

## Models of Police Oversight and Complaints Handling Processes

### Report for the Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence

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#### Table of Contents

	Page
About the Authors	1
Summary	2
1. Types of conduct and complaints handling models	2
2. Summary of each of the models, with reference to examples covering Northern Ireland and other jurisdictions	4
3. The current model in Queensland	5
4. Critiques of the models	9
4.1 Internal affairs	9
4.2 Civilian review	10
4.3 Civilian control	14
5. Development of the police ombudsman model in Northern Ireland	16
6. How the PONI initially functioned in the establishment phase and how it developed	18
7. Overview of features, functions, structure and objectives of the PONI	21
7.1. Type and length of cases	22
7.2. Sharing of information	24
8. How the PONI measures community, complainant and police confidence	25
9. Organisational features that have led to PONI successes	27
10. Why is the PONI regarded as the 'gold standard' in police oversight?	31
11. What conditions would be necessary and/or what barriers might exist for the introduction of a civilian control model in Queensland?	33
12. What matters/features (whether organisational or otherwise) would be essential to the success of this new model in Queensland?	35
References	38

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## **Summary**

The following report reviews five decades of experience internationally with different types of systems for investigating complaints against police and regulating police conduct. Sources include commissions of inquiry and associated reviews of police integrity issues, public opinion surveys, complainant surveys, surveys of police, expert opinions, legislation and legal cases, agency performance data, and studies regarding reduced complaints against police and improvements in police conduct. Testimony is also provided by Michael Maguire, based on eleven years experience as the Police Ombudsman and as Chief Inspector of Criminal Justice in Northern Ireland. The weight of evidence from these diverse sources strongly supports the establishment of an agency with responsibility for the independent investigation and adjudication of allegations and disclosures about police as the best means of satisfying procedural justice criteria, meeting stakeholder expectations, and optimising public confidence. In the Queensland context this would require the redesign of current institutional arrangements to ensure a much more robust police oversight agency is in operation with access and outreach across the state.

## **1. Types of conduct and complaints handling models**

Police complaints systems have been analysed using various typologies. For example, Kerstetter (1985) utilised the categories of civilian 'review', 'input' and 'monitor'. More recently, a review in the United States described three main types of agencies, while also emphasising a growing convergence of functions (De Angelis, Rosenthal & Buchner, 2016). These were (1) 'Investigation-focused' bodies, which conduct direct investigations of complaints, (2) 'review-focused' agencies, which assess the quality of police internal

investigations of complaints, and (3) 'auditor/monitor-focused' agencies, which analyse data on police actions and recommend improvements to procedures (p. 7). Prenzler and Ronken (2001) proposed a three-part model, involving (1) 'internal affairs', (2) 'civilian review' and (3) 'civilian control'. The typology attempts to map degrees of control over complaints management processes from predominantly in-house systems through to substantively external and independent systems. The framework, outlined below, has been adopted by a number of scholars (e.g., Savage, 2013; Puddister & McNabb, 2021).

For much of the history of policing, complaints and discipline were managed internally. This included the management of disclosures of wrongdoing from within the organisation – or 'whistleblowing'. Cases were assigned to supervising officers of different ranks, depending on the seriousness of the matter. Corruption scandals and a high volume of complaints prompted larger police departments to create dedicated units to investigate and adjudicate allegations, and, to a lesser extent, initiate prevention programs. 'Internal affairs' was a common American term. 'Internal investigation divisions' or 'units' have also been commonplace terms. 'Professional standards' is now a more common term. The creation of specialist inhouse integrity units was intended to ensure department-wide consistency and independence from local affiliations (Prenzler & Ronken, 2001).

In-house integrity systems usually always operated with some degree of external scrutiny and input. Elected officials, such as police ministers, provided one line of accountability through parliament to the electorate. Civil litigation provided another mechanism of accountability. A degree of scrutiny was also provided by criminal courts, in interrogating police evidence and excluding material illegally obtained (Sarre, 1989). Inquests and judicial inquiries also provided for ad hoc investigations of adverse incidents involving police and more serious cases of suspected wrongdoing.

Internationally, primarily from the 1970s, governments set up review-style agencies in response to the failures of the internal affairs model involving recurring scandals, cover ups and inaction against misconduct. 'Civilian review' agencies take highly diverse forms, but their main purpose is to provide an independent check on police investigations and discipline without excessive interference in police management (Goldsmith, 1988). A review agency (Prenzler, 2016d, p. 5):

usually consists of a government-appointed citizen board – reflecting community interests and professional skills – with an executive arm, including a director – usually with legal qualifications – and civilian staff. Typically, police will carry out investigations and apportion discipline, with the external agency taking a monitoring role.

Monitoring typically involves paper-based audits of complaint investigation files, with reporting to governments on the quality of police processes, including recommendations for improvements. In some cases, review agencies can take on appeals by complainants, with capacity to criticise police work and recommend alternative findings and sanctions. This is a minimalist model, with scope for some enlargement of authority – such as the capacity to conduct independent investigations of serious matters and appeal disciplinary decisions to a mayor, tribunal or board (Finn, 2001). Review agencies have often been named as 'police ombudsmen', although the term is not exclusive to this model and numerous other titles have been adopted.

'Civilian control' describes a type of 'civilian oversight agency' which processes all complaints against police, with a range of powers and personnel that allow it to operate

without undue influence from police or any other body. In response to the question, ‘Can police investigate police?’, proponents of the model state, ‘No, not in a reliable or sustainable manner that satisfies principles of procedural justice and ensures stakeholder confidence’. A model agency is meant to be a permanent truth-seeking agency, with extensive inquisitorial powers to uncover facts and make appropriate judgements about wrongdoing and culpability (Prenzler & Ronken, 2001). Additionally, however, the model includes an adjudicative function, given the ease with which the outcome from an independent investigation is subverted by a police disciplinary process. Independent adjudication can take a variety of forms, including a casting vote on a police disciplinary board for minor matters, the ability to prosecute intermediate matters in a disciplinary tribunal, and the authority to refer more serious criminal matters to a public prosecutor.

## **2. Summary of each of the models, with reference to examples covering Northern Ireland and other jurisdictions**

The internal affairs model remains the dominant institutional form in autocratic countries and many other locations around the world. The system facilitates the police role in using violence and intimidation to enforce one party rule and exploit citizens. The absence of democratically-based independent institutional scrutiny and authority over police also allows officers to engage in extensive self-serving corruption. Since the 1970s, numerous democracies have adopted forms of civilian review, although they are far from ubiquitous. In 2016, a study for the National Association of Civilian Oversight of Law Enforcement in the United States identified just 144 agencies at a local government level (De Angeles et al., 2016, p. 7). The Canadian Association for Civilian Oversight of Law Enforcement (2022) lists 24 members at its website.

Review agencies adopt different powers and processes. Available evidence indicates that the majority are limited to audits of police files; extending to communicating findings and recommendations to police (including recommendations to change procedures), and reporting key findings publicly (De Angelis et al., 2016). These agencies rely on a conscientious response from police to their recommendations, with some capacity to affect change through institutional shaming and political pressure when a positive response is not encountered. Some review agencies are able to conduct independent investigations but have no authority over disciplinary decisions. It appears that this approach is the dominant form of practice in England and Wales, Scotland, the Republic of Ireland and New Zealand. Australia and New Zealand have taken an atypical path in amalgamating police ombudsmen within public-sector wide commissions, with the exception of New South Wales and the Commonwealth – where specialist police oversight agencies are still in operation within a civilian review framework. The establishment of the Police Integrity Commission (now Law Enforcement Conduct Commission) was a result of the Wood (1997) Commission’s findings regarding the extreme and pervasive nature of corruption in the New South Wales Police and the failure of the public sector wide Independent Commission Against Corruption to address the problem (Prenzler, 2014). There have been repeated attempts to restructure the Australian Law Enforcement Integrity Commission as a public sector wide commission, with this flagged to occur in 2022 (Knott, 2022).

Scholars have identified one agency – the Police Ombudsman for Northern Ireland – which meets a range of criteria for the civilian control model (Savage, 2013). As outlined in more detail below, the Ombudsman investigates all public complaints and allegations against

law enforcement officials in Northern Ireland, deploying a range of investigative powers, with direct input into the outcomes of cases. The Ombudsman is also institutionally independent of the police, free from external influence, with protocols in place to ensure independence by former police employees. Until recently, the Hong Kong Independent Commission Against Corruption displayed many of the characteristics of the civilian control model, but within a narrow definition of corruption focused on bribery (Graycar & Prenzler, 2013). Similarly, it appears that the Singapore Corrupt Practices Investigation Bureau operates independently of the public sector but there is very little information regarding the nature of its relationship with police and processing of police complaints (e.g., Quah, 2020; see also Ho et al., 2021, on aspects of the civilian control model in Japan, Taiwan and Hong Kong; and Smith, 2010, on examples in Europe).

### **3. The current model in Queensland**

The present system for processing complaints against police in Queensland appears to be consistent with a very weak version of the review style model described above. In other words, the large majority of complaints and disclosures are dealt with by police themselves, with some capacity for the integrity commission to audit cases and make recommendations, and also take over cases in some instances; but with very little external control in practice, including in the area of discipline.

The genesis of the present system goes back more than 30 years to the 1987-89 'Fitzgerald Inquiry' into police corruption. The Inquiry found extensive legal process corruption and graft associated with vice operations facilitated by an internal affairs model of complaints processing and integrity management. Fitzgerald (1989) described the police Internal Investigations Section as (p. 289):

woefully ineffective, hampered by a lack of staff and resources and crude techniques. It has lacked commitment and will and demonstrated no initiative to detect serious crime... The Section has provided warm comfort to corrupt police. It has been a friendly, sympathetic, protective and inept overseer. It must be abolished.

A degree of very limited, highly tokenistic, oversight was provided at the time by the Police Complaints Tribunal, described by Fitzgerald as a fraud on the public (pp. 290 & 293):

The Tribunal is an illustration of an administrative body with the superficial trappings of quasi-judicial impartiality and independence, set up as a façade for Government power ... a generally unsuspecting community is deceived ... (The Tribunal) has no power of determination and it can only make recommendations to the Minister which, if acted upon, almost always involve reference of the matters back to the Police Force ... The Tribunal is top heavy, its structure, functions and powers are misconceived, it is cumbersome and expensive ... its role overlaps with tasks already performed elsewhere.

The Fitzgerald Report prescribed an alternative system of complaints handling close to the civilian control model, with a particularly strong focus on protecting internal whistleblowers. The new Criminal Justice Commission, established in 1989, was meant to serve as a permanent royal commission, with an Official Misconduct Division which would 'receive complaints of misconduct or suspected misconduct ... and any other complaints

against police or other public officials' (Fitzgerald, 1989, p. 374). Matters involving 'official misconduct' – 'a broad term describing the misuse of authority and abuse of office by public officials' – were intended to be dealt with directly by the Division (p. 365). Actionable cases were meant to be prosecuted in an inquisitorial 'Misconduct Tribunal', located within the Commission but independent of it, headed by a Judge, with authority to set administrative penalties 'including dismissal, reduction in rank, fines and forfeiture of benefits' (p. 315). Criminal matters would be referred to the Public Prosecutor. Complaints considered 'trivial or purely disciplinary' would be referred to the police, but with capacity for the Commission (and subject officers) to appeal outcomes to the Tribunal (p. 315).

The subsequent history of the various integrity commissions in Queensland has entailed a major departure from this vision. Much of what occurred in the early years is unclear, although one report stated that, 'from its inception, the Criminal Justice Commission ... vigorously investigated all complaints of police misconduct or official misconduct that were deemed to warrant investigation' (Crime and Misconduct Commission, 2004, p. 4). A major assessment of the first five years of the reform program, by the Criminal Justice Commission (1997), indicated a general improvement in police integrity. There had been large increases in complaints but these were attributed to greater public confidence in the new system, and there were declines in allegations of duty failure, fabrication of evidence and serious assault. The proportion of investigated complaints that were substantiated rose from around 14% pre-Fitzgerald to an average of 27% per year in the four years after the full establishment of the new system (pp. 60-62). Survey data also showed a strong improvement in public confidence in police integrity, although the report lacked data on complainant and police officer experiences of the system.

The review also identified a number of operational problems. The Commission's lack of phone tapping powers – since corrected – was a major handicap, as was the absence of adequate adjudicative powers – a situation that was never rectified. The 1997 report on reform identified the police weakening of Commission disciplinary recommendations as a significant problem. Too many matters were not accepted as substantiated or were downgraded, with tariffs such as reprimands or counseling. The problem was compounded, however, by a misdirection of the Commission's efforts towards criminal prosecutions – despite Fitzgerald's recommendation that disciplinary and administrative action occur independently of criminal prosecutions (1989, p. 386). The review of reform reported a significant divergence in outcomes according to the mode of adjudicative procedure. A 'guilty' or 'resigned' outcome occurred in 35% of cases where criminal charges were recommended. This compared to 50% for 'official misconduct', 74% for 'misconduct' and 78% for 'breach of discipline' (Criminal Justice Commission, 1997, p. 67). Overall, very little use was made of tribunals as envisaged by Fitzgerald – typically only about five matters were finalised in this forum per year. This was partly because tribunals reportedly involved unacceptable delays and took an 'excessively legalistic' approach, resulting in an unexpected number of dismissals (Criminal Justice Commission, 1996, s 3.15). The overall result was that the Commission found the three adjudicative options unsatisfactory. With no influence over discipline, the Commission often found itself impotently expressing a 'not happy' response over final decisions and sanctions administered by the police or courts (e.g., Viellaris, 2009, p. 1).

One of the most concerning aspects of the Criminal Justice Commission's operations was its failure to engage in genuinely independent investigations. Fitzgerald referred to a mix of seconded police and specialist civilian staff in the new commission (1989, p. 313). However, the Commission remained heavily dependent on approximately 100 seconded police to

conduct its investigations, with limited supervision by lawyers. This situation was exacerbated by a trend towards referring complaints to the Police Service for processing. The reasons for this are unclear, although the volume of complaints and slow turnaround times might have been a factor. By 1994, it was reported that 64% of public complaints were investigated by the police, with 18% investigated by the Commission (most likely by seconded police) and 7% investigated jointly (Criminal Justice Commission, 1994, p. 53). In effect, the old system of police investigating police predominated, with the presumption – supported by limited evidence – that civilian review would solve the problem of apparent or real bias.

In 1996 the 'Bingham Review' of the Police Service received submissions from the Queensland Police Service and the Police Union arguing that the police should take back more jurisdiction in misconduct matters. At the time, the Criminal Justice Commission stated that 'the QPS has not yet demonstrated the ability to effectively and impartially investigate complaints of misconduct against its own members' (1996, s. 3.21). Numerous complaints were also directed to an informal resolution process controlled by police, introduced as an initiative of the Commission (1994). The option doubled the low rate of complainant satisfaction (see below), although the process was often tokenistic and many complainants clearly preferred an independently managed mediation option (Riley, Prenzler & McKillop, 2020).

As the 1990s progressed, and more information emerged about the operations of the Commission, the revelations evinced a profound disenchantment amongst journalists, scholars and civil libertarians (Prenzler, 2009a). For example, journalist Phil Dickie – whose investigations led to the Fitzgerald Inquiry – described the Criminal Justice Commission as 'a useful repository for burying complaints' (in Prenzler, 2009a, p. 588). In a rare report on complainant satisfaction in 1994, only 27.8% of survey respondents were satisfied with the formal investigation of their complaint, with 18.8% 'fairly dissatisfied' and 53.5% 'very dissatisfied' (total dissatisfied = 72.3%) (Criminal Justice Commission, 1994, p. 60). In terms of process, 60% were dissatisfied (p. 61). By the end of the decade, the situation had deteriorated to the extent that Prenzler's (2009a) assessment of reform was forced to the conclusion that very little had changed since Fitzgerald's comprehensive condemnation of the Police Complaints Tribunal as highly detached and tokenistic (above). For example, the Crime and Misconduct Commission, which replaced the Criminal Justice Commission in 2002, (pp. 582-583):

generally complies with the principle of devolution set out in the Act in Section 34C. It investigates fewer than 2 per cent of the approximately 3,500 complaints it receives each year — despite a budget of \$37 million and a staff of 350. The remaining complaints are dealt with in house by government departments and local government. The commission also lacks public accessibility. It is bunkered down in the Brisbane CBD, with no offices in regional centres in an enormous decentralised state.

An explicit 'devolution' policy, embodied in the *Crime and Misconduct Act 2001*, was developed by a combined Criminal Justice Commission – Police Ethical Standards Department working party. Among other things, the group sought to reduce delays in complaints processing and adopt a less punitive, more behaviourally oriented, approach to complaints management through 'managerial resolution' – involving a modified version of informal resolution (Crime and Misconduct Commission, 2004). However, there have been no published evaluations of this approach to complaints management (Riley, et al., 2020). The

devolution policy involved a further enlargement of the police role in processing complaints, with the commission's supervision and auditing functions, and capacity to conduct independent investigations, ostensibly creating an effective balance between 'encouraging police managers to take responsibility for promoting integrity in their workplace and ensuring an appropriate level of external investigation and independent review' (Crime and Misconduct Commission, 2004, p. 13).

The devolution policy has persisted, with the current *Crime and Corruption Act 2001* requiring the police commissioner hold 'primary responsibility for dealing with complaints involving police misconduct' (s 41(1)), and with direct authority for disciplinary matters under the *Police Service Administration Act 1990*. The Crime and Misconduct Commission has discretion to review the police process and take over investigations as it sees fit. It can also refer matters for adjudication to the Queensland Civil and Administrative Appeals Tribunal or the Public Prosecutor. The Commission's oversight covers 'corrupt conduct' in the public sector, and 'corrupt conduct' and lower level 'misconduct' in the police (*Crime and Corruption Act 2001*). It also has a large role in combatting serious and organised crime. In 2020-21, according to the Commission's *Annual Report*, it 'assessed 3,681 complaints of corruption. Of these complaints, we commenced 26 investigations [0.7%] and 2,852 were forwarded to an appropriate agency for investigation' (Crime and Corruption Commission, 2021, p. 38). Allegations against police, the independent investigation rate, and case disposition numbers were not reported, nor were stakeholder experience data, and there was no evidence to suggest a substantial role for the commission in regard to complaints against police. The role of the Crime and Corruption Commission (CCC) in police integrity is now almost completely opaque. As far as can be ascertained, the discretionary powers it retains to independently investigate and review matters means that it remains marginally within the 'civilian review' category of oversight – although the system is very close to the 'internal affairs' model, with police having near-complete control.

The various versions of the state's integrity commissions have been granted many of the investigative powers and resources consistent with a best-practice external model of police integrity management (Prenzler, 2009a). They have had royal commission powers to compel answers to questions, seize evidence, arrest suspects, apply for search warrants and conduct covert operations, and they have had own motion powers to pursue any matters regardless of complaints. There has been a fairly steady stream of convictions, dismissals and resignations of police emanating from the commissions' work that have provided some reassurance of vigilance and determination in combatting misconduct (Prenzler, 2009a). Nonetheless, there has also been a recurring problem with misconduct scandals; findings of inadequate investigations, discipline and prevention; stakeholder disaffection; and repeated calls for a decisive shift away from the dominant system of police investigating police (e.g., Crime and Corruption Commission, 2015, 2017; Crime and Misconduct Commission, 2011; Crockford, 2021; *Flori v Winter* [2019]; Gregoire, 2019; Independent Panel, 2011; Prenzler, 2009a; Queensland Council of Civil Liberties, 2010; *Wotton v State of Queensland* [2016]).

Two more recent integrity-related reviews in Queensland should be mentioned here. A review of public sector 'culture and accountability' issues stressed the need for greater 'independence, transparency, integrity, accountability and impartiality' across government (Coaldrake, 2022, p. 4). The review recommended creation of a centralised complaints 'clearing house', to ensure better tracking of complaints, and a stronger focus by the Crime and Corruption Commission on 'serious corruption' (p. 3). At the same time, the review singularly failed to address the problem of inadequate responses to complaints overall,

including complaints deemed to be intermediate or minor, and failed to consider the utility of a civilian control model of integrity management.

Secondly, the Commission of Inquiry Relating to the Crime and Corruption Commission found that the CCC was overly reliant on seconded police, whose presence created the risk of a conflict of loyalties and potential for 'institutional capture' (Fitzgerald & Wilson, 2022, p. 6). The Inquiry stopped well short of advocating a civilian control model but recommended adoption of 'a predominantly civilianised model in (the CCC's) anti-corruption work', including through a dedicated training program for non-police investigators (p. 142). The report also recommended use of a wider set of case disposition options beyond criminal prosecutions, and a clearer focus on corruption prevention. The primary function of the Inquiry was to investigate contextual aspects of a case involving the failed prosecution of local government councillors. In that regard, it operated under narrow terms of reference. However, the report noted that the Inquiry had identified a wider set of issues that needed to be addressed, including the compatibility of the CCC's crime and corruption functions, and the adequacy of the devolution policy (see above).

## **4. Critiques of the models**

### **4.1. Internal affairs**

Reliance on the internal affairs model has been widely condemned by commissions of inquiry, non-government integrity organisations, scholars and other stakeholders as involving an inherent conflict of interest with a record of abysmal failure. The internal affairs system was not without some achievements in exposing and removing corrupt officers at times, but in the main it served to protect corruption through cover ups; suppression of evidence; and intimidation of complainants, witnesses and whistleblowers. Much of this has been characterised in the literature in terms of 'the blue curtain of silence' or 'police culture', implying a unique characteristic of policing. However, similar inquiries and research into integrity issues in other organisations have identified the same processes of cover ups and solidarity where self-regulation is the primary means of integrity management (e.g., Mulinari, et al., 2021; Rintoul, Deblaquiere & Thomas, 2017; Royal Commission into Aged Care, Quality and Safety, 2021, pp. 64-5, 68, 72-3, 74, 76-78 & 79; Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, pp. 122-123; Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 2019, pp. 1, 3, 4, 474 & 480).

A common finding of inquiries is that internal affairs systems have an adverse effect on police integrity. For example, Prenzler (2016d) examined the findings of 27 judicial inquiries and reviews of police misconduct issues from Australia, England and Wales, Northern Ireland and the United States. The inquiries were unanimous in concluding that internal affairs units failed to bring individual officers to justice, failed to stop corruption, ignored patterns of misconduct, deterred complainants and whistleblowers, and failed to develop adequate prevention programs. Typical statements included the following:

At the present time a citizen wishing to make a complaint about a policeman knows that his complaint will ultimately be investigated by other policemen. This discourages complaints, because many New Yorkers just don't trust policemen to investigate each other ...

This distrust is not confined to members of the public. Many policemen came to us with valuable information which they consented to give us only upon our assurance that we would not disclose their identity to the Department or to any District Attorney.

Any proposal for dealing with corruption must therefore provide a place where policemen as well as the public can come with confidence and without fear of retaliation. Any office designed to achieve this must be staffed by persons wholly unconnected with the Police Department. (Knapp, 1972, p. 14)

To ask the police to investigate complaints against their own places them in a 'hopeless conflict of interest position'. Police investigators, whether consciously or otherwise, will tend to be sceptical of complainants and will be 'softer' on the police concerned. (Australian Law Reform Commission, 1995, pp. 149-150)

Studies of stakeholder perceptions and experiences with the internal affairs model have produced similar findings. For example, Porter and Prenzler (2016) reviewed 25 studies of complainant satisfaction in 'police dominated systems' (p. 77). In all but one case, the large majority of complainants – averaging 71 per cent – were dissatisfied. While lack of communication and timeliness were issues, perceived bias was a common problem, with a general preference expressed for independent processes. Surveys of complainants also indicate that complainants are genuine in their sense of victimisation by police but most are seeking a non-punitive response – wanting the behaviour they experienced to be stopped and/or to receive an apology (Porter & Prenzler, 2016). Formal complaints also represent a fraction of unsatisfactory experiences with police.

Prenzler's (2016c) review of seven surveys of officers who experienced police dominated systems found three surveys showed high satisfaction rates – between 70% and 76% – while four showed low satisfaction rates between 30% and 40%. Available evidence regarding reasons for police dissatisfaction with internal affairs ranged from alleged bias in favour of citizens to double standards in discipline by police managers. Four police opinion surveys found that support for internal control of complaints varied between zero per cent and an unspecified 'majority' (p. 100). However, surveys have also indicated that many police recognise the problem of a code of silence and inevitable perceptions of bias elicited by internal systems.

#### **4.2. Civilian review**

Civilian review has operated as a partial, and frequently inadequate, remedy to the inherent problems in the internal affairs model. Generally speaking, civilian review represents a political compromise between supporters and opponents of fully independent systems. In many cases it represents a clear capitulation to the power of the police lobby. Available performance indicators – such as public confidence, complainant satisfaction, complaint substantiation rates, and police conduct indicators – suggest some achievements at times (Prenzler, 2009b, chapter 10). Of note here is the fact that De Angelis et al. (2016) found the following from a survey of 97 oversight bodies in the United States: 'auditor/monitor agencies were much more likely to report that police or sheriff's agencies implemented their recommendations frequently or very frequently (72 percent) as compared to investigative (42 percent) and review agencies (34 percent)' (p. 11). A capacity to hold open inquisitorial

hearings and refer matters to a public prosecutor or administrative tribunal significantly enhances the democratic accountability process, as does the ability to publish reports. Nonetheless, most review systems allow too much scope for police to control and subvert the process.

One major problem with civilian review is that it frequently fails to break recurring patterns of police abuses. Agencies promote their independence in investigating complaints and exercising significant authority over police while failing to do so in practice. For example, in the United Kingdom, an inquiry into the Independent Police Complaints Commission (IPCC) by the House of Commons Home Affairs Committee (2013) reported that (p. 4):

Compared with the might of the 43 police forces in England and Wales, the IPCC is woefully under-equipped and hamstrung in achieving its original objectives. It has neither the powers nor the resources that it needs to get to the truth when the integrity of the police is in doubt... police forces are too often left to investigate themselves; and the voice of the IPCC does not have binding authority.

The problem of review systems contributing to cycles of scandal and inquiry was summed up as follows in a study of the treatment of complaints against the police in England and Wales (Smith, 2009, p. 127):

A consequence of unequal representation of stakeholders' interests is that, regardless of the intentions of policy makers and practitioners, the impact of reform has been limited in practice which, in turn, ensures that public demand for meaningful change continues undiminished, and the inevitability of further controversy leads to another reform cycle.

Part of the evidence here derives from 'signal event' analyses, in which police misconduct is associated with disclosures made to oversight agencies, referred on to police departments, ignored, and allowed to escalate into major scandals (e.g., Prenzler, 2009, p. 588 ff.). Signal events, following from the failure of oversight agencies to act quickly and decisively, also often involve years of protracted litigation by frustrated complainants, with taxpayers eventually left responsible for large payouts to victims of police abuses (e.g., 60 Minutes, 2019; 7.30, 2018; Drew & Prenzler, 2015, chapter 10; *Wotton v State of Queensland*, 2016).

Problems of this nature have repeatedly been found by diverse assessments of civilian review systems (Prenzler, 2016d). This pattern of critiques has continued in recent years in Australia (e.g., Australian Law Reform Commission, 2018; Joint Standing Committee on the Corruption and Crime Commission, 2020). The failure of review systems to provide an impartial and adequate complaints process has a particularly profound resonance for minority groups, such as Indigenous peoples – who often feel that racial discrimination is perpetuated through weak review processes dependent on police investigating police (e.g., IBAC, 2022; Johnston, 1991, s 29.5.23; Victorian Aboriginal Legal Service, 2022).

Problems with the civilian review model are a staple of Queensland political debate and media reportage. For example, in 2009 a former supreme court judge and leading corruption investigator called for an end to 'cops investigating cops' (in Koch and McKenna 2009, p. 1). In 2010, the Queensland Council for Civil Liberties called for a judicial inquiry into the management of complaints against police, claiming (2010, p. 1):

We are back to the bad old pre Fitzgerald days where police investigate police and run dead on too many complaints against police... The CMC (Crime and Misconduct Commission) is enamoured of its crime fighting/super police force role and has seriously neglected over the last ten years its police oversight role.

A government-initiated review of these issues in Queensland, published in 2011, was limited in its capacity to recommend a major overhaul of the integrity commission but clearly indicated the need for much greater independence in both the investigation and adjudication of complaints against police in order to ensure public confidence (Independent Panel, 2011, p. 31). More recently, the 2016 Federal Court decision in *Wotton v State of Queensland* (5 2016 FCA 1457) found that, among other things, the Queensland Police Service investigation into the death of an Indigenous man in police custody on Palm Island had failed to demonstrate sufficient independence and impartiality, thereby violating section 9(1) of the *Racial Discrimination Act 1975* (Cth) concerning equal treatment of persons. In 2021, responding to the view that 'our communities have no confidence in the current process of police investigating public complaints against police internally', the Queensland Aboriginal and Torres Strait Islander Legal Service (2021) asserted that 'Queensland needs an independent body to investigate complaints against police officers to ensure greater transparency and community confidence in law enforcement' (p. 1).

Another major problem with civilian review is that it holds out a false promise to victims of police misconduct. Agencies promote their independence from police but fail to directly investigate and adjudicate complaints. One of the effects is a deep sense of betrayal and additional trauma amongst complainants and whistleblowers when the oversight agency refers the complaint to the police (Landau, 1996). In that regard, Porter and Prenzler's (2016) review of nine surveys of complainants' experiences with review – or 'mixed systems' – found that in all but one study the majority of respondents were dissatisfied – although the results indicated improvements on internal affairs systems. Four surveys included a question about a preferred system, with an average of over 60% supporting an independent process. Prenzler's (2016c) review of six surveys regarding police experiences with civilian review found wide variance between 37% and 80% in overall satisfaction and 90% and 20% overall dissatisfaction. Dissatisfaction amongst officers appeared to be most closely associated with perceptions of anti-police bias by complainants and the oversight agency. Two police opinion surveys found that support for a mixed model varied between 20% and 70%. Public perceptions research is generally very supportive of existing review-style agencies – including in Queensland – although it has been argued that many respondents are not aware of the detached role of these agencies and assume they are civilian control agencies (Prenzler, 2016a, pp. 67-68).

It should be noted here that the problem of weak regulatory agencies is not unique to police. 'Under-regulation' and 'regulatory failure' are characteristic of many systems for managing conduct issues in private and public sector organisations (Baldwin, Cave & Lodge, 2011), with frequent calls for greater independence and rigour in the regulatory process. The inherent problem of the review model is summed up in the following hypothetical scenario (Prenzler, 2004, p. 106):

When a person reports a crime, it would never be expected that police would allow colleagues of the alleged offender to conduct the investigation, even under police

superintendence. Nor would it be considered appropriate for police to merely recommend an outcome, with the colleagues of the accused left free to choose the disciplinary response. Yet this is essentially what happens with complaints against police under the weak civilian oversight systems that operate in many jurisdictions. Reactive review processes frequently fail the most basic test of independence ... 'Independence should be demonstrated by the person or body concerned having control of the process' (Hayes, 1997, p. vi).

In terms of principles of justice, review systems also fail to satisfy fundamental criteria of procedural justice, provoking major critiques by human rights and civil liberties bodies (e.g., Amnesty International, 2009; Liberty, 2000; Human Rights Watch, 1998; Police Accountability Project, 2017). Inhouse investigations and limited review processes violate core procedural justice principles; formulated by Tyler (2003) in terms of 'voice, neutrality, respect and trust'. Practitioners charged with responding to citizen allegations of wrongdoing and requests for assistance should listen empathetically to the concerns and preferences of complainants (voice), demonstrate independence and impartiality (neutrality), treat persons with dignity (respect), and exercise authority with genuine concern, competency and legitimacy, ensuring confidence (trust).

The relationship between human rights and police complaints systems has been given increasing scrutiny in the European Union. A 'police complaints initiative' was established by the Council of Europe Commissioner for Human Rights in 2008 'in response to the risk of cultures of police impunity emerging in some European states' (Smith, 2010, p. 59). Although still a work in progress, the development of European human rights legislation, case law and guidelines has emphasised the criterion of institutional independence for effective investigations of alleged crimes by law enforcement officials, including homicide and torture, and the failure to protect human life (Smith, 2018; see also example Council of Europe, 2011). The Council of Europe's Commissioner for Human Rights (2009) set out five principles for effectiveness in the management of complaints, consistent with democratic accountability of police: 'independence', 'adequacy', 'promptness', openness to 'public scrutiny' and 'victim involvement' (pp. 7-8). Independence is defined as the absence of 'institutional or hierarchical connections between the investigators and the officer complained against' (p. 7). In Smith's (2018) summary of the position in the European Union: 'An independent and effective police complaints system in which the public have trust and confidence is fundamental to the protection of human rights and combating impunity' (p. 96). The establishment of an 'independent police complaints body' is described as essential to the practical realisation of these principles (p. 7). Of further note is a major United Nations (2011) review of oversight mechanisms, with a focus on optimising police compliance with human rights standards. A key conclusion, based in part on the Northern Ireland example, was that successful oversight requires 'full operational and hierarchical independence from the police' (p. 70; see also Hopkins, 2009).

Of some relevance here is a court case which followed from the refusal of Victoria's former police oversight agency the Office of Police Integrity to investigate the alleged bashing by police of Nassir Bare in 2009. In 2015 the Victorian Court of Appeal found that the Office of Police Integrity had failed to consider an independent investigation as a way of giving effect to section 10(b) of Victoria's *Charter of Human Rights and Responsibilities Act 2006* prohibiting treatment or punishment 'in a cruel, inhuman or degrading way' (*Bare v Independent Broad-Based Anti-Corruption Commission*, 2015, VSCA 197). All the same, the

court did not state that the Charter required an independent investigation, highlighting the need for clearer wording in the legislation (Hopkins, 2016). Section 17(b) of the Queensland *Human Rights Act 2019* contains the same language as the Victorian Charter, indicating the need for an explicit statement regarding independent investigation and adjudication of complaints against police and other public officials (see also *Wotton v State of Queensland* 2016 above).

### **4.3. Civilian control**

The civilian control model has also been subject to a variety of criticisms. One potential criticism concerns the loss of the investigative expertise of police (Parliament of Victoria, 2018, p. xxi). However, this is an argument that ignores the wide range of investigative functions effectively conducted in the public and private sectors on a routine basis, and the long-term capacity of oversight agencies to train non-police investigators. In addition, the model does not exclude the employment of ex-police, subject to conflict of interest controls and close supervision. It has also been argued that ex-police should be in the minority within the organisation (Liberty, 2000). Overall, nonetheless, there is a potentially productive role for carefully vetted ex-police within agencies that are institutionally separate to the police department they are regulating.

The Police Ombudsman for Northern Ireland appears have effectively balanced utilisation of the skills of ex-police and the mission for independence. It allows employment of former police from Northern Ireland under strict conflict of interest controls. The issue attracted scrutiny in 2011 when a review found that some investigations into legacy cases might have lacked adequate independence (Criminal Justice Inspection Northern Ireland, 2011). However, the review supported the Ombudsman's independence in processing contemporary complaints. The review noted that 'there is a substantial proportion of investigative staff (around 41%) from a former police background' (p. 32) – although there was an implication that this was above an appropriate threshold for public confidence. Nonetheless, when selection standards and 'operational protocols' were considered, the review found that, 'in the main, the necessary safeguards are in place to protect the operational independence of the Police Ombudsman' (p. 32).

There is also a potential argument that police will close ranks against outside investigators who they might consider do not understand the stresses and complexities of policing, whereas they would be more likely to confide in colleagues (Maguire & Corbett, 1991). However, this view is belied by the successes obtained by properly equipped inquiries and investigations in supporting and protecting police witnesses.

It has also been argued that external regulation will undermine police internal authority and remove police managers' responsibilities for integrity (McDonald, 1981; Parliament of Victoria, 2018, p. xxi). The simple rejoinder is that, under the civilian control model, police retain responsibility for the primary prevention of misconduct – through recruitment, training, supervision and other standard integrity management techniques (see section 12 below). The outside agency assesses the effectiveness of these methods and provides a safety net when the internal system fails or underperforms. Nor does the system exclude all in-house investigations and discipline. In theory, civilian control can operate effectively with various degrees of lower-level police authority over discipline, depending on circumstances. For example, the Police Federation in the United Kingdom argued for a division of labour along these lines in 1981. Part of the motivation was a concern that officers were subject to

excessively harsh discipline. The Federation (Working Party, 1981) suggested that everything above administrative matters should be externalised, while police would have responsibility for dealing with (p. 4):

lateness for duty, impertinence or insubordination, failure to carry out administrative orders and so forth ... the chief officer would continue to be responsible for the good government of the force.

There is also a potentially large role for police in the informal resolution of complaints through conciliation measures – although independently managed mediation is a better option for many complainants (Riley, et al., 2020).

It has also been argued that requiring an independent agency to process all complaints against police means it will be engaged in numerous trivial matters that are best handled by police (Prenzler, 2004). The counter-arguments here are that (a) independence is required to determine whether or not complaints are trivial or more serious and (b) what might seem trivial to police might be of strong personal significance to a complainant and require a sensitive and independent process to resolve effectively. Additionally, in one study (Maguire & Corbett, 1991), police officers subject to complaints expressed the view that civilian investigators would help filter out trivial or malicious complaints at an early stage without presumptions of bias (p. 70). More broadly, it has been argued that a properly democratic and flexible complaints system will involve negotiation with complainants about the best way to process their complaint, including through informal resolution and formal mediation options (Riley, et al., 2020).

Concerns have also been expressed about the alleged financial costs to taxpayers in setting up and operating a system that was run largely by police. In contrast, it has been argued that externalisation should simply involve shifting activities from one agency to another with no substantive differences in costs (Prenzler, 2016d). The same resources are needed to adequately investigate and adjudicate complaints regardless of who does the job. However, in practice there should be a substantial saving by reducing or eliminating the ‘double handling’ costs involved when an integrity commission audits police investigation files and engages in corrective action where required – as occurs with a review style agency. In addition, research indicates that a wholistic approach to improving police conduct and managing complaints will substantially reduce complaints over the long term and consequently reduce the demand for, and costs associated with, formal investigations and adjudication of allegations (see for example, Porter, Prenzler & Fleming, 2012; Prenzler, Cawthray, Porter & Alpert, 2016, on successful complaint reduction programs).

Stakeholder surveys have also shown strong support for the civilian control model. Porter and Prenzler (2016) reviewed 10 complainant surveys from the PONI, which found that overall satisfaction averaged 57%, outcome satisfaction averaged 40%, and satisfaction with process was 67%. Closer analysis suggested that problems of evidence meant it was difficult for the PONI to provide the findings that complainants wanted but that the quality and independence of the Ombudsman’s work was recognised in complainant satisfaction in the areas of process and confidence.

Prenzler’s (2016c) review of surveys of police subject to investigations by the PONI found that overall satisfaction averaged 70% and satisfaction with outcomes was 86%. Impartiality was given an average score of 91% and the fairness of the PONI process was supported by 83% of respondents. In addition, an average of 71% of investigated officers

agreed that the independent complaints system 'makes police more accountable' (in Prenzler, 2016c, p. 109-111). Furthermore, four police opinion surveys in England and Wales found that police support for external control of complaints varied between 30% and 'almost half' (p. 100). One survey of police found that 85% agreed that investigations of complaints 'by an independent body' would 'give greater public confidence' (p. 12). An analysis of police union policies, including in Australia, showed that unions have at times supported complete externalisation of complaints management as a way of obviating allegations of bias, with the proviso that all public officials be subject to the same standards (Prenzler, 2016c).

Public opinion surveys have also strongly supported the civilian control model and the work of the PONI. For example, Prenzler (2016a) reviewed 11 studies in this area. Support for generic statements regarding the independent investigation of complaints against police received majority support averaging 86%. Six of the surveys were conducted in Queensland with an average of 89% of respondents expressing support for the statement 'Complaints against the police should be investigated by an oversight body, not the police themselves' (p. 55). Nine surveys included questions about how this applies to different categories of complaints. The results were complex but with overall support sustained for the direct independent investigation of complaints, tending upwards for more serious matters (pp. 57-59). Focus group studies that do not specify quantitative results have also found overall majority support for civilian control (p. 60).

## **5. Development of the Police Ombudsman model in Northern Ireland**

During the Northern Ireland conflict ('the troubles') the legitimacy of the criminal justice institutions was fiercely contested with large sections of the catholic and nationalist communities distrustful of the role of criminal justice bodies in general and policing in particular. These concerns were not without foundation. The Royal Ulster Constabulary (RUC) was drawn overwhelmingly from the Protestant community and was widely seen to be partisan participants in the political conflict. The RUC Special Branch was the subject of criticism as it was seen to be operating as a 'force within a force' (McCullough & Maguire, 2022).

Policing was seen to be too divisive to be explicitly included as part of the negotiations as part of the peace process initiated in the 1990s. The culmination of this process provided for the establishment of an independent commission to look specifically at police reform and make recommendations of the nature of that reform. A separate critical element of the reform agenda was a consideration of police accountability and how it should operate. The objective of Increasing community confidence in policing was thus to be achieved by the reform of the RUC and a new approach to police accountability (McCullough & Maguire, 2022, p. 50).

Police reform was examined by the Independent Commission on Policing in Northern Ireland (ICPNI) also known as the Patten Commission. Its terms of reference were (ICPNI, 1999 p.123):

(I)nquire into policing in Northern Ireland and ...bring forward proposals for future policing structures and arrangements designed to ensure that ...Northern Ireland has a police service that can enjoy the widespread support from, and is seen to be an integral part of, the community as a whole.

The Patten Commission made 175 recommendations including a change in name, badge and uniform of the RUC. It maintained that changes should not be a cluster of unconnected adjustments that could be bolted onto an organisation that already exists. Rather 'the changes that we propose are extensive and they fit together like the pieces of a jigsaw puzzle...holistic change of a fundamental nature is required' (ICPNI, 1999, p. 5). Recommendations included the replacement of the RUC with the Police Service of Northern Ireland and the creation of new accountability structures including a new Policing Board and District Policing Partnerships.

Prior to the Patten Commission a review undertaken by Maurice Hayes in 1997 recommended the creation of a Police Ombudsman for Northern Ireland. Hayes noted the inadequacies of the existing system with complaint handling, low substantiation rates, low levels of awareness of the complaint handling organisation and fundamental concerns about independence. (Hayes, 1997). He indicated that (p. v):

The overwhelming message I got from nearly all sides and from all political parties was the need for investigation to be independent and to be seen to be independent ...the main value impressed on me was independence, independence, independence.

The Patten Commission (ICPNI, 1999) endorsed the Hayes proposal to establish the Police Ombudsman and made the following recommendations (p. 111):

- The Police Ombudsman should be, and be seen to be, an important institution in the governance of Northern Ireland, and should be staffed and resourced accordingly. Budgets should be negotiated with, and finance provided through, the Northern Ireland Office (or its successor department), both for the core staff of the office and to provide for exceptional demands created by large-scale investigations.
- The Ombudsman should take initiatives, not merely react to specific complaints received. He/she should exercise the power to initiate inquiries or investigations even if no specific complaint has been received.
- The Ombudsman should be responsible for compiling data on trends and patterns in complaints against the police, or accumulations of complaints against individual officers (and appropriate systems for managing such data will be needed – see also Chapter 10 on Management and Chapter 11 on Information Technology), and should work with the police to address issues emerging from this data. It is important that management at all levels should use information from the complaints system as a tool of management and to identify training needs. The Policing Board should utilise such data in developing or reviewing policies or practices. There should be no doubt of the Ombudsman's power to investigate and draw conclusions from clustering in patterns of complaints and to make recommendations for change to police management and the Policing Board.
- The Ombudsman should have a dynamic cooperative relationship with both the police and the Policing Board, as well as other bodies involved in community safety issues.
- The Ombudsman should exercise the right to investigate and comment on police policies and practices, where these are perceived to give rise to difficulties, even if the conduct of individual officers may not itself be culpable and should draw any such observations to the attention of the Chief Constable and the Policing Board.

- The Ombudsman should have access to all past reports on the RUC.

Changes to policing and police oversight were made in tandem with other reforms to the criminal justice system, including the establishment of an independent Director of Public Prosecutions (prosecutorial decisions were taken out of the hands of the police) as well as strengthening oversight arrangements with the creation of a criminal justice inspectorate. The independence of a range of decision-making bodies was a critical dimension of the reform agenda. A critical and consistent theme across all criminal justice reforms was the need to improve community confidence in policing and criminal justice (McCullough & Maguire, 2022).

The Hayes Review was clear that the public and the police should have confidence in the complaints system and that the police should no longer investigate complaints against themselves (criminal & misconduct) and these recommendations were incorporated into the *Police (Northern Ireland) Act 2000*. Independence was to be secured by the Police Ombudsman having control over the complaints process, the power to decide what is a complaint, the power to investigate even if there is no complaint, the power to recommend action to the relevant authorities and the ability to issue public reports on the completion of investigations (McCullough & Maguire, 2022). The Act provided the Ombudsman should exercise its powers in such manner and to such extent as appears to be best calculated to secure the efficiency, effectiveness and independence of the police complaints system and the confidence of the public and the members of the police force in that system.

## **6. How the PONI initially functioned in the establishment phase and how it developed**

The task of establishing a new police complaints body was formidable. The first Police Ombudsman had to ensure that all the necessary legislation was in place, to recruit and train staff and to find premises from which the new organisation would operate. (PONI, 2020d). The Ombudsman noted:

Before taking up the post I had read widely on the issue of police accountability. Those systems which failed did so either because of a lack of resources or expertise. I was determined to avoid these pitfalls. I put a lot of effort into seeking to ensure that we had the funds needed to do the job properly. My argument was that the cost of properly investing in this new complaints system would be far outweighed by the cost of not doing so. I also needed people who understood policing, had practical experience of the day-to-day issues police officers have to deal with, who understood the context in which they operate, but at the same time were also able to exercise independent judgement. (cited in PONI, 2020d, p. 4)

One of the first appointments was a Deputy Assistant Commissioner of the Metropolitan Police Service (the service responsible for policing in London). He had over 30 years' experience with 'the Met' much of which focused on operational roles leading teams of detectives. He had direct experience, at a national level, of tackling serious corruption within policing. He brought to PONI a small team of handpicked police officers on secondment from the Metropolitan Police. Other investigation staff were recruited from across the world including USA, Canada, Australia, and Hong Kong. In addition to experienced investigation staff other personnel were recruited in a range of specialisms, including IT, finance,

complaints handling and human resource management. After some preparation PONI opened its doors on 3rd November 2000 (PONI, 2020d)

In the initial stages considerable effort was made to make the public aware of PONI, how different it was from what had gone before and how to use the service. As the Ombudsman recalled: -

In those days before social media, we had to rely on using newspapers, television and radio to get this message across and had then to go and meet people in their communities. (cited in PONI, 2020d, p. 6)

The team also began a programme of extensive discussions with interested parties such as the RUC and its successor organisation the Police Service of Northern Ireland (PSNI), with police staff associations, with the newly formed Policing Board, with key civic and political leaders, 'grass roots' leaders in communities and the wider public. The new Ombudsman took the view that the key to success of the Office would be its independence and the public and police perception of that independence. The Office published anonymised statements on a regular basis, setting out in summary form some of the complaints received, how they had been dealt with and the outcomes of investigations. Within 18 months public awareness of the police complaints system rose from 57% to 86%. A total of 79% of those surveyed believed the Office would treat them fairly. A figure, the PONI brief history notes, many observers would have thought impossible under the previous system (PONI, 2020d).

The credibility of the Office was always going to rest on the quality and veracity of its investigations. The most significant challenge came in its early days after the Ombudsman published in 2001, after an extensive investigation, its report into the Omagh bombing. The bombing was the single most deadly incident during 'the troubles' killing 29 people and injuring 220 others. Concerns had been raised about the effectiveness of the police investigation which included the allegations that the police had information which, if acted upon, could have prevented the bombing, and brought those responsible to justice.

The report made clear those responsible for the bombing were the terrorists who planned and executed the atrocity. It highlighted concerns, however, over the initial police investigation and reported that the police intelligence department (Special Branch) did not provide some critical information to investigators before and after the bombing. It also noted that senior management within the police had been defensive and uncooperative during the investigation (PONI, 2020d).

The response to the report was considerable. The PSNI issued a rebuttal and the then Chief Constable said he would resign and 'commit suicide in public' if the multiple failures highlighted in the report were true (Hopkins & Cowan, 2001) He subsequently apologised for the remark. Some senior public figures echoed these concerns and the dispute between the police and the new Ombudsman made headlines internationally. The Ombudsman noted that,

I got a very real sense that this was a defining moment for the Office and one which we may not survive...I knew we had delivered an independent, impartial investigation. I knew we were factually right in what we said. I had to rely on that as the only means of getting through that awful time. (cited in PONI, 2020d, p. 9)

The recommendations made in the report were ultimately complied with by the PSNI, including a new investigation into the bombing and an independent review into terrorist related murder inquiries and into the role and function of Special Branch. The House of Commons Northern Ireland Affairs Select Committee (NIAC), looked at the functioning of the Office in 2004-2005, observed that the task of constructing from scratch a credible police complaints service in Northern Ireland had been considerable and said it was impressed by the dedication and leadership of the Police Ombudsman and her staff. The NIAC (2005, p. 13) noted that,

Significant progress has been made by the Office in establishing an effective complaints system. We received strong evidence that the Ombudsman is contributing to positive changes in policies and practices despite the difficult political context and had made good progress in gaining the confidence of many in the communities.

In the first six and a half years of operation the Office received over 20,000 complaints by members of the public following their interaction with police officers. They included allegations of failure in duty, oppressive behaviour, assault, harassment, and incivility. In addition, the police referred to the Office for independent investigation each instance when officers fired their weapons, including those occasions during public order disturbances. It investigated the circumstances surrounding the deaths of people who had been in contact with the police including fatal road traffic accidents (PONI, 2020d).

In most cases the actions of the police were found to be justified and no disciplinary actions were recommended. Other complaint outcomes included informal resolution, disciplinary proceedings, and prosecution. Investigations also continued into the role of policing during 'the troubles'. In 2007, for example, the Office upheld a complaint that the police in 1997 protected informants, who had been involved in murder, from being fully accountable to the law. The Report stated that there was a culture of subservience to RUC Special Branch within the police. (PONI, 2007). The PSNI accepted all the recommendations contained in the report (PONI, 2020d).

By the end of the tenure of the first Ombudsman (seven-year position by statute) 88% of respondents said they had heard of the Office of the Police Ombudsman and the majority of these (86%) believed it to be independent of the police. Over three quarters of the public surveyed (78%) were confident that the Office dealt with cases in an impartial way (PONI 2020b). These figures have been consistent over the period the Office has been established (see also Table 1 below).

Responses from police officers initially, were more mixed with just under a third of officers surveyed in 2008 thinking that the Police Ombudsman did a good job, with slightly fewer – just over a quarter – saying that did a poor job. Forty percent expressed mixed feelings. The attitude was more positive among those with less than six years' service, in other words those who joined the PSNI rather than the RUC. (PONI, 2020d). Twenty years on the attitudes of police officers towards the office had improved considerably with a majority of officers surveyed having positive views of the Office; 91% felt they had been treated with respect and 79% felt they had been treated fairly. 74% of Officers believed PONI staff were knowledgeable and just over three quarters of officers surveyed felt their complaint was dealt with independently (PONI, 2021, PONI 2020d; see also Table 2 below).

## 7. Overview of features, functions, structure and objectives of the PONI

The Office of the Police Ombudsman is an Executive Non-Departmental Public Body (NDPB) of the Department of Justice (DoJ). The Office is not governed by a Board but is headed by a Police Ombudsman as a Corporation Sole, who is appointed by Royal Warrant, and normally serves for a period of seven years. The Office of the Police Ombudsman is constituted and operates independently of the DoJ, the Northern Ireland Policing Board and the Police Service of Northern Ireland. It is accountable to the Northern Ireland Assembly and is required to consider all relevant guidance given by Department of Finance (DoF) and the DoJ (PONI, 2021).

The Office of the Police Ombudsman for Northern Ireland provides an independent, impartial police complaints system for the people and the police service of Northern Ireland. It investigates complaints not only against the Police Service of Northern Ireland but also the Belfast Harbour Police, the Belfast International Airport Police, National Crime Agency (NCA) officers in Northern Ireland and Ministry of Defence Police in Northern Ireland. The Office also undertakes investigations into certain complaints about Immigration Officers and Designated Customs Officials when operating in Northern Ireland through a legal framework developed jointly with the Home Office and Department for Justice. These investigative functions have been added over the years.

The Police Ombudsman investigates complaints about the conduct of police officers and, where appropriate, makes recommendations in respect of criminal and misconduct matters. The Police Ombudsman also investigates matters referred to it by certain bodies, where appropriate, and reports on these matters to the Department of Justice, the Policing Board and the Chief Constable. In addition, the Police Ombudsman publishes statements and makes policy recommendations aimed at improving policing within Northern Ireland. It also provides statistical reports for management purposes to the Police Service of Northern Ireland and to the Northern Ireland Policing Board and provides management information to the Department of Justice. Its budget in 2019/2020 was £9.863m, employing 144 staff (PONI, 2021).

The process for the disposition of cases differs for criminal matters and misconduct. For criminal cases, a report goes to the DPP with a recommendation for prosecution / or not depending on the case. The decision on prosecution is made by the DPP. If they decide on prosecution the case goes through the criminal justice system. The Officer can still face a misconduct investigation if there is a no prosecution decision or has been found not guilty (with the evidence threshold at the civil rather than the criminal standard). For misconduct cases, a recommendation for discipline / performance is made to the Chief Constable who is responsible for enforcing discipline. The Chief Constable is under no obligation to accept the recommendation. However, the majority of recommendations are accepted. Sections 59(5)(b) and (6)(a) of the *Police (Northern Ireland) Act 1998* state that if 'the Chief Constable is unwilling to bring (the recommended) disciplinary proceedings, the Ombudsman may, after consultation with the Chief Constable, direct him to bring disciplinary proceedings ... it shall be the duty of the Chief Constable to comply with a direction under subsection (5)'. In practice, concern for the PSNI's reputation, and a shared interest in combatting poor behaviour, have meant that the legislative authority was rarely invoked. An officer may appeal the sanction determined by the PSNI, but they cannot appeal that they should have been subject to a disciplinary process. That is determined by PONI.

During 2019/20, the Police Ombudsman's Office made 152 recommendations that an officer or staff member should receive either a discipline or a performance action. Nearly, three fifths (58%) were for a misconduct meeting and around one third (37%) were for performance action. Formal disciplinary proceedings were recommended in 8 cases. (PONI, 2020c)

The key aims of the Office, framed by the *Police (Northern Ireland) Act 1998*, are to secure '(a) the efficiency, effectiveness and independence of the police complaints system' and '(b) the confidence of the public and of members of the police force in that system'. The values of the Office (presented in the 2019/2020 Annual Report) (2020a, p. 20) are:

- Independence – to investigate complaints free from any influence other than evidence
- Impartial – treat people with respect and fairness
- Accountable - explain findings clearly and fully
- Respectful and professional – treat people with respect and to be professional at all times.

### **7.1. Type and length of cases**

Although the names of the Directorates have changed over the years the investigative work of the Office can be divided into the following areas. Investigations undertaken by the Current Investigations Directorate are categorised as A, B or C, dependent on the nature and complexity of the matters involved. In 2018/2019 the Directorate dealt with 2627 complaints (figures taken from PONI Annual Report 2018/2019). The Annual Report describes the cases as follows:

- Category A generally involve loss of life or serious injury, serious sexual assault, discharge of firearms and other allegations of serious police malpractice. Such matters are normally allocated to the Significant Cases Teams. In 2018/2019, 14 Category A cases were concluded, of which 8 were completed in 230 working days.
- Category B includes allegations of significant physical injury, theft or fraud, discriminatory behaviour, serious neglect of duty associated with the outcome of criminal investigations and/or court proceedings and improper disclosure of information. These cases are generally allocated to the CORE Investigation Team. In 2018/2019 68% of cases were concluded within 110 working days.
- Category C cases involve allegations of incivility, use of excessive force not accompanied by significant injury and less serious breaches of police procedure and/or associated legislation. On most occasions this level of casework is retained by the Initial Complaints and Investigation Team who provide the gateway through which complaints are received. In 2018/2019 92% of cases were concluded within 90 days.

In 2018 the Office investigated one of the most significant cases relating to allegations about the conduct of many of the most senior officers delivering policing in Northern Ireland. More than 56 allegations were made about a police investigation into the PSNI's awarding of

contracts worth around £15 million, with investigations into Bribery and Misconduct in a Public Office relating to the actions of both serving and retired senior officers. The complaint was made by an ex Assistant Chief Constable of the PSNI and a Chief Constable of another force who had been under investigation by the PSNI. PONI investigators interviewed more than 30 witnesses, examined all the relevant material and carried out a number of searches on the PSNI estate. In 2018 the Office published the outcome of that investigation, which found no evidence that the PSNI Chief Constable, members of his senior management team and other named senior police officers, were involved in criminality or misconduct (Kearney, 2018).

Also, in 2018 the Police Ombudsman concluded an investigation of complaints made by a victim of sexual abuse concerning the way police had responded to relevant intelligence and the conduct of their subsequent investigation. Central to the investigation were issues that attracted significant public interest and controversy. The importance of the Office's independence and ability to have unfettered access to sensitive information held by the PSNI were particular features of the investigation, the outcome of which was accepted by the parties involved (PONI, 2018b)

Published reports in 2019/2020 included investigations into alleged unlawful access to information on police computer systems; inappropriate conduct with vulnerable females; alleged failure to respond to an allegation of indecent assault on a child; matters arising from the police response to a serious incident on a motorway which resulted in the death of a member of the public; the circumstances in which police discharged pava spray, taser and attenuated energy projectiles (AEPs) and in dealing with a distressed person in the vicinity of a railway line.

In addition to current investigations, a History Directorate continued to investigate policing during the Northern Ireland conflict. The Directorate had 440 cases in 2019/2020 of which 179 were subject to active inquiries. This is perhaps the most controversial area of the Offices' work. It continues to general high-profile investigations and has been subject to legal challenges over the years by retired RUC officers, in efforts to have history reports quashed. None have been successful to date. In 2014 the then Ombudsman had to threaten to judicial review proceedings to the PSNI over the failure to provide access to information in sensitive cases. He noted that (cited in PONI, 2020d, p. 20):

This issue went to the core of accountability, and I could not allow a situation to develop where those who were subject to investigation would decide what information would be given to investigators. Investigation by negotiation was simply not an option.

Published reports have included investigations into the use of police informants involved in murderous activity during the conflict and the failures to disseminate intelligence material to investigators. For example, in 2016 the Office reported on the results of a three-year investigation into the police response to 6 murders in Northern Ireland in 1994, carried out in a public bar, while the inhabitants were watching the world cup. The report stated clearly that those responsible for the attack were the UVF gunmen and that the police did not have prior intelligence about the attack. The report concluded, however, there was intelligence the police were aware of the importation of weapons used in the attack, police informants were involved in the importation of those weapons (responsible for the death of over 100 people subsequently), there were failures to share intelligence about the murder

gang involved prior to the attack and that there were significant failures in the police investigation (PONI, 2016).

Investigative staff within the Office are drawn from a variety of backgrounds including social welfare investigations, Ombudsman organisations, military and audit. A 2011 Inspection Report found that 41% of investigative staff came from a policing background. Many graduates who came into the Office in 2000 were in senior investigative positions 10 years later. In the historical investigations department former senior detectives are employed given the complexity of the cold cases. Whether dealing with current or historical cases investigation non policing staff take part on the Accredited Investigator Training Programme (ATP) delivered by Portsmouth University. This is compulsory for new PONI investigation officers. Around 95% of staff were accredited. The ATP is designed to National Occupational Standards and is equivalent to Professional Investigation Programme (PIP) 2 training. None of the investigation staff within the Historical Directorate are former members of the PSNI, RUC or the military to protect the independence of these investigations (CJINI, 2011).

## ***7.2. Sharing of information***

A further critical area of the Office relates to the provision of statistical information to a range of bodies including the PSNI, Policing Board and the Department of Justice. At it deals with all public complaints against the police there is a significant database which has been built up over time relating to the nature and profile of complaints and how these have changed. The organisation produces a Statistical Information Bulletin on complaints and allegations received by the Office of the Police Ombudsman for Northern Ireland for specific years, as well as showing trend information for the last five years. It is produced independently by statisticians from the Northern Ireland Statistics and Research Agency (NISRA). The Police Ombudsman's Office uses these statistics to monitor trends in complaints and allegations received and how they were dealt with. It also uses this information to monitor performance against key performance indicators

The information is also used by the PSNI to monitor the trends and patterns in complaints as well as identifying problem areas. PONI statistical team regularly supply the police with information about the numbers and types of complaints including information about individual officers who may be attracting multiple complaints. This information has been used as part of successful complaint reduction strategies by the PSNI. It is also used by the Policing Board to enhance their understanding of what areas of police conduct are attracting public concern and whether these concerns are of substance. In addition, the Office regularly commissions surveys of the experience of individual complainants, police officers and the views of the wider public on the work of the Office. These form part of the performance metrics for the organisation as well as providing valuable insight on client service levels.

The PSNI will also make referrals to PONI in cases where a complaint has not been made, but which relate to interaction between the police and a member of the public. These cases require independent investigation by PONI. In 2018/2019 the police made 13 referrals to the Office (a similar number was received in 2017/2018). In addition, the Police Ombudsman exercised his 'call in' powers on 7 occasions during the year, including a number associated with fatal road traffic incidents (PONI, 2019).

Finally, the Office regularly makes recommendations for improvements to police policies and practices based on the issues identified in individual investigations. Examples

include the requirement to have identifying marks on police vehicles, improvements in cell van locking, the need to improve how the police deal with high risk missing persons, custody suite design and the handling of monies seized by police officers. Police equipment (radios, handcuffs, batons) are now given markings which allow them to be linked to individual officers after recommendations from the Office.

PONI also has the usual corporate services functions associated with a non-departmental public body, including finance, information technology and human resource management.

## 8. How the PONI measures community, complainant and police confidence

The PONI provides detailed data on its work at its website on an annual basis. The provision of long-term stakeholder feedback from the public, complainants, and police – when placed alongside detailed activity data, including complaint numbers and dispositions, case studies and investigation reports – makes it one of the most transparent and accountable oversight agencies in the world. Recognising the impact of public awareness on the use of police complaint systems, the Office has annually surveyed and published information on the level of public awareness of and confidence in the system. Key questions relate to public ‘awareness’; perceptions of ‘independence’, ‘impartiality’ and ‘fairness’; and the ‘effect’ of the PONI’s work on policing (PONI, 2022a, p. 2). Results are presented by age group, gender and religion, and compared with the preceding three years. Sample answers are listed below for 2021 (2022a, p. 6), with additional findings reported for eight years in Table 1, including a breakdown by religion.

- 90% of respondents had heard of the Police Ombudsman’s Office.
- 90% of respondents who had heard of the Police Ombudsman’s Office were aware that it is independent from the police.
- 68% of respondents who had heard of the Police Ombudsman’s Office were confident that complaints are dealt with in an impartial way.
- 75% of respondents who had heard of the Police Ombudsman’s Office felt they would be treated fairly if they made a complaint.
- 75% of respondents who had heard of the Police Ombudsman’s Office felt the Office would help ensure the police do a good job.

**Table 1: Percentage Public Awareness and Perceptions of Police Ombudsman for Northern Ireland, General Population and by Religion, 2014-2020-21**

	2014	2015#	2016	2017	2017/8	2018/9	2019/20	2020/1
Awareness of PONI	84	90	88	86	86	86	95	90
Perception of independence*	80	82	85	85	88	88	92	90
Confident impartial**	77	80	79	76	80	85	76	68
Perception of fairness*	84	82	84	82	81	86	83	75

PONI helps police do a good job*	81	84	86	85	82	87	86	75
Awareness of PONI by religion*								
Catholic	81	88	86	86	88	86	96	90
Protestant	92	92	91	90	90	91	98	92
No religion	-	-	-	-	78	79	92	89
Independence by religion*								
Catholic	75	80	81	82	83	85	90	86
Protestant	85	82	87	88	92	91	92	92
No religion	-	-	-	-	85	87	93	90
Impartiality by religion*								
Catholic	76	78	74	74	77	84	74	66
Protestant	76	79	83	81	83	87	79	75
No religion	-	-	-	-	74	82	75	62
Perception of fair treatment by religion*								
Catholic	85	80	77	79	77	83	79	68
Protestant	84	85	88	87	85	90	85	83
No religion	-	-	-	-	77	81	84	74
PONI helps police do a good job by religion*								
Catholic	83	85	84	86	76	86	86	75
Protestant	80	83	86	88	86	89	88	80
No religion	-	-	-	-	80	84	83	71

\* Of those who were aware of PONI; \*\* Fairly or very confident; # Averaged figures.

Sources: PONI, 2022a pp. 12-15; 2022e, worksheets 2-6, 2018a, worksheets 2-6.

An annual experience survey also measures complainant confidence in the work of the PONI, covering a range of experiences including perceptions of service and treatment by PONI staff. From 2018, results regarding ‘overall satisfaction’ for complainants were no longer reported. However, ‘accept outcome’ – showing high scores – provides an important measure of complainant satisfaction. Police who had complaints made against them are also surveyed annually with similar questions. The results for the last eight years, for complainants and police, are combined in Table 3. An ‘Equality Monitoring’ component of the complainant survey includes questions regarding ‘age, gender, marital status, employment status, sexual orientation, community background, race, country of birth, disability, dependants and political opinion’ (PONI, 2022c, p. 3.)

**Table 3: Percentage Complainant (C) and Police (P) Satisfaction Levels, Police Ombudsman for Northern Ireland**

	2015		2016		2017		2018		2019		2020		2021		2022	
	C	P	C	P	C	P	C	P	C	P	C	P	C	P	C	P
Complainant/Police																
Overall satisfaction	50	-	41	-	46	-	-	-	-	-	-	-	-	-	-	-
Satisfied with advice	57	-	50	-	52	-	53	-	52	-	42	-	25	-	39	-
Independent dealing	-	80	53	79	55	76	54	71	54	75	43	-	28	78	40	80

Treated with respect	-	91	85	89	88	89	86	89	85	87	80	-	73	88	77	88
Fairness of treatment	-	81	78	80	75	80	76	78	74	78	66	-	57	79	61	77
Staff knowledgeable	77	76	78	77	73	76	74	74	74	73	66	-	64	74	60	77
Manner of treatment	-	57	51	56	51	58	49	60	50	63	40	-	23	53	38	50
Staff easy to understand	85	92	83	90	83	89	82	87	84	90	80	-	80	88	72	88
Timeliness to resolve	50	31	48	33	51	32	54	40	49	41	39	-	23	29	38	25
Frequency of updates	59	30	47	32	48	29	53	38	47	37	35	-	23	28	36	27
Clarity of correspondence	-	46	57	47	57	46	58	50	55	51	45	-	27	43	41	43
Clear process explanation	62	56	60	54	61	55	63	58	59	55	53	-	32	47	48	46
Understood outcome	-	-	57	-	59	-	57	-	59	-	48	-	37	-	47	-
Accept Outcome	-	-	79	-	74	-	79	-	78	-	74	-	58	-	72	-
Would use system again	60	-	59	-	65	-	64	-	63	-	56	-	44	-	49	-
System makes police more accountable	-	62	-	60	-	57	-	58	-	65	-	-	-	37	-	57

Sources: PONI, 2022d, pp. 8-11; 2022b, worksheets 2, 3, 5-13.

## 9. Organisational features that have led to PONI successes

The Hayes Review, which led to the establishment of the Office of the Police Ombudsman as an independent statutory organisation, was clear as to what the community expected from the new police complaints body. It should be entirely independent from the police service. This design principle was the foundation upon which the work of the office rests. Many police oversight bodies across the world would describe themselves as independent, what is different about the role and functions of the Office of the Police Ombudsman?

The starting point is the strength of the legislation which established the Office as an entirely new organisation, separately financed, with considerable freedom to investigate police activity. There are a range of organisation features – underpinned by strong legislation – which have ensured contributed to the development of an effective police complaints organisation.

PONI deals with every public complaint against the police. It is important to note that the PSNI retain their own disciplinary processes and anti-corruption unit. The range of work undertaken by the Office is extremely broad from the incivility of a traffic officer to the investigation into a fatal shooting or a death in custody. The public can have confidence, therefore, that their concerns are investigated impartially and independently from the police. This is particularly important in those areas of significant public concern. The Office undertakes automatic investigations – whether a complaint exists or not – into deaths in

custody, weapons discharge by police officers, the use of tasers and the discharge of AEP's in public order incidents. There was real community concern in Northern Ireland that these areas had not been investigated properly by the police in the past. In high profile incidents involving the police, for example after a death in custody, the ability of the Office to take over the investigation quickly and engage with the family and the media has been important in calming community tensions.

The ability to publish reports on these incidents has been critical in demonstrating the independence of the Office. On many occasions this has worked to the benefit of the police. A report which said the police acted appropriately was as important as one which criticized them. For example, in 2015/2016 the Office considered the allegation that a sectarian mob had beaten a man to death while the police did nothing. These allegations were among the most serious that could be made against a police service. They were particularly toxic given the fraught historical relationship between the police and elements within the catholic community in that part of Northern Ireland. After a thorough investigation the Ombudsman concluded there was no evidence to support these concerns. This report received considerable coverage in the media. These reports were received, generally without challenge, as the Office demonstrated it is not afraid to criticize the police where this was justified.

Aside from the wider community impact, the delivery of an impartial, independent investigation has been important for families seeking to understand what happened to their loved ones. For example, a 2012 Report concerned the failure of the police to find a young man who had absconded from a hospital unit. His body was found in a secluded part of the hospital grounds ten weeks after he had been reported missing and approximately 40 metres from where he had been last seen. The police investigation contained a catalogue of mistakes, and 12 officers were disciplined. This Report was extremely important for the family but left them with the unanswered question, could he have been saved by a proper search. Again, this Report received considerable coverage in the local media and the police apologized publicly to the family.

These cases while significant did not take up most of the work undertaken by the Office. The 'volume complaints' focused on the day-to-day aspects of operational policing. This enabled the Office to monitor trends over time, provide feedback on individual officers and provide important management information to the police which enabled them to respond to operational concerns. It was from many of these reports that recommendations on changes to police policy and practice emerged. The range of investigations undertaken by the Office and the publication of Reports has been important in demonstrating independence in practice.

It is interesting to note that in 2018 the Northern Ireland Secretary of State (UK Cabinet Minister responsible for the Northern Ireland) made a speech in which she paid tribute to the role police officers perform in society. She also made the following observation: 'One of the reasons why the PSNI commands very high levels of support from across the community is due to the accountability structures under which it operates' (cited in PONI, 2020d, p. 29). Public outreach has been an important component of the work of the Office since its establishment. Recent examples include community meetings around public order incidents and engagement with youth groups concerning the low level of complaints among young people.

PONI investigations cover both criminality and misconduct. Investigators have the powers of a police constable and can therefore arrest officers, seize their possessions, search their lockers, their homes and interview them under caution. This is critical to ensure that

they can retrieve all the necessary information required to undertake a robust investigation. It also demonstrates that the Office is serious about the work that it does and gives parity of esteem between PONI officers and police officers. If a decision is taken that an incident is a criminal investigation the report is sent to the Director of Public Prosecutions with a recommendation. The decision to prosecute is taken by the DPP. If prosecution is recommended, then it proceeds through the courts. Alternatively, the results of a misconduct investigation are sent to the PSNI Chief Constable with a recommendation. The complainant is provided with a formal letter outlining the investigation and its conclusions. In the most serious cases, therefore, the investigation into the police officer and the decision to prosecute are taken out of the hands of the police. This provides reputational protection for the PSNI, the officer under investigation as well as providing community confidence in the criminal justice process.

There is no area of warranted police activity outside the remit of the Police Ombudsman. In the politically charged context of Northern Ireland it was important to demonstrate that the Office had access to all areas of policing, including the most sensitive ones. This has been important in investigating policing in Northern Ireland's troubled past where most legacy investigations have examined the role of police informers and the activities of police intelligence personnel. The legislation underpinning the Office has been extremely important in this regard as it states the police must give the Ombudsman the information required. In 2014 the Office had to threaten the police with judicial review proceedings as they were unwilling to provide some sensitive information (Allen, 2014). This could only have been undertaken because of the strength of the legislation which established the Office. The case did not go to court as the police provided the information requested. In day-to-day business officers are under instruction to speak to Ombudsman's investigators, although they retain the protection of under caution interviews.

The organisational independence provided to PONI was considerable. Investigations were undertaken without interference from the PSNI, Department of Justice or any other police oversight organisation (eg Criminal Justice Inspection, Policing Board). In 2017 the Office publicly challenged the Minister for Justice over the funding provided to the Office for legacy investigations, highlighting the impact of the proposed cuts on the capacity to undertake these complex and serious investigations (PONI, 2014; Moriarty, 2017). The ability of the Office over the years - by different Ombudsmen - to challenge the police, Department of Justice, lawyers etc... reinforced in the mind of the public the independence of the organisation and therefore developed trust in the outcomes of its investigations. In 2019 / 2020, 86% of the people who responded to the PONI survey had heard of the Police Ombudsman's Office. Of those respondents who had heard of the organisation, 88% believed it was independent of the police and 85% were confident that complaints would be dealt with in an impartial manner (PONI, 2020b; see also Table 1).

The appointment of a single 'Ombudsman' to investigate individual complaints has been an important feature of the Office since its inception. The benefit of this approach is that it reinforces the independence of the Office and permits identification with a single trusted individual. In essence, it copper fastens civilian oversight of the investigation into complaints against the police. It places significant responsibility upon a single individual, so it is critical that the right individual is appointed. The first Ombudsman recognised the success of the Office depended on its ability to deliver independent investigations. This model has been followed, in the main by subsequent appointees to the post. Should the Ombudsman lose the

trust of families, victims, NGOs, lawyers and the police this causes significant problems (see CJINI Inspection into the Office of the Police Ombudsman, 2011).

The mix of staff between those who had never worked for the police and former police officers has been critical. It has permitted the development of an organisational culture independently of the police and the civil service. The post of Senior Director of Investigations – responsible for all cases – has only been held by a former police officer. Chief Executives have been drawn from the policing world (e.g., a former Deputy Chief Constable) and civilian roles.

The post of Police Ombudsman is one of the most high-profile public-sector positions in Northern Ireland. A particular source of controversy has been into investigations into legacy policing matters, specifically the role of the RUC investigating troubles related cases. The investigation into the Omagh bombing was considered by the first Ombudsman a ‘defining moment’. Never has an investigation of this type been published in Northern Ireland and it generated a significant response from the police. The Ombudsman’s recommendations were eventually complied with by the police (PONI, 2020d). Much of the additional debate has centred around the use of the term ‘collusion’ in relation to the links between the police and paramilitaries. The sustained use of informants has been central to this debate. The Northern Ireland Retired Police Officers Association (representing those who has been members of the RUC) have taken exception to these investigations by the Office and have tried on several occasions to have reports quashed: without success (PONI, 2020d).

The Police Federation (the rank-and-file trades union) initially welcomed the establishment of the Office. They have been critical of the Office, however, not only in relation to legacy reports but also to aspects of current investigations (more recently about the publication of case studies on individual investigations) (PONI, 2020d). Inevitably this relationship has generated a healthy tension. In 2018 the Chairman of the Police Federation called for independent oversight of the Police Ombudsman and for redress for officers who had been subject to what he called malicious complaints (PONI, 2020d). The negative views of the Police Federation leadership can be contrasted with the more positive experience of individual officers who have been under investigation by the Office.

The Northern Ireland Retired Police Officers Association (NIRPOA) have been a constant critique of PONI and its investigations into the work of the Royal Ulster Constabulary during the conflict. They have undertaken several judicial reviews of published legacy reports to have them quashed. They have had limited success in claiming procedural unfairness against some officers mentioned anonymously. The challenge to the Office goes back to the report into the Omagh bombing in 2001. More recently the Ombudsman responsible for the Loughinisland Report was deemed by the Appeal Court to have ‘overstepped the mark’ in relation to some conclusions around collusion between the police and paramilitaries. The attempt to have the Report quashed was not successful, however, and the key conclusions stood (PONI, 2016 & 2020d).

Senior Management of the Police Service of Northern Ireland have been extremely supportive of PONI, despite the number of occasions the police have come under significant criticism, as they recognize the importance for community confidence in policing of independent investigations. As noted earlier, the Ombudsman investigated the senior command team of the PSNI. The Chief Constable, who was under investigation, stated his confidence in the office to undertake its work independently ‘People who made these complaints are entitled to make them and I’d encourage them to have the confidence that I have in the Police Ombudsman and allow him to get on with his job’ (cited in Breen, 2017).

A senior PSNI officer gave evidence to the Joint Standing Committee on the Corruption and Crime Commission inquiry into improving the relationship between the CCC and the WAP. He stated that the development of the Police Service of Northern Ireland was shaped by three factors. The first was the Hayes Report set up to review police complaints. The second was the Patten Report in 1999 which made recommendations to change policing from the militarised approach of the Royal Ulster Constabulary and supported the recommendation to establish a Police Ombudsman. The third was the Human Rights Act which imposed on all British public authorities the requirement to work within the European Convention on Human Rights including the right to trial, the right to life and absence of inhumane, unusual and perverse punishment (JSCCC, 2015).

The overall community view of the Police Ombudsman in Northern Ireland, based on independent survey's is that it has the confidence of both communities in the work that it does. This is confidence cannot be taken for granted and is based on several dimensions. Firstly, the legislation underpinning the work of the Office gives it access to all areas of policing, including the ones that have been contested in the past. This overcomes concerns that the police are unaccountable for their actions. Moreover, when a report into current policing is published there is general acceptance of the work undertaken and the conclusions reached. The Office has published reports which have been both critical and supportive of the police. This reinforces confidence in the independence and impartiality of the work. The publication of reports is extremely important as it provides valuable information to the public about what can be complained about and whether these complaints have been successful. The appointment of a single ombudsman as 'corporation sole' has also been important in developing confidence in the work. They provide the public 'face' of the Office.

In 2011 there was a serious problem with the then Ombudsman (a former Canadian Police Officer) as he had lost the trust of families, victims and the NGOs and lawyers representing them. The Chief Executive of the Office resigned claiming that the independence of the Office has been compromised. This generated an inspection report into the Office by Criminal Justice Inspection (CJINI, 2011)) which concluded that the independence of the Office had been compromised in relation to the investigation into legacy cases. The Ombudsman left his position shortly afterwards and a new Ombudsman was appointed to rebuild public confidence in the Office (Maguire, 2015; McCullough & Maguire, 2022). Subsequent reports by CJINI, Amnesty International, NGOs and other stakeholders determined that this has been achieved (CJINI, 2013: Amnesty International, 2015).

## **10. Why is the PONI regarded as the 'gold standard' in police oversight?**

There are a number of organisational features of PONI which differentiate it as a robust civilian control model of police oversight.

1. Institutional independence from the police. PONI is a separate Non-Departmental Public Body that falls within the remit of the Department of Justice in Northern Ireland. It is entirely separate from the PSNI with its own legislative base and funding regime. There is a protocol between the Department of Justice and PONI which makes it clear that the Department (ergo the Minister) is not involved in the casework of the organisation. A recent review of the Office conducted by the current Police Ombudsman has called for this to be strengthened by PONI reporting to the Assembly rather than the Department of Justice.

2. PONI investigates all public complaints into the police from the relatively minor to the serious, for example deaths in custody and deaths after contact. It has the capacity to respond with the 'golden hour' to serious incidents. PONI conducts both criminal and misconduct investigations. Criminal investigations are reported to the Director of Public Prosecutions for decision. Misconduct recommendations are made to the Chief Constable who maintains control over the disciplinary process. PONI only investigates serving police officers. Retired officers are outside the remit of the Office as are some civilian workers employed by the police. It cannot take complaints from serving officers although this can lead to a 'call in' if there is evidence of a criminal offence / behaviour against the code of ethics.
3. It has complete control over the complaints process and can determine what is a complaint, the process through which it is investigated and the findings. Decisions on its recommendations are made by the DPP and the Chief Constable. It has the power to call in to an investigation (without a complaint being made) and can publish the findings of its investigations.
4. PONI staff have the powers of a police officer and can seize property, search homes and lockers and arrest officers if necessary. Serving police officers are obliged to speak to the Ombudsman (under disciplinary sanction) within the constraints provided by the right not to self-incriminate. PONI legislation requires that the police shall give the Office any information it requests in relation to an investigation.
5. The organisation is transparent in its operations. PONI regularly conducts surveys of complainants, police officers and members of the public. The results of these surveys are published on a regular basis. Where a complaint is subject to investigation, the complainant receives a closure letter which details the findings of the investigation and the recommendations made. In the more serious cases a report into the investigation is also published in the public interest. In serious cases a family liaison officer keeps families involved of the stages of investigation and emphasises the independence of the process from the police.
6. While the organisation benefits from the experience and expertise of former police officers there is a cultural identity which is entirely separate from the police. Strict protocols exist to ensure conflicts of interest are managed. Staff are aware of the importance of the civilian oversight role and independence is emphasised throughout the organisation. The quality assurance processes regularly test for consistency in decision making across the organisation. Serious cases are reviewed by the Ombudsman (a civilian) and their senior team. A recent review carried out by the current Ombudsman has called for a legislative underpinning to ensure that the Police Ombudsman cannot have been a serving police officer.
7. The PONI is appointed by Royal Warrant and is statutorily independent from Ministers, the Department of Justice, and the police service. Experience has shown that confidence in 'The Ombudsman' is an important component of developing public confidence in the Office.

In direct comparison with Queensland, there are a number of significant differences with the PONI approach to police oversight. The civilian control model is in direct contrast with civilian review. This reflects the history of the systems in both jurisdictions. While the CCC is independent of the police it only investigates 2% compared to all public complaints by PONI. There is false assurance in Queensland that complaints against the police are independently handled. The Queensland model is complex compared to the relative simplicity of PONI. This is important in developing community confidence as access to the complaints process is a critical component. This is particularly significant for marginalised groups who have a mistrust of the police and policing. In addition, the system for external oversight in Queensland is, compared with Northern Ireland, opaque. The complexity creates a barrier to transparency. PONI by comparison provides comprehensive, publicly available statistics on the complaints and allegations it receives.

The independence of PONI may account for its relatively high substantiate rates (cf., Prenzler, 2009b, chapter 10). Between 2013 and 2018 the average substantiation for complaints subject to a full investigation was 24%. While this has never been a performance metric for PONI it is indicative of the independence of investigations. It has also been a contributory factor to the overall levels of community confidence of PONI, which established a reputation early in its development of not being afraid to criticise the police. When PONI reports that the police have done no wrong these reports are not challenged. This is a protection to the officers and the reputation of the PSNI. When an incident occurs, they immediately refer to an independent PONI investigation.

#### **11. What conditions would be necessary and/or what barriers might exist for the introduction of a civilian control model in Queensland?**

The issues canvassed in this review concerning the management of complaints are universal issues in policing. The problem of the inherent risk of bias in internal responses to allegations of misconduct – and the appearance of bias – is also universal. Consequently, the PONI appears as a best practice agency to effectively counter these risks, which should be considered for adoption in any jurisdiction and should be considered an essential institution. The available literature indicates strongly that the only substantive obstacle to adoption of the model is political. Very little is documented on the reasons for political resistance to civilian control other than in regard to the theory of ‘regulatory capture’: that police, usually through powerful unions, (a) threaten to oppose political candidates who advocate greater independent control or (b) engage in agreements in which the union supports a party in return for the party committing to an internal affairs or weak review model (Prenzler, 2016d; also section 4.2 above). The problem is often compounded by inquiries which are highly critical of review-based systems but fail to make clear recommendations regarding institutionalised independence and non-discretionary responsibilities (Prenzler, 2016d).

It could also be argued that the PONI represents a radical response to an extreme situation that does not apply in many other locations, such as Queensland. However, the introduction of an anti-corruption commission in Queensland occurred in response to a major crisis involving entrenched systemic corruption in the police, and the model recommended by the Commission of Inquiry was strikingly similar to the PONI. The difference was that there was political support for the PONI in Northern Ireland, whereas in Queensland the vision for

an independent integrity agency was systematically subverted from both within and outside the post-Fitzgerald integrity commissions.

There are two further arguments that could be made theoretically against adoption of the PONI model in Queensland. The first relates to financial costs and was dealt with above. To reiterate: externalisation should reduce costs because of the reduced costs of the oversight agency auditing, and often appealing, police processes. Furthermore, over the long-term, an optimal complaints management process should generate large reductions in complaints.

Secondly, there is a practical challenge to the civilian control model entailed in the geographic spread of policing in Queensland vis-à-vis the relatively small area of Northern Ireland. How will investigators be able to properly investigate matters outside the capital city without extensive travel costs? Potential police investigators are already on site in most instances or within close proximity of locations that require attendance. One solution to this challenge is to ensure that the existing public sector-wide integrity commission includes a strong regional presence and has within it an insulated unit dedicated to police integrity with sufficient powers and resources to meet the criteria of the civilian control model (Prenzler, 2016d). ‘Omnibus’ commissions of the type now common in Australian states include jurisdiction over police alongside state politicians; state government public servants; local government elected officials and employees; statutory corporations; and any individual, charity or business engaged with these entities in a way that might involve misconduct. This ‘one stop shop’ format allows for considerable efficiencies to provide a strong regional presence to ensure adequate service delivery. Physical access for complainants, whistleblowers and witnesses is also a major consideration here; as is the capacity for public outreach in order to fulfil a commission’s education and prevention functions, and the application of consistent standards across the public sector. Consequently, properly implemented, this would involve commission offices and staff being established in major population centres across Queensland. These offices should provide an adequate base for investigations required in towns and smaller police locations while also serving education and prevention functions across the whole public sector.

Creating a separate police oversight agency – similar to the PONI or a properly constituted version of the New South Wales Law Enforcement Conduct Commission – would involve more challenging logistics in Queensland in terms of finance and geography. However, the extent to which expenditures would be justified would depend on judgements about the value of a stand-alone police regulator. In that regard, in relation to police, the system in place in Northern Ireland represents a strong alternative to the public sector wide model dominant in Australia.

The diverse geographic and demographic nature of Queensland means that consideration also needs to be given to accommodating the specific needs of Indigenous Queenslanders, including in remote communities. Some guidance can be taken here from the Victorian Aboriginal Legal Service (2022) report *Reforming Police Oversight in Victoria*. The report recommended establishment of ‘a new independent police complaints body’, which would include a ‘Koori Engagement Unit’ (p. 8). The Unit would have responsibility for (pp. 8-9):

- a) Raising awareness of the complaints process within Aboriginal communities, including through outreach sessions;
- b) Establishing culturally appropriate options for lodging a complaint;

- c) Liaising with Aboriginal complainants throughout the complaint process, including to provide regular updates;
- d) Providing and/or coordinating access to culturally safe support for complainants, including through warm referrals to culturally safe providers;
- e) Coordinating access to culturally safe legal assistance, including through warm referrals to VALS and other legal service providers.

**12. What matters/features (whether organisational or otherwise) would be essential to the success of this new model in Queensland?**

The effectiveness of independent oversight is dependent on a variety of factors referred to at various points in the preceding discussion. These are summarised in the following six main points.

1. Adequate jurisdiction and powers in legislation, including the following:
  - a) Responsibility to independently manage all complaints and disclosures, with direct assessment and investigation of all matters other than minor disciplinary matters, and with negotiation with complainants about the most appropriate way of proceeding.
  - b) Power to conduct own motion investigations and audits.
  - c) Authority to require attendance and answers to questions.
  - d) Power of arrest.
  - e) An option to hold public hearings for matters of heightened public interest.
  - f) Ability to apply for warrants to search property and seize evidence.
  - g) Capacity to engage in covert tactics – including the use of communication intercepts, optical surveillance, undercover agents and integrity tests.
  - h) Authority to make disciplinary decisions in consultation with police representatives through a range of forums including disciplinary hearings and tribunals.
  - i) Capacity to refer criminal matters to the public prosecutor.
  - j) Adoption of an independent mediation program for complaints, based on restorative justice principles, including a focus on learning lessons from mediation sessions for improved practice.
  - k) A mission for prevention including by conducting research and risk reviews – including through complaint analyses – aimed at improving procedures and preventing misconduct and other adverse policing events.
  - l) Responsibility for engaging in public sector ethics training.
  - m) Scope to prosecute complainants who are vexatious.
  - n) Strong whistleblower protection protocols.
  - o) Accounting for its work using a variety of performance measures, including stakeholder satisfaction, prosecution outcomes and case study reports.
  
2. Adequate resources, measured in part by the capacity to provide comprehensive due process responses to complaints and meet all the responsibilities at (1) above.

3. An exclusive specialisation in integrity, without responsibilities for combatting serious and organised crime. With regard to police, either through a dedicated police unit or creation of a stand-alone policing oversight agency.
4. Adequate accessibility and geographic coverage for complainants, witnesses, whistleblowers, investigators and other agency staff.
5. Employment of highly skilled and dedicated personnel.
6. Strong cross-party political support for the principles and work of the agency.

In addition, a model agency would be overseen by a parliamentary committee and independent inspector. Furthermore, a model agency must operate in concert with a full set of state-of-the-art integrity management strategies so that all causal factors in police misconduct are covered by optimal prevention methods. A properly established integrity commission should not be considered as an adequate accountability and integrity management mechanism on its own: a 'cure-all'. Additional strategies, primarily operated by police, include, although are not necessarily limited to, the following (Hopkins, 2016; Prenzler, 2016b; Prenzler & Porter, 2022):

1. Targeted and random drug and alcohol testing.
2. Overt surveillance and recording including body-worn cameras, vehicle-mounted cameras, station cameras (including at loading docks, reception areas and cells), and in interviews.
3. Operation of a state-of-the-art profiling and early intervention system for individual officers and organisational units.
4. Comprehensive pre-service and in-service ethics education and training, including consistent communication about ethical standards.
5. The adoption of procedural justice as a key internal management strategy.
6. Adoption of a strong service orientation in police work, including protocols and training to ensure victim care.
7. A focus in procedures and training on communication skills, 'verbal judo', de-escalation, and minimal use of coercion and force.
8. Adoption of 'less-lethal' technologies, such as pepper spray and conducted electricity devices.
9. Comprehensive regular monitoring of police integrity using a full range of indicators – such as ethical climate surveys, stakeholder surveys, and public perception and experience surveys – with results available through easy public access.

10. Applicant ethics testing in recruiting, including psychological assessments that test for deceptiveness, impatience and intolerance.
11. An organisational focus on risk management and continuous improvement, especially in relation to areas of high risk for error and misconduct (for example, database access, informant management, undercover operations, raids and sieges, high speed pursuits, responding to minorities and vulnerable persons, property management, procurement, drug law enforcement, custody, public order policing, legal process corruption, and complaints management).
12. A strong physical inspection and auditing regime, conducted internally, by the police oversight agency and by an additional external Quality Assurance Board.
13. Police retain their own internal professional standards unit, which can engage in investigations, discipline and conciliation; and which has a strong mission for internally-driven misconduct prevention – evaluated by the oversight agency.
14. Finally, it is critical that any oversight organisation has access to the necessary information from within the police. This must be underpinned by law in clear and unambiguous terms. Failure to cooperate with the oversight agency, or provide false information, must also carry consequences.

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