



## **REPORT TO THE NORTHERN IRELAND POLICING BOARD REGARDING PSNI FAILINGS IN LEGACY DISCLOSURE**

**21 FEBRUARY 2019**

### **1. INTRODUCTION**

- 1.1 The Police Service of Northern Ireland (PSNI) recognises the significant public confidence issues that have resulted from our failure to disclose information to the Police Ombudsman's office. In particular, we acknowledge the hurt and concern such issues will have caused for the families of the victims of the Sean Graham Bookmaker's atrocity and the other families that have been affected by this. PSNI deeply regrets our failing and we have offered a sincere apology to the families.
- 1.2 The PSNI never sought to deliberately withhold this information. The Police Ombudsman has also stated publicly that he has no reason to believe that this was "anything other than a systems failure". *(Dr Maguire, View from Stormont, UTV, 18 February 2019)*
- 1.3 As well as providing the Policing Board with an outline of what happened; why it happened; and what we are doing to limit the potential for such an incident to happen again; this Report will also remind the Board of the impact that the lack of progress to deal with the past is having on policing. It also outlines the considerable challenges that the PSNI faces when meeting its diverse disclosure obligations.

### **2. PSNI DISCLOSURE IN RELATION TO THE SEAN GRAHAM BOOKMAKER'S ATROCITY – WHAT HAPPENED AND WHY?**

- 2.1 We now know that some information that should have been disclosed to PONI in the case of the Sean Graham Bookmaker's atrocity was not disclosed. This error only came to light when the PSNI was preparing information for disclosure to the Court as part of Civil Proceedings.
- 2.2 While we await the outcome of both our own internal review and a forthcoming independent review, our current understanding of what has happened in this case is outlined in the timeline below:-

## **2014-2016**

- 2.3 During 2014-2016, the PSNI's PONI Liaison Office responded to a large volume of specific requests for information from a similar dedicated liaison office within PONI. As is normal practice for requests submitted by PONI, the requests were not all necessarily specific to one particular incident. For example, in this particular case, many requests for material connected to the Sean Graham Bookmaker's atrocity were part of a wider PONI investigation, known as Operation Achille, which PONI described on their requests for information as a "series of murders believed to have been carried out by Loyalist paramilitaries in the late 1980's and 1990's". The PSNI researcher may therefore not necessarily have known that a particular request for information was specific to the Sean Graham Bookmaker's atrocity.
- 2.4 In 2014, there were a total of 347 requests for information to PSNI by PONI, of which 101 related to Operation Achille. Similarly in 2015, there were a total of 569 requests for information from PONI to PSNI, of which 136 requests related to Operation Achille. Each request from PONI may ask several questions and seek multiple pieces of information, covering many years.
- 2.5 The research in response to these requests appears to have been completed in good faith given the knowledge and understanding of the researchers at that time. What was believed by the researchers to be the full extent of the relevant material was made available to PONI, however it appears that human error and a lack of familiarity of the myriad of our legacy data sources meant that this disclosure was incomplete.
- 2.6 It appears that the researchers focussed their checks on paper files and believing these to be comprehensive, did not check the legacy computer files that they would sometimes examine as part of their searches. A check of this system would have revealed a small number of additional documents which would have been pertinent to the Ombudsman's enquiry. This was compounded by the fact that the researchers appeared to be unaware of another legacy computer system which if they had checked would have revealed another small number of relevant documents.
- 2.7 It should also be noted that the staff working in PSNI's PONI Liaison Office did not have an intimate knowledge of legacy cases and their research was dependent on Intelligence Requests from PONI. If, from their personal knowledge, they were aware of additional information which may support the PONI search for information, such as an incorrect address, or a misspelt name, this information would be provided to PONI. The officers working in our PONI Liaison Office had varying levels of policing service, some of whom

had only ever served in the PSNI and had no corporate memory of legacy related matters.

## **2018**

- 2.8 In 2018, the PSNI's Legacy Support Unit was involved in researching and preparing information for disclosure to the Court as part of Civil Proceedings in relation to the Sean Graham Bookmaker's atrocity.
- 2.9 The researcher on this occasion was a person with significant corporate memory and prior to applying for this role had 30 years policing experience in the RUC and PSNI, approximately half of which had been in covert policing.
- 2.10 This researcher was very familiar with the various sources of legacy related information, within the PSNI. As an illustration, this individual knew that during 'the troubles' some people referred to a VZ58 weapon by calling it an AK47. So, instead of just researching the term VZ58, the researcher on their own volition, also used the search term AK47. This search led to additional relevant information which was then prepared for disclosure to the Court. At this point, the PSNI did not yet understand that there was a variance in the level of information disclosed to PONI in 2014, as compared with what was being prepared for Civil Proceedings in 2018. This was because the disclosure exercises were being conducted four years apart, by two different teams within the PSNI and under different legal regimes.
- 2.11 During ongoing Civil Proceedings, the PSNI's Legacy Support Unit wrote to the Court as part of a disclosure review in the case, informing the Court that there were 30 folders of sensitive material and 45 folders of non-sensitive material for disclosure. The letter was sent in the knowledge that it would be shared with the solicitor who was acting for the families of the Sean Graham Bookmaker's atrocity, in both the Civil Litigation and the Police Ombudsman Investigation. When the solicitor saw the letter, he made the Police Ombudsman aware of the extent of material being made available to Civil Proceedings.
- 2.12 In June 2018, the Police Ombudsman contacted the PSNI and requested an inventory of material relating to the Civil Proceedings. Arrangements were subsequently made for PONI staff to view the folders, which took place in August 2018. After viewing the folders, PONI indicated to PSNI in September 2018 that some material within the folders had not previously been disclosed to PONI.

- 2.13 From this point onwards, we have worked expeditiously to ensure that PONI has had full access to all of the material.
- 2.14 On 19 October 2018, the Chief Constable commissioned detailed work and fast track actions to establish if these failings could be mitigated and not negatively impact on the Ombudsman's ability to complete his investigations and publish his reports.
- 2.15 Recognising the seriousness of the PSNI's error, and in order to support the pace at which this work could be done, the Chief Constable also agreed to material being shared with PONI outside of the MOU.
- 2.16 The Chief Constable's decision was taken at significant risk against information security requirements and legal obligations to protect the material. It was however taken on balance, in a sincere attempt to limit the damage to the confidence of the victims' families who had been given timescales for the publication of the PONI report.

## **2019**

- 2.17 As this internal review was ongoing, PONI staff advised the PSNI on 24 January 2019, that they would be meeting with the solicitors representing the victims' families and that we should consider preparing an account of what had occurred for their information.
- 2.18 A report which contained an explanation and apology for what had occurred was forwarded to the Police Ombudsman on 4 February 2019, to allow him to brief the families at some future stage. We also forwarded a more sensitive document for the personal attention of Police Ombudsman which provided a more detailed explanation of the specific system failures.
- 2.19 On 11 February 2019, the Ombudsman made the PSNI and the Policing Board aware that he would meet with the families on 14 February 2019, after which point he would speak to the media on the issue.
- 2.20 Out of respect for the Police Ombudsman as our oversight body and as an independent investigator, we did not make any approaches to the victims' families, as it would not have been appropriate to do so.
- 2.21 Only after the Ombudsman's announcements had been made public on 14 February 2019, did we make the offer to meet the families and offer a personal apology and explanation. To date this offer has not been accepted.
- 2.22 It was not our intention to withhold this matter from the Policing Board. We were still in the process of working to remedy this when the Police Ombudsman announced his intentions to publically announce our failings.

- 2.23 We were also aware that this was a very sensitive matter and out of deference to the families we respected the Ombudsman's confidence in this regard. Ultimately, the Police Ombudsman advised the Policing Board on 11 February 2019, the same day that we were made aware that the matter would be publically announced a few days later.
- 2.24 We accept, with hindsight, that it would have been preferable to have fully briefed the Policing Board ourselves, however we believed that we would have had an opportunity to do so prior to the Ombudsman's announcement.

### **3. NEXT STEPS**

- 3.1 As soon as this organisational failing came to our attention, the PSNI commissioned work to address it.
- 3.2 Assistant Chief Constable Legacy and Legal is leading on our internal review and the Terms of Reference are attached at Appendix 1. The PSNI welcome the announcement of an independent review to be conducted by Criminal Justice Inspection Northern Ireland, which will support us in that work.
- 3.3 In the absence of a HIU, the Chief Constable has stated his intention to give appropriately vetted PONI staff full and unfettered access to our legacy systems and with that PONI would also take full responsibility for the information they have access to. The Chief Constable has sought legal advice as to how to make this possible and we will work with the Ombudsman to make progress towards this solution as quickly as possible.
- 3.4 We will ensure that the Policing Board is kept fully updated as this work progresses and respectfully request the support of the Board in restoring community confidence in this area. We would also seek the Policing Board's assistance in exploring strategic and sustainable solutions to the issue of legacy related matters for our organisation and particularly those affected by the past.
- 3.5 Without seeking to diminish our failings in this case, we consider it useful for the Policing Board to have an overview of the scale and complexity of legacy related matters and the challenge this poses for the PSNI. The remainder of this report is dedicated to providing this context.

#### 4. CONTEXT TO POLICING THE PAST

- 4.1 While the Patten Report made no mention of dealing with the past, since its inception, PSNI has sought to deal with this complex and sensitive issue. Recognising that this was an issue that should not be left to policing; in September 2014, three months after taking up post, the Chief Constable publicly warned that:-

*“The extent to which the legacy of the past has implications for both the present and the future cannot be underestimated... action is needed if policing, and indeed our peace process, is not to be dragged backward.” (British Irish Association, September 2014)*

- 4.2 Months later it seemed that action had indeed been taken, in the form of the Stormont House Agreement. The Chief Constable welcomed and offered PSNI’s full support to all the proposals set out in that agreement for dealing with the past. In particular, the proposal for the Historical Investigations Unit (HIU) would remove responsibility for the investigation of acts of violence during the troubles from the PSNI; allowing us to concentrate on Keeping People Safe in the present and the future.
- 4.3 In the Stormont House Consultation on Dealing with the Past, the Chief Constable publicly stated that his preference would be to hand all PSNI’s information and disclosure responsibilities to an independent HIU. PSNI believe that the transfer of data from PSNI to the Director of HIU, along with all associated legal responsibilities, would provide for high levels of independence and would promote public confidence in sensitive areas such as disclosure.
- 4.4 The continuing failure to make progress on the HIU has come at both a financial cost and a cost to confidence in policing. It is the Chief Constable’s assessment that these costs will increase the longer that the ongoing delay continues.

## 5. RESOURCING THE DISCLOSURE DEMAND

- 5.1 The PSNI is committed to openness and transparency and to the maximum disclosure that is possible, not just in line with our statutory responsibilities; but also as part of our sincere desire to provide as much information as possible to victims and survivors and to support reconciliation within our society. Over the years, PSNI has disclosed hundreds of thousands of pieces of information, including the most sensitive of material, to a range of processes for dealing with the past, including the Police Ombudsman, Public Inquiries, Inquests and Civil Proceedings. However, the fact is that PSNI is not adequately resourced to meet the legacy demands that are placed upon the organisation.
- 5.2 PSNI's supply of legacy related information is currently conducted by a number of different teams. The PSNI PONI Liaison Office within Crime Operations Department respond directly to requests from PONI, while the Legal Services Branch and Crime Operations Support Branch respond to requests from the Coroners Court and Civil Litigation. These structural arrangements for disclosure have grown organically as the legacy workload has increased.
- 5.3 Today, the PSNI is dealing with demands for legacy disclosure that were never envisaged and are currently dealing with disclosure for over 850 pieces of legacy related litigation; around 45 legacy inquests and 27 legacy PONI investigations. Such is the demand that, in 2017, the Chief Constable temporarily moved 13 detectives away from present day investigations, for an initial period of 8 months, in order to meet the disclosure deadlines in just one civil litigation case. These detectives, along with a further 12 selected in 2018, have subsequently all been retained for litigation and inquest matters, such has been the continuing demands and burgeoning nature of this work.
- 5.4 The Chief Constable has reported to the Policing Board, and stated publicly on many occasions, that the PSNI is not resourced to deal with the past. On the specific issue of resourcing for disclosure, in July 2018, PSNI submitted a business case to the Department of Justice requesting additional resources. This business case seeks to address the current levels, as well as anticipated future levels, of legacy disclosure work. As yet, no decision has been reached on the business case, which asks for just over 100 additional staff to support PSNI legacy disclosure.
- 5.5 In the absence of a decision on our business case and recognising the mounting disclosure pressures on the organisation, the Chief Constable made the decision in September 2018 to proceed at financial risk and recruit an additional 12 researchers to support disclosure.

## **6. CHALLENGES IN ACCESSING LEGACY MATERIAL**

- 6.1 Preparing material for disclosure is a very difficult and complex process due to the volume of material held and the limitations of the IT systems on which the research must be conducted.

Some of these challenges in accessing material for disclosure are outlined in more detail below:-

- 6.2 The volume of material gathered by the Police Service over decades is immense. We assess that there are over 44 million pages of paper and microform (microfiche and microfilm) records in existence. This does not include the many millions more computer-based records that exist on multiple computer systems. Many of the paper and microform records have deteriorated due to the passage of time. This makes the reading and scanning of those records challenging. It should be noted that troubles related material starts in 1968.
- 6.3 The material is not stored in one place. It is held on computer systems, on paper and in microform at a number of locations within the police estate. Computerisation began in the 1990s and the systems will reflect the technology of the time.
- 6.4 There is no central reference or inventory for every piece of information gathered over many decades.
- 6.5 There are many separate computer systems and access to some of these is limited to only a small number of computer terminals – this is because the systems are no longer in operational use and, as a result, the computer components/software are no longer manufactured. Some of these systems have not been in operational use for 16 years and this causes particular problems when it comes to maintaining them.
- 6.6 Given the age of some of the computer systems, the PSNI has had to continue to invest in IT support to ensure that they continue to function. Despite this investment, it has not been possible to transfer all material onto more modern systems as they are not compatible with one another. This means that some legacy material can only be found on unstable and archaic systems which lack the advanced search facilities of modern computers. These systems will therefore only return results if the exact term is used. By way of example this means, if a researcher enters the search term 'Cook', if it is saved on the database as 'Cooke', it could reveal no results.



## **7. CORPORATE MEMORY LOSS**

- 7.1 The volume of the material held, together with the limitations of the IT systems, means that the accuracy, experience and knowledge of the person who is searching the systems can have a considerable effect on the results that they achieve. Training, peer support and line management supervision is used to support staff working in disclosure. However, this does not ameliorate the challenge of corporate memory loss.
- 7.2 Corporate memory loss is a problem for many large organisations but it is one that is felt acutely for the PSNI, given the importance of being able to access and disclose information relating to policing in the past. Today, almost four in every five police officers have only ever served in the PSNI, leaving only one in four officers with any knowledge or experience of serving as a police officer prior to 2001 in the Royal Ulster Constabulary (RUC).
- 7.3 Up until 2014, the PSNI used temporary workers, the majority of whom were retired police officers with RUC experience, in order to increase corporate memory and support the organisation in responding to many of our legal obligations relating to the past. However, in 2014, the temporary worker contract was brought to a conclusion following a loss of public confidence in the use of temporary workers and significant budgets cuts.

## **8. LEGAL OBLIGATIONS IN MANAGING AND DISCLOSING SENSITIVE MATERIAL**

- 8.1 The legal framework within which the PSNI makes material available for disclosure is characterised by complexity.
- 8.2 In the management and disclosure of information, the PSNI must meet its duties by balancing a number of competing legal obligations – some of which oblige us to disclose information and others which oblige us to protect information. The Police Ombudsman, the Coroner and the Court Service will always have full access to all material available. However, depending on the content of the information, other legal obligations are triggered.

Examples of how the PSNI balances this competing legislation are outlined below:-

- 8.3 In the disclosure of information to the Police Ombudsman, under the Police Act (2000), the PSNI will supply all required information (sensitive and non-sensitive) to PONI. However, legal obligations, including those under Article 2 of the European Convention on Human Rights (ECHR), Section 29 of the Regulation of Investigatory Powers Act (2000) and the Criminal Procedures and Investigations Act (1996) means that the manner in which the information is shared is carefully managed by both organisations, for example in terms of the vetting of staff who have access to the information and the security of the locations and systems on which the information is held. A Memorandum of Understanding (MOU) between the two organisations sets out how all sensitive material should be supplied to PONI.
- 8.4 In the disclosure of information to a Coronial Inquest, under the Coroners (NI) Act 1959, the PSNI will prepare information for disclosure. However, PSNI's obligations under Article 2 and Article 8 of the ECHR means it must consider if redactions should be suggested to the Coroner in order to protect life or safeguard an individual's right to privacy. The Coroner sees all the information and it is entirely the Coroner's decision as to whether to accept our suggested redactions or not.
- 8.5 This complexity and the competing legislative demands are outlined to assist with a wider understanding of the scale and challenge of disclosure for the PSNI. They are not cited as specific causation factors of our failures in this case, but part of the overall context of the extreme challenges faced by PSNI in legacy disclosure.