

**The
Independent Assessor for Complaints
for the
Public Prosecution Service
of
Northern Ireland**

EIGHTH FORMAL REPORT

**for
2012**

**Alasdair MacLaughlin
31st March 2013**

The Independent Assessor

for the Public Prosecution Service

Alasdair MacLaughlin

- investigating complaints
- overseeing and auditing complaints handling processes

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31st March 2013

Dear Director

I have the privilege of presenting to you this my Eighth Formal Report as the Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland. The period of the Formal Report is from 1st April 2012 to 31st March 2013. The statistics presented relate to the calendar year 2012. As usual, I have timed my Formal Report to allow you to take account of its contents in the context of the issue of your own Annual Report for PPS in June/July.

The aim of my Report is to provide you with a basis for reflection on, to assess the performance of, and to give information on the development of Complaints Handling within PPS in the period concerned. It seeks to give pointers for the future handling of complaints and I also give information relating to my own activity during the year. Of particular note is that my Report, if published in a timely way, provides a key measure of public accountability for the PPS.

In general, the period concerned remained a time of considerable flux for PPS. There continued to be changes in policy, personnel and responsibilities at senior level. Add to this, the high degree of politicising of PPS, as a result of the Devolution of Justice, the appointment of the Attorney General for NI, later of the Minister for Justice, and the consequences of these changes. Also there has been the development of yet more high profile cases which have ensured significant continuing public debate. I know that you are aware of the interest of the Justice Committee of the Northern Ireland Assembly, and that they have recently called for a Paper from me on my Seventh Formal Report, for 2011 (see Appendix 2).

At the interface with stakeholders, PPS continues to pay careful attention to Complaints Handling, and also to the ways in which the lessons learned contribute to improved service. However, the systemic inefficiencies that I referred to in last year's Formal Report, many of which were repeated during 2012, ought to have been countered by senior management action. It is disappointing to have to report that many of the lessons that have been learned have not been applied by senior management as I believe they might have been.

You will note that this Formal Report contains no Recommendations, although I have identified what I consider to be the issues that need to be addressed. I feel that it would be presumptuous of me to make Recommendations when I have not been made aware of the rationale behind the changes that have been made in the parameters for the operations of the Independent Assessor for Complaints, following the Review of the role. I comment on these in detail in the body of my Report.

*investigating complaints
overseeing and auditing complaints handling processes
The Independent Assessor is Alasdair MacLaughlin*

I am very happy once again to confirm to you that PPS continues as an organisation that attracts an extremely low incidence of complaints, even though we agree that one complaint is always one too many. I conclude by thanking your staff, through you, for their good work in complaints handling, their ready co-operation, and also the efforts made to ensure my independence from PPS.

Yours Sincerely

Alasdair MacLaughlin

Alasdair MacLaughlin

The Independent Assessor is Alasdair MacLaughlin

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CHAPTER 1 BACKGROUND

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This is my eighth Formal Report on my work as The Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland. The Report covers the period from 1st April 2012 to 31st March 2013. Statistical data however has been drawn from the calendar year 2012.

The Report provides information on Complaints Handling within the PPS for the period concerned, and in comparison with previous years. It provides information on my work as the Independent Assessor for Complaints (IAC). There is an emphasis on promoting and reflecting on improving the service PPS provides to its stakeholders, that arise from the processes of Complaints Handling. **Of note is that it has been said – and I agree - that my Formal Reports, when published in a timely fashion, provide an important contribution to the public accountability of PPS.**

The timing of my Formal Report for the calendar year 2012 at 31st March 2013 takes account of the fact that the Director reports on the activity of PPS on an annual basis in June/July. My publication date permits the Director to take into account as he may wish what has taken place in relation to Complaints Handling in the same period when he prepares his own Annual Report to be published in 2013.

In dealing with complaints, PPS has adopted a three-tier process. PPS accepts a complaint from a stakeholder – who may be a legal-services professional, a judicial officer, a victim, a witness, a police officer, an offender, a supplier of goods and/or services, or a member of the public. PPS does not in general terms attempt to subject a complaint to detailed definitional filters designed to exclude certain types of complaint – this is good complaints handling practice. However, it is important to note that distinctions are made with other types of enquiry where a prosecutorial complaint/request for information, reasons or review, or a Freedom of Information query is involved. These are dealt with under separate arrangements.

Whether prosecutorial in nature or otherwise, a complaint is normally accepted at the work interface, verbally or in written form, where it is dealt with in the first instance; this is the **first** tier. If the conclusion at this stage is not regarded by the complainant as satisfactory, the complaint can be taken to the **second** tier, which is primarily the responsibility of senior management at regional or central levels. If at this stage, the complainant remains dissatisfied after the conclusion of the complaint - which must normally be in writing – the complaint is taken to the **third** tier, which is the responsibility of the Independent Assessor for Complaints. Prosecutorial complaints are taken to the Director at this point, or to his nominee.

At the first, second, and third tiers, a written complaint or query should always be acknowledged in writing within five working days of receipt. Apart from being PPS policy, it is simply good practice to do so. This should present no difficulties, as the fact that there is a stated dissatisfaction means that there is a problem regardless of how this is subsequently defined – as a complaint, a query, application for information, a prosecutorial review or a request for reasons. That can be achieved later – it is surely a simple matter to let a stakeholder know within five working days that his/her query has been received at PPS.

It is also good practice in any case at the second and third tier levels, when a complaint is received (whether by e-mail, by telephone or in person) quickly to translate it into hard copy; this has many advantages, not least that the process is slowed down to facilitate clear thinking about the issue raised. **I have had only limited success in convincing PPS how important this is, despite the fact that complaints about communication and service can often be traced to PPS not following these tenets of good practice.**

The distinction between a prosecutorial and a non-prosecutorial complaint, while appearing to be obvious in a definitional sense, is in practice not always so clear-cut. Accordingly, a decision may be made by the Director to refer a matter directly to me, after immediate receipt and/or at any time, if there appear to be non-prosecutorial elements connected with a prosecutorial complaint or request. In practice, where the Director refers such cases to me, he will be advised by me on my opinion as to whether I believe I have a remit or not.

A complaint can in practice be accepted directly at the second tier, but if so, it should be submitted in writing in hard copy or by e-mail. A non-prosecutorial complaint cannot normally be taken directly to the independent third tier thus by-passing the second tier. However, there have been cases where it has been adjudged that it would be more efficient and save further frustration to the complainant for such a reference to be made to me before the second tier is exhausted. Also, there have been several cases where a complainant has chosen to bring a complaint to me direct, from being dissatisfied at the first tier. In most cases, I will refer such complaints back to the second tier for attention, although there may be particularly sensitive circumstances – for example where a death has occurred - where it may be desirable to accelerate the process, and so to by-pass the second tier. The point being made here is that the purpose of the System is to satisfy a stakeholder complaint and not primarily to simply apply the approved steps.

Concluding responses are given in writing, at the second and third tiers, and these may be supplemented where necessary by face-to-face meetings and discussions with complainants. **Successive PPS Directors have made it plain to all staff that every complaint must be treated at every level seriously, in a timely fashion and with due consideration; and each complaint must be concluded thoroughly, fairly and expeditiously.** However, while ‘justice delayed’ may be seen as ‘justice denied’, the degree of complexity of the issues in each complaint and practical considerations should properly determine the elapsed time to conclude a complaint. Nevertheless, the PPS have adhered to a target for concluding second tier complaints within **twenty** working days. I believe that this figure is still and will likely remain generally unattainable in many cases – indeed, just over 40% in 2012 were not concluded within this timeframe.

It is also vital that the Complaints Handling Processes feed organisational learning and development in PPS. The receipt of every complaint is, and should be seen to be, an opportunity to put right specific matters, as well as to improve the overall service PPS provides, and at every level. In my view, the receipt and processing of a complaint should not be used primarily to admonish or to blame someone in PPS for making a mistake – to do so could have the effect of driving complaints underground.

My role had originally been agreed to be as follows:-

- Help develop initially the Complaints Handling Processes of PPS against a background of excellence, and to keep the System under review
- Audit all or a sample of complaints handled at the second tier (but which are concluded without further dissatisfaction being declared by the stakeholder) on an annual basis
- Oversee (but not manage) from an independent and impartial standpoint, the Complaints Handling Processes of PPS
- Deal with non-prosecutorial complaints taken by stakeholders against PPS at the third and independent tier. This involves me in detailed study of the relevant files, and in certain circumstances, I may interview the complainant and/or appropriate PPS staff
- Make recommendations to the Director about Complaints Handling and its development, and about relevant service issues, in the context of an individual complaint, in regular informal and formal reports and as a consequence of an audit of complaints handling, and in my Formal Reports published annually
- Make interventions where appropriate to support relevant contributions to the development of a better service from PPS

I have no powers to compel PPS in any way. However, the protocols which have been developed over the years permit me to make Recommendations to the Director as a result of a complaint, or in my Formal reports. **If he decides not to implement any such recommendation, the Director is expected under the protocols to provide written reasons, and the Independent Assessor may publish those reasons.**

The right that I have been given to **audit complaints** which are received and concluded by PPS and which are not referred on to me at the third tier, remains unusual for independent complaints assessors/examiners although it is being increasingly recognised in other sectors as an important way of adding value to their contributions.

It is of note that at the time of writing this Report, the IAC role with PPS remains the only independent complaints assessment in any prosecution service in these Islands. However, very shortly early in 2013, the Crown Prosecution Service will follow the example provided by PPS. HM CPS Inspectorate has recommended to CPS that they use the model in Northern Ireland as a basis for their scheme – shortly to be implemented.

CHAPTER 2

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THE WORK of the INDEPENDENT ASSESSOR DURING 2012

I suggest that this is the most important Chapter in my Formal Report as it contains an analysis of the complaints that have reached me at the third tier during the twelve month period in question, as well as other activities in which I have been involved. As such, it provides case studies to assist organisational learning through senior management and other staff in PPS. It is for this reason that I have suggested that staff are urged by senior management to read my Formal Reports. Over the series, I have outlined in anonymous form as case studies, issues that have given rise to complaints which PPS has been unable to conclude at the second tier. Often these do not necessarily represent any failure by PPS – indeed there are complainants whose complaints will be almost impossible for PPS to conclude. A particular value for PPS of the IAC is that some complainants will ‘take it’ from the IAC, where they will not do so from the PPS. Also, as the IAC is effectively the last resort for a complainant, PPS can emphasise, where the IAC has concluded an investigation, in the case of a persisting complainant there is nothing further that PPS can do.

During the twelve month period 1st April 2012 to 31st March 2013, I have concluded, or in so far as it is possible to do so part concluded **eight cases** at the third tier as follows: -

- The first complaint began on 17th February 2012, and was concluded on 14th April 2012
- The second complaint began on 28th March 2012, and was concluded on 23rd May 2012
- The third complaint began on 16th April 2012 and was concluded on 28th May 2012
- The fourth complaint began on 4th June 2012, and was concluded on 15th July 2012
- The fifth complaint began on 12th June 2012, and was concluded on 28th August 2012
- The sixth complaint began on 20th July 2012, and was concluded on 25th September 2012
- The seventh complaint began on 12th November 2012, and was suspended by the Director on 18th December 2012
- The eighth complaint began on 6th December 2012 and was concluded on 16th January 2013

These complaints are outlined in some detail in the following paragraphs.

The **first** complaint was a complex case involving two industrial accidents. It took me eight weeks to conclude. Decisions needed to be made by PPS not simply on the merits of each case, but the effect for legal reasons of considering the cases together or each separately. In fact the stakeholder raised with me eight points that he wished considered. As I may only deal with non-prosecutorial matters, only two of these points were within my remit.

I found that the regional prosecutor who had handled the complaint at second tier had done so in a perfectly proper manner. However, in the view of the stakeholder there were undue delays and there was one element which when explained to the complainant did not satisfy him.

I made **no recommendation** to the Director arising from this complaint. I did however suggest that the regional prosecutor concerned be invited by the Director to write a final letter of explanation to the stakeholder. **I have received no acknowledgement of his receipt of my letter containing this suggestion, and nor do I know whether or not my suggestion has been accepted or rejected.** I would, whatever else, like to think that there had been a final comment from PPS to the stakeholder, as this essentially would finalise the matter for the stakeholder.

The **second** complaint was another complex complaint involving a confusing set of circumstances. The attitude and misconceptions of the stakeholder toward the PPS were compounded by a series of mis-communications and confusions arising within PPS in the relevant cases. At the heart of the matter was a prosecution against the stakeholder concerning property boundaries and interference with a neighbour's drains. In fact there were also other prosecutions in which the complainant was involved.

The complaint however made to PPS was misdirected, as it was pointed at the behaviour of a PSNI officer. The complainant believed that the PSNI officer should have been prosecuted, and also the matter should have been referred to the Police Ombudsman. The stakeholder was dissatisfied with the way in which the matter was dealt with by the prosecutor, even though the latter dealt with it correctly by referring the stakeholder to the Police Ombudsman's Office. This took place in October 2011.

However, on 30th October 2011, the complainant decided to refer his complaint to me. **Had this reached me, I would of course have confirmed that there was no complaint for PPS to answer.** However, this complaint, addressed to me at the Private Office of the Director did not reach me. There then followed a series of internal exchanges (none of which were referred to the IAC) even though the reference to IAC being involved was erroneously mentioned in the interchanges. In short I only learned of the original complaint being referred to me on 20th February 2012. This was despite two further e-mails to me care of the Private Office, neither of which were routed to me. There was another delay of about three weeks as the files were still 'in process', and so were not then available to me. Meanwhile there had been a letter to the complainant informing him – again erroneously - that I had had the complaint in investigation.

Accordingly, by this stage, there was much for the complainant to complain about. My opinion was that PPS had let down the stakeholder rather badly, and as a direct result, I too had effectively let him down. I apologised for this in my conclusion, but ironically, I did not uphold his original complaint which was properly dealt with by the prosecutor, but did uphold what had subsequently taken place.

I made **three recommendations** to the Director resulting from this complaint. The first was that action should be taken to improve the communications between the Private Office and the IAC. The second related to the importance of reminding prosecutors and managers that the clear processes for dealing with any complaint should be followed correctly. The third recommendation was that the Director issued an apology to the stakeholder. The Director wrote to me accepting these three recommendations and enclosing his closing letter to the stakeholder.

This particular complaint was an example of where the failure to deal properly with a complaint created and perpetuated an irritation which could have been closed off by the IAC. The way that the PPS also mishandled the process led not only to more indignation in the stakeholder but the expending of very considerable scarce resource in sorting out the consequences.

The **third** complaint was also a complex case, which took me six weeks to conclude. Fundamentally, the stakeholders' house was burgled. It was the case that the suspect was a foreign national whom police believed that they could connect with the crime. A decision not to prosecute was made. The stakeholders asked for a review by PPS of this decision, the result of which was that the decision was confirmed. Following another interchange, it was decided to consult counsel who recommended that the decision should have been to prosecute. Accordingly, PPS decided to prosecute after all, but by the time all this had taken place, the papers could not be served on the suspect as he was apparently no longer within the jurisdiction.

This led to lengthy interchanges between the stakeholders and PPS. The nature of the complaint that was referred to me was not of course the prosecutorial decision which is outside my remit, but rather the miscommunications and delays that resulted. In particular there was a delay of four months in issuing the final decision, which did actually confirm that the original decision had indeed been incorrect.

In this case I upheld the part of the complaint relating to delays. However, I analysed these very carefully as there are necessary processes involved in changing any prosecutorial decision which the stakeholders perceived were not necessary. I separated these out for the complainants. But they had suffered very frightening and upsetting experiences in their own home, and were entitled to expect better from PPS in the way the matter had been dealt with. From the viewpoint of the PPS, it has to be said that they did try hard to deal thoroughly with the requests for review.

In my concluding letter to the Director on 15th July 2012, I commented on the circumspection in PPS involved in reviewing the matter, which lengthened the processes inordinately for the stakeholders. I made **no specific recommendation** to the Director, but suggested that he might send a final apology in relation to the delays. Receipt of my letter was acknowledged from the Director's Office, and an undertaking that a further substantive letter would reach me in due course. I received a letter dated 19th March 2013 from the Director telling me that he had decided not to follow my suggestion that he write a final letter to the stakeholders in this case, as he felt that what I had told them in my letter and that from the Regional Prosecutor concerned was sufficient. My opinion remains that this really does not provide proper and final closure for the stakeholders.

The **fourth** complaint took me five weeks to conclude from receipt of the material. This was a distressing case where the stakeholder, a woman in her fifties, was badly injured in a road traffic accident, and as a result was unable to continue working. The other party was also injured, was prosecuted, tried, and found guilty. On appeal, however, this party was let off.

The stakeholder brought a number of points in her complaint, some of which were outside the scope of PPS Complaints Handling System, some were prosecutorial, and some had to do with the way PPS had handled the case.

Initially, the complainant had asked PPS to refer the matter to the IAC, but this was not done. This was reasonable enough as the PPS at that stage took the view that the complaint had to do fundamentally with the prosecutorial decision. However, what was not reasonable was that the stakeholder was not told that her reference to me was not being actioned at that stage. There was a lengthy period of review of the referral during which time she was under the impression that it was in the hands of the IAC.

In short, after a number of different Assistant Directors, and the Senior Assistant Director had been in contact with her, she was informed that the matter had **not** in fact been referred to the IAC. When I did receive her complaint, I dealt with the various sets of points the complainant had raised and noted to her where they might be resolved. Subsequently her solicitor also wrote with additional comments to me to which I duly responded.

In my concluding letter to the Director, I commented on the extensive review period which had involved several prosecutors and managers, each of whom serially was corresponding with the complainant. My opinion was that had the request for a review been dealt with swiftly and efficiently, there would have been no reason for me to have been involved. Instead, it gave rise to miscommunication and delay, and a failure to follow clear laid down procedures. Once again there was a failure to communicate with me via the Director's Private Office.

I made **three recommendations** to the Director in my concluding note. The **first** dealt with the need to ensure that the problem of communicating with me via his Office should be resolved. The **second** was that once again action needed to be taken to ensure that prosecutors and managers follow the clearly stated procedures including that of keeping a stakeholder informed of progress. My **third** recommendation was that the Director should write an appropriate concluding letter to the stakeholder concluding the matter. The Director wrote to me accepting these recommendations, and enclosing a copy of his letter to the stakeholder.

The **fifth** complaint was a thoroughly unpleasant case which was in my view vexatious, but which none the less needed to be dealt with, investigated, and finally concluded. In view of its complexity it took me eleven weeks to conclude – rather longer than my usual eight weeks. However, I did keep the stakeholders properly informed as to the reasons for the extension of the time needed.

In short, the events to which the complaint referred originated in 2003. By 2012, the matter had been allowed to escalate to a situation where general threats were made to PPS, but more worryingly to named individuals in PPS including the Director. Detailed analysis indicated very clearly to me that PPS in specific terms had been most accommodating to the complainants and had scarcely put a foot wrong in terms of process – although there were two minor matters where apologies had been instantly offered. In strategic terms however, a senior person in PPS should, in my opinion have seized these matters and concluded all communications about the complaint at a much earlier stage. At one point this indeed was done, but the same senior individual in PPS, shortly afterwards, re-opened the correspondence!

During the processes over these years, reference had also been made by the stakeholders to the Attorney General, and they had without foundation accused the PPS of malfeasance in public office. The Attorney General's Office spent considerable resource on this matter also in an effort to be helpful (including sending their senior officer to Belfast for two days), but did not find for the complainants. In my investigations I was unable to see any grounds for any of the many accusatory points made by the complainants against PPS.

In my concluding letter to the complainants, I made my view known that the moment threats were made about PPS in general, the matter should have been referred to the proper authorities. I had found no reason to uphold the complaints, and I made it clear to the stakeholders that I would be recommending to the PPS that there should be no further correspondence on these matters with them from PPS.

In my concluding letter to the Director, I made **three recommendations**. The **first** was yet again to ask that the proper procedures be followed by prosecutors and managers in PPS – a repetition of recommendations made in many previous complaints in the current and previous years. A particular element is the need to tell the stakeholders when a tier of the System has been exhausted and directing them if they wish to take the matter to the next tier in the Process. Allied with this I recommended that no further correspondence take place in this complaint with these stakeholders. The **second** recommendation related to the accusations made by the stakeholders against the PPS and its officers; I suggested a possible way that this might be handled in any recurrence in another case. My **third** recommendation related to the placing of threats against PPS in general and named individuals in particular. The threats in this case related to the personal safety of the named individuals. It is not for me to become involved in this. But I did suggest that the matter might be discussed by senior management, and policy decisions made about dealing with any similar occurrence from a PPS stakeholder in any other matter.

My letter to the Director was acknowledged on 3rd September 2012, and a substantive response was promised in due course. I received a composite letter from the Director dated 19th March 2013 accepting my Recommendations. I do not know if the stakeholders have been informed by him confirming that PPS will not be responding to any further contacts they may make in these matters, as I had recommended.

The **sixth** complaint was another involved case which took me eight weeks to conclude. This concerned a stakeholder who was the victim of a technical assault on his doorstep. In the process of the assault the substantial front door and jamb were badly damaged. The complaint had two elements. One was the prosecutorial decision, with which I had no remit, and the other was the way in which the complainant was treated by PPS.

Essentially the alleged perpetrator was charged and a court case was scheduled. The legal representative of the alleged perpetrator 'suggested' that a more appropriate way of dealing with the matter was for PPS to seek a caution on the understanding that the alleged perpetrator would pay restitution for the damage caused. It seems that the prosecutor agreed to this, but an entirely flawed way of obtaining an estimated cost followed, resulting in the offer of a cheque in an amount which was half the actual cost and also less than the amount indicated in the first place was then paid.

From this point onwards, the stakeholder was subjected to delay, inaction and a general unwillingness to deal with the victim's difficulties. Quite extraordinarily, having dealt with the **complaint** in an inadequate manner, a PPS manager actually suggested that the stakeholder should now **complain** to PPS. In my letter to the Director, I made the following comments: -

'Arising out of this complaint I have the following observations to make:-

1. There is a need to deal with a complaint in PPS with clarity of purpose and of process with a view to assisting the complainant, thereby reducing any likely further action on the matter being necessary
2. There is a need to consider ALL the issues that the complainant raises, and to deal with all these issues with the complainant
3. There is a need to close off the complaint with the minimum of delay and prevarication, and with maximum clarity
4. There is a clear need to ensure that the complainant is sign-posted or directed clearly to where, if anywhere, and how, he might obtain satisfaction'

I then made **three recommendations** to the Director. The **first** yet again related to the need to ensure that managers and prosecutors follow correctly the clear procedures for dealing with a complaint, and furthermore recognise how complaints can inform the organisation how to improve its service to stakeholders. The **second** recommendation was to reinforce the idea that a complaint whether made in writing, by e-mail, orally or in person should be quickly transferred to hard copy to ensure a proper audit trail. In this case, the entire process was carried out by e-mail and it was evident to me how different threads could and did become muddled. **Thirdly**, I recommended that PPS help where there are external issues, by making clear the options open to the complainant (who was also the victim in the case), and where he might go to have the matters resolved.

I wrote to the Director on 25th September 2012, enclosing copy of my concluding letter to the complainant. I received a composite letter from the Director on 19th March 2013, telling me that he did not propose to take any further action in this matter. I do not know whether or not he has corresponded further with the stakeholder, thus dealing with my third recommendation.

My **seventh** complaint, during the twelve month period, concerned a question of fees for specialised witnesses. On examining the files, it was clear that although this was indeed a complaint, there was no scope within the Complaints Handling System to resolve the issues. Accordingly, five weeks later the complaint was withdrawn from the Complaints Handling System, on the orders of the Director.

My **eighth** complaint concerned matters to do with alleged domestic violence. It took me eight weeks to conclude the case. In this matter, a number of PPS cases were involved – I identified five which were of relevance.

The complainant, and other members of her family, had called the police on up to 15 occasions in connection with turmoil and fracas within her home. In most cases she at first appeared to be the victim of any violence that took place. However, when police arrived at the scene, there was usually no evidence of what had been in the reports over the telephone, and the stakeholder usually denied any violence in her written statements. On one occasion her son had called telling the police that ‘the home was being trashed’. On arrival a few minutes later the police could find no evidence of what had been alleged. The series of events had taken place over the years since 2003. Given the difficulties with the confusion of evidence the PPS were unable to prosecute. Eventually, there were two cases in 2012 where the stakeholder in effect decided to change her many statements. She noted that she had not told all the truth. In several cases she contradicted her previous statements – basically she stated ‘I could not bring myself to tell the truth’. That being so, she wished the Justice System to review all the cases, in the light of this change in her evidence.

Essentially these points were to do with prosecutorial decisions, and how to deal with a situation where the stakeholder wished to change her evidence, and so they were not in my remit. However, she also complained about PPS making ‘wrong assumptions’, creating ‘inaccuracies’, and also providing an ‘unsatisfactory service in these cases’.

In all these cases I was able to confirm that PPS had dealt with all the relevant matters entirely as they should, and in a timely fashion. I found no instance of inadequate or unsatisfactory service from PPS. **Accordingly, I upheld no aspects of her complaints relating to unsatisfactory service.** In addition I explained to her that the PPS could only go on evidence when making a prosecutorial decision, and so assumptions did not enter into the question – it was evidence that counted. The PPS could not be blamed if the evidence was conflicting or did not represent the facts. I went further and said that if she now felt she had to change her stories and presumably now tell the truth, and wished to see the cases concerned being re-considered, she would need perhaps to take independent legal advice.

In my concluding letter to the Director PPS, I was able to affirm that the PPS had dealt with the complaint made entirely as they should, and that accordingly I had no suggestions or recommendations to make in this complaint. The Director subsequently acknowledged my letter, which brought this complaint to a close. I am aware that he did not write in conclusion to the stakeholder confirming my opinion, but am unaware whether or not a nominee did so write. I would add that I believe it is right for PPS **always** to round off a complaint whether upheld or not. This ensures that the ‘high ground’ is maintained for the PPS.

In the cases listed above, it has been either clear that there has been a reason to investigate, or it has not been clear whether or not entry into the Complaints Handling System is appropriate, and so it has been necessary for me to access and examine PPS files. In addition to these enquiries, there have been other cases referred to me by stakeholders where it was appropriate to direct the query elsewhere in PPS as the matters in question had not been within my remit. As well, sometimes cases needed to be directed outside PPS to other organisations within the Criminal Justice System. This can arise where people are unclear about the respective roles of police, prosecuting organisation, court and the judiciary – as indeed would most lay people. In all such circumstances, I have sought to ensure that the person concerned is directed to the appropriate place in the system. These are valuable pointers to PPS to note, as they may have implications for their own publicity about the role of PPS in the Justice System.

I have a formal role to audit all or a sample of the complaints made to PPS at the second tier, and which do not reach me at the third tier. This is a most valuable role, which enables me to give the Director PPS an additional independent view of how the internal system is operating. My audit sample in 2012 was at the 100% level as I had undertaken to do in my Seventh Formal Report last year. I am pleased to be able to report that this year unlike 2011, the files were available to me in good time for the preparation of my Formal Report.

One important point which became obvious to me in my audit, and in other ways is the fact that it appears that recently Regional Prosecutors, and other senior managers involved in a complaints investigation at the second tier do not receive the result of any investigation carried out by the IAC at the third tier. That it is no longer the case that senior managers receive such information, diminishes very much the impact of any learning that the complaint that has not been satisfied by them gives rise. **I take the view that this important omission should be made good with immediate effect where appropriate.**

Performance at tier 2 appears to me to have improved following the introduction of the revised internal system in March 2011. I make the following additional comments:

- There are examples of exemplary complaints handling
- Although some complaints have been acknowledged within the requisite time frame, most are not
- Only a few complaints mention PPS Codes
- In only a few complaints was reference made as to the existence of the independent third tier or how to take the complaint to the IAC if the stakeholder remains dissatisfied at the second tier

Once again, a number of audited files were, like last year, left incomplete, and 'hanging in mid air'. This is even less acceptable now that the audit is of e-files rather than hard copy. It is, in my view, indicative of a lower priority being given to Complaints Handling than ought to be the case.

If errors and omissions like these are to continue to recur, as they have persisted over several years, I would suggest that, if PPS is serious about improving the situation, they might select one issue at a time and deal with that thoroughly. The easiest one is surely to deal with the correct acknowledgement of every query; every query should be acknowledged at once – at that stage there is no need to define the category of the query (be it complaint, prosecutorial review, FOI request or some other stakeholder enquiry). That can be done following thought and the appropriate routing of the enquiry. It is my belief that the Director PPS needs to make sure that communications from and with all stakeholders throughout the organisation are treated with the proper urgency. I believe that in talking with him on these matters that this is what he wants. **If I am correct, then action is needed to emphasise the high priority he places in these matters.**

In my Seventh Formal Report, I discussed the full implementation of the Internal Review of the revised Complaints Handling System. This was to include a number of seminars/workshops led by the IAC for each Regional Directorate and Assistant Directorates. These did take place during 2012, but without my involvement as the Director felt that this was not necessary. The process was to have been initiated with a seminar for Senior Management & Prosecutors which would include the Director emphasising to his team the highest priority that was to be given to handling complaints correctly. In the event this seminar did not take place until the beginning of February 2013.

I continued in 2012 my contacts with other ombudsmen and complaints assessors/examiners throughout the UK and Ireland. This is essential to enable me to maintain contact with developments in, and changing standards and approaches to complaints handling. I continue to do so both independently, and directly with colleagues, and through the Ombudsman Association (formerly the British and Irish Ombudsman Association), and the HM Inspectors' Forum. I am grateful indeed for the support that PPS has given to enable me to attend appropriate workshops and working meetings of colleagues carrying a similar remit.

On 5th January 2013, I received a letter from the Clerk of the Justice Committee of the Northern Ireland Assembly. This noted their receipt of a copy of my Seventh Formal Report as IAC. The Clerk asked me to provide urgently a Paper in the light of my Seventh Formal Report on 'how the Complaints Process operates and who is eligible to submit a complaint'. On 12th January 2013, I provided my response to the Committee, and at the same time, I provided a copy to the Director. I attach a copy of this Paper as Appendix 2 of this my Eighth Formal Report. It will be noted that I provided comment only for the year 2011/12 which was the year to which my Seventh Formal Report related. I have undertaken to the Justice Committee to provide a copy of this my Eighth Formal Report.

Chapter 3

COMPLAINTS HANDLING in PPS DURING 2012

The accumulated database now has seven complete years upon which to base comparisons, judgements and comments about Complaints Handling in PPS. It will be noted that the data recorded is relatively unsophisticated. However it is perhaps sufficient to provide a fair picture of trends in the Complaints & Enquiry Systems of PPS.

In 2012, PPS logged 70 complaints at the second tier, and in addition there were 160 written requests for information/reasons.

	2012	2011	2010	2009	2008	2007	2006
Complaints Logged	70	70	65	49	41	28	39
Written Requests	160	141	107	109	137	115	126

The full case-load for 2011/2012 in PPS was around 50,000. Accordingly, the complaint and request for information rates remain at a remarkably low proportion of well under 1%.

The number of complaints logged at the second tier continues to give an encouraging picture of a low incidence overall of complaints, reviews, and requests for information. Of course, one complaint is always one too many, but it has to be noted that organisations run by human beings are suspect indeed if they give rise to no complaints. I call on the Director, Deputy Director and all Senior Management at PPS to emphasise this position in an active way to all at PPS.

In response to my comments in previous years, I have asked that the PPS Team at top level ensure that management at all levels are made regularly aware of the importance of good Complaints Handling. Regular mention I am informed was made of complaints at monthly management meetings with Regional Prosecutors and other Assistant Directors during 2011. Although I do not know if this is the case, I hope that the same has been happening during 2012 and since. **This is simply good practice, and consideration should be given to continuing consistent attention to these matters.**

An analysis of the complaints with which I have had to deal at the third tier in 2012 along with my audit of 100% of the cases dealt with at the second tier, indicates that there remains scope for much improvement. There is too much room for a lower priority to be given to recording complaints than should be the case. Clear thinking about, and awareness of, the established procedures – which are really not complex and have a rationale based in logic – need constant emphasis to raise awareness in order to eradicate more of the complaints that do arise. In particular it is evident that proper central recording of what is happening at the second tier is still lacking in too many cases because of a sometimes scant emphasis being given to ensure that proper information flows to PPS Central Records about complaints handling. This must not be allowed to continue. My audit of cases in 2012 at the second tier suggests a degree of under-recording at central level of complaints and requests. **The real position needs to be determined, and as appropriate rectified.**

It is also evident from the audit, where the standard is to ensure that this is done within five days of receipt, that the standard of acknowledgement is in need of improvement. It is the case that the central record showed in 2010 that only a very few of the 66 complaints received at the second tier were acknowledged within 5 working days – **a totally unacceptable situation**. In 2011, the figure was apparently no better than this. In 2012, 28 out of a total of 71, or 39% were acknowledged within five days.

This issue, along with the often unrealistic target that complaints must be dealt with within 20 days, was addressed in the Chapter on the Review of the Internal Complaints Handling Process in my last Formal Report for 2011, where I believe that appropriate and effective solutions were recommended. In 2012, 42 complaints – or 59% - were concluded within the 20 days prescribed.

It is now possible to make comparisons over the past seven years about the nature and outcomes of complaints that are centrally registered at the **second tier** of the Complaints Handling Arrangements. The figures over the last seven years are as follows:

Outcome of Complaint	2006	2007	2008	2009	2010	2011	2012
Second tier (PPS Figures)							
• Upheld	9	4	8	9	12	19	14
• Partially upheld	5	0	3	7	2	10	6
• Dismissed	10	5	12	12	19	19	27
• Resolved informally	1	0	0	0	1	0	17
• No further action required	12	15	5	7	3	9	6
• Outstanding	2	4	13	14	25	13	0
• TOTAL	39	28	41	49	66	70	70

Also, in 2012, the main reasons underlying complaints were analysed. Results were as follows:

‘Reasons’ for Complaints in 2012 (PPS Figures)

Failure to respond to communication	12
Standard of written communication	20
Complaint not dealt with to satisfaction	0
Not informed of outcome	11
Conduct of PPS prosecutor	2
Conduct of counsel	5
How PPS conducted case in court	18
Other	16
Primarily prosecutorial	3
Total (note a complaint can have more than one ‘reason’)	87

Under my remit, I am empowered to audit all or a proportion of these cases whether or not they are referred to me. This means that I can access the files and carry out whatever analysis I wish of the way these were handled by PPS. It will be recalled that only 8 of the complaints arising at the second tier of which there were 70 (or 11% in 2012, 13% in 2011, 7.5% in 2010, and 10% in 2009) were referred on to me at the third tier by complainants.

I note a number of obvious points that arise. In 2012 there were around 50,000 cases for decision in PPS. The number of cases involving complaints and reviews/information/requests constitute a miniscule proportion of the cases dealt with in PPS during the year. Accordingly, **I have no hesitation in reporting that PPS remains undoubtedly an organisation which gives rise to a very low incidence of complaints at all levels.**

However, in no sense is this to suggest that such a small proportion does not matter. As already stated, every individual complaint is obviously one too many, but it must be emphasised that for the complainant, his/her complaint is often all consuming. Complaints at the first tier will never be capable of measurement, unless disproportionate bureaucracy is applied to count every one, and this must be resisted at all costs. This is due to the fact that the vast majority of encounters at this level are sorted out before ever developing into a complaint as such – **that so few of these encounters result in second tier complaints is a very great tribute to the effectiveness of PPS front line staff of all categories.**

I am pleased to report no complacent tendency evident at these levels in PPS in 2012, even though the organisation has the comfort of attracting such a low incidence of complaints. It is sobering to continue to note that in PPS, of the relatively few complaints that arise, a high proportion of those that were centrally logged and have been completed in 2012 were **upheld/partially upheld** (29% in 2012, 50% in 2011, 20% in 2010, 33% in 2009, 27% in 2008, 36% in 2007, and 14% in 2006). In addition, in 2012, a further 26% were informally resolved, making those upheld/partially upheld, and informally resolved a total of 55%. A recurrent proportion of complaints being satisfactorily concluded of this magnitude is of vital importance not only to the complainants concerned, but also for those who handle complaints within PPS, and is another indicator of how important it is to have a proper Complaints Handling Process. I again draw attention to the fact that every complaint at whatever level in the organisation and whether upheld or not provides an opportunity to improve the quality and efficiency of the public service provided by PPS.

My 100% audit in 2012 provided me with a basis for other comments about the way in which complaints are handled in PPS – see Chapter 2 for my remarks on this subject. I have stated before in previous Reports my concern about timetabling Complaints Handling in PPS. **It is vital now to ensure that every complaint or request from a stakeholder in writing at any level is acknowledged within five working days.**

In so far as the timetable for dealing with the substance of a complaint is concerned, the minimum standard that must be achieved is that the complainant be given an estimate of when the complaint will likely be concluded. If it appears at any point in this period that the complaint cannot be concluded in the time estimated, the complainant should be informed immediately. **Once again, this has not often been achieved.** The PPS literature states that PPS will normally seek to make a full response within 20 working days. A complainant should be given an appropriate timetable at the start of his/her particular complaint, and if this needs to change the complainant should be told at once. Currently, this seldom happens.

While 58% in 2012 of tier two complaints were concluded within 20 days, it is far too common for the opening paragraph of a letter to a stakeholder to have to begin with the phrase 'I am sorry that it has taken so long to deal with your letter'.

My 100% audit in 2012 suggests that the tendency to use 'legal' language to complainants that is more appropriate for communicating with fellow legal specialists, is now seldom an issue in PPS. **Good complaints handling means communicating with all complainants in plain English** – in general the standard of this form of communicating is excellent in PPS.

There is a continuing need for reference by prosecutors, in cases where there have been complaints, to the existence of the relevant PPS Codes and Policies. Recently the arsenal of these codes has been further complemented with new guidance documents. I have pointed in particular to the excellent Code for Prosecutors, which is so helpful in explaining prosecutorial matters to lay persons, and making the processes clearer to PPS stakeholders. **This Code and others are also seen by stakeholders as an authority independent of the prosecutor concerned.**

I would like to see yet more, and more frequent mention of and reference to the relevant Code as standard practice where there are questions raised about Complaints Handling Processes in PPS. **I have to report that there continues to be far too little mention of these important documents in the conclusion of complaints at the second tier in 2012.** I regard this as unfortunate, however excellent the text of letters sent out – and these were in general otherwise of a very high standard. **I find it difficult to understand why prosecutors would not seek to utilise these excellent documents at every appropriate opportunity, as an added authority when unpalatable decisions have to be communicated to complainants.**

There are excellent leaflets available relating to PPS Complaints Handling Processes and also to the way the IAC operates the independent third tier. Specific reference should also be made to these aids. Copies of the PPS and IAC leaflets should always be sent to complainants in the first instance in a complaint. These leaflets I am told, now form a standard part of the profile information pack for PPS sent out widely to describe the roles and functions of PPS, so why not to stakeholders who are worried and have queries, have a need for information or have complaints?

If PPS is to continue to have a three tier Complaints Handling System, it is essential at the very least, that on the conclusion of a complaint at the second tier, reference should be made to the existence of the third tier to which a complainant has resort if he/she remains dissatisfied. By the same token, reference should be made where written complaints have been received at any level, and concluded in writing to where the complainant can go if they remain dissatisfied. I hasten to point out that in no sense should the Complaints Handling Processes conducted within PPS at any level, or operated by the IAC be promoted as such. But equally, no-one should feel excluded from the Processes; all three tiers must simply be clearly accessible and visible to all stakeholders if they need them.

During 2012, I had two formal meetings with the Director as required by my formal remit. I thank the Director for this access and the support he has provided. My policy and operational relationship with PPS had been conducted through regular contact with a Senior Assistant Director on both a formal and an informal basis prior to 2012. I have enjoyed an effective and productive relationship with the respective post-holders who retired or were promoted early in 2012. **Subsequent to this, there has been no clarification of precisely with whom that operational relationship should be. I would urge that this be addressed as soon as may be.**

In addition I link with Mr Peter Grant and his staff. He is the person who makes available the necessary access, as requested by me, to files and relevant papers, and who handles the administration of the Complaints Handling Processes at central level within PPS. I am most grateful to him and his staff for their willing response whenever I seek their help.

It is pleasing to be able to report that PPS continues to experience an extremely low incidence of complaints at the second and third tiers of Complaints Handling. It might also be stated that although a zero incidence of complaints is not realistic, it remains a desirable target to seek to achieve. By implication, the low incidence of complaints/requests for information is indicative of a high standard of service for the vast number of cases that PPS handles, and which never attract queries. However, I note again that there are strong indications that these aims need to be revisited and re-emphasised at senior management levels in PPS.

My final comment in this chapter is to note that the ways in which PPS deals with complaints remains credible and highly commended.

CHAPTER 4

THE FUTURE of COMPLAINTS HANDLING in PPS

In my Sixth Formal Report, for 2010, published on 31st March 2011, I made three Recommendations to the then Director/Acting Director. My third Recommendation was that the role of the Independent Assessor for Complaints for the Public Prosecution Service should be reviewed. This would complete the process commenced by the thorough Review of the internal Complaints Handling System in PPS which had been a recommendation by me in a previous report. In my Formal Report I stated 'This would include the reporting arrangements for the Independent Assessor for Complaints for the Public Prosecution Service, as well as the question of public accountability in relation to Complaints Handling, including promulgating my Formal Reports'.

I made the point which I regarded as reasonable that although the internal review was complete, and its implementation had been agreed by the PPS Board, perhaps the review of the Independent Assessor for Complaints role might be more appropriately a matter for the 'new Director' when he had been appointed. In the event, Mr Barra McGrory QC took up his position as Director in November 2011.

I repeated this Recommendation in my Seventh Formal Report published in March 2012. This stated 'My second Recommendation is now that Mr Barra McGrory QC is in place as Director, a review of my position as IAC for the PPS is undertaken in a manner as the Director sees fit. I shall of course be pleased to co-operate in this process in any way that the Director may deem appropriate'.

It is now clear that this Review may have taken place. The Director informed me in mid December 2012 in a formal meeting with him, that the IAC position would be advertised shortly but gave me no indication of any major changes, or of any way in which I might be of assistance to him in the Review. I received at that time no clear picture of the rationale or methodology being adopted for this Review. To have decided not to consult me in any way – even in relation to what I do and how I do it – might be regarded as somewhat unorthodox given that the way I carry out the work of the IAC is at least in part likely to be outside the direct experience of PPS management. And much of the work of Independent Assessor for Complaints in any event is conducted away from PPS premises.

However, it was clear that the Review may have been more radical than I had understood, when the position of IAC was publicly advertised in mid January 2013, with an appointment to be made by 30th April 2013. Although the title of the position – Independent Assessor of Complaints for the Public Prosecution Service of Northern Ireland – and the headline tasks remained the same as have been developed over the period since its inception in 2005, there appeared to me to be more fundamental changes.

The most important of these is the time requirement. I currently provide 72 days work per annum. The material made available to potential candidates states clearly that the time requirement is 'expected that this will not exceed 25 days per annum'. This is approximately one third of the time allocation that is currently required to carry out the role I deliver. In addition the fee has been doubled, and the date for the publication of the formal report has been shifted to before 30th June each year from 31st March each year. There are also some indications that the independence of the Independent Assessor could be reduced under the new arrangements.

The rationale for these changes has not been discussed with me. In addition, I have not been informed of any arrangements to which PPS would wish me to adhere to provide for a smooth handover to a new incumbent to allow a change to be as seamless as possible. I have been given no direct indication of when PPS wish me to relinquish my position, although I might infer from the advertisement of my post that they will wish me to vacate the position by 30th April 2013 if a new person has been appointed and is in post at that stage. However, PPS will need to consider how to treat any complaint that may still be in train at that point.

These decisions have implications for my Eighth Formal Report in which I would normally make Recommendations arising from my experience of Complaints Handling and relevant events in 2012/13 to which the Formal Report relates. I do not understand the rationale for the changes outlined above, and so to make meaningful recommendations that could only be implemented in the new situation is rendered inappropriate and unhelpful for PPS. I am not in a position to see how such recommendations could be implemented. Accordingly, it would be entirely presumptuous of me to make any recommendations that might make difficulties for my successor.

As my analysis has shown in Chapters 2 and 3 above, there is plenty of scope for operational improvement. In addition I have stated that there are worrying signs that the complaints handling is being afforded a lower priority by senior management than is in my view appropriate. I can only but hope that the parameters facing the new IAC will enable the restoration of an appropriate set of priorities being given to complaints handling at top levels in PPS. The period from the date of this formal Report and the take up of the role by the person who is appointed as the second Independent Assessor provides an excellent opportunity for the PPS to put right some of the issues which I have raised.

Accordingly, I have sought to point out such concerns as I have in my Eighth Formal Report. I do so in the hope that my reflections will be of assistance, and will be noted in the development of complaints handling in PPS under the newly appointed Independent Assessor for Complaints to whom I wish every success.

Chapter 5

CONCLUDING NOTES

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I was appointed in June 2005, on the date that PPS was formally launched. At that time, the Director specifically charged me with providing the highest possible standards in my work of independent oversight of the Complaints Handling Processes of PPS. I confirm that I have continued to strive to do so. I seek to measure my work against the standards that have been laid down by the Ombudsman Association (formerly the British & Irish Ombudsman Association). These are available in a booklet entitled 'Guide to principles of good complaint handling' published in 2007, which I have made available to PPS. Perhaps even more importantly I have sought to achieve those standards laid down for effective complaints handling by the criteria laid down by Her Majesty's Government Cabinet Office and directed at all in the public service – see Appendix 3 of this Report.

There are eight basic principles of an effective complaints system identified in the Government's **Cabinet Office Best Practice** (COBP) – see Appendix 3. I have continued to have these principles in mind in my work in PPS and elsewhere with other clients. **I confirm that it is my opinion that PPS maintains a generally high level of quality in its work in Complaints Handling.** Nevertheless, every complaint handled should be reviewed against these eight principles if good quality is to be maintained.

There are **three** of the eight principles which PPS in my opinion still does not achieve in a generic way. One is the **first** principle which deals with *publicity*, another is the **fourth** principle which relates to being *informative*, and then there is the **seventh** principle which is that it should be *effective*.

The Cabinet Office states in its first criterion that a complaints system should be *easy to access and well publicised*. I believe that the system in PPS is generally easy to access, but that the question of being *well publicised* leaves many aspects to be desired. The leaflets provided should be made more available, and should receive appropriate mention in communications with stakeholders who have complaints about PPS. Also, the question of the timetable for publishing the Formal Reports of the Independent Assessor for Complaints for the PPS should be considered in this context – in my opinion, this matter is over-ripe for review.

It was agreed initially that my Formal Report is properly published and printed and then is distributed to an agreed list of recipients throughout the political, legal and criminal justice systems. I also send a copy to several key persons around the criminal justice system in Northern Ireland and beyond, at this time. It should then be placed on the PPS website. **In my view, all these things should be implemented immediately or shortly after it is made available to the Director on 31st March each year.**

It is noted that in the published material to support the appointment advertisement for the role of the IAC, that PPS has altered the publication date from 31st March to 30th June each year – this will have the effect of ensuring that the Director may not have time to consider what the IAC reports for the previous year in relation to the Complaints Handling Process when he publishes his own Annual Report at the end of June each year – unless of course that date too is to be slid forward.

It is my view that copies of the IAC Reports should be sent out as had originally been planned, to Parliamentarians, MLAs, Government Officials and other organisations in the Justice system. It is only in this way that proper public accountability in these matters can be maintained. **It should be obvious that the excellent story that the very low incidence of complaints and their generally acceptable processing which have been described in my successive Formal Reports should not be allowed to go untold.**

The COBP also has it that the complaints handling system should be *informative* by which they mean ‘providing information to management so that services can be improved’. I have commented in several parts of this Formal Report where I see that this can be improved. **The main problems lie now I believe with senior management, and PPS will need to decide how to use the system to implement and maintain the highest quality to improve further the excellent service PPS provides.**

In its seventh principle, COBP states (that complaints handling systems need to be):-

‘effective – dealing with all points raised and providing suitable remedies’

This is directed not only within the particular complaint, but also in terms of general improvements to the service PPS provides. The achievement of this principle lies well with the fourth principle, discussed briefly above. Once again, I would hope that PPS senior management will consider this principle, and take action to make good any shortcomings.

As ever, it is appropriate for me to comment that my role within PPS has been largely advisory, recommendatory and independent. Apart from dealing with complaints at the independent third tier, otherwise it is effectively and merely catalytic. I therefore emphasise that the credit for any achievement in good Complaints Processing in PPS is down to the efforts of management and staff of PPS under the Director. **But by the same token, it is obvious that when performance falls away, PPS senior and other management need to examine their part in any shortfall and take early action.**

I wish to thank all those concerned for their responsiveness to my role. I confirm that, where I have required support and assistance, this has readily and willingly been made available by PPS. I would also wish to highlight and commend the strenuous efforts made by PPS to ensure the integrity and independence of the role of The Independent Assessor.

I think that it is appropriate once again, as I have in the past, to emphasise that PPS remains a very low complaint organisation. Every complaint to PPS must continue to be regarded as important, and I urge that the senior management of PPS continues to have this as policy in its sights at all times. It is nevertheless, with a case-load running at a level just under 50,000 per annum, with the incidence of complaints arising of only 70 at the second tier, and with 8 cases being referred to the third tier, **a highly creditable performance and worthy of commendation.**

In 2012 my Formal Report, although published late in the year, was distributed using e-methods for the most part. This reduces considerably the cost of printing, while at the same time taking cognisance of Government policy in using e-technology. This makes a modest contribution to cost saving, but in the context of a fundamentally low cost operation, such a contribution becomes important. I have no staff and do all my own administration and typing. I believe that I have delivered good value to the public in this work and also in pointing to service improvement and providing accountability opportunities in the operations of PPS.

It saddens me to have now to leave my role as IAC for PPS. This has been a seminal experience in my working life. It has been a privilege to have worked with the high quality organisation that PPS is. It has been a very great privilege too for me to have provided a public service with a major challenge to break new ground, and further to be permitted to develop a system which has been operating generally to a very high standard over the past nine years. The System been inspected rigorously by the Criminal Justice Inspectorate of Northern Ireland. It has been examined thoroughly and critically by Her Majesty's Crown Prosecution Service Inspectorate, and found by them appropriate to recommend to the Crown Prosecution Service as an operational model for implementation by that organisation in 2013. This will then become the second such scheme with an independent tier in any prosecution service in these Islands.

In the light of the changes that appear to have been made in the review of the role of the IAC, now is an appropriate time for me to leave further development in the hands of a new IAC, to whom I offer my very best wishes. It only remains for me to thank PPS for allowing me this opportunity to initiate and develop this important public service.

Alasdair MacLaughlin

31st March 2013

Appendix 1



Alasdair MacLaughlin has been the Independent Assessor for Complaints for the Public Prosecution Service since 2005

Alasdair MacLaughlin has extensive experience of private, voluntary and public sector work in Northern Ireland, Great Britain, Ireland, the EU and the USA. Originally trained as an economist, his career has been as a manager in manufacturing and consultancy (15 years), the CBI Director Northern Ireland (10 years), and the Director General of the Ulster Farmers' Union (10 years).

For the past eight years, he has been the Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland. He is also The Lay Observer for Northern Ireland overseeing the complaints handling processes of the solicitors' profession. He is an Assessor for the CCEA – the curriculum authority in Northern Ireland and works as an independent self-employed complaints examiner for other organisations. He is a Trustee of the Belfast Association for the Blind.

Previous activity includes membership of the Boards of several private companies, and of the Probation Service of Northern Ireland. He is a former member of the Council of the University of Ulster, Governor of a Grammar School, and a member of two EU Monitoring Committees. He has been a Regulator for the Institute of Chartered Accountants in Ireland, a panel member of the Industrial Tribunals and the Social Security Tribunals, a member of the NI Economic Council, and of the former Standing Advisory Commission on Human Rights. He is an experienced advisor to the UK Government in Whitehall, to the Wales Assembly Government, and to the Polish Government.

Alasdair MacLaughlin is an organist, is interested in nature and walking, and plays golf for fun.

Appendix 2

Paper as requested by the Justice Committee of the Northern Ireland Assembly on 5th January 2013

PAPER for the JUSTICE COMMITTEE relating to the Seventh Formal Report of the INDEPENDENT ASSESSOR for COMPLAINTS for the PUBLIC PROSECUTION SERVICE of NORTHERN IRELAND

Introduction

1. The Independent Assessor for Complaints for the Public Prosecution Service of Northern Ireland acknowledges the letter dated 21st December 2012 from the Clerk, Justice Committee. This communication arrived with him on 5th January 2013, having been delivered by the internal postal service. In her letter the Clerk notes the receipt of the Seventh Formal Report of the Independent Assessor from the Director Public Prosecution Service (PPS). The Committee has requested further information on how the Complaints Process operates and who is eligible to submit a complaint.
2. The Independent Assessor position was established on 13th June 2005 – the date on which the PPS was formally launched. The function operates entirely independently of the PPS, but is governed by protocols which were written by the Independent Assessor, but which were agreed with the then Director of PPS the late Sir Alasdair Frazer QC CB. The costs of the Independent Assessor are borne by the PPS – which is entirely right given that the complaints handled emanate from the stakeholders of the PPS.

The Complaints Handling Process

3. The Complaints Handling Processes, like other similar systems in other organisations has a three tier operation:
 - Tier 1 - where a complaint arises at the stakeholder/PPS interface
 - Tier 2 - where a complaint has been handled at Tier I, and where the complainant remains dissatisfied with the outcome
 - Tier 3 - where a complaint having been dealt with at Tier 2, and where the complainant is still dissatisfied with the outcome.
4. The **first** Tier is handled at the interface with the stakeholder, and in the vast majority of cases is successfully concluded there. Such cases are not usually made in writing, and quite correctly are not counted.
5. The **second** Tier is dealt with by management, and although a stakeholder can make the complaint in other terms than written, the complaint is translated into hard copy, so that these complaints can be counted and a control trail created. The number of such complaints is around 100 - 150 each year. Complaints at Tier 2 are dealt with by management, as directed by the Director or as deputed by him.

6. The **third** Tier is dealt with by the Independent Assessor, who is entitled to have access to all relevant files at PPS on application. The process is conducted in writing so as to provide a control trail. The number of complaints received at Tier 3 number 8 - 15 in the year.
7. The Independent Assessor has no remit in prosecutorial decisions. Thus complaints about purely prosecutorial decisions are not within the remit of the Independent Assessor. These are professional, legal decisions which require specifically trained professionals to progress.
8. However such complaints or requests for review are also handled within a three tier system; the one difference is that the third tier is handled by the Director PPS. Any other complaint from any external stakeholder of the PPS can be dealt with by the Independent Assessor. The remit does not however extend to internal employment or disciplinary matters which are properly the subject of other legal arrangements.
9. It should be noted that although the process outlined above describes the 'normal' methodology, there are and have been exceptions in order to assist the complainant. For example where the Director takes the view that a complaint should be accelerated through the system because it has unusual features, or is sensitive in some manner or indeed is particularly serious or urgent, he will short-cut the second Tier and take the matter straight to the Independent Assessor. This has happened on a number of specific occasions.

The Role of the Independent Assessor

10. Fundamentally, the role of the Independent Assessor for the PPS is **to oversee the Complaints Handling Processes of the PPS and to resolve Tier 3 complaints.**
11. It should be carefully noted that the Independent Assessor is not a champion for the complainant or stakeholder, nor to take the part of the PPS. His role is strictly neutral in dealing with the complaint and attempting to obtain a resolution. He is simply a campaigner for the truth.
12. The design of the Complaints Handling System was deliberately arranged to be accessible to **any PPS stakeholder** who has what he/she considers a complaint. Unlike some complaints systems, no attempt is made to channel a complainant away from the system on the basis of restricting definitions of either a 'stakeholder' or a 'complaint'. A **stakeholder** can be a victim, a witness, a member of the judiciary, a legal representative, an accused, a contractor, a member of the public, or a political representative. The Independent Assessor has accepted complaints from all these types of stakeholders. Stakeholders may present their complaint in person, in written form, by electronic means or through a political representative.
13. The Complaints Handling System also is designed to assist improving service provision by PPS. It was not designed to try to find culprits and scapegoats. A complex organisation like PPS can be expected to make occasional errors of process or mis-understandings with its stakeholders. However, it is agreed that any complaint is always one too many.

How the Complaints Process Operates

14. The reason for a complaint presenting at Tier 3 is often evident, but can also be unclear. It can emerge for example that the stakeholder appears fundamentally dissatisfied with the prosecutorial decision made in a case. This is to be expected in an adversarial system where one or more parties to a case may end up dissatisfied with the outcome. If it turns out to be purely about the prosecutorial decision, the matter will be reviewed internally, with a final appeal to the Director; the Independent Assessor has no business in such matters. **Such cases are always examined by PPS.**
15. But sometimes the stakeholder in these cases can seek to involve the Independent Assessor. In these instances he will normally refer the matter back to the PPS to sort out; however, if it turns out to be a matter of inadequate communication or issues not being properly explained, or indeed some other service lapse, the Independent Assessor will deal with the complaint as a straightforward case.
16. Tiers 1 & 2 are governed by internal procedures for which a clearly written leaflet is made available to stakeholders. These procedures were installed in 2005 prior to the formal launch of PPS. In 2009/10 they were reviewed by an internal review group. As a consequence, a number of changes were made, which fundamentally had to do with internal administration to streamline and make more uniform the passage of a complaint through Tiers 1 & 2 of the system. This has made the process more efficient and better controlled. Management can now comprehend that the passage of the complaint will be dealt with in a standard way across all Regions of the PPS, and can map where a complaint is at any time. There are clear, detailed and summary written procedures for the reviewed internal system available within PPS.
17. Tier 3 is governed by an external procedure which was designed by the Independent Assessor in 2005 and accepted by the Management Board of PPS – it has not been modified since, and the current Independent Assessor sees no reason to do so. At the same time a number of protocols covering Tier 3 were also written by the Independent Assessor, and agreed by the then Director. These have been followed ever since by successive Directors/Acting Directors and Deputy Directors, and by the Independent Assessor. They are aimed at providing a direct and clear path for a complaint from receipt at the third Tier, and through to its conclusion.
18. The Independent Assessor can be approached directly by stakeholders, by post, by e-mail, and via a political representative. He can be approached indirectly via the PPS as well. All these methods have been used by stakeholders. His leaflet is available in PPS local offices throughout the Province, and community liaison staff refer also to the availability of the Independent Assessor. At Tier 2, managers are also expected to refer to the potential for reference to the Independent Assessor to stakeholders when a complaint is concluded at that level. The audit carried out by the Independent Assessor has found an inadequate performance in this aspect, and has reported the fact in successive Formal Reports.

19. The Independent Assessor has powers to access all relevant files at PPS in a complaint by request, although he may not remove these from the building, or photocopy them without approval by the Director. He may choose to meet a complainant face to face if he feels that this will add to the factual requirements of any investigation at Tier 3.
20. The Independent Assessor has no powers to **require** any action from the Director PPS, or anyone else within or outside the PPS as a result of an investigation. He can however make comment, make suggestions, and make recommendations. If the Director PPS chooses not to accept a recommendation, he must by the protocols explain in writing why he chooses not to do so. In practice, to date there has been no instance of a refusal by the Director PPS to accept a recommendation by the Independent Assessor in a Tier 3 complaint.
21. When necessary and appropriate the Independent Assessor will also recommend that the PPS Director provides an apology to a complainant.
22. The Independent Assessor has the unusual power to audit complaints which are successfully concluded at Tier 2. These are complaints therefore which otherwise he would not have sight of, as they would not reach him. In practice the Independent Assessor has audited ALL complaints received by PPS each year, although a sample would be sufficient for statistical purposes. This is a valuable exercise in that it demonstrates to the Independent Assessor examples of good practice in PPS, and of effective service to stakeholders.
23. On an annual basis, the Independent Assessor provides a Formal Report which is timed, at 31st March to inform the PPS Director for his own annual report on 30th June on matters to do with the Complaints Handling System in the previous calendar year. It is in this Report that the Independent Assessor provides comment arising from his oversight of the System, and is able to outline what has happened in each case he has processed during the previous calendar year.
24. By the protocols, the Director PPS then publishes the Independent Assessor's Formal report on the PPS website, and distributes hard copies to the agencies operating in and around the criminal justice system in Northern Ireland. The Independent Assessor provides copies to the Lord Chief Justice of Northern Ireland, to the Minister for Justice, to the Attorney General for Northern Ireland, and to the Solicitor General for Northern Ireland when he hands over his Report to the Director PPS on 31st March each year.
25. The Independent Assessor reports any shortfalls he has found in the operation of the System during the previous calendar year, within the Report. Findings, comments and recommendations may be found in successive Formal Reports made annually by the Independent Assessor. These are published on the PPS website and in hard copy.
26. The PPS and the Independent Assessor each have separate leaflets written in simple, clear English which are widely available to stakeholders. They are designed to be distinctive, and are clearly separate publications. In his correspondence with PPS Stakeholders, the Independent Assessor uses clear everyday English for communications and expects PPS to do likewise. He explains to complainants what he has found, and why he has concluded as he has.

27. There are times when the PPS has not properly concluded a complaint prior to its receipt by the Independent Assessor. In these circumstances, the Independent Assessor refers the complaint back to the PPS for proper conclusion.
28. There are occasions where the complainant has mis-understood the role of the PPS within the Justice System. It is a matter for the PPS to sort such matters out at the Tier 2 level. However this is not always picked up, and the Independent Assessor sees it as his role to put such mis-understandings right either directly or by routing the stakeholder to the appropriate quarter.
29. There are agreed protocols to be followed by the Director when the Independent Assessor concludes a complaint. There have been some lapses in these processes in recent times to be explained by the disruption resulting from the appointment of the new Director in November 2011. These are being ironed out at the present time.
30. In carrying out his work, the Independent Assessor works to standards that have been established by the Ombudsman Association – formerly the British Irish Ombudsman Association. He also works to the principles which have been laid down by the Cabinet Office of Her Majesty’s Government. The Independent Assessor has made these standards clear to PPS.
31. The Independent Assessor operates what he believes is a low cost and efficient and effective operation on behalf of society. He is self employed, has no staff, and seeks no administrative support from PPS. He handles all business on his own from a virtual office.
32. It will be noted that the Complaints Handling Processes of PPS and of other criminal justice agencies have been inspected by the Criminal Justice Inspectorate of Northern Ireland.

Concluding Comment

33. A complaint handling process should not solely or simply be about resolving complaints, from the point of view of the organisation, although from the point of view of the complainant it is the most important element. The process should in fact be about improving service in the organisation. In the case of the Complaints Handling System in the PPS, this is precisely as it was designed, and what it is aimed at achieving. It is a mechanism for detecting problems which lead to inadequacies of service, as well as helping to detect where services can be improved. **Such an approach can however only operate effectively in a context of professional and mutually respecting relationships between the persons of the Director PPS and the Independent Assessor.**
34. It is of note that the PPS is the first and so far only, since 2005, prosecution service in these Islands with an independent third tier. In this way PPS has led the way, and the experience gained to date has been a matter of some interest in the other jurisdictions. It will be noted that Her Majesty’s Inspectorate for the Crown Prosecution Service of England and Wales (CPS) have carried out two inspections in recent years in relation to complaint handling in CPS. HMCPSI has cited the structure and protocols of Complaints Handling.

35. System of the PPS and has recommended that CPS adopt a similar model. In its most recent Report published this month, HMCPSI have noted that the CPS has made 'no progress' towards achieving the introduction of such an approach. However, it is understood that the CPS will shortly be putting in place an independent third tier.
36. It will be noted that the Independent Assessor will be providing comments and recommendations that relate to his experience in 2012 in his Eighth Formal Report which is due to be published on 31st March 2013.
37. In conclusion, the Independent Assessor stands ready to provide any further information resulting from any questions that may arise for the Justice Committee as a result of this Paper.

Alasdair MacLaughlin
The Independent Assessor for Complaints for the Public Prosecution Service of
Northern Ireland
12th January 2013

APPENDIX 3

Principles of an effective complaints system

Eight basic principles of an effective complaints system have been identified by HM Government's Cabinet Office Best Practice (COBP) to which it expects public bodies to adhere. This states that a complaints system should be:

- *easy to access and well publicised*;
- *speedy* – with fixed time limits for action and keeping people informed of progress;
- *confidential* - to protect staff and those who complain;
- *informative* – providing information to management so that services can be improved;
- *simple* – to understand and use;
- *fair* – with a full procedure for investigations;
- *effective* – dealing with all points raised and providing suitable remedies; and
- *regularly monitored and audited* – to make sure that it is effective and improved.