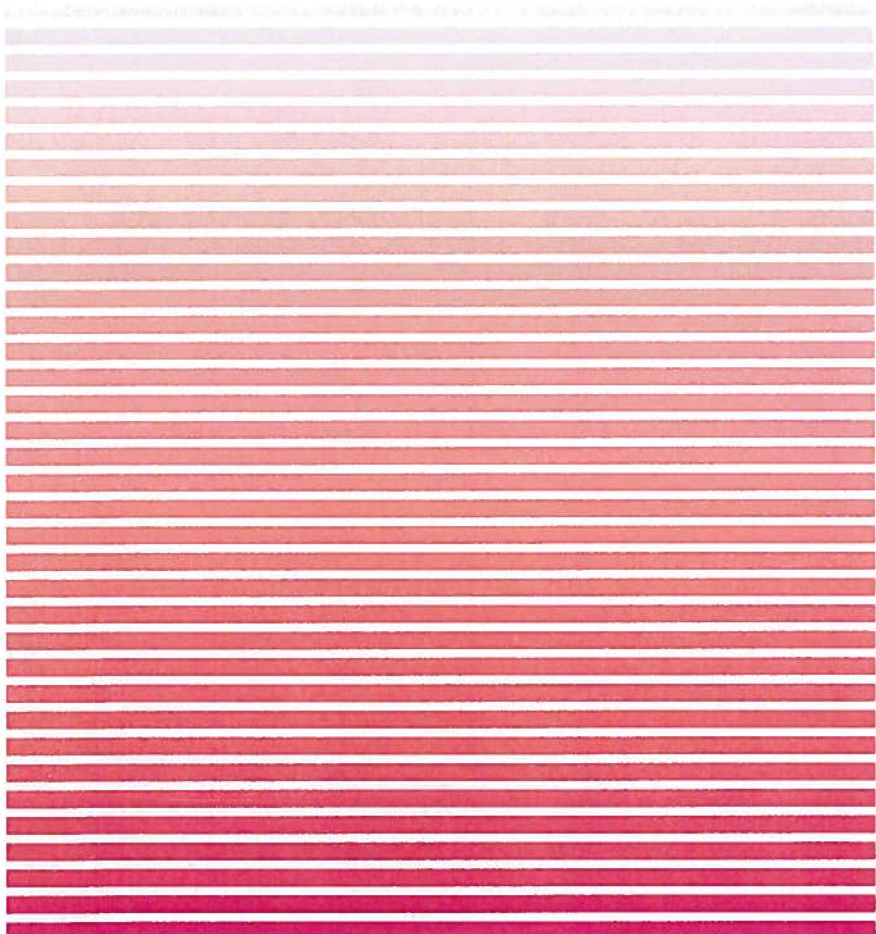




Commentary on the Northern Ireland Policing Board



November 2003

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The commentary on the work of the Policing Board is the first in a series CAJ plans to publish analysing the work of the new policing institutions established in the wake of the Patten Commission (1999). Future commentaries will look at the work of the Police Service of Northern Ireland, the Police Ombudsman for Northern Ireland, and the District Policing Partnerships.

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Northern Ireland Policing Board*

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Committee on the Administration of Justice (CAJ)

What is the Committee on the Administration of Justice?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights (IFHR). CAJ monitors the human rights situation in Northern Ireland and works to ensure the highest standards in the administration of justice. We take no position on the constitutional status of Northern Ireland, seeking instead to ensure that whoever has responsibility for this jurisdiction respects and protects the rights of all. We are opposed to the use of violence for political ends.

CAJ has since 1991 made regular submissions to the human rights organs of the United Nations and to other international human rights mechanisms. These have included the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, the Human Rights Committee, the Committee Against Torture, the Special Rapporteurs on Torture, Independence of Judges and Lawyers, Extra judicial, Summary and Arbitrary Executions, and Freedom of Opinion and Expression, the European Commission and Court of Human Rights and the European Committee on the Prevention of Torture.

CAJ works closely with international non-governmental organisations, including Amnesty International, the Lawyers Committee for Human Rights, Human Rights Watch and the International Commission of Jurists.

Our activities include: publication of human rights information; conducting research and holding conferences; lobbying; and individual casework and legal advice. Our areas of expertise include policing, emergency laws, criminal justice, equality, and the protection of rights.

Our membership is drawn from all sections of the community in Northern Ireland and is made up of lawyers, academics, community activists, trade unionists, students, and other interested individuals.

In 1998, CAJ was awarded the Council of Europe Human Rights Prize in recognition of our work to promote human rights in Northern Ireland.

CAJ has worked extensively on questions of human rights and policing and a short appendix highlights some of the key issues that have been pursued over the years by the organisation.

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Executive Summary

This commentary on the work of the Policing Board is the first in a series CAJ plans on publishing to analyse the work of the Police Service of Northern Ireland and the new permanent policing institutions. Future commentaries will look at the work of the Police Ombudsman for Northern Ireland, the Police Service itself and the District Policing Partnerships. This document focuses on the Northern Ireland Policing Board and is divided into two sections:

- The first gives an overview of the work of the Policing Board, highlighting examples of both good and bad practice to date, with a particular emphasis on the issues of accountability and transparency.
- The second addresses particular case studies which illustrate how the Policing Board's approach to accountability and transparency have affected the way in which the Board has handled current policing issues of importance in Northern Ireland.

In conclusion, CAJ brings together a series of recommendations which we believe could assist in ensuring greater accountability and improving the transparency of the Policing Board. CAJ hopes that the Policing Board will find the recommendations useful in meeting its statutory duty to make *"arrangements to secure continuous improvement in the way in which its functions, and those of the Chief Constable, are exercised .."*

The Policing Board is a new institution which has quickly established itself as a more effective and powerful body than the previous Police Authority for Northern Ireland. The scale of the challenge facing the Policing Board was and is clearly enormous and this commentary addresses some of the successful decisions the Board has made and the early controversies the Board has managed since its establishment on 4 November 2001.

The commentary begins by pointing out that the Policing Board has, to date, acted more akin to a Police Board, rather than a Policing Board, meaning that it has focused its attention almost exclusively on the Police Service rather than on the much broader concept of policing which was the intent of the Patten Commission.

The membership of the Policing Board is also not as representative as the Patten Commission and the Police Act 2000 intended. CAJ calls on the Secretary of State (or the successor body if policing is devolved) to make future appointments to the Board that ensure the composition is more representative of Northern Irish society.

CAJ makes several recommendations on how the Policing Board can, as the Patten Commission recommended, *"hold the Chief Constable and the police service publicly to account"* (emphasis added). The premise of the recommendations is that the Board must both hold the police to account and be seen by the public to hold the police to account. In our view, much more could be done to illustrate that the Board is publicly holding the Chief Constable to account. This commentary makes several recommendations as to how the Policing Board can better utilise the public meetings it holds with the Chief Constable to provide a greater degree of public accountability. Currently, only 18% of the public is even aware that the Policing Board holds monthly public meetings. The Policing Board should better publicise its public meetings, rotate them at different times

Executive Summary

of the day and week and at different venues throughout Northern Ireland, and only institute such security measures as are necessary. The Board should also use the public meetings more effectively by conducting as much of its work as possible during the public sessions. It should agree with the Chief Constable on a format for his reports which will allow the Board and the public to assess police performance. The Chief Constable should also be asked to present in public the PSNI's quarterly reports on the objectives in the policing plan. The Board should develop and publicise a system which allows the public to direct questions to the Chief Constable through Board members. To fulfil its duty to monitor the human rights performance of the police, we recommend that the Board build its own internal capacity through human rights training. We also recommend that the Board should publish and consult on its plan for monitoring the PSNI's human rights performance. Monitoring should begin as soon as possible.

This commentary also discusses improvements the Policing Board could make related to transparency. To date the Policing Board has failed to consult and engage sufficiently with statutory organisations, including the Northern Ireland Human Rights Commission and the Police Ombudsman for Northern Ireland, non-governmental organisations, and the public. Only 23% of the public believe the Policing Board is performing well or very well in consulting with the public about policing issues. CAJ calls on the Policing Board to improve its outreach and proactively seek substantive feedback from the public on the performance of the police. The Board must also make the public aware of its work so that the public has confidence that the Board is holding the police to account. Currently, only 45% of the public believe the Policing Board is monitoring how the PSNI performs well or very well. In addition to the changes in the public meetings highlighted above and the press releases and documents the Board does produce, CAJ recommends that the Policing Board do more to publicise its work, including what issues it pursues with the PSNI, what standards it sets, and its evaluation of PSNI implementation of Board targets.

CAJ also addresses a number of case studies which illustrate how the Board's approach to accountability and transparency have affected the way it has handled the following important policing issues:

- Operational Accountability;
- The introduction of CS Spray;
- The Omagh bomb investigation;
- PSNI recruit training;
- Policing Plan 2003-2006;
- Sectarian crime; and
- District Policing Partnerships.

The thrust of the review of these important policing issues is that the Policing Board must be proactive and seek out information independent from the police and the government, conduct its business in public whenever possible, inform the public of the basis for its decisions, hold and be seen to hold the police publicly to account, and ensure that the new District Policing Partnerships are set up to succeed. Some 21 specific recommendations are made in the following report.

Commentary on the Northern Ireland Policing Board

Introduction

Major policing changes were introduced as a result of the Belfast Agreement of 10 April 1998. The Independent Commission on Policing for Northern Ireland (Patten Commission) was established to conduct a thorough review of policing in Northern Ireland, and published a report containing 175 recommendations, in September 1999.¹ In response to the report of the Patten Commission, the government issued two Implementation Plans² and Parliament enacted policing legislation in 2000 and 2003.³ These initiatives were all meant to ensure, in the words of the Belfast Agreement, that the police service is “*professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and co-operative criminal justice system, which conforms with human rights norms.*”⁴

The Committee on the Administration of Justice (CAJ) has followed the policing debates and developments closely to date, and has decided to publish a series of commentaries on the work undertaken by the different policing institutions to facilitate wider community debate on the progress towards the policing goals established in 1998. The following commentary focuses on the Northern Ireland Policing Board. Future commentaries will focus in turn on each of the other permanent policing institutions, the Police Ombudsman for Northern Ireland (Police Ombudsman), the Police Service of Northern Ireland (PSNI), and the District Policing Partnerships (DPPs).

This commentary is divided into two sections:

- The first gives an overview of the work of the Policing Board, highlighting examples of both good and bad practice to date, with a particular emphasis on the issues of accountability and transparency.
- The second addresses particular case studies which illustrate how the Policing Board’s approach to accountability and transparency has affected the way in which the Board has handled current policing issues of importance in Northern Ireland.

In conclusion, CAJ brings together a series of recommendations which we believe could assist in ensuring greater accountability and improving the transparency of the Policing Board. It is also hoped that this commentary will be of interest and use to others interacting with the Board. This commentary was given to the Policing Board prior to publication to allow the Board to review it for factual accuracy. To the extent possible, CAJ has sought to incorporate the Board’s comments. It is precisely because of the

important role that is performed by the Policing Board that we hope the Board will find this paper useful in meeting its statutory duty to make "*arrangements to secure continuous improvement in the way in which its functions, and those of the Chief Constable, are exercised, having regard to a combination of economy, efficiency and effectiveness.*"⁵

Chapter One

Overview of the work of the Northern Ireland Policing Board

One of the most important recommendations of the Patten Commission was the creation of the Northern Ireland Policing Board (Policing Board or Board), to replace the Police Authority for Northern Ireland.⁶ The Patten Commission made more than twenty recommendations related to the structure and powers of the Policing Board.

The Policing Board is intended to be independent of government and the police and consists of nineteen members, ten of whom are members of the Northern Ireland Assembly, appointed according to the number of seats their parties hold in the Assembly. The remaining nine members of the Policing Board are intended to be independent and are appointed by the Secretary of State for Northern Ireland.⁷

The Patten Commission deliberately named the Board a “Policing”, rather than a “Police” Board. The Patten Commission saw the Policing Board’s remit as extending well beyond supervision of the Police Service to a more holistic consideration of the contributions people and organisations - as well as the police - can make towards public safety.⁸ The Patten Commission gave the example of this broader approach with reference to tackling vandalism, and the value of involving the police, the Housing Executive, the Department of the Environment, the Department of Education, the probation service and relevant community organisations.⁹ Unfortunately, the Policing Board has not as yet embraced this holistic approach and to date has focused almost exclusive attention on the Police Service. We hope the Board will come to embrace a partnership approach to increasing community safety generally, recognising that the Police Service alone, without assistance from relevant agencies and the community, will not be able to effectively prevent, detect or deal with crime.

The Board’s main duty with regard specifically to the police is to ensure that they are efficient and effective, and it is required to do this by, among other things, holding the Chief Constable to account for the exercise of his or her functions, monitoring police performance, keeping itself informed as to trends in complaints against the police, and assessing the measures the Police Service takes to ensure it is representative.¹⁰ The Board must also produce a policing plan setting out arrangements for the policing of Northern Ireland,¹¹ issue a code of ethics for the Police Service,¹² appoint the Chief Constable and other senior police officers,¹³ and may require the Chief Constable to submit a report on any policing matter,¹⁴ and hold an inquiry on the topic of any such report.¹⁵ The Board was established on 4 November 2001. Of the political parties who could take seats on the Board, Sinn Féin alone currently refuses to take its seats, arguing

that the PSNI and the Policing Board fall short of the Patten Commission recommendations and the requirements of the Belfast Agreement.¹⁶

The Policing Board is a new institution which has quickly established itself as a more accountable and powerful body than the previous Police Authority for Northern Ireland. The scale of the challenge facing it was and is clearly enormous. The Oversight Commissioner, who is tasked with supervising the implementation of the Patten Commission recommendations, has described the process as the “*largest and most complex such task undertaken by a law enforcement agency.*”¹⁷ Institutional change of any kind is always complicated, but policing change – anywhere in the world – is a notoriously difficult project. Change in the context of a society moving from a time of very high levels of political conflict to a more peaceful society presents its own challenges. Following the Patten Commission report, the Royal Ulster Constabulary (RUC, now the Police Service of Northern Ireland) faced significant downsizing. A quota system has been introduced to secure a more representative composition. The organisation was also asked to embrace explicitly the centrality of human rights protection to the upholding of the rule of law. In no sense could the challenge facing the police and the policing institutions be described as easy, and the new Policing Board did not have the privilege of a long gestation period. Almost immediately it had to make major decisions and be publicly scrutinised for its handling of some early controversies. The Board’s work is arguably all the more difficult in that there are significant disagreements among members on the future direction of policing in Northern Ireland, with some members clearly opposed to the vision of the Patten Commission.

It is impressive to note that since the Policing Board was established on 4 November 2001, it has, amongst other things:

- Appointed five candidates to the top eight PSNI posts, including the Chief Constable, Hugh Orde, and the Deputy Chief Constable, Paul Leighton;
- Held monthly public meetings with the Chief Constable;
- Issued a number of major documents, including two annual reports, two policing plans, a code of ethics for the Police Service of Northern Ireland, a code of practice related to the functions and responsibilities of the District Policing Partnerships, a corporate plan, and various leaflets describing the work of the Board;
- Commissioned an external review of Special Branch and recommended that the PSNI commission Her Majesty’s Inspectorate of Constabulary to carry out a review of murder investigations;
- Appointed independent members to the District Policing Partnerships with the goal of creating representative bodies;
- Appointed a well-respected Human Rights Adviser, Keir Starmer, QC, to work with the Board on its human rights monitoring duties;
- Asked the Chief Constable to report on his plan for implementing the recommendations of the Stevens report on collusion;
- Approved the PSNI Training, Education and Development Strategy; and
- Prepared a plan for monitoring the effectiveness of the District Policing Partnerships.

One issue that the Board has given particular attention to is the manner in which the PSNI utilises its resources. The Oversight Commissioner has complimented the Policing Board for requesting that the Police Service prepare a Human Resource Planning Strategy.¹⁸ On 7 March 2002, the Policing Board asked the Chief Constable to develop a Human Resource Planning Strategy addressing a variety of issues related to the future planning of the PSNI's resource needs, including civilianisation, restructuring, redeployment, recruitment of regular and Part Time Reserve officers, sickness absence and the role of the Full Time Reserve.¹⁹ Board members then worked with the Police Service to add specific recommendations and timetables to the Strategy.²⁰ On 3 October 2002, the Policing Board launched the Human Resource Planning Strategy, which called for an independent monitor and quarterly progress reports to be presented to the Board.²¹ The Board took this initiative with a view to ensuring that the Police Service is as effective as possible and has a comprehensive plan for using its resources in the most efficient manner, both in the short-term as well as into the future.

The Board has also handled a number of particularly controversial issues in its less than two year existence. The Board had to agree on a new emblem and flag for the Police Service of Northern Ireland which could prove acceptable to all; it had to respond to the critical report of the Police Ombudsman into the police investigation of the Omagh bombing; and had to deal with criticisms of a number of policing operations.

While the Policing Board is not as politically representative as the Patten Commission and legislation intended, the composition is fairly diverse, and it is to be welcomed that the Board has been largely successful in maintaining its cohesion and sense of direction in such a difficult transitional phase. The Board still faces many challenges, but it has taken a number of very important initiatives to place policing in Northern Ireland on a better and more representative basis than was the case in the past.

Much of the rest of the commentary that follows is an attempt to focus in on issues where improvements can be made, but these should not be allowed to overshadow the progress that has been made to date. It is precisely because of the potential offered by the Policing Board that CAJ hopes that the following commentary will – even where on occasion it is somewhat critical – be seen as a constructive contribution to the public debate around policing.

A. Accountability

1. *How representative is the Policing Board?*

The Patten Commission envisioned a Policing Board which would be diverse and representative, and specifically stated, “*We recommend that the nine independent members be selected from a range of different fields – including business, trade unions, voluntary organizations, community groups and the legal profession – with the aim of finding a group of individuals representative of the community as a whole, with the expertise both to set policing priorities and to probe and scrutinize different areas of police performance, from management of resources to the safeguarding of human rights.*”²² The Police Act 2000 requires that the Secretary of State, who had responsibility for appointing the independent members of the Board,²³ shall secure “*that as far as practicable, the membership of the Board is representative of the community in Northern Ireland.*”²⁴

The composition of the Board does not meet these requirements for a number of reasons. We have already noted the absence of Sinn Féin representation. In addition, only two out of the nineteen Board members are female, an under-representation that cannot be explained through lack of qualified female applicants. A number of independent members appointed to the Policing Board also have clear and public party political affiliations. The Board’s human rights expertise, legal expertise, and representation from some key social sectors, such as the voluntary and community sector, churches, youth sector, and trade unions, appears to be limited. This criticism of the Policing Board’s composition is of course not appropriately addressed by the Board itself, which cannot be held responsible for its own composition. The Board’s composition does, however, set an unhelpful example for the PSNI and the Policing Board members themselves, who are responsible for appointing the independent members of the District Policing Partnerships and assessing measures taken to secure a representative Police Service.²⁵ CAJ was pleased to see that the Board did seek balance during its process of appointing independent members to the District Policing Partnerships.

CAJ recommends that the Secretary of State (or the successor body if policing is devolved) consult widely before appointing independent members of the Policing Board as provided for under the Police Act 2000,²⁶ and in future ensure that the composition of the Board is fully representative, as required by the Patten Commission and the Police Act 2000.

2. *Is the Board holding the police publicly to account?*

The Patten Commission recommended that the “*statutory primary function of the Policing Board should be to hold the Chief Constable and the police service publicly to account*” (emphasis added).²⁷ Holding the police “publicly” to account can of course take place in a number of different ways, but it would suggest at least that the public should be aware how the Board is monitoring police performance and holding the Chief Constable to account for that performance. The Patten Commission and the Police Act 2000 require the Policing Board to hold regular public meetings with the Chief Constable.²⁸ Unfortunately, it is CAJ’s view that these meetings have not been overly successful to date.

The Policing Board itself has requested a change in the legislation reducing the number of obligatory public meetings each year.²⁹ The Police Act 2003 now requires the Board to hold eight³⁰ rather than the ten annual public meetings required by the Police Act 2000.³¹ CAJ was surprised that so soon after its establishment, the Board decided to work towards limiting the frequency of this mechanism of public accountability. We understand that the Board only desired increased flexibility and did not intend to reduce transparency.³² We therefore hope that the Board will not in fact reduce the number of public meetings it holds each year.

CAJ has attended almost all of the public meetings, and is convinced that the Policing Board needs to restructure their format and promote them if the Board is to increase public participation and demonstrate to the public exactly how it is holding the Police Service to account. Currently, public meetings of the Policing Board are held at midday at the offices of the Policing Board in Clarendon Dock in Belfast. This may be a suitable time for people working in central Belfast who can forego their lunchtime, but is clearly not suitable for a wide range of people, who cannot attend daytime meetings. There have been few if any public meetings with the Chief Constable organised by the Board outside Belfast, as recommended by the Patten Commission,³³ nor indeed outside of the Policing Board’s offices, though recent statements from Policing Board members suggest that this will change in future.³⁴

The public meetings with the Chief Constable seem to alternate between the first Thursday and the first Wednesday of the month, but the schedule has not been adequately publicised. Notice of the next meeting is published in some newspapers, but it would be helpful if the overall schedule was made available, rather than simply the next meeting. Although use of the internet is not a sufficient medium in and of itself, a schedule of all public meetings for the year could be placed on the Policing Board’s website, which currently only directs people to phone, fax or email the Policing Board for the date of the next public meeting. According to survey results recently published by the Policing Board, only 18% of the public is aware that the Board holds monthly public meetings.³⁵

CAJ recommends that the Policing Board better publicise its public meetings and rotate its public meetings at different times of the day and week and at different venues throughout Northern Ireland. CAJ also recommends that the Policing Board does not reduce the number of public meetings it holds each year.

The Policing Board should also examine the necessity of the security measures currently in place at public meetings. CAJ is not recommending any less security than is necessary to protect Board members and staff and PSNI officials. It is common, however, for Members of the Legislative Assembly, other Board members, and the Chief Constable to regularly attend events which have less security than that currently provided at the Board's offices, which includes a large amount of security staff, registration of attendance, passage through a metal detector, bag searches and on occasion, body searches. The existing level of security at the public meetings may limit attendance and be unnecessarily intimidating.

CAJ recommends that the Policing Board review its security policy for public meetings and institute only such precautions as are necessary and in a way which seeks to avoid intimidating potential participants.

Other improvements the Board should consider relate to how the public meetings are utilised to hold the police publicly to account. The public meetings sometimes begin with a topical presentation by the Police Service, followed by a short statement by the Chief Constable on topics which appear to be of his choosing, and then some questions by Board members, in which the speaker and question are known in advance. There may be certain procedural rules in place which the Board is following, but to an outside observer the public sessions feel largely controlled and choreographed. The public part of the meetings are as short as 20 minutes and a maximum of approximately one hour in duration. During the public meetings, there is no discussion or debate by the Board, and decisions are not taken. No ordinary member of the public is likely, in the course of a public session of this type, to ascertain how, or indeed if, the Board holds the police to account. Although there may be a need on occasion to conduct business in private, CAJ believes that the Board should conduct as much business as possible in public.

In the event that the Board feels constrained in acting more publicly in its exchanges with the Chief Constable, it should be noted that the Patten Commission stated, "*We further recommend that the police service itself should take steps to improve its transparency,*" and concluded that, "*The presumption should be that everything should be available for public scrutiny unless it is in the public interest – not the police interest – to hold it back.*"³⁶ CAJ is aware that the Board produces an annual report, press releases, and agrees a policing plan that sets targets for some policing objectives, but these documents are insufficient to provide the public with an adequate understanding of the ongoing work of the Policing Board, and indeed are not even easily accessible to most members of the public.

CAJ recommends that the Policing Board debate, make decisions, set standards for the police, and evaluate police performance as much as possible during its public rather than its private meetings, so that the public knows what topics the Board is addressing with the police, what goals and timetables the Board is setting for the police, and how and on what information the Board makes its decisions.

CAJ has written to the Human Rights Adviser to the Policing Board suggesting how the Board might better utilise the reports of the Chief Constable at the public meetings as a source of information and for monitoring purposes. Currently, the Chief Constable only makes a short statement at the public meetings, although the Chief Constable may present a more lengthy report at the private session of Board meetings. The Chief Constable should be asked, at the public meetings, to report on current issues of his choosing but also routinely on a whole array of issues. He could be asked to address positive and negative developments related, for example, to: human rights generally; implementation of the Patten Commission recommendations; training; changes made in response to complaint trend information; anonymous records on compliance with the code of ethics and neutral environment policy, and the results of any disciplinary actions; and any patterns highlighted by an analysis of records on the use of emergency powers. The PSNI quarterly reports towards the targets of the policing plan should likewise be presented at public meetings and published.

CAJ recommends that the Policing Board come to an agreement with the PSNI on a format for the Chief Constable's reports at the public meetings which will provide adequate information to allow the Board and the public to assess police performance. CAJ also recommends that the PSNI's quarterly reports towards the targets of the policing plan be presented at the public meetings, published, and widely disseminated.

The Policing Board should also facilitate greater public participation in the public sessions. Presumably Board members do sometimes raise queries with the Chief Constable which were brought to their attention by members of the public. To our knowledge, however, no formal mechanism exists which allows members of the public to direct questions to the Chief Constable through the Board. There is no information about how to direct questions to the Policing Board on the website and this information is not contained in the advertisements of the public meetings. In contrast, CAJ recently received notification of an early public meeting of the Belfast District Policing Partnership, which contained information of use to the general public on how they can phone, email, or write to the DPP to have their questions answered by the Police Service. This is an excellent way of encouraging public involvement with the newly created Belfast DPP. We are not aware of the Policing Board having undertaken a similar initiative and would encourage the Board to do so.

CAJ recommends that the Policing Board produce, consult on and widely disseminate the procedure to be followed by members of the public wishing to direct questions to the Chief Constable, and that the Board proactively seek questions from the public.

3. Is the Board monitoring the Police Service's human rights performance effectively?

The Patten Commission argued that the central purpose of policing should be the protection and vindication of the human rights of all³⁷ and recommended that, *“the performance of the police service as a whole in respect of human rights, as in other respects, should be monitored closely by the Policing Board.”*³⁸ The Police Act 2000 requires the Policing Board to monitor the performance of the police in complying with the Human Rights Act 1998,³⁹ which incorporated the European Convention of Human Rights into domestic law; assess the effectiveness of measures taken to secure that police officers and staff are representative of the community;⁴⁰ assess the effectiveness of the code of ethics,⁴¹ which is based on European and United Nations human rights instruments; and make a plan for monitoring and increasing the number of female police officers.⁴² The Policing Board itself lacks human rights expertise and it is CAJ's understanding that although some human rights training may be planned, Board members have received limited training to date to allow them to carry out their duties. The Policing Board is currently not fully engaged in human rights monitoring.

The Board has, however, made two important steps towards fulfilling its duty to monitor the PSNI's human rights performance. On 5 June 2003, the Board unveiled its new committee structure, which includes a committee entitled, 'Human Rights and Professional Standards'.⁴³ CAJ welcomes this development. In addition, the Board has asked Keir Starmer QC, a highly respected barrister who is based in England and has extensive human rights expertise, to advise the Board on a consultancy basis. Mr Starmer is formulating a plan for monitoring the human rights performance of the police. CAJ congratulates the Board on this important initiative and on the fact that the Board is consulting on its proposal for monitoring the PSNI's human rights performance. Of course it is the Board, not any single adviser, that carries the statutory responsibility for monitoring the human rights performance of the PSNI and therefore -

CAJ recommends that the Policing Board build up its internal capacity to monitor the human rights performance of the police by attending appropriate human rights training and developing the skills necessary to fulfil this important function. CAJ also recommends that the Policing Board publish its plan for monitoring police human rights performance, consult widely on its proposals, make its assessments public, and begin systematic monitoring of the PSNI's human rights performance as soon as possible.

B. Transparency

1. *Is the Board engaging in effective consultation?*

The Patten Commission recommended that the Policing Board “*coordinate its work closely with other agencies whose work touches on public safety, including education, environment, economic development, housing and health authorities, as well as social services, youth services and the probation service, and with appropriate non-governmental organisations.*”⁴⁴ By law, and indeed in the general interests of efficiency and effectiveness, the Policing Board has a duty to coordinate its activities and cooperate with other statutory authorities working in related fields.⁴⁵

Given the emphasis the Patten Commission placed on the centrality of human rights for effective policing, one might expect close cooperation between the Policing Board and the Northern Ireland Human Rights Commission (Human Rights Commission). This does not, however, appear to be the case. The Board was established on 4 November 2001, but has not completed a formal Memorandum of Understanding with the Human Rights Commission. Nor has the Board issued an official response to the Human Rights Commission’s evaluation of police recruit training published in November 2002, which highlighted serious shortcomings and made specific recommendations to the Board.⁴⁶ The only public response to this report that CAJ is aware of was a brief Board response to belated media coverage of the evaluation which appeared in *The Irish News* in April 2003.⁴⁷ The Board states that it has been actively pursuing this matter with the PSNI and will respond to the Human Rights Commission after the Board has finalised its position with the PSNI.⁴⁸ CAJ does not think that a one-year delay in taking action in response to this important evaluation is justified. Similarly, a Human Rights Commission report on the safety and human rights implications of plastic baton rounds was carried out with little assistance from Board members, who were unable to meet with the author of the report on the requested dates,⁴⁹ and have subsequently failed to attend either of two public seminars organised to discuss the report.

Another key institution which one might expect to have close and regular contact with the Policing Board is the Police Ombudsman for Northern Ireland, which is tasked with investigating complaints against the police. The Police Ombudsman states in her annual report, however, that she has only met, on two occasions, with the Complaints Monitoring Committee of the Policing Board, and once with the Board’s Chair and Deputy Chair.⁵⁰ The Board has noted that, since then, there have been additional meetings, but confirms that in the two years since the Board was established, the Police Ombudsman has only met with the full Board once.⁵¹ The Police Ombudsman states in her 2002-2003 annual report that, “*Clearly discussion between all interested parties is in the interests of the community and of policing.*”⁵² We agree with this, and hope that in the future the Policing Board will hold regular meetings with the Police Ombudsman.

Another example of limited cooperation between these two institutions is the Board's response to the Ombudsman's report on police treatment of solicitors and barristers, which was published in March 2003.⁵³ The Ombudsman surveyed all members of the legal profession and 55 members stated they had experienced harassment or threats from police officers, either personally or through their clients. The majority of these 55 stated that they had experienced three or more incidents of police harassment.⁵⁴ According to The News Letter, the Board wrote to the Police Ombudsman criticising this report, even going so far as to ask the Police Ombudsman to "*reflect on the negative impact that unbalanced commentary can have on those who need little to be convinced that your office is the preserve of nationalists and exists only to 'give the police a hard time'*".⁵⁵

This article is disturbing on several grounds. The report published by the Ombudsman highlighted very serious concerns. The Policing Board should have been expressing an interest in learning more about the Ombudsman's research and discussing appropriate follow-up rather than prematurely taking a defensive response more akin to that adopted by the Police Federation, which said, "*A survey such as this is really nothing more than a publicity stunt unless properly substantiated and capable of investigation.*"⁵⁶ It is not the job of the Policing Board to defend the Police Service against all criticisms, fair or unfair; the job of the Policing Board is to hold the police to account. Moreover, the newspaper article seems to suggest that the letter to the Ombudsman was not officially issued to the media, but perhaps leaked. If this is the case, it would be an example of individual members of the Policing Board engaging in media work without necessarily securing the authority of the Board itself. This begs questions about the authority of the Board and the measures that should be taken to govern appropriate contact with the media. Certainly, these examples of Policing Board and Police Ombudsman contact do not suggest the close coordination of work between statutory bodies that the Patten Commission envisaged and which the legislation demands.

The Patten Commission also recommended that the Policing Board coordinate its activities closely with non-governmental organisations. Although CAJ has not surveyed other non-governmental organisations regarding their access to the Board, our own experiences – if symptomatic – do not suggest a particularly positive level of engagement. Given CAJ's twenty plus years of working on human rights and policing, we wrote individually to all Board members immediately upon the Board's establishment in November 2001, sending every member a variety of publications and materials relevant to the Board's work and suggesting an early meeting. We were able to meet with the then Acting Chief Executive and senior staff, and found this contact, and subsequent contacts, most helpful. Unfortunately, however, we were only able to secure a meeting with members of the Policing Board, in the shape of its Corporate Policy Committee, a full year after our first request. This may be a unique experience, but CAJ thinks that it is unlikely since we are unaware of other non-governmental groups securing easy access to the Board. In citing our own experience, CAJ should state explicitly that we do not seek nor want special access, but we do believe that the Board should engage routinely and regularly with organisations which have an interest in the future of policing.

Our concern about the lack of engagement with, and still less outreach to, non-governmental groups is in part motivated by the difficulty this will create for the Board in engaging effectively with the general public. If the Board is failing to engage with interested organisations, it must surely be even more difficult for the public to influence the work of the Board. The Board has a statutory duty to assess public satisfaction with police performance.⁵⁷ The Board will want to use public opinion surveys, non-governmental organisations, and the District Policing Partnerships to garner public opinion, and this paper has already addressed improvements that could be made to the public meetings to increase public participation. CAJ also believes that the Board should engage in a direct and proactive manner with the public.

One source of information lies in feedback gathered by way of public opinion surveys, and the Board receives information of this kind through three public surveys, the Community Attitudes Survey and the Omnibus Survey, which are both administered by the Northern Ireland Statistics and Research Agency, and the recent survey sent out to one in ten families in Northern Ireland in June 2003 by the Policing Board.⁵⁸ CAJ welcomes the fact that the Policing Board has published some of the results of the Community Attitudes Survey and Omnibus Survey, including public perceptions of the police and the Board, and the public's views on policing priorities and the composition of the Police Service.⁵⁹ The Policing Board also has plans to publish results from its June 2003 survey. In addition, the Northern Ireland Office publishes a bulletin on public knowledge and views of the Policing Board, which are obtained from the Omnibus Survey.⁶⁰

Other than these surveys, CAJ is not aware of efforts by the Board to reach out widely to all sectors of the public to obtain more substantive responses regarding police performance. One important exception is the decision together with the Police Ombudsman to fund a survey of young people's attitudes towards the PSNI and knowledge of the work of the Police Ombudsman, the Policing Board, and the District Policing Partnerships.⁶¹ Two of the recommendations following from this research state that the Policing Board should begin an outreach programme to engage with young people and initiate ongoing consultation with young people.⁶²

The Policing Board should go beyond public opinion surveys and also engage in public outreach directly, especially considering the direct access the Board has with the Chief Constable and other senior police officers. Currently, only 23% of the public believe the Policing Board is performing 'well' or 'very well' in consulting with the public about policing issues.⁶³ CAJ understands that the pressure of work to date, and the many competing demands made upon the new Policing Board have limited the potential for effective public outreach. Now, however, we think such outreach is essential for the Board's work.

CAJ recommends that the Policing Board actively engage with statutory bodies, non-governmental and community organisations, and the public to improve its ability to monitor police performance.

2. *Is the Board keeping the public aware of its work?*

This paper recommended earlier that the Policing Board should hold discussions, encourage debate, and take decisions at its public meetings. At present, CAJ believes that there may be a lot of work being done by the Board that is simply not known by the wider public. This may explain why only 45% of the public believe the Policing Board is monitoring how the PSNI performs ‘well’ or ‘very well’.⁶⁴ The Policing Board periodically produces press statements and publishes an annual report and policing plan, but it is CAJ’s opinion that these materials are not adequately disseminated, although they are available on the Board’s website. As noted earlier, however, these documents are insufficient to make the public aware of how the Board is holding the police to account. The press statements are only periodic and the annual reports only recap the work of the Policing Board in summary form and the performance of the police in a general fashion. The policing plan, which, in CAJ’s view, has not been the subject of sufficient public consultation, names seven policing objectives with corresponding performance indicators and targets, but it does not indicate specifically how the Board will use the policing plan to monitor police performance. When the Board considers police data on complaints, for example, it should publicise this fact along with its assessment of the data, the decisions it took upon consideration of the data, the information it relied upon in coming to the decision, the recommendations proposed, if any, and PSNI implementation of the Board’s recommendations. In this manner, the public will know what issues the Board is considering, what sources of information it is utilising, and specifically how the Board is holding the police to account as required by §3(3)(a) of the Police Act 2000.

Such public accountability is important for two crucial reasons. First, it is important in any democratic state keen to uphold the rule of law that the police and policing institutions are held effectively to account for their actions. Second, such accountability must occur and must be seen to occur. The Policing Board will have limited credibility as the body which holds the police to account, unless they are seen to perform this duty impartially and transparently. CAJ welcomes the fact that the Board has announced that it will make more documents public in the future, including Board and committee meeting minutes, agendas and reports.⁶⁵ In the Policing Plan 2003-2006, the Chair of the Board states “*we will regularly report back to the community on what we have done.*”⁶⁶

CAJ recommends that the Policing Board conduct more of its business in public and publish details of its work widely so that the public is reassured that the Policing Board is holding the police to account.

Chapter Two

Case Studies

The first section of this commentary reviewed the work of the Policing Board to date with a focus on accountability and transparency. The second section which follows consists of a number of specific case studies wherein CAJ examines how the Policing Board's approach to accountability and transparency has affected the Board's ability to hold the police publicly to account.

The case studies cover the following issues:

- A. Operational Accountability
- B. The introduction of CS spray
- C. The Omagh Bomb Investigation
- D. PSNI recruit training
- E. Policing Plan 2003-2006
- F. Sectarian crime
- G. District Policing Partnerships

Case Study A:

Operational Accountability and Review of PSNI Policy and Practice

CAJ has long argued that the so-called doctrine of "operational independence" needed to be more clearly defined and regulated, so that the Chief Constable was given a clearer framework within which to operate his or her discretion. Our arguments did not entirely convince the Patten Commission, even though the then Police Authority advised the Commission that "*under the present arrangements if a chief constable decided that a matter was operational, and therefore within the scope of police independence, there was nothing that [the Authority] could do to pursue it.*"⁶⁷ Instead of better defining the term "operational independence", the Patten Commission decided to focus explicitly on accountability after the event, and proposed the following view of operational responsibility:

*"Operational responsibility means that it is the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case."*⁶⁸

Police operations, policy and practice are areas where the Policing Board needs to exercise particular control to ensure adequate accountability. According to the legislation, the Board has a statutory requirement to monitor police compliance with the Human Rights Act.⁶⁹ It is difficult to conceive how this can be done effectively without scrutinising police operations and addressing any concerns arising. The Board should utilise the Police Ombudsman as a source of information on concerns related to operational policing, policies, and practices, and should work with the Police Ombudsman to ensure there are no gaps in accountability in this area. Until the Police Act 2003 was enacted, there had been some ambiguity about the exact powers of the Police Ombudsman in terms of her remit regarding the investigation of complaints related to PSNI policies and practices. As a result, questions regarding the nature of, for example, police raids, the policing of public order events, arrests related to the Castlereagh break-in, charges of heavy-handed policing in loyalist areas, the policing of interfaces in Short Strand and East Belfast, and the disturbances related to the Holy Cross school went largely unanswered. It is not clear whether the Policing Board was systematically monitoring these concerns and implementation of any necessary changes. While individual complaints about individual officers can cause serious problems for members of the public – particularly if ineffectively tackled – it is concerns around larger questions of policing policy that are likely to cause the most serious frictions between the police and the communities served. To ensure that the public concerns related to police operations, policies and practices are addressed, the Policing Board must keep a close eye on developments in this arena.

Leaving aside whether the Police Ombudsman had the power to investigate the complaints highlighted above, the Police (Northern Ireland) Act 1998 requires the Police Ombudsman to forward all complaints she believes do not fall within her remit to the Chief Constable, the Policing Board, or the Secretary of State.⁷⁰ CAJ pursued this issue with the Ombudsman on a number of occasions, and most recently was told that the Police Ombudsman forwards all complaints falling outside her remit to the Chief Constable, but that the Policing Board is not automatically notified. CAJ thinks it is very important that the Board is kept informed of all complaints outside the remit of the Police Ombudsman, so that police action related to these complaints can be monitored.

CAJ recommends that where the Police Ombudsman determines that a complaint is outside of the remit of the Office, that it be forwarded to the Policing Board as well as the Chief Constable under §52(6) of the Police Act 1998. CAJ also recommends that the Board ask the Chief Constable to report publicly to the Board on its investigation of any complaint referred to the Chief Constable by the Police Ombudsman and monitor implementation of any required remedial action.

Over and above any involvement by the Police Ombudsman, the Policing Board should be looking for ways to monitor concerns regarding police operations and policy and practice. The Board could review the advice of the PSNI's Human Rights Legal Adviser on the planning of operations and post-operation review and determine whether it is

adequate and being followed by the Police Service. The Board should be monitoring the media and asking the public about police performance on the ground. Asking the Chief Constable some questions about operational matters during a public or private meeting is insufficient. The Board needs to address these issues in depth with the Police Service. CAJ should note that the Board may already be routinely identifying troubling operational problems, policies and practices, recommending changes, and monitoring implementation of those recommendations, but this is not clear from the public record. The Oversight Commissioner recognised the need for the Policing Board and the Chief Constable to establish a framework on operational responsibility that allows the Chief Constable to make decisions and the Policing Board to review them.⁷¹ The Oversight Commissioner has since reported, however, that the PSNI and the Policing Board have decided not to develop such a policy at this time.⁷² The Oversight Commissioner did not explain the reasons behind this decision. We hope this development does not indicate reluctance on the part of the Board to monitor operational matters nor impede the Board's ability to carry out this function. It is incumbent on the Policing Board to both review police operations, policy and practice, and to keep the public informed of this monitoring and resultant actions.

For example, the Oversight Commissioner has reported deficiencies in the application of the PSNI General Order which outlines the justification and procedures for stops and searches and establishes a procedure for reporting and reviewing the use of the stop and search emergency powers.⁷³ The Oversight Commissioner found that several District Command Units were not monitoring the use of emergency powers as required.⁷⁴ This problem was also identified in the two previous reports of the Oversight Commissioner, which were published in September and December 2002.⁷⁵ Until such time as these laws are repealed, something CAJ has long advocated,⁷⁶ it is vital that the policing authorities recognise the potential threat the legislation poses to the upholding of basic human rights and ensure that the police are held fully to account regarding their use/abuse. Although the Oversight Commissioner reported problems in this regard, it is unclear what the Policing Board is doing to rectify the situation. Whatever it is doing should be made public so that the people are reassured that the Board is fulfilling its mission.

CAJ recommends that the Policing Board, in order to scrutinise police performance in complying with the Human Rights Act, monitor PSNI operations, policy and practice. The Board should focus on the way in which operations are planned and whether the police carry out adequate community impact assessments; review the advice of the PSNI's Human Rights Legal Adviser and whether it is followed; and determine whether a policy should be altered and whether practice is uniformly consistent with policy.

CAJ also recommends that the Board routinely conduct random audits of PSNI operations and make the results, its recommendations and a record of PSNI implementation public.

Case Study B:

Purchase and deployment of CS Spray

The Police Service decided to propose acquisition of CS Spray and brought this proposal to the Policing Board early in 2003. The Police Service did not publicly explain why it had decided to purchase CS Spray, what benefits the weapon would provide, nor what evidence it had considered relevant to the health and safety effects of CS Spray, either with regard to police officers or the public. Independent research indicates that there are adverse health effects with the use of CS Spray; limited research into its safety, especially its long-term effects; and that officers have been injured while being trained in its use.⁷⁷ Some British police services have refused to use or stopped using CS Spray due to concerns that it could cause side effects, especially for those on medication.⁷⁸

On 6 February 2003, the Policing Board released a press statement indicating that it had endorsed the PSNI's proposal to purchase CS Spray at its monthly meeting of the same day.⁷⁹ The Board stated that the PSNI had made a full presentation at the January 2003 meeting of the Corporate Policy Committee of the Board and that members had considered all the implications associated with the introduction of the spray. The PSNI presentation to the Corporate Policy Committee in January and the Policing Board decision to endorse CS Spray were both made in private, despite the fact that there was also a public meeting of the Policing Board on 6 February. Although Denis Bradley, Vice Chair of the Policing Board, recently stated on the radio that CS Spray was discussed at a public meeting,⁸⁰ the minutes of the Board's public meetings do not reflect this.⁸¹ There was no discussion of CS Spray nor was any evidence related to CS Spray presented at the 6 February public meeting of the Policing Board. During the same period of time, the Police Ombudsman also expressed her support for the PSNI's proposal to introduce hand-held CS Spray. The Oversight Commissioner in its May 2003 report merely noted the Police Service's plan to purchase hand-held CS Spray, but did not comment on whether this development was thought to be positive or negative.⁸²

The example of CS Spray raises many concerns related to the accountability and transparency of the Policing Board and the other policing institutions. The only information the public has to assess the appropriateness of the introduction of CS Spray is one press release from the Policing Board, which only states that it has endorsed the PSNI proposal, and one report by the Police Ombudsman on PSNI baton use, which explains that she supports the introduction of CS Spray.⁸³ The public is left not knowing who is responsible for deciding to purchase CS Spray – the Police Service, the Policing Board, or the Northern Ireland Office – or who will be held responsible if members of the public or the PSNI are injured. There is no information readily available to the public as to whether the Policing Board, or the other institutions, analysed existing studies, especially independent studies, before its decision or if the Board only relied on data provided to it by the Police Service. It is not clear to the public if the Policing Board consulted the Human Rights Commission or other independent experts on the human rights and safety implications of the weapon.

The Policing Board's press statement indicates that it "*sought assurances that stringent guidelines are in place for the use of CS Incapacitant Spray and that officers will be thoroughly trained in its use.*"⁸⁴ This wording suggests that there were guidelines in place at the time of the Board's endorsement. PSNI has confirmed, however, that guidelines were not in place at that time.⁸⁵ CAJ therefore assumes from this that the Board will be monitoring the adequacy of the guidelines and training to be put in place, but it would have been better to be more explicit on this point, and in fact to make Board endorsement clearly conditional on the adequacy of the guidelines and training.

Despite the fact that the Policing Board claims in its CS Spray press release that "*it is essential that the public has confidence in how the police deal with violent confrontations,*"⁸⁶ the public is not given enough information to assess the value of CS Spray nor the decision making process followed by the institution responsible for holding the police to account.

Although CAJ has not taken a position on the appropriateness of resort to CS spray, we are very concerned with the reported adverse health effects for the public and officers and the fact that some other police services had refused to use it. Given these concerns, CAJ wrote in March 2003 to the Chief Constable, the Policing Board and the Police Ombudsman asking how the decision to deploy CS spray was taken and whether they had considered the adverse medical research. The Policing Board responded to CAJ's letter on 13 June 2003. The letter confirmed CAJ's fears that the Policing Board relied on the presentation on CS Spray given by the PSNI and a number of reports from bodies such as the Police Complaints Authority for England and Wales, Her Majesty's Inspectorate of Constabulary, the Home Office, and the Association of Chief Police Officers.⁸⁷ The letter indicated that neither the Police Service nor the Policing Board consulted the PSNI's Human Rights Legal Adviser and that the Policing Board did not consult any independent scientific, medical or human rights experts. The letter also makes it apparent that the Board did not explicitly make the use of CS Spray contingent on Board approval of the guidelines to be implemented or the training to be provided by the PSNI.⁸⁸

This response is very worrying for a number of reasons:

- Clearly none of this information was thought to be of public interest since it was only conveyed in response to a letter from CAJ, the contents of which have not been more widely disseminated to our knowledge.
- The Policing Board relied almost entirely on official sources in its decision regarding a new piece of equipment which is likely to be highly contentious, and even when directed to alternative information sources has not indicated that these will be pursued.
- The Policing Board did not take the obvious step of asking advice from the bodies that exist formally to advise on human rights – the PSNI's Human Rights Legal Adviser or the Human Rights Commission.

- Minimal safeguards – such as appropriate guidelines and training – are left largely to the discretion of the police and not made explicit prerequisites to any change in weaponry.
- The Policing Board has not placed any of its own evidence in the public domain, or sought comments or alternative perspectives from the public.

It is CAJ's view that all of these steps should have been taken prior to the Board taking any decision. For the avoidance of doubt, we obviously have no objection to the police making proposals to the Board regarding different equipment; our objection lies in the apparent failure of the Policing Board to exercise fully independent and impartial scrutiny of that proposal in such a way to ensure public confidence in the eventual decision. We believe that it is not too late for the Policing Board to conduct a thorough investigation into CS Spray.

CAJ recommends that the Policing Board review all data on CS Spray, consult widely, make the data public, and publicly debate and decide on the benefits of CS Spray. If the eventual determination is to purchase and deploy CS spray, this measure should then be conditional on the Board's approval of adequate guidelines and training.

Case Study C:

Omagh Bomb Investigation

Only two months into its life, the Policing Board faced an extremely divisive and contentious policing challenge. The Police Ombudsman for Northern Ireland had released a report that found very serious shortcomings in the Royal Ulster Constabulary's handling of intelligence information prior to the Omagh bombing and the investigation of the incident by the RUC and later, the PSNI. In response to the report, a storm erupted in the press and the issues became increasingly portrayed in the media as a highly personalised row between Sir Ronnie Flanagan, the Chief Constable at the time, and the Police Ombudsman. The Policing Board took the report under consideration and, within a relatively short period of time, outlined an action plan for taking forward the important concerns raised in the report. The difficulties the Policing Board must have overcome to unanimously agree to this plan despite the differing opinions members of the Board surely held on the subject, cannot be underestimated. The Board deserves credit for handling this controversy in a mature and constructive manner after only one month of working together.

On 15 August 1998, a bomb exploded in Omagh, County Tyrone killing twenty-nine people, one of whom was pregnant with twins. Some 250 others were injured.⁸⁹ The Omagh bombing, which was the single worst incident in the history of "The Troubles", was all the more shocking given the recent passage of the Belfast Agreement. On 29 July 2001, a newspaper described allegations made by a person claiming to be a former British security force agent which suggested that the Omagh bombing could have been prevented.⁹⁰ The Police Ombudsman decided to make enquiries into these allegations and later decided to carry out a formal investigation into the following matters:

- 1) Whether information of relevance was available to the RUC prior to the bombing;
- 2) Whether any such information had been responded to appropriately by the RUC;
- 3) Whether intelligence held by the RUC was revealed to and exploited by those investigating the bombing; and
- 4) Whether the evidential opportunities contained within a RUC-conducted review of the Omagh bomb investigation had been pursued.

The Police Ombudsman conducted this investigation not based on an individual complaint, but using her power under §55(6) of the Police Act 1998 to investigate any matter that indicates a member of the Police Service may have violated criminal law or acted in a manner that would justify disciplinary proceedings, and it is judged desirable in the public interest to do so.⁹¹

The Police Ombudsman's report on the Omagh bomb investigation was published on 12 December 2001,⁹² although the report received extensive media coverage before the date of its official release. On 7 December 2001, Chief Constable Flanagan asked for additional time before publication to respond to the Ombudsman's report due to the fact that, in his opinion, it contained "*many significant factual inaccuracies, unwarranted*

assumptions, misunderstandings and material omissions."⁹³ He stated that the Ombudsman's report inflicted "*unnecessary grief and anxiety on the relatives of those murdered at Omagh and those injured.*"⁹⁴ In an indication of how upset the Chief Constable was in response to the findings of the Ombudsman's report, he even went so far as to say he would commit suicide in public if the conclusions in the Ombudsman's report were correct.⁹⁵ The Chief Constable also raised the prospect of suing Mrs O'Loan for libel.⁹⁶ Of particular concern to many observers was the fact that the Prime Minister came to the immediate defence of the Chief Constable when his spokesperson stated, "*Sir Ronnie has the prime minister's full support.*"⁹⁷ In contrast, despite the personalised nature of the dispute, the spokesperson did not offer full support to the Police Ombudsman or welcome her report, but merely noted that the Ombudsman had done her duty.⁹⁸

Given the very recent creation of the Ombudsman's Office, a more robust defence of its integrity by the government that had brought the office into being, might have been expected. The lukewarm attitude of the Prime Minister was exacerbated when former Northern Ireland Secretary of State, Peter Mandelson, described the Police Ombudsman's report as a "*very poor piece of work indeed,*" arguing that it fell "*below the quality and standards of objectivity and rigour required in a report of this kind.*"⁹⁹ Some local Ulster Unionist politicians also attacked the Police Ombudsman. For example, Lord Kilclooney, a peer and a member of the Policing Board, stated that the Ombudsman had "*clearly overstepped her responsibilities*" and called for her resignation.¹⁰⁰ More shocking was the response of Lord Maginnis, who likened Mrs O'Loan to a suicide bomber and claimed she had "*outlived her usefulness*".¹⁰¹ The Police Federation called on Mrs O'Loan to "*consider her position*".¹⁰² Mrs O'Loan consistently stood firmly behind the report.¹⁰³

In this highly charged atmosphere, the Policing Board deliberated and met with all of the interested parties before responding to the Ombudsman's report. On the day the report was released, the Policing Board stated it would discuss the report the following week and later hold specially convened meetings to address the contents of the report in more detail.¹⁰⁴ On 20 December 2001, the Corporate Policy Committee of the Board met to discuss the report and the Board announced that its primary concern "*has always been and continues to be the victims of the Omagh atrocity and their families and the effectiveness of the Police Service of Northern Ireland.*"¹⁰⁵

On 22 January 2002, the Police Service of Northern Ireland presented its rebuttal of the Ombudsman's report to the Policing Board.¹⁰⁶ On 28 January 2002, the Board met with the bereaved and those seriously injured by the Omagh bomb to hear their opinions and concerns.¹⁰⁷ On 5 and 7 February 2002, the Board held two meetings on Omagh at which it met separately with the Police Ombudsman and the Chief Constable and then announced its plan for handling the controversy. In its statement, the Board announced that the Police Ombudsman, the Chief Constable and the Board had agreed that, based on the information available, the Omagh bombing could not have been prevented. The Board also complimented the continued commitment of PSNI officers in seeking to secure evidence in the case. The Board set up a committee to monitor implementation of its plan, which called for the following:

1. A review of protocols between all of the parties to the new policing arrangements which would allow for affected individuals to see and respond to reports before publication;
2. A review mechanism for the work of the Police Ombudsman;
3. The Board to appoint a senior officer from outside the PSNI to monitor the Omagh bomb investigation and report to the Board;
4. The PSNI Senior Investigating Officer to retain operational control of the Omagh bomb investigation;
5. The PSNI to appoint an external senior officer from another UK police service, who will have equal status to the Senior Investigating Officer and who will scrutinise the investigation of leads uncovered in the RUC's own review of the Omagh bombing investigation and potentially linked incidents;
6. HMIC to conduct a full review of murder inquiries;
7. The PSNI to adopt the Association of Chief Police Officers (ACPO) policy with regard to murder reviews, which the PSNI had already accepted in principle; and
8. HMIC to conduct a review of Special Branch.¹⁰⁸

The Board's plan effectively supported the key recommendations made by the Police Ombudsman while at the same time making other recommendations to address the Chief Constable's concerns related to the amount of time he was given to respond to the Ombudsman's report before it was published. The Ombudsman's recommendations to conduct an independent review of Special Branch, incidents potentially linked to the Omagh bombing and murder inquiries generally, and implementation of the ACPO policy with regard to murder review were accepted in full. Although the PSNI's Senior Investigating Officer was allowed to continue commanding the investigation despite the Police Ombudsman's recommendation to the contrary, two independent officers were put in place to evaluate the investigation, one with equal status to the PSNI's Senior Investigating Officer. The other recommendations that the Board added were a review of the Police Ombudsman and protocols between her office and the PSNI, which were made in response to complaints that the PSNI was not given sufficient time to respond to her report before its publication. The plan was worded in a way to placate the opposing parties both outside and presumably within the Policing Board, while still implementing the vast majority of the Ombudsman's recommendations. The Police Ombudsman broadly welcomed the Board's plan, which took on her recommendations and moved the murder investigation forward.¹⁰⁹ The Chief Constable also accepted the Board's recommendations.¹¹⁰

Prior to the publication of the Ombudsman's report the Chief Constable had announced his decision to retire but had indicated a willingness to stay on until a replacement had been found. While the Board decided to retain his services for one further month it chose not to take up his offer to remain for a longer period. The Board specifically required the Chief Constable to implement the Board's recommendations with respect to Omagh and to refrain from discussing the Police Ombudsman in the media.¹¹¹

In short, the Board put its support behind recommendations that could rectify the shortcomings of the Omagh bomb investigation and improve the way intelligence is handled by the Police Service. The Board has since received Her Majesty's Inspector of Constabulary Mr Dan Crompton's review of Special Branch, the reports of the Board appointed and PSNI appointed external officers on the Omagh bomb investigation, and Her Majesty's Inspector of Constabulary Mr David Blakey's report on murder investigation in Northern Ireland.

The most important work of the Board, however, remains to be completed – namely the implementation of the recommendations of the various reports and policies. According to the Oversight Commissioner, neither the reforms of Special Branch recommended by the Patten Commission nor those recommended by Her Majesty's Inspectorate of Constabulary have yet been implemented.¹¹² This is where CAJ and others will be monitoring the actions of the Board in future.

CAJ recommends that the Policing Board ensure that all recommendations related to Special Branch made by the Patten Commission, Her Majesty's Inspectorate of Constabulary, and Sir John Stevens be implemented by the Police Service as expeditiously as possible.

Case Study D:

PSNI Recruit Training

PSNI student officer training is another issue in which the Policing Board should be taking the lead in publicly demanding greater police accountability. The Human Rights Commission highlighted deficiencies in the PSNI student officer training programme in a November 2002 evaluation.¹¹³ The report made a number of very positive comments. The Commission's evaluator expressed warm appreciation of the access granted to him in carrying out his work.¹¹⁴ He also commended the problem-solving model that had been introduced¹¹⁵ and added his voice to those of others who fear that high quality training for new recruits is being, and will continue to be, hampered by the poor conditions of the police training facilities.¹¹⁶ The report also found, however, that student recruits are being taught "*to say the right thing, rather than do the right thing*" regarding the use of force,¹¹⁷ that the issue of sectarianism is being largely ignored,¹¹⁸ and that the training session on the European Convention on Human Rights is superficial and at times misleading and/or based on outdated jurisprudence.¹¹⁹ Examples of the troubling comments PSNI trainers made during observed formal recruit training sessions:

Student: (during a session on ground defence techniques): "Can you give him [the assailant] a kick on the way out?"

Trainer: "That's up to you. It depends on your "honestly-held belief and perception". What you wouldn't want is for it to be seen on video that you'd gone and kicked him after bringing him down and escaping."

Trainer: "If a person needs struck, always hit them as hard as you possibly can, because one hard blow could be one assault whereas twenty softer ones could be twenty assaults".¹²⁰

The evaluation listed several recommendations aimed at improving the PSNI student officer training, including that the Policing Board, along with the Northern Ireland Human Rights Commission, Equality Commission, and Office of the Oversight Commissioner, consider setting up a Steering Group in order to coordinate police training evaluation activities.¹²¹ It is not clear from the public pronouncements of the Policing Board what follow-up, if any, has been given to these recommendations.

The Oversight Commissioner described the Human Rights Commission's evaluation as "*largely positive*",¹²² but also said that there is a "*need for comprehensive improvement in the Police Service's training programmes,*" and that, "*the Policing Board will need to take a proactive approach to monitoring and facilitating results in this area.*"¹²³ The Oversight Commissioner went on to say that sectarianism is not adequately addressed in recruit training, student officers do not study off-site with the general public, the training curricula is not public, and there is a need to increase the number of civilian training instructors.¹²⁴ The Oversight Commissioner recently stated that the PSNI has no plan for selecting, training and supervising human rights teachers or evaluating human rights training, its learning outcomes or its impact on police behaviour.¹²⁵

Considering the very serious shortcomings the evaluation uncovered in the student officer training, one would think the Policing Board would be quick to show that it was acting to remedy the situation. One year after the publication of the report, no formal response has been forthcoming, though as noted previously, the Board Chair responded immediately to a critical article in The Irish News on the same topic.¹²⁶

The Policing Board has a duty to monitor PSNI training as part of the policing plan but the Policing Plan 2003-2006 does not address the concerns raised in the Human Rights Commission's recruit training evaluation. This may have been a timing issue, but the Police Act 2000 requires that an assessment of the requirements for educating and training police officers and members of the police support staff should be given in the policing plan.¹²⁷ "*Progress in delivering the Training, Education and Development Strategy*" is a performance indicator for the PSNI in the Policing Plan 2003-2006 and there is a related PSNI target "*to fully implement the agreed Training and Development Strategy within agreed timescales, reporting quarterly to the Policing Board.*"¹²⁸ Appendix D of the Policing Plan 2003-2006 gives a short overview of the PSNI Training, Education and Development Strategy and states that a "*costed training plan covering the training year 2003-2004, will also be placed before the Policing Board for approval.*"¹²⁹ This statement seems to suggest that the agreed strategy and timescales for 2003-2004 had not yet been formulated. Therefore, even if it was not possible to address the Human Rights Commission's recommendations in the 2003-2006 Policing Plan, it should have been possible to incorporate specific related targets into the 2003-2004 training plan. CAJ hopes that when the 2003-2004 training plan is finalised that it, along with the quarterly reports towards implementation of the Training, Education and Development Strategy, is made public. CAJ also hopes that more detail will be given in future policing plan targets and performance indicators related to training instead of referring to implementation of an agreed strategy by an agreed timetable.

Regardless of how the Board publicises its reaction to the Human Rights Commission's evaluation – whether in the policing plan or not – the public deserves to know what changes have been implemented in response to the Human Rights Commission's evaluation and it is important for the public to know that the Policing Board is asking those questions of the PSNI, and ensuring that whatever changes are necessitated are in fact brought about. CAJ believes that the Policing Board should consider the Human Rights Commission's report, respond and require the Police Service to implement any changes the Board believes are necessary in relation to the Commission's evaluation.

In addition, the Policing Board must work with the Human Rights Commission and other organisations to determine how continuous and thorough external evaluation of PSNI training can be facilitated. The Police Service must evaluate its own training programmes, but proper evaluation requires external involvement. Even a cursory glance at the thematic reports carried out into police training by Her Majesty's Inspectorate of Constabulary highlights the value of community involvement in the design, as well as the delivery and evaluation of police training.¹³⁰ The Human Rights Commission must have a role in evaluating PSNI training, but does not have the resources to be responsible for the ongoing review of all PSNI training. As the PSNI

seeks millions of pounds to create a new Training College and as the United States Congress considers funding for PSNI training,¹³¹ the Police Service and the Policing Board must ensure that the content of PSNI training is of the same high quality as the new facilities.

CAJ recommends that the Policing Board respond to the Human Rights Commission's evaluation of PSNI student officer training, monitor PSNI implementation of the report's recommendations, and report publicly on its own and the PSNI's progress towards implementation.

Case Study E:

Policing Plan 2003-2006

The Policing Board has a duty to issue a policing plan setting out proposed arrangements for the policing of Northern Ireland, which is drafted by the Chief Constable and adopted with any amendments by the Board.¹³² The Policing Plan 2003-2006 details the policing objectives the Secretary of State and the Policing Board have set for the PSNI and the corresponding performance indicators and targets which correspond to these objectives. The Plan also includes the actions the different PSNI leaders will take towards the achievement of each objective set.¹³³ The Police Service drafts its plan for achieving the objectives set in the policing plans, including the targets and performance indicators. The Policing Board then adopts the policing plan with any amendments it feels are necessary after consultation with the Chief Constable. Police performance in meeting the objectives set out in the policing plans is assessed by the Board in its annual report. CAJ welcomes the Policing Board's latest policing plan, which will be an excellent tool for holding the police publicly to account. We do believe, however, that the Policing Plan 2003-2006 could have been used even more effectively to this end, and the following remarks may be helpful in the production of successor documents.

It is important to point out that one statement in the Policing Plan could be misread as suggesting that a more culturally varied society increases crime levels. Reference is made in the Policing Plan 2003-2006 to the fact that a "*more varied society with people from many social and cultural backgrounds*" is a trend in society that will impact the work of police.¹³⁴ In the Policing Plan 2002-2005, a similar trend affecting police work was described as "*increased movement of people between an enlarged number of EU member states, and of refugees and asylum seekers.*"¹³⁵ It is not at all clear what was intended by these statements, but perhaps their meaning could be clarified if they are to appear in future policing plans. This is an example of where consultation outside the PSNI and the Policing Board may have improved the policing plans before they were published. We understand that the Policing Board plans on surveying the public as it formulates its objectives for the Police Service, which are contained in the policing plans.

CAJ recommends that the Policing Board consult statutory agencies, non-governmental and community organisations, and the public as it develops future policing plans, so that they adequately address the opinions of the people of Northern Ireland related not only to policing objectives, but also appropriate performance indicators and targets for the Police Service.

It would also be preferable if, whenever possible, the Board would set performance indicators and targets in the policing plans which measure actual rather than perceived PSNI performance. For example, the objective related to 'equity of treatment' is described in the Policing Plan as, "[t]o build and sustain confidence in the Police Service and police accountability arrangements by all sections of society in Northern

Ireland, addressing all the areas set out in legislation and the Implementation Plan; and increasing Catholic representation in the police.” One of the corresponding performance indicators is, “*Confidence levels in equity of treatment.*” The target related to this performance indicator is, “*To achieve confidence levels in overall equity of treatment of 75%.*”¹³⁶ This target measures the opinions of the entire population of Northern Ireland as to whether the PSNI treat people equitably.

Although it is important to gauge public opinion generally, PSNI equity of treatment can and should also be measured more concretely. Section 75 of the Northern Ireland Act requires the Police Service to maintain disaggregated data that is directly relevant to the work of the Policing Board’s monitoring function. Accordingly, CAJ has argued in correspondence that the Board should be examining, and is now arguing that targets for PSNI equity of treatment should be related to, the following:

1. Whether the PSNI records on the use of force, plastic bullets and emergency powers (Patten Commission recommendation 61) evidence impartial treatment;
2. Whether the PSNI records on the random checks of officers that the Patten Commission recommended it performs (Patten recommendation 81) evidence impartial treatment;
3. Whether the PSNI is representative, especially with relation to religion, political opinion, gender, race, and ethnicity;
4. Whether the PSNI is promoting a neutral environment (including effective use of the appraisal system) keeping records investigating alleged violations of the policy, and the resulting discipline, if any;
5. Whether diversity and sectarianism are adequately addressed in training; and
6. Whether the PSNI is conducting cultural audits and surveys, using the cultural audit conducted by the Patten Commission as a baseline.

It would also seem preferable if the targets set in the policing plans would not solely measure Northern Ireland-wide targets where the objective to be met is only a concern in limited localities within Northern Ireland. An example of this practice relates to public order policing. The Policing Plan objective is, “*To maintain public order, thereby providing for the protection and security of the public.*” The corresponding performance indicator is “*confidence in respect of policing public order,*” and the target is, “*to achieve confidence levels in the policing of public disorder of not less than 75%.*”¹³⁷ The vast majority of people in Northern Ireland have little or no experience of serious public disorder or of how it is policed. A target on public order policing, even if it is based on public perceptions rather than direct experience, should ideally primarily focus on people who live in areas where there is often public disorder, who are effected by the disorder, and who are likely to have some knowledge as to whether the PSNI are effectively policing it. CAJ is of course aware that some of this local data and local

performance indicators/measures will be most usefully contained within the local policing plans, which will be issued by the District Commanders after consultation with the District Policing Partnerships.¹³⁸ This fact does not, however, in our view, prevent the Northern Ireland-wide policing plans from also containing targets which focus more directly on measuring policing performance in areas where public order is a concern. To do otherwise would in our view undermine more meaningful accountability.

Moreover, a target based on public opinion may not be the best way to judge PSNI performance in policing public order. The Policing Board could formulate targets such as:

1. The sufficiency of the pre-operation planning, including whether the PSNI's Human Rights Legal Adviser's advice was sought and followed, and whether the PSNI worked with community representatives to avoid an escalation to tension; and
2. The sufficiency of the post-operation review, including an analysis of whether police behaviour defused or exacerbated the problem and whether the PSNI followed an appropriate gradual escalation in the use of force.

CAJ recommends that where possible, the Policing Board set targets in the policing plans which measure actual police performance in addition to Northern Ireland-wide public perception of police performance, and that when utilising public opinion targets, it considers the necessity of also evaluating the opinion of those more directly effected by the issue being addressed.

The Policing Board should ensure that targets set in the policing plans are not too vague to enable sufficient accountability. Under the objective of implementing the programme of change, the performance indicator is, "*Progress against agreed changes, and agreed timetables for change, including in relation to policing and criminal justice arrangements.*" The corresponding target is, not surprisingly, "*To demonstrate progress towards implementing agreed changes within agreed timetables reporting quarterly to the Policing Board.*"¹³⁹ Nowhere in the Policing Plan are the agreed changes and agreed timetables defined. This performance indicator and target lack transparency and the requisite substance to provide accountability and reassure the public that the Police Service is implementing the recommended changes and that the Policing Board is monitoring this change. It is also unclear whether the quarterly reports the police provide the Policing Board will be made public.

CAJ recommends that the Policing Board, in its policing plans, formulate performance indicators and targets with enough detail to allow the public to know how the Board is specifically monitoring PSNI performance.

Case Study F:

Monitoring sectarian crime and incidents

During its 1999-2000 inspection of the PSNI, Her Majesty's Inspectorate of Constabulary reiterated the need for the police to address issues around sectarian crime and the importance of collating data on sectarian incidents.¹⁴⁰ More than three years later, the PSNI still has not formulated a definition of what constitutes a sectarian crime and do not systematically record sectarian crime and incidents.¹⁴¹ Given the large problem sectarian crime poses in Northern Ireland, and the fact that the police monitors certain other forms of hate crime, it is not clear why the police are not yet monitoring sectarian crime. It is also unclear why the police are currently working on a definition of sectarian crime but are not publicising this work nor involving the wider community.

The question for the Policing Board is what role they have played, or intend to play, on this issue. Will the police be encouraged – or required – to consult interested organisations and the public in formulating a definition and system for monitoring sectarian crime? Does the Board have any views – or is it intending to seek views – about the advantages and disadvantages of recording separately sectarian crime committed between Protestants and Catholics from crimes based on other forms of religious discrimination, such as attacks on Muslims?

The Policing Board acknowledged the problem in the Policing Plan 2003-2006, when it named continuing levels of sectarianism within society as a societal and a crime trend.¹⁴² Under the objective of reducing crime and fear of crime, however, the Policing Plan sets targets, “[t]o establish an accurate baseline of the number of crimes and incidents of a racist and homophobic nature,” and “[t]o report the number of domestic violence offences and develop a strategy for monitoring the disposal of incidents.”¹⁴³ Despite identifying sectarianism as an important societal and criminal trend, the Policing Board does not set any targets for the PSNI in relation to tackling sectarian crime in the Policing Plan 2003-2006.

As a very minimum, the Policing Board could have established a target requiring the Police Service to consult widely on a definition of sectarian crime and a system for monitoring sectarian crime/incidents and set a target date for implementation. It is difficult to see how the crime can be effectively countered, if there is no way of recording and monitoring developments over time.

CAJ recommends that the Policing Board ensure that the PSNI consults widely on a definition and system for monitoring sectarian crime/incidents and begins such monitoring as soon as possible.

Case Study G:

District Policing Partnerships

The Patten Commission recommended that District Policing Partnership Boards, made up of political and independent members, be formed in each District Council area for the purpose of advising the police of local community concerns and priorities.¹⁴⁴ The name of these bodies was changed to District Policing Partnerships (DPPs) and the Police Act 2000 defined the functions of the DPPs as follows:

1. To provide views to the District Commander on any matter concerning the policing of the district;
2. To monitor the performance of the police in carrying out the policing plan and the local policing plan for the district;
3. To make arrangements for obtaining the views of the public concerning the policing of the district and the cooperation of the public in preventing crime; and
4. To act as a general forum for discussion and consultation on the policing of the district.¹⁴⁵

The District Councils appoint the political members and the Chair and Deputy Chair of the DPPs¹⁴⁶ and the Policing Board appoints the independent members from among persons nominated by the District Councils.¹⁴⁷ The Police Act 2000 requires the Board to issue a code of practice guiding the DPPs in the exercise of their functions¹⁴⁸ and assess the effectiveness of the DPPs and, in particular, the arrangements DPPs make to obtain the views and cooperation of the public.¹⁴⁹

It is too soon to comment in detail on the work of the DPPs, but some remarks can already be made regarding the Board's role in creating and monitoring the DPPs. The Board deserves to be congratulated for establishing the DPPs in a relatively short period of time. The Board drafted, circulated for comment, and finalised a Code of Practice on the Functions and Responsibilities of the DPPs.¹⁵⁰ The Board advertised, established an interview process, and oversaw the appointment of more than 200 members to DPPs across Northern Ireland. The Patten Commission stated that DPPs, taken as a whole, should be broadly representative of the district in terms of religion, gender, age, and cultural background.¹⁵¹ CAJ is unaware of the extent to which the overall composition can be said to be broadly representative of society as a whole, but recognises that the Board went to great lengths to ensure that this goal was achieved. CAJ welcomes the fact that in contradistinction to the poor representation of women on the Policing Board itself, 127 out of the 207 independent DPP members that the Board appointed were women.¹⁵² CAJ is also pleased that the ages of the independent members appointed ranged from twenty two to seventy five years,¹⁵³ although we would prefer to have young people below the age of twenty two represented as well.

According to the Board, the selection panels used census data to ensure that the independent DPP member appointments were representative and that the selection panels themselves were representative and made up of political and independent members, with independent Selection Panel members and impartial assessors.¹⁵⁴ The report of the Independent Assessors concluded that the appointment process was '*fair, robust, open and transparent*'.¹⁵⁵ The Board has been the subject of some criticism regarding these appointments, but the criticisms seem on occasion to reflect concerns with the selection process laid down by the Northern Ireland Office rather than the work of the Policing Board. There have been criticisms expressed in the media that unionists and former police officers were discriminated against, Catholics are under-represented on the Belfast DPP, members of the Women's Coalition are over-represented, and that disproportionate emphasis was placed on one's cultural background rather than merit.¹⁵⁶ Some leading unionists and former police officers have reportedly lodged industrial tribunal papers alleging they were discriminated against in the selection process.¹⁵⁷ The trade unions were unhappy at the relatively low level of active trade union members appointed to the DPPs.

It will be interesting to see if any of these complaints are upheld and whether changes in composition flow from the public challenges. In some instances, it may become apparent that either the criteria for appointment and/or the procedures governing appointments, will be found to have been inadequately publicised and/or understood, with resultant consequences for future recruitment rounds. There is clearly ambiguity and public uncertainty around the procedures that were followed. Several of the media stories, for example, refer to individuals with lower scores being given preferential treatment by the Board over candidates with higher scores, yet the Northern Ireland Office Code of Practice on the Appointment of Independent Members to District Policing Partnerships suggests that the Board is not to be made aware of the marking accorded to applicants by the District Councils. Application forms must be forwarded in alphabetical order and yet reference is also made to receiving an evaluation from the preliminary interview panel.¹⁵⁸ These various statements may not be contradictory, but clearly have left people confused as to the exact roles of the Policing Board in the selection process.

Now that the DPPs have been established, the first priority of the Policing Board should be to secure appropriate training for DPP members. The Patten Commission recommended that the Policing Board "*maintain regular contact with the DPPBs, through periodic meetings of chairpersons, annual conferences, seminars, training courses and by including them in the circulation of information.*"¹⁵⁹ CAJ is aware that a consultancy company was employed with a view to organising a residential for each DPP, but it is our understanding that these residentials did not address many of the topics that might be considered essential to the effectiveness of the DPPs. We would have thought that, as a minimum, all DPP members need to receive a basic introduction to the Patten Commission recommendations, the roles of the different policing institutions, the structure of the PSNI, domestic and international human rights standards relevant to policing, equality legislation, the Code of Practice on the Functions and Responsibilities of the DPPs, effective meeting behaviour, handling the press, the

potential for conflicts of interest and how to handle them, and the relationship between the DPPs and other bodies at the local level, especially the new Community Safety Partnerships. CAJ understands that DPP managers may be organising additional development opportunities for DPP members¹⁶⁰ and that the Board may be doing the same, and we would like to stress the importance of ensuring that all DPP members have sufficient basic training to perform their duties.

CAJ recommends that the Policing Board identify the training needs of DPP members and develop, consult on, and administer a detailed training programme for all DPP members as soon as possible.

The Policing Board should also conduct an early assessment of how the DPPs are functioning and intervene where necessary. Of course it is right and proper that local DPPs develop their own practices and reflect local circumstances, but there needs to be a minimum of cohesion across all DPPs if these structures are to work well with the police and provide effective oversight and interaction between the police and the local community. Already, CAJ has been made aware anecdotally of the failure of some political members to work productively with independent members, of independents feeling that their contributions are not treated as seriously as those of elected Councillors, and of the perception that anything regarded as critical is side-lined on the grounds that there are no clear procedures yet established. Individuals seem uncertain as to, for example, what questions are ‘allowed’ to be asked of the police at DPP meetings, how the media can best be handled, and what role the DPP can and should play if an incident has already been referred to the Police Ombudsman. These are all valid questions which would naturally arise in any early institution building process, deriving in part from a lack of agreed procedures, but clearly the Board should act decisively early on to empower DPP members.

CAJ recommends that the Policing Board immediately assess the way in which the DPPs are functioning to avoid the adoption of bad institutional habits.

An obvious area where the Policing Board needs to take a central leadership role – rather than leave it to 26+ different standards to be set – relates to the appropriate relationship between the DPPs and the Community Safety Partnerships (CSPs). In particular, it is the view of CAJ that the Policing Board and the Northern Ireland Office must ensure that the CSPs, recommended by the Criminal Justice Review,¹⁶¹ do not in any way dilute the power and effectiveness of the DPPs.

The Patten Commission believed that the role of the DPPs was to “*represent the consumer, voice the concerns of citizens and monitor the performance of the police in their districts, as well as that of other protective agencies such as the fire service, environmental protection, public health and consumer protection authorities.*” The report went on to say that, “*Like the Policing Board, the DPPBs should be encouraged*

to see policing in its widest sense, involving and consulting non-governmental organisations and community groups concerned with safety issues as well as statutory agencies."¹⁶² The Patten Commission recommended that, "*District Councils should have the power to contribute an amount initially up to the equivalent of a rate of 3p in the pound towards the improved policing of the district, which could enable the DPPB to purchase additional services from the police or other statutory agencies, or from the private sector. They might choose to use the money for security cameras in commercial centres, or to fund youth club schemes: it would be for them to decide, in consultation with their local police.*"¹⁶³ Parliament chose however not to accord the DPPs the financial resources recommended by the Patten Commission.

At the same time as the Patten policing changes were being progressed, a quite separate debate was underway. As part of the reform of criminal justice, the Criminal Justice Review noted Patten's proposals regarding DPPs and instead recommended that Community Safety and Policing Partnerships be created. These CSPs, as they were later to be called, were to replace the DPPs, and fulfil the DPPs' role of addressing community safety concerns in partnership with statutory agencies, community groups, and the local community.¹⁶⁴ District Councils were to be given the power to contribute the equivalent to 3p in the pound to the CSPs, albeit with clear guidelines on the raising of such funds and the purposes to which the money could be used.¹⁶⁵ The Review also recommended that the CSPs be monitored and regulated by a newly created governmental body within the Northern Ireland Office called the Community Safety Unit.¹⁶⁶ The recommendation to give District Councils the power to provide the CSPs financial resources was not implemented,¹⁶⁷ but the Criminal Safety Unit was given a budget to fund community safety initiatives.¹⁶⁸ The Criminal Justice Review adopted many of the recommendations that the Patten Commission had made for the DPPs. The Criminal Justice Review welcomed the Patten Commission's "*recognition of the need for co-ordination between the policing and other agencies and non-governmental organisations for public safety purposes,*"¹⁶⁹ and stated that CSPs should have the membership "*as recommended by the Policing Commission for District Policing Partnership Boards,*"¹⁷⁰ and the same advisory, explanatory, and consultative functions that the Patten Commission posed for the DPPs.¹⁷¹ When the Criminal Justice Review argued that District Councils could raise 3p in the pound for the CSPs, just as the Patten Commission had recommended for the DPPs, it noted that, "*[f]rom the examples given by the [Patten] Commission of projects which might be funded in this way (security cameras, youth club schemes) it is clear to us that community safety activity was what [the Patten Commission] had in mind.*"¹⁷²

However, instead of the concept of the DPP and the CSP being effectively integrated as apparently initially envisaged, there now appear to be two quite distinct and separate structures established across all District Councils which have policing as a central component of their work. This is very worrying. There are probably a number of distinctions between the two structures, but most obviously, the CSPs are led and effectively funded by the Northern Ireland Office, whereas the DPPs are independent of any institutional link to government. For example, to receive funding from the Northern Ireland Office, the CSPs must bid for funding from the Northern Ireland Office's Community Safety Unit and meet the following criteria:

- Projects must be submitted by a partnership set up in response to the government's Community Safety Strategy.
- Projects must be designed to respond to the objectives and action points set out in the government's Community Safety Strategy.
- Projects must have the support of the police locally.
- Projects must have secured at least 20% in matching funding either financial or in kind.
- No project will receive more than £50,000 in this financial year (2003/04).
- Bids will only be considered for projects where there is: objective and quantifiable evidence of the problem to be addressed (baseline information); an assessment of how the project will impact on the problem; and a statement of how the impact of the project will be measured and evaluated.¹⁷³

On 18 March 2003, the Northern Ireland Office announced that all 26 District Councils are engaged in the development of Community Safety Partnerships, that the NIO would provide £7.5 million of funding to CSP projects over the next three years, and that 30 projects had already been awarded £1.5 million over the next three years.¹⁷⁴ On 16 July 2003, the Northern Ireland Office awarded £1.8 million pounds over the next three years to seventeen additional community safety projects.¹⁷⁵

It is clear from the money that the Northern Ireland Office is investing in CSPs, and the control that it is able to exert over their work, that CSPs are considered an important part of government strategy for the future. But how does this relate to the existence of the DPPs? The media recently reported that a group entitled 'Safer Streets For All Campaign', located in West Belfast, was refused funding from the Community Safety Unit for refusing to seek the endorsement of the PSNI for its work.¹⁷⁶ Would they be able to go to the West Belfast DPP for support? If not, is the intention of the Northern Ireland Office to control all local initiatives by granting or refusing monies; and if the group can approach the DPP, does this not set up an unhealthy tension at the local level between two bodies that should in fact be working to the same ends?

A close examination of the Community Safety Strategy begs many questions about the role that can effectively be played by local DPPs. If the DPPs are not to be turned into 'talking shops', with little or no power and little or no funding potential for constructive local projects, their work must not be stymied almost before it begins. Moreover, reference is made earlier on in this commentary to the importance of 'policing' being seen as an issue that should engage not only the Police Service, but the broader community. It is the Policing Board, and particularly the DPPs, who will have a major role to play in bringing about such a transformation, and this makes it vital that the ambiguity of CSP/DPP relations at the local level be clarified as soon as possible. This is clearly a problem that cannot be addressed by each individual DPP/CSP and it is CAJ's understanding that the Policing Board also has very serious concerns about the CSPs and that these concerns have been conveyed to government in forceful terms.¹⁷⁷

CAJ recommends that the Northern Ireland Office and the Policing Board take all necessary steps to ensure that CSPs, if they are to be maintained, do not dilute the power of the DPPs. Urgent decisions must be taken about the appropriate relationship between DPPs and CSPs, local funding arrangements and how DPPs can best maintain their independence from government.

Chapter Three

Conclusion and Recommendations

CAJ believes that the Policing Board has established itself as more powerful and effective than its predecessor, the Police Authority for Northern Ireland, in the two years since its establishment. It has in particular begun an important project to ensure effective police accountability and it has already successfully handled some very controversial issues.

The Policing Board needs, however, to make a number of very important changes in the way it operates if it is to improve its ability to comply with its statutory responsibility to hold the Police Service to account.

CAJ hopes that the Policing Board will find the various recommendations indicated in the text (and brought together again below) will prove useful in its work to make policing in Northern Ireland effective, efficient, accountable and transparent.

- 1. CAJ recommends that the Secretary of State (or the successor body if policing is devolved) consult widely before appointing independent members of the Policing Board as provided for under the Police Act 2000, and in future ensure that the composition of the Board is fully representative, as required by the Patten Commission and the Police Act 2000.**
- 2. CAJ recommends that the Policing Board better publicise its public meetings and rotate its public meetings at different times of the day and week and at different venues throughout Northern Ireland. CAJ also recommends that the Policing Board does not reduce the number of public meetings it holds each year.**
- 3. CAJ recommends that the Policing Board review its security policy for public meetings and institute only such precautions as are necessary and in a way which seeks to avoid intimidating potential participants.**

4. CAJ recommends that the Policing Board debate, make decisions, set standards for the police, and evaluate police performance as much as possible during its public rather than its private meetings, so that the public knows what topics the Board is addressing with the police, what goals and timetables the Board is setting for the police, and how and on what information the Board makes its decisions.

5. CAJ recommends that the Policing Board come to an agreement with the PSNI on a format for the Chief Constable's reports at the public meetings which will provide adequate information to allow the Board and the public to assess police performance. CAJ also recommends that the PSNI's quarterly reports towards the targets of the policing plan be presented at the public meetings, published, and widely disseminated.

6. CAJ recommends that the Policing Board produce, consult on and widely disseminate the procedure to be followed by members of the public wishing to direct questions to the Chief Constable, and that the Board proactively seek questions from the public.

7. CAJ recommends that the Policing Board build up its internal capacity to monitor the human rights performance of the police by attending appropriate human rights training and developing the skills necessary to fulfil this important function. CAJ also recommends that the Policing Board publish its plan for monitoring police human rights performance, consult widely on its proposals, make its assessments public, and begin systematic monitoring of the PSNI's human rights performance as soon as possible.

8. CAJ recommends that the Policing Board actively engage with statutory bodies, non-governmental and community organisations, and the public to improve its ability to monitor police performance.

9. CAJ recommends that the Policing Board conduct more of its business in public and publish details of its work widely so that the public is reassured that the Policing Board is holding the police to account.

10. CAJ recommends that where the Police Ombudsman determines that a complaint is outside of the remit of the Office, that it be forwarded to the Policing Board as well as the Chief Constable under §52(6) of the Police Act 1998. CAJ also recommends that the Board ask the Chief Constable to report publicly to the Board on its investigation of any complaint referred to the Chief Constable by the Police Ombudsman and monitor implementation of any required remedial action.

11. CAJ recommends that the Policing Board, in order to scrutinise police performance in complying with the Human Rights Act, monitor PSNI operations, policy and practice. The Board should focus on the way in which operations are planned and whether the police carry out adequate community impact assessments; review the advice of the PSNI's Human Rights Legal Adviser and whether it is followed; and determine whether a policy should be altered and whether practice is uniformly consistent with policy. CAJ also recommends that the Board routinely conduct random audits of PSNI operations and make the results, its recommendations and a record of PSNI implementation public.

12. CAJ recommends that the Policing Board review all data on CS Spray, consult widely, make the data public, and publicly debate and decide on the benefits of CS Spray. If the eventual determination is to purchase and deploy CS spray, this measure should then be conditional on the Board's approval of adequate guidelines and training.

13. CAJ recommends that the Policing Board ensure that all recommendations related to Special Branch made by the Patten Commission, Her Majesty's Inspectorate of Constabulary, and Sir John Stevens be implemented by the Police Service as expeditiously as possible.

14. CAJ recommends that the Policing Board respond to the Human Rights Commission's evaluation of PSNI student officer training, monitor PSNI implementation of the report's recommendations, and report publicly on its own and the PSNI's progress towards implementation.

15. CAJ recommends that the Policing Board consult statutory agencies, non-governmental and community organisations and the public as it develops future policing plans, so that they adequately address the opinions of the people of Northern Ireland related not only to policing objectives, but also appropriate performance indicators and targets for the Police Service.

16. CAJ recommends that where possible, the Policing Board set targets in the policing plans which measure actual police performance in addition to Northern Ireland-wide public perception of police performance, and that when utilising public opinion targets, it considers the necessity of also evaluating the opinion of those more directly effected by the issue being addressed.

17. CAJ recommends that the Policing Board, in its policing plans, formulate performance indicators and targets with enough detail to allow the public to know how the Board is specifically monitoring PSNI performance.

18. CAJ recommends that the Policing Board ensure that the PSNI consults widely on a definition and system for monitoring sectarian crime/incidents and begins such monitoring as soon as possible.

19. CAJ recommends that the Policing Board identify the training needs of DPP members and develop, consult on, and administer a detailed training programme for all DPP members as soon as possible.

20. CAJ recommends that the Policing Board immediately assess the way in which the District Policing Partnerships are functioning to avoid the adoption of bad institutional habits.

21. CAJ recommends that the Northern Ireland Office and the Policing Board take all necessary steps to ensure that Community Safety Partnerships (CSPs), if they are to be maintained, do not dilute the power of the DPPs. Urgent decisions must be taken about the appropriate relationship between DPPs and CSPs, local funding arrangements and how DPPs can best maintain their independence from government.

Endnotes

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- ¹⁴ *Id.* at §59.
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- ²⁸ Patten Commission Report, para 6.36, Recommendation number 35; Police Act 2000, §19 of Schedule 1.
- ²⁹ House of Commons Standing Committee E, Column Number 49, 25 February 2003.
- ³⁰ Police Act 2003, §4(1).
- ³¹ Police Act 2000, §19(2).
- ³² House of Commons Standing Committee E, Column Number 49, 25 February 2003.
- ³³ Patten Commission Report, para. 6.36. It should be noted that the Board held a series of public meetings across Northern Ireland for the purpose of announcing the process for appointing independent members to the DPPs. The Board also held two meetings outside of its offices, one in Derry and one in Belfast, to launch its 2002-2003 annual report. These meetings are distinct, however, from the public meetings the Board is required by law to regularly hold with the Chief Constable and to which this section of the commentary refers.
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- ⁵³ “A study of the treatment of solicitors and barristers by the police in Northern Ireland.” Research Report 01/2003, Police Ombudsman for Northern Ireland, March 2003. This report can be located on the website of the Police Ombudsman, www.policombudsman.org
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- ⁵⁹ Community Attitudes Survey 2002: Northern Ireland Policing Board Module, Northern Ireland Policing Board, 14 May 2003; April 2003 Omnibus Survey. These documents can be located on the website of the Northern Ireland Policing Board, www.nipolicingboard.org.uk
- ⁶⁰ “Views on the Northern Ireland Policing Board: Findings from the October 2001 Northern Ireland Omnibus Survey”, *Research & Statistical Bulletin*, 1/2002, Northern Ireland Office, February 2002, is the most recent NIO bulletin published on this topic. This bulletin can be located on the website of the Northern Ireland Office, www.nio.gov.uk
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- ⁷² Report 8, Office of the Oversight Commissioner, September 2003, p. 29.
- ⁷³ Report 7, Office of the Oversight Commissioner, May 2003, p. 48.
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Appendix One

Brief Synopsis of CAJ's policing work

- 1981 CAJ founded after conference at Queens on civil liberties
- 1982 Publication "Complaints Against the Police" – police complaints' systems became a routine topic of concern with subsequent publications in 1983, 1990, 1991, 1993, advocating an independent complaints system. This culminated in active work pre-and post the Hayes report setting up a Police Ombudsman.
- 1985 Publication "Consultation between the police and the public".
- 1988 Publication "Police Accountability in NI." This topic of accountability was also regularly re-visited with work on lay visiting to police stations (1990) and responses to various consultation documents (1994 NIO document on "Policing in the Community", submissions to the Police Authority in 1995, and legislative proposals in 1995 and 1998).
- 1990 Publication on "Plastic Bullets and the Law" (which updated an earlier 1985 report, and was then complemented by a 1998 report).
- 1996 Publication entitled "Misrule of Law" on the policing of public order disturbances in 1996. Subsequent publications and shorter submissions were produced in 1997, 1998 and 2001 as well as a number of documents relevant to the Parades Commission.
- PATTEN COMMISSION**
- 1997: Major report "Human Rights on Duty: Principles for better policing – international lessons for Northern Ireland".
- 1998: submission to Patten; organised Council of Europe visit to Belfast; facilitated follow up visit by Patten team to Strasbourg.
- 1999: CAJ holds pre-Patten report conference (February). submission to US Congress (April); CAJ holds post-Patten report conference (November); Commentary to NIO on Patten report (November).
- 2000: Extensive lobbying around Policing (NI) Act.
- 2001 Organised Council of Europe seminar for Oversight Commissioner team; produced Benchmarks for Oversight Commissioner (April); spoke on panel at Policing and Human Rights conference (October); commented on draft police Code of Ethics (November).
- 2002 Published: "Commentary on the Code of Practice on the Functions and Responsibilities of District Policing Partnerships" (May); "Submission to the Review of the Parades Commission" (May); "Commentary on the NIO Code of Practice on Reports and Inquiries under Sections 59 and 60" (June); and "Comments and Suggested Amendments to the Police (NI) Bill" (December).

Appendix Two

CAJ's Publications list

- No. 1 **The Administration of Justice in Northern Ireland:** the proceedings of a conference held in Belfast on June 13th, 1981 (no longer in print)
- No. 2 **Emergency Laws in Northern Ireland:** a conference report, 1982 (no longer in print)
- No. 3 **Complaints Against the Police in Northern Ireland,** 1982 (price £2.50)
- No. 4 **Procedures for Handling Complaints Against the Police,** 1983 (updated by pamphlet No.16)
- No. 5 **Emergency Laws: suggestions for reform in Northern Ireland,** 1983 (£1.50)
- No. 6 **Consultation between the Police and the Public,** 1985 (price £3.00)
- No. 7 **Ways of Protecting Minority Rights in Northern Ireland,** 1985 (price £4.00)
- No. 8 **Plastic Bullets and the Law,** 1985 (updated by pamphlet No. 15) (see also Plastic Bullets briefing No. 40)
- No. 9 **"The Blessings of Liberty":** An American Perspective on a Bill of Rights for Northern Ireland, 1986 (price £2.50)
- No. 10 **The Stalker Affair: More questions than answers,** 1988 (price £3.00)
- No. 11 **Police Accountability in Northern Ireland,** 1988 (price £2.00)
- No. 12 **Life Sentence and SOSP Prisoners in Northern Ireland,** 1989 (price £1.50)
- No. 13 **Debt - An Emergency Situation?** A history of the Payments for Debt Act in Northern Ireland and its effects on public employees and people on state benefits, 1989 (price £2.00)
- No. 14 **Lay Visitors to Police Stations in Northern Ireland,** 1990 (price £2.00)
- No. 15 **Plastic Bullets and the Law,** 1990 (price £2.00)
- No. 16 **Cause for Complaint:** The system for dealing with complaints against the police in Northern Ireland, 1990 (price £2.00)
- No. 17 **Making Rights Count.** Includes a proposed Bill of Rights for Northern Ireland, 1990 (price £3.00)
- No. 18 **Inquests and Disputed Killings in Northern Ireland,** 1992 (price £3.50)
- No. 19 **The Casement Trials: A Case Study on the Right to a Fair Trial in Northern Ireland,** 1992 (price £3.00)
- No. 20 **Racism in Northern Ireland:** The need for legislation to combat racial discrimination in Northern Ireland, the proceedings of a CAJ conference held on 30th November 1992, (price £3.00)
- No. 21 **A Bill of Rights for Northern Ireland,** 1993 (price £2.00)
- No. 22 **Staid agus Stadas Gaeilge i dTuaisceart na hEireann - The Irish Language in Northern Ireland:** The UK Government's approach to the Irish Language in light of the European Charter for Regional or Minority Languages, 1993 (price £3.50)
- No. 23 **A Fresh look at Complaints against the Police,** 1993 (price £3.50)
- No. 24 **Adding Insult to Injury?** Allegations of Harassment and the use of Lethal Force by the Security Forces in Northern Ireland, 1994 (price £3.50)
- No. 25 **The States We are In: Civil Rights in Ireland, North and South -** proceedings of a conference held in Dublin by the Irish Council of Civil Liberties and the CAJ, 1993 (price £3.50)
- No. 26 **Civil Liberties in Northern Ireland: The CAJ Handbook** (2nd edition), June 1993 (price £6.00)
- No. 27 **"Harassment: It's part of life here..."** Survey of young people's attitudes to and experience of harassment by the security forces, December 1994 (price £5.00)
- No. 28 **No Emergency, No Emergency Law: Emergency Legislation related to Northern Ireland the case for repeal,** March 1995 (price £4.00)
- No. 29 **Right to Silence debate,** the Northern Ireland Experience (May 1994) (price £3.00)
- No. 30 **Human Rights: The Agenda for Change - Human Rights, the Northern Ireland Conflict and The Peace Process** (includes proceedings of a conference held in Belfast on 11th & 12th March 1995), December 1995 (price £3.50)
- No. 31 **Fair Employment For All:** Submission to the Standing Advisory Commission on Human Rights on Fair Employment, February 1996 (price £4.00)
- No. 32 **The Misrule of Law:** A report on the policing of events during the Summer of 1996 in Northern Ireland, October 1996 (price £5.00)
- No. 33 **Mainstreaming Fairness? : A discussion paper by Dr.Christopher McCrudden, on "Policy Appraisal and Fair Treatment",** November 1996 (Price £3.00)

- No. 34 **Mainstreaming Fairness, “Policy Appraisal and Fair Treatment”**, A summary of a consultation process around “Policy Appraisal & Fair Treatment”, June 1997 (Price £2.00)
- No. 35 **Making a Bill of Rights Stick: Options for Implementation in Northern Ireland**, A Discussion Paper published by the Committee on the Administration of Justice, September 1997 (Price £2.00)
- No. 36 **Policing the Police : A Report on the Policing of Events During the Summer of 1997 in Northern Ireland**, November 1997 (Price £2.00)
- No. 37 **Human Rights on Duty: Principles for better policing - International lessons for Northern Ireland**. December 1997 (Price £6.00)
- No. 38 **Civil Liberties in Northern Ireland: The CAJ Handbook (3rd edition)**, December 1997 (Price £7.00)
- No. 39 **Benchmarks for Change: A Proposal by Dr. Christopher McCrudden on Mainstreaming Fairness in the Governance of Northern Ireland** , February 1998 (Price £2.00)
- No. 40 **Plastic bullets briefing paper**, June 1998 (Price £3.00)
- No. 41 **A Guide to Prisoners’ Rights and Prison Law in Northern Ireland**, September 1998 (Price £5.00)
- No. 42 **The Agreement and a new beginning to policing in Northern Ireland** (Proceedings of a conference held in February 1999, this report also includes Human Rights Benchmarks for policing change, June 1999 (Price £5.00)
- No. 43 **Fundamental Social Rights in Northern Ireland: Building upon the Agreement and the European Social Charter**, October 1999. Proceedings of a conference jointly hosted by CAJ and the Council of Europe, held in June 1999 (Price £5.00)
- No. 44 **The Patten Commission: The way forward for policing in Northern Ireland?** Proceedings of a conference on the findings of the Patten Commission held in October 1999 (Price £5.00)
- No. 45 **Dignity, Equality & Inalienable Rights: Lecture in Belfast**, November 2001 by Archbishop Desmond Tutu, July 2002 (Price £3.00)
- No. 46 **A Bill of Rights for Northern Ireland Through the years – the views of the political parties**, July 2003 (Price £3.50)

Submissions

- S1 **Submission to the UN Human Rights Committee “Human Rights in Northern Ireland”**, 1991 (price £1.00)
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