



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

**OFFICIAL REPORT
(Hansard)**

**CJINI Report on the Police Ombudsman:
Criminal Justice Inspection Northern Ireland**

8 September 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Seán Lynch
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness
Mr Peter Weir

Witnesses:

Mr Brendan McGuigan)
Dr Michael Maguire) Criminal Justice Inspection Northern Ireland
Mr Bill Priestley)

The Chairperson:

I welcome Dr Maguire, Brendan McGuigan and Bill Priestley. This session will be recorded by Hansard. You will briefly outline your findings and then we will open the meeting for members' questions. We have allotted around an hour for the session. So, I hand over to you, Dr Maguire.

Dr Michael Maguire (Criminal Justice Inspection Northern Ireland):

Thank you for the opportunity to speak to you regarding our inspection report into the

independence of the Police Ombudsman. The inspection arose as a result of concerns raised by the former chief executive in relation to what he called a significant lowering of the operational independence of the office from the PSNI. The purpose of the inspection was to look at the independence of the office and examine any issues that could be said to be undermining that independence.

The fieldwork of the report comprised interviews with staff and former staff of the Office of the Police Ombudsman for Northern Ireland (OPONI) as well as senior police personnel and representatives from a number of non-governmental organisations. We also examined a range of documentation, including investigation reports. Inspectors are not investigators, and this exercise did not amount to a reinvestigation of any specific reports.

On completion of the inspection, as part of our normal process, we submitted a draft report to the ombudsman for a factual accuracy check. That included details on the files we examined and provided the opportunity to test the findings and recommendations. On receipt of his comments, and after limited amendments, we submitted the inspection to the Minister of Justice for permission to publish. That was our process, and it is the same that we have used for every other inspection.

The report's findings are organised into four main areas: legislation; review of reports; leadership management, and relationship with stakeholders. I propose to deal briefly with each in turn.

Looking at legislation, policy and procedures, the legislation that established OPONI is considered by us to be comprehensive and robust relative to what exists elsewhere. Officers of OPONI have the powers of a constable with regard to the investigation of complaints that are within the remit of the office. There is a comprehensive range of protocols and memoranda of understanding in relation to the office and the police, and those, in our view, help to support the independence of the office at an operational level by providing a framework for professional working relationships between the organisations.

The revision of a protocol with the PSNI for dealing with sensitive material was informed by a

review in 2008 of the handling of sensitive intelligence material. It made 17 recommendations for change to ensure that material was handled and managed appropriately. Although it is understandable that the security of sensitive information should be taken seriously, it is also important that issues around transparency and accessibility should be included as part of the civilian oversight arrangements. Inspectors found that there had been no significant consideration of the needs of a civilian oversight body in conducting that review as opposed to the needs of the police or security service in the handling of sensitive material.

Although some recommendations to improve the structures and processes for handling material had been implemented, others aimed at improving people, skills, strategy and relationships within the unit designed to handle confidential material, namely the confidential unit, had not been implemented. Those were critical recommendations of the review that were framed to be delivered in tandem with the structural and procedural changes. In our view, the failure to deliver on all of the recommendations and embed the needs of civilian oversight into the review conclusions damaged confidence in the operation of the confidential unit among some investigators and other staff throughout the Office of the Police Ombudsman.

Turning specifically to the reports, the investigative function of the office is divided into current cases and those deemed historical. A total of 80% of investigators are allocated to current cases. Structured processes are in place with regard to how current cases are assessed, allocated, investigated and reported on. The majority of cases investigated by OPONI are current investigations into complaints lodged by members of the public against serving police officers. Those cases are generally less complex than historical cases, and access to information to inform investigations is less problematic. The majority of those cases appear to inspectors to be processed and investigated appropriately by a team of investigators dedicated to that task. Inspectors heard two specific concerns about current cases and those are detailed in the report.

Many historical cases are high-profile, long-running cases involving murders and serious allegations, including collusion. The anguish felt by survivors and family members was evident to inspectors who examined such cases on the files. Resourcing the investigation of historical cases has been a major issue for the office. Inspectors were told of a business case that had been under development to support an application for an increase in budget and resources to deal with

historical cases in a more structured way. The plan had been delayed within OPONI, and it was not possible to determine the reasons for that delay definitively. The failure to deliver on the business case has meant that the office is at a serious disadvantage when carrying out joint operations with the police that require substantial resources.

In the main, historical cases concern complaints about the handling of incidents by the police during the Troubles. Inspectors examined the processes that led to the production of a number of published, and some unpublished, reports at various stages of completion. Many of those cases had been under investigation for several years. However, inspectors found a lack of consistency in approach across the cases with regard to how reports were checked for quality and inaccuracies. There was little consistency in the process for managing investigations and with regard to how families were kept informed of progress or how cases were prioritised for investigation. As we state in the report, quality assurance processes were ill-defined or not defined at all.

The process of getting to the final published report involved many steps after initial updates had been provided, with inevitable changes being made to the raw investigative report to make it fit for publication. In the three published reports examined, many changes were made following an assessment of sensitive material or the availability of further information relevant to the cases. Inspectors also examined 13 unpublished reports to determine what processes were being applied to them and whether there were issues of independence. The common problems encountered in the production of those reports were delay, differing interpretations of sensitive material, inconsistent approaches to how families were briefed and a lack of confidence among some staff as to how the investigative processes were managed. The critical element in effecting the changes to some reports was the often differing interpretations of sensitive material by investigators and the confidential unit. Looking across the reports, inspectors could not find any supporting rationale for some of the changes made other than differing interpretations of sensitive material. Given the concerns already mentioned about the handling of such material, this helped to further undermine confidence in the quality of investigations among those who had no direct access to that information.

In the production of a report, it is not unusual for that report to go through many drafts. Its

conclusions will be subject to change as the investigation develops. It is also not unusual that the process of engagement with stakeholders should be a significant part of the fact-checking and quality assurance process. However, it is a substantial organisational risk that, in the case of historical investigations, emerging findings were communicated while the work was incomplete and that those became subject to change as the investigation progressed. Inspectors found a number of critical examples of changes made to reports that impacted directly on the conclusions, which were substantially different from the messages that had been communicated to families and their representatives earlier in the investigative process. It also meant that reports had been heavily influenced by outside feedback from non-governmental organisations (NGOs), families and their legal representatives, and police. The ways in which OPONI has dealt with the investigation of historical cases has served to undermine rather than enhance its decision-making capacity, and that, as a consequence, has led to a lowering of its operational independence.

The review of published and unpublished historical cases emphasises the critical role of the confidential unit. Members of the confidential unit provide analysis and assessment based on their viewing of material provided by the information holder. Members of the unit believe that they view all the information that is available to the requester. However, some investigators and senior investigators are not confident that they obtained all the relevant sensitive material on which to make an assessment and appropriately direct the investigative process. They also consider that the way in which they obtain such material is unnecessarily bureaucratic. Some investigators lack confidence in the quality of the disseminated report provided by the confidential unit, and those concerns were played out in the review of reports by the senior management team brought together to consider those reports prior to publication — that is the critical review team that we talk about in the report itself.

Thirdly, in relation to leadership and management, at the time of the inspection senior staff were seriously split broadly along the lines of the corporate and investigative functions. That is manifest in the operation of the critical review panel meetings, which considered draft public-facing reports and recommended the final form of published reports.

Again, the principle of having a quality assurance forum to translate investigators' reports into public-facing documents would not, in itself, give cause for concern. However, many senior staff

considered that the product brought to review meetings was not sufficiently developed to enable a detailed final review to take place. That led to reviews taking many weeks to complete, thus delaying final publication. Sensitive material that was considered essential by some in providing a proper quality assurance process — a function given to the ombudsman — had been prevented from being discussed in the critical review panel because of security and vetting concerns. Serious divisions among the senior management of OPONI had affected the operation of the office in its day-to-day functions and the morale and attitude of staff throughout the organisation.

Some critical review panel members lacked confidence that all sensitive material had been provided, appropriately analysed and assessed to enable a full and thorough investigation to take place. There was a lack of trust among many senior managers, to the extent that assurances that were given to the critical review panel by the Police Ombudsman regarding the provision and analysis of sensitive material were not believed. That seriously undermined the critical review panel's function of providing assurance and advice on the publication of final reports of investigations.

We state in the report that, at the time of the inspection, senior management was dysfunctional, that there was a serious lack of trust between many senior staff, and that there was little confidence among directors and some investigators as to how historical cases were being dealt with.

Finally, we talk about relationships with stakeholders. Senior police believe that the Police Ombudsman's office is completely independent in its operational relationship with them and cited the McGurk's Bar bombing report issued in February 2011 as evidence of that. The police raised some concerns regarding the capacity of the Police Ombudsman's office staff to undertake complex historical investigations. Some senior PSNI officers believed that the office staff, without the expertise that former or seconded police detectives provide in such cases, would be unable to contemplate investigations with any confidence. Other senior PSNI officers had concerns over the issue of leaks from the office. They stated that the handling of sensitive material had improved since the review of the intelligence function in 2008.

In our consultation process, non-governmental organisations also raised serious concerns

about the office, including OPONI's capacity to investigate historical cases and the need for the office to properly prioritise how it investigates cases. They had concerns, too, over briefings prior to publication and changes to the contents of reports. It is also important to note that families, NGOs and legal representatives made substantial efforts to engage with and influence reports into historical cases.

In conclusion, we make six recommendations for change in the delivery of historical cases. In essence, we recommend that investigations into historical cases are suspended until the problems that we identified are fixed. Issues to be addressed include the handling of sensitive material through the confidential unit; skills and competencies of staff; quality-assurance mechanisms and strengthening civilian oversight in the organisation.

It is fair to say that this is a report that, as a team, we did not expect to write. Independence of the Police Ombudsman and, importantly, confidence in that independence, is critical both for the public, who may wish to make a complaint, and for the police, who want complaints dealt with fairly and impartially. A report that raises questions about the independence of the office will damage confidence in it. That makes it even more important that the issues raised in the report are dealt with robustly and quickly. Thank you very much, and I am happy to take questions.

The Chairperson:

Thank you very much for your report. I am sure that members will have questions about it, and I shall start with some before opening the meeting up to other members.

Dr Maguire, the report talks about the process being buffeted from a number of different directions, and you alluded to that at the end of your presentation. Your analysis of the lowering of independence includes the influence that NGOs have had on the ombudsman's office. Is it the case that the issue is not solely about connections with the police but about a wide range of individuals and organisations that seem to have been able to exercise influence?

Dr Maguire:

The short answer to your question is yes. What concerned me in the context of decision making in the organisation was the way in which reports and conclusions had changed substantially from

a range of different sources. That brought into question the nature of the independence of the decision making. Yes, it was not only the police but a wide variety of individuals and organisations. As we say in the report, engagement with families, their legal representatives and the police is not necessarily a wrong thing; in fact, it is essential. Done right, it can build confidence in the process of a report. What concerned us was the way in which those reports were changed over time, and influences came from a variety of sources.

The Chairperson:

I think that this is important. Page 4 of the report states: “Independence is not an absolute.” That depends on the viewpoint of how you define independence. Page 5 states:

“Complete independence (isolation) is no more satisfactory than the police investigating themselves.”

What you mean by the Police Ombudsman’s office being able to demonstrate independence, and how does that differ depending on your viewpoint?

Dr Maguire:

The way we describe it in the report is that independence is along a continuum. At one end of that continuum is that you can have an organisation, ombudsman’s office or oversight body that is completely independent from the organisation that it is overseeing and is staffed with individuals who do not come from that background. With that, there is clear blue water between the organisation and its staff and the body it is overseeing. At the other end of the spectrum, you see some organisations in which complaints against the police are dealt with solely by the police or by an organisation that is staffed by only police.

There is a continuum, and, as you move along it, you can see a weakening or strengthening of independence, depending on your viewpoint and where you position the organisation. That description is to set the context for trying to understand a complex set of ideas on this matter. Irrespective of that context, my view is that there has been a lowering of operational independence because of the difficulties that we present in the context of the report. The continuum was an attempt to provide context to the debate, and my conclusion is clear in that regard.

The Chairperson:

Page 7 talks about historical investigations, and it states that complaints older than one year can be investigated if the cases are grave and exceptional. Do you know what the threshold is in order for a historical event to meet the criteria for grave and exceptional?

Dr Maguire:

No. You may direct that question to the ombudsman.

The Chairperson:

There are 121 historical cases, and I am trying to define the criteria for that.

It seems that the 2008 review of handling sensitive information is fundamental to the breakdown that has contaminated the office. On page 9, you touch on the fact that civilian oversight of sensitive information is an issue. Why was it necessary in 2008 to have a review of how information was being handled?

Dr Maguire:

My understanding is that the senior director of investigations, when he took over his post, decided to commission a review of the handling of sensitive material. There had been changes in the way in which material was handled in the police, and, indeed, it is my understanding that there was practice elsewhere that it was felt could be applied in the office of the ombudsman. Therefore, there was a concern in relation to looking at how that material was handled, and four individuals with experience in that area were commissioned to do the work.

As we say in the report, my view is that there was not necessarily anything wrong with the review. In fact, it made a number of quite important recommendations. There are two points to make. First, not all of the recommendations were implemented, and, therefore, the confidential unit was not as was intended coming out of that review. Secondly, and this is a theme that is in the context of the report itself, the Police Ombudsman is a civilian oversight body. In that context, there are issues of openness, transparency and accessibility to information that, in my view, could have been built into the way in which this was handled in the office. That was not done, and the lack of implementation of some of the recommendations meant that, as we evolved

from 2008, there was a lack of confidence among some staff in how the confidential unit was doing its business.

The Chairperson:

Page 28 of your report finds that the PSNI had concerns about leaks of sensitive information from the ombudsman's office and that, since the review, it has more confidence that the office is handling that information more appropriately, albeit while still expressing concerns about leaks. I read into this that, at the time, the police were clearly very concerned that the ombudsman's office was not handling sensitive information and that, therefore, the review was necessary in order for the police to have confidence that it was a fair system. Otherwise, the ombudsman's office would not work. Is it fair to say that a review had to take place because the police did not have confidence in how that information was being handled? As the police raised concerns, did that mean that they clearly had issues with investigators in the ombudsman's office? Did you uncover whether it was because of that that they were not necessarily included in the review?

Dr Maguire:

The last point is pushing it a bit. I do not make a judgement as to the nature of the review. The review was commissioned and undertaken, and all we did was look at what was said and the outworkings of it. We were told by the police that they had concerns, and that they are more assured by the way in which information is being handled now relative to how it was being handled in the past. That is correct. However, at the same time, it was an error that the review was not as broadly based as it could have been in trying to understand the needs of civilian oversight and what that means for accessibility and transparency. That was a flaw in the outworkings of the review. However, I make no judgement in the report about the need for the review. I simply report what others told us in the context of why it was done and the changes that have been made.

The Chairperson:

It seemed to rise up in the ranks of the ombudsman's office from the review in 2008, and then investigators were not happy. Did all investigators share that view? You say that half of them come from a police background. Were all of the investigators unhappy with the system that was brought in after the review?

Dr Maguire:

No. The terms that we used were “some investigators” and “some staff”. It is not true to say that all investigators felt like that. The firewall that was created and the structural changes that were made certainly changed significantly the way in which material was handled. It created a barrier between the investigation and the material in a way that was not there in the past. There were difficulties with some investigators accessing the information that they felt they needed in order to come to a judgement. They described to us, and we saw for ourselves, the way in which the processes worked: they were bureaucratic in respect of how information was accessed.

So, in the report, Chairman, we say that the organisation did not have a corporate or definitive view on the way in which things were done but that serious concerns were expressed by those tasked with the responsibility of doing some of that work. The handling of sensitive material was one core area in which, as it evolved, problems arose, particularly when the critical review team began to get involved in the process.

The Chairperson:

Is that because, in reality, it was difficult? As investigators were not part of the review, and as the civilian element did not come into the review, did that change the system that was bad? Is your report saying that it was reality or is it saying that it was the perception of investigators and those in the critical review panel that they were unhappy with the new system?

Dr Maguire:

It was certainly a reality in the sense that they were unhappy. For example, we did not look explicitly at the question of whether they were getting access to all the material. The only way to do that would have been to trace information from the ombudsman’s office into the police and back again. We did not do that. For those outside the confidential unit, there was a concern about the nature of the information that they were getting and whether it was the full picture. So, it was reality in the context of those who were doing some of the investigations.

The Chairperson:

On page 21 you state that there were:

“20 references to Special Branch which were properly reduced to around five following factual accuracy checking.”

That is on the Claudy bombing report. You go on to state that this demonstrates a tendency towards the police by one member of staff. It would seem that his reality was wrong, because that figure was correctly reduced to five. Clearly, that individual was wrong. There was not a tendency to protect the police or Special Branch on that occasion because, when the figure was factually checked, the references were appropriately reduced to five. I want to get to the heart of this: is it an individual’s perception, or have things really changed? Do people feel aggrieved or, as some feel, have there been people wanting to single out Special Branch?

Dr Maguire:

You are asking me to make assumptions about motives: I cannot do that. I can say that, in that context, an important member of OPONI staff made the comment, so it gave concern to those who did not have access to that material that such an agreement could have existed. In reality, it did not exist, because we looked at what had been referred to us as “the supposed agreement” and it was not that. So, it was a misunderstanding on the part of the individual concerned. However, it was still an important comment to make, in the context of when it was made, which was as part of the critical review panel. As far as those who were outside that scenario were concerned, for someone to make such a comment would rightly have created cause for concern. The fact that it did not work its way through in reality is a separate issue. The fact is that it was said, and that it was a part of the way in which the splits in the organisation began to develop, and was part of the internal dialogue that was going on.

The Chairperson:

Finally, the report refers to a maladministration case that seems to highlight the police’s confidence in the Police Ombudsman’s office. The police were concerned about leaks, and therefore there was a review in 2008. The maladministration case also seems to have fed into the police’s confidence as to how the ombudsman’s office was operating. Where do you see the particular handling of the case and how it impacted on the police?

Dr Maguire:

That is an interesting question. By way of background, the former chief executive found in favour of a complaint about maladministration. There was an understanding that the issues raised in that case would be passed on to the police at the level of deputy chief constable. We followed

that through and found that there was no record in the deputy chief constable's office of that report having been received. It was to be dealt with at a much lower level, and there were another set of issues entirely. So, the police did not express a view to me on that case because, at senior level, they were unaware of it.

The case is subject to litigation, so there were limits on what we could say in the report. It will work its way through the system. I was interested in the way in which the organisation responded to that case and what actions were taken arising from it. As it turned out, after some attempts at mediation that were not taken up, it became the subject of litigation. Therefore, a limited amount was done in relation to it. The case is parked at the moment as far as a response is concerned, as I understand it.

Mr McCartney:

Thank you very much for your presentation and report. The report makes a valuable contribution to what is obviously a very topical issue. I want a couple of items of information for background. The inspectorate made a report on the ombudsman's office in December 2005. I am led to believe that Mr Priestley was one of the investigators, or inspectors, at the time. The inspectorate found, as its overall assessment, that:

“OPONI is an effective and efficient organisation.”

Did you find that in 2011?

Dr Maguire:

I will let Bill answer some of that question. In broad terms, there was only one thing by way of context, which was that the terms of reference for the inspections were different. In the previous inspection we did not look at historical cases, as we did in the context of this inspection. In general terms, you are right. You ask whether we would say that now. The answer is no.

Mr Bill Priestley (Criminal Justice Inspection Northern Ireland):

I cannot add much more to that except to say that the terms of reference were very different. This was a very different focused piece of work that looked specifically at the independence issue. To answer your question, I agree with Dr Maguire: we would not say that it was effective and efficient at this point in time.

Mr McCartney:

The 2005 report states:

“The requirement for independence is a statutory duty of the Office of the Police Ombudsman and a key requirement for compliance with Article 2 of the ECHR ... OPONI is independent of the other criminal justice organisations. The importance of this independence to its proper functioning cannot be over-stated.”

Would you say that about the organisation in 2011?

Dr Maguire:

I cannot give you a legal opinion on that, but I can give you the conclusion of the report, which is that there has been a lowering of operational independence.

Mr McCartney:

In other words, it is a complete overturn from what you said in 2005.

Dr Maguire:

With the important qualification that the terms of reference were much narrower this time round. We did not look at the issue of independence in the previous assessment in the same depth and to the same degree that we did this time round.

Mr McCartney:

In 2005, the report said that:

“It is delivering on its stated aims and objectives with public confidence in the system increasing”.

Would you say that in 2011?

Dr Maguire:

I think that I would make the distinction between current and historical cases. Public confidence in current cases is quite high at roughly 80%. I would expect that confidence in historical cases would not be that high.

Mr McCartney:

I suppose that we can all speculate on what the public might think, but I think that the public looks at the office in its entirety. I do not think that they would make the difference.

Dr Maguire:

That is why I say that historical cases need to be dealt with.

Mr McCartney:

After reading your report, in particular, I feel that you could not say that people could stand over the assertion made in 2005 that public confidence in the system was increasing to the point that the office was carrying out its duties impartially. I do not think that we can say that in 2011. Am I correct?

Dr Maguire:

We have serious concerns over that in relation to the delivery of historical cases.

Mr McCartney:

In relation to what you found in 2005 and 2011, what, in your opinion, was the tipping point?

Dr Maguire:

You are asking me to compare apples and oranges. We did a report in 2005 that concluded with what you said. The organisation that we are looking at now is in a different shape to what it was in 2005. I think that there are a number of contributory factors to that. In the report, we picked out what led to an unravelling, for want of a better word, to some degree, within the organisation. That has to do with issues in relation to the handling of sensitive material, the role of the confidential unit, the way in which the review panel operated compared to how it operated before and the way in which management worked in the organisation compared to what had existed before. There are a variety of reasons, and it is, therefore, hard to pin down any one factor.

Mr McCartney:

When the first Police Ombudsman retired in 2007, the office was held up as an instance of exemplary police oversight. Can we say that in 2011?

Dr Maguire:

In relation to the delivery of historical cases, no.

Mr McCartney:

Have we any explanation for that?

Dr Maguire:

The explanations are what we have given in the report.

Mr McCartney:

Will you outline them for us again, please?

Dr Maguire:

When you look at the narrative that existed you will see that there were some new people in post, a new ombudsman and a new senior director of investigations. There was also a different way of handling sensitive material in the organisation and a variety of ways in which investigations into historical cases were being completed, about which we had concerns from a quality assurance and management point of view. All of those led to issues in the context of the organisation trying to put those reports into the public domain, and a buffeting of reports, which would not have happened in the past.

Mr McCartney:

In relation to trying to re-establish the operational independence, are the people who led to its lowering the best people to lead us to that new place?

Dr Maguire:

That is a difficult question to answer, Raymond. We did not make the recommendation to suspend investigation into historical cases lightly. Irrespective of who the senior management is in the organisation, if they were simply moved out, put in somewhere else and carried on doing the work in the way in which we discovered in the context of the investigation, would there still be problems? Absolutely. Therefore, the issue is one of suspending investigations, fixing those problems — I will come back to your question in a second — putting in place the right procedures and quality assurance mechanisms — indeed, the kind of arrangements that we detail in the report — in order to have a different way of doing that kind of business. You are asking me who should do that.

Mr McCartney:

I am not asking you who should do that; I am asking whether the people who allowed it to unravel will be put in a position to do it again. In 2007, you accepted that it was a body of exemplary police oversight and an effective and efficient organisation. Public confidence was increasing, so what confidence can we have in the people who allowed that to become the opposite? The people who allowed that to unravel are the people who are now telling us that they can fix it. It stretches the imagination; it is nearly an impossible scenario. It would be absurd for any other organisation to identify the people who were responsible for taking it from a place that was exemplary to a place that is far from exemplary and then task them with taking it forward. I find it impossible.

Dr Maguire:

I would say to you that the status quo is not acceptable.

Mr McCartney:

Is that in respect of leadership?

Dr Maguire:

It is in respect of the way in which the organisation is managed and investigations are undertaken. Changes are needed.

Mr McCartney:

We can all take our interpretations from that. If people are saying that the status quo cannot be maintained, the status quo should go.

Dr Maguire:

You are putting me in a difficult position, Raymond, because you are asking me to make a judgement on the heads of organisations. I have not done that in the past, and I am not inclined to do it now because I do not want to be caught in future in relation to that area. The report very clearly sets out the problems.

Mr McCartney:

My colleagues will ask questions about other cases. I refer you to paragraph 3.18 of the report. Reference is made to a case that started in 2005. I want you to step me through the process that lead to a meeting on 24 May 2010. Following that meeting, which involved the Police Ombudsman, the senior director of investigations, the director of history and the director of information, who stated that he was opposed to the proposed changes, a further report was redrafted by the director of information at the dictation of the director of history. That report was substantially different in content and findings to the one that existed earlier in May 2010. Did you read the first draft of that report?

Dr Maguire:

Yes.

Mr McCartney:

Did you read the draft that appeared after 24 May 2010?

Dr Maguire:

Yes.

Mr McCartney:

Would it assist the Committee if members were furnished with copies of both reports?

Dr Maguire:

It is one of the unpublished cases.

Mr McCartney:

I appreciate that.

Dr Maguire:

I am extremely reluctant to say yes because the report has not been published. We do not know the final conclusions of that report.

Mr McCartney:

The reason why I am asking is that, on Monday night on UTV, the ombudsman was interviewed, and he stated that the reports were not altered to limit criticisms of the police and that that was a factual find. I assume that he was talking about what you found factually. That is wrong. You stepped through the case very carefully to the point at which you made the observation:

“In this instance the draft outcomes seen by inspectors were substantially different from those communicated to families earlier in the process and were less critical of police actions.”

I am asking you to assist us in identifying who is right and who is wrong in this instance, because you have laid out the issues very factually, and the ombudsman contradicts that to the point at which he says that you are wrong. He does not say that it is misinterpretation or that perhaps you overstated it; he says that you are wrong. If we were able to see the first draft — not the draft that will appear in public but the one that was drafted after 24 May — would that assist us in ascertaining who is right and who is wrong?

Dr Maguire:

I stand over what is in the report.

Mr McCartney:

I accept that, but I take it that, when the ombudsman appears as a witness, he will say that he stands over the statement that he made on UTV. I am assuming that, so we are left to balance. I can give you my opinion, but I want to base it on fact, and the best way for me to do that in this Committee is to see the first draft and the draft that appeared on 24 May.

Dr Maguire:

I think that you should direct those questions to the ombudsman. What I can say — I mentioned it in my introductory comments — is that we did give the report to the ombudsman’s office for factual accuracy checking. He did not substantively change anything in the report or the conclusions that went to the Minister, so, as far as I am concerned, what is in the report is correct, and it certainly reflects what we found in the context of the investigation.

Mr McCartney:

No doubt you are aware that Tony McCusker was asked to produce a report; I think that we received a copy on 30 June. Subsequently, you wrote your report. Mr McCusker told this

Committee — I think that it was raised by a number of members — that the senior director of investigations admitted that he told a lie to an investigation. He went on to say that he would lie again if the circumstances presented themselves and that he found the whole thing irrelevant. Do you believe that that had any impact on your findings in paragraph 3.21?

Dr Maguire:

No, because the sequencing that is highlighted in those paragraphs is based on the documentation that we reviewed.

Mr McCartney:

In relation to his credibility, we are told that he is one of the final arbiters of the changing of the report. He admits that he lies, and he actually says that he would lie again if it were necessary. Do you not have any view on that?

Dr Maguire:

What I have a view on is the way in which the report changed. The report did change, and we highlight the sequencing of those changes and who is responsible for them. I am not going any further with regard to imputation or making assumptions about that, because I do not have the evidence for it. However, I do stand over what is in the report.

Mr McCartney:

I want to ask you the following question, because I know that you have conducted a number of reports into management. What if you were examining any other organisation and you had the following assertion:

“Two very senior staff had communicated to the Police Ombudsman that they wished to be disassociated from some of the work of the”
office

“and for one of the officers, this had been ceded to”?

Have you any comment on that?

Dr Maguire:

I have not seen such a thing before.

Mr McCartney:

If Brendan now said that he wanted to be disassociated from this report, and you said that you would allow it, where would we be in trying to work out the efficiency of your organisation?

Dr Maguire:

As I said, I have not seen it before.

Mr McCartney:

In not answering the question, you have answered it very well. Thank you.

Ms J McCann:

Thank you for your presentation. I want to ask a few questions. Something struck me when you were making your opening remarks. You mentioned historical cases and high-profile cases, and you also mentioned the word “collusion”. In your report, you go into more detail and refer to the changes that were made to the reports on some of those historical cases. You also say that those changes might make a significant difference to how people might read the report or the outcome of the report.

I know that you looked into the reports on the bombings in Claudy and McGurk’s Bar, and the shootings at Loughinisland in particular. Will you elaborate more on some of the changes that were made in those reports?

Dr Maguire:

The first thing I will say is that we did not re-investigate those reports. This was not a re-investigation of Loughinisland, Claudy or McGurk’s. We did not go back in and test whether the conclusions drawn were the right ones. What we looked at was the way in which those reports had been produced. What we found, as is said in the report, was a lack of consistency. We found that early briefings to families and their representatives, and messages that were given out, were subsequently changed at later briefings. We found, as is said in the report, that issues around quality assurance were either missing or ill-defined. In the context of the individual reports, we were not interested, in the context of this inspection, in whether the conclusions drawn by the ombudsman were the right ones. That is a separate issue. We were concerned with the

production of those reports and the lack of consistency in the production of those reports.

Ms J McCann:

Let me ask another question then, or rephrase my previous question. What did you feel the overall effect of those changes was on criticism of the police?

Dr Maguire:

Bill may have a view on this but, in the main, in looking at those reports, we saw that the criticism of the police had been lessened.

Ms J McCann:

Had been lessened?

Dr Maguire:

Yes.

Ms J McCann:

That brings me to the issue of public confidence. I know you that were looking at operational independence, but I want to talk about how that affects public confidence in the office.

I have looked in more detail at some of those cases. For instance, paragraph 5 of the report from the ombudsman's office on the Loughinisland case indicates that, within an hour of the discovery of the car used in that incident, an agent called Agent Mechanic was called by police officer 4, and that that day they actually met. It goes on to say that a note on the RUC files states that Agent Mechanic was only to be contacted through his police handler, known as police officer 4. I am just giving you an indication of what was said in the report.

Paragraph 7.33 of the report on McGurk's Bar states:

"In respect of the bombing of McGurk's Bar ... 'Just before the explosion a man entered the licensed premises and left down a suitcase, presumably to be picked up by a known member of the Provisional I.R.A. The bomb was intended for use on other premises. Before the "pick-up" was made the bomb exploded, 15 persons were killed and thirteen injured, 12 of whom were taken to hospital.'"

Duty officers and policemen sat down and put that report together the morning after McGurk's

Bar. Having looked at those quotations from those ombudsman's reports, I then go back to how you feel that the reports were changed at that senior level.

We need to talk about the elephant in the room: collusion. Those reports say that there was no collusion. I believe that this has been a very damning report on the ombudsman's office; it is the third recent damning report on the Police Ombudsman's office. The difficulty is how are we to say that what is in those reports reflects the true nature of the investigation or the true nature of what actually happened? How do we tell people that those reports show the true nature of what happened when you say that they were changed, lessening the police criticism?

Dr Maguire:

In the document, we say, and I said when the report was launched, that there is no question that this report has damaged confidence in the office of the ombudsman. That is a fact, given what is arising from this. However, when you look at the nature of reports changing, you will see that that is, in itself, not necessarily a bad thing. It depends on why they change. We saw evidence of reports that were changed because early drafts were factually inaccurate. New information was brought in, and subsequent changes were made to reflect that. We saw other reports that had been changed and for which, as we say in the report, we could find no rationale. That is why the process that we looked at was important.

In the report, I do not comment on, nor did we look at, some of the specifics that you are talking about in relation to those investigations, because that would have been re-investigating the work, and we did not do that. However, in the production of what is very sensitive work that needs to be handled in that way, I am concerned that, if you are going to brief families or send a report to the police for factual accuracy, you must be sure that it is as close to the final product as it is going to be, and you then use the process to test robustly what it is you want to do so that you come up with a product that people have confidence in. We did not see that.

Ms J McCann:

What is said in these reports is very damning, and yet you say that the reports were changed to lessen criticism of the police. Nevertheless, we can see that the reports are very critical of the police. We talk about the high-profile historical cases, the operational independence and the

independence of the ombudsman's office. However, the reality is that there is no independence in the ombudsman's office, and there is no public confidence in the ombudsman's office at this time. You used the word "collusion" in your opening remarks: I am saying clearly that these reports say that there was no police collusion in the cases of Loughinisland and McGurk's Bar, but there is every indication that there was.

Dr Maguire:

We do not say that in this report. However, we do say that the way in which reports have changed gives cause for concern because it shows a lack of consistency, and it can lead to a very real and understandable view that the reports have been changed for reasons that may or may not be right. That damages confidence in the office. For me, it is an important distinction between the investigation of the specific issues that you talk about and the process through which those reports were produced. We very clearly looked at the second one. Yes, we say factually that changes were made to reports and that some of those changes lessen the criticism of the police. In the context of the report, we also show that the way in which feedback was obtained allowed decision-making in the organisation to be buffeted, and that is not good in what is a quasi-judicial role in the context of the ombudsman's office and decision-making.

Overall, I agree with you that this damages public confidence in the office. That is why, in my view, the issues that we address in the report need to be fixed.

Mr A Maginness:

I want to clarify a couple of things. The 2008 review led to sensitive material being dealt with differently within the office of the ombudsman. Is that right?

Dr Maguire:

Yes.

Mr A Maginness:

As a result, that created tensions between investigators and those who were charged with looking after the sensitive material.

Dr Maguire:

Yes.

Mr A Maginness:

That created a lack of trust and a sense that they were not seeing everything that they needed to see.

Dr Maguire:

Among some investigators, yes.

Mr A Maginness:

Since 2008, or shortly after 2008, whenever it was implemented, that continued, presumably, to fester in the organisation. Is that right?

Dr Maguire:

Yes.

Mr A Maginness:

So we now arrive at a situation in which there is a very fractured and very dysfunctional office at senior management level, which has percolated down right through the office. Is that correct?

Dr Maguire:

Yes.

Mr A Maginness:

How do we remedy a situation such as that, if you continue to have the same leadership at the top of the office?

Dr Maguire:

We do not talk about the specifics of that. I will come back to the point. There is not the same leadership because the chief executive and the senior director of investigations are not there: you have two new people in post. Therefore, the overall composition of some of the senior team has

changed.

Mr A Maginness:

If I can interrupt you there: it is still the same ombudsman.

Dr Maguire:

Yes.

Mr A Maginness:

He is the ultimate leader in that office. The buck stops with him.

Dr Maguire:

Yes.

Mr A Maginness:

How do you effect change that would bring about a healing process in that office and make it functional rather than dysfunctional? How can that happen without a change at the very top?

Dr Maguire:

It will be very difficult.

Mr A Maginness:

In answer to Ms McCann's questions, you said that changes were made to certain reports to soften or to diminish criticisms of the police. That related to the report on McGurk's and some others. In relation to McGurk's Bar, did that include the removal of references to collusion?

Dr Maguire:

I am not sure of the detail of that.

Mr Priestley:

I will probably have to come back to you with the detail of that.

Mr A Maginness:

However, there were material and serious changes in the report —

Dr Maguire:

Yes.

Mr A Maginness:

— that softened the criticisms of the police and their investigation into the McGurk's Bar atrocity. Who was responsible for those changes?

Dr Maguire:

Ultimately, it would have been the investigator, signed off by the senior director of investigations.

Mr A Maginness:

How far up the chain of senior management in the ombudsman's office would that have gone?

Dr Maguire:

One of the issues that we deal with in the report, Alban, is that you would expect to have seen a fairly consistent process of quality assurance in the signing-off of reports.

Mr A Maginness:

Yes.

Dr Maguire:

We did not find that. We found inconsistencies. We found reports going to the critical review panel directly from investigators. We saw a variety of ways in which material was handled in the office. That is not good quality assurance. It is not good for testing reports as they evolve and the recommendations and findings of that. That is why we talk about inconsistency and about some of the issues that we dealt with. So, there are a variety of different ways in which reports were handled in the office.

Mr A Maginness:

The first report on McGurk's Bar in July 2010 would have been signed off at a very senior level in the ombudsman's office and, indeed, by the ombudsman himself.

Dr Maguire:

Ultimately, it would have been signed off by the ombudsman.

Mr A Maginness:

Yet that report contained the reduction of criticisms of the RUC.

Dr Maguire:

Yes.

Mr A Maginness:

So, one would assume that the ombudsman was content and satisfied to sign off on that report at that point in time.

Dr Maguire:

I would have thought so, as indeed were some of the investigators.

Mr Weir:

Perhaps that issue will be discussed when we have a debate on it. No disrespect to the witnesses — I think that they have given very good testimony and produced a good report — but, given some of the remarks that I have heard from some people today, I think that, when we look at historical issues, there is a very partial attitude at times. There are double standards here, and there is a lot of hypocrisy. Indeed, people seem to want justice in some cases, but in other cases, they want to draw a line under the past. I suspect that we may come to that when we have a debate on the subject, so I will not refer further to it at this stage.

Many of us do not recognise the existence of nirvana or a Garden of Eden at the Police Ombudsman's Office a number of years ago. A number of us did not have full confidence in it a few years ago. It is important that we make that position clear. Funnily enough, I think that it

was Dr Maguire who compared 2005 with 2011 and said that it was like comparing apples with oranges because the remits were so different. Actually, shortly before you said that, I had written it down.

I will draw out the two aspects of the issue. The independence of the Police Ombudsman in holding the police to account where there have been complaints against police officers might be described as its bread and butter, and that was more or less the basis for the 2005 report. That was obviously looked at, to some extent, in 2011. However, in 2011, there was a heavy focus on the historical side.

I appreciate the fact that you referred to a couple of particular cases on the current investigation side. On the overall independence of investigation and the processes for investigating current cases, are you reasonably satisfied that we have an office that is fit for purpose and that the problems lie on the historical side?

Dr Maguire:

That is fair enough.

Mr Weir:

OK.

Dr Maguire:

I will put it more explicitly. If I had a problem of an operational nature and wanted to make a complaint against the police, I would bring it to the office of the ombudsman.

Mr Weir:

Clearly, there are major problems in the office of the ombudsman. I appreciate the fact that you are reluctant to be drawn into discussing the personalities involved, but you identified dysfunctional relationships between members of senior management, systemic structural problems with the way in which historical cases were dealt with and possibly with the remit of the office itself. Where do you draw the balance of the problems, and how might those be corrected in the future?

Dr Maguire:

That is an interesting question. Although we do not explicitly deal with those issues in the report, when I looked at the organisation what struck me were the splits at management level. I then began to understand why those occurred, which led me into the office's production of historical cases. It is hard to disentangle one issue from another. In May and June of this year, when we examined the issue, we found a dysfunctional management team, and you just cannot escape that point. We then began to understand why that had occurred, and we saw a number of things from the 2008 intelligence review, the setting up of the confidential unit and the type of processes that we talked about. All those factors led to the organisation being effectively split at a senior level.

Mr Weir:

I doubt whether many would disagree with most of your recommendations. With the exception of what could be described as work-in-progress cases — it would be wrong from the point of view of justice and of common sense for those cases to be abandoned midstream — you advocate a suspension of historical cases, at least until various actions are taken and investigations can take place. Is there a case for going one step further? There is a wider debate, and no one has a perfect solution as to how precisely we should deal with the past and historical cases. However, given the somewhat poisonous nature of much of this, is there an argument for going one step further and completely detaching historical inquiries and investigations from the office of the ombudsman, make the decision whether to investigate those cases at all or to place them in a different body and leave the ombudsman to deal with current cases?

Dr Maguire:

Based on what we found in the report, it would not be unreasonable to come to that conclusion. The “contamination” of historical cases, as I think the Chairperson put it, and the overall effect that that has on public confidence has affected the perception of the ability of the ombudsman to deal with current cases. As you said, it is a single office, and people do not distinguish between the two functions. What is happening and what we found in the context of historical cases has had a major impact on the perception of the office overall.

Mr Weir:

From that point of view, the historical side has poisoned the perception of, and the public's confidence in, the office. However, that has not seeped into the perception of the way in which current cases are dealt with.

Dr Maguire:

It certainly impacted on public confidence — there is no doubt about that. However, the point that I made when the report was launched was that if we were simply to take that chunk of work out of the office and put it somewhere else, without addressing the issues that we raised in the report, we would have the same problems. Therefore, you need to address —

Mr Weir:

This may be a controversial view, but I wonder whether, to some extent and with the exception of what is ongoing, one solution may be simply to draw a line under the past. If we are to open up particular cans of worms, we should open up everything and have justice on everything. That is perhaps a separate argument and another debate, and I will not ask you to comment on it. However, on the future of the office of the ombudsman, I would suggest that the impact of historical inquiries is providing an ongoing poison in the system, irrespective of what is done. We need to examine that in a wider context, but that is more of a comment.

Dr Maguire:

My view on that is quite clear. Whatever has to be done in the Office of the Police Ombudsman — indeed, if it is has to be done anywhere — must be done to the right standards. My recommendations try to address those issues.

Mr B McCrea:

I will start by declaring an interest as a former chair of the human rights and professional standards committee of the Northern Ireland Policing Board, which had interaction with the Police Ombudsman and members of his staff on a professional basis.

Did the ombudsman's office ever investigate historical cases properly?

Dr Maguire:

We looked at what has happened since 2008, so I cannot answer that question.

Mr B McCrea:

Yes. That is why it is strange to me that you allowed yourself to be drawn on Mr McCartney's point. It is not clear whether this is an issue to do with the current ombudsman or has been systemic in the past. Following on from Mr Weir's final question, may I ask whether you think that it is possible that, given the complexities of looking at 40-year-old cases and the sensitivity of information, under new management, new people and new resources, the particular framework that we set up in the Office of the Police Ombudsman could look at historical cases properly?

Dr Maguire:

The answer to that question has to be yes, because we are talking about the way in which those reports were produced. As I said to Mr McCartney, we did not look at the historical cases side of the ombudsman's office when we did the previous review in 2005. I can make no judgement about the cases then. In the context of the review of the period since 2008, members will see that we have included in our report a diagram that probably gives false confidence, in a sense, of the way in which the process should have happened. It did not happen like that; it was inconsistent and lacking in quality assurance. Some of the investigators raised concerns about the quality of the investigations as well as others. Could those particular problems be addressed? Actually, they could: by strengthening the issue of how civilian oversight is addressed in the organisation; by dealing with the issues of handling sensitive material; by having a more consistent process; and by not engaging and giving detailed briefings and findings before being absolutely certain that those findings are going to be in the public domain. There are a variety of ways to improve the manner in which the business is done. That is what this report tries to set out.

Mr B McCrea:

Do you have any investigative or intelligence experience yourself?

Dr Maguire:

No. We do not comment on the quality of the investigations. We comment on the process.

Mr B McCrea:

I do not think that you can make the statement that you have just made. In the report, you say:

“CJI Inspectors are not investigators and therefore did not assess the quality of the investigation or evidence available to inform it.”

The report also asks whether the Office of the Police Ombudsman could operate without any police officers, because that would determine complete independence. On the other hand, it points out that there was a need for technical skills, which individuals would be unlikely to have unless they had been serving police officers. There is an issue here. I do not think that the challenges that we are presenting to the ombudsman in relation to historical cases can be handled in the way that we look at it. It is misleading for us to think that we might do that.

Can I ask you about the concerns expressed about the nature of the relationship between two individuals, which was mentioned in the report? Did you find any cause for concern?

Dr Maguire:

We found no evidence that there was a problem.

Mr B McCrea:

It is important to be careful about the language that you use in the report. The report states:

“Moreover both the Chief Constable and the Police Ombudsman stated that they had no evidence of any inappropriate relationship between these officials. In the light of this assurance and the absence of any tangible evidence it is difficult to draw any other conclusion.”

The way in which that text is written shows a certain reluctance to make that statement. The answer is that there was no evidence — end of story. The point that I am making is that we have to be very careful about the way in which we write reports.

From the evidence that has come forward, you are correct in saying that this is a damning report on the ombudsman’s office. It has shredded public confidence absolutely. However, I do not share the position held by others that states that we can address the problems of the past simply by changing the people. That is not the real issue; it is not about process. This is about sensitive information. We have to find the right way to deal with things. I hope that with your expertise, along with others, we might find a better way to deal with the past. However, it is not right to say that this is personality-driven.

Dr Maguire:

I agree with much of what Basil says, but I would make it clear what we said in the report; we did not comment on the conclusions drawn in individual reports. We looked at the process of those reports. I am not making any comment on the conclusions drawn, but my belief, which is based on my experience of running this organisation as well as my prior experience, is that if the process and the equality assurance process are flawed — if there are a variety of ways in which information is dealt with inconsistently within the organisation, internally and externally — that leads to a flawed product. We want to address those issues in the report. You are right; I am not making any comment on the professional judgements made by investigators.

Mr B McCrea:

I accept that; I accept absolutely that you need to be able to quality assure the process and the issues. However, I know that it is difficult when you are sitting in front of people asking you questions, and you are doing your best to be helpful, but I feel that we are in danger of being drawn to say what the appropriate way forward is on issues that are not in the terms of reference or even within our scope. What I think is useful in your report — there are many useful things in it — is your highlighting of some of the challenges. We need to consider those no matter what system or people we use to look at them.

Mr Lynch:

Thank you, Mr Maguire. As you said from the outset, this report came about as a result of the resignation of the chief executive at the time, most notably because of the damage to the independence of the office. Your report confirms that. Your office also carried out a report in 2005 on the former ombudsman, as my colleague said. Based on your inspection at this time, can you identify the turning point between 2005 and now?

Dr Maguire:

That highlights some of the issues we raised in the report. When we tried to understand why we are where we are, and we went back to 2008, we saw a number of things happening. One was the intelligence review and the way in which confidential information was addressed in the context of the organisation and the impact that it had on those staff who were outside access to that

information and their confidence in the process. A variety of things helped to lead us to the position that we were in in May and June of this year when we did our findings. There were also some different senior personnel this time around: there was a new ombudsman and a new senior director of investigations. A variety of things were different to the report that we produced in 2005.

Mr Lynch:

Can you say whether the lowering of independence is likely to have an adverse impact on public confidence and the effectiveness of the office?

Dr Maguire:

Unfortunately, I have no doubt that the effect of this report — this was not a report that I wanted to write — as colleagues on this side of the table have said, would be to impact on public confidence in the office.

Mr Lynch:

Finally, the way in which the office handled historical cases until 2007 was a key role in building confidence in the office. Is that the case today?

Dr Maguire:

The bulk of this discussion has been around the handling of historical cases, which is where the problems are, so that is what has impacted on public confidence.

Mr McCartney:

In your final remark to Basil McCrea, you mentioned the idea that you are more interested in process and procedures, and, if those are flawed, they will lead to certain outcomes. If someone had a position that he or she did not want to handle historical cases, was this process successful?

Dr Maguire:

I cannot pass comment on that.

Mr McCartney:

Thank you.

Dr Maguire:

We have identified a flawed process and the impact that that has had on the organisation.

Mr McCartney:

Would you come to the conclusion that they should be suspended?

Dr Maguire:

Yes.

Mr McCartney:

So, if you set out with the rationale of not wanting to carry out inquiries into historical cases, you could say that this has been a successful piece of work for a person who set out to do that.

Dr Maguire:

We do not say that in the report.

The Chairperson:

We could say that, if the ombudsman were to resign this afternoon, you would still propose that such investigations be suspended because the systems are flawed.

Dr Maguire:

Yes.

The Chairperson:

So, it would not matter whether there was a new ombudsman right now: you would still be proposing that such investigations should be suspended.

Dr Maguire:

That is exactly the point that we are making, yes.

Mr Dickson:

Thank you for your report, Dr Maguire, one which you said that you did not particularly wish to be in the position of having to write. You responded to an earlier question by saying that there was a buffeting of reports in a way that would not have happened in the past. Why do you think that that is the situation in regard to the current incumbents or those at the time of your report? Was that as a result of interpersonal issues? Was it a result of weakness? Was it a result of — as you have emphasised here today — a lack of clear operational guidelines and procedures being in place to deal with those issues? So, regardless of weak management and interpersonal relationships such as personality clashes in an organisation, was there clearly a lack of guidance to people performing their roles?

Dr Maguire:

That is fair: we have identified all the issues that you highlight in the report, yes.

Mr Dickson:

One of the issues for me relates to your recommendation that ongoing investigations into historical cases be halted now. There has been some debate around this table about decoupling those from the current operational complaints with which the ombudsman must deal. Where does that leave people who spent many years campaigning for an investigation? Indeed, during that long time, some campaigners may have died as well as losing relatives in the incident concerned.

We in this society have a duty and a clear responsibility to provide those answers. They may be difficult answers that people simply do not want to hear on occasions, but they must be provided. This community will not move on unless we provide those answers. So, although you have said that such inquiries need to be stopped, we also need to resolve where we will go with them.

Dr Maguire:

The decision to recommend suspension was not taken lightly, because the impact that that has on those who have been waiting a considerable time for an answer is likely to be immense. I — in a team context — took the view that to produce an answer in which people do not have confidence

might perhaps have been worse. That is why, on balance, my view was that we need to stop, fix the issue and then move forward.

Mr Dickson:

Do you believe that the issue is fixable in the context of the constitutional framework that we have here for the Office of the Police Ombudsman?

Dr Maguire:

This work was always going to be difficult. It is not made any easier by the issues that we identified in the report. Irrespective of that, those issues will have to be addressed.

Mr Dickson:

I think that that is a fair answer. Thank you very much.

Mr S Anderson:

Thank you for your presentation, Dr Maguire. You responded to my colleague Peter by stating that you would have no difficulty in bringing a complaint to the ombudsman's office —

Dr Maguire:

You mean on the way home from here?

Mr S Anderson:

Yes. How does it square with the report, which states that senior management is dysfunctional, when you can find that perhaps 80% of the office is working to perfection? Is it fair to use the word "dysfunctional" when you would have confidence bringing a case on the way home? Do you think that it is fair to use that term?

Dr Maguire:

The question is absolutely fair. What we say in the context of the report is that a senior management team is dysfunctional in the way in which it works when it does not work towards a common view of the way forward, the development of a corporate view and team-based-type behaviours, which is what you expect from a senior management team who sit around a table to

run an organisation. There is a distinction between that and the nature of the investigations. In the context of current cases, with a couple of exceptions that we note in the report — there may well be others out there of which we are not aware — we did not hear any significant concerns about the 3,500 relatively low-level cases, in the main, that were brought to the ombudsman’s attention. Therefore, it is entirely reasonable for me to make both of those comments even though — you are correct — at face value, they might seem contradictory.

Mr S Anderson:

I want to expand on that. Historical cases will always be the difficult ones with regard to where we have come from and where we are now. We have heard comments in that regard in the meeting. It is a wider debate. Problems may exist because of that past and how it is investigated. I believe that Mr McCrea raised the issue of comments in paragraph 6.8 with regard to the absence of tangible evidence when, in fact, there was no evidence. Perhaps that is an issue. Paragraph 6.7 states that the independence of staff from, perhaps, a PSNI or military background is “not necessarily” a problem. Those words are not very definite. Is it a problem or not? Paragraph 6.12 states:

“we have seen ... a clear split within the organisation between some investigation and some civilian staff.”

I do not know whether that means some staff with a police or military background and other staff. Is there a difficulty with that background, bearing in mind that — if I am reading the report correctly — those members do not investigate historical cases?

Dr Maguire:

I will certainly give my view on that. Perhaps I will ask Brendan McGuigan, who is an ex-policeman, to comment on that as well. My view is quite simple: does an ombudsman’s office of any type require certain skills, and should those skills be drawn from those from a policing background? The answer is yes. That is a clear statement. Can that be a problem? Yes, it can.

There is quite a lot of work around the area of what is called “organisational capture”, whereby individuals who come from a perspective that is empathetic to an organisation and, therefore — for want of a better term, and speaking hypothetically — can give the benefit of the doubt. That is why I say that it can be a problem. It does not necessarily mean that it is a problem. In the context of this organisation, in which we found individuals from policing

backgrounds and those with investigative skills who were not from policing backgrounds, the key issue was not so much where they come from — although the skills side is important — it is also about the checks and balances that are associated with how they do their work.

That comes back to issues of quality assurance, the role of the critical review panel and civilian oversight. I am a civilian. I am not from a policing background. However, I have a relevant perspective. In the context of the civilian oversight organisation, that perspective, from those who come from a background that is outside policing, is also important. You want to get that mix in the context of an organisation that oversees the police in a civilian oversight body. I do not mean those comments to be contradictory. However, it is a complex area. I am trying to put across some of the subtleties of the arguments. I will ask Brendan, who is an ex-policeman, what he thinks.

Mr Brendan McGuigan (Criminal Justice Inspection Northern Ireland):

I do not think that anything ever stops still. The fact is that investigative standards have changed dramatically in the past 10 to 15 years. It is important that that is reflected in the skills base in the Office of the Police Ombudsman, especially if it is being asked to look at very serious cases, multiple murders and tragic events in the past. It is important that the people who do that, first and foremost, have the knowledge and skills to enable them to do that. It was clear to us that the ombudsman accepted that, on some occasions, they did not. Therefore, it was important that, as we said, there should be a skills audit to ensure that people who do that are up to date with the latest available investigative standards. Otherwise, if reports do not reflect the best possible standards, people will be able to challenge their veracity and thoroughness.

Mr S Anderson:

There is no doubt that the best investigative skills are needed. As I said, it is about checks and balances.

People say that it is a damning report and this and that, and this is the third report. However, I will keep coming back to the fact that it is not a completely dysfunctional office. There is good work being done there.

Dr Maguire:

Good work is being done. However, given what we found in the context of how senior management was addressing cases, I am afraid that “dysfunctional” is the only conclusion that I could come to.

The Chairperson:

I will close with one last question. Are the mechanisms for the handling of sensitive material being carried out properly, or is that something that you cannot comment on? In other words, had there been a civilianisation element to the review, and it had still come out with the same system, would —

Dr Maguire:

I do not necessarily have a problem with the structural changes that were made, because those reflect practices for the handling of sensitive material that exist elsewhere and, indeed, in the police. It is not so much the structural changes themselves that were the problem. It is the fact that those changes were only some of the recommendations. There were other recommendations around skills, strategy and approach in the unit that were not addressed.

Asking people to comment, and provide quality assurance, on work without their having had any insight into the production process — for want of a better term — gives cause for concern. Some of this could be solved relatively easily if the pool were broadened through direct vetting of people who have access to the information. There are ways in which some of this stuff could be fixed to gain extra perspective.

The Chairperson:

All right. Thank you very much for your report. I am pretty sure that this one will not be put on a shelf to gather dust.