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PROCEDURES FOR
HANDLING
COMPLAINTS
AGAINST
THE POLICE

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THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE

The C.A.J. is a broadly-based group which was set up after a conference in Belfast in June 1981 with the aim of striving to secure "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". Its membership comprises community activists, probation officers, rights workers, academics and practising lawyers. At present it operates through working groups on emergency laws, prison reform, and policing; it intends to establish groups on the problems of young people and on the workings of the magistrates' courts. Through publishing pamphlets such as this, and organising seminars and conferences, the C.A.J. seeks to raise the level of public debate and understanding on important social issues.

Membership costs, at a minimum, £2 per annum. Please inquire of the Secretary, the Committee on the Administration of Justice, c/o 7 Lower Crescent, Belfast BT7 1NR. Pamphlets Nos. 1 to 3 concern (1) proceedings of the June 1981 conference, (2) emergency laws, and (3) alternatives for dealing with complaints against the police.

PROCEDURES FOR HANDLING COMPLAINTS AGAINST THE POLICE

INTRODUCTION

This pamphlet represents a submission which the Committee on the Administration of Justice is making to Lord Cowrie, Minister of State in the Northern Ireland Office, the bulk of it having already been submitted to him in October 1982. Its origin lies in the fact that it was known that consideration was being given at Westminster to possible changes in the police complaints system for England and Wales and the Committee on the Administration of Justice wanted to ensure that the most appropriate system was adopted in Northern Ireland.

The recommendations of the Home Affairs Committee of the House of Commons, which are referred to from time to time in the pamphlet, have since been incorporated into the Police and Criminal Evidence Bill (relating to England and Wales) which, at the time of printing, is currently passing through Parliament.

For ease of reference, our own recommendations are summarised on page 21.

THE PROBLEM IN PERSPECTIVE

In recent months there has been much discussion, analysis and comment both here and in England about the present system for handling complaints against the police, and many recommendations made for improvements. This paper is an attempt to review what seem to us to be the most important elements in this work and to relate them at every step to the Northern Irish situation which, though it has some features in common with any democratic society that has to police itself, also has some problems of its own not commonly found elsewhere. In some cases these problems are so fundamental and so dominate the scene that in our view it is necessary to give priority to them and to devise a system with some courage and with thoroughness if there is to be any hope of overcoming them. Indeed part of the difficulty in Northern Ireland lies in the fact that there are widely differing views of what we should expect from the law. It is this difference in objectives, so deeply rooted in Irish history, which makes the design of a system for handling complaints against the police central to the problems of Northern Irish society to a degree that is not reflected in England, important and contentious though it is there too.

It is indeed possible to argue - and some do - that one problem in particular, that of confidence and trust, is so deeply rooted in the nature of our society that any attempt to tackle it by reforming our system of policing ourselves is doomed to failure because it is approaching the matter from the wrong end. According to this view it is unfair to ask anyone to act as a police officer in a society so deeply divided because he is bound to be regarded by some as a representative of a government they do not like and which they hope will be replaced by something very different. According to this view too the real problem is not the police but society itself and once that is put right policing problems will cease to be divisive.

We recognise the force of this view though we do not share it. In essence it is a view which finds expression over many matters among people who are so deeply discontented with the failures of their society to live up to the ideals they hold dear that they despair of any attempts to improve this or that aspect of life on the ground that it would be merely cosmetic tinkering with the edges of the problem and that in so far as such tinkering might be successful it would achieve nothing more than bolstering a basically sick society and prolonging its life when what is required is a wholesale recasting of society itself. This is a view which can legitimately be held by some people in situations all over the world and we recognise that the arguments in its favour in Northern Ireland are stronger than in many more fortunate and stable societies elsewhere.

We have thought it right to consider this view at the outset because the detailed consideration of police complaints procedures which follows would be pointless if we held it ourselves. The reasons why we do not hold it are as follows:

- (a) While we share with the holders of this view a deep concern for the malaise in Northern Irish society, we would prefer to tackle it at many different levels whenever opportunity offers. Our aims are to eliminate tensions and to make living easier for the law-abiding citizen and for the police; in particular we wish to improve the relationship between the two. In our view the changes required to produce a more cohesive society will take time and much ingenuity and are fundamentally of a political nature. Others are addressing themselves to these matters (including some of ourselves in other capacities). But in the meantime life goes on and we believe it would be a mistake to wait for the Promised Land while doing nothing about matters that can be changed relatively quickly if there is agreement that they merit change.
- (b) We believe that the changes we propose could themselves help to bring closer the day when society will be ready to agree on the more fundamental changes needed to heal its basic divisions. While relations between police and public are only one factor in a complex situation it is nevertheless true that every time these relations suffer a setback the tensions in society are accentuated and prolonged; and every time those relations grow towards some degree of understanding and trust the tensions are eased and the way to some extent prepared for a more peaceful, co-operative and forward-looking society.

OBJECTIVES OF CHANGES

It seems right, at the outset, to say what we believe should be the objectives of any changes in the present system. We suggest they should seek to:

- (a) Increase public confidence where it exists and create it where it does not. While this and the following three objectives are all essential, we regard this one as the primary purpose because, despite a number of reforms in recent years and despite the considerable effort that has gone into creating confidence in the R.U.C., we have to face the fact that history and tradition, coupled with some of the responses to the troubles since 1968/9, have combined to bring about an atmosphere that will not be altered without some very radical changes. We are dealing here with emotion much more than reason and it is a common experience that emotional attitudes are resistant to ordinary reasoning. Even if a system can be shown (to the satisfaction of an uninvolved outsider) to be fair, the public here is so deeply sceptical that nothing will carry conviction except a system whose fairness is absolutely self-evident.

There is a comparable problem of confidence in those areas in England which have a significant number of people with black and brown skins and this

has led to wide agreement there that there must be a fresh injection of an independent element into the complaints system. Unfortunately some of the supporters of this view content themselves with that broad statement of principle and do not go on to say what the independent element should consist of and what its powers and duties should be. We set out our views on these matters below because they go to the heart of the matter (pp. 13-16 et seq.).

- (b) Enhance the respect and co-operation of the police. No system will work if the ordinary constable thinks that it is unfairly weighted against him in the conduct of a dangerous job on behalf of the community. In particular there must be no infringement of a constable's ordinary legal rights. But more than this - one objective should be to reduce the strain on members of the R.U.C. The fact of a high suicide rate in the R.U.C. must be taken seriously as a yardstick of the strain to which some of its members and their families are exposed.
- (c) Be effective in uncovering abuses while sifting out vexatious complaints. It is by no means a simple matter to get at the heart of a genuine complaint in the face of the natural human instinct not to be found out; nor is it easy to distinguish between a complaint that the police say is vexatious, but is not in fact, and one which really is. The number and variety of motives which may be at work on both sides, sometimes involving a good deal of past history, can be taxing to any investigator. Hence the importance of devising a method of probing into the allegations and counter-allegations which is very thorough.
- (d) Give the complainant satisfaction as well as discouraging lapses from a high standard of behaviour in the police. A citizen should be sure that the representatives of society, the police, recognise his worth and dignity as a human being, and the present tendency to create an ever-widening circle of bitterness and resentment among a complainant's relatives and friends must be avoided.

Some have suggested that because a complainant may have suffered damage to himself or his property the complaints system ought to incorporate some machinery for compensating him without his having to have recourse to the civil law, which might in some cases appear to be a difficult or cumbersome remedy. In our view complainants want one or both of two things - to get some credible degree of assurance that what happened to them will, if not perhaps never happen again - for that is obviously difficult to guarantee - be at least heavily discouraged by higher authority, and to be recompensed for what they have unjustly suffered. This latter is a difficult subject because what they have suffered may be easily quantifiable (eg. damage to a house) or may be an opportunity for a lawyer's

field day in assessing the value of damage which, though real enough, is intangible in character. We do not regard this issue as of primary importance and we do not wish to see the complaints procedure become complicated with matters better dealt with elsewhere, but we think the system would gain in credibility if, when a complaint is upheld and actual loss can be computed, the matter could be disposed of comparatively simply and quickly instead of obliging the complainant to go to the expense and delay of a separate action in the civil court. We recognise that this is not a simple matter and that there are objections which have some weight. It is an issue which is not central to our main theme and we do not wish to devote a lot of attention to it here, but we believe it should be examined carefully.

- (e) Have regard to cost. The question has been very properly asked whether the need to improve the system is great enough to justify the extra cost. At the same time some estimates have been made of the likely cost of some suggested procedures, drawing the conclusion that the cost would be too high to be acceptable. Our belief is that:
- (i) in Northern Ireland the need is very great - substantially greater than in Britain - and therefore, without being spendthrift, society should be prepared to face the cost. Certainly the system adopted should avoid duplication of work and very complex enquiries and the cost of any proposal ought to be capable of assessment but, as stated above, we regard the first four objectives (a) to (d) as essential, and (e) as, within the limits of reason, flexible;
 - (ii) in fact the recommendations which follow should not be unduly expensive. We return to this aspect at the end of this letter (p. 18), where we give a rough calculation;
 - (iii) in so far as the new procedure results in better relationships between police and public, and a higher standard of police performance, it will also result in a reduced volume of complaints, which in turn will ease the strain, human and financial, on the whole system.

ELEMENTS AND STAGES OF INDEPENDENCE

The present procedure for handling complaints includes what, at the time that they were adopted, were regarded as reforms designed to introduce an independent element into the system - the Police Authority, the Police Complaints Board and the tribunal which may be set up under section 13 of the Police Act (N.I.) 1970. The tribunal, in the one case where it was set up, proved to lack sufficient power to do its job effectively, and though the Police Authority and the Police Complaints Board have been in office for some years they clearly are not regarded by the public as either truly independent or noticeably effective. We therefore share the opinion of those, both here and in Britain, who include in their number such potent voices as those of Lord Scarman and at least three chief constables, that a further injection of independence into the system must be attempted. Lord Scarman indeed went so far as to say that the new system should be completely independent of the police; we refer below to this very difficult question (pp. 12-13).

It seems to us that the most logical and thorough way of looking at the problem of designing an independent element - and because of its thoroughness the one most likely to inspire confidence - is to take it in three stages thus:

- (a) the early stage - which involves submission, preliminary examination, classification, and in suitable cases conciliation;
- (b) the main investigation stage; our pamphlet no. 3, ("Complaints Against the Police: A Working Party Report", Sept. 1982) deals with this from a factual standpoint, describing the present system and listing the options for introducing some independence;
- (c) ex post facto examination where the complainant is not satisfied and wishes to pursue the matter further.

(a) The Early Stage

(i) The identity of the complainant. The present practice is to require a signed complaint, or some other method of the complainant identifying himself, such as his presence at a police station, at the office of the Police Complaints Board, or using the good offices of "anyone other than the Chief Constable". This seems proper, if only because there are obvious difficulties in getting further information from someone who will not identify himself. It does not however entirely cater for the person who thinks he has a genuine cause of complaint but, for reasons which are understandable in Northern Ireland, does not wish to identify himself or to be seen at a police station or having anything to do with Authority.

Since it is already accepted that a complaint may be forwarded by "anyone other than the Chief Constable" (which in fact means anyone and would be more clearly understood if it said just that) our Recommendation No. 1 is that complaints should

be acceptable if made on someone else's behalf, though a proper proviso* in such cases would be to require the author to say whether, in making the complaint, he has or has not the authority of the aggrieved person and to show good reason why he is making the complaint rather than the person aggrieved. This latter proviso should serve to prevent our recommendation opening the way to a flood of politically motivated complaints, lacking any real substance but providing endless opportunities for making mischief. In contrast it is possible to envisage genuine cases where the aggrieved person is willing (or keen) for the complaint to be made but unwilling for his identity to be revealed (such a complaint would probably have to refer to the practice in a particular locality or to a pattern of incidents, or both, rather than to an individual case), and others where the author decides for valid reasons to make the complaint without consulting the aggrieved person. Though some such cases may present difficulty to the investigator, others may be capable of exploration with the help of the author. The system ought to be flexible enough to cope with any complaint where the facts can be established.

(ii) Where information about the system can be found. The Northern Ireland Office's leaflet explaining how to make a complaint is at present available not only in police stations but also in Citizens' Advice Bureaux. We welcome this fact since it is of some importance that the leaflet should be accessible in places which have nothing to do with the police. We are pleased that our previous suggestion that public libraries might stock copies has been noted and we would like to add, as our Recommendation No. 2, that local authority offices would also be suitable places, and, perhaps more important, Post Offices. Neither CABs nor local authority offices by themselves would provide a sufficient number of places for providing information about complaint procedures to cater satisfactorily for elderly people who cannot easily make long journeys and who are often key individuals in the life of a community.

If the recommendation which follows for the creation of an Agency for Complaints against the Police is accepted, it would be appropriate that the Agency should have overall responsibility for distributing information about how to make a complaint.

(iii) Receipt of complaints, their classification and (where appropriate) conciliation. At present all complaints, through whatever channel they may arrive, land up on the desk of the deputy Chief Constable. In our view the first stage in the process of handling a complaint at which there is some scope for introducing an element of independence, which can be seen by the public and so start to create confidence, is at this point. The public can imagine all sorts of motives, whether they ever exist or not, for the police to load the scales in their favour at the moments of receipt and of decision as to how the complaint is to be treated. Recommendation No. 3: we believe that this function

* It is interesting that the Home Office in their evidence to the Home Affairs Committee of the House of Commons (H.A.C. Report, Vol. II, App. C) made this recommendation without any provisos attached. Nevertheless they seem sensible safeguards.

should be taken out of police hands and given to someone else whose independence is self-evident. In view of our later recommendation about the handling of the investigation stage, it may seem unnecessary to mention this point but we do so because it seems to us important to recognise the earliness of the stage at which public confidence can be either gained or put at risk.

There seems to be wide agreement in many quarters that a fair number of complaints relate to relatively small matters and that, though they should not be ignored, it is inappropriate and burdensome to treat them in the same way as more serious complaints, thus taking up a disproportionate amount of administrative time. It has been suggested, by the Home Affairs Committee among others, that a relatively informal process of conciliation would be appropriate here and, as our Recommendation No. 4, we agree. Indeed there is some evidence that the absence of proper machinery for conciliation discourages conciliation when it could very well take place even within the system as it stands. If the station sergeant's initial concern were to play his hand so as to be able later to convince everyone concerned that he had done all he could to satisfy the complainant, instead of striving to abide by the formal procedure for registering the complaint, it is likely that an actively conciliatory attitude would be more frequently shown and that this would pay good dividends in terms of public relations. Some good examples of the way in which the absence of a recognised machinery for conciliation makes the present system unnecessarily cumbersome are given by the Police Complaints Board in their 1981 Report (paras. 23-26). The three cases quoted there would be classified by any reasonable observer as relatively minor matters suitable for informal treatment, but because there is no provision for this they had to be taken all the way through the standard procedure. We note that the Police Complaints Board had the good sense to recommend informal action even though in so doing they were acting ultra vires. What is clearly needed here is proper legal provision for this kind of treatment instead of it being dependent on improvisation.

(iv) The role of liaison committees. Throughout Northern Ireland there are local committees whose purpose is to act as a two-way channel of communication between the police and the community. These appear to vary greatly in their degree of activity and usefulness but we are impressed with the potential which they hold for acquainting the police with local opinion and establishing an atmosphere of trust on both sides. The Home Office appears to think this device is potentially useful and issued in June its Circular 54/1982 on the subject. There is evidence that this concept has recently gained acceptance in Government circles but it is to be regretted that the Police and Criminal Evidence Bill now before Parliament is lacking commitment on this matter.

In the context of Northern Ireland we are strongly of the opinion that the major requirement for making this device really useful is to allow it to have some power rather than being a cosmetic talking-shop. Unless this is done the danger is unavoidable that the public will cynically regard the committee as a piece of window-dressing and so no member of the community commanding a degree of support locally will agree to serve.

Indeed we envisage that local leaders will be extremely cautious if invited to serve on such committees and the difficulty will be to persuade them to run the risk of getting a reputation for "fraternising with the enemy" and so losing their credibility with the community. The only way we see of enticing them into this admittedly dangerous position is to offer them the chance to influence events.

This is not the place to go into all the potential functions of liaison committees but it is the place to make our Recommendation No. 5: that they should be allowed to have a function in relation to complaints. It goes without saying that any member of a liaison committee should be able to forward a complaint from someone else, and if our Recommendation No. 1 is accepted he will also be able to make a complaint on behalf of someone else. We would, however, go further than this and say that he should be entitled, by virtue of his membership of the liaison committee, to pursue the matter during its investigation, to keep in touch with the progress of the case and to assure himself and the complainant that everything possible has been done on his behalf. The Agency for Complaints, whose creation we recommend below (p. 14), should have a duty to disclose its reports to the liaison committees so that a check can be kept on the thoroughness of investigations. The Home Office appears to have been thinking along similar lines in its evidence to the Home Affairs Committee (Report para. 64 and Minutes of Home Office Evidence in Vol. II, pp. 233-9). Though it may not have contemplated such an important role for this lay intervention, the germ of the concept of support of the complaint from "a suitably qualified lay person" not personally involved is clearly implied. We support this idea not so much because we wish to see liaison committees have some power to influence events (though we do) but because it holds some promise of doing two things, the first important in some cases and the second very important in most cases:

- (a) The first is that many complainants in the ordinary course of events are not especially articulate or experienced in dealing with administration or Authority; such people may have a good enough case but find difficulty in presenting it convincingly or pursuing it when confronted with obstacles and objections. The kind of person who might be expected to be a member of a liaison committee could well fill this gap. Indeed if members of liaison committees are to be available for this function it will be important to see that each committee has three or four members competent in this respect and who can spare the necessary time.
- (b) The second advantage we see in this proposal lies in the field of confidence. As we have said, this must be the chief objective of any new system and we believe that it will be the most difficult of all the objectives to achieve. Accordingly society cannot afford to miss any opportunity of introducing an element of independence so free of any suspicion of taint that it cannot fail to inspire confidence. Though our proposal below for

the creation of an Agency for Complaints against the Police is designed to create a body independent of the police, there is always the danger that some people may be suspicious of any Government agency dependent on public funds. For this reason we see great merit in the introduction of this lay element as a final guarantee of objectivity.

The smoothness of operation of any system depends a lot on dialogue and communication between the different people concerned. With this in mind we would hope that liaison committees would from time to time meet the Agency for Complaints, whose creation we recommend later, to discuss either individual cases which may be presenting difficulty or overall trends. Having this active relationship with both the police and the Agency, the committees might on occasion be in a position to act as a bridge between them.

(b) Investigative Methods

Our study of this aspect of the subject appears to reveal six main types of design, either in use somewhere or proposed, for the process of investigating complaints. We list them briefly thus:

1. Straightforward investigation by the police, as at present most commonly practised in Britain and Northern Ireland.
2. Investigation by a special team of full-time police investigators who can be recruited from positions across the province or even nationally. Perhaps the most famous of these teams was the A10 branch of the Metropolitan Police created by Sir Robert Mark, but this system is also in use to some extent in Northern Ireland.
3. Investigation by an officer from another force. This is a device that is used in the United Kingdom in some of the more serious cases and has been recommended a good deal lately in the context of the current debate.
4. Allowing the present system to continue but ensuring that it is monitored by an outside body or person. To some extent the Police Authority already monitors the investigation of complaints in Northern Ireland and the Police Complaints Board scrutinises investigations when they are complete. Both of these devices were resorted to with the intention of introducing an element of independence, but they have failed to command confidence.
5. External or independent investigation by people other than the police. Various forms of this type are to be found abroad (Toronto, Hong Kong and Australia) and this is what Lord Scarman favours. It is obviously the most radical of all departures from present practice.

6. Ex post facto enquiries into cases that have been closed. The Police Authority and the Police Complaints Board have roles to play here and in Northern Ireland there is the additional provision for the appointment of a tribunal under section 13 of the Police Act (N.I.) 1970.

Our assessment of the relative merits of these six options is as follows:

- (a) No. 6 is of a different order of approach from the other five; it is a potential means of curing a situation that has gone wrong, rather than an attempt to make sure that it does not go wrong. We believe that all forms of administration ought to be open to enquiry and reversal if proved faulty, but we do not attach prime importance to this aspect; what is vitally important is to get the system as good as possible so that recourse to ex post facto examination should be needed as seldom as possible. We give our proposals about this stage later in this paper (p. 19).
- (b) Of the other five options we do not recommend reliance on 1, 2 or 3. Whatever the merits of 2 or 3 we think they must be rejected simply because the public will never feel satisfied with a system which uses only policemen to investigate complaints against the police.
- (c) The real choice in our view lies between 4 and 5 or a combination of them and we give our recommendation below. First it is necessary to examine the arguments against using anyone other than the police in the investigatory process; and the arguments for and against retaining the use of the police as part of that process.

Objections to any involvement of non-police people have been made on the following grounds:

- (a) that the Chief Constable would lose control of his power to discipline his force. This argument does not convince. No-one has suggested that any outsider would have any power to impose penalties. The Chief Constable would, under any new system, receive the report of the investigation just as he does now and would then decide what, if any, disciplinary action was called for;
- (b) that no-one except the police is competent to investigate. This argument is even less convincing. There are people in other walks of life who are professionally engaged in investigations of alleged malpractices (Inland Revenue, Customs and Excise, Department of Health and Social Services, etc.) and it is noticeable that some of the really big and successful cases of probing into an abuse have been conducted by lawyers, who by training and experience know better than anyone how to get the truth out of a reluctant witness;

- (c) that any system involving people other than the police would require the creation of a new corps, recruitment to it, a career structure, and all the other attributes of a new administrative body. This is perfectly true, but not an insuperable obstacle. When it was decided to create a body of traffic wardens in order to relieve the police of that work, these difficulties were not regarded as an impediment;
- (d) that fresh legislation would be required. Again this is true but not an insuperable obstacle. The level of agreement that some changes must be made is already sufficiently high to make it likely that there will be legislation for Northern Ireland as well as the English legislation already going through Parliament; the question to be decided is not whether there should be legislation but what its provisions should be;
- (e) that police morale would suffer. This is probably true initially but once the new system is seen to be effective, abuses reduced and public relations improved, the impact on morale can only be to the good.

We therefore conclude that there is no reason for rejecting all forms of external participation in the investigatory process. We think it important to have examined this question of principle rather than make the assumption that an independent element should be introduced simply on the ground of its obvious attraction and without having regard to its possible disadvantages.

Having established this point, it remains to consider the much more controversial question whether investigation of complaints should be entirely independent of the police or whether they should still play a part. From the point of view of establishing public confidence there are obvious attractions in taking the matter out of police hands altogether and it is worth noting that so eminent an authority as Lord Scarman cannot have thought such an idea should be dismissed out of hand when he said that his view was that "if 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". This question must therefore be examined seriously, even by those whose instinct is to say that such a radical change would be too risky and that society would do better to build on and improve what it already has. Indeed if there is force in Lord Scarman's view in the English context, there must be all the more reason to consider it seriously in Northern Ireland. The following points appear to be relevant:

- (a) People in other walks of life have machinery for investigating their own alleged malpractices - doctors, lawyers, journalists etc. - the general principle behind these arrangements being that one should "set a thief to catch a thief". Certainly a knowledge of the way the police system works may be helpful to an investigator, but it is not impossible to acquire that knowledge and any new corps to be created would undoubtedly receive

training in this aspect of their work. The question that it is right to ask is whether the police should conform to this general pattern or whether (apart from the public relations attractions) there is any logical reason for making them an exception. Our view is that there would be a certain logic in making them an exception, on the ground of the powers over other people which they have by law, which are so extensive that the police should be seen to be answerable to other people and not to themselves.

- (b) The possibility of police morale suffering has been dealt with in relation to the introduction of an independent element (p. 12). It is probably the case that morale would suffer more from investigations being entirely in the hands of outsiders than from a mixed system. But this needs to be seen in perspective; morale depends on a number of factors besides the method of investigating complaints.
- (c) The Home Affairs Committee Report notes that none of its witnesses argued that an independent team of investigators would actually do any better than the police have hitherto and it concludes that there is a risk that, although public confidence would obviously increase at the time of the introduction of an independent system, it could subsequently fall below even its present level if the new system was seen to be no better than the old. This is an argument of caution and its strength depends on one's estimate of the likelihood of a totally independent system turning out to be an improvement. In Northern Ireland there will be more optimists on this score than in England, simply because here the public's estimate of the fairness and efficacy of the present system is so very low. Some will say that it is a jaundiced view but the fact has to be faced that it is held.

A Completely Independent Body

We have carefully considered the section of the Home Affairs Committee Report dealing with the option of a totally independent system and we have been forced to look at the arguments through Northern Ireland spectacles. We agree with the Home Affairs Committee that the arguments are finely balanced and it may be that if we had been considering the situation in England we would have supported their conclusion that the police must still have a part to play but should be supplemented by an outside and independent agency such as their proposed assessor. For a number of reasons this is a tempting solution and it is only after prolonged study that we have decided we cannot recommend it for Northern Ireland where the problem of public confidence is so much more general and so much more deeply rooted.

In our view it is necessary to start from the fundamental fact that public confidence will not be achieved as long as the police have any part to play in investigating complaints against

themselves, and since public confidence is our primary objective we see no escape from facing the consequences of this conclusion. We see most merit in the suggestion of a Police Ombudsman made by a number of other commentators and accordingly our Recommendation No. 6 is that there should be established an Agency for Complaints against the Police to which all complaints should be passed, from whatever source or by whatever route they may come. This Agency would be headed by a Director appointed by the Secretary of State and would be staffed by a number of investigators in branch offices appropriately situated throughout the province. It is very important that these branch offices should be able to respond to local conditions and public feeling and not give the impression that all but the most trivial matters are dealt with in the Director's Head Office in Belfast. The personnel in local offices should be approachable, open, friendly, helpful and communicative.

The Agency's Powers

On receipt of a complaint the Agency would proceed to investigate it and must accordingly be provided by Act of Parliament with all the necessary powers to see the relevant papers and to interview witnesses. Most complaints fall into one of four categories: (1) allegations of a criminal offence, (2) allegations of breach of discipline, (3) minor matters, (4) vexatious complaints. The Agency will decide on the treatment appropriate in each case though it will need to have the freedom to adjust the treatment as its enquiries proceed because it sometimes happens that a complaint turns out to be either more or less serious than was originally thought. We say a few words about each of the four categories.

(1) The procedure in cases where a criminal offence has been alleged calls for some attention in relation to three aspects:

- (i) We note the Home Affairs Committee's recommendation that a Crown prosecutor system modelled on Scottish Procurators Fiscal should take the place of the Director of Public Prosecutions and we support this: Recommendation No. 7. In Scotland the Fiscal, unlike the Director of Public Prosecutions in Northern Ireland, is widely regarded as fair and completely independent of the police and, as the Home Affairs Committee point out (para. 42), he is easily accessible to the complainant, whereas the Director of Public Prosecutions in Northern Ireland is a somewhat remote and ethereal figure.

The Home Affairs Committee envisaged that if this recommendation were accepted it could take anything up to 5 years to be brought into effect and we do not question this estimate, but with this probability in view it seems important to do anything that can be done in the meantime to reduce the widespread belief that the Director of Public Prosecutions is less inclined to prosecute policemen than other people. The D.P.P. assuredly regards himself as completely detached and impartial in all cases, and will certainly reject any suggestion that this is not so; but

without making such a suggestion the Secretary of State might consider drawing the D.P.P.'s attention to the strength of the public's scepticism and the unhealthy state of affairs that this causes.

(ii) The next problem relates to the application and interpretation of the double jeopardy rule, which has given rise to much concern both here and in Britain. In origin and in the core of its intention, this rule is beyond criticism but over the course of time it has been refined and added to in order to provide for situations that were not in anyone's mind at the time when the original rule was enunciated. In particular the first Home Office Circular which said that when a complaint against a police officer has been referred to the D.P.P. and he has decided against prosecution there should normally be no disciplinary proceedings if the evidence required to substantiate a disciplinary charge is much the same as that required to substantiate a criminal charge, appears to have been welcomed as a life-line in some police forces and treated as if it was a blanket ruling with no exceptions or qualifications. We were accordingly glad to see the decision of the English High Court in December 1982 which declared the Police Complaints Board's adherence to the Home Office guidance to be illegal. We regard this as a major step forward.

(iii) The third aspect of these cases is the part to be played by the Agency itself. It is probably best that it should concentrate on its own *raison d'etre* as an investigative body and leave the job of prosecuting to the Procurator Fiscal or the D.P.P., but every report of an investigation ought to end with a recommendation and the Agency should certainly be given power to recommend prosecution.

(2) Likewise, reports on complaints where the issue is a potential breach of discipline should go to the Chief Constable and the Agency should have the power to make a recommendation about the action to be taken. Both sides should be able to appeal to the High Court (not the Secretary of State) on a point of law against a decision of a disciplinary tribunal.

(3) We have already referred to the scope for conciliation in minor cases (Recommendation No. 4) and would only add here that if conciliation has not already been achieved by the police the Agency should have the power to attempt conciliation itself.

(4) Vexatious complaints are an irritant, which is of course what they are designed to be. It is reasonable to hope that their number will drop when the body suffering the irritation is seen to be not the R.U.C. but the Agency. In any event, if they are dealt with firmly but sensitively, the supposed satisfaction of making them should largely disappear.

In addition to possessing powers to investigate the types of complaints which have just been considered, the Agency for Complaints against the Police should be able to act as a kind of standing commission with power to investigate incidents involving the police which may not give rise to complaints from particular individuals but which nevertheless provoke grave public concern. There may be no individual complainant because the alleged misbehaviour by the police does not prejudice a member of the public, or because such members as are prejudiced are not able, or are unwilling, to make a formal complaint. In such instances there are, very frequently, loud appeals for some sort of public inquiry. To date no such appeals have been headed. The R.U.C., the Policy Authority and the Northern Ireland Office have all been unwilling to subject police practices to public scrutiny. Even the holding of coroners' inquests - when the incident in question has led to someone's death - is an unsatisfactory means of bringing to light what really happened. Inquests usually take place many months after the event and are not concerned with determining who was responsible for the death. The Director of Public Prosecutions, likewise, acts very slowly, and in his case behind closed doors.

The Committee on the Administration of Justice is of the firm belief that the Agency for Complaints would be the ideal body to investigate controversial incidents as soon as they occur. The Agency would also be well situated to identify, and accordingly investigate, possible malpractices manifested in a series of policing operations. One could imagine, for example, that certain policies may, perhaps in all good faith, be adopted by the police in ignorance of the general public's disapproval. One could imagine, also, instances of corruption which might otherwise go undetected were it not for the Agency's vigilance. We strongly propose therefore (Recommendation No. 8) that the legislation which creates and confers powers on the Agency should include express provision for this type of role. The initiation of such investigations could be the responsibility of the Agency itself, as well as that of the Chief Constable and the Secretary of State.

Staffing the Agency

The staffing of the Agency and particularly the choice of the Director will require very careful attention. We considered the possibility of the control of the Agency being in the hands of a number of people - a Board comparable to that used in a number of public bodies. Superficially this system gives better scope for the operation of democracy through the process of nominations being submitted by interested organisations, but in Northern Ireland it has serious disadvantages deriving from the relationship of the members with the organisations that nominated them, and the result could too easily be an ineffectual body due either to complacency or to lack of consensus. In view of this, and despite the danger of relying so heavily on the choice of a single man or woman, we have concluded that the control should be in the hands of one Director. The Secretary of State, without going through any formal process of consultation, may well see considerable advantage in taking soundings within the community,

including such people as the heads of the main churches, before making an appointment of such a sensitive nature. We would not wish to tie the Secretary of State's hands in his choice, but it seems likely that a suitable field in which to look will be the legal profession - perhaps a judge, an academic lawyer, a barrister, or a solicitor, any of whom should have a reputation for toughness and independence of mind. In our view the key to making a success of the Agency lies largely in the field of personalities. If the Director is an outstandingly forthright person of independent mind and sound judgment he or she could make an impact on a sceptical public comparable to that made by Lord Scarman on the coloured population in England; and if the person in charge of each local office is friendly, patient and willing to go to a lot of trouble, he or she should be able to lubricate the wheels of the community to a useful extent.

If the Government decides to adopt this system in Northern Ireland it will be important that the Director should be allowed enough time to recruit and train suitable people in the way in which they should go about their work.

The recruitment of the staff will be the first function of the Director and will also present a problem which will have to be tackled with great care. Every person throughout the world is to some extent a product of their background and in a divided society it will not be easy to find the requisite number of people who have not been conditioned to thinking in ways which would make them unsuitable for a job calling for detachment, clarity of thought, determination to get at the truth without preconceived notions of what the truth will turn out to be, fairness, honesty and courage. Clearly the Director must seek suitable people wherever he thinks he can find them but, as in the case of his own appointment, it seems likely that the legal profession may prove a fruitful field since it is in the very nature of their training to cultivate the qualities required.

The Agency should of course be required to report annually to the Secretary of State and he in turn should lay the reports before Parliament.

The position of the police in relation to a new Agency taking over a function previously performed by themselves - and a particularly sensitive one at that - calls for some comment. Opinion in the English police forces varies very greatly from those who wish to retain the system unchanged, through those who see the need for some change, all the way to those who accept Lord Scarman's view in its entirety. It is probable that this range of views will be reflected in Northern Ireland, though in what proportions it is impossible to say. We naturally hope that, if perhaps not immediately then after the new system has begun to work, the police will see both the practical advantage of being rid of a tiresome chore and the very great psychological advantage of greater acceptance by the public. In any event, it should be made clear from the outset that at all stages of an investigation, and at any disciplinary hearing or tribunal, an accused officer should have all the rights and privileges that any other accused person would enjoy.

We would not wish it to be thought that we underestimate the difficulties inherent in our proposal that the whole work of investigation should be undertaken by the Agency. The problems of recruitment and the obviously delicate area of relationships between the R.U.C. and the Agency are clearly formidable, and it is always easier - and appeals more readily to the British way of thinking - to build on an existing system and adapt it than to create an entirely new piece of machinery. We have felt driven to recommend the Agency because in the last resort we think the difficulties can be overcome with careful and wise handling, whereas we do not think public confidence can ever be achieved if the police retain any function in relation to investigation of complaints against themselves.

Cost

We undertook above to say something about the cost of our proposals. It is difficult for us to make a truly accurate assessment of the projected costs because we are not in possession of all the facts and figures relating to the existing system. However, we do not think that the costs of the changes we propose would be either unduly burdensome in themselves or out of all proportion to the advantages they would bring in their train. The Police Complaints Board's annual Statement of Accounts show that for the period 15 June 1977 to 31 March 1982 the total grant in aid from the Northern Ireland Office was £476,963. Allowing for inflation the annual cost today is probably around £150,000 per annum. We must add to that the cost of running the Complaints and Discipline Branch of the R.U.C., which must be sizeable in view of the comment which is often made that at times greater police resources are committed to the investigation of minor complaints than to the investigation of serious crimes.

If police officers and laymen are already involved substantially full-time in the handling of complaints, there should not be much additional cost in transferring the function to an independent body. In England and Wales the Home Office reckons that the additional annual cost would be between £9 and £10 million. Scaled down for Northern Ireland, the extra cost here would probably be no more than £250,000-£500,000. This is a generous estimate, given the savings which must be offset against that figure by virtue of the increased availability of police officers for their real task of combatting crime. Given also the current level of awards for criminal injuries and criminal damage to property, coupled with the astronomical costs of both criminal and civil trials, it would not require many crimes to be prevented before the extra expenditure on complaints would be recouped. We would urge the Northern Ireland Office to consider this argument very carefully. Over and above these considerations there is the more general argument that no real price can be put on the cost of securing harmonious police-community relations. The history of Northern Ireland in the last 13 years is testimony to this. In one sense no price would be too high to pay.

(c) An element of independence after the investigation is complete.

This stage in the process of handling complaints will not, by definition, be concerned with minor matters. These will have been syphoned off and dealt with by conciliation. But a series of small matters can soon constitute one large matter. A pattern of practice may be discerned which may call for alteration. A system which is geared to the examination of individual complaints can easily enough fail to show up such a pattern. It is therefore of some importance that there should be built into the machinery at some point the opportunity to see the wood as well as the single trees. It appears to the C.A.J. that the Agency for Complaints will be the obviously appropriate body to be given this opportunity. A well-designed system of recording and regular scrutiny are probably all that is required. We accordingly recommend (No. 9) that the Agency be specifically directed to be vigilant as regards the possibility of a pattern of similar cases arising. After making further investigations in order to document the alleged pattern, the Agency should have to draw the attention of the Chief Constable to it. This recommendation is supplementary to recommendation No. 8, which was concerned with alleged malpractices manifesting themselves other than through a series of specific complaints.

Individual cases requiring an independent element at the post-investigation stage will involve allegations of a breach of internal police discipline or of the commission of a criminal offence. If our recommendations are accepted there will be in both situations an appeal to higher authority, and in view of the independence of the D.P.P. and the Procurator Fiscal, and of the total independence recommended at the investigative stage, it is doubtful whether much more is needed. It might, however, be wise to provide that a complainant could appeal to the Agency to have his case reviewed if fresh evidence comes to light and that if a complaint has cause to believe that he has not received fair and proper treatment at the hands of the Agency itself he should have some way of appealing to another authority. Perhaps this function could be given to the Commissioner for Complaints in Northern Ireland.

This would leave only the present provision for a tribunal under section 13 of the Police Act (N.I.) 1970. In the only case where such a tribunal was appointed it proved to lack sufficient powers to do its job. This could be remedied by giving it the necessary powers. However if our recommendations are accepted a s. 13 tribunal would really be redundant and in the interest of simplifying the system we suggest that the provision allowing for it should be repealed.

INCIDENTAL MATTERS

In addition there are three incidental matters which we believe could be improved:

Complaints withdrawn and complainants satisfied

The rather high number of withdrawn complaints could reflect a satisfactory level of conciliation, or reluctance on the part of complainants to go through the full procedure required if they are to pursue their complaints, or possibly a lot of complaints being made in ignorance of the facts or the regulations and so not being eligible for processing. It could also, unfortunately, reflect some undue, albeit perhaps subtle, pressure being put on complainants and there is widespread belief that this is indeed a factor. We believe that the system for handling complaints that we have envisaged will help to obviate this risk but we think it would help everyone concerned if people wishing to withdraw their complaints or to express themselves satisfied were to be required by the Agency to sign a statement and to give their reasons - except of course where the matter has been settled by conciliation. This is our Recommendation No. 10.

Information to the complainant

We do not doubt that the theory in the regulations sets a reasonable standard but we cannot escape the feeling that this standard is not always adhered to in practice. Moreover we have noted the Home Affairs Committee's observations (paras. 18 and 24 of the 1982 Report) which we endorse. The creation of the Agency would doubtless ease this problem but, whatever the Government's decision about the shape of the complaints machinery, we recommend (No. 11) that particular attention be given to seeing that complainants are treated as reasonable people (even when, perhaps, they are not) who have a reasonable desire to know at reasonable intervals what is happening and why. In cases where a disciplinary charge is made the complainant should be told about the decision and the reasons for it.

Police attitudes to the complaints system

When the new procedure is announced it would be helpful if the Chief Constable could make a public statement indicating his desire to see it working well and fairly, and to see it fully used because the public will have come to have confidence in it. In some instances in the past the police have actively discouraged complaints either by veiled threats or by subtle pressures. The Chief Constable ought to make it clear that he is aware of this and determined to stop it, and that the R.U.C. will co-operate fully with the Agency. We hope that the Police Federation in Northern Ireland will welcome our proposal for an Agency for Complaints. It is the surest way of guaranteeing absolutely fair treatment for the police officers involved. If press reports of the English Federation's reaction to the Home Affairs Committee and White Paper recommendations are accurate, there is reason to believe that nothing but a completely independent system will be seen as satisfactory. This, of course, is what Lord Scarman felt in his 1981 Report into disturbances at Brixton.

Consequential matters

If the Government were to adopt all our recommendations it would be logical to reconsider the positions of the Police Authority, the Police Complaints Board and the D.P.P. The D.P.P. would be affected by the presence of the Procurators Fiscal, and the Police Complaints Board's functions would be taken over by the Agency. The work of the Police Authority covers a wider field than that of complaints and it would not be right in a paper restricted to that subject to say more than that they would cease to have any function in relation to the investigation of complaints.

For convenience we summarise our recommendations as follows:

1. In appropriate cases, and with suitable safeguards, it should be possible for people to complain on behalf of others (pp. 6-7).
2. Information about how to make a complaint should be available in local authority offices and in Post Offices (p. 7).
3. The first point at which an element of independence should be introduced into the system for handling complaints is at the moment the complaint is received (p. 7).
4. Proper provision should be made for conciliation over minor matters (p. 8).
5. Members of Liaison Committees should be entitled to interest themselves in the general handling of complaints and in the progress of individual cases (p. 9).
6. There should be an Agency for Complaints against the Police, with a Director appointed by the Secretary of State, which should investigate all complaints (p. 14).
7. The D.P.P. should be replaced by a Crown prosecutor system modelled on the Procurators Fiscal in Scotland (p. 14).
8. The Agency should be given power to investigate incidents and practices which provoke grave public concern (p. 16).
9. The Agency for Complaints should be required to watch for the appearance of patterns in complaints and to take appropriate action (p. 19).
10. Complainants who are satisfied with the handling of their complaints or who wish to withdraw their complaints should be required to say so in writing (p. 20).
11. Complainants should be kept informed about the progress of their complaints and the reasons for decisions taken (p. 20).