



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT (Hansard)

CJINI Report on the Police Ombudsman: Minister of Justice

8 September 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

Mr David Ford) Minister of Justice

Mr David Hughes) Department of Justice
Mr Peter May)

The Chairperson:

I welcome David Ford, Minister of Justice; Peter May, director of policing and community safety; and David Hughes, deputy director of policing policy and strategy division, to the meeting. I remind everyone that the session is being broadcast across Parliament Buildings and online and is being recorded. I will hand over to you, Minister, to address the Committee on your response to the report, and then there will be a period for questions.

Mr Ford (The Minister of Justice):

Thank you very much, Chair. I welcome this opportunity to brief the Committee on my response to Michael Maguire's report on the independence of the ombudsman's office, to set out the progress that has been made since I was here at the meeting on 30 June in respect of the McCusker review and to outline the steps needed to ensure that the Office of the Police Ombudsman commands widespread public confidence.

I want to say at the outset that I am firmly of the opinion that the Office of the Police Ombudsman is central to the policing architecture in Northern Ireland. I am committed to ensuring that the office is able to perform its responsibilities in a full and effective manner and is capable of securing widespread public confidence. I acknowledge the work done by Al Hutchinson, Nuala O'Loan, all those who work and all those who have worked in the ombudsman's office in building up that office, delivering significant benefit to the people of Northern Ireland and contributing to public confidence in the policing arrangements more widely. However, I do recognise, on foot of Tony McCusker's report in June and the Criminal Justice Inspection (CJI) report, that there is work to be done to enable the ombudsman's office to operate fully effectively going forward.

As has been signalled to the Committee, Al Hutchinson intends to retire on 1 June 2012. It is to his credit that he is willing to remain in post until a successor is found. I commend that commitment to public service, which has been demonstrated over a number of years in Northern Ireland, and his determination to set in train the necessary reforms required to restore public confidence in the work done by the office.

The Committee has had the opportunity to study the report, so I do not intend to rehearse the detail of it, but I want to state from the start that I accept all of the conclusions reached in the report, and both want and expect there to be a full implementation process, capable of independent validation. I will refer to the key findings in the report, but I will also focus my comments on what I believe needs to be done as a result of the report.

Of primary importance to me, as I am sure it is for the Committee, will be to receive assurance

that the Office of the Police Ombudsman (OPONI) will be able to fulfil its functions with the confidence of the public. It is important to state that the inspection concluded that the legislative base for the work of OPONI is solid. It provides the necessary framework for the operation of an independent police complaints body. The report also confirmed that a number of operational protocols are in place that help to define the nature of the relationship between the office and the police, and that those help to secure the nature of the work of the organisation in relation to how complaints are dealt with, for example.

During the course of the inspection, with a couple of exceptions, CJINI did not hear any significant concerns over the ways in which the ombudsman deals with current cases. That is considerable reassurance, given that those comprise the vast majority of the work of the office. In raising these points, I want to highlight the importance of that point. They are central to the reason that the community should continue to have confidence in the Office of the Police Ombudsman in respect of its statutory tasks.

The inspection report rightly highlights the challenges that the office faces in dealing with those historical cases. I recognise that there are difficulties in investigating incidents many years after the event, both because of the passage of time and because responses to the reports are still hugely influenced by mutually exclusive perceptions of the past. However, that does not diminish the significant concerns raised in the report over how OPONI conducts and then reports its investigations into historical cases. The findings of the report are such that I believe it is inevitable that public confidence will be damaged in respect of the adequacy of the process and the robustness of the conclusions reached by the ombudsman in respect of historical cases.

I have discussed the findings and recommendations of the report with Al Hutchinson and Michael Maguire, and I am clear that there is a need to take swift and robust action in a number of different areas.

Al Hutchinson and his team have already set out their plans to implement the recommendations in full. I welcome his commitment to seek independent validation from CJINI that that has been successfully completed. I agree with the recommendations about suspending investigation of historical cases, except where the investigations must proceed alongside existing

PSNI investigations, until a clear resource plan is in place.

After joint work between the ombudsman's office and the Department in recent months, a revised business case has just been received and is being addressed as a priority within the Department. I know that the delay will be a disappointment to families and others who are still waiting for reports to be concluded; however, I believe it to be better that the published reports are credible than that their conclusions are thrown into doubt because of questions being asked about the process by which they have been prepared. I believe that no more investigations should be initiated or concluded until the recommendations have been implemented.

I also emphasise that this is a suspension and not a cessation. Our compliance with the European Court of Human Rights (ECHR) requires us to have a mechanism for the independent investigation of these cases, and the Police Ombudsman still has critical responsibilities in this area.

There is a wider question about the role of the Police Ombudsman in investigating historical cases. Al Hutchinson has long since placed on record his view that the ombudsman's office is ill-equipped to deal with them. He has described it as one of the most significant challenges facing his office, with each historical case involving a disproportionate amount of time, effort and media attention.

The ombudsman is clear that, in the absence of an alternative and more all-encompassing approach to the past, contention about the adequacy of the investigation of historical cases will always feature where the outcome does not fit with an existing point of view. I agree with him. I also agree that the absence of a political consensus about the past makes it hard to envisage the early creation of an alternative mechanism to address those cases. I welcome a public debate on these issues, and I urge the Secretary of State, the First Minister and the deputy First Minister to consider how that debate can be taken forward most effectively.

Of course, there is a wider debate, which is not for today, about how we tackle the past and, in particular, how we avoid focusing on the small number of the most contentious cases becoming a major problem for the overall justice system. In that context, I want to update Committee

members on steps that have been taken to address the specific observation made by Tony McCusker about the need for the office and the Department to work together constructively to plan for more effective organisation around governance, the responsibilities of senior posts and protocols for communication between them and within the office.

When I addressed the Committee in June, I stated that I agreed with Al Hutchinson that we should seek to identify an external source of expertise to work with the office and the Department to examine the short term governance issues that needed to be addressed and resolved speedily. I understand that that has been actioned. The work is critical; not least in enabling the appointment of a new chief executive.

Secondly, I indicated that there are longer-term issues to be considered in relation to how the office will be organised. Work is ongoing on a discussion paper to examine the nature and extent of any longer term changes needed to the establishment and governance of the ombudsman's office, including whether the model of corporation sole remains appropriate and whether the experience of neighbouring jurisdictions can assist us.

I have no predetermined view as to the best operating model for the office in the future, and I recognise that any change to primary legislation will require the agreement of the Assembly. I intend to keep all the options open. I am also keen that the discussion paper should be approached in the context of the conclusions of the ombudsman's five-year review. I understand that work is well under way, and I intend to use the discussion paper as a means of public consultation of the review and the recommendations.

Thirdly, I previously advised Committee members that there are important considerations for the future appointment to the role of the Police Ombudsman. Until now, the post has been open to those with a policing background. My view is that the concept of civilian oversight is important in itself and for public confidence. I have already said that I would share my views with the First Minister and deputy First Minister on the competition needed to replace the current ombudsman, although clearly that competition will have to take place on the basis of the current legislation. The discussion paper will address whether legislative change in this area would be appropriate in the longer term.

Fourthly, the Committee will recall that the most concerning finding arising from Tony McCusker's report was the potential unauthorised disclosure of correspondence relating to the chief executive to another senior member of the ombudsman's office. In response to that, the permanent secretary of my Department set in place a preliminary investigation under the Civil Service disciplinary arrangements to establish the facts. An investigator, independent of the Department, is examining this issue and expects to complete the investigation by the end of September. If evidence is uncovered that establishes that inappropriate disclosure of the document did take place and identifies who is responsible, consideration will be given to disciplinary proceedings. It is important to follow due process in this area, and I am content that that is happening.

In conclusion, although there is justice for society more widely, the past continues to cast a long shadow. We must not make the critical mistake of allowing proper and serious considerations about the work of the ombudsman's office to denigrate the good work being done in respect of complaints against the police. Nor should those concerns be used to damage wider confidence in the policing architecture and institutions in which Northern Ireland has every reason to have confidence.

The existence of an effective and independent complaints system is something that the public and the police have a right to expect. That is a key part of the policing architecture in Northern Ireland and is intended to secure public confidence in the Police Service. I welcome Michael Maguire's report and believe that the implementation of his findings, together with renewal at senior levels of the ombudsman's office, will enable the public to have confidence in these matters. Thank you, Chair.

The Chairperson:

Thank you very much, Minister. At the start of your remarks, you commended the ombudsman for staying on. Can I take it that you support him in the role that he is going to carry out over the next nine months and that you believe that he is the right person, as he believes he is, to take forward these changes?

Mr Ford:

It is clear that there is a balance to be struck between the work to be done by an incoming ombudsman and the preparatory work to be done by the outgoing ombudsman. It seems to me that due to the way in which a public appointment of that level of seniority is made, the timescale that the ombudsman has set out for 1 June is probably realistic for getting a replacement in post. There is the time taken to agree the arrangements that need to be put in place before advertisement; the arrangements for conducting interviews; the quite lengthy time involved for vetting, and the fact that someone applying for such a post would almost certainly have to give three months' notice.

I was here in time to hear the ombudsman say in the earlier evidence session — I think in answer to Stewart's question — that if the First Minister and deputy First Minister made arrangements more quickly he would certainly consider moving before that date. Given that the two people who accompanied the ombudsman this afternoon are the next two senior people in the office, both of whom are acting up, there is a real reason for saying that we need to maintain the continuity of the current ombudsman to let him do that preparatory work and ensure that the new ombudsman coming in early summer next year has the arrangements in place to enable him or her to restore public confidence.

The Chairperson:

Do you feel that Al Hutchinson is to blame for the dysfunctional nature of his office?

Mr Ford:

I am not sure whether my apportioning blame does any good. I am concerned to see that we restore public confidence and that we have an ombudsman in post next year who commands public confidence.

Although there have been issues highlighted, a lot of the discussion this afternoon appears to have been in and around the difficulties with historical matters. We should not lose sight of the fact that, with a couple of exceptions highlighted by the CJINI report, there is every reason to have confidence in the great bulk of the work of the ombudsman's office, including the good work that I see across my desk every week relating to the way that complaints against the police

are handled for current events.

The Chairperson:

With regard to historical events, I know you are saying that the First Minister and deputy First Minister should look at this. Would you support the decoupling of historical cases from the ombudsman's office so that the investigation of such issues would be removed as one of the office's functions?

Mr Ford:

I said that we were looking at options. I also said that I was happy to speak to them about it. So, having not gone fully through the options, I am going to duck that question.

There are serious issues about how we address the past. Frankly, if you want me to make a complaint, there are issues arising, in particular from the Eames/Bradley report and the fallout from that, that fall to either the First Minister and deputy First Minister or the Secretary of State on which little is being done. Meanwhile, institutions linked to the Department of Justice — the police's historical enquiries team, the Court Service, through legacy inquests, and the historical aspects of the Office of the Police Ombudsman — are all bearing the weight of dealing with a past that this society as a whole has not worked out how to deal with. Therefore, frankly, those of us in this Building who have not yet worked out what we should do about the past should be careful about pointing our fingers too much at others. We need to look at the best way of dealing with those issues.

The Chairperson:

The report indicates that the PSNI has said that it is concerned that it is being contaminated by the investigations into the past. It is also concerned that the public's confidence in the PSNI could be diminished as the result of the way in which the office of the ombudsman is investigating the past. Is that something that you, as the policing Minister, are concerned about?

Mr Ford:

It would certainly concern me if public confidence in the PSNI, which is at a high level, were to diminish because of what happened in the past. However difficult and traumatic those events of

the past were, we must recognise that we are now in a different place as regards policing. From what I see every week from the ombudsman's reports that cross my desk, I feel that there is every reason to have confidence in the high standards of the PSNI and in the good current work of the Office of the Police Ombudsman in assessing the actions of the police on behalf of the people. Obviously, that work is being carried out alongside other work by organisations such as the Policing Board. We have every reason for current confidence, but it is clear that the sort of publicity that surrounds historical events has the potential to be damaging. That is why it is important that we get the necessary reforms in place and that the work that Al Hutchinson has outlined gets done. That will allow us to get a new Police Ombudsman in post next year and restore confidence in the office, including in the way that it handles historical cases.

The Chairperson:

Will the review of the options and functions of the ombudsman's office include the creation of an oversight mechanism of that office? A regular complaint is that there is no mechanism for individuals to complain about the way in which the ombudsman's office conducts itself. Furthermore, as you know, the report indicates that investigators in the office have the same powers as police constables. If PSNI constables are subject to oversight, surely individuals in the ombudsman's office should also be held to account. Moreover, when reports are produced, there is no mechanism for individuals who may be implicated to challenge inaccuracies. Do we need to look at how an opportunity can be provided for people to complain about the ombudsman?

Mr Ford:

There are a number of different points. First, there is an internal complaints mechanism, and even the CJINI report refers to the robust work done by the chief executive in following up on complaints. However, I accept that an internal complaints process will never satisfy everyone who wishes to complain. If we are looking at the overall arrangements for the ombudsman's office and its governance, there is a case for deciding whether there needs to be an oversight mechanism. The problem is just how much further you build that in. I frequently receive correspondence from people who want me to investigate the actions of the Public Prosecution Service, the courts and others, and there does come a point at which it is not possible to satisfy some people. However, we need to ensure that the architecture is as robust and practical as possible.

The Chairperson:

The last point that I want to raise is about what the background or profile of the new ombudsman should be. You will know that the Hayes report suggested that it should be someone with a judicial or legal background. Do you hold that position?

Mr Ford:

Again, I am not going to take any view on that particular point. The key issue, which already featured here this afternoon, is the role of those with a policing background, and I suspect that some Committee members will have fairly strong views about the significance of having a policing background in providing confidence when investigating the police. It has also been highlighted that, in the day-to-day work of many of the investigators in the office, many of the skills required are those which police officers have and which others tend not to have. The issues of how close people may be and how many staff have those skills may be the type of issues that need to be considered.

Mr B McCrea:

Minister, do you have confidence in the ombudsman?

Mr Ford:

I thought that I made it fairly clear that I had confidence in what the ombudsman said to me that he would do in his final few months in office: work on the necessary reforms, ensure that the structures are in place and deal with the senior staffing issue so that a good working office is in place for his successor. Given, as I already highlighted, that two of the three people here today are acting up, it will be extremely difficult to run the office if Al Hutchinson does not remain as ombudsman to see that transition through.

Mr B McCrea:

The key point that the ombudsman raised is that he has a report ready to go, which, if there were no questions of confidence, he could produce. At least that would be good for getting the information out. The challenge is how one convinces the people of Northern Ireland that the report that is coming out, which was changed in May 2010, can be relied on. One way would be if you said that you had clear and emphatic confidence in the ombudsman and his work with

regard to that report. Can you give that assurance?

Mr Ford:

No, because it is not my job to quality assure the detailed work on specific cases. My job is to look at issues such as governance and finances; it is not to interfere. We have just had a discussion with the Chair about oversight of the ombudsman's office. It is clear that it is not the Minister's job to provide such professional oversight. It may or may not be anybody else's job, but certainly it is not the Minister's.

When you talk about confidence in that regard, surely the whole point is that the ombudsman has accepted the CJINI recommendation that there should be a hold on historical cases because that is where confidence is lacking. In my opening remarks, I said that I wanted to see a hold on that to ensure that when reports come out, people have confidence in them because the issues have been properly addressed, rather than have any suggestion that we should rush things through and end up with people not having confidence. The chief inspector, in his foreword, talks about the buffeting that has happened with clearly different interest groups making representations as reports are being finalised. A number of issues need to be addressed, but those are not so much about confidence in the ombudsman as confidence in the process through which historical reports have been drawn up.

Mr B McCrea:

Given the report by the chief inspector, the report by Tony McCusker, the problems with senior personnel and the fact that the ombudsman has decided to go, a lot of people will be surprised by the arrangement of nine months. The only reason why it appears that he is staying on for nine months is because, procedurally, it is very difficult to find a replacement. I learn that and I can buy that, but if that were to be the case — he went to you to announce his resignation, and, since you are in front of me, I am asking you — somebody in the body politic has to say that that is an acceptable way to go forward that the population and the electorate of Northern Ireland can have confidence in what will happen in the next nine months.

Mr Ford:

You said that the only reason for him staying was because that was as fast as the process could be

gone through. I do not accept that it is the only reason. If there were an issue of a loss of confidence in the body politic as you describe it, the legislation is quite specific: the responsibility for the appointment or potentially the requirement of the resignation of the ombudsman lies with the First Minister and deputy First Minister acting jointly, not with the Minister of Justice. The Department of Justice is the sponsor Department, but it has no powers relating to the appointment or requesting the resignation of the post holder.

The Chairperson:

So you cannot ask him to retire? We have been lobbied by the Committee on the Administration of Justice (CAJ) that you can.

Mr Ford:

I have read articles in the press this week that said that I should have sacked him. If anybody cares to read schedule 3 to the Police (Northern Ireland) Act 1998, paragraph 1(1) states that he is appointed by the First Minister and the deputy First Minister, and I think that paragraph 1(7) states that they may require him to resign for various reasons. It is not the role of the Minister of Justice.

The Chairperson:

I am sorry, Basil.

Mr B McCrea:

Thank you, Chair. Your point was well made. I notice in the report of the previous meeting that:

“responsibility for making a recommendation for the appointment of the ombudsman falls to the First Minister and the deputy First Minister.”

You then go on to say —

Mr Ford:

I am sorry; if it says “responsibility for making a recommendation”, it means in the technical sense of having to make a recommendation to the Queen. Other than constitutional niceties, responsibility for the appointment lies solely with the two of them.

Mr B McCrea:

I am sorry, Minister; I am only quoting Hansard. If that is not absolutely accurate, I am quite happy for you to —

Mr Ford:

For the sake of clarifying my clearly shorthand remarks, paragraph 1(1) of schedule 3 states:

“The Ombudsman should be appointed by Her Majesty on the recommendation of the First Minister and deputy First Minister acting jointly”.

Paragraph 1(7) states:

“The First Minister and deputy First Minister acting jointly may call on the Ombudsman to retire—

- (a) in the interests of efficiency or effectiveness; or
- (b) if satisfied that the Ombudsman has—
 - (i) been convicted of a criminal offence; or
 - (ii) become bankrupt”.

Mr B McCrea:

That is very handy. However, you said:

“the appointment of the ombudsman falls to the First Minister and the deputy First Minister. Nevertheless, given my responsibilities in that area, I plan to take views on the matter and offer recommendations to them for future competitions.”

All that I am asking you is this: given that you have entered into this arena by saying that you are going to proffer some advice to help the Office of the First Minister and deputy First Minister, I am asking you for some clarity on your position on the ombudsman now.

Mr Ford:

That is different. The Department of Justice is the sponsoring Department, and making recommendations on procedures and practices is an entirely different issue from giving an opinion on the current post holder, which is an issue that lies solely with the First Minister and deputy First Minister.

Mr B McCrea:

OK. This is an area of interest, so given that the ombudsman went to you and that you are the sponsoring Department, do you endorse the current position, which is that he is going to stay for up to nine months and that we can all have confidence in the reports produced by the office? If

you do not feel that you can answer the question, I will not press you.

Mr Ford:

The reports that will be produced by the office in the immediate future will be on current issues, and I thought that we had established that we could have general confidence in those reports. The day-to-day issues that arise through the normal operations of the PSNI are reported on from within a few months to a year or so. Those reports come through regularly, and, frankly, they attract no media notice whatsoever, because they show that the day-to-day operations of the ombudsman's office are going well.

Mr B McCrea:

I thought that you could have been firmer, but we will move on so as not to fall out.

Mr Ford:

I thought that I was.

Mr B McCrea:

You mentioned that you intend to produce a discussion paper on the views for how you might deal with this matter in the longer term. Where are you with that paper, and when might we expect to see a copy?

Mr Ford:

Officials are working on that for me at the moment, and I hope to see it within a few weeks. At this stage, I see no reason why it would not be possible to share it with the Committee. As part of the process, the Committee has a role to advise and assist me, and I am happy to take that helpful advice and assistance.

Mr B McCrea:

Finally, do you still share the view that the current arrangements place a huge burden on the individual who is the ombudsman and that there is no obvious way in which that person can share that burden without being accused of acting inappropriately?

Mr Ford:

I think that there is a real problem. Compare what happens here with what happens in neighbouring jurisdictions: the post here is held by — to use the jargon — a corporation sole, meaning a single individual, whereas the Garda complaints body has three members and the Independent Police Complaints Commission in GB has, I think, 12 members. In those circumstances, there is clearly a degree of collegiality that makes it easier to carry the burden of difficult issues. Regardless of whatever staff are there to support the ombudsman, he is a corporation sole and bears final responsibility. I think that there are major difficulties with that. However, that is the structure, and any change to it would require legislation from the Assembly. Anybody can see that the weight of the issues, particularly historical issues, with which the ombudsman's office has to deal places huge burden on any one individual.

Mr Dickson:

Minister, thank you for joining us this afternoon — and this evening. There has been a lot of discussion and debate on the historical cases today. They are very serious matters, and we have views on them. In the context of the practicalities, they are currently on hold. Do you envisage that they will remain so until the end of the tenure of the current ombudsman in June of next year? If that is the case, what confidence can the public have in the release of them by any new incumbent?

Mr Ford:

The precise timescale is difficult to define. I am not sure whether Dr Maguire talked about this, by my understanding is that he has been invited by the ombudsman to review the arrangements now being made for reform of the institution. The expectation is, I think, that that could be done in the early part of next year. I am sorry: I was not present when Michael Maguire was speaking. I may not be saying quite what he said, but that was my understanding. A period of months would certainly be required for that work to be done. I hope that we will not have to wait until a point when we will be somewhat into the term of office of a new ombudsman before that confidence can be given. It comes down to this issue of confidence; for me, confidence is better than timescale.

Mr Dickson:

In those circumstances, whatever the timescale, how do you envisage people having confidence in reports issued? We will confine ourselves to the historical cases, because everyone seems to be telling us that there is a high level of confidence in the current reports that are being dealt with. How do you see people having the appropriate level of confidence in those reports?

Mr Ford:

If we are putting off the historical reporting until after that work has been done and has been inspected by Dr Maguire's team, and if it happens before any further reports come out on historical issues, we will be in a position to say that confidence has been given because of the validation of the new processes before anything further is published.

Mr Dickson:

The emphasis today is on the historical cases, and a lot of the concerns and criticisms in the report relate to them. We seem to have lost sight of the McCusker report, which was on the interpersonal and personnel relationships in the organisation. Those, for me, are as important in describing the office's dysfunctionality as the treatment of the historical cases. I have put this question to the ombudsman, and I put it to you as well. You used the words from the legislation, which mentions the efficiency of the office holder. By any reasonable standard of the public sector, has the efficiency of the current post holder not been substantially undermined by those interpersonal and personnel issues?

Mr Ford:

It is certainly the case that the perception of the post holder has been undermined. However, the issue for me is not whether that is the case, but how we resolve it and how we ensure that the day-to-day work continues and that we get appropriate mechanisms for dealing with the historical issues. Al Hutchinson has given his final date for going and said to this Committee that he will go earlier if arrangements are made for a replacement. I believe that our current system is the best way to ensure those objectives. Given the fact that the other two officials who were here are acting up, we would be in serious difficulty if the organisation loses all continuity among its top three people.

Mr Dickson:

I genuinely understand the practical difficulties in respect of that and that, if the ombudsman were to resign today, it would potentially carry further risk for the organisation and its credibility. However, we have been dancing round this issue all day. The reality is that in any other circumstances the incumbent would have gone. I am not asking you to agree with me, but that is what reasonable people would expect.

You referred to the issue of former police officers working in the organisation and the role of civilian oversight of the ombudsman's office and therefore of those who work in it. I cannot wholly subscribe to the view that police officers have to be in the office. I am quite convinced that anyone can be trained to have the appropriate investigative powers. It is not impossible to have all the skills of a police officer to carry out an investigation without ever having been a police officer.

Mr Ford:

It may be. However, the question is: how do we train them and how long does it take?

Mr Dickson:

We have had a long time —

Mr Ford:

With respect, I accept responsibility as the sponsoring Minister since 12 April last year, not since the office was set up.

Mr Dickson:

I appreciate that. However, it goes back to training and to what we expect of those who conduct investigations in that organisation.

Mr Ford:

There is probably more of an issue with senior post holders than with staff in general. I am probably going into more detail than I said I would about what might be suggested for new arrangements, so I shall stop before the Chairperson smiles any more at me.

The Chairperson:

I was going to say that you might need to complain to your Chief Whip about some of your party members in the Committee.

Mr McCartney:

Thank you for your presentation. I welcome your acknowledgement that a key component of the office is that the ombudsman must comply with article 2 of the Human Rights Act 1998. There is an idea that historical cases can be removed from the office and all will be fine. I am glad that you —

Mr Ford:

There may be an alternative structure —

Mr McCartney:

There may be.

Mr Ford:

However, at the moment there is no alternative.

Mr McCartney:

Even if the office were suspended from investigating historical cases, we could be deemed to be outside compliance. However, that matter may be tested —

Mr Ford:

We will debate whether a suspension for the short term to get things right is really such a problem.

Mr McCartney:

OK. I have a couple of general questions, although I do not want them to sound like leading questions. Did you hear the evidence of Michael Maguire and the ombudsman?

Mr Ford:

I came in while the ombudsman was answering questions. Unfortunately, the Executive occupied me until that point.

Mr McCartney:

When we were taking evidence about Tony McCusker's report you said that you would reply in September to some of the broader issues that were raised by the CAJ. You might not have done that today, but have you any observations to share with the Committee?

Mr Ford:

Some of the issues around the CAJ would be better bound up in a paper on governance issues that I promised to provide to the Committee as soon as possible. I will certainly take account of the CAJ in that respect.

Mr McCartney:

We have seen the CAJ report, and it has made some allegations. It contends that there are issues about the recruitment of the present ombudsman.

Mr Ford:

I need to be careful, given that I was not responsible at the time —

Mr McCartney:

Can you see where I am coming from?

Mr Ford:

I have done some work on that area, and I am happy to report it to the Committee. I would rather not start talking about it today and then have to talk about it properly another day.

Mr McCartney:

I will give you my thread of thought. Tony McCusker's report did not paint a glowing picture of the workings of the ombudsman's office, and many describe the CAJ report as damning. It is accepted that we have a dysfunctional office. I put it to the ombudsman that, in the view of the

CJI, the flaws in his office were unprecedented, and he accepted that. Indeed, I think that he said that in 44 years of public office he had never seen a situation like it.

I asked the ombudsman whether he was asleep at the wheel or whether someone else was driving, and he said that he was the driver and that he was responsible. However, although he accepted responsibility, he did not seem to want to deal with it; it was as if it was everyone else's fault. He blamed various things, such as personalities.

The issue comes down to public confidence, and the Department has a role to play in restoring it. Although you did not give it as the sole reason why the ombudsman should perhaps stay on, you mentioned the fact that two people were acting up and that that would leave no stable leadership to take the organisation forward. I do not think that that is good enough; it is a lame excuse. If you look at the history of why they are acting up, you can see that the chief executive resigned and made claims that are now substantiated by the CJI report. The other person acting up is the senior director of investigations, who admitted in the Tony McCusker report that he was willing to tell lies to an investigation and would do it again. He nearly dismissed as irrelevant the fact that he had told lies. There is the potential to have the same dynamic happening in the future, and there is no guarantee that it will not happen. The relationships broke down, and two people are acting up. I am saying — I have said this to the ombudsman — that he is not the person to take this forward if we want maximum public confidence in the office. Can you comment on that?

Mr Ford:

It is clear that there is a range of issues around public confidence, and I said that there were issues around how far the current ombudsman would carry through the process of reform and how much would have to be left to the new ombudsman next year. That is a fairly critical issue. I cannot give the answers as to what exactly needs to be done at this stage. Remember, we also have the issue of the external consultant assisting with some of that work. You will recall that one of the criticisms that Tony McCusker made of the Department was that we might, perhaps, have interfered more in recent months in the issue of those relationships.

Mr McCartney:

Perhaps even more —

Mr Ford:

Sorry; as ever, I stand corrected when members of the Committee keep me right. That is quite a difficult issue. The ombudsman's office has to be independent. I suspect that, if we were to go back 40 years, the last thing that some of you sitting on that side of the table would have wanted was a politician directing a body such as the ombudsman on how to work, yet we have to provide the support to deal with governance issues and so on. We are certainly willing to do that, but we cannot go in and tell the ombudsman how to operate. We can only provide support and assistance and be very careful to stay away from the operational matters.

Mr McCartney:

I accept that. The ombudsman accepts that the office is run into the ground. We can think of different ways of explaining that or of different terms, but he accepts that it was unprecedented even in his own experience of public office. He accepts that he is the person at the helm, but he is trying to create the circumstances whereby he will be the person to correct the situation when, in essence, he is the person who led us to where we are. Even if we move away from the ombudsman's office, given all the politics around it, it is, as Stewart said, difficult to see how, in any other organisation or circumstance, this person would not walk.

Mr Ford:

It may be difficult to see that, but the question for me is how we ensure that we have some form of stability in the senior team in the ombudsman's office so that they can initiate reforms and, as I said, leave it so they have not completely hidebound a new person coming in but can ensure that there are structures that give a new person the opportunity to ensure that there is complete public confidence.

Mr McCartney:

In essence, you are asking us as political representatives to go out today and say that public confidence in the ombudsman's office has now been restored.

Mr Ford:

I am not asking you to say that today. I am saying that I believe that what we have got is the best arrangement possible. We have to continue the work being done on current cases. We know that there is public confidence in that work, and we have an ombudsman to carry it forward. You have the ombudsman saying — I do not think that this is hugely different to the way in which you presented it, but it becomes quite different — “I accept that there are problems, and I am committed to using the time that I have to start to make reforms so that the office can operate better in the future”.

Mr McCartney:

The first sentence has to be, “I am the person responsible for this, and now I am going to be the person responsible for solving it.” I have to say that —

Mr Ford:

Those are not necessarily incompatible.

Mr McCartney:

Maybe they are not incompatible, but they are a wee bit difficult to say to somebody. It does not have an authentic ring to it. I stepped the ombudsman through some of the findings of the report. He said that Michael Maguire was wrong. He accepted all the recommendations, but he did not seem to be prepared to accept the route that took him to those recommendations. So, he is part of the reason why we are where we are with regard to public confidence.

Unless I am mistaken, we all accept that there is an issue with public confidence in the office. Our task collectively — because we all understand the importance of the office — is to maximise public confidence. This is not the way to do that. Minister, you should consider what your role is in that, whatever it may be. Perhaps you should tell Al Hutchinson that, in your opinion, public confidence will not be brought to where it needs to be in nine months and that, no matter what he is trying to do, he will not achieve it. That is how I come at the situation. It is inescapable. If you apply this situation to any other organisation, you can see that it is incomprehensible that a person who accepts that he led an organisation into an unprecedented, flawed position should be the person to lead it out of that position. Is it part of the support mechanism to say, “Well, we

cannot really ask him to go because two people are acting up and we need to have continuity of leadership”? In my opinion, it is continuity of bad leadership.

Mr Ford:

We are all concerned to ensure that we restore full public confidence at whatever point in the future that we can. Clearly, we are not agreed on exactly how or when that will happen. However, at this stage, I am certainly taking account of views that I hear.

Mr McCartney:

I accept that you are. I do not doubt that. All that I am saying is that the situation may be beyond repair if, in nine months’ time, people have no confidence. Confidence wanes every day of the week. As the ombudsman himself said, there is no guarantee that he will lead the office to a better place. There is absolutely no guarantee. As a matter of fact, the evidence points in the other direction.

Mr Ford:

There are few guarantees of anything in this life.

Mr McCartney:

I accept that.

Mr Ford:

Let me agree with you for a second, Raymond —

Mr McCartney:

I just want to make one point. There is one guarantee. It was pointed out earlier. In 2007, the Police Ombudsman’s office was portrayed as an example of exemplary police oversight. It was accepted that it maximised public confidence. Therefore, although there are no guarantees, we have been there, we have lost that confidence, and now we are trying to restore it. The person who lost it is not the person to restore it.

Mr A Maginness:

People should be cognisant of the fact that when there is damage to the ombudsman's office, not only is there damage to the office itself but collateral damage to policing. That should be taken on board. As long as the current ombudsman is in office, there will be less confidence and, I believe, less hope of restoring the good name and standing of the office. The period of nine months is excessive. The whole appointment process should be abridged. The ombudsman has indicated that he might leave earlier. That suggestion should be taken up. I strongly urge you and others to recommend that to the ombudsman.

We are in a serious position with regard to policing. An awful lot has been done in policing. An awful lot of work has gone into it from the SDLP, Sinn Féin and others. We are in danger of losing a lot of that. I just want to put that on record.

The other matter is historical cases. The inclusion of historical cases in the ombudsman's office is designed to address some of the outstanding issues that arise from the Troubles. It might not be a perfect way to do that, but it is a method of doing it. Until there is another, much better alternative, we should not canvass the idea of lopping off historical cases. That is dangerous. I remind you, Minister, that the British Government relied on the inclusion of the investigation of historical cases in the Police Ombudsman's office to defend themselves in the European Court of Human Rights in relation to article 2 issues. They were able to say that it was in statute and that they were carrying out their article 2 functions and duties. It is important to remember that when dealing with the whole issue of historical cases. I think it is premature to talk about removing historical cases from that office before there is an alternative.

Finally, in relation to oversight of the Police Ombudsman, it is an absurdity. Where does it end? The ombudsman is there to carry out a function, and that is the position of all other ombudsmen, and it should be respected for that. I know that we have difficulties, but it is important to preserve that.

Mr Ford:

You talked about collateral damage to policing. Clearly, if that were the case, it would be extremely worrying. I am not sure that it is the case in the context of collateral damage to

policing in 2011 under the PSNI because of historical issues, but it is certainly something that would concern me and on which we will be keeping a close watch.

I think that you used the term “lopping off” historical cases. There is no question of lopping off historical cases in the absence of an alternative. There is a legitimate question as to whether there might be an alternative that might deal with things in a different way. However, I do not know that it would be the responsibility of the Minister of Justice to put any proposals forward. It is absolutely clear that compliance with article 2 requires a statutory mechanism, and we currently have one, and there will be no question of changing it. However, the issue that came up with Raymond was whether we lose anything by having a short period of suspension in order to ensure that we do it better. I cannot see how that would breach our article 2 obligations if —

Mr A Maginness:

I do not want to interrupt you, but it is implicit in the recommendations that this should be a short period.

Mr Ford:

And it is implicit as a short period, not as a cessation, as I said in my opening remarks.

On the issue of oversight of oversight, you asked how much oversight we can continue to have. It is a question of whether we require anything more than the current arrangements by which the chief executive reviews complaints. It may be possible to find some way of simply adding a little bit to that, but those are the kinds of issues that we have to look at as we seek to examine reforms of the office.

Ms J McCann:

I suppose that most people have already covered most points. Basically, do you agree that the Police Ombudsman’s office is a very important mechanism to ensure accountable policing? I heard you say that the arrangement that exists today is the best arrangement possible, but do you share my concerns that, if that arrangement stays the way it is, public confidence in that important office will be further undermined? Also, do you share my concern that, because the CJI report talks about divisions between staff, there is a possibility that that office could be contaminated

further and that there could be more division between the staff if that person remains in post? Following on from Raymond's remarks, when you look at the Police Ombudsman's office as it was in 2007 and as it is now, and given that we have seen three damning reports in the space of three months, do you not think that it is not the best arrangement possible and that another option would be to sort it out now?

Mr Ford:

In answer to your first point about the structure, yes, I said in my opening remarks and I repeat that to provide confidence in policing it is absolutely vital that we have the architecture that we have, including the Police Ombudsman's office, the Policing Board and the arrangements for district policing partnerships, which are being subsumed into policing and community safety partnerships. All of those are vital to ensuring proper oversight and engagement with the police, whether at regional or local level. I am determined that we will keep that and restore confidence in those mechanisms. If I said "best possible", I was not saying that I think that what we have is ideal. I was talking about dealing with the practical realities of where we are.

You talked about divisions among staff. Clearly, it is now the responsibility of the three people who were with you before I came to the table to look at ensuring that broken relationships among staff are improved and that there are proper professional working methods in the office. That is not something that can —

Ms J McCann:

May I clarify that point? When I talk about the problems with the staff, I am talking about those problems undermining the independence of the office, as was stated in the report. I am not just talking about problems with staff members.

Mr Ford:

I accept that, but part of the issue is ensuring that proper professional relationships are established in a way that ensures that staff carry out procedures correctly and operate to proper procedures and protocols with regard to external relationships, for example, about which some concerns have been raised. That quite properly lies with the three people who were at the table before me, as they have that specific responsibility. The Department can provide assistance if requested, but we

cannot go in and tell the office how to organise and structure itself. We are not in an ideal position — no one is suggesting that we are — but I believe that we now have the impetus to start to make those changes. Clearly, the key issue will be having the new ombudsman in place as quickly as possible so that that person can carry those changes forward.

Mr Lynch:

I will take up that last point about the new ombudsman. I agree with my colleague. The ombudsman has overseen a mess in his office. It is dysfunctional and divided and lacks independence and effectiveness. The longer that such a lame duck leader stays in place, the worse the situation will be. It will contaminate those who are already there and put the person who will have to pick up the pieces in nine months' time in an even more difficult position.

This option is the worst option, because nine months is too long. It will create even greater difficulty and a lack of confidence. A lot of people will watch what happens here today. When they hear that the ombudsman has given us nine months, they will feel that he should have gone almost immediately and ask what he is doing between times. As has been said, a lot of good work has been done on policing, particularly on the nationalist side. That is a process of instilling confidence, but this situation leaves it in limbo. The longer it lasts, the worse the damage will be.

Mr Ford:

Clearly, nine months is less than ideal — no one is suggesting anything other than that — but the practical reality is that it takes something like that to make such an appointment. You talk about limbo, but there would be a loss of confidence if an ombudsman were not in post to continue with the current cases and do all the day-to-day work that is being done and, as has been acknowledged, done well. That is the reality for more than 80% of the cases. By and large, issues are dealt with very speedily and effectively and produce responses that satisfy people. We need to look at what is actually the issue of confidence. There would be real dangers and problems if no one was there to do that work.

Mr Lynch:

That does not get us away from the point that it is a dysfunctional, divided and ineffective office. Regardless of whether the figure is 80% or 20%, the fact is that the office is dysfunctional.

Therefore, he is not the person to lead us. I know that you were not here at the time, but Michael Maguire said that it would be difficult for the current ombudsman to fix the situation. That is the opinion of the person who drew up the report.

Mr Ford:

As you said, I did not hear him. He may have said that it would be difficult, and it certainly will be difficult. However, the reality is that I am not convinced that anything else would be any better. It is about making sure that we get a new ombudsman as quickly as possible. That responsibility lies with the First Minister and deputy First Minister. They get the opportunity to put in place the final shape of the new arrangements for the way in which the office will work.

The Chairperson:

Minister, thank you very much for taking the time to come here; we appreciate it.