



Commentary
on the
Office of the Police Ombudsman
for Northern Ireland

June 2005

Published by the Committee on the Administration of Justice (CAJ) Ltd
45/47 Donegall Street
Belfast
BT1 2BR
Tel: (44) (028) 9096 1122
Fax: (44) (028) 9024 6706
email: info@caj.org.uk
web address: www.caj.org.uk

This Commentary on the work of the Office of the Police Ombudsman for Northern Ireland is the third in a series CAJ is publishing to analyse the work of the new policing institutions established in the wake of the Patten Commission on Policing (1999). The second Commentary in the series was on the District Policing Partnerships - which also included "Policing with the Community" conference proceedings (May 2005) - and the first commented on the Northern Ireland Policing Board (Nov 2003). The final commentary will look at the work of the Police Service of Northern Ireland.

Commentary on the Office of the Police Ombudsman for Northern Ireland (£5.00)
ISBN 1 873285 69 8

Printed by
Shanway Press, Belfast

*Commentary on the
Office of the Police Ombudsman
for Northern Ireland*

June 2005

Committee on the Administration of Justice (CAJ) Ltd

What is the Committee on the Administration of Justice?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights (IFHR). CAJ monitors the human rights situation in Northern Ireland and works to ensure the highest standards in the administration of justice. We take no position on the constitutional status of Northern Ireland, seeking instead to ensure that whoever has responsibility for this jurisdiction respects and protects the rights of all. We are opposed to the use of violence for political ends.

CAJ has since 1991 made regular submissions to the human rights organs of the United Nations and to other international human rights mechanisms. These have included the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, the Human Rights Committee, the Committee Against Torture, the Special Rapporteurs on Torture, Independence of Judges and Lawyers, Extra judicial, Summary and Arbitrary Executions, and Freedom of Opinion and Expression, the European Commission and Court of Human Rights and the European Committee on the Prevention of Torture.

CAJ works closely with international non-governmental organisations, including Amnesty International, the Human Rights First, Human Rights Watch and the International Commission of Jurists.

Our activities include: publication of human rights information; conducting research and holding conferences; lobbying; and individual casework and legal advice. Our areas of expertise include policing, emergency laws, criminal justice, equality, and the protection of rights.

Our membership is drawn from all sections of the community in Northern Ireland and beyond, and is made up of lawyers, academics, community activists, trade unionists, students, and other interested individuals.

In 1998, CAJ was awarded the Council of Europe Human Rights Prize in recognition of our work to promote human rights in Northern Ireland.

CAJ has worked extensively on questions of human rights and policing and a short appendix highlights some of the key issues that have been pursued over the years by the organisation.

Table of Contents

What is CAJ?

Executive Summary

Chapter One: Introduction	1
Chapter Two: Background	4
A. The Independent Commission for Police Complaints	4
B. The Hayes Review of the Police Complaints System	5
C. The Belfast/Good Friday Agreement, the Patten Commission and the Failure of the Legislation to Implement the Recommendations of the Hayes Review	7
D. The Office of the Police Ombudsman for Northern Ireland	8
Chapter Three: Analysis	15
A. OPONI Investigations	15
1. <i>Nature, Type and Quality of OPONI Investigators</i>	15
2. <i>Quality of OPONI Investigations</i>	18
3. <i>Inability to Investigate the Army</i>	28
4. <i>Legal Safeguards</i>	29
B. OPONI Investigation of PSNI Operations, Policy and Practice	32
1. <i>OPONI Investigation of PSNI Operations</i>	32
2. <i>OPONI Investigation of PSNI Policies and Practices</i>	36
3. <i>Role of the Northern Ireland Policing Board</i>	38
4. <i>Conclusion</i>	38
C. Informal Resolution	39
1. <i>Description of the Current System</i>	39
2. <i>Quality of the Informal Resolution Process</i>	41
D. Effectiveness	46
1. <i>OPONI's Success to Date</i>	46
2. <i>OPONI Substantiation Rates</i>	48
(i) <i>The Complainant's Word against the Officer's Word</i>	52
(ii) <i>Making a Complaint against an Individual Officer</i>	54
(iii) <i>Disciplinary Proceedings</i>	55

E. OPONI Relationship with the Director of Public Prosecutions	64
1. Is the DPP Prosecuting Cases Recommended for Prosecution by the Office of the Police Ombudsman?	64
2. The Time it Takes the DPP to Decide Whether to Prosecute	64
3. Is the DPP Offering to Drop Criminal Charges against Complainants in Exchange for not Pursuing Complaints against Police Officers?	65
F. OPONI Review of the Omagh Bomb Investigation	66
G. OPONI Relationship with the Police Service of Northern Ireland	69
H. OPONI Accessibility and Transparency	71
1. <i>Those Who Fear Police Reprisals</i>	74
2. <i>Members of Ethnic Minority Groups</i>	75
3. <i>Young People</i>	77
I. OPONI Disclosure of Information	78
1. <i>OPONI Transparency in Relation to its Investigations</i>	78
2. <i>OPONI Provision of Evidence Gathered from its Investigations in Criminal and Civil Cases</i>	80
J. Retrospective Cases	82
1. <i>Examples of Retrospective Cases Successfully Investigated by OPONI</i>	83
2. <i>Concerns Regarding OPONI's Ability to Effectively Investigate Retrospective Cases</i>	85
K. Government and OPONI Positions on Plastic Bullets	
1. <i>OPONI Plastic Bullet Report</i>	88
2. <i>Monitoring the Proportional Increase in Army Use of Plastic Bullets</i>	91
L. OPONI Research Reports	92
1. <i>OPONI Investigation of Police Harassment of Lawyers</i>	92
2. <i>OPONI Investigation of PSNI Use of Batons</i>	95
Chapter Four: Conclusion and Summary of Recommendations	101
Endnotes	103
Appendices	123
1. Brief Synopsis of CAJ's Policing Work 1981 - 2004	125
2. Acronyms used in this report	127
3. CAJ's publications list	129

Executive Summary

The Committee on the Administration of Justice (CAJ) is publishing this Commentary on the work of the Office of the Police Ombudsman for Northern Ireland as the third in a series of publications looking at the new permanent policing institutions in Northern Ireland established in the wake of the Agreement and the Patten Commission. CAJ published a Commentary on the Northern Ireland Policing Board in November 2003 and a Commentary and conference report on the District Policing Partnerships in May 2005.

This Commentary on the work of the Police Ombudsman for Northern Ireland is not a formal evaluation of the work of the Office but an assessment of what seems to be working well and what might benefit from improvement. In developing this Commentary, CAJ has drawn extensively on its own work with the Ombudsman's Office, media reports, and a series of in-depth interviews and written correspondence with representatives of over 40 organisations, including solicitors' offices, community groups, human rights organisations, and statutory agencies. CAJ has no way of verifying all the accounts given to us, but has erred on the side of inclusion. If the accounts are correct, there are important lessons to learn; if there are inaccuracies, the accounts nevertheless reflect genuinely held beliefs and perceptions, and as such, we believe that they will also need to be addressed by the Police Ombudsman's Office.

CAJ is extremely grateful to the Office of the Police Ombudsman for Northern Ireland (OPONI) for its cooperation throughout this project; obviously any errors remain ours.

This Commentary consists of two main sections:

1. The first provides background information on the transition from the Independent Commission for Police Complaints to the Office of the Police Ombudsman for Northern Ireland and the powers of the latter.
2. The second provides analysis of the various issues raised as a part of CAJ's research on the work of OPONI, which is based on

Executive Summary

CAJ's own work with the Office, media reports and data CAJ obtained by interviewing representatives of over 40 organisations. This material was accurate as of February 2005

On the basis of our research, CAJ believes that the Office of the Police Ombudsman for Northern Ireland is making a major contribution to police accountability. OPONI is dedicated to vigorously, impartially and independently investigating police complaints. Successes of the institution include quickly establishing an effective complaints mechanism; handling a very high volume of work; contributing to a reduction in the seriousness of the nature of police complaints; increased dissemination of police complaint data; the successful investigation of several high-profile cases such as the Omagh bombing; and bringing many faulty police practices to light.

Improvements can always be made, however, in the manner in which any institution conducts its work and how government supports OPONI as an institution in terms of powers and resources. CAJ makes a number of recommendations throughout the text and these are summarised on pages 101-102. CAJ raises concerns, for example, about the quality of OPONI's investigations. CAJ is concerned that a high percentage of complaints filed with the Office do not reach the informal resolution or formal investigation stage and are instead weeded out. CAJ received complaints regarding the overall quality of some OPONI investigations and suggests that OPONI carefully monitor the quality of its investigations and complainant and police satisfaction.

CAJ recommends that OPONI improve its operations in areas such as outreach, communication and disclosure and that it improve its relationship with solicitors representing both complainants and police officers; grant further access to complainants to information and evidence related to their own complaints; and ensure that complainants are not dissuaded from cooperating because of the risk that their statements might be used against them in separate criminal and civil cases.

The Commentary also examines the ability of OPONI to address police operational matters. CAJ believes OPONI has been taking too broad a view of operational matters which, under the legislation, are outside of its remit to investigate. The result is that very troubling matters which have a large impact on police, issues such as charges of

Executive Summary

impartiality and over- and under-policing; the police approach to public order; and police decisions and conduct with regard to raids, appear to inadequately or inconsistently addressed by OPONI. CAJ recommends that OPONI consult on and publish its policy on investigation of both operational matters and police policies and practices.

CAJ believes that OPONI needs more powers. For example, the Commentary recommends that OPONI be given the power to require the PSNI to supply documents within a certain reasonable period of time; to interview and investigate retired officers regarding misconduct and not just possible crimes; and to investigate complaints against the army, when it is acting in support of the police. Due to the complaints CAJ received about the lack of independence within the informal resolution process, CAJ recommends that OPONI, rather than the PSNI, administer the informal resolution process and that OPONI be given the power to mediate complaints before any formal investigation.

In conclusion, it is worth noting an interesting development that occurred subsequent to the completion of this Commentary. In an attempt to circumvent the reservations nationalists and republicans might have in approaching the police in connection with the murder of Robert McCartney in January 2005, OPONI's services were offered as an alternative venue for statement-taking. Obviously, the role of OPONI, is not, and cannot be, to act as a surrogate police service. While an important and valuable initiative in the McCartney case, any by-passing of the police investigative function cannot be a long term solution. The real challenge is to develop the necessary level of community confidence in the police as a whole, and OPONI has a major role to play in securing that level of confidence.

This Commentary concludes that OPONI is already making a major contribution to developing greater confidence in policing. By highlighting a number of improvements that can be made, CAJ hopes that our recommendations will help assist OPONI build on its work to date to deliver the vision of accountable human rights compliant policing envisaged in the Agreement and in the Patten report.

Chapter One

Commentary on the Office of the Police Ombudsman for Northern Ireland

Introduction

Since the mid 1990s, Northern Ireland has been undergoing an extensive process of police change, resulting from the acceptance that policing is, and has always been, a contentious and highly divisive issue in Northern Ireland.

In 1995, well before the more fundamental overhaul of policing was set in motion in the wake of the peace agreement, the Secretary of State for Northern Ireland appointed Dr Maurice Hayes to conduct a review of the police complaints system in Northern Ireland. The police complaints system in existence at that time, the Independent Commission for Police Complaints (ICPC), relied on the police themselves to investigate the complaints filed against them and was regarded by the public as highly ineffectual. The Committee on the Administration of Justice (CAJ) welcomed Dr Hayes' 1997 report, which called for the creation of an office of a police ombudsman that would independently investigate complaints made against the police.¹

Dr Hayes recognised the need to locate this review of the complaints system within the overall context of broader police reform. He argued that:

"(N)o complaints system, however sophisticated, will compensate for failure to reach a satisfactory resolution of the broader questions of structure, management and political accountability".²

Those proposals for overall police change came as a result of the Belfast/Good Friday Agreement of 10 April 1998, which called for the creation of an independent commission to review policing in Northern Ireland and make recommendations for the reform of the entire system.³ The Independent Commission on Policing for Northern Ireland (Patten Commission) published a report containing 175 recommendations for police reform in September 1999.⁴ The Patten Commission endorsed the creation of an Office of the Police Ombudsman for Northern Ireland (OPONI); recommended many changes to the Royal Ulster Constabulary (RUC), which was thereafter to be called the Police Service of Northern Ireland (PSNI); proposed the creation of various other new policing institutions, including the Northern Ireland Policing Board (NIPB) to replace the Police Authority for Northern Ireland (PANI), District Policing Partnerships (DPPs), which are designed to provide police accountability at the local level, and an Office of the Oversight Commissioner (OOC), which will exist temporarily to report on the progress of implementation of the reform programme proposed by the Patten Commission.

CAJ has closely followed and participated in the policing debates and developments to date, and has decided to publish a series of Commentaries on the work undertaken by these new policing institutions to facilitate wider community debate on the progress towards the policing goals established by the Hayes Review, the Belfast/Good Friday Agreement and the Patten Commission. In November 2003, CAJ published a Commentary on the Northern Ireland Policing Board.⁵ The following Commentary focuses on the Office of the Police Ombudsman for Northern Ireland. CAJ also held a successful conference to address the effectiveness of the District Policing Partnerships in June 2004 and Commentary analysing the work of the DPPs based on this conference was published in May 2005.

This Commentary on the work of OPONI is not a formal evaluation of the work of the Office but an early assessment of what seems to be working well and what might benefit from improvement. In developing this Commentary, CAJ has drawn extensively on its own work with the Ombudsman's Office, media reports, and a series of in-depth interviews and written correspondence with representatives of over 40 organisations, including solicitors offices, community groups, human rights organisations, and statutory agencies. We have not attempted to make any quantitative analysis of our findings, since the research basis was too small to be helpful in this regard. Instead, we have sought to pinpoint issues that may need to be monitored over time, or which merit further research and attention. While much of the material gathered from interviewees was of a largely anecdotal nature, we believe it to be extremely rich, both in highlighting issues which were a matter of common concern across a range of commentators, and in highlighting specific and sometimes very individualised experiences – good and bad. CAJ has no way of verifying all the accounts given to us about private exchanges, but we have erred on the side of inclusion by reporting on virtually all of the concerns that have been raised with us. If the accounts are correct, there are important lessons to learn and changes to be made; if there are inaccuracies, then the accounts nevertheless reflect genuinely held beliefs and perceptions, and as such will also need to be addressed by the Ombudsman's office.

CAJ is extremely grateful to the Office of the Police Ombudsman for Northern Ireland for its cooperation throughout this project. OPONI was very helpful in response to the many questions we forwarded to the Office while preparing this research. OPONI also provided CAJ with detailed comments and concerns after we submitted the draft Commentary to the Office prior to its publication.⁶ In response to these comments, CAJ has sought to remedy any factual inaccuracies and to clarify our proposals in a number of regards. Yet again, we appreciate the time and effort devoted by OPONI to ensuring that this Commentary is as factually correct as possible and will make a useful contribution to strengthening the efficacy of the Ombudsman's Office. Obviously, while CAJ sought to respond to several of OPONI's criticisms, and incorporate a number of helpful comments, the content of the text, and most particularly the conclusions and recommendations we have elaborated, remain entirely the responsibility of CAJ.

This Commentary consists of two main chapters:

1. The first provides background information on the transition from the Independent Commission for Police Complaints to the Office of the Police Ombudsman for Northern Ireland. It details the powers of the two police complaints bodies and the factors which shaped the creation of OPONI – including the Hayes Review, the Belfast/Good Friday Agreement, the Patten Commission and the inadequacy of the legislation enacted to implement the Hayes Review.
2. The second provides analysis of the various issues raised as part of CAJ's research on the work of OPONI, which is based on CAJ's own work with the Office, media reports and data CAJ obtained by interviewing representatives of over 40 organisations, including solicitor offices, community groups, human rights organisations and statutory agencies.

In conclusion, CAJ brings together a series of recommendations we believe could assist in improving the operation of the Office of the Police Ombudsman for Northern Ireland.

It is worth noting at the outset that CAJ is extremely supportive in principle of the Office of the Police Ombudsman. Since our formation in 1981, we have argued for greater accountability of policing, and have written extensively on the value of an independent system for police complaints. As and when opportunities arose over the years, we have campaigned since 1982 for the establishment of something like the current Office of the Police Ombudsman, and more recently we engaged proactively in the policy and legislative debates that finally led to the creation of the Office. It is from the perspective of a group that is supportive of an independent system of police complaints that we have approached the following Commentary.

This stance does not, however, prevent us from being critical, and we offer this Commentary in the hope that it will be seen as a constructive contribution to the debate about Northern Ireland's new policing institutions. Northern Ireland is emerging from a period of serious violent conflict and a prolonged experience of human rights abuses. It is not enough that new policing and criminal justice institutions have been or are being established – they must deliver the change that is so urgently needed. CAJ is aware of the panoply of criticisms of the Ombudsman's office which clearly emanate out of a simple desire to resist change. In contrast, it is CAJ's aim with this Commentary to ensure that any accountability system can secure and retain public and police confidence in its work. We hope that the following Commentary will be a small contribution to this important end.

Chapter 2

Background

This section explains the transition from the Independent Commission for Police Complaints to the Office of the Police Ombudsman for Northern Ireland. It details the powers of the two police complaints bodies and the factors which shaped the creation of OPONI – including the Hayes Review, the Belfast/Good Friday Agreement, the Patten Commission and the inadequacy of the legislation enacted to implement the Hayes Review.

A. The Independent Commission for Police Complaints

The Office of the Police Ombudsman for Northern Ireland replaced the former Northern Ireland complaints body, the Independent Commission for Police Complaints (ICPC). The Commission was made up of eight members, mainly working on a part-time basis, who were supported by approximately 18 staff and had a budget of £978,000 in 1998-99.⁷

According to the ICPC and the Hayes Review,⁸ the previous system worked as follows: complaints could be made to either the ICPC or the Royal Ulster Constabulary, but any complaints received directly by the ICPC were passed to the Chief Constable for recording purposes. It was the prerogative of the Chief Constable to decide whether the alleged action constituted a complaint. The ICPC had no further remit if the Chief Constable did not classify the matter as a complaint. If the Chief Constable did classify the matter as a complaint, several possible forms of action would follow.

The RUC would firstly determine whether informal resolution, which required the consent of the complainant, would be appropriate. Informal resolution was only suitable if the facts alleged, if true, would not constitute a criminal act or disciplinary misconduct. At the end of the informal resolution process, the case would be sent to the ICPC for review. If a complaint could not be resolved informally, the RUC would investigate the complaint, but the complaint would also be referred to the ICPC. The ICPC was required to supervise all investigations of allegations that police conduct led to death or serious injury. The ICPC could choose to supervise the investigation of any other complaint. In 1999, the ICPC supervised 250 cases or 11% of all cases referred to it. The Chief Constable, Secretary of State and Police Authority for Northern Ireland also had some power to refer matters to the ICPC that were not already the subject of a complaint. The ICPC, however, had no power to investigate a matter in the absence of a complaint or referral of this nature. At the completion of a supervised investigation, the ICPC would issue a statement detailing whether it was satisfied with the RUC investigation of the complaint. If the RUC determined both that a criminal offence may have been

committed and that the officer ought to be charged, the case had to be sent to the Director of Public Prosecutions (DPP).

If the RUC failed to institute a disciplinary hearing when thought necessary, the ICPC could direct that such a hearing take place, but the Chief Constable would chair such a hearing and would determine what punishment, if any, would be ordered. As Mary O'Rawe and Dr Linda Moore concluded, "*The fallacy of such a situation (was) demonstrated by the composition of the (misconduct) tribunal and the fact that the middle ranking officer preparing the case (on behalf of the Chief Constable) knew that his or her superior officer was not in favour of the cases being brought.*"⁹

The ICPC system was flawed on many levels, with the main problem being that the police themselves investigated the complaints made against them. Even when cases were supervised by the ICPC, which only took place in a very small percentage of cases, the primary responsibility for investigation remained with members of the RUC. The general public attitude to this practice was one of great scepticism. A survey based on the direct experience of complainants, albeit with only a 28% response rate, found that more than 70% of complainants were either "fairly" or "very dissatisfied" with the way in which their complaints were handled¹⁰ and there was a huge culture of non-cooperation by complainants, who essentially had little or no faith in the system. CAJ began arguing for independent investigation of complaints against the police as early as 1982 and reiterated this call for independence in reports issued in 1982, 1983, 1990, 1991 and 1993¹¹ (see also synopsis on CAJ's work on policing over the years in appendix).

B. The Hayes Review of the Police Complaints System

In 1995, the Secretary of State for Northern Ireland appointed Dr Maurice Hayes to conduct a review of the police complaints system in Northern Ireland. His report, entitled "A Police Ombudsman for Northern Ireland?" was published in January 1997. Dr Hayes found a huge lack of public faith in the ICPC which arose largely from the "*length of the process, the low number of complaints found to have been substantiated and the small number of police officers who had been brought to court, or convicted, or even disciplined as a result of a complaint by a member of the public.*"¹²

Dr Hayes therefore argued that:

The main principles which should underpin a police complaints system in Northern Ireland are:

- The Chief Constable should be responsible for discipline in the force and should be accountable for it to the Police Authority for Northern Ireland (PANI).¹³
- The public should have confidence in the system.

- The police should also have confidence, 'including a genuine belief that misconduct ... will be detected and appropriately dealt with' and that the system will reinforce '...high standards of ethical conduct and integrity, which are recognised as having strong leadership support.'
- The system should be open, fair, easily understood and widely accessible.
- It should not be burdened by an excess of paperwork.
- It should be affordable.¹⁴

Dr Hayes recommended that all complaints should be initially made through and investigated¹⁵ by the Police Ombudsman; but that over time, as public confidence in the police and the complaints system improved, OPONI could move to allowing the police to investigate certain complaints under either appropriate supervision or by means of an audit. He believed that complaints wholly or substantially against policy or operational decisions might best be dealt with by the Chief Constable, subject to the Chief Constable being truly answerable to the Police Authority (now the Policing Board),¹⁶ but was clear that the inability of the ICPC to investigate complaints about policies and practices was a weakness that needed to be addressed.¹⁷

The report was also clear that the Police Ombudsman should have a key research function, tracking patterns and trends and analysing the extent to which specific practices or policies, or the use of certain equipment, tended to increase complaints.¹⁸ Hayes also recommended maximum use of informal resolution.¹⁹ He proposed a lowering of the standard of proof required in disciplinary cases from the criminal standard to a sliding scale appropriate to the seriousness of the alleged offence or the severity of the potential sanctions imposed. Dr Hayes called for consideration of the use of wholly independent disciplinary tribunals not made up of police officers, in which the Police Ombudsman would present the case, but with the Chief Constable continuing to decide discipline.²⁰

Dr Hayes recommended not only that the Police Authority and the Secretary of State should have the power to refer matters that were not already the subject of a complaint to the Police Ombudsman for investigation, but also that the Office of the Police Ombudsman should be able to call itself in of its own motion where it deemed investigation in the absence of a complaint to be in the public interest.²¹ The report also called for a statutory duty for the Police Ombudsman to investigate all "deaths, suicides in custody, and incidents where firearms were discharged."²²

The Hayes review argued that provision be made for the Police Ombudsman to recommend, in appropriate cases, that the Chief Constable make an *ex gratia* payment to the complainant for measurable loss sustained as a result of the action complained of, as well as for out of pocket expenses.²³ Dr Hayes also recommended that the Police Ombudsman reimburse travelling and other required expenses related to a complainant attending his/her interview and/or otherwise pursuing his/her complaint. The report also states that the Police Ombudsman should be able to award legal expenses in exceptional circumstances.²⁴ The Hayes Report was accepted by all political parties and the police.²⁵

C. The Belfast/Good Friday Agreement, the Patten Commission and the Failure of the Legislation to Implement the Recommendations of the Hayes Review

Despite the fact that the government welcomed the Hayes Report and undertook to implement its recommendations, the powers granted to the Police Ombudsman by government in the subsequent legislation were insufficient to create the complaints body envisaged by Dr Hayes. Key powers contained in the Hayes Report were either diluted or missing from the draft legislation, the Police (Northern Ireland) Bill 1998.²⁶ There was little that indicated that the office proposed by the 1998 Police Bill could, on its own, provide the break from the past, necessary to ensure it would succeed where its predecessors had failed.²⁷

This legislative initiative took place against a backdrop of political negotiations whereby a multi-party agreement, had been negotiated and subsequently approved by referendum by 71% of the people of Northern Ireland.²⁸ On foot of this agreement, an international independent commission on policing, known as the Patten Commission (so-called after its chair, the Rt. Hon. Chris Patten) was set up to consider the matter of future policing arrangements for Northern Ireland. The 1998 Police Act was enacted without waiting for the Patten Commission to report, despite it being pointed out by CAJ and others that it could in no way be said to implement Patten. The Patten Commission seems to have agreed that the 1998 Police Act did not fully implement Dr Hayes' vision of OPONI. In its report, the Patten Commission stated that *full* implementation of Dr Hayes' report would create an effective police complaints system.²⁹ O'Rawe and Moore argue that the Patten Commission's need to "*restate unequivocal support for the Hayes Report . . . must be read as rejecting the ability of (the 1998 Police Act) to deliver the pro-active, independent, well-resourced accountability mechanism proposed by Hayes.*"³⁰

Further powers were provided to OPONI, after extensive lobbying, in the Police (Northern Ireland) Act 2000 and again in the Police (Northern Ireland) Act 2003, after further political talks at Weston Park in 2001.³¹ The reluctance to commit to what Hayes had demanded made it appear that the government had to be forced to deliver on its stated commitments in this area. In allowing the subject of police complaints to remain a matter of political gift, carefully crafted recommendations drawn from international best practice were allowed to be styled as political concessions rather than as prerequisites for ensuring the success of the new system. This approach had the effect of allowing government and political parties to treat OPONI itself as a concession and not as a necessary policing reform, opening up the Office to attack and criticism based not necessarily on the quality of the Office's work, but on its mere existence. The reaction of government and some political parties to OPONI's report on the RUC/PSNI's handling of the Omagh bomb investigation is just one example of this phenomenon. See Chapter Three section F, on "OPONI Review of the Omagh Bomb Investigation" for a discussion of the reactions to the Police Ombudsman's Omagh bomb report.

The clearest example of shortcomings in the 1998 and 2000 Police Acts pertains to the ability of OPONI to investigate PSNI policies and practices. Dr Hayes stated that OPONI should have the power to analyse the extent to which specific police practices or policies tend to increase complaints.³² Despite this recommendation, the 1998 police legislation that created OPONI gave the Office no such power. The Patten Commission concurred with Dr Hayes' Report and reiterated his recommendation that OPONI be granted the power to investigate police policies and practices. The Commission recommended that: "*The Ombudsman should exercise the right to investigate and comment on police policies and practices, where these are perceived to give rise to difficulties, even if the conduct of individual officers may not be culpable, and should draw any such observations to the attention of the Chief Constable and the Policing Board.*"³³

The 2000 Police Act did not fulfil Dr Hayes' recommendation in regard to policies and practices either. The 2000 Police Act allowed the Police Ombudsman to research and report on police practices and policies that came to the attention of the Police Ombudsman during the investigation of complaints against individual officers.³⁴ This power only allowed OPONI to "research" rather than "investigate" PSNI policies and practices, and only when they arose as part of a complaint against an individual officer. It was not until after the political negotiations and resultant deals which took place at Weston Park in 2001, that the basic recommendations of Dr Hayes with regard to policy and practice were implemented. As a result, the 2003 Police Act repealed the provision contained in the 2000 Police Act and gave the Police Ombudsman the power to investigate a police practice or policy if the Police Ombudsman believes it is in the public interest to do so and after informing the Chief Constable, the Board and the Secretary of State.³⁵

D. The Office of the Police Ombudsman for Northern Ireland

This section sets out the legislative powers of the Office of the Police Ombudsman. With some minor exceptions, it does not detail how these powers have been utilised to date or whether any problems have arisen either as a result of how the legislation is written or interpreted by OPONI. Such analysis is contained in Chapter 3 of this report.

1. Creation of the Office of the Police Ombudsman

After enactment of the 1998 Police Act, which allowed for the creation of the Office of the Police Ombudsman, Mrs Nuala O'Loan was appointed on 11 October 1999, as the first Police Ombudsman and began recruiting staff and organising the Office.³⁶ The Office of the Police Ombudsman for Northern Ireland was officially opened on 6 November 2000.³⁷ Subsequently, as has been stated, two additional pieces of legislation affecting the powers of the Police Ombudsman were introduced in 2000 and 2003.

The Police Ombudsman is appointed by government to a seven-year term, and cannot be re-appointed. The Secretary of State can call on the Ombudsman to retire in the interests of efficiency or effectiveness, or if satisfied that the Ombudsman has been convicted of a criminal offence, become bankrupt or made an arrangement with his/her creditors.³⁸

2. Types of Complaints Accepted by OPONI

The Police Ombudsman for Northern Ireland has similar objectives but much broader powers than the previous ICPC. OPONI accepts complaints made by or on behalf of members of the public about the conduct of a member of the police.³⁹ To be considered by the Police Ombudsman, a complaint must be made within 12 months, unless: (1) it is not the same or substantially the same as a previous complaint or, if it is, that there is new evidence; (2) the Ombudsman believes an officer may have committed a criminal offence or a disciplinary violation; and (3) the Ombudsman believes the complaint should be investigated because of the gravity of the matter or the exceptional circumstances.⁴⁰ Retrospective cases, which are cases based on complaints made more than 12 months after the incident, are discussed later in Chapter Three section J, on "Retrospective Cases".

The 2003 Police Act allows the Chief Constable to designate a member of police support staff as an officer for the purpose of carrying out investigation, detention and escort duties.⁴¹ The Chief Constable may do the same with contracted out staff carrying out detention and escort duties.⁴² OPONI has been given the duty to investigate complaints against these support staff, as well as Garda Síochána officers seconded to work in Northern Ireland.⁴³

3. Complaints Related to Operational Matters, Policy and Practice

The Office of the Police Ombudsman cannot investigate complaints which relate to the "direction and control" of the Chief Constable.⁴⁴ OPONI must refer such complaints to the Chief Constable, the Policing Board or the Secretary of State, to be dealt with at their discretion and must notify the complainant accordingly.⁴⁵ The 2003 Police Act gave the Police Ombudsman the power to investigate a practice or policy if the Police Ombudsman believes it is in the public interest to do so, and after informing the Chief Constable, the Board and the Secretary of State.⁴⁶ This repealed the provision related to policy and practice contained in the 2000 Police Act, which only allowed the Police Ombudsman to research and report on police practices and policies which come to the attention of the Police Ombudsman during the investigation of complaints against individual officers.⁴⁷ OPONI investigation of police operations, policy and practice is discussed in Chapter Three section B, on "OPONI Investigation of PSNI Operations, Policy and Practice".

4. How Complaints are Received by OPONI

The 1998 Police Act states that complaints made to the police, the Policing Board or the Secretary of State must be forwarded *immediately* to the Police Ombudsman.⁴⁸ In situations where a person calls at a police station to lodge a complaint, PSNI instructions are that details must be recorded on a specific form, and forwarded immediately to the Police Ombudsman. Failure to do so would constitute a breach of the PSNI Code of Conduct.

However, the guidance provided to the PSNI by way of the Northern Ireland Office Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures (NIO Guidance), is ambiguous. The Guidance notes, "*Inquiries from members of the public querying the service provided need not automatically be regarded as a complaint. In such circumstances, it is appropriate for the matter to be discussed with the member of the public to see if the matter can be addressed.....If the complainant still wishes to pursue a formal complaint against the police, it should be forwarded to the Ombudsman*".⁴⁹ A police officer might justifiably believe that the Guidance allows and indeed encourages him or her to try and resolve potential complaints, whereas he or she could face disciplinary action for not forwarding them immediately to the Ombudsman. In addition, this NIO Guidance appears to give the PSNI some authority to determine whether a complaint can be investigated by the Police Ombudsman and therefore whether it should be forwarded to the Office.⁵⁰

There may be some complaints which are easily resolved between the member of the public and the police or which are clearly outside the remit of OPONI, but the legislation clearly sets out that this is a determination which should be made by OPONI. Only in this way will the complaints system retain its transparency and secure public confidence in its independence. There is a risk that, under this Guidance, all complaints made to the PSNI will not be automatically forwarded to OPONI as the legislation requires.

CAJ recommends that the provisions of the Northern Ireland Office Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures with regard to PSNI receipt of complaints be amended to conform more accurately with the legislation and ensure that all complaints the PSNI receive are immediately referred to the Police Ombudsman.

5. Informal Resolution

It is a matter for the Police Ombudsman to decide if informal resolution of a complaint is suitable and this approach requires the consent of the complainant and a determination that the complaint is not serious and, if proved, would not justify a criminal charge.⁵¹ If a complaint qualifies for informal resolution, it is forwarded to the Police Service of Northern Ireland for action (except for complaints

against senior officers, which are referred to the Policing Board). If the matter so referred is not resolved informally by the PSNI, the Police Service refers the complaint back to the Police Ombudsman.⁵² The 2000 Police Act granted the Police Ombudsman the power to mediate, upon agreement of the complainant and the officer involved, cases not considered to be serious, but only after a formal investigation has been carried out.⁵³ The informal resolution process is discussed later in Chapter Three section C, on "Informal Resolution".

6. Complaints not Submitted by Members of the Public

The Office of the Police Ombudsman is primarily mobilised by complaints from members of the public, but the Chief Constable also must refer to OPONI any matter which indicates that the actions of a police officer may have resulted in a person's death, and may refer any matter which indicates a police officer may have committed a criminal offence or violated the disciplinary code.⁵⁴ The Policing Board and the Secretary of State may likewise refer any such matters to the Police Ombudsman.⁵⁵ The police have taken the initiative to request OPONI to investigate all plastic bullet discharges and the use of CS spray at least temporarily, given the high level of public interest in the response of the police to public order situations and the use of force.⁵⁶ The Chief Constable also, by agreement, automatically refers any use of firearms and any serious offence committed by an officer.

The Police Ombudsman may also investigate any matter, which is not the subject of a complaint, if it indicates that a member of the Police Service may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings, if it appears to the Ombudsman that it is in the public interest to do so.⁵⁷ The Police Ombudsman also states that a new duty is to be placed on the Director of Public Prosecutions to refer relevant matters to the Office for investigation.⁵⁸

The 1998 Police Act grants the Police Ombudsman's investigators all the powers and privileges of a constable to investigate complaints.⁵⁹ The Police Ombudsman must investigate all serious complaints, and may investigate all other complaints or refer them to the Chief Constable for investigation, with or without supervision.⁶⁰ OPONI has never referred a case to the Chief Constable for investigation.⁶¹ The PSNI is required to facilitate the interview of officers by OPONI and ensure any delay is justifiable.⁶² The 2000 Police Act and RUC Complaints Regulations 2000 require the Chief Constable and the Policing Board to supply the Police Ombudsman with the information and documents the Office of the Ombudsman may require to complete its investigations.⁶³

7. Criminal Prosecutions

The 1998 Police Act calls on the Police Ombudsman to forward any case indicating that a criminal offence may have been committed, along with its recommendation as to whether prosecution should be pursued, to the Director of Public

Prosecutions.⁶⁴ It is up to the DPP to determine whether or not to actually pursue any criminal charges against the police officers involved.⁶⁵ Criminal prosecution of police officers and OPONI's relationship with the Director of Public Prosecutions are addressed later in Chapter Three section E.

8. *Disciplinary Proceedings*

After the Office of the Police Ombudsman completes its investigation, if the Office decides the complaint does not involve a criminal act or after the criminal case has been pursued, the Police Ombudsman shall send to the disciplinary authority (the Policing Board in the case of senior officers, and the Chief Constable in the case of all other officers) a recommendation as to whether or not disciplinary proceedings are appropriate, and the reasons for that decision.⁶⁶ In the case of the Policing Board, it need only advise the Office of the Police Ombudsman what action it has taken in response to the Ombudsman's recommendation for disciplinary action. If the Chief Constable refuses to commence disciplinary proceedings as recommended by the Police Ombudsman, however, the Police Ombudsman can direct the Chief Constable to comply.⁶⁷

The standard of proof for disciplinary hearings relating to conduct which occurred after the creation of the Office of the Police Ombudsman is the "balance of probabilities", although the degree of proof required increases with the gravity of what is alleged and its potential consequences.⁶⁸ If a complaint relates to conduct which occurred before 6 November 2000, the date OPONI was established, the standard will continue to be the more strict criminal standard of "beyond a reasonable doubt".⁶⁹ Disciplinary hearings, including the standard of proof applied, are discussed later in Chapter Three section D, on "Effectiveness".

9. *OPONI Reporting*

The Ombudsman has the power to report to the Secretary of State on matters related to the individual conduct of an officer, if the Ombudsman believes it is in the public interest to do so. In addition, the Police Ombudsman must keep the Policing Board informed as to statistical and other information related to its handling of complaints against individual officers, including trends and patterns of complaints.⁷⁰

10. *OPONI Disclosure of Information*

The 1998 Act allows OPONI to disclose information to the Secretary of State, and other persons in connection with the exercise of any function of the Office, for the purposes of criminal, civil and disciplinary proceedings or in the form of a summary or general statement.⁷¹ The amount of disclosure OPONI engages in with complainants and others has been controversial and is a topic which is addressed later in Chapter Three section I, on "OPONI Disclosure of Information".

11. Power to Compensate Complainants

The Police Ombudsman can pay the complainant expenses, other than legal expenses, compensation for loss of time, and may recommend that the Chief Constable pay compensation, up to the amount payable in small claims court, if the complainant has suffered measurable financial loss, physical injury, or considerable distress or inconvenience.⁷² The Police Ombudsman has paid complainants' expenses and on one occasion, in the Sean Brown case,⁷³ recommended that the Chief Constable pay compensation to the complainants.

12. OPONI Staff

Although OPONI independence from the Police Service was considered vital for gaining the trust of complainants, the 1998 Police Act allows the Ombudsman to engage serving PSNI officers as well as officers from Great Britain for a period of temporary service with OPONI.⁷⁴ The Act also allows for the provision of serving PSNI officers to OPONI to meet a special demand on OPONI resources.⁷⁵ OPONI does employ seconded officers from Great Britain, but has never employed seconded PSNI officers nor used PSNI officers to meet a special demand on resources.⁷⁶ OPONI has, however, relied on RUC/PSNI investigations of the complaints which OPONI took over from the ICPC, since under that system, complaints were investigated by the Police Service. OPONI does employ ex-RUC officers as part of its investigative staff, an issue which is addressed later in Chapter Three section A, on "OPONI Investigations".

13. OPONI Accountability

To ensure that there is sufficient oversight of the role of the Office of the Police Ombudsman, the Office is accountable to and subject to the inspection of a number of bodies.

OPONI is primarily accountable to parliament. OPONI must comply with any request of the Secretary of State to report on any matters relating to the functions of the Office and is also required to submit annual reports to the Secretary of State.⁷⁷ These reports are laid before both Houses of Parliament.⁷⁸ As part of a more ad-hoc scrutiny process, OPONI was also made the subject of a parliamentary inquiry in 2004 by the Northern Ireland Affairs Committee.⁷⁹

OPONI is audited by the Comptroller and the Auditor General and is subject to oversight and investigation from the Criminal Justice Inspector, the Surveillance Commissioner, the Office of the Oversight Commissioner, the Equality Commission, the Commissioner for Children and Young People and the Information Commissioner.⁸⁰ No reference was made in OPONI's annual report regarding their accountability to the Northern Ireland Human Rights Commission, but it is probable that there are occasions when OPONI would need to comply with strictures from that body in relation to OPONI's compliance with human rights standards.

The Police Ombudsman states that the Office has developed a Satisfaction Policy, Procedure and Register for responding to complaints from staff, responds forthrightly to complaints from the public and police officers, and has a rigorous disciplinary policy.⁸¹ In addition, dissatisfied members of the public, police and staff can take judicial reviews, civil actions and industrial tribunal cases against the Office.

If a police officer has a complaint against the Police Ombudsman for poor administration or wrong application of the rules, and the Police Ombudsman has not handled the complaint to the officer's satisfaction, or there has been undue delay, the officer can complain to the Secretary of State. Examples of the types of complaints that can be brought include: avoidable delay; faulty procedures; unfairness; bias; refusing to answer reasonable questions; discourtesy; and failure to apologise properly for errors. If OPONI cannot demonstrate conclusively that there has been no mal-administration, the Secretary of State shall appoint a person independent of government to investigate and report on the matter.⁸² To date,⁸³ the Secretary of State has not found it necessary to make such an appointment.

Chapter Three

Analysis

A. OPONI Investigations

1. *Nature, Type and Quality of OPONI Investigators*

Dr Maurice Hayes, in his report recommending the creation of a Police Ombudsman, suggested that OPONI should recruit investigators from the ICPC, the legal profession, Customs and Excise, Inland Revenue, Immigration and the Department of Health. Although Dr Hayes stated that there was an argument that while the body was finding its feet it ought to have police expertise available to it, he also stated the balance may change over time and that the staff should be diverse and drawn from a wide range of backgrounds.⁸⁴ CAJ first looked in detail at the importance of a police complaints body using non-police officers as investigators in 1993.⁸⁵

The current make-up of OPONI's investigations department does not seem to represent the broad spectrum of people suggested by Dr Hayes. In the course of the first year, the Police Ombudsman recruited a total of 21 seconded officers from various other police services. At the present time, the number of seconded officers is reducing, but is still significant. Out of 60 investigative staff, as of January 2005, 16 continue to be seconded police officers from Great Britain, although none are seconded from the PSNI. In addition to the seconded staff, the investigations department also has the following ex-police officers on permanent staff: 1 from the South African Police; 2 from the Royal Hong Kong Police; 2 from the Royal Canadian Mounted Police; 4 from the Metropolitan Police; 6 from the Ministry of Defence Police; and 5 ex-RUC officers.⁸⁶ Therefore 36 out of 60 or 60% of OPONI's investigative staff are either current or former police officers.

OPONI has also advised CAJ that 25 out of the 60 investigators come from outside Northern Ireland.⁸⁷ The remainder of the permanent investigative staff come from the telecommunications field, the legal profession, civil service, private investigation, banking, insurance, the former ICPC, local government and Customs and Excise.⁸⁸ OPONI has stated that it has begun to reduce its reliance on seconded police investigators.⁸⁹ In 2004, the Police Ombudsman reported: "*In the early years we had to rely heavily on 21 seconded officers from England and Wales but the recruitment, training and development of our staff and investigators has been progressing well.*"⁹⁰

CAJ recommends that OPONI continue to seek a good balance in its investigative staff between seconded and ex police officers and civilians so that a variety of skills and experience can be drawn upon in the work of the Office.

CAJ believes that representative staffing is vital to creating public confidence in any institution, and that OPONI would benefit in securing a balance between current and former police investigators, between investigators with a police and a non-police background, and between investigators with Northern Ireland experience and those drawn from further afield. Any failure to create such a representative body of investigative staff could be problematic, in that OPONI was set up in part to increase public confidence in the complaints system, and to take the power to investigate complaints out of the hands of the police, and into the hands of a body that is and is perceived to be independent.

An additional safeguard in this respect is the existence of procedural rules governing real or perceived conflicts of interest – particularly governing situations where OPONI investigators, who are ex RUC officers, might be involved in investigating the alleged behaviour of former colleagues. In response to questions, OPONI noted that “*staff are warned against any potential conflicts of interest, which would include not investigating any officer who they knew well in a professional or personal capacity*”.⁹¹ In subsequent correspondence, the Police Ombudsman drew attention to the fact that the Office’s Code of Ethics set out, in paras 26-29, standards of impartiality required of staff, and noted that a staff member who acts in situations of conflict of interest, or fails to disclose a conflict of interest, will have committed “gross misconduct” under OPONI’s Disciplinary Code.⁹²

Clearly former and seconded police officers provide a particular expertise, but others from a non-police background can be trained to the same level and may bring fresh experiences and ways of looking at a problem. As one representative interviewee stated, seconded officers may know their work and be shocked by local police behaviour, but they are not completely independent: “*You get ‘police talk’ from them and they may think ‘that is the way it is done’*”.⁹³

Approximately 80% of OPONI total staff originate from Northern Ireland, although only approximately 58% of the investigative staff are from Northern Ireland.⁹⁴ While it is positive to have outsiders, who may have a fresh take on policing in Northern Ireland, this preponderance may also cause problems. The problem with not having staff from Northern Ireland is that they may not understand the significance of local issues and concerns or the culture and history of Northern Ireland, although they may be thought to have a more unbiased approach to complaints.

For example, two interviewees stated that the investigative staff seconded from British police services did not know that it has proved impossible until very recently to secure criminal convictions against officers for human rights abuses and other crimes committed while on duty. Another said that in a complaint involving serious sectarian harassment by an “untouchable” loyalist, the investigator did not appear to understand how this could be possible, or how life-changing the experience had been for the complainant. Obviously, there could be differing interpretations of such exchanges, but the interviewee had rightly or wrongly concluded that the investigator, not being a local, did not understand the reality of local circumstances.

It is clear that there are many advantages in recruiting investigators from beyond the ranks of ex-police officers and to recruiting beyond a narrow Northern Ireland employment pool. The potential problems are not inevitable and effective induction and staff training programmes can counter some of the potential disadvantages noted above. For example, OPONI has introduced a programme of Accredited Investigative University training that is designed to enable the development of investigators without any former police experience, as well as adding to the skills of those who join the office from other jurisdictions. OPONI believes that this may be the first of its kind in the UK or Ireland.⁹⁵ OPONI has also introduced training that is devised to ensure that staff members address their own inherent biases and prejudices and become more conscious of the sensitivities and needs of both the public and the police.⁹⁶

In response to early exchanges, OPONI had informed CAJ that there was no formal structured induction training given to seconded officers, but that they have been tutored in 'in house' policies and practices, and that OPONI was reviewing the area of induction training for all staff.⁹⁷ OPONI also informed CAJ that training on Northern Ireland and its policing situation is only provided "at intervals".⁹⁸ More recently, however, OPONI informed CAJ that formal structured induction training for seconded officers was being introduced, and would continue to be provided in future.⁹⁹ The Ombudsman notes that the Office "regards training as enormously important and have put very significant resources into training since the Office opened".¹⁰⁰

CAJ recommends that an audit of staff training needs be carried out and that all OPONI staff, whether from Northern Ireland or not, are thoroughly and independently trained on issues related to policing in Northern Ireland, as well as how best to carry out their duties impartially and the manner in which they are expected to interact with both complainants and police officers.

The question also arises as to how candidates are screened. Although some interviewees described the investigators as fair and professional and their interviews thorough and polite, most had inconsistent experiences. Many interviewees expressed concern with how they were treated by OPONI investigators and with regard to the quality of their approach to investigating complaints. While these examples cannot be seen as representing the experiences of all or even a large number of complainants, it is clear that at least some, including lawyers representing a large number of complainants, are unhappy with their treatment. One interviewee went so far as to say that the attitude of the OPONI investigators is "*brusque, almost rude, contemptuous, arrogant and off-putting*". This attitude led this solicitor to think that the investigator was dismissive of the complaint itself. Perhaps unsurprisingly, the solicitor felt vindicated in this belief when the complaint was in due course rejected.

Another solicitor interviewed said that an OPONI investigator started the conversation by stating he had lots of experience dealing with obstructive lawyers. At the conclusion of the investigation, the solicitor was advised that the complaint was determined to be unfounded. The solicitor believed that in this case, the

investigator spoke to the police officers involved and felt able to deny the complaint without coming back to check the police officers claims with either the solicitor or the complainant.

Another interviewee complained to CAJ that the statement recorded by the investigator did not resemble the complainant's description of the facts, and that the investigator even seemed to add facts to the story which the complainant had not said, but which corresponded to the police version of events. Some of the additions might well have given the impression that the complainant was involved in illegal activity.

As noted earlier, CAJ cannot vouch for the accuracy of any of these accounts. If true, however, they would of course be deeply troubling and would seriously undermine the credibility of OPONI. These concerns certainly require regular auditing of systems within OPONI to ascertain that such concerns can be spotted quickly and, where necessary, remedied. OPONI believes that its procedures are fairly robust and expressed some doubts regarding the above examples.¹⁰¹ For example, there is a requirement to supply complainants with six weekly updates, and for complainants to sign their own statements and therefore to ascertain for themselves that they are accurate. OPONI also believes that the procedures for complaining about their Office are reasonably well publicised, given that the procedure is included in their general leaflet, on their website, and included in regular distribution networks.

CAJ recommends that the procedure for making complaints regarding OPONI be mailed to each complainant at the time the complaint against the police is made. CAJ further recommends that OPONI monitor closely the experiences of complainants with OPONI since most, even if they feel aggrieved, will not complain to OPONI. OPONI should include in its annual report details on the nature and quantity of this monitoring work, complaints made about the Office by either police officers or civilians, and should indicate what steps, if any, will be taken to remedy deficiencies.

2. Quality of OPONI Investigations

A number of issues were drawn to our attention in the course of interviews with regard to the quality of OPONI investigations. Consultees expressed concern about complaints being "weeded out" inappropriately; the overall quality of investigations; dissatisfaction with the amount of time required to complete investigations; the extent to which retired officers can be rendered amenable for misconduct; and the effective independence of the Forensic Science Agency, upon which OPONI occasionally relies in its investigations and re-investigations. Each of these concerns is addressed in turn in the following section.

On the question of "weeding out" of complaints, some solicitors representing complainants were concerned that complaints staff "weed out" a high percentage

of complaints and do not send them on for either informal resolution or investigation. One interviewee advised CAJ that she made a complaint by phone in 2001 and left all relevant details, including the names of the officers involved, but was told to make her complaint in writing, something she could not do as she was sick at the time. She is unaware if the matter was even recorded, much less followed up by OPONI.¹⁰²

The Police Ombudsman states that the only cases which are "weeded out" at this initial stage are those outside OPONI's remit and those in which the complainant does not provide sufficient information as to the place, date and time of the incident to enable its consideration.¹⁰³ OPONI also states that the complainant will be notified of any such action and why it has been taken.¹⁰⁴

OPONI's 2003-04 annual report does confirm that OPONI closed 43% of complaints "following enquiries" and that a further 13% were not investigated because they were found to be "incapable of investigation", "ill-founded", or "vexatious, anonymous, repetitive, abuse of procedure, etc."¹⁰⁵ Only 14% of complaints closed in 2003-04 were informally resolved and only 22% of complaints made by members of the public were formally investigated.¹⁰⁶ These percentages do not reflect the 278 complaints (9% of the total number of complaints closed in 2003-04) that OPONI did not consider in these calculations because they were found to be outside OPONI's remit and not included in OPONI's statistics for the total number of cases closed.¹⁰⁷

OPONI has stated that the 43% of complaints closed in 2003-04 which were "closed following enquiries" consist of cases in which complainants failed to cooperate with the Office, either by not assisting with the investigation, not indicating what further steps they wanted to be taken with regard to their complaints or, in some cases, after cooperating but indicating that they did not want to pursue criminal or disciplinary action against the officers concerned.¹⁰⁸ Even if some of these complainants did initially cooperate with the process, the high percentage of closed cases indicates that a very high proportion of complaints are weeded out because OPONI believes the complainants have failed to cooperate. While the Ombudsman questions this conclusion, it is difficult for the public to draw any other conclusion from the statistics provided.¹⁰⁹ It would aid a better public understanding of the process of closing cases, if the categorisation of such cases were more delineated.

OPONI states that safeguards protecting against the inappropriate closure of complaints before the investigation phase include the requirement to get the approval of a line manager and the fact that a complainant can seek to re-open a complaint. OPONI has stated that it recognises that complainant non-cooperation rates are high and that it plans on researching this topic.¹¹⁰

CAJ welcomes OPONI's commitment to analyse why such a high number of complaints do not proceed to the informal resolution or formal investigation stage and recommends that the findings be rendered public along with proposals to resolve the problem and create a review system which ensures genuine complaints are not weeded out at this stage.

With regard more generally to the quality of investigations, consultees reported to CAJ great inconsistencies, with many saying that low-profile complaints are not handled as well as high-profile complaints, despite the obstacles faced in many high-profile cases. The Policing Board stated that the standard of OPONI investigations, as evidenced through the reports it receives, is high and the reports are well written, comprehensive and balanced.¹¹¹ Likewise, the Internal Investigations Branch (IIB) of the PSNI, the department which holds the misconduct hearings in cases forwarded to them by OPONI, stated that while there were some concerns with the quality of OPONI investigations in the beginning, there has been great improvement, and all OPONI investigations forwarded to their office are now of a high standard. Others disagree.

One interviewee stated that in one case, OPONI failed to take witness statements or obtain medical records. Another said that OPONI gave a clean bill of health to a police investigation of a case of suspected collusion by a soldier and when sent criticisms of the investigation, reacted defensively, not constructively. Another interviewee stated that one needs to keep a very close check on the development of investigations since not all of them are impressive. He cited one case in which OPONI, due to a lack of local knowledge, did not know how to locate or did not bother interviewing a member of the press who witnessed the incident which was the source of a complaint. This despite the fact that determining to which news outlet the journalist belonged was an extremely easy task.¹¹² Other examples of OPONI not seeking out non-police witnesses are given in Chapter Three section K, on "Government and OPONI positions on Plastic Bullets".

In one case which OPONI took over from its predecessor, the ICPC, a complainant made an initial statement to the ICPC about being assaulted with a baton. According to the complainant, the police video showed the complainant approaching the police and then being carried away, without showing the actual assault that led to the complainant being carried away. The police video would appear to have been cut and the complainant won an out-of-court settlement against the police. He stated that he never had received a letter indicating that OPONI had taken over the investigation of his complaint, and instead of being contacted to elaborate on his statement, which clearly had issues requiring clarification, he received a letter from OPONI stating there were no grounds for discipline, but that the officers would be "talked to" about the use of batons. OPONI must have found reasons for the officers to be talked to about how to use batons and public monies were paid out by way of compensation. Why then did OPONI not contact the complainant and find the complaint substantiated?¹¹³

One consultee expressed the belief that OPONI was more proactive in the beginning and has since become more reactive. He stated that OPONI decided to investigate a landrover driving at young people in the Ardoyne area of Belfast without a complaint after seeing the incident on television. The Office did not, however, take any initiative to investigate the use of water cannon and allegations of heavy-handed policing on the Upper Springfield Road during the 2002 Whiterock parade, which was similarly aired on television. The Ombudsman has indicated that such apparent disparities in action can often be explained by the presence or

absence of complaints about the incident in question. If no formal complaints are forthcoming, the Ombudsman has the power to call herself in; no such pro-active measure is needed where a complaint is made, since the Office is automatically involved. The key issue from the perspective of the public is the need for clarity – does the Ombudsman normally need to receive a formal complaint to take action, or does the staff routinely monitor, say, media coverage to see if there are any reports of police action that might be considered worthy of investigation? If the Office is to avoid charges of bias and/or inadequate action, it should make clear how much it intends to be proactive as well as how the general public could assist OPONI. Much advice is given about the pursuit of individual complaints, but how can members of the public, community groups, voluntary groups working with Travellers, young people, domestic violence victims etc. help OPONI respond to more generalised policing problems?

It is difficult on the basis of these anecdotal experiences, some positive and some negative, to arrive at any clear conclusions about the overall quality of OPONI's investigations. It would appear, however, that the quality of the investigations may well be 'patchy' at least. This may be a function of the learning curve that any new body has to undertake. There may also be issues, however, about the seniority or experience of the investigators on staff, and/or issues related to the high preponderance of current and former police officers conducting OPONI investigations and following standard lines of police enquiry – something which has both strengths and weaknesses. Clearly OPONI needs to ensure that the quality of its investigations is of a very high standard if people are to have the necessary confidence in the institution.

In addition, OPONI's Annual Report only states that it inspects closure categories, the appropriateness of informal resolution referrals, the accuracy of data input, the capture of relevant misconduct issues, and the forwarding of appropriate memoranda following investigations.¹¹⁴ OPONI states that, for at least the last 12 months, each investigation is reviewed every 60 days by the Deputy Senior Investigating Officer.¹¹⁵ OPONI has set for itself the objective of "Achieving a high level of satisfaction through quality of investigation process".¹¹⁶ One target OPONI has set for itself to assist it in meeting this objective was to carry out 10 quality assurance audits on investigation processes by March 2004.¹¹⁷ OPONI suggests these audits are showing improvement, but further details are not forthcoming at the time of writing.¹¹⁸ OPONI has indicated that the results of these audits will be reported on in OPONI'S next annual report.¹¹⁹

CAJ had assumed that a review of the quality of investigations was not part of the overall quality assurance programme, given the nature of inconsistencies that we were learning of in the course of our research. However, the Ombudsman asserts that this is not correct and that there is quality assurance of the work done.¹²⁰ Since several of the incidents related here pre-date some of the systems now introduced, we can hope that any future repetition would be quickly picked up and remedied, but this should be carefully monitored.

The suggestion has been made that an external expert should be appointed to review a sample of OPONI investigations to ensure the same standards and procedures are being applied across the board. OPONI expects to be inspected by the Criminal Justice Inspection in April 2005, and can invite others to carry out Quality Assurance processes into particular investigations, as indeed they have done for others.¹²¹

CAJ recommends that OPONI keep the issue of quality control of its investigative process regularly under review and seek opportunities to work with others to this end.

A second target OPONI set for itself to meet its objective of achieving a high level of satisfaction with the investigation process is to survey 50% of complainants to determine their satisfaction with OPONI's investigations of their complaints by December 2003.¹²² As of June 2004, the complainant satisfaction survey is based on a sample of only approximately 25% of closed cases.¹²³ OPONI claims that the "*(c)ustomer satisfaction survey is showing improvement*" but does not publish the specific results of the survey, although OPONI does state that information arising from the satisfaction survey will be placed in the public domain in the near future.¹²⁴ It is also not clear how complainants would be able to assess their satisfaction with OPONI's investigations if, as many interviewees assert, complainants are not necessarily advised what lines of inquiry were pursued.

One of the reasons given for the fact that OPONI does not currently canvass all complainants is the problem of limited resources, and the fact that there is only a relatively small Policy and Practice Directorate, which has to work across a range of different issues.¹²⁵ In earlier publications, most particularly, a 1997 report entitled *Human Rights on Duty*, CAJ noted the importance of any future effective complaints body having a "*well-funded and professional research arm*".¹²⁶ On the basis of international experience, CAJ concluded that "the importance of research, and the resourcing of research, cannot be overstated", and we urged that legislation make explicit mention of the research component of OPONI.¹²⁷ The resources of all public bodies are finite, and have to be marshalled carefully, but cost-savings in the area of research can be counter-productive. Accordingly:

CAJ recommends that OPONI send its satisfaction survey to all complainants, whether their complaint makes it to the full investigation stage or not, so that all complainants, including those whose complaints were found to be outside OPONI's remit or rejected for other reasons, are consulted, and that the full results are published.

CAJ further recommends that, because many complainants may not complete a survey, especially if they failed to cooperate in the first place, that OPONI also consult complainants in more proactive ways, including by approaching solicitors and non-governmental organisations known to assist complainants.

CAJ recommends that OPONI liaise with the PSNI, the Policing Board, the Northern Ireland Office, and other relevant bodies to determine how best to resource a high quality programme of policing research reflecting the different interests and expertises of the different bodies.

A particular concern about the quality of OPONI investigations related to the delays consultees reported experiencing. The Police Ombudsman's goal for completing investigations, excluding time beyond the control of the Police Ombudsman, is 90 working days.¹²⁸ The current performance is an average completion time of 99 working days or approximately five months.¹²⁹ If the average is five months, it is taking OPONI much longer to complete some complaints. One interviewee advised CAJ that the "sky is the limit" when it comes to delays and, during the conduct of this research, several of the solicitors interviewed were not able to report how the complaints they were involved in were resolved, since most remained pending. Other interviewees stated they did not understand why they had to wait two years for responses to complaints. These findings are all the more disturbing in that, as OPONI has confirmed to CAJ,¹³⁰ there are in place procedures to inform complainants on a six-weekly basis of progress on the complaint. OPONI noted that they found that there was a high compliance rate with this six-weekly notification system (83%) in respect of complaints received from 1 April 2004.¹³¹ It is not clear to CAJ why there is such a discrepancy between the attitudes of complainants that we interviewed, and OPONI's belief that they keep complainants routinely informed of progress. It may of course be due to complainants being dissatisfied at the overall length of the investigations. In such cases, however regular and frequent the updates, the delays in and of themselves will leave the complainants dissatisfied. OPONI may want to build into its monitoring of compliance rates some questions as to whether the complainants feel adequately informed of progress, and in particular whether they understand and accept the reason for any delays that are occurring. The problem may be one of competing expectations, and if so a qualitative as well as a quantitative approach to monitoring will be required if OPONI is to perform its work to its fullest potential.

Delays are always problematic since there is truth in the adage "justice delayed is justice denied", but the consequences of delayed investigations into very serious allegations could be particularly damaging. For example, with regard to disputed killings by the police, significant delay could find the Police Ombudsman's procedures fall outside the requirements of the jurisprudence of the European Court, which requires a prompt investigation. The Court has stated that: "*A requirement of promptness and reasonable expedition is implicit in this context It must be accepted that there may be obstacles or difficulties that prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigation of a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.*"¹³²

Several questions come to mind regarding delays. One is the extent to which the delays are due to the Office of the Police Ombudsman or the Police Service. The

following examples illustrate the types of delays complainants are facing and the lack of clarity as to which institution is at fault, or whether there are institutional failings at several points in the complaints system that need to be addressed.

One interviewee explained that it took the Police Ombudsman six months to identify which custody sergeant refused to answer his question and then hung up the phone on him. The complainant stated that once the Ombudsman's investigator did identify the sergeant, it was discovered that the sergeant was on sick leave and the interview was delayed further. In another complaint regarding an alleged baton attack on 12 July 2001, an accused officer still had not been interviewed as of March 2003 - ie a full twenty months later. From the perspective of the complainant, this is an unconscionable delay, and yet it is not always clear whether there is a justifiable reason for the delay.¹³³ Excessive delays may also put at risk the legitimacy of the process as a whole – police officers complained about may be justified in arguing an abuse of process if and when the complaint eventually reaches a criminal or disciplinary tribunal. The Police Ombudsman has stated that it can take months to arrange interviews with officers on sick leave and that interviews with officers are frequently cancelled. There are occasions when sickness and unavailability are very justifiable reasons for delay; and others when it could largely be a case of obstructionism. So, the real question about delay lies in whether the delay is largely due to failings in the Office of the Police Ombudsman or due to the police being obstructive?

The PSNI is required to facilitate the interview of officers and ensure any delay is justifiable.¹³⁴ Investigations can, however, also be delayed due to the length of time it takes the police to supply materials.¹³⁵ One interviewee commented that in a relatively minor case submitted in October 2002, the complainant received a letter from OPONI in February 2004 indicating OPONI had just received a response from the PSNI. In this case documents had gone missing, but the interviewee was concerned as to how long it should take the PSNI to supply documents. Clearly the Police Ombudsman sees the police as at least partly to blame for the delay in completing investigations. It also must be asked whether all documents necessary to OPONI investigations, including intelligence files, are being passed to the Police Ombudsman.¹³⁶ Partial supply of documents could also cause delay in the completion of investigations.¹³⁷ The Police Service is statutorily required to provide the Police Ombudsman with the information and documents it requires to carry out its investigations,¹³⁸ but it has been suggested that OPONI should be given some enforcement power to place time limits on the police.

CAJ recommends that OPONI be granted the power, where it believes that PSNI delays are hampering its investigations, to force the PSNI to supply all information required within a certain reasonable period of time.

Another question related to delays, especially in relation to retrospective cases, is whether delays can be explained by a lack of sufficient funding for OPONI's work. This Commentary explores the specific issue of retrospective cases in Chapter Three section J, on "Retrospective Cases", but generally there is a need to ensure

that the Office has sufficient funding to carry out its functions adequately. In May 2004, OPONI advised CAJ that there are a number of retrospective cases awaiting investigation and that additional resources would improve this situation.¹³⁹ OPONI reported in its 2003-04 annual report that retrospective cases are investigated as resources permit and that 15 cases are pending.¹⁴⁰

Yet another question concerning delays relates to the time in which it takes the Director of Public Prosecutions to decide whether or not to prosecute cases referred to it by OPONI. Such problems were particularly troublesome in the early stages of OPONI's functioning, though there have apparently been great improvements made in the past year. Delays at this point in the process can be particularly problematic for several reasons. If a complainant is aware that OPONI has recommended that action be taken by the DPP, any delay that is not clearly explained and justified by the DPP is likely to be treated with suspicion. Complainants having experienced police behaviour serious enough for OPONI to recommend action by the DPP are likely to feel quite aggrieved, and will want to be assured that the criminal justice system will respond in a fair and independent manner to civilian complaints. Unexplained delays will harm the image not only of OPONI, but also the image of the wider criminal justice system and its capacity to respond in a transparent manner to serious allegations made against police officers. It should also be noted that delays here (and indeed at any stage in the process) also cause an unacceptable burden on the police officers involved.

Furthermore, even if the DPP determines that there is insufficient evidence to warrant a criminal action being taken, their delays will succeed only in further delaying the option of OPONI recommending disciplinary action. The latter decision cannot be taken until the DPP has determined whether or not it will prosecute a case. Dr Hayes stated that he thought there was "*scope for discussion between the ICPC, or its replacement, the police and the DPP about time limits and reducing delays*".¹⁴¹ We explore the relationship between OPONI and the DPP later in this Commentary in Chapter Three section E, on "OPONI Relationship with the Director of Public Prosecutions".

OPONI made the point in correspondence with CAJ that there can be additional causes of delay. For example, there could be delays in getting information from forensic scientists and in securing expert medical opinions. OPONI also stated that some delays are caused by the complainants and/or their solicitors, and/or in getting interviews with witnesses.

OPONI recognises that there were delays in the early days of its life, precisely because it was a new institution, with less than its full complement of staff, and having to create new systems to engage with a range of other bodies. OPONI believes that a lot of those early 'teething' problems are now resolved and records that the average time taken to investigate a case has been reduced from 140 days to 99 days.¹⁴²

CAJ recommends that OPONI monitor the issue of delays in its investigations very closely, maintain records on the various reasons for delays, and report on these reasons and any remedial action proposed in its annual reports.

A quite distinct, but very important, concern was raised in the course of our interviews about the limitations on OPONI to fully investigate and recommend disciplinary hearings in cases where the officers accused of misconduct have subsequently retired. There is currently no way by which officers who have subsequently retired can be penalised for behaviour which, if they were still serving, would amount to a disciplinary offence. This would be a problem for any police complaints system, but is particularly important in the Northern Ireland context where recent policing changes have led to the introduction of good severance packages and a large number of officers retiring. The simple departure of police officers who have engaged in improper behaviour may have some positive effects on the future of good policing, but it leaves complainants dissatisfied, could potentially reduce the institutional learning that might flow from completed investigations, and may ultimately contribute to a culture of impunity and all of its attendant implications. CAJ welcomes the statement from OPONI that they do pursue investigations on occasion where some of the officers have retired for the very purpose of achieving the institutional learning.¹⁴³

As will be seen below, the limitations on, or obstructions to OPONI's authority in some instances relates not only to retired, but also, on occasion, to serving officers.

Although OPONI can investigate retired officers in criminal matters, it is not possible for them to demand to interview or discipline retired officers regarding matters of misconduct. It is also possible that, on occasion, OPONI will not be able to access enough evidence to make a determination of whether a retired officer has committed a crime before calling the former officer for interview.

The case of the murder of Sean Brown illustrates this problem. The Office of the Police Ombudsman investigated the murder of Mr Brown and found that the RUC had failed to adequately investigate the case.¹⁴⁴ The Senior Investigating Officer with overall responsibility for the failed investigation is retired and therefore could not be made amenable for any alleged misconduct.¹⁴⁵

Although the Senior Investigating Officer did consent to an interview, he did not provide any explanation for the failures identified in the investigation. As a retired officer, he could not be subjected to a disciplinary hearing. This would not have been true of the Deputy Senior Investigating Officer, who was still a serving PSNI officer, but the Police Ombudsman found that the Deputy Senior Investigating Officer could not be disciplined because he claimed that the Senior Investigating Officer had held all decision-making responsibility in the case. The Police Ombudsman had the following to say about the Deputy Senior Investigating Officer's claim of complete lack of responsibility: *"In the absence of the Policy File [which disappeared after the PSNI was notified of the complaint] which would have clarified responsibility for decision-making, this provides an effective shield."*¹⁴⁶

This limitation in the Police Ombudsman's power is potentially debilitating, especially in retrospective cases, or where an officer chooses to retire to escape responsibility.

A misconduct hearing against an officer would also automatically lapse if the officer retired on medical grounds. The NIO Guidance states that a misconduct hearing against an officer should not prevent or delay medical retirement unless it is not in the public or force's interest to allow the officer to proceed with medical retirement.¹⁴⁷ The Office of the Police Ombudsman has identified the limitation on the Office's power to interview retired officers regarding misconduct as a concern. The Police Ombudsman has stated: *"There are still police officers who have retired, some very recently, and who have information as witnesses about incidents that are the subject of investigation, who refuse to give statements to my investigators or to assist with particular investigations. This makes the investigative process unnecessarily difficult."*¹⁴⁸

CAJ recommends that the Office of the Police Ombudsman be given the power to investigate and interview retired officers in connection with possible misconduct as well as crimes they may have committed in the course of their police duty.

Lastly, with reference to the quality of OPONI investigations, it is worth noting that concerns have been raised of late regarding police and DPP interference with the Forensic Science Agency (FSNI) in Northern Ireland. OPONI has investigated these allegations.¹⁴⁹ In one case, a forensic scientist claims that the PSNI's Senior Investigating Officer on the case and a senior DPP official requested that he remove from his report and the case file details of evidence linking another person to the crime.¹⁵⁰ The other person, who was arrested and released, turned out to be a police informer.¹⁵¹ This is evidence that the defence solicitor stated was clearly relevant to the defence of his clients. In addition, the forensic scientist claimed that soldiers opened a bag of clothing and rubbed a gloved hand over them, allegedly to plant evidence.¹⁵² The charges against all three suspects were eventually withdrawn by the DPP.¹⁵³ In a second case, a forensic scientist refused the request of a police officer to test clothing that may have been inadvertently contaminated. OPONI concluded in its investigation that this particular request by the police officer was quite appropriate. Contamination had meant that forensic data could not have been relied upon in the prosecution of the suspect, but might have been found to exonerate the suspect. The inquiry highlighted that, contrary to press speculation, the forensic scientist said she has never been asked by the PSNI to give false testimony.¹⁵⁴

According to the Police Ombudsman's Office, there are a number of steps underway in FSNI to address these various issues, and the Police Ombudsman can and does make use of other forensic science expertise.¹⁵⁵ However, OPONI uses the services of the Forensic Science Agency in its investigations of police officers,¹⁵⁶ so – as with other agencies in the criminal justice system – any concerns about its efficiency and/or rigorous independence from the police may also have an impact on the quality and credibility of OPONI investigations.

3. *Inability to Investigate the Army*

An issue that was not clearly addressed in the legislative phases of the establishment of OPONI relates to its duties, if any, with regard to the army when the army is performing policing functions. The situation in Northern Ireland often leads to joint police/army operations or sole army operations in support of and at the request of the Police Service. It can be argued that, when the army is acting in support of and at the request of the Police Service, that OPONI should be able to investigate complaints against soldiers. However, the Police Ombudsman believes, and the courts have confirmed, that OPONI's power does not include the ability to investigate the army.¹⁵⁷

OPONI's inability to investigate the army, especially in joint public order operations in which plastic bullets are fired by both organisations, is particularly problematic. The PSNI has agreed to have the Ombudsman's Office investigate every police firing of plastic bullets. Neither the Police Ombudsman nor any other body is responsible, however, for scrutinising army firings of plastic bullets.¹⁵⁸ In a 2003 judicial review, the judge determined that a complainant's allegation that he was hit by a plastic bullet fired by the army fell outside the definition of a complaint within OPONI's power of investigation, because no misconduct by a police officer was alleged.¹⁵⁹

This lack of scrutiny has led many people to worry that the army – subject to less independent scrutiny than the police – might be used as a proxy for the police in the firing of this lethal weapon. This issue and evidence supporting this contention are addressed in Chapter Three, section K, on "Plastic Bullets". The police have also expressed some concern at the apparent double standards being used – at the Police Ombudsman's November 2003 conference, the Chief Constable stated that the fact that there is no accountability for army firing of plastic bullets is the source of some questioning.¹⁶⁰

This debate is clearly much wider than the work of the Office of the Police Ombudsman, but if the existence of an accountability mechanism to address police behaviour and the non-existence of a proper accountability mechanism to address army behaviour were to inadvertently contribute to more plastic bullet firing by the army than by the police in public order situations, this would clearly be a deeply troubling development. Despite believing the Office does not have the power to investigate army conduct, in one case OPONI did decide to make a recommendation to the army in the public interest. In that case, police commanders were of the opinion that in an incident in which plastic bullets were used, the military presence was exacerbating the situation. The police claim they repeatedly asked the military to withdraw, but that the military refused. OPONI suggested that the military consider the consequences of their failure to withdraw.¹⁶¹

It also appears that OPONI has asserted its right to interview former soldiers who may have evidence of relevance to its investigations of complaints against the police, despite the opposition of the Ministry of Defence.¹⁶² In that case, OPONI is investigating the former soldier's claim that the RUC's halting of the surveillance

of an IRA sniper team in order to protect an informer led to the murder of another soldier in 1997.¹⁶³ This investigation will also presumably necessitate OPONI investigation of the actions of the British army.

This conundrum might be solved in a more coherent manner by taking the view that where the army is deployed in support of the PSNI, such as in public order situations, OPONI has a role to play. It is untenable to imagine that the authorities in general, or OPONI in particular, can or would want to ignore such a gap in accountability. While it is currently considered that only the PSNI can investigate army firings of plastic bullets, this policy seems to run counter to the fact that it will have been the police who called in the army to a particular situation and will most likely have endorsed (albeit sometimes in very general terms) that the firing of plastic bullets was an acceptable response in the circumstances. It is therefore quite inappropriate for the police to investigate the army in such situations. CAJ endorses the recommendation made by the Northern Ireland Human Rights Commission in this regard, which calls for the Police Ombudsman to be “*statutorily empowered and given the requisite staff and financial resources to investigate ALL firings of baton rounds*”.¹⁶⁴

Joint public order operations are only the most obvious area in which lack of independent scrutiny of the army is problematic. The Police Ombudsman has recommended the creation of a power that would allow her to recommend the prosecution of persons engaged in joint criminal activity with police officers.¹⁶⁵ There are incidents, the 1989 murder of solicitor Patrick Finucane, for example, which OPONI would not be able to fully investigate, because of the involvement of army operatives. Such compartmentalisation is problematic on many levels and leaves the Office unable to impact on areas such as collusion to the extent necessary to tackle such a pernicious and difficult problem. It is vital that when the army is carrying out policing functions they should be held to at least the same level of accountability as the Police Service and that part of this function should be performed by the Office of the Police Ombudsman to ensure a holistic approach. The Office would need to be properly resourced to undertake the additional workload involved.

CAJ recommends that OPONI or another specially created body be given the statutory power and the resources to investigate army activities performed in support of the PSNI. This would include the operation of army patrols and checkpoints; the use of emergency powers and informers; the handling of security; as well as army conduct in joint police-army operations.

4. Legal Safeguards

There are clearly problems that need to be addressed regarding the most efficient and productive relationship between OPONI and solicitors asked to act for complainants. CAJ interviewed several lawyers (seven out of the 40 in-depth interviews were with solicitors) and these solicitors represented a large number of complainants and – in some cases – police officers complained about. The

solicitors expressed concern that OPONI often by-passes them by communicating only with the complainant and there was a clear implication that OPONI found it 'easier' to deal with individual complainants than to have to engage with their legal representatives. They complain that OPONI writes letters to the complainant that are not copied to the lawyer and will also telephone the complainant instead of the lawyer. The solicitors argue that complainants who are represented by lawyers have chosen not to represent themselves and may not be able to adequately inform the lawyer about what transpired during often relatively technical and legal conversations.

OPONI challenges both the reality and the perception of these findings, saying that the solicitors: *"may have said this but it is factually incorrect. We do what the complainant asks. If the complainant asks that we write to the lawyer we do so. If the complainant asks that we write only to them we do so. We also telephone the complainant on occasion (unless they have specifically asked us not to do so but to communicate through the lawyer) because it can be much quicker than going through the complainant's lawyer who may be unavailable, at court etc."*¹⁶⁶

It seems to CAJ that these apparently contradictory versions can in fact be reconciled. We doubt if many complainants have given explicit instructions that they not be contacted under any circumstances by OPONI; accordingly, OPONI in the absence of an instruction to the contrary may well find it more practical to contact the individual complainant rather than the complainant's solicitor (who is, as indicated, likely to be often away from his/her office). This does not, however, make for satisfactory communications and, whether deliberately or not, will leave the solicitor wary about the fact that s/he is being excluded. It is, after all, likely that many complainants will find it difficult to convey some of the complexities of a case that have been relayed to them by OPONI – especially if the discussion took place by phone – to their solicitor. In the absence of effective communication between OPONI and complainants' solicitors, complainants will not get the best legal advice and serious obstacles could arise in the way of OPONI carrying out effective investigations.

CAJ recommends that OPONI carry out a study directed at those solicitors who have represented complainants to assess their level of satisfaction with the current arrangements and to determine if there are any communication or other problems that need to be addressed.

Such a study could also address a number of other issues which were brought to CAJ's attention, but which are refuted by OPONI.¹⁶⁷ For example, some lawyers also complain about OPONI trying to exclude them from meetings with their clients. British Irish Rights Watch, which has worked on complainants' cases for years, likewise complains that OPONI is not communicating with it, even when complainants ask them to do so, and that OPONI has objected to its representatives attending meetings with complainants.

OPONI believes that it does not limit the access of legal representatives. It does however recognise that *"there are, on rare occasions, very sensitive issues, such*

*as the medical history of a member of the family, which are relevant to the family, or may be unknown to the family, and which we would not wish to refer to in the presence of people other than the family. This is a matter of confidentiality, and respect for the family and the individual to whom the information refers. It is a very rare event, but we would seek to discuss such matters privately rather than in the presence of third parties. If the family subsequently choose to reveal such matters to third parties, be they their legal representatives or anyone else, that is a matter for the family".*¹⁶⁸ Again, CAJ can reconcile competing versions of events, with some representatives feeling deliberately excluded from meetings and unable to effectively assist complainants, whereas OPONI considers that they are acting in the best interests of the complainant. This is not, however, a satisfactory arrangement, and CAJ believes that OPONI should engage with complainants, their legal and other representatives, to determine how to address any misunderstandings or problems that are arising in this regard. In the interim,

CAJ recommends that, where a complainant is represented by a lawyer or non-governmental organisation (NGO), correspondence sent to complainants should be copied to the lawyers and/or NGO unless the complainant requests otherwise. CAJ recommends that oral communication should similarly be routed through the complainant's lawyer, and that the legal or other representatives appointed to act for the complainant should not be excluded by OPONI from any interviews or other meetings related to the complainant's case.¹⁶⁹

Some further legal issues may arise from the perspective of the police officers who are the subject of the complaint. So, for example, two consultees complained that early on after the establishment of OPONI, the Office handled badly the arrest and investigation of cases against police officers. The Northern Ireland Human Rights Commission also advised CAJ that it had concerns about the public arrest of officers. According to OPONI, however, the Office has arrangements with District Commanders for the interview of officers, uses its power of arrest sparingly and has only arrested sixteen officers who declined to attend criminal interviews.¹⁷⁰

OPONI has only arrested officers without prior notice on three occasions, and OPONI states that the majority of investigations have been completed with the cooperation of the police involved.¹⁷¹ CAJ believes that the arrest of sixteen officers who declined to attend criminal interviews after being put on notice of the arrest does not seem unreasonable. Perhaps mistakes were made, but if, as the interviewees claimed, lessons have been learned, the fact that such arrests are very infrequent perhaps sheds a more positive light on OPONI's current use of its power of arrest. The fact that some people are, or were, unhappy with how OPONI used its power of arrest illustrates both the importance of an independent complaints body which scrutinises the Police Service's use of its arrest powers and the need for OPONI to be held properly to account in this regard.

B. OPONI Investigation of PSNI Operations, Policy and Practice

This section addresses the highly disputed, but highly significant territory of police operations, policy and practice. Many important policing problems affecting the public are systemic or related to the approach of the police to a specific operation, not the actions of an individual officer. The legislation initially creating the Office of the Police Ombudsman for Northern Ireland, however, focused exclusively on the receipt of complaints by members of the public against individual police officers and gave OPONI a limited brief with regard to investigating police operations, policies or practices.

The 1998 Police Act prohibits the Office of the Police Ombudsman from investigating operational matters relating to the "direction and control" of the Police Service by the Chief Constable. Instead, it puts OPONI in the position of having to refer complaints touching on such matters to the Chief Constable, the Policing Board or the Secretary of State to be dealt with at their discretion and was limited to notifying the complainant accordingly.¹⁷² Dr Maurice Hayes, in his report on the creation of the Office of the Police Ombudsman, had clearly stated the need for the Office to have the power to analyse the extent to which specific police practices or policies tend to increase complaints.¹⁷³ Despite this recommendation, the legislation that created OPONI gave the Office no such power. After much lobbying, the 2000 Police Act allowed the Police Ombudsman to research and report on police practices and policies which came to the attention of the Police Ombudsman during the investigation of complaints against individual officers, but not investigate them as a separate issue.¹⁷⁴ It took until 2003 for further legal provision to be approved that gave the Police Ombudsman the power to investigate a practice or policy, if the Police Ombudsman believes it is in the public interest to do so, and after informing the Chief Constable, the Board and the Secretary of State.¹⁷⁵

CAJ considers that one of the biggest gaps in the new police complaints system is its failure to effectively address operational matters, and issues of police policies and practices. All police complaints systems should have two crucial functions – the penalising of any individual police officer who may have behaved in a criminal or otherwise improper manner; and, in many ways more importantly, the addressing of systemic institutional problems that result in officers behaving in a criminal or otherwise improper manner. While OPONI does address policy and practice issues encountered during the investigation of complaints against individual officers, CAJ is concerned with how inclusive its approach is when accepting complaints regarding police policy and practice *per se*.

1. OPONI Investigation of PSNI Operations

The Police Ombudsman's Office believes that approximately 4% of complaints are classified as outside its remit because they are "operational" in nature or because they relate to policies and practices.¹⁷⁶ It is impossible to say how many additional complaints about policing might have been forwarded to OPONI relating

to operational or policy issues if the public had not been repeatedly advised that such issues were outside the remit of the Office. In one case, a complainant took a judicial review challenging OPONI's determination that the complaint was outside OPONI's remit because it was deemed operational in nature.¹⁷⁷ OPONI decided to investigate the matter and the judicial review was dropped.¹⁷⁸

The Police Ombudsman has determined, at least in the past, that the following are outside its investigative remit:¹⁷⁹

- Complaints of over- and under-policing;
- The policing strategy in response to interface violence in the Short Strand area of Belfast in 2002;
- The policing strategy in response to loyalist protests at Holy Cross School in Belfast, which began in 2001;
- The policing strategy in response to a loyalist feud in August 2000, which saw 250 families evicted from their homes in the lower Shankill area of Belfast;¹⁸⁰ and,
- the overall police approach to public order situations.

CAJ believes that these are all the kinds of issues on which OPONI could have and should have commented prior to the 2003 change in the law, and must be prepared to investigate subsequent to the 2003 legislative changes.

The Police Ombudsman's Office claims that a decision to raid a particular house is operational and therefore outside its remit, but that any allegation of police misconduct taking place during such a raid is, and always has been, even before the 2003 Police Act, within its remit.¹⁸¹ Further clarification was however attempted in subsequent correspondence between OPONI and CAJ, when the Police Ombudsman noted: "*It is possible that there is misinterpretation here. We would for example examine whether there was reason for a search (including looking at the nature and reliability of any intelligence). If there is no misconduct attaching to that decision then we would not investigate.*"¹⁸² It is CAJ's view that decisions about searches, and the nature of the searches themselves, might involve misconduct and are not excluded from the remit of the Ombudsman because of their "operational" nature. The remarks of the Patten Commission regarding operational responsibility may bear repeating here: "*It does not mean... that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case*".¹⁸³

OPONI practice in this area, however, is or at least appears inconsistent. CAJ has been advised of two complaints regarding police raids of people's homes or offices that have been rejected as relating to operational matters under the direction and control of the Chief Constable.

In one of these cases, the complainants alleged that during early morning, heavy handed-raids, doors were broken down with sledgehammers; stun grenades were thrown into the houses where young children were present; guns were held to the heads of the occupants, including teenage children; a mother was not allowed to comfort a child in distress alone in a separate room or bring a bottle to another;

the media was present; questioning after arrest was unspecific and unrelated to the stated reasons for arrest and the briefings given to the press; and property seized was not returned. In response to this complaint, the Office of the Police Ombudsman responded by letter, the relevant parts of which stated the following:

"The Police Ombudsman only has the power to investigate issues of police misconduct and cannot make enquiries into matters which would be classed as 'direction and control' issues for police. Police operational decisions would fit into this category.

I can confirm an operational decision was made to effect rapid entries into premises and use of force authorised for that purpose. The use of stun grenades would also be an operational matter for the police. There are guidelines for the proportionate use of firearms by police and they would be entitled to draw them if they believed they may be subject to a threat. It is possible that guns being held to children's heads could amount to misconduct...

The procedure by which police conduct the search would also amount to an operational decision on the day. The issue of police policies and procedures are matters for the police and the Policing Board. The Police Ombudsman does bring such issues that emerge from investigations to the attention of the Chief Constable but it is then a matter for him to deal with the matter. If you wish, I will forward a copy of your letter to the Chief Constable and the Policing Board.

The seizure of property in a criminal investigation is also an operational decision for the police. Any request for the return of such property should be directed to the Police Service of Northern Ireland.

Police detention is an operational decision, subject to review under the relevant legislation...

The Police Service of Northern Ireland's press releases are, again, a matter for the police"¹⁸⁴

In CAJ's view, there are several problems with this response. Firstly, OPONI seems to suggest that much of the complaint is outside its remit, in which case the legislation would require it to forward the complaint to the Chief Constable, the Policing Board or the Secretary of State, not merely ask the complainant what they would like to happen.¹⁸⁵

Secondly, the extent to which individual police officers, senior officers, or indeed all those involved in the planning of the operation failed to take sufficient action to avoid excessive reliance on the use of force and/or abused their responsibility to maintain certain levels of confidentiality, are also issues which CAJ would believe to lie within OPONI's terms of reference. OPONI commenting on this text concurred

with CAJ's interpretation, and suggested that the problem was not one of principle but rather that the test (for misconduct) had not been met in this particular case.¹⁸⁶

This stance, however, is far from clear in the letter to the complainant. The tenor is more one of listing reasons why OPONI might not be able to explore the facts of the case, rather than one wherein they have determined the facts do not amount to misconduct.

Thirdly, it is CAJ's view that the police conduct of raids is likely to have a much wider impact on police/community relations than simply on those directly affected, and that it would be vital for the Police Ombudsman to monitor complaints in this area very closely. CAJ believes that OPONI must investigate complaints regarding raids in general and comment on policies regarding raids if it believes they should be tightened, as may be the case with regard to the heavy-handed techniques highlighted in this example.¹⁸⁷

In two other cases, OPONI seemed to take a very different stance about its authority to comment on police behaviour with regard to raids. The first case relates to a complaint regarding police conduct during the PSNI raid of Sinn Féin's offices at Stormont.¹⁸⁸ In that case, OPONI investigated whether the raid was politically motivated; whether it was appropriate to carry automatic weapons in the associated house search; whether the scale and manner of the search was appropriate and if police took into proper consideration the fact they were raiding a legislative assembly building; the decision to raid the offices; whether the PSNI alerted the media; whether people should have been allowed to enter the offices before the search was conducted; whether persons were assaulted in the course of the search; and whether the PSNI should have carried out a risk assessment and minimised any potential alarm and distress.¹⁸⁹ In the second case, OPONI considered police conduct during the raid of the houses of a former police officer and two journalists, as well as the offices of the *Sunday Times*.¹⁹⁰ In that case, OPONI considered whether the timing of a search was unreasonable; whether a search was a professional operation and properly supervised; whether restrictions should have been made on the complainants' movements and ability to make telephone calls; and whether two of the complainants should have been able to make arrangements for the care of their daughter.

While CAJ welcomes OPONI's willingness to consider additional issues related to raids, the differences in OPONI's response to these two searches and the search described earlier could not be more stark. Almost all of the issues considered by OPONI to be outside of its remit in the first example, were analysed in the two latter cases.

One might think that it is OPONI's new power under the 2003 Police Act to investigate policies and practices which allows for the difference in treatment between these complainants. As stated earlier, however, OPONI has advised CAJ that it has always had the power to investigate PSNI conduct during raids, even before the 2003 legislation was enacted. Why then is there such a disparate approach between these cases? OPONI's response to CAJ's questions in this regard is that the facts in the two cases explain the differential response and that there is and was no refusal on their part to consider the various complaints made

about the nature of the two raids.¹⁹¹ Obviously, each case must be examined on the facts of the case. However, it may be particularly important in times of public disorder, in the event of a series of house raids, or other 'high profile' police actions, that OPONI's remit and role be explicitly and frequently communicated to the general public. As noted earlier, many were given the impression that OPONI could not intervene on issues in the first raid discussed above, but saw that OPONI did subsequently intervene on similar issues with regard to the second set of raids commented on above. There is a long legacy of distrust in Northern Ireland and there is a long history of differential policing experiences – as between different communities, different age groups, different social classes etc. OPONI can play an extremely important role in either inflaming that distrust or putting it to rest.

The general public need to be assured that the police, even in pursuit of alleged criminal activity, will use no more force than is absolutely necessary. How a raid is carried out is surely a matter OPONI should be able to fully investigate. Certainly the general public would find it strange to think that OPONI can investigate minor claims of incivility, but not serious allegations of excessive force. Such power would not interfere with the PSNI's ability to take operational decisions as OPONI's scrutiny of those decisions would be conducted after the fact.

CAJ recommends that OPONI consult on and publish its policy on what specific matters are considered within its remit and what matters are deemed operational and outside of its remit. CAJ further recommends that this policy clearly state that the Office of the Ombudsman can investigate matters such as the decision-making process and nature of police raids; charges of over- and under-policing; and the policing strategy adopted in public order situations and other police operations.

2. *OPONI Investigation of PSNI Policies and Practices*

As stated earlier, since the 2000 Police Act, OPONI has had the power to research and report on PSNI policies and practice brought to the Office's attention as part of its investigation of complaints against individual officers. According to OPONI, in every case, it evaluates whether police policies, practices or training played a role in the incidents it investigates.¹⁹² As a result, OPONI has made numerous policy, practice and training recommendations to the PSNI on such issues as:

- Use of force generally, and the use of firearms and batons in particular;
- Compliance with the Regulation of Investigatory Powers Act (RIPA) 2000;
- First aid training of custody officers;
- Safety features of custody suites; and
- Displaying of officer numerals on uniforms and equipment.¹⁹³

It is not clear, however, how the Police Ombudsman will interpret its expanded power under the 2003 Police Act to investigate a police "practice or policy" where the Police Ombudsman believes that it would be in the public interest to do so.¹⁹⁴

The Police Ombudsman has developed a framework outlining how it will investigate

policy and practice issues and has appointed a new director of policy and practice.¹⁹⁵ OPONI states that it has not been granted additional resources to comply with this expanded mandate.¹⁹⁶ OPONI has only used this new power once,¹⁹⁷ and that was to investigate the visibility of police identification numbers. The Office of the Police Ombudsman notes that the provision allowing OPONI to investigate policies and practices is not retrospective, and that complaints submitted before this change in the law will not, therefore, be reopened.

Since OPONI's framework on investigation of police policies and practice has not been published, it is difficult to know what distinction OPONI makes between an "action within the direction and control of the Chief Constable", which OPONI cannot investigate, as compared to "a PSNI policy and practice", which OPONI can investigate. The Office of the Police Ombudsman advised CAJ that decisions within the direction and control of the Chief Constable are incident specific, meaning a complainant cannot complain about the Chief Constable's decision on how to police an incident, but can complain about individual conduct as part of such an operation.¹⁹⁸ This is a problematic distinction that needs to be clarified.

OPONI indicated to CAJ that policies and practices are generic rules and not incident specific. For example, OPONI advised CAJ that it cannot investigate a decision to raid a particular house, unless there is reason to think that the decision to raid the house may have been maliciously motivated or otherwise involved misconduct by a police officer. Decisions to raid particular houses are considered operational decisions for the Chief Constable to make, but the Police Ombudsman can investigate the behaviour of officers involved in such a raid to ensure that their action was compliant with a lawful order.¹⁹⁹

The Police Ombudsman may also consider a complaint against the officer who made the order and can look at any policy and practice issues arising from the raid, such as whether the PSNI's policy with regard to raids should be amended to prevent the concerns alleged.²⁰⁰

Another policy area that can be very contentious is the matter of the policing of public order situations. OPONI, in explaining its stance, made a distinction between a one-off observation, and a policy and practice complaint. So, for example, a member of the public may not be able to complain that landrovers deployed to quell tensions at an interface²⁰¹ were behaving partially by facing exclusively towards one of these groupings on the basis of one such experience. This would be considered to be an operational decision. However, if such behaviour happened several times, the matter may constitute a policy and practice complaint, which OPONI would investigate.²⁰² The problem with this approach is that action can only be taken if members of the public are prepared to monitor and record such data over time. While recognising the difficulties for OPONI in gathering sufficient evidence directly, it is also unrealistic to expect members of the public to do it, not least because people may fear that the collating of such data may put the complainant at risk of prosecution for possession of 'information likely to be of use to terrorists'.²⁰³ CAJ believes that a complaint indicating the police deployed all landrovers to face one side of the community on one occasion should be

investigated by OPONI on the basis that it may demonstrate a lack of impartiality. Again, if no problem is found, it will reassure the public that policing is being carried out entirely for correct operational reasons, and any differential experiences of policing are grounded in objective decision-making.

CAJ recommends that, in the interests of transparency, consistency and effectiveness, OPONI should consult on and publish its framework for investigating police practice and policy.

3. *Role of the Northern Ireland Policing Board*

Of course it could be argued that some of these broader policy issues would be much better addressed by the Policing Board, than be left to the Ombudsman to pursue by way of a complaints system. However, the two are not mutually exclusive. While the Policing Board should play a full role in addressing such matters, it is likely that utilising information gained as a result of OPONI's activity in this area would help rather than hinder the Board's effectiveness in holding the Chief Constable properly to account. The first step to ensuring that the Board performs its duty in this regard is for it to be made aware of any complaints OPONI believes are outside its remit and which are currently being forwarded to the Chief Constable.

CAJ recommended in its Commentary on the Policing Board that OPONI should forward all such complaints to the Policing Board as well as the Chief Constable as already permitted by legislation and that the Policing Board should, at a minimum, analyse the concerns such complaints raise and monitor PSNI implementation of any remedial action.²⁰⁴ To our knowledge, however, nothing has changed since we made this recommendation in November 2003. OPONI continues to forward complaints concerning operational matters it considers outside its remit to the Chief Constable only and not the Policing Board.²⁰⁵ Meanwhile, the public continues to be left ignorant of what the police and the Policing Board are doing in response to such complaints.

CAJ once again recommends that where the Police Ombudsman determines that a complaint is one under the "direction and control of the Chief Constable" and therefore outside its remit, that it be forwarded to the Policing Board as well as the Chief Constable under §52(6) of the 1998 Police Act. CAJ also recommends that the Board ask the Chief Constable to report publicly to the Board on its investigation of any complaint referred to the Chief Constable by the Police Ombudsman and monitor implementation of any required remedial action.

4. *Conclusion*

While individual complaints are very important to the complainants concerned, the wider impact on society of policy and operational failings cannot be underestimated. Consultees have advised CAJ of concerns about the police:

- Driving landrovers quickly and dangerously – exacerbating, rather than calming, public order situations;²⁰⁶
- Facing landrovers all in one direction towards one community only during interface tensions;
- Beginning the policing of a public order situation in an aggressive manner which escalates rather than alleviates tensions;
- Not preventing members of the public from throwing very dangerous missiles at others;
- Contacting the media when conducting a raid, keeping young family members separated from their parents during raids, and using very aggressive and heavy-handed tactics; and
- Leaking information on arrestees' alleged misdeeds despite not charging them with the corresponding offences.

The Police Ombudsman is likely to be the first port of call for investigating such serious allegations, holding the police to account and making relevant recommendations to the Police Service and the Policing Board. The Police Service and the Policing Board must review the relevant policies and operational practices, and ensure that OPONI's recommendations are acted upon and lead to improved policing.

CAJ recommends that OPONI regularly examine how it can give fuller effect to its duty to ensure accountability in the area of police operations, policies and practices and that it produce regular reports on such issues accordingly.

C. Informal Resolution

1. Description of the Current System

After receiving a complaint, the Police Ombudsman must decide whether it is suitable for informal resolution. A complaint which is not serious can be sent to the Police Service (or the Northern Ireland Policing Board in the case of senior officers) to be resolved informally as long as the complainant consents.²⁰⁷ A "serious complaint" is defined in the 1998 Act as one in which the conduct complained of resulted in death or serious injury, which means a fracture, damage to an internal organ or impairment of bodily function.²⁰⁸ While that definition seems to relate only to the most serious types of complaints, the regulations further limit what type of complaint is amenable to informal resolution as one which, if proved, would not justify a criminal charge.²⁰⁹ This definition still allows for complaints alleging very troubling behaviour to be resolved informally.

Informal resolution is carried out by serving police officers. The police officer appointed to resolve the complaint informally will seek the views of the complainant and the subject of the complaint and attempt to resolve the complaint.²¹⁰ The officer handling the resolution cannot apologise on behalf of the subject of the complaint unless s/he has admitted the conduct in question.²¹¹ If the complaint

cannot be resolved informally, is found to be unsuitable for informal resolution, or if at the end of the process the complainant is not satisfied, the complaint is referred back to the Police Ombudsman.²¹² Possible outcomes of informal resolution include:

- Action taken accepted by the complainant (approx. 19% of cases in 2003-04);
- Apology from the officer concerned (approximately 9% of cases);
- Matter brought to the attention of the officer/senior officer (approx. 4% of cases);
- Apology on behalf of the PSNI (approximately 34% of cases);
- Constructive advice given to the officer (approximately 13% of cases);
- Complainant accepts nothing further could be done (approximately 12% of cases);
- Explanation accepted by the complainant (approximately 3% of cases);
- Expression of regret (approximately 2% of cases); and
- Face to face meeting (approximately 3% of cases).²¹³

The Internal Investigations Branch, the PSNI division which administers informal resolution cases, has indicated that they try to resolve informal cases within six weeks. They have a six-week call-up date and, if not resolved at that time, two additional weeks for resolution can be granted.²¹⁴ The Police Ombudsman reports that, on average, informal resolution cases are completed in 45 days, although a few take as long as 120 days to complete.²¹⁵

14% of OPONI cases closed in 2003-04 were informally resolved, and according to OPONI, 63% of complainants whose cases are deemed suitable for informal resolution consent to the procedure, and the current success rate for cases which are sent for informal resolution is 70%.²¹⁶

The Internal Investigations Branch (IIB) of the PSNI deals with all cases forwarded to the Chief Constable by the Police Ombudsman, those referred for informal resolution as well as disciplinary hearings.²¹⁷ The IIB handled 500 informal resolution cases in 2002-03. Any statement made by an officer as part of the informal resolution process cannot be used against him/her in a subsequent disciplinary, civil or criminal hearing unless the statement includes an admission related to a matter not being informally resolved.²¹⁸ According to IIB, no record of the complaint is kept in the officer's file, and cannot be used as part of discipline or promotion in the future. IIB did state, however, that if more than one complaint against an officer were received, the Police Ombudsman could decide that future complaints against the same officer would not be suitable for informal resolution. These two statements are not necessarily contradictory, but it seems strange that PSNI does not appear to have such information readily available to it in the officer's personnel file when OPONI is under an obligation to track and trend complaints.

CAJ recommends that a record of the outcome of informally resolved complaints be kept in the officer's personnel file and considered as part of any decisions related to discipline and promotion.

2. Quality of the Informal Resolution Process

It can be in the interests of complainants and effective learning for the police that complaints are resolved in an informal manner. There is no advantage *per se* in making things complex, formal and overly legal. One solicitor CAJ consulted stated he was happy with the use of informal resolution for relatively minor complaints and has no problems with how the informal resolution system operates. Another solicitor said complainants were able to get apologies from the police. The idea is good and is supported by research which indicates that most complainants only want an apology or to be reassured that the same will not happen to other people.²¹⁹

While appreciating the proper goal of informal resolution, CAJ believes that the role of OPONI can lead to misunderstandings and that the informal resolution system must be improved. The informal resolution process is carried out by the police, not OPONI, but the legislation requires that OPONI offer the complainant the choice of following the informal resolution route. Failings in the process can therefore reflect badly on both the police and, albeit perhaps unfairly, on OPONI.

The following experience of one woman with the informal resolution process highlights some of the problems with the system as it is currently administered and is indicative of the concerns expressed by those CAJ consulted as part of this research. The woman told CAJ of her experience walking with her small daughter in a buggy during an anti-war protest in Spring 2003. She was at the back of the march and a police landrover driving behind the demonstration kept slowing up and then coming at speed towards the marchers.

She said, *"It was very intimidating. I was scared he would hit us accidentally even if he did not mean to."* People were gesturing and shouting at the landrover driver to stop. When the march reached the city centre and stopped the woman took paper and a pen out of her pocket to write down the landrover number. An officer (not the driver) jumped out and said, *"I am sergeant x [officer's name]. If you want to complain come down to the station in the morning and I will explain how you will be prosecuted."* The woman knew that there had been no permission granted for the march to take place and took this as a threat that if she made a complaint, prosecution would follow. The sergeant repeated the remark several times.

A complaint was submitted to the Police Ombudsman and it was deemed suitable for informal resolution. The woman commented that this made her "fed up" as she felt that the complaint was not being treated seriously. She did accept to follow the informal resolution process, however, and even though dissatisfied with the process (see on), did not consider it worthwhile to return her complaint to OPONI. The very fact that OPONI had recommended the informal resolution route gave her – rightly or wrongly – the impression that OPONI was not taking her complaint very seriously.

A police officer phoned her home and work. She commented: *"This is not something everyone would welcome. I met with the officer handling the complaint, who was very pleasant, after arranging a neutral venue. He did not discourage me in my*

complaint, was very good, and asked me if I would like to meet the sergeant against whom I had made the complaint. He said he would arrange a meeting."

"At the meeting, the sergeant was embarrassed, but I was not happy at all with his apology, if you can call it an apology." Rather the woman felt that the officer was simply rationalizing his behaviour and apologizing if she had "felt" intimidated, rather than conceding that he had done anything wrong. Not being satisfied, the complainant asked for an apology in writing. The letter subsequently received apologised that the police had not acted to the 'highest standards' on the day, rather than acknowledging the inappropriate behaviour of the officer. She concluded: "The process was deeply unsatisfying, but I did not request further action. I also signed stating I was satisfied even though I wasn't because if the case went back to the Police Ombudsman, I would feel like a nuisance."

"I think the process would be better if there was some form of investigation of the complaint. I wanted an investigator to talk to my witnesses. The process should also be made more independent. At the very least, the Police Ombudsman should deal with the phone calls to give it a more independent feel. I would also have appreciated an acknowledgment of what had been done wrong."

Clearly many complainants are not going to be satisfied with the current arrangements of informal resolution. Moreover, OPONI is going to suffer some of the consequences, even if it have little, if any, control of the process once the individual has chosen this option. There may be value in OPONI giving further consideration as to how best to ensure that initial complainants are fully advised. It would be important, for example, that complainants are given clear guidance as to the different options, their various advantages and disadvantages, and that the first contact-point genuinely tries to ensure that the issue is being taken seriously, whichever option the complainant eventually chooses.

Like the woman in this example, other interviewees raised a series of concerns regarding the informal resolution process, especially the fact that it is conducted entirely by the Police Service, without any input from the Police Ombudsman. Many believe the informal resolution system gives out contradictory signals about the independence of the Office of the Police Ombudsman and is in many instances unsatisfactory, given the widespread lack of trust between many members of the community and the police. Complainants informed CAJ that they made complaints to the Police Ombudsman because they thought the Office was independent and had not realised, when they accepted informal resolution, that their complaint would be handled completely by the PSNI. This is despite the fact that the Police Ombudsman states that all complainants are told that the police will handle the informal resolution process and the complainants' consent is sought. It may be that complainants believed that the Police Ombudsman would still maintain some role in the informal resolution process. As the Ombudsman confirmed in correspondence with CAJ, "*all we are allowed to do is receive a report on the process and investigate if the Informal Resolution has failed*".²²⁰ It may be that the problem in communication lies entirely with the complainants, but on the basis of our interviews:

CAJ recommends that the guidance given to complainants regarding the informal resolution system make the extremely limited role of OPONI and extensive role of the PSNI in that system unambiguously clear.

The fact that only the police handle informal complaints troubled some complainants because they did not believe the police to be impartial, and in many cases were unsatisfied with how they were treated. Survey results published by OPONI in 2004 give credence to this view of complainants. The survey found that only 4.6% of officers "agree" or "strongly agree" that most people who make complaints have genuine concerns and that 66.6% of officers "agree" or "strongly agree" that most people who make complaints do so to make mischief. In the same study, 79% of police officers thought that most people who made complaints against the police did not have genuine reasons for their complaints.²²¹

The PSNI's Internal Investigation Branch has stated that 40% of the informal resolution cases which fail, do so because complainants do not want to cooperate with the police.²²² One possible solution to this problem, aside from OPONI taking a more active role in the informal resolution process, which is discussed below, is for the system to rely on non-police mediators trained in conflict resolution to resolve the complaints, rather than police officers.²²³

Concerns have been raised regarding the training of the officers assigned to resolve informal resolution cases, as it seems that such officers currently receive little training. According to the IIB, officers who handle informal resolution cases, who are officers of the rank of inspector or above, are expected to have the necessary skills to handle informal resolution cases since it is their belief that these are the same skills that are required in all areas of policing.²²⁴ The IIB did state that some joint briefings were given by IIB and OPONI to officers handling informal resolution cases in Urban Region in 2003 and that IIB hopes to do the same in Rural Region beginning in 2005.²²⁵

In its 2003-04 annual report, OPONI notes that the lack of independence with regard to informal resolution is a problem for complainants and police officers and that the initial development of the informal resolution process was slow and difficult.²²⁶ OPONI stated: *"Initially it was found that the concept of Informal Resolution was a difficult one to explain to complainants. It was understandable that a complainant, and indeed a police officer, considered that if the Office was independent then the police should not be directly involved in trying to resolve the matter."*²²⁷ OPONI states that the appointment of a staff member responsible for the informal resolution process has improved the situation and that the PSNI's ability to resolve cases informally has increased from 40% of cases initially, to 70% of cases currently.²²⁸

Some consultees were also unhappy with the fact that they were asked to attend a meeting in a police station, a place they did not feel comfortable entering and did not consider a neutral venue. Dr Hayes believed that the fact that complainants were often invited to interview at police stations was a weakness of the previous

system, and specifically stated, *"It must be recognised that police stations in Northern Ireland are not welcoming structures and that even if they were, many people would not be comfortable visiting them. Insofar as this is possible, therefore, interviews should be arranged for more neutral venues."*²²⁹ PSNI Internal Investigations Branch advised CAJ that some officers would not feel comfortable or safe going to some complainants' homes and that finding a neutral, yet confidential, location is not always possible. IIB also stated that officers would not feel comfortable meeting in the office of the complainant's solicitor, which they would not necessarily consider a neutral venue.

CAJ recommends that whenever possible, informal resolution meetings between the police and complainants take place in neutral venues.

Complainants whose cases are deemed appropriate for informal resolution are advised by OPONI that their cases are non-serious in nature and therefore that informal resolution rather than formal investigation is recommended. Interviewees stated that this made them feel that OPONI believed their cases were insignificant and not worthy of investigation. If complainants are dissatisfied with the informal resolution process, their complaint is returned to OPONI for formal investigation. Interviewees stated, and IIB agreed, that complainants may decide to indicate satisfaction with the informal resolution of their complaints despite not being satisfied because they are frustrated and do not want to proceed, or because of their belief that OPONI is not interested in investigating their cases since the Office had initially determined them to be non-serious.

CAJ recommends that OPONI revise the letter it sends to complainants recommending informal resolution so that it is clear that their cases fall within the legislative criteria for the procedure without minimising the allegations contained in the complaints and inadvertently displaying a disinterest in investigating them.

One complainant stated that even though he was dissatisfied with how his complaint was handled through the informal resolution process, he was asked by the police if he would sign the form indicating he was satisfied anyway. He refused, but despite the fact that the case should then be returned to the Police Ombudsman, no further action was taken. Another complainant stated his case was referred for informal resolution despite the fact he alleged both physical and verbal abuse by an officer. Aside from wondering why such a case would have been referred for informal resolution, the complainant indicated that he was discouraged from pursuing his complaint by the police officer responsible for implementing the informal resolution process. The complainant reported that he was told that he would not get an apology, and that if the allegations went down on the officer's record, that the officer would be fired.

Another concern is that claims of persistent harassment might be sent for informal resolution, despite the fact that - in the aggregate - this can amount to serious misbehaviour on the part of the officer. For example, one interviewee stated that the constant stopping, questioning, harassment and recruitment as informers of

loyalist young people was referred to informal resolution, sending out the message that it is not a matter that the Police Ombudsman believes is serious. This was an additional reason which made complainants feel that they should accept the informal resolution process. They asked if the Police Ombudsman does not think the complaint is serious, then what use is it to demand formal investigation? The Police Ombudsman reported in this context that one of the problems that they face lies in the language used in the legislation.

Although anecdotal, these concerns illustrate the need, at the very least, for close monitoring of the informal resolution process. CAJ has argued that although potentially positive, informal resolution must be monitored closely so that patterns can be tracked and that any such patterns are not overlooked as minor complaints to be channelled to the informal resolution process. CAJ believes that the process must also be monitored for quality assurance and complainant satisfaction. The Police Ombudsman does send out a satisfaction survey to complainants, as part of its quality assurance programme checks to see if appropriate informal resolution referrals are being made, and the Police Ombudsman is carrying out research on complainant satisfaction with the informal resolution process. The research, which covered the period of November 2000 until March 2003,²³⁰ has not yet been published though it was intended to be ready by October 2003.

Preliminary findings related solely to complainant satisfaction were released, however, at the Police Ombudsman's conference in November 2003. There was only a 17% response rate to the survey OPONI sent to complainants who went through the informal resolution process and the component of the research which deals with police satisfaction with the system has not yet been released. Of those complainants who did participate in the OPONI research, only 52% said that their informal resolution cases were successfully resolved. Those who said their complaints were not successfully resolved said that they had no confidence in the process, that it was not independent, and in one instance described it as a 'farce'.²³¹

When asked if they thought the police officer would act differently in the future, 38% of complainants "strongly disagreed", 15% "disagreed", 32% were "unsure", and about 10% "agreed". The complainants were generally disappointed with the response from the police. Most "agreed" or "strongly agreed" that the informal resolution process needs to be improved or replaced. A large majority agreed that the informal resolution process should be handled independently of the police. When asked if informal resolution was a fair way to resolve complaints, a slim majority agreed. Most complainants said their complaints were taken seriously by the officer who handled the complaint and that the officer was helpful and understanding and that the police were open and honest. Most complainants also believed that OPONI had clearly explained the informal resolution process, and yet, 30% were disappointed with the way OPONI dealt with the complaint, and most complainants "strongly agreed" that they expected to meet with the officer they complained about, which does not necessarily happen.²³²

The OPONI official presenting these findings stated that to improve the informal resolution process, OPONI wants to move to an independent mediative process, where OPONI leads a meeting between the complainant and the officer. This

would interject some independence into the process and presumably give complainants the face-to-face meeting they expect. The Police Ombudsman was given the power of mediation in the 2000 Police Act.²³³ The problem with the power as enacted is that the Police Ombudsman can only use mediation after a complaint has been formally investigated. Clearly such a sequence undermines the value of informal resolution, which is intended to provide an easy, relatively quick, and less adversarial approach. The Ombudsman is attempting to secure changes in the law to allow for the use of mediation without having to conduct a formal investigation.²³⁴ The Office believes such a change would “*provide efficiencies; meet public expectations; reduce stress on officers and secure greater support for the complaints system.*”²³⁵

CAJ recommends that the policing legislation be amended to allow for mediation before any formal investigative process; that OPONI, rather than the Police Service, facilitate the informal resolution of complaints; and that non-police mediators trained in conflict resolution handle complaints deemed appropriate for informal resolution.

It is interesting to note that CAJ recommended the use of independent mediators in the informal resolution process as early as 1990.²³⁶

CAJ further recommends that the policing legislation be amended to allow OPONI to maintain control over the informal resolution process so as to ensure that more complainants feel comfortable using it; and that, until the informal resolution system is reconceived, all PSNI officers involved in informal resolutions should receive appropriate training in conflict resolution; and that the PSNI develop and implement clear criteria governing the choice of officers who are to manage the process.

D. Effectiveness

1. OPONI's Success to Date

At the time of the Hayes Report, only 49% of the population was aware of the Independent Commission for Police Complaints (ICPC), the previous complaints body, and only 50% of those people thought the ICPC was independent of the police.²³⁷ Overall, only 53% expressed confidence in the ICPC's handling of complaints, 65% of Protestants and only 27% of Catholics.²³⁸ In contrast, 85% of the Northern Ireland public have heard of OPONI and 85% of those who have heard of the Office believe it is independent of the police.²³⁹

The Office of the Police Ombudsman is a vast improvement over the ICPC, in that it conducts independent investigation and has additional powers and resources to carry out its mandate. It is clear that the Police Ombudsman is determined to

improve policing through impartial investigation of complaints. The Police Ombudsman guards her independence well and strives to protect the rights of both officers and complainants. The entire Northern Ireland community is much better off due to the existence of OPONI. 79% of respondents believe OPONI will help ensure the police do a good job.²⁴⁰ The main reasons given for this conclusion are a belief that the police will treat the communities in Northern Ireland more impartially; give less cause for complaints; and investigate crime better.²⁴¹

OPONI reports many successes since it was established in November 2000. These include:

- (i) **Handling a very high volume of work:** OPONI has recorded 11,318 complaints since it opened its doors, and this number may not include the complaints it inherited from the ICPC. OPONI has also opened 2425 files on miscellaneous items, such as discovery requests in civil claims, Compensation Agency cases and other queries. The Office also handles general public enquiries related to policing that are not within the remit of the Office by referring the individuals to the appropriate source of information.²⁴²
- (ii) **Making recommendations to improve police policy and practice:** OPONI has made numerous recommendations to the Chief Constable to improve PSNI policies and practices. Such recommendations relate to: police use of force generally and with regard to firearms and batons in particular; police practice in compliance with the Regulation of Investigatory Powers Act; first aid training of custody officers; safety features of custody suites; and displaying of identification numbers on uniforms and equipment.²⁴³
- (iii) **Contributing to a reduction in the number of complaints against police officers:** The number of complaints and other matters OPONI has recorded has declined each year from 3590 in 2001; 3340 in 2002; and 2976 in 2004, although the number of allegations remains relatively consistent (complaints may contain more than one allegation).²⁴⁴ OPONI believes this reduction is because of improved police behaviour due at least in part to the work of OPONI.²⁴⁵ CAJ, however, believes it is difficult to pinpoint the reason for such a reduction, and believes that this trend should be very carefully monitored. For example, Karen McKenzie, Executive Director of the Independent Complaints Directorate (South Africa's police complaints body), has included in that institution's successes an *increase* in the number of complaints received.²⁴⁶
- (iv) **Contributing to a reduction in the seriousness of allegations against police officers:** Allegations of oppressive behaviour (assault, harassment and intimidation) have reduced from 50% to 37%. Use of force allegations have reduced from 50% to 34%. 419 allegations related to the misuse of batons were received between November 2000 and March 2002, 240 in 2003 and 148 in 2004. Over the past three years, the use of live fire has

been reduced from 21 in February 2001-March 2002 to five in 2004. The number of complaints about other use of firearms (such as assault by firearm) has been reduced from 40 in 2002 to 12 in 2004. OPONI states that these reductions have been gained by working with the PSNI on the problems identified during investigations and making specific recommendations for improvement. OPONI states that there is no evidence of an increase in injuries of police officers during this same period.²⁴⁷

(v) Numerous Regulation 20 reports completed with respect to referrals to OPONI from the Police Service and matters in which OPONI has decided to investigate without receiving a complaint. OPONI has made special arrangements with the PSNI with regard to mandatory referrals of deaths which may have resulted from the conduct of a police officer and the referral of other serious matters, including the PSNI's use of live ammunition, plastic bullets and allegations of an officer committing a serious offence.²⁴⁸ OPONI has received 126 referrals from the Chief Constable since the Office was established, 28 in 2003-04 alone. OPONI has also called itself in to investigate 10 matters in which complaints were not received. In each case, OPONI is required to complete a report, which is submitted to the Secretary of State, the Policing Board and the Police Service. These reports are called Regulation 20 Reports because the requirement placed on OPONI to complete and forward investigative reports in these cases is contained in §20 of the Royal Ulster Constabulary (Complaints etc.) Regulations 2000. In 2003-04, OPONI had completed 20 such Regulation 20 reports, which contained 52 recommendations for improved policing.²⁴⁹

(vi) Provision of complaint trend information to the Police Service and the Policing Board. OPONI compiles and gives every District Commander complaint data on a monthly basis. The report summarises information on the volume of complaints, trends and patterns in complaints and complaint outcomes. The Police Ombudsman also provides similar data to the Northern Ireland Policing Board. In 2003-04, OPONI began supplying the PSNI information on multiple complaints against individual officers so that District Commanders could identify officers who are generating higher numbers of complaints. OPONI also advises the PSNI and each District Commander if an officer receives three or more complaints in a rolling twelve month period.²⁵⁰

2. OPONI Substantiation Rates

Although the number of complaints substantiated is not the only, or necessarily the best, way of measuring the success of a police complaints body, substantiation rates are a very important factor for determining the effectiveness of such a body. It can also be argued that learning within the Police Service and positive changes with regards to policy and practice are possibly more important than punishing individual officers. It is also true that a complaints body's substantiation rates are

dependent upon whether the complaints submitted to it support a finding of criminal behaviour or misconduct. Nevertheless, substantiation rates are a key factor in determining the effectiveness of any complaints body. Chief Constable Hugh Orde has stated that 1% of police officers everywhere, including within the PSNI, are corrupt.²⁵¹ While others may consider this an overly optimistic figure, any effective complaints body must capture the misdeeds of at least these officers, as well as officers who cannot be labelled as corrupt but nevertheless violate proper professional standards of behaviour.

Substantiation rates are especially important in Northern Ireland, where the public had little confidence in the ICPC's ability to hold officers to account. In his report calling for the establishment of a police ombudsman, Dr Hayes stated that the new complaints system must gain the confidence of the public and police in its ability to root out misconduct and reinforce high standards of ethical conduct and integrity.²⁵² He went on to say that there was a lack of confidence in the ICPC, in part because of the "*low number of police officers who had been brought to court, or convicted, or even disciplined as a result of a complaint by a member of the public.*"²⁵³ If OPONI is not seen as achieving appropriate substantiation rates, it too will lose the confidence of the public and the police.

There are a number of factors that affect a complaints body's ability to substantiate complaints. These include the powers and resources it has at its disposal, the level of support it has within the community and the cooperation it receives from the Police Service. Furthermore, in the case of OPONI, it must be remembered that, although it is responsible for substantiating complaints, it cannot bring these cases to a conclusion on its own. It is essentially within the purview of the Director of Public Prosecutions and the Northern Ireland Court Service to accept or reject OPONI's recommendation to prosecute a police officer, and to ensure that all the necessary legal processes are complied with in order to secure a conviction. Where OPONI determines that an officer is found in breach of discipline, rather than of any criminal activity, its work ends with a recommendation to the Police Service, and the successful closure of any such case rests with the police.

In sections A, on "OPONI Investigations" and B, on "OPONI Investigation of PSNI Operations, Policy and Practice", this Commentary has already addressed a range of factors, some of which may affect OPONI's ability to substantiate complaints. These include:

- OPONI's reliance on seconded and former police officers to investigate complaints;
- The lack of local knowledge of some OPONI investigators;
- The level of cooperation OPONI receives from the PSNI;
- The quality of OPONI's investigations;
- OPONI's limited power to interview retired police officers;
- OPONI's wide interpretation of what falls outside of its remit because it is considered an operational matter; and
- OPONI's narrow interpretation of what constitutes a policy and practice complaint.

In discussing these concerns that have been raised in the course of our research, we have tried to give specific examples of problem areas and possible remedies.

There are however other factors that can also possibly affect OPONI's ability to substantiate cases, and these are addressed below and include:

- The manner in which OPONI resolves complaints which depend heavily on the complainant's word against the officer's word; and
- The difficulty sometimes involved in identifying the individual officer implicated in a complaint.

It is difficult to determine OPONI's substantiation rates since the institution does not report these figures *per se*. It is only possible to attempt to determine substantiation rates from the data made publicly available, but even the narrowest reading of its rates shows that they are better than those of the ICPC and RUC. According to O'Rawe and Moore, in 1997, under the previous complaints regime, over fifty percent of complaints were not proceeded with either because the complaint was withdrawn or there was a lack of cooperation. Of the 159 formal charges brought that year, all but 14 arose from complaints from police officers, all of which led to disciplinary measures. Of the 14 formal charges which arose from complaints by members of the public, only one resulted in disciplinary action. This means that out of the approximately 5,500 complaints completed that year, only one complaint from a member of the public was substantiated.²⁵⁴

One can determine in what percentage of cases OPONI recommended either criminal or disciplinary action against officers. According to OPONI's 2003-04 annual report, 3077 complaints were closed during 2003-04. Of these, 2799 were within OPONI's remit.²⁵⁵ This means that 278 complaints, or 9% of the complaints closed that year, were considered outside of OPONI's remit. OPONI calculates its case closure category percentages based on the number of 2799 and does not include in these calculations the 278 cases it determined to be outside of its remit. Out of these 2799 complaints closed in 2003-04, OPONI recommended prosecution in 10 cases or approximately 0.03% of the total.²⁵⁶ Out of these 2799 complaints closed in 2003-04, OPONI claims that 76, or 3% of the total, were referred to the Chief Constable for "disciplinary/other recommendations".²⁵⁷ OPONI did not, however, recommend formal or informal disciplinary hearings in all 76 of these cases. In 2003-04, OPONI recommended formal misconduct hearings in 11 cases and informal misconduct proceedings in 47 cases.²⁵⁸ In the other 18 cases, OPONI "made recommendations in respect of Police Policy/Practice/Training or that officers concerned would benefit from a management discussion."²⁵⁹ These last 18 cases do not pertain to either the formal or informal misconduct procedures. Therefore, out of the 2799 complaints closed in 2003-04, OPONI recommended formal or informal misconduct proceedings in 58 cases or 2% of the total. The number of cases out of the total that OPONI recommended prosecution, formal misconduct hearings, or informal misconduct proceedings, is 68 out of 2799, or 2.4% of the cases closed in 2003-04. Of course this percentage does not include the 278, or 9% of cases OPONI received in 2003-04 that were considered outside of its remit. This number also does not include the 14% of closed cases that were informally

resolved, as these are not technically substantiated.²⁶⁰ Therefore, OPONI referred 2.4% of cases for prosecution or misconduct hearings in 2003-04. This rate seems extremely low.

OPONI has advised CAJ that it defines 'substantiation' as wider than merely those cases in which either disciplinary or criminal action is recommended. The Office of the Police Ombudsman considers as 'substantiated cases' those in which it is satisfied that the allegation can be demonstrated to be true, even if it is unable to identify the officer or if the officer cannot be found to have committed misconduct because, for example, the officer had not been properly trained. OPONI cites the cases of Omagh, Sean Brown and Sam Devenney (all cases discussed elsewhere in the Commentary) as examples of this broader definition.²⁶¹ CAJ agrees with this approach. Individual police officers like civilians are "innocent until proved guilty" and this principle must be maintained. Nevertheless, where OPONI finds evidence of wrong-doing, but cannot determine the guilt of a particular officer, it would not be fair to categorise the resolution of such a complaint as unsubstantiated. OPONI has suggested that one might want to talk of a category of "upheld complaints" and this would be a welcome alternative.²⁶²

It would be helpful, however, if OPONI would publish its definition of 'substantiated' as well as its annual substantiation rates. Currently, it is difficult to determine from the annual report how many cases OPONI has determined to be substantiated regardless of whether it has been able to recommend discipline or prosecution. OPONI lists its case outcome categories in its annual report,²⁶³ but these do not explicitly cover the category of outcome being discussed here, and leave readers uncertain about the exact situation.

CAJ recommends that OPONI consult on and publish its definition of 'substantiated' cases, and that it publish its annual and cumulative substantiation rates.

Whatever the substantiation rate of a complaints body is, it will always be the case that the vast majority of complaints will not be referred for discipline or prosecution and this is a common experience regardless of either jurisdiction or the nature of the complaints body. It is even undoubtedly sometimes the case that complaints in which OPONI believes that inappropriate police behaviour did occur, cannot be referred on for further action. There can be many reasons for this: it may be due to a lack of evidence – for some of the reasons highlighted in this Commentary – or because OPONI believes the guilty officer cannot be held responsible. OPONI sometimes concludes that an officer should not be held individually or personally responsible because s/he was following a faulty PSNI policy or practice, because the officer did not receive sufficient refresher training, or because the PSNI training offered was inadequate.

In all cases, OPONI has made it a priority to make recommendations to the Police Service to improve police policy, practice and training. But what happens in the cases in which OPONI believes there is police misbehaviour but the case cannot be substantiated because, for example, there is insufficient evidence? What can

be done with such cases to make sure there is sufficient learning within the PSNI? How will the officer be disciplined or if not disciplined, at least advised that such conduct is unacceptable? More importantly, how will the issues raised in such complaints be fed back into the Police Service so that concerns can be rectified and monitored? OPONI has advised CAJ that it raises any concerns it has in unsubstantiated cases with the Police Service.²⁶⁴ It is not known exactly how OPONI does this or whether the PSNI takes such concerns seriously and remedies the problems raised.

CAJ recommends that OPONI and the PSNI devise a formal procedure for recording and responding to valid concerns raised in complaints, even if the specific complaint itself is found to be 'unsubstantiated'.

The following sections address some additional factors which could be affecting OPONI's ability to hold officers to account for improper behaviour.

(i) *The Complainant's Word against the Officer's Word*

The Internal Investigation Branch of the PSNI advised CAJ that the success rate on complaints by the public was very low when the police conducted the investigations and that the Police Ombudsman's success rate is not much better. They claim that often, independent evidence just does not exist, and the case comes down to the officer's word against the complainant's, with little chance of success in either a criminal or misconduct hearing.²⁶⁵

This problem of cases which come down to one person's word against another's is a source of contention for many of the people with whom CAJ spoke in preparation for this Commentary. Several consultees told CAJ that where there is a detailed and credible allegation made by the complainant, even supported by independent medical evidence and/or a witness who is not considered independent by OPONI, the complaint will be found to be unsubstantiated if the officer gives a contradictory account.

The Police Ombudsman states that it has no statistics to support the contention that cases in which it is the officer's word against the complainants, even with corroborating medical evidence, are found to be unsubstantiated. OPONI contends that medical corroboration can be enough, and that the plausibility of both parties' statements with regard to the extent of the injuries will be considered.²⁶⁶

Despite this assertion, and further examples provided by OPONI of difficulties that might be encountered in the course of verifying complaints, a number of interviewees expressed the view that greater weight is given to police testimony than to the testimony of complainants. Consultees expressed a belief that the Police Ombudsman is too quick to dismiss complaints. One solicitor informed CAJ that despite the fact that 90% of the complaints he had submitted should, in his view, have been upheld, not one has been to date (although some remain pending). Another solicitor raised the concern that there is no way of knowing

whether the Ombudsman's investigators did everything they could to unearth the necessary evidence. It is his understanding that the officer is given at least a summary of the complainant's statement and the officer routinely denies the allegations, but the complainant is not allowed to see the officer's statement. This reality is confirmed by OPONI as the procedures that they are legally obliged to comply with.²⁶⁷

Nor is the complainant told what other possible witnesses were interviewed or what other evidence was sought, so the complainant has little opportunity to rebut the officer's statement or challenge the quality of the investigation. Several interviewees held the belief that, with regard to complaints against the police, an officer's statement is accepted and no further action is taken, but with regard to the prosecution of members of the public, allegations of assault made by police officers do not require corroboration. One lawyer told CAJ that he has brought many complaints to OPONI which should have led to prosecution, but OPONI only recommended prosecution in one case.

One complainant who alleged that a custody sergeant hung the phone up on him after he attempted to obtain information about detained colleagues, received a letter from the Police Ombudsman indicating that because it is the complainant's word against the officer's, based on the balance of probabilities, was considered that a misconduct hearing would fail for lack of evidence due to the absence of independent witnesses. Despite the fact that the complaint was not substantiated, the OPONI investigator told the complainant that he would have fired the officer involved immediately. This suggests that cases are being closed as unsubstantiated even though OPONI believes misconduct has occurred. While it is difficult and problematic to determine whose version is correct without evidence, the reality is that in many cases, there will not be independent witnesses.

In every society, there is a widely held belief that it is notoriously difficult to take a successful complaint against a police officer. For that reason, it is important to do everything possible to ensure that police are not above the law, and that particularly where there is a lot of distrust and the need to build confidence, systems are developed that put police and civilians on a more level playing field. This is particularly important in societies where policing is central to the conflict. At the same time, the Police Ombudsman's investigations must be evidence-based. One person who has represented a number of police officers voiced the belief that "every political detainee makes a complaint". It is in the interests of genuine complaints and honest police officers that the complaints system be as effective and professional as possible.

One possible approach to this problem is the creation of a new case outcome category of "unable to determine". At the time of the Hayes review, this case outcome category was used in New South Wales, Australia.²⁶⁸ The benefit is that "unable to determine" is a more accurate conclusion than "unsubstantiated" in cases in which OPONI feels it does not have sufficient evidence to accept the word of the officer or the word of the complainant. Dr Hayes rejected the creation of this case outcome strategy because he thought that the changes he was

proposing – mainly the change in the standard of proof from “beyond a reasonable doubt” to a “balance of the probabilities” – would make it easier for a complaints body to determine cases one way or another.²⁶⁹ It clearly has not.

CAJ recommends that OPONI create the case outcome category of “unable to determine”, which can be used in cases in which there is insufficient evidence to prove or disprove a complainant’s complaint.

This category would have the benefit of better reflecting the outcome of the investigation and will better ensure that there is learning within the PSNI from the allegations contained in the complaint. Such concerns would presumably be taken more seriously by the Police Service if the complaint was classified as “unable to determine” rather than “unsubstantiated”. Analysis of the complaints assigned to this case closure category will also help quantify and illustrate the problems inherent in substantiating complaints against police officers and may help identify additional improvements which could be made to the complaints system.

(ii) Making a Complaint against an Individual Officer

Another problem related to OPONI’S ability to hold officers responsible for their actions, especially in a public order situation, is the difficulty in identifying the particular officer involved within the unit that carried out the alleged assault or other prohibited action. An example given to CAJ was that of a bystander who was caught up in a baton charge and allegedly beaten by police without justification. The woman was in extreme distress and could not identify which particular individual officer had beaten her. The OPONI investigation also failed to identify the officer concerned. According to the interviewee, OPONI determined that, on the evidence available, that the complaint did not lead to prosecution or discipline because though it was likely that the PSNI were responsible for her treatment, it could not hold an individual officer responsible.

Moreover, this example appears to indicate that there continues to be insufficient penalty for officers ‘covering’ for other officers who have engaged in inappropriate and perhaps criminal behaviour. CAJ has long argued the need for “whistle-blowing” legislation that would actively encourage officers to put loyalty towards good policing before loyalty to their colleagues. Such legislation would hopefully reduce the number of instances in which OPONI cannot progress simply because they cannot identify the individual officer concerned.

In cases in which OPONI cannot identify the responsible officer, an alternative – if not complementary – approach might be for the complainant to make a complaint against the supervisory officer who made the decision to charge. However, it is not clear to CAJ (see earlier discussion of this point) whether OPONI would have agreed to investigate a complaint against the supervisory officer, believing such a decision to be operational in nature and therefore outside of its remit. OPONI states that they would be prepared to investigate the decision to charge to determine

if it was made maliciously and therefore amounted to a breach of the Code of Ethics.²⁷⁰ CAJ believes, however, that a malicious intent should not be the only relevant criterion – in this case, if the officer's decision to charge was found to be in violation of the PSNI policy on the use of force, OPONI in our view has, and should exercise, the authority to act.

In this case, the complainant appears to be left without a remedy. This case shows a fault within the current system, as this is the type of complaint which, if founded, should have resulted in someone being held to account for confidence in the police to be restored and confidence in OPONI maintained.

One solution to cases in which the particular officer responsible for the alleged misbehaviour cannot be identified would be to hold the police, rather than an individual officer, responsible. OPONI claims that it is doing this but it is unclear how frequently it happens and, at least in this case, was not understood to be the case by the person making the complaint. CAJ comments earlier on how consultation around and publication of OPONI's definition and findings regarding "substantiation" might be of some assistance.

(iii) Disciplinary Proceedings

If the Police Ombudsman believes that an officer has violated the police conduct rules, the Office may recommend that the Chief Constable carry out a disciplinary hearing. Such a recommendation will take place at the completion of the Police Ombudsman's investigation, if the complaint is not referred to the Director of Public Prosecutions for possible criminal prosecution. If a complaint is referred to the Director of Public Prosecutions for possible criminal prosecution, a recommendation to hold a disciplinary hearing will take place after the DPP decides not to prosecute or the criminal case is completed. If the Police Ombudsman believes there are mitigating factors, the Police Ombudsman may recommend informal proceedings, which can result in advice and guidance or a superintendent's warning.²⁷¹ If not, the Police Ombudsman will recommend a formal disciplinary hearing which, in order of seriousness, can result in:

- dismissal;
- the requirement to resign;
- reduction in rank;
- reduction in pay for a period not exceeding 12 months;
- a fine of a sum of not more than thirteen days pay to be paid over a minimum of thirteen weeks;
- reprimand;²⁷² and
- caution.

If the Chief Constable believes a disciplinary hearing is not warranted, the Police Ombudsman can direct the Chief Constable to hold one.

The Internal Investigations Branch of the PSNI deals with all cases forwarded to the Chief Constable by the Police Ombudsman. Cases forwarded will include – formal disciplinary hearings, informal “advice and guidance” disciplinary procedures, informal resolution, as well as complaints OPONI considers to be within the “direction and control of the Chief Constable” and therefore outside its remit.²⁷³

The IIB replaced its predecessor, the Complaints and Discipline Department, on 6 November 2000, the same date the Police Ombudsman’s Office was established. At the same time OPONI was preparing to replace the ICPC, the PSNI was overhauling its internal systems to allow transition from the Complaints and Discipline Department to the Internal Investigations Branch. During the existence of the ICPC, the Complaints and Discipline Department investigated all public complaints against police officers and the IIB continued to investigate the complaints from members of the public that were pending when OPONI was established. Any complaints made by members of the public after OPONI was created, however, are investigated by OPONI and not the IIB. The IIB continues to investigate all complaints made against police officers by other police staff. When the IIB replaced the Complaints and Discipline Department, the staff of the unit was reduced from 100 to 75²⁷⁴, 30 of whom are civilians, and 45 of whom are police officers.

OPONI claims that, adjusted for inflation, the Office saves £1.4 million per annum as compared to the previous complaints system, which consisted of the ICPC and the Complaints and Discipline Department, and Dr Hayes had projected that the Office of Police Ombudsman he proposed would be less expensive than the old complaints system.²⁷⁵

The IIB, unlike the former Complaints and Discipline Department, conducts proactive internal investigations. According to the IIB, it works to proactively and reactively root out corruption, collusion and crimes committed by officers by using human intelligence sources and surveillance, and by investigating allegations of crime and misconduct.²⁷⁶ The IIB holds approximately 50 disciplinary hearings each year based on cases originating from within the PSNI and states that it is successful in securing findings of misconduct in 97% of these cases. The IIB also investigates allegations made by officers who phone ‘Safecall’, which allows officers to anonymously report wrongdoing.²⁷⁷

The IIB states that it has found an increase in misconduct because it is now actively searching out and investigating it, something the former Complaints and Discipline Branch did not do.²⁷⁸ The Internal Investigations Branch assists the Police Ombudsman to access police documentation, reviews and formulates the PSNI’s opinion on all of the disciplinary cases referred by OPONI to the PSNI, and holds the formal misconduct hearings. The IIB does not further investigate cases referred to it by the Police Ombudsman but can ask the Police Ombudsman to conduct more investigation of a complaint to assist it in presenting the case at the hearing. The IIB has advised CAJ that there has been a handful of cases in which the PSNI has disagreed with the Police Ombudsman’s recommendation that a misconduct hearing should take place. In those cases, the Police Ombudsman agreed with the PSNI’s arguments that the informal procedure would be more appropriate.²⁷⁹ To date, OPONI has directed the PSNI to hold a disciplinary hearing²⁸⁰ in one case, but it has yet to come to hearing.

Disciplinary hearings are heard by an Assistant Chief Constable – who acts as presiding officer – and two officers of at least the rank of Superintendent.²⁸¹ This is despite the fact that Dr Hayes recommended that further thought be given to whether police officers should sit on the disciplinary tribunals with a view to establishing wholly independent hearings.²⁸² Since 1990, CAJ has been recommending the use of an independent tribunal for disciplinary hearings.²⁸³

The police officer against whom a complaint is made is given written notice of the decision to refer a case to hearing, any statement s/he made to the investigating officer and any relevant statement or information gathered by the investigating officer 28 days before the date of hearing.²⁸⁴ The accused officer is ordered to attend the hearing, and if s/he fails to do so, the hearing may proceed in his/her absence.²⁸⁵ If the sanctions of dismissal, requirement to resign or reduction in rank will be available at the hearing, the officer concerned can choose to be legally represented at the hearing.²⁸⁶ If not (i.e. if the charges are less serious), the officer may represent him/herself or select another officer to present his/her defence.²⁸⁷ A police officer is appointed to present the case, unless the nature of the case allows it, and the accused chooses to be represented. In that case, a solicitor or counsel may present the case.²⁸⁸ If an accused officer wishes a police officer to serve as witness in his/her case, that officer will be ordered to attend the hearing.²⁸⁹ Other non-police witnesses can only be asked to attend.

The complainant, if the hearing is the result of a complaint by a member of the public, may be present at the hearing and may be allowed to bring a friend or relative, although s/he and other members can be excluded “in the public interest” if a witness will disclose information which ought not to be disclosed to the public.²⁹⁰ With the consent of all of the parties, the presiding officer may allow an officer of the Police Ombudsman and any solicitor to attend the hearing, but the hearing is otherwise held in private.²⁹¹

CAJ recommends that the 2000 RUC Conduct Regulations be amended so that a representative of OPONI and the complainant’s solicitor can always be present at disciplinary hearings.

Very worryingly from a civil liberties perspective is the fact that the three officers sitting on the disciplinary panel can make inferences from an accused officer’s silence where evidence is given that the member concerned, while subject to investigation and after having been cautioned in writing:

- failed to mention any fact later relied upon in his/her defence at the hearing, if the fact is one which, in the circumstances existing at the time, s/he could have been reasonably expected to mention during the investigation; or
- failed or refused to account for any object, substance or mark; or
- failed or refused to account for his/her presence at a particular place.²⁹²

Misconduct hearings are decided by a simple majority based on the “balance of probabilities” that the officer’s conduct failed to meet the appropriate standard.²⁹³ This standard is met when it is more likely that something occurred than that it did not occur.²⁹⁴ Although not part of the legislation or the regulations, the NIO Guidance states that: *“Relevant case law makes it absolutely clear that the degree of proof required increases with the gravity of what is alleged and its potential consequences. It therefore follows that, where an allegation is likely to ruin an officer’s reputation, deprive him/her of his/her livelihood or seriously damage his/her career prospects, a tribunal should be satisfied to a high degree of probability that what is alleged has been proved.”*²⁹⁵

The great advantage of the change introduced to the standard of proof, confirmed by both the Police Ombudsman’s Office and Internal Investigations, is that police officers suspected of serious misconduct, but found not guilty of a criminal offence, may still be subjected to a lesser disciplinary charge. In the past, the unsuccessful taking of a criminal case almost automatically ruled out later disciplinary charges being laid - on the grounds that no-one should be subjected to the risk of double jeopardy. This important change has come about because the standard of proof in disciplinary hearings has been lessened from the criminal standard of “beyond a reasonable doubt” to a “balance of the probabilities”. Officers engaged in misbehaviour cannot therefore escape discipline simply on the grounds that such misbehaviour did not constitute criminal behaviour.

A verbatim record of the hearing is taken. The officer may have the Chief Constable review the finding and/or the sanction imposed.²⁹⁶ If an officer has been dismissed, required to resign, or reduced in rank, the officer has a right of appeal to a Police Appeals Tribunal.²⁹⁷ Where a record is made of the outcome of any misconduct hearing, it will be expunged from the officer’s personnel record after a period of three years, depending on the punishment imposed. Records of written warnings will be expunged after 12 months.²⁹⁸ Clearly there is a difficult balance to be struck here: everyone must have the opportunity to change and not be pursued throughout one’s professional career with references in a personnel file to behaviour long ago remedied. On the other hand, serious offences may recur at moments of stress throughout a police officer’s career, and comprehensive records could help track these trends and provide early warning signs.

CAJ recommends that the provisions for destroying disciplinary records be kept regularly under review.

OPONI reported to the Northern Ireland Affairs Committee in March 2004, that, on the basis of complaints made to it by members of the public, that it had recommended misconduct hearings against a total of 21 officers, Superintendent’s warnings against 10 officers, and advice and guidance in the case of 83 officers. Both Superintendent’s warnings and advice and guidance pertain to informal disciplinary proceedings.²⁹⁹ In addition, in 21 cases, the Police Ombudsman made recommendations with respect of police procedures or for officers to receive management discussions. According to OPONI, in two of the misconduct hearings, guilty pleas were entered, in one case the officer was found guilty, in five cases the charges were not proceeded with, and 13 cases remain pending.

CAJ is pleased that OPONI has now publicly begun to distinguish between the number of formal and informal disciplinary proceedings it recommends, and report on the results of such proceedings and the sanctions imposed, in its annual report. CAJ has argued for more than a decade that the outcome of misconduct proceedings should be made public.³⁰⁰

The 2003-04 annual report states that, during the previous year, OPONI recommended:

- Formal disciplinary proceedings in 11 cases, concerning 12 officers and including 15 charges. Three of these cases were completed and the results included one officer being dismissed, one officer being fined and cautioned, and another officer receiving two cautions.
- Advice in guidance in 39 cases against 58 officers. The PSNI gave advice and guidance to 52 of these officers, decided against giving advice and guidance to one officer, and the Chief Constable's response is awaited in the remaining 5 cases.
- Superintendent's warnings in 8 cases against 10 officers. The PSNI gave a superintendent's warning to 4 of these officers, decided against giving a superintendent's warning to 3 officers and five cases remain pending.³⁰¹

CAJ has the following concerns regarding the data concerning disciplinary proceedings resulting from complaints by members of the public:

- (a) **In its three and a half year existence, OPONI has only recommended formal disciplinary hearings against 21 officers.** Some of this can be explained by delays in the system discussed elsewhere – for example, disciplinary hearings cannot be pursued until any criminal charges have been pursued, so delays in the DPP and the courts have a knock-on effect on subsequent disciplinary hearings. According to the Police Ombudsman, the DPP can take from 2 to 18 months to decide whether to prosecute in a case.³⁰² OPONI also reports that “a significant number of disciplinary hearings were postponed due to a judicial review for over a year.”³⁰³ Nevertheless, considering that during this same time period, OPONI has received 2,124 cases from the ICPC, 9,885 complaints direct from complainants, 116 cases referred to it by the Policing Board and the Chief Constable, and investigated 10 cases on its own initiative without complaint,³⁰⁴ this number is extremely low.
- (b) **The majority of disciplinary cases OPONI has referred to the PSNI have been for the informal process rather than for formal disciplinary hearings.** Less than a quarter of the disciplinary cases OPONI has referred to the PSNI have been for formal disciplinary hearings, which can result in serious sanctions. The informal disciplinary process only results in advice and guidance or a superintendent's warning, which will be expunged from the officer's personnel record after 12 months. Even the number of informal disciplinary proceedings OPONI has recommended, 93 in three and a half years in response to over 12,135 cases, is low.

- (c) **The annual reports of the Police Ombudsman do not describe whether the Police Ombudsman's recommendation to hold a disciplinary hearing was accepted by the PSNI in every case or whether and why, after discussion with the PSNI, OPONI decided to change its recommendation that the PSNI hold a disciplinary hearing to a recommendation that informal procedures be followed.** As stated earlier, the IIB advised CAJ that in a handful of cases, the PSNI disagreed with OPONI's recommendation that formal disciplinary hearings should be held. OPONI then changed its recommendations to requests for informal proceedings. The public should be advised as to the basis upon which OPONI changed its recommendations in these cases since this could have some effect on why the proportion of formal hearings recommended is very low compared to the number of informal proceedings. In addition, information should be given as to why five recommended formal hearings were not proceeded with.
- (d) **Only ten misconduct hearings resulting from OPONI referrals have been completed to date.** It is not clear who is at fault for this delay. CAJ is aware that, despite the fact that the IIB states that they try to complete misconduct hearings within three months, the Police Ombudsman has expressed concern about the delays in completing the misconduct hearings referred to the PSNI by OPONI.³⁰⁵ As of June 2004, approximately 21 officers, including a few on the advice of OPONI³⁰⁶, were suspended and others were not allowed to have contact with the public as they await the conclusion of their disciplinary hearings. Generally suspension is with pay, unless an officer is in custody following conviction or absent with his/her whereabouts unknown.³⁰⁷ The IIB does try to conclude the disciplinary hearings of suspended officers before those of non-suspended officers and this could create delays in some cases.
- (e) **Although difficult to determine after so few cases being finalised, the punishment given to officers in disciplinary cases resulting from complaints by members of the public do not seem as serious as that given in cases stemming from complaints from within the Police Service.** OPONI's 2002-03 annual report states that, as a result of the disciplinary hearings OPONI recommended, the following action has been taken: advice, guidance and/or training; constructive discussion; admonishments, procedural recommendations; and superintendent's written warnings.

Most, if not all, of these outcomes relate to the informal disciplinary process, not disciplinary hearings. This does not seem like significant punishment, especially compared to the punishment given to officers as a result of disciplinary hearings which originated from complaints from within the Police Service. According to the 2002-03 annual report of the Chief Constable, in those hearings, the discipline consisted of dismissal, requirement to resign, reduction in rank and pay, fine, reprimand and caution.³⁰⁸ These differing outcomes may give some credence to Dr Hayes' concern that complaints

from within the Police Service may be taken more seriously than complaints made by members of the public.³⁰⁹ There are of course presumably different reasons which might explain this marked discrepancy in substantiation rates and resultant punishment, but it clearly is an important trend which should be monitored very closely.

Accordingly CAJ recommends that OPONI include the following information in its annual reports:

- **The nature of the misconduct alleged in each case referred by OPONI, whether for formal disciplinary hearings or informal disciplinary proceedings;**
- **Whether the PSNI accepted OPONI's recommendation to hold a formal disciplinary hearing in every case, and if not, the reason for the PSNI's disagreement and how the disagreement was resolved;**
- **The outcome of all formal misconduct hearings and informal disciplinary proceedings with regard to the findings of misconduct as well as the punishment imposed; and**
- **OPONI's analysis of the appropriateness of the findings and the sufficiency of the punishment and any other aspect of PSNI's handling of these cases.**

CAJ recommends that the PSNI include the following information in its annual reports:

- **How many cases stemming from complaints from within the Police Service led to formal misconduct hearings being recommended;**
- **How many cases stemming from complaints from within the Police Service led to informal disciplinary proceedings being recommended;**
- **The nature of the misconduct alleged in each of these cases;**
- **The outcome of all of these cases with regard to findings of misconduct and punishment imposed; and**
- **That in all cases, OPONI reports should distinguish between cases originating from OPONI and those originating from within the PSNI.**

(iv) Prosecution of Police Officers

The 1998 Act calls on the Police Ombudsman to forward any case indicating that a criminal offence may have been committed to the Director of Public Prosecutions.³¹⁰ The Office of the Police Ombudsman gives its recommendation as to whether prosecution is warranted, but it is a matter for the Director of Public Prosecutions to decide whether or not to prosecute.³¹¹

Since the Office of the Police Ombudsman opened in November 2000, 475 cases have been referred to the DPP for direction. In 44 of these cases, the Police

Ombudsman recommended prosecution. The DPP has given directions for prosecution in 18 of these cases, has decided not to prosecute in 10 of these cases, and has not made a decision in the remaining cases. The DPP has directed prosecution in three cases where the Police Ombudsman had not so recommended.³¹² The number of cases in which the DPP decided not to prosecute despite OPONI's recommendation to the contrary is not included in OPONI's annual reports. It is therefore difficult for the public to know what action the DPP is taking in cases in which OPONI believes prosecution is warranted.

CAJ recommends that, in its annual reports, OPONI indicate in how many cases the DPP has disagreed with its recommendation to prosecute.

The criminal charges OPONI recommended that the DPP prosecute include: varying degrees of assault; causing death by dangerous driving; dangerous and careless driving; perverting the course of justice; perjury; kidnapping; intimidation; causing harassment, alarm or distress; racially or religiously aggravated crimes; breach of the Data Protection Act; and breach of the Criminal Procedure and Investigations Act.³¹³ From these cases, as of March 2004, only four officers have been convicted. This means that out of the 12,135 cases OPONI has received from either the ICPC, complainants directly, by referral from the Chief Constable and the Policing Board, and by initiating its own investigation as of March 2004,³¹⁴ only four officers have been convicted, although presumably not all of these 12,135 cases have been completed. In only 44 out of these 12,135 cases has OPONI recommended prosecution. This seems a very low number.

Another problem is the fact that the DPP does not generally give reasons for not pursuing a prosecution. Although the NIO Guidance confirms that the DPP only gives reasons in the most general terms, it claims the DPP recognises that this practice must be examined and reviewed in every case where reasons are sought, and that the DPP will normally indicate whether the evidence was insufficient or whether criminal proceedings were not in the public interest. As a result of the Criminal Justice Review, current practices in this area are being scrutinised closely, and it is clearly unsatisfactory that the DPP would fail to explain its inaction when presented with an OPONI recommendation to prosecute. Although OPONI is not allowed to give such reasons to the complainant, provision is made for the complainant to be referred to the DPP for such information.³¹⁵ It is not clear whether this procedure is being followed, and solicitors and complainants may want to consider using the NIO Guidance to obtain reasons for failure to prosecute from the DPP.

The case of John Boyle exemplifies problems in this area. In 1977, Mr Boyle was convicted of attempting to murder a policeman as part of an IRA plot. The evidence against him consisted solely of a statement admitting participation.³¹⁶ He was released in 1986 after it was discovered that the notes of one of his interviews had been re-written by the police. The Police Ombudsman recommended that the two officers involved should be charged with perjury. The DPP decided there was insufficient evidence to prosecute, but refused to give the reasons for its decision. The limitations of judicial review in this arena were highlighted when Mr

Boyle's application for a judicial review to require the DPP to give reasons for the decision not to prosecute the police officers was dismissed on the grounds that there was nothing to indicate that the DPP failed to properly apply its policy.³¹⁷

CAJ recommends that the Director of Public Prosecutions recognise the clear public interest in providing reasons for its decision not to prosecute in cases referred to it for action by the Police Ombudsman.

One of the first police convictions as a result of a Police Ombudsman investigation related to an officer accused of swerving from the left side of the street to the right and mounting the pavement towards a number of people in Belfast after public disorder in connection with an Orange Order parade.³¹⁸ The officer was driving the tenth PSNI land-rover leaving the scene. All of the other nine land-rovers had stuck to the left hand side of the road.³¹⁹ The incident was caught on video and witnessed by parades observers from the United States. The officer was convicted of dangerous driving in December 2003, fined £400 and given an 18-month driving ban.³²⁰ His appeal of the conviction was dismissed in June 2004.³²¹ Presumably, OPONI has referred, or will now refer, the matter to the PSNI for a disciplinary hearing.

Although CAJ would consider the case to be a success for OPONI – in that a police officer who behaved criminally was held effectively to account – some problems in the handling of the case were highlighted by a US witness. The witness cited a number of practical problems encountered, regarding travel arrangements, testimony, and attitudes exhibited from OPONI staff, though OPONI believe that problems were essentially ones of miscommunication and have now been effectively handled.³²² The witness also had concerns about the DPP's handling of the case. Clearly the successful prosecution of criminal police behaviour should face as few obstacles as possible, and OPONI should monitor witness experiences to see that any such obstacles are quickly recognised and addressed.

In a separate case, the prosecution's case against police officers resulting from a referral from the Office of the Police Ombudsman fell apart without the public being advised of the reasons for the failure.

Raymond Boyle was a passenger in a stolen car which collided with a police landrover. A witness contradicted the account given by the police officers, and a report by the Forensic Science Agency, which was requested by OPONI, concluded that the officers' version of events was incorrect.³²³ The Police Ombudsman forwarded the case to the DPP for that agency to decide whether to prosecute the officers involved. The officers concerned were suspended.³²⁴ The DPP decided to prosecute two officers for causing death by dangerous driving and, along with five other officers, for intending to pervert the course of justice. Due to general concerns about the Forensic Science Agency, the Office of the Police Ombudsman later suggested to the DPP that it review the case and secure a second forensic report.³²⁵ According to OPONI, the DPP refused to do this.³²⁶ The DPP later claimed that further expert advice provided by the defence cast doubt on the

original forensic report, and the DPP decided not to offer further evidence in the case. The officers, who had been suspended for approximately 20 months by this time, were acquitted of all charges.³²⁷

Raymond Boyle's family's solicitor said they have many questions about the prosecution³²⁸ and presumably the officers are extremely upset after being suspended for so long in a case which, in the end, the DPP did not even pursue.

Interestingly, despite the fact that it is the DPP's decision to prosecute or not to prosecute, the Police Federation decided to focus its criticisms of this case on the Office of the Police Ombudsman. The Federation went as far as to call for an Oversight Commissioner to regulate OPONI's investigations and stated that they were not satisfied with the methodology which OPONI uses to investigate complaints against the police.³²⁹ The Forensic Science Agency rejected speculation that its work had led to the collapse of the case. The DPP seems to have been the only agency involved that avoided public or Federation criticism about its actions, and yet it is far from clear what role it had played throughout.

It is vital that important cases such as these are open to scrutiny and that any errors of procedure are analysed and rectified to ensure that they cannot be repeated in future.

E. OPONI Relationship with the Director of Public Prosecutions

1. *Is the DPP Prosecuting Cases Recommended for Prosecution by the Office of the Police Ombudsman?*

Although prosecution of officers is not the only, nor necessarily the most important, indicator of success for a police complaints body, it is important that the public have confidence that, where warranted, police officers will be brought before a judge and convicted. This is especially the case in Northern Ireland, where no police officer had ever been convicted of any offence related to the conflict or in response to complaints by the public until OPONI came into being. Concern has been raised that there have been very few prosecutions to date and several solicitors told CAJ about cases in which the Police Ombudsman recommended prosecution but the DPP failed to prosecute. Solicitors also talk of several other cases in which they believe OPONI should have recommended prosecution but did not do so.

2. *The Time it Takes the DPP to Decide Whether to Prosecute*

Another concern is the amount of time it takes the DPP to decide whether it will prosecute in a particular case. According to OPONI, it takes the DPP between 2 and 18 months to decide whether or not to prosecute in a particular case. This delays not only any criminal case, but also any misconduct hearing which may be recommended, as well as the eventual resolution of the complainant's case.

OPONI has stated that it is liaising with the DPP with respect to delays.³³⁰

3. Is the DPP Offering to Drop Criminal Charges against Complainants in Exchange for not Pursuing Complaints against Police Officers?

CAJ has referred in the past to a comment made at the Northern Ireland Forum in January 1997, when Democratic Unionist Party member Gregory Campbell, clearly thinking that he could speak of the experience of many elected politicians, said: *"All members here will know of cases, particularly in public order situations, but not exclusively so, in which charges are levelled. First of all, a person makes a complaint concerning alleged action by a police officer. Initially, the complainant does not have charges levelled against him, but subsequently he is charged by the police"*.³³¹ This was presumably the kind of public concern that Dr Hayes sought to address in his report when he expressed concern about back-door deals being made in which charges against a complainant would be dropped if the complainant would drop his/her complaint against an officer.

CAJ has learned of at least one case of this behaviour continuing. A complainant had made a complaint that he was assaulted by a police officer. The complainant was subsequently charged with assaulting an officer and the DPP was pursuing this case. The Police Ombudsman recommended that the officer be charged with assault, but the DPP refused to make a decision regarding the officer's prosecution until the complainant's criminal case was completed. A judicial review was launched and the complainant was allegedly told that charges against him would be dropped if he dropped his complaint against the officer concerned. CAJ cannot verify the particulars of this case, but it would be surprising if complainants worrying about being falsely convicted of assault, did not readily agree to dropping a complaint against the police officer concerned. It is therefore vital that this kind of situation be extremely closely monitored.

CAJ recommends that OPONI keep records of complaints made to them in such a way as to track if a complainant is being victimised by the PSNI, and that any such evidence of victimisation be treated as a distinct but related element of the initial complaint.

Victimisation, even if proved, is unlikely to be traced directly to the officer who is the subject of the initial complaint, but anti-victimisation legislation and procedures in other areas should be drawn upon by OPONI in determining appropriate action.

F. OPONI Review of the Omagh Bomb Investigation

Many consultees cited OPONI's review of the RUC/PSNI Omagh bomb investigation as a great success for the new complaints body. They felt that in this investigation, OPONI demonstrated its independence and willingness to conduct a very thorough investigation and severely criticise the PSNI where warranted.

On 15 August 1998, a bomb exploded in Omagh, County Tyrone killing twenty-nine people, one of whom was pregnant with twins. Some 250 others were injured.³³² The Omagh bombing, which was the single worst incident in the history of "The Troubles", was all the more shocking given the recent passage of the Belfast/Good Friday Agreement. On 29 July 2001, a newspaper reported allegations made by a person claiming to be a former British security force agent suggesting that the Omagh bombing could have been prevented.³³³ The Police Ombudsman decided to make enquiries into these allegations and later decided to carry out a formal investigation into the following matters: (1) whether information of relevance was available to the RUC prior to the bombing; (2) whether any such information had been responded to appropriately by the RUC; (3) whether intelligence held by the RUC was revealed to and exploited by those investigating the bombing; and (4) whether the evidential opportunities contained within an RUC-conducted review of the Omagh bomb investigation had been pursued. The Office of the Police Ombudsman conducted this investigation using its power under §55(6) of the 1998 Police Act, which allows it to investigate any matter that indicates a member of the Police Service may have violated criminal law or acted in a manner that would justify disciplinary proceedings when judged desirable in the public interest to do so.³³⁴

The Police Ombudsman's report on the Omagh bomb investigation was published on 12 December 2001,³³⁵ although the report received extensive media coverage before the date of its official release. The report found very serious shortcomings in the RUC's handling of intelligence information prior to the Omagh bombing, and the investigation of the incident by the RUC and later, the PSNI. OPONI found a failure of leadership within the Police Service; that intelligence indicating that an attack would take place in Omagh on the date of the explosion was not adequately analysed or acted upon; that this intelligence was not passed on to the police in Omagh; and that Special Branch did not share 78% of its intelligence with the police team investigating the Omagh bombing.³³⁶

OPONI made the following recommendations in response to its investigation:

- That a Senior Investigation Officer independent of the PSNI be asked to lead the team investigating the Omagh bombing;
- That an external officer be appointed to investigate potentially linked incidents identified in the police's Omagh Bomb Review Report;
- That the police investigation team be given access to all relevant intelligence;

- That Her Majesty's Inspectorate of Constabulary be invited to carry out a review of linked murder enquiries, with a view to reporting on strategies, policies and practices, including the sharing of intelligence;
- That there be a review of Special Branch; and
- That the PSNI adopt the policy of the Association of Chief Police Officers (ACPO) with regard to murder reviews.³³⁷

On 7 December 2001, after receiving an advance draft of the OPONI report, Chief Constable Flanagan asked for additional time before publication to respond to the Ombudsman's report due to the fact that, in his opinion, the report contained "*many significant factual inaccuracies, unwarranted assumptions, misunderstandings and material omissions.*"³³⁸ He stated that the Ombudsman's report inflicted "*unnecessary grief and anxiety on the relatives of those murdered at Omagh and those injured.*"³³⁹ In an indication of how upset the Chief Constable was in response to the findings of the Ombudsman's report, he even went so far as to say he would commit suicide in public if the conclusions in the Ombudsman's report were correct.³⁴⁰ The Chief Constable also raised the prospect of suing Mrs O'Loan for libel.³⁴¹ The Police Association for Northern Ireland did take a judicial review against OPONI in response to OPONI's Omagh bomb report, but it was eventually withdrawn.³⁴² The Police Ombudsman welcomed the decision of the Police Association for Northern Ireland to withdraw its judicial review saying, "*I am very pleased that my report stands. The challenge has been withdrawn. I have been very concerned about the effect of this on the Omagh families in the past year but they can now be assured that I confirm the content and conclusion of my report.*"³⁴³

The Northern Ireland Policing Board considered OPONI's report and devised a plan which effectively supported the key recommendations made by the Police Ombudsman while at the same time making other recommendations to address the Chief Constable's concerns relating to the amount of time he was given to respond to the Ombudsman's report before it was published.³⁴⁴ The Ombudsman's recommendations to conduct an independent review of Special Branch, incidents potentially linked to the Omagh bombing and murder inquiries generally, and implementation of the ACPO policy with regard to murder review were accepted in full.

Although the PSNI's Senior Investigating Officer was allowed to continue commanding the investigation despite the Police Ombudsman's recommendation to the contrary, two independent officers were put in place to evaluate the investigation, one with equal status to the PSNI's Senior Investigating Officer. The other recommendations that the Board added were a review of the Office of the Police Ombudsman and protocols between the Office and the PSNI, which were made in response to complaints that the PSNI was not given sufficient time to respond to its report before its publication. The plan was worded in a way to placate the opposing parties, both outside and presumably within the Policing Board, while still implementing the vast majority of the Ombudsman's recommendations. The Police Ombudsman broadly welcomed the Board's plan, which took on board her recommendations and moved the murder investigation forward.³⁴⁵ The Chief Constable also accepted the Board's recommendations.³⁴⁶

Of particular concern to many observers was the fact that, after the OPONI report was released, the Prime Minister came to the immediate defence of the Chief Constable when his spokesperson stated, “*Sir Ronnie has the Prime Minister’s full support.*”³⁴⁷ In contrast, despite the highly personalised nature of the dispute, the spokesperson did not simultaneously offer full support to the Police Ombudsman, or welcome the report, but merely noted that the Ombudsman had done her duty.³⁴⁸ Given the very recent creation of the Ombudsman’s Office, a more robust defence of its integrity by the government that had brought the Office into being might have been expected. The lukewarm attitude of the Prime Minister was exacerbated when a former Northern Ireland Secretary of State, Peter Mandelson, described the Police Ombudsman’s report as a “*very poor piece of work indeed,*” arguing that it fell “*below the quality and standards of objectivity and rigour required in a report of this kind.*”³⁴⁹

Some local Ulster Unionist politicians also attacked the Police Ombudsman. For example, Lord Kilclooney, an Ulster Unionist peer and a member of the Policing Board, stated that the Ombudsman had “*clearly overstepped her responsibilities*” and called for her resignation.³⁵⁰ More shocking was the response of Lord Maginnis, who likened Mrs O’Loan to a suicide bomber and claimed she had “*outlived her usefulness.*”³⁵¹ The Police Federation called on Mrs O’Loan to “*consider her position.*”³⁵² Mrs O’Loan consistently stood firmly behind the report.³⁵³

This lack of government support for OPONI, just like the government’s failure to fully implement the Hayes Review and treatment of OPONI as a political concession, makes it easier for certain politicians to make such vicious attacks on the Office and portray it as a tool for their opponents – mainly nationalists. Had government treated OPONI as it should have, as a proper and necessary police reform recommended by an independent adviser, such hostile attacks on OPONI as it carries out its vital work may have been less likely.

In practice, the statistics, which show that 48% of complainants are Protestant and 37% are Catholic,³⁵⁴ indicate that Protestants (and therefore most likely unionists too) believe in fairly large numbers that the Office of the Police Ombudsman can be of use to them. Certainly it has been CAJ’s experience that the issue may be one of class divisions as much as the more traditional divisions. Working class loyalists, interviewed as part of this research, appeared to have different attitudes to OPONI than the wider unionist community is portrayed as having. In reality, concerns enunciated by unionists such as those cited above tend to be focused more on the very existence of the Office, and the fact that it occasionally criticises the PSNI, rather than on more detailed critiques of its operation or issues such as substantiation rates.

G. OPONI Relationship with the Police Service of Northern Ireland

The Office of the Police Ombudsman has a statutory duty to secure confidence in the complaints system from both the members of the Police Service of Northern Ireland and members of the public.³⁵⁵ The Northern Ireland Statistics and Research Agency surveyed police officers about their opinions of the Office of the Police Ombudsman on behalf of OPONI between January and March 2003. 40% of the approximately 9,900 officers surveyed responded.³⁵⁶ The results of the survey are mixed, but for the most part are unfavourable. The following are some of the findings of the survey:

- 89% of police officers believe OPONI treats the complainant "slightly better" or "much better" than the officer being complained about;
- 84.4% of officers believed they were not updated frequently enough about the progress of the investigation against them;
- 57.3% of officers thought that, overall, they were not treated fairly by OPONI;
- 53.9% of officers "agree" or "strongly agree" they are deterred from doing their jobs properly because they know they might be complained about;
- 63.9% of officers who had spoken to a member of staff from OPONI found the staff member to be professional;
- 58% of officers believe complaints against officers should be independently investigated; and
- 35.7% of officers "agree" or "strongly agree" that they have a good knowledge of the role, responsibilities and powers of OPONI and 67.1% of officers would like to know more.³⁵⁷

The retired Chair of the Police Federation, which represents rank and file PSNI officers, said that officers would never willingly give evidence to OPONI unless there was "root and branch" reform of the complaints system, that the Office is political, damaging the police's ability to work effectively, and is attempting to airbrush the RUC out of existence.³⁵⁸

This all suggests that, despite Mrs O'Loan's support on contentious issues such as the use of CS spray and plastic bullets, she does not have the support or trust of rank and file PSNI officers. In evidence to the Northern Ireland Affairs Committee, the Ombudsman indicated that this survey "caused concern".³⁵⁹ As highlighted already in section A, on "Quality of OPONI Investigations", the Police Ombudsman has stated that it can take months to arrange interviews with officers on sick leave and that interviews with officers are frequently cancelled. Investigations can also be delayed due to the length of time it takes the police to supply materials.³⁶⁰ The Office of the Police Ombudsman has also experienced PSNI reluctance to hand over documents necessary to the investigation of complaints. After OPONI communicated its intention to consider the adequacy of the RUC investigation of the murder of Sean Brown, the Murder Investigation Policy File, which recorded all decisions and the reasons for those decisions, inexplicably disappeared.³⁶¹ The PSNI initially withheld from OPONI some critical information, including an

intelligence chapter of the RUC Review of the Omagh Bomb Investigation, failed to inform OPONI investigators of a computer system where intelligence vital to the investigation was held, and OPONI described the response from senior police management to the OPONI review of the Omagh bomb investigation as defensive and at times, uncooperative.³⁶²

Mrs O'Loan has described the cooperation she receives from police officers as follows:

"There are still police officers who have retired, some very recently, and who have information as witnesses, about incidents the subject of investigation, who refuse to give statements to my investigators or to assist with particular investigations. This makes the investigative process unnecessarily difficult. There are also a few officers who have not retired and who are the subject of investigation who simply refuse to answer questions. Whilst respecting their right not to incriminate themselves I question why some of these officers take this course. There are also situations in which explanations may be available but none are provided which leaves no option but to recommend discipline. Conversely there are officers of great integrity who understand the obligation placed on them as constables and have given evidence against colleagues. One such situation just during the past year led to the conviction of an officer for perverting the course of justice and his subsequent imprisonment. This is the true face of modern ethical policing."³⁶³

The Office of the Police Ombudsman for Northern Ireland is attempting to improve relations between police officers and OPONI. Some examples are as follows:

1. Holding meetings with the Police Federation, Superintendents' Association and Chief Officers Association;
2. Holding two conferences for District Commanders and Chief Officers in conjunction with the PSNI in 2002-03;³⁶⁴
3. Contributing to a question and answer column in the Police Gazette;³⁶⁵
4. Visiting every PSNI District Command Unit;
5. Producing and distributing to each police officer a guide to complaints from a police perspective;
6. Making frequent presentations to officers, recruits and in training;
7. Implementing the 14 recommendations made by senior officers from England who OPONI requested review the lines of communication between OPONI and the PSNI;
8. Securing the agreement of the Staff Associations to address the issues raised in the survey and improve police officers level of knowledge of and confidence in OPONI;³⁶⁶
9. Addressing the Police Federation Northern Ireland annual conference; and
10. Establishing with PSNI and the Staff Associations a Joint Committee to address issues.³⁶⁷

On the positive side, OPONI also reports a high level of PSNI acceptance of the recommendations the Office makes to the PSNI on how best to improve policing. The fact that 58% of officers believe complaints against the police should be independently investigated is encouraging, and will hopefully form a basis upon which to improve relations between the PSNI and OPONI. Such an improvement in relations would facilitate not only the efficient resolution of complaints but also a corresponding increase in the quality of policing.

It is difficult to draw out any particular conclusions or recommendations from this analysis. It is obviously both a statutory duty – and wise – for the Office of the Police Ombudsman to ensure that it secures the confidence of the police in the efficiency and fairness of the Office. At the same time, few people, and police officers are no exception, readily embrace the principle of an external independent arbiter of their professional conduct. It will be important to monitor over time the extent to which attitudes within the Police Service in Northern Ireland change in response to seeing the benefits to good policing of a fair and independent complaints mechanism. Overt politicisation of the work of the Office of the kind indulged in by government and by local politicians and commented upon in the previous section, can only further delay police acceptance of the value of this institution.

H. OPONI Accessibility and Transparency

OPONI has made the dissemination of information a priority and is probably the most transparent of the new policing institutions when it comes to providing information to the general public. 85% of the Northern Irish public are aware of the Office of the Police Ombudsman and 85% of the public also believe it is independent of the PSNI.³⁶⁸ OPONI has taken the following steps to make itself accessible to the public:

1. Complaints can be submitted to OPONI by phoning (including by free phone), faxing, emailing, writing, and calling into the Office, as well as by filling in a complaint form on OPONI's website, submitting a complaint through a solicitor or other representative, or seeking the help of a local Citizens' Advice Bureau;³⁶⁹
2. OPONI has arrangements with organisations such as the Citizens' Advice Bureau, the Chinese Welfare Association and Northern Ireland Women's Aid Federation to use their venues across Northern Ireland to meet with complainants;³⁷⁰

3. OPONI's website contains extensive information on the Office; complaint data, including statistics by PSNI District Command Unit and complaint outcomes; links to all the legislation and statutory rules that impact on the work of the Office; OPONI press releases and publications; and summaries of OPONI's Regulation 20 reports, which address matters referred to OPONI mainly by the Police Service or which OPONI decided to investigate in the public interest without receipt of a complaint from a member of the public;
4. OPONI published a summary of its 2002-03 annual report and distributed it in *The Belfast Telegraph*, which has a circulation of 110,000;³⁷¹ and
5. OPONI has given presentations to 15 District Policing Partnerships and stated in 2003 that it provides a speaker on every occasion in Northern Ireland on which it is asked.³⁷²

Some consultees also praised OPONI for its transparency, stating that families are consulted and sometimes given copies of investigative reports; that the investigations expose misconduct that was previously hidden; that the Police Ombudsman is willing to listen to new ideas and meet with community groups, cooperate with organisations writing documents related to policing, and travel to areas where her reception would not be entirely positive, such as the Short Strand area of Belfast during disturbances there in 2002. Many District Policing Partnerships commended the Police Ombudsman for seeking meetings to explain the Police Ombudsman's role and share local complaint data, with one DPP - whose members have been threatened - stating that her visit was a real morale boost for them.

Some consultees were not as positive, especially with regard to OPONI's provision of information to complainants, an issue which is addressed later in section I, on "OPONI Disclosure of Information". Interviewees also raised two additional examples highlighting a lack of OPONI accessibility, OPONI's international conference and the standard letters OPONI sends to complainants.

In November 2003, the Police Ombudsman held an international conference entitled, "Policing the Police: The Challenges". The conference provided the opportunity to hear about some of the different models of police accountability which exist in different countries and was useful for that purpose. Unfortunately, the conference was so expensive – £399 for one full day and two half days, including meals – that human rights organisations and community groups, even local ones, could not afford to attend. CAJ asked for a reduced fee for non-profit groups so that a wider exchange of views could be achieved, but none was ever offered (other than to CAJ at the last moment in exchange for speaking). As a result, only a handful of non-governmental organisations were able to attend the conference, most because they were speaking at the conference.

Consequently, the audience was made up almost exclusively of police officers and police authorities from Britain, some representatives of government funded police organisations (such as Her Majesty's Inspectorate of Constabulary), academics, representatives of international police accountability bodies, and a few District Policing Partnership members. Many of the District Policing Partnership managers with whom CAJ spoke mentioned that they could also not afford to send all of the members who were interested in attending the conference. This is a shame since the District Policing Partnerships managers said that their members would have really benefited from an introduction to police accountability, especially considering the bodies were only about six months old at that time. Any sharing of views during the conference was certainly limited by the nature of the participants.³⁷³

In addition, the conference agenda allowed very limited time for questions and answers, and almost no time for critical discussion. While the event was very successful in promoting awareness of the Office of the Police Ombudsman internationally, if not locally, which may have been the prime motivation for the event, certainly CAJ has received complaints that the conference was choreographed and contained little of a critical nature. A conference report has not yet been issued.

The second example in which consultees thought OPONI could improve its accessibility to complainants is in regard to the letter it sends out after receiving complaints. After filing a complaint, a complainant receives a letter which requires the complainant to contact OPONI by a specific date or the Office will not pursue his/her complaint. According to those interviewed, this letter does not allow much time for response and the approach appears unnecessarily aggressive. Some consultees stated that the letter is not user-friendly, gives unreasonable deadlines, and leaves the recipients with the impression that OPONI does not want to help the complainants.

Part of the problem may lay in the fact that, under the regulations, a complainant must respond to a letter within 21 days if s/he wants further steps to be taken. Given this fact, OPONI is clearly under an obligation to make this deadline known to complainants, but it would be worth OPONI reviewing these standard letters in light of these comments. It should be possible to convey to complainants the limited timeframe within which they must take action, without implying that OPONI is somehow obstructive or disinterested in the complaint. Alternatively, consideration should be given to amending the regulations. Clearly there is a balance to be struck here as OPONI does not want complainant inaction to lead to delays in concluding investigations. But compared to the time the Police Service takes to respond to complaints, 21 days seems an extremely short period of time.

CAJ recommends that OPONI review the provision of the 2000 RUC Complaints Regulations that requires complainants to respond to OPONI letters within 21 days and if OPONI finds it to be inconveniencing complainants or leading to complainant non-cooperation, make recommendations to change the regulation.

CAJ further recommends that OPONI revise the letter it sends to complainants warning them of deadlines to ensure it does not suggest OPONI disinterest in investigating complaints.

Despite OPONI's efforts to make itself accessible to complainants, there are still groups of people who remain unaware of the Office of the Police Ombudsman or who are disinclined to submit complaints regarding police behaviour to the Office. Examples of such groups are highlighted in the following sections.

1. Those Who Fear Police Reprisals

In addition to those who fail to pursue complaints once lodged, there are many people who do not submit complaints to OPONI. According to survey results published by OPONI, only 16% of respondents who experienced unacceptable police behaviour had submitted complaints to OPONI. The two most common reasons given for this were (1) a belief that nothing would be done about their complaint, and (2) a belief that the complaint would not be taken seriously. Other reasons given for not submitting complaints included that they felt the incident was not serious enough, they could not be bothered, did not know how to complain or did not want to make trouble for the police.³⁷⁴

This research indicates that a very small amount of people who feel they have a reason to complain about police behaviour do so. In CAJ's research, we were told of additional reasons for not complaining. These include a lack of a culture of complaining about the police, a fear of police reprisals, and a belief that the bad police behaviour experienced is normal. Some people informed CAJ that members of the Protestant/unionist community are not accustomed to taking complaints against the police, even if they feel they frequently have cause to do so. They stated they do not have experience in complaining and do not therefore necessarily record the appropriate information.

While fear of police reprisal is an issue that implicates the Police Service, not OPONI, such fear will affect the effectiveness of OPONI. Several consultees informed CAJ that this fear is prohibiting complainants from coming forward. One described her belief that very serious charges were brought against a complainant in retaliation for filing a complaint with OPONI against the PSNI. One solicitor advised CAJ that the filing of criminal charges against complainants is so common that they advise all potential complainants of this risk before filing their complaints with OPONI. Another told us how a young person who alleges extreme police harassment refuses to submit a complaint for fear of the situation escalating to dangerous levels.

OPONI notes that *"only 11% of our complainants are the subject of prosecution by the police."*³⁷⁵ On the one hand, this figure should reassure complainants that they do not need to worry unduly about the risk of them becoming the target of prosecution, since nearly 9 out of 10 complainants do not have this experience. On the other hand, it would be important to ascertain what is happening in the 11% of cases where complainants are being prosecuted by the police. Is OPONI

in a position to effectively monitor such cases over time to ascertain that there are no cases where prosecution is being pursued for the purposes of harassment? One organisation which works with vulnerable youth advised CAJ that the young people they work with would never submit a complaint to OPONI because they are known to the police, and some already allege police harassment. Unfortunately, the organisation has come to the conclusion that it is not safe for them to advise the young people with whom they work to file complaints with OPONI because such action could make them easy targets for police. OPONI should be vigilant in scrutinising any allegations of subsequent police harassment and any charges brought against a complainant after the filing of his/her complaint. Victimisation of people who make complaints in the employment field is treated very seriously, and no less a response should apply if someone is victimised, or alleges victimisation, because of bringing a complaint against the police. This issue is addressed further in the section below.

2. Members of Ethnic Minority Groups

Groups that CAJ consulted as part of this research which represent ethnic minorities, including Travellers, stated that the number of complaints OPONI receives from ethnic minority groups is likely to be very low. Those interviewed did not, however, conclude that this low complaint rate should be understood to mean that there are no policing problems experienced by members of ethnic minorities. Instead, some of the more likely reasons cited for the failure of ethnic minority groups to file complaints included: (1) a lack of confidence in the policing system in general; (2) a lack of knowledge about OPONI, its role, and the fact that it is independent of the police; (3) a belief that nothing is going to change and that it is not worthwhile to complain; and (4) a reluctance to challenge the authority of the police.

The Police Ombudsman does not know how many complaints have originated from members of ethnic minority groups. The only way in which the Police Ombudsman knows whether a complainant is a member of an ethnic minority group is if it is relevant to the complaint or if the complainant returns the monitoring form sent to all complainants, which not all complainants do. The Police Ombudsman identified only ten complaints originating from members of ethnic minority groups filed in 2003-04.³⁷⁶ While OPONI does report on such statistics as religion, gender, age, marital status and employment status of complainants, it does not report on their race/ethnicity.³⁷⁷ OPONI advised CAJ that it has four members of ethnic minority groups on staff.³⁷⁸ It is unclear what their positions and ranks are within the organisation.

The groups working with ethnic minorities that CAJ consulted called for OPONI to conduct much more outreach and consultation with ethnic minority groups to increase awareness of the Office and comfort levels in utilising the Office. OPONI has a duty under §75 of the Northern Ireland Act to reach out to specified groups, including ethnic minorities, and one group suggested that OPONI hold information nights for the various ethnic minority groups and engage in other outreach.

Sometimes, however, the messages being given by OPONI in its outreach work may be ambiguous. It was reported to CAJ that OPONI expressed reluctance to engage in such outreach because it does not want to encourage or be seen to encourage people to submit complaints. On the other, OPONI cites an extensive series of meetings and initiatives as evidence of its desire to work closely with the ethnic minority community.³⁷⁹

The Irish Travellers are an ethnic minority group often reported to have particularly problematic relations with the police. Accordingly, it was very important that, when the Office of the First and Deputy First Minister (OFM/DFM) established a Promoting Social Inclusion (PSI) Working Group on Travellers, the group included in their area of study a range of Traveller issues, and specifically the need to facilitate better relations between Travellers, the Police Service and OPONI. Government issued a formal report responding to these recommendations.³⁸⁰ The Working Group recommended the creation of a full-time Travellers' Legal Rights Worker, who would raise awareness of legal rights among Travellers and explain the procedures and the practices of the police and the criminal justice system.³⁸¹ Such a legal rights worker may help increase comfort levels among Travellers in submitting complaints to OPONI. Unfortunately, government did not accept this recommendation.³⁸²

The Working Group also recommended that the police establish procedures for monitoring relations between themselves and the Traveller community. It stated that such procedures should be agreed with the Police Ombudsman and ensure Travellers are not 'over-policed' and that Travellers who wish to make complaints against officers can be easily identified. The Working Group also suggests that complaints against the police should be monitored with respect to ethnicity.³⁸³ While government claimed in their response to accept the "thrust" of this recommendation, they state that OPONI is already monitoring the ethnicity of complainants and publishing this data and engaged in outreach activities.³⁸⁴ As discussed above, however, OPONI does not know how many complainants come from ethnic minority groups, is not publishing this data, and can only identify 10 complaints from ethnic minorities that were received in 2003-04. The groups CAJ consulted also state that OPONI is not conducting sufficient outreach in ethnic minority communities.

Government also reported that the PSNI is developing a hate crime form,³⁸⁵ but this is not relevant to what the recommendation is calling for. Such a hate crime form is used to record crimes against ethnic minorities and others, not complaints by Travellers against the Police Service, which are directed to OPONI. In addition, if Travellers are reluctant to complain to OPONI because of a distrust of the policing system in general and a belief that nothing will be done, Travellers will be unlikely to go to the Police Service to report a hate crime.

CAJ recommends that OPONI engage in additional outreach with ethnic minority groups in order to increase their knowledge of and confidence in the work of OPONI and their willingness to submit complaints against the police if the need arises.

3. Young People

The Police Ombudsman for Northern Ireland and the Northern Ireland Policing Board commissioned the Institute for Conflict Research to study the attitudes of young people in Northern Ireland to policing and specifically to the Police Service, the Office of the Police Ombudsman, the Northern Ireland Policing Board and the District Policing Partnerships.³⁸⁶ This was a very important piece of research considering that young people are vulnerable, often have frequent contact with the police and are also a group that would not necessarily have received a lot of information about police accountability mechanisms. The initiative to undertake such a focused study is to be warmly commended.

The data for the research was obtained from 31 focus groups and a questionnaire completed by 1163 young people. The report made recommendations to each of the policing institutions with regard to improving relations with young people.³⁸⁷ The main findings in relation to the Office of the Police Ombudsman include the following:

1. 52% of respondents had heard of the Police Ombudsman;
2. 11% of the respondents knew how to contact the Office with only 2% having actually done so;
3. Of the 24 respondents who had lodged a complaint with OPONI, 15 were not happy with the service they had received;
4. Of those who were not happy, the two main reasons were a slow response (5 individuals or 33%) and a feeling that the complaint was not taken seriously (5 individuals or 33%); and
5. Most of the young people felt that, for a complaint to be taken seriously, the incident had to be serious such as physical assault.³⁸⁸

Based on their research, the researchers stated that:

- Access to OPONI is a problem;
- Young people are of the opinion that they are less likely than adults to have their complaints taken seriously and that more weight is given to their complaints when their parents are involved in the process;
- There is a low level of confidence in and awareness of OPONI;
- Cases are quickly sifted and sent for informal resolution, a process young people felt was not worth pursuing; and
- There is a need for a strategy for obtaining complaints from young people.

Despite the fact that the survey secured a relatively wide level of participation by young people, and was able to make a number of interesting recommendations, the report appears to have received very little practical follow up. The report was

officially launched at a public seminar organised by the Office of the Police Ombudsman in June 2003. An important opportunity for further public debate of the report's findings arose some months after the report was published, when the researchers submitted proposals for two papers based on the findings to be presented at OPONI's international conference, which was held in November 2003. Despite the local and international interest that exists for discussing improved relations between the police and young people, neither of the proposed papers was accepted for presentation.

Whereas in 2002-03, 35% of complaints came from people aged between 16 and 24 years of age, this age group only made up 27% of complainants in 2003-04.³⁸⁹ OPONI claims that this significant variation in the age profile of complainants is probably due to the fall in the number of allegations of oppressive behaviour since younger people are more likely to make allegations of this nature than older people.³⁹⁰ It is not clear how OPONI came to this conclusion, nor whether the problems highlighted in this research may be more significant factors leading to a reduction in complaints from this age group. OPONI has also reported that although 85% of the general public are aware of OPONI, people aged under 25 have lower levels of awareness of the Office.³⁹¹

To remedy this lower level of awareness, OPONI states that it has visited 30 schools across Northern Ireland and joined the PSNI in several youth-related projects, including contributing to a textbook on citizenship and safety and participating in a number of youth conferences.³⁹² OPONI also attended several school days, held meetings with Opportunity Youth, Contact Youth, the Youth Council for Northern Ireland and collaborated with the Children's Law Centre to create a leaflet on young people and the police.³⁹³

It was not easy for CAJ to determine on the basis of the public record whether the recommendations of the ICR's report cited above were formally accepted by OPONI, still less how the recommendations were being operationalised. There is some discussion of the research in OPONI's 2003-04 annual report, but implementation of the recommendations is not discussed. In direct correspondence with CAJ, OPONI stated that it is progressing most of the recommendations.³⁹⁴

CAJ recommends that OPONI publish an action plan and timetable for implementation of recommendations contained in the Institute for Conflict Research's report, "Policing, Accountability and Young People".

I. OPONI Disclosure of Information

1. *OPONI Transparency in Relation to its Investigations*

Many interviewees complained about the lack of information complainants can access in relation to the investigations of their own cases. One interviewee stated that the Police Ombudsman does not even allow organisations access to public

documents. Many people complained about the fact that the Police Ombudsman will give the police the complainant's statement – or the facts thereof – but will not provide the complainant with any police statements or documents. It has also been previously argued that providing police officers with the complainant's statement prior to the officer's interview obstructs the value of such an interview. A previous Chair of the ICPC considered the propriety of this practice in his commentary on the Mulvihill report into the RUC investigation of complaints by Rosemary Nelson. The chair quoted Commander Mulvihill as stating that, "*The Investigating Office is very restricted in developing an interview strategy to test the honesty or recollection of a suspect officer who has been provided much of the written evidence in advance. An 'ordinary' suspect for criminal offences has no such safeguard.*"³⁹⁵

The Police Ombudsman informed CAJ, however, that normally only a summary of the complainant's statement, not the statement itself, is given to the accused officer.³⁹⁶ It is not clear whether OPONI's provision of a summary, just like the statement itself, would not likewise prejudice the investigation. The NIO Guidance explicitly states that the notice to the accused officer should not prejudice the investigating officer's or any other investigation of the matter.³⁹⁷ The Guidance states that notice to an accused officer should indicate the terms and import of the allegation or complaint fully and in general terms, except when specific terms are necessary, such as to define uncivil comments.³⁹⁸ This still seems to be much more information than that which complainants are given regarding officers' statements. It would be helpful for OPONI to clarify its practice in this regard.

CAJ took its own judicial review against the Office of the Police Ombudsman on the issue of disclosure to complainants of documents obtained as part of OPONI's investigations. CAJ filed a complaint with OPONI regarding the inadequacy of the RUC investigation of threats against solicitor Rosemary Nelson before her murder, the failure of the RUC to warn Mrs Nelson regarding the danger she faced, and the failure of the RUC to respond to the concerns raised by CAJ.³⁹⁹ CAJ requested documents deemed confidential by the then Royal Ulster Constabulary, which the Police Ombudsman obtained while investigating CAJ's complaint regarding police conduct. The primary arguments CAJ put forward in this case were that in refusing to disclose the documents, the Office of the Police Ombudsman had misconstrued its statutory powers under §63(1)(c) of the 1998 Police Act, which allows for disclosure to "other persons in or in connection with the exercise of any function of the Police Ombudsman"; misapplied her statutory discretion in that she applied a blanket policy of non-disclosure and did not consider each request for disclosure individually; and acted in violation of Article 2 of the European Convention on Human Rights related to the right to life which requires sufficient public scrutiny of the investigation of a murder in which the state has some involvement.

The Police Ombudsman argued, among other things, that OPONI has no blanket policy of non-disclosure of confidential documents but that, in general, confidential documents would not be supplied to other parties without the consent of the person who supplied the materials; that disclosure of the documents was not necessary in order to fulfil OPONI's statutory duty; that revealing such documents would have an adverse effect on public and police confidence in the Office of the Police

Ombudsman; that sufficient information could be given to CAJ without revealing the documents in question; and that CAJ wanted the documents in order to re-investigate or supervise the matters investigated by the Police Ombudsman, which is the role of the Police Ombudsman itself, not the complainant. The Police Ombudsman further argued that the Office's balanced approach to disclosure did not violate Article 2 of the European Convention.

At the time of writing, the judicial review has been determined against CAJ and, we therefore feel that there has been a failure to adequately clarify the situation about appropriate disclosure.⁴⁰⁰

It is not clear whether the experience of CAJ is fairly routine, and it may in fact be that practice in this area is inconsistent, since §63 of the 1998 Police Act allows OPONI to disclose information to any person in connection with the exercise of any of its functions, for the purpose of any criminal, civil or disciplinary proceedings, and in summary format.⁴⁰¹ This certainly gives OPONI the power to disclose all information relevant to its investigation of complaints to the complainants, since investigation of complaints is a function of the Office. It is interesting to note, however, that the legislation frames OPONI's ability to disclose information as a restriction but then provides exceptions that allow OPONI to disclose information in certain circumstances.⁴⁰² In contrast, the legislation controlling the power of disclosure of the Independent Police Complaints Commission (IPCC), the police complaints body for England and Wales, is framed as a duty to keep complainants and other interested parties informed, with the Secretary of State being given the power to limit this duty in certain circumstances.⁴⁰³ While CAJ does not believe that the difference in the legislation restrains OPONI from disclosing information in the situations discussed in this section, it would be preferable if the 1998 Police Act were amended to describe OPONI's power to disclose information as a positive duty, rather than as a restriction which it is a criminal offence to contravene, as is currently done in the 1998 Police Act.

CAJ recommends that OPONI grant complainants the widest possible access to statements and other evidence the Office gathers in investigation of their complaints, subject only to considerations of personal safety. CAJ further recommends that the policing legislation be amended to place a duty on OPONI to keep complainants and other interested parties informed of all aspects of investigations, as is done in the Police Reform Act 2002, which applies in England and Wales.

2. *OPONI Provision of Evidence Gathered from its Investigations in Criminal and Civil Cases*

By far the biggest complaint of solicitors who assist complainants and others is the fact that the Police Ombudsman appears to have two quite different procedures for the handling of evidential material gathered in the course of an investigation. When a complaint is filed, before the officer concerned is interviewed, OPONI will

supply the officer with the complainant's statement or a summary of it. According to the solicitors CAJ interviewed, this information can then be used against the complainant in any civil case they may have taken against the police or in any criminal case that the authorities may have taken against the complainant. For obvious reasons, solicitors often feel that they must advise their clients against giving statements to OPONI in support of their complaints if the statement provided can later be used against them in civil or criminal proceedings. The concern that solicitors have is that a complainant, as the defendant in a criminal case or the plaintiff in a civil case, can be cross examined on the statement s/he made to OPONI. This practice could prejudice the complainant's case. At the same time, OPONI does not regularly supply the police officer's statement or a summary of it to the complainant. Whatever its justification, this is easily seen by complainants as the application of very different standards, dependant on whether one is a complainant or a police officer. Solicitors called on OPONI to revise this policy.

An unfortunate consequence of this policy is the fact that complaints are not being resolved. Many solicitors either do not make complaints to OPONI or if they do, will not allow their clients to provide a statement until their hearing is concluded. This can lead to the Police Ombudsman closing the complainants' cases due to lack of cooperation, a process which OPONI has indicated it will not normally reverse once the complainants are willing to make a statement. Clearly, however, the specific creation by OPONI of a closure category entitled "closed awaiting solicitor contact following criminal proceedings" suggests that there is some real conflict here that needs to be addressed. Due to the time limitations in which complainants must file their complaints, this can lead to complaints never being investigated, the officer never being charged or disciplined, and the concerns raised in the complaint never being passed to the PSNI or made known to the public.

This problem was recognised and discussed already in the Hayes review and Dr Hayes recommended the banning of the disclosure of statements made by officers and complainants as part of the complaints case so that they could not be used against the complainant in his/her criminal or civil case.⁴⁰⁴ CAJ has recommended since 1990 that complainants' statements should be kept confidential and not be provided to the DPP for use in any criminal proceedings against the complainant.⁴⁰⁵

CAJ recommends that the policing legislation and the NIO Guidance are amended to ensure that evidence gathered in the context of a complaint is not amenable to misuse in separate, albeit related, criminal or civil proceedings.

Another complaint of solicitors is that OPONI does not consistently release information to them that would help them defend their clients in criminal cases. OPONI states that it complies with NIO Guidance, which states that: "*Where in the course of an investigation material comes to light which is likely to be of assistance to the complainant or any other person in defending pending criminal proceedings, or which suggests that such proceedings are unsafe or ill-founded, the Ombudsman should immediately bring it to the notice of the Director of Public*

Prosecutions."⁴⁰⁶ OPONI advised CAJ that a number of prosecutions of complainants have been dropped on the foot of such disclosure. In some instances at least, it appears that such material of assistance to the complainant has been disclosed to the prosecution, but not the defence. It is not always clear who is to blame for this miscommunication, but CAJ believes that any and all evidence which may assist the complainant in a criminal hearing taken against him/her or in a civil case s/he has brought against the police should be disclosed to the complainant by OPONI.

Some complainants' solicitors claim that OPONI has failed, at least on occasion, to share with them the results of their investigations – information that could be used to assist their clients in both criminal and civil hearings, despite the fact that the 1998 Police Act allows OPONI to release information "*for the purposes of any criminal, civil or disciplinary proceedings*".⁴⁰⁷ It is also unclear what material OPONI releases in support of civil cases against the police. Complainants' solicitors stated that at times it is even difficult to get a copy of the complainant's own statement. According to OPONI: "*Copies of statements made by complainants should be disclosed unless it is the opinion of the Investigating Officer that to do so would be likely to prejudice the investigation. Where no prejudice exists, complainant statements should be disclosed.*"⁴⁰⁸ It is clear from the judicial review in the Butler case⁴⁰⁹ that there is some confusion even within OPONI about the procedures to be followed. Yet OPONI suggests that it is the solicitors who "do not seem to understand the system."⁴¹⁰

CAJ recommends that OPONI should organise a formal discussion with legal practitioners to learn directly of their concerns and explore together possible solutions regarding OPONI's policies on release of information which could both hurt and help complainants in separate, though related, criminal and civil cases.

J. Retrospective Cases

To be considered by the Police Ombudsman, a complaint must be made within 12 months, unless: (1) it has not been investigated before or there is new evidence; (2) the Ombudsman believes an officer may have committed a criminal offence or a disciplinary violation; and (3) the Ombudsman believes the complaint should be investigated because of the gravity of the matter or the exceptional circumstances.⁴¹¹ The complaints raised in retrospective cases are handled under the misconduct regulations operative at the time and the standard of proof required to demonstrate misconduct in these cases is proof "beyond a reasonable doubt", rather than the new standard of "*balance of probabilities*".⁴¹² To date, OPONI has only made one recommendation for disciplinary action related to a retrospective case.⁴¹³

1. **Examples of Retrospective Cases Successfully Investigated by OPONI**

Two examples of retrospective cases which have been successfully investigated by the Police Ombudsman are those of Samuel Devenny and Sean Brown. The following is how the Office of the Police Ombudsman described the facts of and findings in the case of Mr Samuel Devenny:⁴¹⁴

On 19 April 1969, in Derry, several RUC officers policing a riot entered the Devenny home after some rioters (not the Devenny family) entered the house. Instead of looking for and arresting any rioters still in the home, the officers began beating the family members with batons. Samuel Devenny, the father, was left lying on the floor with blood pouring from his head wounds. His 16-year-old daughter, who was recovering from surgery, was batoned on her thigh and back, pulled from the sofa, and kicked until she lost consciousness. Samuel's 18-year-old daughter was kicked, thrown across the room and lifted by the hair. The 21-year-old son was hit by a baton after entering the room, a family friend was left unconscious in the hallway, and another man was also attacked in the house.

The family complained to the Police Ombudsman that they were never told the results of an investigation into the incident by Officer Drury of the Metropolitan Police; that they never received an acknowledgement that the police were in their home that night or any detail of what was found to have happened to them and that their father had died as a result of the incident that day. The Police Ombudsman found that the case was 'grave and exceptional' and accepted the complaint for investigation.

The Police Ombudsman found that the RUC had never communicated with the family directly about the incident nor provided them with the report of the Drury investigation; that the Drury report acknowledges the attacks on the family by RUC officers and states: "*Whilst it is appreciated that the officers . . . on duty in the riot area on the day in question were under extreme provocation, being constantly attacked and sorely tried, there is no evidence that their action could be justified in any way and this kind of conduct can never be condoned in any force responsible for the preservation of law and order*"; that the Drury investigation could not prove or disprove that Samuel Devenny died as a result of his attack; that criminal convictions could not be pursued due to an amnesty applicable at that time; and that it would not be currently possible to pursue disciplinary action against the officers after so much time had elapsed.⁴¹⁵

As the Police Ombudsman stated upon completion of the investigation: "*Sharing of the information would not have lessened or erased the impact of events, but it may have helped the family come to terms with the trauma they suffered and have helped them bring to a close this chapter in their lives. I hope my report will now do that.*"⁴¹⁶ According to the Pat Finucane Centre, which worked closely with the Devennys, the family felt OPONI's report gave

them some degree of closure, but they were disappointed that the then Chief Constable, Sir Ronnie Flanagan, refused to meet with and apologise to the family. Subsequently, ACC Kinkaid did apologise publicly at a reception in New York in 2001 attended by a member of the Devenny family.

The second example of a retrospective case successfully investigated by OPONI is that of Mr Sean Brown. The following is how the Office of the Police Ombudsman described the facts of and findings in the Sean Brown case:⁴¹⁷

Mr Brown was abducted outside the Gaelic Athletic Association Club in Bellaghy, County Derry on 12 May 1997, and shot and killed that same night. The family complained to the Police Ombudsman's Office that (1) the investigation into his death had not been 'efficiently and properly carried out'; (2) 'no earnest effort was made to identify those who carried out the murder'; and (3) the police failed to update them about developments in the investigation. The Police Ombudsman fully upheld the first two complaints and partially upheld the third.

The Police Ombudsman found that the investigation was incomplete and inadequate because of failures including: not taking DNA samples from arrested suspects to compare them with DNA on cigarette butts found at the murder scene; not searching for witnesses; not following-up on the evidence provided by a witness or contacting him for a full statement; not attempting to identify the vehicles travelling through Toomebridge towards Bellaghy before the murder despite that fact that all vehicle registration numbers of cars travelling through that town were, in that period of time, recorded by the local police; Special Branch not sharing all relevant intelligence material with the police investigative officers; and the 'unexplained disappearance' of the Murder Investigation Policy File, in which all decisions related to the investigation and the reasons for those decisions are recorded, which was in police possession at the time the complaint was forwarded to the police.

The original Senior Investigating Officer has retired and therefore cannot be disciplined and the Police Ombudsman believes that in the absence of the Policy File, it would not be right or possible to hold the other officers involved in the investigation to account for investigative failures. It is arguable that OPONI was excessively cautious in this case, but clearly it would be very difficult to pursue the case to a satisfactory conclusion in the absence of the Policy File and the Senior Investigating Officer, and we have already discussed this latter point in section A. The Police Ombudsman recommended that there be a full independent review of the inquiry into the murder and commitment to carry out the recommendations of the review. The Chief Constable has announced, however, that the PSNI would conduct a full re-investigation of the murder, which the Police Ombudsman has decided obviates the need for a review.

The Chief Constable stated that because the Police Ombudsman found no collusion between the police and Sean Brown's murderers that the PSNI could lead the re-investigation.⁴¹⁸ The family were not satisfied with a re-

investigation conducted by the PSNI and entered into negotiations with the police to agree on an acceptable approach.⁴¹⁹ The family and the PSNI agreed that the new PSNI investigative team would consist of detectives transferred from British police services and would not include any officers involved in the original investigation nor officers who were, or had been, members of Special Branch; the team would be advised by an external Senior Detective from Britain and regular consultation would take place between the PSNI, the external Senior Detective and the family, who would be supported by an advisory group appointed by them, which would include their solicitor, a representative of the Pat Finucane Centre, and a nominee of the Irish government.⁴²⁰

2. Concerns Regarding OPONI's Ability to Effectively Investigate Retrospective Cases

Despite the importance of the Police Ombudsman's power to investigate retrospective cases and the great success the Office has had in facilitating the resolution of some very high profile historic cases and bringing problems to light, there are some concerns regarding the Police Ombudsman's ability to effectively investigate these cases:

(a) OPONI Criteria Related to Retrospective Cases

Some interviewees asked that OPONI's criteria for accepting and prioritising retrospective cases be made public. Currently, the public does not know how OPONI determines what cases are 'grave or exceptional' and therefore requiring investigation. OPONI states that the vast majority of retrospective cases fall outside of its remit or are resolved to the complainant's satisfaction following preliminary enquiries.⁴²¹ OPONI goes on to say that accepted retrospective cases are prioritised for investigation,⁴²² but the public does not know how this prioritising takes place.

CAJ recommends that OPONI consult on and publish its criteria for accepting, prioritising and investigating retrospective cases.

(b) Funding of OPONI Investigations of Retrospective Cases

The major concern, however, in the area of retrospective cases is that of funding. The Police Ombudsman must be granted adequate funding to investigate retrospective cases, since the passage of legislation allowing for retrospective action makes it clear that such cases can be of particular significance and because practically, they may be more resource intensive given the passage of time.

The Police Ombudsman was denied funding from the NIO to investigate three retrospective cases in March 2003.⁴²³ The Police Ombudsman has stated that an application for further investigative resources to handle deaths involving allegations

of collusion by security forces remains under consideration by the Secretary of State.⁴²⁴ In August 2003, it was reported that the Police Ombudsman submitted a business case to the Northern Ireland Office to meet the cost of investigating more than a dozen retrospective cases.⁴²⁵ In May 2004, OPONI advised CAJ that there are a number of retrospective cases awaiting investigation and that additional resources would improve this situation.⁴²⁶ OPONI reported in its 2003-04 annual report that retrospective cases are investigated as resources permit and that 15 cases are pending.⁴²⁷

CAJ recommends that government allocate to OPONI the funds it requires to adequately investigate retrospective cases as they are received by OPONI.

(c) *OPONI's Definition of Collusion*

As stated above, in the case of Mr Sean Brown, the fact that OPONI did not find collusion was relied upon by the Chief Constable to conclude that the PSNI could re-investigate the case and that an independent review, as OPONI had recommended, was not necessary. There is a need to examine the definition of collusion adopted by the Ombudsman, especially considering the importance vested by the Chief Constable in a determination that there was or was not collusion in a particular case. The definition should be opened up for consultation and published, so that the significance of the Ombudsman's finding regarding collusion is unequivocal and properly understood by the complainant and the public.

CAJ recommends that OPONI consult on and publish its definition of collusion.

(d) *Relationship to Serious Crime Review Team*

At the time of writing, the government announced a major investment of monies into a specialist unit to be established in the PSNI to undertake a review of historic cases.⁴²⁸ It is as yet unclear what the relationship – intended or ideal – is between this new initiative and the power of the Police Ombudsman to investigate cases retrospectively. One of the challenges facing both OPONI and PSNI will be to determine how best to liaise on such cases where there is an overlap of remits and responsibilities.

K. Government and OPONI Positions on Plastic Bullets

Whilst it is important to record, and welcome, the fact that no plastic bullets have been fired since September 2002, seventeen people, including nine people aged 18 or under, have been killed in Northern Ireland since 1969 by either rubber or plastic bullets. Fourteen of these deaths were caused by plastic bullets (or plastic

baton rounds (PBRs) as they are officially called by government). In 1998, the United Nations Committee Against Torture called for the "*abolition of the use of plastic bullet rounds as a means of riot control*".⁴²⁹ In 2002, the United Nations Committee on the Rights of the Child stated, "Following the recommendations of the Committee against Torture [citation omitted], the Committee urges the (United Kingdom) to abolish the use of plastic bullet rounds as a means of riot control."⁴³⁰ Despite the concerns expressed by the United Nations, the government have not banned the use of plastic bullets.

The Patten Commission also wrote very scathingly about official attitudes to the use of plastic bullets in its 1999 report. The Commission noted that, "*In view of the fatalities and serious injuries resulting from PBRs, and the controversy caused by their extensive use, we are surprised and concerned that the government, the Police Authority and the RUC have collectively failed to invest more time and money in a search for an acceptable alternative. We were able to discover very little research work being done in the United Kingdom (except in the development of more accurate PBRs).*"⁴³¹ The Patten Commission recommended that "*an immediate and substantial investment be made in a research programme to find an acceptable, effective and less potentially lethal alternative to the PBR.*"⁴³²

While research was undertaken, government have resisted repeated calls to engage independent scientific, medical and human rights expertise. Perhaps unsurprisingly, therefore, the government have stated that: "*Despite a protracted and international search for a commercially available product, we have been unable to find anything that meets the criteria of an acceptable, potentially less lethal alternative to the baton round currently in service which provides an effective capability that does not expose officers and the public to greater risk in violent public disorder.*"⁴³³ In contravention of the pleas of the United Nations to ban the weapon, and the concerns expressed by the Patten Commission about the failure of the authorities to effectively explore alternatives, the PSNI has purchased 120,000 plastic bullets since 2002⁴³⁴, and in fact, most recently, the NI Policing Board has approved the replacement of the L21A1 plastic baton rounds with another projectile weapon, the Attenuated Energy Projectiles (AEP).⁴³⁵ The Office of the Oversight Commissioner has stated, however, that "*it should be clearly understood that the AEP remains a projectile weapon, albeit safer, and is a replacement not an alternative [to the plastic baton round].*"⁴³⁶

Likewise, the Police Ombudsman has stated that she is not yet in a position in which she would endorse the recommendation of the Committee on the Rights of the Child to abolish the use of plastic bullets.⁴³⁷ Mrs O'Loan stated that she considers plastic bullets to be a proportionate response to the immediate threat to life of either a civilian or a police officer.⁴³⁸ She does, however, hope that government will be able to identify a satisfactory alternative to the plastic bullet very rapidly,⁴³⁹ a hope that seems unlikely to be fulfilled.

CAJ has long called for the abolition of the use of plastic bullets and recommends that government comply with the recommendations of United Nations bodies with regard to this lethal weapon.

1. **OPONI Plastic Bullet Report**

The Chief Constable refers all incidents of police plastic bullet firings to the Office of the Police Ombudsman for investigation. This is only a matter of practice with no requirement on the PSNI to make such referrals. CAJ welcomes this arrangement but believes it should be placed on a statutory footing.

CAJ recommends that the policing legislation be amended to require the PSNI to refer all plastic bullet firings to OPONI for investigation.

From the date of the opening of the Office of the Police Ombudsman until March 2003, the Office has completed the investigation of 30 incidents involving plastic bullets.⁴⁴⁰ To date, the Police Ombudsman has published one research report summarising seven such incidents dating from 2001 and 2002.⁴⁴¹ Press statements and summary reports have also been released describing the Police Ombudsman's investigation of further incidents. No subsequent report has been published since 2002 summarising and analysing the additional 23 incidents that OPONI has investigated and no explanation for the failure to publish such a report has been provided.

CAJ recommends that OPONI publish a report analysing the circumstances surrounding all outstanding plastic bullet firings that OPONI has investigated.

The first baton round report involves seven incidents, in which, according to the Police Ombudsman, 36 plastic bullets were fired, and 26 persons hit with plastic bullets, two of them being hit twice. The Police Ombudsman found that:

"In all the incidents examined the Police Ombudsman's investigators concluded that the discharge of the baton rounds was fully justified and proportionate, as were the authorisation and directions given. The deployment and use of the baton rounds were fully in accordance with the relevant PSNI/RUC and Association of Chief Police Officers (ACPO) guidance. No occurrences of police misconduct were found."⁴⁴²

CAJ wrote to the Police Ombudsman regarding several issues of concern after this report was published. CAJ's concerns included:

- The fact that the report does not adequately explore whether the police could have made more of an effort to warn people that plastic bullets were about to be fired, considering warnings were only given in 2 out of the 7 incidents, despite the fact that the PSNI/RUC guidelines state that a warning must be given "unless circumstances do not permit";
- Whether the Police Ombudsman believes that it is problematic that 22% of the plastic bullets missed their targets, considering such inaccuracy could cause injury to those not posing a threat and may indicate a need for further training;

- Why the Police Ombudsman did not address whether firers were able to justify the increased use of force that is required by the police guidelines if the police fire plastic bullets above the waist, since it appears that some 10% of bullets appear to have hit the upper body, significantly increasing the risk of serious and even fatal injuries;
- That the report does not indicate who was targeted and injured by the plastic bullets nor how many of them were children; and
- That no reference is made to how many plastic bullets the army fired during the same time period or even during the same incidents.⁴⁴³

The Pat Finucane Centre (PFC), a Derry-based human rights organisation, wrote a critique of OPONI's plastic bullet report which detailed several criticisms, including:

- *"The Ombudsman's failure to make it clear that her report covers less than a third of the plastic bullets fired by the RUC/PSNI during the period in question.*
- *That the report does not make clear that the outstanding investigations that were not completed and were therefore not included in the report actually constitute a majority of the incidents involving plastic bullets.*
- *That the report will have a 'chilling' affect on those who may wish to log complaints regarding the use of plastic bullets with the Ombudsman's office.*
- *That the Research Report is in effect providing a 'clean bill of health' to plastic bullets.*"⁴⁴⁴

This Commentary will now look in more detail at three additional criticisms of the OPONI's plastic bullet report: the distinction OPONI makes between the plastic bullet and the baton round; OPONI's failure to adequately investigate the reports of non-police witnesses to the incidents investigated; and the need of OPONI to more thoroughly analyse the police approach to public order incidents and its effect, if any, on the escalation to the use of violence.

(a) Plastic Bullet v. Plastic Baton Round

In its report, the Office of the Police Ombudsman states that: "Injuries and deaths resulted from the use of the precursor of the baton round, the plastic bullet, and there have also been injuries consequential upon the use of baton rounds."⁴⁴⁵ In its critique of OPONI's plastic bullet report, the Pat Finucane Centre criticised OPONI for attempting to make a distinction between the L21A1 plastic bullet, which is currently used by the PSNI, and the old L5A7 plastic bullet, which the L21A1 replaced. OPONI referred to the old L5A7 weapon as a 'plastic bullet', and the current L21A1 weapon as a 'baton round'. Yet there is little objective justification for any such distinction and, the government's own Defence Scientific Advisory Council and the Association of Chief Police Officers refer to both weapons by their official name, baton rounds.⁴⁴⁶

OPONI in making such linguistic distinctions, seems only to be seeking to distance the debate about the L21A1 from the deaths and injuries caused by its L5A7 predecessor. CAJ refutes the claim that the newer bullet is necessarily safer, since the government's Defence Scientific Advisory Council (DSAC) only tested the L21A1 plastic bullet in optimal conditions – applying the guidelines rigorously, though these have often been violated in the past. Contrary to OPONI's conclusion that the new weapon is safer, DSAC noted that if the L21A1 plastic bullet is fired outside the guidelines, the incidence of intra-abdominal injuries is likely to increase, that the severity of brain injuries is likely to be greater, that there is more risk of the bullet being retained in the head on impact, and that if aimed higher than allowed, will have more serious medical implications than the L5A7.⁴⁴⁷

Moreover, the PFC report also notes that, *“Having distanced the ‘baton round’ from the ‘plastic bullet’ the report purports to examine seven incidents where ‘baton rounds’ (not plastic bullets) were used. In fact two of the seven incidents involve the older plastic bullet, the L5A7.”*⁴⁴⁸

(b) The Need to Seek Out Non-Police Witnesses

The Pat Finucane Centre, in its critique of the Police Ombudsman's baton round report, gives several examples of the Office of the Police Ombudsman failing to document or even obtain evidence from politicians, an Authorised Officer of the Parades Commission, community groups, press reports and non-governmental organisations, including the one organisation whose whole work programme is totally focused on the question of plastic bullets, the United Campaign Against Plastic Bullets.⁴⁴⁹ The PFC gives the example of a witness in Lurgan, who claimed that a plastic bullet was fired at him on 24 April 2001 without justification and that no petrol bombs were being thrown at the time. The Police Ombudsman claimed that a plastic bullet was fired at a person about to throw a petrol bomb; yet, PFC claims that OPONI neither contacted the witness or organisations that could have put the Ombudsman in touch with this and other witnesses.⁴⁵⁰ There may be reasons for OPONI's action, but anecdotal evidence of Police Ombudsman investigators failing to seek out civilian sources of evidence in cases other than those involving public order have also been reported to CAJ as part of its consultation. Many consultees expressed concern that the Police Ombudsman is relying too heavily on police versions of events.⁴⁵¹

CAJ has highlighted elsewhere in this Commentary occasions when complainants and others have been willing to engage with the Ombudsman but have felt that their experience has not been given similar weight to the testimony of police officers. It must also be the case that the Ombudsman has not always found it easy to learn about the non-police version of events, given the continuing legacy of distrust and lack of confidence in many communities about policing matters. Whatever the reasons, by not adequately considering the views of those who experienced public order incidents, OPONI risks losing public confidence.

CAJ recommends that OPONI more proactively seek out non-police witnesses and consider their evidence in concert with that of police officers.

(c) *Looking at the Overall Policing of an Incident*

Another related concern is the Police Ombudsman's lack of analysis, or at least lack of reporting, in the plastic bullet report on the overall policing operation.⁴⁵²

While recognising that these are difficult judgement calls, and that witnesses' retrospective explanations of what happened can often be contradictory or hotly contested, it is important to recognise that it is very rare that violence starts up without some advance build up of tension. Questions about the original approach of the police to the incident (especially prior to any escalation to violence), what attempts were made to alleviate tensions, and whether the police approach was a factor leading to or increasing the risk of disorder which led to the use of plastic bullets, are all relevant.⁴⁵³

A practical example of this lies in the report's reference in section 4.3 to the fact that members of the public made 11 complaints against the police as a result of one night's proceedings, but that none of the complaints relates to the discharge of baton rounds. It appears that OPONI decided to distinguish these complaints from those surrounding the issue of plastic bullet usage, but was this correct? Perhaps these complaints would have shed light on the behaviour of the police, and the broader context of the disturbances, which may or may not have affected the course of action leading up to the use of plastic bullets. OPONI clarified that this distinction between complaints relating to the discharge of baton rounds, and other complaints about police behaviour in the same series of incidents, is maintained because of the different legislative provisions that are being invoked.⁴⁵⁴ However, for the public this is a far from clear distinction, and should – at the very least – be made explicit in any public reports on the incidents which have been the source of complaint.

2. *Monitoring the Proportional Increase in Army Use of Plastic Bullets*

One consultee, who is a former police officer, stated that he believed the police were waiting too long to use plastic bullets, and were suffering casualties because of concern regarding OPONI's investigations. He believed that senior officers were now terrified to take on public order situations and officers might take 'neglect of duty' cases against the PSNI for failing to protect them. Other consultees state that it was clear from observing public order situations that the army was firing plastic bullets instead of the PSNI because the Office of the Police Ombudsman had interpreted its power as not allowing it to scrutinise army plastic bullet firings or had been told the Office will not be permitted to investigate army firings. People have advised CAJ that they have observed PSNI officers directing soldiers to fire plastic bullets.

The statistics support the contention that the army were firing an increasing proportion of the plastic bullets discharged. The statistics of the Independent Assessor of Military Complaints Procedures in Northern Ireland indicate that army use of plastic bullets increased, as did the proportion fired by the army when compared to police use. The army fired 1 plastic bullet in 1999, 4 in 2000, the year the Office of the Police Ombudsman opened, 17 in 2001 and 85 in the first ten months of 2002.⁴⁵⁵ As far as percentage of plastic bullets fired for each year, the army fired less than 1% of plastic bullets in 1999, 15% in 2000 and 2001, and 25% in the first ten months of 2002. As stated above in section II(A)(3), on "Inability to Investigate the Army", CAJ recommends that OPONI be allowed to investigate army use of plastic bullets.

L. OPONI Research Reports

1. *OPONI Investigation of Police Harassment of Lawyers*

In 2003, the Office of the Police Ombudsman issued a report entitled, "A study of the treatment of solicitors and barristers by the police in Northern Ireland".⁴⁵⁶ This was a very important piece of research, given the importance of defence lawyers being able to practise without fear or favour. There have been many allegations over the years of the conflict that police officers defamed defence solicitors to their clients and issued threats. Two lawyers in Northern Ireland died directly as a consequence of their commitment to uphold the rule of law. Patrick Finucane and Rosemary Nelson, who had experienced indirect and direct threats from the police, were murdered by loyalists in 1989 and 1999, respectively. According to Judge Peter Cory and Sir John Stevens, Commissioner of the Metropolitan Police, who both separately investigated the Finucane case, there is evidence of security force collusion in his murder and a public inquiry has been recommended.⁴⁵⁷ Judge Peter Cory also found evidence of security force collusion in the murder of Rosemary Nelson and likewise called for a public inquiry in that case.⁴⁵⁸

OPONI initiated its study of police treatment of lawyers with a view to quantifying the extent - if any - of harassment, and the results of the research are disconcerting. The report indicates that at least 55 solicitors and barristers had experienced intimidation, harassment or threats from the police; that over half of those lawyers had experienced such behaviour three or more times; and that the abuse suffered included defamation, physical threats or threats of arrest, accusations of being members of paramilitary organisations, threats to pass their details to paramilitary or political organisations, racist or sectarian abuse, unprofessional conduct and inappropriate comments.⁴⁵⁹ A high proportion of the solicitors and barristers were very dissatisfied with the lack of urgency with which the police handled their complaints.⁴⁶⁰

There have been several complaints, however, about the Police Ombudsman's report from human rights non-governmental organisations, the Police Federation and the Northern Ireland Policing Board. CAJ expressed concern that the report

contained no recommendations for improving police behaviour and the Police Ombudsman informed us that no recommendations were included in the report because the Office was happy with the relatively new PSNI policy on the role of defence lawyers. In OPONI's report, however, this policy is only referred to as a "step in the right direction."⁴⁶¹ If the Police Ombudsman believes the existence of this policy obviated the need for recommendations, the report should have mentioned this fact, including the efforts the PSNI had taken to implement and train officers on this policy, as well as whether the PSNI is serious about disciplining any officer who may violate this policy. As it stands, the public is left not knowing if the current PSNI procedure for preventing, monitoring and dealing with any mistreatment has improved the situation.

British Irish Rights Watch (BIRW) and CAJ both expressed concern regarding the tendentious comments in the Police Ombudsman's report which indicated that "*there is no evidence to suggest any police involvement*" in the murders of Patrick Finucane and Rosemary Nelson.⁴⁶² We believe that this statement is seriously misleading. As BIRW wrote in response to the report: "*There is copious evidence, that [Patrick Finucane] was threatened by police officers before his death; that RUC officers incited his death amongst loyalists; that they ignored warnings from a Special Branch agent, Billy Stobie, that could have prevented his death; and that they suppressed a confession by another loyalist, Ken Barratt, that he had shot the lawyer.*"⁴⁶³ In addition, the OPONI report fails to mention that both Pat Finucane and Rosemary Nelson had received numerous threats from the police during their lifetimes. As stated above, the Cory reports subsequently found evidence of security force collusion in both of their murders. The Office of the Police Ombudsman advised CAJ that when it used the word 'evidence', it was referring to 'evidence' that would stand up in court. This same argument was made by OPONI in more recent correspondence,⁴⁶⁴ and while CAJ accepts that the word 'evidence' has this specific legal meaning, we also believe that the average reader will not automatically read this full legal significance into the term. It is more likely that the reader would have understood OPONI to be communicating a belief that 'there is no evidence, information or intelligence' to suggest any wrongdoing. OPONI must use language carefully, and also communicate its message effectively. The failure at the time, and since, to remedy any misunderstanding caused is highly unfortunate.

CAJ also expressed concern to the Police Ombudsman about the methodology followed in the survey and how the findings were portrayed. OPONI sent the questionnaire to all of the 2,834 Northern Ireland solicitors and barristers registered at the time and 1,458 responded.⁴⁶⁵ The survey was sent to every solicitor and barrister in Northern Ireland, regardless of whether they work in an area of law that brings them into contact with the police. The survey was also sent to all solicitors and barristers who are retired or who work outside of Northern Ireland.⁴⁶⁶ Perhaps unsurprisingly, a very small percentage of the total had frequent contact with the police, and accordingly relatively small percentages of respondents reported on any problems in that relationship.

Many readers of the OPONI report might well conclude that the fact that only 55 members of the legal profession - 1.9% of all solicitors and barristers and 3.8% of the barristers who responded to the survey⁴⁶⁷ - reported experiencing harassment is not particularly troubling. However, there was never a suggestion that the vast majority of solicitors and barristers had experienced police harassment as part of their legal work. In fact, the allegation has always been that the majority of police misconduct was focused on a small subset of the legal profession, i.e. criminal defence lawyers and especially those who represent suspects charged under the terrorism laws. It would have been helpful if the study had focused on this subset to ascertain the facts more accurately. This was not done, and although the report does ascertain that a number of lawyers appear to have been frequent targets of police mistreatment⁴⁶⁸, there is no analysis of whether there are any common characteristics among these lawyers. This information would not only clarify the nature of the problem; it is also information the PSNI could use to monitor and combat the problem.

In its response to the Police Ombudsman's report, British Irish Rights Watch raises several additional concerns. One example is the fact that BIRW disagreed with the report's claim that *"it can be argued that those solicitors and barristers who had experienced police mistreatment would have been more likely to respond to the survey than those that had not, and thus that this number represents nearly the totality of the experience of intimidation, harassment or threats from the police in the legal profession in Northern Ireland."*⁴⁶⁹ According to BIRW, the solicitors who are known to have faced the most threats and harassment did not cooperate with OPONI's study because (1) they considered OPONI's methodology of questioning the whole profession when it was known only a few lawyers were affected was flawed; (2) they feared OPONI would downplay the extent of the problem by reporting that only a tiny fraction of lawyers were affected at the expense of highlighting the depth of the problem and the chilling effect it had on the legal profession; and (3) they were not happy with the way OPONI was shutting them out of investigations into their clients' complaints. Clearly the absence of such testimony undermines the validity of the survey as a whole.

OPONI was aware of the fact that many solicitors who were likely to fall into the "most at risk" category (because of their specialisation in criminal defence rather than probate or commercial law) had not responded, and had in fact sought the advice of groups like BIRW as to how to overcome this kind of resistance. Yet this fact was not recorded as part of the findings. In fact, OPONI implied just the opposite by claiming that 55 "represents nearly the totality" of lawyers who have experienced police mistreatment.

According to BIRW, some of the most affected solicitors who refused to cooperate with OPONI faced abuse on tens if not hundreds of occasions.⁴⁷⁰ In addition, BIRW's research on this topic reveals that 64 lawyers have been the victims of police harassment and that *"almost all lawyers who acted for clients detained under emergency laws came in for abuse from the police, and that the level of abuse rose in direct proportion to the number of such clients they represented. In other words, although only a small group of lawyers were affected, almost every member of that small group suffered abuse."*⁴⁷¹ It is BIRW's belief that the Police

Ombudsman's report understates the nature and extent of the problem. OPONI continues to stand behind its findings, arguing that the Office does not know which solicitors chose not to reply and is unaware of the extent of the problems alluded to by BIRW.⁴⁷²

Perhaps even more disturbing than the dispute around the research and the extent of the problem of police harassment of lawyers, was the reaction that followed upon OPONI's work. Despite the fact that the Police Ombudsman's research indicates that 55 lawyers claim to have been threatened by police officers – numbers which are confirmed as a minimum by previous research by the United Nations Special Rapporteur on the Independence of Judges and Lawyers and human rights organisations – the Police Federation expressed dismay at the findings claiming that these were merely allegations and had no independent evidence to support them, and at the fact that the findings were seen as critical of the Police Service generally and, in their view, unfair.⁴⁷³ Even more worrying was the reaction of the Northern Ireland Policing Board. According to *The News Letter*, the Board wrote to the Police Ombudsman criticising this report, even going so far as to ask the Police Ombudsman to “*reflect on the negative impact that unbalanced commentary can have on those who need little to be convinced that your office is the preserve of nationalists and exists only to 'give the police a hard time'.*”⁴⁷⁴

2. OPONI Investigation of PSNI Use of Batons

In March 2003, the Office of the Police Ombudsman published a study of complaints involving baton (not to be confused with plastic baton rounds) use by the PSNI.⁴⁷⁵ The Police Ombudsman was concerned that, at that time, 55% of all complaints involved the use of force and 8% involved the use of batons, and decided to use her power to research police policies and practice to issue this report.⁴⁷⁶ The Office of the Police Ombudsman should be commended for monitoring and identifying trends in complaints and proactively researching any trends of concern. The report is useful in that it analyses the complaints received, compares the PSNI data with that of police services in England and Wales, and makes recommendations to the Police Service with regard to training and record keeping.

The report found that the fact that 31% of complainants alleged they had been struck in the head may call into question the extent to which PSNI officers are following the guidance on the use of batons, which indicates that blows to the head should only be used in extremely grave situations, after blows to other parts of the body have failed.⁴⁷⁷ In addition, the report concludes that the fact that about 12% of complaints related to incidents involving 5 or more officers may lead to questions about the appropriate use of force if in those occasions the officers considerably outnumbered the complainant.⁴⁷⁸

The report also found that baton complaints are more common in Northern Ireland than in England and Wales and that the higher level of complaints cannot be fully explained by the number of public order situations in Northern Ireland, since 58% of complaints arise out of arrest, and only 11% out of public order disturbances.⁴⁷⁹

The report highlights that this discrepancy cannot be completely explained by the higher level of assaults on police officers in Northern Ireland.⁴⁸⁰ For example, the Metropolitan Police, which, at the time had 25,950 officers and obviously serves a much greater population, recorded 1,391 assaults on their officers in 1999/2000, and received 105 baton complaints and 40 CS Spray complaints from April 2001 until March 2002. During that same time, the PSNI, which numbered 11,450 officers and serves a much smaller population, recorded 1,467 assaults against officers, but 309 complaints of baton use were received by the Police Ombudsman.⁴⁸¹

The report recommends that the PSNI should examine its training in Conflict Resolution Skills and include refresher training, which at the time of publication was not provided.⁴⁸² The report failed to note, however, that the Northern Ireland Human Rights Commission evaluation of student officer training seriously criticised this very aspect of PSNI training.⁴⁸³ The Office of the Police Ombudsman also recommends updating the Police Service Code on baton use, parts of which date back to the 1920s – a measure which was in process at the time of publication of the Ombudsman's report.⁴⁸⁴ OPONI also states that consistent recording of the use of force should be required, that use of force data should be centrally collated and consideration should be given to publishing such data.⁴⁸⁵ OPONI has identified a continuation in the reduction of the number of allegations of PSNI baton misuse since this report was published. OPONI recorded 419 such allegations from November 2000 to March 2002, 240 in 2003 and 148 in 2004.⁴⁸⁶

A troubling recommendation coming out of OPONI's baton report, however, was the Police Ombudsman's endorsement of PSNI's acquisition of CS Spray. The Police Ombudsman stated: "*CS sprays would give officers an alternative and sometimes more appropriate means of personal protection in close conflict situations.*"⁴⁸⁷ The Police Ombudsman goes on to acknowledge that the use of CS Spray can give rise to complaints and therefore the recommendations made regarding training in batons should also apply to training in CS Spray.⁴⁸⁸

CAJ is extremely concerned with the Police Ombudsman's endorsement of CS Spray for several reasons. Firstly, the Police Ombudsman initially endorsed the PSNI proposal to acquire CS Spray before the Policing Board had considered it and before publishing the baton report, without making any reference to why she was looking into CS Spray nor what evidence she had considered.⁴⁸⁹ Secondly, it is unclear what legislative provision gives the Police Ombudsman the power to research weaponry which, at that time, had never been used in Northern Ireland and therefore could not have been the source of a complaint. Thirdly, it is clear that the Police Ombudsman did not conduct exhaustive research before endorsing the controversial weapon and that her conclusions were based on less than solid evidence. Fourthly, the Police Ombudsman appears to have endorsed the acquisition of CS Spray before knowing the sufficiency of the guidelines and training programme which would be developed and did not make endorsement contingent on their adequacy, although the Police Ombudsman did raise concerns with the Chief Constable that they be more stringent than those recommended by the Association of Chief Police Officers.⁴⁹⁰

For the record, we should note that OPONI challenges in particular this last assertion on the part of CAJ.⁴⁹¹ OPONI believes that its endorsement of the purchase of CS spray followed on from consultation on draft guidelines, and notes that the Office had responded at length on draft guidelines. However, this clarification does not reassure us, nor undermine the concerns we raised at the time. While excellent that OPONI had - and took - the opportunity to comment on draft guidelines, OPONI endorsed the purchase of the weapon in March 2003 and in April 2003 was still not in possession of concluded guidance.⁴⁹² Nor, to our knowledge, had the Office made its endorsement explicitly contingent on approving the finalised guidelines.⁴⁹³ In July 2004, when CS spray was used for the first time in Northern Ireland, CAJ was still trying to ascertain whether guidelines had been finalised and issued to all officers.

In March 2003, after CAJ heard of the Police Ombudsman's endorsement of CS spray, we sent the Office a letter detailing our concerns, including: (1) the existence of independent research which indicates that there are adverse health effects with the use of CS Spray, limited research into its safety – especially its long-term effects, and that officers have been injured while being trained in its use; and (2) that some British police services have refused to use or stopped using CS Spray due to concerns that it could cause side-effects, especially for people on medication.⁴⁹⁴ In response, the Police Ombudsman did not indicate whether, in advance of endorsing CS Spray, she had scrutinised the independent research we had referred to. She advised CAJ that she was not aware of any research or evidence to prove that the British police services which had refused to use CS Spray did so out of principled opposition.⁴⁹⁵

In addition, the data detailed in OPONI's baton report does not entirely support a conclusion that use of force complaints would be reduced with the introduction of CS Spray. The report states:

"It should be noted that by October 1998 all but three of the 43 forces in England and Wales had introduced CS spray, with a subsequent diminution in baton use and consequential complaints. However, it should be noted that complaints about the use of CS spray were made in all force areas, in numbers that in some areas exceeded the reduction achieved in the number of complaints involving baton use."⁴⁹⁶

The report fails to detail why CS Spray complaints, even if in excess of previous baton complaints, would be preferred to baton complaints and no reference is made to the troubling independent research on CS Spray or the fact that some British services refused to use the weapon. By letter and at a subsequent meeting, the Police Ombudsman explained that CS Spray complaints, as compared to baton complaints, involved a lesser level of injury and may reduce the high level of compensation paid to victims.⁴⁹⁸ Evidence supporting this conclusion was not included in OPONI's baton report.⁵⁹⁸

CS Spray was used for the first time in Northern Ireland in Derry in July 2004 and according to the PSNI, as of 4 November 2004, in a period of approximately four

months, CS Spray has been used 35 times.⁴⁹⁹ This statistic suggests heavy usage, though CAJ has not compared Northern Ireland rates of usage to that of other forces where this weapon has been recently introduced. Very serious allegations were made in response to the first use of CS Spray by the PSNI, in Derry, including: (1) that CS Spray was used by more than one officer against a person who had already been handcuffed; (2) that more than one person suffered serious burns as a result of the use of CS Spray; and (3) that sufficient CS Spray was fired that bystanders and officers also seemed to have been sickened by the chemicals. The PSNI have announced that, as a result of CS Spray use in Derry in October 2004, one officer has been suspended.⁵⁰⁰ This suspension resulted as a consequence of information brought to the attention of the Chief Constable by OPONI.⁵⁰¹

Despite the fact that the Policing Board stated at the time of its endorsement of CS Spray that "*The Board has sought assurances that stringent guidelines are in place for the use of CS Spray and that officers will be thoroughly trained in its use,*" the Board has never publicly addressed whether such guidelines were ever finalised prior to deployment, nor did it publish its analysis of the adequacy of both the guidelines and the training programme which the PSNI has hopefully implemented. CAJ was one of very few bodies that was consulted by the PSNI on the draft CS Spray guidelines but despite submitting our comments in September 2003, neither we nor others were sent a copy of the final guidelines. When CS spray was put to operational use for the first time, CAJ and others immediately again requested copies of the guidelines. Several requests were ignored, but the guidelines were eventually made available only some months later after numerous discharges. The guidelines are apparently on the PSNI website, but are not easily retrievable. It is vital that guidelines such as these be made available so that the press, the public and non-governmental groups can monitor usage against the agreed guidelines.

CAJ recommends that policing scrutiny bodies such as the Policing Board and OPONI (to the extent that this falls within its remit) take appropriate steps to ensure that the introduction of new weaponry be made contingent upon approval of guidelines and appropriate training. CAJ recommends that new weaponry not be introduced prior to the guidelines for their use being effectively disseminated within the PSNI and placed in the public domain.

Paul Leighton, Deputy Chief Constable of the PSNI has stated "*It is my intention to refer all uses of CS spray to the Ombudsman's Office under Regulation 55(4) of the 1998 Police Act for investigation until the end of 2004 when this practice will be reviewed.*"⁵⁰² CAJ welcomes this practice but believes it does not provide adequate protection.

CAJ recommends that the policing legislation be amended to require the PSNI to refer all uses of CS Spray to the Police Ombudsman for investigation.

CAJ is troubled that the Police Ombudsman allegedly did not at first accept to investigate all uses of CS Spray. According to the PSNI Deputy Chief Constable: *"The Police Service had previously approached the Ombudsman's Office and asked if it wished to treat CS use in the same way as baton rounds. They did not feel that this was necessary. However in the interests of openness and to ensure that we learn all lessons possible for our use of CS spray I have gained their agreement to investigate and report on all such uses in these initial months"*.⁵⁰³ OPONI says that their initial reservations were in fact due to concerns that precipitate involvement of their Office might create an expectation that CS spray would lead to abuse and complaints, and that this was unhelpful. While agreeing to investigate incidents where problems or complaints did arise, OPONI believed it was necessary to consider carefully the very significant potential workload involved and be proportionate in response.⁵⁰⁴ While sympathetic to these considerations, CAJ noted earlier action taken by OPONI that we had considered was clearly precipitate - endorsing the purchase of CS spray, in advance of the possibility of specific complaints about their usage.

CAJ believes that the new policing institutions – the PSNI, the Office of the Police Ombudsman, and the Northern Ireland Policing Board – have failed by not adequately considering independent research raising health concerns associated with CS Spray, not making the acquisition of CS Spray conditional on the adequacy of the guidelines and training programme, and in the case of the Policing Board, by not publicly announcing an intention to look immediately into the troubling first use of this new weapon. The Board should also be concerned that it could receive requests for compensation by officers injured while using CS Spray. The Office of the Police Ombudsman has received complaints regarding the use of CS Spray. We hope that OPONI will soon be in a position to inform people whether the existing guidelines are adequate, and whether CS Spray used to date was done so in conformity with the guidelines.

Chapter Four

Conclusion and Summary of Recommendations

The Office of the Police Ombudsman has proved itself to be more effective than its predecessor, the Independent Commission for Police Complaints. It is widely known and it is widely thought to be independent of the police. It is CAJ's experience that OPONI is also the most transparent of the recently established policing bodies. The Office is making a great contribution to the improvement of policing and the building of trust between the police and the public. OPONI has established itself as a most essential component of the new police accountability system.

CAJ hopes, however, that the Office of the Police Ombudsman will find the various recommendations indicated in the text useful in improving the quality of its work. They can be summarised as follows:

- 1. CAJ makes a number of recommendations relating to the staffing of OPONI:** we propose an audit of training needs, emphasise the need for a good balance in its investigative staff between seconded and ex-police officers and civilians, and urge regular reviews of quality control mechanisms.
- 2. CAJ makes a number of recommendations about routine procedures:** complainant satisfaction levels could be improved in a variety of ways, such as, carrying out an analysis of the reasons for complaints not being pursued, the mailing of satisfaction surveys to all complainants, closer monitoring of the delays in the complaints process, greater communication throughout the process with complainants, and more pro-active forms of outreach. The NIO Guidance should be changed to better reflect the legislative obligation for all complaints to be immediately referred to OPONI.
- 3. CAJ makes a number of recommendations regarding the powers of OPONI:** consideration needs to be given to ways in which OPONI can oblige the PSNI to supply information in a timely manner, what powers the Office should have in investigating and interviewing retired officers, and what powers the Office (or some other statutory body) should have to investigate complaints about army activities where these are carried out in support of the PSNI. CAJ also argues for policy clarifications on OPONI's powers regarding operational matters; and argues that OPONI should be given more control over the informal resolution process and be given legislative authority to allow for mediation in advance of any formal investigative process when that is considered appropriate. Specific recommendations are also made regarding OPONI's role in commenting on new and contentious weaponry, such as plastic bullets and CS spray, and the importance of oversight of training and guidelines of same.

4. **CAJ makes a number of recommendations regarding OPONI's relationship with solicitors:** our findings suggest that solicitors we interviewed were quite critical of a number of aspects of OPONI's work and that it would be beneficial to carry out a study directed specifically at solicitors and organise a formal discussion with practitioners to learn of any continuing problems. Such exchanges would, amongst other things, clarify how best to communicate effectively with them and their clients.
5. **CAJ makes a number of recommendations relating to the police disciplinary process:** we recommend that OPONI should be present, along with the complainant's solicitor, at disciplinary hearings and that provisions for destroying disciplinary records be kept regularly under review.
6. **CAJ makes a number of comments on the informal resolution process:** we propose legislative and policy changes and encourage OPONI to improve their communications with complainants in this regard.
7. **CAJ recommends a greater programme of policing research to be carried out by OPONI, along with other policing bodies:** such research would also look, amongst other things, at issues of statistics and trends. OPONI in the meantime should clarify its understanding of "unsubstantiated" complaints, should create a category of "unable to determine" and should publish statistics accordingly. Claims of victimisation should be treated as a distinct but related aspect of the original complaint. Research should also look at broad issues of policing policy and practice, and trends in same.
8. **CAJ recommends that OPONI place more information into the public domain:** a number of recommendations are made regarding the kind of information which should be included in OPONI's annual report and the need for more transparency regarding the link between OPONI recommendations and subsequent decisions not to prosecute by the Director of Public Prosecutors. Specific 'hard to reach' groups (such as ethnic minorities and young people) will need specially targeted efforts of outreach.
9. **CAJ recommends that OPONI facilitate as much transparency as possible in its operations:** in particular we recommend that it seek a legislative duty similar to that which applies in England and Wales whereby OPONI would have a duty, subject to normal safeguards, of disclosure of materials gathered in the investigation.
10. **CAJ recommends that policies regarding OPONI's handling of retrospective cases be clarified:** this is especially important now with the introduction of a specialist PSNI unit looking at historic cases.

ENDNOTES

1. "A Police Ombudsman for Northern Ireland?: A review of the police complaints system in Northern Ireland" [Hereinafter Hayes Report], Dr Maurice Hayes, January 1997. The Hayes Report can be obtained from Her Majesty's Stationery Office.
2. Hayes Report, pp. v and 2.
3. Belfast Good Friday Agreement, 10 April 1998, *Policing and Justice*, para. 3. The Agreement can be located on the website of the Northern Ireland Office at www.nio.gov.uk/the-agreement.
4. "A New Beginning to Policing in Northern Ireland", The Report of the Independent Commission on Policing for Northern Ireland [Hereinafter Patten Commission Report], September 1999. The Patten Commission's report can be located at www.belfast.org.uk.
5. Commentary on the Northern Ireland Policing Board, CAJ, November 2003. This commentary can be located on CAJ's website, www.caj.org.uk.
6. OPONI correspondence with CAJ, dated 21 January 2005. The Ombudsman expressed concern at a number of individual complaints that had been highlighted in the course of the research, and indicated an interest in pursuing these with the individuals concerned. CAJ has conveyed this offer of help to the relevant interviewees, so that they can pursue any concerns directly should they so choose.
7. 1999 Annual Report, ICPC, 5 April 2000 [Hereinafter 1999 ICPC Annual Report], pp. 20, 30, and 35.
8. 1999 ICPC Annual Report, Appendices II and III; Hayes Report, Annex 2.
9. O'Rawe and Moore (2000) *Accountability and Police Complaints in Northern Ireland: Leaving the Past Behind?* [Hereinafter O'Rawe and Moore, *Accountability and Police Complaints in Northern Ireland*], Goldsmith and Lewis, "Civilian Oversight of Policing: Governance, Democracy and Human Rights", Hart Publishing, p. 278.
10. Hayes Report, p. 119.
11. "Complaints Against the Police: A working party report", CAJ, Pamphlet No. 3, September 1982, p. 16; "Procedures for Handling Complaints Against the Police", CAJ, Pamphlet No. 4, May 1983, pp. 13-14; "Cause for Complaint: The system for dealing with complaints against the police in Northern Ireland", CAJ, Pamphlet No. 16, May 1990, p. 31; "Selected examples of Foreign experience in the investigation of Complaints against Police Personnel", CAJ, S.21, March 1991, p. 41; "A fresh look at Complaints against the Police", CAJ, December 1993, p. 55. (see also synopsis of CAJ's work on policing over the years in appendix 1.)
12. Hayes Report, p. 5.
13. The Police Authority for Northern Ireland was replaced by the Northern Ireland Policing Board on 4 November 2001 under §2 of the Police (Northern Ireland) Act 2000.
14. Hayes Report, p. v.
15. Other than those complaints deemed suitable for informal resolution.
16. Hayes Report, p. vi.

17. Id. at 38.
18. Id. at 38.
19. Id. at 38.
20. Id. at 38.
21. Id. at para.8.11 and p. 43.
22. Id. at 63.
23. Id. at para. 17.25.
24. Id. at 74 and para. 17.26.
25. Patten Commission Report, para. 6.40.
26. Now the Police (Northern Ireland) Act 1998, hereinafter 1998 Police Act. The 1998 Police Act can be located at www.legislation.hmso.gov.uk/acts/acts 1998/19980032.htm.
27. See O’Rawe and Moore, *Accountability and Police Complaints in Northern Ireland* for a more detailed discussion of the failings of the legislation to implement the Hayes Report. Dr Colleen Lewis has also pointed out the tendency of governments the world over to set up civilian oversight institutions to fail by allocating insufficient powers, resources, etc. This phenomenon is due to a focus on a short term political agenda too placatory of police views and attitudes. Address to IACOLE conference, Virginia, USA, 26 September 1996.
28. Patten Commission Report, para. 1.1.
29. Patten Commission Report, para. 6.40, recommendation 38. Emphasis added
30. O’Rawe and Moore, *Accountability and Police Complaints in Northern Ireland*, p. 260.
31. Police (Northern Ireland) Act 2000 [Hereinafter 2000 Police Act] and Police (Northern Ireland) Act 2003 [Hereinafter 2003 Police Act]. The 2000 Police Act can be located at www.hmso.gov.uk/acts/acts2000/20000032.htm and the Police Act 2003 can be located at www.hmso.gov.uk/acts/acts2003/20030006.htm.
32. Hayes Report, p. 38.
33. Patten Commission Report, para. 6.41, recommendation 38.
34. 2000 Police Act, §63.
35. 2003 Police Act, §13.
36. “Appointment of Police Ombudsman”, Northern Ireland Office (NIO) Press Release, 11 October 1999. NIO press releases can be located on its website, www.nio.gov.uk.
37. “New Police Era Begins”, OPONI Press Release, 3 November 2000. OPONI press releases can be located on its website, www.policeombudsman.org.
38. 1998 Police Act, §1 of Schedule 3.
39. 1998 Police Act, §52(4).
40. Royal Ulster Constabulary (Complaints etc) Regulations 2001 [Hereinafter 2001 RUC Complaints Regulations], §§5-6. The 2001 RUC Complaints Regulations can be located at www.opsi.gov.uk/sr/sr2001/20010184.htm.
41. 2003 Police Act, §30.
42. Id. at §31.
43. Annual Report, April 2003 – March 2004, OPONI [Hereinafter 2003-04 OPONI Annual Report], p. 14. The OPONI annual reports can be located on the OPONI website, www.policeombudsman.org.
44. 1998 Police Act, §52(5).
45. Id. at §52(6-7).

46. 2003 Police Act, §13.
47. 2000 Police Act, §63.
48. 1998 Police Act, §52(1)(b), emphasis added.
49. Northern Ireland Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures [Hereinafter NIO Guidance], para. 2.7.
50. See for example, NIO Guidance, paras. 2.26-2.27.
51. 1998 Police Act, §53(2); Royal Ulster Constabulary (Complaints etc) Regulations 2000 [Hereinafter 2000 RUC Complaints Regulations], §10(3). The 2000 RUC Complaints Regulations can be located at www.northernireland-legislation.hmso.gov.uk/sr/sr2000/2000319.htm.
52. 1998 Police Act, §53(6).
53. 2000 Police Act, §62.
54. 1998 Police Act, §§55(2) and 55(4).
55. 1998 Police Act, §55(1).
56. Current policy as outlined in OPONI correspondence with CAJ, dated 21 January 2005.
57. 1998 Police Act, §55(6).
58. 2003-04 OPONI Annual Report, p. 14.
59. 1998 Police Act, §56.
60. *Id.* at §§54, 50(1) and 57(4).
61. OPONI written answers to CAJ's questions, 26 May 2004.
62. NIO Guidance, para. 2.15.
63. 2000 Police Act, §66; 2000 RUC Complaints Regulations, §8.
64. 1998 Police Act, §58(2).
65. 2003-04 OPONI Annual Report, p. 11.
66. 1998 Police Act, §59(1-2).
67. 1998 Police Act, §59(4-5).
68. 2001 RUC Complaints Regulations, §11(2); NIO Guidance, §3.70.
69. 2001 RUC Complaints Regulations, §11(1).
70. 1998 Police Act, §61(2); 2000 Police Act, §64.
71. 1998 Police Act, §63.
72. 2000 RUC Complaints Regulations, §§26-27.
73. OPONI written answers to CAJ's questions, 26 May 2004.
74. 1998 Police Act, §§5 and 8 of Schedule 3.
75. 1998 Police Act, §6 of Schedule 3.
77. OPONI written answers to CAJ's questions, 26 May 2004.
77. 1998 Police Act, §§61(1) and 61(3).
78. *Id.* at §61(6).
- 79: www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/344/34402.htm
80. 2003-04 OPONI Annual Report, p. 13.
81. *Id.*
82. NIO Guidance, paras. 2.147-2.149.
83. OPONI correspondence with CAJ, 21 January 2005
84. Hayes Report, paras. 13.62, 13.64, 13.65 and 13.67.
85. "A fresh look at Complaints against the Police", CAJ, December 1993, pp. 5-6.
86. OPONI written answers to CAJ's questions, 26 May 2004, September 2004 and 11 October 2004.

87. OPONI written answers to CAJ's questions, September 2004.
88. Id.
89. OPONI oral answers to CAJ's questions, 2 June 2004.
90. 2003-04 OPONI Annual Report, p. 15.
91. OPONI written answers to CAJ's questions, September 2004.
92. OPONI correspondence with CAJ, 21 January 2005.
93. See "What's wrong with complaint investigations?: Dealing with difference differently" in Complaints against the Police 15 (1) Criminal Justice Ethics, Winter/Spring 1996 at 38 for a discussion of the phenomenon of police narrative determining versions of events from a police perspective.
94. OPONI written answers to CAJ's questions, 26 May 2004 and September 2004.
95. OPONI correspondence with CAJ, 21 January 2005.
96. OPONI correspondence with CAJ, 21 January 2005, states, "Mediation Northern Ireland recently informed me that our induction training and the ongoing contextual and ethical training was unknown in any other public sector organisation of which they are aware."
97. OPONI written answers to CAJ's questions, September 2004.
98. OPONI written answers to CAJ's questions, 26 May 2004.
99. OPONI correspondence with CAJ, 21 January 2005, states "Formal structured induction training lasting one week was provided for the most recent intake of seconded officers and will be provided in future. Part of this training (like much of our other training) is provided by persons from a variety of backgrounds outside the Office. Investigators attend a monthly training event and other special events. Between April and October 2004, for example, there were 22 training events for investigators (not including the accredited investigative training) ranging from CHIS (Covert Human Intelligence Source) Training to Deaths in Custody to CS Incapacitant Spray Training to Firearms Familiarisation Training and Family Liaison Officer Training."
100. OPONI correspondence with CAJ, 21 January 2005.
101. OPONI correspondence with CAJ, 21 January 2005.
102. OPONI correspondence with CAJ, 21 January 2005, indicates that the Office regularly records telephone complaints, and would like to follow up this complaint directly. CAJ has conveyed this response to the individual concerned.
103. OPONI oral answers to CAJ's questions, 2 June 2004.
104. OPONI correspondence with CAJ, 21 January 2005.
105. 2003-04 OPONI Annual Report, p. 17.
106. Id.
107. 2003-04 OPONI Annual Report, p. 27. In its 2002-2003 Annual Report, OPONI reported that approximately 30% of complaints had led to a full investigation (p. 6).
108. OPONI written answers to CAJ's questions, 8 November 2004. This information was complemented by OPONI correspondence with CAJ, 21 January 2005, wherein OPONI notes that on occasion a complainant cooperates throughout the process but chooses at the end not to pursue the matter. Many reasons might explain this – perhaps complainants are satisfied that the matter has been examined and that the police are aware of a problem, but they choose not to be involved in disciplinary or even criminal proceedings. In this scenario, the complaint must be 'closed', because no further steps are to be taken. Alternatively, a complainant may not wish to supply medical evidence, or

provide the names of witnesses, and the complaint must be ‘closed’ because no further steps are feasible. An enormous amount of work is done, but the cases are nevertheless closed. In one case, a recommendation for disciplinary action was made against a police officer, but the solicitor involved said that they were too busy to pursue the case further.

109. OPONI correspondence with CAJ, 21 January 2005.
110. OPONI written answers to CAJ’s questions, 8 November 2004.
111. Northern Ireland Policing Board Letter to CAJ, June 2003.
112. OPONI’s correspondence with CAJ, 21 January 2005, questions how reliable these claims are, and indicates that “we do have cases where permission to access medical record is not forthcoming and where access to witnesses is not provided despite repeated requests”.
113. Correspondence with CAJ, 21 January 2005, indicates that OPONI is unaware of this case. CAJ has relayed this information to the person concerned in the event that s/he wants to pursue the matter directly.
114. 2003-04 OPONI Annual Report, p. 16.
115. OPONI correspondence with CAJ, 21 January 2005.
116. 2003-04 OPONI Annual Report, p. 46.
117. *Id.*
118. 2003-04 OPONI Annual Report, p. 47.
119. OPONI correspondence with CAJ, 21 January 2005.
120. OPONI correspondence with CAJ, 21 January 2005.
121. OPONI correspondence with CAJ, 21 January 2005 – the example of assistance provided to others in this regard was the quality assurance OPONI carried out at the request of the London based Independent Police Complaints Commission into its investigation of police conduct in the Hunting Bill demonstrations.
122. 2003-04 OPONI Annual Report, p. 46.
123. OPONI written answers to CAJ’s questions, 26 May 2004.
124. 2003-04 OPONI Annual Report, p. 47; OPONI written answers to CAJ’s questions, 8 November 2004.
125. OPONI correspondence with CAJ, 21 January 2005.
126. “Human Rights on Duty: Principles for better policing – International lessons for Northern Ireland” Mary O’Rawe and Dr Linda Moore, CAJ, 1997, p. 121.
127. *Id.* at 122.
128. 2003-04 OPONI Annual Report, p. 46.
129. *Id.* at 4.
130. OPONI correspondence with CAJ, 21 January 2005.
131. *Id.*
132. *McShane v. UK* judgment of 28 May 2002, para. 97; *See also Yasa v. Turkey* judgment of 2 September 1998, Reports 1998-IV, pp. 2439-2440, §§ 102-104; *Cakici v. Turkey* [GC] ECHR 1999-IV, §§ 80, 87 and 106; *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, §109; *Mahmut Kaya v. Turkey*, no. 22535/93, [Section 1] ECHR 2000-III, §§ 106-107; *See more generally McCann and Others v. UK* judgment of 27 Sept 1995, Series A no. 324; *Kaya v. Turkey* judgment of 19 Feb 1998, *Reports of Judgments and Decisions* 1998-I; *Kelly and Others v. UK* judgment of 4 May 2001, *Shanaghan v. UK* judgment of 4 May 2001, *McKerr v. UK* judgment of 4 May 2001, *Hugh Jordan v. UK* judgment of 4 May 2001, no. 37715/97, [Section 3].

133. OPONI correspondence with CAJ, 21 January 2005, indicates that delays may occur because an accused person is suffering very serious injury and unavailable for interview.
134. NIO Guidance, para. 2.15.
135. Annual Report, April 2002 – March 2003, OPONI [Hereinafter 2002-03 OPONI Annual Report], p. 6.
136. After OPONI communicated its intention to consider the adequacy of the RUC investigation of the murder of Sean Brown, the Murder Investigation Policy File, which should have recorded all decisions and the reasons for those decisions, inexplicably disappeared. See “‘Significant Failures in investigation of 1997 Sean Brown Murder’” [Hereinafter OPONI Sean Brown Press Release], OPONI Press Release, 19 January 2004 and “The Investigation By Police Of The Murder Of Mr Sean Brown On 12 May 1997” [Hereinafter OPONI Sean Brown Report], Statement Under Section 62 Of The Police (Northern Ireland) Act 1998, OPONI, 19 January 2004. OPONI has also stated that, during its review of the RUC/ PSNI Omagh bomb investigation, some critical information, including an intelligence chapter of the RUC Review of the Omagh Bomb Investigation was not initially made available to OPONI; the police failed to inform investigators of a computer system where intelligence vital to the investigation was held; and the response from senior police management to the OPONI investigation was defensive and at times, uncooperative. See “Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters related to the Omagh Bomb on August 15, 1998” [Hereinafter OPONI Omagh Bomb Press Release], OPONI Press Release, pp. 8 and 10. All of these documents can be located on OPONI’s website, www.policeombudsman.org.
137. OPONI reported that it waited four weeks for the police to make critical information relevant to its investigation of the Omagh bombing available to OPONI investigators. See OPONI Omagh Bomb Press Release, pp. 10-11.
138. 2000 Police Act, §66.
139. OPONI written answers to CAJ’s questions, 26 May 2004.
140. 2003-04 OPONI Annual Report, p. 9.
141. Hayes Report, para. 17.22
142. OPONI correspondence with CAJ, 21 January 2005.
143. OPONI correspondence with CAJ, 21 January 2005.
144. The full details of Mr Brown’s case are explained later in Chapter Three section J, on “Retrospective Cases”.
145. OPONI Sean Brown Report, para. 14.2.
146. *Id.* at 14.7.
147. NIO Guidance, para. 3.68.
148. 2003-04 OPONI Annual Report, p. 17.
149. “Chief Constable Asks Police Ombudsman to Investigate Forensics”, OPONI Press Release, 3 October 2003; “DPP to probe police action”, *The Belfast Telegraph*, 17 November 2004.
150. “Above Suspicion”, UTV Insight Programme, 23 February 2004; “Judge Orders Spy To Give Evidence”, *The News Letter*, 13 November 2004.
151. “DPP to probe police action”, *The Belfast Telegraph*, 17 November 2004.
152. “Above Suspicion”, UTV Insight Programme, 23 February 2004.
153. “Above Suspicion”, UTV Insight Programme, 23 February 2004; “DPP to probe police action”, *The Belfast Telegraph*, 17 November 2004.

154. “No Improper Pressure on Scientist But Poor Police Investigation”, OPONI Press Release, 4 August 2004.
155. OPONI correspondence with CAJ, 21 January 2005.
156. Written answers to CAJ’s questions, 26 May 2004.
157. 2003-04 OPONI Annual Report, p. 28; See OPONI website, www.policombudsman.org, In the matter of an Application by Peter Montgomery for leave to apply for Judicial Review, 13 February 2003.
158. The Independent Assessor of Military Complaints Procedures has written a report on army use of plastic bullets, but has an extremely limited remit and limited powers; he does not investigate every firing. See “A Review of Military use of Baton Rounds in Northern Ireland: 1 January 2001 – 31 October 2002, Independent Assessor of Military Complaints Procedures in Northern Ireland, December 2002.
159. See OPONI website, www.policombudsman.org, In the matter of an Application by Peter Montgomery for leave to apply for Judicial Review, 13 February 2003.
160. Statement of PSNI Chief Constable Hugh Orde, “Policing the Police: The Challenges”, OPONI Conference, 5-7 November 2003.
161. 2003-04 OPONI Annual Report, p. 28.
162. “Soldier’s Restorick claims investigated”, *Sunday Life*, 14 November 2004.
163. Id.
164. “Baton Rounds: A review of the human rights implications of the introduction and use of the L21A1 baton round in Northern Ireland and proposed alternatives to the baton round”, written by the Omega Foundation, published by the Northern Ireland Human Rights Commission, March 2003, p. 39. This report can be located on the website of the Northern Ireland Human Rights Commission, www.nihrc.org. See also a discussion of this issue and recommendation for consideration by the Northern Ireland Affairs Committee in “The Functions of the Office of the Police Ombudsman for Northern Ireland”, HC 344, February 2005 (emphasis in the original).
165. Statement of Police Ombudsman Nuala O’Loan, “Policing the Police: The Challenges”, OPONI Conference, 5-7 November 2003.
166. OPONI correspondence with CAJ, 21 January 2005.
167. OPONI correspondence with CAJ, 21 January 2005.
168. OPONI correspondence with CAJ, 21 January 2005.
169. In OPONI correspondence with CAJ, 21 January 2005, OPONI, notes in response to CAJ’s recommendation on this point that “the decision as to how to communicate will rest with the client”, implying that this is what has been happening to date. To avoid any ambiguity or uncertainty on this point, CAJ has re-worded its recommendation to clarify that the reference to the role of solicitors relates to those complainants who have chosen to be represented by legal counsel, and that exclusions from meetings cannot occur at the request of OPONI.
170. 2003-04 OPONI Annual Report, p. 9.
171. Id.
172. 1998 Police Act, §52(5-7).
173. Hayes Report, p. 38.
174. 2000 Police Act, §63.
175. 2003 Police Act, §13.

176. OPONI written answers to CAJ's questions, 26 May 2004.
177. 2003-04 OPONI Annual Report, p. 30.
178. OPONI correspondence with CAJ, 21 January 2005.
179. OPONI correspondence with CAJ, 21 January 2005, states that (the issues listed in the text): "*It is the case that lengthy explanations of the extent of the remit took place, and although individual cases could be accepted where they came within the legislation, the major issues were outside remit.*"
180. The complainants in this case claim that they submitted their complaint after the establishment of OPONI in November 2000 and that OPONI refused to investigate the complaint believing it was an operational issue outside of OPONI's remit.
181. OPONI written answers to CAJ's questions, 26 May 2004.
182. OPONI correspondence with CAJ, 21 January 2005.
183. Patten Commission Report, para 6.21.
184. OPONI letter to complainant, 23 April 2002.
185. OPONI correspondence with CAJ, 21 January 2005, states that "*The policy now is that we forward the issue to the Chief Constable with our observation that it is a policy matter. The complainant is advised of this.*"
186. OPONI correspondence with CAJ, 21 January 2005.
187. In OPONI correspondence with CAJ, 21 January 2005, states with regard to raids that "*the legislation does not require me to look at raids in general. This is however a matter on which I am much exercised, and on which I intend to conduct research as we conducted research into batons.*"
188. "Stormont Search: Police Ombudsman Statement", OPONI Press Release, 1 August 2004.
189. *Id.*
190. "Seizure of Journalistic Material Unlawful: Police Ombudsman", OPONI Press Release, 3 October 2004.
191. OPONI correspondence with CAJ, 21 January 2005.
192. 2003-04 OPONI Annual Report, p. 10.
193. *Id.*
194. 2003 Police Act, §13 (1998 Police Act, §60A).
195. 2003-04 OPONI Annual Report, p. 13.
196. *Id.*
197. *Id.* at 47.
198. OPONI oral answers to CAJ's questions, 2 June 2004.
199. Clarification offered in OPONI correspondence with CAJ, 21 January 2005.
200. OPONI written answers to CAJ's questions, 26 May 2004.
201. Interface is an area in which nationalists/republicans reside on one side and unionists/loyalists reside on the other.
202. OPONI oral answers to CAJ's questions, 2 June 2004.
203. CAJ has frequently been informed by local community members that they would not be willing to gather even basic data about the operation of the police in their areas in the event that this might be construed by the police or others as suspicious activity. In a controversial case relating to the break-in at Castlereagh, one count against the defendant was the fact that he had checked out of his public library an autobiography of former Prime Minister John Major - See R v John Jude O'Hagan, [2004] NICC 17, Morgan J, 9 July 2004. Whatever the circumstances of this case, this kind of example would deter many people

- from any kind of routine monitoring of police behaviour. CAJ, as an independent human rights group, has been able to carry out such monitoring in the past, but our role was feasible only to the extent that we were seen to be acting impartially and with a clearly defined remit.
204. Commentary on the Northern Ireland Policing Board, CAJ, November 2003, p. 16.
205. OPONI written answers to CAJ's questions, September 2004.
206. OPONI correspondence with CAJ, 21 January 2005, notes on this point that "*We have had two prosecutions for dangerous driving of landrovers, one of which resulted in the conviction of the police officer. The other which involved the driving of a landrover at a group of children was recently dismissed by the magistrate on the basis that the speed at which the landrover was being driven could not be stated accurately and therefore he could not determine whether the driving was dangerous. We have also had a police officer convicted of careless driving.*"
207. 1998 Police Act, §53.
208. *Id.* at §50(1).
209. 2000 RUC Complaints Regulations, §10(3).
210. Royal Ulster Constabulary (Complaints) (Informal Resolution) Regulations 2000 [Hereinafter 2000 RUC Informal Resolution Regulations], §4(2).
211. *Id.* at §4(3).
212. 1998 Police Act, §53(6).
213. 2003-04 OPONI Annual Report, p. 32.
214. CAJ meeting with PSNI Internal Investigations Branch, 3 June 2004.
215. 2003-04 OPONI Annual Report, p. 32.
216. 2003-04 OPONI Annual Report, pp. 27 and 32; OPONI oral answers to CAJ's questions, 2 June 2004.
217. See Chapter Three section D, on "Effectiveness" for more information on the PSNI's Internal Investigations Branch.
218. 1998 Police Act, §53(7-8).
219. "Introducing restorative justice to the police complaints system: Hearing it from the force's mouth", Presentation by Roderick Hill and Karen Cooper, "Policing the Police: The Challenges", OPONI conference, 5-7 November 2003.
220. OPONI correspondence with CAJ, 21 January 2005.
221. Report 3 2004: A Study of the Attitudes of Members of the Police Service of Northern Ireland to the Office of the Police Ombudsman for Northern Ireland and the New Complaints System – Detailed Findings, OPONI, Section One, Tables 16/7 and 16/13. This report can be located on the OPONI website, www.policeombudsman.org.
222. CAJ meeting with PSNI IIB, 3 June 2004.
223. OPONI correspondence with CAJ, 21 January 2005, states: "*We have of course sought a power to mediate which I think would address many of the problems which you correctly identify.*"
224. IIB written answers to CAJ's questions, 26 November 2004.
225. *Id.*
226. 2003-04 OPONI Annual Report, p. 10.
227. *Id.*
228. *Id.*
229. Hayes Report. pp. 39 and 65. (emphasis in the original)

230. OPONI correspondence with CAJ, 21 January 2005 states that the material is promised “very soon”.
231. “Attitudes to Informal Resolution in Northern Ireland”, Presentation of Tim Trimble, OPONI official, “Policing the Police: The Challenges”, OPONI Conference, 5-7 November 2003.
232. Id.
233. 2000 Police Act, §62.
234. 2003-04 OPONI Annual Report, p. 14.
235. Id.
236. “Cause for Complaint: The system for dealing with complaints against the police in Northern Ireland”, CAJ, Pamphlet No. 16, May 1990, p. 27.
237. Hayes Report, p. 113.
238. Id.
239. “Public Awareness of the System of Complaints against the Police in Northern Ireland, 2004”, Research Report 02/2004, Malcolm Ostermeyer, OPONI, p. 5. This report can be located on OPONI’s website, www.policeombudsman.org.
240. 2003-04 OPONI Annual Report, p. 37.
241. OPONI correspondence with CAJ, 21 January 2005 states that: “*The annual independently conducted Omnibus Survey illustrated increasing levels of confidence in the impartiality of the Police Ombudsman and that the existence of the Office helps the police do a good job.*”
242. 2003-04 OPONI Annual Report, p. 5.
243. 2003-04 OPONI Annual Report, p. 10.
244. 2003-04 OPONI Annual Report, p. 5.
245. 2003-04 OPONI Annual Report, p. 37.
246. Presentation of Karen McKenzie, Executive Director of the Independent Complaints Directorate of South Africa, “Policing the Police: The Challenges”, OPONI Conference, 5-7 November 2003.
247. 2003-04 OPONI Annual Report, p. 5.
248. Id. at 7.
249. Id. at 8.
250. 2003-04 OPONI Annual Report, p. 11; OPONI correspondence with CAJ, 21 January 2005, adds “*We also provide quarterly and annual tracking and trending reports to the PSNI and Policing Board. Much of this information is on the website and in the Annual Report so that it is available to the public.*”
251. Presentation by Chief Constable Hugh Orde, “Policing the Police: The Challenges”, OPONI Conference, 5-7 November 2003.
252. Id. at 5.
253. Hayes Report, p. 5.
254. O’Rawe and Moore, *Accountability and Police Complaints in Northern Ireland*, p. 279.
255. 2003-04 OPONI Annual Report, p. 27.
256. Id.
257. Id.
258. 2003-04 OPONI Annual Report, p. 35 (Advice/guidance and Superintendent’s Warning refer to the informal misconduct procedure).
259. 2003-04 OPONI Annual Report, p. 35.
260. Id. at 27.

261. OPONI correspondence with CAJ, 21 January 2005.
262. OPONI correspondence with CAJ, 21 January 2005.
263. 2003-04 OPONI Annual Report, p. 27.
264. OPONI written answers to CAJ's questions, 26 May 2004.
265. CAJ meeting with PSNI IIB, 3 June 2004.
266. OPONI written answers to CAJ's questions, 26 May 2004; OPONI oral answers to CAJ's questions, 2 June 2004. OPONI correspondence with CAJ, 21 January 2005, states that, "*It is important to note that medical evidence for example may demonstrate that an injury has been suffered. If police are to be held responsible then we must be able to link the injury sustained to the police in some way. Witnesses may tell the complainant that they will co-operate but won't when we ask them. They may also tell us a different story from that which they tell the complainant. We cannot tell the complainant all the details as this would breach s. 66 by identifying a person etc.*"
267. OPONI correspondence with CAJ, 21 January 2005: notes that, stated "*The law states that the police officer is entitled to written notice of the nature of the report, complaint or allegation. Therefore this must be supplied. The law also states that there are very strict rules on disclosure. However the complainant will receive a letter advising of the investigative steps taken.*"
268. Hayes Report, para. 17.18.
269. *Id.* at 17.20.
270. OPONI in correspondence with CAJ, 21 January 2005.
271. 2003-04 OPONI Annual Report, p. 12.
272. Royal Ulster Constabulary (Conduct) Regulations 2000 [Hereinafter 2000 RUC Conduct Regulations], §31.
273. All information related to or sourced from the IIB originates from a meeting CAJ held with the Branch on 3 June 2004.
274. These statistics were provided to CAJ by IIB, but OPONI correspondence with CAJ, 21 January 2005, notes that, "*the phone list for G Department (complaints division) on 20 October 2000 shows 119 staff*".
275. 2003-04 OPONI Annual Report, p. 15. It is not clear, however, why OPONI compares its current budget to that of the ICPC which it replaced together with the former Complaints and Discipline Branch, but appears to ignore the ongoing costs of the IIB which handles internal complaints and informal resolution cases, assists OPONI in accessing documents and holds all misconduct hearings.
276. CAJ meeting with PSNI IIB, 3 June 2004.
277. CAJ meeting with PSNI IIB, 3 June 2004, IIB written answers to CAJ's questions, 26 November 2004.
278. CAJ meeting with PSNI IIB, 3 June 2004.
279. *Id.*
280. OPONI correspondence with CAJ, 21 January 2005.
281. 2000 RUC Conduct Regulations, §18. If the accused officer is of superintendent rank, all three members of the disciplinary tribunal must be assistant chief constables.
282. Hayes Report, para. 6.15.
283. "Cause for Complaint: The system for dealing with complaints against the police in Northern Ireland", CAJ, Pamphlet No. 16, May 1990, p. 27.
284. 2000 RUC Conduct Regulations, §13.

285. 2000 RUC Conduct Regulations, §24(1-2).
286. 2000 RUC Conduct Regulations, §16.
287. 2000 RUC Conduct Regulations, §21(3).
288. 2000 RUC Conduct Regulations, §21.
289. 2000 RUC Conduct Regulations, §17(2).
290. 2000 RUC Conduct Regulations, §25 and §27.
291. 2000 RUC Conduct Regulations, §26(1).
292. 2000 RUC Conduct Regulations, §23(2).
293. 2000 RUC Conduct Regulations, §§22(2) and 23(4)(c).
294. NIO Guidance, para. 3.70
295. NIO Guidance, para. 3.70.
296. 2000 RUC Conduct Regulations, §§30 and 34(1).
297. NIO Guidance, paras. 3.80-3.81.
298. *Id.* at 3.82
299. OPONI was examined before the Northern Ireland Affairs Committee on 21 July 2004.
300. "Cause for Complaint: The system for dealing with complaints against the police in Northern Ireland", CAJ, Pamphlet No. 16, May 1990, p. 27.
301. 2003-04 OPONI Annual Report, p. 35.
302. OPONI written answers to CAJ's questions, 26 May 2004.
303. OPONI correspondence with CAJ, 21 January 2005.
304. OPONI Submission to the Northern Ireland Affairs Committee, 17 March 2004, para. 29.
305. OPONI written answers to CAJ's questions, 26 May 2004.
306. OPONI correspondence with CAJ, 21 January 2005, clarifies that OPONI cannot request suspension. The correspondence states that, "*The legislation requires us to inform the Chief Constable if we are aware of circumstances meriting suspension, but the decision is one for PSNI*".
307. 2002-03 OPONI Annual Report, p. 31. It should be noted that more significant punishment, including dismissal, has been assigned to officers as a result of disciplinary hearings originating from complaints made by members of the public in 2003-2004. Unfortunately, the PSNI report for 2003-2004 does not differentiate between cases initiated by OPONI and those initiated from inside the PSNI, rendering comparisons difficult.
308. 2002-2003 Report of the Chief Constable, PSNI, p. 23. The reports of the Chief Constable can be located on the PSNI website, www.psni.police.uk.
309. Hayes Report, para. 17.30.
310. 1998 Police Act, §58.
311. 1998 Police Act, §58(2); 2003-04 OPONI Annual Report, p. 11.
312. OPONI correspondence with CAJ, 21 January 2005, citing Hansard statistics correct as of 12 January 2005.
313. 2003-04 OPONI Annual Report, p. 33, the charges pursued by the DPP are also set out here.
314. OPONI Submission to the Northern Ireland Affairs Committee, 17 March 2004, para. 29.
315. NIO Guidance, para. 2.120.
316. "Application for appeal dismissed", *The Irish News*, 11 October 2004.
317. *Id.*

318. "Cop driving appeal dismissed", *Irish Daily Star*, 3 June 2004.
319. Id.
320. Id.
321. Id.
322. OPONI correspondence with CAJ, 21 January 2005.
323. "Questions Over Forensic Science Evidence: Police Ombudsman", OPONI Press Release, 1 March 2004; "Seven officers cleared over joyrider death", *The News Letter*, 2 March 2004.
324. Id.
325. "Questions Over Forensic Science Evidence: Police Ombudsman", OPONI Press Release, 1 March 2004.
326. Id.
327. "Seven police officers acquitted", *The Irish News*, 2 March 2004; "Seven officers cleared over joyrider death", *The News Letter*, 2 March 2004.
328. "Seven police officers acquitted", *The Irish News*, 2 March 2004.
329. Id.
330. OPONI written answers to CAJ's questions, 26 May 2004.
331. NI Forum for Political Dialogue, Record of Debates, Friday 24 January 1997, no.25, p.12.
332. OPONI Omagh Bomb Press Release.
333. Id.
334. Id.
335. Id.
336. Id. at 2, 3, 5, 6, and 10.
337. OPONI Omagh Bomb Press Release, p. 12.
338. "PSNI Statement on Leaked Ombudsman's Report", PSNI Press Release, 7 December 2001. The PSNI press releases can be located on the PSNI website, www.psnipolice.uk.
339. "Accusations 'a grave disservice'", *The Belfast Telegraph*, 24 January 2002.
340. "Emotional Flanagan in 'suicide' outburst", *The Guardian*, 13 December 2001.
341. "PM backs Ulster police chief", *The Guardian*, 14 December 2001.
342. "Police Ombudsman Statement Following The Withdrawal Of A Judicial Review Brought By The Police Association For Northern Ireland To Quash Her Report Into The Events Surrounding The Omagh Bombing" [Hereinafter Withdrawal of PANI Judicial Review OPONI Press Release], OPONI Press Release, 23 January 2003.
343. Id.
344. "Specially Convened Meetings of the Policing Board to Discuss the Omagh Reports", NIPB Press Release, 5 and 7 February 2002. The NIPB press releases can be located on its website, www.nipolicingboard.org.uk.
345. "Police Ombudsman Welcomes Board Recommendations", OPONI Press Release, 8 February 2002.
346. "Chief Constable Responds to Policing Board Omagh Recommendations", PSNI Press Release, 8 February 2002.
347. "PM backs Ulster police chief", *The Guardian*, 14 December 2001.
348. Id.
349. "Mandelson attacks O'Loan", *The Belfast Telegraph*, 14 December 2001.
350. "Policing Board attempts to end Omagh impasse", *The Irish Times*, 6 February

- 2002.
351. “Maginnis accused of putting O’Loan in danger”, *The Irish Times*, 17 December 2001.
 352. “Row rages over ‘tip-off’ given to Special Branch”, *The Belfast Telegraph*, 7 December 2001.
 353. “It’s Time to Address the Issues – Police Ombudsman”, OPONI Press Release, 24 January 2002; Withdrawal of PANI Judicial Review OPONI Press Release.
 354. 2003-04 OPONI Annual Report, p. 41.
 355. 1998 Police Act, §51(4)(b).
 356. Report 1 2004: A Study of the Attitudes of Members of the Police Service of Northern Ireland to the Office of the Police Ombudsman for Northern Ireland and the New Complaints System – Main Findings, OPONI, p. 1.
 357. Report 3 2004: A Study of the Attitudes of Members of the Police Service of Northern Ireland to the Office of the Police Ombudsman for Northern Ireland and the New Complaints System – Detailed Findings, OPONI.
 358. “Police told to snub O’Loan watchdog”, *The Belfast Telegraph*, 19 July 2004.
 359. Testimony to Northern Ireland Affairs Committee, evidence dated 21 July 2004, Ev.29.(Hansard)
 360. 2002-03 OPONI Annual Report, p. 6.
 361. OPONI Sean Brown Press Release; OPONI Sean Brown Report.
 362. OPONI Omagh Bomb Press Release, pp. 8 and 10.
 363. 2003-04 OPONI Annual Report, p. 17.
 364. *Id.*
 365. 2002-03 OPONI Annual Report, p. 4.
 366. 2003-04 OPONI Annual Report, p. 12.
 367. OPONI correspondence with CAJ, 21 January 2005.
 368. “Public Awareness of the System of Complaints against the Police in Northern Ireland, 2004”, Research Report 02/2004, Malcolm Ostermeyer, OPONI, p. 5.
 369. See OPONI’s website, www.policeombudsman.org, under the section entitled, “How to Complain”.
 370. 2003-04 OPONI Annual Report, p. 4.
 371. 2003-04 OPONI Annual Report, p. 6.
 372. 2003-04 OPONI Annual Report, p. 6; 2002-03 OPONI Annual Report, p.8.
 373. OPONI correspondence with CAJ, 21 January 2005, notes that there was “no NIO support for the conference and it had to pay its way. We did all we could to facilitate attendance by those who wanted to come.” In commenting on the DPP interest in the conference, the Ombudsman wrote that, “they would only have had to ask the Policing Board for funding, I suspect. We certainly wanted them there.”
 374. “Public Awareness of the System of Complaints against the Police in Northern Ireland, 2004”, Research Report 02/2004, Malcolm Ostermeyer, OPONI, p. 5.
 375. OPONI correspondence with CAJ, 21 January 2005.
 376. OPONI written answers to CAJ’s questions, 26 May 2004.
 377. See 2003-04 OPONI Annual Report, pp. 41-42.
 378. OPONI written answers to CAJ’s questions, 26 May 2004.
 379. In OPONI correspondence with CAJ, 21 January 2005, states: “*The Police Ombudsman Office has over the years contacted many of the groups representing ethnic minorities in Northern Ireland and offered to give them presentations on how the police complaints system works. Among such groups*

- which have asked for presentations were the Belfast Travellers group, Chinese Welfare Association and Craigavon Asian Community. We have also produced information on the police complaints system in Mandarin and most recently for the Lithuanian Community. We have provided translation and interpretation services in a number of languages including Turkish and Russian. A member of the Travelling Community participated in our initial training.”
380. A response to the PSNI Working Group on Travellers, 2003.
381. Response to Working Group on Travellers, p. 62, Recommendation 28.
382. Response to Working Group on Travellers, pp. 63-64.
383. *Id.* at 65, Recommendation 29.
384. *Id.* at 65-66.
385. *Id.*
386. “Policing, Accountability and Young People” [Hereinafter Policing, Accountability and Young People], Jennifer Hamilton, Katy Radford and Neil Jarman, Institute for Conflict Research, April 2003. *See* also Hamilton, J., Radford, K. and Jarman, N. (2004) ‘Learning to listen’ – Young People and the Police in Northern Ireland *Youth and Policy* 84 and Hamilton, J., Radford, K. and Jarman, N. (2005) ‘It’s Their Word Against Mine’: Young People’s Attitudes To The Police Complaints Procedure in Northern Ireland. *Children and Society*, June 2005.
387. *Id.* at 5.
388. *Id.* at 7.
389. 2003-04 OPONI Annual Report, p. 41.
390. *Id.*
391. *Id.* at 36.
392. 2003-04 OPONI Annual Report, p. 7; states that OPONI correspondence to CAJ, 21 January 2005: “(OPONI) has written to all schools, and visited 30 schools on 48 occasions and we are now again attempting to contact those schools which did not respond to the first request for access.”
393. 2003-04 OPONI Annual Report, p. 7; OPONI correspondence with CAJ, 21 January 2005.
394. OPONI correspondence with CAJ, 21 January 2005, states: “Organise road shows aimed at young people, particularly those living outside Belfast. (Work in progress as demonstrated in Annual Report); Convene Young Persons Advisory Group to discuss how OPONI might make their information and services more amenable to young people (advised by youth groups that it is better to use existing forums); in consultation with local T.V. Company, explore idea of producing documentary on the work of OPONI (work in progress – legal and other difficulties. Video to be made); wider range of outlets where young people can lodge complaints (email available and other outlets); surgeries in different towns at different times attended by an OPONI representative (experience would suggest it is unlikely that young people would attend. Need specific events); development of a simple standardized complaint registration form available to young people (on our web site); creation of specialist team within OPONI to deal with complaints lodged by young people (particular complaints need particular expertise, however a group of investigators specially trained in achieving best evidence from vulnerable people (includes children)).”
395. Paul A. Donnelly, “A Commentary by the Chairman of ICPC on the Review of RUC Investigations into Complaints by or on Behalf of Mrs Rosemary Nelson

- Conducted by Commander N G Mulvihill Metropolitan Police.
396. OPONI written answers to CAJ's questions, 26 May 2004.
397. NIO Guidance, paras. 2.96-2.97.
398. *Id.* at 2.98.
399. See www.caj.org.uk for further details on the case of Rosemary Nelson,
400. "In the Matter of an Application by the Committee on the Administration of Justice and Martin O'Brien for Judicial Review", KERF5235, delivered 18 March 2005).
401. 1998 Police Act, §63.
402. See 1998 Police Act, §63.
403. Police Reform Act 2002, §§20-21. The Police Reform Act 2002 can be located at www.hmso.gov.uk/acts/acts2002/20020030.htm.
404. Hayes Report, paras. 16.24-16.25.
405. "Cause for Complaint: The system for dealing with complaints against the police in Northern Ireland", CAJ, Pamphlet No. 16, May 1990, p. 27.
406. *Re* Kieran Butler Application for Judicial Review [2003] NIQB 64, 16 September 2003, para. 15; NIO Guidance, para. 2.82.
407. 1998 Police Act, §63(1)(d).
408. OPONI written answers to CAJ's questions, 26 May 2004.
409. *Re* Kieran Butler Application for Judicial Review [2003] NIQB 64, 16 September 2003, para 6.)
410. OPONI correspondence with CAJ, 21 January 2005.
411. 2001 RUC Complaints Regulations, §§5-6.
412. 2003-04 OPONI Annual Report, p. 9.
413. *Id.*
414. "Police Ombudsman Releases Findings on Devenny Investigation", OPONI Press Release, 4 October 2001.
415. *Id.*
416. *Id.*
417. OPONI Sean Brown Press Release; OPONI Sean Brown Report.
418. "Police Deny New Probe Into GAA Murder Hunt Is Cover-Up", *The News Letter*, 24 January 2004.
419. "Press Statement from the family of Sean Brown (deceased)", 7 May 2004. This press release can be located on the website of the Pat Finucane Centre, www.serve.com/pfc.
420. *Id.*
421. 2003-04 OPONI Annual Report, p. 8.
422. *Id.* at 9.
423. "Funds to investigate killings are refused", *The Irish News*, 24 March 2003.
424. 2002-03 OPONI Annual Report, p. 5.
425. "Spotlight on police Troubles inquiries", *The Irish News*, 27 August 2003.
426. OPONI written answers to CAJ's questions, 26 May 2004.
427. 2003-04 OPONI Annual Report, p. 9.
428. The Secretary of State announced funding for this measure on 8 March 2005. For more information on the Serious Crime Review Team see NIO and PSNI websites.
429. Concluding Observations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland, Twenty-first session, 17/11/98, A/54/44, para. 77d.

430. Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland, Thirty-first session, 09/10/2002, CRC/C/15/Add.188, para. 28.
431. Patten Commission Report, para. 9.14.
432. *Id.* at 9.15
433. “Foreword by the Rt Hon Jane Kennedy, Minister of State for Northern Ireland”, A Research Programme Into Alternative Policing Approaches Towards the Management of Conflict, Fourth Report of the Steering Group Researching Alternatives to the Plastic Baton Round [Hereinafter Fourth Report of the Steering Group Seeking Alternatives to the Plastic Baton Round], January 2004. This report can be located at www.nio.gov.uk/phase_4_report_on_baton_rounds.pdf.
434. “Relatives of plastic bullet victims express shock and betrayal at stockpile of plastic bullets”, Relatives for Justice Press Release, 16 September 2004.
435. “Policing Board confirms Plastic Baton Round decision” 7th April 2005 Press Release from NI Policing Board, available on www.nipolicingboard.org.uk See also “CAJ Condemns Policing Board decision on Plastic Bullets” 7th April 2005 Press Release, available on www.caj.org.uk
436. Overseeing the Proposed Revisions for the Policing Services of Northern Ireland, Report 11, Office of the Oversight Commissioner [Hereinafter September 2004 OOC Report], 21 September 2004, p. 54. This report can be located at the website of the Office of the Oversight Commissioner, www.oversightcommissioner.org.
437. OPONI letter to the Children’s Law Centre, 30 May 2003.
438. *Id.*
439. *Id.*
440. First Annual Report November 2000 – March 2002, OPONI, p.28; 2002-03 OPONI Annual Report, p. 32; 2003-04 OPONI Annual Report, p. 21.
441. Baton Rounds Report [Hereinafter OPONI Baton Round Report], Research Report 1/2002, OPONI, May 2002. This report can be located on OPONI’s website, www.policeombudsman.org.
442. OPONI Baton Round Report, p. 1.
443. CAJ Letter to OPONI, 18 June 2002.
444. “PFC response to the report of the Police Ombudsman on the use of plastic bullets April 2001 to March 2002: A Clean Bill of Health?” [Hereinafter A Clean Bill of Health], Pat Finucane Centre, para. 1.4.
445. OPONI Baton Round Report, p. 3.
446. A Clean Bill of Health, para. 2.3.
447. *Id.* at 2.7 –2.10.
448. *Id.* at 1.4.
449. *Id.* at chapter 4.
450. *Id.* at 4.6 and 4.11.
451. In OPONI correspondence with CAJ, 21 January 2005, in response states that “*I do not think that there is an understanding of the evidential tests to be satisfied.*”
452. OPONI correspondence with CAJ, 21 January 2005, seems to imply that the issue may be one of under-reporting, rather than under-analysis. It states: “*We spend much time looking at the events and as much other information as is available. Communities usually offer widely differing opinions as to the build-up of tension which in most cases is not verifiable*”.

453. OPONI correspondence with CAJ, 21 January 2005, states that OPONI does all of this and implies that the problem is one more of reporting than analysis. For the relevance of the police approach see *"A Research Programme Into Alternative Policing Approaches Towards the Management of Conflict"*, Fourth Report of the Steering Group Researching Alternatives to the Plastic Baton Round, January 2004, p. 40; *The Misrule of Law*, CAJ, October 1996, pp 11-19.
454. OPONI correspondence with CAJ, 21 January 2005.
455. "A Review of Military use of Baton Rounds in Northern Ireland: 1 January 2001 – 31 October 2002, Independent Assessor of Military Complaints Procedures in Northern Ireland, December 2002, Annex 1. No plastic bullets have been fired since September 2002, by either the police or the army.
456. "A study of the treatment of solicitors and barristers by the police in Northern Ireland" [Hereinafter Treatment of Solicitors and Barristers Study], Research Report 01/2003, OPONI, March 2003. This report can be located on OPONI's website, www.policeombudsman.org.
457. Stevens 3 Enquiry: Overview and Recommendations, 17 April 2003, Sir John Stevens, Commissioner of the Metropolitan Police Service, paras. 4.6-4.7; Cory Collusion Inquiry Report: Patrick Finucane, 1 April 2004, HMSO, paras. 1.282-1.290 and 1.295. The Stevens Report can be located on the website of the Pat Finucane Centre, at www.serve.com/pfc/pf. The Cory Reports can be located at the website of Conflict Archive on the Internet (CAIN), at <http://cain.ulst.ac.uk/issues/collusion/cory>.
458. Cory Collusion Inquiry Report: Rosemary Nelson, 1 April 2004, HMSO, paras. 4.195 – 4.207 and 4.243. This Inquiry was established on 16th November 2004. See www.rosemarynelsoninquiry.org
459. Treatment of Solicitors and Barristers Study, pp. 6-7.
460. *Id.* at 7.
461. *Id.* at 5.
462. *Id.*
463. "Comments on the Research Conducted by the Police Ombudsman for Northern Ireland into the Treatment of Lawyers by the Police" [Hereinafter BIRW Response to Treatment of Solicitors and Barristers Study], BIRW, 2 April 2003, para. 10.
464. OPONI correspondence with CAJ, 21 January 2005, states that: *"I have to distinguish between information and intelligence and evidence. Maybe I have a job to do in educating people about these concepts but I do not believe I would assist if I were to use language which is not sufficiently specific enough to convey my meaning."*
465. Treatment of Solicitors and Barristers Study, p. 6.
466. *Id.* at 11.
467. *Id.* at 6.
468. *Id.* at 26.
469. *Id.*
470. BIRW Response to Treatment of Solicitors and Barristers Study, para. 8.
471. *Id.* at 6.
472. OPONI correspondence with CAJ, 21 January 2005.
473. "Statement re Ombudsman – complaints from Solicitors", Police Federation for Northern Ireland Press Release, 18 March 2003. Police Federation press re-

- leases can be located on the Police Federation's website, www.policefed-ni.org.uk.
474. "O'Loan told to be positive on police", *The News Letter*, 23 May 2003.
475. "A study of complaints involving the use of batons by the police in Northern Ireland" [Hereinafter OPONI Baton Report], Research Report 02/2003, OPONI, March 2003. This report can be located on OPONI's website, www.policeombudsman.org.
476. *Id.* at 5.
477. *Id.* at 7.3.
478. *Id.* at 7.4.
479. *Id.* at 3.3.6 and 7.1.
480. *Id.* at 7.2.
481. *Id.* at 5.4 and 5.6.
482. *Id.* at 6.5 and 8.1.
483. An Evaluation of the Human Rights Training For Student Officers In The Police Service Of Northern Ireland, Northern Ireland Human Rights Commission, November 2002. This report can be located on the Human Rights Commission's website, www.nihrc.org.
484. OPONI Baton Report, paras. 6.8 and 8.2.
485. *Id.* at 8.3.
486. 2003-04 OPONI Annual Report, p. 5.
487. OPONI Baton Report, para. 8.4.
488. *Id.*
489. "O'Loan backs use of CS spray", *The Irish Post*, 7 January 2003; CS SPRAY, OPONI Press Statement, January 2003.
490. OPONI Letter to CAJ, 8 April 2003.
491. OPONI correspondence with CAJ, 21 January 2005.
492. OPONI Letter to CAJ, 8 April 2003: "*I am very concerned and have articulated to the PSNI my concerns about the ACPO guidelines and I understand that guidelines and training and monitoring to be introduced by the PSNI would be far more rigorous than that which is currently the case in the ACPO guidance. Despite this, there is no concluded guidance yet, and nor has there been training as I understand it for the use of CS spray*".
493. The Policing Board, when asked whether its approval was contingent on approving guidelines for the weapon's use, could only say "*The Board has asked for sight of these guidelines*", Letter to CAJ, dated 13 June 2003.
494. CAJ Letter to OPONI, 12 March 2003; "Health and Safety in Policing: Lessons from the Regulation of CS Sprays in the UK", *Social Science and Medicine*, 56 (2003) 1269-1278; "Police to use pepper spray", BBC News Online, 16 March 2001; "First Welsh force adopts pepper spray", BBC News Online, 5 August 2002.
495. OPONI Letter to CAJ, 8 April 2003.
496. OPONI Baton Report, para. 5.2.
497. OPONI Letter to CAJ, 29 April 2003; CAJ meeting with OPONI, 30 May 2003.
498. OPONI correspondence with CAJ, 21 January 2005, referred us to the Police Complaints Authority Report on CS spray, issued on 27 March 2000. Interestingly, however, the English and Welsh PCA has since been replaced by the Independent Police Complaints Commission and the most recent reference to

CS spray on the IPCC website (press release, dated 24 August 2004) reinforces rather than undermines our fears. The IPCC web cites reports in the Emergency Medicine Journal, that “Police ‘incapacitant’ spray may be more harmful than previously thought. This study suggests that CS preparation used by the UK police may cause more adverse effects than other personal incapacitant spray preparations. A detailed study is now required into the potential adverse effects of the CS used by police.” The Deputy Chair of the IPCC, welcoming the research said, “officers should be told about this valuable research and may need to be more careful in how CS spray is used. It is also time to re-evaluate other options such as synthetic pepper spray or examine whether the composition of CS spray can be changed to reduce damage.” This press release can be located on IPCC’s website, www.ipcc.gov.uk/news/pr240804_csspray

499. Statement by the PSNI, Public Meeting of the Northern Ireland Policing Board, 4 November 2004.
500. “Inquiry into CS spray use”, BBC News, 21 October 2004.
501. OPONI correspondence with CAJ, 21 January 2005.
502. “Ombudsman Asked To Look At CS Spray”, PSNI Press Release, 5 August 2004.
503. Id.
504. OPONI correspondence with CAJ, 21 January 2005.

Appendices

1. Brief Synopsis of CAJ's policing work 1981-2004
2. Acronyms used in this report
3. CAJ publications list

Appendix 1

Brief Synopsis of CAJ's Policing Work 1981 - 2004

The Committee on the Administration of Justice has been working on policing in Northern Ireland since its inception in 1981. The following is a brief synopsis of CAJ's work on policing and human rights:

- 1981 CAJ founded after conference at Queens on civil liberties.
- 1982 Publication "Complaints Against the Police" - police complaints' systems became a routine topic of concern with subsequent publications in 1983, 1990, 1991, 1993, advocating an independent complaints system. This culminated in active work pre-and post the Hayes report setting up a Police Ombudsman.
- 1985 Publication "Consultation between the police and the public".
- 1988 Publication "Police Accountability in NI." This topic was also regularly revisited with work on lay visiting to police stations (1990) and responses to various consultation documents (1994 NIO document on "Policing in the Community", submissions to the Police Authority in 1995, and legislative proposals in 1995 and 1998).
- 1990 Publication on "Plastic Bullets and the Law" (which updated an earlier 1985 report, and was then complemented by a 1998 report).
- 1996 Publication entitled "Misrule of Law" on the policing of public order disturbances in 1996. Subsequent publications and shorter submissions were produced in 1997, 1998 and 2001, as well as a number of documents relevant to the Parades Commission.

PATTEN COMMISSION

- 1997 Major report "Human Rights on Duty: Principles for better policing - international lessons for Northern Ireland".
- 1998 Submission to Patten; organised Council of Europe visit to Belfast; facilitated follow up visit by Patten team to Strasbourg.
- 1999 CAJ holds pre-Patten report conference (February) and produces conference proceedings; submission to US Congress (April); CAJ holds post-Patten report conference (November) and produces conference proceedings; Commentary to NIO on Patten report (November).

- 2000 Extensive lobbying around Police (NI) Act
- 2001 Organised Council of Europe seminar for Oversight Commissioner team; produced Benchmarks for Oversight Commissioner (April); spoke on panel at Policing and Human Rights conference (October); commented on draft police Code of Ethics (November).
- 2002 Produced the following documents:
 "Commentary on the Code of Practice on the Functions and Responsibilities of District Policing Partnerships" (May);
 "Submission to the Review of the Parades Commission" (May);
 "Commentary on the NIO Code of Practice on Reports and Inquiries under Sections 59 and 60" (June); and Comments and Suggested Amendments to the Police (NI) Bill (December). In addition, met and corresponded with the Police Ombudsman and the Independent Assessor of Military Complaints on plastic bullets and commented on several PSNI draft policy documents.
- 2003 Lobbied extensively around the Police Act 2003; responded to the Quigley Review on parading (January); addressed the PSNI's conference on policing and young people; commented on research programme into public order weaponry (March); commented on the Policing Board's Human Rights Monitoring Framework; and published a 50-page commentary assessing the work of the Policing Board (November).
- 2004 Conference organised to discuss work of District Policing Partnerships (June); commented on work around plastic bullets, CS spray, and water cannon guidance

Appendix 2

Acronyms used in this report

OPONI	Office of the Police Ombudsman of Northern Ireland
DPPs	District Policing Partnerships
ICPC	Independent Commission for Police Complaints
NIPB	Northern Ireland Policing Board
OC	Oversight Commissioner
PANI	Police Authority for Northern Ireland
PSNI	Police Service of Northern Ireland
RUC	Royal Ulster Constabulary
IIB	Internal Investigations Branch (of the PSNI)

Appendix 3

CAJ's Publications list

- No. 1 **The Administration of Justice in Northern Ireland:** the proceedings of a conference held in Belfast on June 13th, 1981 (no longer in print)
- No. 2 **Emergency Laws in Northern Ireland:** a conference report, 1982 (no longer in print)
- No. 3 **Complaints Against the Police in Northern Ireland,** 1982 (price £2.50)
- No. 4 **Procedures for Handling Complaints Against the Police,** 1983 (updated by pamphlet No.16)
- No. 5 **Emergency Laws: suggestions for reform in Northern Ireland,** 1983 (£1.50)
- No. 6 **Consultation between the Police and the Public,** 1985 (price £3.00)
- No. 7 **Ways of Protecting Minority Rights in Northern Ireland,** 1985 (price £4.00)
- No. 8 **Plastic Bullets and the Law,** 1985 (updated by pamphlet No. 15) (see also Plastic Bullets briefing No. 40)
- No. 9 **“The Blessings of Liberty”:** An American Perspective on a Bill of Rights for Northern Ireland, 1986 (price £2.50)
- No. 10 **The Stalker Affair: More questions than answers,** 1988 (price £3.00)
- No. 11 **Police Accountability in Northern Ireland,** 1988 (price £2.00)
- No. 12 **Life Sentence and SOSP Prisoners in Northern Ireland,** 1989 (price £1.50)
- No. 13 **Debt - An Emergency Situation?** A history of the Payments for Debt Act in Northern Ireland and its effects on public employees and people on state benefits, 1989 (price £2.00)
- No. 14 **Lay Visitors to Police Stations in Northern Ireland,** 1990 (price £2.00)
- No. 15 **Plastic Bullets and the Law,** 1990 (price £2.00)
- No. 16 **Cause for Complaint:** The system for dealing with complaints against the police in Northern Ireland, 1990 (price £2.00)
- No. 17 **Making Rights Count.** Includes a proposed Bill of Rights for Northern Ireland, 1990 (price £3.00)
- No. 18 **Inquests and Disputed Killings in Northern Ireland,** 1992 (price £3.50)
- No. 19 **The Casement Trials: A Case Study on the Right to a Fair Trial in Northern Ireland,** 1992 (price £3.00)
- No. 20 **Racism in Northern Ireland:** The need for legislation to combat racial discrimination in Northern Ireland, the proceedings of a CAJ conference held on 30th November 1992, (price £3.00)
- No. 21 **A Bill of Rights for Northern Ireland,** 1993 (price £2.00)
- No. 22 **Staid agus Stadas Gaeilge i dTuaisceart na hEireann - The Irish Language in Northern Ireland: The UK Government's approach to the Irish Language in light of the European Charter for Regional or Minority Languages,** 1993 (price £3.50)
- No. 23 **A Fresh look at Complaints against the Police,** 1993 (price £3.50)
- No. 24 **Adding Insult to Injury?** Allegations of Harassment and the use of Lethal Force by the Security Forces in Northern Ireland, 1994 (price £3.50)
- No. 25 **The States We are In: Civil Rights in Ireland, North and South -** proceedings of a conference held in Dublin by the Irish Council of Civil Liberties and the CAJ, 1993 (price £3.50)
- No. 26 **Civil Liberties in Northern Ireland: The CAJ Handbook** (2nd edition), June 1993 (price £6.00)
- No. 27 **“Harassment: It's part of life here...”** Survey of young people's attitudes to and experience of harassment by the security forces, December 1994 (price £5.00)
- No. 28 **No Emergency, No Emergency Law: Emergency Legislation related to Northern Ireland the case for repeal,** March 1995 (price £4.00)
- No. 29 **Right to Silence debate,** the Northern Ireland Experience (May 1994) (price £3.00)
- No. 30 **Human Rights: The Agenda for Change - Human Rights, the Northern Ireland Conflict and The Peace Process** (includes proceedings of a conference held in Belfast on 11th & 12th March 1995), December 1995 (price £3.50)
- No. 31 **Fair Employment For All: Submission to the Standing Advisory Commission on Human Rights on Fair Employment,** February 1996 (price £4.00)
- No. 32 **The Misrule of Law: A report on the policing of events during the Summer of 1996 in Northern Ireland,** October 1996 (price £5.00)

- No. 33 **Mainstreaming Fairness? : A discussion paper by Dr.Christopher McCrudden, on “Policy Appraisal and Fair Treatment”**, November 1996 (Price £3.00)
- No. 34 **Mainstreaming Fairness, “Policy Appraisal and Fair Treatment”, A summary of a consultation process around “Policy Appraisal & Fair Treatment”**, June 1997 (Price £2.00)
- No. 35 **Making a Bill of Rights Stick: Options for Implementation in Northern Ireland**, A Discussion Paper published by the Committee on the Administration of Justice, September 1997 (Price £2.00)
- No. 36 **Policing the Police : A Report on the Policing of Events During the Summer of 1997 in Northern Ireland**, November 1997 (Price £2.00)
- No. 37 **Human Rights on Duty: Principles for better policing - International lessons for Northern Ireland**. December 1997 (Price £6.00)
- No. 38 **Civil Liberties in Northern Ireland: The CAJ Handbook (3rd edition)**, December 1997 (Price £7.00)
- No. 39 **Benchmarks for Change: A Proposal by Dr. Christopher McCrudden on Mainstreaming Fairness in the Governance of Northern Ireland** , February 1998 (Price £2.00)
- No. 40 **Plastic bullets briefing paper**, June 1998 (Price £3.00)
- No. 41 **A Guide to Prisoners’ Rights and Prison Law in Northern Ireland**, September 1998 (Price £5.00)
- No. 42 **The Agreement and a new beginning to policing in Northern Ireland** (Proceedings of a conference held in February 1999, this report also includes Human Rights Benchmarks for policing change, June 1999 (Price £5.00)
- No. 43 **Fundamental Social Rights in Northern Ireland: Building upon the Agreement and the European Social Charter**, October 1999. Proceedings of a conference jointly hosted by CAJ and the Council of Europe, held in June 1999 (Price £5.00)
- No. 44 **The Patten Commission: The way forward for policing in Northern Ireland?** Proceedings of a conference on the findings of the Patten Commission held in October 1999 (Price £5.00)
- No. 45 **Dignity, Equality & Inalienable Rights:** Lecture in Belfast, November 2001 by Archbishop Desmond Tutu, July 2002 (Price £3.00)
- No. 46 **A Bill of Rights for Northern Ireland Through the years – the views of the political parties**, July 2003 (Price £3.50)
- No. 47 **Civil Liberties in Northern Ireland: *The CAJ Handbook*, 4th ed.**, November 2003 (Price £9.50)
- No. 48 **Commentary on the Northern Ireland Policing Board**, November 2003 (Price £5.00)
- No. 49 **Commentary on District Policing Partnerships - including “Police in the Community” conference proceedings**, April 2005 (Price £5.00)
- No. 50 **Commentary on the Office of the Police Ombudsman for Northern Ireland**, June 2005 (Price £5.00)

Submissions

- S1 **Submission to the UN Human Rights Committee “Human Rights in Northern Ireland”**, 1991 (price £1.00)
- S2 **Submission to the United Nations Committee Against Torture**, November 1991 (price £1.50)
- S3 **Submission to the Royal Commission on Criminal Justice**, November 1991 (price £1.00)
- S4 **Submission to United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities**, August 1992 (price £1.00)
- S5 **Submission to United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities**, August 1993 (price £1.00)
- S6 **Submission to United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities**, August 1994 (price £1.00)
- S7 **Submission to Initiative ‘92**, January 1993 (price £1.00)
- S8 **Allegations of Psychological Ill-treatment of Detainees held under Emergency Legislation in Northern Ireland**, February 1993 (price £2.00)
- S9 **Combating Racism in NI - Submission to the Central Community Relations Unit**, March 1993 (price £3.00)

- S10 **Submission to the United Nations Committee on the Elimination of Racial Discrimination, August 1993 (price £2.00)**
- S11 **Combating Racist Harassment in Northern Ireland: A joint submission by the Chinese Welfare Association, CAJ and the Northern Ireland Council for Travelling People to the Home Affairs Committee Inquiry into Racial Attacks and Harassment, June 1993 (price £3.00)**
- S12 **Response to the Draft Children (Northern Ireland) Order 1993, December 1993 (price £1.00)**
- S13 **Submission to President Clinton "Civil Liberties in Northern Ireland", 1993 (price £1.00)**
- S14 **Submission to President Clinton "Civil Liberties in Northern Ireland", 1994 (price £1.00)**
- S15 **Response to the NIO Consultation Document "Policing in the Community", May 1994 (Price £1.00)**
- S16 **Response to the Draft Prison and Young Offender Centre Rules (Northern Ireland) 1994, June 1994 (price £2.00)**
- S17 **Comments on the Proposal for Draft Local Government (Miscellaneous Provisions) (NI) Order (Irish Language Street Signs), June 1994 (price £1.00)**
- S18 **Submission to the United Nations Committee on the Rights of the Child, August 1994 (price £3.00)**
- S19 **Comments on the Criminal Cases Review Authority August 1994 (price £1.50)**
- S20 **A Major Miscarriage of Justice: The Casement Trials, September 1994 (free leaflet)**
- S21 **Selected Examples of Foreign Experience in the investigation of complaints against police personnel, March 1991 (price £1.00)**
- S22 **Submission to United Nations Commission on Human Rights, 1993 (price £1.00)**
- S23 **Submission on the killings of Pearse Jordan, Gerard Maginn & Patrick Finucane, to the UN Special Rapporteur, 1993 (price £2.50)**
- S24 **Submission to United Nations Commission on Human Rights, 1994 (price £1.00)**
- S25 **Submission to Joint Oireachtas Foreign Affairs Committee, 1994 (price £1.00)**
- S26 **Submission to the United Nations Committee on Economic, Social and Cultural Rights, November 1994 (price £1.00)**
- S27 **Response to "Learning for LIfe: the Education Service in NI", 1994 (price £1.00)**
- S28 **Killings by the Security Forces - an information Pack for Families of Victims, 1994 (free)**
- S29 **Proposal for a Draft Police (Amendment) (N.I.) Order, 1995 (price £1.00)**
- S30 **Submission to the United Nations Human Rights Committee, June 1995 (price £4.00)**
- S31 **Submission to the Police Authority for Northern Ireland (PANI) Consultation on the future of policing in Northern Ireland, August 1995 (price £2.00)**
- S32 **Submission to the United Nations Committee Against Torture, October 1995 (price £3.00)**
- S33 **Submission to the International Body, December 1995 (price £1.50)**
- S34 **Response to "On the Record"; the Home Secretary's Criminal Records proposals, September 1996 (price £1.00)**
- S35 **Submission to the United Nations Committee on the Elimination of Racial Discrimination, March 1996 (price £1.00)**
- S36 **Submission to the United Nations Commission on Human Rights, March 1996 (price £1.00)**
- S37 **Submission to the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, 1996 (price £1.00)**
- S38 **Response to the Draft Race Relations (NI) Order 1996, August 1996 (price £1.00)**
- S39 **Fair Employment For All; Commentary on research commissioned by the Standing Advisory Commission on Human Rights (SACHR) for the Employment Equality Review, October 1996 (Price £2.00)**
- S40 **Presentation to the Organisation for Security and Co-operation in Europe (OSCE) Review Conference, Vienna 1996 on the implementation of OSCE commitments in the human dimension, October 1996 (Price £1.50)**
- S41 **Submission to the Independent Review of Parades and Marches, October 1996 (Price £1.00)**
- S42 **The Case for Repeal of the Emergency Law in Northern Ireland, January 1996 (Price £1.50)**
- S43 **The response to the discussion paper on Committal Proceedings in Northern Ireland, (1996)(Price £1.00)**
- S44 **Response to the Northern Ireland Office (NIO) Consultation Paper on Disclosure in Criminal Cases, August 1995 (Price £1.00)**
- S45 **Response to the Consultative Draft on the Equal Opportunities Commission for Northern Ireland (EOCNI) recommendations for change to the Sex Discrimination legislation, October 1996 (Price £1.00)**

- S46 **Submission to the United Nations Committee on the Elimination of Racial Discrimination, March 1997 (Price £1.00)**
- S47 **A response to the draft Northern Ireland (Emergency Provisions) Act, Code of Practice, February 1997 (Price £1.00)**
- S48 **Commentary on 1996 Primary Inspection report by Her Majesty's Inspectorate of Constabulary with reference to the Royal Ulster Constabulary, March 1997 (Price £1.00)**
- S49 **Submission to the United Nations Commission on Human Rights, March 1997 (Price £1.00)**
- S50 **CAJ response to the Draft Criminal Justice (Children) (Northern Ireland) Order 1997, (Price £1.50)**
- S51 **A Joint submission by British Irish Rights Watch, CAJ and Irish Commission for Prisoners Overseas on the Situation of Irish Republican Prisoners in the United Kingdom, March 1997 (Price £3.00)**
- S52 **A Submission to the United Nations Committee on Economic, Social and Cultural Rights for consideration during the Committee's listing of issues relevant to the UK government report, May 1997 (Price £2.00)**
- S53 **A Submission to the Department of the Environment (NI) on the Draft Local Government (Northern Ireland) Order, May 1997 (Price £1.00)**
- S54 **Comments on the Draft Criminal Justice (Northern Ireland) Order 1996, June 1996, (Price £1.50)**
- S55 **A Submission to the Forum for Peace and Reconciliation, 1995 (Price £1.50)**
- S56 **A Submission to the Special Rapporteur on Summary or Arbitrary Executions, August 1997 (Price £2.00)**
- S57 **United States Congressional Hearings on Human Rights in Northern Ireland, Testimony from Martin O'Brien on behalf of CAJ, June 1997 (Price £1.50)**
- S58 **Submission to the UN Committee on Economic, Social and Cultural Rights by the Committee on the Administration of Justice (CAJ). An affiliate of the International Federation for Human Rights, September 1997, (Price £2.00)**
- S59 **Comments on the Northern Ireland (Emergency Provisions) Bill, November 1997 (Price £1.00)**
- S60 **Comments on the Human Rights Bill and Northern Ireland, November 1997 (Price £1.00)**
- S61 **Comments on the Public Processions etc. (Northern Ireland) Bill, November 1997 (Price £1.00)**
- S62 **Comments on the Intrusive Surveillance Code of Practice, October 1997 (Price £0.50)**
- S63 **A review of the Operation of the 1995 Transfer of Sentenced Persons Act by the Transfer of Prisoners group (CAJ, ICPO, NAPO, NIACRO), November 1997 (Price £2.00)**
- S64 **Submission to the United Nations Human Rights Commission, March 1998 (Price £1.00)**
- S65 **Response to New Criminal Justice Measures for Northern Ireland, January 1998 (Price £1.50)**
- S66 **Response to the Guidelines, Code of Practice and Procedural Rules issued by the Parades Commission, February 1998 (Price £1.50)**
- S67 **Submission to the Police (Northern Ireland) Bill, February 1998 (Price £2.50)**
- S68 **Equality: A Proposal In The Light of Multi-Party Talks Agreement by Christopher McCrudden, May 1998 (Price £2.00)**
- S69 **Commentary on the human rights aspects of the Multi-Party Agreement, April 1998 (Price £1.00)**

Policing the Police: The Video: 1997 plus bulletin summarising the Video. The Committee on the Administration of Justice in cooperation with the Witness Programme of the Lawyers Committee for Human Rights has produced a video on the human rights dimension of the so-called 'marching seasons' of 1995, 1996 and 1997, (Price £10.00)

- S70 **CAJ Response to "Partnership for Equality", June 1998 (Price £3.50)**
- S71 **Submission to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities, July 1998 (Price £1.50)**
- S72 **Submission to the Commission on Policing, August 1998 (Price £2.00)**
- S73 **Response to the Draft Juvenile Justice Centre Rules, August 1998 (Price £1.50)**
- S74 **Submission to the United Nations Committee Against Torture, September 1998 (Price £2.50)**

- S75 **A briefing on the Criminal Justice (Terrorism and Conspiracy) Act 1998**, September 1998 (Price £2.00)
- S76 **Submission to the Victims Liaison Unit**, September 1998, (Price £2.00)
- S77 **United States Congressional Hearings on Human Rights in Northern Ireland, Testimony from Paul Mageean on behalf of CAJ**, September 1998 (Price £1.00)
- S78 **Submission to the Criminal Justice Review**, expected November 1998 (Price £4.00)
- S79 **Policing Bibliography** Research material gathered in connection with CAJ report Human Rights on Duty: Principles for better policing - International lessons for Northern Ireland. (See Publication No. 37) (Price £5.00)
- S80 **Public Order Policing 1998** A report on the policing of events during the summer of 1998 compiled from observer reports and eyewitness statements. (Price £2.00)
- S81 **CAJ's commentary on the Draft Code of Practice on Audio Recording under s.53A of the 1996 Emergency Provisions Act**, January 1999. (Price £1.00)
- S82 **CAJ's response to the Consultation Paper on legislation Against Terrorism**, March 1999. (Price £2.50)
- S83 **Submission to the Northern Ireland Affairs Committee in relation to fair employment**, April 1999. (Price £1.50)
- S84 **Written Statement from CAJ to United Nations Commission on Human Rights**, including commentary on the Special Rapporteur on the Independence of Judges and Lawyers and the UN Committee Against Torture, April 1999 (Price £1.00)
- S85 **Submission to the UN Committee on the Elimination of Discrimination Against Women**, May 1999. (Price £3.00)
- S86 **Testimony from Maggie Beirne, CAJ to the US Committee on International Relations Hearings on "New and Acceptable Policing for Northern Ireland"**, April 1999 (Price £1.50)
- S87 **Submission to the Public Consultation on the Freedom of Information Bill**, July 1999 (Price £2.00)
- S88 **Additional submission to the Criminal Justice Review** (this submission relates solely to the Patrick Finucane case), October 1999 (Price £2.00)
- S89 **Testimony from Maggie Beirne, CAJ to the US Congressional Hearings on Human Rights in Northern Ireland**, September 1999 (Price £2.00)
- S90 **Submission to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities**, August 1999 (Price £1.00)
- S91 **Commentary on the Patten report, "A new beginning: policing in Northern Ireland"**, CAJ's response to the report of the Commission into Policing, November 1999 (Price £3.00)
- S92 **Submission to the Review of Criminal Injuries Compensation (NI)**, December 1998 (Price £1.00)
- S93 **Response to the Strategic Plan of the Northern Ireland Human Rights Commission**, November 1999 (Price £2.00)
- S94 **Response to the Equality Commission for Northern Ireland - Consultation on the Draft Guidelines for Public Authority Schemes**, November 1999 (Price £1.00)
- S95 **Submission to the Progress Review of the work of the Parades Commission**, November 1999 (price £2.00)
- S96 **Submission to the Diplock Review**, January 2000 (price £2.00)
- S97 **Additional Submission to the Criminal Justice Review, on the judicial review proceedings concerning Seamus Treacy and Barry Macdonald**, February 2000 (price £1.00)
- S98 **Commentary on Vision into Practice - New TSN Action Plans**, February 2000 (price £2.50)
- S99 **Testimony from Paul Mageean (CAJ) to the Commission on Security and Cooperation in Europe** (Congressional Hearing, Washington), March 2000 (price £2.00)
- S100 **Submission to the United Nations Commission on Human Rights**, April 2000 (price £1.00)
- S101 **Response to the Report of the Criminal Justice Review**, August 2000 (price £3.00)
- S102 **Testimony from Martin O'Brien (CAJ) to the Commission on Security and Co-operation in Europe** (Congressional Hearing, Washington), September 2000 (price £2.00)
- S103 **Submission to the Review Body on Post Primary Education**, December 2000 (price £1.50)
- S104 **Response to the Draft Financial Investigations (NI) Order 2001**, February 2001 (price £1.00)
- S105 **Response to the Family Law Bill**, February 2001 (price £1.50)
- S106 **Preliminary submission to the Northern Ireland Human Rights Commission on A Bill of Rights for Northern Ireland**, March 2001 (price £3.00)
- S107 **Commentary on the draft Life Sentences (Northern Ireland) Order 2001 and the draft Life**

- Sentences Commissioners Rules 2001, March 2001 (price £1.50)
- S108 **Submission to the United Nations Commission on Human Rights**, April 2001 (price £1.50)
- S109 **Commentary on the Northern Ireland Office Implementation Plan relating to the Patten Commission report** (June 2000), April 2001 (price £3.00)
- S110 **Testimony from Martin O'Brien (CAJ) to the Sub-Committee on International Operations and Human Rights** (Congressional Hearing, Washington), March 2001 (price £2.00)
- S111 **Some CAJ reflections, Policing and Public Order in Northern Ireland 1996-2000**, May 2001 (price £3.00)
- S112 **Submission to the United Nations Human Rights Committee, including proposed questions and comments on the Fifth Periodic Report submitted by the government of the UK under the International Covenant on Civil and Political Rights**, June 2001 (price £3.00)
- S113 **Submission to the initial consultation by the Office of the First Minister and Deputy First Minister on *A Single Equality Bill for Northern Ireland***, August 2001 (price £3.00)
- S114 **Response to the Consultation paper on the Review of Part 1 of the Sex Offenders Act 1997**, October 2001 (price £1.50)
- S115 **Response to the Consultation paper on A Commissioner for Children in Northern Ireland**, November 2001 (price £2.00)
- S116 **Preliminary comments on "Making a Bill of Rights for Northern Ireland"** – a consultation by the Northern Ireland Human Rights Commission, September 2001; A4 format; 6 pages; (price £1.00)
- S117 **Summary of "Making a Bill of Rights for Northern Ireland"**, September 2001, A4 format; 4 pages; (price £1.00)
- S118 **"A Bill of Rights for Northern Ireland: some international lessons"** by Professor Sir Nigel Rodley, University of Essex (speech given in May 2001 as part of a lecture series by the CAJ on a Bill of Rights for Northern Ireland), September 2001, A4 format; 12 pages; (price £1.50)
- S119 **"Socio-Economic Rights in a domestic charter of rights – a Canadian perspective"** by Bruce Porter, Executive Director, Centre for Equality Rights in Accommodation and Co-ordinator, Canadian Charter Committee on Poverty issues (speech given in May 2001 as part of a lecture series by the CAJ on a Bill of Rights for Northern Ireland), September 2001; A4 format; 21 pages; (price £2.00)
- S120 **Commentary on Report no. 2 of the Oversight Commissioner "Performance Indicators"**, September 2001; A4 format; 12 pages; (price £1.50)
- S121 **Commentary on Report no. 3 of the Oversight Commissioner**, December 2001; A4 format; 12 pages; (price £1.50)
- S122 **Commentary on the Implementation Plan for the Criminal Justice Review and the Justice (Northern Ireland) Bill**, January 2002; A4 format; 16 pages; (price £2.00)
- S123 **Response to the Ministers of the Council of Europe re Jordan, Kelly, Shanaghan & McKerr**, January 2002, A4 format; 8 pages; (price £1.50)
- S124 **Commentary on the draft Coroners (Practice and Procedure) (Amendment) Rules (Northern Ireland) 2002**, January 2002, A4 format; 8 pages; (price £1.50)
- S125 **Submission to the Northern Ireland Human Rights Commission on "Making a Bill of Rights for Northern Ireland"** (consultation document – September 2001), January 2002, A4 format; 24 pages; (price £3.00)
- S126 **Response to the Healing Through Remembering Project**, April 2002, A4 format; 8 pages; (price £1.00)
- S127 **Submission to the Review of the Parades Commission** (being carried out by Sir George Quigley, 2002), May 2002, A4 format; 8 pages; (price £1.00)
- S128 **Commentary to the Examination of the United Kingdom by the UN Committee on Economic, Social and Cultural Rights**, May 2002, A4 format; 8 pages; (price £1.00)
- S129 **Commentary on the Code of Practice on the Functions and Responsibilities of District Policing Partnerships**, May 2002, A4 format; 12 pages; (price £1.50)
- S130 **Commentary on NIO Code of Practice for Appointment of Independent Members to District Policing Partnerships**, May 2002, A4 format; 8 pages; (price £1.00)
- S131 **Commentary on NIO Code of Practice on Reports and Inquiries under Sections 59 and 60**, June 2002, A4 format; 12 pages; (price £1.50)
- S132 **Submission to "Education For The Twenty-First Century": Report By The Post-Primary Review Body**, June 2002, A4 format; 12 pages; (price £1.50)
- S133 **Submission to the Review of Rating Policy Consultation paper** (issued in May 2002), July 2002,

- A4 format; 12 pages; (price £1.50)
- S134 **Submission to the Government's Response to the Northern Ireland Human Rights Commission's Review of Powers Recommendations**, July 2002, A4 format; 24 pages; (price £3.00)
- S135 **Response to consultation document entitled Review of Opportunities for Public Private Partnerships in Northern Ireland**, July 2002, A4 format; 14 pages; (price £2.00)
- S136 **Response to consultation document issued by the Coroners Review Team**, December 2002, A4 format, 28 pages; (price £3.00)
- S137 **Comments and Suggested Amendments to the Police (Northern Ireland) Bill**, December 2002, A4 format, 4 pages; (price £1.00)
- S138 **Response to the Sir George Quigley's Review of the Parades Commission and Public Processions (NI) Act, 1998**, January 2003, A4 format; 15 pages; (price £1.50)
- S139 **Background note on the Justice (Northern Ireland) Act 2002**, February 2003, A4 format, 16 pages; price £2.00)
- S140 **Questions & Issues on the Devolution of Justice and Policing Functions**, February 2003, A4 format; 8 pages; (price £1.00)
- S141 **Response to the "Race crime and sectarian crime legislation in Northern Ireland"**, A4 format, 8 pages; (price £1.00)
- S142 **Response to A research programme into alternative policing approaches towards the management of conflict** (Patten recommendations 69 and 70 on public order equipment), March 2003, A4 format, 16 pages; (price £2.00)
- S143 **Response to government consultation paper entitled A Shared Future**, June 2003, A4 format, 28 pages; (price £3.00)
- S144 **Commentary on the paper issued by the NIO on the Reform of the Law on Rehabilitation of Offenders**, September 2003, A4 format, 6 pages; (price £1.00)
- S145 **Response to Civil Protection in Northern Ireland: the Implications of the Civil Contingencies Bill**, September 2003, A4 format, 6 pages; (price £1.00)
- S146 **Commentary on the Updated Implementation Plan for the Criminal Justice Review and the Criminal Justice Oversight Commissioner**, September 2003, A4 format, 18 pages. (price £2.00)
- S147 **Submission to the Office of the Independent Criminal Justice Oversight Commissioner**, September 2003, A4 format, 10 pages (price £1.50)
- S148 **Submission to the Joint Committee on Human Rights Inquiry into Human Rights and Deaths in custody**, October 2003, A4 format, 16 pages (price £2.00)
- S149 **Response to the Report of a Fundamental Review of the Inquest System (Luce Review)**, October 2003, A4 format, 12 pages (price £1.50)
- S150 **Testimony to the Commission on Security and Co-operation in Europe**, (US Congressional Hearings, Washington) March 2004 (Price £2.00)
- S151 **Submission to the Northern Ireland Affairs Committee: Inquiry into Hate Crime in Northern Ireland**, March 2004 (Price £1.50)
- S152 **Response to the Department for Employment and Learning on Further Education Means Business**, July 2004, A4 format (price £1.00)
- S153 **Response to the Public Prosecution Service for Northern Ireland – Community Outreach Strategy**, September 2004, A4 format, (price £1.00)
- S154 **Submission to the United Nations Committee Against Torture**, October 2004 (price £3.00)
- S155 **Response to the consultation paper on an Investment Strategy for Northern Ireland (ISNI)**, March 2005, A4 format, (Price £3.00)
- S156 **Submission to the Northern Ireland Affairs Committee Inquiry into the Police Ombudsman for Northern Ireland**, July 2004 (Price £1.50)

For more information on membership and CAJ publications contact the office:

CAJ, 45/47 Donegall Street, Belfast BT1 2BR

Tel: 44 (028) 9096 1122 or Fax 44 (028) 9024 6706

When ordering publications, please add 20% to total amount to cover postage costs.

Website: www.caj.org.uk

Committee on the Administration of Justice (CAJ)
45/47 Donegall Street, Belfast
BT1 2BR
Tel: (44) (028) 9096 1122
Fax: (44) (028) 9024 6706
email: info@caj.org.uk
website: www.caj.org.uk

