

The Committee on the Administration of Justice (CAJ)
45/47 Donegall Street, Belfast BT1 2FG
Tel: (01232) 232394 Fax: (01232) 246706



Submission by the
Committee on the Administration of Justice (CAJ)
on the
Police (NI) Bill
February 1998

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Introduction

The Committee on the Administration of Justice (CAJ) published in December 1997 the results of a major international comparative research project into policing, entitled **Human Rights on Duty: Principles for Better Policing - International Lessons for Northern Ireland**. In drawing extensively on international experience which might be of relevance to the debate about policing in Northern Ireland, the researchers interviewed senior police officers, police trainers, government officials, politicians, academics, oversight bodies and non-governmental organisations in a variety of countries. Particular study was made of the situation in Australia, Belgium, Canada, El Salvador, Netherlands, South Africa and Spain. The report looks at issues of representation, training, accountability, structures and the management of change. Its recommendations focus on how policing by consent (the objective of all democratic societies) can best be obtained and nurtured in Northern Ireland.

The report makes a number of recommendations about the principles that should underpin any future legislation on policing. The report concludes, on the basis of extensive international experience, that police legislation should, amongst other things:

- be informed by international law and specifically incorporate explicit reference to the international and domestic human rights standards relevant to policing;
- be introduced alongside a Bill of Rights because this will create the necessary legislative framework within which good policing can flourish;
- clearly define the remits of all those involved in providing policing with a view to ensuring effective accountability. This would require defining controversial and disputed concepts such as the Chief Constable's "operational independence"; having a statutory basis for the police disciplinary code; imposing a statutory requirement on the police and relevant agencies to consult effectively with the community served;
- be introduced alongside the removal of emergency powers which are in contravention of international human rights law and make impartial policing more not less difficult;

- include provision for an effective and credible police complaints/audit system and draw on good international expertise in these areas;
- require police officers to report any misconduct by colleagues;
- strengthen the role, representative nature, and accountability of civic oversight bodies;
- develop an enforceable contract between police and local communities which would include resources and a statutory responsibility on the police to consult effectively;
- include consideration of the need for the intelligence services also to be made more accountable, as has proved possible in other jurisdictions.

While the report did not propose any single ideal structural model for policing, it noted that any structural model proposed should be tested for its ability, among other things, to:

- put respect for human rights at the heart of the policing process;
- provide a police service which is civilian rather than military in philosophy, training, and practice;
- effectively harness the commitment of local people to providing safe, crime-free environments;
- keep decision making as close as possible to those being policed.

The rest of this submission will look at the specific proposals included in the Police (NI) Bill and comment on the different elements in some detail. However, it is important already to note at this stage that we believe an important opportunity to meet the objectives and challenges listed above has been missed in this draft. The draft legislation is a modest proposal which, if anything, increases police powers rather than renders them properly subject to civic and political oversight.

Despite the many painful setbacks, everyone hopes that we are nevertheless at a key point of Northern Ireland's history, when there could be some transition to a more normal and democratic society. Accordingly, it is vital that people in leadership positions recognise that policing has to change radically to adapt from the abnormal role it has played to date. Imagination and creativity is needed inside and outside the police.

The over-riding lesson from all the jurisdictions studied was the central importance of political will in either preventing or facilitating successful change. Parliament, in this debate on policing, has a unique opportunity to contribute positively to the peace-building process should it choose to do so. We hope that the following commentary will be of some use in this regard.



Throughout the text of the legislation, it is strongly recommended that non-sexist language be used.

Article 2 (1) and (2):

These articles address the issue of the future name of the institution. To respect the sensitivities of some, the titles Royal Ulster Constabulary and the Royal Ulster Constabulary Reserve have been maintained; to comply with comments made by the Police Authority and others, it is proposed that the overall name of the service should be changed to the Northern Ireland Police Service, and thus encompass within this title reference to police officers, traffic wardens and civilian staff working for the Police Authority.

Clearly while this issue does not really go to the heart of the matter – the problem is not so much what the police is called but what it does – it is nevertheless a highly emotive issue. It is interesting, therefore, to draw upon international analogies and see how experience elsewhere has shown the value of name changes in any endeavour to fundamentally change the image or practices of an institution. While symbolic changes of this kind are clearly insufficient, they are important in that they give a clear signal of a break with the past and the need for change. It is therefore unfortunate to fudge the issue in the way the legislation proposes. International experience suggests that, despite different attitudes in the past to the institutions of policing, many people can agree on the value, in a changed political climate, of signalling a new departure.

The terminology used in the proposed legislation also makes a clear distinction between a police force (ie police officers) and a service (police officers and others). The seeming dichotomy between the two 'missions' and 'branches' is, we believe, unhelpful. Accordingly, it is recommended that **articles 1 and 2 be replaced with the following:**

The Police Authority shall secure the maintenance of the police service for Northern Ireland which shall consist of a single service known as the Northern Ireland Police Service. This Service will comprise police officers, reserve officers, traffic wardens, and the civilian staff of the Police Authority.

and the following paragraphs should be renumbered accordingly. See also final paragraph about the need for broad public debate of such issues.

Article 2(3):

If the police are to be effectively accountable, a Police Authority or Board charged with democratic oversight must be created which has more powers than the current Police Authority for Northern Ireland. In the past, the Police Authority has not considered it appropriate to investigate or sometimes even comment upon allegations of collusion, abuse of police powers, or "security related" issues (the latter can be and has been interpreted very widely in the NI context). "Efficiency" and "effectiveness" can be understood in a narrow technical sense. It would therefore be preferable to clarify the situation, and give the Authority a more wide-ranging oversight role, by amending the article as follows:

The Police Authority shall determine the policies and general practices of the police and ensure that the Northern Ireland Police Service efficiently and effectively implements these policies and practices.

In line with the discussion above about a name-change for the police, there may be a good argument for changing the name of the Police Authority to similarly represent a break with the past? It may be worth clarifying here that, whilst many of the changes proposed below seek to give more authority to a police authority in any tripartite relationship with the Chief Constable and the Secretary of State, this is because, in principle, the CAJ believes that a democratic oversight body must play an important role of this kind. The proposed amendments should not be understood to endorse the work of the Police Authority as it currently operates.

Article 2(5):

For clarity about the extent of the Police Authority's discretion in the matter of policing, the following addition is proposed:

2.5 *In discharging its functions the Police Authority shall have regard to –*

(a) *international human rights standards;*

and renumber the following sub-clauses accordingly.

Article 5:

It should be a clear obligation on the Police Authority to ensure that any equipment used by the police, particularly in public order situations, complies with international human rights standards, good international practice, and basic safety conditions (in less than six months - two batches of defective plastic bullets have had to be withdrawn after being used against civilians). There has been much controversy over the use of plastic bullets by the RUC with persistent allegations of too ready a resort to this weapon (which is not used anywhere else in the UK despite serious public disorder). Concerns have also arisen in connection with its possibly sectarian use: of the 6006 plastic bullets fired in one week in 1996, eight times as many were fired at nationalists as unionists, though neither the extent of property damage nor the number of attacks on the police provided an easy explanation for this discrepancy. Accordingly, while we recommend no specific amendment to article 5, we suggest that article 40 (see on), which gives more detailed regulations about the acquiring of equipment, reflect this discipline.

Article 7:

It is extremely important that the Police Authority find effective mechanisms to secure the views of the public about policing. In recent times, it has increasingly used extensive public opinion surveys and this year, for the first time, has begun to hold public meetings. It is important, for example, that statistics about public attitudes should be broken down on a class and urban/rural basis, because research suggests that there are major attitudinal differences on these grounds. It may be unhelpful to obfuscate serious alienation within

certain social groups by looking at these only in broadly generalised statistics. The controversial nature of policing, the sharply divided public attitudes to policing, and the disagreements which surround PANI statements about those attitudes, all suggest that a much more systematic effort at accountability is required.

The use of the District Council network, while welcome, is quite insufficient. Accordingly, we propose the addition to article 7(2) of -

- (b) *consult with any bodies specifically established at local level to liaise between the police and the local community.*

and, make the necessary consequent amendments:

- 7.6. *A District Council, or local community group, may make arrangements for enabling questions on the discharge of the functions of the Police Authority to be put for answer by a person nominated by the Police Authority for that purpose.*
- 7.7. *On being given reasonable notice of a meeting at which questions on the discharge of the Authority's functions are to be put, the Police Authority shall use its best endeavours to be represented at the meeting to answer those questions.*

If this consultative exercise is to have any validity, reporting-back is essential. We propose:

- 7.8. *The Police Authority shall within a reasonable period report on action taken in pursuance of the questions raised.*

There is currently a consultation exercise underway about the nature of local structures for greater police accountability. The legislation must ensure that the police and any central police authority have the duty to consult with such local police consultative fora as are established and that they have the duty to respond to questions about any aspect of policing which affects such fora.

Article 10:

This article appears to transfer financial responsibility to the Chief Constable from the Police Authority, in that the Police Authority submits to the Secretary of State either the draft budget the Chief Constable submitted to it for that purpose, or that draft with such amendments as have been a matter for consultation with the Chief Constable (article 10.3). Furthermore, the Police Authority must place monies received for police purposes at the disposal of the Chief Constable (10.5). The authority conferred on the Chief Constable thereby suggests that a potentially very powerful tool of control may be being withdrawn from the Police Authority. While we accept that PANI has not used this financial tool much in exercising its wider oversight role, this is in our opinion a criticism of PANI's ineffectiveness to date, rather than a reason to withdraw this power. The proposed change serves to undermine the potential authority of PANI further, and there is no obvious attempt to replace this reduction in authority by increased authority in other areas. It is the clearest signal that the Chief Constable, and the police, are to have their evident power within the tripartite structure (alongside PANI and the Secretary of State) enhanced rather than diminished.

While it is obvious that this proposal to transfer more budgetary authority to the Chief Constable in part merely reflects similar changes in England and Wales, CAJ believes that such measures overlook the particularities of Northern Ireland. Policing in Northern Ireland suffers an enormous crisis of confidence and it is totally counter-productive to decrease the tools by which effective democratic accountability can be exercised over the Chief Constable.

CAJ opposes any dilution of the Police Authority's budgetary powers.

Article 11:

One could well imagine that in a society like Northern Ireland the provision of special police services, and the charging thereof, or the failure to provide such services, could become matters of some controversy. It is vital that the police are both impartial and seen to be impartial, so that greater transparency in these matters is important. We recommend the addition:

"The Chief Constable.... subject to the arrangement being in conformity with regulations the Police Authority shall establish to govern such services and subject to the payment of...

and then note elsewhere under obligations of the Police Authority the establishment of such arrangements.

Article 14:

To strengthen the political oversight responsibility for policing, we propose :

14.1 The Secretary of State shall (not may)....

This will require consequential amendments to articles 14.2 and 14.4, with removal of the word 'any' in both places.

While very welcome, the establishment of objectives and performance targets in advance have little significance if they are not the subject of retrospective monitoring and reporting. Accordingly, the following amendment is proposed:

New 14.5: The Secretary of State shall periodically report to Parliament on the extent to which the objectives and performance targets previously set have been met.

and re-number the next article consequently. A related point is made in reference to reporting after the event in the proposed amendment to article 37.

Article 15:

CAJ believes that there is a need for consultation about policing to extend beyond the Chief Constable and the District Councils, and that is why we have already proposed an

amendment to article 7. At this point in the Bill it is not clear, for example, why the Police Authority, cannot as the Secretary of State can do, "consult such other persons as he thinks fit" (article 14.2)? The Authority certainly should be obliged to consult with community based groups with particular expertise in the area of policing. We therefore reassert the importance of amending article 7, and suggest that in article 15(3) the text should be amended to read:

15.3 *Before determining objectives under this section, the Police Authority shall*

- (a) *consult the Chief Constable;*
- (b) *consult any other persons the Authority thinks fit; and*
- (c) *consider any views obtained by the Authority in accordance with the arrangements made under section 7.*

Articles 14 – 17 inclusive

This whole section of the Bill is supposed to improve the accountability of policing by establishing a clear framework for the setting of objectives and performance targets, and the establishment of strategic plans. CAJ found this section somewhat confused and we may therefore not have understood the proposals well enough. It would appear that the Secretary of State is to set objectives and performance targets for a 3-5 year timeframe (article 14) and the Chief Constable is to issue a strategic policing plan for a similar time period (article 16). The Police Authority, however, is to determine policing objectives and performance targets (article 15) and issue a policing plan (article 17) on an annual cycle. If this is the correct interpretation, it would appear to offer the Police Authority a limited consultative role only as regards longer-term policing objectives. Given our contention that democratic oversight mechanisms such as a police authority should have its powers enhanced rather than curtailed, any emphasis on short term planning mechanisms to the exclusion of longer term policy oversight is misguided.

Without more certainty as to the intent of the framers of the legislation, it is difficult to propose specific amendments, though one could imagine that it might be appropriate to give the responsibilities now accorded to the Secretary of State in articles 14 and 16 to a new and revamped Police Authority instead. It is certainly important that the Chief Constable be obliged to get Police Authority approval of his/her strategic policing plan. The current formulation does little other than oblige him/her to consult the Police Authority.

Article 18:

According to the United Nations, law enforcement officers have as a primary duty the upholding of human rights. As a senior member of the UN family (as one of its founders and still a member of the Security Council), as an active proponent of the importance of human rights world-wide (see Robin Cook's emphasis on human rights in foreign policy, and the cross-party parliamentary human rights group), it would be an important, as well as a symbolic, commitment to the importance of human rights if specific reference were made to this mission in the current Police Bill. We recommend the following amendments:

18.1 (a) *to protect the human rights of all without distinction in accordance with the UK's obligations under international human rights law*

(b) *to uphold the rule of law;*

and re-number the other articles accordingly.

Article 19:

This article, given the importance frequently vested in the concept of the Chief Constable's "operational autonomy", lies at the centre of the policing debate. While respecting the importance of not making the police subject to partisan political control, the wide-ranging authority vested in the Chief Constable under article 19 can be, and has been, subject to abuse. Thus successive Secretaries of State have made it quite clear that decisions, for example, to allow marches, or to refuse their passage, were purely "operational" issues. As such, they were felt to lie clearly within the purview of the Chief Constable, despite the fact that the political ramifications of such decisions are very clear. Similarly the Police Authority has used the operational autonomy of the Chief Constable to justify their lack of rigorous examination, even in retrospect, of such decisions. While international experience in this domain cannot be "imported" simplistically, it is obvious from an examination of other jurisdictions that it is this issue which is at the nexus of the debate about effective police accountability. Accordingly, international experience argues that the legislation should define clearly what is intended, and how widely this power should be interpreted.

CAJ proposes:

19.1 *Police officers and reserve officers shall be under the routine direction and control of the Chief Constable provided that he/she shall be accountable to the Secretary of State and the Police Authority for his/her actions and omissions.*

Article 21 (3a & b):

Again, while recognising the need not to allow the Chief Constable's tenure to be dependent on the political whim of any particular administration, it is quite unacceptable that no-one has the authority to sack a Chief Constable if he or she is clearly in dereliction of duty in upholding the human rights and other standards expected of the post. CAJ proposes:

21.1 *The Police Authority shall be responsible, subject to the approval of the Secretary of State, for appointing the Chief Constable. The Chief Constable will hold office according to the terms of an employment contract and may be removed from office for sufficient cause by the Police Authority, with the approval of the Secretary of State.*

This will require consequential amendments in 21.3, and clearly provision would have to be made in the legislation and/or in regulations to ensure that the Chief Constable is given a fair hearing and has a right of appeal.

Article 25:

Again, it is not clear to CAJ why the power to make regulations is held by the Secretary of State rather than the Police Authority? The power to make regulations is surely an important one in determining the relationship of the Chief Constable to the Police Authority. It is particularly surprising that the Police Authority and the Police Association are treated on a par in terms of consultation. Moreover, there are important exceptions to even this consultation. The exclusion of article 21 for example (ie "the issue, use and return of equipment") might be understood to mean that the Secretary of State is explicitly excluded from consulting the Police Authority about the use of plastic bullets/CS gas or other such controversial equipment.

Article 25.1: We propose that "Secretary of State" be replaced by "Police Authority" and any consequential amendments made accordingly.

Article 26:

Again, in a move to change and strengthen the position of any future Police Authority vis-à-vis other parts of the tripartite structure, the article should be amended. The "*Secretary of State*" should be replaced by the "*Police Authority*"

Article 36:

To conform with changes proposed elsewhere to the text where it was thought insufficient to refer to "efficiency" and "effectiveness" without relating this to the overall mission of the police service, this article should be amended to read:

The Secretary of State shall exercise his/her powers under this Act in such manner and to such extent as appears to him/her to be best calculated to promote the efficiency and effectiveness of the Northern Ireland Police Service in carrying out the responsibilities delineated in article 18.

Article 37 :

To make the principles of policing in Northern Ireland subject to more democratic control, the following amendments should be made:

37.1*the Secretary of State shall issue a statement(not may).*

37.2 *The Secretary of State shall publish the statement of principles issued under this section by laying it before both Houses of Parliament.*

Article 38 (1):

“May” should be amended to “shall”.

Article 39 (1):

“May” should be amended to “shall”.

Article 40:

Given the controversy referred to earlier with regard to the use of plastic bullets, and the necessity for law enforcement institutions to comply with international human rights standards, it would be inappropriate to accept that the “efficiency” and “effectiveness” of certain equipment are sufficient criteria. Certain weapons are unacceptable under international law and therefore this article should make a clear reference back to amended article 18 where the general duties of police officers are placed within the necessary human rights framework. The following amendment is proposed:

40.1 *The Secretary of State... of a specified description, if he/she is satisfied that this is in conformity with article 18 and if he/she considers....*

Article 41:

It is unclear to us why 41 (1) allows but does not oblige the Secretary of State to appoint Inspectors of Constabulary (“may”), but 42.2 envisages that the Inspectors “shall” annually inspect. Is this intended to suggest that the Secretary of State is in effect obliged to appoint Inspectors, or does it suggest that someone other than the Secretary of State may also make such appointments?

Article 42:

In CAJ’s report **Human Rights on Duty** we comment on the positive experiences of other jurisdictions which have brought the intelligence services under increasingly effective democratic control. We therefore welcome the reference to the National Criminal Intelligence Services in this legislation. However, it is far from clear to us why such limited references are needed. Given the discretionary authority that the Secretary of State is allowed to retain in 42.2, we believe the following amendment should be made:

42.7 *Subsections 1-6 shall apply in...*

We believe, nevertheless, that the discretion granted to the Secretary of State is too great when it allows material “prejudicial to public order” to be excluded from publication.

Article 42.2(a) should be amended to read:

42.2(a) would be against the interests of national security; or

Article 44:

To emphasise the value of transparency and accountability in all police work, we propose that 44.2 be amended as follows:

An inquiry under this section shall be held in public unless in his/her opinion this would be against the interests of national security.

Article 45:

The value of policing research bodies was so obvious in all of the jurisdictions CAJ visited, we would propose making this a duty. Furthermore, we propose that this be a duty imposed on the Police Authority rather than the Secretary of State. Accordingly we propose the following amendment:

45.1 The Police Authority shall set up....

And consequently this clause will need to be moved from this section on “powers of the Secretary of State” and re-numbered.

Articles 47 - 49

Article 47.2 is a new (and interesting) addition, whereby the Police Authority is expected to comment explicitly on the issue of the representativeness of the police service. While a welcome addition to the responsibility of the Police Authority, it may suggest that the under-representation of certain groups within society (particularly Catholics and nationalists) is the single defining problem for the RUC as currently constituted. The problems range much more widely than that.

We were also unsure of the significance of the word “force” in the original text. Does the Police Authority only report on the representativeness of police officers, or should they not also report on the composition of the different groups of employees they recruit – police officers, civilians, traffic wardens etc.

We would therefore propose the following amendments:

47.2b an assessment -

- (i) of the extent to which the membership of the police service is representative of the community in Northern Ireland;*

- (ii) *of the extent to which the design and delivery of training to the police meets the objectives established for the institution by the policing plan;*
- (iii) *of the extent to which the police have met the principles established for policing by the Secretary of State and laid before parliament in accordance with section 37.*

It should be noted, however, that extending the remit of such reports has only a limited value if the assessments then made are not in turn subject to public scrutiny. For that reason, the reporting mechanisms proposed in this section overall are, in our opinion, far from satisfactory. Thus annual reports by the Police Authority are to be published “in such a manner as appears to it to be appropriate” and sent to the Secretary of State. There appears to be no requirement on the Authority to place these reports in the public domain, and the Secretary of State’s powers in this realm extend only to those reports he/she has asked the Authority to prepare (47.6).

On the other hand, the Chief Constable’s annual report to the Police Authority (mentioned initially in article 48.1), must be submitted simultaneously to the Secretary of State, and the Secretary of State is under an obligation to lay this report before both Houses of Parliament (articles 49.4 and 49.5). This will mean that the Chief Constable’s “general report on the policing of Northern Ireland during that year” is laid before parliament, whereas no similar mechanism is made available to the Police Authority (or the Secretary of State’s) assessment of that report. At the very least, the assessment of policing which the Police Authority is expected to produce (47.2) should be submitted with the Chief Constable’s report to the Secretary of State and the Houses of Parliament. Otherwise, one must question the value of any scrutiny function afforded by the Police Authority.

Accordingly, the following amendment is proposed:

- 49.5 *The Secretary of State shall lay before both Houses of Parliament every report submitted to him/her under subsection (4), and shall append thereto the Police Authority report covering the same period and submitted in accordance with article 47.3b.*

COMPLAINTS AND DISCIPLINE

Introduction:

There is widespread support for an independent system of police complaints. This is in the interests of the police as well as complainants. Having campaigned for many years to this end, CAJ welcomes very warmly the thrust of the Bill in this regard. We do fear, however, that in certain key regards the draft legislation does not mirror the proposals arising from Dr Hayes' study. Crucial amendments must be made if the legislation is to succeed in securing real independence, and consequently genuine credibility.

Just by way of introduction, we should note that there was great unanimity of view between the findings of CAJ's international research and Dr Hayes' regarding the building-blocks of an effective police complaints system:

- any body set up must be completely independent of government, political influence, and of the police. All members must have the degree of credibility and integrity necessary to win/restore confidence and to underpin this principle of independence there must be a guaranteed and sufficient budget independently controlled;
- the Ombudsoffice needs to be able to investigate the whole process from start to finish; needs access to the same information available to police and to be in a position to deal with any police obstruction that might occur;
- there needs to be widespread public dissemination of information about this mechanism for redress
- the complaints body must have the power to decide what is/is not a complaint; must have power to investigate incidents of its own volition even in the absence of a complaint; and the investigators employed must be independent of the police (though there remains some argument as to whether the team benefits from some former or seconded police as well as civilians);
- the system must be easily accessible both to police and public
- the standard of proof necessary to substantiate a complaint should be "the balance of probabilities" (though for the purpose of any criminal proceedings arising out of the same incident, the standard would become that of "beyond a reasonable doubt";
- a criminal prosecution should not be an automatic bar to internal discipline;
- any appeals procedure should be independent, transparent, and respect the rights of officers and complainant alike;
- the system should not be overly legalistic and the appropriate use of Alternative Dispute Resolution should be encouraged, though care must be taken to avoid particular officers or practices wrongly escaping scrutiny;
- the body should have the power to recommend appropriate action both in respect of individual officers and police systems, and be provided with some sanction if recommendations go unheeded;
- the body should have a power to issue special reports, make recommendations, and take other steps to raise public and government awareness of relevant issues;
- the complaints body should have a research arm so as to be pro-active and track trends;
- audit and advocacy functions need to be integrated into its work
- the complaints body must be fully integrated into broader accountability mechanisms, so complaints can be used by other oversight structures to learn from the past and make policy accordingly.

In an attempt to meet these different criteria, we note below a number of improvements which could be made to the draft legislation. Where page references are made in brackets, these refer to the Hayes' report: *A Police Ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*.

Article 52(1):

Dr Hayes in his report emphasised the need for the complaints system to be as open and accessible as possible suggesting that the ways in which a complaint could be lodged should be extended, a freephone number established, and neutral venues be used as much as possible for interviews (see p.85). It should therefore be made a responsibility of the Ombudsman to make him/herself amenable to receiving complaints from different quarters (District Councillors, Citizen Advice Bureaux offices etc).

Thus we propose a new clause:

52.1 c *and the Ombudsman shall have a duty to regularly apprise the public of this fact by publicising the existence of his/her office, and the procedures by which a complaint can be lodged.*

Article 52(3 on) :

The article makes it clear that the Ombudsman will only deal with individual complaints relating to individual police officers. This raises a number of concerns.

Firstly, there are many complaints that relate to the overall "direction and control of the police force by the Chief Constable". We draw parliament's attention to, amongst other things, various reports by UN bodies and reputable international human rights organisations raising concerns about the use of plastic bullets, allegations of police collusion, methods of interrogation, the failure of police officers to wear identification numbers in public order situations etc. These complaints are properly the responsibility of the Chief Constable, subject to the authority of the Secretary of State and the Police Authority. However, the creation of an independent Ombudsman provides yet a further important mechanism of control that could lend great credibility to the oversight process.

Secondly, there are many instances where the identity of the individual officer cannot be established (particularly, of course, when ID numbers are not systematically displayed) and/or a focus on an individual complainant's testimony would trivialise what is really a policy concern. For example, CAJ in seeking to get satisfactory answers to concerns at the failure of officers to wear IDs during various public order situations in the summer of 1997, were asked to identify the officers concerned and/or identify the individual observers who claimed they had seen officers without IDs. Yet our concerns would not have been assuaged if the police interviewed individual CAJ observers and explained (if they could) the specific circumstances involved, nor if individual officers were identified and disciplined. It seems

more important to receive some reassurance that all possible steps would be taken to ensure that this problem would not arise again. The decision by the Chief Constable to send a reminder about ID display to all officers was very welcome, yet a short while later observers again saw officers without individual IDs displayed. The Ombudsman must have the possibility to intervene in such matters.

Dr Hayes addressed the issue of complaints about operational policy and allowed that they might best be dealt with by the Chief Constable. Nevertheless, he called for the Ombudsman to be able to comment on such issues, and he emphasised the importance of the Chief Constable being answerable to the Police Authority in such matters (see p.88). In order to comply with his (and CAJ) concerns, we recommend the following amendments be made:

52.5 *Subsection (4) does not apply to a complaint in so far as it relates to the direction and control of the police force by the Chief Constable. The responsibility for action in the matter of such complaints lies with the Chief Constable, subject to the authority of the Police Authority. The Chief Constable has a duty to report to the Ombudsman on the receipt of such complaints and to satisfy him/her that any such complaints have been dealt with satisfactorily.*

52.7 *This should be deleted*

Article 53:

We support Dr Hayes' arguments for encouraging informal resolution procedures where possible. Dr Hayes in his report, however, did note that care should be taken to avoid any abuses going undetected by the use of this route. He suggested (recommendation 19.22, p.85) that the system be monitored in a variety of ways.

Specific amendments are therefore proposed below. The first amendment proposes an addition preventing an individual officer escaping scrutiny when he/she has been the subject of a number of complaints, albeit of a relatively minor nature (53.2). The second (53.3) ensures that the Ombudsman is kept apprised of action taken, with a view to being satisfied that this procedure was appropriately applied.

53.2c *and it is not one of a number of similar complaints made against the same officer suggesting a pattern which may require investigation.*

53.3 *If it appears to the Ombudsman that the complaint is suitable for informal resolution, s/he shall refer the complaint to the appropriate disciplinary authority and shall be kept informed of action taken in pursuance of the complaint.*

Article 54:

CAJ believes that article 54 as currently drafted seriously risks undermining the concept of a completely independent complaints system. While, one could argue that it is the

Ombudsman who decides the investigative route to be pursued, it leaves it entirely to the discretion of the Ombudsman, should he or she choose to do so, to delegate the vast majority of complaints to the police to investigate. If this practice were to develop, particularly in the initial phases of the new complaints system, the whole project to develop a credible complaints system will prove to be still-born.

The following amendments are proposed:

54.1 *If (a)..... or (b), the complaint shall be formally investigated.*

There are a number of consequential deletions – for example, 54.2, 54.3, 57 & 64.2g etc.

Article 55:

International comparisons highlight the importance of the Ombudsman having “own motion” powers, and we therefore particularly welcome article 55 (6).

Article 57:

This should be completely deleted (see comments under article 54).

Article 59 (4):

It is not clear why senior officers should be excluded from these provisions and where the disciplinary procedures governing them figure? Hayes recommended, and this appears to be accepted in the draft legislation, that all complaints, whether made against senior or junior officers, should be investigated in similar fashion. There is therefore no obvious reason for making different provisions for the disciplining of senior and junior officers.

Article 64:

As noted earlier (see article 25) the power of making regulations should lie with the Police Authority. This also seems an appropriate place to highlight the importance of creating regulations to cover the standard of proof required in complaints cases. This issue has been at the heart of the debate about a credible complaints system, and the specific proposals regarding the requisite standard made by Dr Hayes and others should be reflected in the legislation. Accordingly, CAJ proposes the following amendment to ensure that regulations are established to address this important issue:

New 64.2i *procedures covering the requisite standard of proof in complaints cases; and*
renumber the following articles consequentially.

Article 68:

We believe that this article is highly undesirable as currently drafted since “disaffection” can be interpreted very widely. If, for example, CAJ were found responsible for writing accurate but critical reports about the state of policing, and, as a result, members of the police service were to agitate for change, could the organisation be accused of causing disaffection? This article should be deleted in its entirety or very clear and restrictive definitions given as to the situations which are meant to be covered by this provision.

Schedule 2

Most of the focus on the oath has been on the issue of allegiance. Our concern with the current formulation is that it may unduly focus attention on the constable’s individual obligations within the domestic framework. Just as it seems to us appropriate to make “respect for human rights” an explicit function of the police service overall (see proposed amendment to article 18) there is a good argument for incorporating this responsibility in the individual constable’s oath. Such an addition reinforces in the mind of every individual member of the police service the fact that he/she has a personal and professional responsibility which reflects the commitment entered into by the UK under its international human rights obligations.

Schedule 3

Article 1

CAJ believes that the legislation covering the NI Ombudsman is a useful model to follow in the matter of the tenure of the Police Ombudsman. Thus, following this model, we propose that article 1.7 be amended to read:

- 1.7 *The Ombudsman shall hold office during good behaviour. The Secretary of State may call upon the Ombudsman to retire if satisfied that the Ombudsman has –*
- (i) been convicted of a criminal offence;*
 - (ii) become bankrupt or made a composition or arrangement with his creditors;*
 - (iii) or is unfit on medical grounds.*

Assistance by members of the police force (articles 5-7)

Central to the Hayes report was the separation of authority and investigative powers as between the Ombudsman and the police. Here it is proposed to undercut the principle

entirely by saying that the Ombudsman “shall” enter into an arrangement with the Chief Constable to engage servicing police officers to his/her staff (5.1); other clauses allow the Secretary of State to impose certain methods of working on the Ombudsman.

Several articles must be amended if the principle of independence is to have any meaning.

The following amendments should be made:

5.1 *The Ombudsman may enter into an arrangement with the Chief Constable with a view to members of the police force being engaged for a period of temporary service with the Ombudsman.*

5.3b *Delete since no option under this paragraph should be imposed on the Ombudsman, even at the instigation of the Secretary of State.*

6.2 *If it appears to the Secretary of State (a)... and (b) Made in time, s/he may at the request of the Ombudsman, direct the Chief Constable.....direction.*

7.2a *notwithstanding section 19, be under the direction and control of the Ombudsman, and will report only to him/her.*

Schedule 5:

To ensure that any former ICPC staff retained by the Ombudsman are in a position to take on their new functions, special training provisions should be made for them.

We recommend amending article 6.5 to read: *Sub-paragraphs (2) and (3) are without prejudice to the right of the Ombudsman requiring all such employees to undergo appropriate training.”*

Final Remarks:

In conclusion, we should draw your attention again to the principles of good policing against which this legislation ought to be judged which are contained in **Human Rights on Duty** and which we outlined briefly at the outset of this submission. We have tried throughout the text to make appropriate amendments to bring the legislation into line with good practice elsewhere. There are however, also a number of important issues not already addressed in the text which need to be considered.

1. There is the important issue of *more democratic accountability* both as regards any Police Authority and for any eventual community level bodies established to advise on policing. These issues are looked at in the separate consultative paper recently issued by the Northern Ireland Office. However, it is worth already highlighting the recommendations made on the basis of good practice elsewhere:
 - Society must be in a position to choose the type of police service it wants, and to be provided with the means of redress if this does not occur. Only in this way will individuals and groups in society become more than simply the ‘policed’, but have

an effective role in designing and supporting the policing function. A civic oversight body, such as a police authority/board, is a vital component in such a task, but this in turn then requires that the election of, or appointment of, people to such a representative body be as transparent as possible.

- Local systems of communication, consultation, and decision making should be encouraged with: an enforceable contract between the police and the community; a practice of discussing issues of genuine concern to the community; an inclusive and representative composition; sufficient resources; a legal obligation on the police to listen to and respond to community concerns; and a mechanism whereby local concerns can be pursued at senior levels within policing and police oversight.
2. Regarding the *complaints system*, there are some additional provisions which need to be made. Police officers should be required to report any misconduct by colleagues; sufficient budgetary provisions need to be made to allow the Ombudsman to exercise his/her role creatively and effectively; there is a need to ascertain that the overall programme for accountability structures complement each other and are effectively integrated; the Ombudsman must be able to recommend actions on the basis of his/her findings; and the requisite standard of proof should be amended and laid down by regulation. The use of independent audit should also be addressed.
 3. The thrust of CAJ's findings in **Human Rights on Duty** is that change cannot be piecemeal, and it is necessary to look at policing in a holistic way, if one is to introduce effective change. A crucial part of the dilemma around policing is the nature of the legislation the police are expected to implement. If the police continue to work within the current panoply of emergency measures, and have a limited rights framework within which to operate, it is difficult if not impossible to conceive of a truly representative, accountable and credible policing system emerge. Parliamentarians must urge on government the vital importance of seeing this Police Bill within the broader criminal justice framework. *A Bill of Rights for Northern Ireland is needed; emergency powers should be removed* and the police should work within the framework of the normal criminal law which provides important safeguards for both the accused and law enforcement officers.
 4. Last but not least, **Human Rights on Duty** urged that consideration be given to the establishment of an *International Commission on Policing*. With due respect to parliamentarians, CAJ's report concludes that "policing is not just a matter for government, the police and politicians. Policing by consent can only be secured if a broad community consensus about the nature and forms of policing can be established". The creation of a special Commission would allow the canvassing of views widely within Northern Ireland about the kind of change that people want to see. Such a measure would allow a broad debate around practical and structural issues, as well as the symbolic questions around name changes etc. alluded to earlier in this submission. Drawing on international membership and experience, we believe that it would be possible to move beyond polarised and confrontational positions, and develop commonly-agreed principles. The very process of determining the kind of policing that we would like to see in a peaceful Northern Ireland would by its nature be a contribution to the creation of just such a scenario.

