



**Ulster Unionist Party Response to 'Future Operation
of the Office of the Police Ombudsman for Northern
Ireland – A consultation Paper'**

June 2012

Stakeholder Background

The Ulster Unionist Party was formally founded in 1905 and has a history of over 100 years of public service for all the people of Northern Ireland, spanning the creation of the State, the defence of the State in the face of continuous terrorist attack, and the brokering of peace and power-sharing devolved government structures. Our representation currently includes our MEP, 15 MLA's and 98 Councillors.

Introduction

The Ulster Unionist Party welcomes the opportunity to respond to this consultation and we recognise that it has been brought forward at a critical time in the history of the Office of the Police Ombudsman (OPONI).

There are undoubtedly failings which need to be addressed on the part of the Office itself, the Department of Justice (DoJ) as well as political leadership especially as we seek to find a way forward in dealing with the past.

It is essential that the Office operates as an independent and impartial investigator of complaints against the Police Service of Northern Ireland and in doing so this will engender maximum public confidence.

Investigation of Historic Cases

The investigation of historic cases is the most publicised, divisive and difficult aspect of work which the Police Ombudsman's Office undertakes and certain elements of the OPONI's performance in this area have been under severe scrutiny with the recent publication of a number of critical reports.

An independent review by Tony McCusker¹ concluded that there was no systematic interference in the Ombudsman's Office by DoJ officials, although some interference was evident, and DoJ should have intervened more when it became clear the Ombudsman's Office was not functioning effectively at senior level. The report also detailed the dysfunctional and poor working relationships within the Police Ombudsman's Office, namely between the Chief Executive, the Senior Director of Investigations as well as the Ombudsman himself.

Former Ombudsman Al Hutchinson also asked the Criminal Justice Inspection (CJI) to review the workings of his Office² with the main findings of the CJI Inspection report including a "lowering of independence" in OPONI meaning it should be suspended from investigating historic murders. There were also a number of other concerning findings regarding the historic investigation of cases.

The Ulster Unionist Party believes that the current mechanisms for dealing with the past, including OPONI, are on the whole not operating in an effective, transparent and balanced manner and this is serving to rewrite history. The Ombudsman's Office in particular is severely hampered by the burden of dealing with complex and difficult historic cases and we would therefore support a fundamental review of how cases of this nature are investigated across the board. It is clear that any failings of OPONI should be viewed as part of a wider inability to deal effectively with the legacy of the conflict.

¹ Tony McCusker, Police Ombudsman Investigation Report, 16 June 2011

² Criminal Justice Inspection Northern Ireland (CJINI), An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland, September 2011

Appeal Decisions of the Ombudsman

It is important that adequate checks and balances are in place at every stage of the investigatory process undertaken by the Ombudsman's Office and any appeals process for decisions reached by the Ombudsman should not prejudice this. It is also the case that decisions made by the Ombudsman currently can be challenged through normal court procedures.

In saying that, the Ulster Unionist Party is open to considering an appeals process with strict guidelines on when an appeal process can be initiated. It is important that public confidence in the Ombudsman's Office is not undermined through constant challenges to every decision. An appeals process should also remove any future need for ad hoc Independent Reviews and reports of the nature set out above.

Background of and Restrictions on Applicants for the post of Police Ombudsman

The Ulster Unionist Party would express serious concerns over any restrictions being placed on applicants for the position of the Police Ombudsman with a background in policing. A blanket preclusion amounts to clear discrimination against a certain section of people and as a Party which firmly believes in equality of opportunity this measure would not gain our support.

The failings which have been evident within OPONI, as highlighted by the various reports, were not down to having an Police Ombudsman with a policing background and to attempt to paper over the issues which have been highlighted through enacting a measure which precludes those with a policing background from the post would be to misunderstand the real problems which need to be addressed.

Whilst having a legal background would be advantageous given the nature of the work of the Police Ombudsman it is also the view of the Ulster Unionist Party that having policing experience would be invaluable in carrying out the role with the necessary understanding and sensitivity.

Creation of a Justice Ombudsman

We have set out our view on many occasions that Northern Ireland is over governed with scores of Arm's Length Bodies and various Commissioners, often undertaking important work, but perhaps not in the most cost effective manner.

The Ulster Unionist Party would therefore be open to the creation of a single Justice Ombudsman in the future. The devolution of Policing and Justice brings with it increased local accountability mechanisms and the criminal justice architecture must be tailored accordingly. For that purpose we are willing to explore the options around the roles of the Police Ombudsman's Office and the Prisoner Ombudsman, as well as the Policing Board, as all were created prior to April 2010.

The Prisoner Ombudsman dealt with 328 eligible complaints in 2010/11 as well as completing 9 'death in custody' investigations. This was done with an annual budget of around £660,000; the vast

majority of which relates to staffing.³ We believe that this role could be carried out alongside the oversight function of policing and within a single office. This could be done whilst maintaining the essential component of both operations, which is the confidence of the public.

However, given that Prison Reform is currently being taken forward and a number of changes are therefore imminent, now is not the correct time for such a move and the proposals for the Police Ombudsman's Office arising from this consultation, as well as prison reform itself, should be allowed to bed in before the question of a single Justice Ombudsman is returned to by the Justice Committee. Therefore the option of shared services, including investigative services, would be our preferred option at this time.

Conclusion

This consultation creates an opportunity to make crucial changes to OPONI with a view to restoring public confidence. The issue of how investigations of historic cases proceed is obviously part of a wider debate on dealing with the past and this is an important exercise in gathering opinions on what specific investigations OPONI should be tasked with undertaking.

It is also vital that the Office is operating as efficiently as possible and, like any organisation, there is progress to be made in this area. It is important that cognisance is taken of current developments throughout the criminal justice system in delivering these efficiencies.

³ Prisoner Ombudsman for Northern Ireland, Annual Report, April 2010 – March 2012