

Police Service of Northern Ireland

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POLICY DIRECTIVE

POLICIES AND PROCEDURES RELATING TO THE POLICE OMBUDSMAN FOR NORTHERN IRELAND (PONI)

1. POLICY IDENTIFICATION

POLICY TITLE: Policies and Procedures Relating To the
Police Ombudsman for Northern Ireland
(PONI)

POLICY OWNERSHIP:

DEPARTMENT Professional Standards Department
BRANCH Policy Unit

POLICY APPROVED BY: D/Chief Superintendent Haylett

CCF REF/OTHER
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2. POLICY STATEMENT

This Policy and associated procedures are designed to provide comprehensive information on the functions of the Police Ombudsman for Northern Ireland (PONI) and to guide Police Service of Northern Ireland (PSNI) and contracted designated staff on PONI related issues.

3. INTRODUCTION

(1) Executive Summary

It is the policy of the PSNI to work professionally and productively with PONI in effectively dealing with, and reducing complaints against the PSNI. By dealing with complaints in a timely and responsive manner, we can help to achieve the organisational goal of 'building, broadening and sustaining confidence in the police'.

(2) Origin/Background

(a) The Office of the Police Ombudsman was established in November 2000 to provide an independent police complaints system under the Police (Northern Ireland) Act 1998.

(b) The remit of PONI is to:

- (i) Investigate complaints against police or 'designated staff members' by or on behalf of members of the public;
- (ii) Investigate Chief Constable's referrals [also those from the Secretary of State, Northern Ireland, Northern Ireland Policing Board (NIPB) and the Public Prosecution Service (PPS)];
- (iii) Investigate matters that PONI believes are in the public interest.

(3) Aims/Objectives

This Policy explains the functions of PONI and the various procedures and protocols involved. It aims to provide a user-friendly reference document, by merging all existing Service Procedures, protocols and instructions relating to PONI and by inserting hyperlinks to relevant material. It also introduces new procedures relating to the investigation of designated staff¹. Whilst this Policy aims to inform staff of the main functions of PONI, it is not exhaustive, and legislative powers will take precedence.

(4) Application

This Policy will apply to police officers of all ranks, police officers part-time and designated staff members either employed directly by PSNI or contracted to work in support of PSNI.

(5) Legal Basis

(a) The legal basis for the Office of the Police Ombudsman is Section 51 of the Police (Northern Ireland) Act 1998.

(b) The main pieces of legislation relating to the functions of PONI are:

- (i) The Police (Northern Ireland) Act 1998;
- (ii) The Police (Northern Ireland) Act 2000;

¹ The legal basis for designated staff is Section 30 and 31 of the Police (NI) Act 2003. Designated staff can either be employed directly by the Chief Constable or be contracted staff. Currently, the only designated civilians in the organisation are Civilian Detention Officers, who are contracted staff.

- (iii) The Police (Northern Ireland) Act 2003;
 - (iv) Royal Ulster Constabulary (Complaints etc) Regulations 2000;
 - (v) Royal Ulster Constabulary (Complaints) (Informal Resolution) Regulations 2000;
 - (vi) RUC (Complaints etc) Regulations 2001;
 - (vii) PSNI (Complaints etc) (Amendment) Regulations 2005;
 - (viii) Police Powers for Designated Staff (Complaints and Misconduct) Regulations (NI) 2008;
 - (ix) Police Powers for Designated Staff (Code of Ethics) Order (NI) 2008.
- (c) In addition, the Northern Ireland Office (NIO) has issued guidance on complaints matters: NIO Guidance on Complaints Misconduct and Unsatisfactory Performance

4. IMPLICATIONS/IMPACT OF THE POLICY

(1) Financial Implications/Best Value/Continuous Improvement/Efficiency

- (a) There may be financial implications as a result of abstraction time for police officers and designated staff to assist in PONI investigations. This cost needs to be managed locally.
- (b) The Policy is reflective of recommendation 3(b) of the 'Morris Inquiry Report', which states that there should be a reduction in the number of Human Resources policies. This Policy collates a number of existing procedures into one reference document.

(2) Human Resources/Training

- (a) Professional Standards Department (PSD) has established a PONI Unit that liaises with PONI.
- (b) The current contractor providing designated staff has provided a point of contact for liaison with PONI and PSD. To ensure the smooth running of procedures relating to Civilian Detention Officers there will be liaison between PONI, PSD and the contractor as necessary.
- (c) Where the Policy specifies that the District Commander has responsibilities these may be delegated to the Discipline Champion. PSD organises regular meetings with Discipline Champions, which representatives from PONI also attend.
- (d) PSD provides training, advice and support to appointed officers for Informal Resolution procedures. Any further advice can be sought from D/Inspector, PONI Unit, PSD.

(3) Partnerships

- (a) Effective implementation of the procedures contained in this Policy is dependent on productive working relationships between PSNI, PONI and the Contractor providing contracted designated staff. To this end, joint conferences are organised periodically. PONI has been involved in the development of this Policy.
- (b) The current contractor providing contracted staff will have a separate Memorandum of Understanding with PONI.

(4) Risks

Failure to have clearly documented procedures and protocols in place can result in tension and uncertainty in relation to roles, responsibilities and obligations. It could also result in legal challenge.

(5) Bureaucracy

- (a) PSD have established a PONI Liaison Unit that performs most of the PSNI administration for this Policy.
- (b) District and Departments have also identified Liaison Officers who supply material to PONI.
- (c) The Contractor providing contracted Civilian Detention Officers has identified a Senior Manager for liaison with PONI.
- (d) This Policy has been subject to scrutiny against the anti-bureaucracy checklist.

(6) Consultation

The following have been consulted in relation to this Policy:

- (a) The Police Ombudsman for Northern Ireland (PONI);
- (b) Operations Department;
- (c) Crime Operations Department;
- (d) Superintendents' Association for Northern Ireland (SANI);
- (e) Police Federation for Northern Ireland (PFNI);
- (f) District Commanders;
- (g) District Discipline Champions;
- (h) Contract provider for Civilian Detention Officers.

5. HUMAN RIGHTS/EQUALITY/INTEGRITY/FREEDOM OF INFORMATION

- (1) This Policy has been screened for Section 75 considerations and complies with the Code of Ethics. It is deemed to be Human Rights compliant, however it has the potential to infringe the following articles:
 - (a) Article 5 - Right to Liberty and Security;
 - (b) Article 6 - Right to a Fair Trial;
 - (c) Article 7 - No punishment without law;
 - (d) Article 8 - Right for respect for private and family life.
- (2) Whilst there is potential for engagement of rights, these must be necessary and proportionate and apply equally to all police officers/police staff.
- (3) The Policy is suitable for disclosure in accordance with the Freedom of Information Act 2000.

6. REVIEW

- (1) This Policy will be reviewed on an annual basis, or sooner if required.
- (2) Feedback or queries relating to this Policy should be directed to the Head of PSD.

SECTION 7

PROCEDURES AND GUIDANCE

1. ROLE AND REMIT OF THE OFFICE OF PONI

- (1) Part 7 and Schedule 3 of The Police (NI) Act 1998 provide for the establishment of the Police Ombudsman for Northern Ireland, who has independent control of the police complaints system. PONI has responsibility for the recording and investigation of complaints against police officers and designated staff members by members of the public. Complaints about police staff (other than designated staff members) do not come under the remit of PONI. PONI does not investigate complaints against police made by a serving police officer.
- (2) Whilst the majority of matters investigated by PONI relate to on-duty matters, some off-duty matters can also be investigated if the individual's status as a police officer is relevant, (eg if an officer identifies themselves as such, makes an arrest, or uses police powers whilst off duty). PONI do not investigate off-duty conduct of a designated staff member, however they are bound by their employer's terms and conditions of employment, which may specify standards of off-duty behaviour.
- (3) PONI may investigate both criminal and misconduct matters, and can recommend prosecution to the PPS, or for PSD to conduct a misconduct hearing (in relation to a police officers), or recommend informal action. PONI may also make a recommendation to the Chief Constable in relation to withdrawing or modifying a designated staff member's designation². PONI's Investigating Officers (IOs) have the same powers as a Constable.
- (4) Normally PONI only investigates matters that have occurred within the previous 12 months. However, in some cases, PONI may investigate matters outside this time where PONI considers it is in the public interest to do so, or where crime is alleged, or matters are grave or exceptional³.
- (5) PONI can also refer a complaint to the Chief Constable to investigate; so called 'lease-back'.
- (6) PONI will send reports in cases where a criminal offence may have been committed by a police officer or designated staff member, to the PPS, with a recommendation. After any criminal aspects have been dealt with, PONI will then consider misconduct aspects of a case. PONI will make a recommendation to the Chief Constable (delegated to Head of PSD, or NIPB for ACC or above). The procedures following a recommendation by PONI in relation to Contracted Designated Civilians will be published in due course in a separate Service Procedure.
- (7) There are occasions when PONI may conduct an investigation when a member of the public has not made a complaint. These are:
 - (a) Chief Constable's referrals;
 - (b) Referrals from the Secretary of State;
 - (c) Referrals from the Northern Ireland Policing Board;
 - (d) Matters that PONI considers are in the public interest to investigate.

² Reg 27(5) Police Powers for Designated Staff (Complaints and Misconduct) Regs (NI) 2008

³ Reg 6 Complaints etc Regs 2001

2. CHIEF CONSTABLE'S REFERRALS

- (1) The Chief Constable will refer the following matters to PONI for investigation:
 - (a) Any matter which appears to indicate that the conduct of the police (or a designated staff member whilst involved in relevant functions) may have resulted in the death of a person;
 - (b) Any matter resulting in serious injury to a person as a result of police action (or the actions of a designated staff member whilst involved in relevant functions). [Serious injury is defined as a fracture, damage to an internal organ or impairment of bodily function];
 - (c) Cases where police have discharged a firearm (except in training situations or for negligent discharges within the confines of a police station resulting in no injury);
 - (d) Use of Attenuated Energy Projectiles (AEP);
 - (e) Matters that the Chief Constable considers being in the public interest for PONI to investigate.
- (2) There is no longer a requirement to automatically forward incidents involving the use of CS spray, unless the particular circumstances warrant it.
- (3) Paragraph 4 provides details on how to contact PONI for serious incidents.

3. RECORDING/FORWARDING OF COMPLAINTS

- (1) **General Principles:**
 - (a) All complaints made to PSNI must be recorded via C6 entry on Command and Control. The system allocates the complaint with a unique reference number and this should be cross-referenced on to the OMB2 Form (together with a note of the action taken).
 - (b) The police officer completing Form OMB2 or who has verified with PONI's office that the complaint has already been registered is responsible for ensuring the completeness and accuracy of this entry, and related documentation.
- (2) The requirement to forward all complaints, including those relating to the direction and control of the PSNI by the Chief Constable, does not prevent police officers or designated staff members from explaining their actions. Enquiries from members of the public querying the service provided **need not automatically be regarded as a complaint**. In such circumstances, it is appropriate for the matter to be discussed with the member of the public by a supervisor to see if the matter can be addressed. For example, if the matter is one of delayed response to a call for police assistance, it may be appropriate to explain the reason(s) for the delay if there were more urgent operational pressures. If the complainant wishes to pursue a formal complaint against police, it should be forwarded to PONI. It should be noted that a complainant may submit a complaint in person by contacting PONI directly and a third party may also submit the complaint on their behalf (eg a friend, solicitor, or public representative).

- (3) In cases where a complainant has made an allegation against police to a Forensic Medical Officer (FMO), the allegation must be reported to PONI even if the complainant subsequently states that they do not want their allegation to be treated as a formal complaint. Whilst this may be an additional administrative burden on police officers receiving complaints, such action will protect police from any potential 'failure in duty' allegation.
- (4) If a solicitor acting for a person detained in a custody suite indicates that they will be contacting PONI directly on behalf of their client, PSNI are still required to immediately report the matter to PONI.

(5) **Complaints Submitted at Stations**

- (a) Where a complaint is submitted verbally at a police station, the person submitting the complaint, whether complaining on their own behalf or on behalf of another person, will be handed a copy of the leaflet 'The Police Ombudsman, Dealing With Complaints Against The Police'.⁴ PONI has published literature on complaints handling, including procedures for making complaints. District Commanders should ensure that all stations have an adequate supply of such literature. Replacements may be obtained from the Police Ombudsman's office.
- (b) Where possible, the person submitting the complaint should be dealt with by an officer of at least the rank of Sergeant, and not by the person against whom the complaint has been made.
- (c) The officer to whom a complaint is submitted shall complete Form OMB2 'Notification of a Complaint at a PSNI Station'. Particular attention is drawn to instructions relating to those circumstances when PONI's office should be contacted **immediately**. Paragraph 4 provides more detailed instructions. The person making the complaint will **not** be asked to support their complaint with a written statement. It is extremely important that complaint forms are completed accurately, identifying only the officers **involved** in the incident, not naming all who were merely **present** (these individuals should be named as potential witnesses).
- (d) Where complainants are considered to be intoxicated, the officer dealing with the complainant should complete Form OMB2 as far as possible and forward to PONI in the normal manner. The complainant should not be told to come back when sober.
- (e) PONI's office have asked that officers completing/forwarding Forms OMB2 are reminded of the necessity to fax completed Form OMB2 immediately to their office on **028 9082 8659**. Where the complainant was/is in custody, and has alleged assault, any medical notes/reports/body charts must also be transmitted by fax together with Form OMB2. Subsequently, original completed Form OMB2 and copies of all related documentation (as listed at item 16 of the OMB2) should also be forwarded by post to PONI's office without delay.
- (f) The officer recording the complaint will make a C6 entry on Command and Control and restrict access if necessary.

(6) **Complaints Submitted Other than at Stations**

Where a complaint is made to an officer and not at a police station, the person making the complaint will be asked to call at a convenient police station or contact PONI directly so that details can be recorded. Officers receiving complaints in these circumstances will be required to:

- (a) Make an entry in their official notebook/journal with sufficient details to enable completion of Form OMB2, and take any immediate action necessary;

⁴ This leaflet is to be given, regardless of whether the complaint is in relation to a police officer or a designated staff member.

- (b) On return to their station, the officer will make a C6 entry on Command and Control. The matter should be immediately brought to the attention of a supervisory officer who will initiate form OMB2 if the complaint has not already been registered with PONI. PONI's office can be contacted by telephone to establish whether the complaint has been registered with them.

(7) Complaints Submitted by Telephone

If a police officer or member of police staff receives a complaint by telephone they will request that the complainant calls at a convenient police station, or contact PONI, so that details of the complaint may be recorded. If this request is declined, the person taking the call will endeavour to secure sufficient details to complete Form OMB2. The complaint will be brought to the immediate attention of a supervisory officer who will take action as outlined above.

(8) Complaints Submitted by Letter

When a complaint is received by letter, the District Commander/Head of Branch will forward an acknowledgement to the complainant, stating that the matter will be referred to PONI. A copy of PONI's complaint leaflet will be enclosed. The District Commander/Head of Branch will ensure that Form OMB2 is completed. This also applies in respect of anonymous complaints submitted by letter.

(9) Complaints Made to the Contract Provider of Designated Staff

- (a) There may be occasions when complaints are made directly to the contractor who provides designated staff members to the PSNI. In such instances, the complaint will be handled by a member of the Contractor's Management Team, who is not involved in the complaint. The person handling the complaint will acknowledge the complaint (if by letter), and forward the details of the complaint directly to PONI by telephone and confirm by fax or email. In the event of an emergency complaint being reported directly to the contractor, they will follow the emergency complaint procedure outlined at paragraph 4 (Emergency Complaints) and also immediately contact the senior officer on duty in the District in which the occurrence has taken place to enable initial action to be taken.

- (b) Complaints made to designated staff should be highlighted to a supervisory member of staff for action as per paragraph 3(5) ante.

4. EMERGENCY/NON EMERGENCY COMPLAINTS

- (1) The Complaints Form OMB2 provides notes on how the form should be completed. This guidance specifies how the Form OMB2 should be communicated to PONI's Office in emergency and non-emergency situations.
- (2) PONI has a 24-hour emergency response system providing a SIO on call at all times. It is essential that the guidance notes are consulted to decide whether or not to contact the SIO immediately. The PONI SIO is initially contacted by phone, listed at page 2 of the guidance notes to Form OMB2. (In addition to contacting the SIO on call, the form must also be faxed as soon as possible to PONI's Office).
- (3) In the event of an Emergency Complaint being made directly to the contractor providing designated staff, they will immediately contact PONI as outlined above, and also contact the senior PSNI officer on duty in the District in which the occurrence has taken place to enable initial action to be taken.

(a) Emergency Complaints

- (i) An SIO should be contacted immediately in the following circumstances:

- (ii) In the event of a complaint alleging:

NOT PROTECTIVELY MARKED

- (aa) A relevant offence as defined by 'Police and Criminal Act (PACE) (Amendment)(NI) Order 2007';
 - (bb) A sexual offence;
 - (cc) An assault that could be classed as actual bodily harm or above;
 - (dd) Any allegation that may cause widespread public concern or attract media attention;
 - (ee) In the event of a death in custody or following police contact (see paragraph 9);
 - (ff) Any other matter that requires an immediate response under section 55 of the Police (Northern Ireland) Act 1998;
 - (gg) In the event of a police officer discharging a firearm, except when the discharge was negligent, within police premises and resulted in no injuries, or the firearm was discharged during training;
 - (hh) When AEP are discharged (except training).
- (iii) Where the above applies, the duty/on-call Inspector will ensure that the scene, where possible, is established and preserved, pending arrival of the PONI SIO. It is essential that the preserving of evidence is completed promptly and effectively, and if required, urgent medical attention is provided. These responsibilities precede all other action in connection with an emergency complaint. Paragraph 5 outlines other possible action for preserving evidence. The identities of independent witnesses should be recorded. Paragraphs 5(4) and 5(5) outline protocols regarding police and military witnesses.
- (iv) Regulation 8(1)(b) of the Police Powers for Designated Staff (Complaints and Misconduct) Regs (NI) 2008 also places an obligation on any member of police staff (including contracted designated staff members) or contractor employing designated staff members to whom a complaint is made to take steps to preserve evidence, albeit that they may not have any statutory power of seizure. In cases of any doubt or difficulty as to their powers to preserve evidence, police assistance shall be sought to effect such preservation.

(b) Non-Emergency Complaints

- (i) If the complaint meets none of the criteria above at paragraph 3(a), it can be treated as a non-emergency matter. In that case, Form OMB2 must be faxed as soon as possible to PONI's Office and then posted to the PONI office via internal post.
- (ii) The individual responsible for recording the complaint should take positive steps to identify the officer(s)/designated staff member concerned, as opposed to merely listing on Form OMB2 the names of all those police officers/designated staff on duty at the scene of the incident giving rise to the complaint, or the entire crew of a police vehicle. This will help ensure that the relevant notice is only served on the officer(s)/designated staff member(s) against whom allegations are made.

(c) Police Witnesses

The identities of police and designated staff member witnesses will be recorded. If in the case of an emergency complaint PONI's SIO requests police/designated staff members to remain at the scene, be retained or recalled to duty, creating practical/welfare issues, or affecting operational capabilities, the relevant District Commander/Head of Branch will be consulted (for designated staff members the point of contact will be a member of the contract provider's senior management team, contacted via their 24 hour control room). Due regard should be paid to Service instructions - Policy Directive 03/06 Post Incident Procedure, Deployment of Post Incident Managers, Discharge of Firearms and Service Procedure No 16/95 – Critical Incidents – Management of Psychological Aspects.

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(d) **Military Witnesses**

The following is the agreed protocol between PSNI, PONI and HQNI re military witnesses:

- (i) When PSNI informs PONI of the details of MOD personnel who might be approached as witnesses, PSNI will also inform the Officer Commanding, 3 RMP that they have done so and will pass the same details that have been provided to PONI. This will be done in order for the Royal Military Police to offer speedy and effective assistance to PONI in the discharge of its investigations.
- (ii) Requests for information may be made verbally or in writing depending on the circumstances at the time. Either method is acceptable. If information has been provided by telephone to PONI it should also, as soon as possible thereafter, be provided by telephone to the Military Police based at Thiepval Barracks. Details should be confirmed in writing, as soon as is practical, to the individual in PONI's office who requested it. This should be done via the District Administration Office where a copy of the correspondence should be retained for reference purposes. A further copy of the correspondence will be forwarded to the Military Police at Thiepval Barracks. The internal post will be used to forward correspondence to both PONI and the RMP.
- (iii) Information requested will normally be name, rank, service number, unit and base of the MOD personnel concerned.

5. PRESERVATION OF EVIDENCE (EMERGENCY/NON EMERGENCY COMPLAINTS)

- (1) Whilst investigative responsibility for complaint matters lies with PONI staff, there is still an onus on police to preserve any available evidence for the attention of/or forwarding to the PONI SIO.
- (2) **Note** however the contents of paragraph 7(2) relating to deaths following police contact. In these instances, police action must be strictly limited to preservation of the scene. [If there is any doubt about a proposed course of action, contact should be made with the PONI SIO].
- (3) Depending on the circumstances, the following actions should be considered:
 - (a) Securing medical examination of the actual complainant, **with consent** is essential (in allegations of assault), regardless of when the assault is alleged to have occurred. The prompt and accurate completion of Form PACE 15 by a forensic medical officer is of paramount importance. The Duty Sergeant will examine Form PACE 15 and ensure that the form has been fully completed. In particular they will satisfy themselves that the forensic medical officer has clearly specified the exact nature of the complainant's injuries so that it can be determined whether or not the complaint is one which is classified as an emergency complaint and will require immediate contact to be made with PONI SIO and the duty/on-call Inspector;
 - (b) Securing medical examination of the officer(s)/designated staff member(s) concerned **with consent**;

- (c) Noting the general condition of the complainant/officer(s)/designated staff member(s) concerned and any visible signs of injury or discomfort;
- (d) Making the necessary arrangements to have any visible signs of injury to the complainant/officer(s)/designated staff member(s) concerned photographed with consent;
- (e) Visiting and securing the scene, if applicable;
- (f) Conducting any immediate searches or observations that may be necessary and appropriate;
- (g) Seizure of clothing, documents, firearms, and any relevant records, or other material, which might otherwise be destroyed through time or as a matter of routine;
- (h) Securing of cell, interview room, police vehicle;
- (i) Securing attendance of specialist investigative resources, eg CSI, photography, etc;
- (j) Recording of the identities of possible independent witnesses, including possible military witnesses. Military witnesses should be identified by name, rank, number and regiment (see paragraph 4(d));
- (k) Ascertaining the availability of video evidence, particularly within or outside the precincts of police stations. Police officers responsible for ensuring that evidence is preserved should seize available security videos. Additionally, the availability of further video footage, whether commercial, journalistic or from members of the public, should be drawn to the attention of PONI (if it is not readily available before submission of Form OMB2);
- (l) Regulation 8(1)(b) of the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (NI) 2008 also places an obligation on any member of police staff (including contracted designated staff members) or contractor employing designated staff members to whom a complaint is made, to take steps to preserve evidence, albeit that they do not have any statutory power of seizure. In cases of any doubt or difficulty as to their powers to preserve evidence, police assistance shall be sought to effect such preservation.

6. SCENE SHARING

On occasions an apparent 'crime' scene is a 'shared scene' because the person(s) making a complaint have also allegedly committed a crime. Examples could include an armed bank robbery where police arrived on the scene and discharged firearms to effect an arrest; or perhaps, an arrest for assault on police during which the complainant alleges that the officer assaulted them and caused actual bodily harm. In cases that fall into the 'Emergency Procedure' [paragraph 4(a)] there is an absolute responsibility to immediately inform PONI's SIO, who will inform the PSNI of their intended actions. This applies even in cases where PSNI assume primacy of the scene/investigation.

(1) Scene Sharing Principles

- (a) Alleged criminal offences committed by persons other than police officers or designated staff will be investigated by PSNI.
- (b) PONI will investigate alleged criminal offences and conduct matters committed by police officers and, (with regard to their relevant functions), designated staff.
- (c) When joint crime scenes are involved, police and PONI SIOs will investigate their respective allegation, but the agency with the most serious crime allegation will generally take the lead in respect of forensic support, crime scene management and access to witnesses and suspects.
- (d) When the crimes alleged are largely comparable in seriousness, PONI SIOs will normally take the lead.

- (f) All documents, statements, forensic samples (or scientific results), photographs and any other investigative material must be made available to the PONI SIO (if appointed).
- (g) PONI, will in relation to PONI documentation, fulfil any duty in respect of the Criminal Investigations Act 1996 (CPIA).

7. PROCEDURES FOR DEALING WITH DEATHS FOLLOWING POLICE CONTACT

- (1) Article 2 of the European Convention of Human Rights (ECHR) (which is incorporated into United Kingdom Law by the Human Rights Act 1998) provides that everyone's right to life shall be protected by law. This right imposes:
 - (a) An obligation on the state not to take life, except in very narrowly defined circumstances;
 - (b) A positive obligation to take steps to preserve life;
 - (c) A procedural obligation to ensure there is an independent and effective investigation into deaths, which may have resulted from the activities of state agents (eg death in custody). Where persons for whose actions the State is responsible (including police officers and designated staff members) are implicated in the death, the investigation must be effective and independent. This means that where police officers or designated staff members are implicated in a death, the PSNI can take no substantive part in the investigation.
- (2) Section 55(2) of the Police Act (NI) 1998 states:

"The Chief Constable **shall** refer to PONI any matter which appears to the Chief Constable to indicate that the conduct of a member of the police force **may** have resulted in the death of some other person."⁵
- (3) All references to 'Police' in Section 7 (Deaths following police contact) relate also to designated staff members carrying out their relevant functions.
- (4) PONI will immediately be contacted in the event of any death of a person following police contact and a SIO from PONI's office will be appointed to conduct an investigation into the circumstances surrounding the death.
- (5) It should be noted that the Health and Safety Executive Northern Ireland (HSENI) has, in accordance with the Health and Safety at Work (Northern Ireland) Order 1978, a role in the investigation of work related deaths. Service Procedure No 18/2007 - Investigation of Work Related Deaths Northern Ireland Agreement for Liaison provides more detail in this regard and should be consulted by officers involved in the investigation of such deaths.

(a) Definition of a Death of a Person During or Following Police Contact

- (i) The definition of a death of a person during or following police contact is based on Home Office Circular 13/2002. All references to 'Police' in this section relate also to designated staff members carrying out their relevant functions.
- (ii) The categories are outlined as follows:

(aa) CATEGORY 1

Fatal road traffic incidents involving the police

⁵ Regulation 14 of the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (NI) 2008 extends this to designated staff members

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This definition covers all deaths of members of the public resulting from road traffic incidents involving the police, both where the person who dies is in a vehicle and where they are on foot.

(bb) **CATEGORY 2**

Fatal shooting incidents involving the police

This definition covers circumstances where police fire the fatal shots.

(cc) **CATEGORY 3**

Deaths in or following custody

This definition covers the deaths of persons who have been arrested or otherwise detained by the police. It also includes deaths occurring whilst a person is being arrested or taken into detention. The death may have taken place on police, private or medical premises, in a public place or in a police or other vehicle. Whilst the Home Office Guidance does not specify a timeframe for such deaths, a general guide would be if the death occurs within 48 hours of police contact and there is suspected causal link.

Deaths in the following circumstances are amongst those covered by the definition, however, this list is not exhaustive:

- (AA) Where the person dies in or on the way to hospital (or some other medical premises) following or during transfer from police detention;
- (BB) Where the person dies after leaving police detention and there is a suspected causal link between that detention and death;
- (CC) Where the person is being detained for the purposes of exercising a power to stop and search; and death occurs
- (DD) Where the death is of a child or young person detained for their own protection;
- (EE) Where the person is in the care of the police having been detained under the Mental Health (NI) Order 1986;
- (FF) Any apparent suicide, which occurs within **48 hours** following release from police custody.

(dd) **CATEGORY 4**

Deaths during or following other types of contact with the police

This definition covers circumstances where the person dies during or after some form of contact with the police, which did not amount to detention and there is a link between that contact and the death. Examples of death which would be covered by this definition are as follows:

- (AA) Where the person is actively attempting to evade arrest and the death occurs.
- (BB) Where there is a siege situation including where a person shoots themselves/themselves or another, whilst police are in attendance.

NOT PROTECTIVELY MARKED

NOTES

Deaths involving off-duty police are not included. (Note: however, if a death results from an action by a police officer acting as such, it is covered by this procedure).

In the event that a death is not within the above categories, but there is other evidence to implicate police, the death should be treated as a death following police contact.

(b) Initial Action to be Carried Out by the Senior Officer on Duty

- (i) In the case of all categories, the location of the incident must be treated as a major crime scene and all steps taken to preserve evidence in accordance with current service instructions. The actions of the first personnel at the incident are crucial to a subsequent successful examination and the recovery of evidence. It is therefore essential that all personnel are aware of the importance of scene preservation and the actions they need to take to ensure that any subsequent examinations are not compromised. In particular it is essential that all police officers and designated staff members maintain accurate contemporaneous records of their actions.
- (ii) The role of police at the scene must be limited to preservation of the scene, pending the arrival of staff from PONI's office. **No substantive investigative steps may be taken by police prior to the arrival of PONI staff.** If there are special circumstances requiring immediate action by police (eg adverse weather will eliminate forensic opportunities), action may be taken to the extent required to preserve such evidence.
- (iii) PONI must be notified **immediately**. It is important that notification of PONI is not delayed while other action is taken.
- (iv) Emergency procedures for contacting PONI are outlined in paragraph 4(a) and are also contained in the guidance notes for completion of Forms OMB2 and OMB2b.
- (v) The following people must also be notified:
 - (aa) The District Commander of the area where the death occurred;
 - (bb) Where the death occurs following release from a police custody suite - the District Commander of the area in which the death occurred **and** the District Commander of the custody suite from where the deceased was released (if different);
 - (cc) The Regional Assistant Chief Constable (ACC) for the area where the death occurred **and** the Regional ACC responsible for the custody suite from where the deceased was released (if applicable and if different);
 - (dd) Where the death also relates to a criminal offence, ACC Crime Operations;
 - (ee) The PSNI Health and Safety Branch, who will inform the HSENI. Outside normal office hours contact should be made via Belfast Regional Control (BRC);

- (ff) Where there has been a death in custody, and a contracted designated staff member has been involved in the care/supervision of the prisoner, a member of the contract provider management team should be notified immediately via their 24 hour control room.

(c) Role of District Commander (For Area Where Death Occurred)

The District Commander must ensure that:

- (i) PONI have been informed and consulted to identify primacy of the investigation;
- (ii) Media and Public Relations Department have been informed;
- (iii) The Regional ACC is provided with a community impact assessment;
- (iv) The District/Departmental HR Manager is asked to consider the need for support and counselling of staff in accordance with established procedures;
- (v) Consideration has been given to the appointment of a Post Incident Manager – see Policy Directive 03/06 – Post Incident Procedure for Deployment of Post Incident Managers – Discharge of Firearms.
- (vi) A Health and Safety officer and the HSE has been notified of a death on police premises;
- (vii) Head of Branch, Command Secretariat is informed. This office will inform the NIPB and also the Policing Board Community Involvement Branch.

(d) Investigative Primacy

- (i) PONI's office has full responsibility for investigating a death following police contact. However, there may be issues surrounding the deceased that impact on police investigations and may require evidence to be gathered at the post mortem. An example of this would be where a person arrested for a robbery dies in custody. Police investigating the robbery may require evidence such as fingerprints or clothing fibres.
- (ii) The primacy of an investigation must be decided between the PSNI (SIO/District Commander or Senior Officer) and PONI's SIO as per paragraph 6(1). Both investigations need to target and preserve evidence and maximise all evidential opportunities. It is imperative that PONI's SIO and the PSNI SIO liaise closely to ensure the police investigation or PONI investigation is not hampered or compromised and that the necessary evidence is gathered. It must be borne in mind that, in order for the investigation to be independent and effective (as required by Article 2 of the ECHR), PONI should have ultimate control over the investigation of a death following police contact.

8. NOTIFICATION OF COMPLAINTS RECEIVED BY PONI

Regulation 6 of the RUC (Complaints etc) Regulations 2000 states that, where a complaint has been recorded, PONI must notify:

The appropriate authority; and

The member concerned.

The following procedure has been agreed by PONI and PSD (acting on behalf of the Chief Constable), and approved by the Staff Associations.

(1) Notification to the “Appropriate Authority”

- (a) The Chief Constable is the appropriate authority for all police officers up to and including Chief Superintendent. The NIPB is the appropriate authority for officers of ACC rank and above. The contract provider for contracted designated staff is the appropriate authority for these staff (although PONI also notifies the Chief Constable in relation to complaints regarding designated staff⁶).
- (b) PSD will act on behalf of the Chief Constable for complaints regarding police officers. Notification will be sent electronically to PSD using the following forms:
 - (i) OMB50 Notification to appropriate authority of complaint received/non complaint matter under consideration;
 - (ii) OMB50A Notification to appropriate authority of additional allegation;
- (c) Under the 2000 Regulations, it is the responsibility of PONI, and not the appropriate authority, to inform the member concerned. PSD will not pass information received from PONI to individual members concerned.

(2) Notification to the “Member Concerned”

- (a) Where the member concerned has been identified, PONI will send one of the following forms electronically to their Commander/Discipline Champion (or Contractor for designated staff):
 - (i) OMB52 Notification to officer of complaint received/non-complaint matter under consideration;
 - (ii) OMB52A Notification to officer of additional allegation received;
 - (iii) OMB53 Notification to officer of closure classification.
- (b) It will be the responsibility of the Commander (or Contractor for designated staff) to pass these forms to the member concerned, bearing in mind the confidential nature of the material.

(3) Notification to Members on Sick Leave

Where a member concerned is on short term sick leave, the District Commander should retain the relevant forms and issue them on the officer’s return to duty. Where the member concerned is on long term sick leave, the Commander should forward the relevant forms to the member. It may be appropriate in some circumstances for the advice of Occupational Health and Welfare (OHW) to be sought prior to forwarding forms to a member on sick leave.

⁶ Reg 8(4) Police Powers for Designated Staff (Complaints and Misconduct) Regs 2008

(4) **Notification to Designated Staff Members**

- (a) All notices to be served on contracted designated staff (regarding notification of complaint or notification of investigation⁷) will be forwarded by the PONI Senior Investigating Officer (SIO) to the relevant Managing Director of the contract provider (or deputy) by courier where appropriate. Once received, the notices will be forwarded to one of the contract provider's management staff for service at the first available opportunity. If for any reason there is an anticipated delay in the service of the notice, the PONI SIO should be contacted and further advice obtained. When the notice has been served the copy will be endorsed and pro forma statement completed. The endorsed notice/statement will be returned by courier to the PONI SIO. It is recognised that the relevant Management cannot caution designated staff when serving a notice.
- (b) If a designated staff member is on short term sick leave, the relevant notice should be retained and served when the staff member returns to work. If the designated staff member is on long term sick leave the notice should be served on them unless to do so is likely to adversely impact on their medical condition. The advice of the contractor's Head of HR should be sought where considered necessary.

(5) **Information Contained in Forms OMB 52/52A and OMB 53**

- (a) Form OMB52 notifies a police officer/designated staff member that they are a "member concerned" in relation to a complaint received by PONI. The form will be issued unless to do so would impede the investigation. Form OMB52 will provide details, if available, of how and when the complaint was made, the police station to which the officer/designated staff member is attached and the allegation classification as initially received.
- (b) **Note:** Complaints are classified according to the categories laid down by Her Majesty's Inspectorate (HMI). A full list of these categories is available on the PSD web page and contained at Appendix 'A'. Where the classification 'other' is used, the OMB52/52A will if possible, include some information about the nature of the behaviour complained of. Should additional allegations be made against a member concerned, Form OMB52A will be issued detailing these.
- (c) **Receipt of Forms OMB52/52A by an individual does not necessarily mean the complaint/matter will be subject to a formal investigation by PONI.**

Notification of Formal Investigation

- (d) Should the complaint be closed prior to the appointment of an IO, members concerned will be notified via the District Commander (Contractor for Civilian Detention officers) using Form OMB53, which will indicate the closure classification. Members who have already received Form OMB3 are normally notified of closure by letter. This practice will continue, and the letter will indicate that it fulfils PONI's responsibility to issue Form OMB53. Form OMB51 will be issued as normal to the appropriate authority.
- (e) If an individual is identified and the complaint is to be formally investigated by PONI, they will be served notice under Regulation 9 of the RUC (Conduct) Regulations 2000⁸, unless to do so would prejudice the investigation. The form used for this is OMB3 (for police) or DC3 (for designated civilians).
- (f) PONI are unable to elaborate, prior to the service of Form OMB3/DC3, on the identity of the complainant or the precise nature of the allegations.

⁷ Reg 8(4), 14(2) Police Powers for Designated Staff (Complaints and Misconduct) Regulations (NI) 2008

⁸ Or Reg 14(2) Police Powers for Designated Staff (Complaints and Misconduct) Regulations (NI) 2008 for designated staff

- (g) Members should note that staff at PSD cannot add anything to the information contained on forms issued by PONI, and all queries should be addressed to PONI using the email address provided for that purpose. To ensure that information passed by this means is properly protected, this address can only be accessed using the Common Terminal. Separate communication channels have been agreed between PONI and the contract provider for designated staff.
- (h) PONI provide the name and contact details of the Investigating Officer on a Form OMB3 which is issued if an individual wishes to speak to the Investigating Officer to discuss the case. They may telephone them during office hours. PONI aim to keep officers under investigation on at least a six-weekly basis, either by telephone, email or in writing.

9. ATTENDANCE FOR INTERVIEW

- (1) As a first principle, when an officer of PONI wishes to interview a police officer who is either:
 - (a) subject to a criminal/disciplinary investigation; or
 - (b) a witness or potential witness to a criminal or disciplinary offence,

PONI will contact the Operational Planning office of the relevant District and will seek to establish an appropriate timescale for interview. (Equivalent arrangements in respect of officers attached to Regions/HQ Departments will apply in these circumstances and 'Operational Planning' should be interpreted accordingly.) In making appropriate arrangements for detailing the attendance of the police officer(s) concerned, PONI and relevant Operational Planning staff will have regard to the seriousness of the alleged offence and the potential detriment to the investigation which may arise through delay.

- (2) Once a provisional date and time has been established between PONI and Operational Planning, the details of the interview will be confirmed in writing by PONI, via Operational Planning, to the police officer concerned. Operational Planning, in detailing attendance for interview, will indicate to the officer concerned that attendance will be on duty and will attract financial entitlements in accordance with existing instructions/regulations. An officer may be accompanied by a 'friend' to any interview or seek legal advice where appropriate.
- (3) If for any reason, Operational Planning or the police officer concerned subsequently become aware that the interview appointment will not be met – eg through unavailability of their 'friend' or sickness, that information should be communicated immediately to PONI; and confirmed in writing. In cases of urgency, written notification may be by fax, with due regard being taken of the confidential nature of such correspondence.
- (4) In the event that the officer does not attend for interview as detailed (and in the absence of any notification to the contrary) an officer of PONI will contact the relevant Operational Planning Office. Operational Planning will verify that the officer was detailed to attend for interview and will provide other details as known - eg notified sickness absence etc. In such circumstances PONI will also give consideration to reporting the officer concerned for breaching the Code of Ethics (Professional Duty).
- (5) **Interview of Designated Staff Members**
 - (a) Where possible, PONI will interview contracted designated staff during their normal hours of duty at their normal place of duty. While PONI will endeavour to apply this principle to all investigations, the interests of the investigation are the paramount consideration and PONI will exercise all powers available to it under PACE, where necessary, or deemed appropriate in the circumstances.
 - (b) All arrangements for interview will be made between the PONI SIO and the contract provider's Operational Planning Branch. Once arrangements have been agreed, PONI will write to the designated staff member via the relevant Managing Director, to confirm.

- (c) In cases of difficulty or in the event of a dispute, the Single Point of Contact (SPOC) for each organisation will be consulted and where necessary intervene to resolve the dispute. Where resolution is not achieved, then the Police Ombudsman and the Managing Director of the contract provider shall be consulted and may be asked to intervene as appropriate.
- (d) Should the Contractor's Operations room staff or the designated staff member subsequently become aware that the interview cannot be met, PONI will be notified without delay. Failure to attend an interview without good cause may lead to disciplinary action being taken by the Contract Provider.

10. RECOMMENDATIONS FOLLOWING INVESTIGATION:

- (1) The law requires that at the end of an investigation into alleged criminal behaviour, PONI must submit a file to the PPS (except in cases where evidence clearly shows that an officer is not culpable, eg CCTV evidence). The file will contain a recommendation as to whether, based on the evidence in the case, PONI believes the officer/designated staff member should be prosecuted.
- (2) Following the conclusion of any criminal proceedings, or for investigations which relate to purely misconduct matters, PONI will make a recommendation to Professional Standards Department, who will consider whether disciplinary action (formal or informal) should be taken in relation to police officers. If the PSNI disagrees with the recommendation of PONI, and subsequent agreement cannot be reached, the Police Ombudsman can direct that a misconduct hearing takes place. PONI cannot direct informal misconduct action.
- (3) In the case of Designated staff members, PONI may make a recommendation to Professional Standards Department in relation to modifying or withdrawing the staff member's designation.

11. SOURCES OF SUPPORT

- (1) Being subject of an investigation can be a significant and distressing event. It is important therefore that proper support is available to those officers and designated staff members informed that they are under investigation by PONI. Police officers and designated staff members are reminded that they may bring a friend to any interview with PONI or may seek advice in criminal matters. Sources of support are listed below and are discussed in more detail in Policy Directive 11/07 – Integrity and Professional Standards.
 - (a) Federation – Discipline (Defence) Coordinator;
 - (b) The Superintendents' Association for Northern Ireland (SANI);
 - (c) List of 'Friends';
 - (d) Other Staff Associations;
 - (e) Occupational Health and Welfare (OHW);
 - (f) Line Managers.
- (2) The Contract Provider will put in place separate arrangements for contracted designated staff members.⁹
- (3) In addition, Post Incident Managers can assist in securing support following a serious incident. Policy Directive 03/06 - Post Incident Procedure Policy refers. Agreement has been obtained that this support is extended to designated staff members pending the policy being updated.

⁹ Regulation 30(2) of the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (NI) 2008 specifies who may accompany a designated staff member during interview.

12. INFORMAL RESOLUTION

- (1) Informal Resolution is intended to provide a flexible and simple procedure for dealing with suitable complaints, thus avoiding the need for a lengthy investigation. Only less serious complaints are suitable for Informal Resolution. Informal Resolution can take place for complaints involving either police officers or designated staff members.
- (2) PONI has an obligation to consider whether a complaint is suitable for informal resolution. When PONI deem a complaint suitable for informal resolution, they will seek the complainant's agreement to this process. If the complainant does not agree, then informal resolution cannot proceed.
- (3) Once an agreement has been secured, the matter is referred to PSD, who in conjunction with the relevant District will appoint a suitable officer of at least Inspector rank (Appointed Member) who will carry out the informal resolution attempt. The District Commander will be responsible for monitoring progress and ensuring that the matter is dealt with promptly.
- (4) Where an informal resolution attempt involves a designated staff member, PSD PONI Unit and the Appointed Member will liaise with the contract provider of the designated staff member as appropriate.
- (5) During the Informal Resolution process, the officer or designated staff member concerned may comment on the complaint, either in writing or orally, although there is no obligation to do so. Nothing said during the Informal Resolution process can be used in any subsequent disciplinary, civil or criminal proceedings, unless it consists of or includes an admission about an unrelated matter.
- (6) The following rules apply to informal resolution, in order to protect the rights of the officer/ designated staff member and the complainant:
 - (a) The Appointed Member may not tender an apology on your behalf unless you admit the conduct in question and agree to such an apology being given.
 - (b) If it appears to the Appointed Member that the resolution of the complaint may be assisted by a meeting between the officer/designated staff member concerned and the complainant, such a meeting cannot be arranged without the consent of all parties.
- (7) Should attempts to resolve the complaint informally be unsuccessful, the complaint will be referred to the Police Ombudsman to investigate further.
- (8) No entry relating to the attempted or successful resolution of the complaint will be made on the officer's/designated staff member's personal record.
- (9) Appointed Member (AM) Notes for guidance and further information regarding the Informal Resolution process are available on the Professional Standards web-page; PONI Liaison Unit. See also Section 2 of the NIO Guidance. NIO Guidance section 2_Complaint Procedures and the Police Ombudsman's web-site

13. TRENDING AND TRACKING OF COMPLAINTS AGAINST POLICE

Patten recommendations 79 and 80 deal with the trending and tracking of complaints as follows:

- (1) 79. An automated trend identification system for complaints should be introduced;
- (2) 80. The use of trend information should be followed up by management and as appropriate by the department responsible for discipline. Guidance should be drawn up to help line managers use this information.

(a) Explanation of Terms

- (i) There are 2 key terms to be clarified; complaint and allegation. A complaint relates to the number of files that have been opened against a particular police officer or designated staff member. An allegation is the substance of the complaint. There may therefore be several allegations in one complaint; ie, that a police officer was uncivil, assaulted the subject and failed to investigate a crime. This is an example of what could be one complaint but three allegations.
- (ii) Trend information informs a District Commander of the number of allegations that have occurred in their area of command. This information is provided via Saturn.
- (iii) Tracking deals with the management of individual officers/designated staff members. Information from PONI's office is supplied to PSD and is then made available to that officer's District Commander/Head of Branch for any necessary action.

(b) Trending

- (i) This refers to the information provided by PONI and made available to Commanders, via Saturn, concerning the number of allegations of misconduct that have occurred in their area of command. It is a snapshot in time of the allegations that have been made in their geographical area of control.
- (ii) The allegations are classified under the categories contained at Appendix 'A'. The information can be interrogated further to give statistics as to the day of the week, time of day, station area and location where the allegation arose (if known). The age of the person making the allegation may also be available.
- (iii) It is for District Commanders to decide how best to use the trending data within their District in an effort to reduce complaints.

(c) Tracking

- (i) This refers to information that is supplied in relation to individual officers or designated staff members, and the management of those individuals. It is specific to the individual, irrespective of the geographical area where the police officer/designated staff member is alleged to have committed the act or omission.
- (ii) Information is supplied by PONI to PSD on a monthly basis, highlighting officers/designated staff members with 3 or more complaints in a rolling 12-month period. PSD will ensure that the information relating to police officers is passed to Commanders in a timely manner. The police officer with the most complaints in their District/Branch will be listed first. It must be emphasised that each complaint may contain more than one allegation. Having been provided with the information outlined above, the District Commander/Head of Branch may decide on a course of action in relation to officers under their command. It should be noted that being subject of a complaint does not necessarily mean the officer is under investigation. The individual concerned should have already been notified of the complaint by service of Form OMB52 [see para 8(2)].
- (iii) The District Commander/Head of Branch should take into consideration a range of other matters relating to the individual before deciding on a course of action. [For further detail, see paragraph 13(f) below].
- (iv) Article 10.2 of the Code of Ethics (2008) states that supervisors shall ensure that their staff carry out their professional duties correctly. The District Commander/Head of Branch is best placed to take corrective action in relation to their own officers, and to decide whether or not a police officer has an abnormally high number of complaints, bearing in mind the policing environment and the nature of duties engaged in. Action will be taken at local level, subject to the following instructions.

(d) Information Provided By PONI to PSD

- (i) PONI provide the following information in relation to officers attracting three or more complaints in a rolling 12-month period:
 - (aa) Service number;
 - (bb) Rank;
 - (cc) First name;
 - (dd) Surname;
 - (ee) Complaint reference number;
 - (ff) District (and Custody Suite if relevant) where complaint occurred;
 - (gg) Date complaint received;
 - (hh) Status of complaint;
 - (ii) Allegation type;
 - (jj) Allegation sub-type.
- (ii) All of the above will be supplied to the District Commander/Head of Branch where the police officer is stationed. The police officer with the most complaints will be at the top of the list.
- (iii) Any District Commander/Head of Branch requiring further detail on any of the information supplied by PONI's office should contact the Senior Complaints Officer at 028 9082 8732.

(e) Information Provided by Professional Standards Department to Commanders

PSD will check records of all officers highlighted by PONI. Where anything further is known about the police officer concerned, PSD may add this information to the complaints data for use by District Commanders/Heads of Branch if relevant.

(f) Options for District Commanders

- (i) Having been provided with the information outlined above, the District Commander/Head of Branch should consider what further information is available to them before deciding on a course of action in relation to the officers highlighted.
- (ii) Research suggests that District Commanders/Heads of Branch may find it useful to consider the following in relation to each individual officer:
 - (aa) Sickness absence;
 - (bb) Work performance;
 - (cc) Stop/search figures;
 - (dd) Road Traffic Collisions (RTCs) on duty;
 - (ee) Written warnings;
 - (ff) Civil actions pending;
 - (gg) Views of line-management.

- (iii) The District Commander/Head of Branch may have the highlighted officer spoken to by an appropriate officer, usually an Inspector. This is not a disciplinary interview, but a management interview where the number of complaints is drawn to the officer's attention and comment is invited.
- (iv) Individual complaints must not be discussed in detail, as this could prejudice any ongoing investigation.
- (v) Interviewing officers will report to the District Commander/Head of Branch, who will consider their course of action. Options may include:
 - (aa) Welfare referral;
 - (bb) Monitoring by supervisors;
 - (cc) Guidance or advice on the Code of Ethics and standards expected by the PSNI in dealing with members of the public;
 - (dd) Training;
 - (ee) No further action.
- (vi) District Commanders/Heads of Branch should ensure that the officer concerned is informed of the course of action taken.
- (vii) District Commanders/Heads of Branch must inform PSD of the action taken in relation to each highlighted officer. This information is anonymised and sent to the NIPB on a 6-monthly basis as part of the PSNI Human Rights Compliance Report.

(g) Tracking Relating to Designated Staff Members

PONI will forward information to PSNI PSD on a monthly basis, highlighting designated staff members with 3 or more complaints in a rolling 12 month period. PSD will ensure that the information is passed to the Managing Director of the contract provider in a timely manner. The Managing Director will decide if remedial action is required, and advise PSD what action, if any, is taken.

14. GUIDANCE ON THE HANDLING OF COMPLAINTS RELATING TO "DIRECTION AND CONTROL" OF THE PSNI

- (1) Complaints about the direction and control of a Police Service can often be significant and therefore require a meaningful and timely response. Direction and control complaints do not deal with issues of misconduct; rather they provide an opportunity to capture learning from the experiences of the public. The Chief Constable and the NIPB attach great importance to giving members of the public confidence that their complaint will be responded to in a timely and appropriate manner.
- (2) Examples could be complaints about the tasking and siting of road safety cameras and speed guns, or the number of officers on duty. PSNI already deal with complaints of this nature, but this procedure emphasises **performance monitoring, timeliness and oversight**. The PSNI has agreed the procedure with the NIPB.

(a) Benefits of the System

In order to develop our approach to service improvement to the public, we must be mindful of the positive impact that can be achieved if we manage these issues correctly to achieve a satisfactory outcome for the complainant. The direction and control process affords PSNI the opportunity to improve public confidence in our ability to respond positively to their concerns and improve the way that we work and deliver our services.

(b) Key Elements Of The Procedure

- (i) Responsive to the needs of complainants;
- (ii) Timeliness of response (within 30 days);
- (iii) Proportionate in the handling of the complaint;
- (iv) As open and transparent as the maintenance of operational policing will allow;
- (v) Flexible, so that complaints can be dealt with at the lowest appropriate level, with an emphasis on early resolution;
- (vi) An opportunity for the organisation to learn from experience.

(c) Who Can Complain?

Any member of the public may ask questions about the way policing services are delivered locally and, if dissatisfied, complain about that service. A member of the public does not include a serving police officer, police staff, agency staff or contractor (or anyone acting on their behalf in that capacity).

(d) What Constitutes a Direction and Control Complaint?

- (i) Any matter to do with the delivery of policing services in a police area.
- (ii) However this **excludes**:
 - (aa) Matters that constitute misconduct where personal or individual responsibility is in question, including matters of negligence or incivility;
 - (bb) Internal management and organisational support, (eg finance, procurement, catering, postal services etc) it is for the Chief Constable to decide how such complaints are dealt with;
 - (cc) General functions of the NIPB. Complaints about the NIPB should be directed to the Chief Executive of the NIPB.
 - (dd) Where there is any doubt that a complaint relates to misconduct, then it must be recorded and dealt with as a complaint in accordance with existing procedures as per paragraph 3 (Recording & Forwarding of Complaints).

(e) Definition of Direction and Control

- (i) Direction and control of a Police Service is the legitimate, independent, operational responsibility and discretion that is held by a Chief Officer.
- (ii) For the purpose of this guidance a direction and control complaint is one that relates to and can be categorised as follows:
 - (aa) Operational policing policies (where there is no issue of conduct);
 - (bb) Organisational decisions;
 - (cc) General policing standards in the PSNI;
 - (dd) Operational management decisions (where there is no issue of conduct).

- (iii) Direction and control of the Police Service by the Chief Constable includes direction and control by any other person serving under him who operates under a direct or indirect delegated authority. For example, a District Commander will have delegated authority and prescribed discretion to provide a policing service in the District. Any local policies or operating procedures developed by a Commander will be regarded as direction and control of the Police Service by the Chief Officer.

(f) Recording Complaints about Direction and Control

- (i) Section 52 of the Police (NI) Act 1998 states that all complaints about the PSNI shall be made to PONI or, if made to a member of the PSNI, shall be referred immediately to PONI. PONI shall record and consider all complaints to determine if they relate to the conduct of a member, or to the direction and control of the service. Complaints about direction and control are referred to the Chief Constable (delegated to PSD).
- (ii) If any officer appointed to deal with a direction and control matter becomes aware of matters of potential misconduct, a full report of the facts should be submitted to PSD without delay, for further investigation by the appropriate agency.
- (iii) Complaints about direction and control will be recorded by PSD in a register that will allow information on a complaint or series of complaints to be retrieved effectively and efficiently for the purposes of those who need to manage, oversee, or inspect the procedure.
- (iv) The legislation does not require the following to be registered:
 - (aa) A repeat complaint, which was made by the same complainant and was previously dealt with;
 - (bb) A complaint which is considered to be frivolous, vexatious, or out of time (ie over 12 months old);
 - (cc) An anonymous complaint, unless there is an obvious benefit to be gained by addressing the complaint.

(g) Monitoring of Complaints

- (i) PSD will collate the information to enable senior officers and NIPB members to review complaints by category, scrutinise the outcomes and commission any action considered appropriate to prevent re-occurrence of the issue. This will ensure that both external and internal scrutiny of direction and control matters takes place on a regular basis.
- (ii) In addition to monitoring by senior officers and the NIPB, it is anticipated that Her Majesty's Inspectorate of Constabulary (HMIC) will undertake inspection activity to test compliance with and effectiveness of the procedure during Baseline Assessment or thematic inspections.

(h) Responsibilities – Professional Standards Department

- (i) The Chief Constable has delegated responsibility for the management of this procedure to the Detective Inspector, PONI Unit, PSD.
- (ii) Professional Standards is responsible for the following actions within the timescales at 14(j) below:
 - (aa) Receiving and recording complaints referred by PONI;
 - (bb) Identifying the appropriate ACC/District/Department or Branch best placed to deal with the complaint;

- (cc) Acknowledging receipt with the complainant and advising who will be dealing with their complaint. The complainant will be advised that a copy of this procedure can be obtained via PSNI website or upon request;
- (dd) Liaising with the Contractor employing designated staff members as appropriate;
- (ee) Assigning further report dates and expedites;
- (ff) Examining the action taken and, if appropriate, closing file;
- (gg) Circulating lessons learned on PoliceNet and the PSNI website, if applicable;
- (hh) Reporting bi-annually to the NIPB;
- (ii) Monitoring performance against agreed standards;
- (jj) Providing advice to staff who will be dealing with complaints.

(i) District Commanders/Head of Branches

Officers receiving direction and control complaints from PSD are responsible for the following actions within the timescales at 14(j) below:

- (i) Appointing an officer of appropriate rank to make such enquiries as are considered appropriate, in order to address the issues/concerns raised by the complainant;
- (ii) Corresponding directly or by letter with the complainant at the earliest opportunity to advise them that their concerns are being addressed (an acknowledgement will have been forwarded by PSD)
- (iii) Endeavouring to reach a satisfactory outcome with the complainant as quickly as possible. It is not necessary to achieve complainant satisfaction on all occasions, as the complaint is not being treated as an informal resolution. There should be a presumption towards openness, but any decision on disclosure of information should be subject to a sensitivity test, bearing in mind the requirements of the Freedom of Information Act. In a few instances, a letter to the complainant may be the most appropriate means of dealing with the complaint, but where the circumstances permit and the complainant consents, there should be a meeting to discuss the matter.
- (iv) A full report outlining all actions taken and the final views of the complainant should be forwarded to PSD (within the agreed timescales).

(j) PERFORMANCE MONITORING

The following performance will be recorded by PSD and reported on bi-annually to the NIPB.

DATE	TARGET
Date of incident/Complaint to PONI	Not Applicable
Date full details of complaint received by PSD, and/or identified as 'direction and control' matter	PSD target – 75% referred to District/Dept within 4 working days
Date final report received from District/Dept	District/Dept target - 95% resulted to PSD within 30 working days

15. RECEIPT OF POLICE MATERIAL BY PONI

(1) Receipt of Sensitive/Protectively Marked Material

- (a) It has been agreed that all requests from PONI's office for sensitive or protectively marked material should be channelled through the Detective Superintendent, Force Intelligence Bureau (FIB), Headquarters, Brooklyn. It has also been agreed that all such requests **must**, in the first instance, be approved by a SIO of PONI's office, who must be satisfied as to the need for such a request.
- (b) Sensitive information will include all matters listed on the sensitive schedule(s) of crime files, in accordance with the Criminal Procedures and Investigation Act 1998 and would include, for example, intelligence reports.
- (c) Requests for the disclosure of the identity of covert human intelligence sources or confidential sources will be forwarded to the Chief Constable or Deputy Chief Constable, who will liaise directly with PONI's Director of Investigations.
- (d) The transfer and receipt of such material/information will be completed in compliance with the guidelines contained within the Government Protective Marking Scheme. Where any ambiguity arises as to whether the request is or is not for sensitive information, clarification must be sought from the Information Assurance Unit via the Detective Superintendent, FIB.

(2) Receipt of Crime Files (Including those transmitted to the PPS)

Requests for **copies** of local crime files should normally be requested and supplied via the relevant District Occurrence and Case Management Team (OCMT). Requests for a **copy** of a crime file held at Headquarters should be directed to Crime Branch, Knocknagoney. A **copy** will be provided to PONI – minus material included in any 'sensitive' schedule. Sensitive material will be handled in accordance with the preceding instructions relating to such material.

(3) Receipt of Other Police Material

PONI requests for police material such as notebooks, statements etc should be made through the District Liaison Officer. Information and Communications Services (ICS) also provide a considerable amount of data to PONI. Data from IT Systems will be provided to PONI upon request using Form PONI 1.

(4) **Receipt of Material From the Contract Provider of Designated Staff**

- (a) All requests made by PONI for information, documentation and records from the contract provider for designated staff, which may be of relevance to the PONI investigation, shall be complied with by them so far as is legally possible .
- (b) All requests for such information will be made between the PONI SIO and the contract provider's Operational Planning. In cases of difficulty or in the event of a dispute, the Single Point of Contact for each organisation shall be consulted and where necessary intervene to resolve the dispute. Where resolution is not achieved, then the Ombudsman and the Managing Director of the Contract Provider shall be consulted and may be asked to intervene as appropriate.

16. MISCELLANEOUS GUIDANCE

(1) **Police Ombudsman - Powers of Arrest**

- (a) PONI staff have powers of arrest under Section 56 of the Police (NI) Act 1998. Where an arrest under those provisions is made and the arrested person is conveyed to a custody suite, custody officers should deal with all parties as per PACE and Codes of Practice. Any dispute between custody officers, reviewing Inspectors and PONI staff must be referred immediately to an officer of the rank of Superintendent or above who is responsible for the police station in which the custody suite is located. In the event of that Superintendent being unable to resolve the matter then it will be for that Superintendent and PONI staff to immediately refer any unresolved issues to higher levels in their respective organisations.
- (b) The Police and Criminal Evidence (Application to Police Ombudsman) Order (NI) 2000 extends powers which can be exercised by PONI staff. This legislation seeks to establish equivalency between the ranks and grades as follows:

RANK OF POLICE OFFICERS	GRADE OF POLICE OMBUDSMAN OFFICER
Superintendent	Senior Investigating Officer (SIO)
Inspector	Investigating Officer (IO)
Sergeant	Assistant Investigating Officer (AIO)

(2) **PONI ID Passes**

Officers of PONI have been issued with an identification pass. In the event that such an identification pass is found and handed to police, it should be treated in accordance with current instructions relating to Police Identification Cards and the Police Ombudsman advised immediately.

(3) **Complaints Against PONI**

- (a) Officers/designated staff members not under investigation who have concerns regarding a particular course of action advocated or requested by an officer of PONI should, in the first instance, seek advice and guidance from a supervisory officer. If the matter cannot be resolved, it should be raised with the District Commander/Head of Department/Branch (or Managing Director of the contract provider in cases of contracted designated staff).
- (b) Separate arrangements exist for complaints of maladministration or criminality against an officer of PONI. Section 2 of the NIO Guidance NIO Guidance section 2_Complaint Procedures refers.

COMPLAINT CATEGORIES

1. OPPRESSIVE BEHAVIOUR

- (1) Sexual assault;
- (2) Serious non-sexual assault;
- (3) Serious assault involving fatality;
- (4) Assault (non serious);
- (5) Oppressive conduct (OC not involving assault);
- (6) Harassment (series of like incidents).

2. DISCRIMINATORY BEHAVIOUR

- (1) Racially Discriminatory Behaviour;
- (2) Sectarian discriminatory behaviour;
- (3) Other religious discriminatory behaviour;
- (4) Homophobic discriminatory behaviour;
- (5) Disability discriminatory behaviour;
- (6) Trans-phobic discriminatory behaviour;
- (7) Other discriminatory behaviour.

3. MALPRACTICE

- (1) Corrupt practice;
- (2) Irregularity in relation to evidence/perjury.

4. MISHANDLING OF PROPERTY

5 FAILURE IN DUTY

- (1) Conduct of police investigations;
- (2) Detention/Treatment/Questioning;
- (3) Identification Procedures;
- (4) Tape Recording;
- (5) Improper Disclosure of Information;
- (6) Procedural Irregularity;
- (7) Other Failures in Duty.

6. UNLAWFUL/UNNECESSARY ARREST/DETENTION

7. SEARCH

- (1) Seizure of Property;
- (2) Damage to Property;
- (3) Irregularity re – Stop/Search of Person;
- (4) Irregularity re – Stop/Search of Vehicle.

8. INCIVILITY

- (1) Incivility by officer on the telephone;
- (2) Incivility at police station;
- (3) Incivility at domestic residence;
- (4) Incivility when stopped for a traffic offence;
- (5) Incivility to person under 18 years;
- (6) Other incivility.

9. TRAFFIC

- (1) Driving of Police Vehicles;
- (2) Other Traffic Irregularity.

10. SECTION 55 REFERRAL

- (1) Chief Const referral;
- (2) HET referral;
- (3) Policing Board referral;
- (4) PPS referral;
- (5) Sec of State referral;
- (6) PONI Call In.

11. OTHER

- (1) Other allegation;
- (2) Other – insufficient detail;
- (3) PONI CALL IN/OUT NFA.