a fresh look at Complaints against the Police

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COMPLAINTS AGAINST THE POLICE

Committee on the Administration of Justice
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Committee on the Administration of Justice

The Committee on the Administration of Justice (CAJ) is an independent civil liberties organisation formed in 1981 to work for the highest standards in the administration of justice in Northern Ireland. CAJ is affiliated to the Fédération Internationale des Droits de l'Homme, an international human rights organisation which has consultative status at the United Nations.

CAJ's membership is drawn from both sections of the community and includes lawyers, students, community workers, trade unionists, unemployed people and academics. The CAJ is opposed to the use of violence to achieve political goals in Northern Ireland.

By carrying out research, holding conferences, lobbying politicians, issuing press statements, publishing pamphlets, circulating a monthly bulletin and alerting the international human rights community, the CAJ hopes to stimulate awareness and concern about justice issues in Northern Ireland and encourage the adoption of urgently-needed safeguards. In the Committee's view, not only are abuses of civil liberties wrong in themselves but, in the Northern Ireland context, they hinder the peaceful resolution of the conflict.

Open meetings for CAJ members and the public are held every two months to discuss a variety of civil liberties issues. Sub-groups work on an on-going basis on areas such as policing, Bill of Rights, emergency laws, international standards, use of lethal force by the security forces, juvenile justice, prisons and racism.

Membership of the Committee

Membership entitles you to receive CAJ's monthly civil liberties bulletin Just News, to take part in the work of the sub-groups and to use the CAJ documentation library and clippings service.

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Preface

This publication is the product of many months' research and discussion on the part of the CAJ's sub-group on policing. Peter Tennant was largely responsible for the drafting and editing of the text. We are most grateful to him for the many hours of work he devoted to the task. The other sub-group members were Angela Hegarty, Brice Dickson, Donall Murphy and Martin O'Brien. We are especially grateful to Liz Martin for all her typing and layout work.

This publication is intended to complement those already issued by the CAJ on policing issues. We hope that it will contribute to a greater awareness of the need for the introduction of an independent system for the investigation of complaints against the police and the feasibility of such a scheme.

December 1993

1. Introduction and Background

One of the abiding concerns of the Committee on the Administration of Justice ever since its formation in 1981 has been to do whatever can be done to foster the establishment of a just and accountable police service in Northern Ireland and thereby to improve relations between the RUC and the public. No society can exist without a police service and it is a truism, accepted alike by Government and the police themselves, that no police service can be effective in its task of deterring crime, and tracing it when it occurs, if it cannot rely on the public for cooperation and information. With a high level of paramilitary crime in Northern Ireland this is an especially important consideration and with this in mind the CAJ has studied the overall subject of police accountability as well as the specific subjects of consultation between the police and representatives of the public at local level, the appointment of lay visitors to police stations, and the way complaints against the police should be received and handled. (See list of publications at the end of this pamphlet).

Underlying factors

In saying that the CAJ has been concerned all along to improve relationships between the RUC and the public it should not be inferred that we have been thinking in terms merely of a public relations or a window dressing exercise, leaving things essentially unchanged but having somehow conned the public into taking a rosier view of the police. In the case of each of the four subjects mentioned above our recommendations have advocated effective, workable and fair systems. In two cases (of which the subject of complaints procedures is one) these have involved, in our view necessarily, quite fundamental changes from the present arrangements. Thus in the subject of this paper it is a fact that relationships between groups of people, as between individuals, depend upon perceptions, and perceptions are derived from experiences. If those experiences leave members of the public thinking that they have valid criticisms to make there has to be a workable procedure for examining their complaints and for drawing lessons about future practices from an overall view of the complaints made. The way complaints should be handled is a major theme of this paper and the subject of drawing lessons from them is dealt with in Chapter 3.

The CAJ is strongly of the view that when decisions are being taken as to how best to deal with complaints against the police in Northern Ireland the context in which the RUC operates has to be borne constantly in mind. There are two important dimensions to this context.

Emergency laws

One dimension is the high incidence of violent crime in Northern Ireland, most of it committed in pursuance of "political" goals. Obviously the police have a duty to try to prevent, detect and investigate these crimes. To assist them in these tasks they have been given additional powers by special laws such as the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1991. These Acts confer extra powers of arrest, search and

seizure, and the safeguards they contain for people detained under the Acts are significantly less protective than those which are available to people detained under the "ordinary" law (the Police and Criminal Evidence (NI) Order 1989). It is our view that these extra powers should be balanced by additional and effective requirements of accountability both to the law and to the public whom the police serve.

The emergency laws have been enacted in an attempt to protect society from so-called terrorist activities, but they have inevitably compromised traditional civil liberties and have placed police officers and citizens in highly-charged confrontational situations. Of all the cases considered by the Independent Commission for Police Complaints during the last four years, 15.7% (1,329 out of 8,421) have been ones resulting from complaints made by people arrested under the Emergency Provisions Act or Prevention of Terrorism Act. Of the allegations made in these complaints (a total of 1,601), 987 were of assault during an interview with the police. It is a fact difficult to believe, but nonetheless true, that the ICPC has not been able to substantiate a single one of any of the allegations made; the reason repeatedly cited is "insufficient evidence".

In the course of 1991 serious allegations were made by Amnesty International and the CAJ of ill-treatment by police officers serving at the Castlereagh holding centre. These were considered by the United Nations' Committee Against Torture in Geneva and members of that Committee expressed surprise at the lack of substantiated complaints, especially in view of the fact that in several cases the police had paid compensation to detainees in response to civil claims. While the treatment received by detainees at the holding centres remains a major source of worry it is satisfactory that, despite a 15% rise in the number of people interviewed in the first nine months of 1992, the number of complaints fell by 30%. Though it may never be possible to establish a direct relationship of cause and effect it certainly appears, at least for the purposes of a working hypothesis, that monitoring and pressure by responsible bodies does draw the attention of senior police officers to improper conduct and helps them to reduce bad practices. However this should not blind us to the fact that there is still a considerable way to go.

Different views of the RUC

The second dimension to the context in which the RUC operates, one which is perhaps partly an effect of the first dimension, is the distrust of the force traditionally displayed by people of a nationalist persuasion. While the results of a recent Social Attitudes Survey show that there is little significant difference between Catholics and Protestants regarding their willingness to report to the RUC an ordinary crime such as burglary, there is a greater difference when the crime in question is a "political" one such as hijacking a car, and the difference in attitude becomes even more marked when the comparison is made not between Catholics and Protestants but between nationalists and unionists (see John D. Brewer, **The Public and the Police**, chapter 4 in Peter Stringer and Gillian Robinson (eds), **Social Attitudes in Northern Ireland: The Second Report, 1991-1992**, Black-staff Press, Belfast, 1992).

Only one-third of nationalists assess as "polite" the police officers who stop them in the street and a similar proportion say that they have been annoyed by police behaviour towards them, a figure which is two-and-a-half times that for unionists. While 87% of unionists are quite satisfied or very satisfied with the RUC, the figure for nationalists is 39%; and while 79% of unionists believe that the police treat the two religious communities in the same way, the figure for nationalists is only 32%. Nationalists aged below 25 are the people in Northern Ireland who are most likely to be alienated from the RUC. Finally, the belief that the RUC is doing a good job in controlling crime, whether sectarian or non-sectarian, is much lower amongst nationalists than it is amongst unionists

(42% as opposed to 88% for sectarian crime and 67% as opposed to 94% for non-sectarian crime). Given these statistics, it is not surprising that today less than 8% of RUC officers are Catholics and that the main nationalist political party, the Social Democratic and Labour Party, does not have a nominee on the Police Authority, the body with the duty of ensuring the maintenance of an adequate and efficient police force in Northern Ireland. (There was an unfortunate disagreement between the government and the SDLP about a nomination to the Police Authority.)

Access to solicitors and recording of interrogations

Two further factors which directly impinge on the police complaints system in Northern Ireland are the refusal to allow the presence of solicitors while people arrested under the emergency laws are being interrogated (a prohibition which does not exist in Great Britain) and the refusal to allow these interrogation sessions to be recorded either in sound or in pictures (a refusal which contrasts with the stance taken concerning people arrested under the "ordinary" law: audio-recording is already in use in some police stations in Northern Ireland and experiments with video-recording are being conducted in Great Britain).

At present detainees may be refused permission even to speak to their solicitor for up to 48 hours after their arrest; once a conversation has taken place a further 48 hours may elapse before further contact is permitted. The official statistics issued by the Northern Ireland Office show that since 1987 59% of all requests by people arrested under the emergency laws for access to a solicitor within the initial 48 hour period have been denied. The CAJ is firmly of the view that detainees should be allowed access to a solicitor as soon as they are taken to a police station or holding centre and that solicitors should be permitted to be present when the detainee is being questioned at the station or centre by the police. Any waiver by the detainee of the right to have a solicitor present during interrogation sessions should itself be valid only if witnessed by a solicitor. We also believe that all interrogation sessions should be audio- and video-recorded, with measures taken to ensure that such recordings cannot be tampered with after they have been made.

Supervision at holding centres

The Government confirmed in June 1992 that it was intending to appoint an independent commissioner to supervise procedures at the three holding centres in Northern Ireland (Castlereagh in Belfast, Gough Barracks in Armagh and Strand Road in Derry). Sir Louis Blom-Cooper QC has since been appointed with the following terms of reference:

- To inspect the physical conditions;
- To satisfy himself that the current procedures of monitoring interviews by closed circuit television (CCTV) and electronic stamping of notebooks are carried out;
- To interview detainees about their welfare and treatment.
- To refer any complaints made by a detainee or legal representative to the Chief Constable for investigation.
- To publish an annual report and to make recommendations to the Secretary of State to revise the codes of practice governing detention.

While it remains to be seen whether this new appointment deals adequately with the deep misgivings of the human rights community locally and internationally, it is already possible to say that it falls short of the key safeguards which have been identified. Thus this appointment should have been complementary to, rather than instead of, proper audio and video recording of interviews with the detainee's solicitor present.

At least two obvious logistical problems present themselves:

- How does a well known public figure enter Northern Ireland without that information being passed in advance to the holding centres?
- How does he catch those in breach of the codes of practice? He cannot be in the holding centre at all times so unless there is clear physical evidence the situation will still be the word of the detainee against that of the police officer. The spectrum which Sir Louis will have to consider will still range from the police being largely unprotected from spurious allegations of abuse to allegations of abuse which could be well founded but are inherently difficult to substantiate.

The presence of solicitors during interviews along with video and audio recordings represent the cast-iron safeguards which would deal conclusively with allegations arising out of the conduct of RUC interrogators during interviews. They would also no doubt be of great benefit to Sir Louis in ensuring that the codes of practice are followed and the CAJ recommends accordingly.

The CAJ is opposed to this appointment, not out of any lack of respect for Sir Louis who has held numerous public and quasi-judicial positions with distinction and integrity, but because it perpetuates the distinction between the position of people detained under the ordinary law and that of suspects detained under the emergency laws. We believe that the Lay Visiting Scheme, which has been operating satisfactorily for "ordinary" police stations since April 1991, should be extended, with appropriate modifications, to the holding centres. We have suggested to the Police Authority, who share our view on the general point (as do the existing panels of Lay Visitors), that if Lay Visitors are allowed to visit holding centres they should be able - at any time and for as long as they wish - to sit in front of the TV monitors already in place at those centres. They should be allowed to take notes of what they see and to raise any of the matters with the police officer who is present and with the custody sergeant. When the interrogation is over they should be allowed to speak to the detainee to see if he or she wishes to make any complaints. In due course the visitors would send a report to the Police Authority and the Chief Constable, as they already do after a visit to an "ordinary" station. We are also in favour of the powers of Lay Visitors being placed on a statutory footing: they should be given the function of ensuring that the police adhere to the provisions of the codes of practice for the detention, treatment and questioning of suspects by the police. These already exist for non-scheduled offences, and are likely soon to be in operation also for scheduled offences.

Apart from dissuading police interrogators from unlawful interrogation techniques, which in any event render evidence obtained thereby inadmissible (see section 11 of the Northern Ireland (Emergency Provisions) Act 1991) these reforms would help the police themselves to counter false accusations made against them by detainees. They are measures which the United Nations' Committee Against Torture would like to see put in place in Northern Ireland: at its hearing in November 1991 the Committee said that it was bemused by the British Government's arguments for not introducing them.

Incidents during arrest or transit

Even with these safeguards in place, however, it would be possible for the police to elicit a false confession from an arrested person not during an interrogation session but, say, at the scene of an arrest or during the journey to a holding centre in a police vehicle. For this reason, amongst others, the CAJ believes that a statutory rule should be introduced which would prevent an accused person being convicted of a serious offence solely on the evidence constituted by his or her confession.

The right of silence

We believe as well that the changes made by the Criminal Evidence (NI) Order 1988 to the law on the right of silence in Northern Ireland should be repealed. All interviewees should have an unencumbered right of silence when being questioned at any stage of the proceedings, before and at the trial. It may well be the case that comparatively few accused people currently seek to exercise a right of silence, but the existence of the right is, in our view, so fundamental to a criminal justice system supposedly based on the principle that the burden of proving a person's guilt beyond a reasonable doubt rests on the prosecution that it should in no way be impeded. People may have all sorts of reasons for choosing not to answer questions, most of them having nothing to do with the idea that they are trying to pretend they are innocent of any offence.

We are referring to these points at this juncture - they are all ones which we have already included in our submission to the Royal Commission on Criminal Justice, which reported in mid-1993, although its terms of reference do not officially embrace the law of Northern Ireland - because we think they are highly relevant when consideration is being given to what system to install for dealing with complaints against the police. If the position of a detainee under the emergency laws in Northern Ireland is so much more vulnerable because of the extra powers and special procedures created by those laws, it is all the more important that an effective complaints system be set up to vindicate a detainee's remaining legal rights. More particularly, the existence of such powers and procedures strengthens the case for employing completely independent investigators - not police officers - to examine complaints about the way in which those powers and procedures have been applied. If the police are to be put in an especially privileged position in Northern Ireland it should surely follow that special measures be taken to ensure that they do not abuse that position. It is worth repeating that such measures would be in the police's own interest since they would help to defuse unfounded criticism and enable the RUC to prove that they are not hiding any dirty practices: one would like to assume that that is already the case, but the present system is such that one can have only the police's own word for it.

The CAJ's concern with the complaints system

The CAJ's first study of the subject of complaints was produced as long ago as 1982 and was published as our pamphlet No. 3. This was a background paper indicating the origins of the CAJ's interest in the subject and setting out some of the options which we thought merited consideration. It was followed in 1983 by pamphlet No. 4 which contained our proposals for reform. Subsequently in 1990 we published pamphlet No. 16 which drew attention to the deficiencies in the new system introduced by the Police (NI)Order 1987.

Since 1982 therefore we have been watching the way the matter has been handled both in England and Wales and also here in Northern Ireland; and at the same time we have taken note of the reactions of public opinion generally and more particularly of informed opinion among academics and the police themselves. While the various changes that have been introduced, both in England and Wales and in Northern Ireland, have been intended to make improvements, and have to some extent done so, informed opinion appears to be agreed that the net result, despite some very dedicated work by individuals, has been disappointing. In particular opinion seems to be crystallising in the minds of some of the most authoritative observers of the police - and this includes some senior police officers - that the case for employing some people other than police officers as investigators (as opposed to supervisers of investigators) of complaints is becoming stronger with every month that passes. Indeed no less an authority than the last Metropolitan Commissioner, Sir Peter Imbert, has been

reported as saying that if he could be satisfied that civilians would do the work of investigation as well as police officers he would be in favour of their being appointed.

That observation clearly made it appropriate to study the effectiveness of the several schemes for employing civilians in varying capacities and with varying powers which operate in foreign countries. The CAJ accordingly undertook a limited study of that nature in the form of an internal, unpublished, paper which is now incorporated in chapter 5. More recently, in 1991, a wide ranging study of the subject entitled **Complaints Against the Police - The Trend to External Review** - edited by Andrew J. Goldsmith, has been published by the Clarendon Press. This is a very thorough study by ten contributors, each a noted authority in his own field. All the arguments for and against using civilians as investigators are examined, as are the reasons why some foreign schemes using civilians have been notably more successful than others. The present paper draws heavily on the information in that book and also adds some research of our own especially in relation to New Zealand.

Our 1983 pamphlet No. 4 was entitled **Procedures for Handling Complaints Against the Police**. It made a number of recommendations to the Secretary of State about the nature of the new system for Northern Ireland which the Government was known to be about to establish. Some of those recommendations were accepted, including one potentially important one which had no corresponding provision in the English system. However the Government did not adopt what was arguably the most important element in the scheme we proposed - that the work of investigating complaints should not be done by the police themselves, and it is to this limited subject of who should do the investigating that we are returning in this pamphlet along with a number of other related subjects.

Public scepticism

When we made our recommendation in 1983 that civilians should be appointed we were of course primarily motivated by the transformation in the attitude of the public which we expected would follow a change of that nature. Even in 1983 it was evident that there was a good deal of scepticism in England and Wales about a system which used the police to investigate complaints against other police officers, and of course in Northern Ireland where, for a substantial section of the population, relationships with the police have never been as easy as they once were in England, that scepticism was all the stronger.

Other professions

In advocating a change we were, of course, aware that the police are not the only body of people whom society has entrusted with the task of investigating complaints against themselves. Doctors and lawyers do likewise and their execution of that task, though by no means exempt from criticism, has not prompted as much dissatisfaction as has been, and is, the case with the police. We therefore realised that anyone advocating that a different system should be used in the case of the police was under an obligation to show good reasons for their contention other than the mere fact of the greater degree of dissatisfaction. It was our view at the time, and still is, that a change is merited in the case of the police because of the very special privileges and powers they have been given both by custom and by law, resulting in exceptional powers over other people.

Police attitudes

We were also aware in 1983 that many police officers would not relish either the loss of a traditional function or the prospect of being investigated by an outsider. Clearly the attitude of the police must be regarded as crucial, and indeed one of the lessons which emerges most strongly from a study of foreign attempts to use civilian investigators is that those systems which met with a measure of success were introduced after very thorough negotiation with the police, and those systems which failed often did so because of police opposition. Even in 1983 police opinion on this matter was not uniform, either in England or in Northern Ireland, though in each case the stated policy of the Police Federation was to favour civilian investigation because of the improvement in public relations which they expected to result; and it must be remembered that relations with the public are felt most intensely by the junior ranks in any police service, for they are at the cutting edge of its relationship with the public.

Parliament

We were also aware in 1983 of two further considerations: the considerable burden on police resources of having to undertake investigation of complaints, and the difficulty in terms of disruption which would be involved in changing from one system to another. We knew that both these matters had been considered by the House of Commons Home Affairs Committee in relation to the complaints system in England and Wales and that they had decided not to recommend the use of civilian investigators primarily because, though they could envisage competent civilians being recruited if a change were to be instituted, they were not satisfied that outsiders could do the job any better than the police themselves. Though there would be a gain to the police in the relief from a burden, and though they recognised the improvement that could be expected in relations with the public, they did not feel justified in embarking on the disruption for the sake of a new system which they did not expect to be any more efficient than the then existing one.

This was an arguable position for the Home Affairs Committee to take but in assessing the balance of advantages the CAJ came to a different conclusion. We attached more weight than they did to the importance of public confidence for we were dealing with Northern Ireland and they were dealing with England and Wales. But in addition, though we knew that investigative skills are part of daily life for the police, we were also impressed by the ability of other professions to get to the root of complicated matters. Customs officers and the Inland Revenue are often successful in tracing financial fraud and barristers are trained in cross-examining witnesses. Moreover investigative journalists have been responsible for bringing abuses to light that might otherwise have lain hidden for ever. It was after all the work of journalists that started the saga which ended in the fall of President Nixon in the U.S.

Sir Peter Imbert and Sir Hugh Annesley

So much for the CAJ's reasoning in 1983. It is worth looking at each of these considerations again in the light of the situation today for there have been changes in the weight to be attached to several of them. But before giving our own up-to-date view it is legitimate to speculate about Sir Peter Imbert's reasons for saying he would be in favour of employing civilians if he was satisfied they would be as good at investigation as police officers are. He was not reported as having given any reasons for his statement but it is a reasonable guess that he had in mind primarily the potential gain in public confidence in the police, followed closely by the attraction of relieving the police of the burden in human resources and money that investigation involves.

Lest it be thought that Sir Peter is the only police officer of his rank to have an open mind on the subject of civilian investigation of complaints the reader will note the results of Dr Robert Reiner's survey of the opinions of chief constables to which we refer on pages 20-21. In particular, and especially because our own immediate concern is with Northern Ireland, we attach importance to the statement made in June 1992 by Sir Hugh Annesley, the Chief Constable of the RUC, that he would not stand in the way of a completely independent system if there was a sufficient groundswell of public opinion in favour of it. Like Sir Peter Imbert, Sir Hugh probably calculates that there is more to be gained than lost by appointing civilian investigators.

Why this new study is needed

To turn now to our own reasons for seeking to bring this matter to a head in 1993 after maintaining a steady interest in it over the years, it seems that this is an appropriate, and perhaps even a crucial, time to take stock and to urge action because:

- 1. The two statements quoted above must carry considerable weight.

- 2. The publication by the ICPC of its Triennial Review for the years 1988-1991 provides useful information on the operation of the present system since its inception. The recommmendations contained in the Review, while not going far enough in our eyes, were sensible. The Government announced its response to these recommendations in Parliament on 15 July 1992; unfortunately it rejected the most important of them. In particular we regret that the Secretary of State has not accepted the following proposals:
  (1) that the Commission's view should prevail over that of the Chief Constable when there is a difference of opinion over whether a matter is in fact a complaint;
  (2) that the Commission should be given a power to supervise in the public interest matters considered by it to be grave or exceptional;
  (3) that a truly independent tribunal (not with ICPC members sitting in it) should be established to hear disciplinary charges.

- 3. The difficulty in persuading the public to have confidence in the present system has apparently not diminished despite the improvement over the previous system resulting from the degree of supervision by outsiders that has been introduced. Not only is the public inherently sceptical of any body of people investigating complaints against their own members but most people, though they may not be aware of the precise statistics, regard the rate of substantiation as unrealistically low; and naturally they think the relationship between those two phenomena is a causal one. We deal with those matters in Chapter 2.

- 4. The flow of stories of ill-treatment said to have been meted out to detainees at the holding centres, whether or not they have been made subjects of formal complaint, has permeated into the consciousness of a broad section of the general public and there is widespread concern at the apparent decision to "sail as close as possible to the wind", either without actually adopting any of the practices which the European Court of Human Rights held in 1978 had been used and were in breach of the European Convention on Human Rights, or alternatively doing so without leaving any evidence eg physically abusing suspects without leaving any marks which can be seen by an examining doctor. As with many practices which have grown up, it is not necessary to infer that this tactic has been ordered by senior officers. More probably it was first thought of at operational level and increasingly adopted by colleagues who heard about its effectiveness. If that is so senior officers are unlikely to be ignorant of it but will have been reluctant to interfere, as Sir John Woodcock, HM Chief Inspector of Constabulary for England

& Wales, revealed in the description he recently gave of the way in which police management knows that corners are being cut in order to get results.

- 5. The scope for devising a system in which the public can reasonably be expected to have confidence has increased. In particular the amount of foreign experience from which we can learn what to avoid and what to try to copy has steadily grown. We devote a substantial part of this pamphlet to the experience abroad which indicates that there are many ways of approaching the subject and that some have been significantly more successful than others.

- 6. Informed opinion is aware of these points and is moving towards acceptance of the need for change. It is surely noteworthy that the year 1991 found a market both for the Home Office study of the police complaints system (in England and Wales) by M. Maguire and C. Corbett but also the book entitled **Complaints Against the Police** with its sub-title **'The Trend to External Review'** edited by Dr. Andrew Goldsmith. In that latter book there is a chapter by Dr Robert Reiner on the views expressed by chief constables and he has subsequently published his own work giving in greater detail the results of his survey of the attitudes taken by 40 out of the 43 chief constables in England and Wales. We comment on those results at the end of Chapter 4.

These changes combine to make it possible to study the different ways in which the subject has been approached in different countries with a view to designing a system appropriate for our local conditions, and then to urge those who govern us to have the political will to institute the necessary changes. We will therefore now examine all the considerations which appear to be relevant to an up-to-date reappraisal of the subject.

2. Perceptions of the Present System

Bearing in mind that the system for handling complaints against the police has undergone several changes in recent years it is proper to ask whether yet another change is necessary, and indeed what chances there are of a campaign for change meeting with success. Possibly the most gloomy general view of this aspect was written as long ago as 1514 by Machiavelli:

> *"It should be borne in mind that there is nothing more difficult to handle, more doubtful of success, and more dangerous to carry through than initiating changes...The innovator makes enemies of all those who prospered under the old order, and only lukewarm support is forthcoming from those who would prosper under the new. Their support is lukewarm partly from fear of their adversaries, who have the existing laws on their side, and partly because men are generally incredulous, never really trusting new things unless they have tested them by experience."*

The attitude of the public

While there is considerable evidence that times do not change much it is also true that if the need for change is sufficiently great it must be faced. Let us therefore start with a brief look at the attitude of the public. When faced with the fact that in 1989 only 0.6% of the complaints dealt with in England and Wales were substantiated it is not surprising that in the same year the London Policing Strategy Unit, in reporting on a survey which revealed substantial under-reporting of complaints about the use of stop and search powers, said that the most common reason given for not complaining was a lack of faith in what the result would be. In Northern Ireland, where all relationships tend to be coloured with sectarian undertones and it is known that less than 8% of the police are Catholics against at least 38% in the general population, it is understandable that scepticism about the value of police officers investigating complaints against their colleagues is even more marked. One Australian explanation of public scepticism about the effectiveness of the complaints system there is said to be that a complainant's situation is comparable to that of a chicken obliged to complain to a fox about the treatment she had received in the hen run from another fox.

While the CAJ believes that many complaints have been investigated with exemplary fairness and thoroughness, and that the supervisory functions of the Police Complaints Authority in London and the Independent Commission for Police Complaints (ICPC) in Belfast are intended to ensure that this should be the general rule, it is nevertheless true that the scepticism of the public has some basis in fact and experience, particulary personal experience and local knowledge which has been written up in numerous reports both here and in other countries.

One of the disadvantages under which the ICPC labours is that, while most people are barely aware of its existence, those who are also know that its members are appointed by the Secretary of State, a fact which, in their eyes, casts some doubt on the word "Independent" in its name. This point has been recognised in Washington DC where the comparable body owes its membership to four sources - the Mayor, the City Council, the Chief of Police and the Fraternal Order of Police. If that pattern were to be adopted here the appointing bodies could, for example, be the Secretary of State, the district councils, any political assembly created for the whole of Northern Ireland, the Chief Constable and the Police Federation.

The experience of filing a complaint

To start at the beginning of the process, the loyalty which all police show towards their colleagues can result in an officer being noticeably reluctant to help a citizen to file a complaint, or even actively discouraging. This can be due to laziness in wanting to reduce the amount of work but it can also stem from a perception that all complainants are just trouble-makers. In fact of course some are, more perhaps in Northern Ireland than elsewhere, but there can be an easy temptation to regard each complaint as vexatious without going to the trouble of finding out whether it has any merit or not. In answer to the assertion that virtually every person arrested under the emergency laws in Northern Ireland makes a complaint of police ill-treatment it needs to be pointed out that of the 6,406 people detained between 1988 and 1991 only 1329 (20.7%) lodged a complaint.

The task of making a complaint to a police officer can in itself be intimidating. Very often the complainant has never had any similar experience whereas the receiving officer is accustomed to that part of his or her normal work and will find it easy to point out the difficulty of establishing the facts of a complainant's story and even to convey in a subtle way that the police have means of harassing people they dislike. None of these factors would be present if the recipient of the complaint was an outsider.

It is also an unfortunate fact that the difficulty which many complainants have in the ordinary course of events in establishing the facts of their stories is not helped by the rules governing procedure. Complainants cannot obtain discovery of documents found to be relevant during the investigation of a complaint. It seems to be intrinsically unfair that sight of such documents should be privileged and thereby disclosed only to one party.

The attitudes of senior police officers

In addition to the possibility that the officer to whom the complainant presents his or her case may be less than cooperative, there can also be a human tendency at a higher level to take a negative attitude. While some senior officers look very diligently at all complaints because they do not want a service that gives rise to complaints and would rather get rid of any "bad apples", there are others who are troubled about staff relations and the morale of the force if too many complaints are substantiated.

Low substantiation rates

In times past, too, there can hardly be any doubt that the investigation system itself has not always produced reliable results. In London in 1984 only 8% of all complaints were substantiated and that 8% did not include any complaints about harassment, racial discrimination or false evidence. In 1983 the substantiation figure was even lower - 1.5%. Lustgarten's comment on this was that either those who do bother to complain are liars or there is something wrong with the system.

Whatever the reasons for the low substantiation rate of complaints - and it seems that there are probably several - it is interesting that they appear to be resistant to anything but radical changes in the system. In Britain the establishment of the Police Complaints Authority with its powers of supervision has not noticeably increased the substantiation rate.

Public perception of the complaints system

Whether the average person in the street is aware that the substantiation rate is low is not known but such awareness is unlikely. However even without that information the present system has not established public confidence, which, as we explained at the beginning of this paper, has been one of the CAJ's concerns throughout. In 1988 the British Crime Survey of a random sample of households found that only 46% thought that if they had to make a complaint it would be investigated thoroughly, and only 36% declared themselves happy with the present system. When asked who they thought should investigate complaints only one in six replied the police, the most frequent response being an independent lay body.

Complainants' perceptions

The view of the general public may be compared with the opinions of people who actually made complaints. The Centre for Criminological Research at Oxford University recently contacted 186 complainants of whom 125 had had their investigation supervised by the Police Complaints Authority. Of these only 26% were satisfied with the handling of their case (compared with only 17% among those whose investigation was not supervised). This is a very low figure for a system that was specifically intended to produce credibility. To some extent it may be due to the fact that only 9% believed that the Authority was independent of the police and only 5% thought it was effective in its monitoring role. The vast majority were in favour of investigations being conducted by a totally independent body.

Another survey in three different police force areas also conducted by the Centre for Criminological Research found that the main reasons for dissatisfaction were not so much connected with whether the complaints were substantiated but with the time taken by the investigation, the absence of an apology and the inadequacy of the explanation of the decision. Most people did not understand the place in the system occupied by the Police Complaints Authority and thought that the police made all the decisions and that these were biased in their own favour. It is evident that letters announcing the decision about a complaint should (and could quite easily) be much more informative, and in particular should take more account of the fact that most members of the public are not familiar with police practices and, for instance, if told that the officer about whose conduct they had complained had been given some advice, do not realise that in police terminology this can be a significant penalty. As we explain later the practice in New Zealand is not to send the complainant a brief letter summarizing the result of the investigation rather tersely but to provide him or her with a full copy of the report. If that practice were to be adopted in Northern Ireland it would, among other things, give some substance to the promises of the present Government to be more open.

Objectives of the complaints system

One of the fundamental weaknesses of the present system (and all its predecessors) is that it is too orientated towards the internal disciplinary control of the police service instead of towards public confidence, the satisfaction of the complainant and the use of information revealed by complaints as a whole for improving police organisation and practices. We shall return to this latter subject below but so far as complainant satisfaction is concerned it is evident that most people are not so

much seeking retribution against a particular officer as a full explanation, an apology, perhaps some compensation but at least some assurance that steps will be taken to avoid what happened to them happening to someone else.

Incidentally, since this picture of the objectives of complainants comes from examining cases which were investigated (and some where the investigation was supervised) it seems legitimate to conclude that there is a case for the wider use of the informal resolution procedure now used in many police jurisdictions for dealing with complaints about relatively minor matters. This procedure avoids the use of a disproportionalely formal and time-consuming mechanism where the relatively trivial nature of the alleged offence does not merit it. It would therefore save a good deal of police time while also giving complainants just as much, or even more, satisfaction.

Compensation

We have referred to the desire of some complainants to be compensated for the treatment of which they are complaining. Some people who have suffered a loss which can be measured in financial terms do manage to get compensation as a result of suing the police in the civil courts, which is a procedure completely unconnected with that for handling complaints; at present that is the only way that compensation can be sought or given. We would not wish - nor indeed would it be possible - to deny a citizen the right to sue; and it can be argued that that is the way in which all major claims should continue to be handled.

However we believe, as indeed we argued in our pamphlet No. 4, that the complaints procedures ought to contain an alternative approach, especially for minor matters where the amount at stake would make a civil case too top-heavy to contemplate, and where the amount to be paid out can be agreed without much argument. In such cases a financial payment accompanying the apology would do wonders in terms of complainant satisfaction and, because people talk about the treatment they have received, in terms also of public perception of the police. This is a reform which could be instituted administratively and is not dependent on the civilian investigation of complaints, which is a major theme of this paper, because it is part of the question how the police respond to the facts established by the investigation, rather than how the investigation should be conducted. However we mention it now because it is also part of the subject of complainant satisfaction which we have mentioned as one of the proper objectives of any system for handling complaints.

3. General Lessons to be Learned from Complaints

We referred above to one proper objective of any system for handling complaints, that of using the information revealed as one method of monitoring the execution of police policies and seeing whether any changes in organisation or practice are desirable. This is a matter of collecting and analysing the results of investigations whether the complaint has been accepted as valid or not, and seeing whether they reveal a pattern of behaviour that ought to be avoided. This is something that ought to be undertaken for two reasons. If the complainant is to receive any kind of assurance that what happened will not be repeated, that assurance will not carry much conviction unless he or she knows that the experience will not be treated as an isolated episode but will be fed into the pool of knowledge submitted to police management. And also police management should in their own interests welcome this source of knowledge as one aid readily available to them in their on-going task of making the policies and practices of the service as effective and acceptable to society as possible. That task will be rendered easier for police management if junior ranks are encouraged to look upon exhortations to conform to the prevailing standards of propriety as sensible and desirable in the interests of a good police service, and therefore something they want to do for its own merits and in the interests of their careers, rather than as a way of avoiding disciplinary punishment.

This aspect of what use should be made of complaints has strangely received little attention from police administrators or academic commentators. Dr. Goldsmith reveals in his book mentioned earlier that in recent years adverse comment on the failure of complaints systems to be concerned with systemic reform has come from England, Australia and the United States. This failure to make the mental connection between the knowledge that something wrong was done and the scope for taking positive steps to avoid its repetition, on the face of it rather a surprising phenomenon in many otherwise very well run police services, may have been at least partly due to a traditional belief in the "rotten apple" theory. According to this comforting excuse for not facing up to the possibility of finding disturbing shortcomings, any police officer found to have departed from the highest standards is a sad departure from the norm. In any large body of people one must always expect there to be one or two such bad apples but otherwise the barrel is clean, and there must be no suspicion that the existence of one bad apple is symptomatic of any more widespread disease. It is very satisfactory that this attitude has been criticised publicly at the highest level. Sir John Woodcock, HM Chief Inspector of Constabulary for England and Wales, speaking at an international police conference on 13th October 1992, said

> *"I don't believe in bad apples. I think the problem is not one of individual predisposition to wrongdoing but of structural - or cultural - failure."*

Lessons drawn from complaints in South Australia

It is only fair to add that while the failure to make good use of the information revealed by complaints that have been substantiated is quite general in the Western world there are also exceptions. One such exception, South Australia, is particularly worth mentioning because there the impetus to draw conclusions about desirable changes to which a complaint may point does not depend on the energy or foresight of police management but is provided by the Police Complaints Authority which has the power, when reporting on the investigation into a complaint, to say whether it thinks there should be an alteration of a practice, procedure or policy, or even a rule of law, on which a decision to act or not act was based. The South Australian PCA, which was set up in 1985, has commended itself to public opinion and, perhaps partly for this reason, its recommendations for changes were all accepted by the Police Commissioner up to 1989 (the latest information available). Similar powers also exist elsewhere in Australia - See chapter 5. Pending the acceptance of our first recommendation (see chapter 9) we recommend that the relevant legislation in Northern Ireland - the Police (NI) Order 1987 - should be amended to confer a similar power on the Independent Commission for Police Complaints.

English use of complaints

Lest it be thought that it is only abroad that lessons are beginning to be learned from studying the information revealed by complaints it is only right to say that in England and Wales Inspectors of Constabulary are now using numbers of complaints as one indicator of overall performance, and one force has started circulating to all its divisions a monthly bulletin produced by the Complaints and Discipline Department in which points arising from recent complaints are drawn to the attention of local commanders. More importantly the Police Complaints Authority in London has made several public statements about lessons which can be learned from high profile cases though they have not so far drawn any inferences from numbers of cases pointing to a pattern.

Only management decision needed

As with the idea that the complaints process might incorporate provisions for compensating complainants in appropriate cases, (see page 13 above) so also the ability of the process to provide police management with the information they could use to their own advantage is a question of police response to what investigations reveal rather than a part of the investigation mechanism itself. As such it is again something that can be instituted as a result of an organisational decision and is not wholly dependent on civilians being the investigators. Nevertheless outsiders, once they have learned enough about police work and organisation to make themselves credible to senior officers, may be able to contribute the essential element of persuasion that may be necessary to trigger the decision to establish a systematic and continuous study of complaints in order to see whether any changes in policy or practice are called for. Certainly the experience of the PCA in South Australia appears to point in that direction.

4. Police Attitudes to Civilian Investigation

Because no system of civilian investigation of complaints against the police could hope to succeed without good cooperation from the police themselves it is worth looking at some of the attitudes that have been expressed by police officers both here and abroad in order to see whether they reveal anything about either the type of system most likely to work smoothly or the way it should be introduced.

Advocates of independent investigation do not claim that outsiders are any better at investigation work than police officers for whom that work is part of their daily experience. They merely claim that it is a skill that can be learned and is already possessed by civilians in some other walks of life, and that it should be used because it would relieve the police of a substantial burden and, more importantly, for the benefit it would bring in terms of credibility with the public and therefore public cooperation with the police.

Opposing arguments

Police attitudes to this concept vary. Some of the foreign efforts to introduce an element of civilian investigation have had to be abandoned because of intense police opposition while in other cases the adverse reaction has been milder and has amounted in effect to an admission that there is a price to pay in supposedly reduced efficiency in order to get the admitted benefits of not being seen as judges in their own cause. There is some evidence that police opinion is moving towards acceptance of civilians being used, but, as stated earlier, no fresh proposal in that direction could possibly succeed unless it was first very thoroughly negotiated with the police. For this reason it will be useful to have some idea of the arguments that will be encountered. Not surprisingly they vary in the weight they carry, some needing to be taken very seriously because of their cogency rather than because of the vehemence with which they are held. In this latter category there are two that are outstanding.

(1) "No knowledge of police culture"

The first is that a police investigator "knows the ropes". Because of experience over some years he or she understands the organisation and the culture and so knows instinctively where to look for the facts. This argument maintains that no outsider could, even with experience, hope to acquire the same ability to get quickly to the important elements in the enquiry.

(2) "It would be too slow"

The second argument also concerns the importance of speed and points to the fact that the police have an inbuilt advantage because they are on the spot and able to act immediately. This argument admits that a police officer who has done something wrong, being also a person with the normal instinct of self-preservation in a crisis, will be subject to the human temptation to destroy the evidence and may succumb to that temptation unless the investigator can find it quickly. By contrast an outsider asking on the telephone for an appointment to go into the matter in two days time could find that the relevant material had been "lost", without there being any record of who last had it.

Some may think that these arguments point in the direction of any new attempt to use civilian investigators allowing for the first moves to be made by the police and for the civilians to take over later or to work jointly with the police. On the other hand the experience of the New Zealand Police Complaints Authority, to which we devote a section in Chapter 5, seems to show that a skilful and respected civilian authority, commanding public confidence as well as police cooperation generally, will not be frustrated in this way and indeed can move very quickly.

(3) "There would be a wall of silence"

A further argument against the use of civilians is that any investigation into an alleged wrong doing will be met with a wall of silence both by the supposed culprit and by all his or her other colleagues, and that the task of penetrating this refusal to cooporate with the enquiry will be far greater in the case of outsiders, whom the police will instinctively resent, than if the investigator is a senior officer. It is difficult to know how much weight to attach to this argument. No doubt it will be true in some cases but the basic difficulty is in any case quite serious. To be the subject of an investigation with the possibility that it will result in some penalty, lack of promotion or even dismissal must be a stressful experience for anyone and the natural instinct must be to exert oneself to use all available devices, including one's legal rights, to avoid the worst outcome. To what extent one's efforts in that direction are likely to be governed by the identity of the investigator seem to us to be a minor consideration, and certainly if the Police Federation, either the one in Northern Ireland or the one in England and Wales, accurately represent the feelings of their members, the average constable may be presumed to be willing to face a civilian investigator if he or she has to be the subject of an investigation.

(4) "It would damage police morale"

Similarly some police unions have argued that police morale would suffer if a decision was announced that civilian investigation would begin because police work and the problems the police face would not be appreciated. They believed that this would result in a drop in the effectiveness of police work because individual officers would be inclined towards excessive caution in a situation really needing initiative and action, for fear of risking a complaint which would be investigated by someone presumed to be biased against the police. It is perhaps true that initially that might to some extent be the case, but it might not be a lasting phenomenon, for the spectacle of an independent body giving general praise to the police service in its public reports, as has happened for instance in New Zealand, must be a warming experience for all ranks.

A further police union argument that a change to civilian investigation would result in a significant number of resignations also does not stand up to examination, certainly with unemployment at anything like its present level. Police officers with pensions at risk and mortgages to be paid off

will not lightly sacrifice a job which may well in practice never result in their being the subject of a complaint.

(5) "It would encounter an unwritten code of corporate loyalty"

At the other end of the scale, in the very worst cases of police resentment against the intrusion of outsiders into their affairs, an unwritten but well understood code gets built up. Perhaps the most extreme example of this was described by Commissioner Fitzgerald in his 1989 report on the police in Queensland. He said that the code effectively makes police immune from the law. In conflicts between the code and the law, the code prevails. "Under the code:

- loyalty to fellow officers is paramount;
- it is impermissible to criticise other police officers, particularly to outsiders;
- critical activities of police, including contact with informants, are exempt from scrutiny;
- police do not enforce the law against, or carry out surveillance on, other police; and
- those who breach the code can be punished and ostracised..."

It is no use blinding ourselves to the fact that these attitudes exist to a greater or less extent in most police services and that the introduction of a system of civilian investigation would have to be accompanied by a programme of education designed to give priority to integrity of behaviour and the elimination of any practice falling below the highest standard. In this context both the Professional Policing Ethics and Charter documents recently issued by the RUC are steps in the right direction but do not go far enough.

(6) "Police officers distrust intellectuals"

A subtle element in police reaction to the prospect of civilian investigation may have its origin in the educational backgrounds of the respective parties. When police officers who have not themselves been to a university, but may nevertheless have risen to senior positions, find themselves confronted with university-trained civilian investigators suggesting in their reports that the service concerned should consider revising its training programme or its recruitment standards they may instinctively feel, if not exactly intimidated, at least suspicious of intellectuals who are presumed to be too ignorant of police work to be able to have sensible views. There may be lingering possibilities of this phenomenon in the UK today but as the police increasingly recruit university graduates it should not present a major or lasting problem. Moreover, if the civilian investigators are themselves properly trained they should be able to avoid an over-intellectual approach to serving police officers.

(7) "The Police know best what standards to adopt"

Another subtle, but potentially quite important, reaction of the police to civilian investigation can have its origin in the different ways in which police and outsiders instinctively classify the standards of propriety applicable to police work. In the nature of things police frequently have to cope with situations of conflict, much of it violent and, from their point of view, certain devices are necessary if they are to have any practical effect. These may not at first sight commend themselves to people who have not had experience of police work and there can even be a difficult borderline to draw between what is permissible and what should be challenged as beyond the law. An obvious example of the kind of subject which can easily produce contrasting views of what is necessary to get the job done and what should not be tolerated because it is the beginning of a slippery slope towards a

police state or an abandonment of the standards of a civilised, democratic society is the increasing use of firearms, using either lead bullets or plastic baton rounds.

It is understandable that police who may be in considerable danger may feel impelled above all to make sure of their own survival in an increasingly violent world, and yet an outsider reviewing a case of a police killing may want on behalf of society to put a brake on what appears to be a too easy acceptance of a trigger-happy attitude to the possession of a weapon. While it is important that outsiders concerning themselves with the police should take the time and the trouble to inform themselves about what police work involves, it is also important that the police, if they are to act in the name of society, should be ready to accept the norms which society wishes to be adopted on its behalf and should not dismiss any pressures in that direction as coming from armchair critics.

This understanding of police work and the pressures it involves which all police officers have because that is their life can be reflected in the police attitude to the prospect of civilian investigation. In a situation of conflict where a police officer is presented with a rowdy, drunken group the amount of physical force which appears to be needed to bring the situation under control can evoke different reactions from people with different viewpoints; while a police officer can be reasonably sure, if a complaint is made, that a senior officer investigating the complaint will understand his or her predicament and support the action taken, he or she may be inclined to suspect that a civilian investigator would not understand and would uphold the complaint.

Genuine wish for reform needed

When one looks at the attitudes of senior officers to the prospect of civilian investigation it becomes necessary to enquire quite closely how genuine are the sentiments expressed, for there can be a risk that they represent more what the officers think, probably quite rightly, the enquirer wishes to hear than what they themselves genuinely feel. In the case of the Victorian police in Australia senior officers repeatedly expressed their willingness to cooperate with a reform programme but failed to do so in any meaningful way. The lesson to be learned in that case is probably that no change can ever be successfully imposed from outside. Not only does it have to be thoroughly negotiated but the negotiation must aim to convince the existing management of the case for reform to the point where they actively want to bring it about because they see its potential benefits. There is an analogy here with good employment practices in the context of anti-discrimination measures.

The attitudes of chief constables

It is of considerable interest that opinions about civilian investigation among chief constables in England and Wales appear to have moved significantly in recent years. Dr Robert Reiner's survey of 40 who responded to his enquiries out of the total of 43 revealed that 30% supported the idea of a totally independent system, half of them having public satisfaction as their goal and half because they would be relieved to be rid of the drain on their workload and their budget or because they thought that morale would improve when the present pattern of bureaucracy and delays was removed from the police organisation. Another 18%, though undecided, saw some potential advantages in independent investigation. This leaves 52% wanting no change.

It should be emphasised that they all without exception had confidence in the existing system. This is not surprising when one reflects that chief constables could hardly have reached their present positions unless they cared deeply for the efficiency of their forces. This should have made them keen to rid themselves of any bad elements and therefore take care to appoint as investigating officers

those who will probe thoroughly and conscientiously into all the allegations made against their juniors.

Nevertheless the fact that 30% expressed themselves as favouring a change seems to reflect a movement in police thinking as well as in the thinking of the public and academics who specialise in police matters. It is reasonable to suppose that a survey taken 10 years ago would not have produced that result and perhaps that, by extrapolation, the figure will continue to grow when the impact of experience abroad comes to be fully appreciated. The proportions of the general public and of complainants who support an independent system of investigation are, as could be expected, substantially larger but, while important in terms of what voters tell their elected representatives, that is of less significance than the fact that 12 chief constables who know exactly how the present system works, and have personal experience of managing it, think, albeit for different reasons, that it should be changed. It is also of some interest that the 30% who favour a change are taking a position not very far removed from that of the CAJ - that civilian investigators would not necessarily be any better at their job than police officers, though they could well be in some cases and in some situations, but that the change would in any event bring other benefits which are worth paying for.

5. Experience in other jurisdictions

It is worth devoting some space to experience in other countries partly because information from abroad is often the factor that persuades public, legal and political opinion that a change in the law is desirable, and partly because, in the particular matter of complaints against the police, there has now been built up a considerable amount of experience exhibiting a wide range of devices for involving civilians and very varying histories of failure or success which are highly instructive.

The CAJ does not have the resources to undertake a comprehensive investigation on a world scale but has been fortunate in obtaining some information about the arrangements adopted in several police departments in the United States and also in Australia, Canada and New Zealand.

We begin with a few words about the systems in place in England and Wales and in the Republic of Ireland.

England and Wales

In England and Wales the system for dealing with complaints against the police is virtually identical to that in Northern Ireland. It is governed by Part IX of the Police and Criminal Evidence Act 1984, which creates a Police Complaints Authority to carry out more or less the same functions as Northern Ireland's Independent Commission for Police Complaints. The main differences are, first, that England and Wales has no equivalent to article 8(2) of the Police (NI) Order 1987, which allows the Secretary of State or the Police Authority to refer to the Independent Commission for Police Complaints any matter which, although not the subject of a complaint, appears to the Secretary of State or the Police Authority to indicate (a) that a police officer may have committed a criminal or disciplinary offence and (b) that it is desirable in the public interest that the Commission should supervise the investigation of the matter. This is an extra power which the CAJ advocated during the early 1980s but unfortunately, as far as we are aware, it has not so far been used.

The second main difference is that in England and Wales not all complaints have to be referred to the PCA, whereas in Northern Ireland they do all have to be referred to the ICPC (though as regards complaints which are informally resolved the ICPC simply looks at the files to make sure that the criteria for using the informal resolution procedure have been properly complied with). In England and Wales the complaints which must be referred to the PCA are those alleging that death or serious injury has been caused by a police officer (section 87 of the PACE Act 1984) and those alleging assault occasioning actual bodily harm, corruption or a serious arrestable offence (the Police (Complaints) (Mandatory Referrals Etc) Regulations 1985). In addition a chief constable can refer any other complaint to the PCA if he or she so wishes.

As Table 1 shows, the PCA is not, relatively speaking, as busy as the ICPC. The population of England and Wales is roughly 30 times that of Northern Ireland but the workload of the PCA in terms of cases referred, supervised or completed is between two and four times as great as that of the ICPC. The PCA's budget, however, is between five and six times as great as that of the ICPC. In 1992 the PCA spent £4,540 per case supervised while the ICPC spent £1,570; the amounts spent per case completed were, respectively, £374 and £243.

Table 1: A Comparison of the PCA and ICPC for 1992

	PCA	ICPC
Cases referred	4,476	2,547
Cases supervised	757	396
Cases completed	9,200	2,556
Investigations continuing at end of year	464	184
Formal disciplinary charges	252	39
Ratio of charges to cases supervised	1:3	1:10
Ratio of charges to cases completed	1:37	1:66
Govt. grant received	**£3,436,900**	**£622,000**

The English system, like that in Northern Ireland, has been criticised for not employing completely independent investigators. The Chairman of the PCA said in its Annual Report for 1989 that no one has produced a blue-print for an alternative and viable independent scheme. Such a claim, however, depends on one's assessment of viability. The CAJ believes that its own proposals for an independent scheme are viable and that schemes which are working well in other countries do display a much greater degree of independence than that enshrined in the British and Northern Ireland systems.

The English PCA has, however, appeared to be more active than the ICPC in dealing with controversial aspects of the police complaints sytem. Its annual report always contains a chapter on legal matters, where recently issues such as public interest immunity certificates, confidentiality of letters to complainants and delay in hearing a disciplinary case have been discussed. The ICPC's annual reports, by way of contrast, despite the generally more contentious context in Northern Ireland, tend to avoid taking a position on these and other issues. In its Triennial Review 1988-1991 the PCA recommended that an investigating officer's report and the witness statements obtained should not be disclosed to the lawyers who are instructed by a force to defend civil proceedings arising from an incident complained about. The disclosure of these documents is a very significant problem in Northern Ireland, leading many complainants to refuse to co-operate with any investigation of their complaints, yet the ICPC has not echoed the PCA's recommendation. It is only in the past year or so, moreover, that, in the absence of a formal complaint, the ICPC has nevertheless been involved in the investigation of incidents where lethal force has been used by police officers.

This involvement, however, has been at the request of the Chief Constable under article 8(1) of the Police (NI) Order 1987: there is no evidence that the ICPC has itself gone looking for involvement. It adopted a similar head-in-the-sand approach during the Stevens Inquiry into allegations of collusion between members of the security forces and loyalist paramilitaries.

The English complaints system also benefits from regular appraisal by the Home Affairs Select Committee in the House of Commons. In recent years this committee has issued three reports on the subject: HC 583 (1987-88), HC 395 (1988-89) and HC 179 (1991-92). The last of these looked at the progress that has been made in ironing out problems identified by the PCA's first Triennial Review and considered the need for further change; in particular it responded to the Review's proposals for reform of the disciplinary case procedure.

The CAJ would agree with several of the recommendations made by the Select Committee. These include the following:

- (a) that the PCA should conduct a regular survey to monitor progress in achieving public awareness of the Authority's work;
- (b) that all police forces should adopt the so-called Statement of Intent regarding delays (this would set targets of 120 days for the completion of investigations and a further 120 days for the holding of disciplinary hearings)
- (c) that Authority members should not sit on disciplinary tribunals but should be replaced by a strong independent presence; and
- (d) that not all cases currently falling within the disciplinary system require a standard of proof beyond a reasonable doubt.

We note with interest that in its official response to the Select Committee's report the government has accepted the first three of these recommendations (see Cm 1996, July 1992). It is regrettable, that as far as Northern Ireland is concerned, the government is proving much less amenable. It has not adopted any of these Select Committee recommendations, even that, (c), which is also one recommended by the ICPC.

Republic of Ireland

The concept of independent scrutiny of citizen complaints against the police was introduced in the Republic of Ireland by the Garda Siochana (Complaints) Act 1986. The central elements of the machinery are a Garda Siochana Complaints Board (modelled closely on its counterparts in Northern Ireland and Great Britain) and the establishment of the Board's Chief Executive as a statutory office in its own right. Although the Board's primary role is to provide independent scrutiny in the investigation and disposal of complaints its membership includes the Commissioner of the Garda Siochana as well as eight other members, at least three of whom must be practising barristers or solicitors of not less than 10 years' standing.

A complaint may be lodged directly by the complainant, or an authorised person, with the police or at the Board's office. Either way all complaints will be presented to the Board. To be admissible for formal investigation a complaint must allege behaviour of a type traditionally associated with internal disciplinary codes, such as discourtesy or abuse of authority. An interesting exception is the inclusion of an offence of breaching the regulations governing the treatment of suspects in police custody. Other admissibility requirements are that: the complaint must be lodged within 6 months after the relevant incident and it must not be frivolous or vexatious. In 1991, out of a total of 759 complaints lodged plus 972 carried forward from the previous year, 773 (47%) were rejected as

inadmissible. Of these 46% failed because they did not constitute a recognised offence while 36% were deemed frivolous or vexatious.

Minor complaints can be disposed of informally by the Commissioner at the request of the Board. Of the 294 complaints actually dealt with in 1991, 28 (10%) were disposed of in this manner. Fifteen (54%) resulted in the officer being advised or warned about his or her behaviour. The other admissible complaints will be investigated formally, almost invariably by an officer of the rank of Superintendent or higher. In 1991 174 such investigations were completed. A further 91 (31%) were withdrawn.

The Board's input in any individual case begins with the power to prescribe general principles which must be followed by the Commissioner of the Garda Siochana when appointing an investigating officer. Thereafter, this officer reports to the Board's Chief Executive who, in turn, keeps the Board informed on the progress of the investigation. The Board does have the power to direct independent investigation of a complaint where it considers that that is required in the public interest or that the police investigation has not been, or is not being, carried out properly. However, it has not exercised this power to date. There is also provision for the Board, in certain circumstances, to direct an officer to answer a question, furnish information or produce a document or thing where he or she has otherwise refused to do so in the course of an investigation. Failure to comply with the direction is a disciplinary offence in itself.

If the complaint discloses a possible criminal offence the Board must refer it to the DPP for a decision on prosecution. Apart from that, if the Board feels that a breach of discipline is disclosed, and that breach is not amenable to informal resolution, it must refer it to a Tribunal. Only 5 cases were referred in 1991 while a further 3 were carried over. The Tribunal will consist of three people. Two of these must be members of the Board who were not involved previously in the case, while the third must be an officer of the rank of Chief Superintendent or higher. At least one of the Board representatives must be a solicitor or barrister.

The object of the Tribunal proceedings is to make a determination on whether or not the officer in question was guilty of a breach of discipline and, if so, what disciplinary action should be taken. The proceedings are held in private and, broadly speaking, follow an adversarial and accusatorial approach. Only one case was completed in 1991 and that resulted in the officer being cleared of the disciplinary charges. In the event of an adverse decision against the officer there can be an appeal to an Appeal Tribunal consisting of three people and chaired by a Circuit Court judge.

Since the creation of the Garda Complaints Board in 1987 almost 5,000 complaints have been lodged. During this period at least 26 gardai have been dismissed from duty, but only one as a result of a complaint. Complaints have led to two other officers having their pay reduced, three being cautioned and one reprimanded.

As regards civil actions taken against the Garda for assault, false imprisonment and damage to property, the reports of the Comptroller and Auditor General in Ireland reveal that from 1987 to 1991 a total of £635,477 was paid in settlements to 65 people. The figure for 1992 is expected to be about £750,000, largely because of a settlement of £375,000 in favour of Mr Derek Fairbrother who was allegedly assaulted at Finglas garda station. Negotiations are still in progress over the compensation to be awarded to Nicky Kelly, wrongly convicted of involvement in the Sallins Mail train robbery.

The United States

In the U.S. a number of attempts were made in the late 1950s and subsequently to introduce a civilian element into the management of policing. These varied widely, some being solely concerned with complaints while others were experiments in introducing outsiders into the formulation of policy. Most have been abandoned, either because they were faulty in design, or because of a change in political fortunes or because they were not properly negotiated with the police before being introduced and so attracted unrelenting police hostility. Four however remain and are worth examining.

Detroit

In Detroit a Board of Police Commissioners was established after some civil disturbances in the 1960s. It is a body of five civilians appointed by the Mayor and approved by the City Council and may be regarded as roughly the equivalent of a UK Police Authority, though its powers are considerably greater since they include the establishment of policy, rules and regulations, approval of the budget and reviewing and imposing discipline, as well as the examination of complaints. The board has, of course, its own staff and the equivalent of our procedure for the informal resolution of minor complaints is conducted by their Executive Secretary. Most other complaints - about 90% - are investigated by the police themselves, either the section complained against or the Professional Standards Section. The remaining 10% of serious cases are investigated either by the Board's own staff of civilian investigators or by mixed teams of these investigators and police officers. Reports of investigations are submitted to the Board which then makes recommendations for settlement to the Chief of Police.

This arrangement in Detroit is regarded as an important step in civilian involvement in police work because it has created a link between the examination of complaints and the general control of police work which, by definition, includes observing patterns of malpractices and taking steps to abolish them. The arrangement has worked, perhaps primarily because it was extensively negotiated with the police union and in the process a number of concessions to the police were made.

Perhaps the main query concerning the Detroit experience relates to the fall in the number of complaints made in recent times. It is not known whether for some unsatisfactory reason public confidence in the complaints system has fallen off or whether, on the contrary, public confidence in policing generally has increased and so there is less cause for complaint. If this is the case it could be due either to the successful elimination of some malpractices (which is after all one of the Board's objectives) or to a different emphasis in police work, embodying a greater element of co-operation with the public. These are matters which could well be worth exploring in some detail if and when the resources become available.

Berkeley

In Berkeley there is a Police Review Commission (PRC) which also has power to review policies, practices and procedures, and to make appropriate recommendations, in this case to the City Council and the City Manager, but its interest in complaints is limited to appeals from the police department's own complaints procedure. Here again the Commission has its own investigators who report to the Commission.

The PRC jurisdiction is very broad, allowing for review of virtually any aspect of police operations, as well as the investigation of individual complaints of misconduct. The Commission holds twice

monthly public meetings, with the Chief of Police or other ranking officers in attendance, in which public comment is received and any topical matter of interest can be pursued at the Commission's initiative.

It is important to note that the PRC process is an extraordinarily public one - with the complaints, hearings, investigation reports, findings and City Manager response all open to the public. The PRC is able to maintain this level of public disclosure in part because it is not directly involved in imposing or recommending disciplinary action.

Berkeley's commitment to an open PRC process meets several important objectives. It provides meaningful access to citizens for the ongoing review of police operations; it enhances officers' compliance with community standards of conduct; and it maintains the credibility of the PRC with the community it serves.

A summary of features of the PRC process is listed below:

- Provides for independent, civilian investigation of allegations of misconduct against members of the Berkeley Police Department - including excessive force allegations - as well as civilian review of any aspect of police practices, policies and procedures.
- Has been in existence since 1973, created as a result of a citizen initiative, with nine Commissioners, appointed by the Mayor and City Council, staffed by civilian, non-police City employees.
- Has subpoena power which, under City Manager policy, compels officers to cooperate with investigations and testify at public hearings as a condition of employment.
- Has the authority to render public findings on the merits of allegations of miscounduct, which do not include disciplinary recommendations.
- Has advisory power to recommend policy changes on any aspect of police operations to the Chief, City Manager and City Council.
- Is developing mediation as an option for handling citizen complaints where appropriate.

As in Detroit the Berkeley system provides a link between investigating complaints by independent investigators and some control over police policy and practice. The fact that the only complaints which come before the Commission are those which are the subject of appeals may be thought to limit the effectiveness of this system in so far as, human nature being what it is, there will probably be some cases where the complainant is dissatisfied with the handling of the complaint by the police department but yet does not have the energy or determination to go through with the further hassle of an appeal. Nevertheless the Berkeley System, which dates from 1973, must be regarded as a very important example of what can be achieved in this field.

Chicago

The system operated in Chicago presents yet another design. There the Office of Professional Standards (OPS), which was established in 1974 in response to public and internal concern about the integrity of excessive force investigations, is not concerned with police policy and, though its investigative staff are civilians, they are employed by the police department and cannot therefore be regarded as wholly independent. However this modification is probably made up for, at least to some extent, by the presence on the staff of the Office of some administrators and supervisors who are mostly lawyers. Moreover the police department's attitude to the Office is that the investigative staff are, by order of the Superintendent of Police, completely independent of the normal police chain of command. No officer of any rank can impede an OPS investigation, and complainants can

speak to an investigator anywhere they like. On the other hand the investigators can use the full resources of the police department and are equipped with police vehicles and radios. It would therefore seem that their relationship with the police, whatever the reality, must appear to some complainants to be somewhat ambivalent.

As in Detroit most complaints are dealt with by the police themselves and the Office of Professional Standards, though it acts as the recipient and registrar of all complaints, is mainly concerned with charges of flagrant police brutality. It also reviews cases involving dismissals as well as all cases where an officer shot someone, whether fatally or not, even when no allegation of misconduct is made. The investigators are carefully chosen to be ethnically representative of the Chicago population and speak Spanish and other languages. They live all over the city and about half of them are women. They are required to have a college education and must go through a pre-service training.

One early achievement of the OPS was a relatively high rate of dismissals - 30 in each of the successive years, 1976 and 1977, which for a city the size of Chicago, large as it is, must be regarded as something of a clearing out of dead wood. This, combined with the rate of substantiation of complaints rising from 3% under the previous system to 8.4%, earned the Office increasing praise from the public.

New York City

In New York City a Civilian Complaint Review Board was created in 1986 and began functioning in 1987. The Board has 12 members, six appointed by the Police Commissioner from among his senior executive non-uniformed employees and six appointed from the general public by the Mayor with the advice and consent of the City Council. Five of the mayoral appointees represent the five boroughs of New York, while the sixth is "at large".

In addition to the public representatives on the Board itself, six civilian investigators from the Police Department's staff were selected in 1987 to work for the Board. They received extensive training in law and in police procedures, some of the instruction being supplied on the job by supervisors and peers. According to the Board's 1987 Annual Report this civilian input was a great success:

> *"The civilian investigators have performed admirably and have earned the confidence of both complainants and co-workers. Testament to the success of the program is the fact that three of the original six investigators were hired away from us by other governmental agencies within six months of their appointment. Notwithstanding this attrition, the program is alive and well, and progress has ben made in developing a career and promotional track for civilian investigators."*

By 1992 the Review Board had 59 investigators of whom rather under half were civilians. It appears at the time of writing that the New York City arrangements are about to be altered as the result of an agreement reached in October 1992. In future there will be 13 members of the Board instead of 12. All will be appointed by the Mayor but five will be nominees of the City Council and three of the Police Commissioner. None of the members except those three will have had any experience as police officers or FBI agents but they may be selected from people with other law enforcement experience such as prosecuting lawyers or assistant district attorneys. Rather curiously those appointed by the Police Commissioner must be civilians with past experience either as police officers or in other law enforcement work. To judge by some of the comments emanating from people in New York with knowledge of these matters this new arrangement will not satisfy everyone, despite

the fact that it is itself a compromise, and it may throw up problems which have not yet been addressed. Further change is therefore a possibility and certainly it remains to be seen how well the new system will work. That may well depend to a large extent on the Board's staff of investigators. The agreement apparently says nothing about them so presumably that will be a matter for the Board itself to decide and control.

Conclusions from these four jurisdictions

These four American examples have been quoted because of their (differing) merits and considerable degrees of success. It must however be emphasised that they are somewhat exceptional cases in a country where many attempts were made to introduce some civilian element into police work and most were abandoned as failures. It seems that this overall experience points up the following lessons.

1. No scheme will succeed which is not thoroughly negotiated with the police before it is adopted. This is so obvious that one would think it need not be stated but in fact a number of the abandoned schemes failed for this reason.

2. There needs to be a delicate balance between the powers of the complaints review body and those remaining with the police. It is important not to sap the police department's control of its own affairs to the point where the chief of police feels he or she no longer has authority over subordinate officers.

3. On the other hand there is clearly great value to be derived from a link between the machinery for dealing with complaints and that for determining police policy and practice. The CAJ has for a long time (and without knowing until now of this American experience) insisted on the importance of the complaints machinery being able both to deal satisfactorily with the individual case and to observe patterns of police practice which give rise to a number of similar complaints. If these patterns in police work, which are usually what concern the public most and therefore govern public confidence (or lack of it), are to be rectified the arrangements in Detroit and Berkeley, where both functions are in the hands of the same people, offer the simplest and most logical solution. There may be a lesson here for us in Northern Ireland.

4. In the U.S., as here, the police are very wary of any form of control operating from political motivation and a number of the American schemes failed for this reason. In the nature of things any activity which is motivated by a particular section of society will be opposed by those who distrust and disagree with that section, and it has long been agreed that is important for the success and stability of any police service that it should not be subjected to changes of policy determined by considerations which have little or nothing to do with policing.

5. At the same time the need for an independent investigation of complaints to be just that and not a window-dressing exercise is obvious enough. Any system which gives the impression that the investigators, though civilian, are too closely associated with the police will tend to be looked at askance by a cynical public.

Overall U.S. experience

Before leaving the American continent, it is worth looking briefly at the overall US experience during the 30 years in which that country has tried to tackle the subject of civilian review. There are so many separate police departments in the US that a thorough study would run to several volumes, but it is possible to detect different climates of opinion in different periods with resulting

differences in the prevailing arrangements and it is worth describing these briefly because they serve to illustrate what we have already pointed out, that a responsive democracy tends to produce the kind of system that it wants at the time, albeit sometimes not without delay or pain.

The 1960s

The early experiments with civilian review boards in the 1960s cannot be counted a success. Perhaps it was inevitable that that should be so because it was a new idea that needed time to become acceptable to the police. Certainly the opposition that it generated was intense and, in the absence of a degree of support comparable to that revealed in Toronto twenty years later, there was a general decline in the fortunes of the boards towards the end of the decade.

The 1970s

By the 1970s however the climate of opinion had changed and a number of new ventures were begun, taking a variety of forms, showing that no one design is sacrosanct but that what is essential for success is a sound legal foundation and sufficient support, not merely from disadvantaged minority groups who regard themselves as particular police targets and so tend to be to the fore in advocating civilian review, but from the public generally.

The 1980s

This period of relative success extended also into the 1980s and more systems were established, again exhibiting a diversity in organisation, legal standing and the degree of civilian involvement in the complaints process. Of the 25 largest US cities 13 now have some sort of civilian oversight board or agency monitoring their police departments, several having been created in the last 6 years. In the nature of things the police have continued to be wary of such schemes but have not fought against them with the ferocity and resourcefulness exhibited in Victoria and Toronto. Moreover police management has very properly responded to the stimulus which civilian involvement provides by tightening up the efficiency and reliability of their own internal systems of investigation and review.

The present position

The latest development in the US is a reasoned debate among commentators and students of both public administration in general and police work in particular. There is a school of thought among such people which argues that in the technological age in which we live most problems of organisation are technical by nature and require technicians to resolve them. By going on to argue from the general to the particular - a sin in the world of philosophy - these people conclude that lapses in police work resulting in complaints must, in the interest of efficiency, be examined only by police because only they will understand the issues. This view of course overlooks the fact that some management problems are not essentially technical and some patterns of human behaviour can be found almost anywhere and are best judged by people of independent mind. Perhaps this is a debate that will go on for a long time; it certainly exhibits the fact that the issue is not simple and that people who feel strongly on a subject will have recourse to all sorts of unexpected arguments.

Australia

New South Wales

The New South Wales approach is very different from any of the American models, being in effect something of a hybrid between, on the one hand, the present British and Northern Irish system of an external authority supervising and controlling police investigations into complaints and, on the other, the operation by the external authority itself of a system of re-investigating cases which have already been investigated by the police. The mechanism used in New South Wales is that of the state Ombudsman who has extensive powers and deals with complaints against all departments of the state. In the case of complaints against the police, as with complaints against other departments, the first stage of investigation is left to the department complained against, though it is significant that at the point of receipt of the complaint it is the office of the Ombudsman that decides which complaints require police investigation and which, for various reasons, do not.

As the police internal investigations proceed, some cases are dropped, some dealt with by conciliation, some declared sustained and some declared not sustained (this being accepted by the complainant). Of the remaining ones which the police are unable to determine, some are deemed by the Ombudsman to be not sustained and some others fall by the wayside through lack of the complainant's desire to pursue the matter further. Of those where a re-investigation is asked for the Ombudsman will decline the request in some cases without further investigation and will proceed with the remainder. It is the method of handling this relatively small number that provides the interest in the New South Wales practice. It should perhaps be said that at any point where a case is dropped on the initiative of the Ombudsman, - i.e. is deemed by him or her either at the beginning not to merit investigation by anybody or, later, not to need any further study than a reading of the police report - there does not seem to be any reason to fear a faulty procedure or the likelihood of injustice. There could however be some fear, either towards the end of the first stage, or at the point where the police declare they are unable to determine the case, that complaints may be dropped through improper pressure by the police on the complainant.

The Ombudsman's staff

These people are partly civilian (since complaints against departments other than the police will normally not require police investigation) and partly police officers chosen by the Ombudsman and seconded to him or her from the New South Wales police. For investigating complaints against the police the Ombudsman is now able to use both civilians and seconded police as he or she thinks best in each case, though originally the legislation did not allow the use of civilians. The Ombudsman's reports speak extremely highly of both the quality of the seconded police officers and of their expertise.

Hearings

The hearings conducted by the Ombudsman are described in his special report to Parliament in the following terms:

> *"After the appropriate steps have been taken by the Ombudsman's seconded police officer a matter is usually set down for hearing. In conducting hearings the Ombudsman is given Royal Commission powers under Section 19 of the Ombudsman Act, and for most practical purposes the Ombudsman exercises the powers of a Royal Commissioner.*

He may, if he wishes, compel witnesses to attend and to produce documents. He may compel witnesses to answer questions.

"Hearings conducted by the Office of the Ombudsman are usually heard either at the Sydney Office of the Ombudsman or at a civic centre in a country or regional centre, if all of the relevant witnesses live in that area. The Ombudsman prefers not to use court houses or police buildings in order to assure civilian witnesses that the hearing will be both impartial and relatively informal.

"Hearings are conducted by the Ombudsman, the Deputy Ombudsman, or either of the two Assistant Ombudsmen. They are assisted by the seconded police officers responsible for the matter.

"The usual order of witnesses at a hearing is the complainant, civilian witnesses, police witnesses and, finally, police officers the subject of complaint. Although there is no rigid or formal procedure, witnesses are usually questioned extensively by the seconded police officer: the person hearing the matter asks such further questions as he or she chooses.

"The proceedings are tape recorded but they are quite informal. Everybody present sits at the same level around a table and no judicial dress or formality is adopted. Evidence is usually taken in a conversational manner. Evidence is not taken on oath.

"Witnesses are told at the outset that they may interrupt and make comments or statements at any time during the proceedings. If they are represented, the same invitation is extended to their lawyers. At the end of their evidence, each witness and their lawyer is asked if they wish to add anything to the evidence they have given or if they feel any matter has been overlooked or not covered in sufficient detail.

"The procedures are designed to make all witnesses, including those without experience of court rules and processes, as comfortable and relaxed in giving their evidence as possible.

"All of the procedures used at hearings are in accordance with the advice of eminent counsel. If necessary the Ombudsman will use his Royal Commission powers to ensure that every witness believed to be of assistance to the Inquiry, other than police officers the subject of complaint, is required to attend.

"An important feature of the Ombudsman's Royal Commission hearings is that police officers the subject of complaint are not required to attend; they are merely invited to do so. Although the Ombudsman has power to require such police officers to attend, he takes the view that it is a matter for individual police officers to decide whether to attend and give evidence at an Ombudsman's Inquiry. This is done in an attempt to make the proceedings as fair as possible to police the subject of complaint and to ensure that there can be no complaint that police have been compelled to give evidence against their will. In nearly all cases police have responded to the invitation to attend and given evidence."

The Ombudsman's powers

The power to subpoena witnesses has already been mentioned. The following passages reveal comparable powers to obtain the relevant papers and to bring any unsatisfactory matters to the attention of Parliament and the public:

> *"Seconded police officers also obtain all relevant documentation. Again, where possible, this is done with the co-operation of those concerned. But where it is recommended by a seconded police officer, the Ombudsman will exercise his Royal Commission powers and require the production of documents. If the documents are held by a New South Wales Government Department, the Ombudsman can use the power in Section 18 of the Ombudsman Act to require production of the documents.*
>
> *"It is the policy of the Ombudsman to treat the New South Wales police force in the same way as any other New South Wales public authority; that is, where the Police Department itself has been unable to resolve a complaint by a member of the public or investigate it to the satisfaction of the complainant, to re-investigate complaints against the police force and produce detailed, well reasoned and fair reports about the conduct of individual police officers and the practices of the force as a whole. It is up to the Commissioner of Police to implement the Ombudsman's recommendations as a result of being convinced by the Ombudsman's report of the correctness of the course recommended.*
>
> *"In cases where the Commissioner of Police does not follow the Ombudsman's recommendation, the Ombudsman believes a report to Parliament should be made, as would be the case if any other public authority failed to follow an Ombudsman's recommendation. This is the traditional approach of the Ombudsman system both here and overseas. The making of a report to Parliament brings the matter into the parliamentary and public arena. Such a report to Parliament is, rightly, the ultimate sanction under the Ombudsman system."*

Issues that have arisen in New South Wales

No system, however good, ever develops without some difficulty or problem being encountered. In the case of the Ombudsman's responsibilities in relation to complaints against the police it is evident from the record that there were the following problems.

(a) Career structure for seconded police officers

Police officers seconded to the Office of the Ombudsman were concerned that the Police Department regarded their secondment as of no consequence in terms of promotion and future career prospects. The number of seconded officers dropped, with several of them applying for transfers. The Ombudsman therefore recommended that the Police Department should assess seconded officer positions and rank them at a level commensurate with the work done and the responsibilities discharged.

(b) Harassment of seconded officers

As soon as seconded police officers began to investigate complaints vigorously and impartially the Police Association of New South Wales started a campaign against them. They were called "spies" and were themselves the object of complaints. The Ombudsman consequently wrote to the Minister

responsible for the police to protest against the conduct of the Association and of the Commissioner of Police.

(c) Opposition to the Ombudsman's powers

The Police Association argued that New South Wales should abolish the system of police internal investigations and Ombudsman scrutiny and instead establish a separate Police Complaints Authority; but the Ombudsman has successfully countered that the existing system rightly places the police in the same position as all other public servants and achieves efficiency and economies of scale. Maintaining a separate Authority is expensive and wasteful.

Assessment of the New South Wales experience

The New South Wales Ombudsman was first given a role in the investigation of complaints against the police by the Police Regulation (Allegations of Misconduct) Act 1978. It was in 1984 that his office was granted the power of direct re-investigation of complaints. Since then the annual reports of the Ombudsman have expressed a high degree of satisfaction with the system. In the report for 1986-87, for example, this passage occurs:

> *"In the view of the Ombudsman after three years of operation of the system, the New South Wales system of investigating complaints about police is one of the best of its kind in Australia, or indeed, the world."*

The Ombudsman regularly reports on general issues arising out of particular incidents and makes numerous recommendations on how police practices could be improved. He has, for instance, highlighted the inappropriate use of arrest powers, the need for proper guidelines on strip-searching and the special problems experienced by aboriginal people. Occasionally the Ombudsman recommends that the police service should make an ex-gratia payment of compensation to complainants. In the report for 1990-91 it is noted that:

> *"The past two years have seen spectacular and widely publicised episodes where the New South Wales Police have come under searching public scrutiny...The fact that such matters are opened up for public debate generally encourages confidence in the mechanisms to deal with complaints and appears to have an influence on the increasing numbers [of complaints]."*

In 1989 a Select Committee of the New South Wales Legislative Council issued a report on the role of the Ombudsman in relation to police complaints. It found that there were massive and widespread misconceptions among the police about what the Ombudsman did, how he did it and why, that there was a need to reduce delays in the handling of complaints (though by statute police investigations must be concluded within 180 days) and that greater efforts should be made to conciliate complainants. The Ombudsman took steps to address these points and made a special report to Parliament on the matter in July 1991. That same month the Parliamentary Joint Committee on the Office of the Ombudsman set up a Review of the Ombudsman's role in investigating complaints against the police. This Review was published in April 1992; it makes numerous recommendations in relation to the conciliation of complaints and other matters but in no way seeks to diminish the role of the Ombudsman in this context.

Victoria

The history of the attempt to introduce a civilian element into the handling of complaints against the police in the Australian state of Victoria is not a success story. Indeed it makes extraordinary reading but the details of a long battle between the Police Complaints Authority and the police, with the state government failing to support its own creation, would take more space to rehearse than we could justify here. However the story does provide at least two very clear lessons about how not to attempt to deal fairly with complaints against a strong police force without adequate backing.

An early confrontation

The Authority was set up in 1986 and though its powers have been criticised as vague they did include the ability to conduct its own investigations instead of always letting the police do an internal investigation first. An incident which occurred very early in the life of the Authority started a saga that was to prove disastrous. Hampered at the outset on the purely practical level by the government's failure to provide their own creation with a proper office, the Authority, in an attempt to establish some basic facts about the complaints it had received, advertised locally that its members would be available at certain times in two hotels to receive first hand information from anyone able and willing to give it. This seemingly natural and proper action stimulated the Police Association to take the extraordinary step of seeking an injunction in the courts to prevent the members of the Authority doing any such thing. Even more extraordinarily the injunction was granted and it was not until a year later that the Authority persuaded the Supreme Count of Victoria to reverse the judgement, by which time of course the point of the information-seeking exercise had been lost.

This rather dramatic episode at the beginning of the Authority's life set the tone to the relationship between the Authority and senior police in the months that followed. A number of complainants were discontented with the way the police dealt with them and the Authority irritated the police by selecting a number of such cases for further study by themselves. Any resulting recommendations for disciplinary action were rejected by the police who exhibited antagonism towards both the complainants and the Authority.

Lack of political support

Similarly the Authority, in pursuit of its remit to make recommendations for changes in police practices and procedures, was instrumental in running a number of seminars but the Chief Commissioner forbade his senior officers to attend and the Minister for Police even tried to persuade the Authority to dissociate itself from this attempt to stimulate informed discussion about reform of policing in Victoria.

The influence of the press

This sort of thing inevitably attracted the attention of the press and an investigative journalist ran a series of articles which were regarded by senior police as a vendetta against them. It did in fact put the issue of relationships between the Authority and the police unmistakably in the public domain and the Minister felt it politically necessary to set up an inquiry into what was becoming for the government an increasingly embarrassing public wrangle. He accordingly appointed Professor Richardson, the former Ombudsman for the whole of the Commonwealth of Australia, to report on the workings of the Internal Investigation Department. His report largely supported the Authority's criticisms of the department but expressed concern about the bad relationships and suggested that if matters did not improve the Authority might be wound up and its functions given to the (Victoria) Ombudsman, with a Deputy Ombudsman specifically in charge of overseeing the

review of police complaints. This in fact was what happened a few months later after further confrontations; see below.

Mistaken tactics

With hindsight it may be concluded that the PCA made two major mistakes in deciding how to play its hand in the face of determined opposition to its very existence from the senior police command. In essence its first mistake was to take its remit very seriously and pursue it energetically. It was determined to unearth police corruption and biased internal investigation of complaints, and in the process it found good opportunities to advocate changes in practices and procedures. This was altogether too much for the police: they had begun to accept the idea of their investigations into individual complaints being overseen by outsiders because they knew this was a phenomenon occurring elsewhere and there was no particular reason why Victoria should expect to be exempt from this trend, but they thought it wholly wrong in principle that civilians, whom they regarded as being, by definition, ignorant of the problems of police work, should contemplate teaching them lessons in organisation and method, and even in the attitudes they should adopt.

The PCA did in fact debate within itself how energetically it should pursue its tasks. In effect it had to choose between a gentle and slow approach in an attempt to give the police time to become adjusted to new ways and new standards and, on the other hand, a forceful approach based on the belief that the police would never change unless forced to do so by publicly aired pressure. There was a great deal of sensible reasoning, in the prevailing atmosphere of the time, and indeed in actual experience, to support this latter policy and in fact it is difficult to criticise the PCA for adopting it except on the ground that in the event it failed and they were abolished. It is difficult to say whether, if they had adopted the longer-term tactic and been more pragmatic and tactful, they would have been able to win over such determined opposition or would merely have been accused of letting down complainants whose cases they regarded as valid and so betraying their trust and failing to give the public any confidence in the system, which was after all the reason for the authority's appointment in the first place.

Political judgement

The PCA's second mistake was one of political judgement. It took the government which created the Authority at its word when it expressed its support, and failed to realise that it is an occupational hazard in political life that politicians not infrequently say what they think will be agreeable to their hearers in preference to being completely honest. In this case it is evident that the government in power in Victoria saw some votes in creating the PCA but not - and especially not in the run-up to an election - in supporting a forceful confrontation with a strong police senior command and a powerful and militant Police Association willing even to go to the length of entering candidates in the election. The significance of what the Victoria government did is worth spelling out clearly, for governments the world over tend to subordinate all considerations to that of political advantage. If the balance of political advantage appears to indicate that a statutory authority should be wound up if it refuses to act against its conscience in a politically acceptable way then wound up it will be.

The need for political will

The experience of Victoria is therefore only one example among many of the fact that attempts to reform police malpractices are dependent for their success on the political will of the government of the day, which is in turn dependent on what it sees as the level and nature of public disquiet. If the public is chiefly concerned about the level of crime and instinctively supportive of the law and

order lobby for a strong police force there will be few votes in a programme of police reform which will tend to be regarded as possibly beneficial but only in the long term future: but if the public is sufficiently outraged by stories of police abuses and sees such stories as constituting an immediate and urgent problem, as happened in Queensland, it then becomes possible for an official enquiry to recommend the complete abandonment of the internal investigation model on the ground that the police service is so corrupt that it simply cannot be trusted with that function and, rather than grafting onto it an external supervisory and monitoring system, the creation of something altogether different and altogether external with the police having no role in the investigation of complaints. These two descriptions of the public's choice of priorities and what logically follows from the choice made serve to illustrate the full length of the scale that exists in the relationship between the degree of change that can be expected to succeed and the political desire for it in a democracy.

The system in Victoria today

The functions conferred upon the Deputy Ombudsman are twofold: to oversee and review police internal investigations and to conduct investigations. Both functions are carried out quite independently of the police. By 30 June 1990 the Deputy Ombudsman had conducted 58 independent investigations as well as 74 further investigations of complaints already investigated by the police. Of the 58 independent investigations, 16 (28%) were substantiated. In his annual report to 30 June 1991 the Deputy Ombudsman reveals that "approximately 200 matters have been investigated by me by way of primary investigation" and he argues convincingly that his office is now more independent of the police than was the former Police Complaints Authority. Unlike in New South Wales, the Office of the Ombudsman in Victoria does not use seconded police officers for independent investigations. In recent years these investigations have included "public interest" matters such as the conduct of police raids, the use of firearms and conditions in police cells.

Queensland

Since 22 April 1990 all complaints against the police in Queensland have been investigated by the Criminal Justice Commission, which was established following a Commission of Inquiry that revealed organized corruption within the police force. Investigations of complaints are conducted by police officers seconded to the Commission, some of these being from other States in Australia. The Commission often makes recommendations to the Commissioner of the Police Service that measures be taken to obviate the recurrence of certain complaints, for example in relation to the holds used by officers when conducting arrests. Judging by the rise in the number of complaints in 1991-92 compared with 1990-91, the new Commission is having a measurable impact on the public's awareness of the complaints system. A determined effort is being made to "clean up" the police in Queensland and this new complaints system is seen as a crucial element in the reform process.

Canada

Toronto

The experience of Metropolitan Toronto equals that of Victoria in showing the lengths to which opposition to a hated reform can go, but there are significant differences of detail and, for reasons that will be explained, the outcome was entirely different. In order to draw attention to the significance of what happened it will be necessary to go into more detail than in the case of Victoria.

The office of the Public Complaints Commissioner was established in 1981 with the following powers:

- 1. monitoring the police handling of complaints
- 2. reinvestigating and reviewing police decisions when the complainant was not satisfied
- 3. when necessary referring cases to a civilian tribunal with disciplinary powers
- 4. in special cases conducting his own initial investigations
- 5. making recommendations to the police or the government about policing issues arising out of complaints.

Thorough preparation

The Act creating the office was passed as a result of a substantial crisis in police - community relations in the 1970s so that there was a public acceptance of the existence of a problem and the need to do something about it. Perhaps because of this and the debate that it generated the system devised was the result of thorough negotiation with police management and the Police Association; the checks and balances written into the system were numerous and well thought out and there were good safeguards against injustice being done to an accused officer. Above all, and in contrast to the situation in Victoria, the legislation was detailed and clear. The overall effect appeared to be as good as anything either the advocates of reform or its potential opponents could reasonably have asked for and both sides recognised the considerable advantages they stood to gain. The reformers got a system incorporating extensive civilian investigation, substantial rights for complainants and hearings before a civilian tribunal. The Police Association thought that the system would give more protection to accused officers than the internal discipline system and that police morale would improve because public hostility would evaporate, while this was also seen by police management as a relief from the persistent debilitating criticism they were accustomed to.

Intensity of police opposition to power of dismissal

There was however one element in the system which gave rise to the extraordinary quarrel that followed and which, it is fair to say, was quite out of character with the even-handedness of the system as a whole. The tribunals were given disciplinary powers unmatched in any other police jurisdiction in Canada except possibly two and, so far as we know, not tried anywhere else in the world. They could themselves impose penalties including dismissal whereas the norm in the field of discipline is for any civilian authority, of whatever nature, to have only the power to make recommendations about disciplinary penalties to the chief of police. In passing we feel it right to say that in our view that norm conforms to an important principle of good organisation, namely that, subject to the overall jurisdiction of the courts or any special authority established by law for the purpose, such as the industrial tribunals in the UK, the authority in charge of any organisation, be it an individual or a corporate body, must be in control of its own house. At any rate, whatever the rightness or wrongness of principle, it was certainly this provision that started a long battle in which the police used every device of which they could think to redress the situation, including not merely an appeal to the Divisional Court against the decision of a tribunal and, on getting an adverse judgement, a further attempt to appeal to the Ontario Court of Appeal, which refused leave to appeal. Having exhausted the legal processes available the Police Association at once decided on a partial strike to be maintained until the officer concerned, who had been forced to resign, was reinstated and the law amended so as to abolish the office of Public Complaints Commissioner. Police management took no steps to condemn or to discipline this withdrawal of services to the public and

the public were further made very much aware of the issue by public demonstrations and a media campaign.

This was followed by further recourse to the courts in a way that must be unique. The Association's representative in the dismissed constable's division charged him, with his full cooperation, with the criminal offence of assault, clearly on the calculated assumption that he would be acquitted, the officer bringing the charge having publicly stated that he was convinced the accused man was innocent. In the event this device was not allowed to run its full course because the Attorney General stayed the proceedings.

Wide ranging debate

The final step taken by the opposition was for police management and the Police Association both to submit recommendations to the Government for changes in the law. This attracted both public attention and public response. Not only did a number of community organisations spring to the defence of the law as it then was but so did the Criminal Lawyers' Association, and the Canadian Bar Association went so far as to urge that the Metropolitan Toronto system with some modifications be extended to the whole province of Ontario with its 117 separate police forces. Since this was the idea that won the day the outcome in this case was that the challenge to the system was not in the end supported by the courts, the media or the public and therefore not by Government. Indeed the Federal Government of Canada has amended the Act governing the Royal Canadian Mounted Police so as to include a number of the provisions originating in Toronto.

Assessment of the Toronto experience

If an attempt be made to assess why the result in Toronto - and indeed in Canada - was so different from that in Victoria two observations are perhaps called for. The first is that, with the one exception of the offending provision that caused all the trouble, the Toronto system was very thoroughly negotiated before being set-up and, as a result, was very detailed, very clear and very fair. In the end this was recognised by police rank and file, police management and the public and this was what preserved it when under attack.

The second is that when a system is under attack the defenders need both restraint, which was absent in Victoria though it had been canvassed and duly considered, and resolve. Restraint is needed to give the attackers time to adjust to new ideas and to the fact that they have public support, though it must not of course be carried to the length of emasculating the essentials of the system. This was what the PCA in Victoria was determined to avoid but in doing so they missed the opportunity of finding a middle way. And resolve is needed too when faced with such determined opposition as was brought to bear in Toronto. Had the government not stood firm when faced with a police strike and public demonstrations by the police the outcome would have been very different, but the government not only knew of the decisions of the Courts but it correctly assessed the wishes of the general public.

Ontario

A more recent Canadian development has been the establishment in the province of Ontario of a Special Investigations Unit in the department of the Solicitor General (though it may soon be transferred to that of the Attorney General). This unit is empowered, on the initiative of its director, to investigate "circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers" (s 113(5) Police Services Act 1989). The director of the

SIU cannot at any stage have been a police officer; his or her investigators cannot be current police officers nor, significantly, can they investigate a member of a police force in which they previously served (s 113(3), (6)).

This is a significant development in that the initiative to take action lies with the director and does not need the stimulus of a complaint from a member of the public. However the future of this reform is not entirely certain as the two largest police unions in Ontario are both opposed to it.

New Zealand

The experience of civilian investigation of complaints in New Zealand is an altogether happier one, though admittedly it is short compared with the other police jurisdictions and it may be premature to formulate firm conclusions derived from what has happened so far. Some people may be tempted to think that New Zealand, having a relatively peaceful and contented society, is not a fair test of how to introduce a civilian element into the examination of complaints, but the country has its indigenous Maori population whose traditional life style does not mesh easily with that of people of European descent, and the police service, though generally of a very high standard, is not immune from the temptations, which afflict the police everywhere, to take short cuts in order to achieve what they want to achieve. It is therefore of considerable interest to see how a small country, with a population just over twice the size of Northern Ireland's, has created an authority which has managed to do the work entrusted to it while securing the cooperation and respect of the police and a satisfactory degree of confidence from the public.

The Authority's functions

The New Zealand Police Complaints Authority was established in 1988 with the functions of

- 1. Monitoring all complaints and satisfying itself that those dealt with entirely by the police were properly handled and that the decisions were correct.
- 2. Where necessary supervising the police conduct of the investigation.
- 3. Where necessary conducting its own investigations, either from the very beginning because of the seriousness of the case, or later where the Authority is itself dissatisfied with the police investigation.
- 4. Reviewing cases where complainants are dissatisfied with the handling of their cases by the police. So far these have been about 10% of all complaints received. Of those that the Authority reviewed 17% in the first year of the Authority's work and 23% in the second achieved some change in the outcome as a result of the review.

The Authority and his deputy and staff

In New Zealand the Authority is an individual, a respected former High Court Judge. He has a deputy who is a senior lawyer with long experience in criminal work for both prosecution and defence and some 12 years experience as a judge of the High Court of the Cook Islands as well as in the appellate jurisdiction of various Pacific islands. The Authority's office employs three investigating officers. The senior officer was formerly a senior partner in a large Wellington law firm with a wide experience of enquiries and investigations. The second officer is not a lawyer but has had wide experience in various parts of the world in military policing, investigative work and counter-intelligence. The third officer is a woman, employed part-time, who previously worked for the Auckland District Law Society investigating defaulting lawyers. It will therefore be seen that the Authority, his deputy and his staff are all civilians with experience of either the law or

investigative work or both. The Act establishing the Authority stipulated that he himself must be qualified as a barrister or solicitor of the High Court and that he will be appointed by the Governor - General on the recommendation of the House of Representatives.

The methods employed

The annual reports of the Authority submitted to the House of Representatives make interesting reading. Among other things they reveal

- 1. His judicious use of methods, most interviews being quite informal but evidence on oath being taken at formal hearings especially when there are interested parties in the conflict.
- 2. His awareness at the beginning of what was at stake in terms of public confidence and the success of the steps he took to achieve it. The debates in Parliament during the passage of the Bill seeking to establish the Authority revealed strenuous and repeated objections by the opposition based largely on police fears and apprehensions. The Authority instructed his deputy and all his staff to read the parliamentary reports of those debates so that they would all be aware of the fears that had been expressed. As a result they have been very largely dispelled by the way the office approached its task.
- 3. His willingness to use his powers fully but not to attempt to go beyond them. Where an investigation reveals a shortcoming not merely of the performance of the officers complained against but of police policies, practices or procedures he has the power to make recommendations for improving the situation to the Commissioner and has had occasion to use that power but has not felt it right to interfere in matters of general police practice not giving rise to a complaint. Where a number of complaints of a similar nature reveal a pattern which appears to call for alteration or even for additional training the Authority has drawn attention to the matter in his report to Parliament.
- 4. His understanding of the value of good communications. At the start of his work he arranged with the police that all notifications of the results of investigations should include a paragraph saying that if the complainant was not satisfied he or she could refer the matter to his office. Also where he or his office conducts an investigation the requirement in the Act that the complainant should be informed of the result does not result in a one page letter, as is the practice in some police forces elsewhere; a full copy of the report is sent to the complainant and the Commissioner is likewise asked to give a copy to the officer complained against. This evidence of an attitude of fairness has contributed to police acceptance of his work.
- 5. His understanding that Parliament's intention was to discover the truth if possible about each complaint, resulting in his use in most cases of inquisitorial rather than adversarial procedures.
- 6. His practice of never commenting on the use by the police of a discretion that was theirs by right unless it appears to have been improperly exercised i.e. on a wrong principle or by taking into account irrelevant matters or omitting to take account of relevant matters.

It would appear from the reports generally,and especially from the passages to which we have drawn particular attention, that the effectiveness of the PCA in New Zealand and the respect it has won from the police and the public are due partly to good drafting of the legislation and partly to the wisdom and fairness with which its work has been done.

Conclusions from foreign experience

As we said at the beginning of this chapter, the CAJ does not have the resources to undertake a comprehensive survey on a world scale of all the ways in which other countries handle complaints against the police. This could possibly be a project worth the undertaking if the necessary funding was available but in the meantime the lesson from the information we have collected seems to be clear that the bogey of the difficulties supposedly attached to using civilian investigators is not anything like as daunting as some of the critics fear, provided the mistakes which we have highlighted are avoided. Indeed those people who allege that civilian investigation of complaints against the police is not practised anywhere in the world are quite clearly misinformed. It is practised in enough countries and in enough different ways to give any government willing to examine the evidence plenty of information on which to base a system suitable to its own conditions.

6. The Standard of Proof in Assessing Complaints

In most police jurisdictions before a complaint against an officer can be regarded as sustained the criminal standard of proof has to be satisfied, namely that the facts have been proved beyond a reasonable doubt. This being so a school of thought has inevitably grown up which argues that, since the complaints process is so intimately geared to the internal process of administering discipline within the service, the wrong standard of proof is being used, because in other professional organisations the standard of proof required is the civil one of the balance of probabilities.

It is an interesting fact that in Toronto both standards are in use, depending on whether a complaint against an officer is made by a member of the public, when the criminal standard applies, or by a superior officer when the civil standard applies. This could even happen over the same alleged offence and is clearly an anomaly. It is our view that this is the wrong way to make any distinction and that, though a strong case for retaining the criminal standard can be made where the allegation is sufficiently serious to merit dismissal if proved, in less serious cases it would be more consistent with the practice in other organisations to change to the civil standard. If that were to be done it may be presumed that the proportion of sustained complaints would rise, perhaps significantly, and that the benefit in public relations would be considerable. One of the main reasons why many complainants are dissatisfied with the handling of their complaints is that, often after what seems to them an inexplicably long time, they are simply told that their complaint cannot be sustained for lack of evidence. Under the present system this is almost inevitable in those cases, which constitute a high proportion of the total, where there are no independent witnesses of what happened and the investigator is faced with one story by the complainant and another by the accused officer. If the investigator was allowed to use his or her own judgement as to which was the more credible the result would often be different.

While many police officers can be expected to resist any change in the standard of proof others, including notably the last Metropolitan Commissioner, Sir Peter Imbert, recognise that the standard of proof is as important a question as who is to do the investigating and that consideration may have to be given to changing it. Moreover the fact that this is a serious issue and not merely a change advocated by people with an anti-police bias is shown by the fact that no less an authority than the Court of Appeal in **R v Hampshire County Council ex parte Ellerton [1985] 1All ER 599** expressed doubts as to whether the criminal standard of proof was appropriate for disciplinary hearings against police officers (apparently making no distinction between more serious and less serious charges). While this was a comment on disciplinary hearings and what we are discussing here is the way to assess the truth or otherwise of a complaint, the two processes are so closely allied that the standard applicable to one would seem also to be appropriate to the other.

Indeed it is significant that, very possibly as a result of becoming aware of authoritative expressions of opinion such as these, the government is now contemplating using the civil standard of proof in the less serious cases of police officers' disciplinary hearings in England and Wales - See the Home Secretary's consultation paper of March 1993 on Police Discipline Procedures. While this is not a proposal for Northern Ireland or for dealing with complaints themselves, in many cases the process of deciding whether a complaint is valid must rely on the same evidence as that which will be used in deciding whether to impose any penalty on the officer complained against. So if the Government's proposal in relation to discipline is accepted it would seem inevitable that it will also be applied to at least some complaints. Moreover the Government consulted the police staff associations before issuing their consultation paper so it must be inferred that the logic behind the government's argument (broadly what we have said above)will ultimately be accepted by the police despite some initial misgivings expressed at the English Police Federation's Conference in May 1993.

Another comment on the relative appropriateness of the criminal or the civil standard of proof is worth noting because though, like that of the Court of Appeal in the Ellerton case just quoted, it concerns disciplinary proceedings rather than complaints, it adds to the debate an element which we have not yet mentioned.

In its triennial review for the years 1988-91 the Independent Commission for Police Complaints for Northern Ireland mentioned that in their view a change from the criminal standard to the civil one would probably result in an increased number of charges being pursued and upheld. The Standing Advisory Commission on Human Rights, in commenting on that observation, said that the civil standard appeared to them to be more appropriate because the principal purpose of disciplinary proceedings is to protect the public rather than to punish the accused. While that argument may appear to be less than compelling what is of great interest is the quotation from Wade on Administrative Law (a standard work in this field) which they adduced in its favour. According to Wade the civil standard is itself flexible so that the degree of probability required is proportionate to the nature and gravity of the issue. This point was also emphasised in the Ellerton case when Lord Scarman, quoting from a judgement in another case, said that "the very elements of gravity become a part of the whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities." This element of flexibility in the civil standard of proof may make some people conclude that it should be adopted for all complaints and not merely for the less serious ones.

An interesting complication is introduced into this discussion by the fact that in Berkeley the standard of proof used for all complaints, however serious, is that of the evidence being clear and convincing, which is specifically described as being intermediate between the criminal and the civil standards. It was adopted after negotiations between the authorities and the police and is broadly accepted by all interested parties, though sometimes the police can be upset if the panel conclude that there is not enough evidence to meet the standard but that they are disturbed by the allegation(s). This amounts to a not proven verdict that indirectly leaves a cloud hanging over the reputation of the accused officer. While it obviously can be a cause of dissatisfaction it would seem not to be essentially connected with this particular standard of proof but could happen whatever standard was in use.

It is evident that the question what standard of proof should be adopted is by no means a simple or straight forward one. In the light of the need to be absolutely fair to the accused officer, and the argument addressed above about the degree of flexibility which the civil standard can incorporate, there is a strong temptation to recommend that where a police officer is accused of an offence which

is not sufficiently serious to merit dismissal, whether the accusation is made by a colleague or by a member of the public, the civil standard of proof should be the one required. This would bring the police more nearly into line with other professional organisations while retaining the present strong protection of their human rights in the more serious cases. It seems an eminently fair arrangement which would significantly improve the public's perception of the complaints process. Nevertheless we incline to the view that the standard used in Berkeley is worth further investigation and that the government should consider it carefully before reaching a final decision.

The other important aspect of this subject is whether the right place to draw the line between using the civil or the criminal standard of proof is the one we have suggested of the risk of dismissal if the complaint is upheld. In the Home Office consultation paper on discipline referred to above a distinction is suggested between matters of poor performance on the one hand, and on the other behaviour which could be classified as misconduct, both of which are often the subjects of complaints. Two possible definitions of misconduct are set out for public discussion. This is too detailed a matter to go into here and it is possible that the comments the Home Office will receive on the consultation paper with result in the adoption of a line of demarcation different from both ours and the two suggested by the government. What is however clear is that there is a strong case for using the civil standard in a large number of cases where today the criminal standard applies.

7. The Ideal Authority

A reading of the systems in use in police jurisdictions around the world reveals an almost bewildering number of different designs. Many of these have been described in this paper. We do not propose to list them all here, still less to describe again their salient characteristics. We do, however, think it worthwhile to set out some of the most important principles on which an ideal system should be based. We believe that these principles can be applied whether the actual mechanism chosen is of the ombudsman type, either general as in New South Wales or specifically related to the police, or is one of any of the other types of body handling complaints against the police. We doubt if it would be right for us at this stage to express any very strong preference as to which type of body would be the most appropriate for any UK police service, though it is worth noting that British experience of the Ombudsman pattern has, on the whole, been quite satisfactory and could probably be extended to cover police complaints without too much disruption. Be that as it may, let us, for the sake of brevity and convenience, call our imaginary ideal body The Authority.

- 1. The Authority, if it is to go as far as is reasonable towards satisfying complainants and towards giving the public confidence in its work, must above all be credible. This means:
  a. its members and staff must be people whose independence and impartiality are self-evident and in particular they must not be on the police pay roll or themselves involved in managing the police as happens in some cities in the U.S.
  b. it must not have been created primarily in response to pressure from organisations known to be hostile to the police, but rather because of a perception by the public in general that a wholly independent organisation is required.

- 2. We do not know of any police service apart from that in Queensland where the external Authority investigates all complaints. This pattern came about in Queensland as a direct result of the fact that the degree of corruption was so great, and so thoroughly permeated all ranks, that the Fitzgerald Commission appointed to enquire into it reported that the police service simply could not be allowed to have anything to do with the investigation of complaints.

  In all other cases investigation is either done entirely by the police or there is a hybrid system using both police and civilians, the work being divided in various ways. For the reasons we have given the requirement of credibility cannot be achieved if the police are the sole investigators, however much they may be supervised, and the effective choice lies between the other two systems. We would prefer on balance to see a system using civilians only but we recognise that there are certain advantages in a mixed system. Not only would the change from the present system be less disruptive but it can also be argued that the investigation of some complaints should be the function of the police, subject to monitoring by the Authority which should satisfy itself both that the resulting decisions on the merits or otherwise of the complaints

are the correct ones and also, and equally importantly, that the investigations were conducted efficiently, thoroughly, impartially and correctly. Police investigation can be important in the first instance in the interest of speed (before the evidence is lost) and in cases involving criminal charges against members of the public; and there is a case also for leaving the police to deal with the less contentious cases. Probably these decisions will depend on the relative seriousness of the complaint. How the more serious cases should be defined presents some difficulty because cases of alleged assault, mandatory for supervision under the present system, often do not present a lot of potential for an external investigation though they probably should be regarded as at least part of the category of serious cases because that is what they in fact are - an abuse by the police of their right to use force where necessary to uphold the law. In addition to cases of alleged assault civilian investigators should certainly be used to look into all the cases which attract a lot of public interest and concern, and they should be given freedom to examine those cases where they think they can see most prospect of being able to achieve results which will impinge on the public consciousness. Dividing the work of investigation between the police and the civilians in this way should reduce as far as possible the upheaval resulting from a more radical change in the system while at the same time going as far as possible to create public confidence.

Before leaving the subject of which type of cases should, in a hybrid system, be investigated by the police and which by the civilian staff there is a further complication to be considered. In Chapter 6 we have set out some of the considerations which are relevant to the decision when to use the civil standard of proof in deciding whether a complaint is valid and when to use the criminal standard; and we have referred to the government's own suggestions about the use of these two standards when coming to a decision in disciplinary cases. While it may not be possible to apply precisely the same dividing line in both these areas it seems right to bear in mind the relationship between them and to avoid the adoption of any glaring anomalies.

- 3. For the practical purpose of going on to describe the work of our ideal Authority in more detail it is necessary to make an informed guess at which system our legislators are likely to prefer. We take the view that, when presented with the facts we have set out, Parliament will agree that some civilian investigators must be employed in future but will hesitate to entrust the work to them entirely. If that should prove to be the case then we believe that the Authority established by new legislation should have the following powers:

(a) to receive complaints from people who prefer not to submit them to the police

(b) to decide whether a complaint should initially be investigated by the police or by its civilian staff.

(c) to receive and consider all reports of investigations (with their recommendations) conducted by the civilian staff. The Authority will then decide whether to accept the recommendation and if any action is called for will arrange for it to be taken. If the Authority's assessment of the report of an investigation leads it to conclude that there should be a change in police practice, procedure or policy it should so inform the Chief Constable; and if it considers that a change in the law is called for it should have the power so to recommend to the Government and to have its recommendation placed in the Library of the House of Commons. Police reports should be submitted to the Chief Constable who should decide whether to accept the recommendations and should take any consequential action. In both cases the complainant should be informed of the result and given an explanation of the decision in terms that will be reasonably informative.

(**d**) to supervise police investigation in certain cases

(**e**) itself to reinvestigate where it is not content with a police investigation

(**f**) to receive and act on representations by complainants who are dissatisfied with the way the police have handled their complaints

(**g**) itself to conduct the initial investigation in particularly serious cases

(**h**) itself to investigate matters which have come to its notice even though no complaint has been made

(**i**) itself to investigate where the officer complained against is a member of the internal investigation branch

(**j**) itself to investigate where the officer complained against is a senior officer, especially if he or she is senior to the officer in charge of the internal investigation branch

(**k**) itself to investigate where the issue involves not merely a possible offence by a particular officer but also a question relating to police policies, practices or procedures; police willingness to consider changes in these matters may need some prompting from an outside source.

(**l**) to search for and have access to all relevant papers

(**m**) where it appears that an officer may have committed a criminal offence the Authority as well as the Chief Constable should be entitled to refer the matter to the Director of Public Prosecutions

(**n**) In general any disciplinary punishment shown by the investigation of a complaint to be called for should be a matter for the Chief Constable because the chief officer of any organisation must be, and be seen to be, in control of his or her subordinates. However there should be a reserve power in the hands of the Authority to require the Chief Constable to impose a penalty. History shows that cases can arise where the Chief Constable may be reluctant for one reason or another to take action when the judgement of people less closely involved is quite clear that action should be taken in the public interest.

- 4. The Authority must be seen to be fair beyond questioning in its handling of complaints. The police have human rights as well as other citizens and these must be observed at all stages. But the matter goes beyond the observation of established legal rights such as the right to silence where giving evidence could result in self-incrimination. It could be important, for instance, if the Authority was given the power in serious cases to establish a tribunal, that the membership of the tribunal should include an officer nominated by the Police Federation.

- 5. The Authority must be informative in its communications with complainants and with officers complained against. Information about the progress of an investigation should be supplied at not too long intervals and when the final result is announced it should be reasonably explicit. In many jurisdictions complainants tend to be dissatisfied with the handling of their complaints, either because they are left in ignorance of what is being done for far too long, or because the

final announcement of the result of the investigation is unnecessarily terse and in fact tells them so little that they get the impression, however unjustified, of a cover-up.

- 6. Most systems provide for an informal procedure for dealing with minor complaints. This can be important in reducing the work-load on the police and in giving complainants as much as is possible of what they want without imposing on them and on the police an inappropriately top-heavy and formal procedure. There seems to be a good deal of evidence that the use of this mechanism could with advantage be extended into the range of allegations of medium seriousness. Of course initial treatment of a complaint in this way might have to be abandoned in favour of further and more formal investigation but experience seems to show that even in cases of medium seriousness the complainant's objectives are often limited to a desire to make sure that police management are fully informed about what happened, are willing to apologise for it and to give some assurance not merely, or even primarily, that the offending officer will receive whatever disciplinary treatment is appropriate but essentially that steps will be taken to try to avoid another similar occurrence.

- 7. To that minimum list of basic objectives it is right to add that in cases where the complainant has suffered a reasonably easily quantifiable loss or expense a great deal of good-will could be created if the Authority had the power, when satisfied that the facts merit it, to direct the police to pay compensation as part of either the informal or the formal procedure, thus saving the complainant, the police and the courts the time and expense of a civil court case. We have referred to this matter earlier but mention it as a function we believe the Authority should have.

- 8. One of the most important functions of the Authority should be to draw the attention of police management to any lessons about policies, practices or procedures which have emerged from the Authority's work in the handling of complaints. It is only fair to police management that they should be given this information from the source where it is most easily obtainable as a piece of automatic procedure instead of having to ask for a specific piece of research to be done.

- 9. It should go without saying that the Authority must be adequately funded to enable it to do its job thoroughly. Regrettably it is a fact that many systems in several countries have been obliged to be very selective in the work they have undertaken because their budget has been grossly inadequate.

The skills needed by the Authority

We have said that the Authority must consist of people whose independence is self-evident. We regard that as a statement that is beyond dispute but an examination of what the Authority has to do in investigating and evaluating complaints immediately shows how easily someone who, on appointment, clearly satisfied this requirement could, in the course of doing the work of the Authority, either fail to become effective or lose the appearance of independence. In order to gain a proper understanding of the merits or demerits of many complaints it will be necessary for an outsider to learn enough about police organisation, practices and culture to be able to understand what was going on and why, to know where to look for the relevant information, and to win the cooperation and respect of the police generally and their internal investigators in particular. This requires investigative and relationship skills which are possessed by people in several walks of life, most notably lawyers, but can also be learned if necessary.

What is not so immediately obvious, but is very important, is that, if the outsiders are not very aware of the danger, an insidious process of gradual, almost unnoticed, but growing over-familiarity with

the police could set in. This could easily make them appear to complainants to be biased in favour of the police and in the worst cases that is what they could actually be. To the investigative skill there must therefore be added an innate sense of fairness and impartiality, and sufficient sensitivity to understand how easy it can be to confirm the complainant's half-formed suspicion of bias in favour of the police, or alternatively the half-formed suspicion on the part of the police that the outside investigator does not understand what policing involves and approaches the job with an anti-police philosophy.

In addition to the work of investigating and assessing the merits of complaints we have referred above to the function of drawing the attention of police management to any changes in policies, practices or procedures that seem to be called for as a result. In many cases such conclusions may be obvious enough but in others, perhaps especially where to be sure about a recommendation for systemic change it may be necessary to form an overview of a large number of cases, it would appear that a quite different skill from the main investigative one will be required. In such areas the analytical mind and training of professional management consultants would be the most appropriate qualification and it can be argued that this function should be given either to the police themselves or to a separate agency. If that were to be done any ideas about systemic change that the Authority had arising out of complaints would presumably be channelled in the first instance either to that separate agency or the appropriate research and analysis branch of the police service concerned.

The Scope for Change in Northern Ireland

The CAJ is a Northern Ireland organisation and it is with the situation there that we are primarily concerned. When considering possible changes in the administration of Northern Ireland affairs one has to take account of two factors, the first being that which dominates much of life here, a 24 year old state of civil unrest and all the abnormalities that has brought about. In that context the question that always has to be asked is whether the contemplated change could, in terms of practicability, be made here or whether it could only be contemplated in a more stable and orderly society. Occasionally that question leads to the further question whether the contemplated change might even be particularly helpful in a divided society and therefore even more appropriate here than elsewhere. Examined in this light we have formed the conclusion that there is nothing inherent in the Northern Ireland situation militating against the introduction of an independent corps of investigators either working in tandem with the present supervisory system or, as we have indicated we would prefer, constituting the sole investigatory mechanism. We are also satisfied that because the belief that the police are unfair to the minority, however mistaken it may be, is more widely held here than in Britain, for that very reason a device which holds out some hope of improving the public perception of the police, wherever it may be introduced, would be particularly helpful here.

The other factor that has to be taken into account when considering changes in Northern Ireland is that in the past these have fallen into two classes. Some have had to wait till a comparable change has been made in England and Wales and have then been made here with some, usually minor, variations designed to adapt them to the local situation. Others have been made here first or even made here and here alone. These have usually been changes specifically thought either to be necessary to deal with some aspect of life that is peculiar to Northern Ireland or changes that administrators would like to see applied generally in the UK but think could benefit from a pilot project operated here before deciding on its final form. Examined in this light a change to independent investigation of complaints against the police would, we believe, be an improvement anywhere if well designed and operated. In that sense it should not be thought of as something called for only in Northern Ireland, though, as we have said, the situation here could make it even more beneficial than elsewhere.

Whether it needs to wait until it has been established in Britain and then copied here, perhaps with modifications, or whether it could be introduced here first is a legitimate subject for debate. Our own view is that, given the political will to make the move, there is no inherent reason why Northern Ireland should not be a pioneer in this field as it has been in others.

8. Conclusion

The fact that this paper is concerned with the limited subject of complaints against the police, with particular emphasis on the even narrower field of independent investigation of complaints, should not lead to any suggestion that the CAJ thinks that a change to independent investigation, even if accompanied by a change in either some or all cases of the standard of proof, would immediately eliminate all difficulties in administering the RUC. We are fully aware that there is a deep-seated problem of accountability and that consultation with the public at local level, if well conducted, can bring enormous benefits. We have addressed these subjects as well as that of lay visitors to police stations elsewhere, and we know, too, that supervision, training and recruitment are all subjects which have a bearing on the degree of confidence in the police that the public can be expected to have.

Looked at in the limited light of the areas it can be expected to influence directly, any system of handling complaints ought to have four objectives:

❒ 1. Internal discipline

It should enable disciplinary penalties to be imposed when an officer has been shown to have committed an offence. At present the complaints system is, in our view, too exclusively concerned with this objective, necessary though it is. We have not concerned ourselves with it as we regard it as a matter for the government and police management to decide. The major criticism to be made in this area it is that there is a fairly widespread belief that too frequently an officer who has broken one of the regulations does not have any penalty imposed. This belief is not without substance. Mr Paul Condon, the Metropolitan Police Commissioner, has recently revealed that no disciplinary action was taken in 46 out of the 59 cases in which the police in London were sued in the civil courts during the last 5 years.

Regretably no comparable figures have been published for Northern Ireland but it is certainly very striking that in spite of substantial damages being paid to people held at Castlreagh, successful habeas corpus applications and the rejection of confessions on the ground that they were improperly obtained, as far as we know not one single police officer has been punished in the last five years for any action taken under the emergency laws which was the subject of a complaint. As we have said, a high proportion of complainants are not primarily interested in seeing a penalty imposed but it remains a fact that so long as there is a widespread belief that offences are committed and tolerated by management so long will the public find difficulty in having confidence in the police.

This problem has its roots in the fact that the current regulations applying to the handling of disciplinary matters are over-legalistic and inappropriate to many of the relatively minor offences committed, which belong properly to the field of management control rather than to that of quasi-judicial proceedings. This situation has almost inevitably led to reluctance on the

part of the police to use top-heavy methods and so they have tended to do nothing about large numbers of offences which, minor though they be, ought to be addressed. It is satisfactory that the government has recognised this problem in the consultation paper on police discipline procedures issued by the Home Office in March 1993. A similar document was published by the Northern Ireland Office in August 1993.

A further weakness of the disciplinary system, considered in the context of its relationship to the complaints system, is that it is not helpful to those complainants who are interested in seeing that the officer whose behaviour they have complained about is not merely judged by the complaint investigation to have done what the complainant said but has also paid an appropriate price.

The complainant may attend certain parts of the disciplinary hearing and may give evidence but may not be present when punishment is being considered; and when a decision has been reached most police services are economical with the information they release. In England and Wales this has caused the PCA to comment "We ask ourselves why the complainant is not entitled to know the outcome of a case which has been brought at his or her instigation." The answer of course lies in the essentially internal nature of the disciplinary process. Viewed from that angle it has some logic, but it is lacking in imagination and amounts to a denial of natural justice. In these days when there is a trend towards openness in the administration of our affairs, albeit as yet somewhat tentative, this is a matter that could with advantage be re-examined.

2. Public confidence

This leads on to the second objective which is that the system should appear to the public to be fair and well administered so that it will contribute to public confidence in the police. At present it has to be said that this objective is very far from being fulfilled. In many police force areas there is, despite the quite large numbers of complaints made, a widespread belief that there is no point in making a complaint because it will have no result; and in Northern Ireland this belief is more widely held than elsewhere. There are probably four main contributors to this state of affairs. These are, first, the length of time taken to investigate many complaints, second, the fact that the standard of proof required so often results in the complainant being told that the complaint has not been sustained for lack of evidence, third, general scepticism of a system where complaints are investigated by the people complained against, and fourth, probably the most serious, the fear that if they do complain the only result will be that they will be the subject of unwelcome attention from the police.

Until very recently there was also a fifth factor deriving from the increasing tendency in the last few years for aggrieved people to sue the police in the civil courts. Solicitors were advising their clients who wanted to pursue that course not to make a complaint as well because if they did the information provided by the terms of the complaint would be available to the police when preparing their defence in the civil case and could give rise to fabricated and untrue excuses which were impossible, or at least very difficult, to check. The information concerned should of course be available only to the investigator and it is obvious that if the investigator was a civilian, as we are advocating, then this additional difficulty would not arise. However even without going to the length of having civilian investigators there have been authoritative voices advocating fairer procedures. The English Police Complaints Authority in its Triennial Review for 1988-91 recommended that statements made during investigations into complaints should not be disclosed to the police's lawyers when defending a civil action. In the event it has not been necessary to wait for government action because in England and Wales at any rate the

judiciary has intervened with a very welcome decision by Mr Justice Popplewell in **R v Chief Constable of the West Midlands, ex parte Wiley** (Queen's Bench, 16th December 1992). He said that documents obtained, and information resulting from, investigations into complaints were closed for purposes of civil litigation. He said the purposes of the investigation would be emasculated if a complainant or witness was reluctant to make a statement because of apprehension that it would be used in other proceedings. His judgement also included the following passage:

> *"The development of the law in relation to public interest immunity and the reasoning upon which it is based leads me clearly to the conclusion that the documents which come into existence for the purpose of the complaints procedure and the information therefrom are not to be used in the civil proceedings for any purpose whatever save for the purpose of enabling the legal adviser to advise on discovery. It is difficult to see what logic there is which prevents the use of the complainant's statement by way of cross examination but nevertheless entitles the legal advisers to the Chief Constable to use it for other purposes. There can in my judgment be no half way house in this exercise."*

This judgement was confirmed by the court of appeal on 23rd July 1993.
The Independent Commission for Police Complaints for Northern Ireland has not taken a position on whether Justice Popplewell's view of the law should be adopted in Northern Ireland but regards the matter as one for the Chief Constable and his legal advisers. The CAJ calls upon the government to enshrine Popplewell J's principle in statute law and hopes that in the meantime the Chief Constable will bring Northern Ireland practice into line with it.
The system of supervision by civilians established by the last reform in 1987 was intended to contribute to public confidence but the evidence is that it has largely failed to do so, despite the thoroughness and fairness with which the work of supervision is in fact done. This is partly because not many people know of its existence and of those who do, but have not had any personal experience of the way the system operates, a high proportion regard the reform as a piece of window dressing with the civilians biased in favour of the police.
While we believe that a system using civilian investigators for all but minor complaints would create more public confidence we do not pretend that it would necessarily shorten the investigation time or that, in the absence of a change in the standard of proof required, it would result in any significantly larger number of complaints being sustained. Indeed there is a risk that when it came to be realised that, after another change in the system, no more complaints were sustained than previously, the feeling of disappointment would be so great that public confidence might actually fall. This can lead only to the conclusion that the reform most calculated to improve public confidence would be a change in the standard of proof required.

3. Management lessons

Any system of handling complaints should be regarded by police management as a useful tool in their hands for discovering weaknesses not so much in individual behaviour as in all the areas where management can have some influence - recruitment standards so that people with the right qualities make up the service, training so that the right attitudes are emphasised, practices and procedures so that mistakes are less likely to be repeated. We have dealt with this aspect earlier in this paper and have emphasised that it has considerable scope for greater use than hitherto.

4. Complainant satisfaction

Any system for dealing with complaints should try, in so far as it is right to do so, to satisfy the complainant. In many commercial enterprises this is indeed the primary objective, whether the complaint is justified or not. That cannot, of course, be the right way to look at the matter for the police and one of the factors in their case is that they receive a number of complaints which clearly have no substance, and which they classify as vexatious. Some of these are made as a bargaining counter by people facing a criminal charge. (A similar tactic operates, too, in the reverse direction: it sometimes suits the police to bring a criminal charge against a complainant who might not have received that attention if he or she had not complained. This tactic can be aimed either at the particular complainant concerned or at the general public who are not slow to absorb the lesson that this can be a hazard for anyone thinking of making a complaint.)

It is also often alleged that people with a grudge against the police also make vexatious complaints with the sole objective of wasting police time, and in Northern Ireland, for all we know, this may well be more common than elsewhere at least in part because of the existence of the paramilitaries. While these phenomena do exist they should not be exaggerated and the danger that any police service has to guard against is that their members may come instinctively to view complaints as unfounded and malicious when in fact they are genuine and well founded. It is important therefore that a complainant should be regarded as a reasonable human being unless or until there is clear evidence to the contrary.

We have dealt throughout this paper with the need to satisfy the complainant as far as is right and possible. That need is closely linked with the aspect of public confidence because complainants, whether satisfied or dissatisfied, talk about their experiences to their friends and neighbours. For the police, as for shopkeepers, satisfied complainants are one of the best advertisements available. In the light of this requirement, therefore, the use of civilian investigators could be expected to improve matters to an important extent because a complainant who is told that a police investigation has failed to sustain his or her claim, even if given quite a full explanation, will instinctively feel that somehow the cards have been stacked in favour of the officer complained against, but if told the same things about a civilian investigation will be more inclined to accept the result as the outcome of a genuinely fair process. However in so far as satisfaction is dependent on the complaint being sustained it seems clear that the greatest advance will be achieved by a change in the standard of proof required to sustain a complaint.

9. Summary and Recommendations

While, as we have said, the CAJ has been anxious to see improvements in the system for handling complaints ever since our establishment in 1981, our present preoccupation is as much with the things that people are currently complaining about as with what happens to their complaints once they are made. These matters, which are dealt with in the first four and a half pages of the introduction to this paper (Chapter 1), are concerned with a number of police practices on the streets, at the time of arrest of suspects and during their transport and interrogation. We cannot emphasise too strongly that they call for urgent attention, as also do the subjects mentioned in the first paragraph of Chapter 8. So far as the complaints system itself is concerned, the recommendations to which we are drawn by our examination of this subject are:

- 1. An authority, whether of the ombudsman type or the more conventional Police Complaints Authority type, should be appointed and equipped with a corps of civilian investigators. Ideally these should constitute the sole investigatory mechanism, but if a hybrid system is to be established then the civilian investigators should be used in the more serious cases, leaving the police, as at present, to investigate the minor ones. It would then be constituted as set out in Chapter 7 and it should have the powers listed under para. 3 of that chapter. Additionally its work should be governed by the considerations explained in paras 1, 2 and 4 - 9 of that chapter.
- 2. The government should institute a thorough enquiry into all aspects of the standard of proof to be used when assessing complaints against the police, with a view to adopting the civil standard for at least some types of complaint. Further they should examine any merits there may be in using in some cases the intermediate standard used in Berkeley, California of the evidence being clear and convincing. When deciding when to use the civilian standard of proof, the intermediate standard or the criminal standard, they should bear in mind the relationship between those decisions and the analogous decisions to be made about disciplinary cases.
- 3. Solicitors should be allowed to attend police interviews with suspects at the holding centres or at police stations and arrangements should be made for all interviews to be audio and visually recorded. (Chapter 1)
- 4. Pending the establishment of a new Authority as recommended in 1 above the ICPC should be given the power in suitable cases to direct the Chief Constable to pay compensation to a complainant who has suffered loss as a result of police action. (Chapters 2 & 7)
- 5. Pending the establishment of a new Authority as recommended in 1 above the Police (NI) Order 1987 should be amended to give the ICPC powers to recommend changes in police practices, procedures or policies to the Chief Constable and to recommend changes in the law to Her Majesty's Government. (Chapter 3)

❒ 6. Following Mr. Justice Popplewell's judgement in R v Chief Constable of the West Midlands, ex parte Wiley and its confirmation by the Court of Appeal the government should legislate to enshrine in Northern Irish law the principle that documents obtained, and information resulting from, investigations into complaints against the police must not be available to the police in any civil proceedings. (Chapter 8)

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No. 2 **Emergency laws in Northern Ireland:** a conference report, 1982 (no longer in print).

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