

**Submission from the
Committee on the Administration of Justice (CAJ)
to the Northern Ireland Affairs Committee
Inquiry into the Police Ombudsman for Northern Ireland
(July 2004)**

The Committee on the Administration of Justice (CAJ) believes that the Office of the Police Ombudsman for Northern Ireland is a vast improvement over the Independent Commission for Police Complaints (ICPC), the previous police complaints body.

The new institution is empowered to conduct independent investigations and has much greater powers, resources and public support than its predecessor. The Office is also a model with regard to outreach and engagement with external bodies, especially when compared to other statutory bodies. According to public opinion surveys commissioned by the Police Ombudsman, 85% of the Northern Ireland public have heard of the Office (hereafter PONI), and very importantly 85% of those who have heard of the Office believe it is independent of the police.

It is clear that the Police Ombudsman is determined to improve policing through impartial investigation of complaints and policing policies and practice, as well as referring recommendations for better practice to the Police Service and to the Policing Board. The Police Ombudsman guards her independence well and strives to protect the rights of both officers and complainants. In so doing, the Office offers greater credibility and legitimacy to the new policing arrangements overall, and facilitates increased public confidence in the Police Service of Northern Ireland (PSNI).

CAJ has no hesitation in asserting that the establishment and operation to date of PONI has contributed positively to the new beginning to policing.

Of course, we also believe that, like all institutions (especially new ones), PONI could make further improvements to its operations, and the following submission highlights a number of issues which have come to our attention in this regard. CAJ is currently finalising a very detailed commentary on the work of the NI Police Ombudsman's Office. As part of the process, CAJ has met or corresponded with over 40 individuals and organisations, including solicitors, community groups, human rights organisations, and statutory agencies regarding their experience of the work of the Police Ombudsman. Unfortunately, the full document will not be available in time for the inquiry by the Northern Ireland Affairs Committee, but we have highlighted some of the major issues and concerns that we think that the Committee might find it useful to address in the course of its own inquiry.

Issues the Committee may want to pursue:

1. **Independence** is a crucial principle for the Ombudsman's office – both in reality, and in terms of public perception. There is however a high proportion of investigative staff seconded from police forces elsewhere (approx 25%), as well as quite a number of former police officers, including ex-RUC staff. What is the policy of the Office in regard to recruitment and what steps are being taken to increase the proportion of non-police officers on staff?

2. **Investigations:** Some concerns have been raised with CAJ about the attitude of investigators towards complainants, delays in the investigation process and the quality of investigations. PONI has introduced a quality assurance programme but it is not clear that it monitors for such issues and, if not, should it not be changed to do so?
3. The oversight of **operational issues** is still problematic: CAJ's commentary will be looking in detail at the Ombudsman's work in relation to the policing of public order situations, decision-making around raids, arrests and deployment, and the information the police give to the press and the public with regard to operations and suspects. The Patten report noted that operational responsibility "*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*" (para 6.21). NIAC should discuss the extent to which PONI's legislative mandate currently allows for the investigation of complaints about operational matters, and the extent to which legislative changes are called for.
4. **Mediation:** This is an important alternative to formal investigations but appears not to be being fully or effectively used as yet. A series of measures are needed both in legislative and operational terms to facilitate greater use of this option. NIAC may want to ask PONI how this aspect of the Ombudsman's work could be improved.
5. **Substantiation rates:** This is the usual measure that is used by the general public to assess the effectiveness of an independent complaints mechanism. While not the sole or necessarily most important measure, it is clearly of concern that current substantiation rates seem very low, and the reasons for this need careful examination. NIAC may want to recommend that a review be conducted to determine what happens particularly in cases where it is the complainant's word against the word of a police officer and that in the meantime an "unable to determine" case outcome category be created. A "police misconduct" case outcome category could also be created for use in cases where it is clear that misconduct occurred but not clear which officer was responsible. CAJ has previously recommended that an active policy on whistle-blowing could contribute to ending the practice of individual officers engaged in wrongdoing being misguidedly protected by their colleagues.
6. **Disciplinary Hearings:** To ensure greater transparency, it would be excellent if PONI were required to report on the outcome of all disciplinary hearings resulting from their investigations.
7. **Role of the Director of Public Prosecutions (DPP):** Many cases appear to fail the test for prosecution set by the DPP but this element of the investigation is totally lacking in transparency. An independent review should be carried out to examine the approach being taken by the DPP in response to cases originating from PONI.
8. **Retrospective cases:** PONI should consult on and publish its detailed criteria for determining to take action on certain retrospective cases, and on the

definitions it is using when commenting on allegations of collusion. Adequate funding must be provided to PONI to allow it where appropriate to exercise its statutory powers to investigate, without any further delay, retrospective cases.

9. **Plastic Bullets:** CAJ is totally opposed to the use of plastic bullets and is campaigning actively for their withdrawal. In the meantime, we urge that the Police Act be amended to require the Chief Constable to refer all plastic bullet firings to the Police Ombudsman for investigation (at present the Chief Constable has introduced a voluntary code to refer such firings). The CAJ commentary will discuss PONI reports to date on plastic bullet firing, and the army/police division of work. It is noteworthy that with increased scrutiny of the police firing of plastic bullets, army usage has increased markedly.
10. **New weaponry:** CAJ expressed grave reservations at PONI's apparently unsolicited endorsement of the Policing Board's decision to purchase CS spray. This is discussed in CAJ's commentary but one important lesson for the future is that PONI re-examine whether it has the legislative authority to comment on as-yet unused weapons (which, by definition, are not the subject of complaints). Even if it were determined that PONI can comment on proposed new weaponry, such comment must be made only when all relevant research, especially independent research, has been carefully evaluated.
11. **Transparency:** The quality of the transparency of the Office of the Police Ombudsman was considered mixed by interviewees for CAJ's commentary. Many people spoke very highly about the amount of information the public can access from PONI – press conferences, published statistics, contact with families and community groups, outreach to local District Policing Partnerships, and extensive use of the Office's website and publications to issue quarterly complaint data and other such material. Monthly statistics are also shared with the PSNI and the Policing Board. Compared to the other policing institutions, the Police Ombudsman is extremely open to engagement and information sharing. At the same time there was concern about the problem of disclosure (see on) and major events like the international conference organised by PONI in November 2003 which allowed little time for open debate and critical self-examination.
12. **Disclosure:** By far the biggest complaint of solicitors who assist complainants and others is the extent to which PONI does or does not disclose information. CAJ is currently pursuing a judicial review against the Chief Constable and Police Ombudsman in this regard, and some reference to this problem was raised in the Hayes review but the issue has clearly not yet been resolved satisfactorily. An unfortunate consequence of the lack of clarity in this area means that complaints are not being resolved – either because solicitors will advise their clients not to provide a statement until their hearing(s) are concluded and/or because the Police Ombudsman closes the case due to lack of cooperation. Due to the time limitations involved, this can lead to complaints not being investigated, the officer not being charged or disciplined, and the concerns raised in the complaint not being passed to the PSNI or made known to the public. The Committee may want to pursue this issue in some detail with PONI in the course of their testimony.

The full CAJ commentary will discuss the issues above in some detail, will look at the research reports issued by the Ombudsman, and will examine more closely the links between the Police Ombudsman's Office and other policing institutions.

In our earlier commentary on the **Policing Board** (November 2003), we expressed concern about the lack of frequent and routine contacts between the Board and the Ombudsman, and CAJ understands that the situation has not dramatically changed in the interim, despite an interest on the part of the Ombudsman for more systematic exchanges. This may be an issue that the Committee will want to explore with the Policing Board witnesses to the inquiry.

The NI Affairs Committee may also want to ascertain from police witnesses the extent of routine exchanges between the **PSNI** and the Ombudsman's Office. If institutional learning and institutional change is to occur, it is vital that the findings of the Ombudsman be forwarded to, and acted upon, by police trainers and middle-level as well as senior police managers. CAJ believes that routine information exchanges of this nature are not necessarily yet in place within the PSNI, and the Committee may want to assure themselves that the creation of an independent complaints system is complemented by internal police management systems that can pick up on trends and take action accordingly.

CAJ will complete and publish its full commentary in the coming weeks. We look forward with great interest to study the findings of the Committee. We hope that the thrust of the Committee's report will be to focus on the important contribution the institution of the Ombudsman is making to increased public confidence in policing, while emphasising that there is still much improvement that is possible. The challenge for the Committee is to learn how changes to the work of the Ombudsman's Office can further contribute to the "new beginning" for policing.

The Committee may want in particular to seek comments from witnesses on the extent to which the recommendations made by Patten are now in fact in place -

"The Police Ombudsman should be, and be seen to be, an important institution in the governance of Northern Ireland, and should be staffed and resourced accordingly. The Ombudsman should take initiatives, not merely react to specific complaints received. He/she should exercise the power to initiate inquiries or investigations even if no specific complaint has been received. The Ombudsman should be responsible for compiling data on trends and patterns in complaints against the police, or accumulations of complaints against individual officers, and should work with the police to address issues emerging from this data. He/she should have a dynamic cooperative relationship with both the police and the Policing Board, as well as other bodies involved in community safety issues. He/she 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 itself be culpable, and should draw any such observations to the attention of the Chief Constable and the Policing Board. The Ombudsman should have access to all past reports on the RUC (para 6.41, recommendation 38).