

ARTICLES

The Office of the Police Ombudsman for Northern Ireland

Organizational Legitimacy and Conditionality

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Abstract

The article addresses organizational legitimacy in the public services, conducting an analysis of the records of the Office of the Police Ombudsman for Northern Ireland (OPONI) 2000-2018. A framework of organizational legitimacy provides a basis for examining OPONI's record with respect to fulfilment of purpose, administrative efficiency and outcomes. Results suggest that OPONI needs to adjust to changing societal circumstances in Northern Ireland to sustain its role in persuading the people that policing is both fair and appropriate. A strategic reset is required given the diminished number of complaints cases linked to political conflict in order to avoid inadvertently destabilizing the post-conflict governance of policing.

Keywords: police, oversight, legitimacy, Northern Ireland.

1 Introduction

This study focused on the work of the Office of the Police Ombudsman for Northern Ireland (OPONI). The OPONI police complaints model has attracted global attention (Ellison, 2007), and it is likely the OPONI model will be referenced in political responses that press for greater independence in investigating police. Also following a spate of police shootings in the USA that encouraged support for the Black Lives Matter movement, calls for the independent investigation of police complaints have risen across the globe.

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Drawing on an analysis of the published statistical records of OPONI since its creation in November 2000, a structured approach is taken to examining the means by which this organization accrues its legitimacy, as a body with a significant role in the governance of post-conflict Northern Ireland. That role is, in specific terms, persuading the people that the delivery of policing is fair and appropriate. The SARS-Cov2 pandemic began in early 2020 and impacted on policing and complaints, meaning that trends examined were disrupted during 2019-2020. The study therefore concludes at year 2018-2019.

In the UK, oversight of police services takes different forms involving separate legislatures, scrutiny bodies, inspection systems and police complaints institutions. In England and Wales, it is the Independent Office for Police Conduct (IOPC) that oversees the police complaints system, and in Scotland, it is the Police Investigations and Review Commissioner (PIRC) (Murphy et al., 2016). In Northern Ireland, unlike the rest of the UK, complaints against the police are managed and investigated by OPONI independently of the Police Service of Northern Ireland (PSNI) (House of Commons, 2018). Of these police complaints bodies, OPONI is the only one to have been provided with the same investigative powers as the police themselves. The financial burden of operating OPONI is considerable; for example, on a per capita basis, it costs six times more than PIRC in Scotland (Office of the Police Ombudsman for Northern Ireland, 2018; PIRC, 2019).

OPONI was created as a non-state actor to investigate police complaints to build cross-community trust in the integrity of the police and support post-conflict governance arrangements. In comparative terms, OPONI, as a new organization in 2000, found itself in a looser operating environment, with greater room for strategic manoeuvring in respect of identity and legitimacy accumulation, than typically afforded to public service organizations. The downside to exercising strategic agency is the possibility of losing legitimacy and public approval when the institution or organization makes the wrong decisions.

Contemporary theorization of organizational legitimacy emerged from academic work in politics and law, which, historically, considered constitutional matters such as the legitimacy of heirs, especially for monarchical succession; arrangements of political power; and the rule of law in society (Barker, 1990). A distinction therefore needs to be made between constitutional and organizational legitimacy, although a degree of interdependency may be evident in practice. In this article we frame organizational legitimacy in terms of generating favourable responses from key external constituent sources. OPONI is an excellent example of an organization with multiple sources of legitimacy to satisfy, including lobby groups pursuing campaigns on the part of victims and survivors of the “Troubles”, human rights-orientated groupings, the Northern Ireland Retired Police Officers Association, the PSNI, the Northern Ireland Policing Board, political parties and the Northern Ireland government.

In this study, we seek to examine OPONI’s strategic approach to its legitimacy as an organization and the viability of positions taken. Two basic questions are posed:

Question 1: In terms of sources, where and how does OPONI seek legitimacy?

Question 2: Is OPONI's strategic approach to managing legitimacy sustainable?

2 OPONI: Background

During the negotiations leading up to the Good Friday Agreement all parties, including the police service and UK government, recognized that police reform, if successful, could provide a punctuation in the ongoing relationships between communities and the state (McNulty, 2002; Mulcahy, 2006). During the "Troubles", attempts to reform the Royal Ulster Constabulary (RUC) in line with changes taking place elsewhere in the UK were never sustained amidst the background of frequent political violence and public order incidents. The RUC had, during the "Troubles", built up considerable expertise and capacity in counter-terrorism policing, a role that the Good Friday Agreement could make largely redundant. Reform was clearly required to help the RUC adjust to working as a purely civilian police service to reset the relationship between the police, Protestant and Catholic communities in Northern Ireland (Ellison, 2007; McGarry & O'Leary, 2006; Patten, 1999; Weitzer, 1996). The *Patten Report* (1999), essentially, created a new police service, held to account by a new Policing Board and a new complaints body in the form of OPONI (Murphy, 2015). Patten's report framed institution building in human rights terms, and, as frequently observed, policing in Northern Ireland underwent one of the world's most extensive human rights-informed programmes of change (Bronitt et al., 2014).

The *Hayes Report* (1997) provided detail for the Police (Northern Ireland) Act 1998 to establish OPONI, a fully independent body empowered and resourced to investigate all complaints alleging misconduct and criminality against a police officer made by a member of the public. Given some historical precedent in Northern Ireland and the UK, the new organization would be constructed around the governance concept of an ombudsman.

It is important to recognize the significance of human rights in analysing OPONI's strategy on managing legitimacy. Following election to power in 1997, the "New Labour" government legislated, using the Human Rights Act 1998, to bring the European Convention of Human Rights (ECHR) into UK law, adding a new dimension to the NI peace talks. The formal codification of the Convention into UK law gave an increased expectation that the rights of individuals could prevail over those of the state. This further added to public expectations in Northern Ireland and linked the peace process firmly into an emerging human rights policy agenda (Harvey, 2015; Rea & Masefield, 2014, pp. 264-272). Patten, by linking "protection of human rights" with the role of the new complaints organization, provided an opportunity for OPONI to craft an identity associated with the wider social expectations of the peace process (Patten, 1999, para 6.42). In 2001 OPONI's powers were extended to temporarily investigate complaints made outside the 12-month time limit but not before 6 November 1998 unless deemed to be "grave or exceptional" cases. OPONI interpreted "grave" to include alleged

police involvement in the death of a person, alleged failure to effectively investigate a death, or widespread and consistent element of criminality, and “exceptional” to include high-profile matters and matters of national importance (OPONI, 2015). The concepts of “high profile” and “national importance” potentially provided considerable elasticity for OPONI in moving into a strategic space where different sources of legitimacy could be tapped. OPONI, in taking this opportunity to investigate legacy complaints about the RUC dating back to a chosen date of 1968, opened up the potential to fulfil a more expansive human rights role than that likely to be afforded by the original role of investigating current police complaints made over conduct and service. The creation, by OPONI, of the Historical Investigations Directorate to deal with legacy cases, changed the basis of OPONI’s legitimacy task. While the Patten Commission had clearly marked the Northern Ireland Policing Board to take the lead role in human rights oversight, OPONI could now begin bringing international human rights standards into its complaints handling role and had created an opportunity for it to investigate the legacy of the “Troubles”, albeit with a very narrow focus on the police. Human rights issues associated with legacy cases offered new sources of legitimacy in the form of local actors interested in deliberating historical rather than current issues of policing, accountability and justice (Martin, 2019, pp. 95-96).

3 Theorizing Legitimacy

Scholarly attention to organizational legitimacy has grown since the 1990s, but perhaps surprisingly, in spite of the significant growth of the state over the last 80 years, a body of empirical work is only slowly emerging on the acquirement, protection and growth of the legitimacy of public service organizations (Contandriopoulos et al., 2004; Hanberger, 2003; Marnoch et al., 2000; Williams, 2018). The study of organizational legitimacy, as noted by Deephouse and Suchman (2008), skewed heavily towards theory development, creating what they refer to as an overgrown “intellectual thicket”, overlapping to some extent with concepts related to status, reputation and trust. They conclude that such theorizing has led to conceptual plasticity rather than agreement on an established framework for understanding the empirical properties of legitimate organizations. Accordingly, an interpretation of the expansive theoretical literature was required to create a framework for this empirical study of one “new start” organization’s legitimacy record.

Legitimacy can be conceived as the presence or absence of doubt on the part of significant individuals or organizations and can be granted only by sources external to the organization; self-production is not a possibility (Meyer & Scott, 1983). There will be identifiable reasons for awarding legitimacy, residing in the congruence and fit of the organization with a person’s beliefs, expectations and perceived interests (Black, 2008, p. 144). The “givers” of legitimacy may deem an organization unsatisfactory in respect of either mission or fulfilment of purpose, when they do not understand what it is doing or perceive it to be acting in ways that do not conform to their expectations, extant rules and social norms. Scott (2014), in a

highly influential book, *Institutions and Organizations*, saw legitimacy not as a commodity but as an unstable condition. Scott's contribution is instructive, pointing the framework towards the task of capturing the extent to which legitimacy can be gained, maintained, possibly expanded but also lost.

The theoretical journey to the typology of legitimacy, which informs this study, involved many attempts by researchers to reach an endpoint of general acceptance, with much relabelling and reassembling of concepts. In a review of theoretical developments since 1995, Deephouse and Suchman (2008) are able to demonstrate how there has eventually been a coalescence around the idea that legitimacy comprises different dimensions in which empirical studies should seek data. Suchman's (1995) three dimensions provided a framework for collecting data for an analysis of OPONI's legitimacy management challenge. The first dimension, *cognitive legitimacy*, comprising predictability, plausibility, inevitability and permanence, gives rise to a sense that the organization is necessary and that its role is unquestionable; the second is *moral legitimacy* arising from judgments on whether the organization is doing the right thing in the right ways (this involves an assessment of how well the organization is aligned with social norms and rules), and the third is *pragmatic legitimacy* resting on calculations made by the organization's most immediate audiences as to how well their self-interest has been met. In this calculus, material outcomes matter (Deephouse & Suchman, 2008). It can be claimed with strong justification that OPONI was born out of a theory of cause and effect, and political agreement as to what was needed to be done in terms of building public confidence in the police, which, if vindicated, should provide cognitive legitimacy. OPONI needs to operate in a manner that produces moral legitimacy when handling complaints, conducting investigations and issuing judgments. The organization is also required to deliver outcomes (pragmatic) that can take various forms but must appear legitimate to complainants, the police and the general public.

With long-established organizations, legitimacy may often be treated as a "given"; however, the theoretical literature on organizational legitimacy suggests otherwise. Legitimacy, it emphasized, is never permanently guaranteed, so seeking, maintaining and repairing the sources of legitimacy is a constant task. That legitimacy generation is an interactional and iterative business, dependent on the acceptance of the organization by others, is likely to be appreciated by the leaders of a "new start" such as OPONI, as such organizations lack an extant well of approval from which they can draw support. Treating legitimacy as an unstable condition requiring the organization to steer through cognitive, moral and pragmatic dimensions within the constraints of a specific operating environment frames OPONI's challenge in this analysis (Ashforth & Gibbs 1990; Clarke et al., 2009; Suchman, 1995). It is also important to note that the degree of agency or freedom to manoeuvre available to an organization to create an impression that is favourable in the eyes of its audience varies considerably (Überbacher, 2014). So, while legitimacy can be produced from organizational action or strategy, opportunities vary considerably according to context and setting (Boyd, 2000). This is a significant factor in appreciating how OPONI has managed legitimacy.

Legitimacy involves a balancing act to reach thresholds of acceptability in each dimension. “Good” outcomes (pragmatic legitimacy) realized through inappropriate investigative practices (moral) may be seen as flawed. Similarly, outcomes that fail to align in the public’s minds with organizational purpose (cognitive) might not generate legitimacy. Legitimacy management will involve proactive strategies to define and give meaning to organizational actions, securing acceptance by different constituent audiences. As it may be impossible to please all sources of legitimacy all of the time, organizations may therefore make a strategic choice to seek to please those whose support they believe to be of most significance. While material results will be required, in addition to demonstrating bureaucratic efficiency, organizations may utilize symbolic actions to signal to their chosen audience that they share the same social norms, values and worldview as managers try to gain legitimacy for their desired strategic direction (Tornikoski & Newbert, 2007).

Accordingly, legitimacy management can be seen to involve discursive processes, implying a need for effective communication (Zimmerman & Zeitz, 2002). Organizations communicate their ideas through language, symbolism and rituals, delivered in practice through press releases, social media, briefings and published reports to convince stakeholders that they share the same views (Bridwell-Mitchell & Mezas, 2012, p. 196). Strategies in the private sector may typically include adjusting mission statements and business plans to give priority to objectives that reflect the wants and desires of the selected audience. Another factor in managing legitimacy is the strategic impact made by the hiring of senior staff with specific job histories. A related aim is to establish an appropriate organizational culture to signify conformance with prevailing social norms (Deephouse & Suchman, 2008).

4 OPONI Framed in Terms of Legitimacy

OPONI has several “providers” of legitimacy: the police, the government, the media, the Policing Board and the wider public. Maintaining government confidence is formally addressed by the provision of technical performance and financial data in the form of annual report documentation. The media, on the other hand, will be appreciative of material that can form the basis of a story in which its readers, viewers and listeners will be interested. Politicians and the public in Northern Ireland will be interested in OPONI’s performance in investigating the PSNI but may interpret results in differing ways, according to which side of the ethno-nationalist political divide they sit on.

The “theory” of OPONI was identified through a political dialogue, resulting in the *Hayes Report* (1997), which recommended an independent organization, based on an ombudsman model, with powers to investigate complaints against contemporary policing. Comprehension and acceptability of the theory are crucial elements in delivering legitimacy. The role and responsibilities of OPONI have been set by law through a political process endorsing OPONI to investigate complaints and case referrals from the PSNI and Public Prosecution Service (PPS). Importantly, OPONI’s established purpose is to investigate and report; it has no

power to make judgments on matters of culpability. If there is discord around the theory of an organization and its role, then the first cognitive base for legitimacy is jeopardized. Were competing views evident on the part of different sections of society regarding OPONI's role, then cognitive legitimacy would be reduced.

However, OPONI also has access to cognitive legitimacy with intellectual roots derived from the human rights narrative promoted by the New Labour government in power at the time of its creation. In public policy, narratives support common interpretations of problems and how they should be addressed. Narratives accumulate significance as multiple participants contribute stories, collectively building up a coherent "worldview" (Shanahan et al., 2014). There will not necessarily be equality in the impact that contributions by different groups make to the story, when it comes to giving meaning to events. New Labour developed a rights-dominated narrative around the Good Friday Agreement and a range of institutions were created as a response to complaints about the violation of human rights in the past. OPONI fitted into this narrative and was established as part of a governance reform programme framed in terms of "consociational" power sharing and political stabilization (McGarry & O'Leary, 2015) with legal powers to investigate complaints against the police. Using these powers to fit the narrative could potentially provide a certain basis for claiming cognitive legitimacy.

From an established cognitive legitimacy base, OPONI could then aspire to generate pragmatic legitimacy in the form of completed inquiries, appropriate responses from the PSNI in terms of disciplinary actions and policy changes and by securing criminal charges when deemed necessary by the PPS and in some cases criminal convictions delivered by the court. Pragmatic legitimacy refers to the extent to which an organization can deliver an acceptable range and level of material impact with respect to its purpose. Thus, complainants, the public at large and the PSNI need to be able to observe material results in terms of individual and societal benefits accruing from OPONI's activities.

Legitimacy is ultimately derived from a number of separate communities of interest that prioritize different outcomes. It is reasonable to assume, for example, that the level of partisan identification with Protestant unionism and loyalism or Catholic republicanism and nationalism would have an impact on what members of the public would want in terms of outcomes. For example, people identifying strongly as republican were expected to value findings of fault against police officers consistent with their perception of police discrimination. To a lesser extent, this same prioritization could be anticipated to be shared by strong identifiers with loyalism. While on the other hand, a growing majority of the public, both Catholic and Protestant, were likely to share a similar interest in OPONI outcomes, related to "ordinary" or contemporary policing. OPONI, therefore, needed at some level to satisfy as many segments of the public as possible. In securing sources of pragmatic legitimacy, there is also the prospect of profile-raising OPONI "blockbusters", in the form of inquiries and reports related to historical events of a magnitude sufficient to command significant audiences.

OPONI, like other organizations, undermines its purpose and outcomes legitimacy if it is unable to acquire moral legitimacy. In general terms, organizations that deal with the public need to be seen as efficient with OPONI seeking to realize

legitimacy through its interactions with the public, the PSNI and interest groups. This can be demonstrated, for example, through delivering a timely service. However, in addition to standard service provider requirements, there are particular issues around procedural justice that must be addressed. Members of the public need to feel that they are given respect and dignity when lodging complaints. Likewise, while considering a case's merits and in any subsequent investigation that follows, OPONI should treat all those it encounters in a procedurally just way to generate public confidence, cooperation and legitimacy (Jackson et al., 2012; Sunshine & Tyler, 2003). OPONI needs to be as clearly impartial in its handling of complaints as possible to claim moral legitimacy.

With any organization, there is a sequence determining the acquisition and maintenance of legitimacy. This study of legitimacy recognizes the interdependence between cognitive, moral and pragmatic dimensions. Outcomes of significance to sources of legitimacy generate pragmatic legitimacy. In OPONI's case, outcomes are instanced by investigations, which lead to police officers being prosecuted or subjected to performance reviews or formal disciplinary actions and PSNI policy changes. On the other hand, "good" outcomes realized through inappropriate OPONI investigative practices may be seen as flawed, thus undermining moral, process-based, legitimacy. Similarly, outcomes that fail to align in the public's minds with organizational purpose might not generate cognitive legitimacy. In this study, we seek to examine the extent to which OPONI has adopted a strategic approach to legitimacy production and also evaluate the viability of positions taken. Addressing the legitimacy task using Suchman's conceptual framework provides an analytic basis for identifying the strengths and weaknesses of OPONI's record over time.

5 Methods

The study involved a rigorous scrutiny of a performance data series covering an 18-year time period. The performance account presented by OPONI in its Annual Statistical Bulletin series was the main source of data. Data collection and presentation is managed by OPONI's Statistical Unit. In focusing on this story in numbers, the intention was to deal with the basic statistical record OPONI produces through the collection of data relating to its achievements in respect of inputs, processes and outcomes (Marnoch, 2008). The bulletin informs the performance story presented in the OPONI Annual Report series, which is a more interpretation reliant publication. The Annual Statistical Bulletin series is designed for public consumption, covering trends and patterns in police complaints and identifying any issues that may need to be addressed. OPONI also reports to the Northern Ireland Policing Board, providing a profile of complaints received. For the purposes of this study the Annual Statistical Bulletin was considered to be the primary source that needed to be given priority in analysing the legitimacy problem.

The bulletin provides a rich account of OPONI's performance, presented in 26 tables covering numbers of complaints, allegations, complaints, informal resolution, closures and recommendations to the PPS and police. In nearly all cases

a five-year time series is provided for each statistic. Since the range of statistics collected by OPONI has been largely fixed since the first report, the analysis in this study has, accordingly, been based on a full 18 years of OPONI activity. Since the quantified record examined is based on OPONI's own data, the current study has avoided excessive levels of qualitative interpretation (Bryman, 2003, pp. 157-171). In short, it is a record of performance summaries but benefits from being an official version that has been scrutinized by external actors over two decades. As a statistical series, the data can be readily re-examined by other researchers. In methodological terms there are a number of significant attractions in using annual statistical bulletins. When statistics are in the public domain, they are an attractive option for researchers in terms of availability and efficiency. The analytic work can focus on data selection for review rather than data collection. There are also fewer reflexivity issues, meaning researchers are unlikely to attach their own meanings to the type of social interaction that would take place in, for example, research interview. Statistical records compiled in bulletins are non-reactive to the research process, implying a stability that other forms or methods of research may not guarantee. This can afford re-analysis over time, provided the level of "churn", where one indicator is replaced by another, remains low (Talbot, 2004). There are measures of exactness and coverage over time and range of performance to be considered, where the quality of one statistical bulletin can be compared to another and findings graded accordingly.

Researchers need to avoid bias in selecting statistical indicators for analysis. In this respect, they should also indicate whether they consider the compiler of the bulletin to have omitted any significant measures. Statistical bulletins of the type examined in this study offer an efficient and effective means of analysing change and development in the way an organization performs over time. Researchers, if familiar with a statistical set, are able to demonstrate a capacity to identify pertinent information. Pattern recognition is possible with careful re-reading of statistical series by well-informed researchers, representing the point at which the researcher's interpretation of data becomes a significant part of the analytic process.

The analysis, dependent as it is on this statistical record, has certain limitations. While researchers can learn through the examination of statistics, this alone does not explain how an organization operates on a day-by-day basis or at a strategic level (Atkinson & Coffey, 1997). Understanding why OPONI has taken certain decisions would certainly be very useful. The possibility of conducting in-depth interviews with key figures within OPONI and the PSNI, for example, should be examined for future research. The study has also not drawn on data generated in numerous opinion surveys commissioned by OPONI or the PSNI on the basis that the questions posed were not fit for purpose in the context of analysing legitimacy management. In relation to the current study a specially designed survey of both serving police officers, retired police officers and the public would have been useful as a complement to the analysis conducted of published data but was beyond the scope of the research team. Future research should consider bespoke survey work.

6 Analysis

Question 1: In terms of sources, where and how does OPONI seek legitimacy?

Question 2: Is OPONI’s strategic approach to managing legitimacy sustainable?

6.1 Current Case Investigations

Except for a few case referrals made by the PSNI and PPS to OPONI, all investigations begin with a complaint made by a member of the public. Calculated on the full financial years covered by the first Ombudsman’s tenure (2000-2007), the average number of complaints per annum was 3,183. During the second Ombudsman’s time in post (2007-2011), the average per annum was 3,261. The third Ombudsman ran an organization dealing with an average of 3,104, between 2012 and 2018. The data therefore shows a gradual decline in complaints, falling to 2,561 in 2017-2018. (Table 1.) That the numbers have fallen slowly indicates that the organization has a solid cognitive legitimacy base in public acknowledgement of OPONI’s place in the scheme of post-conflict Northern Ireland. (Q1). If a trend analysis showed complaints reporting to be in decline, it might indicate that the public are not confirming their endorsement of the OPONI’s purpose. Alternatively, of course, a decline in the number of complaints could indicate a positively received behavioural change on the part of the PSNI in the way it deals with the public.¹ Further investigation involving either survey work or in-depth qualitative research with the public would be required to fully understand why complaints are falling.

Table 1 Ombudsman term of office and average number of complaints received

Period	Average number of complaints
2000-2007	3,183
2007-2011	3,261
2012-2018	3,104

Table 2 Average number of case closures completed by OPONI

Period	Case closures
2000-2007	3,084
2007-2011	3,356
2012-2018	3,139

How organizations go about their business is a significant element of legitimacy management. OPONI’s management of complaints is a moral legitimacy challenge. A basic process structure exists whereby cases may be closed after initial assessment

1 Unless otherwise indicated, data has been extracted from Office of the Police Ombudsman for Northern Ireland (2010; 2019). The pandemic that began in 2019-2020 impacted on policing, complaints and complaints processing, meaning that data from this period should not be included in an analysis of long-term trends dating from OPONI’s beginnings in 2001.

– firstly, if they are deemed to be outside OPONI’s remit, which is specified in law; secondly, if the case is “ill-founded” which involves a preliminary review and decision by investigators; thirdly, if the complaint is withdrawn by the complainant; fourthly, if investigation is not possible because of a lack of cooperation by the complainant. Lastly, a formal investigation may not take place if the complainant accepts informal resolution. OPONI investigations may also begin but be discontinued if initial inquiries fail to substantiate the basis of complaints. There are thus numerous ways in which complaints can be dealt with, all potentially resulting in individual complainants or police officers being satisfied to varying degrees with the process, as opposed to the eventual outcome. The potential to lose moral legitimacy is clear, if, for example, a very tight interpretation of legal remit is used or the appraisal of the initial claims being made lead to too many decisions of “ill-founded” in the eyes of the public. Calculated using the same Ombudsman tenure periods, average closure numbers are as follows: 3,084 in 2000-2007; 3,356 in 2007-2012; and 3,139 in 2012-2018 (Table 2). From 2015, there has been a small decline such that in 2017-2018 only 2,656 closures were recorded. With broadly similar numbers recorded over the course of the three periods, the data is showing that OPONI can complete an administrative process that accrues a high degree of moral legitimacy (Q1). The management problem involves achieving an acceptable balance in between accepting and rejecting complaints to be investigated. If members of the public feel there is no point taking a complaint forward because it will not pass the test for investigation, then the whole system would be jeopardized, with cognitive legitimacy being lost in the sense that OPONI loses its status as the primary organization that should be used for complaints against police officers. A particular problem might be associated with, for example, the time taken to process a complaint from initiation to resolution.

Table 3 Case closures analysis 2017-2018

Outside Remit	Closed After Initial Enquiry			Informally Resolved	Fully	Total
	Ill-founded	Complainant did not engage	Other (includes withdrawals)			
391	384 (14.5%)	728 (27.5%)	95 (4%)	170	887	
391 (15%)	1207 (46%)			170 (6%)	887 (33%)	2,656 (100%)

Pragmatic, outcome derived legitimacy in the form of actions against errant police officers is less easily accumulated (Q1). Understanding the problem with generating pragmatic legitimacy requires that cases investigated by OPONI need more detailed examination. As shown in Table 3, 2017-2018, the 2,656 closures breakdown is as follows: 391 closed after initial assessment because the complaint was outside OPONI’s remit; 1,207 closed after initial inquiries, of which 728 ended because the complainant did not fully engage with the complaints system; 384 because complaints were found to be ill-founded; and the rest were either withdrawn or

classified as “other”; 170 cases were resolved informally; and one historical case was identified. This left a total of 887 cases that were fully investigated in 2017-2018. OPONI therefore investigated 33% of the complaints it received, which is consistent with the long-term records in this respect.

As recorded in Table 4, of these 887 complaints investigations, 675 were not substantiated, or no issue of concern was identified, leaving a small number (212) that were substantiated or in which an issue of concern was identified. Thus, only 8% were determined to be justified. Such a low figure is problematic for OPONI to claim pragmatic outcome legitimacy and requires other outcomes as the basis for claiming pragmatic legitimacy (Q1).

Table 4 Outcome of fully investigated cases 2017-2018

Fully Investigated	Not Substantiated	Substantiated / Issue of Concern
887 (33%)	675 (25%)	212 (8%)

If OPONI decides that a police officer should be prosecuted, it submits the case to the PPS to decide on prosecution, in line with accepted legal practice that investigation and prosecution should be separate functions. In 2017-2018, after investigation, OPONI submitted 105 cases involving a criminal allegation to the PPS to make the prosecutorial decision. During the same period, the PPS directed prosecution in only three of the 193 cases on which it had made a prosecutorial decision (PPS, 2019). This means that 0.2% of the complaints made resulted in a decision to prosecute. Since OPONI became operational in 2000, and up to 2018, the PPS has brought some 99 cases against police officers to court; of these, only 30 cases have resulted in a defendant police officer being found guilty (on at least one charge). Considering these findings, should complainants view an investigation as the result they value, then nearly one in three will be rewarded with a positive pragmatic outcome, but for those seeking an investigation result that finds fault with a police officer’s conduct, then less than one in 12 will be satisfied. In answering Q1, which concerned sources of legitimacy and how they were collected, it is not clear how complainants value different “outcomes”, and further research involving survey work or in-depth qualitative interviews is needed.

In order to understand more about the outcomes associated with OPONI investigations, a Freedom of Investigation² request for data on OPONI’s recommendations for disciplinary and performance action against a police officer was made (Police Service of Northern Ireland, 2022). This provided a response for a single year 2017-2018, when 180 cases were reported to the Chief Constable, of which 168 resulted in action against a police officer(s), while 7 cases went to a disciplinary hearing. As regards historical cases (see further on), it should be pointed out that recommending disciplinary and performance action is not an option given the individual officers involved have almost certainly retired; the data therefore refers to contemporary policing. If outcomes (Q1) are to be counted in

2 PSNI F-2022-00058.

terms of disciplinary action against officers because of OPONI recommendation, a stronger claim for pragmatic legitimacy is possible. However, there are again problems with establishing how complainants value different forms of outcome. It is quite possible, for example, that a complainant may assume transgressions by police officers require “justice” in the form of prosecutions, prison sentences or an attribution of fault on the part of the police. In-depth interviews would be required to resolve this type of problem. It is also not clear how much value OPONI places on disciplinary and performance action outcomes in comparison with prosecutions. This is clearly an important factor in the strategic management of legitimacy but would require in-depth interviews with senior staff prepared to engage on the issues involved.

7 Policy Recommendations

OPONI has another source of legitimacy in the powers given to it to identify faults in police policy (Q1). The organization can accrue pragmatic legitimacy by making policy recommendations to the PSNI, which may be accepted and subsequently actioned. Data recording the PSNI response to policy recommendations made by OPONI available since 2012-2013 shows recommendations are relatively quickly dealt with; for example, in 2012-2013, a total of 38 out of 47 recommendations (81%) were accepted. In 2013-2014, the figures were 13 out of 22 (60%), and in 2014-2015, 61 out of 67 (91%). The data indicates that influencing policy change is a significant source of pragmatic legitimacy for OPONI; however, the recommendations are concerned mainly with operational rather than strategic policy. There is no evidence that the Policing Board, which holds the PSNI to account, is dissatisfied with the police reaction in this regard but also little evidence that OPONI regards securing policy change as a source of legitimacy. Interviews with Policing Board members and OPONI staff would again be helpful in resolving this issue.

8 Historical Investigations

OPONI's role in investigating complaints against RUC officers during the “Troubles” represents a potentially rich source of different types of legitimacy (Q1). The Good Friday Agreement and resultant policing reforms (Police (Northern Ireland) Acts 1998 and 2000) marked a punctuation in policing style and social norms, which, supported by the New Labour government's human rights narrative, raised public expectations and created space for policing organizations and their leaders to innovate and seek positions in the new order. OPONI, whose leadership shared the now dominant human rights narrative, interpreted a 2001 legal provision in “exceptional or grave” cases to expand its role to investigate public complaints against the police and its officers throughout the 30 years of the “Troubles”. There is no indication that such an extension of the OPONI's role to pre-1998 policing was envisaged when the organization was created. To investigate these legacy

complaints OPONI created a Historic Investigation Directorate, a key strategic action.

OPONI can accept complaints outside the statutory time limit only if it considers the complaint to involve a grave or exceptional matter that, in effect, involves allegations that the police breached Article 2 (right to life) of the ECHR. Allegations of this nature are newsworthy, attracting the attention of the media and rights groups. Further empirical research examining the magnitude of media coverage for these investigations in comparison with contemporary prosecutions, disciplinary outcomes, or policy outcomes would be useful, as this may influence OPONI's strategy on realizing legitimacy.

The data provided by OPONI up to 2019 records a total of 243 "Troubles" related complaints closed by the Historical Investigations Directorate with a further 205 pending, which provides the potential for OPONI to realize cognitive legitimacy in confirming its purpose as a Good Friday Agreement institution situated in a human rights narrative. Investigating historic or legacy complaints about the RUC offers the opportunity to accrue legitimacy from groups embracing the human rights narrative (Q1). That the RUC ceased to exist on 4 November 2001 made it easier for OPONI to investigate historical complaints, as the new police service (PSNI) sought to distance itself from its predecessor, as intended by the architects of the Good Friday Agreement. In total, 14 OPONI historical case files have been received by the PPS, none of which have resulted in a prosecution (PPS, 2019). It needs to be stated that some complainants may place high value on the process of bringing a case to the PPS by OPONI, as opposed to a prosecution taking place. Whether this satisfies complainants in terms of an outcome is an unknown that would require very carefully designed qualitative research to provide an answer. Sustainability is a significant issue since it is unclear whether a prosecution or fault-finding-focused Historical Investigations Directorate has a future given the lack of pragmatic legitimacy being realized for complainants (Q2).

Some greater sense of the limitations of legitimacy-building material available was found on OPONI's (2019a) website, which provided a profile of the organization's achievements with respect to investigating historical cases in which a conclusion has been reached (Q1). There are 24 cases from the period 1969-1998 for which OPONI presents a summary of the substance of the complaint and key findings. Each case can be categorized according to the assessment of the complaint used by OPONI in taking a decision to proceed with an investigation. Of the 24 cases (nine of which involved more than one type of complaint), 12 cases examined alleged collusion between the police and others over the use made of intelligence. More specifically, they concerned the withholding of information, failures to act on intelligence or inappropriate levels of protection given to informants. Of these, eight were rejected and four upheld or partially upheld. Two cases involving allegations of killing by police action or unlawful killing were rejected. Investigative bias formed the basis of two cases, which were upheld. Thirteen other cases centred on allegations of the RUC using a flawed inquiry process, the misinterpretation of intelligence, conducting the wrong type of investigation or poor investigation. Of these, 12 were upheld, with only one rejected. There was another case upheld that had been initiated by a complaint made by a police officer, and one in which the

police were not the subject of the investigation. A further case, which was upheld, centred on the breaching of rules on the treatment of a vulnerable person.

The historical investigations and outcomes, such as they are, therefore add little material to a narrative that casts the police as violators of human rights during the “Troubles”. The most frequent “upholds” related to a flawed inquiry process. Such matters are hard to completely eliminate and should be guarded against by using strong institutional controls and policy manuals. Positive developments in this respect began to take place in the 1990s, which may encourage OPONI investigators to make unwarranted assumptions about what represented accepted standards in the 1970s and 1980s. Investigative bias is another management issue that has been identified, but, again, this is hard to completely eliminate given the way human cognitive processes work. Rather, it is a failing that needs to be guarded against with strong institutional correction mechanisms, which, for example, would encourage investigating officers to guard against making assumptions. Such findings are unlikely to be challenged given the relatively low profile of the problems involved. On the other hand, “judgments” of unlawful killing or collusion are highly combustible in terms of political and media attention and offer very fertile ground in which to plant claims for outcome legitimacy.

Two investigations did concern accusations categorized as “killed by action of police” or unlawful killing. Neither was upheld. Another potentially high-profile case concerning an accusation that the police acted as agent provocateur was also rejected.

The record would suggest that it is easier for OPONI to describe an investigation as flawed, or that the RUC as an institution colluded, than to establish individual culpability, as it attempts to claim outcome legitimacy from legacy complaints. Police collusion has been the subject of much popular comment and some legal attention over the last 20 years; it is easy to allege and difficult to disprove. There is no crime of collusion, but there are a number of criminal charges that apply to the acts alleged to be collusive, such as aid, abet, counsel or procure an indictable offence (this is an offence liable to be tried by judge and jury), conspiracy, assisting offenders, withholding information, possessing material likely to assist terrorists, attempting to pervert the course of justice, misconduct in public office and obstruction. To date, no one has been prosecuted, let alone found guilty, despite the numerous criminal charges applicable. Thus, using the term “collusion” may be seen as a rhetorical device to derive pragmatic legitimacy by attributing “fault” and cognitive legitimacy from key constituent sources by affirming that part of OPONI’s sense of purpose is closely aligned to the Good Friday Agreement human rights narrative (Q1).

Given its considerable cost and staffing requirements and failure to bring any investigation to a judicial tribunal, the OPONI Historical Investigations Directorate could seek justification in the fulfilment of its purpose and demonstration of efficient, effective and fair process. However, the available evidence indicates that legacy investigations involve lengthy completion times that may infringe rights to a fair trial and private life of those investigated. In terms of realizing pragmatic outcomes legitimacy through historical investigations, OPONI’s record is poor, as is its efficiency and speed in processing complaints. In terms of producing and

re-producing legitimacy, a very heavily weighted effort goes into using public statements to generate cognitive rather than pragmatic and moral legitimacy. That investigation of legacy complaints continue suggests that OPONI views making public statements supporting allegations of rights abuses as an outcome from which it can claim legitimacy (Q1). This is not thought to be sustainable, however, if the rights of those investigated are being breached (Q2). A recent inquiry in England conducted by the Independent Office of Police Conduct into allegations of police misconduct, involving a similarly long and protracted investigation, found that the human rights of those investigated had been breached, resulting in significant damages to the officers concerned (Police Federation, 2022). Legacy investigations taking an inordinate amount of time are likely to be breaching the human rights of those under investigation.

9 Current Cases Profiled on OPONI Website

OPONI has publicized information concerning a few concluded investigations on its website (OPONI, 2019b). This is a “shop window” for OPONI’s caseload and represents a strategic effort to realize pragmatic legitimacy by enriching its outcomes achievement profile (Q1). When a series of years are examined, a clear trend would appear to exist in respect of the variety and type of incidents used to publicize. The investigation timetable from incident to OPONI report means that 2016 was the most recent year to provide sufficient numbers of investigations to examine. Regarding 2016, to date, eight cases appear on the website. Of these, all but two relate to routine investigations carried out by OPONI following a referral by the PSNI when its officers used CS spray or Taser as weapons of restraint. The other two investigations featured related to allegations of speeding by PSNI officers and irregularity in a police search. The pattern was very similar in 2015, where 17 cases are publicized, all of which refer to CS spray or Taser incidents, bar an investigation into why the police had not arrested a man who had tried to enter a flat repeatedly and then subsequently killed an occupant. It is not until we go back to 2014 that the website publicizes an investigation related to a current Northern Ireland “exceptional” case. This investigation involved a man detained under the Terrorism Act 2000 and concerned his continued detention. OPONI concluded that the reviewing officers had fulfilled their responsibilities to consider representations made to them by the man’s solicitor in line with the requirements of the Terrorism Act and relevant sections of the PACE (NI) Order (1989). Going further back, the OPONI website contained a richer range of investigations to place in its “shop window”. In 2009, 30 incidents and investigation outcomes are described, of which nine relate to Taser incidents, a further 18 refer to allegations that could apply to any other UK police service and three are connected to post-conflict Northern Irish political and social circumstances. These included a police officer disciplined following inappropriate comments to members of the public (advising them to contact a dissident republican to help resolve a neighbourhood dispute), discharge of baton rounds during a public order disturbance and an officer disciplined for failing to disclose information in a court

case, which involved the prosecution of a number of people following a sectarian attack.

In marked contrast, going back to 2002, the set of publicized incidents and investigations are far more recognizably associated with post-conflict Northern Irish political and social circumstances. Some 39 investigation reports are described, and 29 of these are clearly associated with the work of a police service engaging with incidents whose origins can be deemed exceptional Northern Ireland. These included an investigation into whether MI5 had influenced the Chief Constable and a report identifying communication and coordination problems between police and military units dealing with public disorder in North Belfast, numerous incidents involving the discharge of baton rounds and a smaller number involving firearms. The inescapable conclusion to be drawn from this examination of the OPONI “shop window” is that the stock of complaints “material” has, over the years, become devoid of cases that relate to an exceptional Northern Irish political situation. Accordingly, OPONI’s work is increasingly difficult to strategically situate within a legacy and human rights narrative (Q1). Whether this is regarded as a success in police governance by OPONI is not entirely clear. In-depth interviews with key staff would be helpful in this respect.

10 Discussion and Conclusions

The analysis of OPONI’s viability in sourcing legitimacy was framed around cognitive, moral and pragmatic dimensions with the intention to problematize the business of producing and re-producing organizational legitimacy. Having established the environmental context in which OPONI operates and framing the problem in terms of the theoretical literature, this study posed two questions:

Question 1: In terms of sources, where and how does OPONI seek legitimacy?

Question 2: Is OPONI’s strategic approach to managing legitimacy sustainable?

With regard to claiming legitimacy from key sources (Q1), OPONI faces a number of strategic issues. The preceding analysis examined OPONI’s performance as represented through annual statistical reports. This statistical set is a depository for legitimacy-building material, with multiple metrics available in trend format. The number of complaints has remained fairly constant since 2000, with a small decline in later years. This consistency suggests that the cognitive legitimacy of OPONI is affirmed by the Northern Irish public, who continue to use the complaints service. OPONI investigates around a third of the complaints it receives, and, of these, around 25% will be substantiated or an issue of concern identified. There is an administrative consistency in the work OPONI does in order to screen complaints, and the absence of a challenge by either politicians or the police to the management practices employed implies that both moral and cognitive legitimacy is being generated. Less than 10% of complaints will typically lead to a finding against the PSNI of any sort; even less, 0.2%, lead to a prosecution. The investigation

itself therefore needs to be perceived as an outcome for both police officer and complainant if pragmatic legitimacy is to be generated.

OPONI also sources legitimacy through the powers given to it to identify faults in police policy (Q1). Pragmatic outcomes are achieved in the form of policy recommendations made to the PSNI, with most being accepted and used to change policies. Also discipline action outcomes are another rich source that can produce legitimacy across all three dimensions. It is clear that legacy cases are problematic for OPONI, hampered by excessive investigation times, the limited scope of investigations and possible infringements of the rights of those investigated.

A further source of legitimacy is sought through the publication of case stories of selected concluded investigations (OPONI, 2019b). This is a “shop window” for OPONI’s caseload and represents a strategic effort to enrich its outcomes achievement profile (Q1). When lists of cases are examined, a clear trend would appear to exist in respect of the variety and type of incidents available to publicize. Given that only a few current complaint cases can be categorized as “political”, or exceptional to Northern Ireland, this means that part of OPONI’s legitimacy claim, which, as has been explained, is to be understood in relation to a human rights narrative, draws increasingly heavily on the legacy cases it investigates (Q1 and Q2). The number of legacy cases pending stood at 205 in 2019, but OPONI has only publicly reported on 21 cases in 20 years, so pragmatic outcomes are very few, with no one prosecuted as the result of a historical complaint investigation. “Closure effect” pragmatic outcomes are therefore far less evident when OPONI deals with historical cases compared with complaints relating to current police-public interactions. Given its considerable cost and staffing requirements, the Historical Investigations Directorate must seek justification in the fulfilment of its purpose and demonstration of an efficient and fair process to ensure moral legitimacy. OPONI has relied heavily on legacy complaints against officers who had served in the RUC to provide the basis for claiming cognitive legitimacy from a human rights constituency. The historical event at the centre of the complaint will always involve allegations around major crime incidents, usually terrorism and murder – two factors guaranteed to attract media attention. However, such investigations are problematic as the passage of time makes it more difficult to collect evidence, memories fade and the outcome has little relevance to contemporary policing whose standards of policy and practices and legal framework are considerably different from those existing in the late 20th century.

OPONI has tended to contribute to the human rights narrative not by securing prosecutions but by finding investigation management faults associated with individual police officers and the RUC in general. Such fault-finding is not subjected to ‘due process’ in which the credibility of the evidence is tested to avoid value judgments being made. The generation of human rights-framed pragmatic legitimacy has frequently centred on making a finding of collusion in OPONI’s legacy complaint investigations. However, collusion, with its sinister connotations, remains an ill-defined and disputed term, which, in practice, has not resulted in the prosecution of a police officer, serving or retired.

That this source of legitimacy is problematic was further illustrated in a judgment published by the Court of Appeal on comments made by the then

Ombudsman, in a June 2016 public statement on the conduct of RUC officers arising from his investigation of a complaint with respect to a historical event. The judgment noted that the 1998 Act requires the Ombudsman to exercise his or her powers best calculated to secure the confidence of the public and the members of the police force. The court ruled that the Ombudsman had exceeded his powers and acted “*ultra vires*”, straying from the investigative role that the organization performs, when he asserted in the conclusion that retired officers had committed criminal offences or disciplinary misconduct (Lord Chief Justice’s Office, 2018). In dealing with historical cases, a certain ambiguity has frequently crept into the role performed by OPONI in the sense of attributing fault rather than following the principle of requiring investigators to make recommendations to the PPS to decide whether to prosecute. Accepting that it is for the courts to decide whether someone was guilty or not is a fundamental principle that OPONI needs to affirm through its actions and statements. It is quite possible for an organization to lose a great deal of legitimacy around one single event, and the 2018 judgment may prove to be such an example.

Following the cessation of the Northern Ireland “Troubles”, a rights narrative developed alongside political agreement and police reform, in which OPONI would be responsible for the management of police complaints to help build confidence in the PSNI. During the outworking of the new arrangements, OPONI took a strategic decision to investigate complaints about legacy policing outside the statutory time limit for making a complaint, aligning itself with the emergent rights narrative, which perhaps explains its continuing involvement in legacy cases. The policing environment has changed significantly, to the point that findings may have little relevance to the new PSNI. The temptation to fill the void created by the absence of a dedicated “truth and reconciliation” body for the “Troubles” may prove costly to OPONI’s future legitimacy (Q2).

Pre-Good Friday Agreement conditions were the product of a long historical schism between unionist and nationalist communities in Ireland and, later, Northern Ireland, and explain the political decision to invest heavily in OPONI. OPONI’s leaders made a strategic decision to investigate legacy complaints, investing heavily both in resource and identity-association terms. Awareness of the significant resources it has invested in building up an organizational infrastructure and running a large Historical Investigations Directorate may be encouraging OPONI to keep mining the diminishing seam of cases dating back to the “Troubles”. In the future, OPONI is likely to concentrate on contemporary complaints that relate to the type of incidents and complaints that are not exceptional to Northern Ireland at all but rather refer to a pattern of police work found in the rest of the UK. The diminishing number of exceptional to Northern Ireland complaints cases linked to political conflict and alleged discriminatory practices, the failure to win cases against former RUC officers, and the unlikelihood of bringing prosecutions all suggest a punctuation in the near future. As Pollitt (2008, pp. 39–45) pointed out in his examination of path dependencies, an organization that misunderstands its environment may face change taking place in a more “brutal fashion”. When organizational leaders fail to reposition in the face

of significant environmental change, they are subsequently confronted by an irreparable loss of legitimacy (Q2).

In striving to promote its legacy investigation role, a significant strategic risk has been taken with the primary role of supporting oversight of contemporary policing. This study has not examined the very complex question of how messages associated with OPONI's investigations and reports regarding the conduct of the RUC during the "Troubles" impact on trust in the contemporary PSNI. In post-conflict Northern Ireland, not only have the police to perform in a fair and effective manner but there also needs to be a reliable institutional mechanism for translating performance into trust and confidence. OPONI has been fulfilling such a role but risks losing its integrity by attempting to perform two quite distinct roles. The "hybrid" contemporary complaints and legacy case investigator model is unlikely to prove viable in the long term. An unintended consequence would be for the sections of the public to turn back from taking complaints to OPONI because it is associated with legacy case investigation "blockbusters", which are part of a narrative they reject. Another risk is that current police officer behaviour becomes more defensive and rule-book dependent, as a consequence of the publicity surrounding legacy case investigations, where criticisms were made of RUC case management. A dedicated truth and reconciliation body represents a much more viable alternative than an organization created to provide complaints-based oversight of the PSNI whose mission has crept dangerously into narrowly focused historical investigations. Post-Good Friday Agreement, sociopolitical conditions have changed in the sense that the community expects the PSNI to behave in a non-discriminatory manner, in the knowledge that a very well-funded independent complaints organization with strong powers exists to investigate should it not. A future where an organization set up to investigate contemporary complaints against police officers is dependent on its legitimacy from investigations into historical policing cases is rendering OPONI susceptible to a potentially catastrophic loss of legitimacy.

In framing the complexity of OPONI's organizational legitimacy challenge and finding data that identifies trends, it is hoped that this study provides a template for other researchers wishing to understand public service organizations operating in various environmental contexts. More specifically, academics involved in the field of policing studies may be interested in a study that offers a new perspective on the performance of a complaints body. The protests that took place against the actions of police in the USA and elsewhere during 2020 will very probably lead to an intensification of interest in the design and performance of complaints bodies. Northern Ireland continues to attract a good deal of academic attention as an example of a post-conflict society, and the conclusions drawn from this study should be of interest to those whose interest lies in dealing with police reform and accountability in such settings. The study will also have relevance to the debate over the creation of a commission to investigate the past in Northern Ireland. It is anticipated that practitioners in policing and police complaints bodies will engage with our discussion and conclusions.

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