

# Future Operation of the Office of the Police Ombudsman for Northern Ireland

A consultation paper

Department of Justice  
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## **Ministerial foreword**

An important part of public confidence in justice and policing is confidence in the arrangements for investigating complaints against the police. People want the assurance of a system which is fair, objective and effective; that is as transparent as possible; and that takes proper account of the needs of victims.

The findings of external and internal reports into the Office over recent months are such that public confidence has been damaged in respect of the adequacy of processes, robustness of report conclusions particularly in respect of historic cases and have raised concerns regarding governance and how the office is currently organised. Questions of confidence have arisen previously as well, and there are differing views on the most appropriate police oversight mechanism that should be put in place to secure widespread public confidence.

This discussion paper and the Police Ombudsman's Five-Year Review Report on the working of Part VII of the Police (Northern Ireland) Act 1998 (Part VII contains the legislative provisions governing complaints against the police) look at the legislative framework and governance arrangements for the Office of the Police Ombudsman for Northern Ireland. They set out options and invite views on the appropriate way forward.

I am keen to agree a package of reforms to restore public confidence in the work of the Office of the Police Ombudsman for Northern Ireland (OPONI). Of primary importance to me will be to ensure OPONI will fulfil its functions with the confidence of the public.

I look forward to carefully considering all views received and will bring forward recommendations in light of them.

**DAVID FORD MLA**  
Minister of Justice

## 1. Introduction

- 1.1 In light of the recent focus on the Office of the Police Ombudsman for Northern Ireland (OPONI), and a series of reports reviewing various aspects of its operation, the discussion paper examines key issues which have emerged as important considerations about how OPONI should operate in the future. This discussion paper is also timely as, after over 10 years of the Ombudsman's office and after the devolution of justice, it is right to look again at the arrangements and to consider whether any changes to the structure are needed to secure widespread public confidence and to consider changes or plans in other jurisdictions.
- 1.2 This paper is intended as a springboard for discussion; the Minister of Justice is clear that the Ombudsman's Office must continue to provide robust, independent oversight of the police which meets the needs of Northern Ireland, but is keen to hear views from interested parties about how best to secure that objective and to ensure we have a detailed operating model for future working to deliver better value and increase public confidence. It is important to stress that this consultation will not affect the appointment of a new Ombudsman, but rather seeks to explore options for longer term change.
- 1.3 OPONI has occupied a critical place in the policing architecture in Northern Ireland. There is a responsibility to engender and preserve trust in this vital public service, as a lack of confidence risks undermining the independence and credibility of the Ombudsman. Ultimately this could undermine confidence in the police service overall.
- 1.4 Given the historical context of the Ombudsman's Office, and its value to society, any change will need to increase the organisation's status and effectiveness, and not diminish its ability to fulfil its role and secure public confidence.

- 1.5 International models of civilian oversight agencies have varying degrees of independence and scale of mandate; OPONI is at the more robust end of the spectrum. A discussion needs to take place on whether those arrangements require some amendment or bolstering or whether more fundamental change is appropriate.
- 1.6 Confidence in the police, the confidence to complain when things go wrong, (and confidence by the police that they will be treated fairly when investigated) are factors critical for societal well being. The purpose of this paper is to test whether there is room for more to be done in practical terms to ensure that those principles are protected.
- 1.7 Specifically the issues covered by this paper are:
- Whether it is appropriate that the Ombudsman can have a **policing background**.
  - Whether the **corporation sole model**, in other words, a single individual acting as Ombudsman, continues to be the most appropriate.
  - Whether the functions of the Police Ombudsman could be located as part of a **Justice Ombudsman, Justice Ombudsmen, public sector Ombudsman**, or remain as a stand-alone office.
  - Whether the proposals for adjustments to the role and powers of the Ombudsman emerging from the five year review are appropriate.
- 1.8 The Minister of Justice has made it clear that all options are open, including those requiring legislative change and encourages views on the range of matters covered in the paper.
- 1.9 He acknowledges that at the heart of the problems currently facing OPONI is the difficulty that the Ombudsman has in investigating historic

cases which cannot be addressed by HET because of the direct or indirect involvement – real or alleged – of police officers. There needs to be a strategic solution to dealing with the Past – not just a justice solution. That would release the Ombudsman's office from looking into past events so that they can concentrate on addressing current complaints against the police.

- 1.10 However, the issue of whether OPONI should continue to deal with historic cases involving police actions is part of a broader debate on the past. At present there is no political consensus on how to address legacy issues and a range of opinions on the most appropriate mechanism for investigating historic cases. Until a successor organisation or mechanism is established to take forward the investigation of historic cases, there is an Article 2 duty on the Executive to ensure there are proper investigations in respect of cases where there has been a loss of life. As such, OPONI will continue to investigate these cases until an alternative is put in place. However this is an opportunity for you to give your views as to whether or how an alternative should be put in place.

***Q: Do you believe an alternative mechanism for investigating historic cases should be put in place? If so what form should that take?***

- 1.11 The current Ombudsman will leave office before his term of office comes to an end, whilst recognising the importance of having a fully functioning Office of the Ombudsman at all times. To this end he has appointed an interim Chief Executive and formally delegated his functions as Police Ombudsman to appropriate levels within his Office with effect from midnight on 28 January 2012. The First Minister and deputy First Minister are responsible for the process to recommend a new Police Ombudsman and the recruitment process is currently ongoing. This paper seeks to address issues for the longer term – it is clear the new

Ombudsman will be appointed under the current legislative arrangements.

## 2. Background

- 2.1 In November 1995 Dr Maurice Hayes produced proposals for a new police complaints system for Northern Ireland designed to secure the confidence of the people of Northern Ireland, and of the police themselves.
- 2.2 Dr Hayes published his report in January 1997, following a consultation with political parties, members of the public, the police and policing organisations. In the report Dr Hayes stated that "the overwhelming message I got from nearly all sides and from all political parties was the need for the investigation to be independent and to be seen to be independent".
- 2.3 His key recommendation was that an independent Police Ombudsman should be appointed to deal with all complaints against the police. The Ombudsman should be supported by a team of professional investigators which he envisaged being drawn from a range of disciplines, including the police. Dr Hayes recommended that the Ombudsman be a full time post, filled by a judge or a person of the quality and experience of a senior judicial figure.
- 2.4 The Belfast Agreement addressed the concept of oversight of the police, saying that the Commission on Policing should include proposals designed to ensure that there would be an "open, accessible and independent means of investigating and adjudicating upon complaints against the police."
- 2.5 The Patten Report was explicit in its full support for the Hayes report, and concurred that a fully independent Police Ombudsman was required for Northern Ireland. Patten made a number of recommendations in relation to the Ombudsman, stating:



*“We cannot emphasise too strongly the importance of the office of Police Ombudsman in the future policing arrangements...the institution is critical to the question of police accountability to the law, to public trust in the police and to the protection of human rights”.*

#### Legislative Base

- 2.6 Legislation creating the Police Ombudsman was brought forward as part of the Police (Northern Ireland) Act 1998 which set out the powers and functions of the Office, creating a legislative framework for independent oversight of the police. While described as a Police “Ombudsman”, OPONI could perhaps be more accurately described as a civilian body with responsibility for oversight of the Police Service of Northern Ireland.
- 2.7 The Office began operating on 6 November 2000, when Nuala O’Loan took up office as the first Police Ombudsman. Baroness O’Loan’s term of office ended in 2007, and she was succeeded by the current incumbent, Al Hutchinson, the former Police Oversight Commissioner and previously an officer in the RCMP.
- 2.8 The Police Ombudsman is appointed by The Queen, upon a recommendation made by the First Minister and deputy First Minister, as a named person for a fixed term of seven years. While this is longer than the usual term for public appointments, it reflects the practice for other Ombudsman appointments and is intended to underscore the need for the post to be free from political interference. The post holder is paid using judicial salary scales.
- 2.9 The First Minister and deputy First Minister acting jointly may call upon the Ombudsman to retire in the interests of efficiency and effectiveness; or if satisfied that the Ombudsman has been convicted of a criminal offence or become bankrupt.
- 2.10 The Police Ombudsman investigates all complaints made about PSNI, from incivility to criminal conduct.

2.11 The functions of the office were extended to include retrospective matters, by the RUC (Complaints etc) Regulations 2001. The Police Ombudsman has exclusive jurisdiction for cases where a death has resulted from the conduct of a police officer which precludes the involvement of the PSNI, including HET in such investigations. In reviewing all deaths arising from the 'Troubles' in Northern Ireland, HET must refer any matter in which the conduct of a police officer may have resulted in the death of another person or in which potential criminality or serious misconduct by police officers is observed or is subject of complaint.

#### Status

2.12 Like the Director of Public Prosecutions, the status of this authority is that of corporation sole. However, unlike this post, the legislation establishing the Police Ombudsman does not provide for an interim Ombudsman to exercise powers and this appears to be an oversight which needs to be rectified.

***Q: Do you agree that there should be a provision to authorise a person to act as interim Ombudsman whilst a permanent appointment is made by the First Minister and deputy First Minister acting jointly?***

2.13 The status of the Office of the Police Ombudsman is that of a non-departmental public body (NDPB) sponsored through the Department of Justice. This means that it is subject to DFP guidance in relation to its governance, but not in respect of its executive functions. In short, the DOJ's Accounting Officer (the Permanent Secretary) is accountable to the Minister and the Assembly for how the organisation manages public money and its corporate risks.

2.14 The investigative functions of the organisation operate independently of Government. It is an important principle that government should not be able to determine which cases are investigated, how they are investigated or what the outcome should be. Nonetheless, recent controversy has demonstrated the need for public confidence in the effectiveness of investigations conducted by OPONI. CJINI can examine aspects of this but are not empowered to consider the efficacy of the investigation of individual cases. Individual decisions can be challenged through the courts. There remains a question as to whether there should be a separate appeal mechanism for Ombudsman decisions.

***Q: Do you believe there needs to be a mechanism to appeal decisions of the Ombudsman? If so what form should that take?***

#### Recent History

2.15 As a result of concerns raised by the then Chief Executive of OPONI, two separate independent reviews were commissioned. The first was conducted by Tony McCusker and addressed the relationship between OPONI and the DoJ and looked into claims of interference by DOJ officials. There were a number of issues which he found gave cause for concern. In particular, he was concerned that an agreement appeared to have been concluded on the previous five year review between the Senior Director of Investigations and a middle ranking official of the NIO without either the imprimatur of the Ombudsman or the knowledge of the Chief Executive. Also the question of the Senior Director of Investigations being party to a controversial note prepared by DFP consultants which was then referenced in a subsequent grievance case taken against the Chief Executive, was raised as a serious cause for concern.

2.16 As part of his response to the review report published in June 2011 [[Police Ombudsman Investigation Report | Department of Justice NI](#)], the

Minister of Justice announced his intention to bring forward a discussion paper on the future of the office.

2.17 The second review was conducted by Criminal Justice Inspection Northern Ireland (CJINI) at the request of the Police Ombudsman following criticism of OPONI. The inspection looked at the independence of the Office of the Police Ombudsman from the PSNI because of concerns raised in relation to a lowering of the operational independence of OPONI. The inspection report, published in September 2011 [<http://www.cjini.org/TheInspections/Inspection-Reports.aspx>], found the legislative framework to be sound, reporting that it provided a strong framework for the operational independence of a police complaints body.

2.18 During the course of the inspection – with some exceptions – CJINI did not hear any significant concerns over the way in which OPONI deals with current cases. However, significant concerns were raised around how historic cases are handled including an inconsistent investigation process, a varied approach to communication with stakeholders and differences in quality assurance. In addition, CJINI found a senior management team divided around the production of historic reports and a fractured approach to governance and decision-making. The handling of sensitive material was also found to be problematic. On that basis, it was agreed that the investigation of historic cases should be suspended (save where investigations have to proceed alongside existing PSNI investigations) until a revised investigation process and resourced plan is in place which is capable of independent validation by CJINI.

2.19 At this stage progress has been made in reforming the processes to support the approval of the historic business case, but further work is required in order to fully implement the report recommendations and this will take some further time. Until CJINI is able to give the Office a clean bill of health in respect of processes for historic cases, it would be inappropriate for the Ombudsman to lift the suspension of those cases.

The Minister has made clear his commitment to ensuring that action is taken to ensure that the issues raised in the report are dealt with so that public confidence in the Office of the Police Ombudsman is maintained.

## Content

2.20 This paper sets out the context through the International Human Rights standards which should be applied to civilian oversight of the police, and a comparative analysis of the approaches in our neighbouring jurisdictions. It goes on to discuss the rationale and options for change across each of the three issues: policing background; the corporation sole model; and the potential for a justice ombudsman or ombudsmen. It raises a range of issues on which a public discussion is needed in the context of the conclusions of the Ombudsman's own five-year review of Part VII of the Police Act 1998.

### 3. International Human Rights Standards

- 3.1 The Council of Europe's Commissioner for Human Rights, Thomas Hammerberg, published his *Opinion concerning independent and effective determination of complaints against the police* in 2009 ("The Opinion").
- 3.2 The opinion sets out five ECHR effective police complaints principles:
- Independence.
  - Adequacy.
  - Promptness.
  - Public Scrutiny.
  - Victim Involvement.
- 3.3 The Commissioner recommends that all member states should have an independent police complaints body (IPCB) with responsibility for the oversight of all complaints. Though not prescriptive about the issues considered in this paper, such as whether the most effective model is for a single person, or a Commission model, it is a useful reference document in terms of providing assurance that we are taking account of the right issues.
- 3.4 The Opinion states: "the constitutional arrangements and policing systems, along with historical, political and cultural influences, prevailing in each member state will play a major part in determining the institutional arrangements for an IPCB." Therefore, while the principle provide a strategic framework for any body, it remains appropriate for the exact detail on any specific oversight mechanism to be developed locally.
- 3.5 The Opinion is an independent and authoritative framework; therefore, in considering this paper, you may wish to consider the principles identified and assess the extent to which the options set out here would meet

them. Clearly the overarching priority for any reform should be its suitability and appropriateness for our historical, political and cultural context. Where appropriate, therefore, references will be made to the Opinion, in the context of discussion on specific issues.

## 4. Approaches in Neighbouring Jurisdictions

### England and Wales

- 4.1 Police Complaints are considered by the Independent Police Complaints Commission (IPCC), which was created by the Police Reform Act 2002, partially in response to the Stephen Lawrence Inquiry. The legislation provides for the IPCC to be overseen by a Chair and no less than ten other members, none of whom may have worked previously for a UK police force in any capacity. Each Commissioner has responsibility for a number of forces. There are currently ten Commissioners in post, and the role of Chair is vacant – plans are for the next Chair to be appointed on a part-time basis. A legislative change is currently being considered to reduce the number of commissioners to five.
- 4.2 The IPCC does not investigate all complaints against the police but it can review how the police handled complaints about the conduct of officers, and it can investigate more serious matters, including allegations of criminal behaviour by police officers.
- Death or serious injury
  - Serious assault
  - Serious sexual assault
  - Serious corruption
  - Criminal Offence or behaviour which is liable to lead to a disciplinary sanction and which, in either case, is aggravated by discriminatory behaviour.

The IPCC can also call in matters which it considers to be serious or could impact on public confidence. There is also a facility for forces to voluntarily refer matters where they consider independent oversight to be required.



- 4.3 In 2010/11 the IPCC received 2,401 referrals from the police, of which 2,092 were returned to the police for local investigation or local resolution. The IPCC's budget is currently £34.3 m, and will be reducing over the next three years in line with the reduction in Government spending.
- 4.4 The IPCC's governance arrangements are as an Arms Length Body of the Home Office.

#### Ireland

- 4.5 The Garda Síochána Ombudsman Commission (GSOC) provides civilian oversight of the police in the Republic of Ireland, and was established by the Garda Síochána Act 2005. The GSOC consists of three members, one of whom is appointed as Chair. At least one Commissioner must be female, and at least one must be male. Where agreement cannot be reached on an issue, the legislation provides for determination to be reached through a majority vote. Although not specified in legislation, in practice the Chair takes responsibility for the overall leadership and management of the organisation. Commissioners cannot have served as a member of An Garda Síochána although one member has a policing background as a former member of the Metropolitan Police.
- 4.6 GSOC can investigate all complaints about the Garda, although where possible it will seek to resolve complaints through informal resolution or mediation. A large proportion of complaints are returned to the Garda Síochána for investigation.
- 4.7 GSOC is an Arms Length Body of the Department of Justice in the Republic.

## Scotland.

- 4.8 The Police Complaints Commissioner for Scotland (PCCS) was created by the Police, Public Order and Criminal Justice (Scotland) Act 2006. The purpose of the PCCS is to review how Scottish police forces handle complaints, rather than investigating complaints itself. The PCCS does this by examining the facts of the case, the evidence on which the police conclusions were based, and comes to a view on whether the conclusions were reasonable. In more serious cases, such as deaths in custody and serious and fatal road accidents involving police vehicles, a different police force is called in to investigate. Allegations that a police officer, civilian staff member or police organisation has committed a crime are dealt with by the Crown Office and Procurator Fiscal Service.
- 4.9 The PCCS' current role is much closer to the traditional understanding of "ombudsman" which is to say, it reviews the way in which the police organisation handled complaints, rather than having any investigative powers itself. The powers are therefore more narrowly defined than the equivalent bodies in the neighbouring jurisdictions.
- 4.10 It is a condition of appointment that the Commissioner should not have any previous connections with the police in the UK, including all UK police forces and, for example, Police Authorities, the National Criminal Intelligence Service and the Serious Organised Crime Agency.
- 4.11 In 2010/11, the PCCS dealt with 174 complaints, and operated with a budget of £1.001m (the 11/12 budget is £930, 000).
- 4.12 The PCCS is an Arms Length Body of the Safer Communities Directorate, reporting to the Director General Learning and Justice within the Scottish Government.
- 4.13 In February 2011, the Scottish Government published a consultation paper on police reform. The outcome of that review is still being worked

through, but it appears likely that Scotland will reduce from eight to one police force, and one Police Authority. The Scottish Government is now consulting on options for dealing with police complaints in that single force model.

4.14 Following the consultation, it has been agreed that non-criminal complaints will continue to be dealt with by the police in the first instance, overseen by the Scottish Police Authority. Similarly, less serious criminal allegations will continue to be handled within the police service, under the independent direction and control of the Crown Office and Procurator Fiscal Service.

4.15 The Scottish Government has proposed that a new independent body should be created to handle more serious investigations. It is currently consulting on this, including whether this new body should take on the current PCCS functions, or whether they should be transferred to the Scottish Public Services Ombudsman.

## Conclusion

4.16 Clearly each organisation has a number of features in common. Most strikingly this includes independence from government, though all are subject to the overall financial and corporate governance regimes of the jurisdiction by their status as Arms Length Bodies of the Department of Justice (or equivalent) and a prohibition on previous experience of policing within that jurisdiction. However, they also have additional features reflecting the circumstances and requirements of the jurisdiction. In addition each of the arrangements is currently being reviewed to test whether the model is effective, efficient and likely to secure public confidence.

## 5. Discussion on Reform

### Policing Background

- 5.1 In line with the requirements of Article 2 of the European Convention on Human Rights, the Police Ombudsman cannot be a past member of the PSNI or RUC.
- 5.2 Although there is a bar against policing experience within the jurisdiction (and occasionally in neighbouring jurisdictions), there is no wider prohibition on applicants with a policing background for the oversight bodies in the Republic of Ireland, Scotland and England and Wales.
- 5.3 In terms of oversight in other professional fields, there is a mixed approach. In some disciplines, for example where doctors investigate other doctors through the GMC, a background in the relevant profession is not considered to be a bar. However there are also oversight bodies who cannot share a professional background with those that they investigate, for example the Legal Ombudsman, who handles complaints about lawyers in England and Wales. The decisive factor in terms of determining the model appears to be whether professional knowledge of the subject matter is a pre-requisite for judging whether the actions taken were appropriate or not.

The span of options on this issue include:-

- (i) **Status quo** – following discussion, it could be decided that the current arrangement remains appropriate to meet the needs of Northern Ireland;
- (ii) **Broaden the policing bar** - to cover all forces in the United Kingdom and the Republic of Ireland. It could be considered that some policing experience would be beneficial, but that experience

in neighbouring jurisdictions created too great a risk of bias, or risking a lack of public confidence.

- (iii) **Exclude a policing background completely** – to put the question beyond doubt, it may be concluded that only a complete bar on any background as a police officer would suffice.
- (iv) **Exclude those who were employed in any capacity by a police force** – extending the logic of option (iii) even further, it could be concluded that any kind of employment in the policing sphere would be inappropriate to the role – bringing in those employed by or on behalf of police organisations.
- (v) **Specify that a legal background is required** – rather than prohibit a policing background, an alternative approach might be to require a legal background for the post.
- (vi) **Specify that the post holder must be a senior judicial figure or person of the quality and experience of a senior judicial figure** – this approach would revert to the original recommendation from the Hayes Report.

5.4 The significant investigative role of the Ombudsman highlights the advantage of the postholder being a person with sufficient legal or professional training to be able to oversee, interpret and reach decisions on the case prepared by investigators. Those skills can be demonstrated in a range of backgrounds.

5.5 The Hayes report envisaged the post holder as a senior judicial figure or person of the quality and experience of a senior judicial figure; this is consistent with the model used in New Zealand's Independent Police Conduct Authority and some other international examples. In Australia those tasked with civilian oversight of the police tend to have a legal background, either as a member of the judiciary, or as a practising

lawyer. Judicial independence is a well established principle of our justice system and a judicial figure would be fluent in an adjudication role, and likely to command the confidence of police and public alike.

5.6 However, it is possible that those with other backgrounds could bring the right skills and a broader perspective to the post: for example, those with a background in other forms of adjudication; investigative journalism or consumer affairs might well be equipped to fulfil the functions of the post.

5.7 An emphasis on “civilian” oversight might logically lead to the conclusion that a policing background should be prohibited. While police inspectorates are commonly headed by ex-police officers, for example HMIC and the Garda Inspectorate, the dedicated policing Ombudsman role has tended to be a civilian role.

5.8 For some, a policing background will always be considered to be an institutional connection, and as such a barrier to independence. Whether this assessment is based on fact or perception, the impact is the same. There is possibly a distinction to be drawn between the practical importance of the robustness and independence of the investigative process, and the symbolic and presentational significance of the independence of the decision maker.

5.9 ***Q: Do you believe it would be right to restrict the applicants for the post of Police Ombudsman by precluding a policing background? If so, should that apply to Northern Ireland, to here and neighbouring jurisdictions or on a generic basis?***

***Q: Should applicants be required to have certain previous experience relevant to adjudicating on complaints?***

***Q: Are there specific skills/competences/experiences an applicant for the post should have? If so, what are they?***

***Q: Should applicants be a senior judicial figure or person of the quality and experience of a senior judicial figure?***

## 6. Corporation Sole

- 6.1 This section addresses the legal status of the Ombudsman and identifies the options. Currently the Police Ombudsman is a corporation sole. A corporation sole is a legal device which provides for an entity to be invested with legal personality and perpetual succession enabling the office-holder to conduct commercial transactions without incurring personal liability. This model places the final decision making or adjudicating power with the person of the Ombudsman. This model provides legal continuity with each office holder having identical powers to his/her predecessor.
- 6.2 In the Human Rights Opinion, quoted in Section 3 above, the Commissioner does not express a preference for an individual Police Ombudsman or a collective Police Complaints Commission. However, he recommends that the oversight body should be representative of a diverse population and arrangements made to consult all stakeholders, including complainants and their representatives. In practice, this requirement could be met by either the corporation sole model or a Commission model where more than one individual has a decision-making role. Therefore, the question is the extent to which each model best meets the needs of our society today.
- 6.3 There are a range of possible models; and a number of options are set out below:
- (i) **Status Quo** – it may be decided that the current model remains appropriate for Northern Ireland and is capable of attracting the confidence of the community.
  - (ii) **Appointment of deputy (or deputies)** – in both practical and presentational terms, the appointment of a deputy (or deputies)



could provide additional assurance and accountability to the Ombudsman's Office.

- (iii) **Establishment of an Oversight Board** - an alternative might be to appoint a lay oversight board which would scrutinise reports and decision making and regularly call the Ombudsman to account. This Board might be charged with providing regular reports to the Assembly. This would provide a challenge mechanism, as well as increasing confidence in how governance of the office would work. It would be important to ensure clarity on where respective responsibilities of the Board and of the Ombudsman begin and end. Care would also need to be taken to ensure clarity about the respective roles and responsibilities of this Board and the Policing Board.
- (iv) **Replacement of current model with Commission** – it might be concluded that the existing model is no longer capable of meeting the needs of Northern Ireland. We could therefore consider replacing the current model with a Commission; possibly modelled on England and Wales or the Republic of Ireland. This would mean a broader decision making base, and the potential to introduce some form of balanced membership. In the English model, each Commissioner is responsible for a geographical area. The Irish model currently divides responsibilities on functional lines. Safeguards would be required to ensure that the absence of consensus did not block decision making.
- (v) One other way to approach it would be to provide a **Separate Commission arrangement for Historic Cases only** – given the criticism of how historic cases have been dealt with by OPONI, there is an argument that these cases require a different approach from contemporary ones. The make up of the panel, and the appointment process would need to be consulted on thoroughly to ensure community confidence.

- 6.4 In seeking views on the optimal approach, there are a range of factors to be considered. These include perceptions of independence, decision-making and leadership. The current arrangements reflected the recommendation of Dr Maurice Hayes who concluded that the police complaints body would benefit from “the full-time commitment of a single person with perhaps a couple of deputies”. Dr Hayes pointed also to the high levels of public understanding of the Ombudsman model, and the fact that politicians and public servants were familiar with it. The Patten Report concurred with the Hayes’ recommendation that the Ombudsman be a single commissioner.
- 6.5 Having more than one Ombudsman or the provision of a deputy could provide an internal system of checks and balances, broaden representation and provide resilience and protection against any buffeting. However, there is arguably a danger that introducing more actors into decision making could lead to delay or to complex dispute resolution processes.
- 6.6 Having one person clearly in charge could be seen as an advantage, particularly in providing a unified vision for the organisation, and one leader for staff and public to identify with. Conversely, it could be seen as lacking in accountability and appropriate control, with the standing of the whole organisation embodied in a single person. Recent controversy about the effectiveness of the office under the current Ombudsman is evidence of that risk.
- 6.7 However, in terms of accountability, a single officer holder is more visibly accountable for an organisation’s actions than a body of appointed people. This is not to say that collective accountability is any less effective, rather that simpler arrangements are perhaps easier to identify with and therefore perhaps more capable of engendering confidence.
- 6.8 A board or Commission model would enable balance in terms of gender and community background. Collective accountability, with

commissioners or board members holding each other to account, could create additional safeguards around decision making and transparency.

6.9 However, there are practical issues with this model, as a decision making panel might carry a perception that the conclusions of investigations could be compromised to secure agreement, thereby undermining the “independence” principle. It might also carry a risk of a deadlock on decision making, undermining the requirement for promptness. This could be mitigated by building in a power for the majority decision to carry, where consensus is not found. Particularly in the current climate, the cost implications of an expanded membership must be considered also.

6.10 ***Q: Do you believe corporation sole model is appropriate? If not, what change do you believe is needed?***

## 7. Justice Ombudsman/Office of Justice Ombudsmen

- 7.1 The third element for discussion is the potential for policing oversight to be incorporated with other functions as part of a Justice Ombudsman's role. The critical question has to be whether the issue of police complaints is of such that joining it with other similar functions might damage public confidence, dilute unacceptably the requirements of a Police Ombudsman or militate against effective delivery of the various functions.
- 7.2 While, for the Executive as for other jurisdictions, consideration is currently being given to the rationalisation of Arms Length Bodies to share back office services and enhance efficiency, the key consideration is which model will deliver the most effective services for Northern Ireland. The Minister of Justice has made it clear that cost is not a sufficient reason to change the current model.
- 7.3 There are a number of factors which would suggest a review of the provision of ombudsman services that relate to justice:
- whether it remains efficient and effective to have multiple routes for addressing complaints; and
  - the range of governance approaches to ombudsman offices and the potential value in greater consistency.
- 7.4 Reviews in neighbouring jurisdictions did not advocate the merger of police oversight bodies with other organisations. However given the smaller scale in Northern Ireland this does not in itself preclude that option for Northern Ireland. The range of options here might include:

- (i) **Status Quo** - it might be considered that it is of fundamental importance to the policing architecture in Northern Ireland that a separate Police Ombudsman is maintained.
- (ii) **Single Justice Ombudsman** - the conclusion could be reached that the time is right for a consolidation of the Police Ombudsman with the Prisoner Ombudsman as the roles are similar.
- (iii) **Office of Justice Ombudsmen - shared services, including investigative resources** - alternatively, while it may be concluded that all of the existing offices must maintain a separate identity there could be scope to consolidate back office functions. Further, it could be considered that some unified public gateway, tying together access to all of these services into a one-stop-shop, is needed.

7.5 In the justice field, we have a number of discrete “ombudsman” bodies in addition to the Police Ombudsman. Like OPONI, the Prisoner Ombudsman has a significant role in investigation of incidents. The Prisoner Ombudsman is appointed by the Minister of Justice under Section 2(2) of the Prison Act (Northern Ireland) 1953, and the office is not currently established on a statutory footing. The Prisoner Ombudsman investigates complaints from prisoners held in Northern Ireland who remain unhappy with the outcome of complaints dealt with by the Prison Service. The remit of the Prisoner Ombudsman was extended in 2005 to include investigation of deaths in custody, and again in 2010 to include investigation of complaints from visitors to prison. The Minister of Justice is committed to reviewing the powers of the Prisoner Ombudsman under the Hillsborough Castle Agreement.

7.6 Grouping services as a single operational platform could generate useful economies of scale by reducing duplication of support services. Bringing together services could facilitate some mutual support between front-line staff, to smooth out some of the peaks and troughs in work pressures,

thereby potentially improving turnaround times for investigations; and creating a wider pool of skills and experience.

- 7.7 Returning to the principles set out in the Opinion, the critical issue is the extent to which our historic,, political and cultural context would support the consolidation of ombudsman services in the justice field. In most jurisdictions, policing has a specific and separate oversight mechanism. One question to be addressed is the extent to which, despite the apparent administrative advantages, there remains a requirement for policing oversight to be separate. Regardless of how this question is resolved, there is merit in exploring the degree to which support services and investigative expertise could be shared in order to maximise efficiency.

- 7.8 ***Q: Do you favour retaining a separate Police Ombudsman or creating a Justice Ombudsman?***

***Q: Is there merit, both in terms of efficiency and case progression, to having an Office of Justice Ombudsmen, where there is a separate Police and Prisoner Ombudsman, but there is co-location, shared services, and/or a pool of investigators?***

## Questions to Consider

Below are some questions for you to consider in formulating your response. However, we would welcome your views on any of the issues raised in the document.

1. Do you believe an alternative mechanism for investigating historic cases should be put in place? If so what form should that take?
2. Do you agree that there should be a provision to authorise a person to act as interim Ombudsman whilst a permanent appointment is made by the First Minister and deputy First Minister acting jointly?
3. Do you believe there needs to be a mechanism to appeal decisions of the Ombudsman? If so what form should that take?
4. Do you believe it would be right to restrict the applicants for the post of Police Ombudsman by precluding a policing background? If so, should that apply to Northern Ireland, to here and neighbouring jurisdictions or on a generic basis?
5. Should applicants be required to have certain previous experience relevant to adjudicating on complaints?
6. Are there specific skills/competences/experiences an applicant for the post should have? If so, what are they?
7. Should an applicant be a senior judicial figure or person of the quality and experience of a senior judicial figure?
8. Do you believe corporation sole model is appropriate? If not, what change do you believe is needed?

9. Do you favour retaining a separate Police Ombudsman or creating a Justice Ombudsman?
10. Is there merit, both in terms of efficiency and case progression, to having an Office of Justice Ombudsmen, where there is a separate Police and Prisoner Ombudsman, but there is co-location, shared services, and/or a pool of investigators?



## Further Information

### Alternative Formats

This document can be made available in different formats – large print, Braille or other languages - for those individuals with particular needs, on request. Hard copies will be posted on request. A text phone facility is also available by phoning: (028) 9052 7668.

To request an alternative format, please contact us at Department of Justice, Legacy Branch, Castle Buildings, Stormont Estate, Belfast, BT4 3SG.

If you have any questions concerning the documentation or the consultation process, you should contact the Department's consultation co-ordinator, Mark Higgins on (028) 9076 5784 or email at [mark.higgins@dojni.x.gsi.gov.co.uk](mailto:mark.higgins@dojni.x.gsi.gov.co.uk).

Alternatively, you may wish to write to the address below:

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Department of Justice  
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Block A, Level 4  
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BELFAST  
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### Confidentiality and Access to Information Legislation

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation: these are chiefly the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice (section 45) with which public authorities must comply and which deals,

amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Office of the First Minister and deputy First Minister.

For further information about confidentiality of responses please contact the Information Commissioner's Office on (028) 9026 9380 or email [ni@ico.gsi.gov.uk](mailto:ni@ico.gsi.gov.uk) (or see their website at: [www.ico.gov.uk](http://www.ico.gov.uk)).

### Equality Statement

Section 75 of the Northern Ireland Act 1998 requires all public authorities in Northern Ireland to have due regard to equality of opportunity between the nine equality categories and have regard to promote good relations between persons of different religious belief, political opinion or racial group. Public Authorities are also required to meet legislative obligations under the Disability Discrimination Order, particularly in the formation of public policy making.

The Department of Justice is fully committed to fulfilling its Section 75 obligations on the promotion of equality of opportunity, good relations and meeting legislative requirements in Northern Ireland.