Pathways to Accountability?

Independent Oversight, the Right to Life and the Investigation of Deaths Involving the Police

By

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This thesis is dedicated to the late Detective Superintendent Paul Buschini who would always ask me how the ‘ology’ was coming along and frequently told me that if I wanted it to be good, I should start it with the line “It was a dark and stormy night...”
Pathways to Accountability?

Independent Oversight, the Right to Life and the Investigation of Deaths Involving the Police
Article 2

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
   a. in defence of any person from unlawful violence;
   b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
   c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 2 of the European Convention on Human Rights, 1950
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DECLARATION

“Whilst registered as a candidate for the above degree, I have not been registered for any other research award. The results and conclusions embodied in this thesis are the work of the named candidate and have not been submitted for any other academic award.”

Brian J. Doherty

WORD COUNT: 49,996
Abstract

This thesis centres on issues of policing accountability and oversight. It examines the extent to which the police oversight agencies in the United Kingdom and Ireland with the remit for investigating deaths involving the police have evolved and adapted their investigative practice and capacity to meet the positive obligation under Article 2 of the European Convention on Human Rights (ECHR) created by the European Court of Human Rights (ECtHR) of conducting an effective investigation of any state caused death. It first examines the problem presented by deaths involving the police and considers a number of typologies of deaths involving the police. The thesis then examines the evolution and contextual operation of three police oversight agencies, the Office of the Police Ombudsman for Northern Ireland, the Independent Police Complaints Commission and the Garda Síochána Ombudsman Commission. It then conducts a critical analysis of the evolution of the positive obligation under Article 2 of the ECHR and the development through European Court jurisprudence of the five standards of an effective investigation: independence, adequacy, timeliness, victim involvement and public scrutiny. The theory of Europeanization of Human Rights and the process by which European Court decisions impact upon domestic states is explored. An evaluation of the response to the Article 2 obligations by each of the oversight agencies from the perspective of those responsible for the investigation of deaths involving the police is conducted through qualitative interviews with senior investigating officers. The importance of the “political will” to conduct investigations as per the definition put forward by Luna and Walker has also been considered. Using Borzel and Risse’s definition of the degrees of domestic change caused by Europeanization the thesis concludes that the arrangements for policing oversight policies, processes and institutions have been “transformed” by the Article 2 obligations imposed by the ECtHR. It further concludes that the independence of oversight agencies is a complicated concept and is dependent on several interlinking variables that cannot be described or evaluated in simple linear terms. The performance and capacity of oversight agencies to meet the five standards is not constant and can be impacted upon by both internal and external factors. Oversight agencies can be seen to follow Herzog’s model of scandal and reform. The capacity of the oversight agencies to conduct investigations into deaths involving the police employing ‘high policing’ methods as defined by Brodeur is also explored. Finally, the research assesses whether in the viewpoint of the police oversight investigators the standards set by Europe are relevant, realistic and achievable in practice.

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# ABBREVIATIONS

<table>
<thead>
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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CSI</td>
<td>Crime Scene Investigator</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>FLO</td>
<td>Family Liaison Officer</td>
</tr>
<tr>
<td>GSOC</td>
<td>Garda Síochana Ombudsman Commission</td>
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<tr>
<td>GSCB</td>
<td>Garda Síochána Complaints Board</td>
</tr>
<tr>
<td>IO</td>
<td>Investigating Officer</td>
</tr>
<tr>
<td>IPCC</td>
<td>Independent Police Complaints Service</td>
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<tr>
<td>OPONI</td>
<td>Office of the Police Ombudsman for Northern Ireland</td>
</tr>
<tr>
<td>PCA</td>
<td>Police Complaints Authority</td>
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<tr>
<td>PSNI</td>
<td>Police Service of Northern Ireland</td>
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<tr>
<td>RIC</td>
<td>Royal Irish Constabulary</td>
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<tr>
<td>RUC</td>
<td>Royal Ulster Constabulary</td>
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<td>R2S</td>
<td>Return to Scene</td>
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<td>SI</td>
<td>Senior Investigator</td>
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<td>SIO</td>
<td>Senior Investigating Officer</td>
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It was a dark and stormy night...
Chapter One

Introduction
Chapter One: Introduction

1.1 The Problem of Deaths Involving the Police

There are few events more challenging to a modern democratic state than police involvement in the death of a citizen (Williams H. E., 2008). Any death involving the police will almost inevitably lead to considerable media and public scrutiny (MacAlister, 2012) and have a significant impact on the criminal justice system and the community at large (Ross, 2010). This is further heightened when the deceased dies whilst in police custody. Indeed, deaths in police custody in the United Kingdom have been described as a “significant national problem” (Parliamentary Joint Committee on Human Rights, 2005, p. 109). Such a death has the potential to generate criminal or disciplinary proceedings against police officers, civil litigation, calls for police reform and even on occasion civil unrest (Di Miao, 2010; Fyfe, 1988). Deaths following the use of force by the police can also be problematic for democratic states as they are often seen as ‘political’ in nature as police forces are seen to reflect the governments of the state in which they serve (Das & Palmiotto, 2002) using force to ensure the “maintenance of the order and security associated with a political power structure” (Flyghed, 2002, p. 23).

Bruggeman states that a “precarious relationship exists between police powers and the democratic control of the police in all democratic states” (Bruggeman, 2002, p. 259). A death involving the police can damage that precarious relationship resulting in a range of public reaction, from calls for enquiry and reform to the widespread public disorder such as that experienced in England in August 2011 (Lewis, Newburn, Taylor, & Ball, 2011). This is increasingly the case in a world where distaste for the physical use of force as a controlling mechanism has heightened alongside a growing awareness of human rights and a greater concern for the oppressed (Alpert & Dunham, 2004; Binder & Fridell, 1984). Widespread media reporting of alleged police misconduct can undermine public confidence in the police in the long term and enter into the “cultural repertoire” of how the police are perceived (Weitzer, 2002, p. 406) meaning that the impact of any death involving the police can resonate and grow creating the impression amongst communities that serious problems exist within police services (Weitzer & Tuch, 2004). This can erode public trust in the police in democratic societies, a trust earned by the police through the very legitimacy of their actions (Kaariainen, 2007) , and can threaten the ability of other police officers to function properly within that society (Alpert & Dunham, 2004; Punch, 2000). Punch has stated that this “elicits a special feeling of betrayal” in the public who then condemn the police “for the infringement itself and also for the breach of trust” (Punch, 1985, p. 8). Furthermore, it is
often posited that the police embody public perceptions of “law and order, the nation state or the dominant social group” (Bradford, Stanko, & Jackson, 2009, p. 143) which implies that the public may register the impact of negative interactions with the police in the wider context of the relationships with other broader social structures such as government and the criminal justice system generally or as Punch put it, “Police officers are the state made flesh” (Punch, 2000, p. 322).

Following a death involving the police the state is faced with a second potential opportunity to risk losing the confidence of the public in not initiating a fair, transparent and effective investigation into the circumstances of the death. Accountability of the police is seen as a requirement of the democratic principle, (Bayley & Shearing, 2009) and a failure of accountability is consequentially a threat to democracy. Repeated failures of the state to investigate police caused deaths can lead to abuses of police authority becoming “part and parcel of the policing remit” (Milton-Edwards, 2000, p. 317) and create a “culture of impunity” within the police (Neild, 2000, p. 223). In contrast a properly integrated “holistic” approach (Harris F., 2012, p. 2) to policing oversight balancing both deterrence of inappropriate behaviour and improving the performance of the police (Luna & Walker, 2000; Brereton, 2000) by undertaking an effective investigation into the death can create a “self sustaining culture of accountability” (Walker, 2001, p. 86). It has been argued that the process of the investigation is as important as the outcome so that the citizens of the state feel that they have been treated fairly and justly (Kaariainen, 2007; Engel, 2005; Tyler, 1999) and that emphasis in such investigations should be on “effective accountability and transparency to ensure respect for the rule of law and maintain public confidence” (Reid, 2007, p. 545). In short, once a death has occurred involving the police it is in the interests of the state, the community, the police and the family of the deceased that the circumstances of the death are properly and diligently examined as “what is at stake is nothing less than public confidence in the state’s monopoly on the use of force”.

1.2 Types of Deaths Involving the Police

The varied and pervasive nature of the role of policing in society means that deaths involving the police can occur in diverse and complex circumstances and various typologies of deaths involving the police have evolved. The Home Office in the UK have, for example, defined four categories of deaths involving the police. These are fatal road traffic accidents involving the police, fatal shooting incidents involving the police, deaths in or following custody and deaths during or following other types of contact with the police (Home Office,
However these categories are neither exclusive nor exhaustive. Some typologies are based on the temporal proximity of the involvement of the police with the deceased; “those occurring at the time of the arrest, those while being transported to jail or hospital, and those while the deceased is a resident of the jail” (Di Miao, 2010, p. 1). Other typologies attempt to organise the phenomenon of police involved deaths by looking at the causal factors of the death itself; “Alcohol and Drug Overdose, Natural Causes, Violent Deaths and Suicide” (MacAlister, 2012, p. 29). Shepherd distinguishes between deaths that result directly from police actions, acts of commission, and deaths that result from a lack of care or a lack of police action, acts of omission. Of these he states that deaths resulting from direct police actions, including the use of force, cause the greatest concern to the media and the public (Shepherd, 2005).

Although Jacobs and O’Brien argue that the use of violence by police officers is uncommon in advanced states (Jacobs & O’Brien, 1998), no country is free from the excessive use of force or the even the improper use of lethal force by its police force (Das & Palmiotto, 2002). A controversial death involving police use of force can have a negative effect on the effectiveness of policing in general. Flyghed comments that where force has been used by police resulting in a death, claims that the force used was unnecessary or excessive can cause a backlash in the form of “increased sympathy for the phenomenon” that the police are attempting to hold in check (Flyghed, 2002, p. 26). Excessive use of police force may also hold the potential to polarize and isolate the areas of the community that most need the police (Fyfe, 1988). The police in Europe are sanctioned to use force, including in some circumstances force that can result in a fatal outcome, by the state in which they serve. However, this power comes with a corollary responsibility to properly account for the use of force. No death involving the police could be considered as straightforward and all carry both the potential for controversy and also the opportunity for the police to reflect on their actions and performance.

1.3 The European Court and Article 2 of the European Convention on Human Rights

The European Court has recognised that when a death involving the police, or indeed the state, occurs there is a need for a thorough and transparent investigation. This thorough and transparent investigation has the narrow function of establishing whether any criminal or disciplinary culpability may fall as a result of the death and also the broader function of establishing the narrative of the death, identifying and rectifying any systemic failures and reassuring the public that they are not at risk of arbitrary state killings (MacAlister, 2012). The right to life was established under Article 2 of the European Convention on Human
Rights (ECHR) and the European Court of Human Rights (ECtHR) subsequently developed a “procedural or investigative duty to examine how and why a person died” (Turner, 2009, p. 1). This procedural obligation evolved through the European Court jurisprudence to become a “fundamental right” which “enshrines one of the basic values of the democratic societies making up the Council of Europe.2” Therefore, in their investigation of deaths involving the police, signatory states to the ECHR are liable if they fail to conduct an effective investigation in accordance with the five principles or standards necessary to fulfil the obligations, created by the Article 2 jurisprudence and subsequently articulated in an opinion of the European Commissioner (Commissioner for Human Rights, 2009) as

- independence,
- adequacy,
- promptness,
- public scrutiny, and
- victim involvement.

These principles are designed to have a dual purpose; firstly, “to ensure that an individual has an effective remedy for an alleged violation of Article 2” and secondly to “protect against violation of these fundamental rights by providing an investigative framework that is effective and capable of bringing offenders to justice” (Commissioner for Human Rights, 2009, p. 8).

1.4 Deaths Involving the Police: A Personal Perspective

I have worked in the area of police oversight as an investigator since 2000. I started my career as an investigator with the Office of the Police Ombudsman for Northern Ireland (OPONI) and I am currently a Senior Investigating Officer with the Garda Síochána Ombudsman Commission (GSOC) in the Republic of Ireland. In the past thirteen years I have had various roles in the investigation of deaths involving the police including working with bereaved families as a Family Liaison Officer (FLO) and leading investigation teams as an SIO. I have also investigated a wide range of circumstances in which deaths involving the police have occurred and that the principles of Article 2 of the ECHR can be said to have engaged. These have included fatal police shootings, restraint deaths, fatal road traffic incidents and deaths whilst in the custody of the police. I therefore approach this research as a “practitioner researcher” (Coy, 2006, p. 428) or as an “insider” i.e. as someone who is involved in the investigation of deaths involving the police (Merton, 1972, p. 11). This has also been described as “insider action research” (Coghlan & Shani, 2007, p. 643). However, it is also worth noting that using the framework put forward by Savage to categorize the

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2 McCann v UK (1966) EHRR 97, ECHR, para 147.
types of police complaints investigators in relation to their policing or civilian backgrounds, it could be said that I commenced my oversight career as an “outsider” i.e. an investigator “with neither policing nor investigative experience” (Savage, 2013, p. 5). It is with this perspective that I approach this thesis and as the research aims and objectives in the next section will set out, the thesis is grounded in examining the views and experiences of other oversight practitioners in relation to practice and performance in the investigation of deaths involving the police.

1.5 Research Aims and Objectives

The aim of this thesis is to examine the extent to which three selected European police oversight agencies have evolved and adapted their investigative practice, performance and capacity to meet the five standards of the positive obligation of conducting an effective investigation into a death involving the police under Article 2 of the European Convention of Human Rights (ECHR). In meeting this aim the thesis will examine the practices of the Garda Síochana Ombudsman Commission (GSOC) in the Republic of Ireland, the Office of the Police Ombudsman for Northern Ireland (OPONI) and the Independent Police Complaints Commission (IPCC) in England and Wales. The three agencies have been selected for this study as they each represent what has been described as a “watershed in police reform” i.e. the introduction in their respective jurisdictions of external independent or non police bodies that would have the responsibility for the investigation of police complaints and deaths involving the police (Savage, 2007). As can be seen in the chart below, since their commencement each of the organisations has been involved in the investigation of a number of deaths involving the police on a yearly basis.
The United Kingdom, Northern Ireland and the Republic of Ireland are all signatories to the ECHR and each of the jurisdictions has incorporated the Convention into their domestic legislation; the extent to which each state’s mechanisms for police accountability have the capacity to comply with the arising obligations is worthy of examination.

In achieving the aim of the thesis the following objectives have been identified:

- Through analysis of academic literature and official reports to examine the role of the police and consider the types and nature of deaths involving the police;
- To explore the academic literature on the concept of accountability and its specific importance to policing and policing legitimacy;
- To examine the origin, development and operational policing context of the three policing oversight agencies OPONI, the IPCC and GSOC.
- To critically analyse the positive procedural obligation for an effective investigation into deaths involving the police from its origins in Article 2 of the ECHR, its evolution through the subsequent European jurisprudence and its codification by the European Commissioner for Human Rights;
- Using qualitative interviews with Senior Investigators to examine the investigative capacity of OPONI, the IPCC and GSOC to meet the Article 2 standards.
The first objective of the thesis then will be to examine the role of the police and consider the context in which deaths involving the police can and do happen. To that end Chapter Two of the thesis will first examine the prevalent and multi faceted role of police in society and explore how this role can lead to incidents of heightened risk of death or serious harm. The use of Brodeur’s high and low policing/control paradigms will show that deaths involving the police can occur through both everyday reactive policing and also through planned policing operations based on intelligence gathering and covert surveillance techniques (Brodeur, 1983). To illustrate this point reference will be made to the death of Jean Charles de Menezes in July 2005 and it will be argued that in order to ensure accountability policing oversight mechanisms must have the capacity to deal with deaths involving the police that fall within either the high or low policing paradigms. The chapter will then explore the general concept of accountability in policing and trace the evolution of different accountability models that are used in police oversight. The range and variation of typologies of police oversight models will be outlined with emphasis on the emergence and evolution of independent policing oversight mechanisms. The dominant issue of “who investigates the police?” will be explored along with some inherent risks in over emphasis of a single element of policing oversight. Following this discussion two significant risks to accountability mechanisms, regulatory capture and the lack of a political will, will be examined. Finally, the chapter will introduce a history of each of the three oversight agencies and the policing environment into which they were introduced.

Chapter Three will set out the research methodology used to examine the three oversight agencies. The chapter will first outline the parameters for a critical analysis of the evolution of the Article 2 standards and then outline the choices that led to the use of a qualitatively driven mixed methods approach to assess the response of each of the three jurisdictions in evolving and orientating oversight structures to meet the standards. The chapter will discuss the difficulties that led to a decision to only report on the qualitative findings arising from interviews conducted with SIs in each of the three oversight agencies.

Chapter Four will outline the critical analysis conducted into the evolution of the Article 2 standards examining and describing the positive procedural obligation for an effective investigation into deaths involving the police from its origins in Article 2 of the ECHR, its evolution through the subsequent European jurisprudence and its elucidation by the European Commissioner for Human Rights. The practical application of the positive obligation will also be examined and each of the five standards of an effective investigation: independence, adequacy, promptness, public scrutiny and victim involvement will be considered in turn in relation to the European law and relevant literature. In order to examine this issue consideration is given as to how the standards themselves migrate from judgements made in the ECtHR to their application in the signatory states of the ECHR through a process referred to as Europeanization. The effect of decisions of the ECtHR and
European policy on member states and the extent to which this can be measured will also be explored and outlined.

Chapter Five sets out the findings of the research. Firstly the question as to the level of awareness of the Article 2 standards will be examined amongst the SIs and investigators in each of the three organisations. The central question of independence will be explored in detail with an examination of the value and nature of independence and the views of the SIs in relation to the use of ex-police officers, the culture of the organisation and the reality of regulatory capture. Following the section on independence, the research findings in relation to the adequacy and promptness of investigations into deaths involving the police will be set out. The conjoined issues of public scrutiny of investigations and the involving the families of the deceased in the investigation will then be explored. The capacity of the oversight agencies to investigate deaths that have occurred in circumstances aligned to both the high and low policing paradigms described by Brodeur will then be examined and the views of the SIs in relation to their capacity to gain access to the intelligence information that grounds high policing operations will be explored. The SIs perception of the political will of their respective organisations to conduct effective investigations into deaths involving the police will then be explored. The Chapter concludes with the SIs views on the purpose of investigating deaths involving the police and their considerations as to whether the Article 2 standards are realistic and attainable.

Chapter Six will then analyse the findings using both the relevant literature and the European and domestic law. In doing so, the research will attempt to trace issues relevant to the Article 2 standards from the propositions of the criminological discourse, through the European jurisprudence and to their ultimate practical application by oversight investigators and therefore to “make accurate connections between what the law does and to what happens on the ground” (Goodman & Jinks, 2003, p. 182). The research will also consider the purpose and effectiveness of the standards and consider whether the positive obligation works to secure the right to life or whether it is just an “onerous burden on a state” (Chevalier-Watts, 2010, p. 701). Finally Chapter Seven will summarise the thesis to identify the contribution to knowledge the research has made. The thesis will conclude with a consideration of further possible areas of research.
Chapter Two:

Accountability, Oversight and Deaths Involving the Police
Chapter Two: Accountability, Oversight and Deaths involving the Police

2.1 Introduction

The central concern of this thesis is the investigation of deaths involving the police. This chapter will look at this issue from three perspectives. Firstly it will examine the nature of the police role and the types of death that the police may be involved in. Secondly it will examine the concept of accountability and its importance in the policing context and finally the chapter will examine the question of who is tasked to investigate deaths involving the police and ensuring policing accountability in the three jurisdictions that are the subject of this research. This chapter therefore begins with a discussion of the role of police in society and considers some of the different contexts in which the police may be involved in the death of a citizen. Further to this aim Brodeur’s (Brodeur, 1983) theory of high policing and low policing will be outlined and applied to the issue of investigating deaths involving the police. The investigation of deaths involving the police is, however, one strand of the wider issue of accountability in policing; therefore, it is necessary to explore the conceptual underpinnings of policing oversight and accountability. The difficulties in reaching a definition of accountability are discussed and some conceptual models of accountability are outlined followed by a discussion of the application and importance of accountability in policing. The evolution of police accountability mechanisms and the development of civilian oversight in policing will then be examined. The multiplicity of typologies for categorising policing oversight models will be considered and applied to the research at hand. Consideration is also given to some of the difficulties and challenges that may inhibit achieving true accountability with a discussion of the concepts of regulatory capture and political will. Moving from the conceptual to the practical application of policing accountability the chapter then examines the three oversight agencies tasked with conducting effective investigations into a death involving the police. As will be outlined in the methodology section of this thesis the policing oversight agencies in Ireland, Northern Ireland and England and Wales have been selected primarily due to their remit to undertake independent investigations of police conduct. This chapter will conclude with an examination of the evolution and introduction of the three agencies and attempt to establish the policing context and events that led to the introduction in each of the three jurisdictions of independent police oversight and the implications that followed. A brief history of each of the oversight mechanisms since their introduction will be outlined as well as an analysis of their structure, statutory powers and responsibilities. The oversight agencies will be examined in chronological order as to their incorporation in law starting with OPONI and then considering the IPCC and finally GSOC. Particular emphasis will be
placed upon GSOC as the most current iteration of the evolution of independent oversight following lessons learned from the development of its predecessors OPONI and the IPCC.

2.2 The Role of the Police

While the proper role of police in society has been the subject of debate for decades (Rosenbaum, 1998; Reiner, 1998) attempts to distil the role to a simple explanation or its manifest parts have proved elusive and instead it is recognised that the police in Western democracies are called upon to perform “manifold roles” (Herzog, 1999, p. 477) the variety of which “beggars description” (James, 2003, p. 1). Policing has been described as both “knowledge intensive” (Holgersson & Gottschalk, 2008, p. 365), “more like a craft than a science” (Bayley & Bittner, 1997, p. 128) and a “superhuman role: part priest, part scapegoat” (Whittaker, 1979, p. 8). Bittner, however, suggested that the role was more straightforward and primarily to prevent “something that ought not to be happening and about which someone had better do something now” (Bittner, 1974, p. 30). The police have been described as “protectors of moral rights” (Miller & Blackler, 2005, p. 5), “a social service with exceptional and unique authorities, responsibilities, and public expectations” (Cotton & Coleman, 2012, p. 24) and as a “social regulatory agency” tasked with making “social and political judgements” to ensure the status quo (Bass, 2000, p. 149). Removed from these conceptual descriptions of policing Bayley has produced a statistical analysis of police work to split the role into tasks such as “patrol and respond to requests of service”, “investigate crime”, “regulate traffic” and “administer” (Bayley, 2009, p. 578). However, Marenin argues that the “reach and domain” of policing increasingly extends far beyond these minimal concepts of law enforcement and is pervasive in society (Marenin, 2005, p. 101).

Whatever the definition of the role, it is clear that policing in all its functions is intimately bound with the issue of human rights (Sheptycki, 2000). This is acutely accurate when the police are involved in an incident in which someone dies. There are, however, some elements of the role of policing that may make their involvement in incidents of fatality more likely and whether the death occurs by way of an act of commission or of omission the police must be called upon to account for the circumstances in which the death has occurred. The elements of policing that may lead to a fatality are aligned to their “array of coercive powers” (Choongh, 1997, p. 1) and include the police use of force, the arrest, detention and care of persons and police pursuits. By way of illustration the figure below outlines the 82 deaths involving the police in England and Wales recorded in 2011/12 broken down into four categories of road traffic fatalities, fatal police shootings, deaths in or following police custody and other deaths following police contact.
2.3 High Policing and Low Policing

Whilst it is not possible to provide a definitive typology to cover the circumstances in which all types of deaths involving the police will occur an interesting and useful construct in examining the nature of deaths involving the police and also the capacity of oversight agencies to examine the circumstances that led to the death are Brodeur’s paradigms of High and Low Policing. This section will first outline the definitions of the paradigms and then consider their application to the investigation of deaths involving the police.

Brodeur (Brodeur, 1983) describes the two paradigms of policing as Low Policing and High Policing. He cites Bordua (1968), Chapman (1970), Tobias (1972) and Manning (1977) and “equates low policing with criminal policing” (Brodeur, 1983, p. 512) describing it as “forceful reaction to conspicuous signs of disorder, whether or not of a criminal nature”. Low Policing is in effect “the myriad of duties relating to community security” and “everyday policing largely performed by agents in uniform” (Brodeur, 2007, p. 25). In contrast High Policing is the paradigm associated with political policing, “it reaches out for potential threats in a systemic attempt to preserve the distribution of power in a given society” (Brodeur, 1983, p. 513). Brodeur listed four basic features of the High Policing paradigm. The first feature, which he describes as the most important, is that High Policing is primarily
“all absorbent” (Brodeur, 1983, p. 513) policing which aims to control by the all
encompassing gathering and storing of intelligence. The second feature of Brodeur’s High
Policing paradigm is that it is not “uniquely bound to enforce the law and regulations as they
are made by an independent legislator” (Brodeur, 1983, p. 513). Thirdly, “Protecting the
community from law violators is not an end to itself for high policing; crime control may also
serve as a tool to generate information which can be used to maximize state coercion of any
group or individual perceived as threatening the established order” (Brodeur, 1983, pp. 513-
514) and finally, “High policing not only makes extensive use of undercover agents and paid
informers, but it also acknowledges its willingness to do so” (Brodeur, 1983, p. 514).

Brodeur argues that just as there are two paradigms for policing there may also be two
paradigmatic models for controlling the police “namely high and low control” (1983, p. 517)
arguing that for policing oversight to be successful, it needs to move away from narrow
constructs such as the culpability of officers for their actions and concentrate instead in
analysing the policing culture and frameworks that allow any such abuses to exist.
However, the challenge of successful oversight of High Policing activity should not be
underestimated. Bruggeman notes that the general difficulties of achieving police
accountability are heightened in the context of a High Policing function such as under cover
policing (Bruggeman, 2002). The secrecy inherent in High Policing functions effectively
weakens the transparency essential to achieve effective accountability (Marenin, 2005) and
if the functions of the police are not wholly transparent, the correlation is that they are not
wholly accountable (Marenin, 2005; Goldsmith & Lewis, 2000; Perez T. E., 2000).

To extrapolate Brodeur’s theory to the problem of deaths involving the police, it can be
stated that if two paradigms of policing exist, High and Low Policing, then civilian deaths can
occur from policing activities aligned to either paradigm. These deaths should therefore be
investigated by agencies with the capacity to enquire into both High and Low Policing
activity and with the authority to assert High and Low Control in terms of holding the police
to account. This research in considering the extent to which police oversight agencies have
developed the capacity to investigate deaths involving the police to the standards set by the
European Courts will also seek to examine the extent to which the oversight agencies are
able to investigate both High and Low policing activity that may lead to a fatal outcome. This
is best illustrated by way of a practical and real example.

The fatal shooting of Jean Charles De Menezes on the 22nd of July 2005 by an “élite firearms
unit of the Metropolitan Police” (Turner, 2008, p. 1) engaged in a counter terrorism
operation who mistakenly believed Mr. De Menezes have participated in a failed suicide
bombing brings into sharp focus the High/Low Policing and High/Low Control dynamic. As
Turner stated:
“The circumstances of the shooting did not involve a stand-off between police and a suspect brandishing a weapon, threatening the life of a hostage or the lives of armed officers; an entirely innocent man was summarily executed in the full glare of a packed London underground train. Nevertheless, the events surrounding the shooting symbolise the new and unique forms of terrorism that the UK authorities now face post ‘9/11’, overshadowing the IRA atrocities of the 1980s and 1990s. They challenge the very nature of policing in the 21st Century and the state’s obligation to maintain safety and security” (Turner, 2008, p. 5).

Punch described the De Menezes shooting as, “one of the defining moments in the history of British policing” (Punch, 2011, p. 5) raising a host of issues “not only around operational practice but crucially also about policymaking, legality, transparency, accountability and above all legitimacy.” The investigation of the shooting presented a “major challenge” for the IPCC (Wood, 2012, p. 80). As will be outlined later, the investigation was required under the positive procedural obligation under Article 2 to examine not only the decision making of the firearms officer who fired the fatal shot but also all of the High Policing elements of intelligence gathering and operational planning that led to the deployment of the armed officers in the first place. This thesis will examine whether the policing oversight institutions of the UK and Ireland would have the capacity to ensure the necessary accountability of policing should a similar event occur again. First some of the key, fundamental issues of accountability and the development within police oversight of the capacity for independent investigation will be explored.

2.4 The Concept of Accountability

Koppell argues that although accountability is almost universally seen as a positive the “meaning of accountability remains elusive” (Koppell, 2005, p. 94). Accountability as a term is commonly used to denote bureaucratic control, transparency or responsiveness to popular demands and has also been conflated with related concepts of responsibility, accessibility and answerability (Cheung, 2005; Mulgan, 2000).

A simplistic definition of accountability has been put forward by Bovens as:

“the relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences” (Bovens, 2006, p. 6).

Bovens et al. would later identify three “perspectives” for assessing accountability: the democratic perspective by which the accountability mechanism should yield accurate and
timely information about conduct, the constitutional perspective which should effectively deal with abuse of powers and corruption and the learning perspective which uses feedback of a high quality information and critique to promote reflection and learning (Bovens, Schillemans, & Hart, 2008, p. 233). It is clear then that accountability is a complex construct which encompasses more than simply holding a person or group of persons to account; there is also the possibility of applying accountability mechanisms to future as well as past conduct.

In that regard Smith sees a nexus between the concepts of regulation and accountability which share a common commencement and end point in standard setting and the issue of reward or sanction:

“In regulatory processes standard setting is for the purpose of controlling, guiding or influencing events or behaviour. Rewards, awards and sanctions serve to encourage compliance and deter non compliance in achieving the expected standard. In accountability processes, rewards, awards and sanctions generally function to commend successful performance, make reparation, or punish failure” (Smith G., 2009, p. 423)

In Smith’s regulatory/accountability nexus the purpose of accountability is retrospective whilst regulation is forward looking or prospective.

Several typologies of accountability exist. Radin and Romzek conceptualize accountability according to the source of the control and the degree of control suggesting four accountability types as “hierarchical, legal, professional and political” (Radin & Romzek, 1996, p. 61). Hierarchical accountability mechanisms are internal controls such as supervisory roles within an organisation. Legal accountability mechanisms are manifested in external oversight and monitoring activities. Whilst both hierarchical and legal accountability are seen to exert high levels of control, professional accountability, which manifests itself in professional norms and standards, and political accountability, which is based on an expectation of response to external political or stakeholder control, are seen to exert low levels of control. In contrast Behn concentrates on the specific purposive area of accountability to cite four categories where accountability is routinely required or applied: finances, fairness, abuse of power and performance (Behn, 2001). However, Koppel argues that these typologies do not provide for the distinct dimensions that can exist within accountability and has proposed a typology of five accountability dimensions that concentrate on the “nature” of accountability each with a corresponding “critical question” that is to be asked of an organization to determine its accountability (Koppel, 2005, p. 96). The five dimensions of accountability are articulated in the table below:
<table>
<thead>
<tr>
<th>Conception of Accountability</th>
<th>Key Determination</th>
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<tr>
<td>Transparency</td>
<td>Did the organization reveal the facts of its performance?</td>
</tr>
<tr>
<td>Liability</td>
<td>Did the organization face consequences for its performance?</td>
</tr>
<tr>
<td>Controllability</td>
<td>Did the organization do what the principal (e.g. Congress, president) desired?</td>
</tr>
<tr>
<td>Responsibility</td>
<td>Did the organization follow the rules?</td>
</tr>
<tr>
<td>Responsiveness</td>
<td>Did the organization fulfil the substantive expectation (demand/need)?</td>
</tr>
</tbody>
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Table One: Conception of Accountability (Koppell, 2005, p. 96)

Similarly Smith (Smith G., 2009, p. 423) presents the six elements of the accountability process conceptualized by Marshaw (2006) as a series of questions:

<table>
<thead>
<tr>
<th>The Accountability Process:</th>
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<tr>
<td>i.  Who is accountable?</td>
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<td>ii. To who are they accountable?</td>
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<td>iii. For what are they accountable?</td>
</tr>
<tr>
<td>iv. By what standards of appraisal?</td>
</tr>
<tr>
<td>v. Through what processes are they held accountable?</td>
</tr>
<tr>
<td>vi. What consequences may follow?</td>
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Table Two: The Accountability Process (Smith G., 2009, p. 423)

Examination of these questions in the context of this thesis and the investigation of deaths involving the police opens up some interesting discussions. The question of ‘who is accountable?’ is for example deceptively complex, as will be outlined in the next chapter, the investigation of deaths involving the police under Article 2 of the ECHR may require consideration of issues of both individual liability for wrongdoing and also police practice.
and procedures, therefore encompassing elements of both personal and organisational accountability (Smith G., 2004). Similarly the question of ‘to whom?’ the individual police officer or the wider police organisation are accountable is also complex, as any police oversight mechanism can be considered as one strand of a larger thread that encompasses political, legal, social and professional accountability mechanisms (National Democratic Institute for International Affairs, 2005). Questions three and four are considered in the next chapter as I examine the development of standards of effective investigations under Article 2 of the ECHR in relation to deaths involving the police. The remaining questions relating to the process by which the police are held accountable and the consequences of the processes reflect the focus of this research which relates to the extent to which the policing oversight arrangements have the capacity to meet the standards mandated by the ECtHR.

2.5 Accountability in Policing: The Development of Civilian Oversight

Markham and Punch see the value of accountability in stark terms:

“Policing is accountability, for without it there is no legitimacy: and without legitimacy the police cannot function adequately within a democratic state” (Markham & Punch, 2007, p. 300).

Why then is accountability in policing a concept for which universal acceptance should be expected (Bovens, Schillemans, & Hart, 2008)? The importance of accountability in policing derives from the both the extensive powers given to the police and their role as the gatekeepers of the criminal justice system. Police misconduct and lack of accountability serves to undermine the police service itself, the wider criminal justice system and the legitimacy of the state in which they operate (Seneviratne, 2004). Accountability in policing is important then because the stakes are much higher than in other spheres of public life. As accountability in policing can be characterised along different strands or aspects reminiscent of the Radin and Romzek model outlined above, for example democratic accountability by which elected representatives may seek to hold the police to account, financial accountability ensuring financial integrity through audit, legal accountability which ensures compliance with statute and internal accountability by which the individual officers are accountable to the police service (Patten, 1999), it is logical that different accountability mechanisms have developed to address these different aspects. Indeed, the array of accountability mechanisms to which a single police service may have to answer has been described as the “accountability industry” (Orde, 2008, p. 221).

This thesis is most concerned with legal accountability by which it is meant that the police should be accountable to the same laws that they are charged to enforce and that there
should be an investigation and a resulting charge and sanction when they breach them (Smith G., 2004). The question though of who investigates the police is not one that has been easily answered and instead different structures and mechanisms have evolved through the history of policing to address the issue. Alpert and Dunham envisage three ages of police reform, from a starting point of “non-regulation” through the movement to “professionalize” the police and finally to the current age characterised by the move to “external control” (Alpert & Dunham, 2004, p. 4). Policing oversight mechanisms have rarely been self-generated but instead oversight mechanisms have been instigated outside of the police (Bayley, 2008) and usually without a consensus amongst the police, government and the community as to their value (Miller J., 2002). Several academics (Punch, 2000; Herzog, 1999) have noted that the evolution of external or civilian oversight of policing has been punctuated by scandals followed by periods of review of the policing accountability mechanisms, the production of a “detailed enquiry report and an accompanying set of recommendations” (Prenzler, 2002, p. 10) and “a realignment of power” (Punch, 2003, p. 194). Herzog (1999, p. 483) proposes a cyclical dynamic that is observable in the evolution of police oversight towards increased civilian involvement and notes that following the completion of one revolution of the cycle the situation improves “pending the next crisis” (Herzog, 1999, p. 477).

Figure Three: Herzog’s Cycle of Evolution
Adapted from Herzog (Herzog, 1999).
2.5.1 Typologies of Police Oversight Models

Goldsmith and Lewis have said that “Holding police to account has become a growth industry” (2000, p. 1) and there exist a “bewildering diversity” (Harris, 2012, p. 2) of accountability mechanisms across the Europe and the rest of the globe (Den Boer & Fernhout, 2008). The variety of approaches to oversight in the European context has been explained by the differing starting positions of states in establishing Human Rights compliance (Vaughan & Kilcommins, 2007). Several criminologists have attempted to provide a typology “at least crudely” (Miller J., 2002, p. 8) for oversight agencies. Typologies can be useful as a classification system to assist in “organising complex phenomena” (MacAlister, 2012, p. 28) but they can also present an oversimplification of the issue in order to create neat labels and categories. Indeed the variations as regards structure, powers, remit and activities effectively ensures that any attempt to conduct a comparison between two oversight models would be faced with considerable methodological difficulties (Brereton, 2000; Mohr, 2007). Just as there is no one off-the-shelf organizational model of democratic policing that can be imported into other settings, there is no system of police oversight that is readily transferable between states (Marenin, 2005; Bratton & Malinowski, 2008). In fact as Perez has concluded, “to establish an effective and accountable system of policing, democracies need multiple mechanisms of control” (Perez T. E., 2000, p. 48). It is difficult then to describe the multiple mechanisms of accountability and accountability relationships that exist with a simple typology.

Many of the existing typologies, therefore, are based on a single element within the oversight models that can be used as a comparator. Frequently the element used is the “enduring issue of independence” (Wood, 2012, p. 90) or as Smith puts it, the “degree of lay involvement in police complaints procedures” (Smith G., 2004, p. 15). Smith argues that the last half century of discussion on police complaints has been dominated by “structural and procedural questions” and that the issue of independence or “who investigates the police? issue emerging as predominant” (Smith, 2004, p. 15). Smith also notes the models identified in several typologies can be arranged as to the perceived location of the oversight agency on a continuum with “police operated systems at one end of the spectrum and non-police structures at the other” (Smith G., 2004, p. 15). Smith warns, however, that preoccupation with a single issue, such as independence, “carries the risk that equally important matters are overlooked” (Smith G., 2004, p. 16) and Kempa contends the search for the ideal demarcation of who is responsible for what investigative function has plagued the operation of oversight agencies creating a near constant review of the mechanisms and resulting in a myriad of attempts to attain the “golden fleece” of optimal allocation of investigative responsibility (Kempa, 2007, p. 113).
It could be argued then the issue of effective oversight of policing is less about finding the right model (O’Rawe & Moore, 2000; Milton-Edwards, 2000) and more about integrating the oversight agency into a wider oversight structure with an agenda based on the professionalization of policing as part democratic reform encouraging both individual and organizational accountability. Nevertheless, the typologies have evolved over decades to include variations of increased and more sophisticated civilian involvement along the continuum suggested by Smith. Some examples are:

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<tr>
<td>“External Civilian Oversight Agency”</td>
<td>“Internal Review”</td>
<td>Civilian Review</td>
<td>Civilian Review</td>
<td>Internal Review</td>
</tr>
<tr>
<td>Police Internal Affairs</td>
<td>Civilian In House</td>
<td>Review and Appellate Models</td>
<td>Civilian Input</td>
<td>Civilian Review</td>
</tr>
<tr>
<td>Civilian External Supervisory</td>
<td>Civilian External Investigatory</td>
<td>Quality Assurance Models</td>
<td>Civilian Monitor</td>
<td>Civilian Monitor</td>
</tr>
<tr>
<td>Civilian Investigative/Adjudicative</td>
<td>Police Investigatory on behalf of Civilian External Agency</td>
<td>Performance Based Models</td>
<td></td>
<td></td>
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Figure Four: Police Oversight Typologies

In this thesis, reference will be made to the three category typology put forward by Prenzler and Ronken of the “internal affairs model”, “the civilian review model” and “the civilian control model” (Prenzler & Ronken, 2001, p. 152). Prenzler and Ronken’s typology assists as GSOC, the IPCC and OPONI could all be seen to be at the independent end of the oversight continuum as each of them has the statutory mandate to conduct their own investigations and are therefore aligned with what is referred to as the civilian control model. The internal affairs model necessitates police internally investigating other police and the civilian review model involves the independent review of investigations carried out by police officers. The civilian control model, however:
“involves the fully independent, civilian investigation of at least the more serious allegations of misconduct, ostensibly as a means of ensuring both effective and publicly acceptable standards of police accountability” (Savage, 2013, p. 4).

As useful as this typology is, by concentrating on the “who investigates?” issue the typologies fail to capture the fact that the agencies also have the statutory capacity or function for other types of investigation or resolution of complaint matters (Smith G. , 2001). Both GSOC and IPCC have within their statutory powers different modes of investigation which range from the fully independent enquiry to those carried out by the police themselves. OPONI, which is often held up as the gold standard of independent police oversight investigation (Seneviratne, 2004; Prenzler, 2011) due to its practice of independently investigating all complaints and matters referred to it, nevertheless retains within its capacity the legislative scope to refer matters back to the police for investigation

2.6 Threats to Accountability: Regulatory Capture and Lack of Political Will

This section will introduce two concepts central to any discussion of accountability mechanisms. The first ‘regulatory capture’ has been identified as an issue of concern in police accountability research (Savage, 2012). Regulatory capture has been defined as the “techniques by which the group being regulated subverts the impartiality and zealfulness of the regulator” (Prenzler, 2000, p. 662) and in policing oversight terms this could be said to have three distinct forms: identification with the police agency subject to oversight, sympathy with the particular problems faced by the policing agency in meeting standards, and a lack of toughness of rigour (Makkai & Braithwaite, 1992). Makkai and Braithwaite define the best regulatory culture in industry as one where, “regulators are tough and absolutely committed to maximising the policy objectives that lie behind the law while at the same time being flexible- open to ways of achieving those policy objectives that are less costly for business” (Makkai & Braithwaite, 1992, p. 73). These same principles of toughness, commitment, maximisation of policy objectives and flexibility could be applied to the police oversight mechanisms. In considering the extent to which the policing oversight agencies have applied the Article 2 obligations of conducting effective investigations into deaths involving the police, this thesis will also consider whether there is any evidence of the oversight agencies having been subject to regulatory capture by the police services over which they have remit.

The second threat to the accountability mechanisms that will be considered is that of a lack of “political will”. The issue of political will was explored by Luna and Walker (Luna &

3 Section 54(3)(b) of the Police (Northern Ireland) Act, 1998 allows the Ombudsman to refer any complaint to the Chief Constable for investigation by a police officer.
Walker, 2000, p. 99) and is used as a construct to examine oversight agencies where there is an apparent gap between their powers and resources and their actual activities and where as a result failings can be attributed to the processes employed rather than the structure of the oversight mechanism. This is of direct relevance to this thesis as the three oversight agencies are, as outlined above, aligned to the civilian control model and should, in theory, be vested with the necessary independence and statutory power to carry out their oversight function. Any gap between their respective powers and resources and their actual activity in the investigation of deaths involving the police may be explained by a lack of political will in those in charge of the organisations to actually perform the task with which they have been charged. Luna and Walker defined ‘political will’ as the “commitment to making oversight work effectively” (Luna & Walker, 2000, p. 99) and the extent to which the political will to conduct effective investigations into deaths involving the police exists in each agency will be examined.

Although it is accepted that every jurisdiction will be at a different evolutive step towards democratic policing, police accountability and human rights compliance (Vaughan & Kilcommins, 2007), there is a commonality amongst some of the concepts in relation to policing accountability in the three jurisdictions under discussion in this thesis. Although there may be other modes of investigation possible within their statutory powers, all three of the agencies have the remit to investigate deaths involving the police using their own investigative staff. The analysis in this thesis then will not seek to look through the prism of typologies of oversight agencies but will look instead at the practical steps taken in the investigations by the oversight investigators, their capacity to meet the standards expected of investigations into deaths and to withstand the challenges posed by threats to accountability. Each of three oversight bodies will be considered in turn starting with OPONI.

2.7 The Office of the Police Ombudsman for Northern Ireland: Policing in Context in Northern Ireland

It is common for commentators on Northern Ireland to express the cost of the ‘Troubles’ in human terms. McKittrick et al. (2006) have catalogued the details of 3,700 people who died as a result of the Northern Ireland troubles. McKittrick et al., have calculated that 87.7% of the deaths were caused by either Republican or Loyalist terrorist groupings (McKittrick, Kelters, Feeney, Thornton, & McVea, 2006) however three hundred and sixty five deaths are recorded as being caused by the security forces of which 50 are credited to the Royal Ulster Constabulary (RUC). McKittrick et al., recognise that although the security forces were responsible for comparatively much fewer deaths than terrorist groupings like the IRA, the deaths for which they were responsible “generated sizeable and continuing controversy” (2006, p. 1561). These deaths were often caused as a result of the attempts of the police...
and security services to maintain a form of law and order within the country. These attempts could be aligned with either of Brodeur’s high or low policing paradigms (Brodeur, 1983) as deaths would occur through the deployment of low policing techniques such as public order control and through high policing methodology such as the use of informants and intelligence led operations. Indeed, the use by police of intelligence led policing and sources such as informants would remain controversial throughout the Troubles and beyond.

The Civil Rights movement which emerged in the late 1960s (Mallie & McKittrick, 1997) saw Northern Ireland citizens from the minority Catholic population stage public protests in relation to inequality of public housing, the unfairness of electoral ‘gerrymandering’ and the draconian emergency legislation (Wallace, 1970). These protests were met with hostility from the loyalist community and “savage force” from the security forces embodied in the British Army and the RUC (Foot, 1996, p. 159; Pringle & Jacobson, 2000). During this time policing became what Patten would later describe as “at the heart of many of the problems that politicians have been unable to resolve” (Patten, 1999, p. 2). Policing in Northern Ireland was seen as biased and partisan. The manner in which a series of public order incidents arising from loyalist bands parading through Catholic areas were policed led to the conclusion that the RUC were deeply aligned with the Unionist community (Cochrane, 1997). As Martin stated “The force [the RUC] was seen as either the protector of the state and way of life by some residents or as a brutal violator of human rights and corrupt arm of a colonial power by others” (Martin, 2006, p. 320).

Through a series of small incremental steps, commencing in the late eighties with secret talks between the main nationalist political parties, Sinn Fein and the SDLP, and the Irish government and negotiating a torturous path through paramilitary ceasefires announced, broken and renewed, the search for a political settlement to the troubles culminated in April 1998 with the signing of the Belfast Agreement (Mallie & McKittrick, 1997), which became known as the Good Friday Agreement (McGarry & O'Leary, 1999). The agreement was seen as a ‘blueprint’ for peaceful resolution to difficulties that had plagued the North (Mulcahy, 2006) constitutionally recognising the social truth that Northern Ireland contained both British and Irish nationalities and both nationalist and loyalist cultures (McGarry & O'Leary, 1999). One of the central aspects of the Agreement was the establishment of an Independent Commission on Policing to identify a new way forward and to move towards policing with the consent of all of the people (Hayes, 1997).


2.7.1 OPONI

O’Rawe and Moore have described the failure of successive police accountability mechanisms in Northern Ireland leading up to the creation of the Office of the Police Ombudsman for Northern Ireland (OPONI) as evidence of the government tendency to “obfuscate and tinker at the edges of problems rather than act swiftly and decisively to transform systems that have been shown to fail” (O’Rawe & Moore, 2000, p. 259). OPONI, proposed by Hayes (Hayes, 1997) and endorsed by Patten (Patten, 1999), amounted to a resounding move towards independent investigation of police complaints in the fight for what Hayes described as the “great prize” of “public confidence in and support for the Police” (Hayes, 1997, p.v). The word ‘ombudsman’ consists of two Swedish words: ‘ombuds’ meaning representative and ‘man’ which means the people (Fowlie, 2011) and refers to “an office occupied by a single individual who is empowered and resourced to investigate citizen complaints about the manner in which they have been treated by central and local government bodies” (Walsh, 2004, p. 3). The independence of the institution is seen as its most significant feature (Kucsko-Stadlmayer, 2008).

Walsh stated that OPONI “established itself as a respected police complaints mechanism” (Walsh, 2011, p. 326) a success attributed in “no small measure to the calibre and standing of the individual appointed to the ombudsman’s office” (Walsh, 2004, p. 3). In fact several commentators have referred to OPONI as the “Rolls Royce” of oversight bodies (Seneviratne, 2004, p. 340; Prenzler, 2011, p. 285; Savage, 2012, p. 1). OPONI was prevented by statute from investigating matters that were over 12 months old unless new evidence became available or where the case was considered to be grave and exceptional (Bell, 2003). Due to the country’s history there would prove to be many complaints and instances which would fulfil the grave and exceptional criteria and OPONI found itself with a dual role responsible for ‘current’ and ‘historic’ deaths involving the police. However, it was to become mired in a period of controversy and review in which its independence in the investigation of historic matters was questioned. In 2011 concerns were raised as to the independence of the office resulting in the extensive external review of its operations including its relationship with the PSNI and the Department of Justice. An inspection by the Criminal Justice Inspectorate, although recognising the complexities of defining and measuring the independence of the office and whilst endorsing both the statutory framework of the office and its investigations into current matters, reached the conclusion that there had been an overall lowering of “the operational independence of the OPONI” (Criminal Justice Inspection Northern Ireland, 2011, p. 34). Following this review the then serving Police Ombudsman left his post in January 2012 and a new Police Ombudsman took office in July 2012. A follow up review of the office conducted by the Criminal Justice Inspectorate reported “substantial progress” had been made and that “new structures and

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4 Regulation 6 Royal Ulster Constabulary (Complaints etc., ) Regulations 2001
processes had been developed and implemented with a focus on providing comprehensive and robust quality assurance of investigations into historic cases and any subsequent production of public reports” (Criminal Justice Inspection Northern Ireland, 2013, p. vi).

2.8 The Independent Police Complaints Commission

The Independent Police Complaints Commission (IPCC) was introduced in England and Wales in 2004 marking an incremental evolutionary step in statutory complaints systems that began in 1964 with the enactment of the Police Act, which vested the responsibility for complaints and discipline issues in chief police officers, and continued with the Police Act of 1976 which established the Police Complaints Board (PCB) (Smith G., 2009). The PCB was a step towards the civilianisation of policing oversight through the review of investigation files completed by the police but was heavily criticised for its lack of authority and power. Following criticism of the police contained in the report of the Scarman (1982) inquiry into the riots in Brixton in April 1981, the enactment of the Police and Criminal Evidence Act, 1984, introduced the Police Complaints Authority (PCA) which again marked a small but further step towards external civilian investigation of the police with provision for “lay supervision for serious complaints” (Seneviratne, 2004, p. 125). The PCA operated until it too came under significant criticism in the Macpherson Report into the miscarriage of justice following the death of Stephen Lawrence (Savage, Grieve, & Poyser, 2009) which recommended the establishment of an independent police complaints body (Macpherson, 1999). Further pressures mounting to establish an independent police complaints body came through reports commissioned to review the complaints process (KPMG, 2000; Harrison & Cuneen, 2000) and that arising from the ECtHR judgement in the Kelly and Khan cases which criticised the lack of an independent police complaints mechanism (Smith G., 2002).

The IPCC commenced operations on the 1st of April 2004. It was established by the Police Reform Act 2002 which provided for four schemes or modes of investigation of police complaints. The IPCC can refer matters back to the relevant policing agency for their own local investigation and can also both supervise and manage investigations carried out by Professional Standards Departments in the police agencies over which it has remit. In the more serious cases it can carry out its own independent investigations (Wood, 2012). It is clear that from the outset, issues relating to the Article 2 obligations were under consideration in the operation of the IPCC. Writing in 2004, Deputy Chair Wadham outlined

5 Kelly and Others v United Kingdom (2001) (Appl. No. 27229/95, 3rd April 2001)
6 Khan v UK (2001), 31 EHRR 45
7 Police Reform Act (2002) Schedule 3 Part 3 section 16
8 Police Reform Act (2002) Schedule 3 Part 3 section 17
9 Police Reform Act (2002) Schedule 3 Part 3 section 18
10 Police Reform Act (2002) Schedule 3 Part 3 section 19
the IPCC’s ability to meet the Article 2 standards in investigations of death and serious injury and stated:

“...the powers of the IPCC to manage and supervise these cases combined with the possibility of using a different police force to carry out the detailed investigation work appears to meet the requirements of the Convention. The approach taken by the Police Reform Act and by the IPCC in involving the relatives of those who have died in the investigation probably goes further than required by the Convention” (Wadham, 2004, p. 5).

The IPCC did not have to wait long for a significant challenge to its investigative capacity when on the 22nd of July 2005 “an unarmed Brazilian man, Jean Charles de Menezes, was shot seven times in the head by plainclothes police officers on a stationary train at Stockwell tube station” (Turner, 2008, p. 2). The death of Jean Charles de Menezes led to an investigation into the circumstances of the shooting and also into the conduct of senior police officers and the release of inaccurate information immediately after his killing. The responsibility of both investigations fell to the IPCC. In November 2007, the Office of the Metropolitan Police Commissioner was convicted of failures under the Health and Safety at Work Act 1974 and fined £175,000. Several other high profile and significant cases have fallen to the IPCC since their inception including the death of Ian Tomlinson and Mark Saunders (Davies, 2010). Alongside their investigative responsibilities the IPCC has “invested its energies” in examining deaths in custody and “can claim to have made a most positive impact ... in relation to the number of people dying in or following police custody” (Wood, 2012, p. 81). The IPCC has also published annual statistical reports and analysis alongside detailed examinations of their investigations into deaths (IPCC, 2010). In 2012 the IPCC commenced a review of their work in cases involving death including “cases where Article 2 of the ECHR is engaged” (IPCC, 2012). The IPCC 2012-2015 corporate plan identified six priority areas for the organisation, three of them relate to deaths and serious injury involving the police (IPCC, 2012).

Consistently over the years of its operation the IPCC has been criticised for the low number of independent investigations it carries out, Prenzler and Porter described the IPCC as “very much a mixed model of regulatory oversight, with continued reliance on police for the majority of investigations and limited input into disciplinary processes” (Porter & Prenzler, 2012, p. 154) and in 2010 the Home Affairs Committee starkly pronounced:

“In 2008–09, less than 1% of all complaints made against the Police were directly investigated by IPCC staff and just 10% of “serious” cases referred to the IPCC were subsequently managed by the IPCC’s own staff. It is true to say that, 99 times out of
In January 2013 the Home Affairs Committee published a further report into the IPCC that recommended that the IPCC conduct more independent investigations and stated in relation to deaths involving the police:

“The IPCC owes it to the families of those who die in cases involving the police to get to the truth of the matter- a botched job is an offence to all concerned. When the IPCC does investigate it often comes too late and takes too long.” (Home Affairs Committee, 2013, p. 36).

Under the heading of “A second home for police officers” the committee also criticised the make-up of staff in the organisation and recommended that the IPCC move from the current levels of 33% to a target of employing 20% or fewer investigators with former policing backgrounds (Home Affairs Committee, 2013, pp. 24-26). On the 12th of February 2013 the Home Secretary announced a series of measures to expand the IPCC to deal with all serious complaints against the police as independent investigations including drawing resources from police professional standards departments (Travis, 2013). The IPCC’s powers were controversially expanded in 2013 to allow them to compel police officers to attend an interview as a witness in managed or independent IPCC investigations (Dodd, 2012). This expansion of power and resources came at a time when the IPCC was facing perhaps its biggest challenge to date having launched an investigation in October 2012 into possible historic police wrongdoing in relation to the 1989 Hillsborough tragedy (IPCC, 2012).

2.9 The Garda Síochána Ombudsman Commission: Policing and Accountability in Ireland

Although the Garda Síochána have experienced several scandals, including media exposés into the operations of a Garda ‘heavy gang’ in the seventies believed to use intimidation, physical and mental abuse to coerce or concoct suspect confessions (Kilcommins, O'Donnell, O'Sullivan, & Vaughan, 2004; Inglis, 2003), allegations of misuse of Garda powers for political purposes (Brady, 2012 c; Joyce & Murtagh, 1983) in the eighties and the use of improper and oppressive interrogation techniques resulting in miscarriages of justice in the nineties (Birmingham, 2006), the force have still enjoyed a high level of public confidence. However, the Morris Tribunal established on the 28th March 2002 to enquire into the conduct of Gardaí in the Donegal Division in the west of Ireland represented “the first major investigation and evaluation of policies, organisation and practices across key aspects of policing in the History of the state” (Walsh, 2010, p. x). Unethical and criminal behaviour alleged to have been perpetrated by a small number of Garda members in Donegal had by
November 2001 caused serious concerns to be expressed by the public, the media and eventually the Government (Fitzgerald, 2008). The behaviour to be examined by the Morris Tribunal included breaches of almost all of the sections of the Garda code of conduct (Conway, 2010, p. 88) and criminality such as extortion, harassment, unlawful arrest and detention, the fabrication of weapons finds, the mishandling of informants and ill-treatment of persons in custody (Nolan, 2005). Whilst acknowledging other contextual factors such as the growing importance of international human rights mechanisms as being relevant drivers, Conway rates the policing scandal in Donegal and the Morris Tribunal and its negative findings as “monumental driver” of police reform and the primary cause of increased police oversight in Ireland (Conway, 2010, p. 124). Indeed it is possible to draw parallels as regards the impact on police reform between the Morris Tribunal following the scandal in Donegal and the Macpherson Report that followed the miscarriage of justice in the case of Stephen Lawrence.

In Ireland the pattern of policing scandal followed by reform was not an entirely new state of affairs. Up until the 1980s in Ireland allegations of Garda misconduct were investigated internally by other members of the Gardaí. However following what has become known as the ‘Kerry babies case’, in which there were allegations of police use of “force and psychological terror” in the securing of false confessions from a family in rural Kerry in relation to the murder of a new born baby during an investigation described as “medieval” (McCafferty, 1985, p. 79), the Garda Síochána Complaints Board (GSCB) was established in 1987. The GSCB had introduced an independent element into the investigation of public complaints against the police with a remit largely restricted to overseeing Garda investigation of complaints (Mulcahy, 2007) but had been hampered by inadequate resources, public criticism of the use of members of An Garda Síochána to conduct almost all of the investigations undertaken, a low rate of cases determined in favour of the complainant and a high rate of cases found to be inadmissible (Walsh, 2004). The Board itself highlighted deficiencies in the complaints system and called for reforms of the process in almost all of its annual reports (Walsh, 2004) during its tenure the Committee of the Prevention of Torture twice reported that persons detained by the Garda Síochána in Ireland ran “a not inconsiderable risk of being physically ill-treated” (Council of Europe, 1995, p. 14; 1999). A chapter of The Morris report was dedicated to criticism of the GSCB’s failures and “the limited nature of its investigatory powers” (Morris, 2008, p. 321). Morris focused on two significant factors “the inadequate structures of accountability; and the culture of silence and non co-operation with investigations” (McVerry, 2005, p. 1).

Demands, made by political representatives and pressure groups including the Irish Human Rights Commission that Ireland should look to its Northern neighbours for an example in reducing the “democratic deficit” of police accountability (Mulcahy, 2005, p. 203) and to emulate the oversight structures that had begun to bed in there, were initially resisted on
the grounds that the realities of policing differed substantially across both jurisdictions (National Economic and Social Council, 2012). A draft Bill published in 2003 initially proposed a Garda Inspectorate but this was to be replaced by the proposal of a Garda Ombudsman Commission by the time it had reached the Seanad in February 2004 and was to include both an Ombudsman Commission, for complaints, and an Inspectorate dealing with complaints and areas of practice and procedure by the time it reached the Dáil in 2005. After what has been characterised as a hurried debate with frequent amendments the Garda Síochána Act was signed into law by the president of Ireland on the 10th of July 2005 (Conway, 2010). As the Gardaí had for so long relied upon self regulation, the creation of GSOC represented a “dramatic shift” in the terms and structure of accountability (National Economic and Social Council, 2012) and heralded in the new paradigm for the Garda Síochána in the 21st century “that of policing to accountability” (Fitzgerald, 2008, p. 4).

Prior to the commencement of the new accountability structures Walsh predicted the factors that would lead to its success or failure:

“The capacity of the Ombudsman Commission to discharge this onerous task will be heavily dependent on matters such as: its status and composition; whether the persons appointed to it have the necessary expertise and qualifications; the extent to which it can act and be seen to act independently of government; whether it has the necessary powers and resources to employ and train investigators independent of the Garda; and perhaps, most important of all, whether it will have the necessary powers to investigate complaints against Gardaí, and the force as a whole, robustly, fairly and swiftly” (Walsh, 2004, p. 2).

Other commentators felt that the new Ombudsman Commission suffered in comparison with the Northern Model, criticising the three person Commission structure, the lack of open competition in their appointment and questioning whether government appointees could be seen to be sufficiently independent and autonomous of the state (McVerry, 2005; Vaughan, 2005). Indeed, before one complaint had been received or one investigator employed the new police oversight mechanisms were expected to “fall significantly short of their counterparts in Northern Ireland” (Walsh, 2011, p. 326).

2.9.1 GSOC

The first three person Garda Síochana Ombudsman Commission (GSOC) was appointed in February 2006 (GSOC, 2007) with the twin statutory objectives of establishing an effective, efficient system of investigating police complaints that is fair to all concerned and of promoting confidence in that system. As with the IPCC, not all complaints or investigations
were to be carried out independently by the Commission, instead the Act provided for four types of investigation: independent investigation by GSOC of possible criminal offences\textsuperscript{11}; independent investigation by GSOC of possible disciplinary breaches by Garda members\textsuperscript{12}; investigation of possible disciplinary breaches referred to the Garda Síochána for investigation supervised by GSOC\textsuperscript{13} and the unsupervised investigation of possible disciplinary breaches by the Garda Síochána\textsuperscript{14}. For the purposes of the independent investigation of possible criminal offences the designated officers of the GSOC were invested with “all the powers, immunities and privileges conferred and all the duties imposed on any member of the Garda Síochána\textsuperscript{15}.” Following on from a recommendation of the Morris Tribunal the Act created an obligation\textsuperscript{16} on Garda members when directed by a member of a higher rank to account for any act done or omission made whilst on duty. Following a legislative amendment the power to direct an account from a Garda member was extended so that designated officers of GSOC were also given the power.\textsuperscript{17} The use of the power\textsuperscript{18} to direct an account is limited due to the right against self-incrimination. Indeed the power of GSOC to obtain information from any agency, including the Garda Síochána is not as explicitly drafted as in the other jurisdictions. It appears to rest with the investing of the powers of a Garda member in its designated officers and a duty lies with the Gardaí to preserve evidence relevant to a complaint, however, the explicit terms seen in the legislation of other jurisdictions to compel the cooperation of the overseen, is absent.

In relation to the investigation of death involving the Gardaí, the Act placed a dual responsibility on both the Garda Síochána and GSOC legislating that any matter that appeared to the Garda Commissioner to indicate that the conduct of a Garda member may have resulted in the death of, or serious harm to,\textsuperscript{19} a person shall be referred to the Garda Ombudsman who in turn shall ensure that it is investigated. A further responsibility lies with GSOC in circumstances where no referral is made but the Commission believes that the conduct of a member may have led to the death of a person. During and at the conclusion of an investigation commenced under this statutory responsibility GSOC is obliged\textsuperscript{20} to provide the Garda members whose conduct is subject to the investigation, the Garda Commissioner, the relevant Government Minister and any other person that the Commission considers has a sufficient interest, for example the family of a deceased or their representatives with sufficient information to keep them informed as to the progress and results of the investigation. There is no requirement, however, as has been seen in, for example, Northern

\begin{itemize}
\item Section 98 Garda Síochána Act, 2005
\item Section 95 Garda Síochána Act, 2005
\item Section 94(5) Garda Síochána Act, 2005
\item Section 94(1) Garda Síochána Act, 2005
\item Section 98(1) Garda Síochána Act, 2005
\item Section 39 (1) Garda Síochána Act, 2005 (As Amended)
\item Section 96 Garda Síochána Act, 2005
\item Section 39 (4) Garda Síochána Act, 2005 (As Amended)
\item Section 102 (1) and (2) Garda Síochána Act, 2005
\item Section 103 (1)(b) Garda Síochána Act, 2005
\end{itemize}
Ireland that the findings of an investigation into a death referred by the police force be made public by laying them before Parliament or in this case the Dáil.

GSOC would not have to wait long for the first challenges relating to the investigation of a death. It commenced operations on the 9th of May 2007 and on the 17th of May GSOC commenced its first investigation into a death (Cuzack, 2007). Since then it has been tasked with the investigation of a large number of fatal incidents involving An Garda Síochána; in 2012 GSOC investigated 13 deaths involving the police (GSOC, 2013). In its Annual Report for 2012 GSOC reported considerable difficulties in the supply of information from An Garda Síochána but also asserted its commitment to meeting the obligations under Article 2 (GSOC, 2013, p. 9).

This chapter began with a consideration of the role of police in society and an examination of the elements of that role that could lead to fatalities involving the police. The discussion then moved to the concept of accountability and its importance in the context of deaths involving the police. Typologies of police oversight agencies were discussed highlighting the evolution of independent investigation of police services. Finally the chapter introduced the three policing oversight agencies that are the subject of this research: OPONI, the IPCC and GSOC. In doing so both the origins of the three agencies and the policing context into which they were introduced have been examined. The current context in which each of the oversight agencies are operating has also been explored. In the next chapter a methodology is outlined to analyse the Article 2 ECHR standards to which deaths involving the police must be investigated and to examine the capacity and ability of each of the three oversight agencies to meet those standards.
Chapter Three:

Methodology
Chapter Three: Methodology

3.1 Introduction

This chapter will explore the choices made in selecting an appropriate methodology to firstly explore the evolution of the Article 2 standards and then to examine the capacity of oversight agencies to comply with them. The chapter will begin with the outline of a critical analysis structure to identify and highlight the evolution of the Article 2 standards and this will then be followed by an exploration of the difficulties in evaluating the work undertaken by oversight agencies generally. The chapter will then outline considerations made in the selection of the oversight agencies which are the subject of this thesis. It will then look at the selection of a mixed methods research strategy, employing semi-structured interviews followed by a questionnaire, to gather the primary data in the examination of each of the agencies and will outline the difficulties in carrying out this strategy leading to a decision to report on the qualitative elements of the research only. The practical application of the research strategy will be considered including issues relating to sampling, transcription and analysis and finally the ethical considerations of the research will be outlined.

3.2 Critical Analysis of the Issues Relating to Article 2

The first part of the research methodology chosen to examine the issues relating to the investigation of deaths involving the police is to conduct a critical analysis of the evolution of the principle and standards of an effective investigation under Article 2 of the ECHR. This analysis will examine the origin of the European Convention itself and the concept of positive obligations derived from the text. Next it will explore in detail the Article 2 standard of the right to life and the origin and evolution of the positive obligation of an effective investigation into deaths involving the state. This section of the analysis will draw on both the academic literature on the topic but also the European jurisprudence that caused the incremental evolution of the principle of effective investigation into deaths involving the police. The analysis will then outline the emergence of the five standards of an effective investigation and consider both the law and literature around each of these standards. These five standards have been articulated in an opinion of the European Commissioner for Human Rights and this document and the standards defined within it in will also be subject to the analysis. The meaning and resonance of the five standards will then be dealt with in turn again drawing on both ECtHR precedent and academic commentary. Finally the process by which the standards migrate from discussion in the ECtHR to practical application by
oversight agencies will be analysed using the framework of Europeanization (Borzel & Risse, 2000).

3.3 The Difficulty of Evaluating Police Oversight Agencies

Reiner described the identification and assessment of good police performance as the “gaping hole at the heart of debates about policing” (Reiner, 1998, p. 55). Just as the debate on how the application of quantitative research methods to policing organisations can do justice to the complexity of the activities they perform remains unresolved (Fleming & Scott, 2008) and raises complex theoretical and practical questions (Brodeur, 1998), the evaluation of civilian oversight agencies has been insufficiently considered (Goldsmith & Lewis, 2000). The literature instead focuses on descriptions of the development and function of oversight agencies as opposed to formal evaluations (Miller J, 2002). Where evaluation of oversight agencies is considered, there has been a tendency in the literature to evaluate success and failure in “stark dichotomous terms without regard to considerations of degree and process, or of a symbolic as well as a practical nature” (Goldsmith, 2000, p. 190). Prenzler and Lewis concluded that “Measuring the performance of police oversight agencies is not an easy matter” (Prenzler & Lewis, 2005, p. 82).

Further problems arise in assessing the work of oversight agencies in relation to the achievement of the Article 2 standards. Firstly, the most common assessment of compliance with Article 2 standards is the retrospective examination by the ECtHR following an application to the ECtHR in an individual case where there is an allegation that a breach of one or more of the standards has occurred. Furthermore, the Article 2 standards includes five interlinked elements of independence, adequacy, timeliness, public scrutiny and victim involvement which means that any research strategy has to be capable of examining each element. Further the obligation to fulfil the Article 2 standards is a state obligation and the oversight agencies may not have sole carriage or responsibility for all of the five elements for example, in compliance with the public scrutiny element the oversight body may be required to liaise with external agencies such as the relevant coronial authority. As such it may be “overwhelmingly difficult to imagine an evaluation research design that could encompass the multiagency approach” (Brodeur, 1998, p. 47).

To commence the task of identifying a methodology to meet my aims and objectives, I first sought to identify through the literature what models may be available to assist in my examination of oversight agencies. Stenning considers that an effective police complaints agency should possess:
“a sound legislative foundation; dedicated, competent, experienced and/or trained personnel to administer it; a reasonable level of commitment and co-operation on the part of the police organisations and personnel to whom the process applies; an adequate degree of knowledge of, confidence in, and willingness to use, the process and in good faith, on the part of potential complainants; and the commitment of political support and adequate resources for full and effective implementation of the process” (Stenning, 2000, p. 147).

Stenning’s detailed structure for evaluating the legislative framework is outlined in Appendix 1 below in tabular form but it is clear from the multi layered description of an effective oversight agency that any evaluation of the different elements would require a complex and non linear approach capable of assessing multiple constructs such as independence, impartiality and thoroughness. Stenning’s proposal represents a ‘normative’ approach (Stenning, 2000) evaluating the legislative framework that empowers the agencies and stressing the importance of balancing the parallel or competing considerations of “discipline and remedy, police management and external oversight, formality and informality, the individual complainant and the public interest” (Goldsmith & Lewis, 2000, p. 8).

Walker proposed that developing appropriate performance measures to indicate the effectiveness of the work undertaken was one of the most important challenges for oversight agencies (Walker, 2006). However, Prenzler and Lewis in researching performance indicators for oversight agencies and having considered measures such as complaint substantiation rates, disciplinary sanctions applied, timelines in investigations, changes in police procedures, case file audits and stakeholder confidence found that no single measure or even a group of measures “provides an objective demonstration of the effectiveness of an agency in preventing corruption or effectively adjudicating allegations of misconduct” (Prenzler & Lewis, 2005, pp. 77-78). Filstad and Gottschalk suggested five performance indicators “quality and quantity of complaints received, complaints completion process and time, conviction rate from complaints charges, learning and advice for police agencies and confidence in the police oversight agency” (Filstad & Gottschalk, 2011, p. 108) but found that the ability of police oversight agencies to provide support to police agencies through lessons learning was limited. The attempts by oversight agencies to report on complaint trends and to analyse complaints data as a tool for organisational learning indicates a withdrawal from a legalistic sanctions based approach to police misconduct and a move towards improving police organisational effectiveness through feedback to police management (Goldsmith & Lewis, 2000).

The concept of learning lessons from the investigations of police involved is at the centre of the Article 2 standards. Smith has stated:
“The task facing investigators and analysts is to identify all the factors that result in failure, rather than presume human error, and then implement the lessons learned... as a reflective endeavour lesson learning has the capacity to enhance regulatory and accountability effectiveness” (Smith G., 2009, p. 424).

This echoes the comments of both Baroness Hale and Lord Bingham as to the purposes of the investigation into deaths involving the police including an element of the prevention of future incidents.

It is clear then that any methodology undertaken to examine the capacity and performance of the oversight agencies in undertaking investigations into police involved deaths cannot rely on simple or single indicators such as disciplinary or criminal sanctions. Stenning’s model, whilst attractive, deals with the powers afforded to an oversight agency but would not serve to indicate the manner in which the powers are implemented or used by the actors within the organisations such as the investigators and senior investigators. A case study analysis of an actual investigation or investigations could serve to examine the response by one oversight agency to a specific set of circumstances but would inevitably be case specific and limited by its retrospective nature (Turner, 2009). Analysis of Annual Reports including the published Performance Indicators would also provide only the approved public narrative of the oversight agencies themselves. A wider scope again could be taken by researching the viewpoints of other stakeholders in the investigation process for example the families of the deceased or police officers subject of investigation. Necessarily, therefore I had to attempt to narrow my focus. My consideration of the evaluative models above led to the conclusion that my intention through this thesis was not an evaluation of performance or outcomes but instead amounted to an examination and assessment of the issues relating to investigating deaths involving the police from the viewpoint of the investigators tasked with the practical application of the Article 2 standards. This would provide an insight into the work of policing oversight investigators and an examination of their perception of the issues relating to the investigation of deaths involving the police. This would mean that I was approaching the examination of the oversight agencies not from a standpoint of what the oversight agencies should do, what they are empowered to do or what they say that they do but instead gathering data from key oversight practitioners, i.e. the investigators themselves, as to what they actually do.

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3.4 Selecting a Methodology

In order to approach the selection of research methodology it was necessary to take the question back to first principles and consider the aims of the research. Bachman categorised the four purposes of social research as descriptive, exploratory, explanatory and evaluative (Bachman, 2003, p. 13). Having considered Bachman’s model, I concluded that primarily this thesis was an examination of oversight agencies from the perspective of the investigators charged with achieving the standards of an effective investigation. There would be some descriptive elements to the research in that it would describe the investigative mechanisms in place in each of the agencies, some exploratory elements to the research in that it would explore the meanings given by the investigators to concepts such as independence and finally the research would have a narrow evaluative or assessment function in that it would seek to identify whether the oversight structures had the capacity to meet the Article 2 standards. However, whilst the European Courts are required to retrospectively analyse a single investigation against the contention put forward by an applicant that specific breaches of the convention have occurred the aim of this research was broader in that it would examine the ongoing capacity of oversight agencies to undertake the investigations of deaths involving the police as they occur. Further the research would attempt to examine to what extent the standards set in Europe had actually made their way from the ECtHR to those responsible within the selected oversight agencies for applying the standards in their investigation and in that regard the evaluation would move beyond the means and statutory powers of the organisations and in to less quantifiable areas such as culture and attitudes. In relation to evaluating oversight agencies and their capacity to achieve the Article 2 standards, Mowbray has cited the McKerr Case23 stating “the duty to undertake effective investigations into killings is ‘... not an obligation of result, but of means’, thereby recognising that a State may have provided adequate resources for the investigation to be characterised as effective even if it was unable to result in the identification/punishment of persons responsible for an unlawful killing” (Mowbray, 2005, p. 78). This would indicate that any examination of a state’s ability to attain the standards should not seek to assess the results of the investigations undertaken on the limited scope of prosecutions or disciplinary outcomes arising but should look instead at the ‘means’ employed in the investigation itself by those investigators who had control over the investigation and made the choices as to how they were conducted. The research would then examine the capacity of the organisations from the perspective of those in charge and control of decision making and therefore the ‘means’ of the investigations undertaken.

The next question was which research method was the most appropriate to undertake the examination process. Mixed methods research either combines, integrates, or mixes qualitative and quantitative methods (Morgan, 2007) and has been defined as “an approach

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23 McKerr v United Kingdom (2001) 28883/95 4th May 2001 at 96
to knowledge (theory and practice) that attempts to consider multiple viewpoints, perspective, positions and standpoints (always including the standpoints of qualitative and quantitative research)” (Burke Johnson, Onwuegbuzie, & Turner, 2001, p. 113). Such an approach that would encompass multiple viewpoints would be better placed to examine the complexities and subjective nature of some of the concepts that had emerged from the literature review such as independence and the culture of the oversight agencies which would not be readily susceptible to numeric quantification. Also appealing was the assertion by Burke Johnson et al., (2001, p. 113) that the “primary philosophy of mixed research was one of pragmatism” as this was felt to be in keeping with the insider element of the research in that I was a senior investigating officer in an oversight agency seeking to examine the practical application of standards set by courts but applied by fellow senior investigating officers or SIOs.

In seeking to further refine the choice of research method I considered the models of mixed methods research described by Creswell et al., and initially selected the “Sequential Exploratory Design” as the most appropriate to fit the aims of the research (Creswell, Clark, Gutmann, & Hanson, 2003, p. 223). The ‘Sequential Exploratory Design’ is a five phase design model consisting of Qualitative Data Collection and then Qualitative Data Analysis, followed by Quantitative Data Collection and then Quantitative Data Analysis and ending with the Interpretation of the Entire Analysis. In applying this model I would seek to collect qualitative data through interviews with senior investigating officers in the oversight agencies which would then be analysed to assist in the development of a quantitative instrument that would be used to gather further quantitative data from investigating officers. This would be in keeping with the rationale of mixed methods research referred to as “development” i.e. using the results from one method to assist and inform the use of the other method (Greene, Caracelli, & Graham, 1989, p. 259). It would also arguably assist in ‘triangulation’ through seeking an “increased validity” of the results across the mixed methods (Moran-Ellis, et al., 2006, pp. 47-48).

Although it was my intention to follow the Article 2 standards all the way to their practical application by the investigators who have the front line responsibility for executing the investigative strategy. When it came to drafting the thesis the ambitious scale of the project and the limited word count availability meant that ultimately I reported only on the qualitative research undertaken in the interviews with the Senior Investigators. The quantitative instruments and data are reproduced in Appendices 5, 6 and 10 and the following discussion of the methodology considerations relate only to the qualitative elements of the research. Although this limits the ability of the research to connect with the on the ground application of the Article 2 principles as the thesis deals with complex and subjective constructs such as independence and thoroughness the qualitative interviews is where the richest data lay.
3.5 Qualitative Data Collection and Analysis

3.5.1 Interviews

For the qualitative data collection I selected semi-structured interviews, defined as where “the interviewer has a general area of interest and concern but lets the conversation develop within this area” (Robson, 2002, p. 270) as the appropriate methodology for gathering the data. This was primarily because I did not wish to overly restrict the interviews and to be open to the areas regarding the investigation of deaths that may prove to be important to the interview subjects. I did, however, wish to explore some specific aspects so a flexible semi-structured interview process was considered the optimal solution. I was also conscious that I was interviewing senior investigators who had been trained in investigative interview techniques, would be comfortable with a more structured approach to interviews and would recognise any clumsy attempts to “do rapport” (Knapik, 2006, pp. 82-89). For the semi-structured interviews, I decided to follow the five stage model put forward by Robson as Introduction, Warm-Up, Main Body of Interview, Cool Off and Closure (Robson, 2002). I then prepared a schedule of questions that would provide a loose structure for the interview (Appendix 2). For the Introduction section of the interview I would explain the purpose of the research and go through preliminary requirements such as the Interview Information Sheet and the Participant Consent Form, this would also serve to allow me to lead into the Warm Up questions which were generally phrased questions about the experience of the interviewee of the concepts surrounding Article 2. Although intended to be general open ended questions, I hoped that the responses to these general questions might provide some interesting scope for what Kvale called the “descriptions of the life-world of the interviewee” (Kvale S., 1994, p. 149). I divided the main body of the interview into sections and subsections covering the five standards as well as questions relating to the capacity of the organisation to undertake an investigation of a death involving elements of what Brodeur described as ‘high policing’ (Brodeur, 1983) and what Luna and Walker (2000) described as the ‘political will’ of the oversight agencies. I also selected some general questions as the Cool Off section that would cover the interviewees’ opinion as to whether the Article 2 standards were realistic and attainable and for the Closure section of the interview I would enquire as to whether the interviewee had any questions and explain the probable timescale for the completion of the research.

3.5.2 Qualitative Sampling Issues

Theoretically any oversight agency operating in a country that was a signatory to the ECHR could be evaluated to establish whether capacity existed to meet the Article 2 standards. I chose to examine three oversight agencies. These were the Office of the Police Ombudsman
for Northern Ireland (OPONI), the Independent Police Complaints Commission (IPCC) and the Garda Síochana Ombudsman Commission (GSOC) in the Republic of Ireland. The reasons for selecting these three agencies were due to their place in the evolution towards independent police oversight. All three agencies had the statutory power to independently investigate deaths involving the police. As such each had arguably reached the ‘end game’ of the evolution of policing accountability mechanisms and were intended to be capable of Article 2 compliance in investigation. There were other, primarily pragmatic factors in the selection of these agencies, such as my previous experience of the organisations, their geographical proximity and their use of English as a primary operating language, but the main factor in their selection was their ability to independently investigate deaths involving the police.

For the qualitative phase of the research the population that I wished to study were those people within the rank structures of the organisation that may be called upon to ‘lead’ the investigations into deaths involving the police. Although the terminology and titles differed across the organisations these people could be referred to as senior investigators (SIs). The definition of a senior investigating officer when used in policing terms is:

“The lead investigator of a serious crime [who] makes the principal decisions within a serious crime investigation and takes primary responsibility for its outcome” (Smith & Flanagan, 2000, p. 12).

This can be readily adapted to police oversight terms when it is considered that an investigation into a death involving the police is equitable to a serious crime investigation.

The next sampling issue was how I would select which SIs that I would interview. In order to get a representative sample, the approach necessarily differed across each of the organisations. This was due to the fact that each of the oversight agencies was of a different size and structure and had a different number of SIs. The approach was also made more difficult by the fact that each of the organisations were in a period of flux in that all three of the agencies ran both promotion and recruitment campaigns over the life time of the research meaning that the population of SIs in the oversight bodies remained in flux.

In GSOC over the course of the research there were only seven SIs in their staff structure. Although I was aware that a large sample size was not always necessary due to the “information rich” nature of qualitative interviews (Holloway, 1997, p. 142) and that the ideal sample size for a qualitative study was instead one that “adequately answered the question” (Marshall, 1996, p. 523) I considered the population of senior investigators in GSOC was relatively small and therefore I was able to interview all of them thus allowing me
to study the “complete population” (Oppenheim, 1992, p. 7). In OPONI at the time the interviews were conducted there were 18 investigators holding the rank of Senior Investigator or Deputy Senior Investigator. Again I considered that this was not an unreasonable number of interviewees and I attempted to interview the entire population. Of the 18, two declined to be interviewed and two were unavailable through leave or sickness which meant that I was able to conduct interviews with 14 or 77.77% of the population within OPONI. The IPCC presented different difficulties. OPONI and GSOC are based over relatively small geographical areas and the distances involved presented no real difficulties in attending their offices for interviews. The IPCC, however, cover a much wider area and at the time of conducting the interviews had offices in Sale, Cardiff, Wakefield and London and were in the process of opening a fifth office in Warrington. It also has a much larger staff than the other two organisations with over 400 employees of which around 100 are investigators.

Financial and time constraints meant that I would be unable to attend at all of the sites; however, I was aware that each of the offices could present a different environment in which to gather data. I elected then to interview as many of the SIs as I could in three of the IPCC offices, Cardiff, Sale and London. I did this knowing that if I was to interview too small a sample I risked being unable to make “statistical generalizations” (Kvale S., 1994, p. 164). I selected these offices as when attempting to arrange the interviews I discovered that the highest number of senior and deputy senior investigators would be present on the days selected for interviews. As a result I was able to interview nine senior investigators from the IPCC across the three offices. I was conscious that if these interviews did not garner the necessary degree of “saturation” in that “new interviews are conducted to a point where further interviews yield little new knowledge” (Kvale S., 1994, p. 165) I could return to the population at a later date and arrange further interviews although this would prove to be unnecessary.

<table>
<thead>
<tr>
<th>Organisation</th>
<th>OPONI</th>
<th>IPCC</th>
<th>GSOC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number of SIs</td>
<td>18</td>
<td>22*</td>
<td>7</td>
</tr>
<tr>
<td>SIs Interviewed</td>
<td>14</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Percentage</td>
<td>77.77%</td>
<td>40.90%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table Three: Percentage of Senior Investigators Interviewed *This is the total number of SIs in three IPCC offices at London, Sale and Wakefield.
My approach to the sampling of the senior investigators was different than in each of the three organisations. Using Marshall’s typology of the three sampling models as convenience, judgemental and theoretical (Marshall, 1996, p. 523), the sampling model for the three organisations was aligned to the convenience model. This was particularly so for the IPCC. I was aware that convenience sampling of a population could be considered as the least rigorous but I was restricted by time and financial constraints and the difficulties of attempting to examine a population that by its nature was reactive and fluid to the demands of its role. In making these decisions I was buoyed by Marshall’s guideline that “qualitative sampling usually requires a flexible, pragmatic approach” (Marshall, 1996, p. 524) and upon analysis of the data I was satisfied that I had managed to gather qualitative data that was representative of each of the three organisations and that could build towards answering the aims of the research.

3.5.3 Ethics

In considering the ethical concerns in relation to the research I considered various sources of guidance in dealing with research in an ethical manner. I considered the ethical guidelines of the British Society of Criminology website and the Ethical Self Assessment Form provided by Portsmouth University as well as reading the academic literature on the subject. Considering Bryman’s discussion of the topic I considered that there was no danger of physical harm to the participants in the research and any risk of loss of self esteem or stress would be negligible (Bryman, 2001). The next issue was one of ensuring that informed consent had been given by all participants. Upon the advice of the Research Ethics Committee for Portsmouth University I drafted a Participant Information Sheet (See Appendix 3) which set out the voluntary nature of participation, the purposes of the research, the safeguards around any data gathered. Each interviewee was also required to complete a Consent Form (See Appendix 4) which indicated that they had been provided with the information sheet, had given voluntary consent for their participation and agreed to being audio recorded and quoted verbatim in the research. Although I was aware that there is no “legally recognised privilege of confidentiality” in research (Hagan, 2003, p. 43) I was able to provide the assurance that I would endeavour as far as possible to keep the data obtained in the study confidential but that the confidentiality could be breached should I discover significant malpractice or on foot of a legal or moral obligation. I also assured the SI’s that they would each be allocated a code made up of SI and a two digit number and that any quotations in the thesis would be referenced to this code and not by their identity. Due to the small number of SIs in GSOC extra care had to be taken in the selection and presentation of direct quotations to avoid inadvertently identifying their author. The research was considered by the Ethical Approvals Committee and approval was granted. This was later confirmed in writing on the 25th of April 2013 (See Appendix 8).
3.5.4 Reflection on Interviews

Upon reflection the interviews conducted for the research went well. I made the choice to interview in the workplace of the interviewee and arranged for a room to be set aside for this purpose. I avoided using the actual office of the interview subject where possible to promote a more comfortable atmosphere. I digitally recorded each interview and chose to take as few notes as possible to avoid the disruptive practice of writing extensively and instead listen to the interviewees responses (Bachman, 2003).

Another issue that had to be considered was the impact of my own role as an oversight Senior Investigator on the research being undertaken. As previously stated I had commenced my oversight career with OPONI and at the time of the research I was employed with GSOC. I was therefore conscious that my status as a practitioner researcher may serve to skew the responses I would obtain from the interview subjects. As such I attempted to leave my conceptual baggage (Coy, 2006) behind to present a neutrality towards the issues under examination in the interviews and allow the subject to express and expand upon their own viewpoint (Fox, Martin, & Green, 2007). Although I knew all of the interview subjects within GSOC and a number of the subjects within OPONI the interviews in the IPCC were conducted with senior investigators that I had not previously met. I could therefore be more confident that my role as practitioner researcher was less likely to affect their responses but I also tailored my introduction to these interviewees to encourage both their engagement with the interview and a strong “interviewer-participant” relationship (Knox & Burkard, 2009, p. 569).

The interviews ranged in length from around 35 minutes to an hour and twenty minutes but on average an hour was sufficient to explore the themes but not make unreasonable demands on the interviewees (Robson, 2002). Several of the interviewees had ‘on call’ responsibilities so it was common for interviews to be interrupted by mobile telephone calls or visitors to the interview room in relation to active and ongoing investigations. Although this may have interrupted the flow of the interview on some occasions it provided a brief respite to allow me to take stock and refocus the interview where necessary.

Upon reflection on the research undertaken, the aim of the research was perhaps too ambitious as it required a larger commitment of time and resources than perhaps focussing on a single oversight agency or a single element of the article 2 standards may have required and by the end of the interview process I had conducted thirty interviews, in five offices, in four different countries, across three oversight agencies. As referenced above the ambitious scale of the research also meant that the results of the quantitative research phases undertaken are not reported in this thesis.
3.5.5 Transcription

Conscious of the depth and range of the approaches and methodology of transcription referenced in the various literature on the topic (Ochs, 1979; Greene, Franquiz, & Dixon, 1997; Jaffe, 2000; Duranti, 2007) I chose to align my approach to the transcription of the interviews to two descriptions that I had found in the literature. The first was a description by Davidson of a process that was “theoretical, selective, interpretive, and representational” (Davidson, 2009, p. 37) and the second by Rapley (Rapley, 2001) which proposed that the question that prompted the response was as important as the response itself thus emphasising both text and context. In following these two descriptions I sought to use the transcription process as a pre-analysis phase and as I transcribed the thirty interviews and listened repeatedly to the interviews, I made notes of common themes and issues, use of language and phraseology and other pertinent elements that flowed through the interviews. I transcribed as closely as possible to the spoken word including pauses and verbal inflections where appropriate, however, due to the predilection of some senior investigators to discuss actual investigations of cases I chose not to transcribe any response that could serve to identify the interviewee or contained a reference to an actual investigation. The transcription process was long but necessarily so and at its conclusion I had produced thirty transcripts each of several thousand words that accurately reflected the scope and scale of the interviews with hopefully as little as possible having been “lost in transcription” (Bourdieu, 1999, p. 622).

3.5.6 Analysis

The data gathered in the qualitative interviews was to be used in two ways. Primarily the mixed methods research was to be “qualitatively driven” (Mason, 2006, p. 9) with the rich experiential data provided by the interviewees to make up the bulk of the findings of the research. For this reason I felt that the analysis of the interview transcripts leaned more towards the “imaginative work of interpretation” rather than “coding, indexing, sorting, retrieving or otherwise manipulating data” (Coffey & Atkinson, 1996, p. 6). In analysing the data I used a grounded theory approach defined as “the discovery of theory from data systematically obtained from social research” (Glaser & Strauss, 1967, p. 2) and examined the transcripts for the messages that emerged and then attempted to ‘code’ them. I followed the methodology put forward by Wincup (Wincup, 1997; Noakes & Wincup, 2004) and read through the transcripts firstly highlighting themes as they emerged from the data and then secondly focusing on these themes in a more detailed way. To assist me with this analytical process I created a matrix (see Appendix 7) based on the semi structured interview schedule which allowed me to classify each of the interviews by way of responses to the areas explored in a simplistically general way under the categories of ‘mostly negative’, ‘mostly positive’ and ‘neutral’. This was to be used as the first layer of analysis.
and the matrix incorporated a section to capture emerging themes and recurrent language or emphasis. Following this I revisited all of the interviews and selected the sections that either best evidenced the emerging themes or made points directly relevant to the aims of the research. In doing so I was mindful of Kvale’s warning against reading the interview material like “the devil reads the Bible” (Kvale, 1983, p. 190) and not selecting and interpreting the data in a preconceived or prejudiced fashion but instead presenting the research findings in a fair and unbiased fashion.

The findings of the research are set out in the following chapters.
Chapter Four:

Article 2, the Five Standards of the Positive Obligation and the Europeanization of Human Rights
Chapter Four: Article 2, the Five Standards of the Positive Obligation and the Europeanization of Human Rights

4.1 Introduction

This chapter is a critical analysis of the origin and evolution of the five standards of the effective investigation of a death involving the police derived from the right of life under Article 2 of the ECHR. The analysis will draw on both jurisprudence in the form of E CtHR case law regarding deaths involving the police and the academic literature. The chapter will introduce the European Convention and the right to life under Article 2. It will then map the development through the jurisprudence of the E CtHR of the positive procedural obligation on all signatories to the Convention to hold an effective investigation into any police involved death and the five standards that define an effective investigation. The chapter will examine each of the five standards of independence, adequacy, promptness, public scrutiny and victim involvement outlining both the relevant literature and jurisprudence in relation to the concepts. These standards will later form the focus of the research undertaken in each of the policing oversight agencies. The articulation of these standards as guidelines produced by the European Commissioner for Human Rights will also be examined. The chapter will then outline issues in relation to the practical application of the five standards in European jurisdictions and explore how and to what extent the application of Article 2 in the E CtHR has caused what has been referred to as the ‘Europeanization’ of human rights as common standards migrate from state to state.

4.2 The European Convention on Human Rights

The European Convention for the Protection on Human Rights and Fundamental Freedoms (the ECHR) was signed on the 4th of November 1950 by representatives of thirteen countries24 (Modinos, 1962; Bates, 2011) and entered into force on the 3rd of September 1953. The ECHR created a “a binding international code of human rights, with safeguards against abuses of power and effective remedies for victims of violations by Contractive States” (Lester A., 2011, p. 99). Convention provisions include the right to life (Article 2), the prohibition of torture, inhuman or degrading treatment or punishment (Article 3) and the right to privacy (Article 8) (Spielmann, 1999, p. 757). The articles are not merely a list of the entitlements of citizens protected by the ECHR but represent a “challenge to states to promote the realization or enjoyment of those rights” (Ackerly & Cruz, 2011, p. 3). The

24 Belgium, Denmark, France, Germany, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Saar, Turkey and the UK signed on the 4th of November 1950. Greece and Sweden signed on the 8th of November.
Convention has since been ratified by all forty seven member states of the Council of Europe (Hathaway, 2007) and it is estimated that over 800 million people fall under its protection (Harris, O'Boyle, Bates, & Buckley, 2009).

The ECHR was the first international instrument to “aspire to a broad range of civil and political rights both by taking the form of a treaty legally binding on its High Contracting Parties and by establishing a system of supervision over the implementation of the rights at the domestic level” (Gomien, 2000, p. 6). To that end Article 34 of the ECHR creates the right of “any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention” to bring a petition before the ECtHR. The right of individual petition has been described as “one of the most effective means of protecting human rights” (Gomien, 2000, p. 142) and as the “Crown jewel of the Convention” (Christoffersen, 2011, p. 182). Only two inter-State applications have reached the ECtHR for determination (Mowbray, 2004); and it has been argued that countries take little interest in human rights violations in other countries unless they or their citizens are affected (Neumayer, 2005). The ECHR is clearly then not as concerned with mutual relations between member states as it is about the protection of citizens from their own governors (Hathaway, 2007). Indeed its articles “proclaim solemn principles for the humane treatment of the inhabitants of the participating States” (Mowbray, 2005, p. 60) and act as a conscience (Christoffersen & Madsen, 2011) or a “constitutional bill of rights” for Western Europe (Kruger, 2000, p. 4). It is purported that the system of protection afforded by the ECHR and the ECtHR has now embedded in western European legal culture (Bates, 2010) and is the cornerstone of transnational protection of human rights (Hennette-Vauchez, 2011).

4.2.1 “A Law Making Treaty”

The evolution of the ECHR has occurred through the ECtHR’s role as a transnational constitutional court, addressing cases where individual breaches of rights enshrined in the convention are alleged against member states (Harris, O'Boyle, Bates, & Buckley, 2009). Once a member state has been found in breach, the state is obliged to remedy the cause of the breach and the Court’s judgements have caused significant changes in state practices (Shapiro, 2002) such as legislative amendments and administrative reform (Moravcik, 2000). In cases brought before the ECtHR, in which a breach is alleged, the interpretation of

25 Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the Former Yugoslav Republic of Macedonia, Turkey, Ukraine and the UK.


27 Golder v UK A 18 (1975); 1 EHRR 524 PC citing Wemhoff v FRG A 7 (1968) p 23; 1 EHRR 55 at 75
the Convention is governed by Article 31 of the Vienna Convention on the Law of Treaties, 1969, which states that a treaty, “shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” This indicates a ‘teleological’ approach to interpretation which can be defined as an approach that seeks to realize the object and purpose of the Convention as an effective instrument of human rights protection (Bates, 2010; VanHoof & VanDijk, 1998). Voeten contends that the reality of judicial interpretation of abstract rights issues allows “judges to create compounds brewed from a motley crew of ingredients including legal text, statutes, precedent, judge’s policy preferences, judges’ perceptions of what society values, and collegial norms” (Voeten, 2011, p. 61).

In the landmark case of Golder28 the Court outlined the teleological approach to interpretation of the Convention stating that it was necessary:

“... to seek the interpretation that is most appropriate in order to realize the aim and achieve the object of the treaty, and not that which would restrict to the greatest possible degree the obligations of the parties.”

In another case29, the Court stated that the Convention must be treated as a “living instrument” and “interpreted in light of present-day conditions” and “be influenced by the developments and commonly accepted standards” of the member States. Harris et al., state that this means that the ECHR is given a dynamic or evolutive interpretation where the determinative standards are those currently accepted in European society and not those prevalent when the Convention was adopted (Harris, O’Boyle, Bates, & Buckley, 2009). Harris et al., (2009) also suggest an almost cyclical approach in that the Court will look to the prevailing human rights standards of the member states and indeed towards other international human rights treaties and other human rights institutions such as the United Nations, thus increasing the potential for a uniformity of approach in human rights issues30. For example in one case involving a fatal shooting by agents of the state the Court made reference to the “United Nations Force and Firearms Principles” (United Nations, 1990) and the “United Nations Principles on Extra-Legal Executions” (United Nations, 1989) in assessing the security operation that led to the death31.

It can be argued then that as the European Court’s decisions influence the common law of human rights across Europe, the increased awareness and compliance of human rights can

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28 Golder v UK A 18 (1975); 1 EHRR 524 PC citing Wemhoff v FRG A 7 (1968) p 23; 1 EHRR 55 at 75
29 Tyrer v UK A 26 (1978); 2 EHRR 1 para 31
30 Oneryildiz v Turkey (2004)- XII 41 EHRR 325; Siliadin v France (2005) VII; 43 EHRR 287; Eskilinen v Finland(2007) XX GC;
in turn then influence the ‘consensus’ of European human rights standards taken into account by the court when interpreting the application of the Convention treaty. This means that the Court takes cognizance of evolving national and supranational architecture for the protection of rights and therefore avoids applying 1950’s standards, becoming a “formalistic anachronism” (Mowbray, 2005, p. 63) or a “bar to reform or improvement”\(^\text{32}\) and instead ensures the Convention remains a dynamic doctrine (Madsen, 2011) whose guarantees are “more than illusory and empty rhetoric” and are “effective and tangible” (Wildhaber, 2011, p. 213). This demonstrates the ability of Human Rights Law to initiate process, dialogue and debate which over time changes common held beliefs and standards and in turn raises the ethical temperature of the state (Hafner-Burton & Tsutsui, 2007).

In relation to the research undertaken here the practical application of the standards of an effective investigation as evolved in the European court will be examined to establish to what stage the procedural architecture of each of the states i.e. the policing oversight agencies has evolved. This is particularly relevant when, as has been argued above, the European court will consider the normative standards in its member states when judging applications before it. First though the evolution of the positive procedural obligation and the standards of an effective investigation will be explored.

### 4.2.2 Positive Obligations

The Court of Human Rights’ evolutive interpretation of the ECHR has developed significant positive obligations upon state parties which require the state to undertake specific affirmative steps (Mowbray, 2004) as opposed to restricting the actions of the state in respect of its subjects. It can be argued that the creation of positive obligations under the Convention involves the ECtHR interpreting the Convention in such a way as to create a new right that was not intended for inclusion when the treaty was drafted. However, one can also view the positive obligations under the Convention that have developed since its adoption as “the discovery of obligations that were always implicit in the guarantees concerned or as the addition of new obligations for states” (Harris, O’Boyle, Bates, & Buckley, 2009, p. 8). Compliance with these positive obligations requires more from a State than mere passivity (Mowbray, 2005). Indeed the burden on the State is not in recognising and respecting the rights of its citizens but instead in “fostering of the enabling conditions of rights enjoyment” (Ackerly & Cruz, 2011). The positive obligations are seen as the defining element of the ECHR which set it apart from other human rights instruments (Starmer, 2001). The foundation of the positive obligations are that they seek to ensure that the Convention rights and freedoms are applied in ways that are practical and effective.

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\(^\text{32}\) Stafford v United Kingdom 2002-IV 115; (2002) 35 EHRR 32 at paras 68-69
and not “theoretical or illusory”\textsuperscript{33}. The principle of effectiveness was first established in the case of Marckx v Belgium\textsuperscript{34} and has since been used in the development of many different positive obligations including those under Article 2 of the Convention. One of the questions to be addressed by this research is how the evolution of this positive obligation of the ECHR through the ECtHR is ultimately implemented by practitioners in member states to ensure compliance with the object and purpose of the Convention.

4.3 Article 2, the Right to Life and the Positive Obligation

Article 2 (1) of the ECHR, the right to life, imposes three different obligations on the state. The first of these is the ‘negative duty’ to refrain from taking a life except in the restricted circumstances set out in Article 2(2) which states that it will not be considered a breach of Article 2 where a state deprives someone of their life using force which is no more than is absolutely necessary in defence of someone from unlawful violence, in order to effect a lawful arrest or prevent the escape of someone lawfully detained or in action lawfully taken for the purpose of quelling a riot or insurrection. Article 2(1) also imposes the positive duty on the state to take steps to protect the lives of their subjects for example in relation to detained persons or hospital patients. Finally, as Mowbray stated the jurisprudence in relation to Article 2 of the ECHR has created a “category of procedural obligations requiring effective official investigations into killings ... with the objective of securing effective respect for the right to life” (Mowbray, 2005, p. 77). Thus the Convention imposes a further ‘positive’ or ‘procedural’ obligation on its signatories to “properly and openly to investigate deaths for which the state might be responsible” (Lester, Pannick, & Herberg, 2009, p. 4.2.4).

The purpose of the investigation into a state caused death has been considered by Lord Bingham\textsuperscript{35} as follows:

\begin{quote}
“The purposes of such an investigation are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save others.”
\end{quote}

\textsuperscript{33} Airey v Ireland A 32 (1979) ; (1979-1980) 2 EHRR 305 at para 24
\textsuperscript{34} Marckx v Belgium A 31(1979); (1979-1980) 2 EHRR 305
\textsuperscript{35} R v Secretary of State for the Home Department Ex p. Amin [2003] UKHL 51; [2004] 1 A.C. 653 per Lord Bingham at [32]
Or as Baroness Hale succinctly noted:

“There is not much point in prohibiting police and prison officers... from taking life if there is no independent investigation of how a person in their charge came by their death.”

The Bingham explanation emphasises both the accountability and regulatory aspects of the investigation in that it calls those responsible to account but also serves to regulate against further occurrences and to reassure the public as to the status quo. Mowbray sees a further regulatory purpose for the creation of the effective investigative obligation in that it is designed to “buttress the express right to life enshrined in Article 2 by deterring public officials from carrying out unlawful killings through the fear of subsequent inquiry” (Mowbray, 2005, p. 77). The creation of the positive procedural obligation to investigate deaths caused by state agents and the ensuing expectation that an effective and thorough investigation will always follow a state caused fatality should then act to deter state agents from using excessive force, acting outside of their powers towards their citizens or acting in neglect of a duty of care.

The European jurisprudence relating to Article 2 is considered to be “the most coherent body of Strasbourg law” (Mowbray, 2002, p. 448) and also amongst “the richest and most dynamic” in all of the ECHR’s case law (Interights, 2008, p. 1). The jurisprudence has established that compliance with the procedural obligations of Article 2 requires “a thorough, diligent and comprehensive inquiry conducted in a prompt and expeditious manner in which the victim’s relations may participate, carried out by a body independent of the persons implicated in the events and in manner guaranteeing sufficient public scrutiny.” Whilst the Court does not specify the procedures, practices or processes that are necessary to ensure compliance with Article 2 nor does it dictate that the obligations should be the remit of a single “unified procedure”, the Court does identify the crucial, indispensable features necessary “for maintaining public confidence in the rule of law and helping prevent suggestions of official collusion in or tolerance of unlawful acts” (Interights, 2008, p. 37).

The case of McCann v UK has been described as “seminal” (Chevalier-Watts, 2010, p. 702), a “landmark decision” (Palmer, 1996, p. 1) and as representing a “sea change” (Ni Aolain, 2002, p. 574) in the consideration of Article 2 cases. Although the issue of effective investigation had been considered in other jurisdictions the case of McCann is widely

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36 Savage v South Essex Partnership NHS Foundation Trust [2008] UKHL 74, [2009] per Baroness Hale at [76]
37 McCann and Others v United Kingdom [1995](Appl. No18984/91, 27th September 1995) at para 161
38 McCann and Others v United Kingdom [1995](Appl. No18984/91, 27th September 1995)
39 Velásquez Rodríguez v Honduras (1988) Inter American Court of Human Rights July 29, 1988
credited as being the first European case that articulated the procedural obligation on a state to carry out an effective investigation following a death caused by agents of the state (O’Neill A., 2009). Surprisingly, perhaps, but the consideration of the actual investigation into the deaths by the courts could be considered in hindsight as modest. In McCann v UK the court was required to examine the circumstances around the fatal shooting by British soldiers in Gibraltar of three IRA members. In their judgement the court held that while the use of fatal force in itself did not constitute a breach of Article 2:

“lack of care in terms of evaluating and providing information to the soldiers involved in the shooting and the failure to allow for other contingencies was held not to be in conformity with Article 2” (O’Neill, 2009, p. 313).

In relation to state investigation into the deaths, Chevalier-Watts (2010, p. 704) has noted that by the time the application was heard, a public inquest had already taken place into the deaths “where the applicants, the deceased’s relatives had been provided with legal representation, and the killings were the subject of detailed scrutiny, including examination and cross examination of key personnel.” The ECtHR confined itself to noting that a:

“general legal prohibition of arbitrary killing by the agents of the State would be ineffective, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities” and that Article 2 “requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State” (Interights, 2008, p. 70).

The Court did not go so far as to outline the form that any such investigation should take and did not find a breach of the procedural obligation despite the applicant’s criticism of the investigation into the deaths and the coronial process. Instead, the Court took what has been seen as a pragmatic approach in considering the “novel concept” of the effective investigation principle (Chevalier-Watts, 2010, p. 706).

Nevertheless, once the duty on a State to undertake an effective investigation into the death of a subject was established by the ECtHR a series of cases followed that built upon the protections (Ní Aolain, 2001) of the judgement in McCann to augment and develop the principles of effective investigation, broaden the circumstances in which the obligation arises and to ultimately define five constituent standards necessary for compliance with Article 2 (Mowbray, 2004).

4.4 The Evolution of the Standards of an Effective Investigation

If the McCann case is seen as the watershed moment in which the positive procedural obligation began to evolve, several other key cases can be considered as major evolutionary steps. In Ergi v Turkey, the ECtHR found that the investigation into a death following a security forces operation had failed to take statements from the victim’s family and other significant witnesses and had failed to examine the planning of the operation. The Court found that there had been a breach of Article 2 in relation to the procedural obligation thus emphasizing the “shift in jurisprudence towards stringent accountability at all stages of an operation, not just prior to the death of the individual” (Chevalier-Watts, 2010, p. 706). In Kaya v Turkey the Court held that for investigations to satisfy the requirements of the positive obligation under Article 2, they must be “genuinely rigorous, and not merely ritualistic charades” (Mowbray, 2011, p. 132).

In 2001 the ECtHR delivered judgement in four cases frequently referred to as the “conjoined cases” (Chevalier-Watts, 2010, p. 710); Hugh Jordan v United Kingdom, Kelly and Others v United Kingdom, McKerr v United Kingdom and Shanahan v United Kingdom. The ECtHR attempted in these judgements to combine and consolidate the elements of the procedural obligation and to set out a blueprint for the effective domestic investigation of state caused deaths. The Court acknowledged that the investigations had to be “capable of leading to a determination of whether the particular use of force was justifiable in the circumstances and to the identification and punishment of those responsible” (Chevalier-Watts, 2010, p. 711). The judgements also found a violation of Article 2 where there was a lack of independence of the officers investigating the death from the officers involved in the incident itself. The judgement in the Jordan case found specifically that even though the investigation was supervised by an independent police monitoring authority, this did not provide a sufficient independent safeguard for compliance with Article 2. The Court held that there must be “hierarchical, institutional and practical independence” between those responsible and those investigating the death (O’Neill M., 2009, p. 313). In the Kelly judgement the court held that the family of the deceased had been disadvantaged by lack of access to the evidence, including witness statements, prior to their appearance at the inquest. The Court held that the next of kin of the deceased had a right to participate in the proceedings and that the procedures adopted should be such to allow them to protect their legitimate interests. In the Jordan case, the family of the deceased were not informed of the reason why a prosecution of the persons responsible for

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41 Ergi v Turkey 66/1997/850/1057 28 September 2001
42 Kaya v Turkey 22729/93 19 February 1998
44 Kelly and Others v United Kingdom (2001) 30054/96 4th May 2001
the death was not initiated. The Court also held that the failure to inform the family of the reasons behind the decision in circumstances where the independence of the decision may be in question was not conducive to public confidence and was not compatible with Article 2. Finally, the Court imposed a requirement that the investigations be conducted in a timely manner. In the Kelly case a span of eight years from the death to the commencement of the inquest meant that the Court found that the investigation was neither prompt nor expeditious and that a violation of Article 2 had occurred.

In relation to the elements of an effective investigation, the Court stated in the McKerr\(^{47}\) judgement:

> “This is not an obligation of result but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including inter alia, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings.”

It is noted that this distinction means that lack of prosecution or a conviction does not automatically equate to a breach of the procedural obligation as long as the authorities have taken reasonable steps to investigate and secure evidence (Reid, 2007).

Since the conjoined cases judgement the elements of an Article 2 compliant investigation have been considered and expanded in other European Court cases most importantly Ramsahai v the Netherlands \(^{48}\) which represents the high watermark of Article 2 jurisprudence and can be considered a significant case in the evolution of the effective investigation obligation. The case, which related to the fatal shooting of an armed man, found that a period of fifteen and a half hours before an independent agency commenced investigating the circumstances was sufficient to amount to breach of the Article 2 requirements. Further failings identified were failure to test the officers’ hands for firearms residue, failure to conduct ballistic testing of the firearms, failure to undertake a reconstruction of the incident and failure to adequately photograph the injuries to the deceased. The interviewing of the police officers was also criticized on a number of fronts. The interviews took place three days after the shooting and this was deemed to be an excessive amount of time. Also, although there was no evidence to indicate that the members had colluded in their accounts, the investigation was criticised for failing to keep the officers separate following the incident. The Court also found that the subsequent involvement of an independent body in the investigation of a death was not sufficient to

\(^{47}\) McKerr v United Kingdom (2001) 28883/95 4\(^{th}\) May 2001 at 553

remove the taint caused by enquiries initially being undertaken by the same force as the officers involved in the death.

Although the Court has provided for the development of standards defining an effective investigation, the Court has stopped short of prescribing the nature and structure of any enquiry to allow for flexibility to be dictated by circumstance and the practical reality of the investigative apparatus of the member states. In Velikova v Bulgaria, the court held that the degree of scrutiny required to satisfy the threshold of an effective investigation depended on the circumstances of the case and could not be reduced to a simple check list. The Court recognised that no simple investigative procedures criteria can be developed that will ensure an effective investigation in each case. The Court also recognised that each of the jurisdictions has different structures and capacity for investigating deaths. This means that a realistic approach must be taken in assessing the investigations undertaken but also that it falls to each state to ensure that mechanisms are in place to ensure that an effective investigation occurs into any incident involving state agents where a death occurs. The standards of an effective investigation developed over a relatively short period of time but were incrementally evolved over numerous ECtHR decisions. These were brought together by the European Commissioner for Human Rights in a document of significant importance to policing oversight which is outlined in the next section.

4.4.1 The Opinion of the Commissioner for Human Rights

In May 2008 the Commissioner for Human Rights conducted two expert workshops on police complaints mechanisms in which the principles of effective complaints investigations were identified and discussed. Representatives of the three oversight agencies subject of this research OPONI, GSOC and the IPCC all contributed to the workshops which explored best practice in complaints investigation (Commissioner for Human Rights, 2008). Following this in 2009, the Commissioner for Human Rights published an ‘opinion’ document which articulated the principles of an effective ‘police complaints investigation’ as developed in the ECtHR in consideration of Article 2 and 3 of the ECHR (Commissioner for Human Rights, 2009). It listed the five principles of an effective investigation as

- independence,
- adequacy,
- promptness,
- public scrutiny and
- victim involvement.

Velikova v Bulgaria (2000) 18th May 2000 para 80
The principles are designed to have a dual purpose, firstly “to ensure that an individual has an effective remedy for an alleged violation of Article 2” and secondly, “to protect against violation of these fundamental rights by providing an investigative framework that is effective and capable of bringing offenders to justice” (2009, p. 8).

The principles were defined by the Commissioner as follows:

“**Independence**: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;

**Adequacy**: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;

**Promptness**: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;

**Public Scrutiny**: procedures and decision making should be open and transparent in order to ensure accountability; and

**Victim Involvement**: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.” (2009, pp. 8-9)

It should be noted that while the language used in the Commissioner’s opinion refers to complaints and complainants the standards set out refer to the minimum standards expected when Article 2 or 3 is engaged as well as providing guidelines for the handling of complaints generally.

4.5 The Five Standards of an Effective Investigation

This section will deal with each of the five standards in turn and explore both the law, in terms of European and domestic jurisprudence and the relevant literature.
4.5.1 Independence

Savage has noted that “Discourses of ‘independence’ permeate much of the debate and analysis of complaints systems and processes” (Savage, 2012, p. 2). Independence, however, is a simple aspiration that can sometimes be elusive to achieve, define or to measure (Lumina, 2006). Indeed the main difficulty with establishing actual independence in an investigation is that independence is almost exclusively related to subjectivity. It appears more important that an investigation be seen to be independent through the background and identities of the personnel that undertake it rather than any attempt being made to test the quality of the investigation and the independence of the investigative decision making. Independent investigation of policing agencies by civilian agencies was a “controversial development” but one that can make “a major contribution to overcoming the problem of bias when police investigate the police” (Prenzler & Ransley, Preface, 2002). However whilst the concept that investigations into complaints against the police should be conducted by non police investigators may be “intuitively attractive” (Harris F., 2012, p. 2) as a “strategic issue in the emerging accountability model” (Ni Aolain, 2001, p. 37), Stone and Ward neatly capture the core of the issue asking:

“Is it more important for the oversight body to be truly effective at identifying, investigating and punishing police misconduct? Or is it more important for the oversight body to be fully independent of the police organization?” (Stone & Ward, 2000, p. 38).

The perception of independence appears to be the solution proposed in many jurisdictions. It is suggested however that an independent investigation is one where all decisions are made on a fair and accurate assessment of the evidence without fear or favour and the reduction of the oversight issue to one of merely ‘who investigates?’ belies a more complex problem. Independence when reduced to this simplistic formula can be given disproportionate weight in the quest for effectiveness in investigation. It is important not only to reach the end game of independent investigation but also to “interrogate that ‘end game’” (Savage, 2012, p. 2) and assess the actual and practical independence of the investigation. The independence of an investigation alone is not a magic wand that can bring about redress and police institutional reform (Neild, 2000); the investigations themselves must be able to withstand the scrutiny that they will no doubt attract.

Whilst the ECtHR does not provide any simple steps as to how the investigating authority can achieve independence in the investigation of police involved death, it has been emphatic as to what does not amount to independence in an investigation. In Gulec v
Turkey an investigation into a fatal shooting in which the investigators were from the same police force as the gendarmerie officers who had fired the fatal shots and were also their hierarchical superiors was found to be in contravention of the procedural obligation of independence. In Kelly and Others v UK despite the investigation having been supervised by the Independent Commission for Police Complaints, the forerunner to OPONI, the court held that there was still sufficient proximity between the investigating body and those whose actions were under investigation to constitute a breach of the procedural obligation of independence. The Court went on to advocate the establishment of a “fully independent investigating agency [that] would help to overcome the lack of confidence in the system.”

The Ramsahai judgement sets the independence bar particularly high in that it was found that enquiries undertaken in a period of fifteen and a half hours by the same force as the police officers involved in the death were sufficient to amount to a breach of Article 2 and that the subsequent investigation by an independent body was not sufficient to remove the taint caused by the initial lack of independent inquiry. The Court, therefore, “demands a strict institutional independence of investigators from those state agents implicated in the killing” (Mowbray, 2004, p. 33). The judgments of the European Court would therefore serve to prevent the members of any police force from investigating a death caused by their colleagues. A degree of institutional separation has to be introduced in each European jurisdiction to allow for the independent investigation of deaths involving the police.

4.5.2 Adequacy

In considering the adequacy or otherwise of an investigation it should be noted that it has proven difficult to create a framework for the measurement of the quality of an investigation or of obtaining an accurate assessment of the investigative function (Tong, 2009). Reiner suggests a move away from assessing the investigative process by its outcome, e.g. whether or not the investigation results in a criminal prosecution or conviction. Instead he stresses an emphasis on the quality of the processes involved in investigation (Reiner, 1998). This is resonant of the ECtHR’s comment that the responsibility to investigate state caused deaths involving the police was not one of results but one of means suggesting that a true evaluation of the adequacy of the investigations undertaken by police oversight agencies must look at the processes undertaken in the course of the investigations. Whilst it may be difficult to accurately assess the adequacy of an investigation it is easier to establish when an investigation has been inadequate through failure to perform key investigative steps or mismanagement. Smith (2009, p. 431), for example, cites the research into deaths in custody undertaken by Leigh et al. (Leigh, 1998).

50 Gulec v Turkey (1998) 28 EHRR 121
51 Kelly and Others v United Kingdom (2001) (Appl. No. 27229/95, 3rd April 2001)
52 Kelly and Others v United Kingdom (2001) (Appl. No. 27229/95, 3rd April 2001) at Para 141
Johnson, & Ingram, 1998) as revealing that some of the investigation reports following a death amounted to “no more than one side of paper”.

One of the difficulties in assessing the investigative function is that a mystique has built up around the skills involved in investigating offences and investigation is variously classified as an art, a craft and a science (Repetto, 1978; Tong, 2009). This mystique serves to bolster the argument that only the police can investigate the police but it is far from agreed that criminal investigation requires skills that are solely within their gift (Bayley, 2009). Police oversight agencies have experienced difficulties in hiring good quality investigators with the necessary skill sets to conduct complex investigations into incidents where death has occurred and most agencies have recruited former police officers who, it is argued, may have the necessary skills but not the independence of mind to challenge former colleagues or employers (Manby, 2000; Perez T. E., 2000). Aside from identifying the skilled personnel necessary to conduct the investigations, it is also possible to identify other barriers that may exist that could prohibit or frustrate such investigations. The Christopher Commission following the LA Riots in response to the videotaped beating of Rodney King by LAPD officers found that the code of silence was “perhaps the greatest single barrier to the effective investigation and adjudication of complaints” (Christopher, 1991, p. 168). Skolnick states that the “blue wall, curtain or cocoon of silence” is “embedded in police subculture ... across continents” (Skolnick, 2002, p. 7). This secrecy serves to protect officers from oversight and the demands of public accountability (Rothwell & Baldwin, 2007). The blue wall may extend beyond the silence of individual members; in deaths involving elements of covert surveillance, the use of informants, telephone intercepts and other methodology consistent with the ‘High Policing’ paradigm, the investigating body must be confident that they can access all the material that will allow them to properly assess the circumstances to investigate the death. This means that they have to have been provided with the legislative basis on which to gain access to the material, the ability to properly and safely receive and store the information and the skills to properly analyse it when received. It will be necessary in such cases for the investigative body to be able to look beyond the circumstances of the death itself but also to examine the wider context such as policing systems, training, equipment and standing orders that may have contributed to the occurrence. It is not enough to look at the narrow focus, for example, of the decision of an officer to use lethal force, in order to be adequate the investigation must examine the circumstances that led to the officer being in the position where force was required. “While officers make individual decisions about using deadly force during field encounters, preparing them for these highly challenging encounters is an organizational responsibility” (Morrison & Garner, 2011, p. 342) or as Reiss suggested the police must be held accountable for all their actions and not just the final violent act or confrontation (Reiss, 1980).
Encounters between the police and the public are notoriously difficult to investigate and rarely lead to sanction or conviction. Newburn and Reiner identified a number of factors that contribute to the low substantiation rate of complaints including the low visibility of the incident that gave rise to the complaint, the lack of independent evidence and the fact that witness testimony is frequently restricted to that of the complainant and the officers complained of (Newburn & Reiner, 2004). Whilst some deaths involving the police could be considered ‘high visibility’ including for example firearms incidents that evolve into a siege situation, some police involved deaths such as deaths in custody take place almost entirely behind closed doors. The impact of these factors means that irrespective of who investigates the incident many are still left with a sense of grievance (Newburn & Reiner, 2004).

Another factor that Skolnick has identified as a barrier to conducting an adequate investigation is the disparity between the police and vulnerable elements of the population with which they interact. In relation to the allegations of excessive force Skolnick stated, “It is difficult to convict police who are accused of assaulting persons of low social character” (Skolnick, 2002, p. 13). Indeed Box and Russell purport that investigations into police misconduct can wilfully engage in what they term as the “politics of discredibility” and employ techniques such as stigmatising the complainant to prevent a finding against a police officer (Box & Russell, 1975, p. 321). These same methodologies could easily be used by those with nefarious intent in the investigation of a death to ensure that a negative finding against the police is unlikely.

In its consideration of the principles of an effective investigation the ECtHR has not been prescriptive as to what steps have to be taken in an investigation in order to meet the requirement of adequacy. Each investigation into a death may present evidential opportunities unique to the circumstances in which the death occurred and the investigation process does not marry well with a ‘tick box’ approach. Clearly, the ECtHR does not wish to overly encroach upon the decision making of the domestic state’s independent investigators. Citing the cases of Gulec v Turkey54, Kaya v Turkey55 and Kelly and Others v UK56 Mowbray (2002, pp. 440-442) argues that the European Court “expects investigators to take reasonable steps to obtain full testimony from all primary witnesses”, to obtain evidence “through the utilisation of forensic science” and from “conducting a full autopsy of the deceased ... undertaken by experts who are versed in contemporary best practice ... and who will not overlook or inadvertently destroy irreplaceable samples.”

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54 Gulec v Turkey (1998) 28 EHRR 121
56 Kelly and Others v United Kingdom (2001) (Appl. No. 27229/95, 3rd April 2001
4.5.3 Promptness

In assessing whether an investigation has been conducted in a timely fashion, the European Court will consider “the timing of the start of the investigation”, any delays in taking statements and the length of time taken during initial investigations (Open Society Justice Initiative, 2010). The court held in McShane v United Kingdom that, periods of unexplained delay within an investigation of a death could lead to a breach of Article 2. In that case the investigation took nineteen and a half months, the length of time in and of itself was not enough to constitute a breach but the unexplained periods of inactivity in the enquiry led to the conclusion that the investigation was not conducted with reasonable expedition; whereas in the case of Edwards v United Kingdom due to the complicated nature of an enquiry, which included investigations across numerous public services and a large number of witnesses, three and a half years to conclude the proceedings was not held to be unreasonable.

However, the issue of promptness or timeliness of an investigation is not as simplistic a measure as it may first appear. It may be difficult in fact to accurately ascertain as to when an investigation has actually commenced and when it can be said to have been completed and as, for example, some investigations may result in a criminal trial with the possibility of an appeal mechanism, followed by a Coronal inquest, the length of an investigation may be measured in years and not months. The ECtHR has established that the commencement of an investigation must be prompt and the state should not rely on the family of the deceased to complain in order for it to commence an investigation. Therefore, there has to be a proactive mechanism to trigger the commencement of the investigation and the empowering of the investigative agency with the necessary statutory and other capacity to conduct the investigation. The ECtHR has also established that there should be ‘timeliness’ to individual aspects of the investigation, for example, that the interviewing of principal witnesses including potential suspects should be carried out expeditiously. It has been acknowledged that police officers under investigation can deliberately draw out the gap between the incident under investigation and the provision of an account as part of a deliberate strategy to undermine the enquiry (Chemerinsky, 2000) and therefore the attempts to take early accounts must be robust and proactive. As has been noted, the responsibility for the conduct of elements of the investigation may fall to more than one agency. For example, an investigative agency may rely upon the services of the state

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57 Cicek v Turkey (2001) 27th February 2001
59 Labita v Italy (2000) 6th April 2000
60 McShane v United Kingdom (2002) 28883/94 4th May 2002
62 Nachova and Others v Bulgaria [2005] ECHR 43577/98
63 Ramsahai v Netherlands [2007] 46 EHRR 983
pathologist to conduct a post mortem and to provide a report that will ultimately be included in a file of evidence that will be sent to a prosecuting authority for a decision as to whether there is sufficient evidence to support criminal proceedings. The opportunity for delay does not lie within the control of a single agency and therefore it is more difficult to minimize. The court has recognised that the investigation of complex deaths may result in longer enquiries\textsuperscript{64}. There is also recognition by the Court that what is required is a continuous effort or momentum in the investigation which avoids periods of inactivity or unwarranted delay\textsuperscript{65}.

\section*{4.5.4 Public Scrutiny}

The two remaining standards of public scrutiny and victim involvement are inherently linked and both were “designed to safeguard against the dangers of introducing introspective investigations leading to secret reports” (Mowbray, 2002, p. 442) in that the ECtHR demands that the decision making and findings of any enquiry into a death are made public. For many jurisdictions this represents a challenging move towards increased transparency which is seen as an essential element of accountability (Marenin, 2005; Koppell, 2005; Dryberg, 2003). This can represent a significant shift as some areas of policing, such as the use of covert techniques and informants may not easily or comfortably be exposed to daylight. Lumina sees the provision of public information concerning the police as one of the most important functions of police oversight especially with regard to those police services historically seen to govern by secrecy (Lumina, 2006). This can provide a significant challenge for an oversight agency to find a balance between providing information into the public domain whilst maintaining the confidence of the police service that they investigate and also acting wholly within the law.

There are two main avenues by which the investigation of a death is scrutinized by the public. The first is by way of a public hearing which can take various forms including a criminal trial, a coronial inquest or even a public disciplinary hearing and the second is by way of public reporting. It can be seen therefore, that control of the nature, form and processes of the public hearing lies elsewhere than with the policing oversight body tasked with the investigation. Additionally, such a hearing, irrespective of whether it may be adversarial or inquisitorial in nature, may involve a different intent or perspective than publicly airing the circumstances of the death. For example, in a criminal trial it might suit the defence of the accused to actively seek to repress information from being considered that would have been released in a coronial inquest. Also the family of the deceased in a criminal trial are not entitled to representation, whilst some European jurisdictions allow for representation in coronial proceedings to a range of interested parties. The purpose of the

\textsuperscript{64} Paul and Audrey Edwards v United Kingdom (2002) 46477/99 14\textsuperscript{th} March 2002

\textsuperscript{65} McShane v United Kingdom (2002) 28883/94 4\textsuperscript{th} May 2002
public hearing must be considered and thought given as to whether it is sufficiently aligned
to the intentions of Article 2, Hegarty has stated that the “demands for public inquiries are
driven by a need for an accounting of the events and a desire to see the rule of law restored” (Hegarty, 2002, p. 1155).

Whereas the investigating agency relinquishes control of the accounting of events in a
public inquiry, they do retain control when publicly reporting the conclusions or findings of
an investigation. Not all oversight bodies have a public reporting function included in their
statutory powers and the accuracy or otherwise of the reports has been the subject of
controversy and debate. What is required, however, is that the conclusions are aired and
the public allowed to analyse and respond to the findings. This transparency plays an
important role in the investigative oversight process mandated by the Article 2
jurisprudence and it may encourage society to have renewed confidence in its policing
arrangements and in the legal and judicial process following the trauma of a fatality
(Hegarty, 2002). This allows for the investigative process to evolve through public review
and criticism and allows for public and community commentary to influence the procedures
under investigation (Blakely, 2012).

4.5.5 Victim Involvement

The European Commissioner for Human Rights has stated that the involvement of the
victim, or in the case of a fatality the family of the victim, must be “meaningful and
effectively applied and not empty and rhetorical” (2009, p. 14). When the police investigate
a murder or a suspicious death they deploy a dedicated Family Liaison Officer or FLO to liaise
between the investigation and the family. Although there are numerous ways in which
those in charge of an investigation can liaise with a family, the FLO role has been adapted by
some policing oversight agencies to liaise with bereaved families in line with the victim
involvement principle. Family liaison has been described as a “moral or ethical
responsibility” in an investigation (McGarry & Smith, 2011, p. 3). For many years the liaison
between an investigation and the bereaved family of the victim lacked “a label”, “guidelines
or specific training” (McGarry and Smith, 2011, p.3) and was seen as “an investigative task
but not a specialism” (Grieve, 2009, p. 114). Both McGarry and Smith (2011) and Bending
and Malone (2007) trace the evolution of family liaison in policing with reference to
tragedies and scandals such as the Lockerbie air crash and the Marchioness disaster; an
evolution closely aligned to what is referred to as reform by crisis (Roycroft, Brown, & Innes,
2007). However, a “pivotal” (McGarry & Smith, 2011, p. 7) moment in the development of
the role came from the report of Sir William Macpherson into the police investigation into
the murder of Stephen Lawrence on the 22nd of April 1993 (Macpherson, 1999). The
Macpherson report included six individual recommendations relating to family liaison. These
recommendations established the FLO in murder investigations as a designated, dedicated
and trained role. The training would include racism awareness and cultural diversity (Macpherson, 1999) and placed a positive duty on Senior Investigating Officers (SIOs) and FLOs to ensure the satisfactory management of family liaison and the provision of all possible information about the crime and the investigation. McGarry and Smith (2011, p7) credit the Macpherson report with creating the core principles of “openness and accountability” that “sit at the heart of family liaison work” and Grieve states that family liaison had a “deep significance to the whole Lawrence agenda” (Grieve, 2009, p. 113). However, the deployment of an ‘overt investigator’ into a bereaved family does present the risk that the family may feel more investigated than informed. Doreen Lawrence is quoted in the Home Affairs Committee report ‘The Macpherson Report: Ten Years On’ as stating that in her opinion FLOs “are more there to collect information and evidence rather than communicate to the family how the investigation is happening” (House of Commons Home Affairs Committee, 2009, p. 4).

Research into the experience of families dealing with deaths by homicide (Malone, 2007), suicide (Wilson & Marshall, 2010), natural disaster (Kristensen, Wiersaeth, & Heir, 2010) and other mass fatalities such as terrorist attacks (Goodman & Brown, 2008) has developed our understanding of the needs of families bereaved in such circumstances. Wilson and Marshall cite the research of Clarke and Goldney (2000) and state that there is an increased recognition that people bereaved through suicide “grieve differently and have different needs from those bereaved through other modes of death” (Wilson & Marshall, 2010, p. 626). The terms “traumatic grief” (Victim Support, 2006) or “traumatic bereavement” (Rynearson & McCreery, 1993, p. 132) are used to describe the “unique blend of trauma and grief” (Armour, 2002, p. 110) when the “sudden, unexpected and violent nature of death often leads to a more difficult course of bereavement” (Kristensen, Wiersaeth, & Heir, 2010, p. 138). Victim Support found that “traumatic grief is complicated by involvement in the criminal justice system whose processes can inhibit and hamper grief reactions, and exacerbate feelings of rage and powerlessness” (Victim Support, 2006, p. 9). They identify specific needs that can arise following bereavement by homicide such as being informed of the death in a sensitive way and an ongoing need for support and crisis management. Failings in this regard by the criminal justice system such as “poor communication, insensitivity and lack of information” (Victim Support, 2006, p. 15) can serve to both exacerbate the traumatic experience and interfere with the grieving process. Several researchers (Brown, 1993; Riches & Dawson, 1998; Rock, 1998) have echoed Malone who stated “lengthy and often frustrating involvement in the criminal justice process can significantly disrupt and protract the grieving process, as well as fuelling some of the emotional difficulties” (Malone, 2007, p. 384).

The challenge to civilian oversight bodies is to take the role of the FLO from the policing context and to apply it to their independent investigations into police caused deaths and
deaths in custody. Shaw and Coles argue that this has not been a good fit; echoing the earlier comments of Doreen Lawrence they state, “The role has not transferred smoothly into working with families bereaved by deaths in custody... The tension has given rise to families describing that they felt they were being investigated rather than the circumstances of their relative’s death” (2007, p. 59). Shaw and Coles’ research involved interviewing the families and reporting on their experiences following custody deaths. They state, “The role FLOs play in the aftermath of deaths in police custody is often confusing and at worst intrusive ... FLOs need a clearly delineated remit to avoid confusion about whether they perform an investigatory role” (Shaw & Coles, 2007, p. 60). They recommend that “those in family liaison roles need to be trained to understand the specific needs of families bereaved by deaths in custody” (2007, p. 61). Shaw and Coles stated that half of the families interviewed felt that were not kept informed and concluded that the openness required under Article 2 was not being reached. There is potential for the role to produce a positive contribution to the family of the deceased. Eyre’s research into police FLOs identified that where family liaison works well the liaison officers can provide “support at a difficult time, being a professional conduit of information and making a difference” (Eyre, 2007, p. 3). Eyre also recognised, “the difference that good and effective family liaison work can make to the public’s perception and experience of professionalism and the police force” (Eyre, 2007a, p. 333). The challenge to the oversight investigation agencies is to manage the liaison with families of the deceased to ensure their involvement to the standard requirement by the Article 2 jurisprudence. Later in this thesis the extent to which the oversight agencies have adopted the concept of involving the families of the deceased in investigations into deaths involving the police will be explored.

4.5.6 The Practical Application of the Article 2 Standards

The Article 2 standards are an international benchmark against which the investigation of state caused death can be judged. The ECHR has created a “set of nation transcending human rights ideals” (Levy & Sznайдer, 2006, p. 659) which a citizen can use to assess the adequacy of state action in these circumstances and by extension the legitimacy of the state itself (Vaughan & Kilcommins, 2007). The European Court judgements have a dual role. They analyse the circumstances of the application brought before them and find whether a violation of an established right has occurred, but they also set the ‘objectives’ that each member state must aspire to for future compliance with the ECHR (Bruggeman, 2002). Reports such as that of the European Human Rights Commissioner represent a more positive step towards the integration of Human Rights in state policing oversight mechanisms (Alston & Weiler, 1999).

Whilst it is accepted that a multi agency approach to the investigation of state caused death is neither prohibited nor criticized in the European judgements, the policing oversight
agencies have the front line responsibility for the commencement of the investigations into any death that occurs and may be ultimately held to the standards of the procedural obligation. Starmer has stated that, “Evidence of human rights breaches tends to be easier to find than evidence of human rights compliance” (Strarmer, 2007, p. 97). The challenge then is to examine the policing oversight models in each of the jurisdictions to assess how far each state has gone towards meeting the requirements and whether there are sufficient mechanisms in place for an effective investigation, as defined in the jurisprudence and the opinion of the Commissioner, to take place when the police are involved in an incident in which a death occurs. Firstly, however, it is necessary to examine the process by which a standard set in the ECtHR in response to a contravention of the procedural obligation by a member state might migrate its way into the policy and practice of an oversight agency in the UK and Ireland.

4.6 The ‘Europeanization’ of Human Rights

The discussion of the Article 2 standards of an effective investigation into a death involving the police thus far has outlined the origin and evolution of the standards primarily within the context of the ECtHR and the opinion of the European Commissioner for Human Rights. A central concern of the thesis is whether these standards have a practical relevance to the investigation of deaths involving the police as conducted by the three oversight agencies that are the subject of this research. Bell and Keenan have stated that the process of incorporating the European jurisprudence on the procedural obligation into domestic arrangements “involves a fascinating completing of the circle” (Bell & Keenan, 2005, p. 72). The process is essentially a transfer of policy from the ECtHR to each of the ECHR signatory states. Bulmer and Padgett define this type of transfer as a “coercive form of transfer” in that the “hierarchical governance” of the Court of Human Rights exercises a “supranational authority” delivering judgements that redefine domestic “policy space” and then compelling its signatories to comply with the rulings of the court or risk sanction or expulsion (Bulmer & Padgett, 2004, pp. 104-105). Bulmer and Padgett see the transfer by hierarchy as the most productive form of policy transfer in the European context noting that, “Court judgements have far-reaching potential for transforming public policy” and “Judicial rule making is rich in transfer potential” (Bulmer & Padgett, 2004, pp. 112-115).

This transfer of European human rights policy to domestic states process has been referred to by Vaughan and Kilcommins as the “Europeanization of Human Rights” (Vaughan & Kilcommins, 2007, p. 437) by which they mean that “growing interconnectedness between European nations has produced an increasingly significant human rights discourse” and that this “Europeanization of Human Rights has had a significant impact on the development of oversight mechanisms” (Vaughan & Kilcommins, 2007, p. 440). However, this is not to suggest that the process is uniform across member states as the implementation of any
policy is reliant on each state’s legal and administrative processes and agencies (Menon & Weatherill, 2003). Therefore across the signatories of the European Convention given the different societies within which the police may enjoy varied roles and “modes of action” (Kaariainen, 2007, p. 410) different responses to the Article 2 obligations in the form of oversight mechanisms, processes and statutory instruments can be observed to have evolved.

Europeanization has been given different definitions and can manifest itself in different ways (Olsen, 2002). A general definition is “domestic change caused by European integration” (Vaughan & Kilcommins, 2007, p. 444) whereas Risse et al., conceptualize Europeanization as:

“the emergence and development at the European level of distinct structures of governance, that is of political, legal and social institutions associated with political problem solving that formalizes interactions among the actors, and of policy networks specializing in the creation of authoritative European rules” (Risse, Caporaso, & Green Cowles, 2001, p. 3).

Borzel and Risse (2000, p. 1) state that two conditions must exist for expecting domestic change in response to Europeanization. Firstly, there must be an element of incompatibility between European processes, policies and institutions and the domestic level processes. This constitutes “adaptational pressures”. The second condition is that there must be “facilitating factors be it actors or institutions- responding to the adaptational pressures” (Borzel & Risse, 2000, p. 1). The ECtHR operates as a ‘Triadic’ Dispute Resolution Model in that a dispute between two parties is brought to a third party who “assists in finding or authoritatively determining, resolution of the dispute” (Sandholtz & Stone Sweet, 2004, p. 247). Thus the ECHR identifies the ‘misfit’ between existing domestic practices and the international standards expected by the Court. Further, in the triadic dispute resolution model the decisions of the triadic dispute resolution mechanism can “contain materials for consolidating existing or building new, norms” (Sandholtz & Stone Sweet, 2004, p. 248). Also “the body of rules that constitutes normative structure steadily will expand, becoming more elaborate and differentiated; these rules then will feed back onto dyadic relationships structuring future interactions, conflict and dispute resolution” (Sandholtz & Stone Sweet, 2004, p. 248). Therefore, the member states in incorporating the rulings of the ECtHR into their domestic policies and institutions in the ‘adaptational process’ create a new structural norm within the state with the potential to decrease or prevent the need for resort to the ECtHR as the triadic model to identify breaches or contraventions of the Convention and instead work in closer alignment to the dyadic form of dispute resolution.
Borzel and Risse (2000, p. 10) argue that Europeanization can cause three different degrees of domestic change. These are “Absorption” in which member states experience a low degree of domestic change and European policies are incorporated into existing institutions without substantial modification, “Accommodation” in which the degree of domestic change is modest as member states adapt by patching on new processes onto existing ones without fundamentally altering their meaning and finally “Transformation” where member states replace existing policies, processes and institutions with new ones to the extent that there is a fundamental change in collective understandings at a domestic level (Borzel & Risse, 2000, p. 10). These definitions of absorption, accommodation and transformation will be used later in the thesis to measure the scale or degree to which Article 2 has been adapted into the policing oversight jurisdictions under consideration.

4.6.1 Measuring Europeanization in Relation to the Investigative Obligations under Article 2

The rulings of the ECtHR whilst binding have no automatic transformative effect on the states to which they apply (McBride, 2003) instead it falls to the state to take remedial action in relation to any breaches and to periodically report to the Council of Europe as to the nature and impact of any action taken. As has been seen above the state responsibility goes beyond getting its own house in order following an adverse finding. It is each state’s responsibility to recognise the aspirational nature of the standards set by the jurisprudence and work towards creating and maintaining structures that will allow future compliance. These structures in turn then have the opportunity to raise the ethical temperature of the state if they attempt to meaningfully engage with the human rights discourse and apply the standards objectively. Olsen has described two forms of change as “rule following” and “arguing and persuading” (Olsen, 2002, p. 927). In rule following change is normative driven, obligatory and quasi-mechanical following application of stable criteria to pre-defined situations, for example the following of clear instructions or obligations following a judicial ruling. In the second form of change, the underlying process is one of debate in which the common standards of truth and morals are argued and change occurs as the normative or factual beliefs change. There is a cyclical manner in which the European Courts take the ethical temperature of member states in reaching their judgements as to breaches of the convention, judgements which in turn may effectively raise the ethical ground temperature of the states themselves through the Europeanization of the impact of the judgements and allow for the creation of higher normative values within those states. It is also wholly possible, however, for the changes made by a state in compliance with either the finding of a breach of Article 2 or towards the aspirational objective setting of the ECtHR to be solely a cosmetic exercise.
This chapter has traced the evolution of the positive procedural obligation on a state to conduct an effective investigation into a death involving the police to the five standards developed by the ECtHR jurisprudence and subsequently elucidated by the European Commissioner for Human Rights. Consideration has also been given as to the Europeanization process by which these standards have migrated from the ECtHR to each of the signatory states to the Convention. The policing oversight agencies with which this thesis is concerned the IPCC, OPONI and GSOC have all been involved since their commencement in the investigation of deaths involving the police. This research will seek to assess whether they have the capacity to fully adhere to the positive investigative obligation and as to whether the decisions of the ECtHR in relation to the obligations have resulted in a practical application of the five standards in the investigations undertaken by each of the agencies. The next section will set out the findings of the qualitative interviews conducted with Senior Investigators in each of the oversight bodies.
Chapter Five:

Findings
Chapter Five: Findings

5.1 Introduction

This chapter outlines the findings from the interviews conducted with Senior Investigators (SIs) in OPONI, the IPCC and GSOC. In presenting the findings of the thesis I will first examine the knowledge and awareness of the Article 2 standards in each of the three organisations. I will then look at each of the five standards of the Article 2 procedural obligation in turn and present the findings of the qualitative interviews. I will also outline the responses from the interviewees in relation to the ‘political will’ (Luna & Walker, 2000) of their respective organisations to investigate deaths involving the police and also examine the views of the SIs as to the capacity of their organisation to deal with deaths involving the police that may included elements of ‘high policing’ (Brodeur, 1983). To maintain the anonymity of interviewees, they have each been assigned an SI or Senior Investigator number when quoted. As discussed above, each of the organisations have differing rank structures and different titles to denote level of investigative or managerial responsibility. All of the persons interviewed, however, either have been or could at some time be called upon to act as lead investigator into a death following police contact.

5.2 General Awareness of Article 2 and the Five Standards

The interviews of SIs across all of the organisations revealed that they had almost universally a high level of experience in the investigation of deaths involving the police and a high level of awareness and understanding of the five procedural standards. Many of the investigators brought experience of Article 2 investigations from their previous careers in law enforcement agencies, primarily from careers as police officers. Several of the SIs displayed in depth knowledge of the topic and had direct experience of investigations in which Article 2 issues arose having been involved in the investigation of some of the most high profile police involved deaths in their jurisdiction. Almost without exception the SIs across each organisation displayed a serious consideration of the issues surrounding the investigation of police involved deaths. For example several of the SIs cited ECtHR cases which had led to the development of the positive obligation and outlined their impact upon the investigative processes of their respective oversight agency whilst others cited the statute that had incorporated the Human Rights Act into their jurisdiction. Although the level of knowledge in relation to Article 2 was high across most of the SIs a few SIs who came from a non European jurisdiction expressed concerns at their level of knowledge whilst simultaneously displaying a grasp of the issues at hand. The importance and
relevance of the Article 2 standards was expressed by SIs in each of the organisations. In OPONI SI14 described the Article 2 standards as “the bedrock of what we’re doing”, in GSOC SI17 described them as the “benchmark” of the investigation of deaths and in the IPCC by SI27 as being “at the heart” of what they do.

The data from both the interviews would indicate therefore that a high level of knowledge and awareness of the Article 2 standards existed in each of three organisations.

5.3 Independence

There were similarities across each of the organisations in the way in which the SIs viewed and described their capacity to undertake independent investigations. Several distinctions were also revealed between the oversight agencies due to the differing remits and statutory frameworks. By way of example, within OPONI the Article 2 standards were primarily viewed through the filter of their experiences investigating ‘historic’ cases arising from the period known as the ‘troubles’. This meant that the issue of independence in investigation was not just an issue for incidents that could happen in the future but the independence of the investigative staff was viewed through the entirety of their careers to date.

Independence was explained in several different ways by the SIs. An SI in OPONI SI04 described independence as a “state of mind” and described the difficulties of keeping true to your own values and “having to balance the position you are in relation to the investigation versus what’s right and what’s wrong and come up with a balanced view now.” Independence was also frequently described in practical terms in terms of conducting investigative steps. In GSOC SI15 set out the investigative steps required to achieve independence:

“...the analysis of the scene and the seizure of evidence, interviewing of key witnesses, meeting with the family concerned, etc., etc., trying to make sure as much as is possible, as much as is realistic, we, as in the Garda Ombudsman take control of that aspect...”

This evidence based approach to independence was also elucidated by OPONI SI06:

“... to me it is very simple, you are trying to find out what happened, you are trying to establish the facts, establish the evidence and if you focus on doing that the rest sort of falls into place as regards independence.”
Each of the three organisations had created on call response teams to deal with critical incidents such as deaths to ensure a prompt response to any incident and to enable the organisation to deal with the investigations independently. The on call functions of the three agencies then were specifically aligned to fulfilment of the Article 2 standards.

### 5.3.1 The Value of Independence

It was common across the three organisations for the SIs to assign significant value to their independence. In OPONI it was described by SI02 and SI06 in the same language as being, “at the heart of everything we do”. OPONI SI12 described staff being “focussed on ensuring the independence” and referred to a “drive by the people here to ensure that there is independence”. OPONI SI09 described the agency’s independence in the investigation of police caused deaths as being “critically important for our credibility, the confidence of the public and also the confidence of policing.” In the IPCC, SI30 discussed the considerable investigative effort employed in “ensuring our independence”.

Several of the SIs across the organisations referenced that ‘independence’ formed part of the vision, mission or organisational architecture of their agency. In OPONI SI08 stated, “You know it says so on the door, ‘impartial, independent, investigation’, wholly independent role that goes down the middle.” In GSOC SI15 stated that there was “a very strong culture of independence within GSOC” and commented that it was represented by one of the three pillars that made up the organisational logo. IPCC SI24 described the importance of demonstrating the independence of an investigation into a death from the outset but also outlined the limits that could be placed on independence through resourcing:

> “There are always going to be elements of that independence that we can’t do, crime scene investigators, we don’t have our own so you have to rely on the force’s crime scene investigators and if you stick to the vehicle side, if it was a fatal road traffic collision we don’t have in house road traffic investigators, collision investigators so you have to rely on that resource as well. I think right from the start of any investigation to deem it as being independent and compliant with Article 2 you need to show that as an oversight body you have had a grip of that investigation right from the sort of onset.”

This theme was also identified by SIs in GSOC who outlined that complete independence was difficult and that on occasions other resources had to be relied on. GSOC SI15 stated as follows:
“I’m not aware anyway of any jurisdiction that can claim to have full and total independence of this type of work ... There is a reliance on resources from other agencies and including the cops themselves. It doesn’t sit right with me if we were to take a purist view of Article 2 and what the courts lay down, the standards are, it wouldn’t sit right with me at all, but a pragmatic view which is the view I have to take in order to get the job done would be, I do what I can with the resources available to me and if it leaves me open to criticism for failings or whatever it might be then so be it.”

5.3.2 The Nature of Independence

Interestingly SIs spoke of independence as being an evolving process characterised by the ability to both ebb and flow. Several SIs spoke about the independence of their organisation improving or declining at identifiable stages in their history. By way of example the IPCC SI26 stated in relation to the investigation of deaths involving the police:

“I think we’ve got better at investigating them independently. I still think we have problems where we haven’t got the expertise in certain areas where we have to use police resources but I think we’ve got much better at getting independent police resources to undertake those.”

The SIs frequently described the independence of their organisation as a changeable and fluid entity. It was common for an SI to explain that their organisation had achieved varying degrees of independence throughout its existence. Practical independence was also not seen to be a passive value but instead was described in kinetic terms as a value that had to be “managed” SI01 or “proved” SI06. Independence was not then described in static, passive terms but instead was to be monitored and kept in positive balance. Independence was not achieved simply by the statutory framework of the organisation and its place on the scale from police internal investigation to civilian oversight. Instead maintaining independence required vigilance and monitoring.

OPONI SI06 described the need to assert the agency’s independence:

“I’m going out and meeting families and their legal representatives and intermediaries we would be very proactive in stressing to them that we do conduct independent, impartial investigations, we don’t take sides, we are evidenced based, we are independent from the police service and we are there to really answer their questions, their concerns in a fair and impartial manner, so independence is at the heart of everything we do, and it is a daily battle...”
The interviewees frequently spoke in terms of working at or improving both the practical independence and also the perception of independence of the organisation giving both equal weight. The importance of independence both as a constituent of an effective Article 2 investigation and also as a facet of the oversight agency was repeated and emphasised. The external assessment of independence and its importance to the success of the agency was frequently commented on.

5.3.3 Ex-officers

Each of the three agencies had a mixture of SIs from both policing and non policing backgrounds. Each of the interviewees were asked as to whether the involvement of investigators with a policing background impacted upon the Article 2 requirement of independence in the investigations of deaths involving the police. There were a range of responses. In OPONI this issue had particular relevance to the investigation of the ‘historic’ cases which meant that a decision was taken that ex RUC officers would not be involved in those investigations. OPONI SI03 spoke of needing a balance of ex police officers:

“How many is too many? How many ex-police officers do I have before the organisation effectively loses its independence or certainly loses the perception of independence?”

OPONI SI04 outlined the benefit of having ex-police officers in terms of their ability to actually enhance the independence of investigations rather than detract from it through what they referred to as the “poacher turned gamekeeper scenario”:

“You could have a police officer being more independent because of his knowledge of where to look ... how to get under the skin than you would have of someone who’s fiercely independent but doesn’t have that edge because he doesn’t really know where to look and where to go to expose those sorts of investigations.”

This issue was echoed by the interviewees from both a policing and non policing background in the IPCC who had recently been criticised by the Home Office Affairs for the number of ex police officers employed. IPCC SI26 stated:

“I can honestly say that during my nine years here, during an investigation I have never come across anybody from a police background that has not investigated something thoroughly, because of their leaning towards the police. I think we need to
limit the amount of police officers but their skills and their knowledge of policing is invaluable and I think the benefits outweigh the negatives...”

In GSOC SI15 described the issue of employing ex-police officers as a “threat” to the organisation but one that could be managed. SI15 further stated that a lot depended on the individual concerned and the choices they made in investigations.

### 5.3.4 Culture

Each of the SIs were asked for their views as to whether the oversight agency in which they worked had developed a policing culture. There were a range of viewpoints expressed. Some of the SIs in all of the organisations identified their tendency to mirror the jargon and use of language of the police which they investigated.

OPONI SI01 stated:

“I’ve being doing this for years now and it is a daily battle to stop us from using jargon ...so my view is if I am speaking to a police officer I use their jargon and if I’m speaking to a member of the public I say something different and I think we need to be aware of that and that’s part of managing people’s view of your independence and impartiality.”

Interestingly some of the SIs who came from a non policing background were more likely to equate the culture within the oversight agency with that of a police service whilst the SIs with policing backgrounds were emphatic that the oversight agencies did not have a policing culture. IPCC SI25 stated:

“... There is nothing that you can remotely mirror what goes on in the police culture here. I think that comes down to the IPCC core values which you know is important to the organisation...”

IPCC SI30 stated:

“I think culture is a developmental thing and probably within the police service now the culture is a lot different than it was 8 years ago and 20 years ago, and ... I see the culture here as being very, very different from being a police culture because of the different types of individuals that we employ.”
In OPONI, SI12 whose career in policing was in a police service outside of the UK, stated:

“It’s very different from a policing culture... You have to consider the people you are dealing with on a regular basis, more often the majority of your work is with people who on a regular basis are in contact with law enforcement, not in a positive way.”

IPCC SI26 who did not have a policing background stated that they had never come across a pro police bias amongst the IPCC staff, however, they saw the issue of the oversight agency adopting a police culture from a slightly different perspective:

“I think there would be a danger of that if our percentages of police officers or ex law enforcement got too high but whereas the IPCC at the moment, it recruits young, fresh intelligent people into the investigations directorate and I think they are essential because they might not have the experience of law enforcement they might not have the experience of criminal investigations but what they do is that they provide that balance between the police because they’ve got other ideas, they’ve got other points of view.”

OPONI SI12 felt that certain aspects of the policing culture had made their way into the office:

“I think there are certain facets of it that are because you have so many ex-police and ex-military here and police and military have a certain kind of similar kind of outlook on life, in that you know, we are in splendid isolation from civil society so therefore we view civil society in a disdainful view in a way because it’s like we are the gatekeepers and they are the thundering herd, the hordes...”

OPONI SI06 described the evolution of the culture within the organisation:

“I think in the early days there was a bit of a police culture in the Ombudsman but I think the reason for that was we had a lot of seconded senior police officers ... plus I think our investigators were less confident then of their own abilities so it was very easy to become part of that culture and to go with it. I think that now we have stronger civilian investigators and less of a seconded police family within us... I now think that we have our own culture... it’s an investigative culture so therefore it is going to be similar in some respects to police investigators culture...”
5.3.5 Regulatory Capture

The SIs were asked their views as to whether they had any experience of regulatory capture occurring in their organisation and any steps that were taken to avoid it. The interviews revealed that each of the jurisdictions faced unique difficulties in managing their relationship with the force or forces within their remit for the investigation of deaths involving the police. The IPCC investigates all of the police forces across England and Wales and through the different modes of investigation catered for in their legislation they had the possibility that they could be managing an investigation with a force or conducting the investigation of that force independently. Several of the SIs were clear that the relationship with the police in these investigations had distinct boundaries, IPCC SI24 stated, “We don’t work with [the police force] we work alongside”, and this was echoed by IPCC SI29 who made the distinction between working with a police force and “focusing upon”. IPCC SI29 also challenged the use of language stating that the term “working with” sounded like collaboration.

The threat of regulatory capture was seen as a reality. IPCC SI28 stated that they had experienced regulatory capture in the past due to reliance on information from police services in managed investigations. The same danger was also present in Article 2 investigations:

“When you get a death which is an Article 2 death and you are getting that at two o’clock, three o’clock in the morning and they are phoning that through to you, there is a reliance that some of the aspects of what they are telling you is actually the circumstances that actually occurred... but that is incumbent on whoever is actually taking the call to actually draw those out.”

Perhaps inevitably, the oversight agency has to rely on a certain level of cooperation from the police service under investigation in order for the investigation to be conducted. One SI in OPONI SI10 spoke of the frustration that this can bring:

“... the bureaucracy, the memorandums of understanding sometimes you listen to that and you think in many ways they are impacting on us having to be patient, overly polite and almost subservient to the organisation which we rely on.”

Other SIs spoke of the need to maintain a healthy relationship with the PSNI but for the relationship to be monitored as SI02 said, “the PSNI, regarding our relationship we do have, we do stand a risk of becoming very much cozying up with the PSNI, we have to be careful.”
The relationship with the PSNI and therefore the risk of regulatory capture could, however, be managed, as SI08 stated:

“Well first of all I don’t work closely with the PSNI because I don’t work with them...The cooperation is nice to have and often it meets an investigative need, but I do quite bluntly hold the principle that if you are not going to cooperate with me, then I do have the powers to do certain things, for example, seize documentation, gather evidence, arrest suspects if need be.”

OPONI SI03 described the need to maintain professional working relationships:

“...you have to have relationships with individuals of the PSNI but they should be professional and people, I think sometimes potentially don’t see the dangers as regards how other people will see relationships if it is seen to be too close... potentially how they could leave themselves vulnerable to criticism...”

The historic investigations undertaken by OPONI centre on the investigation of a police force, the RUC, that no longer exists thus reducing or negating the possibility or regulatory capture. However, due to their involvement in ‘historic’ enquiries they were also called upon to conduct investigation in relation to allegations of RUC and civilian collusion that required ‘parallel’ investigations by both bodies. This required the delicate management of relationships. As OPONI SI13 explained:

“...because there are allegations of criminality by non police officers alongside allegations of criminality by police officers, there are two parallel investigations which ... if for example you are dealing with an alleged conspiracy between both parts there has to be a kind of cross fertilisation of the investigation, it is impossible for there not to be...”

GSOC has the responsibility for investigating a single national force. GSOC SI15 described the need for vigilance in monitoring the relationship with the Garda Síochána:

“I’ve found, it’s very difficult to relax and take your eye of the ball for a second... it’s that constant vigilance that things aren’t getting to cosy if I can put it that way, there is always that sort of professional tension that healthy tension between the two organisations.”
GSOC SI18 described the need for a “healthy tension” to exist between the oversight body and force that they oversee stating in regard to the risk of regulatory capture, “I am very conscious of it because I think it is something real and I constantly have to keep reminding myself of the requirement not to let that happen.”

5.3.6 Independence through Specialist Knowledge

Several of the SIs across the organisations made reference to the fact that the independence of their investigations could be improved or bolstered through increased professional knowledge, expertise or specialism. Each of the three agencies had worked towards creating in-house specialist in technical and forensic areas. OPONI SI14 explained:

“So from an independence point of view, we are fairly self sufficient now with the training now. We can do a lot of the simple stuff ourselves.”

One particular difficulty raised by several of the IPCC SIs was the need to rely on police forensic collision investigators in fatal road traffic collisions. IPCC SI25 stated:

“... for instance Road Traffic Pursuits, deaths we’ve not got the expertise in relation to the investigation at the scene where it’s specialist work and for that what we insist upon is that another force comes out to look at the work being carried out by the force that’s actually doing it or the other force does it...”

GSOC had attempted to mitigate against this risk by developing small pockets of expertise among their staff. GSOC SI19 explained the concept behind it:

“Recently we’ve got the... trained Collision Investigators who can attend the scene and liaise with the Garda person and because they have a good or a reasonable understanding of forensic collision investigations, they can speak to them intelligently about what has happened here and look at the evidence and get an idea of it, so that way we do put our independence into it a bit more...”

Although the oversight agencies are often defined by their independence, it is difficult to evaluate. Independence is not a simple linear construct, but is instead a multi-factorial and evolving entity. Each of the SIs in the agencies valued and defended the independence of their investigations and their organisation. It was clear, however, that the need to maintain independence was a constant. Several of the SIs expressed the view that independence had
been lessened or strengthened by events. This reflected Herzog’s model of the evolution of independence in accountability measures (Herzog, 1999).

5.4 Adequacy

The SIs were asked their views as to whether their organisations conducted adequate investigations into deaths involving the police. The use of language in relation to the adequacy of an investigation presented an issue for several of the SIs in all three of the oversight agencies. Several SIs challenged the use of the word ‘adequacy’ which they saw as a “difficult term” SI23 preferring instead to refer to the ‘thoroughness’ or ‘robustness’ of an investigations or instead referring to the investigation being considered as “proportionate” SI17. For the SIs the word adequacy did not capture the level of investigative effort put into the enquiries. OPONI SI13 summed up the position:

“...just make it adequate? I know there is a much, much wider context in using that term. I think they are great principles and my understanding is that if you adhere to all five and replace the adequacy with ‘thorough’... then you have an effective investigation.”

SIs outlined the practical requirements of meeting an adequate standard of investigation. OPONI SI12 listed the requirements as “the skill set”, “the resources”, “the basic knowledge”, “the drive to look at everything” and the “courage to say when you see something that is not right.”

5.4.1 Resources

The issue of resources was common to each agency and each of the SIs made reference to difficulties in resourcing enquiries. Whilst the majority of the SIs were concerned about the need for more resources some of the SIs expressed this in particularly stark terms. In GSOC SI18 stated:

“... we have insufficient numbers, our staff aren’t adequately trained and because of the way we are structured we never have sufficient resources on the ground at any given time to investigate a major incident ... equal to an investigation of the same event and set of circumstances being conducted by an Garda Síochána so I think we are very vulnerable in that area.”
The continuing investigative workload that still had to be serviced while an Article 2 investigation was ongoing was also an issue for the agencies. In OPONI internal team structures had developed so that a Significant Case Team would take over and deal with the investigation of serious incidents such as cases where Article 2 might engage, with the other work being undertaken by Core Investigation Teams. The OPONI SIs had also developed a regimented system of reviews of their investigations whether into historic or current cases to ensure that lines of inquiry were being followed. OPONI SI06 outlined the benefits of their system:

“In the early days we were maybe a bit lax around review but ... there are very clear review processes in place now as part of the investigative process so you shouldn’t be at the end of an investigation going this hasn’t been properly reviewed as it went on because the processes are in place to do it.”

A similar regimented system of review was also present in the IPCC with the SIs describing a structured and “exhaustive” (IPCC SI25) review process bolstered with Dip Sample and Thematic reviews. The IPCC SIs also described a team based approach to investigations involving others outside of the investigations directorates. IPCC SI30 stated that the adequacy of investigations had improved:

“It is now more, much more of a team with the Commission being involved, with the lawyers being involved, and there will be critical incident meetings similar to police gold groups set up now, probably two or three of those will take place on the day of the incident being referred and there is a lot more sort of internal oversight now to ensure adequacy.”

Several of the IPCC SIs reflected on previous investigative performance of the organisation and spoke about an improvement in the standards of the investigations that they carried out, many of them conceding that the quality of investigations may not always have been at an appropriate level. IPCC SI28 spoke about the IPCC having previously been “found wanting in relation to the quality of the investigation” which was also echoed by IPCC SI26 who also spoke about the need for the organisation to reflect and learn from past mistakes. IPCC SI27 felt that the investigations did meet the required standard:

“I think we do a good job and I think I can look families in the eye after wards and say... and that’s what the majority of families want, they just want to know what happened so if we can line the ducks up and tell them and they may not necessarily like our conclusion and we may argue about that but they just want to know what happened.”
The geographical area which needed to be covered by the different agencies’ on call function was also an issue. This was less of a concern for OPONI whose SIs described a comfortable geographical area of responsibility. Similarly in GSOC the geographical area covered by their response team was not seen to cause insurmountable problems. Within the IPCC, however, the sheer span of the area that was required to be covered had led to serious implications for their ability to perform the on call function to the standards that may be required in an Article 2 compliant investigation. IPCC SI28 described the difficulties in relation to their on call teams, “generally speaking we can’t get there in a reasonable time because of the geography of the whole of the UK. We’ve got five offices and we’ve got an on call team, but the on call team is quite small, it’s based North and South so to actually provide an Article 2 cover out of hours is extremely difficult.”

As IPCC SI27 described the provisions made for an immediate investigative response:

“... I’ve got forty investigators to do more than half of England... You can only do with what you’ve got ... we’re basically at something is better than nothing but only just.”

Despite these concerns the interviews with the SIs would suggest a confidence amongst the SIs that thorough investigations into deaths involving the police were being conducted and that the Article 2 standard of adequacy was being met.

5.5 Promptness

The issue of timeliness or promptness in investigations caused some consternation amongst the SIs. All had been involved in inquiries that could be considered to be protracted. Common themes identified by the SIs were the need to be thorough, the challenges of interacting with other agencies and outside bodies and the need for improved resourcing to achieve a timely investigation. GSOC SI15, when asked if they could satisfy the obligation to investigate in a timely fashion, stated that they felt that the timeliness standard was GSOC’s “biggest area of exposure or weakness” in relation to compliance with Article 2. The reason for this was the difficulties they had encountered in securing Garda information. SI15 commented on the impact that resources could have on timeliness of investigation but attributed most of the delays to Garda cooperation and the manner in which GSOC conducted inquiries. SI15 summarised the position as follows:

“We have a set of protocols with Garda management that they have signed up to that stipulate information will be provided within 30 days of the request. If it is provided within thirty days of the request then in my experience some the cause for celebration ... I don’t think we do meet the standards on promptness due to the
manner in which we go about our enquiries. We’re not the sort of outfit that goes around daily putting doors in, executing warrants, seizing stuff.”

GSOC SI16, whilst expressing that they thought GSOC investigated deaths involving the police both promptly and to a high standard, presented a practical viewpoint in relation to what could be achieved by a small oversight organisation:

“I think there has to be a reality check in regards to the fact that we are an investigating body of approximately twenty six investigators covering the whole state, covering fourteen thousand members of AGS.”

OPONI SI12 queried that the definition of timeliness may differ amongst the persons involved in the investigation and was a relative term depending on your viewpoint:

“... my perception of timeliness within the organisation working wise, might not be the victim’s family’s perception of timeliness, you know... the victims are the families or anyone who is impacted by it, the police officers who are impacted by the investigation into a death, everybody that’s impacted by that, what’s their timeliness? What is their mindset of timeliness? Because for them that’s all there is, that death.”

Once again the remit for historic investigations undertaken by OPONI also presented unique challenges for investigators attempting to investigate in a timely manner due to the fact that responsibility for investigating all of the incidents from 1968 to 1998 arose at the same time. This has led OPONI to review and prioritise which of the investigations it has been able to undertake as the resources do not exist to allow the organisation to investigate all of the cases at once. SI04 explained the problem stating, “...we have some cases still on our books that are twelve years old. We have taken on far too much and we are not capable of delivering on timeliness because we have taken on too much.” OPONI SI13 described timeliness as the one Article 2 standard that they had a problem reaching.

Several SIs spoke of improvements in achieving timeliness in investigations. OPONI SI01 stated:

“I think we’ve got better at it as the years have gone on... we’re being as quick as we can and I think we’ve got quicker at it because the processes are now in place for us to get the information to move it forward...”
IPCC SI28 agreed with several of his colleagues in relation to the impact of resourcing on timeliness in investigations but also referenced the need to conduct thorough investigations:

“It is difficult...we agreed to do investigations within 157 days, currently 60% but we are struggling with that because we are short of resources... We try and do them as quick as we can, but they have to be thorough, but they have to be proportionate as well.”

IPCC SI27 expressed frustration at the issues that could prevent an inquiry being conducted in a timely fashion including the cooperation of the officers involved in the investigation:

“Justice delayed is justice denied and we are very conscious of that ...and just the problems of getting officers with their lawyers, with their federation representatives with the modern shift patterns it can take weeks just to arrange one interview, we can get and we’re starting to play a bit more hard ball now with compelling, we can actually tell them to come here within five days, we can’t make them talk.”

Common amongst the SIs was the expressed desire to investigate the cases in a prompt manner and examples were cited of the speedy completion of investigations, however, several of the SIs across the organisations were keen to point out that timeliness should not come at the cost of thoroughness. OPONO SI07 recalled responding to a question from a family in relation to how long the investigation into their loved one’s death was going to take, “it’s going to take as long as it’s going to take because I want to be as thorough as I can but there have to be milestones and checks along the way to make sure that you are dealing with things.” GSOC SI17 expressed a similar sentiment, “I would rather have to explain why it took as long as it did than have to explain why it was inadequate. I don’t think that inadequacy is acceptable in any investigation.”

Timeliness or promptness was clearly an issue of concern then for SIs in all three organisations and one which had not been adequately resolved. This signified that more work was required in all three agencies around ensuring the timeliness of investigations into deaths involving the police.

5.6 Public Scrutiny

All of the SIs were asked for their opinions on the Article 2 standard of achieving public scrutiny in the investigation. The two main avenues for achieving this standard are public
hearings, such as those of the coronial process, or the public reporting of the progress and findings of the investigation. The SIs had similar experiences with the coronial processes across the jurisdictions, but in relation to the public reporting, there was a marked difference among the three agencies SIs as to their responses to the questions in that several SIs in OPONI and GSOC spoke of the need to ‘do more’ in making their findings public and spoke of frustration of what had been done in the past. Significantly, however, all of the SIs of the IPCC were satisfied that the level of public reporting was appropriate.

GSOC SI17 outlined doubts that enough was being done to make the findings of the investigations public:

“...I don’t think we should be in the news every day, I don’t think we should be touting for business so to speak but I do believe that it is in the public interest to know what is going on in relation to some systemic issues that we come across on a regular basis.”

GSOC SI16 expressed his frustration at the level of public reporting undertaken by the organisation:

“...there are so many things that we do well, we do very good investigations, but I don’t think we have inspired public confidence in ourselves by the very nature of the amount of information that has been retained within these four walls and that has not been given to the public.”

SI16 concluded by stating that the new Ombudsman Commission had undertaken to publish its findings more, this was echoed by GSOC SI18 who felt that there was a “more progressive view” in relation to putting information into the public domain. GSOC SI15 indicated a contrary opinion in that they felt that the organisation had a good record in making its findings public, but felt that more could be done in following up on the public reports:

“I think we do enough on reporting, I don’t think that we do enough on follow up. I think where things need to be said, we have said them and then it withers on the vine and then we move on to the next big thing so I don’t think we are strong enough on follow up...”

Several of the SIs spoke about the usefulness of the external and public scrutiny that the coronial process and other judicial proceedings can provide in determining the adequacy of the investigation. OPONI SI01 described it as follows:
“...my view is if I am standing up in the Coroner’s court am I quite happy with what I’ve done? Or if I’m sitting in the High Court being judicially reviewed can I stand over the sustainability and robustness of what I’ve done? And that’s the benchmark for me.”

Other SIs in OPONI also commented on the quality of the coronial hearings in the jurisdiction. Whilst OPONI SI09 found that the level of scrutiny varied from case to case and SI14 described the coronial process in a death involving the police as a “difficult playing field”, SI10 described the inquests as “challenging” and “fairly robust”. OPONI SI03 expanded on this saying:

“...they are robust, they are rigorous, they will hold you to account, you will be scrutinised, your work will be scrutinised, your decision making, your rationale etc., will be scrutinised but rightly so, but those are the sort of tests to ensure that your investigations are thorough.”

A similar viewpoint was expressed by IPCC SI26:

“If we know that that product, that investigation is going to be there for the public to see, not just at inquest but on the website then it makes you more professional, it makes you think about what you are doing and it makes you have sound rationale for what you are doing so it is a good thing and we are getting better.”

However whilst SIs in both GSOC and the IPCC cited examples of thorough, probing and lengthy inquests several of the SIs made similar observations in relation to the coronial process and a lack of consistency between the different coroners across their jurisdictions. IPCC SI23 commented that the coroners could be “very, very different” in their decision making but that each was “masters of their own court” while IPCC SI28 stated, “they are quite a unique bunch all over the country and they have different approaches to the police. My experience of the coroners has been varied depending on the coroner.” The IPCC SIs almost universally agreed that the coroners in their jurisdiction were fully aware of Article 2 and were conducting their coronial inquests in compliance with it. IPCC SI31 described the coronial process as follows:

“It definitely is sufficiently rigorous because I think coroner’s defend their position very well and they want to get to the bottom of what happened and the fact that for any Article 2 death you will have a jury ... so it’s got to be reasonably thorough.”
GSOC SIs had a similar view of the coronial process indicating that knowledge of the Article 2 obligations differed among coroners. GSOC SI19 commented that some inquests were conducted very quickly and felt that the part time nature of the coroners in the jurisdiction may impact upon the level of scrutiny given to inquiries. GSOC SI18 gave a graphic description of the range of Article 2 awareness amongst the coroners in their jurisdiction:

“The degrees range from the man who wrote the book in this jurisdiction to ... “yes, yes, Article 2 what is that again?” so there’s the range from no knowledge whatsoever to a man who has written the book and everywhere in between. So yes a huge difference between coroners.”

5.7 Victim Involvement

Of all of the Article 2 standards, the one that attracted the greatest consistency of viewpoint across the organisations was the need to engage with the family of the deceased to ensure that they are fully informed of the progress and findings of the investigation. Each of the three organisations had developed specialist roles amongst their investigative resource to deal with the issue of engaging with families of the deceased. GSOC had established a compliment of trained FLOs, whilst the IPCC, in recognition of the slightly different emphasis in liaising with a family bereaved due to a death following police contact as opposed to a homicide, had titled the specialist role as Family Liaison Managers. Again OPONI’s remit for the ‘historic’ enquiries had required an adaptation of their approach. OPONI had almost since their inception created a FLO resource having sent some of their investigative staff on police FLO courses with Avon and Somerset Police. Faced with the challenges of liaising with families in investigations whose loved ones may have died as far back as 1968, OPONI had created a special Communications Unit to update families, explain investigative progress or the lack of it and manage expectations. Each of the organisations therefore had developed a capacity to potentially fulfil the Article 2 requirement, the interviews with the SIs the questions explored their attitudes to the implementation of these liaison structures and whether they thought their organisation did enough to meet them.

In all three jurisdictions the oversight agencies SIs could be seen to have recognised the need for families to be involved in the investigations and for them to be provided with sufficient information. Although this was not universal amongst the SIs, the SIs who expressed that family members should not be provided with information or indeed should not be placed at the centre of the investigation were in the minority. In GSOC only one of the SIs interviewed expressed any reservation in relation to the information that should be provided to the family. GSOC SI18 stated that during an investigation the family should be provided with “the very minimum” and only at the end of the investigation should the
family be given “all of the facts and all of the information.” SI18 explained their rationale for this viewpoint in the risk that disclosure to the family may present to the investigation:

“I am somewhat concerned that at some stage if an Article 2 type investigation were to proceed to a trial that we might have compromised evidence or contaminated or shown a pre-judgement or a bias in the form of an update given to a family that could be used by a person who is the subject of a charge to defend that charge.”

The prevailing view across the GSOC SIs was that they had established a suitable liaison function and that it was intended to provide families with as much information as they were lawfully able to provide.

GSOC SI17 stated:

“I do believe that we have the legislation and policy and procedures to allow us to properly engage with families. I believe that we also have the proper training and the properly trained staff and enough of them to properly meet that victim involvement and public scrutiny aspect of it... on paper we are good and when it comes to the victim involvement we are very good especially when it comes to the Article 2’s”

GSOC SI19 was of the view that the Family Liaison aspect of investigations was something that GSOC did “really well” stating:

“...I try to give them enough so they understand what has happened and what is going to happen without giving them the outcome of it during the investigation prior to a court or an inquest. I would give them a lot more information.”

SI15 similarly described their test for how much information was provided to the family in open terms:

“I have to have a reason for not telling them, that’s what I’m getting at rather than a blanket, tell them nothing and then go through each individual but and go well, they can have that, they can have that. I work the other way around, they can have everything but let’s have a look at it first.”

Similar attitudes prevailed in the IPCC, with several SIs commenting on the importance of the family of the deceased in the investigative process. SI28 emphasised family liaison as
being “extremely important” to the IPCC whilst SI27 described involving the family as “prime, prime, prime”, and SI24 described it as “vital”. The SIs were also complimentary of those tasked with performing the liaison with the families. SI26 stated that they do a “fantastic job” and SI30 described how measures had been put in place to monitor compliance in family liaison saying, “in terms of updates that is taken very, very seriously, we’ve got performance measures in place to ensure that updates of all interested parties including the families are rigorously complied with, as managers we check the quality of the update letters to make sure that they are meaningful and they are not just, “the investigation is progressing satisfactorily”.

The importance of creating a meaningful liaison with the family was also emphasised by SI24 who described it in strong terms:

“...you’ve got to let them know that they are forming part of this investigation... their involvement in it is vital, they are a key element of searching for the truth, what happened in the death of this particular person or what happened in this collision that led to the death of this particular person or some police shooting.”

SI25 outlined their view that liaising with the families of the deceased was the “most important part” of the investigation but stated that it was not always possible to establish a successful liaison with the family stating,

“We have had failures. We’ve got it wrong with families and where we’ve got it wrong we’ve gone out and identified that and we’ve said we’ve got it wrong and we’ve recognised that fact, touch wood we haven’t got a bad record here, my team haven’t got a bad record but they know how I feel about engaging with families.”

In OPONI there was evidence of a similarly family centric approach to the investigation of deaths involving the police. SI08 expressed his view as to the information that was to be supplied to families was to “tell them everything” and when information could not be released to explain the reasons behind that decision. This viewpoint echoed those of other SIs in the other organisations. OPONI SI05 expressed the common view that “you have to give families enough information that they are update and they know exactly what is going on” and SI03 stating that OPONI were “proactive on that point because we see the benefit of it, because if you lose the family or their representatives it’s just going to make it more difficult.” OPONI SIs also expressed favourable opinion on the work carried out by the family liaison officers with SI02 describing it as being “as good as it can be” and SI05 stating that OPONI had “more than enough people trained and adequately trained.” SI08 outlined that the contact with families of the deceased in Article 2 investigations had been made a Key
Performance Indicator within OPONI which measured the “regularity of contact with families” which was “recommended and considered organisationally for every six weeks.”

As with other standards under Article 2, the remit of OPONI to investigate ‘historic’ cases had led to the creation of a ‘communications team’. As SI05 explained:

“... onto the historical side, we’ve got the Communication Team that is a separate entity... a self contained department within our team that deals with the families ... that point of view that has improved dramatically, really good standards of IOs, good people in there doing it.”

Also similar to comments made by IPCC SIs SI07 reflected that OPONI had occasions where they were not as “family centred and victim centred” as they should be. SI06 accepted that the function of family liaison had not always been implemented properly but saw an improvement in how the role was deployed saying:

“We have made mistakes in the past but we are going to get it right now ... you know, we can do the world’s greatest investigation but if we don’t have the family on board, it’s not worth a hill of beans so I think mistakes have been made in the past, we have failed families in the past but I’d like to think... those mistakes won’t be repeated.”

As with the previous standards it was clear then that the three organisations had developed constructs and attempted to comply with the Article 2 requirements. The SIs had also engaged with the standards in this regard. There was evidence of a will to engage with families and a common theme amongst the SIs was the importance of such engagement. Whilst this was not universal it was clear that the majority of SIs were working towards reaching the Article 2 standard of victim involvement.

5.8 High and Low Policing

As was explored earlier in this thesis Brodeur’s theory of high and low policing (1983) can be applied to deaths involving the police in that whilst some deaths occur during an interaction with the police that involve elements more aligned with the low policing paradigm such as public order arrests or deaths in custody others involve elements of the high policing paradigm such as the fatal shooting of a person following a pro-active intelligence led operation. In such circumstances the importance of the Article 2 standards
comes to the fore as the case law, starting with the McCann\(^\text{66}\) judgement, dictates that any investigation carried out into the death must examine the planning and preparation of the operation and examine whether suitable steps were taken to reduce the risk of a loss of life occurring. This will inevitably require that the oversight agency tasked with the investigation of such a death must develop and maintain the capacity to undertake the necessary enquiries to probe the planning of policing actions that result in a death and the facility for accessing and maintaining the kind of intelligence product that is used by the police in the planning and running of such operations. Each SI was provided with an explanation of Brodeur’s theory and asked if a ‘high’ policing death such as the Stockwell shooting took place within their geographical area and remit, would they have the capacity to undertake all aspects of the investigation. The answers across the three oversight agencies were varied, but SIs in all organisations expressed concerns as to whether they would get access to all of the intelligence in a ‘high’ policing death involving the police.

The IPCC, who had faced the challenge of investigating the high policing death of Jean Charles de Menezes in 2005, were confident that they could cope if such circumstances were to arise again. Several felt that they had learned from the 2005 investigation and that structures had improved since then. IPCC SI26 stated:

“I think there would be less resistance now than there was back in 2005. In 2005 we were a very new organisation and you know the Commissioner of the Met and several of the high ranking officers had not quite got used to the fact that we were there... we would get much more cooperation and free access now I am sure to that material... I think it would be quicker now and I think our investigation now would be more thorough due to that. I think the public would demand it as well.”

This viewpoint was echoed by IPCC SI29 who stated:

“... it was still a young organisation, it was still finding its feet and that would probably have been the first major investigation or first investigation of that magnitude where these issues were brought to bear or teased out. Since then the organisation has matured, the body of knowledge both internally and externally is much greater now as to what’s expected, what’s required, what needs to be done so I think it is well positioned in that sense to deal with it.”

Similarly most of the IPCC SIs were confident that they would get access to the intelligence surrounding a ‘high policing’ death. SI29 continued, “I think there will always be a tension

about access to intelligence. I think we are positioned to get it and the onus must be on other agencies, other parties to have the confidence to share it.”

Typical of the responses in OPONI was SI13 who stated:

“Well, we could deal quite effectively and efficiently with the low policing end. The difficulty with the high policing end is that national security and responsibility for national security now rests with MI5, security service, so they may well be in possession of intelligence or sensitive information that they do not wish to share with us.”

OPONI SI08 was similarly confident in the capacity of the organisation to deal with the ‘low’ policing aspects of such an incident saying:

“I think there is the capacity and the knowledge and the skill within this organisation to investigate that and that’s because I’m aware of some of the personalities and some of the individuals and some of their backgrounds and abilities.”

When asked whether they would get access to the intelligence product that may be required to be evaluated in such an investigation, SI08 gave a considered response which demonstrated the resilience of the oversight agency:

“I am not one hundred percent confident that I will readily get access to the information but I am confident enough in my own abilities to recognise from what I have, what I’ve asked for and the circumstances that pervade that I can identify gaps in what I’ve got and then I’ll go back and ask again.”

OPONI SI03 described how the public interest in such an incident would ensure that the oversight agency would be able to fulfil its investigative function:

“If something like that happened I would be probably fairly confident that we would get all the material, I think there would be such scrutiny over that there and such media and political interest, I think that it would be extremely difficult and extremely foolish for police to withhold something any significant information about that...”

SI10 was also confident that the material would be provided but stated that “it would take far too long”, “would require too many niceties” and would impact upon the confidence of
the family of the deceased. SI07 was also expressed a surety that the intelligence would be provided saying, “I think this organisation has gone through too much pain in respect of concerns that maybe some senior staff had in respect of the accessing of intelligence not to.” SI04 was “absolutely confident, one hundred percent confident” that OPONI would get access to all of the intelligence behind such a policing operation and also stated that OPONI would investigate it with “vigour”.

In GSOC the youngest and smallest of the three oversight agencies, the prevailing mood was not one of confidence on the issue of investigating a ‘high’ policing death. Whilst most of the SIs expressed the view that the investigative function could cope with the demands of the ‘low policing’ elements of a death, both GSOC SI16 and SI15 raised the issue of difficulties in terms of “information exchange” with the Garda Síochána whilst GSOC SI18 stated bluntly:

“We don’t have the capacity to investigate a high policing death and we don’t have the necessary cooperation with AGS even to allow us to begin an investigation into a high policing death. They are even reluctant to cooperate with a death in low policing.”

GSOC SI19 was equally as sanguine about access to intelligence:

“...well we don’t have the power to demand it and we wouldn’t get it, so we couldn’t investigate something like that, the Article 2 would fail from the start. We wouldn’t have enough people to respond to it for a start and then we wouldn’t get what we need to investigate it thoroughly or adequately anyway...”

It is clear then that in the more mature organisations of the IPCC and OPONI there is more confidence amongst the SIs in the investigation of a high policing death and in the access of sensitive information from the police services under investigation. GSOC SIs would not share the same confidence that the organisation was adequately resourced or statutorily empowered or that they would receive the cooperation of the police necessary to conduct such an enquiry.

5.9 Political Will

The SIs in each of the oversight agencies were asked to comment on whether the ‘political will’ as defined by Luna and Walker (2000) to investigate deaths involving the police existed in their organisation. One GSOC SI expressed some reluctance to comment stating, “I have
to take the fifth on that one. I don’t want to incriminate myself and I do want to keep my job.” It was common amongst the GSOC SIs to describe the importance of the ‘political will’ for the agency to investigate with SI’s using the terms ‘vital’ and ‘paramount’. It was also common for the SIs to state that the leadership of the organisation was an important factor in establishing that will. GSOC SI15 stated:

“We’ve experienced since we came into being three different commissions, led by three different personalities ... three different bearings on the way we do business...but the three different chairpersons, the three different personalities, I would suggest had a different political will to achieve our objectives.”

SIs in the IPCC across the organisation all said that the ‘political will’ existed in their organisation to investigate Article 2 deaths. Some saw this as part of the IPCC’s evolution; SI26, for example, spoke about the will improving over time whilst SI25 saw the political will internally reflected externally by increased budget and portfolio. The SIs also spoke about the importance of their Commissioners in relation to the ‘political will’ of the organisation, with SI30 stating that the Commissioners serve to “drive investigations” and SI28 stating:

“It’s got to be the cornerstone of the investigation. If there is no political will then they can be manipulated, they can go for an easy ride and so on, they can do what they feel is the political answer as opposed to what’s right or wrong. And I have worked for some people who I would say, as long as the thing was right evidentially and they believed that what they were doing was right they didn’t care which side it was.”

Finally in OPONI, the SIs described a changing landscape of political will. SI01 described the early days of the office and “fighting to get it going and running” stating “our blood is on the walls of this place”. SI10 described their being “watersheds” in the history of the organisation where the political will was transformed. SI03 described the political will as “absolutely crucial” explaining that the change in ombudsman created a “new will” in the organisation. Describing the will in the organisation SI03 went on to say:

“Some people ... believe passionately about it, believe passionately about what they do and they believe that people have a right to know these things, that these matters should be thoroughly investigated, other people don’t.”

OPONI SI07 was particularly confident that the will existed in the organisation to investigate incidents involving death stating:
“I think if we had someone who, a member of the public shot dead by police officers today, there most certainly is that political will to investigate and to leave no stone unturned.”

5.10 The Purpose of the Investigation into Deaths Involving the Police

It is clear from the evolution of the Article 2 standards themselves and from the comments of Judge Bingham and others that the Article 2 compliant investigation into a death can have many competing and complimentary purposes. These could be classed as punitive, informative, restorative and preventative in nature as they relate to disciplinary and criminal processes, the provision of information to the bereaved, the restoration of confidence in policing and the learning of lessons to prevent future deaths. Each of the SIs were asked what they saw as the purpose of the investigations into state caused deaths carried out by their respective oversight agencies. Their answers showed a universal recognition of the multi-functionality of their investigations. None of the SIs in any of the organisations were restricted in their viewpoint to a singular punitive purpose. Almost all SIs included some element of providing information to the families of the deceased and it was common for elements of public confidence to be expressed. In OPONI for example the purpose of an Article 2 investigation into a death was described by SI01 as having a dual purpose:

“One I think it’s about truth and honesty for the families. And two, I think it’s about public confidence in the systems and the structures and the organisations and that’s not just us that would be the PSNI and what have they done and the judicial proceedings that go through the whole thing. I think it has a bigger impact than just us.”

OPONI SI02 captures the four purpose of punitive, informative, restorative and preventative in their response:

“I think it’s really important for public confidence, for improving policing and I think it’s really important for society to know what’s occurred. So by us doing our investigation, society as a whole, led by the press who will then filter all the information down to society as a general rule, we need to be showing that... society needs to be looking at us and thinking if my son or daughter was to die tomorrow as a result of police contact would I get justice, would justice be done. If there was culpability would it be identified and would it be dealt with correctly.”

In OPONI the historic cases also provided for a parallel discourse into the purpose of investigating historic deaths which centred more on the need for a ‘truth telling’ mechanism. SI14 captured the purpose of investigating the historic cases involving deaths as being straightforward:

“...they just want closure, to know where they stand and a line drawn in the sand and that’s what it is I think, just bringing closure to the victims that’s what it is and I think it’s as simple as that.”

In GSOC SI16 described the purpose of the investigations in a single sentence in that it was to ensure, “that the state has given a full and thorough account for what has happened to their citizen.” SI17 also summed up the purpose in stating, “Why did this happen and could it have been avoided?” SI17 later expanded on this answer to state:

“Could this be avoided and can we learn anything from this? ...but it has to be able in my view to identify areas that can be improved, to take a critical view of itself because people shouldn’t die as result of a police operation unless it’s absolutely necessary.”

In the IPCC SIs also had a wider view of their investigative function than simple criminal or disciplinary enquiry. SI26 provided a family centric viewpoint:

“...it’s important that these families get the answers that they need to move on and god forbid get over the tragedy, try to get over the death of a loved one and I think that they get greater comfort and better answers and are less sceptical about those answers because it’s come from an independent body than it would have been if it had come from the police.”

SI23 found the basis for investigation in the restoration of public confidence and applied the Article 2 standards directly to the purpose of the investigation:

“...Article 2 investigations and the requirements are important in terms of it being independent for that reason for public confidence. I think that the elements of family involvement and public scrutiny are important for the same thing, at the end of the day the family of the person who died has a right to know how they died and again how trusting they can be when just provided with information from the agency that had, that were looking after the person at the time of death is always going to be a concern.”
5.11 Are the Article 2 Standards Realistic and Attainable?

Although some of the SIs expressed doubts as to whether their organisation had managed to meet the standards in the investigations that they had undertaken all but one of the SIs viewed the Article 2 standards as realistic and attainable standards. The SI15 who did not see them as realistic still viewed the standards positively describing them as a “worthy burden” and “aspirational”. Indeed, across the SIs the five standards were seen as a useful model for benchmarking investigations and for holding their own investigations to account. SI31 summed up the thinking of many of the other SIs stating:

“I think it’s something to aim for ... at the end of the day we have to be happy that we have been independent, we’ve been thorough and as far as possible we have got to the truth about what has gone on.”

This chapter has outlined in detail the findings of the research undertaken in the three policing oversight agencies. The findings have included consideration of the awareness of the Article 2 standards in the three agencies and the practical application of the five standards of independence, adequacy, promptness, public scrutiny and victim involvement. The perceptions and views of senior investigators on concepts such as the value and nature of independence in investigations, the culture of policing oversight, regulatory capture and the importance of political will have also all been explored in the context of the investigation of deaths involving the police. The next chapter will seek to analyse these findings with reference to both the relevant literature and case law.
Chapter Six:

Analysis
Chapter Six: Analysis

6.1 Introduction

This chapter will seek to analyse the findings of the research. In doing so it is necessary to return to the primary aim of the thesis which was to evaluate the extent to which GSOC, OPONI and the IPCC have evolved and adapted their investigative practice, performance and capacity to meet the five standards of the positive obligation of conducting an effective investigation into a death involving the police under Article 2 of the European Convention of Human Rights (ECHR). In order to do so I will examine each of the five standards in turn and analyse the research findings with reference to both the relevant law and literature. I will then examine the research findings as regards High and Low Policing and Political Will. Finally, I will look to the question of the Europeanization of human rights and, using the framework put forward by Borsel and Risse (Borzel & Risse, 2000) will seek to establish the extent to which the Article 2 standards have been adopted in each of the three jurisdictions.

6.2 Independence

Just as the issue of independence is seen as both central and controversial to the question of police accountability so it can be said to have permeated much of the research carried out in this thesis (Savage, 2012). Throughout the examination of the five standards the topic of independence can be seen to be the most important, the most contentious and the one which invited the richest data from respondents. I will first examine the rulings of the ECtHR and the Opinion of the Human Rights Commissioner in relation to the topic and I will then consider some of the most significant themes arising from the literature.

The Human Rights Commissioner has stated that in any investigation there should be “practical independence” (Commissioner for Human Rights, 2009, p. 8). The ECtHR has demanded a strict institutional independence in the investigation from the police officers involved in any death. In the case of Ramsahai68, seen as the high watermark in the jurisprudence, a fifteen and half hour delay before the commencement of the independent investigation of the death was deemed to be excessive and the investigative actions undertaken in that time period by officers from the same force as those involved in the death was seen to be in breach of the requirement for independence. The ECtHR case of Ramsahai could be said to have had a significant impact on the three oversight agencies. Of

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68 Ramsahai v Netherlands (52391/99) (2006) 43 EHRR 54 ECHR
the European Court cases referred to by the SIs in the interviews it was the case mentioned most frequently and in contexts where it was used almost as shorthand for the Article 2 standards themselves. SIs from the IPCC mentioned that the case had led to an organisational decision to investigate more cases independently. The case had also led to a reorganisation as to how the IPCC ran on call arrangements to ensure that an investigative capacity existed should an incident arise involving a fatality.

The SIs in the three organisations viewed the investigations undertaken into deaths involving the police as independent in the hierarchical and institutional sense. The SIs referred to their organisational ability to respond quickly to investigate incidents involving deaths, the experience both they and their staff had gathered in the investigation of fatalities and the safeguard of independence brought to the investigation by the fact that it was undertaken by the oversight bodies rather than the police themselves. Due to what Savage refers to as the “mix” of personnel from policing and non policing backgrounds in each of the oversight agencies (Savage, 2013, p. 2), the issue as to whether employing former police officers in any way detracted from the independence of the investigations undertaken was explored with the SIs. Whilst some reservations where expressed in relation to specific cases, the most frequently expressed attitude was that that the former police officers brought much needed investigative and policing experience and were an asset to each of the three organisations. The independence of the investigations undertaken by the organisations and indeed, independence as a core value in each of the organisations was of central importance to the SIs and was something that was seen to both protected and asserted. Independence was a key element of the identity of each of the organisations.

The research found that the three organisations had the capacity to conduct investigations that would meet the Article 2 standard of independence in terms of hierarchical, structural and practical independence. From an external perspective it could be argued that due to their alignment to the “civilian control model” (Prenzler & Ronken, 2001, p. 152) the organisations were already in a position to be viewed as independent. However, as Savage has stated there is a need to “interrogate that ‘endgame’” of independence (Savage, 2012, p. 2) and to look at how the SIs viewed and articulated the independence of their organisation. The independence of the investigations undertaken by the organisations and indeed, independence as a core value in each of the organisations was of central importance to the SIs and was articulated as something that was seen to be both protected and asserted. To the SIs independence was a key element of the identity of each of the organisations. However, such was the pervasive nature of independence; SIs from the three organisations expressed a wide range of variables that could impact upon the practical independence of any investigation such as resources, expertise, statutory powers and staff training. It was clear that the SIs considered that there were barriers to independence in investigations and some spoke of the need to compromise. Although, it was further clear
that the organisations had actively worked to negate these compromises where possible for example, GSOC had trained several of their staff as Forensic Collision Investigators for deployment alongside police specialists in deaths involving the police. However, achieving actual independence was not neatly done but instead involved what Savage called, “compromise, negotiation, settlement and ...frustration” (Savage, 2012, p. 15). Resources and the training of staff were recurring themes and the SIs expressed frustration at the limitations of their staffing levels. It was commented on in all three organisations that in order to carry out all the roles required in the investigation of a death involving the police would require more staffing resources than were available and therefore some level of assistance was required from the policing agency under investigation. This was seen as a risk to be managed but that independence could be asserted into the investigation where required.

![Figure Five: The Factors Influencing Practical Independence in Investigations](image)

Although some of the staff who came from a non police background indicated that they thought elements of a police culture may have existed within their organisations those from
a policing background were particularly emphatic in denying that this was the case. Several of the SIs expressed the view that the organisation had developed or was developing its own culture. Some of the SIs stated that their organisation shared an element with policing culture in that they necessarily used a similar technical vocabulary. This is what Sackmann referred to as “dictionary knowledge” which would provide the labels and definitions of constructs and things within an organisation (Sackmann, 1991, p. 21). The SIs, however, viewed this as a tool for communicating professionally with the police agencies under their remit and a different level and form of communication was seen as necessary when communicating with non-police personnel.

It was common for the SIs to refer to independence as a fluid and evolving entity rather than something that was fixed or static. The SIs appeared to recognise that independence was their greatest strength as an oversight agency and often expressed their independence as a defence to criticism. However, the SIs also recognised that independence was potentially a source of vulnerability (Savage, 2012) and expressed the reputational damage that any compromises in relation to independence could present. Just as Herzog had represented a cyclical process for the evolution from police internal investigation to civilian control based models of oversight (Herzog, 1999) in which scandal is followed by reform and a move towards greater independent oversight, the SIs in each organisation indicated that events internal to the agency could result in internal reform and increased focus on independence. This was expressed in some cases as a change in management or as a change in policy or resources. For example the IPCC SIs expressed that following the Home Affairs Committee criticisms further resources would be allocated that would allow them to independently investigate more cases. Similarly, in OPONI the view was expressed that the Criminal Justice Inspectorate review, following a public challenge to their level of independence, would ultimately bolster their independence. It is clear then that the cycles of reform and enhanced independence put forward by Herzog continue even after the end game of civilian control has been reached and that as the independence of an organisation can ebb and flow, vigilant monitoring is required.

One such area where vigilance is required is that of regulatory capture. Perceived to be an issue of central concern to police oversight (Prenzler, 2004; Smith G., 2009; Savage, 2012) the SIs were universally of the view that regulatory capture was not currently an issue within their organisation and that neither their independence nor their “zealousness” (Prenzler, 2000, p. 662) had been compromised. Indeed, although several of the SIs cited examples as to how regulatory capture may have occurred in the past and that constant vigilance was required to fend off the risk, the sense of mission amongst the investigators was undaunted. SIs spoke of a professional relationship with the police but that no encroachment was made or expected into the ability of oversight to be critical or to prosecute wrongdoing. Interestingly, the SIs in GSOC found that the tensions that existed
between their organisation and the Garda Síochána had effectively negated the risk of regulatory capture.

To conclude the section on independence, although the topic will arise again throughout the chapter, it should be stated that independence is a complex and “messy” (Savage, 2012, p. 15) construct. Independence is not static and the evidence would indicate that the independence of an oversight agency, even one based on the civilian control model, can ebb and flow due to internal and external factors. It is easy therefore to conclude that the three oversight agencies have the capacity to meet the Article 2 standard of independent investigation, however, to state that in any instance whether a truly independent investigation has occurred would require greater analysis.

6.3 Adequacy

The Human Rights Commissioner has stated “the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible” (Commissioner for Human Rights, 2009, pp. 8-9) whilst the ECtHR cases of Gulec v Turkey69, Kaya v Turkey70 and Kelly and Others v UK71 would indicate that investigators should take reasonable steps to obtain accounts from all witnesses, that a full post mortem should be conducted and that evidence should be gathered using forensic science techniques where possible (Mowbray, 2002). SIs in all three organisations challenged the use of the term ‘adequate’ and felt that it did not accurately reflect the standard of investigation achieved by the agencies and the level of investigative effort. The SIs spoke of their use of modern investigative technique and of the efforts undertaken to obtain witness accounts. The SIs would contend then that the investigations undertaken would meet the standard of adequacy. Almost universally the SIs did not seek to equate the quality of the investigation with whether or not a criminal or disciplinary sanction had resulted but instead emphasised the quality of the processes undertaken in the investigation (Reiner, 1998); in both the IPCC and OPONI structured review processes were outlined as a means of ensuring quality of investigations. Further to the quality of the investigations, SIs frequently commented on the ability and quality of their investigative staff and indicated that they had developed the skills, knowledge and specialism necessary to conduct investigations to the necessary standards (Bayley, 2009; Tong, 2009).

The difficulties encountered in relation to the “Blue Wall of Silence” (Christopher, 1991, p. 168; Skolnick, 2002, p. 7) were discussed with the SIs in all three organisations. Interestingly three different perspectives were obtained from the SIs. In GSOC the SIs cited a general

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69 Gulec v Turkey (1998) 28 EHRR 121
71 Kelly and Others v United Kingdom (2001) (Appl. No. 27229/95, 3rd April 2001
difficulty in obtaining basic information from the Garda Síochána in relation to non death related matters, but that a greater level of cooperation was experienced in the more serious cases. In OPONI whilst it was generally felt that PSNI members cooperated with their enquiries, some SIs were critical of structures put in place for obtaining an account from police officers involved in fatalities as overly bureaucratic and placing a barrier between the investigators and those under investigation. The IPCC, at the time the research interviews took place, had just had their powers in this area enhanced with the ability to require a member to attend for interview, whilst GSOC had since its inception had the power to demand an account from a Garda member. SIs across all three organisations expressed reservations about the benefits of such statutory powers on the basis that they either did not go far enough, in case of the IPCC duty to attend was not seen as duty to account and in GSOC’s case the account provided under obligation was inadmissible in criminal proceedings. In OPONI there was a commonly held view that retired police officers should be compelled to assist in investigations, although some of the SIs expressed an understanding as to why they may not wish to revisit the troubled past. Interestingly, the SIs generally did not wish to have expanded powers to compel the cooperation of members or to undermine the right of the members to silence in a criminal interview. Some SIs expressed that this would lead to an inequity between the rights afforded to oversight investigators as opposed to those afforded to the police. The SIs, however, did not afford the Blue Wall of Silence, the same degree of kudos as a barrier to an effective investigation as expressed in the literature (Chemerinsky, 2000). The SIs view stated that whilst it could create a challenge to their investigation and perhaps encroach upon timeliness the Blue Wall was not surmountable. In fact of the potential challenges to the adequacy of investigations that were outlined by the SIs, the main challenge identified was resourcing and, in particular to the IPCC, the resourcing of an effective on call response to a large geographical area.

6.4 Promptness

The promptness standard has been defined as “the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law” (Commissioner for Human Rights, 2009, pp. 8-9). The European Case Law has established that this requires promptness in all aspects of the investigation including its commencement and the interviews of witnesses and suspects. The use of delaying tactics has also been recognised as a method used by police officers to subvert and prejudice oversight inquiries (Chemerinsky, 2000; Box & Russell, 1975). Of the five standards of an effective investigation, the issue of promptness was seen as the element that caused greatest concern across all three organisations. Again the delivery of timely

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72 Nachova and Others v Bulgaria [2005] ECHR 43577/98
73 Ramsahai v Netherlands [2007] 46 EHRR 983
investigations was not seen as a constant throughout the life cycle of any of the oversight agencies with SIs frequently commenting that they had improved as regards timescales since their inception and had enhanced on call mechanisms to respond to critical incidents. Resources again were raised as an issue by SIs in all three organisations. OPONI’s investigation of ‘historic’ cases was seen as a significant challenge as regards the delivery of prompt and Article 2 compliant investigations into deaths involving the police that could date from in excess of thirty years ago (Campbell, 2010; Lundy, 2009). Whilst no easy solutions presented themselves in the course of the research, the SIs frequently and consistently expressed their wish to investigate deaths involving the police in a timely fashion but also maintained that a quality investigation should not be compromised due to concerns of timeliness. The SIs also recognised and expressed the effects that any delay in investigations could have on the family of the deceased or the officers involved (Malone, 2007).

6.5 Public Scrutiny

The literature on the concept of accountability stressed the importance of transparency as a method of enhancing accountability mechanisms (Dryberg, 2003; Koppell, 2005). It was recognised, however, that the provision of public information in relation to police functions historically seen to be governed by secrecy could be problematic (Lumina, 2006). The Human Rights Commissioner explained the public scrutiny standard stating, “procedures and decision making should be open and transparent in order to ensure accountability” (Commissioner for Human Rights, 2009, pp. 8-9). The public element to the investigation of a death involving the police is intrinsically linked to the concept of accountability and designed to prevent the dangers of investigations taking place behind closed doors and resulting in reports that are not disclosed (Mowbray, 2002). As was seen earlier in the thesis, two main avenues for inviting public scrutiny of an investigation were identified; the public reporting on investigations at their conclusion or as they progress or through public hearings such as coronial inquests or criminal or disciplinary proceedings.

In relation to the public reporting of the findings of the investigations into deaths involving the police, none of the SIs challenged the concept of making their investigations accessible to the public. Instead the need to make the findings public was almost universally seen as a positive by the SIs. The SIs in the IPCC felt that their organisation did enough by way of public reporting and indicated that they had reviewed their processes in this regard and intended to increase the number of reports released having set a goal of reporting on all deaths investigated by the IPCC. Interestingly, the SIs in both GSOC and OPONI felt that they could improve in the area. The benefits of public reporting of the findings of the investigation were expressed by SIs in both accountability and regulatory language (Smith G., 2009) in that the reports were designed both to point out where mistakes had been made.
and the police held to account but also to remedy systemic issues and prevent further reoccurrences of the incidents that had led to the death. Although concerns were expressed as to the consistency of practice across jurisdictions, the importance of coronial hearings was also expressed by the SIs. Again the public hearings of the circumstances were seen in retrospective and prospective terms in that the hearing providing for the events leading to a death to be recounted but also to remedy any failing that may have led to the fatality (Hegarty, 2002). Interestingly the public scrutiny standard served a cyclical function as several SIs expressed the opinion that the knowledge that the process and findings of the investigation were to be both made public and scrutinised in the coronial forum meant that there was a pressure to ensure that the investigation had been carried out thoroughly and to the highest possible standards. In that regard, the public scrutiny element ensured that the oversight agencies themselves were accountable to the public.

6.6 Victim Involvement

The Human Rights Commissioner stated that the families of the deceased “should be involved in the ... process in order to safeguard [their] legitimate interests” (Commissioner for Human Rights, 2009, pp. 8-9) and further that the involvement of the families should be “meaningful and effectively applied and not empty and rhetorical” (2009, p. 14). The European Court requires that the procedures adopted in the investigation ensure the protection of the family of the deceased’s interests even when those interests are in direct conflict with the police who may have been involved in the death. In the interview of the SIs in the three oversight agencies, the concept of the interests of the police service under investigation impacting upon their liaison with the family was not raised. In fact the only issue that was raised that would impact upon the flow of information to the family bereaved by a death involving the police was possibility of prejudice to the investigation itself. Almost universally, the SIs spoke, sometimes in passionate terms, about their investigations being focused on the needs of the bereaved family. The importance of keeping the families ‘on side’ was expressed time and time again. Most of the SIs stated that they would provide the families all of the information that they were lawfully permitted to do and in the limited circumstances where information could not be provided a reason for withholding the information would be given. In doing so the SIs echoed the concepts of accountability and openness that have been said to be at the heart of the concept of family liaison in the investigation of deaths (Grieve, 2009; McGarry & Smith, 2011). Some of the SIs praised the professionalism of their FLOs all of which had undergone training to perform what was seen as a specialist role (Macpherson, 1999). The need to adapt the role from a policing perspective to an oversight or accountability perspective was also reflected by the SIs. In the IPCC and OPONI for example the terminology surrounding the role had been adapted to reflect the differing needs of an oversight investigation and to separate the function from

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74 McKerr v United Kingdom (2001) 4th May 2001
that performed by police FLOs (Shaw & Coles, 2007). The SIs also expressed an understanding of the trauma associated with the types of death which they investigated and several had examples of difficult situations that had arisen with families during the course of the investigation. The SIs frequently outlined in empathetic terms the difficulties experienced by families during investigations (Malone, 2007) and some of the SIs also had cause to comment that they felt that they had failed families in the past. The SIs across all three organisations, however, expressed the desire to include the families of the deceased in their investigation and a will to meet the standards set under Article 2.

6.7 High/Low Policing and High/Low Control

In exploring the range of circumstances in which deaths involving the police may occur reference was made in the interviews of the SIs to Brodeur’s High and Low Policing paradigms and the need for High and Low Policing control mechanisms (Brodeur, 1983). As an example of a death involving the police that had elements of the High Policing paradigm reference was made to the fatal shooting of Jean Charles de Menezes in 2005 in that it resulted from a planned intelligence led operation using specialist trained officers to preserve the societal order from perceived threats (Turner, 2008). The SIs were asked how they felt their organisation would cope with a similar investigation should a pre-planned policing operation result in the fatal shooting of a civilian.

The majority of the SIs interviewed were cognisant of the scope of investigation that would be required should a pre-planned policing operation result in a death. The SIs almost universally expressed an awareness of the responsibility on any oversight agency investigating a death to examine the planning of the police operation that may have led to the fatality and several cited the McCann judgement that contributed to the development of the investigative obligations. The SIs across all three organisations were also aware of the burden that accessing intelligence of this nature may place on their organisation. SIs in all of the organisations expressed some level of concern that they may not gain access to all of the material and would only access intelligence if they were successful in asking the right questions rather than the police service under investigation voluntarily providing information or having the confidence to share material that they held. It was common for SIs to refer to demanding access to material and exercising statutory powers in order to access intelligence held by the police in terms.

Confidence was highest amongst the SIs in the IPCC who had previously had carriage of the investigation into the death of Jean Charles de Menezes. Interestingly they felt that they were better placed to investigate such an incident now than in 2005 and cited that there

would be less ‘political’ resistance to their investigation. The IPCC SIs outlined that their organisational experience and ability had grown and that the organisation had matured since the original investigation into the de Menezes shooting. Several of the SIs expressed that this increased skill set enabled them to be more challenging and robust as investigators. The IPCC SIs also discussed the existence of practical mechanisms to allow them to access intelligence material held by the police services they are tasked to investigate and although the SIs had varying degrees of confidence that they would be able to access all of the intelligence that may have been used in planning such a policing operation all of the IPCC SIs were confident that they would be able to investigate a high policing death to the standards dictated by Article 2.

In OPONI the SIs were confident that they could adequately deal with the low policing elements of an investigation into an incident similar to the shooting of Jean Charles de Menezes but described the challenge that such an investigation would present to the organisation. The OPONI SIs felt that due to their experience of similar investigations into fatal shootings of both a current and historical nature that they had built up the knowledge, skills and resilience to undertake such inquiries to the required standard. Several of the SIs expressed their confidence in emphatic terms that they would gain access to any intelligence material linked to high policing activities. Confidence was lowest amongst the GSOC SIs as to whether access would be given to the intelligence material necessary to properly probe the planning of any police operation that may have led to a death. Several of the GSOC SIs cited the lack of cooperation of the police in what could be seen as investigations into low policing activity as evidence of the difficulties that would be experienced in the investigation of a death arising from high policing activity. It was also common for GSOC SIs to argue that their statutory powers fell short of what was required in relation to demanding the provision of material from the Gardaí. The lack of cooperation of the Gardaí in providing material of both a low and high policing nature was frequently commented upon and the GSOC SIs were not confident that they would be able to investigate an incident such as the de Menezes shooting to the standards required under Article 2.

The SIs in all three organisations recognised the challenge that an investigation into a death involving the police following high policing activity such as a pre-planned intelligence led operation. All of the SIs described structures and processes that had been put in place to accommodate the accessing of intelligence held by the police. The language used in relation to these provisions was common across the three organisations with reference made to firewalls, intercepts and intelligence products. The SIs in the three organisations also spoke of their own resources to analyse and interrogate intelligence material once it had been provided. Each of the organisations had clearly engaged with the issue of exerting high control over police intelligence activities (Brodeur, 1983). However GSOC SIs were not
confident that they would receive the cooperation from the Gardaí and would be allowed access to the level of intelligence material required to meet the investigative standards required by Article 2. This accountability gap could lead to the conclusion that if the functions of the police are not wholly transparent to the oversight agency tasked with the investigation of the death involving the police, then they are also not wholly accountable as a police service (Marenin, 2005; Goldsmith & Lewis, 2000; Perez T. E., 2000).

6.8 Political Will

The concept of “political will” was defined as the “commitment to making oversight work effectively” (Luna & Walker, 2000, p. 99) and can be viewed as a construct to examine the disparity between the powers and resources of oversight agencies and their actual activities. In the interviews with the SIs the concept was outlined and they were asked for their views on the political will of their organisation in the context of investigating deaths involving the police. The SIs across all three oversight agencies repeatedly expressed the importance of the organisation having the political will to carry out its functions. The SIs did not challenge the concept of ‘political will’ but instead described it using terms such as ‘vital’. It was common for SIs to describe the political will of their organisation in passionate terms describing the task faced by the oversight agencies as a ‘fight’ or ‘battle’ and referring to the constraint that a lack of political will could have on their ability to effectively investigate. These passionate descriptions echoed the findings of Reiner who noted that police officers often regarded their work with a sense of mission (Reiner, 1992) and Savage (Savage, 2013) who found that oversight investigators frequently described their vocation in terms of making a difference and improving policing.

The concept of political will was not without controversy as several SIs criticised their own organisation for not having sufficient political will at different points in their history to robustly carry out their functions. Other SIs felt the need to restrain themselves somewhat in answering the question for fear that they could be seen as overly critical of their own organisation. In that regard the SIs described the political will of their organisations as flowing from the senior management of the organisations and described the importance of political will being displayed by the Ombudsman in OPONI, or the Commissioners in the IPCC and GSOC. The SIs frequently expressed that the will of these senior role holders impacted directly upon aspects of their investigations and changes in personnel at senior level was described as watershed moments for the organisations. The SIs clearly considered the political will to carry out their investigative function as important to their ability to fully meet their investigative standards. The concept of political will was frequently aligned with the element of public scrutiny as it was seen necessary that the oversight agencies publicly and robustly present the findings of their investigations. A lack of political will was also seen akin to constraining the agency from thoroughly investigating matters or properly reporting
on their findings. The political will of the organisation impacted upon public confidence in the oversight bodies to carry out their functions. The SIs spoke of increased public confidence following robust investigations and the public reporting of findings. The SIs in both OPONI and the IPCC also spoke of both the will and the ability to carry out investigations.

The political will of three organisations can be said then to vary according to the impact of both internal and external factors. In the interviews of the SIs frequent reference was made to periods in the history of the organisations when the political will may not have been as strong as it should have been. Almost all of the SIs felt that the correct balance of political will had been restored to their organisations and the will existed currently to properly investigate any deaths involving the police. However, despite an acknowledgement that the political will was not a constant in any of the oversight agencies, the SIs expressed their organisation’s commitment to investigate deaths involving the police to the Article 2 standards. From the interviews of the SIs in relation to this topic, it is possible to state that the concept of political will is a reality in policing oversight agencies and that it is important if not vital to the investigative activities of the agency. It is also possible to state that the perceptions of the SIs is that the political will of the organisation flows from senior role holders such as Commissioners and holders of the office of Ombudsman. There was also suggestion amongst the SIs that following a period of scandal or of a change in senior management a realignment of the political will of the organisation could be seen to have occurred (Herzog, 1999).

6.9 Europeanization

It has been acknowledged that court judgements can transform public policy (Bulmer & Padgett, 2004) but that it falls to each individual state to take any necessary remedial action following the finding of a breach of the ECHR by the ECtHR (McBride, 2003). The process of domestic change caused by the growing interconnectedness of Europe has been referred to as Europeanization (Risse, Caporaso, & Green Cowles, 2001). The concept of Europeanization has been applied to the increase in human rights discourse amongst European states and its effect on oversight mechanisms (Vaughan & Kilcommmins, 2007). One of the objectives of this thesis was to measure the extent to which the judgements of the ECtHR that developed the Article 2 obligations to conduct an effective investigation into a death involving the police had been incorporated into each of the oversight agencies and in turn each of the jurisdictions. The first conclusion that can be reached from the research is that a level of change has occurred in each of the jurisdictions at a domestic level as a result of the development of the Article 2 obligations. This can be evidenced as each of the oversight agencies has adapted both policy and practice in response to the European jurisprudence in relation to Article 2. These changes can be said to be along the dimensions
of both “policies” and “polity” (Borzel & Risse, 2000, pp. 3-4) in that the policy fabric and the legal and administrative structures that carry out those policies have been altered. By way of example from the research, the IPCC following the judgement in the Ramsahai case altered their approach to the investigation of deaths involving the police and began to independently investigate a higher percentage of deaths involving the police. The second conclusion that can be reached is in relation to the manner in which the change has taken place. The change has been both ‘normative’ in the following of clear guidance where such guidance exists, for example in relation to the principle of victim involvement all of the agencies have established similar mechanisms for liaising with the bereaved families, and also change through “arguing and persuading” (Olsen, 2002, p. 927), for example the investigative standard of ‘adequacy’ which the SIs have engaged with and redefined as thorough and robust.

The interviews of the SIs described circumstances indicating that the two conditions required for domestic change in response to Europeanization i.e. incompatibility between the European processes and the domestic processes and facilitating factors to respond to the adaptational pressures had at times existed in their organisations (Borzel & Risse, 2000). SIs described ECtHR judgements being reviewed and any potential impact upon their existing internal processes being measured and disseminated amongst their investigators. The SIs also were seen to use the language of the judgements and the majority of the SIs were comfortable discussing the impact of individual ECtHR judgements on their investigative practices and procedures. In this regard the three agencies can be said to have implemented the ECtHR judgements in the sense that they had transposed the jurisprudence on Article 2 into their own jurisdiction and amended the nature and operation of their domestic investigative processes and structures in order to comply with the case law (Haverland, 2000).

Having concluded that the Article 2 standards have produced policy and polity change in the jurisdictions through both rule following and debate, the final conclusion relates to the level of change that has occurred. Borzel and Risse proposed three levels of domestic change due to Europeanization, “absorption” where the degree of change is low, “accommodation” where the degree of change is modest and “transformation” where the degree of change is high (Borzel & Risse, 2000, p. 10). The final conclusion from the research is that the policing oversight mechanisms in three jurisdictions have been transformed by the Article 2 standards to conduct an effective investigation into a death involving the police in that both policies and processes have been replaced with substantially different ones in order to meet the standards and that institutions have been replaced or altered significantly as a result of the development of the standards. Finally, the underlying collective understanding of the SIs within all three oversight agencies can be seen to have been fundamentally altered by their knowledge and acceptance of the Article 2 standards.
To echo the comment in the case of Airey v Ireland\textsuperscript{76} the oversight agencies in all three jurisdictions can be said to be working to ensure that the rights afforded under Article 2 of the ECHR are not theoretical or illusory but are practical and effective. The evidence gathered in this research indicates that the three oversight agencies have significantly engaged with the Article 2 standards and have transformed their investigative practice in an attempt to fully comply with the standards. The independence of these organisations is jealously guarded by the investigators and they are both aware and wary of potential threats that may impact upon their effectiveness. Significant effort has also been expended by each of the agencies to ensure that their investigations are carried out in a timely manner and that the families of the deceased are engaged with throughout the investigation. The procedural obligation under Article 2 of the ECHR is an ongoing responsibility and requires the continued effort of the three policing oversight agencies to ensure that any death involving the police is effectively investigated and the continued vigilance of the investigators to ensure that there is no decline in the capacity of the organisations to meet their responsibilities.

\textsuperscript{76} Airey v Ireland A 32 (1979); (1979-1980) 2 EHRR 305 at para 24
Chapter Seven:

Conclusions and Future Research
Chapter Seven: Conclusions and Future Research

7.1 Introduction

The final chapter of the thesis will begin with a reflection on the aims and objectives of the thesis and will outline how the research purports to have achieved them. The next part of the chapter will provide a summary of the key messages that can be derived from the research and will draw together the central findings. The next section will outline the contribution to original knowledge made by the research which primarily relates to its focus on the perceptions of the oversight investigators themselves. Finally the thesis closes with a consideration of further research opportunities in the area of policing oversight.

7.2 Reflection on the Research Aims and Objectives

The aim of this thesis was to examine the extent to which three selected European police oversight agencies with the remit for investigating deaths involving the police have evolved and adapted their investigative practice, performance and capacity to meet the five standards of the positive obligation of conducting an effective investigation into a death involving the police under Article 2 of the ECHR. In achieving that aim this thesis examined the practices and perceptions of senior investigators with the responsibility for the investigation of deaths involving the police in Ireland, Northern Ireland and England and Wales.

The thesis began in Chapter One with a consideration of the threat that a death involving the police can present to the legitimacy of the police, their relationship with the public and the democratic governance of the people (Punch, 2000). The need for fair, transparent investigations of the circumstances of any death involving the police was put forward as central to the accountability structures necessary in a democratic society (Bayley & Shearing, 2009; Milton-Edwards, 2000; Hegarty, 2002). In order to provide a context for the later discussion of the investigation of deaths involving the police, Chapter Two of the thesis examined the nature and role of the police and explored the types of police activity that could lead to a fatality occurring. The role of the police was seen to be both pervasive (Marenin, 2005) and complex (Herzog, 1999) and any attempt to distil the role to a simple explanation proved elusive. It was however possible to isolate elements of the policing role where a risk of serious harm or death was heightened. To provide a context through which types of deaths involving the police could be viewed use was made of Brodeur’s High and Low policing paradigms (Brodeur, 1983). Brodeur’s paradigms were discussed and it was
outlined that deaths involving the police could occur as a result of low policing activity such as the arrest and detention of an offender and in high policing activity such as an intelligence led pre-planned policing operation. It was argued that policing oversight mechanisms tasked with the investigation of deaths involving the police required the capacity to investigate both sets of circumstances and the ability to exert High and Low control of policing activity. Chapter Two then explored the concept of accountability first in general terms and then specifically in relation to policing. Whilst accountability is seen almost universally as a positive the difficulties in reaching an agreed definition and the sometimes blurred lines between the retrospective lens of accountability and the prospective focus of regulation were highlighted (Smith G., 2009). Accountability mechanisms in policing terms can be seen to have evolved from internal methods of control to external methods and the emergence and development of independent oversight of policing was discussed and various typologies of oversight mechanisms were outlined. The cycle of scandal and reform in policing was also discussed (Herzog, 1999) in that it could be argued that following a scandal in policing the accountability mechanisms can be seen to move further along the spectrum towards external and independent oversight (Smith G., 2004). The importance of looking beyond the models of oversight mechanisms to focus on what practical investigative steps are actually taken by the agencies was stressed. The chapter concluded with a discussion of the evolution and introduction of the three policing oversight agencies subject of the research.

A methodology for examining the investigations of deaths involving the police undertaken by OPONI, the IPCC and GSOC from the perspective of the investigators was then considered in Chapter Three. The difficulty faced in examining the work of oversight agencies was discussed (Prenzler & Lewis, 2005) and different models suggested in the literature for evaluating oversight mechanisms were considered (Stenning, 2000; Walker, 2006). The focus of the research as an examination of the perceptions and practices of the oversight investigators led to the selection of a mixed methods approach that would allow for the experiences and views of the investigators to be captured. However it was noted that the scope and scale of the research would prove to be overly ambitious and only the qualitative element of the research would be reported. Issues such as sampling, transcription, ethics and the interviews of 30 senior investigators across the three agencies were discussed.

Chapter Four then examined the origin and development of the five standards of an effective investigation into a death involving the police derived from the jurisprudence relating to the positive obligation under Article 2 of the ECHR and codified by the European Commissioner for Human Rights. The ECHR was introduced and its evolution to the point of being considered the cornerstone of the transnational protection of human rights was discussed (Hennette-Vauchez, 2011). The concept of positive obligations arising from the Act which require state parties to undertake specific affirmative steps was discussed and the
positive procedural obligation of an effective investigation arising from Article 2 the right to life was examined (Mowbray, 2004). The development of the positive obligation and its evolution through the jurisprudence of the ECtHR was outlined. Each of the five standards arising from Article 2 of an effective investigation: independence, adequacy, promptness, public scrutiny and victim involvement were then examined in turn. The thesis then moved to describing the process by which the European Court judgements migrate from the ECtHR to each of the domestic states through a process referred to as Europeanization (Borzel & Risse, 2000). This concept and its application to measuring the extent to which member states were applying the investigative standards required by Article 2 was then discussed.

The findings of the research were then outlined in detail in Chapter Five. The findings of the interviews of the SIs in all three agencies were set out first in relation to each of the five standards of an effective investigation and then in discussion of the high and low policing paradigms and the political will of each of the organisations. Chapter Six analysed these findings and drew conclusions from the research. The main messages of the research are set out below.

7.3 Policing Oversight and the Obligation to Investigate Deaths Involving the Police

The main conclusion arrived at through this research is that each of the three oversight agencies have significantly engaged with the issues arising from the positive obligation to effectively investigate deaths involving the police. The five standards under Article 2 of the ECHR of an effective investigation have been considered in depth by the three agencies and they have adapted their practice and procedures in an attempt to meet the standards required. Using the definition put forward by Borzel and Risse (2000, p. 10) the application of the Article 2 standards can be said to have “transformed” each of the policing oversight agencies and the policies and procedures for the investigation of deaths involving the police. The high level of awareness of the standards in the oversight bodies and the evidence of a high level of engagement with the case law that caused the standards to evolve as well as evidence of changes in practice and investigative approach in order to meet the standards strongly indicated that the Article 2 standards are an example of the successful Europeanization of a concept. The SIs interviewed had a high level of knowledge of the standards and their obligations under the ECHR. The standards can be said to be grounded and accepted within OPONI, GSOC and the IPCC having made their way from the European courts to the practitioners who apply them in their investigations. The Article 2 standards were also viewed positively across the three organisations. All but one of the SIs felt that they were both realistic and attainable. The standards are seen by the oversight practitioners as a useful bench mark of an important part of the oversight function. The research produced significant evidence that each of the agencies strived to meet the Article 2 standards in every investigation of a death involving the police.
The research considered the perceptions of the SIs in relation to each of the five Article 2 standards in turn. The first standard of independence was found to be a complicated concept that is difficult to achieve in practical terms. The evidence from the interviews of the SIs would indicate that each of the organisations recognises the complexity of the construct that is independence. The SIs spoke of independence in terms of both asserting it in investigations and protecting it from denigration. Each of the organisations had faced challenges to their independence in their operations and the SIs outlined the effect that such challenges could have. Following a threat to the independence of the oversight agencies the SIs described how realignment occurred in which improved investigative practice and redefined independence emerged. There is evidence therefore that Herzog’s model of evolution of oversight applies to the three organisations that have faced challenges and in response have strengthened their independence (Herzog, 1999). The evidence would also indicate that their practical independence internally and the perception of their independence externally are both highly valued by the oversight practitioners themselves. The SIs in the organisations would indicate that independence does not exist in a linear fashion and is multi factorial. Each of the organisations discussed independence in kinetic terms as an evolving entity and one that must be maintained. Threats to independence through regulatory capture, the pervasion of a policing culture, lack of resources and lack of investigative expertise are all of high relevance to each of the organisations. The organisations are aware of the threats and attempt to counter them. There is significant evidence that GSOC, OPONI and the IPCC make considerable attempts to ensure that their investigations are conducted independently.

The second standard of an effective investigation, adequacy, caused difficulty for the SIs in the three oversight agencies as it was felt that the term itself did not sufficiently capture the thoroughness required in an investigation of a death involving the police. Whilst it was difficult to define the terms of an adequate investigation significant work had been undertaken in each of the agencies to ensure that investigations were conducted to a sufficient standard. In particular within OPONI and the IPCC a rigid structure of investigative reviews had been introduced to promote and ensure quality investigations. The requirement of promptness or timeliness in investigations of deaths involving the police was a matter of some difficulty for all three organisations. The SIs interviewed provided examples of both investigations being carried out within short timescales but also of protracted and delayed enquiries. This was an ongoing problem which was impacted upon by both resourcing and demand. No easy solutions were put forward but commitment was expressed in each of the organisations to improving in this regard. The SIs interviewed were clearly committed to investigating deaths involving the police both adequately and in a timely fashion.
In relation to the standard of public scrutiny, different approaches were seen across the three oversight agencies. The IPCC had exerted significant energy in this regard and had attained a high degree of public scrutiny of its investigations and their conclusions. This had led to a very high level of confidence amongst its SIs in their performance in this area. Both GSOC and OPONI recognised that they could improve in relation to publishing their findings. The SIs of all three agencies had similar views of the Coronial process in their jurisdiction which represented a significant commitment of resources and effort. In relation to the fifth and final standard of ensuring that the family of the deceased is sufficiently involved in an investigation into the death, a family centred approach to the investigations of deaths involving the police was expressed in all three organisations. Investigative resources and specialist skills had been deployed in all three organisations in an attempt to meet this Article 2 standard. Again, the attaining of this standard was seen to be an evolving process that required sustained effort. Encouragingly the importance of the views of the family of the deceased was consistently and repeatedly expressed in each of the organisations. Almost universally across the three agencies a significant commitment to engage with the bereaved families and to supply information in relation to the progress and conclusions of the investigations were expressed by the SIs.

In relation to the High and Low paradigms of policing put forward by Brodeur (Brodeur, 1983) each of the organisations’ SIs were confident that they could manage the low policing elements of a major investigation into a police involved death. The same confidence did not exist that the high policing elements would be sufficiently explored. Some level of reservation was expressed in each of the organisations as to whether access would be given to sensitive intelligence that could be required for an Article 2 compliant investigation. This was most marked in GSOC where little confidence existed that they would be able to gain access to the sensitive material that the police may use to plan an operation. This may point to an accountability gap in that GSOC may not be in a position to fulfil its Article 2 obligations should a death arise from a policing operation aligned to the High policing paradigm.

The theory of political will was explored with each of the SIs (Luna & Walker, 2000). The SIs were universally emphatic in the requirement of oversight agencies to have and to maintain the necessary political will to carry out its function. The existence of political will within an oversight agency to investigate the matters referred to it or complained of was seen to be essential to its successful operation. From the perspective of the SIs the political will was seen to flow from the senior role holders of the organisation down to the investigative practitioners on the ground. The political will in each organisation was not seen as a constant and the importance of leadership and vision in each organisation was clearly stated. This was aligned to the views expressed by Walsh who stressed the importance of the selection of suitably qualified persons to fulfil these roles (Walsh, 2004).
This thesis is a contribution to the literature on accountability, policing oversight and Article 2 of the European Convention on Human Rights. Its contribution to original knowledge comes through its examination of the practical application of the Article 2 standards by the three oversight agencies from the perspectives of the Senior Investigators tasked with leading the investigation teams charged with the front line responsibility of investigating deaths involving the police. The research involved qualitative interviews with the SIs which obtained their perspectives on the challenges of undertaking Article 2 compliant investigations. It would appear from the literature that the thesis represents the first time that the views of SIs were sought on the practical application of the standards and the first attempt to measure the political will of oversight agencies to undertake the investigative function to which they were tasked from the perspective of the senior investigators. The research provides a contribution to original knowledge in its attempt to measure the capacity of the oversight agencies to exert high and low policing control over the police service in that it examines the capacity of each of the three agencies to investigate deaths involving the police that could be aligned to Brodeur’s High and Low policing paradigms (Brodeur, 1983). The thesis also makes a contribution to the literature on the ‘Europeanization’ of human rights and specifically the degree to which the Article 2 standards have changed domestic policies and legal and administrative institutions involved in policing oversight.

7.4 Future Research

Upon reflection the scope of this research was overly ambitious. The examination of three different oversight agencies presented significant logistical challenges and assessing the range of issues raised by the Article 2 standards meant that a large number of variables had to be considered in each examination. The restrictions presented by the word count also meant that the results of the quantitative research did not form part of the final thesis. Therefore a narrower approach focusing on one of the oversight agencies or one of the standards under Article 2 may provide further in depth analysis of some of the issues considered in this thesis. Also as it has been seen that meeting the five standards of independence, adequacy, promptness, public scrutiny and victim involvement does not remain constant in the life cycle of any oversight agency and recognising the significant impact that changes in the political will of those working within the oversight agencies can have on the investigation of deaths involving the police, there is scope to repeat research of this nature at intervals to take the ethical temperature of the oversight agency at any given point in its history. Similarly, the ethical temperature may also be assessed from viewpoints other than that of the investigators who were the subject of this research. As this research has concluded that the political will of the agency is derived from senior role holders such as the Commissioners or holders of the office of Ombudsman, valuable research could be conducted examining the views of this important and influential population.
A farther reaching examination of the issues and one that would encompass the views of all of the potential stakeholders in the investigation of a death involving the police is also possible. Although there may be some methodological challenges involved, an examination of the issues involved in an Article 2 compliant investigation of a death involving the police from the points of view of the oversight investigators, the police officers subject to the investigation, the families of the deceased and others such as the Coroner could present a worthwhile area for exploration. In such an approach the views of the stakeholders could be sought directly to examine the investigation from multiple viewpoints. Although again fraught with methodological challenges another possible approach to examining the issues that arise in conducting an Article 2 complaint investigation could involve the retrospective structured review of completed investigations. This would not necessarily focus on the outcomes of the investigations but the means employed to meet each of the standards. This could include a qualitative assessment of the investigation methodology employed in conducting the investigation itself including the use of the appropriate forensic techniques and where necessary expert witnesses, the family liaison strategy employed to meet the victim involvement standard and the level and extent of public scrutiny afforded both the progress and conclusion of the investigation into a death. As has been discussed throughout the thesis, the pervasive and varied nature of the role of the police and the range of circumstances that deaths involving the police can occur means that the scope for examining the investigative choices and decisions that are made in independent investigation is both rich and complex.
## Appendices

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<td>Definition</td>
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<td>------------------------------------------------</td>
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<tr>
<td>Statement of Principles and Objectives</td>
<td>A provision setting out clearly the guiding principles and policy objectives of the complaints process provided for, and the intended priority between potentially competing or conflicting objectives of that process.</td>
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</table>
| Accessibility | i. How easy is it for a potential complainant to lodge and pursue a complaint?  
               ii. What range of complaints can be dealt with through the process?  
               iii. Who may lodge and pursue a complaint?  
               iv. What resources will be available to complainants?  
               v. What protections against abuse of the process are there? |
| Fairness | i. Do parties receive adequate notice of upcoming stages, developments and requirements of them in the process?  
      ii. Do parties have sufficient opportunity to present “their side of the story” to decision makers?  
      iii. Do parties have adequate opportunity for legal or other representation in participating in the process?  
      iv. Do they have adequate opportunity to be heard before any sanction is imposed on them?  
      v. Do they have access to review and appeal of decisions?  
      vi. Does the process give complainants, respondents and the public access to procedural and substantive justice? |
<p>| Respect for Rights | The rights encompassed by the administrative law concept of “natural justice” and any specifically enumerated by statute or constitution. |
| Openness and Accountability | The process should be open and accountable to complainants, respondents, police services to which it applies, their police boards and the public more generally, while protecting the legitimate privacy interests of those who become involved in it, the |</p>
<table>
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<tr>
<th>Core Requirements</th>
<th>Description</th>
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<tr>
<td>Integrity of police operations, and the viability of</td>
<td>The process should provide for the timely handling and disposition of complaints while allowing</td>
</tr>
<tr>
<td>the police complaints process itself.</td>
<td>sufficient time for adequate and effective investigation and resolution of them.</td>
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<tr>
<td>Timeliness</td>
<td>The process should provide for the thorough investigation, and where necessary, adjudication of</td>
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<tr>
<td>Thoroughness</td>
<td>complaints.</td>
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<td>Impartiality</td>
<td>The process should ensure the impartiality of those who investigate, adjudicate, dispose of and</td>
</tr>
<tr>
<td>Impartiality</td>
<td>review the handling of complaints.</td>
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<tr>
<td>Independence</td>
<td>Those who investigate, adjudicate or otherwise process complaints must enjoy independence from</td>
</tr>
<tr>
<td>Independence</td>
<td>direction, control or influence from police organisations, police governing authority and any</td>
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<td></td>
<td>other person or body who may have a vested or partisan interest in the outcome of the process.</td>
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<td>An appropriate balance between the ‘public interest’</td>
<td>An appropriate balance between the ‘public interest’ and the interests of the parties involved in</td>
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<td>and the interests of the parties involved in a complaint.</td>
<td>a complaint.</td>
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<tr>
<td>An appropriate balance between formal (or less formal)</td>
<td>An appropriate balance between formal (or less formal) procedures for resolving and disposing of</td>
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<tr>
<td>procedures for resolving and disposing of complaints.</td>
<td>complaints.</td>
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<tr>
<td>An appropriate balance between remedial and punitive</td>
<td>An appropriate balance between remedial and punitive dispositions.</td>
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<td>dispositions.</td>
<td>An appropriate balance between internal management and external oversight of the handling of</td>
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<td>complaints.</td>
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<tr>
<td>An appropriate balance between internal management and</td>
<td>Provision of appropriate systemic information to police management and governing authorities.</td>
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<td>external oversight of the handling of complaints.</td>
<td>Effective integration and compatibility with internal disciplinary and grievance processes.</td>
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Appendix One: Stenning’s Framework for Assessing Legislative Requirement for Effective Oversight Adapted from Stenning (2000, pp. 147-163)
Appendix Two:

Semi Structured Interview Schedule

Research Title: Pathways to Accountability: The Investigation of Police Caused Deaths

1. What has been your experience to date of Article 2 of the ECHR and the five standards relating to an effective investigation?

2. How do the five standards impact upon how you do your job?

   **Independence**

3. How do you ensure that any investigation in which you are involved is independent?

4. What steps do you take to avoid ‘regulatory capture’?

5. Do you believe that using ex police officers in the investigations impacts upon the independence of the investigation?

6. Do you believe that relying on police resources impacts upon the independence of the investigation?

7. Do you believe that your organisation has adopted any elements of the culture of the police service they are investigating?

8. What may be the barriers to independent investigation?

   **Adequacy**

9. How do you ensure that any investigation in which you are involved is adequate?

10. What for you defines an adequate investigation?

11. How would you see the training of staff impacting upon this?

12. How would you see the use of technology impacting upon the adequacy of the investigation?

13. What may be the barriers to an adequate investigation?

   **Promptness**

14. How long on average does an investigation into a death take?

15. Do you feel that you can achieve timely investigations?
16. Do you believe you have to balance timely with another aspect of the five standards e.g. adequacy?

17. What may be the barriers to a timely investigation?

**Public Scrutiny**

18. What have been your experiences with public hearings or reporting in the investigation of deaths?

19. What has been your experience of the Coronial process?

20. Do you believe that your organisation does enough to make their findings public?

21. What may be the barriers to making the findings of an investigation public?

**Victim Involvement**

22. How much do you tell the family of the deceased in an investigation?

23. How is the information provided?

24. Do you personally meet with the family?

25. What have your experiences been in this regard?

26. Are there any barriers to involving the family of the deceased?

27. Do you think that your organization does enough to involve the family of the victim?

**Resources and Powers**

28. How do any of the following impact upon your organizations’ ability to investigate deaths involving the police to the standards set by the ECHR case law:
   a) Resources
   b) Geography
   c) Organizational Size

29. What further powers do you feel would enhance your ability to meet the investigative requirements?
   a) The power to compel testimony?
   b) The power to demand documents?
c) The power to impose discipline sanctions?

High/Low Policing

30. Do you believe that your organization has the capacity to investigate deaths resulting from either type of policing?

Political Will

31. How important do you think political will is to the effective investigation of state caused death?

Purpose

32. How would you describe the actual purpose of the investigation into a state caused death?

The Standards

33. Do you feel that the ECHR standards are realistic?

34. Do you feel that they are attainable?

35. Do you feel that your organization meets the standards in its investigations?

36. Which of the standards do you think is the most important in your organization?

37. Do you believe they represent a burden on the state?

38. Do you think that the civilian investigation of state caused deaths actually works?
Information

I would like to invite you to take part in my research study. Before you decide I would like you to understand why the research is being done, what the research is about and what it would involve for you. Talk to others about the study if you wish. If there is anything that is not clear, please do not hesitate to ask me to clarify.

What is the research about?

The primary objective of the research is to evaluate the police oversight agencies in the United Kingdom and Ireland in investigating deaths involving the police against the standards set by the European Commissioner for Human Rights and the European Courts. The research is not concerned with individual cases but focuses on the standards that govern investigations and how these standards are relevant to the oversight agencies.

What is the purpose of the study?

The purpose of the study is to gather data for the completion of a Doctoral thesis as part of a Professional Doctorate in Criminal Justice with the University of Portsmouth.

Why have I been invited?

You have been invited as you may have been involved in the investigation of deaths involving the police. I intend to interview as many Senior Investigating Officers and others of equivalent rank as is required for the study.

Do I have to take part?

Participation in this research is entirely voluntary. This information sheet may assist you in deciding whether or not to participate in the study. If you agree to take part, I will then ask you to sign a consent form.

What will happen to me if I take part?

If you agree to take part, I intend to conduct an interview with you in relation to your experience of investigating deaths involving the police. The interview should take around ninety minutes. So as to
accurately capture your responses, I intend to audio record the interview. You will not be identified by name in any material produced from this research.

What will I have to do?
You will be required, should you wish to do so, to answer the questions put to you in relation to your perceptions and views. Should you not wish to answer any of the questions, you can decline at any time.

What are the possible disadvantages and risks of taking part?
The interview will take up about an hour and a half of your time. Should you require a break at any time, please do not hesitate to ask.

What are the possible benefits of taking part?
The interview may provide an opportunity for participants to reflect upon their professional involvement in investigations and their professional knowledge of the research topic itself.

Will my taking part in the study be kept confidential?
Every effort will be made to ensure that the data obtained during the interview will be kept confidential. You will be quoted verbatim, unless to do so would result in your identification. All participants in the study will be identified only by their rank and their place of work.

Confidentiality could be breached in the event that the research uncovered significant malpractice or as a result of a legal or moral obligation.

If you join the study, it is possible that some of the data collected will be looked at by authorised persons from the University of Portsmouth. Data may also be looked at by authorised people to check that the study is being carried out correctly. All will have a duty of confidentiality to you as a research participant and we will do their best to meet this duty.

The data from the interview will be captured in the first instance by audio recording.

The audio recording will be stored securely in a digital file identified by a Unique Reference Number (URN). Your name will not appear in the identifier of the digital file.

Subsequently the recording will be transcribed by me and the transcription will be marked with the relevant URN. The transcripts will be stored securely.

Participants have the right to check the accuracy of data held about them and correct any errors.

What will happen if I don’t want to carry on with the study?
Should you wish to withdraw from the study; every effort will be made to facilitate your wishes. However, as this may prove difficult following the analysis of the data gathered, I may contact you to discuss the further use of any data you have provided. Should you withdraw from the study, the data you have provided will be retained for examination by the University of Portsmouth until the completion of the Doctoral thesis when it will disposed of securely.

What if there is a problem?
If you have a concern about any aspect of this study, please feel free to bring them to my attention, however you should you remain unhappy and wish to complain formally, you can do this by contacting my research supervisor Professor Steve Savage at Steve.Savage@port.ac.uk.
What will happen to the results of the research study?
The results of this study will be published in a Doctoral Thesis submitted to the University of Portsmouth. You will not be identified in any publication unless you have specifically given your consent.

Who is organising and funding the research?
The research is not funded as it is for the completion of an academic qualification. It is undertaken as part of the completion of the Professional Doctorate in Criminal Justice with the University of Portsmouth.

Who has reviewed the study?
Research in the University of Portsmouth is looked at by independent group of people, called a Research Ethics Committee, to protect your interests. This study has been reviewed and given a favourable opinion by the Research Ethics Committee.

Further information and contact details:
Should you require any further information at any point, please do not hesitate to contact me at my Portsmouth University e-mail address above.

Should you require information about research undertaken by the University of Portsmouth, this can be accessed at: http://www.port.ac.uk/research/

Thank you for taking the time to read this information sheet, should you decide to participate in the research a copy of the information sheet will be provided to you and you will be asked to sign a consent form.
Study Title: Pathways to Accountability: The Investigation of Deaths Involving the Police

REC Ref No: .................................................................

Name of Researcher: Brian J. Doherty

consent form

1. I confirm that I have read and understand the information sheet dated.. ......................... for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason, up until the commencement of the analysis of the data in October 2012

3. I understand that data collected during the study, may be looked at by individuals from Portsmouth University, or from regulatory authorities. I give permission for these individuals to have access to my data.

4. I agree to my interview being audio recorded.

5. I agree to being quoted verbatim.

6. I agree to being a participant in the research and I understand that I will not be quoted by name.

7. I agree to take part in the above study.

Name of Participant: Date: Signature:

Name of Person taking consent: Date: Signature:

Researcher: Brian Doherty E-mail: icj90567@myport.ac.uk
Supervisor: Professor Steve Savage: Steve.Savage@port.ac.uk
Questionnaire on Article 2 of the European Convention on Human Rights

'The Right to Life'

Instructions

This questionnaire is distributed as part of research for a thesis written towards completion of a Doctorate degree with the University of Portsmouth. The questionnaires are anonymous and all answers given or views provided will be treated as confidential.

The research is designed to examine the relevance and application of the five principles for the effective investigation of deaths involving the police that engage under Article 2 of the European Convention on Human Rights.

The questionnaire is designed to be completed mostly by ticking the relevant boxes, however, please feel free to expand on any answer in the space provided.

Please return the completed questionnaires to Brian Doherty via GSOC internal mail.

Your assistance is much appreciated.

1. How would you rate your own knowledge of the five principles for the effective investigation of deaths involving the police that engage under Article 2 of the European Convention on Human Rights?

Very Poor □  Poor □  Unsure □  Good □  Very Good □  

Please expand if necessary: 


2. How would you rate the organizational knowledge within the Garda Ombudsman of the five principles for the effective investigation of deaths involving the police that engage under Article 2 of the European Convention on Human Rights?

Very Poor □  Poor □  Unsure □  Good □  Very Good □  

Please expand if necessary:


3. The European Commissioner for Human Rights has stated that an effective investigation into a death involving the police should be independent. Independence is defined as, “There should be no institutional or hierarchical connections between the investigators and the officers concerned and there should be practical independence.”

In your opinion do you agree that the investigations into deaths involving the police undertaken by your organization are investigated independently?

Strongly Disagree □ Disagree □ Neutral □ Agree □ Strongly Agree □

Please expand if necessary:

4. The European Commissioner for Human Rights has defined an adequate investigation into a death involving the police as follows, “The investigation should be capable of gathering evidence to determine whether police behaviour was unlawful and to identify and punish those responsible.”

In your opinion do you agree that the investigations into deaths involving the police undertaken by your organization are investigated adequately?

Strongly Disagree □ Disagree □ Neutral □ Agree □ Strongly Agree □

Please expand if necessary:

5. The European Commissioner for Human Rights has stated that an effective investigation must be prompt stating, “The investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law.”

In your opinion do you agree that the investigations into deaths involving the police undertaken by your organization are investigated promptly?

Strongly Disagree □ Disagree □ Neutral □ Agree □ Strongly Agree □
6. The European Commissioner for Human Rights has stated that an effective investigation must be subject to public scrutiny stating, “Procedures and decision making should be open and transparent to ensure accountability.”

In your opinion do you agree that the investigations into deaths involving the police undertaken by your organization are subject to sufficient public scrutiny?

Strongly Disagree □ Disagree □ Neutral □ Agree □ Strongly Agree □

Please expand if necessary:

7. The European Commissioner for Human Rights has stated that the family in an investigation where a death has occurred should be ‘involved in the investigation process [sufficiently] in order to safeguard his or her legitimate interests’.

Do you agree that your organization has met that standard in the investigations you have been involved in?

Strongly Disagree □ Disagree □ Neutral □ Agree □ Strongly Agree □

Please expand if necessary:

8. Would you agree that your organization has the necessary resources to investigate deaths involving the police to the standards established under Article 2 of the European Convention on Human Rights?

Strongly Disagree □ Disagree □ Neutral □ Agree □ Strongly Agree □
9. Would you agree that your organization has the necessary statutory powers required to investigate deaths involving the police to the standards established under Article 2 of the European Convention on Human Rights?

**Strongly Disagree □ Disagree □ Neutral □ Agree □ Strongly Agree □**

Please expand if necessary:

10. How would you rate the awareness of the police service(s) that you investigate of the five principles for the effective investigation of deaths involving the police that engage under Article 2 of the European Convention on Human Rights?

**Very Poor □ Poor □ Unsure □ Good □ Very Good □**

Please explain if necessary:

Thank-you for your time in completing this questionnaire.
<table>
<thead>
<tr>
<th>Column1</th>
<th>Column2</th>
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<th>Column4</th>
<th>Column5</th>
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<td>SI No:</td>
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<td>Neutral</td>
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<td>High/Low Policing Capacity</td>
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<td>Standards Attained?</td>
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<td>Civilian Oversight</td>
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</table>
Mr Brian Doherty  
Professional Doctorate Student  
Institute of Criminal Justice Studies  
University of Portsmouth

REC reference number: 11/12:23  
Please quote this number on all correspondence.

25th April 2013

Dear Brian,

Full Title of Study: Pathways to Accountability: The Investigation of Deaths Involving the Police

Documents reviewed:  
Consent Form  
Interview Schedule  
Invitation Letter  
Participant Information Sheet

Further to our recent correspondence, this proposal was reviewed by The Research Ethics Committee of The Faculty of Humanities and Social Sciences.

I am pleased to tell you that the proposal was awarded a favourable ethical opinion by the committee.

Kind regards,

FHSS FREC Chair  
David Carpenter

Members participating in the review:

- David Carpenter  
- Richard Hitchcock  
- Jane Winstone
FORM UPR16
Research Ethics Review Checklist

Please complete and return the form to Research Section, Quality
agement Division, Academic Registry, University House, with your thesis,

to examination

<table>
<thead>
<tr>
<th>Postgraduate Research Student (PGRS) Information</th>
<th>Student ID: 478261-01</th>
</tr>
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<tbody>
<tr>
<td>Student Name: Brian J. Doherty</td>
<td></td>
</tr>
<tr>
<td>Department: Criminal Justice</td>
<td></td>
</tr>
<tr>
<td>First Supervisor: Professor Steve Savage</td>
<td></td>
</tr>
<tr>
<td>Start Date: Sept 2011</td>
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| Study Mode and Route:                           |                         |
| Part-time √                                    |                         |
| Full-time ☐                                    | MPhil ☐                |
|                                               | MD ☐                   |
|                                               | PhD ☐                  |
|                                               | Integrated Doctorate (NewRoute) ☐ |
|                                               | Prof Doc (PD) √        |

| Title of Thesis: Pathways to Accountability? Independent Oversight, the Right to Life and the Investigation of Deaths Involving the Police |
| Thesis Word Count: 63,447 (excluding ancillary data) |

If you are unsure about any of the following, please contact the local representative on your Faculty Ethics Committee for advice. Please note that it is your responsibility to follow the University’s Ethics Policy and any relevant University, academic or professional guidelines in the conduct of your study.

Although the Ethics Committee may have given your study a favourable opinion, the final responsibility for the ethical conduct of this work lies with the researcher(s).

UKRIO Finished Research Checklist:
(If you would like to know more about the checklist, please see your Faculty or Departmental Ethics Committee rep or see the online version of the full checklist at: http://www.ukrio.org/what-we-do/code-of-practice-for-research/)

<table>
<thead>
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<th>a) Have all of your research and findings been reported accurately, honestly and within a reasonable time frame?</th>
<th>YES</th>
</tr>
</thead>
<tbody>
<tr>
<td>b) Have all contributions to knowledge been acknowledged?</td>
<td>YES</td>
</tr>
<tr>
<td>c) Have you complied with all agreements relating to intellectual property, publication and authorship?</td>
<td>YES</td>
</tr>
<tr>
<td>Question</td>
<td>Answer</td>
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<td>-------------------------------------------------------------------------</td>
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<tr>
<td>d) Has your research data been retained in a secure and accessible form and will it remain so for the required duration?</td>
<td>YES</td>
</tr>
<tr>
<td>e) Does your research comply with all legal, ethical, and contractual requirements?</td>
<td>YES</td>
</tr>
</tbody>
</table>

*Delete as appropriate*

**Student Statement:**

I have considered the ethical dimensions of the above named research project, and have successfully obtained the necessary ethical approval(s).

**Ethical review number(s) from Faculty Ethics Committee (or from NRES/SCREC):** 11/12:23

Signed: Brian J. Doherty  
(Student)  
Date: 24th September 2013

If you have *not* submitted your work for ethical review, and/or you have answered 'No' to one or more of questions a) to e), please explain why this is so:

Signed:  
(Student)  
Date:
Appendix Ten:

Quantitative Research Findings

The Quantitative Research Findings from the questionnaire circulated to Investigating Officers from the three oversight bodies are set out in pie chart form below:

Investigators’ Personal Knowledge of Article 2

Organisational Knowledge of Article 2
Questionnaire Results on Independence OPONI

Questionnaire Results on Independence GSOC

Questionnaire Results on Independence IPCC
Questionnaire Results on Adequacy for OPONI, ipcc and GSOC

<table>
<thead>
<tr>
<th></th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neutral</th>
<th>Agree</th>
<th>Strongly Agree</th>
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<tr>
<td>OPONI</td>
<td>9%</td>
<td>17%</td>
<td>48%</td>
<td>26%</td>
<td>26%</td>
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<tr>
<td>ipcc</td>
<td>14%</td>
<td>5%</td>
<td>67%</td>
<td>14%</td>
<td>5%</td>
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<tr>
<td>GSOC</td>
<td>6%</td>
<td>28%</td>
<td>61%</td>
<td>5%</td>
<td>6%</td>
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</tbody>
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Questionnaire Results on Promptness for OPONI

<table>
<thead>
<tr>
<th></th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neutral</th>
<th>Agree</th>
<th>Strongly Agree</th>
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</thead>
<tbody>
<tr>
<td>OPONI</td>
<td>17%</td>
<td>31%</td>
<td>17%</td>
<td>35%</td>
<td></td>
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</table>
Questionnaire Results on Promptness for the IPCC

Questionnaire Results on Promptness for GSOC

Questionnaire results on Public Scrutiny for the IPCC
Questionnaire results on Public Scrutiny for the OPONI and GSOC

**OPONI**
- Strongly Agree: 4%
- Disagree: 17%
- Strongly Disagree: 9%
- Agree: 44%
- Neutral: 26%

**GSOC**
- Disagree: 22%
- Agree: 33%
- Neutral: 28%

Questionnaire Results for Victim Involvement in OPONI
Questionnaire Results for Victim Involvement in IPCC

- Strongly Disagree: 5%
- Neutral: 33%
- Agree: 52%
- Strongly Agree: 10%

Questionnaire Results for Victim Involvement in GSOC

- Strongly Disagree: 6%
- Neutral: 11%
- Strongly Agree: 22%
- Agree: 61%
References


Davies, C. (2010, October 2011 8th ). 'It's Closure, but the feelings are very raw'. *The Guardian,* pp. 4-5.


Lally, C. (2012 b, August 16th). Decline in organised crime confirms recession has been bad for business. *The Irish Times*, p. 6.


