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## **POLICE OMBUDSMAN INVESTIGATION REPORT**

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## **POLICE OMBUDSMAN REVIEW**

### **Introduction**

On 19 April 2011, I was asked by the Minister for Justice, David Ford to undertake a review in relation to allegations made against the Department of Justice by the Chief Executive of the Office of the Police Ombudsman. The terms of reference are shown in detail in the annex but the specific areas of the enquiry were to review whether:

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

2. While the focus of the review was to be from the devolution of policing and justice on 12 April 2010, relevant information from the point of the current Ombudsman appointment should be taken into account.

3. The allegations by the Chief Executive were made in his letter of 31 March 2011 to the Permanent Secretary. The letter advised the Permanent Secretary that the Chief Executive had given notice of his resignation to the Ombudsman. The Permanent Secretary replied to the Chief Executive on 12 April.

4. In April the media became aware of the intent of the Chief Executive to resign seemingly on the basis of a leak relating to the resignation letter. There then followed a number of press and media references which

speculated on the question of interference across the range of functions of the OPONI, not just in relation to the organisation of the Office.

5. The Department announced the review on 20 April and this was followed by an announcement on 22 April that the Ombudsman had asked the Criminal Justice Inspector to look at the relationship between the Office and the PSNI following the speculation surrounding this review and the allegation about relationships between the Ombudsman's Office and the PSNI.

6. I contacted the Chief Executive and the Ombudsman on 19 April following my appointment to arrange a preliminary discussion. I met both of them on 22 April. Because of timings relating to the release of papers under FOI and because relevant people were on extended leave with the various holidays around that time, most interviews took place between 3 May and 13 May. I submitted a draft report to DOJ on 16 May and it was then copied in whole or part to various individuals for comment and fact checking. I received the last comments on the draft report on 12 June.

7. In addition to the initial meetings, I conducted 20 interviews/meetings as part of this review. I am grateful to all who willingly gave of their time. I also took the opportunity to discuss the modalities of the review with the Criminal Justice Inspector (CJI) and we agreed to liaise insofar as this review would impact on his. I was also approached by Committee for the Administration of Justice(CAJ) to meet their Director and officials to discuss a report they intend to issue shortly raising questions around the functioning of the Ombudsman's Office and his appointment. I met representatives of NIPSA acting in support of the Chief Executive,



though I had indicated that I was not investigating the Chief Executive as such. I also met an individual at the request of an MLA to discuss the handling of a case he had raised with the Ombudsman's office. The issues in that case fell more into the CJI Review and I agreed with the CJI that they would handle the issues which the case presented, particularly the apparent long delay in dealing with a report prepared by the Chief Executive in 2008.

## **Background**

8. The current Ombudsman was appointed on 6 November 2007. The role of the Ombudsman is set out in statute and repeated in the Management Statement/Financial Memorandum agreed with the DOJ. As a corporation sole the governance differs from most non executive departmental public bodies in that there is no Board carrying responsibility for strategic direction or financial oversight. Essentially this is vested in the role of the Ombudsman though of course functions are delegated to senior officials in the Office. The Chief Executive is the Accounting Officer appointed under the terms of the Financial Memorandum by the DOJ Permanent Secretary.

9. The Police Ombudsman for Northern Ireland (the Office) was established under the Police (Northern Ireland) Act 1998 as a corporation sole and is now accountable to the Assembly, through the Minister of Justice for Northern Ireland. The role of the Police Ombudsman and the constitution of the Office are set out in Schedule 3 to the Police (Northern Ireland) Act 1998. I have included at Annex 2 details of the Ombudsman's statutory responsibilities, together with an outline of his responsibilities and

those of the Chief Executive and the Sponsoring Division in the Department of Justice as set out in the Management Statement.

## **The Allegations**

10. The original allegations were referred to in the Chief Executive's letter to the Permanent Secretary and in his resignation letter to the Ombudsman. The key quotes from the letter to the Permanent Secretary were:

*“During the last three years or more I have observed, what I consider to be, interference and meddling by some officials in the affairs and governance of this Office and also a lowering of the professional independence between our operations and those of our key stakeholder, the PSNI. In trying to confront these issues, I believe I have been subject of personal and damaging attacks. The recent, in my view, false and malicious allegations and attack on my role and personal integrity by former NIO officials within the DOJ have left me demoralised, undermined, and disillusioned. I note with concern the response to my solicitor recently, refusing to provide me information regarding specific personal allegations made by some officials even though they have been investigated by an external investigator with the use of public funds. I have been left in the position now of having to leave my post so that I can exercise external processes in respect of these matters without damaging the status and reputation of the Office which I worked so hard to establish.*

*I would under no circumstances recommend that my post is filled or that your responsibilities are delegated again to this Office until the central governance arrangements between the Department and this Independent Body are reviewed. In my view the current arrangements are untenable and the recent Internal Audit Report brings this matter into sharp focus.”*

11. The written allegations were added to in discussion with the Chief Executive on 22 April to embrace some 6 areas of alleged interference or behaviour designed to undermine the authority of the Chief Executive. The key areas of concern to the Chief Executive were:

- issues surrounding appointment of the current Ombudsman;
- issues concerning allowances and hospitality of the Ombudsman;
- the 5 year statutory review;
- the grading of senior staff;
- the business case in relation to historic cases; and
- the stakeholder relationship, in terms of the management of intelligence, between the Ombudsman’s office and the PSNI.

It is important to note that the Chief Executive did not at any time allege that the NIO or the DOJ had interfered in the investigative side of the Ombudsman’s Office.

## **Methodology**

12. Essentially this review consisted of undertaking a series of interviews with key personnel and reviewing a substantial range of documents. I received for review the following documents:

- a series of papers and folders provided by DOJ;
- personal papers from the Senior Director of Investigations;
- papers provided by the Chief Executive, including those released to him under FOI;
- documents released by the Ombudsman including independent reports commissioned by him into grievance cases in 2010; and
- a statement of complaint from NIPSA in relation to the handling of grievance procedure/complaint.

## **FINDINGS**

### **The Appointment of the Current Ombudsman**

13. The suggestion was that the NIO deliberately excluded the CEO from any significant discussion about the basis of the appointment and the terms offered to the new Ombudsman. At that time the Chief Executive believed that there were three issues of concern. The first was that there should have been a requirement for an Ombudsman without any policing background (not just without a Northern Ireland policing background) similar to the appointment of the IPCC Commissioners or the Garda Síochána Commission. Second was an alleged decision by the NIO to

introduce an additional requirement into the short listing process requiring experience of work in Northern Ireland. This allegation was apparently based on a phone call to the Chief Executive from the recruitment consultants suggesting that this should be the approach. I was also approached by telephone by one of those not shortlisted who also referred to a call from the consultants along similar lines. The third issue concerned the terms offered to the Ombudsman, and in particular his travel package of flights home to Canada.

14. It is not part of the brief to explore the circumstances surrounding the appointment of the current Ombudsman. I have however been presented with papers by the Permanent Secretary, who was a member of the selection panel, which demonstrates that no requirement relating to Northern Ireland experience was introduced at any time and he further assured me that two of the 5 candidates short listed for interview did not have such experience. The key issue for me however is whether the Chief Executive was excluded from any appropriate discussions about the appointment by officials of the NIO, and that in my view is caught by the terms of reference.

15. I have reviewed the various papers at length and spoken to some of those who were involved. I have a note which sets out details of a meeting which the Chief Executive had with the NIO in March 2007 in relation to the job specification for the appointment of the successor to Dame Nuala O'Loan. In fact Dame Nuala O'Loan was to attend the meeting, but was ill at the time. I have also seen other papers which suggest that details of the proposed appointment specification were circulated to the then Ombudsman and the Chief Executive beforehand. There appears to be





less evidence of discussions around the terms offered to the new Ombudsman and the Permanent Secretary has accepted that perhaps there might have been more contact around those issues. In a way this heralded a further deterioration in the already apparent fraught relationship between the Chief Executive and the NIO. During the tenure of the previous Ombudsman there had been reported tensions in relation to the relative independence of the Office and counter concerns by the NIO about the relationship between the Ombudsman and the police. These tensions were added to at the time by a somewhat difficult exchange of correspondence between the Chief Executive and the NIO over the pension arrangements for the previous Ombudsman.

16. I take the view that the appointment of the Ombudsman was clearly a matter for the Secretary of State and fully within the administrative responsibilities of the NIO. Some, including the Chief Executive, have questioned the decision to allow former police officers to apply. But that was a political call then and will be again with the next appointment. A chief executive should not normally expect to be fully involved in such a process and the Chief Executive assures me that he did not seek such involvement. It seems evident that he and the previous Ombudsman were included in discussions/correspondence about the post specification, though not as involved in discussions about the job package which might have been expected. In my view it was not unreasonable for the Chief Executive to want input to discussions about the proposed financial package given his role as Accounting Officer.

17. By not fully consulting the Chief Executive on the financial package, at least informally, the NIO did not follow best practice in these matters and



the climate was set for the unfortunate set of relationship difficulties which followed the appointment of the new Ombudsman.

### **Issues Surrounding Allowances and Hospitality**

18. In our initial discussion the Chief Executive raised concerns about the travel expenses and hospitality costs of the Ombudsman and how these were dealt with by the NIO. There had been no hint of these concerns in the letter to the Permanent Secretary about his resignation.

19. Questions about claiming allowances, travel and hospitality, are the clear responsibility of the Chief Executive in his role as Accounting Officer. The terms of the Financial Memorandum are quite specific as to his judgement about regularity and probity:

*“take action as set out in paragraphs 14-18 of the NDPB Accounting Officer Memorandum if the Police Ombudsman is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration or efficiency or effectiveness.”*

20. The relevance to the core question of interference by officials relates to the action of the NIO following discussions with the Chief Executive about press interest in the expenses of the Ombudsman in his previous role as Oversight Commissioner. I spoke to the senior official involved and was told that there had been a meeting with the Ombudsman, following a discussion with the Chief Executive, to stress to him that while his travel



arrangements were within the rules, specific expensive overseas trips, if taken out of context, could be misconstrued by the media and, more importantly, undermine public confidence. It was left to the Internal Audit team to deal with hospitality issues on the basis that the NIO had intervened on the travel issues. The official was adamant that the Internal Audit team was not “instructed” to avoid examining the Ombudsman’s travel arrangements as had been alleged by the Chief Executive, though accepted that the decision to audit two other arm’s length bodies could have been seen as masking particular attention on the Office.

21. It does concern me that in an organisation which has core values and principles on regularity and probity, significant issues relating to travel and hospitality needed intervention by senior officials and to have its hospitality accounts examined by the Internal Auditors. It is worth recalling one of the core functions of the Ombudsman is to:

*“exercise his powers in such manner and to such extent as appears to him to be best calculated to secure:*

*the efficiency, effectiveness and independence of the police complaints system; and*

*the confidence of the public and of members of the police force in that system”*

22. It is also the case that the Chief Executive has extensive powers to raise concerns about any expenditure in the Office by virtue of his Accounting Officer role, including seeking a formal direction and reporting

such a direction to the department's Accounting Officer and to the Comptroller and Auditor General.

23. The Chief Executive has assured me that following an exchange of correspondence and discussions with the Ombudsman there are no outstanding concerns. On the role of the NIO, it looks as if they dealt with the matter appropriately and sensitively with the key objective to ensure there were no issues of regularity or other issues which might lead to audit concerns or adverse press comment or speculation.

### **The 5 Year Review**

24. Before she left office the previous Ombudsman prepared a 5 year review as required by statute. The review contained 26 recommendations. The allegation by the Chief Executive is that the NIO rejected the recommendations in the 5 year Review because they would have strengthened the role and power of the office. In addition he alleged that he was excluded from the discussions and that a document summarising an agreed position on the recommendations between the NIO and the Office signed by the Senior Director of Investigations and a middle ranking official in the NIO, was not shared or discussed with either him or the Ombudsman.

25. Arriving at a final position in relation to the 2007 Review took some considerable time with the NIO concluding that they had to go through further consultations following the appointment of the new Ombudsman in 2007; the ongoing Eames/Bradley review was also an issue in delaying matters.

26. Following his appointment in 2007 the Ombudsman was asked for his opinion on his predecessor's recommendations and the papers show that following consideration his initial position was to support a majority of recommendations, some 19 of the 26, and this position formed part of the further consultation process. Matters seemed to drag on and notes record that at a meeting in June 2009 involving NIO officials and the Ombudsman, the Senior Director of Investigations, the Chief Executive and the Legal Director, it was agreed to set up a small group of NIO and Office officials to bring matters to a conclusion. The Ombudsman nominated the Senior Director of Investigations and the Legal Director as members of the group. The Chief Executive was aware of these nominations.

27. The Ombudsman's recollection of the position was that while the position on some recommendations was clear cut, the review had dragged on for over 2 years and it would be better to roll others into the next review and that the group's role was to organize the final position. The group met towards the end of June and a note records that the group agreed action for the 26 recommendations as 4 accepted, 20 rejected and 2 for further discussion.

28. A submission went to the Minister on 2 October 2009. The paper makes a number of references to the Ombudsman in relation to his position on the recommendations. For example:

*"after extensive consideration of the views and comments raised in the consultation exercise, Al Hutchinson has now indicated that he*

*believes that four of the recommendations.....should be implemented and 22 should be rejected or otherwise passed over"*

*"officials have discussed at length with Al Hutchinson the reasons for the implementation/rejection of each of the 26 recommendations and these are summarised at Annex A."*

29. The Annex mentioned was in effect a table showing the 26 recommendations with the rationale for acceptance or rejection. On the day of the Ministerial submission this table was signed as an agreed document between the NIO and the Office by the Senior Director of Investigations and an NIO official.

30. The Ombudsman and the Chief Executive stated that they were unaware of either the Ministerial submission or the agreed and signed document. Both also say that they had not been kept up to speed by their Office officials about developments following the creation of the group in June 2009. They only realized that matters had been finalised and approved by the Minister following an email exchange in late November between an NIO official the Ombudsman and the Senior Director of Investigations about two specific recommendations of interest to the Committee of Ministers at Strasbourg. Senior officials indicated to me that they believed the Senior Director of Investigations was representing the views of the Ombudsman.

31. What can be drawn from this? I can readily understand why the Chief Executive might have believed that there was a determination by the NIO and sections within the Office not to allow the strengthening of the Office

based on the recommendations of the previous Ombudsman. On the other hand the NIO officials and the Senior Director of Investigations are adamant that they were only implementing a position agreed by everyone including both the Ombudsman and the Chief Executive. Regardless of motivation, the way the process was handled was not satisfactory and did fuel a conspiracy theory. Critical in all of this was the position of the Ombudsman. It is surprising that he was not consulted about the final agreed position on the review recommendations or about how this was presented to the Minister. Lessons need to be learned and the issues should have been aired at a more senior level between the Ombudsman and the NIO.

### **The Job Evaluation Issue**

32. Perhaps the most toxic issues to arise were matters relating to a job evaluation exercise carried out by the DFP Business Consultancy Service commissioned by NIO on behalf of the Office. The question of regrading was first raised by the former Ombudsman. In simple terms she believed that the Chief Executive and Directors were under graded. After a prolonged lead in it was agreed that the NIO would commission DFP consultants to undertake appropriate assessments under Civil Service terms. The Office nevertheless had to pay for it. The posts covered were the Chief Executive, the Senior Director of Investigations and the Directors.

33. The review was conducted on the basis of the normal approach to the evaluation of Civil Service posts based on job descriptions prepared by each individual and signed off by the Ombudsman in relation to the two senior positions, and by the Chief Executive for all other Directors. The

evaluation was carried out in accordance with relevant Cabinet Office memoranda.

34. In presenting their findings the consultants first briefed NIO officials and then the Chief Executive. The Senior Director of Investigations indicated that he had expected to be at the debrief but alleges the Chief Executive excluded him from the meeting. The Chief Executive disputes this. The findings were not well received given that the Chief Executive was confirmed as a Grade 5 and the Senior Director confirmed as a more senior Grade 3. In addition the other Directors, far from having their positions enhanced, were found to be mid or low range in their current grades and one post was in fact recommended to be reduced by a grade.

35. Several issues flowed from this episode:

- The DFP consultants alleged that they were treated in a wholly inappropriate manner by the Chief Executive during the presentation of their findings and were in effect asked to leave the building.
- They were asked during the briefing of the DOJ to report back on how the presentation to the Ombudsman's Office had gone. They reported what had happened and were then asked to provide their views in writing. They did so but indicated that they did not wish to pursue the matter as a complaint. Of particular note was a reference in the written report to a concern about the health of the Chief Executive and the potential impact the alleged behaviour of the Chief Executive might have on junior staff, if repeated.



- A senior DOJ official decided that as this was not a complaint no formal follow up intervention was required but concluded that the matter should be mentioned to the Ombudsman. The matter of the DFP consultants report was first brought to the attention of the Ombudsman in a grievance complaint raised by the Senior Director of Investigations towards the end of June 2010. The Ombudsman was provided with a copy of the report on 19 July 2010 and he satisfied himself immediately that the Chief Executive posed absolutely no threat to staff.
- The report did however play its way into later grievance considerations and as indicated above was mentioned by the Senior Director of Investigations in his grievance statement at the end of June. He also indicated to the Independent Investigator conducting the review of the grievance that he had seen a copy of the DFP note, having been shown it by a DOJ official. However he subsequently told me that he had not seen the report; that he had learned of its content from an official in the Office; and that he had not told the truth to the Independent Investigator examining his grievance. In an e-mail to me about what he had told the Independent Investigator, he stated:

*“On this issue of the DOJ report my position is as follows. Following our meetings he contacted me and said my knowledge of the affair amounted to "mere tittle tattle"(his words) and that he could not proceed to investigate this without firm evidence. (Shocking in my view). I knew what had taken place from the source but could not (for a number of very, very*

*important reasons {including personal safety, health and safety issues, FOI implications and whistle blowing considerations}, at this time, tell.....this. I am prepared to discuss the source and other issues with you on a one to one basis.*

*I did therefore tell him that I had seen the report (which may or may not have existed at this time). This was not true. I stand by this decision and would do exactly the same again given the dignity at work policy etc..... In any event I consider this an irrelevance.*

- The Senior Director of Investigations subsequently told me the name of his source in the Office. I raised this matter with that person who denied any knowledge about what happened at the meeting between the DFP consultants and the Chief Executive and the subsequent DFP report, or having told the Senior Director of Investigations about anything related to the meeting.
- It was a series of e-mails between the Chief Executive, the Ombudsman and the Senior Director of Investigations about the outcome of the regrading and subsequently a number of confrontations between the Chief Executive and the Senior Director of Investigations which led to both making complaints to the Ombudsman.
- This resulted in an Independent Investigator being brought in to review the complaints. The complaint from the Chief Executive was later categorized as a general complaint about the functioning

of the Office and not specifically a grievance about a particular individual. In many ways it was similar in content to the issues surfacing in this review.

- The Senior Director of Investigations, in his grievance, referred to: the DFP consultants report noted above; another incident involving an NIO official and the Chief Executive; and a further incident involving another member of staff from the Office, none of which involved any issues affecting him directly. In total he cited 7 areas of concern which either involved him directly or, in his view, were issues which raised dignity at work concerns. The Investigator found there were 4 issues where evidence was sufficient to warrant further consideration.
- Three counts in the complaint by the Senior Director of Investigations against the Chief Executive were upheld by the Ombudsman in October 2010. The Chief Executive was subsequently disciplined in March 2011 by being given a written warning. The delay was because the Chief Executive had been on sick leave for a time. The Chief Executive tendered his resignation on the day of his disciplinary hearing.
- The Senior Director of Investigations went on long term sick leave in June 2010, around the time he lodged his grievance case where he also raised concerns about his personal safety in contact with the Chief Executive indicating he could not return to the office while the Chief Executive remained in post. He remains on long term sick leave.

36. The specific allegation by the Chief Executive is that the DOJ influenced the regrading outcome in a number of ways. First the decision in relation to the downgraded Director's post suited a desire of the DOJ to amalgamate two directorates in the Office. This is flatly denied by both DOJ and DFP consultants who insist that the posts were graded according to tried and tested methodology. Second, while appearing to accept the grading of his own post, the Chief Executive seriously challenged the result for the Senior Director of Investigations, believing it at best to be on a par with his own, if not of a lower grade, and that the NIO had influenced the outcome.

37. I cannot adjudicate on the rights and wrongs of the grading assessments. However some significant points have to be made:

- I have not found any evidence that the NIO or, subsequently, the DOJ sought to influence the outcome of this work.
- I accept the DFP assurance that discussions are normally held with the post holder based on approved job descriptions and that comparability forms no part of the process. However the work of the Office is not straightforward Civil Service activity and I might have expected more discussions with the Ombudsman who had a clear perception about the relative requirements in terms of judgment and influence which were the key areas of difference in scoring between the two senior posts. The Ombudsman's view was that there was little if anything to separate the two posts.

- Making a presentation to the DOJ before presenting to the senior officials in the Office seems to me to have been an unwise tactic.
- Presenting the findings in relation to a senior staff member affected by the grading result without first presenting to the Ombudsman, also seemed to me to be tactically flawed.
- I think that the Ombudsman should have been more involved in all of this realising that it involved senior staff who were already at odds with each other anticipating that any emerging differential was likely to create major problems in his senior group.
- This was an issue which, in my view, was not gripped early enough by the Ombudsman and as a result has had an impact on the effectiveness of the Office ever since. There are clear signs that the relationships throughout the office as a whole suffered greatly in the aftermath of this exercise.
- The grading questions still have to be resolved and despite the Ombudsman's attempts to review matters the issues remain on hold pending the outcome of the different investigations.
- The two issues mentioned above involving DFP consultants and the NIO official and which formed part of the grievance by the Senior Director of Investigations, did not involve him directly. The official and DFP consultants had clearly decided not to press complaints and in my view these were matters for the Ombudsman to deal with directly, particularly as the incident involving the official

had occurred 9 months previously and the DFP consultants report was not made available to the Chief Executive to challenge.

38. Was this interference in the operation of the office? I view the possibility that the Senior Director of Investigations was made privy to the note from DFP officials by an DOJ official as disturbing and clearly interfering in the role of the Office, though I don't believe this represented an example of systemic interference by DOJ. While the suggestion that the Senior Director of Investigations was made privy to the report from DFP consultants by an DOJ official is disputed, I believe that on the balance of probability he was either shown the report or was well briefed about its contents. As the document did not arrive with the Ombudsman's Office until 19 July and as the Senior Director of Investigations was aware of its contents in late June I also conclude that it was more than likely that he gained this information from someone in DOJ.

39. This was a disturbing event and represents clear interference in the role of the Office and due process. It is also disturbing to note the comments of the Senior Director of Investigations about misleading the Independent Investigator. This is a matter which the Ombudsman will wish to consider carefully upon the return to work of the Senior Director of Investigations.

40. The Chief Executive clearly saw the content of the DFP consultant's report as the basis of the "malicious allegations" mentioned in his resignation letters. Even during the grievance process where the content was presented to the Investigator as evidence, he had not been given an

opportunity to view the report and saw it only recently on the basis of an FOI request. I believe that to be lacking in due process.

41. The grading issue was not well managed tactically by the NIO/DOJ, DFP, or the Ombudsman. However the behaviour of the Chief Executive was also seriously in breach of dignity at work principles in how he handled a number of these matters. The subsequent damage to relationships and morale within the office has been severe. Sides have been taken and it is fair to say that the overall impression is of a drift towards an ineffective office. It is impossible for an office to inspire confidence with the general public and with its key stakeholders when it appears its senior managers cannot manage even the most basic of personal relationships and conduct their conflict under the gaze of their staff. This was an occasion for decisive leadership and in my view it was missing.

### **Business Case for Historic Cases**

42. This is the most complex and politically sensitive area of work for the Office. While the Ombudsman has made clear his view that this work should not be dealt with under their remit, preferring an Eames/Bradley type solution, it remains nevertheless a core function of the Office. However, it is clear that, in terms of capacity and skills-set, the Office is struggling to meet the demands of many families for resolution and, even with additional resources, this area of work will for the foreseeable future place enormous demands on staff. The Office has been struggling for some time to present an adequate business case for more resources as required by the seemingly more exacting financial assessments demanded

by DFP under devolution. This is not peculiar to the Office; other bodies struggle at times with the demands and the bureaucracy of the process.

43. The suggestion from the Chief Executive in my initial discussion was that the DOJ had failed to progress matters as expeditiously as possible.

44. Evidence from within the Office questions the view that DOJ were dragging their heels. The view of the Director responsible for Historic Work was that the delays were entirely the fault of the Office because they were struggling with the technicalities and bureaucracy involved in building a case, particularly about how resources would be deployed.

45. This issue did not feature much in further discussions with the Chief Executive. For the record I found no evidence that there was any intent by DOJ to delay progress on this matter. On the contrary it seems that senior officials were fully supportive of the need for more resources, had made the case for resources quite some time ago in budget discussions, and did progress the business case as soon as it had been presented to the Department.

### **Relationships with PSNI**

46. This was the final area of concern raised directly with me by the Chief Executive and was clearly outside my terms of reference. Two days after the announcement of this review the Ombudsman announced that he had asked the Criminal Justice Inspector to conduct a review of the relationship between the Office and PSNI. I made a point of keeping the CJI apprised of my work and the areas of enquiry. I have now seen the terms of



reference drawn up by CJI and I am content that they cover the areas raised with me by the Chief Executive. I understand that he is also content with the CJI terms of reference.

## **CONCLUSIONS**

- I have not discovered any evidence of systemic interference or meddling by DOJ officials in the governance and functioning of the Office.
- There are, though, a number of issues which give cause for concern. Two issues which trouble me in particular relate to the outcome of the 5 year Review and the unfortunate consequences of the job evaluation exercise.
- On the 5 year review I am concerned that an agreement appears to have been concluded 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. I am also surprised that the Ombudsman was not advised of the outcome of the work commissioned in June 2009 or, more critically, about the position attributed to him in the ministerial submission in October 2009.
- The issues triggered by the outcome of the regrading review have in my view been highly damaging to the morale and effectiveness of the Office. Matters remain unresolved and the consequences at a personal level are regrettable. The impact goes beyond those most involved and has had a demoralizing impact on the whole

Office. In overall terms this was clumsy, poorly handled and, in my view should have been gripped much earlier and more decisively.

- 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, is a serious cause for concern.
- Discussions around the job evaluation issue have also revealed that the role and authority of the Chief Executive is disputed by the Ombudsman and the Senior Director of Investigations. While the Ombudsman views the two senior posts as in effect Deputy Ombudsmen, the Chief Executive sees his position differently citing not only custom and practice, but also the terms of the Management Statement which seem unambiguous in terms of his primary advisory role in support of the Ombudsman.
- Overall governance problems were also raised in discussions and these need to be resolved quickly, and certainly before the appointment of a new Chief Executive. Various consultants' reports have not helped. In my view they merely reflect the lack of clarity about the functionality of the Office and have diverted time and energy of the senior group and Directors away from their core functions and responsibilities.
- A recent Internal Audit report is an example. Referred to by many as damaging in its analysis of governance, I believe it to be as flawed as the others by not understanding the unique role of the Office and its sensitivities. The suggestion made in it that the two non-executive members of the Audit Committee might also become part of the Executive Board created by previous consultants seems to me to be politically naïve.

- I am not however persuaded that governance per se is the key issue. Though where governance is unclear, roles are disputed and personality clashes emerge, major problems are almost inevitable. However this is an organisation with a simple governance structure of a corporate sole, a relatively small senior group and with clear business objectives. It should therefore be relatively straightforward to have clarity about governance and senior roles and responsibilities. In successful organisations clarity of governance, business purpose and roles can cope with personality issues. Without that organisations inevitably become ineffective.
- While I have been critical of some aspects of the NIO/DOJ relationships with the Office I think it should also be recorded that they are exceptions and a great deal of co-operation is enjoyed by officials in both offices.
- Ironically I also believe that given what has gone on over the last number of years and particularly over the last 12 months, DOJ might have intervened more within the terms of the Management Statement and Ministerial responsibility when it became clear that the Office was not functioning effectively at senior level.

## **What Next?**

47. The Chief Executive is right that the Permanent Secretary should not agree to proceed with the appointment of his successor until there is clarity about the future functioning of the Office. In the interim I think the Office and DOJ need to work constructively together to plan for a more effective organisation in terms of governance, responsibilities of senior posts and

protocols for communications between them, and within the Office. There may be a need to consider some external professional support to facilitate this process.

48. On the wider front, the outcome of the CJI Investigation will have to be factored in and also that a further Statutory 5-year review is due next year. Bearing all this in mind it seems to me that within the next 6-12 months there is probably a need for DOJ to initiate a comprehensive review of the future functioning of the Office and in particular the appropriateness of the governance model currently used. It is around 10 years since the first Ombudsman was appointed and with the benefit of the considerable experience gained about the operation of this work in a post conflict society, I think the time is about right to begin planning for the next period of office.

49. **Finally**, I should like to record my appreciation to all those who met with me.

50. I was very ably supported in compiling a vast range of notes by Emma Marmion of Prestige Employment Solutions who was also helpful in advising me on the range of HR issues which surfaced during the review.

Tony Mc Cusker

16 June 201

## Annex 1

### **TERMS OF REFERENCE**

The Reviewer shall:

(a) gather evidence in respect of the allegations made against DOJ civil servants by Sam Pollock specifically that

- officials have interfered and meddled in the affairs and governance of the Office; and
- officials have made false and malicious allegations against the Chief Executive;

while the focus for these enquiries should be from the devolution of policing and justice on 12 April 2010, relevant information from the point of Al Hutchinson's appointment should be taken into account.

(b) assess the evidence available against the legislative remit of the Office and guidance/best practice for sponsor departments engagement with ALBs and identify any improper behaviour on the part of officials;

(c) report to the Minister and Permanent Secretary by 16 May on whether the evidence warrants further investigation;

(d) undertake any further investigation in a timeframe to be agreed.

## Annex 2

### **The Functions, Duties and Powers of the Ombudsman’s Office**

The Police (Northern Ireland) Act 1998 gives the Police Ombudsman for Northern Ireland a **Statutory duty** to

“strive to deliver a police complaints system in which the public and police officers can have confidence”.

The Police (Northern Ireland) Act 1998 and other primary legislation direct the Police Ombudsman in a number of areas. Some of the key requirements are too;

- Secure an efficient, effective and independent complaints system;
- Secure the confidence of the public and members of the police force;
- Observe all requirements as to confidentiality;
- Receive complaints and other referred matters and to decide how to deal with them;
- Investigate complaints, referred matters and matters called in for investigation by the Police Ombudsman;
- Receive and record policy complaints and refer them to the Chief Constable;
- Make recommendations to the Director of the Public Prosecution Service (PPS) for criminal prosecution;

- Make recommendations and directions in respect of disciplinary action against police officers;
- Notify the Department of Justice and Secretary of State in some circumstances, Northern Ireland Policing Board (NIPB) and the Chief Constable of the outcome of certain complaints, referred matters and any investigation which the Police Ombudsman initiates without a complaint; and
- Report to the Department of Justice annually.

The current (2008) Management statement outlines more specifically the role, responsibilities and accountability of the Ombudsman. This is currently under review to take account of devolution in April 2010 but while the main areas of responsibility are core to each document, there is one interesting addition to the role of the Ombudsman in the current draft. It postulates as a future role for the Ombudsman that he/she

“Constructively challenge the Office’s executive team in their planning, target setting and delivery of performance”.

The Police Ombudsman has responsibility for ensuring that the Office fulfils the aims and objectives set by the Department of Justice and approved by the Minister, and for promoting the efficient, economic and effective use of staff and other resources by the Office. More specifically the Ombudsman has to

- establish the overall strategic direction of the Office, within the resources framework determined by the Secretary of State;

- ensure that the Secretary of State is kept informed of any changes which are likely to impact on the strategic direction of the Office or on the attainability of its targets, and determine the steps needed to deal with such changes;
- ensure that any statutory or administrative requirements for the use of public funds are complied with; that the Office operates within the limits of its statutory authority and any delegated authority agreed with the Department, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the Office takes into account guidance issued by the Department;
- ensure that the Office receives and reviews regularly financial information concerning the management of the Office; is informed in a timely manner about any concerns about the activities of the Office and provides positive assurance to the Department that appropriate action has been taken on such concerns;
- demonstrate high standards of corporate governance at all times, including by using the independent audit committee to help the Police Ombudsman to address the key financial and other risks facing the Office;
- appoint a Chief Executive and, in consultation with the Department, set performance objectives and remuneration terms linked to these objectives for the Chief Executive which give due weight to the proper management and use of public monies;
- formulate the Office's strategy in line with the wider strategic policies of the Department;
- ensure that the Office, in reaching decisions takes proper account of guidance provided by the Department;



- promote the efficient and effective use of staff and other resources, encouraging high standards of probity, propriety and regularity;
- represent the views of the Office to the general public.

The position of the Chief Executive is the only other role set out in the Management Statement/Financial Memorandum. The Chief Executive of the Office is designated as the Office's Accounting Officer by the Accounting Officer of the Department of Justice, the Permanent Secretary.

The Chief Executive is personally responsible for safeguarding the public funds for which he has charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the office. As Accounting Officer he exercises the following responsibilities:

On planning and monitoring -

- ensures that the Office's corporate and business plans are consistent with the Department's wider strategic aims and current PSA;
- informs the Department how resources are being used to achieve those objectives;
- ensures that timely forecasts and monitoring information on performance and finance are provided to the Department; that the Department is notified promptly if overspends or underspends are likely and that corrective action is taken; and that any significant problems, whether financial or otherwise, and whether detected by

internal audit or by other means, are notified to the Department in a timely fashion.

On managing risk and resources -

- ensures that a system of risk management is maintained to inform decisions on financial and operational planning and to assist in achieving objectives and targets;
- ensures that an effective system of programme and project management and contract management is maintained;
- ensures that all public funds made available to the Office [including any approved income or other receipts] are used for the purpose intended by Parliament, and that such monies, together with the Office's assets, equipment and staff, are used economically, efficiently and effectively;
- ensures that adequate internal management and financial controls are maintained by the Office, including effective measures against fraud and theft;
- maintains a comprehensive system of internal delegated authorities which are notified to all staff, together with a system for regularly reviewing compliance with these delegations;
- ensures that effective personnel management policies are maintained.

On advising the Police Ombudsman -

- advises the Police Ombudsman on the discharge of his responsibilities as set out in relevant legislation and in any other

relevant instructions and guidance that may be issued from time to time;

- advises the Police Ombudsman on the Office's performance compared with its aims and objectives;
- ensures that financial considerations are taken fully into account by the Police Ombudsman at all stages in reaching and executing his decisions, and that standard financial appraisal techniques are followed as far as this is practical;
- takes action as set out in paragraphs 14-18 of the NDPB Accounting Officer Memorandum if the Police Ombudsman is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration or efficiency or effectiveness.

On accounting for the Office's activities -

- signs the accounts and is responsible for ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Secretary of State;
- signs a Statement of Accounting Officer's responsibilities, for inclusion in the annual report and accounts;
- signs a Statement on Internal Control regarding the Office's system of internal control, for inclusion in the annual report and accounts;

- ensures that effective procedures for handling complaints about the Office are established and made widely known within and outside the Office;
- acts in accordance with the terms of the Management Statement and with the instructions and guidance in Treasury documents;
- gives evidence, normally with the Accounting Officer of the Department when summoned before the Committee of Public Accounts on the use and stewardship of public funds by the Office.

The other key role in the organisation is the Senior Director of Investigations. This is the main Operational role in the Office and is responsible for all investigations. The Senior Director has responsibility for the management of around two thirds of the Office staffing and is a member of the Executive Board which also includes the Chief Executive and the Ombudsman.

### **The Sponsoring Team in the Department**

The current draft Management statement provides a more contemporary outline of the Sponsoring Team's role in devolution. Within the Department of Justice, Policing Policy and Strategy Division (PPSD) is the sponsoring team for the Office. The Team, in consultation with the Accounting Officer, is the primary source of advice to the Minister on the discharge of his responsibilities in respect of the Office, and the primary point of contact for the Office in dealing with the Department of Justice. The sponsoring team carries out its duties under the management of a Grade 5, who has primary responsibility within the team for overseeing the activities of the Office.

The sponsoring team advises the Minister on:

- an appropriate framework of objectives and targets for the Office in the light of the Department's wider strategic aims and current PSA objectives and targets; and
- an appropriate budget for the Office in the light of the Department's overall public expenditure priorities;
- how well the Office is achieving its strategic objectives and whether it is delivering value for money.

In support of the Departmental Accounting Officer, the sponsoring team:

On performance and risk management -

- monitors the Office's activities on a continuing basis through an adequate and timely flow of information from the Office on performance, budgeting, control, and risk management, including early sight of the Office's Statement on Internal Control;
- addresses in a timely manner any significant problems arising in the Office, whether financial or otherwise, making such interventions in the affairs of the Office as the Department of Justice judges necessary to address such problems;
- periodically carries out a risk assessment of the Office's activities to inform the Department of Justice's oversight of the Office; strengthen these arrangements if necessary; and amend the Management Statement and Financial Memorandum accordingly. The risk assessment takes into account the nature of the Office's activities; the public monies at stake; the body's corporate

governance arrangements; its financial performance; internal and external auditors' reports; the openness of communications between the body and the Department of Justice; and any other relevant matters;

On communication with the Office -

- informs the Office of relevant Executive/government policy in a timely manner; if necessary, advises on the interpretation of that policy; and issues specific guidance to the Office as necessary;
- brings concerns about the activities of the Office to the attention of the Police Ombudsman, and requires explanations and assurances from him that appropriate action has been taken.