



CAJ

**Committee on the
Administration of Justice**

CAJ's commentary to the
**Office of the Police Ombudsman for NI's review
under section 61(4) of the Police (NI) Act 1998**

Submission No. S.226

Price: £1.00

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The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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Promoting Justice / Protecting Rights

Winner of the Council of Europe Human Rights Prize

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27 March 2009

cc Al Hutchinson
Police Ombudsman

Dear Mr Chambers,

Re: Review under section 61(4) of the Police (NI) Act 1998

Thank you for inviting the Committee on the Administration of Justice (CAJ) to comment on the above-named consultation, and we appreciate your granting of an extension to enable our submission.

CAJ has long been active on policing and human rights, and has sought to engage constructively in policy debates and consultations on how policing and its oversight generally can operate on a human rights compliant basis. In relation to the Office of the Police Ombudsman specifically, this has included the publication of a Commentary on the operation of the Office in June 2005. We have also engaged with the Ombudsman on an ongoing basis in relation to individual cases as well as wider policy issues. We are therefore very conversant with the operation of the Office and as such would consider ourselves to be a “key stakeholder” in any discussions or consultations that take place regarding the Office.

We first attended a public meeting about the review of powers in April 2006 [sic] at which the then Ombudsman Nuala O’Loan assured us in public that this was the first stage in what would be a wider consultation by her Office on the issue. As a key concerned stakeholder, we remained in correspondence with OPONI thereafter to establish the status and progress of the review and when we might expect to be consulted. We were assured again in a letter from the Ombudsman on 30th November 2006 that it was her intention to consult.

However in an e-mail exchange with the Ombudsman’s office in spring 2007, it became clear that this intention had changed, and that while discussions had taken

place within the policing establishment, no such opportunity was to be afforded to wider stakeholders at that stage but rather would await consultation by the NIO.

After inquiring further about this with the NIO, we received a letter from the Head of Police Complaints Branch on 17th October 2007 stating:

“...we are currently seeking initial comments from the main policing bodies regarding the proposals in the 5-year review. This is to assist us in further considering the proposals in conjunction with the Office of the Police Ombudsman. Detailed views will be sought later on proposals that have been developed further...”

We refer to the previous exchanges to highlight our consistent attempts to contribute to this process at a meaningful stage when recommendations were being formulated. By extension, this context underscores what has been an entirely unsatisfactory process in relation to the consultation on this issue. Meaningful consultation involves consulting during the process of policy formulation. As it stands, it appears decisions have been made and certain items ruled out of contention in the debate that appears to have taken place about the powers of the Ombudsman. This would appear to have occurred without substantial involvement or opportunity for input from key stakeholders beyond the policing establishment.

If our views as a key stakeholder had been sought earlier in the preparation of this document, for example, there are issues that we would have sought to highlight, particularly those identified in our Commentary on the Office of the Police Ombudsman in June 2005, such as:

- a. The Ombudsman should be resourced to carry out extensive research functions, or if the Office chooses instead to commission research, their power to do so would be enhanced by being clearly set out in statute. Are existing resources adequate to meet this recommendation?
- b. The OPONI should have the power to set deadlines for PSNI compliance with its investigations (CAJ Commentary page 24). The current long delays are not acceptable and yet recommendations have not been made about how this might be addressed. In the absence of alternative options, we would reiterate the initial CAJ recommendation.
- c. CAJ welcomes the extension of authority of OPONI to retired officers but no reference is made to army officers operating under the directions of the PSNI (CAJ Commentary, page 29).
- d. CAJ has made many recommendations which refer to the need to cooperate more closely with complainants, their solicitors and non-governmental organisations. This concern does not seem to have been addressed.
- e. The OPONI should seek to put its power to investigate discharges of lethal and less-lethal weaponry (currently a matter of discretion for the Chief Constable) on a statutory basis. By extension, the OPONI should seek to enhance its powers relating to investigation into the use of all forms of police weaponry

which would benefit from additional scrutiny (CAJ Commentary pages 88 and 98).

While this review is essentially focused on the workings of the legislation as it applies to the Police Ombudsman, it is disappointing that some of the recommendations made by CAJ with regard to other entities were not pursued. For example, we recommended that the Director of Public Prosecutions “recognise the clear public interest in providing reasons for the decision not to prosecute in cases referred to it for action by the Police Ombudsman”. While clearly a recommendation to the PPS, any failure of the PPS to be transparent in its follow-up to Ombudsman cases will have an impact on public confidence in the work of the Ombudsman’s office. More broadly while we understand that this is a review of the legislation, it seems a lost opportunity that there was not more exploration of how the legislation has worked in practice, and what is required over and above specific legislative changes.

As it stands, it appears it is unlikely that any of these issues will be incorporated at this late stage. Thus we feel it is of limited value to comment in detail on decisions that have already been made. However, we offer the following brief comments with respect to the Statutory Report submitted by the former Police Ombudsman, Dame Nuala O’Loan in July 2007:

- Recommendation 3 (disclosure)

While understanding the ambiguity that currently exists, CAJ would oppose any extension to the limitations on disclosure by OPONI per se. CAJ undertook a judicial review in the strong belief that public confidence requires more not less disclosure on the part of OPONI. Our report urges that the burden of proof on disclosure be reversed to that currently and mirror the legislative provisions which apply to the IPCC for England and Wales (CAJ Commentary, p.80).

- Recommendation 9 (informal resolution)

CAJ has argued that it is essential for OPONI to have the option of pursuing a failed informal resolution case, and to have a new closure category which better reflects the reality.

- Recommendation 10 (mediation)

Mediation should be contingent on it being acceptable to all those involved. If this is the case then it would be welcomed by CAJ.

- Recommendation 15 (investigation of criminal behaviour involving civilians)

While the argument for this recommendation is very clear it may be difficult to implement in practice. It is possible to imagine situations where the actions of one police officer are intimately tied into the actions of a large number of civilian suspects, and OPONI would be drawn further and further from its police focus. CAJ recommends that the formulation clarifies that OPONI may

arrest civilians when this action proves necessary to proceed effectively against police officers who are being investigated.

- Recommendations 17 – 22 (Ombudsman’s function)

The set of recommendations aim to improve the operation of the Ombudsman’s functions with regard to disciplinary actions and should enhance coordination with the PSNI. As such they are to be welcomed. CAJ had further recommended that the complainant solicitor be empowered to attend disciplinary hearings (along with the Ombudsman). (our Commentary, page 57)

With respect to Al Hutchinson’s comments, CAJ makes the following further remarks:

- Recommendation 17

Drawing from our analysis of the OPONI as an accountability mechanism that should not be driven solely by policing imperatives, CAJ would be vigilant of the style of work relationship that would develop in a joint operation with the police service when the investigation involves allegations of criminal activity by police informants. We would therefore disagree that the lack of “joint operations” would risk the perception of a “parallel police service”. Instead we would support the recommendation that the Police Ombudsman be empowered to arrest persons who are engaged in a crime for which police officers are being investigated.

- Recommendation 20

CAJ would support the recommendation to enable the Police Ombudsman to recommend the suspension of an officer. The granting of this statutory power would make the OPONI a more robust accountability mechanism which holds statutory power independent of the Police Service and is therefore not contingent on the final decision of the Chief Constable (Deputy Chief Constable).

- Recommendation 21

CAJ would apply the principle that the Police Service is effectively one node of policing. By extension the Chief Constable has operational responsibility for the control and direction of the Police Service but not absolute operational independence.

- Recommendation 25

The OPONI has a statutory responsibility to investigate complaints and is best placed to direct compensation payments not exceeding a specified amount. This ensures that certain categories of allegations remain completely independent of policing imperatives.

In conclusion, we would like again to express our concern about the process that has evolved around this important debate, and in particular seek clarification about who is defined as a “key stakeholder” and how this distinction is made. We would also like clarification on the specific processes through which the Office of the Ombudsman and the Northern Ireland Office undertake to attain valuable and meaningful consultation in policy and decision-making processes. We look forward to hearing your reply.

Yours sincerely

Mick Beyers
Policing Programme Officer

Aideen Gilmore
Deputy Director