

PILOT MEDIATION PROJECT REPORT

September 2008 – March 2009

CONTENTS

	Page
Foreword by the Police Ombudsman for Northern Ireland	3
List of Abbreviations	4
I. Introduction	5
2. Staffing the pilot project	7
3. Police Service of Northern Ireland (PSNI) District A - Subject district	8
4. Public Awareness Programme	10
5. Police Awareness Programme	12
6. Selection of cases suitable for mediation	16
7. The Mediation process	18
8. Mediation and complainants	20
9. Mediation and police officers	22
10. Conclusions	23
11. Recommendations	27
 <u>APPENDICES</u>	
A - List of mediation presentations	28
B - Mediation Leaflets and Press Releases	29
C - Complaints considered in pilot project	30
D - Mediation Codes of Practice	31
E - Mediation Evaluation Form	34
F - Project Expenditure	38

FOREWORD BY THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

This Mediation Pilot Project has been an important commitment and effort of this Office, and one that had my full support. This project was designed to test the viability of a formal mediation process at the beginning of the Northern Ireland police complaints system. Its success and acceptance would have resulted in future developments, and added another mechanism for resolving differences between the public and the police.

The pilot project did not achieve quantitatively positive results. In one sense that is unfortunate, nonetheless the project was also a positive learning experience in that it indicated the areas of work and focus needed to bring about police complaint resolution. The clear learning within the project pilot area (North and West Belfast) is that neither the police officers subject of complaints nor the public lodging the complaints are yet ready to accept a mediation tool. The mutual absence of trust and confidence is a critical factor that requires attention, at a number of levels. There is a lost opportunity for police officers in the failure to understand that a public complaint is an opportunity to improve policing and reduce complaints.

An important aspect of any modern democratic policing system is that timely mediative or informal mechanisms exist to resolve those policing complaints from the public that at their core represent service issues. While some 24% of our 3000 annual complaints are identified as appropriate for informal resolution, there are approximately only 12% resolved by the informal resolution procedures, and the process does not allow resolution in the timely manner that the public deserves. As a result of the learning from this project, I intend to focus on the informal resolution system. While not formal mediation, improvements in informal resolution will for now represent a mediative approach and perhaps prepare the ground for a future application of formal mediation process.

It is important to note that we received extremely positive support from the Police Service of Northern Ireland (PSNI) management and community leaders, numerous stakeholder groups and mediation professionals. The Police Federation of Northern Ireland (PFNI) leadership also formally endorsed the project, although not beyond the pilot area boundaries. The project was accomplished through the tremendous effort, commitment and leadership of Geraldine Loughran and Greg Mullan who deserve credit for seeing this project to its conclusion.

LIST OF ABBREVIATIONS

The Office	The Office of the Police Ombudsman for Northern Ireland
PSNI	The Police Service of Northern Ireland
PFNI	The Police Federation of Northern Ireland
IR	Informal Resolution
NIO	Northern Ireland Office
ICO	Initial Complaints Office
PSD	Professional Standards Department
CMS	Case Management System

1. INTRODUCTION

- 1.a Adopting mediation as a means of resolving some of the less serious complaints made to the Office of the Police Ombudsman for Northern Ireland (the Office) has been an important issue for the Office since it first opened its doors to the public on 6th November 2000. Section 58A of the Police (NI) Act 1998 allows for mediation at the conclusion of a Police Ombudsman investigation but there is no legislative framework for mediation upon receipt of a complaint. A survey relating to the Informal Resolution (IR) process (Section 53 of the Police (NI) Act 1998) indicated that 59% of complainants agreed that the current IR process needs to be improved or replaced and 73% believed that the process should be handled by persons independent of police¹. Also, in a rolling survey of police officers' attitudes to the IR process, spanning 3 years since 2005, 23% of those who responded stated that they were dissatisfied or very dissatisfied with the process.
- 1.b Following a period of extensive research looking at how mediation was operating in other jurisdictions around the world, the first Police Ombudsman, Mrs Nuala O'Loan (now Dame), made a recommendation in her five-year legislative review that the primary legislation be changed to enable the Office to offer mediation when a complaint is first received.
- 1.c There followed a major consultation process lasting approximately 18 months commencing in January 2006, the aim of which was to gauge support for mediating complaints upon receipt. A mediation model was issued to the Office's stakeholders and also to a large number of community-based agencies, seeking their views and comments. The feedback showed a positive response to the model and an acceptance of the principle of mediation as a means of resolving complaints of a less serious nature.
- 1.d A project mediation board with representatives from the Office, the Police Service of Northern Ireland (PSNI), the Police Federation of Northern Ireland (PFNI) and the Superintendent's Association was established to review the feedback. Following consultation with the Northern Ireland Office (NIO) it was agreed that a mediation pilot project should be initiated.
- 1.e In November 2007 the current Police Ombudsman, Mr Al Hutchinson, took up his post and actively encouraged and supported the mediation pilot project. He determined that the objective of the pilot project should be twofold: to identify whether mediation is a viable and feasible option at the initial complaint receipt stage in the police complaints system in Northern Ireland and to clarify the extent

¹ An evaluation of Police-Led Informal Resolution of Police Complaints in Northern Ireland - Dec. 05

of resources required should mediation be rolled out to incorporate the whole of the PSNI.

- 1.f This report will detail the various aspects of the mediation pilot project from the preparation stages to the selection of complaints considered suitable for mediation. The report also includes a number of recommendations arising from the pilot's findings.

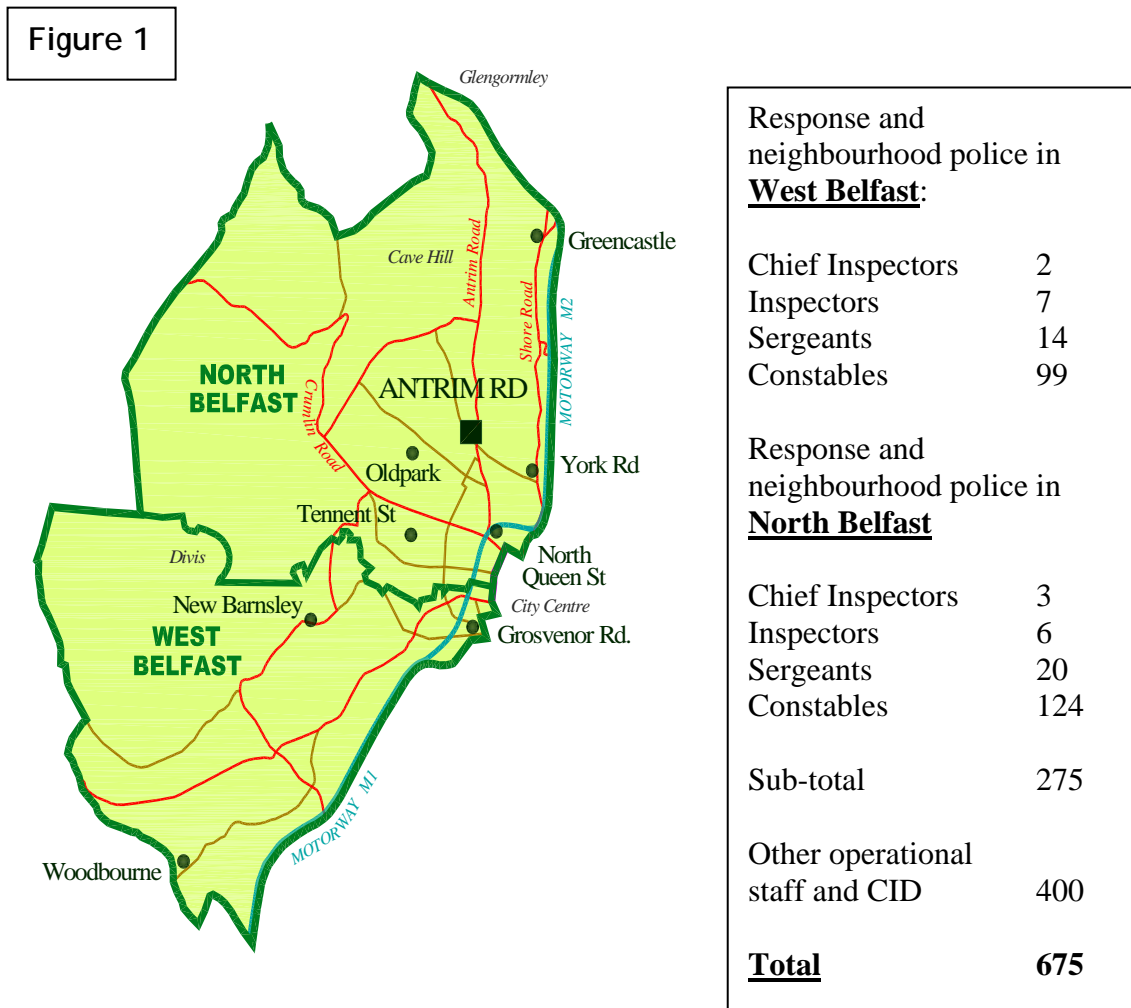
2. STAFFING THE PILOT PROJECT

- 2.a The project team comprised a lead manager and a project manager from within the Office staff. The lead manager for the project was the Director of Policy and Practice. The project manager, originally from the Initial Complaints Office (ICO), undertook mediation training and became an accredited mediator some months prior to the launch of the pilot project. She also successfully completed a PRINCE2 Project Management course and is now a PRINCE2 practitioner.
- 2.b An experienced, professional mediator was considered essential to the project for two reasons: the appropriate mediation experience was lacking in the Office and an external critical eye could help to refine both the model and the process. The Office's Procurement Unit issued a request for tender in the second quarter of 2008 to find an external mediator to assist in the pilot project. Four companies were asked to submit a tender and Mediation Northern Ireland was chosen in May 2008. The security vetting procedures were then put in place and the two people from Mediation Northern Ireland were cleared by mid-September 2008. One of the mediators is an associate of Mediation Northern Ireland and it was this person who worked closely with the project manager who was the Office's mediator. The other member of staff from Mediation Northern Ireland acted solely as a supervisory mediator and had no contact whatsoever with complainants or police officers.
- 2.c The project team had hoped to work with the external mediators in the run up to the launch of the project in September 2008 (marketing of the project, production of information leaflets, presentations, etc.). However, it transpired that the project manager undertook this work due to the delay in receiving security clearance from an external agency for the mediators.
- 2.d The scale of the pilot project did not warrant additional personnel. It was agreed that should administrative assistance be required by the project manager, this would be provided on an 'as and when' basis. Ultimately, however, there was no requirement to enlist the assistance of another member of staff.

3. PSNI DISTRICT A - SUBJECT OF PILOT

- 3.a The decision to choose PSNI District A (North and West Belfast) as the focus of the mediation pilot project was based on statistical information available to the Office and the close geographical proximity of the district to the Office. The choice of District A was agreed following a meeting with the relevant District Commander and upon receipt of a written endorsement from the Deputy Chief Constable of the PSNI.
- 3.b A decision was taken at the outset by the Police Ombudsman to consider complaints from other PSNI districts depending on the feedback from District A. This was deemed essential and good practice given that ultimately the Office hoped to roll out mediation to all districts.

Figure 1 below shows the location of PSNI District A in Belfast, the police stations therein and the number of officers by rank and unit.



3.c District A is one of the larger districts in the PSNI. The population statistics for the area covered by District A date back to 2001 and show the population at 143,522². In the year 2007-2008, 383 complaints were received from this district. This represents 13% of the total number of complaints received in that year. Figure 2 below shows the position of District A in comparison with all other PSNI Districts in relation to the number of complaints suitable for IR and the number of those which were informally resolved in the year 2007-2008.

Figure 2

Complaints Informally resolved during 2007/08*

	District										
	A	B	C	D	E	F	G	H	Unknown/ Other	Total	
Number of complaints per district	383	377	404	416	382	203	303	383	230	3081	
Number of complaints deemed suitable for IR	81	97	120	131	94	48	72	81	25	749	
Complaints Informally Resolved	39	48	56	64	36	13	31	39	11	337	
% of cases suitable for IR and successfully IR,ed	48%	49%	47%	49%	38%	27%	43%	48%	44%	45%	
% of successful IR in relation to overall number of complaints	21%	26%	30%	31%	25%	24%	24%	21%	11%	24%	

3.d The Office is based in central Belfast, a short distance from District A's boundary lines. Given that the Office was financing the pilot from its existing annual budget, the project team needed to consider the cost implication when choosing the subject district. Travel in terms of both time and money would impact less on the Office's budget if the subject district were close to the project base.

² Northern Ireland Census 2001 NISRA

4. PUBLIC AWARENESS PROGRAMME

- 4.a Prior to the launch of the live project in September 2008, the project team initiated and completed an extensive public awareness programme in District A. An information leaflet was produced by the project manager and issued to a wide range of agencies and community groups based or having links to the north and west of Belfast. The project manager then made contact with the aforementioned agencies and groups and asked if they would be interested in hearing about the pilot project. Approximately 40 groups in the district responded positively to the request and information leaflets and correspondence were sent to all the others who had not responded (see Appendix A).
- 4.b Many of the groups visited by the project manager appeared to have a good grasp of the principles of mediation and some of the attendees were mediators themselves, actively working in some of the well-known interface areas of north and west Belfast. It was even suggested that the Office consider using mediators from within the subject district in the pilot project. The majority of those at the presentations showed interest in the mediation pilot project. They understood the benefits for the complainant but expressed concern that police may not take the matter seriously and sought guarantees that 'bad cops' would not use the process to escape real punishment.
- 4.c A substantial number of the community groups stated that in their view very few people from within their specific community would actually make complaints of a less serious nature directly to the Office as they feel this is too formal a procedure.
- 4.d Some groups, particularly those familiar with or practising community restorative justice, advised that mediation worked well when communities wished to query police operations in their area. However, as the Office deals solely with complaints against individual police officers, these groups were less sure of the impact of mediation in such circumstances. It is important to note that a considerable number of the groups and agencies were unfamiliar with the work of the Office and often their only references were the high profile reports on some of the historic cases investigated by the Office.
- 4.e It was encouraging for the project team to find that communities and their representatives were willing to listen to OPONI staff and in many cases offer what assistance they could to either pass information on to other groups or provide the project team with contacts who might be interested in the pilot project. It became clear that whilst there were reservations about the number of

complainants and police officers who would engage in the mediation project, most of those who attended the presentations recognised the validity of a pilot project and asked to be kept updated.

- 4.f In addition to the presentations and information leaflet distribution, press releases were also issued (Appendix B).

5. POLICE AWARENESS PROGRAMME

- 5.a Much of the police awareness programme focused on PSNI District A as the project team wished to ensure that as many officers as possible were made aware of the initiative and could seek further advice, should this be required.
- 5.b Meetings took place with the PSNI's Professional Standards Department (PSD), senior officers in District A, the PFNI and the Chief Superintendent's Association in the preparatory stages of the project. The purpose of these meetings was to provide a background to the project, advise how the Office intended to proceed and seek guidance on certain matters beyond the control of the Office. Following these meetings, each of the afore-mentioned received monthly updates by e-mail. An exchange of correspondence between the project's lead manager and the Deputy Chief Constable was also initiated and continued throughout the project.
- 5.c An information leaflet specific to officers was produced. The District Commander suggested attaching the leaflet to officers' payslips and this was done in July 2008. Information relating to the mediation project was also included in PSNI and PFNI publications, both in hard copy and electronic format (see Appendix B). Officers were advised that information on the pilot project was also available to them on the Office's own website and the project manager's direct line telephone number was made available to them.
- 5.d The majority of complaints made to the Office involve officers of constable or sergeant rank. The project team sought to speak directly to these officers and with the support of the District Commander and Discipline Champion in District A, a series of presentations took place in Antrim Road Police Station during the month of August 2008. The officers who attended on each occasion were response officers. Two further meetings were held with response inspectors from within District A and a separate focus group meeting with neighbourhood officers took place in Woodbourne Police Station, also in August 2008.
- 5.e Below are some of the issues raised by senior police officers during meetings held with them prior to the launch of the project:
- How will the mediation pilot impact on Informal Resolution
 - There will be a need to get the PFNI on board, otherwise the project may not achieve successful mediations
 - Police officer security during mediations in light of the dissident republican threat
 - Disclosure of information obtained through the mediation process
 - Mediation fits well with community policing and the trend for openness and transparency

- Officers will need to fully understand the benefit of mediation for them
- The suitability of complainants to the mediation process
- Could the term complaint be replaced by something akin to 'quality of service' issues which better reflect the nature of the complaints suitable for mediation.

Senior police officers were highly supportive of the pilot project but did recognise the challenges and difficulties of 'selling' the concept to the federated ranks.

5.f The presentations to response officers were held in Antrim Road Police Station every Tuesday in August 2008, ending with a final presentation on the 2nd September 2008. There were approximately 25 to 30 officers present on each occasion with varying levels of experience in policing. The meetings with response inspectors from District A were held in July 2008.

5.g Below are some of the comments/issues raised by the attendees:

- Police officers do not trust the Office nor consider it impartial
- Too much negativity towards police from the community in District A
- Complained against police officers feel they are guilty until proven innocent
- Most officers would prefer a formal investigation
- Can the IR inspector and the Office mediator not work together in the project?
- Police officers are only 'doing their job'
- Can mediation not be a 'stand-alone' option?
- How can OPONI ensure sufficient security for police officers during mediations?
- Who's to say a mediation would not turn into a 'slanging match'
- The majority of complaints are vexatious

5.h Different members of the Office staff accompanied the mediation project manager during these presentations and the response of police to not only the pilot project but also to the Office was viewed as generally negative. Police officers present voiced concerns that, if the matter being complained of was neither criminal nor misconduct in nature, why was the Office even considering it as a complaint. The project manager gave examples of past complaints which would have been suitable for mediation with a view to highlighting how the process could lead to greater mutual understanding between complainant and police officer. Officers tended to respond that they are professional and comply with police policies and procedures. There is therefore in their view no substance to the complaint.

5.i Approximately one month prior to the launch of the project, the results of an independent survey of police officers attitudes to the

Office, were published³. The response to certain questions in the survey mirrored some of the responses of police officers during the presentations.

- 5.j Senior police officers and officers from the PSNI's Professional Standards Department had placed much emphasis on 'selling' the mediation pilot project to the PFNI. It is important to note that the PFNI was a member of the Mediation Project Board from the outset, had agreed the mediation model proposed by the first Police Ombudsman, had indicated its support for mediation upon receipt of a complaint and was aware of the Office's recommendation in its five-year legislative review.
- 5.k The project manager first made contact with the PFNI shortly after taking up her post and met with two representatives on 9th April 2008 at New Cathedral Buildings. The project manager advised the representatives that the pilot project would be launched in September 2008 and sought ideas and suggestions from them as to how best to get the message across to police officers during the five months leading up to the launch. The representatives suggested that the project manager liaise with District A's training unit and welcomed the idea of 'dip-sampling' in other districts.
- 5.l The project's lead manager and the project manager then received an invitation to attend a Constitutional, Legislation and Discipline meeting on 7th May 2008 at PFNI headquarters. The participating representatives asked many pertinent questions and these were addressed directly by both the lead manager and the project manager. There was no indication that the representatives would not support the pilot project, albeit they had some reservations about certain aspects, notably the confidentiality of the process and the cost and time effectiveness of mediation in general.
- 5.m The project manager received a further invitation to attend a regional board meeting on 5th June 2008. This regional board comprised federation representatives from Antrim, Carrickfergus, Lisburn and North and West Belfast. It became apparent at the beginning of this meeting that those present were lacklustre in their support for mediation. Their main concern appeared to be the fact that the mediator was a member of the Office staff and could not, in their view, be impartial in a mediation process. At the end of the meeting, the representatives confirmed that they would only lend their support to the mediation project if the mediator were external to both the PSNI and the Office and also that federation representatives be given access to the actual mediations so as to advise their members *in situ*.
- 5.n The PFNI representatives on the Project Board had not insisted on these 'conditions' and therefore the response of the regional board

³ Survey of the attitudes of the Police Officers from the Police Service of Northern Ireland to the Office of the Police Ombudsman for Northern Ireland - July 2008

members was surprising. It was not clear whether those present at this meeting had good understanding of the principles of mediation as their comments tended to suggest they viewed it as an adversarial process, not unlike formal investigations by the Office. It was also evident that those present had not been made aware of the previous work carried out by the Mediation Project Board nor of the role played by the PFNI on this board. There were no further formal meetings with the PFNI prior to the project launch.

6. SELECTION OF CASES SUITABLE FOR MEDIATION

- 6.a The project manager transferred to the Initial Complaints Office (ICO) for the duration of the live project in order to review each new complaint received and gauge its suitability for mediation. The project manager considered only new complaints and those where further enquiries carried out by the ICO suggested that mediation might be possible. The target number of complaints to be considered in the project over its lifespan was 30 but ultimately only 26 were considered.
- 6.b As with IR, mediation was offered only in complaints of a less serious nature where, even if the allegation were proven, no criminal or disciplinary charges would be preferred. Examples of allegation types are as follows:
- Incivility
 - Failure in duty
 - Minor harassment

Appendix C shows the list of complaints considered in the pilot project with their associated allegations and a brief description of the complained of incident.

- 6.c During the first two months of the project, it became apparent that there was an insufficient number of suitable cases from District A to sustain the project for six months. The project team decided at this stage to begin considering complaints stemming from other PSNI districts. The PFNI queried this decision. They stated that they had understood that complaints from other districts would only be considered once the six-month pilot project had been completed in District A. They requested additional time to advise their members accordingly and sought a meeting to discuss how to overcome this query. The date they proposed to hold a meeting fell outside the pilot's lifespan (April 2009) but, given the PFNI's strong views on the matter, the Police Ombudsman agreed to limit the pilot to District A. It is unclear, however, to what extent this impacted on the mediation pilot project.
- 6.d The project manager assessed the information available upon receipt of the complaint and checked the complainant's history on the Office's Case Management System (CMS). If the complainant identified a police officer at the outset, a further check was carried out to ascertain whether this officer had any history of complaints made against him/her. If the complainant was unable to identify the officer, the project manager liaised with the Criminal Justice Unit in the district seeking documentation which would identify him/her.

- 6.e It was important to consider complaints where the allegation could be clearly identified and where there were no other extenuating factors, which might impact negatively on mediation. An alleged failure to properly investigate an incident, for example, would often necessitate further enquiries with the complainant to ascertain the seriousness of the allegation.

- 6.f In total the project manager considered 26 complaints during the mediation project. There were additional complaints received in the ICO in January and February 2009 (22 in total) which were deemed suitable for mediation but due to the afore-mentioned query from the PFNI relating to complaints from outside District A, it was not considered appropriate to approach these complainants.

7. THE MEDIATION PROCESS

- 7.a The project manager reviewed complaints and made the decision to contact the complainants. The mediation consultant was not involved in this initial stage of the process. If the complainant had provided a telephone contact number, the project manager made direct contact with the complainant and discussed the details of the complaint. Only when the project manager was satisfied that the complaint allegation was suitable for mediation, was a one-to-one meeting requested. The project manager then consulted with the professional mediator and a time and date was arranged to visit the complainant. If there was no contact telephone number provided, the project manager wrote to the complainant asking them to contact the office to discuss their complaint in greater detail. If, after a week, there was no response from the complainant, the complaint was returned to the ICO for further processing.
- 7.b All the one-to-one consultations with complainants were held in their homes. They lasted from 20 minutes to one hour and all the complainants had been advised beforehand of the reason for the visit. The project manager sent an information leaflet to each complainant who agreed to meet with the project team prior to the visit and a Mediation Codes of Practice (Appendix D) was produced for the complainant's consideration. Complainants sometimes requested additional time to consider mediation and were advised that their complaint would not be pursued should they fail to contact the project manager within the week.
- 7.c On occasion, details of the mediation process were discussed during a telephone call and some complainants declined to meet with the project mediators in person. In these cases, the project mediators had no further contact with the complainant other than this initial telephone call.
- 7.d If a complainant declined to engage in mediation, their complaint was referred for formal investigation and the mediation project manager had no further input into the matter. In some complaints, the complainant opted for IR, in which case the complaint was returned to the ICO for follow-up action.
- 7.e When a complainant agreed to engage in mediation, the mediation project manager made contact with the complained against officers. At the beginning of the project, the project manager made telephone contact with the officer(s) but all the officers who were contacted in this way declined to meet the mediators and indicated that they had no wish to engage in mediation. In order to ensure that police officers met the mediators, the project manager subsequently arranged mediation consultations with the complained against police officers through the District Operational Planning Unit. Once a date and time had been arranged, the project manager sent an e-mail message to

the officers, advising them to contact her should they have any queries. The pre-mediation consultations with police officers took place in police stations and lasted approximately 30 minutes on average.

- 7.f If a police officer agreed to engage in mediation, the project manager would liaise with all the parties involved to find a time and date convenient for a mediation meeting. All the complainants who agreed to try mediation stated that they would be happy to attend the local police station for the mediation. Police officers' personal security had been a concern raised during presentations to police and this response from complainants helped to address this issue.
- 7.g If a police officer declined the offer of mediation, a brief entry was made in the case progress report and the complaint was referred for formal investigation. The project manager advised both the complainant and the police officer of this step.
- 7.h The meetings with complainants were arranged promptly, the only delay occurring when the two mediators had other business commitments. Meetings with police officers occurred in a range of 3 to 16 days following the meeting with the complainant. On average the mediation project manager retained the complaint for a period of 1.5 weeks. One complaint was successfully mediated and it took 11 weeks to achieve this outcome. There was little requirement in the mediation process for correspondence or adherence to strict bureaucratic procedures. Brief notes were taken during the pre-mediation consultations for recall purposes only and the project manager retained these.
- 7.i An Agreement to Mediate form and a Complaint Mediated form were signed by all parties in the case of the successful mediation and both complainant and police officer completed and returned an evaluation form (Appendix E). The police officer stated that he was satisfied with the mediation process as a whole. The complainant, however, did not fully complete the evaluation form and no clear conclusion can be drawn regarding his overall view of the process. The project manager recorded very brief details of dates of meetings and telephone calls in the case progress report but all other material relating to the mediation project remained with the project manager.
- 7.j The project team had hoped to be in a position to equality impact assess the mediation pilot in order to provide a breakdown of Section 75 groupings. There was however an insufficient return of monitoring forms by complainants to enable this to be done.

8. MEDIATION AND COMPLAINANTS

8.a The mediation team considered a total of 26 complaints in the pilot project. Below is a summary of what occurred in each case (see appendix G for full details):

- 1 complaint was successfully mediated
- 6 complaints were returned to the ICO as deemed unsuitable for mediation following contact with the complainant.
- 7 complainants failed to co-operate with the mediation team following an initial contact.
- 3 complainants declined mediation at the initial contact, stating that they felt their complaint warranted formal investigation.
- 3 complainants believed mediation was too 'extreme' for their complaint during the initial contact and opted for informal resolution.
- In 6 complaints, the complainant against police officers declined mediation (albeit the complainants had agreed) and the complaints were referred for formal investigation.

8.b As referred to earlier in this report, the method of the initial contact with the complainant depended on the method used originally by the complainant to lodge his/her complaint. However, the project manager spoke to the vast majority of the above complainants (21) by telephone. It was not often possible to gauge how much a complainant understood about mediation during a telephone conversation with them. While some complainants were quite clear that their complaint should be investigated, others had difficulty identifying what they were hoping to achieve by making their complaint to the Office. A complainant's capacity to explain why they made the complaint and what they wanted to see happen was the deciding factor when determining whether mediation was suitable.

8.c The mediation team was convinced that a one-to-one consultation was the best way to find this out. All those complainants who were visited in their homes seemed to appreciate the time taken by the mediators to explain the pilot project and the mediation process. The informality of the visit led complainants to fully share their experiences and the openness and frankness of these meetings were of great help to the mediators.

8.d It is important to point out that the information made available to the project manager at the selection of complaint stage was often

minimal compared to what was added during telephone conversations between the complainant and the project manager or during the pre-mediation consultations. On occasion this additional information would rule out mediation or give rise to further enquiries with police.

- 8.e In general terms, complainants seemed to grasp the concept of mediation and understood how it would help resolve their complaint. As only one complaint progressed through the whole mediation process, it is difficult to present any evidence of how much that knowledge and understanding extended to actual mediations.

9. MEDIATION AND POLICE OFFICERS

- 9.a The project manager spoke with a total of four officers by telephone and pre-mediation consultations were held also with four police officers. In all instances, the complainants had agreed to engage in mediation.
- 9.b Initially the project manager opted to contact complained against police officers directly by telephone to reduce the length of time in dealing with the complaints. The police officers however declined to meet the mediators, stating that they could see no justification for the complaint as they were 'only doing their jobs'. Their version of events also differed somewhat from the version recounted by the complainant and all clearly disputed any alleged wrongdoing. When pushed to meet the mediators, the officers felt this would be futile and were happy to be formally investigated.
- 9.c In order to have an opportunity to meet with complained against officers on a one-to-one basis, the project manager arranged personal meetings through the District's Operational Planning Unit and confirmed the details of the meeting to the officer by e-mail. Of the four officers who attended the pre-mediation consultations, one agreed to engage in mediation with little persuasion from the mediators but the three other officers declined mediation, stating many of the same reasons as outlined above. One officer indicated that she had spoken to her federation representative prior to the consultation and was advised not to engage in mediation. This was contrary to the PFNI's stated position of encouraging officers to participate in mediation if they so wished. One officer expressed shock that a complaint had been made against him and requested additional time to consider his options. He eventually declined mediation pointing out that he had been given a job to do and had done it to the best of his ability. Another officer made the comment that by engaging in mediation, he was somehow justifying the complaint and since he felt he had behaved in a professional, correct manner, mediation was not an option for him.
- 9.d All contact with complained against police officers, either by telephone or in person, was courteous and professional. None of the officers took issue with the fact that one of the mediators was a member of the Office staff but it was clear that they had difficulty understanding why a complaint had been made.

10. CONCLUSIONS

- 10.a During the period from April 2008 to March 2009, the Office received 3042 complaints and of these 753 were deemed suitable for IR. When approached and asked whether they would consent to attempting the informal resolution of their complaint, 493 of these complainants agreed to do so and 274 successfully resolved their complaint through the IR process.
- 10.b The IR process suits many complainants but not all. As alluded to earlier in this report, satisfaction surveys relating to IR conducted by the Office in the recent past highlight concerns by both the public and police officers. Mediation was viewed by many, both in the Office and externally, as a means of addressing these concerns and providing an innovative and effective tool to resolving some of the less serious complaints against police. The pilot project did not set out to undermine the IR process but to raise the profile of mediation and attempt to show the benefits for complainants, police officers and the public purse.
- 10.c Of the 26 complaints considered for the mediation project, only one was successfully mediated. There is no specific pattern to the response of complainants to the offer of mediation, as only three refused it when first contacted. The Office cannot therefore comment on complainants' level of understanding of mediation nor if they would have coped well in a face-to-face meeting with a police officer. There were some complainants who had not realised that the complaint would be referred to the Office, believing that local police would be dealing with the matter. Some of these complainants opted for IR, stating that mediation was a step too far for them while others probably would have been happy to have local police deal with the issue.
- 10.d It is important to note at this point that mediation in a police complaints system differs fundamentally from mediation as it is used in other fields. When two parties engage in mediation, they have already at that stage acknowledged that a problem exists between them. Perhaps one party has decided for some time to ignore the problem but still accepts that there is one (neighbourhood disputes, divorcing couples, business partners falling out, etc.). In the Northern Ireland police complaints system, a police officer first learns of a complaint against him/her by way of an OMB52 written notification. This form contains only minimal information relating to the details of the complaint. These notifications are formal and often evoke queries and concerns from officers. They do not fit well with the mediation process and were often a cause of frustration for police officers approached during the project. The project team, whilst recognising that such notification is a legislative requirement, nevertheless considers that in complaints deemed suitable for mediation, OMB52s should be withheld until such time as the

mediators have approached the complained against police officer advising them of the complaint details.

- 10.e Mediators will always insist that the process in which they are involved must be informal, otherwise the potential for frank and open discussions is greatly diminished. Informality is however difficult to achieve within a police complaints system that is highly regulated.
- 10.f IR is only informal in name as it is enshrined in a very tight legislative framework to which strict procedures and best practices have been added. Even though the pilot project did not have a legislative framework to support it, the Office's mediators tried as far as practicable to comply with legislative constraints in order to protect the mediation process and its participants. The external mediator may have found this frustrating on occasion and may have felt that total de-regulation would have been more suited to mediation. This is an important issue that needs to be addressed prior to consideration being given to rolling mediation out to all PSNI Districts.
- 10.g All the police officers, except one, who were approached by the mediators, stated they would prefer to be formally investigated. Most of the arguments raised by these police officers were defensive in nature and indicative of a preference/willingness to remain within an adversarial forum. The fact is that these officers felt very strongly that they were being punished for doing their job and were very confident that a formal investigation would vindicate them. It was difficult when speaking to these officers to gauge their awareness of 'quality of service' issues as opposed to doing the job 'by the book'. Most of them viewed any acceptance on their part to engage in mediation as tantamount to admitting that they had in fact done something wrong and formal investigation in their minds would protect them better than mediation. Police officers saw little incentive to attempt mediation given that the complaint had to be referred for formal investigation should either party decline mediation or the process fail.
- 10.h For future reference, consideration must be given to encouraging police officers to move away from this position and engage more with complainants. It may be worthwhile to consider the suggestion that mediation be marketed as a 'one-stop shop', successful or otherwise. In other jurisdictions around the world, this transpired to be the only way that police officers would accept to engage in the mediation process and the results showed a higher rate of success when mediation was proposed in this way. Both parties agreed to mediate because they accepted that it was the only option which would give them some satisfaction and a degree of mutual understanding. It is obvious that in such circumstances, the tracking and trending of police officers would be crucial to the integrity of the mediation process as some might view it as an 'easy' option. The one officer who did agree to mediate the complaint against him did so willingly and showed a good understanding of the concept and the benefits not only to him but also to the PSNI as a whole. Unless police officers

come to accept that the public they serve may have well-founded concerns about the manner in which they were dealt with by a police officer and can legitimately complain about this, their response to mediation will be difficult to change.

- 10.i Research carried out prior to the launch of the mediation project showed that most mediations involve two mediators, with one acting as the 'lead' mediator. It is crucial for the future of mediation in the police complaints system that this practice continues. Two mediators provide mutual support and protection, a balanced perspective and very necessary 'breathing space'.
- 10.j It is difficult to draw any meaningful conclusions regarding the time and cost effectiveness of mediation, given that only one complaint went through the whole process. Working with an external mediator, who was involved in other projects outside the Office, proved to be the only cause for delay in dealing with the complaints deemed suitable for mediation. Based on the experience of the successful mediation, it is certain that with one dedicated mediator working in liaison with the ICO and one of the other trained mediators employed by the Police Ombudsman assisting, mediation is by far more cost and time effective than any other process currently used by the Office.
- 10.k It is the view of the mediation project team that the original recommendation, made in the Office's five-year legislative review regarding mediation, should be implemented. The project may not have achieved the hoped for number of successful mediations this time around but this should not signal the end of mediation in Northern Ireland's police complaints system. It is a relatively new concept in any complaints system but is gathering momentum and whilst there are challenges to mediation in the field of police complaints, these are not insurmountable. Both the police and the public lack confidence in the benefits and potential of mediation and the Office should consider how best to remedy this situation.
- 10.l There has been much change in policing in the last ten years and with the possibility of devolved policing and justice in Northern Ireland, further changes are inevitable. The outreach programme conducted by the project team demonstrated that there is a willingness on the part of both the public and police to work together towards a common goal. Community policing is becoming more and more prevalent and there are many forums in existence where a form of mediation is already at work. This in itself is encouraging.
- 10.m By the time the legislation is changed to accommodate mediation upon receipt of a complaint and with the knowledge and experience of the pilot project, the Office should be well prepared for the challenges which will undoubtedly arise.
- 10.n The project findings reflect that there is still much work to be done in building complainant and police officer trust before mediation is

rolled out throughout Northern Ireland as an alternative means of resolving complaints against police

11. RECOMMENDATIONS

Strategic:

- 11.a That the Office continues a mediative philosophy where applicable, encouraging police and the public to engage in the early resolving of issues identified by complaints.

Legislative/Procedural:

- 11.b That in complaints identified for mediation, Form OMB52 service is deferred pending contact between the mediator and the police officer concerned.

The Office of the Police Ombudsman for Northern Ireland:

- 11.c That prior to the end of his term of Office, the Police Ombudsman considers initiating a further mediation pilot project.
- 11.d That until such time as there is legislative change and the issue of mediation is revisited, the Office should actively engage in promoting the benefits of mediation to the public, police officers, their representatives and the Office's own staff.

The Police Service of Northern Ireland:

- 11.e That mediation/alternative dispute resolution awareness become an integral element in the training of PSNI officers.

Additional copies of this and other publications are available from:

Police Ombudsman for Northern Ireland
New Cathedral Buildings
St. Anne's Square
11 Church Street
Belfast
BT1 1PG

Telephone: 028 9082 8669/828616
Fax: 028 9082 8605
Textphone: 028 9082 8756
Email: Research@policeombudsman.org

These publications and other information about the work of the Police Ombudsman for Northern Ireland are also available on the Internet at:

Website: www.policeombudsman.org



INVESTOR IN PEOPLE