

***A Submission from  
the Committee on the Administration of Justice (CAJ)  
to the  
Police Authority (PANI) Consultation on  
the future of policing in Northern Ireland***

***August 1995***

## **PART ONE: GENERAL COMMENTS ON POLICING IN NORTHERN IRELAND**

### ***Opening proviso***

These comments are preliminary and not set in stone. The issue of policing is one in which CAJ has had a long interest. Given the scale of the questions raised by any thorough look at policing, we see this as an on-going area of debate. It is difficult to come down hard and fast on particular options because the success of policing structures is significantly dependent on political consensus.

### ***The PANI Consultation process***

To that extent, it is worthy of note that the two nationalist parties, Sinn Féin and the Social Democratic and Labour Party, have decided against becoming involved in the consultation. This, in our view, represents a major stumbling block to the process. A consultation process which will not have the benefit of the widest possible range of opinion must have a major question mark waiting at its end. It is particularly important that the views of those who have consistently failed to participate in policing structures are mirrored in any assessment of the future of policing. While PANI may regret the fact that the political representatives of the nationalist community have declined to recognise the validity of the consultation, we remain convinced that, without their participation, no meaningful conclusions can be reached. Policing structures which fail to engage with the representatives of the minority tradition in Northern Ireland will encounter great difficulty in meeting the scale of change which is required if policing is to move from controversy to service.

Additionally, we have received complaints that attendance at your "community consultation seminars" appeared to be by invitation only. A number of community organisations have been actively generating ideas and opinions regarding the future of policing. It would be unfortunate if these groups were not afforded the opportunity to participate on the same basis as other groups.

A further problem with the credibility of the PANI consultation is the fact that it has no authority in relation to the Chief Constable. The clear differences which have emerged between Sir Hugh and PANI inspire little hope that he will engage with conclusions which appear to him unsavoury. The simple fact is that PANI has no effective statutory authority over the Chief Constable. A statutory mechanism needs to be devised which ensures that community feeling will be fed into the process of policing change. To the extent that nationalist opinion is not represented on PANI, the difficulty in feeding the views of that community into the process becomes even more marked.

We also understand that, in relation to Sir Hugh's New Year call for some kind of

commission, a government committee has been established by the NIO to consider the future of policing. We understand that the RUC, in the person of Assistant Chief Constable Flannigan, has a seat on this "Policing Review Team". It has been announced that Mr Flannigan is carrying out an internal review which will be fed into this review. We are concerned that this may be where the real decisions are made and would be interested in knowing what relationship the PANI process has to this less public review. Further, will there be any effort to carry out a wide and cross-community consultation to inform the civil servants and RUC officers involved?

Given the above, our first recommendation is that a more inclusive consultation must be held which has two major components: wide community and political support from all sides; and the assurance that its conclusions are given statutory authority so that they cannot be ignored or dismissed by the Chief Constable.

### ***A Commission On Policing***

The current political situation, with ceasefires having held for 11 months and the possibility of negotiations, represents the most significant opportunity to create stable policing since the beginning of violent conflict in Northern Ireland. On that occasion, the government established the Hunt Committee which made proposals leading to legislation, the **Police Act (NI) 1970**. This is the level of study and authority which an examination of policing requires in 1995. It is to be hoped that the government accepts that last year's consultation, **Policing in the Community**, has been overtaken by events. The narrowness of vision displayed in that document is inadequate to the new post-ceasefire situation.

The form of a commission or committee is of course in the gift of the UK government after consultation with the Irish government. This Commission should ideally be established with the agreement of the two governments and all the parties to the negotiations. Consideration should be given to the appointment of members from outside the UK or Ireland who have strong human rights credentials. Its terms of reference should be concerned with the establishment of an efficient police service in Northern Ireland which will meet the widest possible public support. Its focus therefore would be forward looking, though it should be prepared to look at the history of policing in Ireland and Northern Ireland and to examine what has led to problems of acceptability. Although this would not be a general Commission on criminal justice it should be empowered to look at the legal framework of arrest, detention and search powers within which the police operate as well as the composition, structure, training and accountability of the police.

The Commission should establish a wide consultation exercise. Its members should seek to canvas views as widely as possible and indicate in its final report the full range of views it has received and how it has responded to them. All suggestions should be fully considered. The Commission should not be too closely tied to previous models of policing in Britain or Ireland. It might consider holding some hearings of views in public and should have the resources to commission research on comparable situations, such as South Africa, El Salvador, Spain or the former East Germany. Models of policing from Commonwealth countries which have a

similar common law background might also be usefully examined. The views of the police should be sought and fully considered by the Commission but should not be given a different status from the views of anyone else.

The Commission should seek to establish that any civilian police service in Northern Ireland be accountable, representative, democratic and serve the needs of all the communities in Northern Ireland. The final report of the Commission should be available to the public and might offer several possible options for the development of policing in Northern Ireland, probably in some way dependent on how the constitutional position evolves. The Commission should aim to produce a report within a year. However after three months it might seek to issue an interim report on the issue of community policing and on any interim changes pending the delivery of a full report.

Though there may be criticisms of the time and money that would need to be spent on this process, it is important to have as wide an assessment as possible because of the need for a wide consensus to under-pin new policing structures. The Commission's recommendations must not remain un-implemented; the Commission must not be an excuse for delay and inaction.

### ***Policing NI: The Context.***

CAJ takes as its starting point international standards on human rights protection. While there is relatively little guidance on issues such as the make-up and structure of law enforcement-bodies, there are many standards which are intimately bound up with the law and practice in relation to wide areas of police responsibility. The **UN Code of Conduct for Law Enforcement Officials** (see enclosed copy) offers some initial guidance. It speaks of the importance of police services being representative in make-up, and responsive and accountable to the communities they serve. The Code speaks of the need for responsiveness in relation to public scrutiny. It also says that the acceptability of the police service depends on whether the law that it enforces is "well conceived, popularly accepted and humane". Importantly, the UN Code points out that the "conduct of every functionary within the system has an impact on the entire system". This is important in the context of the RUC's history and is especially significant given the failure of the complaints mechanisms to deal with the high number of individuals who do give cause for complaint.

The other main piece of internationally agreed standard setting relating specifically to the police is the **Declaration on the Police** passed by the Parliamentary Assembly of the Council of Europe (see enclosed copy). This speaks of the desirability of police officers having "the active moral and physical support of the community they are serving". It also emphasises that it is "inappropriate for those who have committed violations of human rights while members of police forces, or those who have belonged to any police force that has been disbanded on account of inhumane practices, to be employed as policemen".

The Declaration outlaws torture and other forms of inhuman and degrading

treatment or punishment along with summary executions. This should, of course, be axiomatic. Finally, the Declaration comments on the importance of a "clear chain of command" from the point of view of accountability. It should always be possible to identify who is "ultimately" responsible for "the acts or omissions of a police officer". Once again, to the extent that it has been virtually impossible even to get a remedy against ordinary constables, much less more senior ranks, the accountability of the RUC is clearly a major problem.

It is our view that the RUC fails to meet these criteria of minimum international standards for policing.

If real change is to be brought about in the way in which Northern Ireland is policed then there needs to be a fundamental change in the ethos and culture of the police paired with a complete overhaul of the law. Without *both* of these, fundamental change will not happen. For example, if the current emergency laws remain on the statute books then real change cannot occur, no matter what kind of initiatives are made within the police service itself. If, on the other hand, emergency law is repealed without a concrete change in policing ethos and culture, the level of recruitment from the nationalist community will remain too small.

Policing in Northern Ireland differs significantly in a number of respects from the rest of the UK. There is only one police force - the Royal Ulster Constabulary (RUC) - for the whole of Northern Ireland. The RUC are armed and have significantly more sweeping powers in relation to stop and search, arrest and detention than in other jurisdictions. In addition there is a history of civil unrest where members of the RUC have been under continual threat of violence, where 296 full-time and reserve officers have lost their lives and many more have been injured. The fact that 93% of RUC members are drawn from the Protestant/unionist community and only 7% from the Catholic/nationalist community - which comprises 43% of the whole population - is a further defining factor as compared with other parts of the UK. This disparity in the make-up of the police has been a major element in continuing antagonism to the RUC from members of the Catholic community. Lest it be thought that the relationship between Catholics and the RUC is the only one which needs to be addressed, there has also been increasing mistrust of the RUC in some Protestant/unionist communities. CAJ has also received complaints of police harassment from minority ethnic communities and the gay community who are of the view that the RUC fails to deal effectively with their complaints.

The religious imbalance within the RUC is only part of the reason for its failure to secure the confidence of the nationalist community. At its foundation, it was intended that one third of places in the RUC should be reserved for members of the Catholic community. This sensible attempt at ensuring even-handedness was not kept to when Catholics failed to offer themselves for policing. Rather than maintain this arrangement as an aspiration for future fulfilment when tensions eased, the authorities appear to have accepted that the cause of proper representation was lost. The security function of the RUC began to be more and more pronounced, continuing the tradition of Irish policing rather than evolving into a modern civilianised community role. Given the identification of policing with the Northern Irish state, the dysfunctional relationship between the RUC and the Catholic community

was solidified. In this connection, we refer you to the introductory chapters of Dr Robbie McVeigh's book, "**It's part of life here...**", a copy of which we enclose with this submission.

These historical and structural realities have been exacerbated by real concerns about the human rights record of the RUC. RUC members on duty have been involved in the killings of civilians in controversial circumstances; although no convictions have ever been secured in this respect. There have also been continued allegations of ill-treatment during emergency detention, harassment (see Dr McVeigh's report) and collusion with members of loyalist paramilitary organisations.

These concerns cannot be dismissed. The two major enquiries to investigate shoot-to-kill allegations and collusion raised more questions than answers. We continue to call in vain for the publication of the Stalker/Sampson and Stevens enquiry reports. Other mechanisms established to deal with complaints have shown themselves again and again to be unequal to the task of winning public confidence. This matter has been highlighted recently by the United Nations Human Rights Committee which was "concerned that, notwithstanding establishment in the United Kingdom of mechanisms for external supervision of investigations of incidents in which the police or military are allegedly involved, especially incidents that result in death or wounding of persons, as the investigations are still carried out by the police, they lack sufficient credibility." The Human Rights Committee further recommended that "specific efforts be made to enhance in Northern Ireland, confidence in the administration of justice by resolving outstanding cases and by putting in place transparently fair procedures for independent investigation of complaints." A full copy of the Human Rights Committee's final comment is attached for your information.

Finally, in a brief checklist of difficulties, the question of accountability to an effective Authority has never been resolved and remains a major stumbling block to widespread acceptance of the police.

### ***Acknowledging the Problem***

A developing notion in the international human rights community is the right to truth. According to this, following a conflict, unresolved issues can be aired and the community as a whole can move forward to a new and more productive future. A willingness to be transparent about past wrongs indicates that the future will be built on respect for human rights. Various bodies have been set up in Latin America, the Philippines and South Africa in order to investigate and report on any issues which victims of the conflict wish to raise. The recent comments of the Human Rights Committee referred to above and in particular the reference to the need "to resolve outstanding cases" indicate some support for such a move. Evidence of good intent on the part of the government in this regard would be the publication of the Stalker/Sampson report and the reports of investigations carried out by John Stevens into various allegations of collusion. Both of these unearthed evidence of wrong-doing on the part of security personnel but resulted in decisions not to prosecute. There should also be public enquiries into various controversial state

killings as the inquest system has not proved capable of putting concerns to rest. Finally, the question of ill-treatment in holding centres should be examined with a view to identifying those who have not shown respect for the human rights of detainees during the interrogation process.

### ***The functions of a modern police service***

People often confuse the police with the state, despite the fact that the police themselves, quite rightly, seek to distance themselves from political interference with their operations. Any new arrangements for policing in Northern Ireland must seek formally to disassociate the police service from the political allegiances of those who happen to be in power at any particular time. The police should be governed by, answerable to and accountable under the law, not the state, and the law should be framed with the political independence of the police in mind. They should not see their role as to uphold a set of political beliefs, beyond the maintenance of peace, freedom and security, which are the hallmarks of any fully democratic society. In particular, the police service should not officially take any stance on the desirable constitutional arrangements for Northern Ireland.

It is axiomatic that the structures of any organisation ought to be informed and shaped by the function of that organisation. Thus in order to determine what structure a police service ought to have in NI it is important to decide what its functions are.

Of course, the debate about the functions of a police service is in itself intrinsically political and controversial in the Northern Irish context. However, looking at the functions described in the 1993 report, **Inquiry into Police Responsibilities and Rewards** (the Sheehy Report), we can begin to construct a model which might well be generally accepted. The functions outlined are as follows:

- to prevent crime;
- to pursue and bring to justice those who break the law;
- to keep the peace; and
- to protect, help and reassure the community.

As a civil liberties organisation we would wish to add two further purposes or functions:

- to uphold the rule of law; and
- to protect the individual's civil liberties.

It should be self-evident that the police should uphold the rule of law. But in Northern Ireland, there is a perception that this has not always happened. At times the rule of law has been abrogated in favour of short-term legal measures with a distinctly political tinge to them. Some laws which the police have been asked to enforce, and some of the methods they have chosen for enforcing them, have undermined the traditional concept of the rule of law. Furthermore, the perception that the law will protect police officers from facing prosecution or conviction has eroded respect for the law. In a new political dispensation with cross community support, the police should not have to contend with these difficulties. They should find it easier,

therefore, to promote awareness of and confidence in the law as an independent arm of authority not tied to the political policy of the executive of the day. It should then be clear that no-one, including police officers, is above the law.

In relation to the protection of civil liberties, this will involve a whole-hearted commitment to respect for international human rights standards. This will display itself in a strong human rights component in police training, a willingness to move away from reliance on emergency law and a determination to establish clear guidelines on the use of force. In particular, the **UN Code of Conduct for Law Enforcement Officials**, relevant **UN Conventions** and **Basic Principles** and relevant European standards should inform police training.

### ***Structural models for policing Northern Ireland***

A key issue which has emerged in discussions on policing is the structure which might best serve the needs of the community. We have been hide-bound in Northern Ireland for years by the notion of a single police force operating throughout Northern Ireland. What has become clear in the debate of the past few months is that whilst there are many other models and experiences to choose from, very little actual research has been carried out. It is the view of the CAJ that before anyone rushes to blueprint a new police service thought ought to be given to the ways in which other societies around the world have sought to deal with similar problems. There exists no coherent piece of research pertinent to Northern Ireland on the subject. The following is only an initial attempt to explore some of the possible alternative models and the issues raised by them.

#### **Model One: Two Police Forces (by Function)**

One option which has been canvassed in the past is that a two-tier police force should be introduced, with the upper tier responsible for "security" or more serious crime. The proposal as canvassed envisages that minor criminal offences (presumably connected with the commission of summary offences) would be investigated by small local forces whilst the investigation of indictable offences would be the job of a Northern Ireland Police Service.

Apart from obvious problems with demarcation lines, the result of this proposal might well be that in areas West of the Bann and in West Belfast nationalists would be responsible for so-called "community policing" but might well exercise little control over the policing of more serious offences. The upper tier might well be the section towards which existing RUC members would gravitate, thus perpetuating the religious imbalance. The CAJ believes that this would be a disaster, amounting to the creation by stealth of a "political police", probably resulting in an unaccountable, secret and undemocratic force. If we are arguing that any new policing arrangements must be representative and accountable then it is clear that local communities must be involved in terms of both membership and control: if there are two police forces, one local and one regional, then the chances of local community control and involvement in the regional one are naturally diminished.



However, this does not mean that the only alternative is one single police force: if it is accepted that real local involvement is necessary then there are a number of ways in which this can be facilitated. We do not address here the question of what cross-border institutions relating to policing may or may not be appropriate. However, it is our view that it would be sensible to address this issue in the context of the transformation required to policing in Northern Ireland.

### **Model Two: Separate Local Police Services**

This model envisages the carving up of Northern Ireland into a number of smaller policing units - for example along the lines of the RUC's existing divisional structure. Each unit recruits, organises and is controlled within that local unit.

The strength of this model is that it allows for more complete local involvement, but its disadvantages are related to its scale - it would probably have to rely upon help from the other units to police large demonstrations or events, for example. Furthermore, given the sectarian geographical divisions the chances are that each unit would be either predominantly Protestant or Catholic depending upon location.

### **Model Three: Devolved Local Police Services**

This model envisages greater autonomy and local control for existing (or rejigged) RUC Divisions. Each Division or Unit would be obliged to recruit a certain percentage (say 75%) of its staff locally and would have to ensure that a certain percentage of recruits were women. Each Unit would be accountable in the first place to a local management committee and each unit would be commanded by a Deputy Chief Constable. The strength of this model is that one retains the police service as a whole and thus the economies of scale but in effect allows for the devolution of policing to smaller, local units. The model would also allow a greater sense of "a clean sheet" as the "local recruitment requirement" would oblige each unit to recruit fresh staff locally, as well as allowing existing RUC officers to apply for transfer or whatever. A disadvantage, however, is that it would impinge upon the right of people in the police, or any other, service to live where they liked.

## **PART TWO: SPECIFIC COMMENTS ON POLICING IN NORTHERN IRELAND**

### ***Creating A New Policing Culture***

Whatever structure is eventually decided upon, the culture which informs policing will to a large extent determine whether individuals from all sides will wish to offer themselves for recruitment in order to meet representativeness requirements discussed later in this paper. For real change to occur a new culture and ethos needs to emerge. Relationships need to alter and safeguards need to be introduced.

Some of the change in the ethos and culture of the RUC will be influenced by extraneous factors. An example is the repeal of emergency law, though RUC input into reviews of emergency legislation suggests that they have been keen, at policy level, to maintain the wide powers they have. However, some of the required change is within the power of the police themselves by way of training, recruitment, attitude and the methods chosen for exercising their powers. Thus far, there remains a serious question mark over whether or not a commitment to change exists.

To date, there has been a wide perception that the police see their "anti-terrorist" role as the most important one. This has marginalised their more standard role which would be recognised in any other Western society. Particularly in loyalist areas, there has been a demand that a more visible yet low key community type patrolling be adopted to assist in crime prevention. A number of structural and legislative changes are therefore necessary to change this problematic aspect.

### ***Training***

Training will have a major role in altering the ethos of the police service. In particular, CAJ is concerned that there should be a strong human rights component in training for recruits. There should also be in-service training for serving officers of all ranks. It is important to point out that this is already an obligation and should not be seen as an exercise in improving community relations - though this may be a welcome outcome of an improved commitment to human rights. Furthermore, it will not be adequate to seek to keep to the letter of human rights standards. Rather the spirit of human rights protection should be stressed in police training, emphasising the humanity of all and the need for people to be treated with respect and minimum force. This should inform the actions of the lowliest constable on patrol through the actions and motivations of special units to the Chief Constable in his or her development of security policy.

Human rights impact on every aspect of police responsibility, from how to deal with members of the public through to powers of arrest, crowd control and the use of firearms. Police officers should be given a grounding in the structure and development of international law in relation to the United Nations, the Council of

Europe and European Union and the Organisation of Security and Co-operation in Europe. Training should show how standard setting has developed more and more detail with treaties in certain broad human rights areas - such as children's rights and discrimination against women - and the adopting of Principles in relation to specific law enforcement functions. Prohibition of torture, cruel, inhuman or degrading treatment will have specific implications for interviewing techniques and methods of arrest. Officers who carry firearms or have specific weapons duties will need to be familiar with the **Basic Principles on the Use of Force by Law Enforcement Officials** (see enclosed copy) as well as case-law at European and UN level. Treaties on the elimination of discrimination should sensitise officers in how they deal with women, people from minority ethnic or gay/lesbian communities and people of different religion or political opinion. There is a variety of training courses designed for law enforcement officials at the European Commission. The United Nations also has facilities to assist the development of police training in human rights. These facilities should be availed of.

### ***Flags, emblems and oaths***

Clearly this is a problematic area, but it goes to the heart of ensuring a more neutral environment which has the possibility of encouraging wider recruitment and therefore more representativeness in the make-up of the police.

Given our earlier concern that the police should not officially take any stance on the desirable constitutional arrangements for Northern Ireland we wonder if it is necessary to have the Union Jack flying over police stations, or pictures of the Queen displayed in them? A number of cases at the Fair Employment Tribunal have supported the importance of a neutral working environment and there is no reason why police stations should be immune from such considerations. Furthermore the Fair Employment Code of Practice specifically enjoins employers to promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of their religious belief or political opinion and recommends the prohibition of the display of flags, emblems, posters, etc.

It will be important to mark a new beginning for policing in Northern Ireland. Thought should therefore be given to a new name and the commissioning of a new emblem.

We would be interested also in comparing the oath required of police officers in Northern Ireland with the one used in England, Wales and Scotland. This issue has been addressed in relation to jurors and is currently the subject of legal proceedings in relation to senior barristers. It would be appropriate to examine the police oath to see whether it needs to be modified.

### ***Accountability mechanisms***

The tri-partite arrangements for police accountability have not been satisfactory for two main reasons. Firstly, there has not been wide enough representation on the Police Authority. This is not entirely the fault of PANI as it has been given insufficient

powers to reach the credibility threshold. The second factor is that the arrangement simply does not amount to a mechanism to make the Chief Constable accountable and is therefore a contradiction in terms. The Chief Constable has become virtually a law unto himself. This is tied in with the seemingly elastic concept of operational independence, which, while important, must not result in an unaccountable chief constable.

There will need to be some more appropriate and representative body, properly empowered and representative of local people, to which the police are required to account for their actions. This may or may not emerge from PANI, but will need to be co-extensive with whatever geographical structure is decided upon for policing in Northern Ireland. CAJ has already published on this issue in an attempt to make what already exists more effective (see enclosed copy of pamphlet on police accountability). If, however, the opportunity for other alternatives now exists, we would like to see a more democratic and participative means of selecting members of the body. Members of all political parties should be able to propose members. Representatives of the voluntary sector, industry and the trade union movement should also sit on the body. Making appointment subject only to the Secretary of State is problematic. The criteria set down in the **Framework Document** for measuring community acceptability for state institutions are a useful benchmark for whatever body and appointment procedure is adopted in its place. In particular Paras 18 and 19 of the Joint Document state:

*"18. [The governments] acknowledge the need for new arrangements and structures to reflect the reality of diverse aspirations, to reconcile as fully as possible the rights of both traditions, and to promote co-operation between them, so as to foster the process of developing agreement and consensus between all the people of Ireland.*

*"19. They agree that future arrangements relating to Northern Ireland and Northern Ireland's wider relationships, should respect the full and equal legitimacy and worth of the identity, sense of allegiance, aspiration and ethos of both the unionist and nationalist communities there. Consequently both Governments commit themselves to the principle that institutions and arrangements in Northern Ireland and North/South institutions should afford both communities secure and satisfactory political, administrative and symbolic expression and protection."*

The other key concern is what areas it will be open to such a Police Authority to have responsibility for and into which they can inquire. In this regard we refer you to our response to the government's consultative document last year (see enclosed copy) where we insist that security policy must not be left simply to the Chief Constable on grounds of operational independence. We insist that the Chief Constable must be seen to be accountable to the Authority, though clearly it is to be hoped that good working relationships will reduce confrontation to a minimum.

Operational independence must be re-interpreted. We do not envisage the Authority having an input into day to day minutiae or what happens to a particular officer in a particular street at a particular time of the day or night. We do insist, however, that

the Authority should be concerned with major questions such as the human rights implications of policy, safeguards during police detention, the use of informers, the rules governing the use of force and the maintenance of specialised units. It should also reserve the right to ask for a report on particularly contentious incidents or on the policing of anticipated events and be able to assess whether management structures responded appropriately and sensitively. We doubt whether there will ever be an occasion where the Chief Constable should be able to invoke national security or operational independence when asked for information by a properly functioning Authority body.

As well as such an overall body, we would like to see the establishment of community policing councils. Such fora must not be along the lines of the existing police liaison committees which have almost no power, although a function of any new body could be liaison. Any forum must be able to ask awkward questions and receive truthful answers upon which it can then act. Unless this happens local people will regard these as talking shops and confidence will crumble.

The geographical extent of such councils is a problematic issue and will depend to some extent on which model is agreed for the new policing service/s. Councils should be able to make reports to the Authority body in event of their being dissatisfied with particular aspects of local policing. Consideration will have to be given to achieving a representative cross-section of the community in the make-up of these councils. Once again, the Framework Document criteria represent important benchmarks in assessing how membership will be established.

For your information, we enclose a copy of our pamphlet, written some years ago, on Police Consultation with the Community.

### ***Representativeness***

One reason why the RUC is said by some to be an unacceptable force is that, as already shown, it is not seen as sufficiently representative of the community it polices. While it is not necessary to require the police to contain exactly the same proportion of different types of people as the population as a whole, it is nevertheless important that there not be a gross imbalance in those proportions. Even if such an imbalance occurs unintentionally, efforts should be made to redress it for at least two reasons.

The first is that unless the police service is broadly representative of the types of people being policed it will inevitably tend not to win the confidence - no matter how good the training given to the officers or how professional the service rendered by them - of the types of people who are under-represented. The second reason is that if the police service itself consists of a variety of types of people there is a greater likelihood that its own internal arrangements, as well as the processes it uses for making decisions affecting people outside the service, will be more thoroughly imbued with tolerance for alternative points of view.

If we agree that the police service should be representative the next question is,

representative of whom? What are the different "types" of people who need to be more or less proportionally represented? The answer must surely be that if the policing functions impact differentially on types of people then it is those types of people who need to be represented. Thus, in Northern Ireland as in every other society, the policing functions impact differentially on men and women: for example, most crimes are committed by men rather than by women, women are frequently the target of criminal conduct aimed at them by men, and the needs of women detainees are sometimes different from those of their male counterparts. The CAJ believes that in Northern Ireland people who are perceived to be members of ethnic minorities are also treated differently by the police system. It follows that we believe the police service in Northern Ireland should have sufficient women and sufficient members of ethnic minorities to ensure that the needs of those groups are at all times adequately appreciated by the service.

In addition to gender and race, the factors of religion and political belief also result in differential policing in Northern Ireland. It is a fact of life that both before and during the Troubles the Catholic nationalist population experienced policing in a significantly different fashion from the Protestant unionist community.

As religion and political belief have such important roles in Northern Ireland, it is essential that the membership of the police service at all levels and ranks roughly reflects the religious and political composition of the society. There are several reasons why the RUC was for many years not representative in this sense but at this juncture it is not necessary to determine whether chief amongst them was the fear instilled by IRA assassinations of Catholic officers or the disenchantment of potential Catholic recruits with RUC policies and practices. For the future, neither of these reasons should be allowed to have any effect whatsoever on Catholic membership rates.

The police service should not blanch at the suggestion that amongst its officers there should be significant numbers whose political beliefs are that a united Ireland would be preferable to a partitioned Ireland. Individual officers should be allowed to hold whatever political views they like so long as those views do not interfere with their own policing powers and discretion. Proper training should ensure that personal preferences - of whatever nature, whether political, social or sexual - do not lead an officer to act in a biased fashion. This is because the chief function of the police is to uphold the law and the law must be applied even-handedly across the board in all situations. Operational decisions, and policing policy decisions, must also always be taken with even-handedness in mind. In this respect the government's own Policy Appraisal and Fair Treatment (PAFT) Guidelines - which CAJ largely welcomes - should be applied as much to the law enforcement function as it does to other executive functions. Furthermore, a definite time-scale should be established in order to assess realistically how the imbalance is being addressed. Without goals and timetables, a stated commitment to balanced representation can end up as rhetoric without substance.

We conclude, therefore, that any future police service for Northern Ireland should have sufficient numbers of female, Catholic, gay/lesbian and ethnic minority officers to ensure that the points of view of those sections of the community are fully taken

on board when policing decisions are being reached. We also believe that it is important for the membership of the service to be representative on a geographical basis. The present situation, whereby very few police officers live West of the Bann or in the Southern parts of Northern Ireland, is likely to distance the service from the specific needs and wishes of the people residing or working in those areas. To an extent this could be counteracted by efficient opinion-gathering and consultation at local level, but the risk of misunderstanding would still be high. As a matter of general principle it is right that to a large extent people should be policed by officers who live and work amongst them.

## ***Eligibility***

Some would argue that if the police service is to be truly representative of society in Northern Ireland it should in future have its fair share of ex-paramilitaries among the ranks. Others would balk at the very idea.

CAJ believes that the same principle should be applied on this issue as on other issues of eligibility. A person should be excluded from eligibility only if he or she cannot demonstrate an allegiance to the values and goals of the police service he or she wishes to join; those values and goals - the service's Mission Statement - must themselves be publicly agreed and articulated in advance of the re-establishment of the service.

One of the central goals of any police service must be the prevention and detection of crime. No-one could seriously argue that people who believe in the acceptability of criminal behaviour should be permitted to join the very service which exists to counteract such behaviour. However, only a small proportion of the people who have criminal convictions against their name are people who intend, or are even likely, to re-offend. The law itself recognises, through the Rehabilitation of Offenders legislation, that as time goes on a person's convictions should become "spent", that they can in effect be completely wiped from the record so that anyone alleging that the conviction still subsists may be sued for defamation of character.

But the Rehabilitation of Offenders legislation does not apply to sentences which are longer than 30 months: these convictions can never become spent. Nor does it apply whenever a person applies for certain categories of employment, there being a recognition that, for example, persons employed to work with children should have to disclose whether they have any previous convictions. At present one of the professions enjoying this blanket immunity from the legislation is the police ("the office of constable"). Presumably the justification for this is that it would be too risky to allow ex-prisoners to have access to information about police procedures which they might then try to make personal use of or pass on to former accomplices. But no information is in the public domain concerning the extent to which the RUC has up to now been prepared, having obtained information about a candidate's previous convictions, to allow exceptions to the general rule and recruit such a person. Presumably there are already a few police officers with minor convictions against their name for crimes committed many years previously.

CAJ maintains that an absolute bar on persons with a previous conviction joining the police service is not sustainable. Eligibility should turn on the nature of the crime for which the person was convicted, the circumstances surrounding the commission of the crime, the time which has elapsed since the conviction was imposed and the behaviour of the person during that time. As regards the nature of the crime, some official recognition should be given to the fact that for a number of persons convicted of so-called "scheduled" offences during the past 22 years - those listed in the Emergency Provisions Acts - the reason for the offence committed in the first place was the existence of the campaign of violence associated with a particular political philosophy. In that sense the crimes could be said to be "politically motivated".

The authorities should not insist upon labelling all of these convicted persons as "ordinary criminals", since for one thing they were tried by an extraordinary court (without a jury) and under extraordinary procedures, all specially created to counter the politically motivated campaign of violence. We do not go so far as to say that political motivation for a crime is a reason for not punishing the perpetrator, merely that it should not automatically be a reason for disqualifying that person from future membership of the police service.

In theory there are no offences for which a conviction should automatically disqualify a person from eligibility for the RUC: even convictions for murder cover a multitude of different circumstances ranging from premeditated, deliberate and direct action to impetuous, accidental and peripheral involvement. We believe that criteria should be agreed and published concerning the factors that will be looked at to distinguish between those convictions that should disqualify a person for a specified time from subsequent service in the police (especially as there will be many other "deserving" candidates) and those which are not indicative of such an antipathy to the forces of law and order (however those forces are recruited or whatever the nature of the "state" within which they serve) that disqualification from membership is appropriate.

A final point relating to future recruitment concerns serving police officers. The **Declaration on the Police** passed by the Parliamentary Assembly of the Council of Europe (already referred to) states that it is "inappropriate for those who have committed violations of human rights while members of police forces, or those who have belonged to any police force that has been disbanded on account of inhumane practices, to be employed as policemen". This raises the question of officers who have a disciplinary record or who are suspected of being involved in human rights abuses but have escaped prosecution. CAJ has received complaints about individual officers whose alleged conduct would appear to be wholly inconsistent with a police service committed to community acceptability and respect for human rights.

Thought must be given to a screening programme which ensures that applicants with inappropriate past behaviour either face the consequences of their action or are dismissed. One method would follow the example of the reconstitution of the B Specials into the Ulster Defence Regiment. Every member of the former was sent an application form for the new regiment. This model would allow the establishment of criteria as mentioned above, one element of which would be an examination of service records including the number of complaints made against the officers



involved.

### ***Emergency law and special units***

The RUC should be willing to forego its reliance on current emergency laws. This law has created many opportunities for human rights abuses. Its nature is to provide the police with much greater discretion than ordinary law which also involves judicial scrutiny to a greater extent. It is suffused with a concern to make conviction more readily attainable than under ordinary law. It has also facilitated a stress on secret intelligence gathering rather than the investigation of crime. To this end, we would like to see the immediate closure of Castlereagh and the other holding centres, a call repeated recently by the UN Human Rights Committee which recommended that "the Castlereagh detention centre be closed as a matter of urgency." Note was also taken "of the government's own admission that conditions at the Castlereagh detention centre in Northern Ireland are unacceptable and concern is therefore expressed at the Government's admission that it has not decided definitively to close the facility." Henceforth, investigations should be carried out in PACE stations with the protections of electronic recording and the presence of legal advisors.

DMSUs and HMSUs should be abolished. Overwhelmingly, complaints of harassment and intimidation relate to these groups. They have also been the focus of controversy over various killings. Their culture appears to focus on aggression rather than consensual policing. There may be a role for individual members of these units in a new policing service but we have no doubt that extensive re-training will be necessary.

The role of Special Branch officers in interrogations and the recruitment and handling of informers has also given rise to many questionable activities. Many of them are the focus of complaints of ill-treatment during interrogation. We have concerns as to whether these officers will be able to make the conceptual leap to civilian policing.

### ***Arms***

Reliance on an armed police service should end. On two occasions this century a commitment to unarmed policing in Ireland has been expressed. Following the Civil War in the Free State, an unarmed Gardaí was established in very difficult circumstances. This ideal was held to. The Hunt Report similarly accepted that an unarmed RUC would be an appropriate model. Unfortunately, this policy did not survive. A speedy move to disarm would be an important indication that the police wish to adopt a less para-military role. A commitment not to resort to the use of plastic bullets in future would also be highly desirable.

## ***Size***

We do not accept that current woman/manpower levels are necessary to meet the policing needs of Northern Ireland. Including the reserve, there is currently around 1 police officer for every 115 persons. Available figures appear to indicate that a modern police service requires far fewer personnel in order efficiently to carry out its duties. Optimally, we would like to see new policing structures aim for a ratio of 1 to between 250 and 300 people. This would represent a reduction of 50% to 60%. A desire to maintain the current high levels of personnel would represent a yearning for the culture of massive resourcing, over-policing and coercion.

## ***Transparency***

A new police service will wish to establish much closer links with the community and become more transparent about its role, function and establishments. The RUC has attempted to improve its local contacts with some success through its community relations programmes. However, many of these exercises have resulted in controversy, with claims that attempts to portray the RUC as community police fails to address the lack of confidence they have engendered. Thus, in West Belfast, visits by the RUC to schools have led to some protests by parents and walk-outs. It is likely that such exercises will remain too controversial while political issues are unresolved.

A commitment to transparency will become evident in a move away from too great a reliance on intelligence-gathering, recruitment of informers and reliance on the catchall of national security or public interest to keep the lid on controversial incidents. In order to bridge the gap between the police and the community, we expect that a new police service will wish to dismantle the intimidating facades to police stations which have been erected as a protection against republican attack. We would envisage a greater role for the police in explaining how the law is put into practice in police stations and elsewhere. Consideration should be given to formal input into school curricula. Police station open days have recently been instituted in England and Wales to make a wider range of people aware of what they are there for and what safeguards operate for interviewing and detention. It must be emphasised that, if these ideas are limited to those who already accept the police they will not achieve anything. Furthermore, they will only be practicable if meaningful change is achieved in other areas covered in this submission.

## ***The complaints system***

Since its formation in 1981, CAJ has done a great deal of work on the issue of police complaints. We have produced four large-scale pamphlets on the topic (see enclosed copies) and have exhaustively publicised our views. We have conducted extensive international research and consulted with a large number of local and foreign interested parties.

Our long-standing recommendation is that no system for dealing with complaints against a police officer will ever gain a sufficient degree of public acceptance, as well as having a real prospect of detecting and dealing with wrongful conduct, unless the investigation of the complaint is conducted by someone other than another police officer. The UN Human Rights Committee appears to share this view when it notes that the current system lacks "sufficient credibility" and recommends the implementation of "transparently fair procedures for independent investigation of complaints." We think it is absolutely crucial that change should be made to the existing legislation on police complaints, the **Police (NI) Order 1987**, to ensure that the requisite degree of real independence is introduced into the system. We certainly do not think that the proposed **Police (Amendment)(NI) Order 1995** goes far enough in this regard. (see our enclosed response to the Order).

We also believe that the complaints system should be able to respond to patterns of complaint by initiating changes to policing practices. In addition the system should be more user-friendly and should make provision for facilitating the award of compensation to persons whose complaints are substantiated.

## CONCLUSION

The essential precondition for change is the recognition, especially on the part of the government and the RUC, that change is necessary. Although government and the RUC may have a heavy investment in the *status quo*, they must recognise that this is unacceptable to significant sections of the community. It will be impossible to achieve the ideal of policing by consent if this reality is not faced. On the other hand, if this need is faced and a commitment to change made then all must be open to ideas as to how that change occurs and what ultimate form a police service for Northern Ireland shall take. Government and the RUC should indicate their clear commitment to change as soon as possible.

The protection of human rights must be a cornerstone of any change. Measures must be put in place to ensure the respect of international human rights obligations at United Nations, Council of Europe and Organisation of Security and Co-operation in Europe level which the government has ratified. In addition, non-binding codes of practice, such as the **United Nations Code of Conduct for Law Enforcement Officials**, should be drawn upon in setting the legal and operational parameters for the new police service. However, all these are minimum standards and are at a high level of generality. They will not by themselves supply an adequate framework for policing in Northern Ireland.

The most controversial aspect of change is likely to be who is entrusted with bringing it about. Should the British government alone make changes, should it be the responsibility of both the British and Irish governments? Should all be left to the political talks or should something be decided earlier? One thing which is clear is that ultimately, while Northern Ireland remains part of the United Kingdom, only the United Kingdom government has the legal and political resources to effect change in policing in Northern Ireland. However, given the significance of the issue, we feel

that the close involvement of all parties to the negotiations and the Irish government in consultations on any changes sought is also most important. Without cross-community and cross-party input and support, the process is unlikely to be successful.

## AUGUST 1995