

**Stocktake of Policing Oversight and  
Accountability Arrangements**

**and**

**Review of Police Ombudsman's  
Powers**

**Consultation Paper**

**December 2021**

# **Stocktake of Policing Oversight and Accountability Arrangements and Review of Police Ombudsman's Powers**

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## **Ministerial Foreword**

In Northern Ireland, a number of bodies have a role in ensuring oversight and accountability of the PSNI. Policing oversight helps to ensure and promote public confidence in policing. Scrutiny and public engagement have also helped to bring about improvements in policing and, in turn, contributed to public confidence. However, I am mindful that some people remain distrustful and there remains an ongoing need to focus on building public confidence in some parts of the community.

I have frequently made clear that my role as Minister for Justice is separate to that of the Policing Board, which is responsible for holding the Chief Constable to account, and the Police Ombudsman, which investigates complaints about the conduct of the police. While this is often frustrating for MLAs, it is important that policing does not become politicised and that the oversight bodies have the independence necessary to do their job.

The principle of oversight and accountability is now widely accepted and supported and the arrangements have worked well since they first came into being over 20 years ago.

There have been many changes in NI over the last 20 years, and there will be new challenges in the future. It remains vitally important to have effective oversight arrangements in place, but we need to ensure that they remain fit for purpose.

My role is to oversee the policing architecture, to set the legislative framework for policing (with the Justice Committee and the NI Assembly) and to determine the overall funding for policing from within the Northern Ireland budget.

When I became Minister of Justice, I considered it timely to take stock of our current arrangements to see if there were any areas in need of improvement or reform and to also address issues that had been raised with the Department previously. I have also received recommendations from the Police Ombudsman for reform of her powers and I am taking the opportunity to consult on her Five Year Review alongside the stocktake.

I have already met with a range of stakeholders and want to thank everyone who has contributed to date. The discussions have proved extremely valuable in reflecting on the strengths of our current arrangements and considering constructive ways in which the bodies might work better together. The engagement to date has confirmed that the existing architecture for policing oversight and accountability is still seen as being fit for purpose. There are differing perspectives on the Police Ombudsman's powers but again, I have welcomed the opportunity to discuss these with stakeholders and am keen to identify recommendations on which we can reach consensus.

Following this engagement, we are now putting forward proposals for consultation to address issues identified in this stocktake. Some changes may require legislation but we are also happy to consider changes that do not require legislation. I am keen to consider views on the proposals and to take forward actions on which there is consensus and your contributions would be greatly appreciated.

## Executive Summary

The Minister of Justice signalled her intention to carry out a stocktake of the arrangements for policing oversight and accountability in May 2020. It has been some time since the last substantive programme of policing reform and the subsequent devolution of responsibility for policing and justice. It is now timely to consider whether there are changes that would improve the efficiency or effectiveness of policing oversight and accountability arrangements. A core principle is that any changes should be consistent with the underlying ethos of the reforms implemented following the publication of “A New Beginning: Policing in Northern Ireland” (“the Patten report”) and be capable of securing political agreement.

This stocktake is not intended as a fundamental review of the roles of the existing bodies or their performance; rather, it is considering the relationships and interfaces between the bodies and focused on making improvements to the functioning of the existing structures. The stocktake was focused on current policing and did not look at issues associated with legacy of the Past, such as legacy investigations. Nor did it consider the role of Police & Community Safety Partnerships (PCSPs).

The Minister held a series of pre-consultation meetings with key stakeholders to inform work on the stocktake. There was broad consensus that the current oversight arrangements are generally working well and there is no need for fundamental reform but it was recognised that the interactions and communication between various bodies could be improved. This document summarises the issues raised during the stocktake, actions already being taken, and proposals for change.

The Police Ombudsman published a Five Year Review, which made a number of recommendations for reform of her powers. Alongside the stocktake, stakeholders were also invited to give their initial views during the pre-consultation phase.

## Summary of Issues

The Department recognises the importance of maintaining and respecting the independence of the policing bodies and does not want to put in place any measures that might be seen as undermining their independence.

The following are the main issues that have been identified for consideration as part of this stocktake.

- Ensuring clarity of roles and interfaces between the respective bodies.
- Improving the day-to-day working of the tripartite relationship between the DoJ, the Policing Board, and PSNI.
- Any potential to streamline PSNI reporting to the respective bodies.
- Oversight of the implementation of inspection and review findings and recommendations; ensuring best use of those findings and outcomes delivered.
- Better alignment of inspections, audits and other reviews of PSNI effectiveness and efficiency.
- Ensuring the Board has greater visibility of PSNI business cases and the need to clarify lines on accountability and reporting.
- Creation of a strategic group for oversight bodies to look at collective priorities.
- Operation of the Board in the absence of a functioning Assembly.
- The potential for the Board to put in place more formal arrangements to meet with bodies representing police officers and staff.

While issues linked to the accountability of the oversight bodies were raised, including their relationship with DoJ, no specific proposals are being put forward on this. There are governance requirements that are inescapable due to the need to account for the use of public money and the Department alone does not have the power to change the requirements set by the Department of Finance (DoF). New procedures for the development of business cases were recently put in place and the Department is also engaging with DoF to explore the potential to streamline the pay remit process and will put in place any agreed changes.

The role of Policing and Community Safety Partnerships (PCSPs) in providing local oversight and accountability was raised but is not being considered as part of this

stocktake, given the range of associated issues and the need to consider these in the context of other key policy areas, such as community safety. The Injury on Duty (IOD) process was also raised. However, a separate workstream has already been set up to consider reform of the injury benefit scheme for police officers in response to a report published by the Northern Ireland Audit Office in March 2020.

## **Proposals for Change**

The following section summarises the proposals for change identified through this stocktake. The Minister had indicated she was open to considering both changes that may require legislation and those that could be implemented administratively.

Views are invited on the options set out in this paper. Suggestions on any alternative options that have not been identified are also welcome.

### Clarity of roles

- The Department of Justice should develop an information guide to be made available to the public that sets out the roles of the various bodies and where queries on policing should be directed.
- If considered necessary or appropriate at some point in the future, the Policing Board and the Justice Committee could revisit previous work to develop a protocol on their respective roles and the relationship between them.

### Tripartite Relationship

- Stocktake meetings should take place every six months between the Minister and Chair and Vice-Chair of the Policing Board. Alternatively, the discussions might also include the Chief Constable. One of the meetings might focus on budget. The purpose of the meetings would be to horizon scan and identify forthcoming priority issues.
- The Policing Board should consider putting in place more formal arrangements to meet those representing police officers and police staff to discuss issues relating to policing.

- Consideration of a greater role for the Chief Constable in the selection of senior staff.

#### Implementation of inspection and review findings

- The recently established Strategic Oversight Forum should continue to meet on an informal basis, with the possibility of it being put on a more formal (statutory) footing at a later stage. The purpose of the Forum should be to improve coordination, share information and reduce potential duplication of reviews.
- The Policing Board should have a greater role in overseeing how the PSNI implements any inspection or other recommendations accepted by the PSNI.
- The Department should amend legislation (S29 of the Police (NI) Act 2000) to remove the statutory requirement for the NIAO to audit the Board's performance plan and arrangements to secure continuous improvement.

#### The Board's role in approving PSNI business cases

- Existing arrangements should be strengthened to provide the Board with better visibility of forthcoming business cases and Direct Award of Contract requests to give it an early opportunity to consider the proposals and express its views.

#### Operation of the Board

- The Department should develop legislative provision to ensure the continued operation of the Board in the absence of a functioning Assembly.

#### Review of OPONI's powers

The Police Ombudsman has put forward recommendations on legislative change for consideration by the Minister. The report has been published on the OPONI website and the Department is seeking views on those proposals on which the Minister believes there may be the potential for political consensus based on the discussions held to date. The Department is also seeking views on the other recommendations and if there appears to be sufficient support, the Department is also open to taking them forward.



## **Consultation**

The consultation is in three parts:

Part 1: Proposals for change resulting from the stocktake on policing oversight.

Part 2: Ombudsman's proposals identified as potentially attracting consensus.

Part 3: Views on remaining proposals from the Ombudsman

The questions for consultation are set out at the end of this document.

# Stocktake of Policing Oversight and Accountability Arrangements

## Introduction

1. In Northern Ireland, there is a comprehensive set of arrangements for policing oversight and accountability. These were mostly established by the Belfast Agreement and subsequent agreements, which led to the Patten Report, reform of policing and the devolution of policing and justice powers to the NI Assembly and Executive. These arrangements are in primary legislation and set out roles for the NI Policing Board, the Office of the Police Ombudsman (OPONI), Criminal Justice Inspection NI (CJI), HM Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS) and the NI Audit Office (NIAO)<sup>1</sup>. The Department of Justice has responsibility for policing legislation and the overall funding provided to PSNI. In addition, the Northern Ireland Office engages directly with the PSNI on matters of national security which are not devolved including the provision of Additional Security Funding<sup>2</sup>. The Justice Committee exercises a scrutiny role in respect of the work of the Department of Justice and can invite representatives of the various justice bodies to appear before it.

2. The Criminal Justice Board (CJB) is the main strategic oversight group for the overall criminal justice system in Northern Ireland. The Board is chaired by the Minister of Justice and members include the Lady Chief Justice, the Chief Constable, the Director of Public Prosecutions and the Permanent Secretary for the Department of Justice. The CJB looks at issues across the justice system, including policing, and has a focus on cross-cutting delivery and system-wide effectiveness. However, the role of the CJB is not within the remit of this stocktake.

3. More recently, a National Policing Board (NPB) was set up by the Home Office. The NPB enables the Home Secretary to directly engage with the policing sector to set the long-term strategic direction for policing and facilitate the delivery of the

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<sup>1</sup> Policing & Community Safety Partnerships (PCSPs) also provide an oversight role at district level. However, the role and functions of PCSPs is not within the scope of this stocktake.

<sup>2</sup> The NIO retains a role in providing funding and setting policy and legislation in relation to national security. However, the role of the NIO is not within the scope of this stocktake. There are also UK-wide bodies, such as the Investigatory Powers Commissioners' Office (which oversees the exercise of powers under the Regulation of Investigatory Powers Act) and the Information Commissioner's Office (ICO), which oversee the exercise of powers by PSNI and OPONI. However, these bodies are not within the scope of this stocktake.

Westminster government's key policing commitments. Although its membership initially included police forces from England and Wales, the Chief Constables from Northern Ireland and Scotland have been invited to join the meeting. However, it is important to stress that the Chief Constable remains accountable to the Northern Ireland Policing Board.

4. The local arrangements have remained largely unchanged since their inception. It is now over 20 years since the reforms of policing that were implemented following "A New Beginning: Policing in Northern Ireland" ("the Patten Report"), and the "Review of the Criminal Justice System in Northern Ireland" ("the Criminal Justice Review") reported, and over 10 years since the devolution of policing and justice powers. It was considered timely, therefore, to take stock of how the arrangements are operating and identify any areas for improvement.

### **Background**

5. The Hayes Report 1997 set out proposals for the creation of an independent Police Ombudsman. The Office of the Police Ombudsman NI (OPONI) was set up under the Police (NI) Act 1998.

6. The Independent Commission on Policing for Northern Ireland ("the Patten Commission") was set up to make proposals for future policing structures and arrangements. The aim of the proposals was to create a police service that would be effective, operate in partnership with the community, cooperate with other police forces, and be accountable both to the law and the community which it was to serve. Key recommendations included a new name and symbols; culture and ethos; recruitment and structure; an emphasis on human rights and policing with the community; demilitarisation and normalisation; and oversight and accountability provided by a Policing Board (with political and independent members). The changes were enacted in the Police (NI) Act 2000 and an extensive reform programme was implemented under the auspices of an oversight body. The Patten Report also reaffirmed the benefits of an independent Ombudsman to handle complaints about the conduct of police officers.

7. The emphasis of the reforms taken forward in response to Patten was on ensuring transparency, accountability, respect for human rights, and policing with the community. These principles remain valid today, as can be seen in contemporary debates on policing, though increasingly confidence is influenced by the effectiveness of delivery, as well as perceptions of fairness.

8. In addition, the Review of the Criminal Justice System of Northern Ireland (“the Criminal Justice Review”), which reported in March 2000, made a number of recommendations on accountability and inspection. The recommendations included the creation of a statute based, independent, criminal justice inspectorate and expanded inter-agency machinery to facilitate co-ordination across the criminal justice sector, with a view to enhancing public confidence.

9. Accountability is an essential part of policing and this will necessarily entail an administrative overhead. However, it is important to acknowledge the trade-off between deploying limited resources to front-line delivery and providing a service that makes a tangible impact on communities, and to meeting the administrative overhead involved in providing information required to provide accountability. Accountability has a wider benefit in providing public assurance regarding the actions of the police and to address incorrect perceptions. Scrutiny and public engagement has also helped to bring about improvements in policing and, in turn, contributed to public confidence. The key is to ensure an appropriate balance between the resources needed to meet the needs of oversight mechanisms and those available directly for service delivery.

10. Linked to accountability and confidence is the Board’s advocacy role. The Board has a duty to make arrangements for obtaining the cooperation of the public with the police in the prevention of crime. This involves outreach and engagement with the public and is an important element in promoting confidence in policing. It also involves supporting the Chief Constable in lobbying for resources and putting in place plans to bring about improvement in policing, which can again impact on public confidence.

## NI Legislation

11. The current arrangements are mostly set out in the Police (NI) Act 1998 and the Police (NI) Act 2000. Other legislation includes the Justice (NI) Act 2002, the Justice and Security (NI) Act 2007, and the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007.

## **Pre-Consultation Engagement**

12. The Minister held a series of meetings with key stakeholders to inform work on the stocktake and, alongside this, to take views in advance of consultation on the Police Ombudsman's Five Year Review Report. The Minister met with the NI Policing Board, the Police Ombudsman, the Chief Inspector of Criminal Justice Inspection NI, the Chief Constable, HM Inspector of Constabulary, and representatives of the Police Federation NI, Superintendents' Association NI, the Chief Police Officers' Staff Association, and the NI Retired Police Officers' Association. In addition, officials met with representatives of NIPSA, briefed the Justice Committee, and engaged with the NI Audit Office.

13. There was general agreement that the current arrangements are working well and there is no need for fundamental change. It was noted that the bodies are independent but are also interdependent in providing effective oversight of policing. It was also recognised that there was scope to improve communication and cooperation between the various bodies in some areas. The issues raised were, therefore, identified as areas to improve the practical working relationships between the various bodies.

## **Issues Arising and Actions to address these**

14. The following section outlines issues that have been identified for consideration by stakeholders during this stocktake and proposals that might be taken forward to address these. Views are also invited on any other potential options for change that might be considered.

## **Clarity of Roles**

15. There are a number of bodies involved in providing oversight and ensuring accountability of the PSNI, which were put in place over a period of time. The PSNI,

Policing Board, OPONI, and CJI were set up prior to the devolution of policing and justice powers to the NI Assembly in 2010 and the subsequent establishment of the Department for Justice and the Assembly's Justice Committee.

16. The Department recognises that, as identified by key stakeholders, it would be helpful to clarify and improve understanding of the roles of the respective oversight bodies, including clarifying to the public the issues that are the responsibility of the Minister and the matters that are rightly the responsibility of the respective oversight bodies. The Minister has sought to stress and protect the independence of the oversight bodies and the integrity of the oversight arrangements and to ensure that they are kept free from undue political interference.

17. There is some potential for overlap between the work of the Policing Board and the Justice Committee. It was understood that the Board is responsible for oversight of the work of the Chief Constable and that the Justice Committee is responsible for oversight of the Minister of Justice and Department. However, in practice, since the Committee may on occasion need to request briefings from the Chief Constable and other senior officers to inform its work, this can lead to some overlap with the work of the Board. For example, the Committee has a clear role in scrutinising legislation but there may be an overlap in scrutinising how the police enforce legislation and how this impacts on public confidence.

18. It would, therefore, be helpful to consider ways to clarify the respective roles of the oversight bodies and ensure the bodies have complementary scrutiny roles and do not duplicate or cut across each other's functions. It is also important that the public understand the different roles the various bodies have.

#### Proposals to promote greater clarity of roles

19. The following proposals aim to clarify the roles of the oversight bodies and ensure they are widely understood. This would ensure the public are better informed about the roles of the various oversight bodies and know where to direct various queries or complaints for a more efficient response.

- **The Department should develop an information guide to be made available to the public that sets out the roles of the various bodies and where queries on policing should be directed.** A draft of what this might look like is provided at Annex B.
- **The Chair and Vice-Chair of the Justice Committee have agreed to meet the Chair and Vice-Chair of the Policing Board every six months. In the future, and if considered appropriate or necessary, the Policing Board and the Justice Committee could revisit work to develop a protocol on the roles and relationship between them.**

### **Tripartite Relationship**

20. The strategic context has changed significantly over the last 20 years, and this will impact on the delivery of policing. There will also be new and emerging challenges, such as the implications of Brexit and technological change, which may require changes in strategy and operational delivery. Recent developments have included plans to increase police numbers, reform local policing, transform the PSNI estate, and increase the use of technology. It is important that the Minister, Board and Chief Constable work together to shape and support delivery of policing objectives<sup>3</sup>.

21. At official level, the tripartite relationship includes a focus on issues related to governance and financial management. While some matters, e.g. staffing, are the responsibility of the Board, in practice they are managed by the Chief Constable. While the Chief Constable has responsibility for the allocation of the budget available to him, the PSNI has to secure approval from the Department for matters such as pay remits, approval for the direct award of contracts (DACs), and business cases outside of the PSNI's delegated limits. The PSNI's budget is set through the Executive's budget process; the Board has no formal role in this but has a responsibility for making resources available to the Chief Constable, from the funding agreed by the Executive. It also has a financial oversight role. There is a shared interest and responsibility but

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<sup>3</sup> The Police Act requires the DoJ to determine long term policing objectives, following consultation with the Board, the Chief Constable, Police Ombudsman, NIHRC, Equality Commission and any other person it considers appropriate. A statement of these objectives is required to be laid at the Assembly.

not always control and visibility. A key issue identified was a need to clarify lines of accountability in relation to budget-setting.

22. While the tripartite relationship often focuses on governance matters, it was suggested that the Board should be able to provide the Department with policy advice on policing matters. The Department is also keen to support the Board in having a more strategic impact.

23. Another issue raised was the importance of engagement between the Board and the police staff associations, particularly on issues relating to officer wellbeing, and between the Board and those representing police staff. It was suggested that this engagement could be of value in informing the Board's decision-making and oversight by providing an alternative, front-line perspective on policing issues. Police staff have welcomed recent engagement with the Chair and Chief Executive of the Board and it was also suggested that it would be helpful to put this engagement on a more regular footing, in recognition of the Board's oversight of the work of police staff and the important policing functions they perform.

24. Some actions are already being taken to improve the tripartite relationship:

- Work is underway on the development of new Partnership Agreements, and the development of a new Framework Document between the Board and the Department. This will provide an opportunity to provide greater clarity of roles within the tripartite arrangements, including the scope and level of delegations.
- The Board's Effectiveness Review includes a recommendation to document the tripartite relationship with the Department of Justice (the DOJ) and PSNI.
- PSNI now provides a list of business cases and DACs to the Board's Resources Committee for information or approval, as appropriate.
- The Department has reinvigorated regular Strategic Policing Policy Meetings (SPPM) with officials from the Policing Board and PSNI to provide a forum for discussion of strategic issues at official level. SPPM would provide a means for the Department to take policy advice from the Board and PSNI on strategic policing matters, including considering matters on which the Department might wish to seek policy advice from the Board. The involvement of the Deputy Chief Constable, who



normally attends these meetings, could also provide a means of linking strategy to operational delivery.

#### Proposals to improve the tripartite relationship

25. The following proposed actions could also be taken to improve the tripartite relationship:

- **PSNI should provide a more forward-looking list of business cases and DACs to the Board to give Board members an early opportunity to consider the proposals and express their views.**
- **SPPM might be complemented by stocktake meetings every six months between the Minister and Chair and Vice-Chair of the Policing Board. Alternatively, the discussions might also include the Chief Constable. One meeting might focus on budget. The purpose of the meetings would be to horizon scan and identify forthcoming priority issues.**
- **The Policing Board might wish to consider putting in place more formal arrangements to meet those representing police officers and police staff to discuss issues relating to policing, in addition to its participation in the Police Advisory Group (NI) chaired by the DoJ Director, Safer Communities.**

#### **Operation of the Board in the absence of a functioning Assembly**

26. The period between January 2017 and January 2020, during which the Assembly and Executive were not operating, also impacted on the operation of the Policing Board and its ability to provide oversight of the PSNI. As the Assembly had not formally commenced sitting, the Board had no political members, as the term of political members expires upon the dissolution of the Assembly. The Secretary of State took powers<sup>4</sup> to appoint political members and fill any vacancies that arose in independent membership in the absence of a Minister of Justice. While this restored engagement between the Board and PSNI, it exposed a gap in the current legislative arrangements (since the appointment provisions in the Northern Ireland (Executive

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<sup>4</sup> S5 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018

Formation and Exercise of Functions have since lapsed) that should be addressed to provide a contingency should a similar situation occur again.

Proposal to enable the Board to continue to operate effectively if the Assembly is suspended

27. Measures to apply to the operation of the Policing Board would need consideration and agreement in the context of measures adopted to implement the commitments in *New Decade, New Approach*. It is proposed that:

- **The Department should develop legislative provision to ensure the continued operation of the Board in the absence of a functioning Assembly.**

**Appointment Process for Senior Officers**

28. The Policing Board is responsible for appointing the Chief Constable, with the approval of the Minister of Justice. The Policing Board is also responsible for the appointment of senior officers. However, senior officers are under the direction and control of the Chief Constable.

Proposed changes to the appointment process for senior officers

29. An argument has been made that the Chief Constable should be able to have a greater role in the selection of senior staff. The Chief Constable currently has a role as advisor to the appointment panel and is engaged in the development of role and person specifications.

30. **The Department is inviting views on whether current arrangements should remain unchanged or the Chief Constable's role enhanced to include a decision making role in the selection of candidates.**

**Implementation of inspection and other recommendations**

31. Public confidence is an important element in policing and underpins the principles of policing with the community and policing with consent. Strong oversight and accountability arrangements have an important role in promoting public confidence and were an integral part of policing reforms here. The impact of NI's past,

and the continuing impact that legacy investigations continue to have today, reinforces the need to ensure public confidence through robust and transparent accountability arrangements. It is therefore right and proper that the PSNI has to report on performance to a number of different bodies at different times and potentially in different formats. It also has to respond to various requests for information, such as questions from Board members, Assembly Questions from MLAs, and media queries. The relationships between the PSNI and each of the oversight bodies (including through various groups set up by the Department) clearly require the investment of time and effort on all sides to develop effective working relationships and develop an understanding of what is being sought and the purpose for which it is sought. The PSNI also has to balance the need to be transparent and accountable with the preservation of the operational independence of the Chief Constable.

32. While it is recognised that the PSNI, like any public body, has to dedicate resources, including staff time, to respond to the oversight bodies in exercising their accountability role, for example by providing information or attending meetings. The need for accountability is not in question. However, accountability should be proportionate and we want to ensure we get the balance right. The size of the PSNI's budget, the complexity of its service, the high profile nature of its work and the public interest are inescapable factors that need to be taken into account. There is also a need to balance factors such as operational independence and the pressures of resource, legislation and new technology.

33. The PSNI receives inspection recommendations from CJI and HMICFRS and other recommendations from reviews carried out by a range of bodies, including OPONI, NIPB and NIAO, and from other reviews commissioned by the PSNI itself. This can result in overlap, duplication, or potentially conflicting recommendations. There is also a need to ensure that recommendations are not only implemented but actually bring about the improvement intended, both in policing and policing oversight. If there is more effective implementation of recommendations, this might reduce the need for follow-up inspections or audits on the same matter, helping to reduce the overall burden of inspection and audit.

34. CJI often works with HMICFRS in inspections of the PSNI. CJI's inspections mostly focus on the role of the police in thematic issues impacting on the whole justice system, and in recent years the emphasis has been on strategic level recommendations to support longer-term, more fundamental reform<sup>55</sup>. HMICFRS is commissioned to carry out annual Police Effectiveness, Efficiency and Legitimacy (PEEL) reviews, which focus on efficiency and effectiveness. Independent inspection, which is distinct from governance, is recognised as having an important role in ensuring transparency, accountability and confidence. Inspection recommendations can also identify good practice and suggestions for improvement including suggestions from within the organisation. CJI's role has the advantage of providing a local inspection body (with a remit spanning all aspects of the criminal justice system, except the judiciary) that can examine the PSNI's role in systemic issues (e.g. avoidable delay in criminal proceedings). The involvement of HMICFRS provides access to external policing expertise and benchmarking of performance that can help to raise standards, including through its links with the College of Policing. Either body can be commissioned to carry out other inspections as required.

#### Actions underway

35. PSNI has set up an Overview Monitoring System to keep track of progress against inspection recommendations. Board officials have access to this system. This might help to support the Board in monitoring progress against recommendations and using inspection findings to better inform its oversight role.

36. There was a view that greater cooperation between the oversight bodies would be helpful in ensuring more effective oversight and implementation of inspection recommendations. The Policing Board, OPONI, CJI and HMICFRS have taken early steps to better coordinate activity and keep each other informed of future plans by setting up a Strategic Oversight Group. CJI is acutely aware that OPONI is an organisation within its statutory remit to inspect and that relationship must be appropriately observed. Initially the Strategic Oversight Group is an informal

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<sup>55</sup> CJI also carries out regular inspections of police custody as a member of the National Prevention Mechanism (NPM), which forms part of the UK Government's response to fulfilling its obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

arrangement based on information sharing. The Department welcomes the establishment of the Group and is willing to support the bodies in making the Group work effectively.

Proposals to ensure more effective implementation of inspection recommendations

37. The following proposals are put forward:

- **The Strategic Oversight Group might, if considered appropriate at a later stage, be put on a more formal (statutory) footing. It would provide a means for the oversight bodies, keeping their independence, to share appropriate information on planned inspections and reviews. This would have the advantage of involving the Board at an early stage in the development of inspection plans. It would also enable the bodies and PSNI to work together to streamline the provision of information in a way that helps minimise the burden on the PSNI, while ensuring that bodies receive the information required to fulfil their role in a timely manner.**
- **The Policing Board is responsible for holding the Chief Constable to account and would seem the natural body to ensure that PSNI implements any recommendations accepted by the PSNI. The PSNI should decide which recommendations it accepts and to inform the Board; the Board would then hold them to account for progress on those recommendations. It would be for the Board to determine how it wished to oversee the implementation of inspection arrangements, for example through the work of its Performance Committee. Some aspects of this might be covered through existing work but there may be potential implications for the workload of the Board's committees.**
- **The PSNI and Policing Board might consider how recommendations, both outstanding recommendations and future recommendations, should be prioritised and how progress reporting is incorporated into arrangements already in place for the Chief Constable to report to the Board.**

### **Audits and reviews of efficiency and effectiveness**

38. The Comptroller & Auditor General (C&AG) has recommended the removal of the statutory requirement for the C&AG to audit the Board's performance plan and arrangements to secure continuous improvement. Similar provisions that previously existed in England and Wales have now been repealed. HMICFRS inspections also assess the PSNI's effectiveness and efficiency so this move would reduce duplication but without reducing accountability, as PSNI would remain subject to the same audit arrangements as the rest of the public sector.

39. The oversight bodies, through improved coordination and sharing of information, might be able reduce any potential duplication in studies to be carried out by NIAO of areas already covered by CJI and/or HMICFRS, thereby allowing NIAO to concentrate its efforts on financial accountability. A change in this area would mean the NIAO no longer to do an annual continuous improvement review but it does not change the scope of action available to NIAO – they could do such a review if they chose to.

#### Proposed action on audits and reviews of efficiency and effectiveness

- **The Department should amend legislation (S29 of the Police (NI) Act 2000) to remove the statutory requirement for the NIAO to audit the Board's performance plan and arrangements to secure continuous improvement.**

### **Accountability of the oversight bodies**

40. The various bodies are accountable to the Department on matters of finance and governance. Regular accountability review meetings and governance meetings are held with each of the bodies it sponsors as a means of providing assurance to the Departmental Accounting Officer on the governance of each of the bodies, including matters such as audit and risk and information assurance, and their management of the public money provided to them. The need for proper governance arrangements is well established and previous problems within some ALBs has reinforced that need. A number of bodies raised with the Department the fact that some of the governance processes, e.g. for approving business cases and pay remits, put in place to ensure scrutiny and accountability for public money, can prove onerous and involve significant

time and effort. It is also recognised that the length of time taken to approve pay remits and deliver pay awards can have a negative impact on the morale of police officers and staff, and staff working in the oversight bodies. The Department continues to explore with the Department of Finance (DoF) what scope there is to reduce bureaucracy in these areas. In the meantime, the Department is under an obligation to meet the financial requirements set by DoF in relation to the management of public money.

41. The Minister is accountable to the Assembly for the performance and financial management of the oversight bodies. The Minister also approves the corporate and business plans and the publication of annual report and accounts. The Department's sponsor team advise the Minister on the appropriateness of objectives and targets, including their relation to the Minister's strategic aims and objectives, and progress towards these. The sponsor team is also responsible for ensuring the bodies have an appropriate budget and that value for money is being delivered.

42. The Minister has the power to appoint independent members of the Policing Board and the Chief Inspector. The Police Ombudsman is appointed by Her Majesty The Queen, on the advice of the First and deputy First Minister. The oversight arrangements include provision for performance appraisal of those holding a public appointment and, in certain circumstances set out in legislation, the Minister's power of dismissal.

#### Carry forward of PSNI funding and maintenance of reserves

43. The Policing Board and Chief Constable have previously raised the issue of end-year flexibility for PSNI funding. Unlike policing bodies in England and Wales, the PSNI cannot carry forward funds from one year to the next and maintain reserves and is at a comparative disadvantage. Local policing bodies in England and Wales are classified as local government and are partly funded through local authorities with tax-raising powers. They are, therefore, subject to different accounting rules to the PSNI, which is classified as a non-departmental public body.

44. DoJ has worked with DoF to explore any potential options that would provide a carry forward facility for the PSNI. One option might be to ring-fence PSNI funding and

provide it with a carry forward facility; however, this would put at risk the ability to keep the overall NI block grant within the 0.75% under/overspend limit. Another apparent option might be to classify the PSNI as a local authority. However, this would significantly impact on the policing and policing oversight arrangements here, including the tripartite arrangement, the link between the Minister of Justice and the police service, and the benefits we have in a single, unified regional police service. It would also risk diluting the Board's accountability role. DoF is exploring the potential for any flexibility with HM Treasury.

#### Reforms to policing oversight in England & Wales, Scotland and ROI

45. There have been major developments in policing oversight in England and Wales and Scotland and we have considered if any of these changes need to be adapted and applied in a suitable way here as part of this stocktake.

46. In England and Wales, police and crime commissioners (PCCs) are now in place for each police area, whose work is overseen by a local police and crime panel. PCCs are directly elected to have responsibility for policing for their area and hold chief constables to account. The PCC arrangements are under review by the Home Office and there have been some concerns about the potential for the role to become politicised because of the electoral element. This arrangement was not considered appropriate to NI, given the different background to policing here. It was also noted that the NIPB provides oversight of the Chief Constable in NI and the balance of its membership, being reflective of the community it serves and having a blend of political and independent voices, is an important strength.

47. Chief Constables in England and Wales are held to account by PCCs for the following statutory duties:

- Effectiveness and efficiency of any arrangements for collaboration with other persons;
- Arrangements for engagement with local people;
- Securing value for money;
- Exercise of duties in relation to equality and diversity;
- Duties in relation to safeguarding children.



48. The arrangements in NI are different. While there is no equivalent power to enter into collaborative arrangements, PSNI already works with a range of statutory partners, e.g. through Support Hubs, the NI Road Safety Partnership, and through local Community Planning arrangements and Policing and Community Safety Partnerships. These arrangements are working well and there may not be a need for additional statutory provision to enable collaboration; it can often be the case that the benefit is in the quality of the relationship rather than having a duty per se. However, there may be an opportunity to refresh and modernise relationships and progress a community safety ethos that involves a wider range of bodies. A duty to collaborate would require a reciprocal arrangement with other bodies to be effective. **However, the Department is willing to consider any views about the need for a specific power to enter collaborative arrangements.**

49. The Board already has a duty to obtain support from the public for policing. It also has a duty to secure value for money. The Chief Constable (who is designated as the PSNI Accounting Officer) and Permanent Secretary, as Accounting Officer of the Department, also have duties to secure value for money.

50. In relation to equality and diversity, the Chief Constable is one of the public authorities specified under Section 75 of the Northern Ireland Act 1998. The Board is also required to assess the effectiveness of measures taken to ensure that the police service and police staff are representative of the community.<sup>6</sup> The Board is also required to make, and revise, an action plan for monitoring the number of women among police officers and police staff and to increase that number, if women are under-represented<sup>7</sup>.

51. NI also has different arrangements in relation to safeguarding children. The Safeguarding Board for NI coordinates work across a number of statutory partners, including PSNI, in relation to safeguarding and promoting the welfare of children, are also different and the PSNI is part of the safeguarding arrangements. The Department therefore does not consider there to be a specific statutory requirement on the NIPB on this issue.

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<sup>6</sup> S3(d)(i) of the Police (NI) Act 2000.

<sup>7</sup> S48(1) of the Police (NI) Act 2000.

52. There are now additional duties on the Home Secretary to set policing objectives, and to secure efficiency and effectiveness. However, these are not required here: the Minister of Justice already has a duty in relation to setting policing objectives and the Accounting Officers of the PSNI and the Department have responsibilities to secure the efficient and effective use of resources. (The Home Secretary also has duties to publish a strategic policing requirement and to issue a policing protocol but these are not considered relevant to NI given that we have a single police force).

53. Reforms to policing were also introduced in Scotland, including the setting up of the Scottish Police Authority and a review of the complaints process. In the Republic of Ireland, work is underway to implement the recommendations of Commission on the Future of Policing in Ireland, which made a number of recommendations on police governance, oversight and complaints. These developments are mostly introducing arrangements similar to those in place here.

### **Police Covenant**

54. The Police, Crime, Sentencing and Courts Bill<sup>8</sup> includes a clause which makes provision for a police covenant for members and former members of the police workforce across England and Wales. This Bill was introduced in the House of Commons on 9 March 2021 and is currently at the Committee Stage in the House of Lords. An amendment is being considered to extend the covenant to officers, staff and families of the British Transport Police, the Civil Nuclear Constabulary, the Ministry of Defence Police and the National Crime Agency.

55. The Bill includes a statutory duty on the Home Secretary to report annually on the Police Covenant. The Police Covenant aims to enhance support and protection for police and applies to all serving or former police personnel<sup>9</sup>. The Police Covenant covers matters such as: health and well-being, physical protection, and support required for members of their families. In preparing the annual police covenant report, the Home Secretary must have due regard to the ‘obligations and sacrifices’ made by

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<sup>8</sup> The Bill is not expected to receive Royal Assent until 2022.

<sup>9</sup> The Police Covenant is based on the Armed Forces Covenant; the Armed Forces Covenant was extended to Northern Ireland in 2021.

members of the police workforce and ‘the principle that it is desirable to remove any disadvantage for members or former members of the police workforce arising from their membership or former membership’.

56. While this stocktake is focused on policing oversight, the Department recognises the benefits of balancing an emphasis on scrutiny and accountability of the police with measures to reinforce the support provided in return for the service provided by members of the police service and police staff.

57. There are a number of significant support initiatives already available to current and former police officers and their families in Northern Ireland. The Police Rehabilitation and Retraining Trust (PRRT) offers personal development and retraining for officers planning to retire, along with physiotherapy and psychological therapies. The Northern Ireland Police Fund (NIPF) provides care and financial assistance to police officers and former officers, and to their widows, widowers and families, who were injured or disabled as direct result of terrorism. The RUC George Cross Foundation (RUCGC) was established to mark the sacrifice and honour the achievements of the Royal Ulster Constabulary. The police staff associations also provide support to their members. PSNI also has access to two Police Treatment Centres (PTCs) which provide treatment and support for injured/ill and retired officers. Furthermore, there are NI specific mechanisms which recognise the unique context within which PSNI officers work, including the payment of the NI Transitional Allowance (NITA). PSNI officers also have access to the kit they need to keep themselves safe and PSNI officers routinely carry firearms for their own protection and other weapons.

58. The Department has taken account of representations made by those representing police officers, and the principle of parity. **Views are, therefore, invited on the proposal to introduce a statutory police covenant in Northern Ireland. This might be based on the England and Wales model but tailored to suit our own circumstances. Views are also invited on what a police covenant should cover and to whom it should apply.**

## Review of OPONI's powers

### Introduction

59. Alongside the stocktake, it is also timely to consider the need to reform the powers and operations of OPONI. The existing legislation dates from 1998, with regulations put in place in 2000 and 2001, without substantive change. The Ombudsman is also required to review the workings of the legislation relating to their powers every five years and provide a report to the Department. There have been three such Reviews but the recommendations have not been acted upon due to a lack of political consensus for the package put forward. In the interim, reforms to complaints arrangements have been introduced in England and Scotland that have not been considered here, including the establishment of the new Independent Office for Police Complaints<sup>10</sup>. The arrangements for handling complaints in England and Wales and in Scotland are different to NI in that the complaints bodies can both investigate or review complaints handled by policing bodies. However, there have been some amendments that have progressed complaints arrangements that have not been considered in NI.

60. There is a consensus that there remains a need for an independent complaints mechanism. The efforts made by the current Ombudsman to develop stronger links with other bodies have been acknowledged and welcomed.

61. The Ombudsman has been considering the existing legislation, along with other reforms in Scotland and England and Wales, and has put forward recommendations on legislative change for consideration by the Minister. The recommendations are outlined in the Ombudsman's Five Year Review.

62. The Ombudsman has taken on an increasing number of legacy cases, which have attracted debate. The Stormont House agreement 2016 included provision for a new Historical Investigations Unit (HIU), which would have taken over all outstanding legacy investigations. However, in 2021, the UK Government put forward new proposals for legacy arrangements. These included an end to the Ombudsman's

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<sup>10</sup> See Annex C for more detail on arrangements in GB and ROI.

investigations and a new body to provide information to families. At this stage, the final detail is still to be confirmed and legislation is to be brought before Parliament. However, it is important to consider the proposed reforms to the Ombudsman's powers in this context.

63. The Department notes that OPONI has been in place for over 20 years without any reform of its powers. It is now timely to look at reforms required in light of 20 years' experience to ensure that OPONI, and its statutory powers and duties, remain fit for purpose. For example, it would be beneficial for complainants and any police officer subject to a complaint to progress reforms that can make the complaints process more effective and efficient and result in speedier outcomes. There is merit in reforms aimed to promote transparency, including in the arrangements for reporting the outcomes of investigations, as these can help to further promote confidence in the Office. This includes specific arrangements to provide a right for those subject to a complaint to respond to the findings and have this reflected in the report. It may also be helpful to consider the range of support roles that come under OPONI's remit, given the important role support staff have assumed in providing a policing service to the public. The Ombudsman's Report (previously published by the Ombudsman) sets out a detailed rationale for each recommendation.

64. The Department is conscious that some of the recommendations may not be capable of attracting sufficient consensus at this time to enable legislative change to be made. Issues already identified in relation to the recommendations are as follows:

- There were concerns expressed about the power to compel witnesses to cooperate and it was noted that this power is not available to the PSNI. It was also noted that it may impact disproportionately on retired officers, who may not have access to the same support as serving officers under investigation by the Ombudsman, raising issues of equality of arms. The impact on retired officers is particularly relevant in legacy cases but this may be overtaken by any new arrangements put in place by the UK Government on the handling of legacy investigations.
- It was suggested that Northern Ireland is not currently at the place to be able to hold disciplinary proceedings in public. The recommendation is that hearings

should be held in public where the chair considers it in the public interest to do so. While noting the merits of the recommendation in theory, including to panels having a legally qualified chair, concerns were expressed about the risks to an officer's personal safety and the potential for proceedings to become politicised.

- It was suggested that OPONI should follow the new IOPC framework and its focus on learning and candour and move away from a sense of 'blame' that can sometimes result from an adversarial investigative process. This is an approach that OPONI is already working to implement.
- The absence of a facility to make complaints to an independent body about OPONI was raised. Some stakeholders felt that previous court judgments had undermined confidence. OPONI published an updated complaints policy in April 2021, which includes provision for an external independent assessor to carry out a review of a complaint where the complainant is not satisfied with the way in which the Office has dealt with the matter. This policy covers complaints of maladministration; any challenge to the findings of an investigation has to be taken via a judicial review.
- There was also a view that OPONI investigations can take a long time, placing undue stress on the officer under investigation, impacting on PSNI efficiency if an officer is suspended pending an OPONI investigation, and impacting on officer welfare and confidence in OPONI among police officers. A speedier process would also be in the interests of the complainant. It was suggested that legislative timeframes may help to speed up the process or filtering cases to see if the matter can be resolved quickly without investigation. The Ombudsman's own recommendations (11, 12, 13 and 34), on informal resolution, mediation, removing the requirement to investigation and dealing with vexatious complaints are relevant here.
- The value of mediation in some circumstances was noted and it was suggested there could be merit in adopting the informal resolution approach for routine complaints or complaints involving more junior or inexperienced officers, rather than subjecting them to a full investigation.

- There was support for a greater emphasis on learning points arising from OPONI investigations.
- It was noted that arrangements are already in place for the investigation of complaints about police staff and some concern about the proposal to bring police staff within the remit of OPONI. OPONI has since clarified that this recommendation would relate to certain staff using policing powers, including contracted staff carrying out policing duties.

65. The Minister is considering the Ombudsman's recommendations but will not be finalising her position until the proposals have been consulted upon. The consultation is, therefore, seeking views on the individual proposals put forward by the Ombudsman. The Department will seek to take forward each of the measures for which consensus can be achieved.

66. The Department is therefore consulting on the recommendations that have the potential (perhaps after further discussion and clarification) to attract consensus to be taken forward. The Department is also seeking views on recommendations that have not attracted consensus so far and is willing to consider taking any of these forward should a sufficient consensus emerge during the consultation.

67. There have been a number of reforms to the complaints regimes in England and Wales, Scotland and the ROI that might also inform any changes to the complaints arrangements in NI. These include:

- Duty to keep the complainant and other interested persons informed about the handling of a complaint. OPONI already does this as part of its service standards but would be open to putting this into legislation to strengthen this good practice.
- Changes to the definition of 'complaint' – the Policing and Crime Act 2017 defines a complaint as any expression of dissatisfaction by any person who was affected by or witnessed the conduct, or any other person who claims to have been adversely affected by it. The Scottish definition is similar. A definition of a complaint may help to bring further clarity; however, careful consideration of the definition is

required as it must be linked to who can complain and should focus on those directly involved or affected by an incident. The broadened definition seems to have contributed to an increase in complaints in England and Wales and if a similar trend results here, this may have comparable resource implications for OPONI.

- New power for specified bodies to make ‘super-complaints’, e.g. voluntary and community sector groups, such as Women’s Aid, and oversight bodies such as the Children’s Commissioner, can make ‘super-complaints’ to the IOPC that a feature of policing is significantly harming the public interest. This may be an extension of powers already held by the Ombudsman and the potential whistleblowing power (see below). However, it is important to note that may lead to an increase in cases and resource implications for OPONI.
- The Policing and Crime Act 2017 enables the IOPC to investigate whistle-blowing claims on matters not being investigated as a complaint from a current or former officer or someone raising a concern about a serving officer. As above, this may lead to an increase in cases and resource implications for OPONI.
- The Policing and Crime Act 2017 introduces disciplinary arrangements for former members of police forces (subject to conditions, including a specified time period and gravity of the complaint). This recommendation may prove politically contentious in Northern Ireland and would need to be considered in terms of its application to troubles-related investigations (noting that the NIO has set out proposals for new arrangements for legacy investigations) and to officers under investigation for other matters who retire before an OPONI investigation is complete.

68. An issue has also arisen from the review of complaints being undertaken in Scotland by Dame Eilís Angiolini. The Angiolini Review recommended that legislation be amended to provide the Police Investigations & Review Commissioner (PIRC) the power, in clearly defined circumstances, to investigate the actions of officers from outside of Scotland when they are undertaking a policing function in Scotland and explore with the other administrations how reciprocal powers could be put in place for



the IOPC and the PONI in respect of the actions of Police Scotland officers when they are operating in England, Wales or Northern Ireland.

69. The Department of Justice has welcomed this development, as it would address a legislative gap in relation to officers from NI and Scotland serving in each other's jurisdiction. We are working with Scottish counterparts to address this but it is recognised that legislative change will take some time, due to the complexity of the legislation and the need to make the necessary legislation through Westminster. In the interim, provision already exists under Section 60 of the Police (NI) Act 1998 for OPONI to agree procedures with other bodies responsible for police forces in GB for the investigation of incidents or complaints and a series of agreements were put in place as part of preparations for EU Exit and the Covid pandemic. An MOU with Police Scotland was also put in place, which largely replicates the section 60 agreements with police services across England and Wales. However, there is a need for clarity around who should discipline police officers, serving in NI, from other forces and there are complexities in cross jurisdictional terms as to how this is managed.

## **EQUALITY AND GOOD RELATIONS IMPACT ASSESSMENT**

70. Section 75 of the Northern Ireland Act 1998 requires public authorities, in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality between all the Section 75 groups. Without prejudice to these obligations, the Department is also required, in carrying out its functions relating to Northern Ireland, to have due regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

71. Initial equality screening of the stocktake and recommendations from the Ombudsman has identified no adverse impacts and a full equality impact assessment is not being carried out at this stage. The full screening document is available on the DoJ website. Views are invited on any equality or human rights implications resulting from the proposals set out in this document.

72. As work progresses to develop the detail and implement any of the proposals to be taken forward following this consultation, further equality screening will be carried out on the individual proposals.

### **Conclusion**

73. This stocktake has been a timely exercise that has demonstrated that the policing oversight arrangements are robust and generally working well. We have greatly appreciated the contributions and inputs provided to date which have helped to identify a range of areas in which improvements could be made. The purpose of this consultation is to seek views on which of those should be prioritised for action.

## Proposals for Consultation

### Part 1 Proposals for change resulting from the stocktake on policing oversight

#### Question 1

Do you agree that the Department should publish an information guide for the public that sets out the roles of the various bodies and where queries on policing should be directed?

Yes  No

#### Question 2

Do you agree that the Policing Board and the Justice Committee should develop a protocol on the roles and relationship between them?

Yes  No

#### Question 3

Do you agree that the PSNI should provide a more forward-looking list of business cases and DACs to the Board to give Board members an early opportunity to consider the proposals and express its views?

Yes  No

#### Question 4

Should there be a bi-annual discussion of strategic priorities between (please tick one):

a) the Minister and Chair and Vice-Chair of the Policing Board

or

b) the Minister, the Chair and Vice-Chair of the Policing Board, and the Chief Constable?

**Question 5**

Do you agree that the Policing Board should put in place more formal arrangements to meet those representing police officers and police staff to discuss issues relating to policing?

Yes  No

**Question 6**

Should the Department develop legislative provision to ensure the continued operation of the Board in the absence of a functioning Assembly?

Yes  No

**Question 7**

Should the arrangements for appointing senior officers (please select one):

Remain unchanged

Include a greater decision making role for the Chief Constable

**Question 8**

Should the Strategic Oversight Group remain as an informal body for now, with the potential to consider putting it on a more formal (statutory) footing at a later stage?

Yes  No

**Question 9**

Should the Policing Board be responsible for oversight of the implementation of inspection recommendations by the Chief Constable?

Yes  No

**Question 10**

Do you agree that the Department should accept the NIAO recommendation that the statutory requirement should be removed for the NIAO to audit the Board's performance plan and arrangements to secure continuous improvement?

Yes  No

**Question 11**

**Subject to further consideration, including of resource implications, do you think any of the changes made to police complaints in Great Britain should be made here?**

Definition of 'complaint' as an expression of dissatisfaction by any person who was affected by or witnessed the conduct, or any other person who claims to have been adversely affected by it.

Yes  No

**Question 12**

Introduce a duty on the Ombudsman to keep the complainant and other interested persons informed about the handling of a complaint.

Yes  No

**Question 13**

Power for specified bodies to make 'super-complaints' to the Ombudsman that a feature of policing is significantly harming the public interest?

Yes  No

**Question 14**

Power for the Ombudsman to investigate whistle-blowing claims on matters not being investigated as a complaint from a current or former officer or someone raising a concern about a serving officer.

Yes  No

**Question 15**

Do you think Northern Ireland should have a statutory Police Covenant?

Yes  No


**Question 16**

If you answered 'Yes' to Question 15, who should be covered by the Covenant? (Tick all that apply)

- a) Serving and former members of the PSNI (incorporating the RUC)
- b) Serving and formers members of the PSNI Reserve (incorporating the RUC Reserve)
- c) Serving and former members of police staff
- d) Other (Please specify)

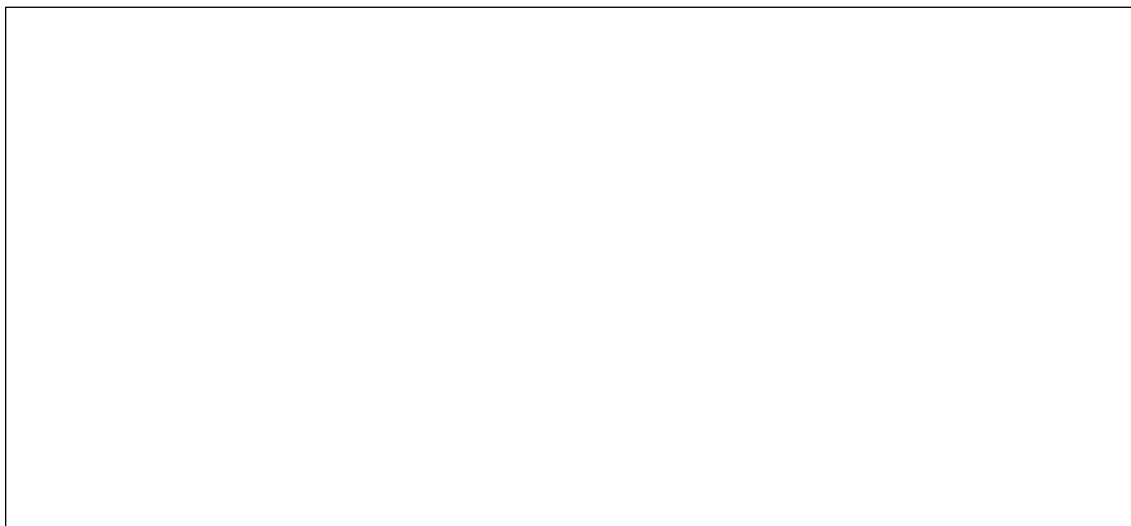
**Question 17**

Do you think there are any gaps in provision for serving and former police officers and staff?

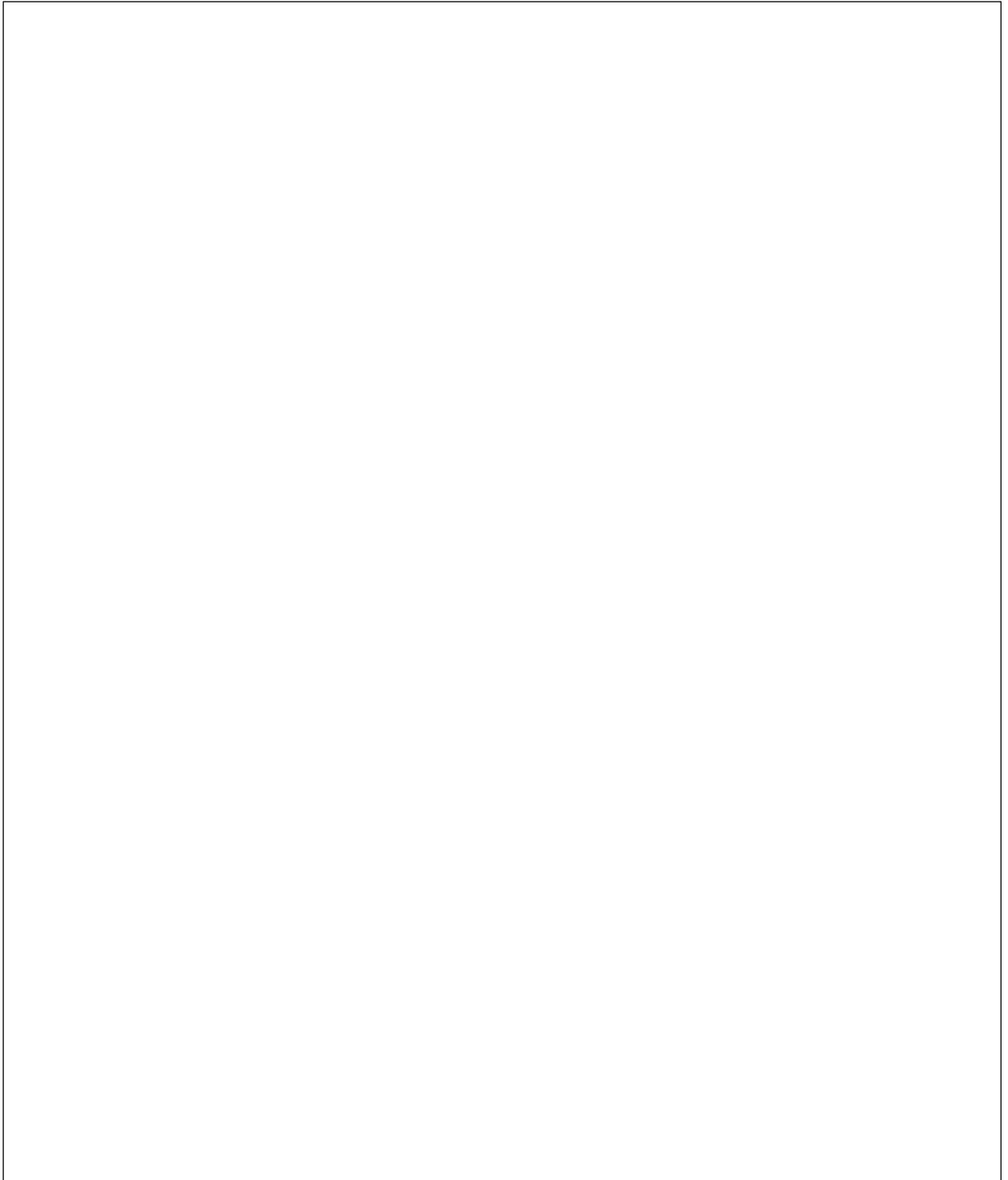


**Question 18**

If you answered 'Yes' to Question 15, what do you think should be included in a Police Covenant?



**Views are also invited on any other changes to improve policing oversight arrangements**

A large, empty rectangular box with a thin black border, intended for users to provide their views on the proposed changes to policing oversight arrangements.



## **Part 2: Review of the Police Ombudsman's powers**

**Do you agree that the following recommendations put forward by the Ombudsman should be taken forward?**

### **Recommendation 2**

The Police Ombudsman legislation be consolidated into a single Police Ombudsman Act which is foundation legislation providing for further amendment and the ability to make regulations.

**Yes**  **No**

### **Recommendation 4**

That the legislation be amended to provide for the appointment of an interim Police Ombudsman and (ii) the appointment be subject to similar disqualifications as for the appointment of the Police Ombudsman.

**Yes**  **No**

### **Recommendation 5**

That the legislation should define a member of the public as a person connected to or affected by an incident or the matter complained of which can include a police officer not acting in his or her capacity as such.

**Yes**  **No**

### **Recommendation 6**

That the Police Ombudsman legislation be amended to permit the Ombudsman to refer to the conduct of an FMO to the GMC.

**Yes**  **No**

**Recommendation 7**

That those relevant civilians or other individuals acting on behalf of the Chief Constable or providing services to him in a contractual relationship can be the subject of a complaint or referral to the Police Ombudsman and investigation by her of that person's actions/conduct.

Yes  No

**Recommendation 8**

That any post which was previously carried out by a police officer, which is now fulfilled by police support staff and which involves contact with members of the public, should be brought within the remit of the Police Ombudsman for Northern Ireland for the purposes of complaints against those personnel and the exercise of the powers and duties under Part VII of the Police (Northern Ireland) Act 1998.

Yes  No

**Recommendation 10**

That the Police Ombudsman legislation provides clarification on the purposes of an investigation, which are to ascertain whether the matter properly warrants investigation and the allegations contained in a complaint are in substance true.

Yes  No

**Recommendation 11**

That the Police Ombudsman legislation should provide a discretion for the Ombudsman to determine whether to begin, continue or discontinue an investigation in circumstances where the Police Ombudsman considers it is in the public interest to do so. These circumstances can include where it is not proportionate to investigate a complaint further, where there is no reasonably practical outcome to be achieved and where the complaint is vexatious or ill-founded.

Yes  No

**Recommendation 12**

That section 54 of the Police (NI) Act should be amended to give the Police Ombudsman discretion to decide whether a complaint which has been the subject of a failed Alternative Resolution should be further investigated, and that in such cases a new closure category the necessity of continuing or discontinuing an investigation should be determined by the Police Ombudsman.

Yes  No

**Recommendation 13**

That the Police (NI) Act 1998 be amended to enable the Police Ombudsman to conduct mediation in appropriate circumstances to resolve a complaint, and that there be no requirement to investigate first.

Yes  No

**Recommendation 14**

That the legislation is amended to provide for an obligation on any person in possession or control of information or documents which in the Police Ombudsman's opinion is relevant to an investigation to provide this information to the Ombudsman in a reasonable time.

Yes  No

**Recommendation 16**

That the High Court be given powers to deal with obstruction by any person to the Police Ombudsman investigation in connection with information gathering powers.

Yes  No

**Recommendation 18**

That the legislation be amended to include a general provision requiring the Police Ombudsman to consult, co-operate and share information with other DOJ arms' length bodies (NIPB, CJI) and other police accountability bodies (HMIC).

Yes  No

**Recommendation 19**

In order to address this complex regulatory landscape the Police Ombudsman should be enabled to consult with, liaise and co-operate with the following Offices where the Police Ombudsman forms the opinion that the matter may be the subject of an investigation or inquiry by that organisation.

- (I) Northern Ireland Public Services Ombudsman
- (II) Parliamentary and Health Service Ombudsman

Co-operation includes sharing information relating to a complaint or investigation, the conduct of an investigation and the form, content and publication of a report.

Yes  No

**Recommendation 20**

That the provisions for protecting information obtained for any of the Ombudsman's statutory functions be amended in Police Ombudsman legislation to take account of new data sharing arrangements with other police accountability bodies and ombudsmen.

Yes  No

**Recommendation 21**

That the Police Ombudsman legislation be amended to permit reports on referrals from the Director of Public Prosecutions and the Secretary of State.

Yes  No

**Recommendation 22**

That the Police Ombudsman has a discretion to publish any reports on investigations and the exercise of her functions when it is in the public interest to do so.

Yes  No

**Recommendation 23**

That if Police Ombudsman legislation is amended to provide a general power to publish reports, the Ombudsman ought to be required also to take account of the rights and interests of the complainant, police officer(s) and any other person when publishing a report.

Yes  No

**Recommendation 24**

That the legislation be amended to include a provision that requires the Police Ombudsman to give any individual who is the subject of allegations in a complaint or investigation an opportunity to comment on any allegations.

Yes  No

**Recommendation 25**

That the legislation be amended to require the Police Ombudsman to provide any officer criticised (explicitly or implicitly) in a public report, with an opportunity to comment on those criticisms, within a reasonable time. The Ombudsman will also be required to take into account their response and reflect that response in the public report.

Yes  No

**Recommendation 27**

That the legislation be amended to provide for an obligation on PSNI to respond within a statutory time limit.

Yes  No

**Recommendation 29 (part a)**

That the legislation be amended to provide a new composition for police disciplinary panels including a legally qualified chair, with lay and police representative membership.

Yes  No

**Recommendation 30**

That the legislation be amended to allow the Police Ombudsman for Northern Ireland to submit an early written report if the conditions contained in regulation 20(3) of the 2016 Regulations are met.

Yes  No

**Recommendation 32**

Regulation 23 of the 2001 Regulations be amended to allow complainants to withdraw complaints verbally, provided that it is formally recorded as such by the Ombudsman staff who receives the verbal withdrawal.

Yes  No

**Recommendation 33**

That regulation 25(1) of the RUC (Complaints etc) Regulations 2000 be amended to allow the Police Ombudsman to dispense with the requirements of the 1998 Act where a complaint is determined to be ill-founded.

Yes  No

**Recommendation 34**

That definitions of vexatious and oppressive complaints be provided for in legislation.

Yes  No

### **Part 3: Review of the Police Ombudsman's powers**

The Department is not currently intending to take forward the following proposals from the Ombudsman. However, it may consider those where sufficient consensus emerges.

Do you agree that the following recommendations put forward by the Ombudsman should be taken forward?

#### **Recommendation 1**

That consideration be given to legislation providing that the Police Ombudsman be designated as an Officer of the Assembly.

Yes  No

#### **Recommendation 3**

The Police Ombudsman legislation should provide for disqualifications from holding the position of Police Ombudsman persons who are or have been serving police officers.

Yes  No

#### **Recommendation 9**

That the Police Ombudsman may recommend any action which she considers appropriate with a view to resolving a complaint; and that the Police Ombudsman may recommend any action in addition to or instead of investigating a complaint.

Yes  No

**Recommendation 15**

That the Police Ombudsman legislation is amended to provide power to compel witnesses and suspects to attend for interview and to do so within a reasonable time. The interviewees must be required to bring all documentation and records in their possession and control including retired police officers.

Yes  No

**Recommendation 17**

That the legislation be amended to provide for a power to ‘determine’ a complaint in circumstances where no criminality or misconduct has occurred but the complainant has a legitimate grievance.

Yes  No

**Recommendation 26**

That all published reports and public statements of the Ombudsman are protected by defamation privilege.

Yes  No

**Recommendation 28**

That the Chief Constable be required to notify the Police Ombudsman of a matter, where there is no indication that a member of the police force may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings and the Chief Constable considers it is desirable in the public interest to do so.

Yes  No



**Recommendation 29 (part b)**

That the legislation be amended to provide a new composition for police disciplinary panels including a legally qualified chair, with lay and police representative membership. Where it is deemed by the chair in the police disciplinary and appeals panels, that it is in the public interest, the hearing should be held in public.

Yes  No

**Recommendation 31**

That the Police Ombudsman legislation be amended to permit details of disciplinary recommendations and the sanctions / outcomes in any such proceedings to the complainant and the general public.

Yes  No

**Recommendation 35**

That, subject to consultation with NIPSO, the Police Ombudsman be added to schedule 3 of Public Services Ombudsman (Northern Ireland) Act 2016 as a listed authority for complaints in respect of her administrative functions.

Yes  No

## **EQUALITY AND GOOD RELATIONS ASSESSMENT**

**Please outline below any equality and/or human rights issues that you think might arise from the proposals set out in the stocktake or Ombudsman's Review**

## Terms of Reference

### **Purpose**

The objective of this stocktake is to consider whether there are changes that would substantively improve the efficiency or effectiveness of policing oversight and accountability arrangements. A core principle is that any changes should be consistent with the underlying ethos of the Patten report and capable of securing political agreement.

This stocktake is not intended as a fundamental review of the roles of the existing bodies or their performance; nor is it connected to the review of arms-length bodies included in the New Decade, New Approach Agreement.

This stocktake is considering the relationships and interfaces between the bodies and focused on making improvements to the functioning of the existing structures. The Department has no position on any changes that may be required and will consider changes that may require legislation and changes that can be made without the need for legislation. The focus of the stocktake is modern day policing and it will exclude consideration of mechanisms for dealing with the legacy of the past.

The stocktake is not about diluting accountability; it will reflect on the effectiveness of the current arrangements, with a view to identifying any changes that may:

- help the oversight bodies to better perform their roles in holding the PSNI to account for its performance, including any measures that may reduce the administrative burden. For example, can reporting be streamlined in a way that provides better and timely information about the performance of the PSNI?
- reinforce or clarify the roles of the various oversight bodies (respecting the existing tripartite accountability arrangements and statutory functions).
- help to improve the working relationships between the various bodies to avoid any unnecessary overlaps and duplication, and build on the strengths or expertise each body brings to policing oversight.
- continue to support the emphasis in Patten on democratic accountability and confidence in policing and policing oversight.

The arrangements for policing oversight in Northern Ireland are bespoke and are very much tailored to our particular circumstances. However, it may be useful to look at any learning that might be adapted to the Northern Ireland context. While there may not be potential for direct read-across, therefore, the stocktake will take account of developments in Great Britain and the Republic of Ireland to identify any lessons that might inform arrangements in NI. For example, this might include work to examine accountability mechanisms for England and Wales, changes to police complaints being taken forward in Scotland in response to Dame Elish Angiolini's report, and legislative reforms being considered in the Republic of Ireland.

### **Approach**

The stocktake is being conducted by the Department of Justice, in consultation with stakeholders. The first stage involved targeted engagement with key bodies to foster collaborative working and jointly identify key issues to be considered during the stocktake. The key bodies were the NIPB, OPONI, PSNI, CJI, and the Justice Committee. Meetings were held with bodies representing serving and retired police officers, police staff, and with HMICFRS and the NIAO. Feedback from this early engagement with stakeholders was used to inform the development of the policy options set out in this paper.

The second stage is a formal public consultation and stakeholder engagement to obtain views on proposals for reform. This will run for 10 weeks.

At the conclusion of the consultation, a summary report will be prepared to include proposals for change based on the options and recommendations that achieve political consensus. It is recognised that some reforms may require legislation and this will be subject to the normal policy development process and legislative scrutiny through the Assembly. Due to time constraints in the current mandate, it is likely to be the next Assembly mandate before legislation is brought forward.

**DRAFT INFORMATION GUIDE****Who has responsibility for policing in Northern Ireland?****Background**

In Northern Ireland, there are bodies that watch over the police and check how they do their job. They were set up under the Belfast Agreement. The Agreement meant changes were made to the police. There were also changes to other parts of the justice system, including a new body to carry out inspections called Criminal Justice Inspection NI. Another report, the Hayes Report, led to a Police Ombudsman being set up. Its job is to look into complaints about how the police do their job. After agreements made by politicians, the NI Assembly and Executive got powers to make laws on policing and justice in Northern Ireland.

The bodies who watch over the police are the NI Policing Board, the Office of the Police Ombudsman (OPONI), Criminal Justice Inspection NI (CJI), HM Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS) and the NI Audit Office (NIAO). The Justice Committee watches over the work of the Minister of Justice.

**Police Service of Northern Ireland**

The Chief Constable is in charge of the PSNI and decides what it does. The Chief Constable has to be allowed to decide what the police should do. Politicians cannot interfere in his decisions or give him orders. The Chief Constable has to explain what he does to the NI Policing Board and the Policing Board can ask him questions about things the police have done.

The Chief Constable can hire police officers. He also has to look after all the people, buildings, equipment and money that the police have. The Chief Constable helps the NI Policing Board to do a policing plan for Northern Ireland.

**Northern Ireland Policing Board (NIPB)**

The NI Policing Board was set up to look after the police service. It is independent of the Minister for Justice. This means the Minister for Justice cannot tell the Board what

to do. The Board hires (and can fire) the Chief Constable and other top police officers. It makes a plan for policing and decides on some payments police officers get if they get hurt. The Board also tries to get everyone to support the police and help them do their job.

The Board's main job is asking the Chief Constable questions to see how well the police are doing. The Chief Constable comes to talk to the Board and answer their questions. This happens once a month and anyone can watch.

**Policing and Community Safety Partnerships (PCSPs)** have been set up in each district council area to help reduce crime and promote community safety. PCSPs work with the community to address issues of local concern. They also monitor the performance of the police in each local area and work to help the public work with the police

### **Police Ombudsman for Northern Ireland**

The Police Ombudsman looks at complaints people have about the police. The Ombudsman is independent and the Minister for Justice has no role in their investigations or reports.

You can make a complaint to the Police Ombudsman if you are unhappy about the way the police treat you. You can make a complaint about police officers or some other people who work in police stations. The Police Ombudsman can look into your complaint and suggest what should be done about it. They also look at very serious complaints that people make and at things the Minister asks them to. They can also decide themselves to look at things. The Ombudsman publishes reports and other suggestions to make policing better.

### **Criminal Justice Inspection Northern Ireland (CJI)**

CJI was established in law as an independent organisation to improve the performance of the criminal justice system. It can inspect the PSNI and Police Ombudsman. The Chief Inspector of Criminal Justice in Northern Ireland is appointed by the Minister of Justice and is independent. The Minister of Justice approves annual

inspection programmes and individual published reports. The Minister may request the Chief Inspector to carry out a review in addition to the inspection programme.

CJI works with Her Majesty's Inspectorate of Constabulary, Fire & Rescue Services (HMICFRS) on some inspections. HMICFRS inspects police services in England and Wales and Northern Ireland. It carries out inspections known as PEEL Reviews, which cover Police Effectiveness, Efficiency and Legitimacy.

### **Minister of Justice**

The Minister of Justice makes the laws for policing and sets long term things that police should try to achieve. The Minister cannot tell the policing bodies what to do. The policing bodies are all independent of the Minister of Justice but the Minister of Justice, NI Policing Board and PSNI all work together to make sure we the police can do a good job in keeping everyone safe.

The Minister decides how much money the policing bodies get. The Department of Justice helps the Minister to make sure the policing bodies spend the money well.

### **Assembly Justice Committee**

Some members of the Assembly belong to the Justice Committee. The Justice Committee helps the Minister in making laws and deciding how to spend money. The Committee also checks what the Minister is doing and publishes reports.

The Justice Committee also asks people from the police, Police Ombudsman and Chief Inspector to talk to Members about their work.

### **Where to direct queries on policing and policing oversight**

The Chief Constable can answer questions about what the police are doing and how they spend money.

The Policing Board can look at the performance of the police and ask the Chief Constable questions.

Policing & Community Safety Partnerships can look at issues that are affecting the local area and ask the local police questions.

The Police Ombudsman can deal with any complaints about the way the police do their job. You can find out how to make a complaint here: <https://www.nidirect.gov.uk/articles/complaints-about-police> ]

The Minister of Justice can answer questions about the laws and money given to the PSNI and other bodies. However, she cannot answer about things that are the responsibility of the different bodies.



The diagram below summarises who can answer questions about policing in Northern Ireland

