

# POLICE OMBUDSMAN OPERATION BALLAST REPORT

## Third Interim Report to the Policing Board on PSNI Implementation of Recommendations

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### BACKGROUND

The Statement by the Police Ombudsman of Northern Ireland on her investigation into the circumstances surrounding the death of Raymond McCord Junior and related matters was published on 22 January 2007 (the Operation Ballast Report). It contained 20 recommendations, the last of which required the Policing Board to establish a mechanism to review the PSNI response to the recommendations in the Operation Ballast Report within 6 months and at appropriate intervals thereafter (recommendation 20).

The Policing Board accepted its responsibility for overseeing the implementation of the recommendations made in the Operation Ballast Report and agreed that, as its Human Rights Advisors, Keir Starmer QC and I should examine, validate and report on the implementation of those recommendations (appointing external assistance as necessary).

Keir Starmer QC<sup>1</sup> and I have delivered two interim reports to the Policing Board. The first report was on 19 July 2007. The second report was on 9 January 2008 when we reported that as of December 2007, the PSNI had implemented 10 of the 17 Operation Ballast Report recommendations in full,<sup>2</sup> 6 recommendations in part<sup>3</sup> and one recommendation remained outstanding.<sup>4</sup>

In this third interim report, I provide the Policing Board with a further update on the status of the PSNI's implementation of the 17 recommendations made to it by the Police Ombudsman in the Operation Ballast Report.

### METHODOLOGY

Since the last interim report, I have had detailed meetings with senior officers in PSNI Crime Operations, trainers in PSNI Special Operations Branch, the Deputy Director and senior members of the Historical Enquiries Team (HET), senior members of the Prison Service and the Director and Deputy Director of the Public Prosecution Service.

During the course of the last six months, the PSNI has provided me with one written report on its work in progressing implementation of the outstanding Operation Ballast recommendations, together with other relevant documentation which I have requested. In addition, HET has provided me with two written reports on its work in progressing recommendations 1-3.

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<sup>1</sup> Keir Starmer QC stood down as a Human Rights Advisor to the Policing Board at the beginning of February 2008.

<sup>2</sup> Recommendations 6, 7, 8, 9, 10, 11, 12, 13, 14 and 18.

<sup>3</sup> Recommendations 1, 2, 4, 5, 15 and 16.

<sup>4</sup> Recommendation 3.

I am satisfied that the PSNI has provided me with all the information I have required to examine, validate and report on the implementation of the recommendations in the Police Ombudsman's Operation Ballast Report.

## **IMPLEMENTATION OF RECOMMENDATIONS**

In outline, as of August 2008, the PSNI has implemented 13 of the 17 Operation Ballast Report recommendations in full (recommendations 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18) and the remaining 4 recommendations in part (recommendations 1, 2, 3 and 5).

I set out below my analysis of the current status of implementation of the recommendations made to the PSNI by the Police Ombudsman in the Operation Ballast Report. For ease, I have retained the structure of the last interim report and have grouped the recommendations under the following seven headings: (a) investigation; (b) training; (c) policy; (d) review of PSNI personnel; (e) processes/procedure; (f) PSNI relationship with Police Ombudsman and (g) PSNI relationship with other bodies.

### **A. INVESTIGATION**

#### **Recommendation 1: Investigation of North Belfast and Newtownabbey informant network**

#### **Recommendation 2: Investigation of Informant 1**

Recommendation 1 required a thorough investigation of all crimes which the network of informants – covert human intelligence sources (CHIS) – within the UVF in North Belfast and Newtownabbey have been associated, including the re-interview of all Special Branch handlers and controllers responsible for those CHIS and the referral of any indication of criminal behaviour by serving or returned officers to the Police Ombudsman. Recommendation 2 required the investigation of informant 1 as a suspect in all murders, attempted murders and serious crime for which he is suspected (treating them all as linked crimes).

In our January report, we indicated that the PSNI had accepted both these recommendations and work in relation to them was underway through the work of the Complex Inquiries Team, a sub-unit of the Historical Enquiries Team (HET). The investigation covers a total of 31 murders and attempted murders that allegedly occurred between August 1989 and December 2002. Neither former nor serving RUC/PSNI officers are part of the Complex Inquiries Team.

In our January report we recorded that during our initial discussions with the Police Ombudsman in May 2007, she had indicated that the intention of this recommendation was that the PSNI should conduct a *reinvestigation* of all relevant crimes rather than an administrative review of those crimes. We also recorded that HET senior personnel considered their process to be one of reinvestigation rather than review. We set out the five stage reinvestigation methodology in our last report<sup>5</sup> and I do not repeat it here. We

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<sup>5</sup> Police Ombudsman Operation Ballast Report, Report to the Policing Board on Status of Implementation of Recommendations, 9 January 2008, pp.3-4.

stated that in our view, what is required is an effective investigation and that can best be judged at the end of the exercise but we concluded, following a series of meetings with HET senior personnel, that we were satisfied that the approach taken so far by the PSNI was in keeping with the original intention behind recommendations 1 and 2 of the Operation Ballast Report.

During the last six months, I have met with the Deputy Director of HET and senior members of the Complex Inquiries Team on a number of occasions. The Complex Inquiries Team is currently investigating 19 murders (within 17 operations), 14 attempted murders and 14 punishment shootings within the parameters of its Operation Ballast investigation. All of the cases are at varying points of the focused investigation stage (stage two) of the five stage reinvestigation model. Forensic opportunities have been identified in 18 instances.

All victims, including the victims of the attempted murders, have now been traced. A number of victims have been or are being debriefed and further evidence or intelligence obtained as a result of the debriefing process is the subject of ongoing investigation and/or verification. Some of the evidence or intelligence obtained has little or no connection with the Operation Ballast series of offences but point to other serious linked offences, including further allegations of serious criminal misconduct by police officers. These are now also the subject of investigation by the Complex Inquiries Team. In the event that the allegations of serious criminal misconduct by police officers are verified, these will be referred to the Police Ombudsman for further investigation.

Following my detailed discussions with HET over the last six months, I remain satisfied that the approach taken by the PSNI meets the intentions behind recommendations 1 and 2 of the Operation Ballast Report. Due to the complex nature of the reinvestigation process, these recommendations continue to remain implemented in part. I will report to the Policing Board again on the status of the reinvestigation in the next interim report.

### **Recommendation 3: Investigation of cancelled informants in 2003**

Recommendation 3 required investigation of the 12% of covert human intelligence sources (CHIS) cancelled in 2003 after the intervention of the Police Ombudsman and Stevens recommendations. We recorded in our January 2008 report that we had been informed that the 12% of CHIS cancelled in 2003 were deregistered on the grounds of suggested intelligence rather than on solid evidence that they were involved in serious crime and that at the time, all cases were referred to CID and none resulted in prosecution. We also reported that the PSNI had indicated its intention in light of the recommendation to refer relevant cases to HET for further review and investigation.

In March 2008, I met with the (then) Head of the PSNI Central Authorisations Bureau and the Director of the HET Complex Inquiries Team to review all CHIS (both national security and serious crime) deregistered as a result of the PSNI CHIS Risk Analysis Group review in 2003 (the CRAG Review).<sup>6</sup> We reviewed the individual case papers in relation to each CHIS deregistered and agreed which cases should be referred to HET for further investigation. Those cases have now been referred to the HET Complex

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<sup>6</sup> The CRAG review examined all CHIS employed by the PSNI. Its remit was to ensure that the PSNI employment of CHIS was proportionate in relation to the terrorist threat.

Inquiries Team. Any evidence uncovered of police criminal misconduct will be referred immediately to the Police Ombudsman for investigation. In addition, the Head of the PSNI Central Authorisations Bureau agreed to report back on subsequent action taken by the PSNI against a small number of serious crime CHIS who had been declassified. This work is continuing.

I welcome the PSNI's open and transparent approach to dealing with this recommendation and referring cases (together with case papers) to the HET Complex Inquiries Team. The recommendation requires an investigation of those CHIS who were deregistered in 2003 on the grounds of intelligence or evidence that they were involved in serious crime. Like recommendations 1 and 2, what is required is an effective investigation.

During meetings with HET in June 2008, I was informed that the current priority of the Complex Inquiries Team is to obtain and exploit evidential opportunities arising out of its reinvestigation of the murders and attempted murders relating to recommendations 1 and 2. Linked individuals will be included within this process but otherwise, the reinvestigation required under recommendation 3 is likely to remain outstanding for some time to come.

Against this background, I consider recommendation 3 to be implemented in part. I will report to the Policing Board again on the status of implementation of this recommendation in the next interim report.

## **B. TRAINING**

### **Recommendation 4: Intelligence training**

This recommendation required the PSNI to ensure that all officers in Intelligence branch receive full training (properly updated), consistent with national policing standards in CHIS handling (including all responsibilities and obligations). In the January interim report, we reported that we had observed the training devised by the PSNI Intelligence Skills Team (IST) in direct response to the Police Ombudsman Operational Ballast Report. The training provided was carefully focused and directed. Human rights issues were at the forefront of teaching and class discussions, which were open and animated. In total, 93% of PSNI officers engaged in CHIS handling (on the grounds of national security, serious and volume crime) have now received this bespoke training and the small numbers of remaining officers who have yet to complete the training have been prioritised.

In light of the difficulties in reaching 100% of officers (given long term sickness absence and continuous changes in personnel), I consider recommendation 4 to be implemented in full. The Board will however continue to monitor the adequacy of PSNI covert policing training as part of its annual human rights compliance assessment.

### **Recommendation 5: Detective training**

This recommendation required PSNI officers appointed to Intelligence branch to have detective training to enable them to carry out their functions efficiently and effectively.

Since 2004, to work in PSNI Intelligence branch, officers have had to complete detective training. Before 2004, this was not the case. In our January 2008 report, we reported that all Intelligence branch officers had received or were receiving training and all those appointed to CHIS handling duties were required to have CID experience prior to appointment. We reported that we were satisfied with the progress being made in respect of recommendation 5 but that in our view, the intention behind this recommendation was that all officers in post in the Intelligence branch should have detective training, not just new appointments.

Since January 2008, a total of eight Investigative Skills Courses have been delivered to PSNI Intelligence branch officers. Further courses are scheduled in the next months. By the end of 2008, close to 100% of PSNI Intelligence branch officers should have completed the Investigative Skills Course. I am satisfied that once all officers have completed this training, recommendation 5 will be implemented in full. Until then, it remains implemented in part.

Over the last six months, I have had discussions with the PSNI regarding the requirement that all those officers appointed to CHIS handling duties must have CID experience prior to appointment. This effectively means that only those officers within PSNI Crime Operations are currently eligible to apply for positions as CHIS handlers. Special Operations Branch trainers have reported that this restriction in the pool of officers from whom CHIS handlers can be recruited is impeding the appointment of suitably qualified officers.<sup>7</sup> The concern is that suitable officers from other PSNI departments are being unnecessarily excluded. At present, any officer who wishes to work as an CHIS handler must complete an intensive five week training and assessment process. Special Operations Branch trainers have put forward the proposal to increase this training and assessment programme to seven weeks to include the two week Investigative Skills Course which officers appointed to Intelligence branch currently have to complete (see recommendation 4 above) with a pass/fail exam. This would then allow the PSNI to recruit officers from across the Service as CHIS handlers rather than merely from within Crime Operations.

I have considered this proposal carefully and have discussed it in detail with both Special Operations Branch trainers and senior personnel within Crime Operations. I agree that the current system of recruitment of CHIS handlers is potentially limiting the PSNI's ability to recruit the most suitable candidates to CHIS handling duties. I therefore support the proposal put forward by Special Operations Branch trainers but the Policing Board will monitor the impact of the new approach if it is adopted by the PSNI and report as part of its annual human rights compliance assessment.

## **C. POLICY**

### **Recommendation 6: Review intelligence dissemination policy**

*Implemented in full: refer to January 2008 interim report.*

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<sup>7</sup> Email Special Operations Branch trainers to Policing Board's human rights advisor dated 12 June 2008.

## **D. REVIEW OF PERSONNEL**

### **Recommendation 7: Review of criticised officers**

*Implemented in full: refer to January 2008 interim report.*

Whilst we reported this recommendation to be implemented in full in our January 2008 interim report, I was subsequently asked by the Policing Board to obtain further details of the nature of the criticisms made by the Police Ombudsman and the action taken by the PSNI. I have pursued this with the PSNI over the last six months. I am satisfied that the concerns raised by the Police Ombudsman were minor in nature and that the action taken by the PSNI in response was proportionate.

## **E. PSNI PROCESSES/PROCEDURE**

### **Recommendation 8: Regular change of informant handlers**

*Implemented in full: refer to January 2008 interim report.*

I continue to monitor the adequacy of PSNI's policy and procedure as part of the Policing Board's annual human rights compliance assessment.

### **Recommendation 9: Completion of technology changes**

*Implemented in full: refer to January 2008 interim report.*

### **Recommendation 10: Review of intelligence records procedure**

*Implemented in full: refer to January 2008 interim report.*

I continue to keep the PSNI's policy on the retention and storage of documents under review as part of the Policing Board's annual human rights compliance assessment.

### **Recommendation 11: Recovery of material and documents**

*Implemented in full: refer to January 2008 interim report.*

### **Recommendation 14: Operational risk advisors**

*Implemented in full: refer to January 2008 interim report.*

Whilst we reported this recommendation to be implemented in full in our January 2008 interim report, we recommended that the PSNI should keep its decision under review, particularly if a common ACPO framework is developed in relation to operational risk advisors.<sup>8</sup> I have had further discussions in the last six months regarding this recommendation with senior officers within Crime Operations. The PSNI is currently

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<sup>8</sup> Operational risk advisors provide an independent, operational assessment with a level of expertise for specialist areas of an investigation, particularly covert operations.

reconsidering the value of appointing a senior officer to such a role within Crime Operations Branch. I will report further in the next interim report.

## **F. PSNI RELATIONSHIP WITH POLICE OMBUDSMAN**

### **Recommendations 12 + 13: Duty not to obstruct the Police Ombudsman and to furnish information and documents**

*Implemented in full: refer to January 2008 interim report.*

## **G. PSNI RELATIONSHIP WITH OTHER BODIES**

### **Recommendation 15: Providing information to the PPS**

This recommendation required the PSNI to review procedures for the provision of confidential information to the Public Prosecution Service (PPS) to ensure accuracy and compliance with the Criminal Procedure and Investigations Act 1996.

In our January interim report, we recorded that we had examined the protocol between the PPS and the PSNI which sets out the operational services to be provided by the PSNI to the PPS and vice versa. We indicated that we would meet with the PPS to discuss the effectiveness of the protocol and the disclosure of confidential information by the PSNI.

In August 2008, I met with the Director and Deputy Director of the PPS. They indicated that the PPS and the PSNI have a productive working relationship which has improved over recent years. The Director and Deputy Director are satisfied with the arrangements in place for the disclosure of confidential information by the PSNI to the PPS. ACC Crime Operations and the Deputy Director of the PPS have agreed a particular scheme for the disclosure of highly sensitive information.

I am satisfied that the PPS and the PSNI are developing a more effective working relationship and that arrangements are in place for the disclosure of confidential information by the PSNI. Against this background, I consider recommendation 15 to be implemented in full but will continue to monitor the arrangements in place for the disclosure of confidential information as part of the Policing Board's annual human rights compliance assessment.

### **Recommendation 16: Prison intelligence**

This recommendation required the PSNI to introduce and monitor new processes for gathering intelligence from prisons. This resulted from concerns identified by the Police Ombudsman regarding the divergent accounts given by the PSNI and the Northern Ireland Prison Service regarding a particular murder investigation while the murder suspect was in prison.

In our January report, we recorded that we had reviewed the Memorandum of Understanding between the PSNI and the Northern Ireland Prison Service and reported on the PSNI Prison Intelligence Officers and the Prison Service Security Intelligence Liaison Officers who act as points of contact for each Service regarding intelligence

matters. We indicated that we would meet with the Prison Service to discuss the effectiveness of the Memorandum of Understanding and the dissemination and handling of intelligence by the PSNI.

In July 2008, I met with senior personnel in the Prison Service. They indicated that the Prison Service and the PSNI have a productive working relationship and they are generally satisfied with the arrangements in place for the dissemination and handling of intelligence by the PSNI. Communication between the Prison Service and the PSNI has improved considerably over the last twelve months with the establishment of a dedicated PSNI Prison Intelligence Unit. Senior members of the Prison Service and the PSNI meet twice yearly to discuss matters of concern. These are open and frank exchanges.

The memoranda of understanding between the PSNI and the Prison Service are currently in the process of being reviewed and updated and will be merged into one overarching agreement. A tripartite memorandum of understanding between the Prison Service, the PSNI and the Security Service is also in the process of being agreed. The Prison Service underlined the critical importance of an effective, co-operative relationship between the PSNI and the Security Service regarding the sharing and provision of intelligence and its impact on other criminal justice agencies, such as itself, which rely on both Services for intelligence reports.

I am satisfied that the Prison Service and the PSNI have an effective working relationship and that arrangements are in place for the dissemination and handling of intelligence by the PSNI. Against this background, I consider recommendation 16 to be implemented in full but will continue to monitor the arrangements in place for the dissemination and handling of intelligence by the PSNI as part of the Policing Board's annual human rights compliance assessment.

### **Recommendation 18: PSNI and An Garda Síochána**

This recommendation required the PSNI to ensure that there are clearly defined and auditable processes to ensure effective policing operations with An Garda Síochána.

In our January report, we reported that the PSNI and An Garda Síochána were in the process of agreeing a joint Memorandum of Understanding setting out the arrangements for bilateral co-operation between the PSNI and An Garda Síochána in sharing operational criminal intelligence to facilitate a shared understanding of criminal activity with a cross border dimension. The Memorandum was signed and agreed as a working arrangement in May 2008. I therefore consider recommendation 18 to be implemented in full.

JANE GORDON

11 September 2008