

## Statutory Report:

Review under Section 61(4) of the Police  
(Northern Ireland) Act 1998.

# INTRODUCTION

0.1. By virtue of s. 61(4) of the Police (NI) Act 1998 the Police Ombudsman for Northern Ireland (the Police Ombudsman) is required to

- (a) keep under review the working of this Part, and
- (b) at least once every five years, make a report on it to the Secretary of State.

0.2. This Report is compiled and submitted in accordance with Section 61(4).

# STRUCTURE

- 1. The Office of the Police Ombudsman for Northern Ireland**
- 2. The Legislation**
- 3. The process for the review of part VII of the Police Act**
- 4. The appointment of the Police Ombudsman for Northern Ireland**
- 5. Police reform and consequential jurisdictional issues**
- 6. The receipt, recording and handling of complaints**
- 7. Informal resolution**
- 8. Mediation**
- 9. Investigation**
- 10. Investigation of Policy and Practice**
- 11. Police Ombudsman reporting functions**
- 12. Officer suspension issues**
- 13. Unsatisfactory Performance**
- 14. Disciplinary hearings**

- 15. Anticipated UK wide changes involving the Police Ombudsman responsibility for Her Majesty's Revenue and Customs and the Immigration Service, and changes in police disciplinary arrangements.**
- 16. Secretary of State's Guidance**
- 17. Compensation**
- 18. Mal-administration complaints against the Police Ombudsman**

# 1.0

## THE OFFICE OF THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

- 1.1. The office of the Police Ombudsman for Northern Ireland was established under Part V11 of the Police (NI) Act 1998 (the Police Act). The primary statutory duty of the Police Ombudsman is to secure an efficient, effective and independent complaints system, and to do so in the way she thinks best calculated to secure the confidence of the public and of the police in that system. The first Police Ombudsman took office on 6 November 2000 for a term of seven years. The office of the Police Ombudsman is situated in Belfast and provides a continuous service 24 hours a day to the people and police of Northern Ireland. Staff are employed by, and seconded to the Police Ombudsman in accordance with Schedule 3 of the Police Act.
- 1.2 The Police Ombudsman has jurisdiction in respect of six organisations with police powers which operate in Northern Ireland:
- The Police Service of Northern Ireland;
  - The Larne Harbour Police;
  - The Belfast Harbour Police;
  - The Belfast International Airport Police
  - The Ministry of Defence Police
  - The Serious and Organised Crime Agency

1.3 The Police Ombudsman has been asked to take responsibility for the investigation of serious criminal complaints against the staff of the Immigration Service and Her Majesty's Revenue and Customs. At the present time negotiations are underway to identify the legislative changes which will be necessary to enable the Police Ombudsman to carry out such a role. In particular there is a requirement for legislation to enable the use of Police and Criminal Evidence Order powers when investigating the non-police personnel who are employed by these organisations. There is a requirement to make an amendment to Section 60 of the Police (Northern Ireland) Act 1998 to permit agreements to be put in place with organisations not being a "body of constables". There is also a necessity to identify and agree the resourcing of such work, as current budgets are not available for the work.

1.4 The Vision and Mission of the Police Ombudsman for Northern Ireland:

**Vision**

The Police Ombudsman will strive for excellence in providing an independent impartial police complaints service in which the public and the police have confidence.

**Mission**

- To ensure maximum awareness of the Police Ombudsman complaints service
- To ensure police complaints system is fully accessible and responsive to the community
- To provide a robust and effective investigation process leading to evidence-based recommendations
- To analyse and research the outcomes of complaints so as to inform and improve the policy and practice of policing

- To achieve excellence in the provision of an independent impartial police complaints service in which the public and police have confidence.

# 2.0

## THE LEGISLATION

2.1 The legislation which governs the work of the Police Ombudsman's Office, and which is the subject of this review, is Part VII of the Police (Northern Ireland) Act 1998. The following is a list of some of the legislation which also regulates the work of the Office:

- Criminal Law Act (NI) 1967
- Criminal Appeal Act 1995
- Criminal Procedure and Investigations Act 1996
- Police (Northern Ireland) Act 1998
- Human Rights Act 1998
- Northern Ireland Act 1998
- Data Protection Act 1998
- Police (Northern Ireland) Act 2000
- Regulation of Investigatory Powers Act 2000
- Freedom of Information Act 2000

- Justice (Northern Ireland) Act 2000
- Anti-terrorism, Crime and Security Act 2001
- Criminal Justice and Police Act 2001
- Justice (Northern Ireland) Act 2002
- Proceeds of Crime Act 2002
- Police (Northern Ireland) Act 2003
- Justice (Northern Ireland) Act 2004
- The Serious Organised Crime and Policing Act 2005

## Orders in Council

- The Police and Criminal Evidence (Northern Ireland) Order 1989
- The Commissioner for Children and Young People (Northern Ireland) Order 2003
- The Police (Northern Ireland) Act 1998 (Modification) Order 2003
- Criminal Justice (Northern Ireland) Order 2004
- Criminal Justice (Northern Ireland) Order 2005
- The Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007

## Statutory Rules

- Statutory Rule 1989 No. 1341: The Police and Criminal Evidence Order (Northern Ireland) 1989
- Statutory Rule 2000 No. 314: The Police and Criminal Evidence (Application to Police Ombudsman) Order (Northern Ireland) 2000
- Statutory Rule 2000 No. 315: The Royal Ulster Constabulary (Conduct) Regulations 2000
- Statutory Rule 2000 No. 316: The Royal Ulster Constabulary (Unsatisfactory Performance) Regulations 2000
- Statutory Rule 2000 No. 317: The Royal Ulster Constabulary (Appeals) Regulations 2000
- Statutory Rule 2000 No. 318: The Royal Ulster Constabulary (Complaints etc.) Regulations 2000
- Statutory Rule 2000 No. 319: The Royal Ulster Constabulary (Complaints) (Informal Resolution) Regulations 2000
- Statutory Rule 2000 No. 320: The Royal Ulster Constabulary (Conduct) (Senior Officer) Regulations 2000
- Statutory Rule 2000 No. 399: The Police (Northern Ireland) Act 1998 (Commencement) Order (Northern Ireland) 2000
- Statutory Rule 2000 No 412: The Police (Northern Ireland) Act 2000 (Commencement) Order 2000

- Statutory Rule 2001 No.132: The Police (Northern Ireland) Act 2000 (Commencement No. 2) Order 2001
- Statutory Rule 2001 No. 184: Royal Ulster Constabulary (Complaints etc) Regulations 2001
- Statutory Rule 2001 No. 396: The Police (Northern Ireland) Act 2000 (Commencement No.3 and Transitional Provisions) Order 2001
- Statutory Rule 2001 No. 369: Police Trainee Regulations (NI) 2001
- Statutory Rule 2003 No.184: Police Service of Northern Ireland (Amendment) Regulations 2003
- Statutory Rule 2003 No. 68: Police Service of Northern Ireland (Conduct) Regulations 2003
- Statutory Rule 2003 No.142: Police (Northern Ireland) Act 1998 (Commencement No.5) Order (Northern Ireland) 2003
- Statutory Rule 2003 No. 399: Police Service of Northern Ireland (Appeals) (Amendment) Regulations 2003
- Statutory Rule 2004 No.122: The Police Service of Northern Ireland (Secondment) (Garda Síochána) Regulations 2004
- Statutory Rule No. 376: The Police (Northern Ireland) Act (Modification) Order 2003

- Statutory Rule 2004 No. 315: Police Service of Northern Ireland (Conduct etc.) (Amendment) Regulations 2004
- Statutory Rule 2004 No. 379: Police (Appointments) Regulations (Northern Ireland) 2004
- Statutory Rule 2005 No. 341: The Police Service of Northern Ireland (Complaints etc.) (Amendment) Regulations 2005
- Statutory Rule 2006 No. 69: The Police (Recruitment) (Amendment) Regulations (Northern Ireland) 2006
- Statutory Rule 2007 No.177: The Police (Northern Ireland) Act 2003 (Commencement No.2) Order 2007
- Statutory Rule 2007 No.58: Police and Criminal Evidence (Northern Ireland) Order 1989 (Code of Practice) (No.3) Order 2007
- The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007
- Statutory Rule 2007 No.130: Police Service of Northern Ireland (Unsatisfactory Performance and Attendance) Regulations 2007

## Statutory Instruments

- The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003
- The Regulation of Investigatory Powers (Communications Data) Order 2003
- The Criminal Justice (No 2) (Northern Ireland) Order 2004
- Policing (Miscellaneous) Provisions (Northern Ireland) Order 2007

# 3.0

## THE PROCESS FOR THE REVIEW OF PART VII OF THE POLICE ACT

3.1 The process was initiated by way of internal consultation in the Office of the Police Ombudsman (the Office). This was followed by preliminary external consultation with stakeholders, a meeting of stakeholders within the criminal justice system, community consultation meetings in Belfast and Omagh, and further stakeholder meetings. The Review Report has been posted on the website

3.2 Reports which have been produced in relation to the Office were considered. These included:

- Report of the House of Commons Northern Ireland Affairs Committee on the Functions of the Office of the Police Ombudsman for Northern Ireland. Fifth Report of Session 2004-2005. February 2005
- Report of the Criminal Justice Inspector for Northern Ireland on the Inspection of the Office of the Police Ombudsman for Northern Ireland. December 2005
- Reports of the Patten Oversight Commissioner 2000-2007
- Commentary of the Committee on the Administration of Justice on the Office of the Police Ombudsman for Northern Ireland. June 2005

# 4.0

## THE APPOINTMENT OF THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

- 4.1 The Police Ombudsman is appointed under s.51 of the Police Act as a corporation sole by Her Majesty, the Queen. The Police Ombudsman is appointed for a period of seven years, or a period ending on the date on which the person appointed attains the age of 70 whichever is the shorter. A person whose terms of appointment expire shall not be eligible for re-appointment (Schedule 3 Para 1(4)).
- 4.2 This provision is not consistent with the provisions in relation to the appointment of the Parliamentary Ombudsman or of the Chairman and Members of the Independent Police Complaints Commission (IPCC – the independent police complaints system for England and Wales). The Parliamentary Ombudsman is appointed until retirement and the Chairman and Members of the IPCC are appointed for a term of five years, renewable for five years. Most public sector appointments carry the possibility of a renewal of the term of office.
- 4.3 The work of the Police Ombudsman is highly complex, technical and sensitive. In these circumstances it is considered that the provisions in relation to the single term of appointment of the Police Ombudsman are unsuited to the achievement of maximum efficiency and effectiveness.

## Recommendation 1

*That the initial term of the Police Ombudsman should be reduced to a term of five years, and that the Police Ombudsman should be eligible for re-appointment for a further term of five years.*

# 5.0

## POLICE REFORM AND CONSEQUENTIAL JURISDICTIONAL ISSUES

- 5.1 When the Office of Police Ombudsman for Northern Ireland was established almost all policing functions were carried out by police officers. All those officers were subject to the accountability arrangements created by Part VII of the Police (NI) Act 1998.
- 5.2 Since the establishment of the Office, a programme of civilianization has been initiated in accordance with the requirements of the Independent Report on Policing (the Patten Report).
- 5.3 Under these arrangements the PSNI have introduced civilian receptionists in police stations and there are a number of civilian investigators currently working for PSNI. In addition to this; new categories of civilian detention officers, escort officers and investigators have been created.
- 5.4 At present complaints against these employees are not dealt with by the Police Ombudsman. The consequence of the new arrangements is that some of those police employees who are in regular contact with the public and who carry out functions previously carried out by police officers are not within the remit of the Police Ombudsman. This will almost inevitably create confusion for members of the public.
- 5.5 There are currently draft regulations to deal with some, but not all of these posts, and to bring them within the remit of the Police Ombudsman.

## Recommendation 2

*That any post which was previously carried out by a police officer, and which has been civilianized under the civilianization initiative and which involves contact with members of the public, should be brought within the remit of the Police Ombudsman for Northern Ireland for the purposes of complaints against those personnel and the exercise of the powers and duties under s.55 of the Police (Northern Ireland) Act.*

# 6.0

## FREEDOM OF INFORMATION

- 6.1 The Police Ombudsman is committed to providing a police complaints service in the way she thinks best calculated to secure the support of the public and the police. She believes that for such support to be forthcoming it is essential that people be informed about the nature of her work. The Office is committed to Accountability.
- 6.2 The Police Ombudsman is also of the view, however, that the interests of the public and of justice are best served by maintaining a police complaints system where the participation of complainants, witnesses, informants, suspects and offenders is reliant upon ensuring, as far possible, their confidentiality.
- 6.3 Section 63 of the Police Northern Ireland Act places very strict limitations on the disclosure of information received by the Police Ombudsman in connection with her functions. The Police Act does not extend that restriction on the disclosure of information to other organisations with whom the Police Ombudsman may have to share that information in the exercise of her functions.
- 6.4 In order to help ensure the confidentiality of such information, the Police Ombudsman proposes that the restrictions on its disclosure be extended to all holders of that information.

## Recommendation 3

*That section 63(2) of the Police (Northern Ireland) Act should be amended to include “(c) Such other persons to whom the Police Ombudsman is required by statute to release information”*

# 7.0

## THE RECEIPT, RECORDING AND HANDLING OF COMPLAINTS

### Receipt

- 7.1 Complaints are recorded by the Police Ombudsman. If made to the Chief Constable, the Northern Ireland Policing Board, the Secretary of State or the Public Prosecution Service complaints must immediately be referred to the Police Ombudsman. The Police Ombudsman is then responsible for recording the complaint and for notifying the PSNI and any named officer.
- 7.2 Complaints about police conduct may on occasion require immediate and urgent action to recover evidence, which if not so recovered will be lost. There are two agencies which are not currently required to notify the Police Ombudsman immediately if they receive a complaint about police conduct, or if they become aware in the course of their work of a matter which should be referred to the Police Ombudsman by virtue of its nature and content. Those agencies are the Criminal Cases Review Commission, which has no statutory power to refer matters to the Police Ombudsman, and the Criminal Justice Inspector who also has no power to refer matters.
- 7.3 There are also judges and magistrates who are not specifically empowered to refer matters to the Police Ombudsman, but who have on occasion sought to do so.

## Recommendation 4

***That the Criminal Cases Review Commission and the Criminal Justice Inspector should be added to the list of those empowered to refer complaints to the Police Ombudsman under s. 52 of the Police Act and that the Lord Chief Justice should also be empowered to refer to the Police Ombudsman matters brought to his attention by members of the judiciary and magistracy.***

7.4 Complaints can only be made by “members of the public.” Police officers are not empowered to complain to the Police Ombudsman. There are however occasions on which police officers have brought to the attention of the Police Ombudsman matters which require to be dealt with. The Police Ombudsman can only deal with these matters by way of the exercise of her right to investigate under section 55(6) of the Police (NI) Act 1989. This involves the necessity to report on each occasion to the Secretary of State, Northern Ireland Policing Board and Chief Constable under Regulation 20 of the RUC (Complaints etc.) Regulations 2000.

7.5 Both the Northern Ireland Affairs Committee and the Northern Ireland Human Rights Commission have recommended that police officers should be permitted to bring to the attention of the Police Ombudsman matters of concern involving both the way in which services are delivered to the public and the conduct of police officers in that process. The Police Federation for Northern Ireland has also articulated their wish that their members should be permitted to bring matters to the attention of the Police Ombudsman.

## Recommendation 5

***That police officers should be empowered to bring to the attention of the Police Ombudsman for investigation matters which appear to indicate that there are concerns about the conduct of fellow officers in the delivery of policing services to the public.***

## Recording and subsequent handling of complaints

7.6 Complaints must be recorded when received by the Police Ombudsman and a register of complaints must be kept.

7.7 By virtue of s. 52(3) of the Police Act the Police Ombudsman is required on receipt of a complaint:

*“ (a) to record and consider each complaint made or referred to him... and  
(b) to determine whether it is a complaint to which subsection 4 applies.”*

7.8 Regulation 6(2) of the RUC (Complaints etc) Regulations 2000 requires the Police Ombudsman to send to police and to any identified police officer a copy of any complaint received. This notice does not indicate that the officer is under investigation. It merely advises the officer that a complaint has been made. The information contained in the Regulation 6 notices forms the basis of the system of tracking and trending of complaints against individual officers. The process of tracking and trending complaints against individual officers was a requirement of the Patten Report on Policing. Under this process management information is provided to District Commanders in respect of any officer who has been the subject of 3 or more complaints in any twelve month period.

- 7.9 The Police Ombudsman served over 3,000 Regulation 6 Notices during the past twelve months. Each officer served with a Regulation 6 Notice is identified on the monthly Tracking and Trending Report. It has been identified that the service of a Regulation 6 Notice on an officer can cause concern, alarm and, on occasion, distress. In addition to this there have been a number of occasions on which senior officer and Police Ombudsman time has been spent explaining again to officers that the service of a Regulation 6 notice does not mean that the officer is under investigation (and this is stated clearly at the top of the notice).
- 7.10 When the complaint has been closed the officer will also receive a notice informing him or her of the outcome of the complaint, despite the fact that that officer was never the subject of investigation.
- 7.11 If the complaint is not one to which section 52(4) applies, then the Police Ombudsman cannot deal with the complaint, but must refer it to the Chief Constable, the Northern Ireland Policing Board or the Secretary of State as she thinks fit, and shall notify the complainant accordingly.
- 7.12 The service of Regulation 6 notices on officers serves no purpose, as the complaint may be one in respect of which informal resolution is attempted under s. 53 of the Police (NI) Act, may be one with which the Police Ombudsman cannot deal as it does not fall within her remit, or may be one to which Regulations 23, 24 and 25 of the RUC (Complaints etc) Regulations apply. The complaint will then be closed as indicated in the paragraph 7.10.
- 7.13 The cumulative effect of Regulations 6 is that some officers receive two statutory notices from the Police Ombudsman, because when a Regulation 6 Notice has been served in compliance with the law, and it subsequently transpires that the complaint is not one to which s. 52(4) applies, then that complaint will be closed. In such circumstances the officer has never been

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placed under investigation. The process of serving Regulation 6 notices and closure notices in these circumstances causes alarm and concern among police officers, and is not an efficient use of resources.

7.14 Moreover, under the current arrangements tracking and trending of any officer subject of multiple complaints occurs automatically on service of the Regulation 6 notice, even though the complaint may subsequently transpire to be one in respect of which no action is possible, for the reasons described in paragraph 7.12

7.15 If a police officer is the subject of a complaint, and that complaint is to be investigated, then the Police Ombudsman must serve a notice, under Regulation 9 of the RUC (Complaints etc) Regulations 2000, on the officer, telling him that he is the subject of a complaint and that he has certain rights.

7.16 This provides protection of all officers consistent with the requirements of the law.

## Recommendation 6

***That the requirement to serve a notice under Regulation 6 of the RUC (Conduct) Regulations 2000, on officers, is repealed but that the Regulation 6 notices continue to be served on the PSNI to notify them of the existence of the complaint, so that all complaints are captured for statistical analysis.***

## Recommendation 7

***That tracking and trending of officers the subject of multiple complaints should be triggered by the service of Regulation 9 Notices. No legislative amendment is required for this purpose.***

# 8.0

## INFORMAL RESOLUTION

8.1 Section 53(1) of the Police Act requires that the Police Ombudsman “*shall consider whether the complaint is suitable for informal resolution and for that purpose may make such investigations as he thinks fit.*”

S. 53(2) of the Act states that

“ *A complaint is not suitable for informal resolution unless –*

*(a) the complainant gives his consent; and*

*(b) it is not a serious complaint.*”

8.2 Informal resolution is conducted by the police and it is generally agreed that, for those complainants who agree to informal resolution, the process is working as well as can be expected. There is a significant number of complainants who, having approached the Police Ombudsman with a complaint, do not think it appropriate for the PSNI to resolve the complaint.

8.3 The title “informal resolution” is generally agreed to be inappropriate. It is perceived that it suggests that complaints which are dealt with in this way are less professionally and less seriously processed. It is therefore suggested that the name of this process should be changed to make it consistent with the term used in England and Wales, which is thought to be more appropriate.

### Recommendation 8

***That the title of the process currently referred to as “informal resolution” in section 53 of the Police (NI) Act should be changed to “Local Resolution.”***

8.4 There is currently a requirement that if informal resolution fails then the Police Ombudsman “shall” investigate. There are occasions on which it is inappropriate to investigate where for example the complainant unreasonably failed to complete the informal resolution process, but did not withdraw from it, or where there are irreconcilable differences between the complainant’s account of an incident and that of the officer, there were no independent witnesses and there are no investigative opportunities.

## Recommendation 9

***That section 54 of the Police (NI) Act should be amended to give the Police Ombudsman discretion to decide whether a complaint which has been the subject of a failed informal resolution should be investigated, and that in such cases a new closure category “Failed Informal Resolution, further investigation not possible” be introduced.***

# 9.0

## MEDIATION – THE NEED FOR MODERN METHODS OF DISPUTE RESOLUTION

- 9.1 Mediation is permissible under the Police Act only after investigation. Section 58A of the Police (NI) Act 1998 provides for the option of mediation after the conclusion of investigation, and only where the complaint is not serious and does not indicate that a criminal offence has been committed. This is generally wholly inappropriate, as investigation can have the effect of further separating the complainant and the officer. There is a technical criminal offence alleged even where an assault is a slight push. Any assault allegation, no matter how minor is excluded from mediation.
- 9.2 The Police Ombudsman has consistently, since appointment, sought the power to mediate as an alternative to both informal resolution and investigation. Mediation is a widely recognised modern form of alternative dispute resolution, which has proved both to be cost effective, and to provide higher levels of satisfaction to both complainant and the person complained against. The Police Ombudsman’s proposal for the introduction of mediation as a method of resolving complaints has the support of all parties and was the subject of a recommendation by both the Northern Ireland Affairs Committee and the Criminal Justice Inspector. The legislative amendments necessary have yet to be made.
- 9.3 Agreement has been reached between all the stakeholders as to this proposal.

9.4 The ability to mediate suitable complaints is essential to enable the police complaints system to meet the needs of complainants and of the police service in a modern, timely, appropriate and effective manner. Mediation is used in many jurisdictions to achieve resolution to such issues.

## Recommendation 10

***That the Police (NI) Act 1998 be amended to enable the Police Ombudsman to conduct mediation in appropriate circumstances, and that there be no requirement to investigate first.***

# 10.0

## INVESTIGATION

### Cautions

- 10.1 Investigations are conducted by Police Ombudsman Investigators, who have full police powers under the Police and Criminal Evidence Order (NI) 1989, when conducting criminal investigations. When conducting conduct investigations investigators are empowered by the relevant conduct and complaint regulations. Although the powers accorded to investigators are significant there are, nonetheless, a number of deficiencies in the legislation which require to be addressed.
- 10.2 When an officer is interviewed in respect of alleged involvement in a criminal offence, he or she will be interviewed following a Police and Criminal Evidence (NI) Order caution. If there is consideration of the same matters, but for disciplinary purposes, then it is not necessary to re-caution and re-interview the officer. The answers which the officer has given under the Police and Criminal Evidence caution could not be withdrawn by the officer in a subsequent disciplinary interview without bringing into question his veracity when giving evidence under caution in respect of alleged criminality.
- 10.3 It was the RUC practice to conduct two sets of interviews – one criminal and one disciplinary in respect of the same issue. The Police Ombudsman considers that it is neither necessary, nor desirable nor sensible for an officer to receive two separate cautions and to be asked the same questions twice, once for criminal investigative purposes and once for disciplinary purposes.

- 10.4 When an officer is being questioned about other matters relevant only to their compliance with the PSNI Code of Conduct then that officer must receive a disciplinary caution before questioning occurs.
- 10.5 The legislation does not deal specifically with this matter and it would be of assistance were it do so.

## Recommendation 11

***That the RUC (Conduct) Regulations 2000, and the RUC (Senior Officer) (Conduct) Regulations 2000 should be amended to provide that matters the subject of questioning under PACE caution, do not require to be the subject of further questioning under a discipline caution; and that any matters relating to the discharge of a police officer's obligations under the PSNI Code of Ethics, which have not previously been addressed during a PACE interview, should be the subject of a second interview conducted following the administration of a disciplinary caution.***

## Attendance for interview

- 10.6 Most officers attend for interview, either as witness or suspect officer without any problem. However some officers do not attend voluntarily. Officers who decline to attend for interview cannot currently be ordered by the Police Ombudsman to do so. In these circumstances it is necessary for the Police Ombudsman to ask the PSNI to order the officer to attend for interview. This can involve a very lengthy process, which delays the conduct of the investigation – a matter of concern to all involved.

10.7 It would facilitate the process of investigation if officers, who are unwilling to attend for interview, could be required by the Police Ombudsman to attend. This would also reduce a number of unnecessary and time-wasting interactions between senior police officers and senior staff of the Police Ombudsman.

## Recommendation 12

***That the Police Ombudsman should be specifically empowered by statute to compel the attendance for interview of both witness and suspect officers.***

## Retired officers and others

10.8 When police officers retire they cannot be the subject of investigation in respect of alleged breaches of discipline during their service as police officers. This is quite correct. Retired officers can be investigated in respect of suspected criminal offences committed during their term of service.

10.9 The Police Ombudsman regularly wishes to interview, as witnesses, officers who have retired, in relation to evidence which they may have relating to an ongoing criminal investigation by the Police Ombudsman, or even in relation to the investigation of serious disciplinary matters. The Police Ombudsman has no power to compel those officers to assist her investigation or provide her with documentation compiled by them during their service and retained by them upon retirement.

- 10.10 Section 5 of the Criminal Law Act of 1967 does not take account of the role of the Police Ombudsman within the criminal justice system and requires amendment accordingly. An appropriate amendment would place a duty on all persons, including police or former police officers, to report to the Police Ombudsman evidence of potential police officer criminality. Such an amendment would remove any doubt as to the obligation on all to assist the Police Ombudsman with the investigations of crimes, which fall within her remit.
- 10.11 The effect of retired officers' refusal to assist investigations, particularly retrospective investigations, which by statutory definition involve grave or exceptional matters, can be quite damaging to the Police Service of Northern Ireland. In other common law jurisdictions such as Australia there is a power to compel testimony from witness officers in such circumstances. This would be in the public interest as a refusal by retired police officers to give information, which they have to enable a criminal investigation, has the effect of reducing public confidence in police officers generally.
- 10.12 It is also the case that there is a public understanding that there is a civic obligation on anyone who can assist an investigation to do so. It is the Police Ombudsman's view that that obligation applies equally to retired police officers and to members of the public, and to others who have relevant information.

## Recommendation 13

***That the Police Ombudsman be given a power to compel retired police officers to submit to witness interview, answer questions and provide all relevant documentation to her, which is within their possession, custody, power or control when she is conducting criminal investigations involving grave or exceptional matters.***

## Recommendation 14

*That Section 5(1) of the Criminal Law 1967 be amended to include after “constable”; “or where the information relates to police conduct, the Police Ombudsman for Northern Ireland”*

### **The submission of investigation files to the Director of Public Prosecutions**

- 10.13 A complainant has the right under the Police (NI) Act 1998 to complain within a period of twelve months following the incident which is the subject of complaint. Some complaints involve allegations of summary criminal offences, such as common assault, which are statute barred in terms of prosecution after six months. Those cases can only be dealt with under the PSNI Code of Ethics.
- 10.14 In relevant cases in which the complaint is received shortly before the expiry of the six month period, the Police Ombudsman can only deal with such matters by submitting an interim investigation file to the Public Prosecution Service with a request to the Public Prosecution Service to initiate the prosecution process by issue of a Form 1 within the six month period. PSNI officers have the right to take out Form 1s and hence to ensure that the possibility of prosecution remains live. Police Ombudsman investigators do not have a corresponding power.
- 10.15 The provision of a power to take out Form 1s in relevant cases would remove the need for preliminary interim file submission, for this purpose only, to the Public Prosecution Service, and would therefore remove both the requirement to prepare the interim file and the requirement for the Public Prosecution Service to deal with it.

## Recommendation 15

***That the Police Ombudsman is empowered to take out Form 1s, when engaged in the investigation of summary criminal offences in the same way that PSNI officers do.***

10.16 Matters which are statute barred from prosecution (because they are summary offences triable in a magistrates court, no charge has been preferred and six months has elapsed since the date of the incident) can only be dealt with under the PSNI Code of Ethics. Notwithstanding this the Police Ombudsman is required by section 58 of the Police (NI) Act to submit an investigation file to the Public Prosecution Service.

## Recommendation 16

***That the requirement, under section 58, to submit files for the consideration, by the Director of Public Prosecutions, of criminal prosecution only applies when the complaint has been received before the alleged criminal offence became statute barred.***

## Police Ombudsman powers of investigation

10.17 The Police Ombudsman has powers of arrest only of police officers and retired police officers suspected of a criminal offence, allegedly committed during their service as police officers.

- 10.18 The Police Ombudsman has encountered a few occasions on which civilians are allegedly engaged in criminal activity in conjunction with police officers. These matters have included murder cases. In such cases, because the Police Ombudsman has no powers of arrest of the civilians, such persons must be arrested by the PSNI and investigated by them. For the purposes of the PSNI investigation they are suspects. For the purposes of the Police Ombudsman investigation they can only be witnesses. However, should they disclose in interview material indicative of their own serious criminal wrongdoing, that matter must be reported to the PSNI by the Police Ombudsman. Moreover, the Police Ombudsman, in such cases will have grounds to believe that these individuals may have committed a criminal offence. As such they are entitled to all the protection of the European Convention on Human Rights.
- 10.19 The consequence of the current limitation on the powers of the Police Ombudsman is that where a police officer and a civilian are allegedly engaged in crime there may not be an effective investigation of the whole matter, and vital evidence may be lost as a consequence of the fact that the alleged civilian wrongdoer can only be a witness in the Police Ombudsman's investigation. The parallel investigation of that civilian's alleged criminality will also be hampered by considerations of the European Convention Rights of the police officer who is under investigation by the Police Ombudsman, in respect of a crime being investigated also by the PSNI.
- 10.20 Further to this, the parallel criminal investigation by the PSNI of civilians, in matters in which police officers are under criminal investigation by the Police Ombudsman has the effect of diminishing the perception of the independence and effectiveness of the Office of Police Ombudsman.

10.21 It also has the effect of causing the utilisation of unnecessary resources by both the Police Ombudsman and the PSNI and is not cost effective.

## Recommendation 17

***That the Police Ombudsman be empowered to arrest persons who are not police officers and who are engaged in a crime for which police officers are being investigated, and to conduct one investigation in respect of such a matter.***

## Conciliation following investigation

10.22 As previously stated section 58A of the Police (NI) Act 1998 provides for the option of mediation after the conclusion of investigation, only where the complaint is not serious and does not indicate that a criminal offence has been committed.

10.23 There is no provision for conciliation, which does not necessarily involve the alleged police officer offender and the complainant, but would involve the PSNI and the complainant. This process is currently used by the Police Ombudsman in cases where, for example, there is clear forensic evidence of the commission of a crime by a police officer, but the individual officer cannot be identified. (For example, in one case a complainant alleged that a police officer had smashed her car's wing mirror. She described the officer. Traces of paint, identified forensically as identical to the paint of the car, were found on the officer's baton by the Forensic Science Service. He was prosecuted for criminal damage. The prosecution was dismissed when a senior officer gave evidence that all the officers threw their batons into one box. This raised a reasonable doubt that the officer charged may not have been the officer who struck the car. The case was dismissed. There was however no doubt that the police baton had caused criminal damage to the

complainant's car.) There is no statutory base for the informal process which occurs. It is reliant on the good will of individual officers.

10.24 In such cases conciliation would enable the process of assuaging the individual's sense of grievance against the PSNI, and would also enable the PSNI to seek to recover the situation created by its unidentified member.

10.25 Conciliation has been the subject of discussion between the PSNI and the Police Ombudsman and the PSNI are in agreement that this process is useful to the PSNI, as it enables the PSNI to recover, to some degree the damage done by the offending but unidentified member.

## Recommendation 18

*That there be statutory provision for the use of a conciliation process in appropriate cases in which there is clear evidence that the conduct alleged occurred, but an individual officer cannot be identified.*

## The withdrawal of complaints under Regulation 23 of the RUC (Complaints etc.) Regulations.

10.26 There are a number of categories under which complaints can be closed. Among these are "non-co-operation," which is used when a complainant, having made a complaint does not respond to action by the Police Ombudsman, and "withdrawn," which is used when a complainant decides to discontinue the complaint. Regulation 23 of the RUC (Complaints etc) Regulations requires that complaints must be "withdrawn" in writing. Complainants sometimes seek to withdraw their complaints verbally, either during meetings or by telephone. If no written withdrawal is received the complaint must be closed as "non-co-operation." This has the effect of distorting the statistics in relation to the numbers of complaints, which are closed as "non-cooperation" and "withdrawn."

**REVIEW – SECTION 61 (4) POLICE (Northern Ireland) ACT 1998**

## Recommendation 19

*That, given the number of people who have difficulties in communicating in writing for various reasons, not least disability, complainants should no longer have to withdraw complaints in writing, but that they should be able to do so verbally, provided that the verbal withdrawal is accompanied by a formal written statement by the member of the Police Ombudsman's staff who receives the verbal withdrawal.*

## **Investigation of current police policies and practices under Section 60a of the Police (NI) Act 1998**

10.27 The power to investigate current police policy and practice was introduced by section 13 of the Police (NI) Act 2003. This provision is working well. No change has been recommended by any of those consulted.

10.28 No change is required.

# 11.0

## POLICE OMBUDSMAN GENERAL

### REPORTING FUNCTIONS

10.29 The Police Ombudsman is required to provide various categories of information to the Secretary of State, the Chief Constable and the Northern Ireland Policing Board. The Police Ombudsman also has a power to issue Statements under section 62 of the Police (NI) Act 1998 which are published.

10.30 The Police Ombudsman consults regularly in relation to the needs of those to whom information, in its various forms, is provided. No requirement for change to these provisions has been identified.

10.31 The Police Ombudsman also provides information to District Policing Partnerships, and has consulted with them as to their information needs and the extent to which those needs are satisfied. They have identified no requirement for change.

10.32 There has been no articulation of a need for amendment to the provisions relating to these powers.

10.33 No change to these provisions is required.

# 13.0

## OFFICER SUSPENSION ISSUES

- 13.1 Under Regulation 5 of the RUC (Conduct) Regulations 2000 the Chief Constable has the power to suspend a police officer from duty and from his office of constable.
- 13.2 Regulation 7 of the RUC (Complaints etc) Regulations 2000 provides that where, during the conduct of an investigation by the Police Ombudsman, she determines that the conduct of an officer does not meet the required standard the Police Ombudsman shall inform the appropriate authority to enable him to make the necessary decision.
- 13.3 The Police Ombudsman has no power to recommend suspension.
- 13.4 However under the RUC (Conduct) (Senior Officers) Regulations 2000, if the Northern Ireland Policing Board decide to suspend a senior officer that suspension will only occur with the approval of the Police Ombudsman.
- 13.5 There are occasions when the Police Ombudsman would wish to recommend, but not to direct, the suspension of an officer, for reasons of public interest.

### Recommendation 20

***That Regulation 7 of the RUC (Complaints etc) Regulations 2000 be amended to enable the Police Ombudsman to recommend the suspension of an officer.***

# 14.0

## DISCIPLINARY ACTION BY THE CHIEF CONSTABLE FOLLOWING POLICE OMBUDSMAN INVESTIGATIONS

14.1 Following Police Ombudsman investigations Disciplinary Tribunals may be convened by the Chief Constable to hear cases in which the resulting penalty may be:

- Dismissal
- Requirement to resign
- Reduction in rank
- Reduction in pay
- Fine of up to 13 days pay
- Reprimand
- Caution

14.2 If the Chief Constable declines to hold a hearing the Police Ombudsman can direct him so to do. This has rarely been necessary.

14.3 The Secretary of State's Guidance (to which the Police Ombudsman is required by law to have regard) states that where the officer admits the offence, or where there are other relevant circumstances, hearings should not necessarily occur if a Superintendent's Written Warning to the Officer would be a suitable penalty. This is a sensible arrangement as it obviates the need and expense of a formal hearing.

- 14.4 The issue of a Superintendent's Written Warning or of Words of Advice and Guidance to an officer are non-statutory penalties. The Police Ombudsman cannot direct the Chief Constable to issue such "informal discipline."
- 14.5 Most of the disciplinary recommendations made by the Police Ombudsman are for either Superintendent's Written Warning or Advice and Guidance. This is proportionate to the allegation which has been substantiated and consistent with the Secretary of State's Guidance. However the Police Ombudsman has no power to compel such "informal discipline". This is not satisfactory. If the police decline to apply the "informal discipline" then, despite the fact that the complaint has been substantiated, the Police Ombudsman must inform the complainant that the police refuse to apply the sanction.

## Recommendation 21

***That the Police Ombudsman be given statutory power to direct that informal discipline be applied in cases where a complaint is substantiated, but the Police Ombudsman does not consider it appropriate to recommend formal discipline.***

# 15.0

## DISCIPLINARY HEARINGS UNDER THE ROYAL ULSTER CONSTABULARY (CONDUCT) REGULATIONS 2000 AND THE ROYAL ULSTER CONSTABULARY (CONDUCT) (SENIOR OFFICER) REGULATIONS 2000

- 15.1 Disciplinary hearings are conducted by the PSNI following both internal investigation by the PSNI and investigation by the Police Ombudsman.
- 15.2 The RUC (Conduct etc) Regulations 2000 do not permit the Police Ombudsman and her staff to attend such hearings unless both the presiding officer and all parties consent to such attendance at all or even part of the hearing. The RUC (Conduct) (Senior Officer) Regulations 2000 make no provision to allow the Police Ombudsman to attend hearings involving Chief Officers.

15.3 The effect of this is that the Police Ombudsman having conducted the investigation is excluded from the hearing unless the officer complained about is not a senior officer and he and the presiding officer agree. This is totally unsatisfactory and is undermining of the integrity and effectiveness of the hearing process itself. The Police Ombudsman and her investigators should be permitted to attend all hearings conducted as a consequence of an investigation by the Office.

## Recommendation 22

***That Regulation 26 of the RUC (Conduct) Regulations 2000 and the RUC (Conduct) (Senior Officers) Regulations 2000 be amended to provide a right to the Police Ombudsman to attend all hearings which take place following a Police Ombudsman investigation.***

# 16.0

## ANTICIPATED UK WIDE CHANGES INVOLVING POLICE OMBUDSMAN RESPONSIBILITY FOR HER MAJESTY'S REVENUE AND CUSTOMS AND THE IMMIGRATION SERVICE, AND CHANGES IN DISCIPLINARY ARRANGEMENTS

### **Her Majesty's Revenue and Customs and the Immigration Service**

16.1 As stated in paragraph 1.3 of this Report arrangements are currently being considered which would make the Police Ombudsman responsible for the investigation of serious criminal allegations against staff, exercising police powers, employed by Her Majesty's Customs and Excise and by the Immigration Service. Those arrangements will require legislative change to enable the Police Ombudsman's investigators to conduct criminal investigations of these non-police personnel. Such legislative change has already occurred in respect of the Serious Organised Crime Agency in Northern Ireland.

- 16.2 Following various recent reports, such as the Taylor Report in England and Wales there is a proposal to adopt new methods of dealing with police officer misconduct. It is anticipated that change of a similar kind may also occur in Northern Ireland.
- 16.3 Such changes will require further amendment to the Police (NI) Act and all the subordinate legislation thereunder.
- 16.4 On a previous occasion legislative change has occurred without consultation and necessary legislative change affecting the Police Ombudsman has not occurred. The Police Ombudsman has then had to seek consequential legislative amendments, which have been very much delayed.

## Recommendation 23

***That the Police Ombudsman should be involved as early as possible in discussions in relation to matters of relevant and necessary statutory change affecting the Office.***

# 17.0

## SECRETARY OF STATE'S GUIDANCE UNDER S.65 OF THE POLICE (NORTHERN IRELAND) ACT 1998

17.1 The Secretary of State's Guidance on police complaints has not been revised since the establishment of the Office.

### Recommendation 24

**That the statutory guidance on police complaints, issued in accordance with section 65 of the Police (Northern Ireland) Act 1998 should be reviewed and where necessary revised.**

# 18.0

## COMPENSATION

18.1 Currently the Police Ombudsman is empowered to *recommend* to the Chief Constable that he make a payment not exceeding specified amounts to a complainant. The Chief Constable has made payment recommended thus far. Notwithstanding this, given the low level of the possible payments the Police Ombudsman should be empowered to direct payments.

### Recommendation 25

**The Police Ombudsman is empowered to direct the Chief Constable to make a payment not exceeding specified amounts to a complainant.**

# 19.0

## MAKING OF MAL-ADMINISTRATION COMPLAINTS MADE ABOUT THE POLICE OMBUDSMAN

19.1 There is no time limit for the making of mal-administration complaints about the Police Ombudsman. The consequence of this is that complaints can be received at any time. Such complaints may necessitate the re-examination of case files. In such circumstances police officers, who were the subject of the relevant complaint, may find that matters which have previously been closed are again under review. There should be a time limit consistent with time limits applicable for complaints of mal-administration in other public bodies.

### Recommendation 26

**That a time limit for the making of complaints of mal-administration against the Police Ombudsman should be introduced and that that time limit should be twelve months.**

# SUMMARY OF RECOMMENDATIONS

## Recommendation 1

*That the initial term of the Police Ombudsman should be reduced to a term of five years, and that the Police Ombudsman should be eligible for re-appointment for a further term of five years.*

## Recommendation 2

*That any post which was previously carried out by a police officer, and which has been civilianized under the civilianization initiative and which involves contact with members of the public, should be brought within the remit of the Police Ombudsman for Northern Ireland for the purposes of complaints against those personnel and the exercise of the powers and duties under s.55 of the Police (Northern Ireland) Act.*

## Recommendation 3

*That section 63(2) of the Police (Northern Ireland) Act should be amended to include “(c) Such other persons to whom the Police Ombudsman is required by statute to release information”.*

## Recommendation 4

*That the Criminal Cases Review Commission and the Criminal Justice Inspector should be added to the list of those empowered to refer complaints to the Police Ombudsman under s. 52 of the Police Act and that the Lord Chief Justice should also be empowered to refer to the Police Ombudsman matters brought to his attention by members of the judiciary and magistracy.*

## Recommendation 5

*That police officers should be empowered to bring to the attention of the Police Ombudsman for investigation matters which appear to indicate that there are concerns about the conduct of fellow officers in the delivery of policing services to the public.*

## Recommendation 6

*That the requirement to serve a notice under Regulation 6 of the RUC (Conduct) Regulations 2000, on officers, is repealed but that Regulation 6 notices continue to be served on the PSNI to notify them of the existence of the complaint, so that all complaints are captured for statistical analysis.*

## Recommendation 7

*That tracking and trending of officers the subject of multiple complaints should be triggered by the service of Regulation 9 Notices. No legislative amendment is required for this purpose.*

## Recommendation 8

*That the title of the process currently referred to as “informal resolution” in Section 53 of the Police (NI) Act should be changed to “Local Resolution.”*

## Recommendation 9

*That section 54 of the Police (NI) Act should be amended to give the Police Ombudsman discretion to decide whether a complaint which has been the subject of a failed informal resolution should be investigated, and that in such cases a new closure category “Failed Informal Resolution, further investigation not possible” be introduced.*

## Recommendation 10

*That the Police (NI) Act 1998 be amended to enable the Police Ombudsman to conduct mediation in appropriate circumstances, and that there be no requirement to investigate first.*

## Recommendation 11

*That the RUC (Conduct) Regulations 2000, and the RUC (Senior Officer) (Conduct) Regulations 2000 should be amended to provide that matters the subject of questioning under PACE caution, do not require to be the subject of further questioning under a discipline caution; and that any matters relating to the discharge of a police officer's obligations under the PSNI Code of Ethics, which have not previously been addressed during a PACE interview, should be the subject of a second interview conducted following the administration of a disciplinary caution.*

## Recommendation 12

*That the Police Ombudsman should be specifically empowered by statute to compel the attendance for interview of both witness and suspect officers.*

## Recommendation 13

*That the Police Ombudsman be given a power to compel retired police officers to submit to witness interview, answer questions and provide all relevant documentation to her, which is within their possession, custody, power or control when she is conducting criminal investigations involving grave or exceptional matters.*

## Recommendation 14

*That Section 5(1) of the Criminal Law 1967 be amended to include after “constable”; “or where the information relates to police conduct, the Police Ombudsman for Northern Ireland”*

## Recommendation 15

*That the Police Ombudsman is empowered to take out Form 1s, when engaged in the investigation of summary criminal offences in the same way that PSNI officers do.*

## Recommendation 16

*That the requirement, under section 58, to submit files for the consideration, by the Director of Public Prosecutions, of criminal prosecution only applies when the complaint has been received before the alleged criminal offence became statute barred.*

## Recommendation 17

*That the Police Ombudsman be empowered to arrest persons who are not police officers and who are engaged in a crime for which police officers are being investigated, and to conduct one investigation in respect of such a matter.*

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