of contact in each organisation.

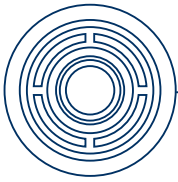
2.9 The revision of the protocol with the PSNI for dealing with sensitive information has been informed by a report into the restructuring of the handling of sensitive material. This comprehensive external review of the intelligence function was carried out in 2008. The review was conducted by four senior members of English police forces with strong and respected backgrounds in managing the handling of intelligence and sensitive information. The review was commissioned because of a number of concerns by the PSNI and OPONI staff around the ways in which intelligence material was handled by the OPONI.

2.10 This review identified several major areas of concern with regard to structures, processes, policy, strategy and people. It made 17 recommendations for change to ensure that sensitive material was handled and managed appropriately. It is understandable that the security of sensitive information should be taken seriously, however, it is also important that issues around transparency and accessibility should be included as part of civilian oversight arrangements. The review included interviews with senior members of the OPONI staff but civilian oversight was not represented on the review team. Inspectors found that there had been no significant consideration of the needs of a civilian oversight body as opposed to the needs of the police or Security Service.

2.11 The reporting team consisted entirely of serving police officers from England and Wales. Whilst the recommendations were designed to address the needs of the PSNI and Security Service by providing assurance about the handling of information by the OPONI, it is not clear that all of the civilian oversight needs of the OPONI, with regard to sensitive material were represented.

2.12 The OPONI has implemented some of the structural changes recommended by the review and has in place a 'firewall' system to ensure that sensitive material is handled in accordance with what is recognised by the police and Security Service as good practice in this area.

2.13 Sensitive material should be handled appropriately and lawfully and in a way that the organisations supplying the material can be assured that it is dealt with in a way which would not endanger people's lives. There is an argument that full and timely provision of sensitive information from the PSNI and/or the Security Service to the OPONI may be improved by having better assurance mechanisms in place. Following the review the OPONI had advertised the post of Intelligence Manager; however no new appointment was made. Whilst some recommendations to improve the structures and processes for handling sensitive material had been implemented, many other recommendations regarding people, skills, strategy and relationships had not. These were critical recommendations of the review and were framed to be delivered in tandem with the structural and procedural changes.



2.14 As a consequence of failing to implement all the review recommendations the day-to-day operation of the Confidential Unit within the OPONI is not as envisaged by the 2008 intelligence review report. Failing to embed the needs of the OPONI into the review by having civilian oversight representation on the review team damaged confidence in the operation of the Confidential Unit as recommendations were implemented. The impact of these circumstances is further explained in Chapter 3 which examines reports on investigations.

2.15 In 2008 the OPONI had introduced a policy to ensure its compliance with Article 2 of the European Convention on Human Rights (ECHR) when investigating deaths that occur in circumstances where the police are involved. Specific sections of the policy apply to cases referred by the PSNI Historical Enquiries Team (HET) which excludes from the investigation (unless in exceptional circumstances) OPONI staff with previous police or military service during the period 1969 to 1998. This is to satisfy the requirement of Article 2 and the interpretation placed on it by the European Court of Human Rights that investigators responsible for and carrying out investigations must be independent from those implicated. With regard to the appointment of investigators to historical cases, Inspectors found that this element of the policy was being implemented.

2.16 The policy further states that:

'In the investigation of any death as a consequence of State action from the date

of this policy (3 July 2008), the Police Ombudsman will ensure that the deployment of investigators either to the scene, the immediate management of the scene and the following investigation is open to all staff employed by the Office since its conception unless a member of staff raises a concern as to a conflict of interest on their part.'

2.17 Inspectors found there had been serious disagreement between the Police Ombudsman and his Chief Executive as to the interpretation and deployment of this element of the policy following the appointment of a former PSNI officer to investigate a case of the death of Mr Marc Ringland.³ With regard to the concerns raised by the OPONI Chief Executive about a breach of the Article 2 ECHR policy the section quoted in 2.16 appeared to Inspectors to have been complied with. Where there is a lack of clarity in the interpretation of what constitutes a conflict of interest. The decision regarding this is left entirely to each individual OPONI member of staff and Inspectors could find no guidance available to staff as to what would be regarded as a conflict of interest. This case is further examined in the section in Chapter 3 on current cases.

³ For further details please refer to paragraph 3.35.

CHAPTER 3:

Review of reports



3.1 The investigative function of the OPONI is sub-divided into current cases and those cases deemed historical. The majority of cases handled by the OPONI are current cases. This is reflected in the allocation of resources with around 80% of investigators allocated to current cases. These cases are those that have been complained about within a year of the incident taking place and amount to around 3,500 complaints involving over 6,000 allegations per year. However, at the time of this inspection there were 121 cases of complaints being dealt with by the historic unit of the OPONI about the handling of incidents that occurred in the past.

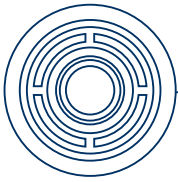
Historic cases

3.2 Many of these cases are high profile, long-running cases involving murders and serious allegations including collusion. The anguish felt by survivors and family members was evident to Inspectors who examined some of these cases. These are very difficult cases and the Police Ombudsman has stated that the OPONI can deal with only two historic cases a year and that it would take around 50 years to complete the historical work it currently has registered. He has further stated that the OPONI and HET are blunt instruments too narrowly focused to use in a search for truth and justice for

societal change but in the absence of any agreed way forward the OPONI would continue to fulfil the role. Delay in dealing with these cases has become protracted in some instances and this has been exacerbated by concerns raised both externally and internally about the quality of investigations. A recently formed team within the History Directorate now reviews cases and prioritises them for completion using a prioritisation index.

3.3 Resourcing of the investigation of historic cases has been a major issue for the OPONI. At present these cases are handled by a team of 13 investigators and one administrator, headed by a Director of History. None of the staff employed in the History Directorate are former members of the PSNI or military in accordance with the OPONI Article 2 ECHR policy.

3.4 Inspectors were told of a business case that had been under development to support an application for an increase in budget and resources to deal in a more structured way with historic cases. This plan had been delayed within the OPONI and Inspectors were told of differing reasons for this. These included a lack of in-house skills to prepare a business plan to the standard required by the Department of Finance and Personnel (DFP) and a lack of urgency



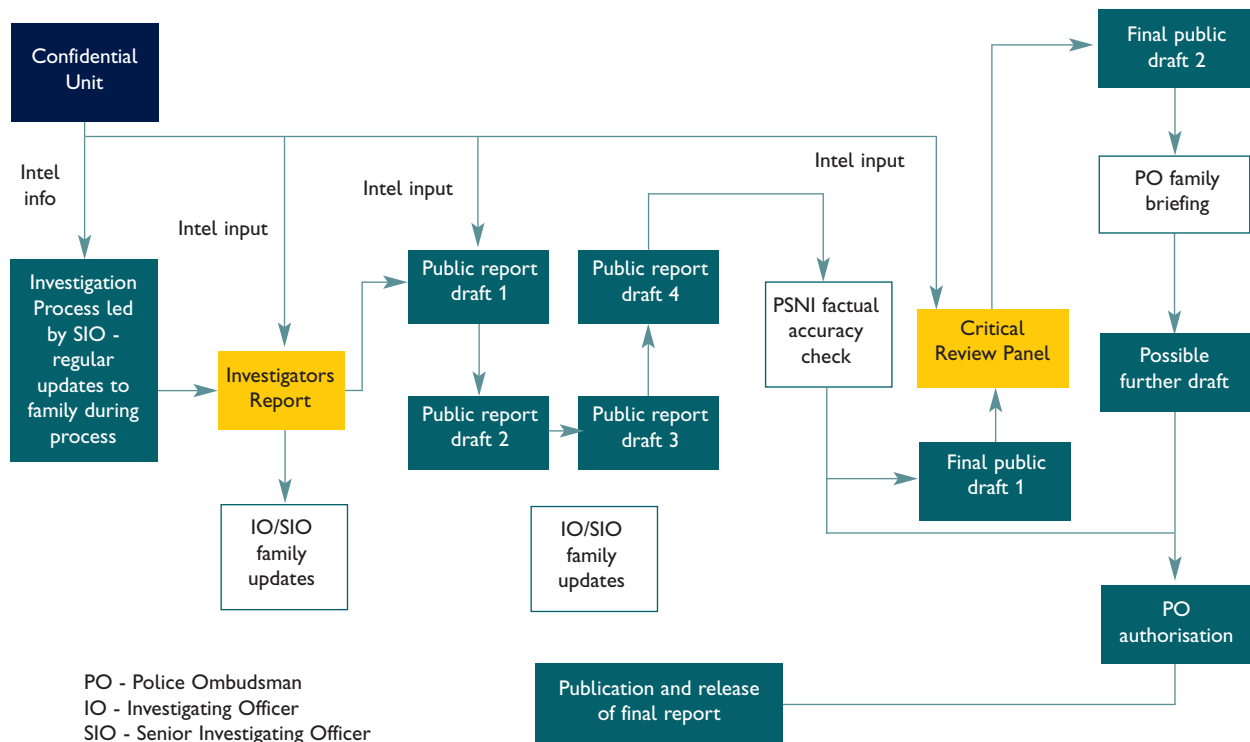
to progress the case. It was not possible to definitively determine the reasons for the delay in the business case being finalised other than there had been a breakdown in communication within the OPONI to finalise and submit it. The effects of failing to do so mean that the OPONI is at a serious disadvantage when carrying out joint operations with the PSNI that require substantial resources.

- 3.5 In one particular instance arising from a historic case the PSNI had allocated a team of around 40 officers led by a Detective Chief Inspector and overseen by a Detective Chief Superintendent to deal with their investigative obligations. The OPONI could only allocate one acting SIO to the case with support available from the historic team and oversight from the Director of History. This is a stark inequality of arms in cases that require a joint investigation. Even if the business case had been approved and extra resources allocated to the OPONI, it is unlikely that this imbalance would have been fully addressed.
- 3.6 Historic cases in the main concern complaints about the handling of incidents by the police during 'The Troubles'. Inspectors examined the processes that led to the production of the published reports on the Claudy bombings, McGurk's bar bombing and the Loughinisland shootings as well as a range of reports not yet published but at various stages of completion.
- 3.7 These cases had been under investigation for several years but Inspectors found there was a lack of consistency of approach across the cases with regard to how reports were checked for quality and inaccuracies.

There was little consistency in the processes for managing investigations, how families were kept informed of progress, or how cases were prioritised for investigation. Quality assurance processes were ill defined or not defined at all.

- 3.8 Figure 1 illustrates the typical process which historical reports go through whilst being investigated and developed to produce a final report. This process was drawn up by Inspectors as they attempted to clarify the investigative and reporting procedures in use by the OPONI. However, this process was not clearly set out by the OPONI and there were many minor variations in approach from one case to the next. The Strategic Plan for historical cases which formed the basis for the stalled business case, had set out detailed processes and procedures but these had only very recently been adopted and then only in part. There were detailed plans to expand the History Directorate upon agreement of the business plan which would provide for a more structured approach and consideration of such cases brought to the OPONI. Some processes had been put into operation within the existing budget but to become fully functional, the Strategic Plan for historical cases required the additional resources set out in the business plan.
- 3.9 The process outlined in Figure 1 is a generic one and whilst it shows the preparation of four draft public reports, there may be more or less dependent on the case. The three completed cases mentioned above had all got to a point in their preparation where investigators had considered them ready for publication. All of the reports had then

Figure 1: Typical process for historical cases



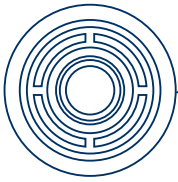
been subject to further reviews by a different SIO after feedback from families or the PSNI. All three of the cases had passed to a different Investigating Officer or SIO at some stage during their investigation and preparation, whilst all had involved the use and interpretation of sensitive material to inform the investigation.

3.10 The process shows areas common to these three reports although the number of draft reports produced had varied depending on feedback. All three reports had included the provision of updates to families at various stages of the investigation. Updates are very important to families and in these serious cases, is a legislative requirement as well as being recognised good practice. Updates were given by a variety of OPONI staff depending on the report and the stage of investigation but

it was clear that very early findings had been communicated to families by Investigating Officers. These findings had mainly been provided verbally and had set out the basic elements and findings of the investigation report. Formal updates to families had been recorded on file notes which set out what was communicated to the families as well as feedback provided by families to the OPONI staff. The file notes reflected the changes which families had experienced when they had received updates at later stages of the process, for example, in the McGurk's bar bombing report.

Report into the McGurk's bar bombing

3.11 Inspectors examined the processes and preparation of draft reports leading to the production of the report into the McGurk's bar bombing. The final report



on this matter was issued on 21 February 2011. A previous report issued in July 2010 had been withdrawn after mistakes had been pointed out to the OPONI.

3.12 Inspectors viewed draft reports leading up to the presentation of the first report on McGurk's bar in July 2010. These earlier draft reports had been more critical of police action than the report that was presented to the families in July 2010. The SIO in the case had been updating families with his findings as the case progressed therefore the perception of the families receiving the July 2010 report was that there had been a substantial lessening of the criticism of police actions compared with the information on the case they had already received.

3.13 During the progress of the investigation report the Senior Director of Investigations (SDI) required a different SIO to conduct a comprehensive review of the initial investigative report. Following the review, an updated draft report was prepared which was less critical of police action and this is the report that was presented to families in July 2010. The SIO who carried out the review believes that this was appropriate given his assessment of the strength of evidence used to support some of the more critical findings.

3.14 Following the withdrawal of the report issued in July 2010 together with comment and additional information from surviving family members, a further draft report was prepared and issued in February 2011 which reverted to being more critical of police action. This report was shared with the PSNI for factual accuracy checking prior to

publication. However, this was not done in accordance with agreed protocol as the PSNI was not given the agreed 10 days to prepare a response. The subsequent rejection of the findings by the PSNI Chief Constable has been extensively reported. He told Inspectors that his consideration is that he must uphold the integrity of the office of Chief Constable and that he cannot sign up to something that he believes to be wrong.

3.15 The progress of the report into the McGurk's bar bombing illustrates a flawed process that is heavily influenced by feedback. The ordering of a review of the investigation illustrated a lack of confidence in the investigative processes which was confirmed to Inspectors by the SDI who had required the review to be conducted. The changes in the draft reports from being critical of police action, to less critical and then back to critical caused confusion, anger and distress to family members. These changes also provoked a defensive reaction from the PSNI Chief Constable who believed the report to be inaccurate. CJI Inspectors are not investigators and therefore did not assess the quality of the investigation or evidence available to inform it. Nor does this type of review come within the remit of Inspectors' terms of reference. However, the application of ill defined processes in this case caused internal friction within the OPONI and external friction with families and the PSNI.

3.16 The process map (Figure 1) illustrates that getting to a final published report involves many steps after initial updates have been provided with inevitable changes being made to the raw investigative report to make it fit for



publication. Many of the changes in the three published reports examined were made following reassessment of sensitive information or the availability of further information relevant to the cases. Inspectors found that this was also the situation in their examination of unfinished reports outlined below.

Unfinished historic cases

- 3.17 Inspectors examined 13 unpublished reports to determine what processes were being applied to them and whether there were issues of independence. It is important to state that these cases are unpublished and a final determination of findings had not been made. However, they serve to illustrate the processes that were in operation during the investigation and preparation for reporting on these key historical cases.
- 3.18 Some of these reports had been with the OPONI for a number of years. In one particular case first reported to the OPONI in 2005, a series of draft reports had been prepared following completion of the investigation. These illustrated the common problems encountered in the majority of the other reports examined of delay, differing interpretation of sensitive information, inconsistent approaches to how families are briefed, and lack of confidence in how the investigative processes were managed.
- 3.19 The investigators in this case regarded it as being complete in October 2008 and a briefing was given to families on the basis of their findings. Inspectors viewed handwritten comments on draft reports giving feedback on content, style and interpretation of information. One comment in particular illustrated a misunderstanding of legislation which if it had been accepted, would have acted to the advantage of the police on one of the findings. Although the legislative comment was not acted on it did illustrate a tendency to view the situation from the police perspective. There were also several disagreements between the investigators and the Confidential Unit on the interpretation and use of sensitive material.
- 3.20 In early May 2010 the draft report was circulated amongst senior OPONI staff and the SIO in this case believed that there was general agreement as to its content and findings. The SIO and another Director stated that the Police Ombudsman had indicated that the report was generally in a state to be published. This report retained the investigators' original findings with regard to complaints made.
- 3.21 However, this report was changed substantially later in May 2010. It is unclear exactly why the report was changed. Following a meeting on 24 May 2010 involving the Police Ombudsman, Senior Director of Investigations, Director of History and Director of Information (who stated he was opposed to the proposed changes), a further report was redrafted by the Director of Information at the dictation of the Director of History. This report was substantially different in content and findings to the one that existed in early May 2010.
- 3.22 It is stressed that this report has not yet reached its final conclusion nor has it been through the critical review process. Therefore it could be amended again. The case illustrates a process operating by which a report which has been



redrafted several times with no changes to the findings can be amended in a short space of time to provide completely different outcomes. In this instance the draft outcomes seen by Inspectors were substantially different from those communicated to families earlier in the process and were less critical of police actions.

3.23 The critical element in effecting the changes to the report was the differing interpretation of sensitive material by the investigators and the Confidential Unit. The final arbiter in these situations is the Senior Director of Investigations who was present at the meeting on 24 May 2010 and who supported the changes. Inspectors could not find any supporting rationale for the changes other than the differing interpretation of sensitive material as outlined above.

3.24 It is not unusual that in the production of a report it will go through many drafts and its conclusions will be subject to changes as the investigation develops. It is also not unusual that the process of engagement with stakeholders should be a significant part of the fact checking and quality assurance process. Done well it helps to build confidence in the process and that the final 'product' is robust from a variety of perspectives. This can be done without a reduction in the independence of judgement and decision-making.

3.25 It is a substantial organisational risk, however, that in the case of historic investigations, emerging findings have been communicated while the work has been incomplete and that these then become subject to change as the investigation progresses. This can only serve to fuel a conspiracy theory that

the 'product' has been 'got at' even though any changes are based on new evidence and/or new material. In some cases, as far as we can determine the reasons for changes are unclear even to those conducting the investigation. This variation in process and the lack of a consistent approach to communication and quality assurance even within the organisation gives cause for concern.

Confidential Unit

3.26 This case along with several other unfinished cases examined by Inspectors emphasise the critical role of the Confidential Unit. This Unit comprises an intelligence manager, two analysts and two intelligence officers.

3.27 The review of the intelligence function was described in Chapter 2. The impact of the implementation of parts of that review is in the day-to-day operation of the Confidential Unit. The outline process map of how historical cases are investigated and reported on illustrates the input the Confidential Unit has to each investigation. The Confidential Unit does not believe that they have much influence over the progression of cases and further believe that the Unit is not listened to by senior management. However, the evidence from the cases reviewed by Inspectors is that the importance of the Unit is underestimated by its members.

3.28 A formal system for dealing with sensitive information is in operation that is in line with accepted and recognised practice within policing. This requires investigators to apply for any sensitive information that they may require during their investigations. Applications are processed by the Confidential Unit who



may amend the terms of the applications so that they are more easily understood by the receiving party – in most cases the PSNI. Once an application is made by the Confidential Unit to the information holder, the Confidential Unit deals with any responses and depending on the information, either receives it at the OPONI or is required to visit the PSNI or other holder to view it on their premises. The Confidential Unit member then prepares a report based on the viewing of material and the investigator's request. The report is forwarded to the investigator as a disseminated intelligence report (DIR).

3.29 If the SIO in the case wishes to view the sensitive material that the Confidential Unit used to prepare the DIR they must apply to the Senior Director of Investigations who is the final arbiter in these matters. The interpretation of the protocol dealing with the viewing of material by senior investigators had caused problems between the investigative side and the Confidential Unit. The interpretation of the Unit was that senior investigators could only view material when accompanied by a member of the Unit. The protocol does not make it clear that a senior investigator must always be accompanied when viewing sensitive material on PSNI premises. However, during one investigation in January 2009, a senior investigator was asked to leave PSNI premises because they were not accompanied by a member of the OPONI Confidential Unit. This caused embarrassment to the senior investigator and in his view, demeaned the role of the OPONI in the eyes of the PSNI.

3.30 Inspectors viewed requests and DIRs in many of the historic cases examined by them. Inspectors also interviewed some current and former senior investigators and investigators regarding the provision of intelligence material to support investigations. Members of the Confidential Unit provide analysis and assessment based on their viewing of the material provided by the information holder. Members of the Confidential Unit believe that they view all the information that is available to the requester. However, some investigators and senior investigators believe that not all material is made available and the process of obtaining material is unnecessarily bureaucratic. This belief is not unusual when compared with the corresponding situation within police services when investigators are required to conform to protocol for requesting sensitive information whilst investigating serious criminal matters.

3.31 Some senior investigators believe that to obtain material through application to the Confidential Unit requires persistence and continual explanation that less experienced investigators lack. Inspectors viewed requests for material that had been passed back and forth between investigators and the Confidential Unit that would support the view that persistence and repeated clarification of requests is required to obtain material. The material viewed would also indicate that the Confidential Unit sought to clarify the investigators' requests for information to facilitate the information gathering process. There is a lack of confidence amongst some investigators in the quality of the disseminated report provided by the Confidential Unit. This arises from their perception that not all material has



been made available to the members of the Unit and a questioning of the analysis of material on occasions when SIOs view the sensitive material for themselves. We would expect these issues to be considered in any review of the role of the Confidential Unit.

Current cases

- 3.32 Inspectors examined a referral from the PSNI Chief Constable made to the OPONI in 2007. In 2008 the Confidential Unit prepared an assessment of the case which stated that it would require a considerable allocation of resources to deal with it. The assessment was forwarded to the Senior Director of Investigations for a decision on how to progress the case. The Senior Director wrote a file note to the effect that there were no resources available and the case would be reviewed at a later date. Resources have not as yet been allocated to progress this referral and it is Inspectors' understanding that the case will require a joint approach by the OPONI and the PSNI. The overriding factor stated in considering this particular case was resources. If other potential factors in determining the priority of this case such as potential impact and the ages of key persons involved were considered, Inspectors could not find a record of this. This was an important case and it might be expected that issues other than just resources might have been considered.
- 3.33 There are structured processes with regard to how current cases are assessed, allocated, investigated and reported on. The majority of cases dealt with by the OPONI are current investigations into complaints lodged by

members of the public against serving police officers. The majority of these cases appear to Inspectors to be processed and investigated appropriately by a team of investigators dedicated to that task. In the main these investigations do not involve access to sensitive material and therefore do not generally receive input from the Confidential Unit. The cases are generally less complex than historical cases and access to information to inform the investigations is less problematic.

- 3.34 Substantiated cases represent only around three to four percent of those cases forwarded for investigation. Although the way case results are recorded has changed and direct comparisons are not possible, the rate of substantiated cases has remained fairly constant since inception of the OPONI in 2001. The OPONI works closely with the PSNI Professional Standards Department (PSD) with the relationship being described as professional but not without its tensions. Complaints dealt with by the OPONI are forwarded on completion to the PSD if recommendations such as advice and guidance or disciplinary charges are made. No member of the OPONI is present at hearings when any of the recommended actions are carried out by the PSNI.
- 3.35 On examination of a selection of current case files, Inspectors found that two current cases had adversely affected perceptions of the independence of the OPONI both within it and externally. The first of these was the death of Mr Marc Ringland on 3 February 2011. A member of staff who was a former PSNI officer was appointed by the Acting



Senior Director of Investigations to investigate the death of Mr Ringland who had been shot by an off duty police officer. The Acting Senior Director had attended the immediate scene of the incident. The Police Ombudsman told Inspectors that when he had established there was no conflict of interest, that he regarded the SIO appointed to be the best person to conduct an independent, fair investigation. He further stated that Mr Ringland's family and legal representative had been kept fully informed of the appointment of the particular SIO. The Chief Executive believes this appointment to be in direct contravention of the OPONI policy and Article 2 of the European Convention on Human Rights (ECHR).

3.36 Inspectors do not doubt the integrity or ability of the SIO in this case. However, the European Court has interpreted independence in these circumstances to encompass a 'practical' as well as hierarchical and institutional independence.

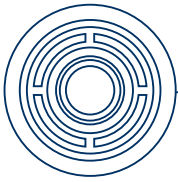
3.37 It is not certain whether the appointment of a former PSNI officer to carry out the investigation in these circumstances would fail to meet the standards of Article 2 as interpreted by the European Court. However, the case illustrates that the OPONI Article 2 policy requires further clarification and agreement as to its deployment to enable the discharge of its responsibilities to secure the efficiency, effectiveness and independence of police complaints. Issues around the appointment of a former PSNI officer and the apparent conflict with Article 2 ECHR were raised in an e-mail to the OPONI on 10 February 2011. This was responded to via e-mail by the Acting

Senior Director of Investigations on 14 February 2011 asserting that he was satisfied that the investigation was being conducted fairly, independently and impartially and that there was no conflict of interest.

3.38 The second was an investigation which arose from a minor complaint made in 2003 and was escalated to a Crown Court case in which the judge used his discretion to withdraw the case from the jury and to direct verdicts of not guilty. This case followed a PSNI investigation of complainants after their case had been found to be not substantiated by the OPONI investigator.

3.39 A complaint of maladministration against the OPONI arose out of this case and was investigated by the OPONI Chief Executive following the collapse of a court case in early 2008. His findings, set out in a report in 2008, were very critical of the handling of the case by the OPONI. The investigation found serious failings in how the initial complaint was investigated as well as behaviour by the Investigating Officer that went beyond his remit.

3.40 The Investigating Officer, first appointed to the case in 2003, who was a seconded police officer from England, is no longer with the OPONI but it appeared to Inspectors that the officer had acted on his own initiative in this case without informing his supervisors of his intended actions. However, his actions in performing tasks which if they were to be undertaken at all were a matter for the PSNI, served to call into question the independence of the OPONI from the PSNI. Not only in the minds of the complainants and some



staff within the OPONI, but also at a public trial before the Crown Court.

3.41 Inspectors did not find any evidence that the actions of this investigator were deliberately designed to undermine the independence of the OPONI but, the lack of clear reporting lines and little direct supervision were enabling factors. The case was reported on by the Chief Executive in 2008 who concluded there was maladministration in the way in which the cases were handled by the OPONI and made recommendations that the Police Ombudsman consider, *“...if there are steps which can be taken to ensure that this situation is never repeated”*. He also made a recommendation that CJI be asked to examine some of the process issues which were specifically or implicitly criticised in the Chief Executive’s review and that the findings should be shared with the PSNI Chief Constable and the Director of Public Prosecutions.

3.42 In response to the Chief Executive’s review, the Police Ombudsman wrote to the complainants in January 2009 stating that the Chief Executive’s review had caused him the *“gravest of concerns”* and that he had referred certain matters to the PSNI for further consideration. There was an attempt by the Police Ombudsman to engage in mediation with the complainants but this was not taken up. The case is now the subject of civil litigation. As a consequence of the litigation Inspectors were told that no further action was taken within the OPONI to address the matters raised and no approach was made to CJI to consider the issues. As part of this inspection enquires were made within the PSNI as to when the Chief Executive’s review was received.

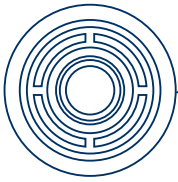
Inspectors were told that there was no record of the Chief Executive’s review having been received by the PSNI Deputy Chief Constable despite a clear understanding by the Police Ombudsman and the OPONI Chief Executive that it had been sent. Inspectors are aware that the Chief Executive’s review was sent to an officer within the PSNI who was dealing with some of the more specific issues arising from the collapse of the Crown Court case.

CHAPTER 4:

Leadership and management



- 4.1 There is a serious split amongst senior staff broadly along the lines of the corporate and investigative functions. This is manifest in the operation of the Critical Review Panel meetings which consider draft public facing reports and recommend the final form of published reports.
- 4.2 The current structure of review meetings was instigated after the time of the reporting of complaints relating to police handling of the Claudy bombings. It has continued since then and was in operation over the course of publication of the report into the McGurk's bar bombing. During a meeting reviewing the Claudy bombings report, an issue was raised about an alleged agreement with the police not to make mention of the RUC Special Branch in the OPONI reports. The draft report under discussion had over 20 references to Special Branch which were properly reduced to around five following factual accuracy checking. However, the mention of an agreement with the PSNI not to mention the RUC Special Branch in reports caused serious division in the Critical Review Panel.
- 4.3 The comment made about the alleged agreement appears to Inspectors to have been based on a misunderstanding of an undertaking to reconsider the wording of one particular draft report. The agreement according to the senior investigator present at a meeting with the PSNI discussing the draft report was to use the term 'the police' where appropriate but to continue to refer to Special Branch where it was more accurate to do so. The fact that a member of the OPONI staff thought that an agreement had been reached not to mention Special Branch in the OPONI reports indicates a tendency towards the police perspective at least on the part of that member of staff.
- 4.4 Critical Review Panel meetings are chaired by one of the Directors and comprise the relevant Senior Investigating Officer, both Directors of Investigations, the Senior Director of Investigations, Chief Executive Officer, Police Ombudsman, other Directors, and the Head of the Confidential Unit. The review process has varied in both its operation and composition during the tenure of the present Police Ombudsman.
- 4.5 Before the present Police Ombudsman took up office high profile reports were reviewed by a senior management team which involved all the Directors. This process was led by the former Police Ombudsman who had personally drafted the public facing report for



consideration by the Critical Review Panel. The product in front of the Critical Review Panel in this case was in effect a completed product being quality assured by the top team.

4.6 Currently reports that are considered by the Critical Review Panel are drafts that have been derived from the investigator's report and authored by the appropriate Director of Investigations, sometimes with input from the Director of Information. However, this process was not consistent across every report and Inspectors saw variations in approaches when viewing a selection of reports at various stages of investigation and production. Inspectors would expect to see an improvement in the application of processes as a result of the full implementation of the Strategic Plan for the History Directorate should the business plan supporting this be agreed.

4.7 The principle of having a quality assurance forum to effectively translate investigators' reports into public facing documents would not in itself cause problems. The numbers of people on the panel, the range of opinions and the state of the product reviewed had caused division and a lack of management focus. Many participants in the Critical Review Panel meetings considered them to be time consuming, divisive and lacking in direction. The product brought to the Critical Review Panel meetings is considered by many senior staff to be not sufficiently developed to enable a detailed final review. This had led to reviews taking many weeks to complete thus delaying final publication. Sensitive material considered essential by some in providing a proper quality assurance

function to the Police Ombudsman had been prevented from being discussed in this forum by the operation of intelligence processes.

4.8 The most recent meetings of the Critical Review Panel concerned the report into the Loughinisland murders which was published on 24 June 2011. These meetings were protracted, contributed to delaying the final report, and have further seriously divided the corporate and investigative functions of the OPONI.

4.9 The critical elements causing dysfunction of the Critical Review Panel are mistrust and lack of confidence over the provision and interpretation of sensitive material. Inspectors would expect to see a review panel sitting at this stage of the process deliberating on the quality aspects of reports brought to them. At present some Critical Review Panel members do not believe that SIOs have had access to all relevant sensitive material to inform the investigation. In addition some SIOs are not confident that they have had access to all such material. Some senior members of staff sitting on the Critical Review Panel stated that they could not discharge their functions with regard to providing a quality review of material brought to the panel without being able to question in depth, the use of sensitive material used to inform the investigative process.

4.10 Panel members bring their own experiences of Northern Ireland to the table and use these to provide the Police Ombudsman with assurances regarding the finished product. That is the main aim of the review process. However, some members lack confidence that all sensitive material

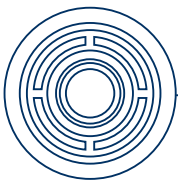


has been provided and appropriately analysed and assessed to enable a full and thorough investigation to take place. Some SIOs are not confident that they have obtained all relevant sensitive material on which they can make an assessment and appropriately direct the investigative process. When issues regarding sensitive material are raised during the Critical Review Panel meetings, details have been withheld from members because of security and vetting concerns.

- 4.11 This situation reflects the structures and processes implemented by the OPONI following the review of the intelligence function in 2008 but without the appropriate level of trust and confidence that is required. This situation is a result of the incomplete implementation of the recommendations of the 2008 intelligence review. Allowing this situation to continue has further widened the split between the investigative side of the organisation and the corporate and support side and has caused deep mistrust.
- 4.12 There have been serious divisions amongst senior management of the OPONI which has affected the operation of the OPONI in its day-to-day functions and the morale and attitude of staff throughout the organisation. Two very senior staff had communicated to the Police Ombudsman that they wished to be disassociated from some of the work of the OPONI and for one of the officers, this had been ceded to. There is a lack of trust amongst many senior managers to the extent that assurances given to the Critical Review Panel by the Police Ombudsman regarding the provision and analysis of sensitive material are not

believed. This has seriously undermined the function of the Critical Review Panel to provide assurance and advice to the Police Ombudsman on publication of final reports of investigations.

- 4.13 In 2007 a review of the functions of the OPONI was conducted and made available to the Police Ombudsman in 2008 which was followed by a review of the corporate governance arrangements. An organisational development project to implement the findings of the review was instigated and progress is being made towards completion of the main elements by September 2011. However, a recommendation to restructure the governance arrangements caused further friction amongst senior staff. An executive board was formed consisting of the Police Ombudsman, Senior Director of Investigations and the Chief Executive. A larger forum that included all the Directors was dissolved and replaced with a Director's Management Team. The new structure itself is not uncommon amongst public sector organisations. However, the move prompted deep division and mistrust as the main decision-making capacity of the organisation was seen to rest with a board that was drawn predominately from the ranks of former police officers (only the Chief Executive was not a former police officer). For the purposes of this inspection, CJI regard all those members of the OPONI who hold the position of Director or above to be in senior management positions.
- 4.14 The OPONI senior management is at present dysfunctional, there is a serious lack of trust between many senior staff and little confidence amongst Directors and some investigators in how historic cases are dealt with.



Staff composition and resourcing

4.15 The OPONI currently employs 144 members of staff. There are 67 investigative staff for current cases including Investigative Officers, Deputy Senior Investigative Officers, Senior Investigative Officers, an Intelligence Manager, Intelligence Officers and analysts. The investigative staff for current cases is drawn from a wide range of backgrounds with around 50% having some sort of policing background.

4.16 Within the Historic Investigations Directorate there are 13 investigators. None of these are former members of the PSNI or RUC and none are former members of the military. Fewer than 40% of the investigators have some sort of policing background. Whether dealing with current or historical cases investigators are encouraged to partake in the Accredited Investigator Training Programme (ATP), an accredited investigators course which is delivered by the University of Portsmouth. The ATP is mandatory for all new OPONI investigation officers, except for seconded police officers in the role. Currently 81% of investigators are accredited and this is expected to increase to 95% when the current cohort is accredited later in 2011. The ATP is designed to National Occupational Standards and is equivalent to Professionalising Investigation Programme (PIP) level 2 training.

4.17 There was an issue regarding access to the Home Office Large Major Enquiry System (HOLMES) which is used by the PSNI and other police forces to manage complex serious crimes. Data is held on the system and used in the co-ordination of the investigative process. Only

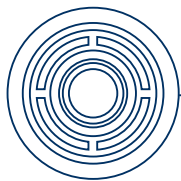
properly trained and skilled persons can interrogate the system for information. When investigating complaints against the PSNI that required the interrogation of the HOLMES system to the appropriate level, there was a lack of the required skills and training within the OPONI staff. The situation regarding access to HOLMES has now been resolved though both members of staff who have the required training and skills are former PSNI officers. These members of staff provide support to the Historic Directorate through an internal advisory group which has had HOLMES awareness training.

4.18 The skills set required for investigating complaints against the police is very similar to that required in conducting criminal investigations. Employing former police officers to conduct investigations into serving officers in itself is not at issue. It is for the Police Ombudsman to ensure that the necessary checks and balances are in place to ensure that the perception, as well as the reality of independence of the OPONI, is achieved and maintained. Despite the employment of former police officers as investigative staff, the accredited investigative training and the use of seconded officers from GB forces, senior PSNI officers still raised some questions about the quality of investigations of more complex cases and the standard of some OPONI senior investigators. As described in the section on historic cases the frequent review of cases by different OPONI senior investigators as directed by the Senior Director of Investigations, also illustrated a lack of confidence in the investigations and had led to the publication of reports being delayed. A review and assurance process is not



an unusual aspect of investigations. However, problems arose when findings of reports were shared with families before the quality assurance process had been completed and before the reports had been through the Critical Review Panel.

- 4.19 The business case referred to in paragraph 3.4 was an attempt to restructure and professionalise the processing of historic investigations by implementing a Strategic Plan for the Historic Investigations Directorate. Detailed processes had been described together with supporting policies and procedures. Some restructuring within the existing budget and resourcing arrangements had taken place. However, the impact of this restructuring on historic cases had been minimal due to the fact that most of the cases have been long running. A method of prioritisation has been designed which would have benefited from wider consultation. This could be further developed if the business case was approved and implemented. Any restructuring of how historic cases are dealt with must take place within the context of dealing with the confidence and trust issues evident in how sensitive material is obtained, analysed and used to inform the investigation of historic complaint cases. Taken together with other recommendations arising from this inspection, Inspectors believe that the implementation of the Strategic Plan would provide a more robust and sustainable model for dealing with historic cases.



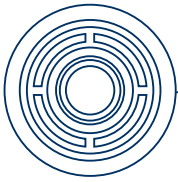
CHAPTER 5:

Relationships with stakeholders



- 5.1 During the inspection concerns were raised about a relationship between a senior member of the OPONI staff and a senior PSNI officer. Inspectors interviewed these staff who asserted that at all times their relationship was entirely professional. The leaders of both organisations also stated that they had no evidence of any inappropriate relationships. Inspectors found no tangible evidence that relationships had been inappropriate. However, the perception that the relationship had become too close was driven by the officers in question having been seen together at some social events.
- 5.2 Relationships with the PSNI are variable. On the positive side there is a professional working relationship with the Professional Standards Department (PSD) as outlined in the section on current cases (paragraph 3.32 onwards). There are regular meetings and information regarding officers attracting multiple complaints is supplied to the PSNI. Some senior police officers stated that more detailed information on this would help root out unsuitable officers and challenge inappropriate behaviour of others. There is co-operation in developing the pilot local resolution scheme and the PSNI wish to see this continue and expand with the implementation of the Taylor⁴ reforms. Senior PSNI officers believe that the Police Ombudsman is completely independent in his operational relationship with them and cite the McGurk's bar bombing report that was issued in February 2011 as evidence of this. The Chief Constable regarded integrity of the process and integrity in the relationships between the OPONI and the PSNI as very important and that showing integrity and trust in no way diminished the independence of either.
- 5.3 Operation of the protocol agreed between the PSNI and the OPONI is generally good although this was not the case when the PSNI were asked to respond within seven working days to the second McGurk's report published in February 2011.
- 5.4 The PSNI raised some concerns regarding the capacity of the OPONI to undertake complex historical investigations and some senior PSNI officers believe that without the expertise that former or seconded senior police detectives bring to these cases, the OPONI would be unable to

⁴ The Taylor Review of the police officer disciplinary arrangements for England and Wales was published in 2005. It recommended a new disciplinary procedure and a review of the unsatisfactory performance procedures for police officers.



contemplate investigating them with any confidence. The PSNI raised concerns that the current issues regarding the OPONI could have a negative impact on public confidence in policing.

- 5.5 Some senior PSNI officers also raised the issue of concerns of leaks from the OPONI though as regards handling sensitive material, they stated that this had improved since the review of the intelligence function in 2008. The procedures adopted by the OPONI mean that their own investigators use a similar process for accessing intelligence that PSNI detectives do. Some senior PSNI officers stated that there is more confidence within the PSNI that intelligence provided to the OPONI will be handled appropriately. However, some senior PSNI officers still have concerns over the leaking of information from the OPONI in historical cases.
- 5.6 There is frustration from the PSNI as to how the OPONI reports are regularly changed, sometimes within days of publication, which leaves very little time for the PSNI to consider them for factual accuracy.
- 5.7 Non-Governmental Organisations (NGOs) have raised serious concerns about the OPONI. The Committee on the Administration of Justice (CAJ) published a recent report detailing some of these concerns which included its capacity to investigate historic cases, delay and issues of independence⁵. These concerns are shared by British Irish Rights Watch (BIRW) who also raised the need for the OPONI to properly prioritise how it investigates

historical cases to take into account the ages of people key to the investigation. The Pat Finucane Centre has helped some families who raised complaints with the OPONI during briefings given prior to publication and have experienced the changes made to reports between the initial provision of information and later briefings.

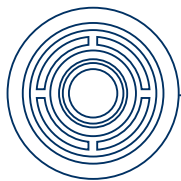
- 5.8 NGOs have met with the Police Ombudsman and have stated that he told them that when appointed he had an agenda to redress the balance between the police and the OPONI but that perhaps the 'pendulum has swung too far the other way'. The NGOs now say that the Police Ombudsman denies having used those words but that he stated that he has said that people perhaps believed that the balance had moved too far. The NGOs perceive that the Police Ombudsman is reluctant to deal with legacy cases but if not dealt with by the OPONI, they believe no other mechanism is available to families and other complainants.
- 5.9 It is important to note that families, NGOs and legal representatives have made substantial efforts to engage with and influence reports into historic cases. Influence on reports comes from many directions as a result of proper engagement with stakeholders. This is not unusual but where changes have been made on the basis of these approaches, this has added to the perception that the independence of the OPONI has reduced. This situation is a trade-off between engagement and isolation.

⁵ Committee on the Administration of Justice (2011) *Human Rights and dealing with historic cases: A review of the Office of the Police Ombudsman for Northern Ireland*.



5.10 With regard to relationships it is important to state the level of confidence within the community about the work of the OPONI. The level of confidence that the OPONI is independent of the police amongst people who have heard of the organisation is currently high at 80%. This has reduced over the last three years from 86% in 2008. However, there are many difficult and potentially controversial historical cases nearing their publication date and allied with the concerns which prompted this inspection, the OPONI need to monitor confidence rates carefully.

5.11 Considering the survey information available from the OPONI it is also worth noting that the number of people who felt they were being treated fairly rose slightly between 2005-06 – 2009-10, as did those who were satisfied with the service and who felt they were being taken seriously. The numbers who felt staff from within the organisation were impartial fell slightly during this period. Overall ratings for those involved in current cases remained high with three quarters to two thirds having stated a positive reaction to the service provided. This strengthens the case that for the most part, there are no major concerns with current cases.



CHAPTER 6:

Conclusions



- 6.1 The terms of reference required CJI to assess the operational independence of the OPONI in its relationships with the PSNI and to examine any specific issues that could be said to undermine the independence of the OPONI. The determination of 'operational independence' within the context of civilian oversight of the police is a complex and difficult area. Dr Maurice Hayes in recommending the establishment of the OPONI noted that: *"The overwhelming message I got from nearly all sides and from all political parties was the need for the investigation to be independent and to be seen to be independent"* (cited in the Committee on the Administration of Justice (CAJ) 2011 Report).
- 6.2 In the context of Northern Ireland in order to ensure public confidence, the perception of 'independence' in the work of the Office of the Police Ombudsman is as important as actual independence. The police need to believe that complaints against them will be treated fairly and impartially while the community require confidence that the accountability mechanisms are robust to deal with concerns over policing.
- 6.3 CJI was asked to examine the work of the OPONI because of concerns raised by the Chief Executive that there had been a significant lowering of the professional independence between the operations of the OPONI and those of the PSNI. These are serious allegations which generated substantial media interest and raised concerns about the work of the OPONI.
- 6.4 It is apparent from the outset that there is no agreement on the extent to which the independence of the work of the OPONI has reduced in its relationship with the police. The Police Ombudsman has stated clearly that independence is both practical and real. This view is supported by the Chief Constable who has told CJI that the relationship between the PSNI and the OPONI is entirely professional. At the same time the Chief Executive believes independence has reduced. This view is supported by many of the NGOs who deal with OPONI on a frequent basis.
- 6.5 The answer to this problem is a complex one and probably will not serve to support any particular view point in total, as all those involved in the debate and discussion can find evidence from this inspection to support their particular assertions. Much of what the OPONI handles on a daily basis (current complaints) is dealt with in a professional and appropriate way. At the same time this review raises important concerns around the delivery of reports



into historical cases. The role and behaviour of senior management is also critical to the effective functioning of the OPONI.

6.6 Independence is not an absolute. It can be seen however as a zero sum game where for example, developments in working relationships between the OPONI and the PSNI are at the expense of independence. In considering the issue of independence we came at it from a number of different perspectives.

6.7 Firstly, from a legislative perspective and in relation to the existence of operational protocols our view is that in the main, the necessary safeguards are in place to protect the operational independence of the Police Ombudsman. The quasi-judicial role of the Police Ombudsman is enshrined in legislation as is the right of access and supporting powers in relation to the collection of information. In considering the profile of OPONI staff we can see that there is a substantial proportion of investigative staff (around 41%) from a former police background. Does the existence of a large number of former police staff within the OPONI of itself reduce independence? The answer is not necessarily. It is entirely appropriate and reasonable that former police personnel are recruited to the OPONI subject to the necessary checks and balances of their Article 2 ECHR policy. It is the existence and application of the necessary checks and balances that will ensure that independence is maintained.

6.8 A controversial narrative has developed in relation to the existence of a personal friendship between a staff member within the OPONI and one within the PSNI which has served to

undermine the operational independence of the OPONI. In the course of this inspection we interviewed the relevant staff as to the nature of their relationship and they have stated that at all times they have been “*entirely professional*” in how business was conducted. Moreover both the Chief Constable and the Police Ombudsman stated that they had no evidence of any inappropriate relationship between these officials. In the light of this assurance and the absence of any tangible evidence it is difficult to draw any other conclusion.

6.9 It is a critical success factor that the OPONI should develop professional and effective working relationships with the PSNI at a wide range of levels, from the individual investigator, Confidential Unit staff, Directors of current and historical cases to the Senior Director of Investigations and Police Ombudsman himself. These relationships need to extend beyond individual investigations as the OPONI staff engage with the police at a national and local level to maintain professional standards (through for example, attendance at Association of Chief Police Officers meetings). In a small jurisdiction such as Northern Ireland it is to be expected that former police officers will apply to join the OPONI and for relationships with staff in both organisations to extend beyond the professional into the personal and social.

6.10 There is a clear dilemma here. The existence of former police staff within the OPONI could be highlighted as reducing the independence of the OPONI. The recruitment of personnel with no background in policing would be a clear statement as to the

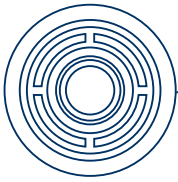


independence of the OPONI. At the same time the need for a particular skill set – particularly around the investigation of serious and complex cases – is unlikely to be held outside the police service. The recruitment of staff with no policing background in, for example, serious crime investigations would undermine the ability of the organisation to conduct investigations of this type when they arise and is therefore unrealistic. In relation to the handling of sensitive intelligence material, it is a fact that it's a case of former police talking to the police. Such a circumstance can give rise to the perception of a lack of independence. It is clear from this inspection that there are concerns among some staff and some stakeholders as to the efficacy of current arrangements.

- 6.11 The Joint Intelligence Review commissioned in 2008 contained a number of critical recommendations which addressed concerns among the police and the Senior Director of Investigations about how confidential intelligence material was handled by the OPONI. This has led to a significant influence asserted by the Confidential Unit over the handling of material, some of which has given rise to a split in the OPONI over the use of this material and how it has been used in historical investigations. What seems to have been missing from the Joint Intelligence Review was a clear articulation of the needs of the OPONI – as a civilian oversight body – in the handling of such material which would also build confidence within the OPONI's investigative process, particularly as to how the material was collected and disseminated. This is particularly important as it represented a significant

change from the way in which material was handled in the past. There was a clear onus on those implementing the Joint Intelligence Review to ensure that confidence in the dissemination of material was maintained and that proper consideration was given to ECHR Article 2 and Article 8 obligations. While the OPONI will rightly point to senior management authorisation of investigator requests as a mechanism to ensure that the material is properly obtained and disseminated, this was not enough to build confidence in the process among all staff.

- 6.12 The existence of checks and balances is the important issue. This is particularly important in Northern Ireland because of the 'contested space' of the justice system and the significance of the OPONI within the overall police accountability framework. The recruitment of former police officers generally into the organisation places an even greater burden to ensure that independence is real and maintained on an operational basis. As we have seen with the OPONI there is a clear split within the organisation between some investigation and some civilian staff. This does not lead to good governance, quality assurance or to the development of a definitive corporate view.
- 6.13 A further issue relates to the process of investigation itself and the extent to which the work can be described as independent. A number of concerns were raised about the content of individual historical investigations. It was outside the brief of this inspection to re-examine the evidence and conclusions from either published reports or work in progress. What is clear from the inspection, however, is the flawed nature



of the investigation process used in historical cases. It seems to be buffeted from a number of different directions. This leads to a lack of confidence among many of those involved in the process including some investigators themselves, victims' families and their representatives and the police.

- 6.14 In the light of this process it is easy to see how a perception has developed among some around the independence of the OPONI. This is clearly an unsatisfactory situation. A robust investigation process is central to public confidence in the OPONI and its independence. The difficulties arising from the investigation process are not helped by the divisions that exist within the senior management.
- 6.15 It is our view that the investigation into historical cases should be suspended until the Strategic Plan for the Historical Investigations Directorate has been adequately resourced and becomes fully operational.
- 6.16 Our overall conclusion is that the flawed nature of the investigation process in historic cases, the divisions within senior management, and concerns around the handling of sensitive material have undermined confidence in the work of the OPONI among some staff and key stakeholders. These issues have led to a lowering of the operational independence of the OPONI. It is an urgent requirement that these issues are addressed in response to this report.



Appendices



Appendix 1: Terms of reference

Introduction and context

The Chief Inspector of Criminal Justice in Northern Ireland has been asked by the Police Ombudsman to examine the operational independence of the Office of the Police Ombudsman for Northern Ireland (OPONI) from the Police Service of Northern Ireland (PSNI) following recent criticism.

This relates to comments concerning the nature of the relationship between the PSNI and the OPONI which constitutes an issue of public confidence in the OPONI. The Police Ombudsman requested CJI to consider this issue and to report on the findings.

CJI has a legislative remit to conduct inspections in relation to the Office of the Police Ombudsman for Northern Ireland under section 46 of the Justice (Northern Ireland) Act 2002 but is prohibited from investigating individual cases.

Aims of the inspection

The broad aim of this inspection is to:

Assess the operational independence of the Office of the Police Ombudsman in its relationships with the PSNI and examine any specific issues that could be said to undermine the independence of the Office.

More specifically, the objectives of the inspection are to examine:

- the adequacy of the policy and procedures in place to ensure and support the operational independence of the OPONI;
- the operational activity of the Office in relation to the conduct of investigations, and the nature of the working relationship with the PSNI in the discharge of its duties; and
- the outcomes of the work of the Office including:
 - profile of complaints;
 - results of complaints;
 - satisfaction with complaints process; and
 - views of key stakeholders.



Methodology

The methodology will follow that of a full CJI inspection. The inspection will be based upon the CJI inspection framework which is available on the CJI website, www.cjini.org. Initial scoping and analysis has informed the production of these terms of reference. Analysis of both quantitative and qualitative data will inform the overall assessment of the operational independence of the OPONI.

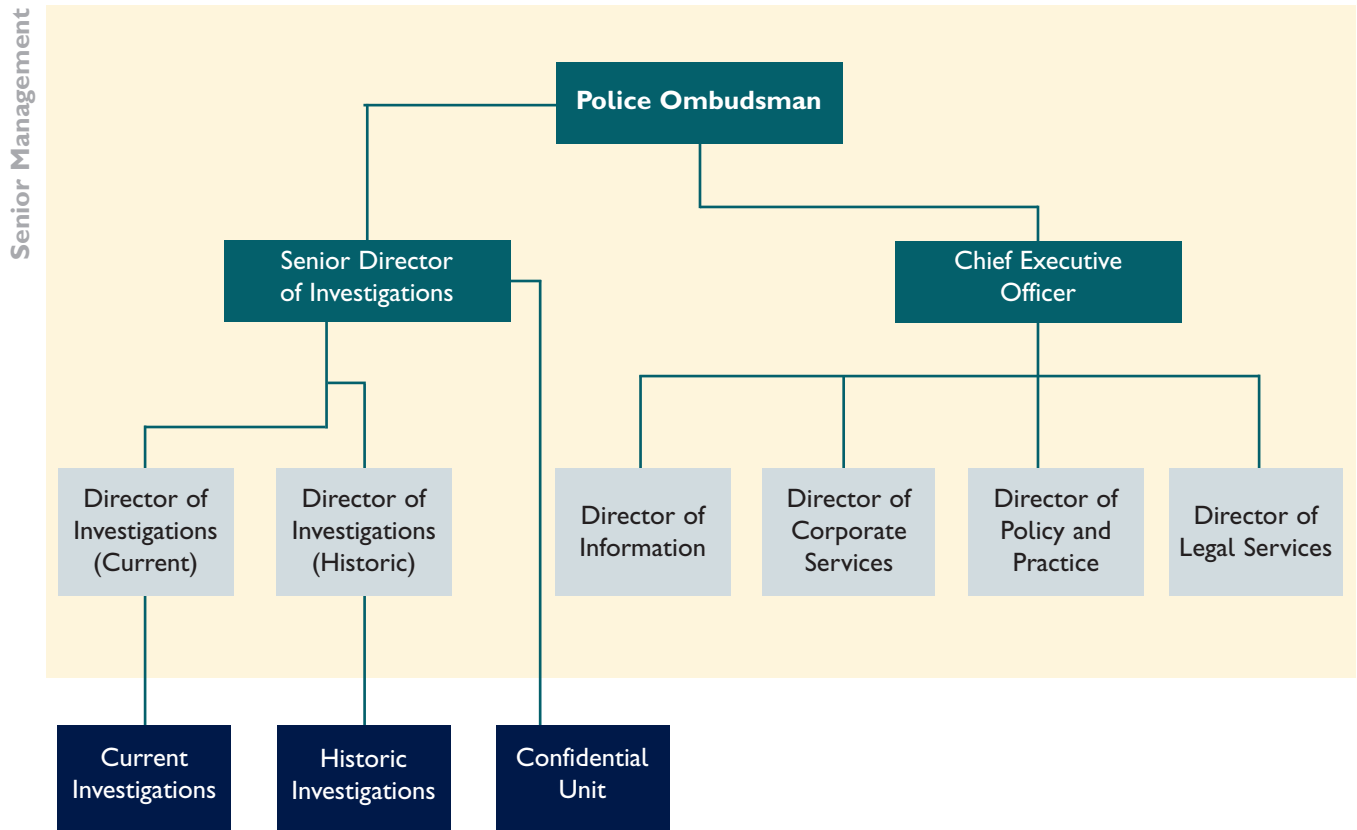
The fieldwork will comprise:

- a consideration of policies and procedures within the OPONI;
- interviews with staff at the OPONI together with examination and consideration of statistical and other documentation (including the internal complaints process);
- interviews with PSNI personnel and examination and consideration of documentation as necessary;
- a review of a sample of the OPONI complaints files selected by CJI Inspectors and associated correspondence; and
- interviews with key stakeholders of the OPONI.

Fieldwork will take place between May and June 2011. The aim will be to produce the interim inspection report for delivery to the Minister of Justice on or before 30 June in line with CJI's legislative remit. Any further inspection work which may be required to inform a fuller report if necessary, will be carried out during July and August.

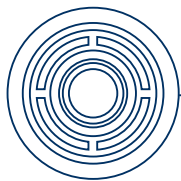


Appendix 2: OPONI organisational chart



Shaded background represents those in Senior Management positions







Copyright© Criminal Justice Inspection Northern Ireland
All rights reserved

First published in Northern Ireland in September 2011 by
CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND
14 Great Victoria Street
Belfast BT2 7BA
www.cjini.org

ISBN 978-1-905283-66-8

Typeset in Gill Sans
Printed in Northern Ireland by Commercial Graphics Limited
Designed by Page Setup