



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Policing Oversight and Accountability: Mrs
Naomi Long MLA, Minister of Justice

9 December 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mervyn Storey (Chairperson)
Mr Doug Beattie
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Robin Newton
Miss Rachel Woods

Witnesses:

Mrs Long	Minister of Justice
Ms Lisa Boal	Department of Justice
Ms Maura Campbell	Department of Justice

The Chairperson (Mr Storey): I welcome, via StarLeaf, the Minister to the meeting. I am glad that she has been released from the Executive meeting. I am sure that she is glad of that. I also welcome Maura Campbell, the deputy director and head of the policing policy and strategy division, and Lisa Boal, from the policing policy and strategy division. Cathy Galway may join us, if she moves over from the previous meeting. I welcome you all to the Committee. I invite the Minister to make a few opening comments, and then, no doubt, members will have questions. Thank you.

Mrs Long (The Minister of Justice): Thank you very much, Chair. I reflected to the previous Chair, who was, of course, chairing the Executive meeting, that it was a delight to be released by one of you to meet the other. I am glad that I have been able to make it this afternoon, and I thank the Committee for accommodating the shift in times. I appreciate that. I also appreciate the opportunity to brief members today on the forthcoming consultation on the stocktake of policing oversight and accountability and the powers of the Police Ombudsman. I will keep my introductory remarks pretty brief, because I want to allow more time for members' questions, as I realise that they may have issues that they wish to raise.

Last month marked 20 years since the establishment of the Police Service of Northern Ireland and the Policing Board, and, last year, we marked 10 years since the devolution of policing and justice powers to the Assembly. When I became Minister of Justice, I thought that it was timely and good practice to take stock of the current policing oversight arrangements to see whether any areas needed improvement or reform. I have also received recommendations from the Police Ombudsman herself about the reform of her powers, and I am taking the opportunity to consult on her five-year review report alongside the stocktake.

In Northern Ireland, as you will be well aware, a number of bodies have a role in ensuring the oversight and accountability of policing, which is a fundamental part of ensuring and promoting public confidence in the service. The principle of independent oversight and accountability is now widely accepted and supported, and the arrangements have been broadly working well since they came into being 20 years ago. There have been many changes, however, in Northern Ireland over the last 20 years, and, of course, new challenges will continue to emerge in the future. It remains vital to have effective oversight arrangements and to ensure that they remain fit for purpose, as the demands of a modern policing service evolve.

The principle of independent oversight was central to the stocktake, and we have endeavoured to work with the various bodies that are carrying it out. We engaged with each of the oversight bodies, including the full membership of the Policing Board, and with the bodies that represent both serving and former police officers and staff. If I may, I place on record my thanks to all those who took part in the discussions. They were really constructive and also provided us with some valuable feedback, which we have sought to reflect in the proposals being put forward.

The engagement to date has confirmed that the existing architecture for policing oversight and accountability is still generally seen as being fit for purpose. It also reaffirmed the important role of the Policing Board, with its mix of political and independent members, in ensuring an effective, representative and accountable police service and in holding the Chief Constable to account. I acknowledge that there are different perspectives on the extent of the Police Ombudsman's powers and what they should be, but, again, I welcomed the opportunity to discuss those with stakeholders, and I am keen to identify recommendations on which we can reach consensus.

In the consultation paper, we have set out the various issues raised during the stocktake, with the work that is in progress to address some of those issues and the additional actions that we propose. The papers that we have provided to the Committee set out the detail of the range of issues raised, which include clarity of roles, ensuring complementarity and good coordination in respect of inspection and review arrangements and governance and financial management issues. The nature of our oversight arrangements and the respective responsibilities of each of the bodies means that some of the proposed actions will fall to other bodies to take forward, in some cases, with the support of the Department. Many of the proposals are operational or administrative, and most would not require legislative change.

Turning specifically to the ombudsman's proposals, I am conscious of the divided opinion that can arise on aspects of the ombudsman's work, as was expressed very clearly in the debate in the Assembly Chamber on 18 October. Nonetheless, it is important that we consider carefully the case for reform. The Office of the Police Ombudsman for Northern Ireland's (OPONI) powers have remained unchanged since 1998. We should consider carefully the need for change in light of 20 years of learning and to ensure, into the future, that the office remains fit for purpose. We await clarity on the Government's plans for legacy investigations. As you know, that has not been forthcoming to date. However, it is expected that OPONI will no longer deal with cases that predate 1998, and, therefore, we should consider the proposals in that context.

There is merit in looking at the proposals with a view to progressing change, including those aimed at making the complaints process more efficient and effective and more transparent. Our engagement to date and the meetings that the ombudsman herself has undertaken have given us some sense of the recommendations that could attract consensus, and we have put those forward in the consultation document to test that thinking. However, we are also seeking views on the other proposals in case a consensus emerges that we had not anticipated. We aim to launch the consultation next week and for it to run until mid-February. As you will appreciate, we will need some time to analyse the responses and to consider the issues raised. Therefore, any legislation will be introduced in the next Assembly mandate, and that will be subject to the normal scrutiny processes, including the Committee Stage.

Finally, I understand that, earlier in your meeting, there was a query about the purpose of today's discussion and whether the Committee was being asked formally to approve the consultation document. At the outset, I will clarify that. As the Clerk said, officials attended previously to brief the Committee on the purpose and scope of the stocktake and how we were handling the Police Ombudsman's five-year review report on her powers, but that was a number of months ago. In fact, it was February of this year. The officials indicated, at the time, that I intended to meet the Committee at a suitable point to discuss what we would do. Since then, I have been engaging with stakeholders, and, given that the Committee is a key stakeholder, I want to engage with you before we press "go" on the consultation.

There is no formal or statutory requirement, as you know, to seek approval from the Committee before launching a consultation. However, I am keen to ensure that the Committee is content with the overall direction of the consultation and has the opportunity to flag any queries or concerns about its content with me before it goes live. As I explained, it will be the next Assembly mandate before legislation can be brought forward to give effect to the outcome of the consultation. There may be some changes that can be implemented administratively, and, therefore, the Committee would be involved and kept aware of where that was happening.

As I said, I am committed to working collaboratively and constructively with the Committee, and attendance today is an important part of that. I am happy to take any questions from members about the consultation.

The Chairperson (Mr Storey): Thank you, Minister. We will take questions from members in a moment. First, I will raise a couple of issues. One is the consultation on the principle of a separate police covenant for Northern Ireland that would have distinct provisions. If such a covenant was in place, would it have prevented the very sad situation that played out on our TV screens involving the two police officers on the Ormeau Road? Subsequently, the Public Prosecution Service (PPS) told us this week that it is not taking forward prosecutions.

Mrs Long: You will appreciate that it would be inappropriate for me to comment on individual cases. Given that the independence of policing and, indeed, of the ombudsman's office is the primary concern, it would not be appropriate for me to second-guess. There is due process involved, so when complaints are forwarded to the ombudsman in a general sense, the ombudsman will go through those and look to see whether there is anything that necessitates being referred to the PPS. The PPS will then do its job and decide whether there is anything worthy of prosecution. It is important to note that I do not control the decision-making of the PPS, the ombudsman's office or the complaints process on the way through that.

I hope that it would continue to be an open and transparent process, so that those who are involved in it — as complainants or as those who are complained about — would continue to have confidence that they are treated with dignity and respect, which was reflected in recent surveys, and also that they are kept abreast of what is happening with any complaint that has been made and how it is being progressed.

It is about making sure that the process is correct, but it would go beyond my office and my responsibilities to start interfering in individual cases or trying to comment or create commentary around how they should be handled.

The Chairperson (Mr Storey): Following on from that, for clarity, am I correct in saying that you have taken the decision not to pursue the ombudsman's proposal on the powers to compel police officers? I take a view that it would disproportionately impact on retired officers and, obviously, have an impact on the whole issue of legacy. Are we clear that that will not form part of the consultation?

Mrs Long: As I discussed, one of the issues in terms of compelling witnesses is a contentious proposal. That is something that we will acknowledge straight away, particularly in relation to legacy investigations. The ombudsman obviously considers it necessary to ensure cooperation with her investigations, but I have also listened to the concerns that have been expressed by the Northern Ireland Retired Police Officers Association that, for example, retired officers lack access to contemporary records and other forms of support that would be available to serving officers who were under investigation.

The proposed new arrangements for legacy investigations have included transferring OPONI's legacy cases to a new body. That could impact on the consideration of this particular proposal.

Whilst we are not clear how those proposals will be taken forward, given its contentious nature and the fact that legacy issues are a shifting piece of work, it is not something that we are able to take forward, nor would it be appropriate to take it forward, at this time, even if we were to test opinion on the matter. I do not think that we would find consensus, and, without certainty around legacy, there would be an issue.

Obviously, compelling witnesses is a slightly different situation for serving officers, and it tends to be more contentious in the context of legacy. I have listened very carefully to what the Northern Ireland Retired Police Officers Association has said about that.

The Chairperson (Mr Storey): You rightly raised the issue of the debate in the Assembly on 18 October when concerns were raised about the operation of the ombudsman. Since I took up this role, I have been very clear to ensure that we draw a distinction, as best we can, between the responsibilities of the Justice Committee and those of the Policing Board. That is why we have set up arrangements for meetings between the chairs and vice chairs of the board and the Justice Committee. That is for efficiency and effectiveness reasons.

The Department is consulting on the proposals that the PSNI will be under an obligation to respond to the ombudsman within a statutory time limit. Given those concerns and the ombudsman's office taking 14 or 15 years to do an investigation, when will we have scrutiny of the efficiency and effectiveness of the ombudsman's office? It should not just be seen as an organisation that can take as long as it wants and not have the way in which it does its business scrutinised in the same way as any other non-departmental public body or any Department.

Mrs Long: As I said in the debate, the office itself routinely monitors case progress and sets targets for completion. It is not oblivious to the criticism and nor does it feel that it is unaccountable in that sense, in that it is publicly accountable for the use of public money. In 2020, which is the most recent year for which data is available, the office completed 63% of its category B cases within 110 working days, against a target of 70%. It completed 93% of its category C cases within 90 working days, against a target of 85%. Those relating to historical and legacy cases, by their very nature, can take much longer to conclude, although there are often factors that are outside the ombudsman's control, which lead to those delays. For example, if a file is sent to the PPS, the office then has to await an outcome from the PPS consideration before it can proceed with further investigation.

Some cases have, of course, taken a very long time. I am by no means diminishing the significance or sensitivity of those cases for those who have been complained about and those who have made the complaint. Often, those are the most complex and sensitive cases that the ombudsman will deal with. However, it would be fair to say that those are the exception rather than the rule. It is important, of course, that we try to deal with all cases in a timely way and that the ombudsman is able to do that, to report on those statistics and to allow scrutiny of those facts. Nevertheless, it is also important that we recognise the impact that legacy and historical cases have had on those timelines.

I have been very clear that, from my perspective, I simply do not believe that the current justice system in the main, including the ombudsman's office, the PSNI, the Department of Justice legacy investigation branch and everything else, is constructed and funded in a way that allows us to do justice to legacy cases. I cannot be clearer about that: the current system is failing everyone who is involved in those cases. What I want to see is a comprehensive approach that is properly funded but that takes the pressure off the modern-day justice system, so that we can get on with policing the here and now and immediately preceding events in order to allow another system to take over those legacy cases, which are much longer, more complicated and more resource-intensive. At the moment, there is a genuine pressure in the justice system between legacy and current cases, which is to the detriment of everyone who is seeking resolution of their cases, whether it be in the courts, at an inquest or anything else. It is really important to put that on record with respect to the ombudsman's office as well.

It is also important that, while we do not interfere with the ombudsman's office when it comes to issues — for example, around the decisions that it makes because it is important that those are entirely independent — we hold the ombudsman's office, as we would any other body, accountable for its use of public funds and for the fact that it needs to be efficient in the discharge of its statutory functions. It is not an unaccountable office, in the sense that no one ever asks questions. We have an annual accountability meeting with the ombudsman's office, as we would with any other group, but we do not interfere, if you like, with the office's operational decisions. That is an important distinction that we have to maintain in order that the office has credibility. There are a lot of people who will want to think that I, as a politician, or, indeed, any other politician in the Assembly, had any direct impact on the decisions that are being made, so it is absolutely right that we keep that separate.

The Chairperson (Mr Storey): If that is the case, when it comes to openness and transparency — I still think that there is a mist around how the component parts of all this hold the ombudsman to account — would one way of doing that be to extend the role of the external independent assessor of complaints against the ombudsman on substantive matters and not just those involving maladministration? Would that lead you to believe that that could negate the cost and the delays, particularly for retired officers who are seeking judicial reviews to challenge the findings? That might be one way to add confidence that this organisation is not able to continue without there being some external evaluation and assessment of the way in which it goes about its business.

Mrs Long: Chair, you have hit on two issues: how it does its business, and the business that it does. The business that it does, as an ombudsman's office, has to be independent, and, therefore, it is right that it does that work independently. It is also right that it is ultimately for the judiciary, through a judicial review, to make a decision if there is a challenge to what is decided by the ombudsman's office; otherwise, you end up with oversight for the overseer and layers and layers of bureaucracy, because who oversees the overseer? At some point, with an ombudsman's office, you have to accept that that is the top of the chain, and, if people want to go beyond that, it then goes into the court system.

However, I agree that there needs to be oversight of how the office does its work, so that is one of the reasons that we are looking at that additional oversight. In cases of maladministration, for example, it is correct that, if things have not been done correctly, there should be a body overseeing that, because that provides confidence. The Criminal Justice Inspection NI (CJINI) also inspects the Office of the Police Ombudsman, so there is that power, under section 46 of the Justice (Northern Ireland) Act 2002, for CJINI to go in and do an inspection of any individual aspect of OPONI's work. From that perspective, it is important that we do not talk about the ombudsman's office in the sort of terms that suggest that it is above scrutiny. It most certainly is not above scrutiny, and, although I do not want to speak on the ombudsman's behalf, I do not believe that the ombudsman's office would wish to be above scrutiny, because part of the role that it fulfils is trying to build confidence, both in its own role and responsibilities and on the police more generally. CJINI is able to do that, and that is a good balance, but, ultimately, when the ombudsman reaches decisions, it is appropriate that, at some point, if the decision is fundamentally challengeable in law, that is where it needs to head; otherwise, we would just be entering into more layers of bureaucracy.

Scrutiny of how the ombudsman's office does its job, how the office is run and all that is absolutely legitimate, but, when it comes to challenging decisions, the courts are, on balance, the right place for that to happen.

The Chairperson (Mr Storey): Thank you, Minister. We will now go to members for questions.

Ms Dolan: I thank the Minister for coming this afternoon. I have to keep my camera turned off because our internet is not great. I know that that is a wee bit rude, Minister; please forgive me.

Mrs Long: It is fine.

Ms Dolan: I appreciate your coming here today and I am glad that you did, because I am absolutely not content with the inclusion of a police covenant in the consultation document. I do not understand the relevance or the need to have such a proposal in that document. It is not part of policing oversight and accountability, which, as I understand it, is the subject of this consultation. My other concern is: why was it not included in the Department's briefing paper for this session? It lends itself to a perception that perhaps the Department wanted to bury this issue and hope that members would not notice it.

Mrs Long: I certainly would not want to create the impression that we have in any way been trying to hide the issue. Given what has happened in the House of Commons in creating a police covenant for members and former members of the police workforce across England and Wales, we are looking to see whether there is any appetite for similar approaches in Northern Ireland. We are consulting on it; we have not decided on it. That is the first thing to say. Given that it is a live issue, it would be odd if we were not to ask the public and, indeed, the Committee and others for their views on it. Those who have strong views that it is not the way we should deal with this have an opportunity, through the consultation, to say that.

There are, of course, a number of initiatives already in place, such as the Police Rehabilitation and Retraining Trust (PRRT) and the Northern Ireland Police Fund, to try to support former and current officers. There is also the RUC George Cross Foundation, which, again, is able to provide support, and, indeed, staff associations are able to provide support to their members. I suppose that the question is whether it is desirable to remove any disadvantage for members or former members of the police workforce arising from their membership or former membership in the same way as, for example, the military covenant has been rolled out widely across the UK.

There is a benefit to asking the question and allowing the public to give us an insight into their views when we go to consultation. However, I do not want anyone to think that, from our perspective, it is something that we are specifically advocating for.

Another thing to be aware of, Jemma, is that, with regard to policing here and pay and benefits, there has been a broad acceptance of the parity principle because it will be difficult for us to attract officers from other jurisdictions, particularly within these islands, if police here are paid more poorly, their terms and conditions are worse or the support for them after they leave the service is worse than in other parts of these islands. We are putting this in the consultation partly because of the parity principle and wanting to offer that consideration on whether or not we want to maintain that element of parity with the rest of the UK. That is a changing national landscape. That is why it is in there. I do not think that it is hidden. There is a fair bit of information on the issue in the consultation. Hopefully, that has reassured you on the reasons for our bringing it forward. It was not on our radar at the start of the process, given that this has emerged as part of the Police, Crime, Sentencing and Courts Bill in England and Wales.

Ms Dolan: Thank you. It does not reassure me. I am still opposed to its being in the consultation document, to be honest. I understand the parity issue, but I do not understand how we could possibly justify including this proposal. Given everything that is going on, especially with our health and social care workers and what they are going through, including low-paid domiciliary care workers and other front-line workers, it does not sit comfortably with me. My party and I would not agree to the document going out to consultation with that included in it.

Mrs Long: As I said, Chair, we are not seeking permission to consult. I have the power, as Minister, to consult on the paper. I am seeking opinions on the content. I would not overlook the fact that many people who have served in the Police Service have done so at considerable cost to themselves — for example, having to move away from the community in which they have lived and living remotely from family. They often suffer significant disadvantages in being able to find another job after they leave the Police Service, and the cost that they incur, for example, as a result of security issues can continue long after their service has ended. It is not unreasonable to consult on the issue of the covenant because, of course, it simply entails ensuring no detriment. That does not advantage them over anyone else. It just ensures that they are no worse off than if they had not given service as a police officer. I do not see how that in any way undermines support for health service workers or other low-paid workers. Indeed, if you look at some police staff workers and those who work in the Police Service more widely in staff grades, they also suffer detriment because of the work that they do. They are not highly paid workers by any means. It is just worth considering that these are front-line workers giving service in the community, who may be disadvantaged as a result of that service. All that we are asking is whether or not we believe that there should be some proposal in place around the covenant to ensure that they are not further disadvantaged when they leave the service.

Ms Dolan: I know that, and I am not playing down the sacrifice that police officers make, but it just does not sit comfortably with me. Can you clarify that this is going out to consultation no matter what the Committee says? Is that right?

Mrs Long: It will be going out to consultation. As I said, there is no statutory duty for the Committee to approve or agree on consultation documents. That responsibility falls to the Minister, but we are here today to listen to your concerns. We will then consider the document again before we decide to put it out next week. I am listening very carefully to your concerns. Again, if you want to speak to me or my officials in the interim, we are more than happy to listen in more detail. There is no requirement for the Committee to rubber-stamp the consultation document. You may think that that is an advantage in that you will not have to take ownership of it when it goes out. You can also respond to it, of course, on individual party levels and outline the bits that you do and do not agree with. I encourage members to do so individually and collectively with their parties, because we need feedback from all key stakeholders, and our parties are key stakeholders in the process.

Ms Dolan: I understand. I might take you up on the offer of liaising with you and your officials in the interim.

My other question is on the absence from the Police Ombudsman's powers of the power to compel former police officers. You have already covered it, but will you run over it again? We are not looking for you to reconsider your decision not to address the issue, but will you clarify what you said earlier?

Mrs Long: We have not detected significant consensus on compelling witnesses. That is the first point. A range of views have been expressed, some of which, I have to say, are fairly strongly held — that is the polite description for it. Part of the challenge is that a serving police officer who has to give evidence to the ombudsman will have access to the contemporaneous notes that they, as an officer, took at that incident. They will have access to the resources for representation and support to which

they are entitled as a police officer. Crucially, they will have access to a proper, contemporaneous record of the events in question. A retired officer does not automatically have that. If we were going to look at compulsion relating to those events, therefore, it would raise questions as to whether people would have access to such things as their contemporaneous historical notes and, indeed, whether those notes would even be available at this remove from the incidents.

Most of the issues around compulsion for witnesses are focused on historical rather than current cases, because the challenge tends to arise when someone has left the service more than when they are currently serving. It tends to become slightly more challenging for them to make representations to the ombudsman's office. There can be situations in which an officer will not have had sight of the notes that they took at an incident for 20 years and is trying to rely on memory to give evidence. Of course, it is a basic rule of the justice system that you do not force somebody to say something that would incriminate them, not least through lack of recall.

Ms Dolan: OK. Thank you. I am sorry for making you go over that again. I hope, however, that you will take my concerns and those of my party on board. We might be in touch in the next week or so.

Mrs Long: OK. No problem. Thank you.

The Chairperson (Mr Storey): On a procedural issue, I omitted to say that the session will be covered by Hansard. I should have said that at the beginning, for clarity. I also say to members that Hansard will provide a report of today's session, but it will not be done in the usual timescale, due to the pressures with so many other Bill sessions across the Assembly. Members should note that.

Ms S Bradley: Thank you, Minister and team, for being here today. At the outset, Minister, I thank you for the earlier clarification, because I had asked whether this session was a statutory process that I had been unaware of or unfamiliar with. What led me to ask that was that the Department's letter to the Committee says that we are asked to "approve" the consultation. In the language of a Committee, the request to approve something can have a different meaning from the conversational piece that you have described. I commend you for that, to be fair, because the session and, indeed, the preconsultation period are an opportunity to see what the Department is thinking and what its priorities are. I appreciate that. It was perhaps worth asking the question, because it was a bit misleading for me. I do not know whether others felt similarly, but, for me certainly, it was good to hear that clarification.

I will not be drawn to starting to answer the consultation's questions, however tempting that might be. I can see why some people might be tempted to do so. I will ask a few questions about the process. You referenced the preconsultation engagement that took place. Minister, am I correct that you took a reading of which issues may or may not be contentious from the preconsultation engagement, together with your consideration of the ombudsman's proposals and that you have moved forward into this consultation on that basis with those issues that you feel are not overly contentious? Is that the case, or is it the case that everything is in the consultation and that you will take a reading from the outcome to determine what is and what is not contentious and on what things you can move more quickly than other

Mrs Long: When we spoke to you at the outset, back in February, we said that our intention was *[Inaudible owing to poor sound quality]* from the pre-consultation that we were carrying out with all the bodies. It is fair to say that there were some issues on which there was unanimous agreement, and it makes sense to go out to consultation with very specific proposals in those areas. You will see from the consultation that those proposals will be more detailed.

There were other areas on which there was some agreement that things were right in principle but on which there remained some questions about how those things might be worked through and delivered. We were also able to include that in the consultation so that we can draw out some of those points.

There is another category that we recognise as contentious, where directly opposing views came forward. We have included some of those on the basis that we want to take wider views; we have not given up on considering those issues simply because there is no consensus on them. We are also conscious that a degree of consensus needs to be achieved for this to go ahead. Through the consultation, we are testing some of the issues on which we feel there are particularly strongly held views. My colleagues can correct me if I get this wrong: there is precious little that we have said that we are just not going to talk about any more. From our discussions, however, there are one or two things that were clearly not going to fly at this time. We have only very limited resource and did not

want to focus that on things that cannot be progressed. That is the way that we have taken the consultation forward.

I am very aware that we said that this would be a short, sharp review. It has ended up being slightly more than that, in that it has not been as short and as sharp as we might have liked. That is due in part to resourcing within the Department, the challenges of carrying out the pre-consultation during the COVID lockdown and so on. Equally, I am concerned to ensure that it does not end up snowballing and being bigger than we had anticipated because it is taking longer than we anticipated. It is not about root-and-branch reform; it is about trying to resolve areas in which there may be conflicts or frictions around the fringes of organisations and trying to provide clarity for the public who use the system and for the organisations. Although this has taken a little bit longer than we would have liked, we are keen that it does not become a much bigger project than we anticipated, because it is being carried out with relatively little resource.

Ms S Bradley: Thank you. That is clearer.

Was there any political input to the preconsultation period, the choice of stakeholders or the identification of what conversations were worth opening? Did political parties or leaders have a conversation? I noted that there were a lot of the obvious stakeholders, such as CJINI: members of the justice family, if you like. Was there any political input to trying to get an airing or a true sense of what is contentious?

Mrs Long: There was. We met the full session of the Policing Board. Representatives of all the Executive parties were at that meeting and were able to give their views. As you would expect, they did so fulsomely. I can assure you that Dolores did not let you down at all; she told us what she thought and was quite robust in doing that, so you were well covered and well represented at that meeting.

Ms S Bradley: Thank you.

Mrs Long: As with any consultation, I do not want the pre-consultation to shape the consultation to the extent that it determines the outcomes. We were trying to get a sense of where people are on some of the more difficult issues and of whether those issues are worth pursuing now or need to be worked through more slowly. It was really about trying to shape that. We got pretty clear responses from the organisations. As I said, the political parties were included through the Policing Board. I am conscious that that does not cover every political party, but all political parties will have an opportunity to respond to the consultation, and that, rather than the pre-consultation engagements, will determine the outcome of the decision-making process.

Ms S Bradley: I appreciate that. I have two more quick points. You suggested that, depending on the outcome of the consultation, there may be some legislative change. While some questions are focused, others are light-touch when it comes to the detail that you will get back from them. Is it anticipated that, if an item looked to be in need of legislative change, it would invoke a more detailed consultation, rather than the consultation that has happened being used as cover?

Would it be dangerous to grab the quick wins and leave the difficulties on the table? When everything does not progress together, some things never progress at all. Sometimes, you can get momentum by pairing things. Has that been considered?

Mrs Long: I understand where you are coming from with your second question. Political negotiation often takes that form, with certain trade-offs and so on. You could not review an organisational structure for the oversight of policing in that way. We cannot engage in those trade-offs. It will be for the organisations themselves to think through the benefits and disbenefits of the different offers that we put to them.

You are right that some of the consultation questions are more light-touch than others. Some are more detailed because there is more developed policy in the area, or it is a more straightforward area of development. Some are slightly lighter touch, in that, in some of the more contested areas, we are trying to test out opinion and draw out more detail. The detail of the consultation gives some indication of how developed policy would be in each area, but, if we were to introduce legislation, we would use the normal legislative process. There may need to be pre-policy development ahead of the drafting of the legislation, which itself may require consultation, but, at the very least, if we were to introduce legislation, it would need to be consulted on.

There is no question of things drawn from a vague question ending up in a Bill without anybody having had an opportunity to have further say while the Bill is refined as we go along. The Department is clear, as I am, that we need evidence-based policymaking, not policy-based evidence making. It is important that we go about it the right way, by doing the research and consultation, and that we develop our policy on the basis of the evidence that we have, rather than simply going ahead, even if we think that we know where the evidence leads. I am always keen to test that, because the presumptions that we make are not, even though they look logical, always 100% accurate.

It is important that we test the evidence, and that sometimes means that things move slowly. That is a frustration of mine, there is frustration for the Department, and there is frustration for the Committee, but it is important that we get these things right as opposed to doing them right now. If legislation is to be brought forward, we will certainly consult in the normal way. We will make sure that that is properly flagged.

Ms S Bradley: Thank you, Minister.

The Chairperson (Mr Storey): Apologies if the answer to my question has been set out for us. The two Acts that cover the operation of the police are the Police (Northern Ireland) Act 1998 and the Police (Northern Ireland) Act 2000. Can we have a delineation of change that would require legislation and change that could be brought about without legislation? Would that be helpful? Apologies if it is in the proposed consultation document, but we need clarity on that point. There seems to be a bit of confusion about what we can do legislatively and what we can do procedurally.

Mrs Long: Some of it is implied but, perhaps, not explicit in the consultation. We might think about that. We certainly have evidence that we can give to you about things that might require legislation and things that could be done administratively. We have a fairly good idea of that at this point. It will also depend on the results of the consultation, because how people want things that are raised in their responses to be taken forward might dictate whether they need to be legislatively underpinned or whether people are content for an administrative solution to be sought. We can give an early indication to the Committee of the things that are likely to require legislation and those that are not, if that is helpful. Most of that is, however, in the consultation document.

Ms Lisa Boal (Department of Justice): The consultation document sets out what legislative change is required. Most of the legislative change will be for the OPONI recommendations. From the stocktake *[Inaudible owing to poor sound quality]* the one thing that would require legislation is changing the requirement on the Northern Ireland Audit Office, and, if there was a view that the strategic oversight group needed be put on a statutory footing, that would require legislation. *[Inaudible owing to poor sound quality.]*

Ms Maura Campbell (Department of Justice): We discovered that not much came through in the stocktake itself in terms of proposals for legislative change. As Lisa said, there is the proposal for a statutory requirement on the Comptroller and Auditor General to do an annual inspection of efficiency, which the Comptroller and Auditor General recommended to us previously. That will be a change to the 2000 Act. As Lisa said, if there were a desire to put the collaboration between *[Inaudible owing to poor sound quality]* on a statutory footing, that would require legislation, but there would not be a change to anything that exists currently. The changes to the ombudsman's powers would be changes to the 1998 Act. Very little would touch on the content of the 2000 Act.

The Chairperson (Mr Storey): On that point about the Comptroller and Auditor General, did that issue not relate specifically to the retrospective powers of the PSNI? I am loathe to move into that territory, which is the responsibility of the Policing Board.

Ms Boal: No. It was the requirement for the Comptroller and Auditor General to audit the performance plan in relation to secure and continuous improvement. It was what was known as *[Inaudible owing to poor sound quality]* in England and Wales. It was following that example.

The Chairperson (Mr Storey): OK, thank you. It would be helpful if we could have something about that separation. That would be useful for us in our consideration of the matter.

Miss Woods: Thank you, Minister, for attending this afternoon. As I said earlier, I have a smoke alarm that is beeping. It is nothing to worry about, although it is very irritating. I hope that it does not take over.

A number of questions have already been asked. For my information, I want to get clarity on the Policing Board membership and make-up. My understanding is that that is dictated by the Police Act (Northern Ireland) 2000, as amended in 2003, and the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018. That includes the membership of the board, including the political representatives. You will be aware from the comments made earlier that it is made up of political representatives from the Executive parties. Did that issue come up? Who decided that only the Executive parties would be on the board?

Mrs Long: Strictly speaking, it is not just the Executive parties; it simply happens to be the Executive parties on this occasion. It is decided by the d'Hondt process, which starts with the main parties. There was a time when there were members of the Policing Board who were not members of the Executive and who would have been in opposition. There have also been times when parties were in the Executive but not on the Policing Board. As a party, we have been in both situations at times, as have some other parties. It is not a direct read-across to the Executive. It just so happens that, on this occasion, that is how it worked out. On this occasion, the Venn diagram is a circle rather than two loops.

Miss Woods: Thank you. It has always interested me how that happens. At times, I have raised questions at the Committee. I appreciate that this might not be the Committee's role and that it might be stepping beyond the bounds of the Committee. My party, however, has no role on the Policing Board and no representation elsewhere. I appreciate why we are doing the stocktake and why this is happening. Certainly, clarity is key.

Turning to the ombudsman consultation more generally, I remember this issue coming up previously. Are there any restrictions on who can be appointed ombudsman? For instance, is there any consideration of conflicts of interest when it comes to who can take up the position? Is that being looked at?

Mrs Long: There are no disqualifications. Obviously, however, as with any post, if conflicts of interest were to emerge with regard to a particular candidate, they would need to be resolved pre-appointment. There are no disqualifications as such. I will check with Maura. I think that we are considering trying to strengthen that.

Ms Campbell: The ombudsman included in her five-year review report a recommendation that legislation should be amended to provide for disqualifications from holding the position of Police Ombudsman:

"persons who are or have been serving police officers."

In the consultation document, however, we identify that as being part of the group of recommendations on which we thought it unlikely that the consensus to enable such a change to be taken forward would be reached.

Miss Woods: OK. I think that that is where I got it from, the five-year review. Is that not being consulted on in this process?

Mrs Long: We identify that in the second part of the consultation: things on which we do not think that there is consensus. We are, of course, willing to hear views on all those issues. If people have strong views, we are happy to hear them.

Miss Woods: Thank you. I want to ask about the ombudsman's report. There has been much discussion over the past number of months and, indeed, into last year about the Black Lives Matter protests. The ombudsman's findings were clear: the PSNI had not adequately considered the balance of human rights considerations. The ombudsman made a number of recommendations. One was that the PSNI consider adopting a human rights-based approach to policing, including four principles, and:

"evidencing the identification of relevant rights, balancing competing rights and risks to include appropriate measures to address PSNI's obligations and mitigate the identified risks."

From your perspective, are the human rights reports conducted by the Policing Board and its statutory duty on human rights sufficient, or do human rights considerations need to be strengthened and

become more embedded in an explicit oversight and accountability framework that governs the police?

Mrs Long: As you know, the Policing Board not only has its own human rights adviser but can take additional human rights advice, should it wish to commission it. I cannot and should not comment on or create a narrative on whether the ombudsman's report was accurate. The police have accepted the report and are working their way through those recommendations.

What I can say, in general terms, is that human rights compliance is incredibly important. It was a priority in 1998 and has been a priority since. We continue, as a justice system, to refine our understanding of and responsiveness to human rights issues.

The policing of COVID restrictions has thrown up challenges for police forces, not just across these islands but further afield, in trying to balance individual rights and the collective responsibilities that are being placed on people to try to deal with a public health emergency. That has been challenging. I hope, however, that from that challenge will come greater clarity on how that balance can be achieved, and it has to be achieved to the satisfaction of the ombudsman, the courts and the PSNI, because it is important for public confidence that those recommendations from the ombudsman are acted upon and seen to be delivered.

Miss Woods: Thank you, Minister. Finally, recommendation 11 refers to legislation providing:

"discretion for the Ombudsman to determine whether to begin, continue or discontinue an investigation in circumstances where the Police Ombudsman considers it is in the public interest to do so."

Do any controls or criteria exist for that? What will be the limits of that discretion, or is that being consulted on to try to ascertain those limits?

Mrs Long: Essentially, at the moment — again, the sponsor team can keep me right — my understanding is that there is a duty on the ombudsman to consider every complaint that comes in front of them. Some complaints might be quite serious in nature; others might not be. Some might have a lot of substance and require significant attention; others might appear not to. It is about the discretion to be able to, if you like, filter complaints. It is worth bearing in mind that, once a complaint is launched, those who are complained about can be in an incredibly stressful position. If, for example, vexatious complainants make repeat complaints about individual officers or multiple officers, that can be challenging. Maura, I am happy for you to add to that.

Certainly, having spoken to the ombudsman, I know that her concern was about focusing limited resources on substantive complaints for which there was a real basis. The ombudsman is also, quite rightly, keen to look at resolution beyond simply producing a report on the complaint. She is keen to make the kind of early interventions where people who really just want an apology are enabled to find resolution earlier rather than going through a formal process of complaint. If an officer has been a little abrupt, people might simply accept an apology. That might be the answer. Sometimes, however, that can be hard to get. When there is a complaints system such as the ombudsman, which sits outside policing, the police's answer to every complaint might be, "Take it to the ombudsman." Sometimes, local resolution is all that is needed, and this is about that discretion. Maura, I am happy to let you in.

Ms Campbell: It is part of a series of recommendations included here, some of which were made by previous ombudsmen, that allow for more proportionality in the investigation of complaints. It is a recognition of the fact that policing, and confidence in it, has moved on significantly since 1998 when those powers were first created.

In the pre-consultation engagement, there seemed to be a strong measure of support for that more streamlined, proportionate approach where, as the Minister says, cases that do not require a full-blown investigation can be dealt with in other ways. This goes back to the Chair's earlier point about seeking to expedite the processing of investigations and the management of complaints. It can be very slow. It also allows for the better use of the resources that are put into the ombudsman's office, meaning that attention can be focused on the more serious and complex complaints that need a higher level of investigation.

Mrs Long: It is also an issue, Rachel, that can affect people's sense of satisfaction with the outcome. If, for example, after an interaction with a police officer who is rude or abrupt, you seek an apology, if

you end up in the ombudsman's system, you might have to wait months for the ombudsman to come back and say, "Perhaps the officer may have been out of line but there is no evidence on the body-worn camera. No offence has been committed. Standards have not been breached" and so on. In such cases, people can come away asking, "What was the point?" .To be honest, somebody could have said to the officer, "You should apologise", and that would sort it out. At the time, that person would feel that they had had the resolution that they were seeking, rather than feeling that they had gone through a laborious process only to come out the other end empty-handed and frustrated.

It is about that proportionality. Rather than trying to sift out complicated complaints and not dealing with them, or sifting out things that they just do not want to be bothered with, it is about saying, "If it is a simple complaint with a simple resolution, we should not have to open a whole investigation file. We should just try to resolve it". That would be to the benefit of the officer, who, probably, instead of being defensive about being investigated, would be able to say, "OK, I can see why that might have been the case, and I am happy to resolve it." It might lead to improved relationships between the public and the police. Hopefully, it will be seen as positive. We are, however, happy to take feedback on that from you and others as part of the consultation.

Miss Woods: Thank you. If all parties were to be in agreement, it would be a more restorative process open to the ombudsman, if applicable. Thank you, Chair, those are all my questions. Thank you, Minister.

The Chairperson (Mr Storey): You raised a point, Rachel, about the make-up of the Policing Board. I am a former member of the board, and its make-up depends on the results of the last Assembly election. On the basis of that, the d'Hondt process is run. The make-up of the board will change as a result of the next election, whenever that may be. Parties may end up with more members or fewer. That is still part of the framework of the legislation. I hope that that is useful.

Minister, we mentioned the whole issue of challenges facing the ombudsman's office and issues with its functionality. The last time that CJINI produced a report on the ombudsman's office was in 2011, if I am correct, though my Google process could be flawed. In 2011, the report's recommendations concerned specific issues that related to the police. No recommendations concerned the function of the office. A section in that report was about leadership, and it makes a particular comment on the critical review panel of the ombudsman's office. It mentions a particular report that it had difficulties with. It was the investigation into the Loughinisland incident. Published in 2011, it says this:

"These meetings were protracted, contributed to delaying the final report, and have further seriously divided the corporate and investigative functions of the OPONI."

There is, however, no recommendation. Is there not a need to assess the effectiveness of the office before starting to look at how we give it more powers? That is my concern. I am not speaking now as Chair of the Committee: I am speaking as a Committee member and, obviously, on behalf of my party. Clearly, there is a gap between those two things, which raises serious questions about giving any more powers to an organisation that, clearly, still has questions to answer, even about its internal governance arrangements.

Mrs Long: There are a couple of points to make in answer to your question, Chair. You are correct: CJINI carried out an inspection of the independence of the ombudsman's office in 2011. It identified, as you say, significant concerns at that time about how sensitive, complex and high-profile historical cases were investigated and handled. There was a suspension of historical work at that time while CJINI's recommendations were addressed. OPONI was then allowed to recommence its historical cases after CJINI did a follow-up review in 2013, when it was satisfied that the issues that it had raised were being addressed adequately by the ombudsman.

In 2020, there was also a CJINI review of the methods that the PSNI used in the disclosure of information about historical cases to the ombudsman's office. Some of you may recall that that was carried out at the request of the Department in response to the Sean Graham case, when it emerged that some material had not been disclosed to the ombudsman's office. The inspection recommendation in that case led to the publication of revised memoranda of understanding between OPONI and the PSNI to deal with the issue.

As regards the individual aspects of OPONI's work and CJINI's decision to undertake reviews, CJINI, basically, has the right to undertake a review at any time: a thematic inspection, an individual piece of work or, indeed, a general inspection. CJINI consults on its inspection plan each year. Therefore, if

political parties, including yours, were keen to see a more thematic review of the ombudsman's office, you could, of course, at the point at which CJINI launches its annual plan of work state that, in your view, it was past the time for a wider inspection.

From a departmental point of view, when we requested a review, it was because a specific problem re disclosure arose at the interface between the Office of the Police Ombudsman and the PSNI. CJINI's recommendations have been implemented to resolve that issue. That was in 2020.

Mr Beattie: Minister, I will be brief. The weird thing about going last is that everybody has asked your questions, and you have answered them really well, I have to say, and closed off most of them.

I will ask what your understanding is of a particular issue. The ombudsman is asking for the inclusion of support staff and service providers in its office's remit. Where would that stop? Would it mean, for example, that an external service provider to the PSNI, such as a training provider, could fall under the ombudsman's remit?

Mrs Long: I think that it relates to those who exercise policing functions, Doug, rather than just anybody who is involved in the policing family and its support staff. It would be about the exercise of their functions. Lisa, do you want to add anything on that?

Ms Boal: Yes. It covers people who exercise policing functions and come into contact with the public. It is not just anybody, like a training provider, for example. It relates to people who carry out a policing function, whether that is police support staff or people who are engaged on a contractual basis with the Chief Constable. That is what it is aimed at. It is not probably not explained well enough in that report to make it clear to whom it applies.

Mrs Long: With the increasing number of civilian staff whom police use for matters that might previously have been dealt with by non-civilian staff — for example, at inquiry offices and so on — I think that the idea is to hold them to the same standard of service delivery and accountability as you would hold the police, more generally, to account. It is more in the context of contact with the public than third-party contractors and so on.

Mr Beattie: That is where I am coming from, Minister; I get that. Many of the service providers for the front-facing stuff that the police do are, however, external now. If, for example, you are training police officers on domestic abuse, you might bring in Women's Aid as an external service provider to the PSNI. The stuff that Women's Aid passed on to the PSNI becomes front-facing. Do you see where you could blur the lines slightly?

Mrs Long: The case there is that, if you are training the PSNI, you are not doing it in direct contact with the public, and that is the key differential. It would be those who are carrying out those duties. Let us take a hypothetical example of a complaint about how a domestic abuse incident has been handled. The ombudsman might find that the training needs to be improved. The investigation, however, would not be into Women's Aid and its training pack; the ombudsman would be looking to the police and saying, "You need to put measures in place that will ensure that your officers are trained, in addition to what is currently done, in X, Y and Z". That is not a change, because the ombudsman's office already does that in relation to recommendations for future training. It would not be for people who are back office staff; it would be for people who are exercising policing duties. It is the support officer roles that people have now, where they exercise functions as a police officer in that front-line role, rather than people who provide training and support in back offices.

Mr Beattie: That is pretty clear. I have one more brief question to ask, if I may. There is a reference to making police disciplinary panel sanctions public. I take it that that is literally a chart and that no officers are named or anything like that.

Mrs Long: This is one of the areas that was quite sensitive. Obviously, for example, there is a proportionality test, a *[Inaudible]* information test and issues around individuals being identified and so on. That was among the concerns raised about the notion that things would be made public. It is about ensuring balance between transparency of what the ombudsman's office does and transparency of what the police do. It is also about ensuring that people's personal information is treated with suitable respect, particularly in a context where people may find themselves vulnerable because of their service in the PSNI. It is also fair to say that it depends, to a large degree, on the seniority of the individual. Certain ranks of senior officer are well known by the public and are very public-facing, so

that might be different, and, if they are being sanctioned, it might be a different scale of offence from one relating to, for example, a junior constable on the street.

Mr Beattie: That is fair enough. You can see how that could fall into how a covenant could work to protect a police officer. I am very supportive of that. Minister, thank you.

The Chairperson (Mr Storey): Thank you, members. There are no other questions. Thank you, Minister, and your officials for the time that you have taken this afternoon to discuss this matter.

Mrs Long: It is much appreciated, thank you.