

**COMPLAINTS
AGAINST THE POLICE
A working party report**

CAJ Pamphlet No.3 September 1982

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INTRODUCTION

THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE

The Committee on the Administration of Justice is a broadly based group set up with the intention of securing 'the highest standards in the administration of justice in Northern Ireland by examining the operation of the current system and promoting the discussion of alternatives'. The Committee was set up after a conference which was held in June 1981 in the Students' Union at Queen's University Belfast, and which was chaired by Lord Gardiner, former Lord Chancellor of the United Kingdom.

That conference was called by a group of concerned individuals, and brought together an exceptionally broad range of people, from all sections of the Northern Irish community, with a professional or personal interest in the standards of justice in Northern Ireland. The C.A.J. was established to continue the work of the conference through research and discussion, and to provide a forum where people from widely different backgrounds and with widely different experiences of the justice system could exchange information and work out alternative strategies on questions of common concern. The C.A.J. now involves community activists, lawyers and academics, and has been working through three working parties, on emergency law, on prison reform, and on policing. A second conference was held in April 1982, chaired by Ballymoney surgeon John Robb.

This pamphlet covers the work of

the working party on policing, which has been primarily concerned with the procedures for dealing with complaints against the police. The bulk of this pamphlet, Section 5, reviews the present system for making and dealing with complaints against the police, in Northern Ireland, compares them with systems used in the United States and in several Commonwealth countries, and considers ways in which the Northern Ireland system can be improved on. Section 3 is based on a paper presented to the C.A.J. conference in April of this year, and describes one local initiative aimed at improving the relationship between police and public, while Section 4 sums up the discussions and resolutions on policing questions at that conference.

This pamphlet is primarily a research paper. It does not seek to make specific recommendations, though the working party's priorities for change were set out in the submission which the group made to the House of Commons Home Affairs Committee earlier this year, and are summarised in Section 2 of the pamphlet. The C.A.J. hopes to publish its conclusions and proposals on police complaints procedures in the autumn of this year; the working party would be very pleased to receive further submissions or comments on the ideas in this document; these can be sent to Mr Brice Dickson, Convenor, Working Party on Policing, Committee on the Administration of Justice, c/o 7 Lower Crescent, Belfast 7.

August 1982

II. THE WORK TO DATE OF THE WORKING GROUP ON THE POLICE

Since being set up after the first C.A.J. Conference in June 1981, the working group on the police has focussed its attention on the system for handling complaints. Meetings have been held every 4-6 weeks.

One of our first tasks was to consider the Triennial Review Report of the Police Complaints Board for Northern Ireland. This was eventually published in November 1981, having been submitted to the Secretary of State in July 1980. It was a great disappointment. Earlier Annual Reports had not commented on the overall effectiveness of the complaints procedure introduced by the Police (N.I.) Order 1977, saying that that was a matter best left to the Triennial Review Report. Yet in that Report the Board freely admits that it "deliberately avoided discussion of the relative merits of the present arrangements for dealing with complaints vis-à-vis any other possible arrangements." This was a denial of the very purpose of the review.

In March 1982 a seminar was organised at Queen's University to discuss complaint procedures. Many interested parties were invited to attend but unfortunately we were not able to attract the R.U.C. themselves, the Police Authority, the Police Federation, the D.P.P.'s Office, or the Northern Ireland Office. Representatives did however attend from the Police Complaints Board, the Ombudsman's Office, the Standing Advisory Commission

on Human Rights, the Northern Ireland Civil Rights Association, the Corrymeela Community, the Peace People, the Northern Ireland Association of Socialist Lawyers, the Belfast Law Centre and the Faculty of Law. A useful discussion took place, based mostly on the evidence recently submitted by the Northern Ireland Office to the House of Commons' Home Affairs Committee.

Arising out of that seminar the group submitted a 2500 word document as evidence to the Home Affairs Committee, which was examining the system for handling complaints mainly in England and Wales. Apart from the N.I.O. (which also represented the views of the Police Authority), the C.A.J. were the only body in Northern Ireland to submit evidence. Our evidence included the following 12 recommendations:

- (i) there should be more publicity about how to complain and what can be complained about;
- (ii) there should be many more channels for the submission of complaints, and only if a completely independent investigative machinery is established should complaints continue to be receivable at R.U.C. stations;
- (iii) complainants who wish to withdraw a complaint should have to give written reasons for doing so;
- (iv) much greater efforts should be made to keep complainants informed about the progress of

their complaints, and they should be encouraged to consult a legal adviser;

- (v) the precise rationale for the double jeopardy principle ought to be closely re-considered; police officers should expect to be jeopardised to the same extent as other professional persons;
- (vi) a means for independently investigating complainant should be immediately devised, with the normal rules of natural justice applying;
- (vii) if independent assessors are to be appointed, their role and powers should be very precisely defined;
- (viii) whatever new independent element is introduced, it should allow for prosecutions to be recommended to the D.P.P.;
- (ix) even if an independent investigative mechanism is established, **ex post facto** reviews should not be completely abandoned;
- (x) if independent investigations are not introduced, the powers vested in statutory review bodies should be exercised more fully and **extended**;
- (xi) complainants should be entitled to remedies in respect of complaints which are substantiated;
- (xii) more attention should be given to complaints which collectively point to systematic police malpractices.

This evidence was also put before the Minister of State, Lord Gowrie, when a deputation from the C.A.J. visited him at Stormont Castle on 31 March 1982. In addition, we stressed the practical implications of the way in which the present system for

dealing with complaints is organised. It leads to great cynicism in the general public, especially as, although no formal mechanism exists for awarding compensation in respect of complaints which have been substantiated, in some cases **ex gratia** payments have been made without any further explanation or action. We also protested about the non-publication of the R.U.C.'s code of conduct on interrogation, and we left the Minister the following five questions, which he promised he would answer in writing in due course:

1. Why are there so few channels for making a complaint?
2. Why must the police investigate themselves?
3. Why can more not be done to assure a complainant that the complaint is being, or has been, properly investigated?
4. What steps is it proposed to take to make the Police Complaints Board and the Police Authority more effective protectors of the public's interests rather than the police's?
5. Is it proposed to implement the recommendations of the Bennett Committee relating to the use of independent investigating officers and the increased powers of section 13 tribunals?

The Home Affairs Committee reported in June 1982. It recommended that in the long-term the most promising framework for investigating complaints would be a Crown Prosecutor system, modelled on the Scottish procurator fiscal system. In the short-term the Police Complaints Board should be ex-

panded and local independent assessors should be established to supervise the investigation of complaints and to provide reconciliation in less serious cases. But the actual investigation of complaints should, the majority of the Committee concluded, remain the responsibility of the police themselves; only two members of the 13-member Committee felt that responsibility for investigations ought to be assigned to a police ombudsman supported by investigatory staff. The evidence submitted by the C.A.J. is listed as received (and published in the official Minutes) but no mention appears to be made of it in the body of the Report.

The C.A.J. is due to meet again with Lord Gowrie during the autumn. By that time the police group hopes to have finalised its reaction

to the Home Affairs Committee Report and to have prepared its own blueprint for a reformed system. To help it pinpoint the defects in the practical operation of the current system, the group also intends to conduct a small survey among people who have actually lodged complaints in the recent past; we aim to discover how they perceived the system as it affected them.

In the near future the police group hopes to meet representatives from both the Police Authority and the Community Relations Branch of the R.U.C. We hope to expand our activities into the area of police accountability in general, the more so as we have come to appreciate that a workable complaints system is highly dependent on good police/community relations at all levels.

III. THE LONDONDERRY PUBLIC AND POLICE LIAISON COMMITTEE

At the Annual Conference on 24 April 1982 a paper was presented by Mrs Margaret O'Donnell outlining the role of the Londonderry Public and Police Liaison Committee. What follows is based very closely on what she said on that occasion.

THE COMMITTEE'S FORMATION

The Hunt Advisory Committee on the Police in Northern Ireland reported in October 1969. One of its recommendations was for the setting up of a Police Liaison Committee in Londonderry, the members to be appointed by the then Londonderry Development Commission and reflecting all shades of opinion in the city. The city's chief police officer was to be amongst the members.

The L.C.D. accordingly established the Police Liaison Committee in December 1970, its terms of reference being "to provide a formal medium for consultation between the public and police with a view to achieving the fullest measure of co-operation between them at all times." In implementing the recommendation to bring together all shades of opinion, the Commission decided to select persons from a wide range of specified interests on an individual basis rather than to invite representative bodies to submit nominations.

It was felt better not to select persons with a party political background but careful regard was nevertheless given to achieving a balance between the interests of the

city and those of the county, those of employers and of employees, those of trade, agriculture, youth, tenants etc., and those of the two communities on either side of the River Foyle. The optimum number of members was felt to be nine, but to begin with the following eight were selected:

- the Chairman of Londonderry Chamber of Commerce;
- a local farmer;
- two local members of the Police Authority for N.I.;
- a headmaster of a secondary intermediate school;
- a representative of a local tenants' association;
- a medical practitioner;
- the local R.U.C. divisional commander.

A little while after it was established the Committee decided to change its name to the Public and Police Liaison Committee, a more accurate reflection of its role.

THE CONSEQUENCES OF LOCAL GOVERNMENT REORGANISATION

In March 1973 the U.K. Government presented Northern Ireland Constitutional Proposals to Parliament in the form of a White Paper. In para. 70 of that Paper it was envisaged that the new District Councils which were to come into being in October of that year would be able to form the basis of local committees with advisory responsibilities in relation to the policing of

their districts. The District Councils could, for example, "invite the local police commander to attend meetings so that they could keep themselves informed of the way their district was being policed; they could explain problems and put forward suggestions; they could offer advice; they could help to promote recruitment; they could encourage local citizens to help prevent intimidation, vandalism, etc.; they could provide links with tenants' associations and other groups whose co-operation was important to good relations in the district; and they could take special interest in such matters as road traffic and road safety."

With these statements in mind, the Londonderry District Council, which took over in October 1973, met with the existing Public and Police Liaison Committee and asked it to continue in being under the Council's aegis until such time as the Council came to a decision regarding the composition of a new Committee. With one exception, all the members who were on the Committee at that time agreed to continue to serve on it.

In 1974 the District Council decided to appoint six councillors to serve on the Committee. This has

brought the current total membership to fourteen.

THE COMMITTEE'S FUNCTIONS

Since its inception in 1970 the Public and Police Liaison Committee has endeavoured to carry out its terms of reference. It has received a number of deputations representing various shades of opinion in the area and on several occasions it has been in a position to deal with complaints raised by such deputations. Some time ago it had a series of special meetings with all the tenants' and community associations in the area. The Committee has also sent a deputation to discuss various subjects with the Secretary of State and Ministers of State.

Until some months ago, a representative from the Army attended monthly meetings of the Committee while matters pertaining to security were being discussed. Individual members have been approached from time to time by members of the general public on particular issues and all sides have usually found such contacts to be helpful in resolving problems. The Committee has also been a forum for the discussion of such matters as roads, parking and "no waiting" restrictions, street lighting etc.

IV. RECORD OF DISCUSSION AND RESOLUTIONS ON THE POLICE AT THE C.A.J. CONFERENCE, 24 APRIL 1982

At the Annual Conference one of the afternoon workshops was devoted to a discussion of methods for handling complaints. A wide variety of views were canvassed and the discussion expanded into a consideration of what kind of police force/service was needed in Northern Ireland and whether the kind of liaison committee which operated in Londonderry could be usefully established elsewhere and its role made more definite.

In the process of summing up the workshop's discussion and conclusions, a number of resolutions were put to the plenary session of the Conference and were all adopted. The first resolution called for the creation of many more Public and Police Liaison Committees, on a formal footing. Such Committees could help to defuse local tensions and to sustain communications; the need for such bodies in England and Wales was stressed by Lord Scarman in his report into the disturbances in Brixton during the summer of 1981. These local committees might also assist in the lodging of complaints, thereby removing the onus from easily intimidated private citizens.

The second resolution stated that

the more serious allegations in complaints should be investigated by a completely independent body; if that was unacceptable to the Government then at the very least an officer from some police force other than the R.U.C. should be appointed to conduct investigations. Thirdly, the Conference resolved that a system for the independent monitoring of how complaints are investigated should be devised; some monitors could be appointed by the network of local liaison committees which it was hoped would be established. The group was urged to look into the feasibility of other review/appeal procedures for complaints.

The fourth resolution called for the withdrawal of plastic bullets as a riot-control weapon and for an inquiry into the recent death of Derry schoolboy Steven McCoomy.

Lastly, the Conference declared that the R.U.C. should be independent of political control and responsible to the community it serves. A meeting with the Community Relations Branch was deemed essential to press home this point.

V. HOW ELEMENTS OF INDEPENDENCE COULD BE INTRODUCED INTO THE SYSTEM FOR HANDLING COMPLAINTS AGAINST THE R.U.C.

Introduction

This paper is intended as a discussion document. It tries to set out a wide range of options for those who would like to see a greater degree of independence introduced into the current system for handling complaints against the R.U.C. By independence is meant non-R.U.C. involvement.

Part I describes the current system, about which more details can be found in the Bennett Report (1979, Cmnd. 7497) chs. 15-18. That Report confines its attention to complaints relating to interrogation, but the current system operates in the same fashion for all types of complaint. Part II looks at the current system stage by stage and considers what elements of independence could be introduced at each stage. On a lot of points the paper is deliberately non-committal. This methodology, and some of the comparisons made with systems in other jurisdictions, are drawn from an invaluable working paper submitted to the Committee on the Administration of Justice in April 1982 by Tom Foley and Martin Burton of Yale University. (Copies are available from the C.A.J. for the

price of photocopying: £1.30) The consideration of each stage of the complaints system is meant to stand on its own, though at times the viability of particular options is dependent on what options are chosen at an earlier or later stage in the system.

Comments on the options set out in this paper, or on other options, are warmly invited. The C.A.J.'s own conclusions will be incorporated in a follow-up pamphlet to be published around September 1982.

Part I: The Current System

[see Chart One]

[1] Recording and investigating the complaint

Complaints of whatever nature against members of the R.U.C., up to the rank of Chief Superintendent, must be made either to the R.U.C. itself (eg. by calling at a police station or by writing to the divisional commander) or to the Police Complaints Board. In practice only a handful of the complaints made each year are made to the Board directly rather than to the R.U.C. All the complaints, wherever made, must be referred to the Chief

Constable, who must cause them to be investigated (unless the police officer against whom the complaint is being made has already been charged with an offence alleged in the complaint). This responsibility of the Chief Constable is in fact delegated to the Deputy Chief Constable, who assigns to each complaint either an investigator from the Central Investigation Unit of the Complaints and Discipline Branch of the R.U.C. or an investigator who is a divisional officer combining his investigative duties with his regular duties. It seems that all complaints made by persons suspected of terrorism are investigated by full-time investigating officers employed in the Central Investigation Unit. The investigating officer interviews the complainant and any witnesses, and submits a report to the Deputy Chief Constable. The report is then evaluated.

[2] Charging the police officer

It is the duty of the Chief Constable to send every report to the Director of Public Prosecutions unless he is satisfied that no criminal offence has been committed. In cases not sent to the D.P.P. the Chief Constable has an unfettered discretion (subject to the involvement of the Police Complaints Board) whether to prefer disciplinary charges. In cases sent to the D.P.P., the D.P.P. must decide whether to prosecute a police officer for a criminal offence. In arriving at this decision the D.P.P.'s office does not conduct further investigation itself, though the D.P.P. does have the powers,

where it appears to him to be necessary or appropriate to do so, to cause any matter to be further investigated by the R.U.C. before he decides whether the case is a proper one in which to initiate criminal proceedings. If the D.P.P. decides to prosecute then, whether the police officer is ultimately convicted or acquitted, he cannot be charged with any offence against police discipline which is in substance the same as the offence of which he has been convicted or acquitted. This is in furtherance of the so-called double jeopardy principle. Even if the D.P.P. decides not to prosecute then, according to a Home Office Circular of 1980, "there should normally be no disciplinary proceedings if the evidence required to substantiate a disciplinary charge is the same as that required to substantiate the criminal charge".

(It should be noted that even though no formal complaint has been made against a police officer the Chief Constable is obliged to furnish the D.P.P. with facts and information regarding any allegation that a police officer has committed an offence.)

If a police officer is prosecuted and convicted for a criminal offence he enjoys exactly the same rights and privileges during the trial and appeal processes as any other accused person. If, following a complaint, a police officer is charged with an offence against the R.U.C.'s Code of Discipline, the charge can be heard by the Chief Constable or Deputy Chief Constable, or by the Chief Constable of

another police force. Where a disciplinary charge has been found proved and a punishment imposed otherwise than by the Chief Constable of the R.U.C., the accused may appeal to that Chief Constable against the finding and/or the punishment: the Chief Constable will consider the appeal himself or pass it on for consideration by his Deputy (provided the Deputy did not hear the original case). An appeal can in addition lie to the Secretary of State, who before allowing or dismissing the appeal, or varying the punishment, can appoint an appeal tribunal to hold an inquiry and report to him. The decision of the Secretary of State is final, though the police officer involved retains his rights to relief in the courts against breaches of natural justice etc.

[3] The role of the Police Complaints Board

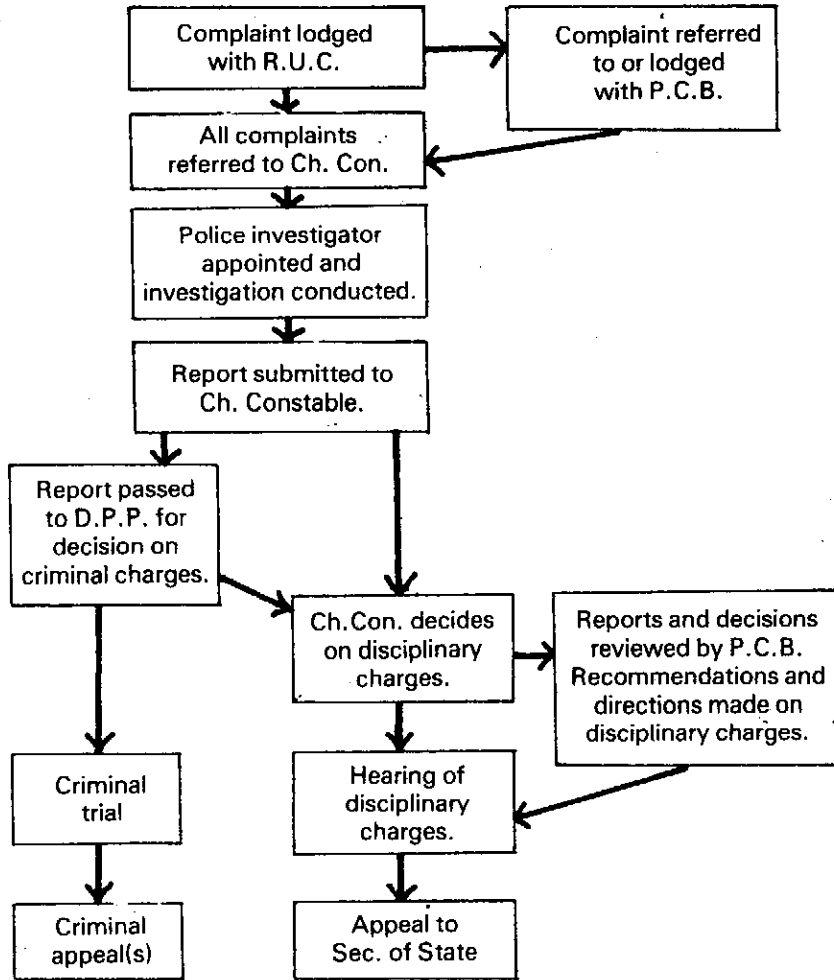
Notice of all complaints referred to the Deputy Chief Constable must in turn be given by the R.U.C. to the Police Complaints Board, which also receives copies of all investigation reports (except where the complaint has been withdrawn) and of the Chief Constable's decision whether or not to prefer disciplinary charges (except where charges have already been preferred and admitted by the accused). If the R.U.C.'s investigation report is one which requires to be forwarded to the D.P.P. (because the Chief Constable is not satisfied that no criminal offence has been committed) this is done — and the D.P.P.'s decision whether to prosecute or not is taken — before the

report is sent to the Police Complaints Board. The Board can ask the Deputy Chief Constable for additional information if it considers this to be necessary for the purpose of discharging its functions, and it can ask that any information it receives be transmitted to the D.P.P.; the R.U.C. is not obliged to disclose additional information but in practice will do so; the power to ask for information to be transmitted to the D.P.P. has been exercised only once.

If the Deputy Chief Constable has decided not to prefer disciplinary charges, the Board may, if it disagrees with this decision, recommend which charges it thinks should be preferred. If the Deputy Chief Constable is still unwilling to refer them, the Board may direct them to be preferred. In cases where the Deputy Chief Constable decides to prefer charges, the Board must consider whether the charges should be heard not by a Chief Constable, or Deputy, sitting alone, but by a disciplinary tribunal consisting of a Chief Constable and two members of the Police Complaints Board. Such a tribunal must be appointed in cases where the Board has directed the preferment of disciplinary charges (which has only occurred once); it has been appointed in other situations on only three occasions. If the accused officer is found guilty by a disciplinary tribunal, the punishment to be imposed is a matter reserved for the Chief Constable of the R.U.C. Appeals lie to the Secretary of State, as in cases where no tribunal is appointed.

CHART ONE

THE CURRENT SYSTEM FOR HANDLING COMPLAINTS



In addition, at any stage:

1. The Police Authority can appoint a tribunal.
2. The complainant can bring a civil action against the police officer(s).

CHART TWO

THE OPPORTUNITIES FOR INTRODUCING AN ELEMENT OF INDEPENDENCE INTO THE HANDLING OF COMPLAINTS

1. Where can a complaint be filed, apart from at R.U.C. stations?
2. Who can decide whether a complaint is minor or more serious?
3. If a complaint is minor, who can appoint a conciliator?
4. Who can conciliate?
5. If a complaint is more serious, or if conciliation does not succeed, who can appoint an investigator?
6. Who can investigate?
7. Who can supervise an investigation, as it continues?
8. Who can review an investigation, once it is complete?
9. Who can recommend the preferment of criminal and/or disciplinary charges?
10. Who can direct the preferment of criminal and/or disciplinary charges?
11. Who can hear disciplinary charges, and appeal in such cases?
12. Who can punish the police officer?
13. Who can decide what remedies to grant a complainant?

[4] Other opportunities for review

The Secretary of State can request the Police Complaints Board to report to him on such matters relating generally to complaints as the Secretary of State may specify, but no such request has yet been made. The Board may also make a report on any matters coming to its notice to which it considers that the Secretary of State's attention should be drawn by reason of their gravity or of other exceptional circumstances.

The Police Authority for Northern Ireland is obliged to keep itself informed as to the manner in which complaints are dealt with by the Chief Constable. It performs this function through its Complaints and Publicity Committee, which meets regularly with the Deputy Chief Constable and his supporting officers. It has pressed for greater access to individual files but at times this has not been granted. Unlike its counterparts in England and Wales, the Police Authority here is also empowered to require a tribunal to be established to consider and report on those complaints which relate to matters appearing to affect the public interest. This power has been exercised once, but the tribunal found its hands tied by the fact that it had no power to force police witnesses to attend to give evidence.

Her Majesty's Inspectorate of Constabulary does not oversee the complaints system in Northern Ireland in the way it does in Great Britain.

The system for handling complaints does not at the moment

enable compensation to be awarded to any person whose complaint has been substantiated. Nor are any of the authorities concerned with policing supervised by the Commissioner for Complaints (the equivalent in Northern Ireland of the local ombudsmen in England and Wales). To obtain compensation the complainant has to take a civil action in the ordinary courts of law, bringing his complaint within a recognised category of civil wrongs.

Part II: Scope for Independence

[see Chart Two]

Following the working paper by Foley and Burton, we can identify four basic stages, and various sub-stages, in the process of handling complaints. It is necessary to consider the form which an independent element might take at each of these stages. The stages are (1) the reception of complaints, (2) the investigation of complaints, (3) the determination of charges, and (4) the resolution of charges.

[1] The reception of complaints

[i] How may a complaint be filed?

At the moment there seems to be considerable flexibility on this point. Complaints can be made in person, by telephone or by letter. There is no official form which must be used, and no oath to state the truth needs to be sworn. To have any chance of provoking an investigation, however, the complaint should not be anonymous.

But though it may be easy in theory to file a complaint, people

will still not do so if they remain unaware of how to go about it. It is not sufficient to have information available at a police station, or obtainable from the Police Complaints Board. Leaflets and forms ought to be obtainable from other places such as district council offices, post offices, social security offices and advice centres. Forms or letters of complaint could even be forwarded to the police through such bodies, or through councillors, M.P.s, members of public/police liaison committees, the Ombudsman etc. One would have to ensure that the actual investigation of the matter was left with the body given that responsibility, but otherwise there can be no objection to making the channels for complaints as accessible as possible.

[ii] Where may a complaint be filed?

The main issue here is whether police stations should continue to be the place where most complaints are filed. The station will often be the place where the behaviour giving rise to the complaint occurs, or the place where the complainant is likely to find himself shortly afterwards. It is thus sometimes a convenient place, physically. On the other hand it may well be an intimidating place, even if only in the mind of the prospective complainant. In Northern Ireland, a significant number of people do not wish to be seen entering or leaving a police station. To cater for people who are not able, or do not want, to make a complaint at a police station, there should be alternative places

available.

Complaints can at present be made to the Police Complaints Board, though this is not widely known. One should also be able to file them at district council offices, at the Ombudsman's office, or with public/police liaison committees. These bodies should be charged with the responsibility of passing on the complaints to whichever authority is chosen as the investigating agency. Further communication on the case might then be conducted through the same forwarding body.

[iii] Who may complain?

It is not generally known that in Northern Ireland a complaint may be made on behalf of someone else. The possibility of this ought to be advertised and the right of organisations to file complaints should be openly recognised: if, for example, the Committee on the Administration of Justice receives complaints, it ought to be able to file them on the complainants' behalf. Certainly, in cases where juveniles are involved, steps need to be taken to allow complaints to be lodged more easily on their behalf.

If a complaint is anonymous, the R.U.C. seem to take it for granted that it cannot be investigated. This should not always be the case. Some such complaints, though unsigned, may be very well documented; some may be anonymous for good reasons, such as fear of reprisals; some may still point to malpractices which, if in fact they occurred, indicate misguided policing policies rather than one-off isolated incidents.

[iv] When may a complaint be filed?

It would be undesirable to impose any time limits for the filing of complaints. They should obviously be filed as soon as possible so that interviews can be conducted and evidence collected while the affair is still reasonably fresh in people's minds. The filing should not need to be postponed until after other related proceedings (such as the prosecution of the complainant, or a coroner's inquest) have been completed; only the investigation of such complaints may have to wait.

2. The investigation of complaints

The police force in Northern Ireland has always staunchly defended its right to be itself responsible for investigating complaints. The police say that only they themselves have the necessary investigative expertise, that police officers under investigation would not respond to investigators from outside the force, that police morale and the Chief Constable's authority would be undermined if independent investigators were employed, that it would be too expensive to give the task to outside investigators, that there would then be a deluge of trivial and fabricated complaints.

The Committee on the Administration of Justice believes that each of these arguments can be answered. But it also believes that there is an overriding reason for allowing independent investigation, one which would sway the balance even if the police did have a case on some of the arguments just mentioned. This reason is that justice needs not

only to be done, but to be seen to be done: however competent and unbiased the investigations carried out by the police could be proved to be, it is still essential that the outward appearance matches the inward reality. Otherwise there is a grave risk of the general public becoming unduly cynical and suspicious, attitudes which do nothing to foster good police/community relations.

That a completely sound complaints system is crucial to the healthy state of the police service in general was recognised by Lord Scarman in his report into the disturbances in Brixton. He explicitly states: "My own view is that is public confidence in the complaints procedure is to be achieved any solution falling short of a system of independent investigation available for all complaints... is unlikely to be successful." Most importantly, this same point has been made not just by pressure groups such as ourselves, the Northern Ireland Civil Rights Association and the National Council for Civil Liberties, but also by bodies representing police officers. The Police Federation for England and Wales, for instance, has said that "There appears to be no way in which the public, or at least those individuals who are interested in the question, will be convinced of the fairness of the system so long as the police appear to be judges in their own cause." And the Association of Police Superintendents has said: "We... agree with Lord Scarman that nothing short of an independent system is likely to be successful."

Given the consensus on the need for independent investigations, what are the ways in which this might be achieved? The Committee on the Administration of Justice believes that the nature of the independent element in this context depends on two variables: (i) the seriousness of the allegations made in the complaint, and (ii) the availability of mechanisms for review.

[i] The relevance of the seriousness of the complaint

Complaints vary greatly in the seriousness of the allegations they embody. In order to keep matters in perspective, and to use resources efficiently, it is sensible to devote more energy to the investigation of serious allegations than to comparatively trivial matters. The problem is to devise a scheme for ensuring that this happens. One answer would be to categorise all allegations in advance so that each category had its own autonomous system of investigation; another would be to have all complaints dealt with initially by the same system, with more serious allegations being passed on through as many other processes as it is necessary to make available. In this latter event it would be necessary to decide who should do the sifting.

A lot of complaints currently made are undoubtedly of a type which from nearly every point of view it would be better to deal with informally. This would mean the complainant discussing the matter with the police themselves, explanations, apologies and instructions

being issued more or less on the spot. The officer in charge of each police station may be an appropriate person to conduct this conciliation process (or, as the Home Affairs Committee recommends, a local conciliation officer specially appointed by the regional authority). The complaints may need to be officially recorded, but no further investigation would be necessary.

Complaints which make more worrying allegations could be dealt with more officially, perhaps along similar lines to the standard system in use for all complaints at the moment. This sort of attention might need to be given to some complaints which initially seem quite minor but which informal discussion reveals to be more serious, at any rate potentially. Informal attempts at conciliation may therefore be advisable in almost every case, while being easily transcended in cases where it is soon obvious that more formal investigations are required. Allegations which are really serious may not need to go through the conciliation process, on the basis that if there is the smallest grain of truth in them a much higher level of attention is required — even if the complainant himself is unwilling for the matter to be taken much further.

If there is to be a formal method of investigating some complaints it may take one of at least four different forms (identified by Foley and Burton):

[a] **Internal Investigation:** this is where the police force involved in the complaint investigates itself; a variant is where officers from

another police force do the investigating; the former method is the one most commonly used in England and in America; the latter has been recommended for general use in Australia by that country's Law Reform Commission and is used from time to time in England; its more frequent use was recommended for Northern Ireland by the Bennett Committee in 1979.

[b] **Special Department Investigation:** this is where a special police unit is set up solely to handle police complaints; it is the system employed in London's Metropolitan Police, with its A.10 Unit, and in Hong Kong, with its Independent Commission Against Corruption; similar units exist in Victoria, New South Wales, South Australia and the Australian Capital Territory; to a large extent this is also the system employed now in Northern Ireland, with the R.U.C.'s Complaints and Discipline Branch and its Central Investigation Unit.

[c] **Discretionary "Ombudsman" Investigation:** this is where an independent Commissioner is given the task of carrying out a parallel investigation to that conducted by the police themselves; the Commissioner and his staff are given powers to subpoena witnesses, to search and seize police records, and to order public hearings on the basis of their own or the police investigation; such an arrangement exists in Ontario, Manitoba and Nova Scotia, as well as the Federal police forces

in Australia; it is also what was contained in the Private Members' Bill introduced into the House of Commons in October 1981 by Mr Alfred Dubs.

[d] **Wholly External Investigation:** this is where a fully independent body, usually a civilian commission but sometimes a single figure such as an ombudsman, is alone entrusted with investigative powers sufficient to determine if there is substance to a complaint; this is what Lord Scarman recommended, while others (such as the Police Complaints Board for England and Wales) have recommended it for complaints of assaults and other serious offences.

Whichever of these four models of investigation is adopted, and however serious the allegation contained in the complaint may be, the further question remains whether there should be any mechanism for reviewing investigations.

[ii] **The relevance of the review of investigations**

Reviews of investigations, like investigations themselves, can take many different forms. Generally speaking, the more independent the investigation the less crucial it is to have a review; as investigations become less independent, the more essential it is to have immediate, real and effective reviews. Some sort of review mechanism already exists in Northern Ireland through the Police Complaints Board — but that Board has no power to conduct investigat-

ions itself and can only look at whatever information the R.U.C. itself wishes to disclose to it. The same can be said of the Police Complaints Board in England. There, however, H.M. Inspectorate of Constabulary also functions, and its practice is to review all cases in which expressions of dissatisfaction are received from complainants about the outcome of their complaints. In the United States, Civilian Complaints Supervisors serve the same function, though reviewing investigation reports on a somewhat more regular basis. The ombudsman in Australia's Northern Territory operates similarly.

The chief argument in favour of reviews is that no matter which body conducts investigations there is always the chance that it will become case-hardened; in that event it would not be in a position to appreciate how its effectiveness is being compromised in the eyes of the general public. Reviews, provided they are full-scale and backed by proper investigatory powers, ensure that justice is seen to be done. A review is comparable to an appeal procedure, which is standardly available in all legal matters however distinguished or impartial the original arbiter.

One possible danger in resting satisfied with any sort of review procedure is that if the review body has no real teeth, and the responsibility for investigations remains with the police, the combined operations of the two stages may be less effective in ensuring satisfactory outcomes than would an investigation by a completely independent

body with no review. The ideal situation would be to have an independent investigation and an independent review; this need not be too expensive or time-consuming because if the investigatory stage were independent there would be bound to be fewer troublesome cases for the review body.

In the past year or so the Police Complaints Board for England and Wales, the Royal Commission on Criminal Procedure and the Home Office have all recommended that an independent assessor should be appointed to supervise the investigation (still by the police) of serious complaints; this supervision could be someone with judicial experience, the chairman or a deputy chairman of the Police Complaints Board, or the Director of Public Prosecutions. Such supervision amounts to the contemporaneous monitoring of an investigation rather than to an *ex post facto* review of a completed exercise.

[3] **The determination of charges**

As explained in Part I of this paper, there are three bodies in Northern Ireland with the task of deciding whether, and if so what, charges should be brought against a police officer when a complaint has been substantiated. One is the Director of Public Prosecutions and the other two are the Chief Constable (or his deputy) and the Police Complaints Board. The D.P.P. has a monopoly over deciding whether the officer should be prosecuted for a criminal offence, while the Chief Constable and the Police Complaints Board must con-

fine their attention to the preferment of disciplinary charges. Even that role, however, is severely restricted by the way in which the double jeopardy principle is operated. This is exacerbated by the fact that (certainly in England and Wales) the D.P.P. will not prosecute unless he is more than 50% sure that the officer has committed an offence; vis-à-vis other prospective defendants he need only be satisfied that there is a *prima facie* case against him.

The D.P.P. and the P.C.B. are said by some to constitute sufficient elements of independence at this stage. In fact, however, this independence is illusory because of the powerlessness of these bodies to conduct their own investigations into the complaints. The only information they can go on is that which is supplied to them by the R.U.C. While it would not be fair to accord police officers fewer safeguards against trumped-up charges than normal citizens are allowed, the D.P.P. should apply the same test in all cases, and the need to eradicate police malpractices is such a vital one that the body which investigates a complaint, or reviews that investigation, should have the power to recommend to the D.P.P. that criminal charges be laid or even to lay them itself. Similarly, the disciplinary stage should be seen as separate from the prosecution stage, so that a decision on the latter should by no means prejudice a decision on the former. This is already taken for granted when it is a question of distinguishing criminal from civil proceedings (even con-

viction of a crime is not conclusive evidence of civil liability in respect of the same piece of conduct) and disciplinary proceedings should be treated equally distinctly. In addition, to the extent that a review body such as the Police Complaints Board has power to **require** disciplinary charges to be preferred, this power should be exercised more conscientiously.

[4] The resolution of charges

Once a decision has been taken to prefer charges, whether of a criminal or a disciplinary nature, the next stage is the resolution of those charges: who should be responsible for deciding whether an officer is guilty or not guilty, and in what way should the matter be resolved? Part I of this paper outlines the system at present operating in Northern Ireland. The ordinary criminal courts deal with criminal charges and the Chief Constable, or a tribunal, deals with disciplinary charges.

INFORMAL RESOLUTION

At the moment there is no official mechanism for resolving very minor charges in a less formalistic manner. This would surely be necessary if a conciliation process were ever introduced for these minor complaints, because in the nature of things the matter would not be deserving of the diversion of large resources and the investigation and charge stages would tend to merge together. The only problem is to decide who should act as the prime conciliator:

it could be the police themselves (eg. the officer in charge of the station in question) or a local "ombudsman". The Home Affairs Committee favours the latter system, wanting a network of local complaint offices to be set up in every region and every major metropolitan area.

In Australia, the Law Reform Commission has retracted an earlier suggestion that police dispose of "non-serious" complaints themselves, citing the fact that police are left with too much discretion and ambiguous guidelines for determining what is or is not "serious". The current Australian system, as described by Foley and Burton, "requires the ombudsman, after initially screening out vexatious complaints, to seek conciliation or mediation. Cases especially suited for informal resolution are those that can be satisfied by a letter of apology, expungement of an arrest and finger-printing, replacement or repair of illegally-damaged property, or suitable explanation of the police action. Only if informal resolution fails is the ombudsman to recommend or order an investigation." This model suggests, in fact, that if a conciliation process is involved there may be no need ever to get to the stage of preferring charges; charges should perhaps be reserved for more serious substantiated complaints.

FORMAL RESOLUTION

If a formal method of resolving charges is required, there are a number

of schemes already operating which could serve as models for a new scheme in Northern Ireland. In some of these schemes the police chief resolves the charges by himself, in others a hearing is held. The hearing may be before the police chief alone, before a police board, before a civilian or joint civilian-police board, or before a judicial magistrate. The pros and cons of each of these models are ably set out by Foley and Burton:

[i] **Police Chief Only:** Some Canadian and United States systems make provisions for the local or city police chief alone to adjudicate the case without the benefit of a hearing. Sometimes, too, where hearings are allowed, an officer will be allowed to accept discipline from the police chief by, in effect, pleading guilty to the charge. The disadvantages to this set-up include the possibility of collusion between officer and police chief; the possibility of prejudice in the judgment, with the likelihood of penalties insufficient to deter the conduct at issue, the appearance of a biased procedure; and the denial of due process to the officer. Among the advantages are that the system is quick and efficient, and probably less damaging to police morale. It has also been argued that this approach is preferred simply because the responsibility for correcting an evil is allotted to those from whom the evil arose.

[ii] **Hearings Before the Police Chief Alone:** This procedure

differs from the above system in that the verdict is preceded by a trial of some sort with the Police Chief as trier-of-fact. The due process objection has been weakened, but justice is still not seen to be done and the potential for an unjust decision still exists. Some argue that the formal hearing serves to heighten the police chief's awareness of his duty to the public, and hence may sometimes be especially harsh on the accused in these proceedings. As with other formal but non-judicial hearings the police chief may be called upon to decide on legal issues for which he is neither educated nor trained. Nevertheless, this method is widely used in the United States, because of its efficiency and its appeal to police interests.

[iii] Hearings Before a Civilian or Civilian-Police Board: An approach in which civilian boards hold hearings on police complaints has inspired a great deal of public debate. Civilian boards are desirable because they eliminate potential conflict-of-interest problems that may occur when the police chief or officers are called upon to judge a policeman; likewise, they reduce the possibility of bias in favour of the police; and they are more likely to enhance public confidence in the complaints procedure.

Arguments posited in opposition to the civilian boards approach are that they undermine the authority of the police chief in handling discipline within his

own force; that police morale is impaired; that, similar to the argument against civilian investigation, only police understand the complexities of police work and are therefore the only ones qualified to judge police; that the boards involve greater expense; that adamant police opposition can circumvent effective board operation; and that there is no guarantee civilian boards will be any more impartial than police boards will be any more impartial than police boards. In answer to objections that they reduce police morale and hamper law enforcement, it is argued that no proof has been presented to show the effects on police morale, and that legitimate law enforcement is not hampered.

The Australian Law Reform Commission rejected the idea of a citizen board because of the problem in getting "representative" citizens to serve on the board, and — when the board is a combination board — the difficulty in balancing police representation with civilian representation. Sir Robert Mark has cited the problem of citizen boards in which political influence may affect appointments.

Nevertheless, such civilian boards do exist and are used to varying degrees. Some systems invoke the board only for major cases. In San Francisco, for example, the Civilian Police Commission (three members appointed by the mayor) hears cases where the penalty would exceed ten days' suspension. In Chicago,

the five-member Police Board tries cases where the penalty would be dismissal. The Canadian "Maloney" Proposal suggests a Civilian Commissioner of Complaints (a) to decide on minor cases, and (b) to preside over the selection of a Tribunal for major cases, the Tribunal to be composed of three members — a lawyer, an officer, and a citizen — chosen from a list of fifteen each. Another approach is that of British Columbia, where within 30 days of receiving the results of an investigation, either the complainant or the officer may have the case tried before a civilian police board; if one or the other is still not satisfied, he may carry the case to a British Columbia Police Commission, composed of three civilians, one with prior police experience. Yet another approach suggests a Complaints Board composed of four members: a judge from a national court; the Police Commissioner; and two civilians selected by rotation from a citizen's panel.

[iv] Hearings Before a Judicial Magistrate: Although judges and lawyers have frequently been asked to serve on civilian commissions, there have been surprisingly few proposals for judges to serve as independent police complaint arbiters. Judges would appear to be singularly well-suited for such trials, because of their expertise in determining what constitutes sound and convincing evidence. In addition, judges are frequently viewed as

perhaps the most impartial members of society. Nevertheless, hearings before a judge may tend to formalise the complaints procedure more than is necessary or desirable. It has also been suggested that judges lack the requisite experience to handle the complexities of evaluating police work.

This last criticism loses substance when one considers that judges are often called upon to decide cases for which they have no particular competency, including in fact criminal and civil suits involving claims of police abuse. Some commentators have pointed specifically to industrial arbitration cases as proof of the success of judicial involvement in specialised fields.

Procedures to be used at formal hearings:

The procedures used at formal hearings should be certain, fair and modestly formal — though more relaxed than in a purely judicial proceeding. The participation of the complainant is essential, not just to ensure that his case is properly presented but also to allow the officer a chance to cross-examine him. Complainant participation discourages spiritless prosecution and makes it more likely that the complainant will feel able to accept the final decision, even if adverse.

The burden of proof should lie with the prosecuting or disciplining authority (ie. the D.P.P.'s Office or the R.U.C.), not with the individual complainant. The charge is, after all, being brought on behalf of

society, or the police force, as a whole. The procedure should be more inquisitorial than adversarial (ie. with the board members themselves probing and questioning, rather than leaving each side to present its own case unaided); the legal rules of evidence should be more relaxed and flexible than in regular courts, and the complainant himself should be allowed to examine and cross-examine witnesses. There is no reason to deprive defendants of their usual right to silence and the right to legal counsel. If the right to silence is considered to be too great a privilege in disciplinary hearings, the compromise solution suggested by the Australian Law Reform Commission could be adopted: this would deprive the defendant of a right to silence during the investigation stage but confer it on him at the hearing stage; the prosecution could not then introduce the accused's out-of-the-hearing testimony but could use it as a focus for their inquiries. Representation by lawyers should be allowed, provided the hearings are not permitted to

become too technical as a result. It goes without saying that the legal aid and advice schemes should extend to these proceedings.

As far as possible the hearings ought to be open rather than closed. There may arise situations where the best interests of all concerned may call for a closed hearing, but the alternatives to full closure should always be carefully considered first. If either the complainant or the defendant is also involved in concurrent civil or criminal proceedings, further action on the complaint ought perhaps to be postponed so that rights and privileges available during those proceedings are not compromised.

The decisions and reasoning of hearings boards should be recorded, notified to all the parties and made available for public inspection. Care should be taken to ensure that all the parties have understood the proceedings and that, where possible, fairly precise guidelines are laid down as to what is expected of police officers and what conduct will not be tolerated.

The Committee on the Administration of Justice is a broadly based group set up with the intention of securing 'the highest standards in the administration of justice in Northern Ireland by examining the operation of the current system, and promoting the discussion of alternatives'. It involves community activists, academics and lawyers, and was established after a conference held in Belfast on June 13, 1981, with the intention of providing an opportunity for people with a professional or personal concern about the standards of justice in Northern Ireland to exchange information and opinions. The CAJ currently works through three working groups, on emergency law, prison reform, and policing, and it is hoped to establish a further group to work on the problems of young people and the law. Through the publication of pamphlets such as this and the organisation of conferences and seminars the CAJ aims to raise the level of public debate and understanding on these important issues; further information about the Committee on the Administration of Justice and copies of its publications can be obtained from:

The Secretary,
Committee on the Administration of Justice,
c/o 7 Lower Crescent, Belfast 7.

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