

POLICING IN THE COMMUNITY - RESPONSE BY THE C.A.J.

The Committee on the Administration of Justice (CAJ) welcomes the acknowledgment in the consultation document that the present arrangements for policing in Northern Ireland suffer from a number of shortcomings and in particular that the role envisaged by Lord Hunt for the Police Authority - expressing the concerns and needs of the community to the police and holding them to account - has been obscured. The CAJ itself identified various shortcomings in the area of police accountability as early as September 1988. It was in that month that it published a pamphlet entitled "Police Accountability in Northern Ireland", which makes 17 separate recommendations for improving the system. We said then that it is true for Northern Ireland as it is for England and Wales that:

"one very important point at which the present system needs to be reformed is that part of the law which defines, or fails to define satisfactorily, the powers and responsibilities of the central government, the police authority and the chief constable" (para. 34).

We are pleased to see that some of our ideas seem to have been taken on board in the Northern Ireland Office's consultation document. There is, for example, a noticeable similarity between our two sets of proposals regarding the responsibilities of the Police Authority. The consultation paper says that:

"The new structure will ensure that the new Police Authority has clear responsibilities and the means to give them effect. It will be tasked with representing the community to the RUC, identifying the community's priorities for policing within available resources, and holding the RUC to account for an efficient and effective delivery of these community objectives" (para.5.5).

Our pamphlet said that:

"Police authorities should be required to establish policing policies and priorities and see that they are carried out rather than to interest themselves in detail" (App I, page 1).

We therefore broadly welcome the conclusion in the consultation paper that in Northern Ireland the Police Authority must be given a distinct statutory responsibility for identifying objectives for the police (para. 5.10). However in this regard the paper does give us cause for concern on two fronts.

First, the paper is very short on detail as to the scope of the Authority's proposed powers in this context. From paras. 1.6, 5.4, 5.5 and 5.10 it seems that the Secretary of State will have responsibility for establishing and monitoring "overall" objectives for "Province-wide" policing, while the Authority will have responsibility for establishing and monitoring objectives for the provision of police services (whether or not on a "Province-wide basis") identified by communities throughout Northern Ireland. It is unclear to us how exactly the community in Northern Ireland is to be given its say in what the policing objectives in Northern Ireland should be, whether on a "Province-wide" basis or more locally. We firmly believe that the community should have a say at all levels and in all areas. Furthermore we feel that it is essential that mechanisms should be put in place to ensure that the Authority is genuinely representative of the community it serves.

We do not think that para. 5.10 adequately explains the difference between these two roles or properly deals with situations where the objectives set by the Secretary of State and the Authority may conflict. Will the Authority be able to devise "Province-wide" policies even if these are opposed by the Secretary of State? In particular we do not approve of an arrangement whereby any differences between the Authority's objectives and those of the Chief Constable will be resolved by the Secretary of State. We take the position that such differences should be resolved in favour of the Police Authority, since it is the body charged with representing the views of the community to the Chief Constable. It is certainly not enough to say that

the Secretary of State will be required by law to give reasons for not being able to accept any objective proposed by the Police Authority, because it will be all too easy for the Secretary of State to hide behind virtually unchallengeable reasons such as national security or public order.

The second cause for concern is the complete exclusion of the Police Authority from any say in security policy objectives or related matters. We regard this to be a totally unacceptable suggestion, one which will in effect eviscerate the Police Authority completely. We do not think the proposal will achieve the desired goal of greater community support for the police. It seriously undermines the aim as stated in para. 1.6 of the consultation paper, namely to "ensure that the RUC is fully accountable to the community". How is such accountability to materialise if the Authority can have no say in security policies? Para. 2.6 of the paper notes that "sections of the community have felt unable to give unqualified support to the police service" while para 4.4 states the government's determination to put in place "structures which will command the support and confidence of all sections of Northern Ireland's divided community". Unfortunately we do not think the paper's proposals will remove the misgivings of the important groupings it mentions who are at present unwilling fully to support the police or to accept appointment to the Authority. Any attempts which the Police Authority may wish to make to accommodate the community are, under the paper's proposals, capable of being thwarted by the Chief Constable and the Secretary of State.

Such a stance would mean, would it not, that the Police Authority would not have any say in issues such as the employment of informers, the use of lethal force and plastic bullets, the policing of funerals, the controlling of marches, the setting up of vehicle checkpoints, the closing of roads, the deployment of undercover officers, the

treatment of detainees, the recording of interviews or the handling of security information. We would politely suggest that if an interested observer were to discover that the new Authority can express no views on matters such as these then it is not worthy of either interest or respect.

If we have misunderstood the function of the Authority in this regard - if it would, after all, have some effective or meaningful say in matters such as the ones mentioned - then it is incumbent on the government to spell this out more clearly. The consultation paper should have given a more precise indication of what is meant by "security policy objectives or related matters" (para. 5.5) and should have stated who is to take the decision that a certain issue falls in this category. Before lending our support to the new proposed arrangements we would need to be reassured that the new Authority is going to be a meaningful and worthwhile body with real and relevant powers. The consultation paper does not provide this reassurance.

If the Police Authority is to be unable to hold the Chief Constable accountable for security and related matters, the obvious question, unanswered by the paper, is who will do so?

These two major concerns lead us to conclude that, despite what is said in para. 1.1 of the consultation paper, the proposed new arrangements will not create a strengthened framework for policing but rather a weakened one. Nor will they meet the aims of providing a structure which will improve the effectiveness of the police service and ensure that it is accountable to the whole community. It seems that the arrangements will not "take account of the particular problems of a divided community" (para.1.1) since it is in relation to most of these problems that the Police

Authority and the community will be barred from devising relevant policing objectives. The paper seeks, in para. 1.3, to endorse Lord Hunt's principle that the Police Authority should be a body "through which the wishes and fears of the community can be expressed": we would respectfully submit that if the proposed Police Authority is not to be given any say in security policy objectives it will plainly be unable to express the community's wishes and fears. What the paper is offering is a veneer of accountability rather than the real thing.

We also feel that the consultation paper does not give much cause for hope that better arrangements are to be put in place for garnering community priorities for policing objectives. We would argue that these new arrangements will need to be substantially more effective than the current arrangements in relation to Community Police Liaison Committees. We do not believe that these Committees are functioning at all well: they do not discuss general policing policies and do not attempt to set policing priorities in particular areas. We think it is essential that new legislation in this field should specify in some detail the composition, powers and duties of the CPLCs or their successor body. Moreover, as with the Police Authority, we do not accept that such Committees should be barred from discussing objectives concerning security policy. It would be naive and disingenuous to think that security policy is not a crucial issue for communities throughout Northern Ireland: communities expect to be able to make their views known as to the objectives which should be pursued and how this should be done.

The consultation paper emphasises that the proposals do not affect the operational independence of the Chief Constable. The CAJ recognises the importance of this principle but insists that it must not be defined in such broad terms as to undermine completely the accountability mechanisms put in place for ensuring that the police

satisfy the wishes of the people. We would like to see the new statutory framework containing more detailed guidance as to what is encompassed by the term operational independence: it is not unheard of for such guidance to be placed in a Schedule to legislation.

While we welcome the commitment, in para. 1.6 of the paper, to define in statutory terms the responsibilities and lines of accountability of the Secretary of State, the Police Authority and the Chief Constable, we trust that these definitions will be plain and detailed, not vague and general, and that they will result in a greater degree of accountability to the community. Of course accountability is not just about structures but also about effective practical measures. We believe the Chief Constable would agree that he and his officers should be primarily accountable to the law. The law is the product of democratic argument in Parliament or of objective discussion in a court: if either of those bodies produces a law which increases the accountability of the police the Chief Constable is duty-bound to abide by that law.

We would therefore urge the government to consider introducing new laws which would make the police more accountable in particular respects. One reform which is immediately required is to section 3 of the Criminal Law Act (NI) 1967, the provision which permits the police to use lethal force even when it is not necessary to do so. Another is to the system for dealing with complaints against the police, a matter about which we wrote to the Secretary of State in April 1994 by way of reaction to the Triennial Review Report of the Independent Commission for Police Complaints. A third reform which we think is urgently required is the introduction of audio-recording and video-recording for all interviews with detainees arrested under the emergency laws; they should also be entitled to be interviewed in the presence of their solicitor, as in England and Wales.

We approve whole-heartedly of the ideas (in para. 5.9) that the objective criteria applied to the appointment of persons seeking high office in the RUC should be publicised and that appointments should be made on a fixed-term basis. In our 1988 pamphlet we recommended (in para. 94) that the Chief Constable should be engaged by the Police Authority under a specific contract for services: in legal terms the chief constable should not be the employee of the Authority (this acknowledges his or her special legal status as a constable) but the Authority's independent contractor. We suggested then, and we stand by this proposal, that a detailed contract should be drawn up between the Authority and the Chief Constable specifying the duties of the latter. As we stated in 1988:

"The contract could easily be so drafted as to require the Chief Constable to have regard to supplementary guidelines and codes of practice when exceeding the Police Authority's policies" (para. 94).

Three further matters call for comment. First, we welcome the commitment in the consultation paper (in para. 5.5) to oblige the Police Authority to publish an annual report: the failure to produce such a report up to now has been a serious blemish on the accountability map. Second, with reference to para. 6.1, we favour retaining the title "Police Authority" rather than adopting "Police Commission". We believe that the former better represents the function of the kind of body which is necessary to secure public confidence; the test of the new body will not be in its name but in its powers, but we would want that body to have an image which reflects its true position. Third, with regard to para. 7.1, we very much prefer introducing these legislative changes by a Bill rather than by an Order in Council: the topic is too important to be processed in any other way and only the former procedure will give MPs and peers an opportunity to amend the draft law and to debate it thoroughly.

Finally, we are unclear as to why exactly the new accountability arrangements in Northern Ireland have to be so different from those being introduced for England and Wales by the Police and Magistrates' Courts Bill (paras. 4.1 and 4.2). We do not think that the points raised in para. 4.2 justify such a radical departure from the more democratic approach being adopted across the water.

We trust these comments are of use to the Northern Ireland Office in its deliberations and very much hope that when the final arrangements are made they will reflect our concerns.

Committee on the Administration of Justice

May 1994