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Police Service of Northern Ireland
Legacy Investigation Branch

Case Sequencing Model

December 2016

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Statutory requirements

Section 32 of the Police (Northern Ireland) Act 2000 states that it shall be the general duty of police officers

- (a) to protect life and property;
- (b) to preserve order;
- (c) to prevent the commission of offences;
- (d) where an offence has been committed, to take measures to bring the offender to justice.

Where the investigative obligation under Article 2 of the European Convention on Human Rights (ECHR) applies, it requires that the authorities must act of their own motion and not wait for the matter to be referred. When an investigation is taken forward it must be independent, effective and reasonably prompt. There must also be sufficient public scrutiny of the investigation and the next of kin of the deceased must be involved in the investigation to the appropriate extent.

The Chief Constable has stated clearly that the PSNI supports the establishment of the Historical Investigations Unit (HIU) under the auspices of the Stormont House Agreement (SHA). The Chief Constable recognises however that he has statutory obligations for the legacy caseload until such time that the HIU becomes operational. These obligations are the basis for the work of the Legacy Investigation Branch (LIB).

Due regard will be given to the Convention values test as set out by the Grand Chamber of the European Court of Human Rights in *Janowiec v Russia*.

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How will the Legacy Investigation Branch sequence cases?

Legacy Investigation Branch will align its work to contribute to the commitments of the Chief Constable to keep people safe and bring offenders to justice.

There are four aspects to Legacy Investigation Branch's case sequencing model:

1. Contemporary persons of interest
2. Forensic potential
3. Criminal justice status
4. Case progression

Contemporary Persons of Interest

In terms of 'keeping people safe', it follows that those individuals that are considered by the police service to pose a potential threat to citizen's safety today should play a role in the sequencing of legacy cases.

For legacy policing, this will mean identifying those historical cases which feature contemporary persons of interest (CPOI)¹ as potential suspects.

The Legacy Investigation Branch will conduct a six-monthly review of the service's CPOI listing² to establish if any changes or additions have occurred. This will safeguard the relevance of the branch's case sequencing with the service's position on contemporary threat.

Forensic Potential

With regards to 'bringing offenders to justice', the ACPO guidelines on cold case review outline the identification of forensic potential as critical to unresolved cases³. This makes forensic findings a major driver in the field of legacy policing. It follows that forensic evidence should form an aspect of case sequencing.

For legacy policing, this will mean the identification of those historical cases, which present an initial basis for an inference of forensic potential.

The Legacy Investigation Branch will conduct an annual review of the methodology for deriving preliminary forensic potential. This will ensure that any interim developments in forensic technology are included in the process of case sequencing.

¹ The term 'Contemporary Persons of Interest' (CPOI) is defined as any person of interest to the PSNI in connection with any serious crime offence since 10th April 1998. This will include ongoing assessment of the 'wanted' status of persons being investigated under Operation Redfield. Serious crime is defined in RIPA 2000, S.81(2) and (3), as "*references to crime that satisfies... (a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one... and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; (b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.*"

² To conduct this review, the Legacy Investigation Branch will require a consolidated list of CPOIs from relevant PSNI departments on a six-monthly basis.

³ ACPO Murder Investigation Manual, para 4.3.2

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Criminal Justice Status

The definition of the term 'unsolved' has a range of different meanings for the stakeholders of legacy review. For example, a case where an individual has been prosecuted in connection with a murder but for a lesser offence such as possession of articles likely to be of use in terrorism will not be considered as 'solved' for the family but may be recorded as 'detected' for Home Office counting rules.

It is recognised that there are a wide range of scenarios to consider. However when considering the ability to take executive action, those cases where all prime suspects were charged with and convicted of the primary offence do not offer the same potential to contribute to public protection as those cases where no person was ever charged and or convicted. For this reason, the case's criminal justice status will play a part in sequencing for Legacy Investigation Branch.

This will mean identifying those historical cases where no individual has been charged and or convicted of the primary offence⁴.

A decision to narrow the focus to unsolved cases has the benefit of reinforcing the criminal justice motivation of the branch and bringing to the forefront those cases where no individual has been brought to justice for any element of the incident.

The Legacy Investigation Branch will conduct an annual review of the cases falling outside of the definition of unsolved to ensure that there are no overriding considerations or scenarios that have been overlooked which may merit inclusion.

Case Progression

The cases that fell within the caseload of the Historical Enquiries Team (HET), the Serious Crime Review Team (SCRT), the Retrospective Murder Investigation Team (ReMIT) and the investigation of the events of Bloody Sunday are at various stages of completion. These can be divided into two categories:

1. Advanced Cases – reviews that are nearing completion where exploratory work has been either ruled out or proposed or investigations where the case has been formally allocated to an investigation team and a Terms of Reference and an Investigation Strategy have been agreed.
2. Un-advanced Cases – cases that since the conclusion of the original investigations have either
 - (a) never been opened for review or investigation or
 - (b) been opened but have not progressed to a stage where exploratory work has been considered.

The identification of 'un-advanced cases' presents the opportunity to recognise currently undiscovered potential. In addition, given the progress that has been made by former branches responsible for review (the HET and the SCRT combined have completed the review of in the region of 2000 cases), un-advanced cases will largely be those incidents which occurred in the late 1980s, the 1990s and in the early 2000s.

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A benefit of addressing these cases in advance of others is the alignment with the Chief Constable's key priority of managing contemporary threats to public safety. It would seem a reasonable assumption (arguable on the grounds of offender hierarchies and severity of modus operandi) that those individuals believed responsible for cases most recently committed may be more likely to pose a threat today. In this way, this aspect of sequencing will be aligned with CPOI element of the model.

The Legacy Investigation Branch will conduct an annual review of the operational impact of the definition of 'advanced' and 'un-advanced' and its use in the case sequencing model to ensure that it maximises branch efficiency.

The case sequencing model in its entirety alongside supporting policy statements and operating procedures will be subject to an annual review to ensure it remains fit for purpose and contributes to meeting the Chief Constable's statutory obligations.

As outlined in the Legacy Investigation Branch, Terms of Reference, *'the Assistant Chief Constable reserves the right to refer any historical case⁵ to branch. Each 'new'⁶ referral... will be subject to the Legacy Investigation Branch's 'Case Sequencing' policy. Any deviation from this policy will require the Assistant Chief Constable's approval in recognition of the potential impact on the equality of approach to case sequencing and the service's Section 75 [equality] obligations.'*

⁴ There is a challenge in identifying these cases before conducting a review. The front-loading of the HEAD database creates the potential for this piece of work to be completed. It should be noted that this project involves high volumes of complex data from a range of disparate and often historical sources. While this information offers a good starting point for a broad assessment, the finer details may remain unseen until a review is commenced. An awareness of the limitations will ensure the right level of dependency and any follow-up research can be undertaken in good time.

⁵ The Legacy Investigations Branch defines an 'historical case' as any case which occurred prior to 01/03/2004.

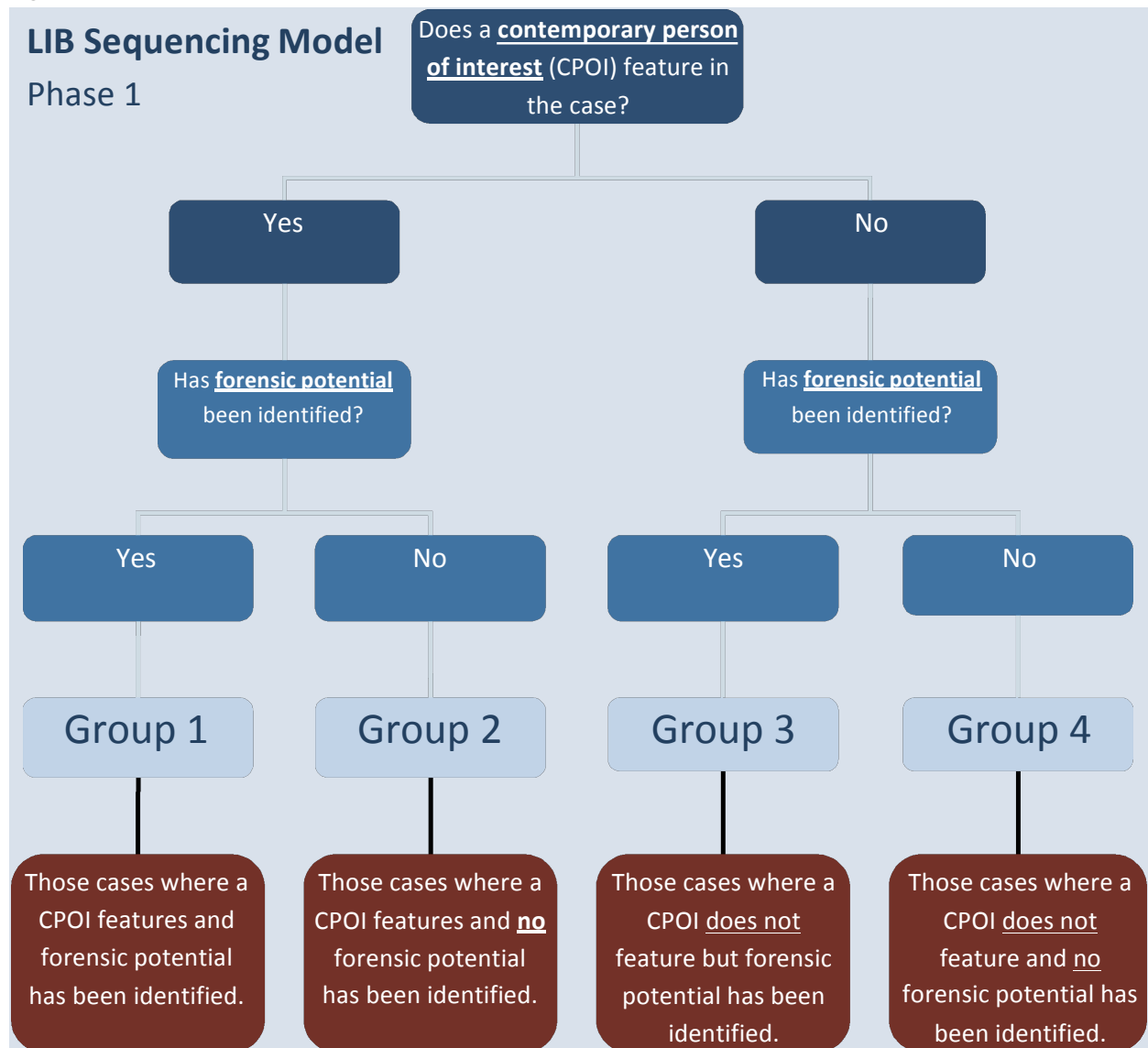
⁶ The term 'new' refers to those cases which may be referred by the Assistant Chief Constable to LIB which fall outside of the currently stated remit above (LIB TOR pages 3 and 4).

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Phase 1

The first two aspects; contemporary persons of interest and forensic potential will represent Phase 1 of the case sequencing model. Figure 1 shows Phase 1 of Legacy Investigation Branch's case sequencing model.

Figure 1



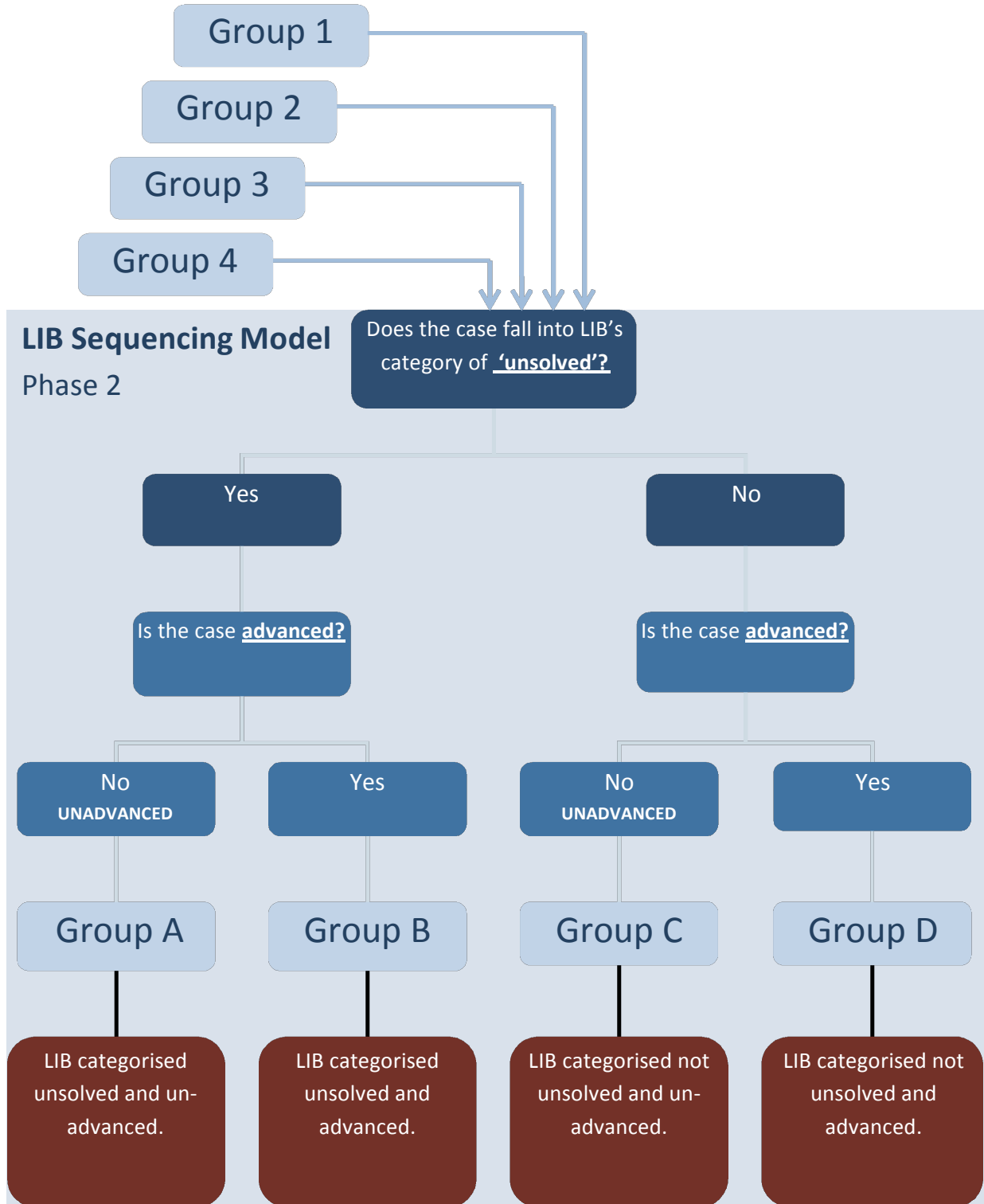
Having completed the first phase, four groups will emerge as detailed in figure 1. At this point, the Legacy Investigation Branch can conduct Phase 2 of the sequencing model which involves consideration of the criminal justice status and the progress of the case for each of the four groups shown in figure 1.

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Phase 2

Figure 2 shows Phase 2 of the Legacy Investigation Branch's sequencing model.

Figure 2



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The outcome of phase 1 and 2 will ultimately leave the Legacy Investigation Branch with a workload that fits within 16 sectors. Figure 3 provides an outline of the sectors.

Figure 3

	1	2	3	4
A	CPOI features, forensic potential identified, LIB categorised unsolved and un-advanced.	CPOI features, no forensic potential, LIB categorised unsolved and un-advanced.	CPOI <u>does not</u> feature but forensic potential has been identified. LIB categorised unsolved and un-advanced.	CPOI <u>does not</u> feature and <u>no</u> forensic potential. LIB categorised unsolved and un-advanced.
B	CPOI features, forensic potential identified, LIB categorised unsolved and advanced.	CPOI features, no forensic potential, LIB categorised unsolved and advanced.	CPOI <u>does not</u> feature but forensic potential has been identified. LIB categorised unsolved and advanced.	CPOI <u>does not</u> feature and <u>no</u> forensic potential. LIB categorised unsolved and advanced.
C	CPOI features, forensic potential identified, LIB categorised not unsolved and un-advanced.	CPOI features, no forensic potential, LIB categorised not unsolved and un-advanced.	CPOI <u>does not</u> feature but forensic potential has been identified. LIB categorised not unsolved and un-advanced.	CPOI <u>does not</u> feature and <u>no</u> forensic potential. LIB categorised not unsolved and un-advanced.
D	CPOI features, forensic potential identified, LIB categorised not unsolved and advanced.	CPOI features, no forensic potential, LIB categorised not unsolved and advanced.	CPOI <u>does not</u> feature but forensic potential. LIB categorised not unsolved and advanced.	CPOI <u>does not</u> feature and <u>no</u> forensic potential. LIB categorised not unsolved and advanced.

Final Considerations for Sequencing

Age of Case

As previously addressed in this report (pg. 5), the offenders who committed crimes in relatively more recent times may be more likely to present a contemporary risk to public safety than those committed in the 1970s and 1980s.

For this reason, when presented with the final groupings, if any further decision is required regarding which case to sequence, the criteria that will play a key role will be the age of the case. On this basis, the most recently occurring cases in the grouping will be undertaken first, except in a case where the Head of LIB has accepted the rationale for a variation on humanitarian grounds.

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Family Preference

The Stormont House Agreement outlines an agreed mechanism for dealing with the past. An integral component is the establishment of the Historical Investigations Unit (HIU); 'a new independent body to take forward investigations into outstanding Troubles related deaths'⁷. The body will take forward outstanding cases from the Historical Enquiries Team (HET) process and the legacy work of the Police Ombudsman for Northern Ireland (PONI)⁸. At this stage, political consensus has not been reached regarding the establishment of the HIU.

All historical cases within LIB's current remit will be subject to the case sequencing model in recognition of the Chief Constable's ongoing statutory obligations. Those cases that were the responsibility of the HET and which are certified as 'incomplete' will transfer to the HIU on its establishment.

In the interim, there is potential for some HET cases to fall into Groups 1, 2 or 3 (Fig.3), where a CPOI features and or forensic potential has been identified. LIB will conduct a review, and if applicable, an investigation in these cases.

However, for those cases falling into Group 4 (Fig.3), where neither a CPOI features, nor forensic potential has been identified; the LIB will seek the views of family members to ascertain their preference in respect of which body progresses the case. This will be a factor in whether the LIB devotes resource to that case or whether the work is to be developed by HIU.

Operational Impact

Each of these group levels is likely to place a differing degree of demand on tactical operations. Legacy Investigation Branch caseload may therefore, in order to maximise branch efficiency, require a blend of cases across review and investigation teams at any one time.

That is to say, if a case has been opened but is likely to be inactive for a period whilst, for example, forensic results are awaited, Head of Branch may authorise work to be undertaken on a case which comes later in the model. If this is a less complex case, it may be completed first.

Corporate Risk

Each of these groupings also carries a corporate risk factor. The risk factors around application of the Case Sequencing Model will be subject to Annual Review by LIB and reported on to the Legacy Delivery Group.

⁷ Stormont House Agreement, para 30, pg 6

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