

**The Committee  
on the  
Administration of Justice**

**POLICE ACCOUNTABILITY  
IN  
NORTHERN IRELAND**

**C.A.J. PAMPHLET NO. 11**

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## **THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE**

The Committee on the Administration of Justice is an independent civil liberties organisation formed in 1981 to work for "the highest standards in the administration of justice in Northern Ireland by examining the operation of the current system and promoting the discussion of alternatives".

By undertaking and facilitating research, holding conferences, lobbying politicians, issuing press statements, publishing pamphlets and circulating a monthly news-sheet, the CAJ hopes to raise the level of public debate around important social justice issues.

Open meetings of the full Committee and visitors take place monthly to discuss current justice topics. Various sub-groups meet and work on an on-going basis. At present the sub-groups are specifically concerned with prisons, Bill of Rights, policing, emergency laws, laws on rape, Payments for Debt Act and magistrates courts.

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Membership entitles the individual to attend the organisations's monthly meetings, to take part in the work of sub-committees, to use the CAJ library and newspaper clippings service, and to receive all CAJ mailings, including our monthly news-letter "Just News". The membership fee is £5 for individuals and £10 for organisations.

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## PREFACE

This pamphlet is the product of many months' research and discussion on the part of the C.A.J.'s sub-group on policing. The person mainly responsible for drafting and editing was Peter Tennant. We are most grateful to him for the many hours of work he dedicated to the task.

The publication is intended to complement the pamphlets already issued - on complaints against the police (No.'s 3 and 4), on consultation between the police and the public (No. 6) and on the Stalker Affair (No. 10). A policy document which outlines the full framework of the C.A.J.'s current ideas on policing is being released to accompany this pamphlet.

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# POLICE ACCOUNTABILITY IN NORTHERN IRELAND

## INTRODUCTION AND SUMMARY

1. As part of the search for the best possible system of administering justice in Northern Ireland the Committee on the Administration of Justice (CAJ) has studied two aspects of policing - the method of handling complaints against the police and the machinery for consultation between the police and the public (CAJ pamphlets nos. 4 & 6). In the course of studying these relatively narrow subjects it became obvious that there is a broader subject, that of accountability, which is fundamental to every other aspect of policing, and that if the arrangements for the accountability of any public service are not right it will be difficult to get a satisfactory system for any of the particular branches of activity of that service. Moreover it is vain to strive after the acceptability of the police (without which it is acknowledged on all sides that they cannot hope to be effective) if the public do not have confidence in the arrangements for police accountability.

2. This paper has its origin, therefore, in our suspicion that there could very well be a causal relationship between the nature of the arrangements (or lack of them) for the accountability of the police and some of the policies and methods adopted by the police which have from time to time caused at best a lack of confidence, and at worst a definite antagonism towards them of substantial sections of the population. It would not be possible to give an exhaustive list of what we have in mind but some of the outstanding examples are

- the apparently trigger-happy use of plastic bullets in Northern Ireland at one period;
- the 1982 shootings which were the subject of the Stalker Inquiry;
- the interrogation methods adopted in Northern Ireland which were the subject of enquiry by Amnesty International;
- the incursions by the R.U.C. into the Irish Republic
- the behaviour of the Metropolitan Police in Brixton leading to the rioting there which had to be investigated by Lord Scarman;
- the similar state of affairs in the Handsworth Division of Birmingham also leading to rioting;
- the apparent tendency to stop and question people for no very obvious reason except possibly the temptation to take an opportunity to harrass people;
- getting people up between 5am and 6am so as to have them ready for questioning when the detectives start work at 9am - not in itself, a very serious thing but one which, done often enough, naturally causes criticism and resentment;
- the use of uncorroborated evidence from a witness against his own former associates, sometimes with the aid of very substantial inducements;
- the use of firearms in situations which appeared not to have called for that degree of force.

All of these, some in fairly general use and others only in Northern Ireland and only at certain periods, have been very bad for public relations and have raised quite fundamental questions about the level at which the decisions to adopt these practices were made. In particular it was in most cases impossible for anyone seeking redress or a change of policy

to get to grips with the root of the problem. In the most serious cases the public outcry resulted in an ad-hoc enquiry - eg Lord Scarman's very public, judicial enquiry or Mr. Stalker's very secret, internal enquiry. But in other cases, despite much comment, the matter remained essentially elusive because there was no individual or corporate authority with both the power to make decisions and the willingness to answer for them.

3. This paper, while primarily concerned with the structural arrangements for accountability, does also touch on a number of other factors affecting the acceptability of the police, partly because the acceptability of the RUC is our most fundamental concern. We are aware that there are factors affecting acceptability which, while they have their counterparts in areas in Britain where there are sizeable black or brown skinned populations, are particularly important and particularly acute in Northern Ireland. The RUC will always have difficulty in winning general acceptance so long as nationalists are reluctant to join it and this in turn is dependent on the political arrangements for the government of Northern Ireland and on the degree to which old wounds can be healed and the whole population can begin to feel that they all belong here and that the Government (even if they disapprove of some of its policies as any citizen of any country may from time to time) is their government and not an unwanted, alien one. This paper does not attempt to address those matters which belong to the field of politics and the constitutional arrangements for the government of a part of the United Kingdom.

4. There is however one characteristic of the RUC which is very much a part of this general problem of acceptability and which, because it involves the nature of its accountability and control, cannot be omitted from any paper such as this. We refer of course to the security duties of the police here which have no counterpart in any other UK police force. The activities of the police in discharging their responsibility for security inevitably militate against their acceptability for normal policing and, as a result, are intimately linked with the imbalance in their composition; and this in turn is both the result of, and the cause of, their lack of acceptance by a substantial part of the population. We deal with this problem in paragraphs 35 - 38.

5. What this paper attempts to do is to examine the constitutional issues involved in decisions affecting the position of the police in society and the mechanisms provided for their governance. After sketching very briefly the salient points in the history of policing in England (from where Northern Ireland has inherited a large part of its pattern) we look a little more closely at the work of the Royal Commission which reported on the English police in 1962. We conclude that they asked themselves all the right questions and we have been impressed by their rehearsal of the anomalies, contradictions, confusions and uncertainties which existed at that time. We are considerably less impressed by their conclusion that despite these shortcomings, and in particular despite the acknowledged constitutional impropriety of the then situation, very little alteration was required because the arrangements were working fairly smoothly; with the benefit of hindsight, and after 25 years of experience during which the system has worked a lot less smoothly, we have concluded that a change in the law will have to be faced. The essence of the problem is today, as it was in 1962, how to balance the need to keep the police free from improper manipulation by sectional interests with the equal need of people in a democracy to have a say in the way they are policed. History has produced a situation where, in our view, not enough scope is given to this latter requirement, and that is arguably at the root of many of the current criticisms of police work in practice.

6. This analysis has led us to ask what powers of control over the police should society exercise and what machinery should be created to that end. We attempt an answer to the first question in relation to any society, but because Northern Ireland is very different from Britain the machinery we envisage for the governance of the RUC is designed for our particular problems and we have not thought it necessary or proper to make recommendations for Britain. Our recommendations are listed in Appendix I.

7. To return to the starting point in our train of thought, we have had to take cognisance of the fact that police accountability has recently been the subject of much comment and debate in Britain, where we have witnessed the unedifying spectacle of at least two police authorities and their respective chief constables being locked in conflict and public acrimony. As a result of this state of affairs, and also of certain particular activities of the police in other parts of Britain which many people regarded as at least controversial and possibly even improper, there has grown up a considerable demand that the police should be more accountable, though the precise way of achieving this has often not been defined. Indeed it may be supposed that many of the people subscribing to this demand do not claim to be experts in the relevant branch of the law or its origins in the English philosophy about the status and functions of the constable, which is a very specialised subject; they are simply extrapolating from their belief in the basic principle of democracy that, because all power stems from the people, anyone in the public service from the Prime Minister to the dustman must be responsible to someone else in the hierarchy or to some collective authority, be it a committee or Parliament itself. There is no gainsaying this as a general principle, and while it must apply with particular force to any individual such as a chief constable who has a considerable number of men and women under his command, what we have to face is the fact that the present law exempts chief constables from this general principle. Accordingly what needs to be considered is whether Parliament was wise in agreeing to that arrangement. Certainly it was a decision taken carefully on the advice of a Royal Commission - itself a very thorough procedure - but it is dangerous to depart from a rule so fundamental to the good ordering of society, and recent experience has shown just how dangerous. If it is thought with hindsight that our legislators made a mistake then the only possible cure must be to change the law.

## PART 1. LEGAL AND HISTORICAL

### THE LAW

8. At the present time the law - in Northern Ireland the Police Act of 1970 and in England and Wales the Police Act of 1964 - has created a tripartite division of responsibility between the police authority, the chief constable and the central government - the Home Secretary in England and Wales and the Secretary of State here. The important points to notice are:

(a) that the principle of dividing the responsibility is itself constitutionally sound but the present balance is open to question and is at the heart of the issues which this paper will examine

(b) that part of the debate in England and Wales has been caused by the recent tendency in practice for the central government to take more power unto itself than some people thought it had (though even that left little enough to local initiative and local adaptation to differing circumstances) and in the process to reduce the already small degree of control possessed by the police authority. We shall discuss later the arguments for and against giving a large share of responsibility to the central government

(c) that the Act in each case gives the police authority the statutory duty only of securing the maintenance of an adequate and efficient police force but leaves the direction and control of the police to the chief constable. This division of functions was made by Parliament quite deliberately and in the full awareness that it was the opposite of the normal relationship between a chief officer of a local service and the authority concerned with that service. In every other case in Northern Ireland before direct rule was imposed, and in England and Wales today, the local authority, albeit with some degree of coordination and oversight by the central government, decides policy and the chief officer is responsible for executing it; as the professional and experienced head of his department he naturally and properly advises his authority on the policies he recommends but it is they who decide and they do not invariably accept his recommendations.

9. We shall see below how this unique relationship in the case of the police came about. Suffice it to say here that it is an arrangement which most foreigners find incomprehensible and which is giving increasing concern to many people at home, partly because it is constitutionally very dangerous to give so much unsupervised power to a paid official, and partly because in practice the system is not working as smoothly as it used to. The strains imposed upon it by the increasing tensions in society have been too much for its inbuilt contradictions, and many people now hold the opinion that we cannot afford to rest content with a situation where chief constables generally exercise power but do not account for it, and police authorities suffer in public esteem because their title implies that they have control and are a public watchdog, though they are seen not to be. It is of interest that the Royal Commission in 1962 accepted that this ill-defined arrangement was constitutionally improper but recommended that because it worked well in practice only small alterations should be made to it. While it was perhaps just permissible to take that view 25 years ago, it surely is not possible today to be content with an arrangement which is neither constitutionally proper nor working well in practice.

### IMMEDIATE ORIGINS OF THE LAW

10. The law on police accountability in Northern Ireland is traceable to the report of the Hunt Committee, while the English law is the result of the work of the Royal Commission on the Police which reported in 1962.

### THE HUNT COMMITTEE

11. The Hunt Committee observed that the Inspector General (now the Chief Constable) was not responsible to anyone for his operational policies (note the combination into one phrase of the two words supposedly at opposite ends of the control function) and said that it was important that he should be accountable to a body representative of the community as a whole. This observation led them to go into some detail about how that body should be composed in the particular circumstances of Northern Ireland, but they had nothing to say about the extent or nature of the accountability to it of the Chief Constable. The inference to be drawn is presumably that they had general accountability in mind, though no such relationship was created by the 1970 Act. Nor indeed is that interpretation consistent with their recommendation that Northern Ireland should follow the English pattern, where no general accountability existed. Whatever we ought to make of this vagueness and confusion it is only fair to the Hunt Committee to say that when they sat in 1969 the English system had not revealed its weaknesses to anything like the extent that it has now done. It is necessary therefore to turn for a moment to the English law and how it has come to take its present form, and what the effect of this has been.

### THE EARLY DEVELOPMENT OF THE ENGLISH POLICE AND THE CONCEPT OF INDEPENDENCE

12. The ambiguities and contradictions of the present arrangements for policing in England are not a new phenomenon. The history of policing is full of them but one concept has survived - not certainly undiluted but at least as a continuing thread in the thinking of policy makers and of the courts. The concept of the independence of the constable dates from the very earliest times when the constable was simply one citizen among many, unpaid but elected in rotation to work part-time on a piece of work that needed doing for the benefit of the local community. He had then no special powers but was simply engaged to do what any citizen was entitled to do voluntarily in order to ensure that the law was observed. Because of the potential pressure from individuals or groups with axes to grind it was recognised from the beginning that if these people were not to be corrupted (as indeed they were at one stage) they needed independence from the control of others so that they could carry out their functions with complete impartiality and fairness to all. The principle of impartiality in the application of the law was and still is fundamental to successful policing and to the acceptability of the police as the effective arm of society (and not merely of one section of it), and it is notable how wise and farsighted our forebears in the middle ages were in establishing this principle at the very beginning of a new form of activity undertaken on behalf of the community.

13. From this basic requirement there developed the doctrine that the constable's powers were original and not derived, that he possessed them by reason only of his office and not because he was responsible to a superior or to any controlling authority. This second step

in the theoretical thinking about police work is still, as we shall see, very much a part of today's accepted wisdom but in the light of recent developments it is at least arguable that it needs to take its place alongside the kind of relationship modern democracies expect to have with people who work for them. Obviously with the passage of time the concept of independence has been obliged to live with the development of a modern, highly organised society. As early as the 14th century Justices of the Peace were appointed and constables were obliged to carry out their instructions. Then when Watch Committees were established under the Municipal Corporations Act of 1835 they met, in some cases daily, to supervise police operations. And now of course we are familiar with modern, disciplined police forces organised on a hierarchical basis under the control of their respective chief constables.

14. Despite these changes, however, the concept of independence has survived in two forms. In the first and simplest form society continues to recognise the need, inherent in the nature of much police work, to allow the man on the ground, whether he be an individual constable in a lonely situation, or a senior officer in charge of a number of others, to use his own observation, make his own analysis and form his own judgment about the right course of action (or inaction). The recognition of this need is no more than common-sense acceptance of reality and was very clearly articulated as recently as 1981 by Lawton L.J. in R v the Chief Constable of Devon and Cornwall, ex parte the Central Electricity Generating Board (1982) 2QB 458. The Board had asked the court for an order of mandamus against the Chief Constable to compel him to order his men to clear a certain site of demonstrators who were protesting against the Board's intention to explore the site for a possible nuclear power station. The court refused the application because only the police on the spot (and not the Chief Constable or the court) could make the evaluation needed to form a reasonable opinion whether an offence was likely to be committed if the site was not cleared. (It is worth noting here that the necessity to protect the man on the ground from interference by others in the assessment of his duty, and then the execution of it, need not stand in the way of a consideration of possible improvements in the overall pattern of responsibility. If control of policing policies were to rest less with chief constables and more with some authority representative of the people there is no need to suppose that the ruling in the Electricity Generating Board case would be in the least affected. All that would happen would be the inheritance by the new authority of the chief constable's position, complete with its limitations.)

15. The other form in which the concept of independence has survived to the present day is in the person of the chief constable himself and there it is much more controversial, and for that reason more important, because the current debate about the accountability of the police is in essence a debate about the powers and independence of chief constables, not the men under their command.

## THE GROWTH OF THE POWER OF CHIEF CONSTABLES

16. The degree of independence which chief constables enjoy today derives from a combination of trends and influences. The three most important may be identified as: -

### (a) The Gradual Attrition of the Power of Justices of the Peace

This process which started in the 19th century with the creation of modern police forces was very well described in paragraph 82 of the report of the Royal Commission on the Police in 1962:

*"This form of control, although unrepealed by Parliament, has now fallen into virtual disuse, and is today little more than an historical survival. As a result a situation has gradually come about, unregulated and probably unrecognised by Parliament, in which chief constables, able and intelligent men, growing in professional stature and public esteem, have assumed authority and powers which their predecessors would formerly have sought from justices, now praying in aid their tenure of the independent office of constable, which, as we have seen, they cherish as a bulwark against interference or control by the police authorities which appointed them."*

### (b) Professionalism

Then there has been the influence of professionalism, the increasing complication of the work and the consequent difficulty in mastering it experienced by part-time local government councillors. This development, though by no means limited to police work, has been very marked in recent years in that field. As each new technological aid has become available decisions about whether to use it, and if so at what cost and subject to what conditions or limitations, have increasingly required more knowledge of the subject than the average member of a local authority can afford the time to acquire. In many areas of responsibility this has resulted in the members of local authorities being presented with a flood of paper which they barely understand, and decisions involving many thousands of pounds being taken with little or no discussion. Instead they have too often contented themselves with the position of figureheads, opening buildings, cutting tapes, presenting prizes and making platitudinous speeches. This process has in some cases reached its logical conclusion when a mistake has been made in a policy decision which might have been avoided had the elected representatives of the people been more aware both of the likely consequences of the decision and of the probable effect on public opinion. In these cases we have seen very pronounced public discontent manifesting itself in rioting, strikes, legal disputes, loss of confidence in the service concerned, the polarisation of society and the breakdown of law and order. How best to reverse this process is a very big subject in itself; at this point we are concerned merely to record it as a fact of life which has largely contributed to the growth of the power of the chief constables (without yet addressing the question whether that is itself desirable or not.)

### (c) The Royal Commission

The third contributor to the growth of the power of chief constables has been the continuing adherence to the doctrine of the independence of the police. This has manifested itself in two ways - judicial decisions and the report of the Royal Commission in 1962. It is best to take this first because, though only 26 years old, it shows how, in the days before the recent upsurge of animosity towards the police, both caused by and resulting in controversial police methods, official thinking was prepared to leave chief constables to control the policing of their areas largely unfettered by any democratic oversight. The Royal Com-

mission cannot be accused of not having examined the issue sufficiently thoroughly. They listened to a great deal of evidence both about the constitutional situation as it then was and also about what was thought desirable for the future. On the former it is worth quoting their paragraphs 61, 72 and 73:

*"61. The evidence placed before us includes a wealth of judicial pronouncements, the effect of which has been to deny any relationship of master and servant as between the police authority and the constable or as between the Crown and the constable; and in thus denying that he is a servant of either a local or a central authority, the courts have been led to assert the independent character of his office.*

*72. The Association of Chief Police Officers of England and Wales submitted to us that the chief constable, because he holds the office of constable, therefore enjoys full protection from local control in carrying out his duties of law enforcement and in commanding his force for this purpose. They deduced from this that the status of chief constables in relation to police authorities is different from that of local government officers, and went on to say:*

*'Quite clearly a police authority cannot direct a chief constable as to the manner in which he should carry out the enforcement of the law or the maintenance of The Queen's Peace, any more than they could direct any other constable on the exercise of his individual authority'.*

*They also quoted with approval the Oaksey Committee's view that*

*'The police authority have no right to give the chief constable orders about the disposition of the force or the way in which police duty should be carried out, and he cannot divest himself of responsibility by turning to them for guidance or instructions on matters of police duty'.*

*73. That Your Majesty's Government in 1958 also held this view of the legal status of the office of chief constable is shown by the following statement by Lord Chesham in the House of Lords, speaking on behalf of the Government:*

*'What I wish to emphasise (it has been said before, and I say it again) is that no police authority or anyone else has any authority to interfere in relation to the enforcement of the law by the police. Naturally there is normally good co-operation between the police authority and their chief constable, but the full responsibility for enforcement is a matter which is reserved entirely to the chief officer of police. In the exercise of this responsibility he is answerable to the law alone, and not to any public authority. This is the position both in the counties and in the boroughs. I think it is generally recognised to be such today, whatever may have happened in the past.'*

## PERIOD WHEN LOCAL CONTROL WAS ENFORCED

17. The Royal Commission were however fully aware that the absence of any master - servant relationship between the police authority and the chief constable had been authoritatively affirmed only in relatively modern times, for they observed that

*" Mr Speaker Lowther ruled, when disallowing a parliamentary question about rioting at Gillingham in 1917, 'The Hon. Member should ask the Watch Committee'; and in 1936 one of Your Majesty's former Secretaries of State for the Home Department, Sir John Simon, told the House of Commons, following allegations that the police had shown partiality in handling political riots in Oxford and elsewhere, 'The Oxford police are subject to the rate-payers of Oxford and to the people who elect the City Council out of which the Watch Committee is formed'. In the course of this debate the Deputy Chairman said*

*'In the case of the provincial police he [the Secretary of State] cannot give orders. The orders to them are given by the statutory authority, which is the standing joint committee in the case of the county, and in the case of a borough, if it has an independent police force, it is the watch committee. They have absolute control over the provincial police.....'*

18. A further expression of this view is to be found in a ruling given by the Speaker as recently as 1958 -

*'The crux of the Hon. Member's difficulty is that the control of local police forces and chief constables is in the hands of the local authority'.*

19. Some colour is given to these views by the report of the Royal Commission on Police Powers and Procedure in 1929, which stated,

*'The chief constable is responsible to his police authority which..... is a unit of local government';*

although the Commission went on to observe that the powers vested in police authorities

*'are mainly concerned with matters of policy and finance and interfere little, if at all, with the executive or technical control of the force'".*

## THE CORE OF THE ROYAL COMMISSION'S REPORT (1962)

20. On views about the future submitted to them the Royal Commission said in paragraphs 75 and 76

*"75. The foregoing expressions of opinion are difficult to reconcile with the judgments to which we referred in paragraphs 62-64 if it be assumed, as we have been invited to assume, that the legal status of chief constable and constable is identical. Yet the view that a police authority has, or should have, some responsibility for law and order, and has some control over the police force which it is required by law to maintain, was persistently represented to us in much of the evidence we heard, although there was little unanimity about the extent of this responsibility or the degree of control exercisable.*

*76. The Association of Municipal Corporations went farthest in this direction. They contended that a police authority has power to do whatever seems to it necessary to police its area efficiently so far as statute, regulation or common law does not derogate from that power. .... There was nothing in law to prevent a police authority from discussing the administration of the force with the chief constable or from requiring him to report to it about his conduct of the force. A police authority was also, in the Association's view, en-*

titled to give the chief constable instructions, for example, to take steps to enforce the law more vigorously or as to his methods in dealing with a political demonstration; stopping short, however, of interfering with the application of the criminal law in particular cases. The delegation by the watch committee of executive control to the chief constable was, they suggested, a matter not of law but of good administrative practice. They acknowledged that the law governing this matter was uncertain, but thought that the present position was satisfactory and that it would be a mistake to clarify it."

21. In the Royal Commission's paragraph 78 they referred again to the unsatisfactory nature of the confusion:

"The position resulting from the foregoing is unsatisfactory and confused. It may be summarised by stating that, while the courts have established beyond doubt the legal status of the constable, the inferences drawn from these judgments as to the status of a chief constable, and his relations with a police authority, are in dispute. In practice, informal working arrangements have usually grown up between police authorities and chief constables, which have been flexible enough to render unnecessary a close analysis of the underlying principles which it is now our duty to examine. Thus a representative of the Association of Chief Police Officers told us that a chief constable would listen to any opinions expressed by the police authority as to the manner in which police duties are being performed, and if he were wise he would have regard to these opinions; but he would not accept instructions. A witness from the County Councils' Association summarised the Association's view by saying, 'No one can tell the chief constable what he is to do, but he is responsible to the standing joint committee for what he has done.'"

22. This last quotation is perhaps the most telling of all for it enshrines in one short sentence one of the principal fudges in official attitudes to the division of responsibility. It is one thing - and perfectly logical and proper - to give an individual (e.g. the constable on the ground) the freedom to make up his own mind what to do or not do but to make him responsible to the courts, as he must surely be, if he decides to do something illegal; but it is quite another thing, and a sign of confusion, to leave a chief constable free of control by others and then to suggest that he is responsible to some authority for what he has done. He can only be responsible to them in the very limited sense that they can ask him to report, but in the full and ordinary meaning of the word he was not at that time, and is not now, responsible to them because if they disapprove of what he has done there is nothing they can do, short of the ultimate sanction of dismissal<sup>1</sup> which can be appropriate only in the most extreme cases.

23. The Commission's own reaction to this state of affairs was given in the opening sentence of their paragraph 79:

"We have been assured by all concerned that the lack of definition in this matter rarely gives rise to practical difficulty, but we do not think it is wise to count on this indefinitely."

<sup>1</sup> Section 7 (2) of the Police Act (Northern Ireland) 1970 is quoted in Appendix 3

## Two Types of Decisions

24. This led the Commission to draw the proper distinction between the two broad categories of decisions which fall to the police. In paragraphs 85-87 they dealt with those relating to the enforcement of the law in particular cases:

"85. There was a wide concurrence of view in the evidence submitted to us that chief constables, like other police officers, should remain independent and immune from outside influence and pressure as regards certain of their activities; but witnesses were divided on the question whether, in respect of other activities, they should be placed under some form of external supervision.

86. The duties which it was generally agreed in the evidence should be performed by chief constables unhampered by any kind of external control are not capable of precise definition, but they cover broadly what we referred to earlier as "quasi-judicial" matters, that is, the enforcement of the criminal law in particular cases involving, for example, the pursuit of inquiries and decisions to arrest and to prosecute.....

87. We entirely accept that it is in the public interest that a chief constable, in dealing with these quasi-judicial matters should be free from the conventional processes of democratic control and influence. We therefore recognise a field, wider in England and Wales than in Scotland, in which the present legal status of the chief constable is clearly justified by the purposes of his appointment, namely the field of law enforcement in relation to particular cases."

25. On the second broad category of decisions the Commission said at the end of their paragraph 88, followed by paragraphs 89 and 90 and the opening sentence of 91:

"Our concern, however, is with an entirely different range of activities, namely, those activities other than the enforcement of the law in particular cases, over which neither a police authority nor anyone else at present appears to have recognised powers of control over a chief constable, and in respect of which the chief constable is not ordinarily brought to account.

89. The range of these activities is wide, and the present legal status of the chief constable is widely regarded as providing him with unfettered discretion in their exercise - although, as we said earlier, the Association of Municipal Corporations question this. Thus he is accountable to no one, and subject to no one's orders, for the way in which, for example, he settles his general policies in regard to law enforcement over the area covered by his force, the disposition of his force, the concentration of his resources on any particular type of crime or area, the manner in which he handles political demonstrations or processions and allocates and instructs his men when preventing breaches of the peace arising from industrial disputes, the methods he employs in dealing with an outbreak of violence or of passive resistance to authority, his policy in enforcing the traffic laws and in dealing with parked vehicles, and so on.

90. The question therefore arises whether the status of the chief constable should continue in future to shield him from external control in the formulation and application of what, for convenience, we describe as police policies in matters which vitally concern the public

interest. Behind this, too, lies the broader question whether the community should have some voice, through their elected representatives, locally or nationally, in the maintenance of law and order.

91. It cannot in our view be said that duties of the kind which we have described require the complete immunity from external influence that is generally acknowledged to be necessary in regard to the enforcement of the law in particular cases."

## The Royal Commission's Conclusions

26. The conclusion which the Royal Commission reached was that a chief constable should "be subject to more effective supervision than the present arrangements appear to recognise" and they added:

*"The problem is to move towards this objective without compromising the chief constable's impartiality in enforcing the law in particular cases." (para 92)*

The Commission's answer to this problem was to reject the straightforward solution; they said in paragraph 97:

*"We received no evidence favouring the conversion of chief constables into local authority servants, nor do we regard this as a desirable course. It would not, in our view, make for the preservation of the impartiality of the police in enforcing the law. We therefore reject this alternative."*

27. Instead they recommended strengthening the links between separate forces, the submission by chief constables to police authorities of *ex post-facto* reports on their policies and a more effective system of government inspection.

28. We have quoted the Royal Commission's report at some length to show the degree of confusion which existed in 1962, the quite recent change in the accepted view of what the law was, the thoroughness and clarity with which they examined the problem and the anti-climax constituted by their recommendations.

## THE LEADING COURT CASE

29. The Royal Commission's report was given effect in the Police Act of 1964 in England and Wales, that of 1967 in Scotland and that of 1970 in Northern Ireland. As already noted, in each case the chief constables are given the control of their forces, so the law is at least made clear in that there is no servant - master relationship with police authorities. This was emphasised with considerable force by Lord Denning in the first Blackburn case (R v Commissioner of Police for the Metropolis, ex parte Blackburn (1968) 2 QB 118):

*"I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected, and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted, and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law it-*

*self. No Minister of the Crown can tell him that he must or must not prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone." (p 136)*

## PART 2. THE PRESENT

### ASSESSMENT OF THE PRESENT POSITION IN ENGLAND AND WALES

30. Despite the clarity in the law on the last mentioned point, there are important areas to which the same clarity does not extend. Indeed Marshall, one of the most eminent authorities on all aspects of policing, said, in a comment on the 1964 Police Act as long ago as 1965, as reported in the University of Bath Social Policy Paper no. 4:

*"it is generally agreed that the Act is a fudge, that it incorporates ambiguities and contradictions concerning responsibility for framing, monitoring and financing policing policy."*

31. The Bath paper went on to say:

*"However it is also agreed that until recently the Act worked tolerably well: it worked because the parties to the fudge - the chief constables, the police authorities and successive Home Secretaries made it work" (Loveday 1985). There was a consensus about policing, it was a bi-partisan area politically. During the 1980's that agreement has been subject to increasing strain and in some forces has all but broken down. The miners' dispute of 1984/5 forced dormant issues to the surface. Several police authorities and chief constables engaged in acrimonious public dispute and the Home Secretary threatened to use his powers to overrule police authority decisions. As a consequence it is now Labour Party policy that a new Police Act is required and most chief constables are of the opinion, though for different reasons, that the Act requires amendment to be workable."*

### PROVISIONS OF THE POLICE ACT (NI) 1970

32. It has been necessary to go into the situation in England at some length because the Northern Irish situation, though not identical, owes a great deal to the English example. In Northern Ireland under the 1970 Act, as in England under the 1964 Act, there is a Police Authority which has the duty to "secure the maintenance of an adequate and efficient police force"; it determines the number of officers of each rank that are needed, provides the buildings, vehicles and equipment and makes the senior appointments. But it can give no directions about what police officers should or should not do; it does not, for instance, even have any say in approving the General Orders for the Government and Guidance of the Force (sometimes referred to as the Police Code of Conduct or the Discipline Code) though it is satisfactory to note that the Authority was extensively consulted during the drafting of the more recent document entitled Professional Policing Ethics which has also, and confusingly, been referred to as the Police Code.

33. The difference from the English pattern lies in the acceptance of the Hunt Committee's recommendations on how the Police Authority should be constituted. Instead of the English mix of two-thirds elected representatives and one-third justices, the members of the Police Authority in Northern Ireland are appointed by the Secretary of State and are, as far as practical, representative of the whole community; in particular there should be members representing the interests of district councils, other public bodies including the Universities and higher education generally, the legal profession, trade unions, agriculture,

industry and commerce and voluntary organisations concerned with the welfare of children and young people (See Appendix 3).

### ASSESSMENT OF THE PRESENT POSITION IN NORTHERN IRELAND

34. In Northern Ireland the deficiency in the law has not manifested itself in the form of public disputes between the Police Authority and the Chief Constable to the same extent as it has in England. This is perhaps because the Police Authority has largely been content to give successive Chief Constables their head in response to their pleas that they are faced with a form of guerilla warfare and should be left to fight it without a committee breathing down their necks. But the absence of control has resulted in a number of policing methods being adopted from time to time which have caused considerable distress, controversy and embarrassment. It is therefore true for Northern Ireland, as it is for England and Wales, that one very important point at which the present system needs to be reformed is that part of the law which defines, or fails to define satisfactorily, the powers and responsibilities of the central government, the police authority and the chief constable.

### SECURITY FUNCTIONS OF THE R U C

35. In any society it is normally understood that if any danger to the security of the state or substantial disruption of the peaceful life of the population should arise it is the function of the police to restore order, and that if this task proves too onerous for their resources it will be necessary to call in the army to assist them. This is what has happened in Northern Ireland, though to complete the picture it is necessary to remember that the origin of organised policing in Ireland lay not so much in the need to combat crime, as was the case elsewhere, but in an attempt to safeguard the security of the state and the ruling class in the face of an endemic condition of potential rebellion; and this condition persisted after partition and the formation of the R.U.C. There was always a smouldering fire liable to burst into flames at any time from the partition of Ireland in 1921 until the present troubles erupted in 1968. For this reason the Northern Ireland Ministry of Home Affairs, which had the responsibility for policing during that period, saw to it that the RUC was equipped and trained for paramilitary work. At the same time, because the provincial government was always a Unionist one and the danger was seen to come from the nationalist community, the force was predominantly Protestant and regarded by most Catholics as oppressive and antagonistic, and therefore not merely an organisation they did not wish to join but one which was not acceptable for the work of policing.

36. The Hunt Committee made an effort to tackle this problem at one level and the Police Act (Northern Ireland) 1970 which followed their report removed responsibility for policing from the Ministry of Home Affairs and created a new Police Authority on the English model. Clearly the motive behind this change was the realisation that if the police were ever to become acceptable to the whole population they could not be accountable to an obviously biased authority, and for this reason the Hunt Committee made very careful recommendations about the composition of the new authority. Unfortunately they did not at the same time suggest that the new authority should have realistic powers of control, so that the effort to convince the public that the police would now be accountable to an authority in which everyone could have confidence failed at the first hurdle; whatever the public might think of the new authority they were quickly seen not to possess any teeth worth mentioning and have therefore been regarded by many as irrelevant to the problem of bias.

Clearly any design for a new system must ensure not only that accountability is achieved in fact as well as in theory, but also that the power is held by people who themselves inspire confidence that police officers of all ranks will behave with complete impartiality on all occasions. While some progress in this direction has been made in recent years for which credit must be given to several Chief Constables, it is regrettably true that the RUC has still some considerable way to go in this direction. Until Catholics can have complete confidence in the impartiality of those who make the decisions (as well as in their power to see that their policies are carried out in practice) they will never join the police in numbers comparable with their proportion of the population.

37. We cannot leave this aspect of the RUC's functions without addressing one of the most difficult problems of all; it is one of the most difficult because many people and organisations, including political parties and indeed the Government have at times displayed ambivalent attitudes towards it. On the one hand it is said that justice must be seen to be done and the police will never be acceptable if they are thought to be above the law; and on the other that they are a counter - insurgency force and it is inappropriate to apply the same rules to them as to the police in the rest of the UK. This difficulty can come to the forefront of debate at any moment and was recently thought by some to have been a contributory cause of the controversy over Mr. Stalker's inquiry into the police shootings in 1982, it being suggested that Mr. Stalker may have been applying civilian standards to a quasi-war-time situation. It is indeed possible to envisage a conflict of attitudes in this respect between the RUC and the Government. The RUC, like the army, could understandably complain if they find they are being asked to do a difficult job with their hands tied behind their backs; while the Government, at least part of the time, maintains that there is no war and that people who engage in terrorism are committing ordinary crimes and must be treated as such.

38. It is very important to be clear about the implications of this conflict of philosophies for any system of controlling the police. Though we look forward to the day when the RUC will be concerned only with ordinary policing we have reluctantly to agree with those who for the time being cannot see any way of relieving the RUC of their security functions, but we do not see any reason why that should exempt them from a proper system of governance. Indeed not only that but in our own view the need for proper control and accountability is rendered especially great by the security function precisely because the extremely difficult circumstances in which they have to work lead them to use methods which bring them to the edge of legality in a way rarely experienced by any other UK police force. Those who say or imply that security work necessitates a force that is a law unto itself, are opting for chaos. We are therefore treating the RUC's security work as not detracting at all from the need for them to be controlled by a properly constituted and accountable authority (even though the security situation does impose limitations on the composition of that authority as we point out in paragraph 98 below).

39. Finally it is necessary to address the problem which can arise when a security issue is thought by those who know about it to be so delicate that it should be discussed only by the minimum possible number of people. This sort of situation could properly inhibit discussion by the full Police Authority but we consider that the chairperson should in all cases be kept fully informed and that, in consultation with the Secretary of State and the Chief Constable, he/she should decide how much information should be shared with his/her colleagues.

## PART 3. FACTORS AFFECTING THE ISSUES.

### DEFINITIONS

40. At this point it is necessary to define the sense in which certain words should be used in the study of this subject because if this is not done the discussion will be confused. Let us start with the word "accountability" which is part of the title of this paper.

#### Accountability to the Law

41. It is frequently said, as Lord Denning did in the Blackburn case already quoted (see para. 29), that the police are accountable to the law. There are two things to be said about this. The first is that this is an absolutely minimum requirement of a democratic society, for as soon as the police are allowed to act without the constraints of the law we will have taken the first steps towards what is commonly described as a police state.

42. Secondly, while we can be thankful that Parliament has not taken the overt step of exempting the police from the obligations of the law, the courts have veered in that direction and the unadorned statement that the police are accountable to the law is true only up to a point, for the courts are often reluctant to intervene or impose their authority, and it is notoriously difficult to get a police officer convicted on a criminal charge, even though, in Northern Ireland in particular, substantial sums have been paid out of public funds when civil claims for damages have been instituted. Though this may be the way society wants it to be in England and Wales where it is juries that acquit policemen, in Northern Ireland, where a single judge without a jury presides over a Diplock Court and is the arbiter of fact as well as of law, the effect is to bring the entire legal system into increasing disrepute, and to cause people to view the administration of justice generally with increasing cynicism. Moreover a further contribution has been made to this effect by the several cases where there has been no dispute about some improper police behaviour having taken place but a "wall of silence" has been erected and no officer is ever charged because no-one will admit to any offence and no guilty officer can be identified. (The trial in July 1987 of police officers for assaults on innocent schoolboys in London illustrates the "wall of silence" in operation. It is to the credit of the Metropolitan Police that ultimately senior officers were able to convince those who knew the facts that it was in the interests of the police themselves that the matter should be resolved: but it took a long time and much harmful publicity before the wall was breached.)

#### Executive Accountability

43. The police themselves frequently quote the dictum that they are accountable to the law with the implication that that is enough in itself and no other form of accountability needs to be sought after. We do not think this is a valid conclusion. Over the years the police have been given a great many powers which the ordinary citizen does not have, and though that can broadly be regarded as a necessary development it should surely carry with it a correspondingly greater degree of accountability. In the case of all police officers below the rank of chief constable there does exist an additional type of accountability because they are members of a disciplined force with a recognised chain of command and an established code of

conduct. But the chief constable is in an altogether different position and we have to be clear that any discussion about the accountability of the police is in fact a discussion about chief constables, and is all the more important because of the greater responsibilities in relation to the formulation of policy, as well as its execution, that rest upon them.

### Other Forms of Accountability

44. To many people the notion of accountability in relation to the police conjures up a series of outside influences which can be brought to bear on police behaviour, ranging from the Director of Public Prosecutions who has the function of deciding whether a police officer should be charged with a criminal offence, through the machinery for maintaining internal discipline and the parallel but separate machinery for dealing with complaints, down to the local consultative committees.<sup>2</sup> We touch upon these matters where they are relevant to our argument and we are well aware that they give cause for concern, but this paper is primarily concerned with the right way to make policies, and it would be inappropriate to comment here to any extent on those other influences. We have dealt with the machinery for consultation in our pamphlet no.6 and with the handling of complaints in our pamphlets nos. 3 and 4. A short policy document outlining the whole framework of our ideas on policing is being published contemporaneously with this pamphlet.

### Degrees of Accountability

45. Finally, accountability is a word which can have more than one meaning. In one sense the police are accountable to their authorities because the authorities can call for reports from their chief constables, this having been one of the recommendations of the Royal Commission. But while there is nothing to prevent a police authority from commenting on a report, or even advising their chief constable to do things differently another time, they cannot require him to do so. In this full sense, therefore, he is not accountable to them, and the discussion becomes clearer if we talk about control.

### Operational

46. A word which over the years has been the subject of much argument between chief constables and their authorities is "operational". This phenomenon is curious for three reasons. First, there is no mention in the legislation of operations or operational activities, let alone a definition of them. Second, the way in which the argument has always taken place has been the contention by the chief constable that a matter which the authority wished to

<sup>2</sup> For a discussion of the place of these committees in relation to the main subject of this paper see paras 50 - 52.

discuss was an operational one and therefore outside their remit; the unstated implication of that argument must be presumed to be that matters of policy, by contrast, are within the authority's remit whereas we know that this also is a contentious area and, though there have been ministerial pronouncements and observations in Home Office circulars which imply that police authorities can and should properly concern themselves with policy<sup>3</sup>, the legislation does not say so, and if a chief constable finds a discussion about some policy by the authority not to his liking he will resist it.

47. The third respect in which it is curious that there has been so much argument over what is operational and what is not is that there has not been a comparable amount of disagreement between authorities and their chief officers in other departments of local authority work. While there can of course be borderline cases where it is possible to hold differing views about a certain subject and whether it ought to be decided by the authority or the chief officer, this is not generally a recurring source of dispute, despite the obvious difficulty in making a clear distinction - for operational decisions are often the result of policy, and policy decisions are, frequently and properly, made in the course of reviewing operations and their consequences.

48. Why the distinction between operational matters and others should have been such a bone of contention in policing but not in other fields is not immediately clear but it may be a result of the constitutional position of the chief constable. Whereas all other chief officers are appointed by their authorities to do their bidding and to offer them advice which they may or may not accept, in the case of the police it is mostly the authority that advises the chief constable and he who makes the decisions. This was the explicit recommendation of the Royal Commission (para 93) and in consequence is what chief constables have regarded the law as enshrining. If that is indeed at the root of so much dispute it could be that one way of eliminating this source of confusion and unhappy relationships would be to reverse the present position and make chief constables the servants of their authorities. We have already noted that the Royal Commission rejected that option and there are of course potent arguments, legal and constitutional, bearing on this question which we examine later. Here we are merely concerned to point out the possible effect on one major area of repeated contention and to explain why, in contrast to the words in the title of this paper which we have defined for our present purposes, we do not think it necessary or profitable to attempt a definition of what is or is not operational. It is essentially a side issue and becomes important only when something much more fundamental about the relationship is awry.

### THE GOVERNMENTAL CONTEXT

49. We are examining the accountability of the police at a time when it is the subject of much discussion in Britain and could well be the subject of fresh legislation in the next de-

<sup>3</sup> In June 1978 Mr. Merlyn Rees in answer to a Parliamentary Question said "The Act in no way inhibits discussion of operational issues between a chief constable and the police authority whether in the context of a review of the resources needed or more generally. The chief constable is generally accountable to his police authority for his policy."

cade. Since Northern Ireland legislation usually follows that for England and Wales and is often modelled on it, though with suitable adaptations for the particular circumstances here, the currency of the debate in Britain makes this paper timely. However, we are presented with a difficulty in that there is also a debate in progress about how Northern Ireland should be governed and the outcome could well affect the position of the police. For the purposes of practical discussion we therefore propose to assume that for the foreseeable future Northern Ireland will continue to be a part of the United Kingdom; though conceivably there may be some redrawing of its boundaries, we do not suppose that would affect the discussion of police accountability. What could very well affect it substantially is a departure from the present arrangement of direct rule from London, whether that should take the form of complete integration into the UK or of a provincial type of devolved government. It is, however, the present situation with which we are concerned and if that were to be altered our conclusions would have to be reexamined.

## **DISTINCTION BETWEEN CONTROL AND CONSULTATION**

50. Before considering possible changes it is necessary to look at two factors which have some bearing on the position of the police, one of them being a major one or even possibly the dominant one (see para. 53 et seq. below). The lesser of the two is the relationship of police accountability to any local consultative committees which may be set up, as they have recently been established in England and Wales. At their best these bodies have shown their usefulness in providing a valuable two-way channel of communication between the police and the public. This can both help the public to understand the difficulties of policing their area, and make the police more aware of public feeling about some of the choices the police have to make. If each listens to the other the overall effect is greater acceptability of the police in the eyes of the public. We therefore attach some importance to the establishment of these consultative committees and have published a paper suggesting some of the best mechanisms to adopt (CAJ pamphlet no. 6). We note that art. 82 of the proposed Police and Criminal Evidence (NI) Order compels the Police Authority to make arrangements for consulting the public. We certainly welcome this development. However the point we wish to emphasise here is that it would be a fundamental mistake to confuse a system of consultation with what is needed by way of governance and control. Indeed it is inherent in the meaning of consultation that, though there is an obligation to listen to the views proffered and consider them, there is no obligation to accept them. An example of the unfortunate consequences that can follow from this is given by the history of the Southall demonstration in April 1979. In the period leading up to that demonstration there had been good consultation between local organisations and Chief Inspector Gosse, the Community Liaison Officer, and agreement had been reached on the handling of the demonstration. But the officer in charge of policing the demonstration had different views about this and is said to have observed "Who ..... is Gosse? I am in charge here."

51. So important is it to avoid confusing consultation with control that some advocates of reform have refused to support the concept of consultation for fear that it might be adopted and then paraded as an adequate substitute for any change in the present constitutional arrangements. We have not taken that view as we think that the machinery for consultation, if well designed, could be important enough for it to be an ill-advised mistake not to take advantage of it. But the corollary is that it must be recognised for what it is and only for that. What is needed is both consultation at the local level and accountability or control at the force level.

52. The distinction between local consultation and central control should never be blurred; they are essentially separate mechanisms, but there could well be an advantage for the control mechanism if it had a direct means of communication with the consultation machinery, for lessons derived from one local area could easily be of value to other areas. It seems to us that the simplest way of establishing this link would be to give consultative committees a right of access to the Police Authority. This could obviously be a means of taking to higher authority some representation which had been made to the police locally but had failed to get a response; but it could also be a means of telling the Police Authority of some significant improvement which a local consultative committee had managed to achieve and was sadly needed elsewhere.

## **CENTRAL GOVERNMENT**

53. The second factor bearing on the position of the police in any society is the place that the central government ought to occupy. The accepted wisdom on this question has changed over the years, in some respects only gradually and almost unnoticed at the time. It is therefore proper that the question should be examined in a rational way and an informed decision taken. We do not claim any monopoly of wisdom about this and indeed the arguments are fairly finely balanced, so we would welcome a study of the subject in greater depth than we have the resources to undertake. All that we can attempt to do here is to set out the considerations which seem to us to merit attention.

54. Traditionally British society has set its mind firmly against the idea of a national police force, centrally controlled, as a potentially dangerous step in the direction of a police state ruled by a dictator. The preference has always been for local forces, locally controlled, though inevitably, with the passage of time and the greater mobility of criminals, this system has had to be modified in two respects; the number of forces has been reduced and their size increased, and the central government, though accepting no responsibility for the police outside the metropolis, has come to play a larger and larger part in their operations, mainly through the medium of circulars issued to chief constables and police authorities, conferences of senior police officers and central government officials to encourage common procedures, and the influence exercised by Her Majesty's Inspectorate. The latest additions to this trend towards centralisation have been the creation of joint forces and the establishment of the police computer and the National Reporting Centre, which is a mechanism operated by the Association of Chief Police Officers for co-ordinating the assistance given to forces suddenly facing a need for greater manpower from other forces not under the same degree of pressure.

55. Each of these developments has been a logical adaptation of the system of policing the country devised in order to meet changing circumstances and needs; none of them has been made as a conscious and deliberate change of attitude towards the concept of centralisation, but that is clearly the direction in which they point, and the question that it is pertinent to ask is whether the trend towards centralisation in the interest of greater efficiency of operation is likely to continue at a pace which will make it more sensible to abandon the present system altogether and create a national police force, and whether this would really be such a dangerous step as has been assumed hitherto.

56. There are two principal arguments in favour of a national force - the further pursuit of efficiency and the possibility that the original dislike of the idea was based on a fallacy. There is little doubt that only the central government can be expected to provide the resources

that are needed for some of the tasks that fall to the police at the end of the 20th century. The compilation of an adequate library, the management of an appropriate programme of research, the ability to check on mistakes made locally and the pursuit of the necessary degree of continuity and coordination are all matters that can be more logically handled at the centre of what is after all a small country in terms of area. However these matters can be handled centrally without also requiring central control of a unified force.

57. The original prejudice against a national police force was widely accepted by all shades of opinion and was based on the assumption that if ever there was a danger of a dictatorial regime coming to power that danger would be rendered greater if there was already in existence a national force which could be taken over at one stroke and used to eliminate any democratic resistance. That argument has an immediate appeal but it is doubtful whether history endorses it. There is some evidence to support the view that the usurpation of power by Hitler and Mussolini was helped by the existence of small local forces that were too weak to control the activities of the German and Italian gangs of fascists.

58. Against these arguments there still remains the enduring strength of the desire people have to influence the way they are policed, and the increasing dislike of the remoteness of those who govern them, which gives rise to feelings of frustration and the breakdown of law and order. This in turn gives more work and difficulties to the police and if they give way to the temptation to meet toughness with toughness the cycle of animosity is perpetuated. Those who argue in favour of local control seem to us to have the stronger case; we do not regard the case for centralisation as totally invalid but we think it is outweighed by the predominant need to establish a working relationship between the public and those who control the police. If the latter are not accessible there can be no working relationship and the cycle of violence and counter-violence will continue on its downward path. This consideration seems to us to outweigh all others in any context but particularly in that of Northern Ireland, where the remoteness of London, both geographical and psychological, is more keenly felt than in any other part of the UK.

### Central Government and the R.U.C.

59. There is also the temptation, to which governments seem increasingly prone to fall, to manipulate affairs to suit their own ends whenever they can but especially during times of unrest. In this connection it is noteworthy that the Police Authority in Northern Ireland was originally established in 1970 at least partly as a means of removing control of the police away from the provincial government. It would be a retrograde step, now that there is no provincial government, to hand control over to the central government.

60. It may of course happen that this point will be settled within the foreseeable future on political grounds rather than purely police considerations. If the moves towards a new form of devolved government for Northern Ireland, which at the time of writing appear to be receiving some cautious consideration in political circles, were to result in the establishment of a new provincial government commanding broadly-based respect, it is possible that control of the police would be one of the matters taken over by it.

61. In the absence of any such development it is possible to envisage a hybrid solution, the RUC being the direct responsibility of the Secretary of State without any comparable changes being made in Britain. Despite its attraction of simplicity we reject this idea, partly for the general reasons already given but also because one of the main difficulties - if not

the main difficulty - facing the RUC is that of winning the acceptance and support of a substantial section of the population. That task would be rendered more rather than less difficult if the RUC were to become constitutionally as well as putatively an arm of the London government.

62. This is not to say that the central government should play no part at all in the management of the RUC. We believe that the concept of a partnership between central and local influence is fundamentally right and that what has to be tackled is the balance between them. The influence of the central government is always potentially a helpful check against anything going badly wrong with local control and in the particular case of Northern Ireland that could be especially important. It is, however, right to say here that whatever power and influence is exercised by the Home Office, or the Scottish or Northern Ireland Offices, over police forces outside London, this should be subject to the controlling authority of Parliament. The reluctance of successive Home Secretaries to answer any question about the police outside London is constitutionally sound only so long as he does not shirk responsibility for his own part in what is done in the provinces. This point has recently assumed particular importance in England and Wales because of the tendency of the Home Office to intervene financially and over the provision of supplies, both matters which the legislation ascribed to the police authorities; but it is equally valid in relation to Northern Ireland and should not be lost sight of.

### Her Majesty's Inspectors of Constabulary

63. The one aspect of the central government's activities which seems to us to call for detailed comment is the composition of the inspectorate. It is obvious enough that Her Majesty's Inspectors must be people of sufficient stature to carry weight with chief constables but it does not follow that they must necessarily be policemen, as has been the practice hitherto. While that has the advantage of familiarity with technical aspects of the work, it can also have the disadvantage of the absence of fresh minds; and we believe it would be worthwhile to appoint some inspectors of constabulary from other walks of life, such as industry, where people have gained experience of running large organisations and have shown a grasp of the problems involved in managing people. This would also have the advantage of greater credibility in the eyes of the public; the spectacle of the police inspecting themselves does not carry a great deal of conviction.

## PART 4. THE HEART OF THE MATTER

### CONSIDERATIONS RELATING TO CHANGE

64. We must now ask ourselves what changes in the Northern Irish law are both desirable and practicable in the light of the divisions in the population of the province. This involves an examination of what powers of control should be exercised over the police, and by whom. Inevitably these questions are linked and so must be the answers. An interesting parallel is the debate which took place some years ago about the powers and composition of the House of Lords during which it became very clear that there was absolutely no possibility of giving increased powers of revising legislation to an upper chamber of Parliament unless its composition could be made more acceptable than that of the present House of Lords, but that if agreement could be reached about its composition then the question of its powers might be at least worth discussing. The same principle must apply in relation to control over the police and yet for an orderly discussion of these subjects it is necessary to examine them separately. We therefore believe that the only practical way forward is to ask ourselves, first, what powers of control over the police ought to be exercised on behalf of the public they serve by an authority acceptable to Parliament, the public and the police themselves; and then to consider how that authority should be constituted.

### POLITICS AND THE POLICE

65. However, before examining either of these subjects it is necessary to arrive at a correct understanding of the relationship between the work of the police and the making of political decisions. This is a difficult area open to considerable confusion because there are two forces working in opposite directions and because people do not always recognise the real nature of what has to be done. On the one hand there is a school of thought which pleads for policing to be kept out of politics, and certainly it is the case that many chief constables have an abiding fear that local authority members sitting on police authorities may try to exercise political leverage of an improper nature for reasons which do not have a lot to do with the subject under discussion at the time. Equally it has to be conceded that the central government is not always to be trusted to keep its political objectives separate from its influence over the work of the police; some of the controversial tactics used by the English police during the 1984 miners' strike appeared to have their origin in the Government's desire to defeat the strike.

66. For these reasons we accept the need to be very wary about the relationship between policing and politics, and yet we find ourselves obliged to accept that they cannot be realistically treated as wholly separate subjects. The fact is that many decisions which have to be taken in the ordinary course of policing are inherently political - certainly anything to do with public order is frequently political - and the right question to ask is whether those decisions should be taken by a paid official, by local government politicians, by the central government or by an authority created ad hoc for the purpose, which, though it may consist only partly of politicians, is charged with these responsibilities. The first step in answering that question seems to us to be the rejection of the present system which places the onus of making political decisions on a paid official not subject to outside control. That arrangement is not fair either to the official or to the public. It may be noted that the fact that the system has not given more trouble than it has is due to the United Kingdom having enjoyed

the services of many able chief constables with sound judgement and a sensitive awareness of public needs and public opinion. Nevertheless, the system is inherently wrong and vulnerable, and it is not prudent, when devising a system, to rely for its effectiveness on the hope that one will always be able to appoint good officials.

### THE TREATMENT OF REGRETTABLE INCIDENTS

67. We should perhaps add that we do not regard the need for greater powers of control over the police as being derived purely from abstract principles concerning the way democratic societies should be governed, fundamental though these are; rather we take the view - and this despite our respect for the performance of many chief constables - that recent police history in important parts of the UK, and notably in Northern Ireland, is itself a reason for accepting the urgent need of change. The need for some authority with effective powers of supervision, charged with the making of policies and with the ability to see that these are carried out in practice, has been demonstrated quite often in recent times by the failure of the complaints system to get to the root of many disturbing episodes.

68. The present complaints system provides for complaints to be made about the actions of individual police officers who can be identified, and in some cases these complaints have been followed by the laying of a criminal charge before a court of law. An observer of these matters is, however, often left with the impression that the underling is being asked to carry the blame while the real culprits responsible for the policy he was executing are never mentioned. In one famous Northern Ireland case they were indeed mentioned (though not named) when the defendant claimed that he had been instructed in how to concoct an untrue account of his actions by four senior officers. This was not challenged in court and it is now known to have been part of the remit of the Stalker/Sampson enquiry, which, six years after the event, has produced confirmatory evidence (see CAJ pamphlet 10). It is our belief that, as a matter of police administration, it would be much less top-heavy if the power to examine this sort of episode lay initially in the ordinary routine powers of control of an authority charged with the function of policing their area.

69. The system we have at present is part of the English legal pattern of accusation and punishment. While a just system of punishment for proven wrong-doing must always be part of the right way to handle complaints we believe that what is also needed is a pattern of enquiry more akin to the inquisitorial approach used in some continental countries, designed both to find out what actually happened and so make it possible to improve the service, and also to establish which officers ought to be charged either for a criminal<sup>4</sup> or a disciplinary offence, whether any complaint has been made or not. This type of approach would fall quite naturally within the routine functions of a police authority wanting very properly to know what, if anything, went wrong in the conduct of its force and to ensure so far as possible that the same thing will not happen again.

4 The ultimate decision in relation to a criminal charge should of course remain with the Director of Public Prosecutions.

70. There is moreover a further advantage which would be made easier to achieve in this way. We have referred above to the present emphasis on trying to identify the actual performer(s) of the offending behaviour to the exclusion of any responsibility properly attaching to his superiors. If all officers of whatever rank concerned with such matters knew that they were themselves vulnerable, even if only in a disciplinary context, they would be more likely to ensure that nothing improper was done by any of the men under their command. This would not only be much fairer in terms of natural justice but we believe it would tend to reduce the number of disturbing episodes; and it could come about much more easily and naturally as part of an enquiry conducted by the police authority in the ordinary course of business than by invoking the complaints procedure.

71. It is only necessary to add that in the more serious cases the initial administrative enquiry by the police authority may not be sufficiently powerful or formal to elicit the truth. In such cases the police authority should have the power to set up a tribunal of enquiry with the ability to sub-poena witnesses. This is not a tool that should be used frequently or lightly but it is vital for public confidence that the most serious cases should be dealt with openly and not by internal enquiries, the reports of which are confidential and not published. Indeed this is so important that we think the Secretary of State should have the same power in case the police authority might be reluctant to take the initiative. We therefore welcome the proposed art. 83 of the Police and Criminal Evidence (NI) Order, which allows the Secretary of State to cause a local inquiry to be held into any policing matter. But we would like to see the same power granted to the Police Authority.

#### **POWER OF CONTROL: Balancing Accountability with Independence**

72. Having, then, studied the history of this subject, analysed the present situation with all its faults, ambiguities and contradictions, and having related it to the general principles which a modern democracy must try to incorporate in its institutional arrangements, we are forced to the conclusion that the clearest and simplest way of reforming the law would be to place on some acceptable and accountable authority the function of policing its area<sup>5</sup>

<sup>5</sup> In her book *Called to Account* (NCCL 1985) Ms. Sarah Spencer argues that if police authorities are to be given the responsibility for policing they must necessarily be given the duty to enforce the law and therefore this duty in the hands of a police officer must no longer be his own original duty but one delegated to him by the authority. She envisages that if this change were not made there could be continual conflict between the police and the authority, each claiming the right to decide in a given situation what might or might not need to be done. In theory this is so and in the last resort no doubt the courts would have to decide the issue, but we do not advocate removing the constable's traditional authority because: (i) it would be such a fundamental change that we think it should be approached with great caution; (ii) as explained below, we think it would be quite wrong for police authorities to interest themselves too much in detail and if that can be avoided then conflict should be a rare occurrence; (iii) the existence of a duty belonging to an individual as well as to the authority employing him/her is not an unknown phenomenon and does not normally cause trouble; social workers for instance have certain statutory duties to exercise their professional judgement and act on it, and these exist alongside their authority's overall responsibility for the service; (iv) to replace the constable's personal duty by a delegated one would run counter to the basic principle that someone to whom a discretion is entrusted cannot act under direction but must exercise the discretion personally.

- in our case almost certainly the whole of Northern Ireland, for there seems to be no need to divide the province up.

73. We have described the new authority we would like to see created as needing to be both acceptable and accountable. These qualities are of course two sides of the same coin for no authority that is not itself accountable has any hope of being acceptable. So it is necessary to consider to whom and in what way it should be accountable. It will of course publish a report of its work annually and if Northern Ireland ever achieves some form of provincial government the reports of the Police Authority would presumably be laid before any proposed new Assembly. In the meantime the reports should be made to the Secretary of State and laid by him/her before Parliament. We think also that the Authority should be accountable to the Commissioner of Complaints in the event of anyone suspecting it of being guilty of maladministration; but in the last resort, and particularly if it should be thought to have failed in its statutory duty of policing its area, it will of course be accountable to the courts.

74. The change we have suggested would at one stroke reverse the mistakes and eliminate many of the arguments of recent years and would allow policing policies to be decided in the name of the public who are being policed rather than by the people doing the job.

75. The enlargement of the police authority's remit to include responsibility for the policing of its area will have a marked effect on its position in the body politic. The fact that its functions must include the formulation of broad policies - not, as we say below with some emphasis, the giving of instructions in individual cases - on such subjects as the weapons available to the police, the objectives to be sought after when policing funerals, or routing (or forbidding) demonstrations, the right use of force, patrolling on foot or responding to trouble with mobile squads, the stopping and questioning of people etc - all matters that at present are decided by the chief constable - will inevitably bring its decisions to the notice of large numbers of people who today may be hardly aware that there is such a body as the police authority. And this higher profile that will inevitably accompany its increased responsibilities will make it especially important that, within the limits imposed by the need for confidentiality where the work requires it, there should be good communication with the public. It is as important that the police authority should have its fingers on the pulse of public opinion as that the police themselves should; and it will be very important that the public should understand and approve of the police authority's work. That approval will be an essential element in achieving the acceptability of the police which is the underlying theme of this paper.

76. As one example of the way in which we believe the police authorities of the future should cultivate relationships with the public we would suggest that they should from time to time publish pamphlets of manageable size giving the most important information they wish the public to hear. These pamphlets could quote selected passages from their annual reports and in particular should, subject to the needs of security, set out the policies they

have adopted which will form the Chief Constable's remit. This will enable the public to form their own opinions on controversial incidents against a background of known policies and make it possible both to challenge the actions of the police if they appear not to have observed the policy concerned, and also to refrain from time-wasting challenges which they might otherwise, and out of ignorance, be tempted to make. Equally the RUC Code<sup>6</sup> should be published so that the public can measure police conduct against the standards laid down.

77. We are of course aware that the change we have suggested is a very radical one in relation to both the present situation and the trend of recent years, but our study has forced us to the conclusion that that is exactly what is needed. We recognise that the suggestion may generate instinctive opposition among many people who will fear that it implies going back to the bad old days of corrupt control and jeopardising the independence and impartiality of the police. While our proposal would of course involve a considerable alteration in the balance of power, we do not think these fears are justified. We do not see for instance any need to tamper with the constitutional ability of the constable to enforce the law under his own original authority. There is no inherent conflict between this cherished ingredient of the present arrangements and the making of broad policy by people appointed for that purpose. Nor do we see any need to drop the existing section 6 (2) in the Northern Ireland Police Act which provides that the direction and control of the force is the function of the Chief Constable.<sup>7</sup>

78. In saying that the present system is inherently wrong and vulnerable we have to acknowledge that it evolved over a long period in response to public awareness of the dangers of political manipulation, which we accept are equally to be avoided. At different periods before, during and after the sittings of the Royal Commission the debate about how to govern the police and yet preserve their impartiality was intense and occupied some of the best minds in the country. In saying that the answer which resulted was wrong we do not wish to suggest that the Royal Commission was not aware of what they were doing, that their work was not sufficiently thorough or that, had the choice been ours at that time, we would necessarily have chosen differently. What we are doing in 1988 is re-examining the problem with the advantage of hindsight and the experience of the intervening years during which the present system has been subjected to stresses and strains that no-one could reasonably be expected to have envisaged in the early 1960s.

79. The nervousness in the 19th and 20th centuries about either local or central political control is a reflection of the fear of manipulation by any sectional interest which, as we have seen, has been part and parcel of the history of policing - and rightly so. It is vital that the

6 The attitude of the public to the RUC would be much more favourable if the excellent document entitled "Professional Policing Ethics" which is available only in the library of the House of Commons could be widely circulated in Northern Ireland.

7 It is satisfactory to have this explicitly stated in the law, partly to avoid an over-zealous police authority interesting itself in too much detail and partly so as to impose a statutory duty on the Chief Constable, thereby making it possible for the courts to intervene if he should fail to exercise proper control of his force.

objective of the police should be to treat everyone as equal before the law. It is idle to deny that this does not invariably happen, perhaps especially in Northern Ireland, but we are concerned here not so much with human failings as with policies and the process by which they are decided upon. So no method of control must be contemplated which will carry with it a danger of one section of society being in a position to misuse a position of power to its own advantage at the expense of others.

80. That much is beyond dispute, but the problem arises when one tries to marry that principle with an attempt to allow the people in a democracy to influence the way they are policed. Policies relating to any public activity are usually decided in democracies by the majority for the time being, and these change from time to time. In general terms therefore society is accustomed to the prospect that a given policy in relation to, say, education or social work or housing may not be immutable. Nor indeed do we demand that policing policies should never change because we know that the circumstances with which the police have to cope may change. But it has been broadly accepted that it is undesirable that policing policies should change as frequently as political fortunes and in particular that, because of the power which the police have over people, there should not be the same level of direct political input into the making of policing decisions as there is in other subjects. That consensus about what it is desirable to avoid originated in Britain where the local authority element in the composition of police authorities posed an obvious potential for a dangerous degree of local partisan interference with the police, and it resulted in the recommendations of the Royal Commission and their expression in the English and Welsh Act of 1964, followed by the Scottish Act of 1967, in both cases leaving the democratic framework in position but giving it only a token amount of power. It was foreseeable, but not entirely logical, that that arrangement should be carried over into the Northern Ireland Act of 1970 despite the major difference in the composition of the Police Authority derived from the acceptance of the Hunt Committee's recommendation that its members should all be appointed. It is because of this history of why the Police Authority in Northern Ireland came to be so emasculated that we have felt it necessary to examine the argument about the danger of political interference - and also because it is legitimate to look forward to the day when some kind of *modus vivendi* may be achieved in Northern Ireland, thus paving the way for a different way of selecting the members of the Police Authority.

81. The question therefore that we have to ask ourselves is whether the Royal Commission chose the right path between the Scylla of improper political interference and the Charybdis of the absence of responsibility to the community of those who make the important decisions, many of them political in nature. The difficulty of finding this path was well expressed in Professor J B Mitchell's evidence to the Royal Commission when he said

*"The neutrality of the force, and thus its insulation from political bodies, is clearly desirable but complete autonomy, while aiding neutrality and possibly leading to greater efficiency, is inconceivable in a society which expects those who wield power to be ultimately responsible to the community."*

82. At one stage it looked as if the Commission might try to resolve this difficulty by making a distinction between, on the one hand, control over the law enforcement duties of the police and, on the other, control over matters of policy, the concentration of resources and priorities in selecting matters for police attention, which the Commission were disposed to regard as proper subjects for the influence of the community; but when they came to draft

their report and when the 1964 Act was passed by Parliament no provision was made for the police authorities to have the power to decide such things.

83. To be fair to the Royal Commission, there is little doubt that their report reflected the prevailing attitude of the day. Quite apart from the need to preserve the constable's impartiality and independence, they received evidence that it was essential for a police officer in many situations to be able to act speedily on his own initiative without reference to a superior authority and without waiting for a committee's decision. And in line with this they received no evidence in support of the idea that chief constables might be local authority servants, though the Association of Municipal Corporations submitted that a police authority at that time was already empowered to do whatever was necessary within the law to ensure that its area was efficiently policed, including giving instructions to the chief constable on how to do this. That, however, was very much a minority view, though it represented a school of thought which continued to have adherents after the Commission reported.

84. The Royal Commission's own assessment of the situation in 1962 was that the existing anomalies, contradictions and lack of definition worked well in practice and therefore had much to commend them, though they also accepted that constitutionally the situation was not proper. It is this acceptance of a characteristically English fudge because it was not giving too much trouble at the time which has been increasingly questioned since. Under the influence of greater tensions in society the system has not worked so well as before and students of the recurring debate are increasingly inclining to the view that to accept a fundamental constitutional impropriety is to invite unending trouble. This is why there is now a considerable body of opinion in favour of a new Police Bill designed to draw the line between the two dangers in a different place from that chosen by the Royal Commission 26 years ago.

#### ADMINISTRATIVE PRACTICE

85. It is our belief that part of this debate, which generates a great deal of heat, could be avoided if there was general acceptance of the fundamental principle of good administration that the level of authority at which any question should be decided is the lowest level that is competent and equipped to make that decision. If that could be agreed it would not be necessary to spend time disposing of the very understandable, and indeed proper, fears of many chief constables that any change in the present balance of power would make their job impossible. It is worth quoting two examples from quite recent times illustrating how far some people would like to go in the direction of detailed control on behalf of the community.

86. The first example represents only an aspiration. In 1962 the Greater London Council advocated the creation of a Police Authority for the Metropolis composed of elected representatives of the GLC and the London Borough Councils, to which the police would be responsible in matters of policy, practices and operations. They would be working under a delegated authority which could be extended, limited or withdrawn at any time. The document explaining these proposals gave as an example the possibility that the Police Authority might see fit, in the case of a particular incident about to take place, to instruct the police not to pursue the normal practice in such cases. It would seem that if a police authority were to attempt to regulate police work case by case they could well be in danger of interfering with the principle of equality before the law, but they would also undoubtedly

be transgressing the principle of good administration enunciated above. There is a strong case for an authority to be the right level for the formulation of broad policies, but none at all for it to be the right level for deciding on the detailed interpretation and application of those policies in individual cases (though the function of formulating policies must carry with it the obligation to see that those policies are implemented; and that in turn may require the authority to investigate the conduct of the police in a given case where there is a reasonable suspicion that they deviated either from the law or from the policy concerned.)

87. The other example is one of actual history. It is on record that in 1983 there were 56 meetings of the Greater Manchester Police Committee and its sub-committees and that the Chief Constable had to submit 243 reports on a wide range of subjects. Such a level of attention to detail must have been enormously expensive in terms both of the time taken to prepare the reports and of the time spent by the relevant officers at meetings. One's instinctive reaction is that while the members of the Authority could be commended for their enthusiasm and their own hard work and determination to master their subject, they carried their enthusiasm to Gilbertian lengths of absurdity. In fact, though, it is only fair to concede that they felt driven to these lengths by the difficulty they experienced in getting from the Chief Constable what they regarded as information that was properly due to them. So this case is simultaneously an illustration of the wrong place at which to draw the line between the responsibilities of the Police Authority and the Chief Constable, and also of what can happen if those responsibilities are not clearly defined in law.

#### APPEAL IN CASES OF DISPUTE

88. It is difficult to envisage ways of drafting a new Police Bill which, while giving the authority power to make policy, could effectively prevent them from interesting themselves in the minutiae of police work other than by giving the chief constable the power which he has in Britain today to appeal to the central government. We are in general reluctant to see the central government exercise more power, as we think there is a danger of that tendency itself going too far; but this is an existing power and it seems to us to be exactly the sort of appeal function which rightly belongs at the centre and can appropriately be exercised largely by the Secretary of State on the advice of the Inspectorate, especially if our recommendations (see para. 63) were to be adopted that a number of inspectors be appointed with experience of running large organisations other than the police. Any system of administration is only as good as the people who operate it, and in the last resort there must be some dependence on common sense, a sense of proportion and the need to convince others with a detached outlook of the rightness of what is contemplated.

89. One possible refinement of this appellate function would be to give both the chief constable and the police authority the right to appeal in contentious cases, especially those not requiring immediate decisions, against the Secretary of State's decision to a Select Committee of the House of Commons.

#### CONTINUING INDEPENDENCE

90. In our view there is only one rider that needs to be attached to the proposal to make police authorities responsible for policing their areas. It is of course essential that nothing should be done to disturb the freedom of judgement and action of the police officer on the ground in his handling of particular cases (though, as we have said, this freedom does not,

and never should, place the officer above the law). This is a principle which, as we have explained, originated with the appointment of the very first constables and has been repeatedly confirmed by every authority throughout the centuries since. There is no reason why the change we propose should conflict with the retention of this principle but it could be just as well if the new legislation made that clear.

## THE POSITION OF THE CHIEF CONSTABLE

91. We must now draw together some of the threads in the reasoning which we have propounded and see whether they lead to a conclusion which is less of a fudge than the present arrangement; indeed ideally what we seek is a relationship between a chief constable and his authority that is clear and acceptable to both parties as well as to society and therefore to Parliament.

92. We have suggested that policies and priorities in relation to many tasks that fall to the police and which closely affect the public should be decided by police authorities who should therefore have the statutory responsibility for policing their areas, though they should not concern themselves with detail or with particular cases. They would be advised by their chief constables who would be responsible to them for executing the policies laid down, but the chief constables should be free to decide the manner of doing that and would have the direction and control of the men and women in their forces most of whom they would themselves appoint. It seems to us that, however the functions of the police authority and the Chief Constable are divided, no arrangement will work smoothly unless it is regarded on both sides as a partnership rather than a struggle for power. Nevertheless it will be easier to avoid disputes in borderline cases if it is accepted by all concerned and specified in the legislation that the authority is the proper body to decide policies and priorities and that, within the parameters thus laid down, the chief constable is free to decide how he gives effect to those decisions. However, in the last resort, and especially if there should be a dispute as to whether the choice of a particular practice was a matter of method or of policy, the final say both about where the dividing line should be drawn, and indeed about what methods should be adopted, must rest with the authority.

93. Some may think that division of functions points in the direction of chief constables being the servants of their authorities. We have however noted that the Royal Commission not only rejected that option but recorded the fact that they received no evidence expressly advocating it (though one submission went fairly close to doing so.) In many respects we have not thought it right to accept for today the thinking of 1962 but in this matter of the relationship of chief constables to their authorities we hesitate to recommend a change which would depart from so much theory and past practice. Nor do we think it necessary because it is common practice for people to be engaged on a special contractual basis to perform particular functions.

94. The legal concept of an agent - someone who does something for another person or authority - embraces both the servant, who can be told both what to do and how to do it, and the contractor, who undertakes to perform a certain function for the principal but is free to decide the manner in which he will provide the service, and free also himself to employ any staff that he may need for that purpose. The precise way in which a contractor relates to his principal will depend on the detailed wording of the contract for services and it will of course be a matter of supreme importance how a chief constable's contract for services is drafted. We do not think it appropriate in a paper such as this to embark on a dis-

ussion of the details of such a contract, but it is a matter of common knowledge that there are precedents for very loosely drawn contracts as there are also for contracts which tie the contractor down to large numbers of very detailed obligations. This seems to provide enough latitude for the drafting of a model contract which could serve as a guide for police authorities when formulating their own requirements. The contract could easily be so drafted as to require the Chief Constable to have regard to supplementary guidelines and codes of practice when executing the Police Authority's policies.

## CONTROL BY WHOM?

95. This brings us to what is perhaps the most difficult question of all - to what kind of a body should the public entrust the function of policing its area? At the outset it should be stated frankly that it is probably not possible to design the make-up of a police authority, even for a relatively peaceful society, which will be devoid of risks and hazards. Human nature is fallible and we have to live with that fact. All that can be done is to provide for the expression of the public's legitimate wishes, combined with some machinery of checks and balances which can come into operation if local control proves to be faulty. The existing system of 3-cornered partnership, with the central government in one corner, is intended to do just that and, as we have said above, we believe the essence of that relationship should be retained but that the share of power exercised by the police authority should be enhanced.

96. In a relatively peaceful society it seems hard to avoid the conclusion that the best way of giving expression to the public's desires is to have a police authority consisting at least largely of people elected by the public, either generally for all local government work, or conceivably in a separate election for the specific function of policing. Only in this way will it be possible accurately to gauge the public's preferences in the many choices that have to be made in a police service today. To give just one example by way of illustration, when a force is faced with a limited budget, which in turn imposes a limit on manpower, it may be necessary to choose between an inadequate response to rising crime or abandoning altogether certain traditional police functions. One English chief constable is said to be considering commissioning an opinion poll to discover the public's preference on exactly this question. While he deserves credit for wanting his policy decisions to give effect to the public's wishes, one cannot help feeling that he ought to be able to rely on the elected representatives on his Authority to reflect the public's views, for why else were they elected? This is exactly the sort of issue on which it is perfectly proper for the public to have a preference and any system which does not provide for the expression of that preference will run into trouble.

97. The difficulty in Northern Ireland is of course that the public does not speak with one voice and a significant proportion of one part of it is in any case at loggerheads with the police. For this reason we cannot dissent from the generally accepted view that a police authority here consisting largely of elected representatives cannot be contemplated at present.

98. The case for the democratic control of the police forces in Britain has in recent times been made powerfully by Ms. Sarah Spencer, Messrs Jefferson and Grimshaw, Mr Laurence Lustgarten of the University of Warwick, Lord Gifford, QC, and others. We have gone into some of the arguments involved in this debate because they are part of the background to consideration of the system here and because they are, in Britain, part of the

question whether there should be more accountability of the police at all. However, for the time being we have to accept the reality that fully democratic accountability is not a realistic option in Northern Ireland. Nor need we be greatly detained by the argument between those in Britain who favour the retention of JPs as members of police authorities and those who would dispense with them. Our argument has confined itself to the need for constitutional propriety to be observed rather than neglected, and it is after satisfying ourselves of this need, here as elsewhere, that we have to consider who should do the controlling.

99. In considering that question we find it hard to improve much on the work of the Hunt Committee which is enshrined in the present law, for the list of the interests from which nominees should be chosen seems very proper, though there is one important omission. In most societies the police have the handicap that they are regarded by the less privileged as the protectors of the middle and upper classes and the oppressors of people like themselves. This picture is often not entirely without foundation and it is important because it is a factor making for a divided society. It is particularly important in Northern Ireland where the class division - though this is not always recognised - is second only to the religious/ethnic/political division of Catholic/Celt/Nationalists from Protestant/Anglo-Saxon/Unionists. If there is ever to be any confidence in the police in the working class areas of Northern Ireland it will not be achieved without some visible representation of those areas in the membership of the Police Authority. We have addressed this matter in Appendix 4 where, in a draft schedule to a possible new Police Bill, we list the organisations which could be given the right to nominate candidates for appointment to the Police Authority.

100. There is one departure from the normal practice which we think should be tried. We have referred above to the difficulty experienced in local government generally when part-time members of authorities in various fields are theoretically in control of fulltime and very able professionals with a far greater knowledge of the technicalities of the work concerned. Society has not adapted the mechanics of government in keeping with the changes that have taken place in what is supposed to be governed. In some cases of government appointments there is now a full-time chairman, but that is usually as much as has been thought necessary or desirable. In our view the time has come to recognise that the old pattern puts the members of the governing body at such a disadvantage that it is unrealistic to expect them to govern effectively; and we believe that a very suitable place to begin is the Police Authority for Northern Ireland, partly because Northern Ireland is often ahead of the rest of the UK in adapting to changing circumstances, and partly because we are dealing with an authority composed of appointed members which should render the change in one way relatively easy to make. Accordingly we suggest that there should be relatively few members but that they should all be full-time and paid appropriately. One effect of this is likely to be that they will be both more committed to the work and more effective.

101. It is worth mentioning here that Dr Ian Oliver, the Chief Constable of Central Scotland, in his recent book Police, Government and Accountability, sees the Northern Ireland system of appointing the members of the Police Authority as one which could profitably be copied in Britain in order to eliminate the danger of local party political influence.

## THE APPOINTING AUTHORITY

102. This takes us to the identity of the appointing authority, at present, and quite logically, the Secretary of State. The chief disadvantage of this is that the Police Authority is widely

regarded (to some extent unfairly, but nevertheless it is so regarded) as too much in the Government's pocket and to too great an extent apologists for the police. This perception could change to a large extent if its members were given the powers and responsibilities of control which we advocate, but it would be unlikely to disappear altogether unless the legislation provided that though the appointments were made by the Secretary of State the people concerned were nominated by specific organisations listed in the Act. The present law stipulates that the members shall be representative of certain interests which are listed in Schedule 1 of the Act. It would be only a small adaptation of that approach to specify the organisations empowered to nominate someone - e.g. the member of the Authority representing the trade union interest should be nominated by the Northern Ireland Committee of the Irish Congress of Trades Unions. In this way the Secretary of State would retain the final say in the decision to appoint, which would enable him to achieve a satisfactory balance in the membership of the Authority, but it would be clear to the public that the members were people chosen initially by representative organisations.

## THE STAFF OF THE POLICE AUTHORITY

103. The Police Authority will clearly need its own staff, as it does today. The new legislation should empower it to make its own appointments, not necessarily from the Civil Service, though since its budget will come from the Northern Ireland vote the number of staff and their level of salaries must be approved by the Northern Ireland Office.

104. One gap in the Police Authority's present staff is worth noting. They should have their own legal adviser, for there are many questions they have to consider which have legal implications, and their ability to communicate with the Director of Public Prosecutions would be greatly facilitated by the presence of a suitably qualified lawyer.

## APPENDIX 1

### SUMMARY OF RECOMMENDATIONS

#### Powers and Duties of the Police Authority

1. Police authorities should have the statutory duty of policing their areas. (para 72)
2. Police authorities should be required to establish policing policies and priorities and see that they are carried out rather than to interest themselves in detail. (paras 92 & 85-87)
3. Police authorities should themselves enquire into apparently regrettable police behaviour both in order to improve the service and to try to establish whether any officers should be charged by the DPP. (para 69)
4. In the most serious cases of alleged malpractice police authorities and the Secretary of State should have the power to establish tribunals of enquiry with the ability to subpoena witnesses. (para 71)
5. Police authorities should publish annual reports and be accountable for good administration to the Commissioner for Complaints and to the courts for any failure to carry out their statutory duties. (para 73)
6. Police authorities should cultivate good relationships with an informed public and to that end should publish suitable pamphlets describing the policies they have adopted and any other material necessary for public understanding of policing. (paras 75-76)

#### Membership of the Police Authority

7. The members of the Police Authority for Northern Ireland should be appointed by the Secretary of State on the nomination of certain representative organisations. (para 102) They should be relatively few but should work full-time. (para 100)

#### Powers, Duties and Status of Chief Constables

8. Chief constables should retain the direction and control of their forces. In Northern Ireland the Chief Constable should appoint all the subordinate officers except the senior officers, who should, as now, be appointed by the Police Authority. (para 77)
9. The relationship between chief constables and their authorities should be governed by the terms of their contract for services together with the guidelines and codes of practice issued by the authorities. (paras 91-94)

#### Responsibilities of Individual Police Officers

10. Individual constables should retain their independent responsibility to enforce the law. (paras 77 and 90)

11. Police officers of all ranks should be responsible for the behaviour of the men under their command as well as the men themselves being responsible for their own actions. (para 70)

#### Accountability to Parliament

12. Ministers, including the Secretary of State for Northern Ireland, with political responsibility for policing outside London should be answerable to Parliament for their actions (para 62).
13. In cases of dispute between a chief constable and his police authority over the power to make decisions the Secretary of State concerned should exercise an appellate function (para 88) with the possibility in appropriate cases of a further appeal being made to a Select Committee of the House of Commons (para 89).

#### Security Considerations

14. The Chairperson of the Police Authority for Northern Ireland should be kept fully informed of all security issues affecting the work of the R.U.C. and should be empowered to decide, in consultation with the Secretary of State and the Chief Constable, how much of such information should be shared with other members of the Authority. (para 39)

#### Her Majesty's Inspectors of Constabulary

15. Some of Her Majesty's Inspectors of Constabulary should have experience of managing large organisations other than police forces. (para 63)

#### Local Consultation Committees

16. Any local consultation committee which may be established in Northern Ireland should have a right of direct access to the Police Authority. (para 52)

#### Staffing of the Police Authority

17. The Police Authority for Northern Ireland should have its own legal adviser on its staff. (para 104)

## APPENDIX 2

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## APPENDIX 3

### EXTRACTS FROM THE POLICE ACT (NORTHERN IRELAND) 1970 (as amended)

#### Establishment of a Police Authority for Northern Ireland.

1. (2) It shall be the duty of the Police Authority to secure the maintenance of an adequate and efficient police force in Northern Ireland and to carry out all such functions as are conferred on them by this Act.

#### Provision and maintenance of equipment.

5. The Police authority shall, subject to any regulations made under section 27, provide and maintain such vehicles, apparatus, furniture, fittings, clothing and other equipment as may be required for the purposes of this Act and may enter into arrangements with any Government department or public or local authority for the maintenance and repair, on such terms as the Authority with the approval of the Ministry may determine, of vehicles, apparatus or other equipment used by that department or authority.

#### Strength and operational control of the police force, etc.

6. (1) The Police Authority shall, subject to the approval of the Secretary of State given with the concurrence of the Treasury, from time to time determine the maximum number of persons of each rank which is to constitute the establishment of the police force and the maximum number of persons who may be appointed as police cadets and traffic wardens respectively.

(2) The police force, police cadets and traffic wardens shall be under the direction and control of the Chief Constable.

#### Appointment and removal of senior officers of the R.U.C.

7. (1) As from the appointed day the Police Authority shall, subject to the approval of the Secretary of State and, in the case of senior officers other than the Chief Constable, after consultation with the Chief Constable, appoint each senior officer of the Royal Ulster Constabulary and every senior officer holding office immediately before that day shall be deemed to have been so appointed by the Police Authority.

(2) The Police Authority with the approval of the Secretary of State may call upon any senior officer of the Royal Ulster Constabulary to retire in the interests of efficiency and (without prejudice to the foregoing) shall, if required by the Secretary of State, call upon the Chief Constable so to retire.

## Liability for wrongful acts of members of the police force

14. (1) Proceedings may be brought against the Chief Constable for the recovery of damages in respect of torts committed by members of the police force under his direction and control in the exercise or purported exercise of their functions in like manner as proceedings may be brought against a master for the recovery of damages in respect of torts committed by his servants in the course of their employment, and the Chief Constable shall in respect of any such first-mentioned tort be treated for the purposes of such proceedings as a joint tortfeasor.

(2) There shall be paid by the Police Authority-

(a) any damages or costs awarded against the Chief Constable in any proceedings brought against him by virtue of this section and any costs properly incurred by him in any such proceedings so far as not recovered by him in the proceedings; and

(b) any sum required in connection with the settlement of any claim made against the Chief Constable by virtue of this section, if the settlement is approved by the Police Authority.

(3) Without prejudice to subsection (1), the Police Authority may, in such cases and to such extent as they think fit, pay any damages or costs awarded against a member of the police force in proceedings for a tort committed by him, or any costs incurred and not recovered by him in any such proceedings, and any sum required in connection with the settlement of any claim that has or might have given rise to such proceedings..

(4) The Police Authority may make arrangements for the legal representation of the Chief Constable or any member of the police force in any proceedings to which this section applies.

## SCHEDULE 1 - THE POLICE AUTHORITY

### Constitution

1. The Police Authority shall consist of a Chairperson, a Vice-Chairperson and not less than fourteen nor more than twenty persons appointed by the Governor to be members of the Authority.

2. (1) The powers of appointment under paragraph 1 shall be so exercised as to secure that

(a) as far as practicable the membership of the Police Authority is representative of the community in Northern Ireland; and

(b) as far as practicable the members appointed include persons representative of the interests of

(i) local authorities and other public bodies (including universities and other institutions of higher education);

(ii) the legal profession;

(iii) trade unions;

(iv) agriculture, industry and commerce;

(v) voluntary organisations having as their principal object, or one of their principal objects, the welfare of children or young persons; and

(c) a person is appointed to represent the Northern Ireland Office.

(2) The Secretary of State, shall, in connection with the making of appointments under sub-paragraph (1) (b), consult such organisations and persons as appear to him to represent the respective interests mentioned in that sub-paragraph.

## APPENDIX 4

### DRAFT CLAUSES FOR INCLUSION IN A NEW POLICE BILL

1 (1) It shall be the duty of the Police Authority to provide a police service for Northern Ireland, to devise its policing policies and priorities and to carry out all such functions as may be necessary for those purposes.

(2) In establishing and operating this service and in devising these policies the Police Authority may consider the views of any individuals or representatives of any organisations but it must have regard to the views expressed by the local consultative committees, which it shall be the duty of the Police Authority to establish in all police divisions.

2 (1) The Police Authority shall have meetings at least once every three months with representatives of Her Majesty's forces in Northern Ireland.

(2) In devising policing policies for Northern Ireland the Police Authority shall have regard to the policies of Her Majesty's forces in Northern Ireland but shall ensure that the police service is visible and active in all sub-divisions and that in joint operations with Her Majesty's forces the police play the primary role in implementing policing policies.

(3) The Police Authority shall consult at least once each year with all local consultative committees in Northern Ireland regarding their work and experience.

3 (1) The Police Authority shall engage a Chief Constable to be accountable to it for the operation of the police service in Northern Ireland and for implementation of the policies laid down.

(2) It shall be the duty of the Chief Constable to implement the policing policies devised by the Police Authority for Northern Ireland and to perform the tasks specified in his/her contract for services.

(3) The terms of the Chief Constable's contract for services shall be approved by the Secretary of State. The contract shall include a clause requiring the Chief Constable to obey any directions issued by the Police Authority and relieving him/her of any obligation to abide by the terms of the contract if they should conflict with any of the Authority's policies.

(4) The Police Authority may, either in the Chief Constable's contract for services or in devising its policing policies, require that certain tasks of the police service shall or shall not be performed in a stated manner.

(5) The Police Authority in the course of reviewing the operations of the service and the execution of its policies shall have access to all the relevant papers.

4 (1) The Police Authority shall, subject to the approval of the Secretary of State, given with the concurrence of the Treasury, from time to time determine the maximum number of persons of each rank which is to constitute the establishment of the police service and the maximum number of persons who may be appointed as traffic wardens.

(2) The Chief Constable shall appoint all members of the police service, except the senior officers and all traffic wardens, who shall be employed by the Chief Constable and under

his/her direction and control. Senior officers and traffic wardens shall be appointed by the Police Authority, but also be under the Chief Constable's direction and control.

5(1) The Secretary of State and Police Authority shall each have the power to set up a tribunal of enquiry into specific events or patterns of events.

(2) The membership of a tribunal of enquiry set up under sub-section (1) shall be determined by the Police Authority but shall include at least one member of the Police Authority, who shall act as chairperson.

(3) The chairperson of a tribunal of enquiry set up under sub-section (1) shall have the power to call witnesses, including serving police officers, to give evidence and shall have the right of access to all documents pertaining to the case.

6. The Police Authority shall submit to the Secretary of State as soon as practicable after the close of each calendar year a report on its work during that year.

7. In Part 2 of Schedule 1 to the Commissioner for Complaints Act (Northern Ireland) 1969 (public bodies subject to investigation) the following entry shall be inserted at the appropriate place in alphabetical order: The Police Authority for Northern Ireland

### Draft Schedule to proposed new Police Bill

1. The Police Authority shall consist of a chairperson, vice chairperson and not less than five, nor more than eleven, other persons appointed by the Secretary of State from a list of those who shall be nominated for that purpose by

The Association of Local Authorities of Northern Ireland  
The Bar Council of Northern Ireland  
The Law Society of Northern Ireland  
The Northern Ireland Committee of the Irish Congress of Trade Unions  
The Northern Ireland Branch of the Confederation of British Industry  
The Ulster Farmers Union  
The Senate of the Queen's University  
The Council of the University of Ulster  
The Northern Ireland Council for Voluntary Action  
The Standing Advisory Commission on Human Rights

together with such other persons as the Secretary of State may select, whether nominated by an organisation having an interest in the work of the R.U.C. not listed in this paragraph of this schedule or chosen by the Secretary of State with a view to enhancing the stature and balance of the Authority, especially from organisations concerned with youth, women's affairs, tenants' interests, community matters and the co-operative movement.

2. When inviting the organisations listed in paragraph 1 of this schedule to nominate candidates for his/her consideration the Secretary of State shall draw their attention to his/her obligation, when making appointments to a governmental authority, to have the same regard for the need for a fair and proper balance as between the main sections of the population as he/she has required of industrial companies when employing workers.

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