



Police (Northern Ireland) Act 1998

1998 CHAPTER 32

PART VII

POLICE COMPLAINTS AND DISCIPLINARY PROCEEDINGS

50 Interpretation of this Part

(1) In this Part—

“the appropriate disciplinary authority” means—

- (a) in relation to a senior officer, the Police Authority; and
- (b) in relation to any other member of the police force, the Chief Constable;

“complaint” shall be construed in accordance with section 52(8);

“complainant” means the person by, or on behalf of whom, a complaint is made;

“disciplinary proceedings” means—

- (a) in relation to a member of the Royal Ulster Constabulary, proceedings identified as such by regulations under section 25;
- (b) in relation to a reserve constable, proceedings identified as such by regulations under section 26;

“officer of the Ombudsman” means—

- (a) a person employed by the Ombudsman under paragraph 3(1) of Schedule 3;
- (b) a person providing assistance to the Ombudsman in pursuance of arrangements made under paragraph 3(2) of Schedule 3;
- (c) a member of the police force on temporary service with the Ombudsman in accordance with arrangements under paragraph 5 of Schedule 3;
- (d) a member of the police force providing assistance to the Ombudsman under paragraph 6 of Schedule 3;
- (e) a member of a police force in Great Britain on temporary service with the Ombudsman in accordance with arrangements under paragraph 8 of Schedule 3;

“the Ombudsman” means the Police Ombudsman for Northern Ireland;

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“police officer” means a member of—

- (a) the police force; or
- (b) a police force in Great Britain;

“prescribed” means prescribed by regulations under section 64;

“serious complaint” means a complaint—

- (a) alleging that the conduct complained of resulted in the death of, or serious injury to, some person; or
- (b) of such other description as may be prescribed;

“serious injury” means a fracture, damage to an internal organ or impairment of bodily function.

- (2) Where a complaint is made orally, references in this Part to a complaint being referred to a body or person shall be read as references to particulars of the complaint being so referred.

51 The Police Ombudsman for Northern Ireland

- (1) For the purposes of this Part there shall be a Police Ombudsman for Northern Ireland.
- (2) The person for the time being holding the office of Police Ombudsman for Northern Ireland shall by that name be a corporation sole.
- (3) Schedule 3 shall have effect in relation to the Police Ombudsman for Northern Ireland (in this Part referred to as “the Ombudsman”).
- (4) The Ombudsman shall exercise his powers under this Part in such manner and to such extent as appears to him to be best calculated to secure—
 - (a) the efficiency, effectiveness and independence of the police complaints system; and
 - (b) the confidence of the public and of members of the police force in that system.
- (5) The Independent Commission for Police Complaints for Northern Ireland is hereby abolished.

52 Complaints – receipt and initial classification of complaints

- (1) For the purposes of this Part, all complaints about the police force shall either—
 - (a) be made to the Ombudsman; or
 - (b) if made to a member of the police force, the Police Authority or the Secretary of State, be referred immediately to the Ombudsman.
- (2) Where a complaint—
 - (a) is made to the Chief Constable; and
 - (b) appears to the Chief Constable to be a complaint to which subsection (4) applies,

the Chief Constable shall take such steps as appear to him to be desirable for the purpose of preserving evidence relating to the conduct complained of.
- (3) The Ombudsman shall—
 - (a) record and consider each complaint made or referred to him under subsection (1); and
 - (b) determine whether it is a complaint to which subsection (4) applies.

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- (4) Subject to subsection (5), this subsection applies to a complaint about the conduct of a member of the police force which is made by, or on behalf of, a member of the public.
- (5) Subsection (4) does not apply to a complaint in so far as it relates to the direction and control of the police force by the Chief Constable.
- (6) Where the Ombudsman determines that a complaint made or referred to him under paragraph (1) is not a complaint to which subsection (4) applies, he shall refer the complaint to the Chief Constable, the Police Authority or the Secretary of State as he thinks fit and shall notify the complainant accordingly.
- (7) A complaint referred under subsection (6) shall be dealt with according to the discretion of the Chief Constable, the Police Authority or the Secretary of State (as the case may be).
- (8) Subject to subsection (9), where the Ombudsman determines that a complaint made or referred to him under subsection (1) is a complaint to which subsection (4) applies, the complaint shall be dealt with in accordance with the following provisions of this Part; and accordingly references in those provisions to a complaint shall be construed as references to a complaint in relation to which the Ombudsman has made such a determination.
- (9) If any conduct to which a complaint wholly or partly relates is or has been the subject of disciplinary or criminal proceedings, none of the following provisions of this Part shall have effect in relation to the complaint in so far as it relates to that conduct.
- (10) In the case of a complaint made otherwise than as mentioned in subsection (2)(a), the Chief Constable shall, if so requested by the Ombudsman, take such steps as appear to the Chief Constable to be desirable for the purpose of preserving evidence relating to the conduct complained of.

53 Complaints – informal resolution

- (1) The Ombudsman shall consider whether the complaint is suitable for informal resolution and may for that purpose make such investigations as he thinks fit.
- (2) A complaint is not suitable for informal resolution unless—
 - (a) the complainant gives his consent; and
 - (b) it is not a serious complaint.
- (3) If it appears to the Ombudsman that the complaint is suitable for informal resolution, he shall refer the complaint to the appropriate disciplinary authority.
- (4) Where a complaint is referred under subsection (3), the appropriate disciplinary authority shall seek to resolve it informally and may appoint a member of the police force to do so on behalf of the authority.
- (5) The Chief Constable shall, at the request of the Police Authority, provide a member of the police force to be appointed by the Police Authority under subsection (4).
- (6) If, after attempts have been made to resolve a complaint informally, it appears to the appropriate disciplinary authority—
 - (a) that informal resolution of the complaint is impossible; or
 - (b) that the complaint is for any other reason not suitable for informal resolution,

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the appropriate disciplinary authority shall notify the Ombudsman accordingly and refer the complaint to him.

- (7) Subject to subsection (8), no statement made by any person for the purpose of the informal resolution of a complaint shall be admissible in any subsequent criminal, civil or disciplinary proceedings.
- (8) A statement is not rendered inadmissible by subsection (7) if it consists of or includes an admission relating to a matter which does not fall to be resolved informally.

54 Complaints – formal investigation

- (1) If—
- (a) it appears to the Ombudsman that a complaint is not suitable for informal resolution; or
 - (b) a complaint is referred to the Ombudsman under section 53(6),
- the complaint shall be formally investigated as provided in subsection (2) or (3).
- (2) Where the complaint is a serious complaint, the Ombudsman shall formally investigate it in accordance with section 56.
- (3) In the case of any other complaint, the Ombudsman may as he thinks fit—
- (a) formally investigate the complaint in accordance with section 56; or
 - (b) refer the complaint to the Chief Constable for formal investigation by a police officer in accordance with section 57.

55 Consideration of other matters by the Ombudsman

- (1) The Police Authority or the Secretary of State may refer to the Ombudsman any matter which—
- (a) appears to the Authority or the Secretary of State to indicate that a member of the police force may have—
 - (i) committed a criminal offence; or
 - (ii) behaved in a manner which would justify disciplinary proceedings;
 and
 - (b) is not the subject of a complaint,
- if, after consultation with the Ombudsman and the Chief Constable, it appears to the Authority or the Secretary of State that it is desirable in the public interest that the Ombudsman should investigate the matter.
- (2) The Chief Constable shall refer to the Ombudsman any matter which appears to the Chief Constable to indicate that conduct of a member of the police force may have resulted in the death of some other person.
- (3) Where any matter is referred to the Ombudsman under subsection (1) or (2), he shall formally investigate the matter in accordance with section 56.
- (4) The Chief Constable may refer to the Ombudsman any matter which—
- (a) appears to the Chief Constable to indicate that a member of the police force may have—
 - (i) committed a criminal offence; or

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- (ii) behaved in a manner which would justify disciplinary proceedings;
and
 - (b) is not the subject of a complaint,
if it appears to the Chief Constable that it is desirable in the public interest that the Ombudsman should investigate the matter.
- (5) Where any matter is referred to the Ombudsman under subsection (4), he shall formally investigate the matter in accordance with section 56 if it appears to him that it is desirable in the public interest that he should do so.
- (6) The Ombudsman may of his own motion formally investigate in accordance with section 56 any matter which—
 - (a) appears to the Ombudsman to indicate that a member of the police force may have—
 - (i) committed a criminal offence; or
 - (ii) behaved in a manner which would justify disciplinary proceedings;
and
 - (b) is not the subject of a complaint,
if it appears to the Ombudsman that it is desirable in the public interest that he should do so.
- (7) The Ombudsman shall notify—
 - (a) the Police Authority or the Secretary of State, in the case of a matter referred under subsection (1);
 - (b) the Chief Constable, in the case of a matter referred under subsection (2) or (4),
of the outcome of any criminal or disciplinary proceedings brought against a member of the police force in respect of, or in connection with, the matter so referred.

56 Formal investigation by the Ombudsman

- (1) Where a complaint or matter is to be formally investigated by the Ombudsman under section 54(2) or (3)(a) or 55(3), (5) or (6), he shall appoint an officer of the Ombudsman to conduct the investigation.
- (2) The Secretary of State may by order provide that any provision of the Police and Criminal Evidence (Northern Ireland) Order 1989 which relates to investigation of offences conducted by police officers (within the meaning of that Order) shall apply, subject to such modifications as the order may specify, to investigations under this section conducted by persons who are not police officers (within the meaning of that Order).
- (3) A person employed by the Ombudsman under paragraph 3(1) of Schedule 3 shall for the purpose of conducting, or assisting in the conduct of, an investigation under this section have all the powers and privileges of a constable throughout Northern Ireland and the adjacent United Kingdom territorial waters; and subsection (3) of section 18 applies for the purposes of this subsection as it applies for the purposes of subsection (2) of that section.
- (4) Section 66 applies to a person to whom subsection (3) applies as it applies to a constable.

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- (5) A person to whom subsection (3) applies shall not be regarded as in police service for the purposes of—
 - (a) Article 145 of the Trade Union and Labour Relations (Northern Ireland) Order 1995; or
 - (b) Article 243 of the Employment Rights (Northern Ireland) Order 1996.
- (6) At the end of an investigation under this section the person appointed to conduct the investigation shall submit a report on the investigation to the Ombudsman.

57 Formal investigation by a police officer

- (1) Where a complaint is referred to the Chief Constable under section 54(3)(b), he shall appoint a police officer to investigate it formally on behalf of the Ombudsman.
- (2) A member of the police force may not be appointed to investigate a complaint formally if he has previously been appointed to act in relation to it under section 53(4).
- (3) The Ombudsman may require—
 - (a) that no appointment of a person to conduct an investigation under this section shall be made unless the Ombudsman has given notice to the Chief Constable that he approves the person whom the Chief Constable proposes to appoint; or
 - (b) if such an appointment has already been made and the Ombudsman is not satisfied with the person appointed, that—
 - (i) the Chief Constable shall, as soon as is reasonably practicable, select another police officer and notify the Ombudsman that he proposes to appoint that person; and
 - (ii) the appointment shall not be made unless the Ombudsman gives notice to the Chief Constable that he approves that person.
- (4) The Ombudsman may supervise the investigation of any complaint under this section if he considers that it is desirable in the public interest for him to do so.
- (5) Where the Ombudsman decides to supervise an investigation under this section he shall notify the Chief Constable to that effect.
- (6) A member of a police force in Great Britain who is appointed to conduct an investigation under this section shall, for the purpose of conducting that investigation, have all the powers and privileges of a constable throughout Northern Ireland and the adjacent United Kingdom territorial waters; and subsection (3) of section 18 applies for the purposes of this subsection as it applies for the purposes of subsection (2) of that section.
- (7) The Ombudsman may impose requirements as to the conduct of an investigation which the Ombudsman is supervising; and it shall be the duty of a police officer to comply with any requirement imposed on him by virtue of this subsection.
- (8) At the end of an investigation under this section the police officer appointed to conduct the investigation shall submit a report on the investigation to the Ombudsman.

58 Steps to be taken after investigation – criminal proceedings

- (1) The Ombudsman shall consider any report made under section 56(6) or 57(8) and determine whether the report indicates that a criminal offence may have been committed by a member of the police force.
- (2) If the Ombudsman determines that the report indicates that a criminal offence may have been committed by a member of the police force, he shall send a copy of the report to the Director together with such recommendations as appear to the Ombudsman to be appropriate.
- (3) Where a report is sent to the Director under subsection (2), the Ombudsman shall, at the request of the Director, ascertain and furnish to the Director all such further information in relation to the complaint or matter dealt with in the report as appears to the Director to be necessary for the discharge of his functions under the Prosecution of Offences (Northern Ireland) Order 1972.
- (4) In this section and section 59 “the Director” means the Director of Public Prosecutions for Northern Ireland.

59 Steps to be taken after investigation – disciplinary proceedings

- (1) Where—
 - (a) the Director has dealt with the question of criminal proceedings; or
 - (b) the Ombudsman determines that the report under section 56(6) or 57(8) does not indicate that a criminal offence may have been committed by a member of the police force,the Ombudsman shall consider the question of disciplinary proceedings.
- (2) The Ombudsman shall send the appropriate disciplinary authority a memorandum containing—
 - (a) his recommendation as to whether or not disciplinary proceedings should be brought in respect of the conduct which is the subject of the investigation;
 - (b) a written statement of his reasons for making that recommendation; and
 - (c) where he recommends that disciplinary proceedings should be brought, such particulars in relation to the disciplinary proceedings which he recommends as he thinks appropriate.
- (3) No disciplinary proceedings shall be brought by the appropriate disciplinary authority before it receives the memorandum of the Ombudsman under subsection (2).
- (4) The Police Authority shall advise the Ombudsman of what action it has taken in response to a recommendation contained in a memorandum sent to it under subsection (2); and nothing in the following provisions of this section has effect in relation to senior officers.
- (5) If—
 - (a) a memorandum sent to the Chief Constable under subsection (2) contains a recommendation that disciplinary proceedings should be brought; but
 - (b) the Chief Constable is unwilling to bring such disciplinary proceedings,the Ombudsman may, after consultation with the Chief Constable, direct him to bring disciplinary proceedings.
- (6) Subject to subsection (7)—

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- (a) it shall be the duty of the Chief Constable to comply with a direction under subsection (5);
 - (b) the Chief Constable may not discontinue disciplinary proceedings which he has brought in accordance with—
 - (i) a recommendation contained in a memorandum under subsection (2);
 - or
 - (ii) a direction under subsection (5).
- (7) The Ombudsman may give the Chief Constable leave—
- (a) not to bring disciplinary proceedings which subsection (6)(a) would otherwise oblige him to bring; or
 - (b) to discontinue disciplinary proceedings with which subsection (6)(b) would otherwise require him to proceed.
- (8) Regulations made in accordance with section 25(3) or 26(3) may establish, or make provision for the establishment of, a special procedure for any case in which disciplinary proceedings are brought—
- (a) where a memorandum under subsection (2) recommending the bringing of those proceedings contains a statement to the effect that, by reason of exceptional circumstances affecting the case, the Ombudsman considers that such special procedures are appropriate; or
 - (b) in compliance with a direction under subsection (5).
- (9) The Chief Constable shall advise the Ombudsman of what action he has taken in response to—
- (a) a recommendation contained in a memorandum under subsection (2);
 - (b) a direction under subsection (5).

60 Constabularies not maintained by Police Authority

- (1) An agreement for the establishment in relation to any body of constables maintained by an authority other than the Police Authority of procedures corresponding or similar to any of those established by virtue of this Part may, with the approval of the Secretary of State, be made between the Ombudsman and the authority maintaining the body of constables.
- (2) Where no such procedures are in force in relation to any body of constables, the Secretary of State may by order establish such procedures.
- (3) An agreement under this section may at any time be varied or terminated with the approval of the Secretary of State.
- (4) Before making an order under this section the Secretary of State shall consult—
 - (a) the Ombudsman; and
 - (b) the authority maintaining the body of constables to whom the order would relate.
- (5) Nothing in any other statutory provision shall prevent an authority which maintains a body of constables from carrying into effect procedures established by virtue of this section.
- (6) No such procedures shall have effect in relation to anything done by a constable outside Northern Ireland.

61 Reports

- (1) The Ombudsman shall, at the request of the Secretary of State, report to the Secretary of State on such matters relating generally to the functions of the Ombudsman as the Secretary of State may specify, and the Ombudsman may for that purpose carry out research into any such matters.
- (2) The Ombudsman may make a report to the Secretary of State on any matters coming to the Ombudsman's attention under this Part to which the Ombudsman considers that the Secretary of State's attention should be drawn in the public interest.
- (3) The Ombudsman shall, not later than 3 months after the end of each financial year, make to the Secretary of State a report on the discharge of the Ombudsman's functions during that year.
- (4) The Ombudsman shall—
 - (a) keep under review the working of this Part; and
 - (b) at least once every five years, make a report on it to the Secretary of State.
- (5) The Ombudsman shall send a copy of any report under this section to—
 - (a) the Police Authority and the Chief Constable; and
 - (b) if the report concerns any such body of constables as is mentioned in section 60, to the authority maintaining it and the officer having the direction and control of it.
- (6) The Secretary of State shall—
 - (a) lay before both Houses of Parliament a copy of every report received by him under this section; and
 - (b) cause every such report to be published.
- (7) The Ombudsman shall send to the Police Authority any statistical or other general information which the Ombudsman considers should be brought to the attention of the Police Authority in connection with its functions under section 2(4)(a).

62 Statements by Ombudsman about exercise of his functions

The Ombudsman may, in relation to any exercise of his functions under this Part, publish a statement as to his actions, his decisions and determinations and the reasons for his decisions and determinations.

63 Restriction on disclosure of information

- (1) No information received by a person to whom this subsection applies in connection with any of the functions of the Ombudsman under this Part shall be disclosed by any person who is or has been a person to whom this subsection applies except—
 - (a) to a person to whom this subsection applies;
 - (b) to the Secretary of State;
 - (c) to other persons in or in connection with the exercise of any function of the Ombudsman;
 - (d) for the purposes of any criminal, civil or disciplinary proceedings; or
 - (e) in the form of a summary or other general statement made by the Ombudsman which—

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- (i) does not identify the person from whom the information was received; and
 - (ii) does not, except to such extent as the Ombudsman thinks necessary in the public interest, identify any person to whom the information relates.
- (2) Subsection (1) applies to—
- (a) the Ombudsman; and
 - (b) an officer of the Ombudsman.
- (3) Any person who discloses information in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

64 Regulations

- (1) The Secretary of State may make regulations—
- (a) as to the procedure to be followed under this Part; and
 - (b) for prescribing anything authorised or required to be prescribed by any provision in this Part.
- (2) The Secretary of State shall by regulations provide—
- (a) that, subject to such exceptions and in accordance with such procedures as may be prescribed, the Ombudsman shall furnish a copy of, or of the record of, a complaint against a member of the police force to—
 - (i) that member;
 - (ii) the complainant; and
 - (iii) the appropriate disciplinary authority;
 - (b) procedures for the informal resolution of complaints of such descriptions as may be prescribed, and for giving the complainant a record of the outcome of any such procedure;
 - (c) procedures for giving a member of the police force, whose conduct is the subject of a complaint which falls to be resolved informally, an opportunity to comment orally or in writing on the complaint;
 - (d) for cases in which any provision of this Part is not to apply where—
 - (i) a complaint, other than a complaint which falls to be resolved informally, is withdrawn;
 - (ii) the complainant indicates that he does not wish any further steps to be taken; or
 - (iii) the complainant fails to indicate, in response to a request from the Ombudsman to do so, whether he wishes any further steps to be taken;
 - (e) for enabling the Ombudsman to dispense with any requirement of this Part;
 - (f) for enabling the Ombudsman to relinquish the supervision of the investigation of any complaint under section 57;
 - (g) procedures for an investigation begun under section 56 or section 57 to be continued, where the Ombudsman so directs, as if it had originally been begun under the other of those sections;
 - (h) procedures for the making of complaints and the reference of complaints and other matters under this Part;

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- (i) that the Ombudsman shall be supplied with such information or documents of such description as may be prescribed at such time or in such circumstances as may be prescribed;
 - (j) that any action, determination or decision of a prescribed description taken by the Ombudsman shall be notified to prescribed persons within a prescribed time and that, in connection with such a notification, the Ombudsman shall have power to supply the person notified with any relevant information;
 - (k) for authorising or requiring the Ombudsman to provide to the appropriate disciplinary authority information relevant to the exercise by that authority of any power of suspension under regulations made by virtue of section 25(2)(f) or 26(2)(e).
 - (l) that the Chief Constable shall have power to delegate any functions conferred on him by or by virtue of this Part;
 - (m) for enabling the Ombudsman to pay to a complainant—
 - (i) sums in respect of expenses incurred by him; and
 - (ii) allowances by way of compensation for the loss of his time, in accordance with such scales and subject to such conditions as may be prescribed;
 - (n) for enabling the Ombudsman, in such cases as may be prescribed, to make a recommendation to the Chief Constable for the payment by the Chief Constable to the complainant of compensation of such amount as the Ombudsman considers appropriate (but not exceeding such amount as may be prescribed).
- (3) Regulations under this section may authorise the Secretary of State to make provision for any purposes specified in the regulations.
- (4) Before making any regulations under this section, the Secretary of State shall consult—
- (a) the Ombudsman;
 - (b) the Police Authority; and
 - (c) the Police Association.

65 Guidance concerning discipline, complaints, etc

- (1) The Secretary of State may issue guidance to the Police Authority and police officers concerning the discharge of their functions—
- (a) under this Part;
 - (b) under regulations made under section 25 in relation to the matters mentioned in subsection (2)(e) of that section; and
 - (c) under regulations made under section 26 in relation to the matters mentioned in subsection (2)(d) of that section;
- and they shall have regard to any such guidance in the discharge of their functions.
- (2) Guidance may not be issued under subsection (1) in relation to the handling of a particular case.
- (3) A failure on the part of a person to whom guidance is issued under this section to have regard to such guidance shall be admissible in evidence on any appeal from a decision taken in proceedings under regulations made in accordance with section 25(3) or 26(3).

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- (4) In discharging his functions under section 59 the Ombudsman shall have regard—
- (a) to any guidance given to him by the Secretary of State with respect to such matters as are for the time being the subject of guidance under subsection (1); and
 - (b) in particular, but without prejudice to the generality of paragraph (a), to any such guidance as to the principles to be applied in cases that involve any question of criminal proceedings.
- (5) In discharging his functions under this Part the Ombudsman shall have regard to any guidance given to him by the Secretary of State with respect to matters the disclosure of which may be prejudicial to the public interest.