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Winner of the 1998 Council of Europe Human Rights Prize

CAJ's commentary on the Patten report

"A new beginning: policing in Northern Ireland"

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Preface

The Committee on the Administration of Justice (CAJ) is a cross-community group which has worked since its inception in 1981 on a wide array of human rights concerns. The organisation takes no position on the constitutional status of Northern Ireland but monitors the extent to which the jurisdiction is administered in accordance with international human rights norms. Alongside its work on equality, gender, disability, racism, and juvenile justice, the organisation works on more directly conflict-related issues such as emergency legislation, prisoners and policing.

A selected bibliography of CAJ publications and submissions on the topic of policing is attached in appendix. We called for an International Commission into Policing as early as 1995, and welcomed the establishment under the terms of the Good Friday Agreement of the Commission into Policing for Northern Ireland (hereinafter called the Patten Commission, after its chairperson Chris Patten). In an attempt to assist the work of the Commission, we made available to them a 300-page comparative research report entitled - **Human Rights on Duty: Principles for better policing - international lessons for Northern Ireland** - which looked at good practice in a variety of jurisdictions around the world. Shorter submissions also followed, and CAJ sent observers to many of the public meetings organised by the Commission across Northern Ireland to understand better the concerns of the different communities.

The Commission into Policing issued its eagerly anticipated report in September 1999, with some 175 recommendations (the full text can be found at: www.belfast.org.uk). At the time of its release, the then Secretary of State for Northern Ireland announced a period of consultation regarding the various proposals for future policing. CAJ accordingly prepared the following detailed commentary.

CAJ commentary on the Patten report

“A new beginning: policing in Northern Ireland”

*References in brackets refer to report paragraph numbers
unless otherwise stated*

Introductory Remarks

In the course of our original submission to the Commission on Policing in August 1998, the Committee on the Administration of Justice (CAJ) wrote that “the issue of policing and human rights abuses committed by the police has been at the heart of the conflict in Northern Ireland, and the creation of an accountable, impartial and representative police service must be the cornerstone of a new peaceful and democratic society.” We believe that the Patten report, in particular by the centrality it accords to human rights in future policing arrangements, echoes the above.

There is no doubt that the report contains many detailed and positive recommendations. Some of those recommendations generated a degree of political controversy, yet the Good Friday Agreement had always made clear that there needed to be a new beginning to policing. Those wanting to categorically reject change should bear in mind that “if changes in policing are resisted (or mishandled) then there could be a serious impact on the attempt to rebuild democratic politics in Northern Ireland” (1.7). It is unfortunate in this regard that the media focus has been on a very limited set of recommendations, mainly on those that were most likely to provoke divisive reactions.

This is particularly disappointing given that the Patten team found a broad consensus of views on many important aspects of policing (3.18 and 3.19). CAJ also noted this consensus in its analysis of the public consultation exercise. The Agreement established the basis for a new beginning to policing in Northern Ireland and Patten found “broad acceptance across the communities, albeit with differences of emphasis, that the composition of the police service should be more representative of the population...” (3.23). Similarly, there was much agreement around the importance of police accountability, community policing, and local partnerships.

The Commission has set its own tests by which to judge the results of its work. The last of these asks “Does it [the proposal] protect and vindicate the human rights and human dignity of all?” (1.10). The following CAJ commentary contains a detailed response to that question. However, we feel we must indicate at the outset that there are several key areas in which the report falls short of what we believe is required to genuinely transform policing in Northern Ireland. Without changes in these areas, we believe that it will be extremely difficult to meet the human rights test set by Patten, despite the good human rights language that pervades the rest of the text.

CAJ believes that emergency laws must be repealed without further delay. Such laws have formed the context of many of the human rights abuses in the past and will undermine other significant changes Patten has suggested. International experience shows that the wider legal framework is key to effective policing, and keeping repressive laws on the statute book will not allow for policing practices respectful of

human rights. Hopefully this issue will be re-visited once the Criminal Justice Review has reported by the end of this year.

Plastic bullets must be withdrawn from use. The recommendations Patten makes in relation to this issue should reduce the number of fatalities and injuries caused by the weapon, or at least reduce the current impunity surrounding such consequences. However, CAJ echoes the UN in arguing that plastic bullets, no matter how tightly controlled, are not an appropriate or effective method of riot control.

Community policing, and local accountability are extremely important concepts, and ones which were widely supported in the public meetings held right across the community. At the Northern Ireland level, the Commission makes some very positive proposals regarding a new powerful Policing Board, and extended powers for the Police Ombudsperson, but has not, in our view, effectively ensured police accountability at the local level.

The last major, but potentially most damaging, concern CAJ has with regard to the report is the absence of any mechanism to deal with past human rights abuses. Specifically, no mechanism is proposed to help identify past human rights abusers so that they are neither recruited nor retained in the new police service. In our own submissions, we discussed the issue of whether the new policing arrangements could include former paramilitaries and/or police officers found to have been involved in serious human rights abuses. International experience seemed to encourage a policy of inclusiveness so we emphasised the importance of a rigorous screening mechanism to ensure that people who are genuine security risks are not recruited, and 'bad apples' among the existing police force are removed. However, although the Commission states categorically that 'bad apples' within the police "should be dealt with" (5.19), they do not recommend how this is to be done. Moreover, they lay themselves open to charges of double standards: they categorically rule out some potential recruits on the basis of their past activities (15.13), and yet they allow all currently serving officers to remain, as long as they commit themselves (via the oath) to future good behaviour.

If there is to be no major change in current personnel, despite the fact that few, if any officers have been held accountable for offences ranging from harassment, ill-treatment, collusion, falsification of evidence to unlawful killing, we are left with an appalling lack of accountability at the heart of policing. To permit this culture to permeate the new policing service promised by the Good Friday Agreement is to court failure. Leaving the current command structure of the RUC intact could well undermine the process of change, since experience from elsewhere suggests that officers in senior and middle ranks can become the locus for sustained resistance to change over the longer term.

The extent of the change recommended by Patten is a recognition of the very serious problems associated with policing in Northern Ireland. In spite of the important flaws we have examined here, it will be clear from our commentary that CAJ believes that the Commission into Policing has made many detailed, positive, and constructive recommendations about the future of policing in Northern Ireland. The report has begun a very necessary process of change. Many changes are long over-due, and CAJ believes the process of delivering that change must not be delayed any further.

Human Rights

- CAJ welcomes the strong emphasis on human rights both at the outset of the report and throughout much of the text and key recommendations.
- We welcome in particular the recommendation for a comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach (4.6). There should be broad consultation with the Human Rights Commission, a wide range of non-governmental organisations, and other human rights experts (local and international) about how such a programme might be structured and how best to implement it.
- CAJ recommended that the police oath of office (or declaration) incorporate reference to human rights standards and is pleased that this has been done (4.7). It is worth noting that it had already been agreed in the Police Act (NI) 1998 that references to the monarchy be withdrawn so, contrary to media reports, Patten did not remove the references to the monarchy, but merely added explicit references to human rights. CAJ does not feel that the rendering explicit of a principle which should be implicit in policing could be in any way objectionable.
- The requirement by Patten that the new oath be taken by recruits and existing police officers is welcome. The necessity for serving police officers to take a new oath is particularly important in building confidence that a new beginning is taking place and in signalling to officers that important change is taking place and that behaviour which might have been tolerated in the past will no longer be so tolerated.
- However, the requirement to take a new oath falls far short of the screening process that human rights organisations have urged to ensure that individuals who have engaged in serious human rights abuse are not retained or recruited in the new policing structures. As noted earlier, this is potentially a major flaw in Patten. It is difficult to see how one can develop confidence in the new policing arrangements if known human rights abusers continue to serve with impunity. This problem can be addressed in several different ways. For example, Patten has recommended that the new Police Ombudsperson should have access to all past reports on the RUC. This could well mean that in relation to a number of high profile cases (eg the Stalker and Stevens investigations), the Ombudsperson could take action against serving officers, including those who may now be at senior ranks. But legislation would need to provide for this as currently the Ombudsperson is constrained to dealing with complaints by members of the public. In addition, if the Ombudsperson identifies a pattern of previous abuses which have gone unpunished, he/she will be able to investigate such abuses and potentially take action against those officers involved, but only if no previous disciplinary or criminal proceedings have been undertaken. It may therefore be worthwhile to specifically mandate the Ombudsperson to investigate past abuses and designate resources for that purpose for perhaps the first five years of the office's existence.

Alternatively a specific unit could be established as part of the implementation team to vet current police officers before they take the new oath of office, to ensure that they have not been involved in previous human rights abuses. This would have the advantage of ensuring the new oath is not seen as tokenistic, but a real dedication to a new beginning. Such a unit could have access to previous reports on the police, internal disciplinary records, details of civil actions,

evidence of illegally obtained confessions, inquest depositions, files from the DPP's office and other relevant documents. Whatever approach is taken, the principle is clear. Not to take action in relation to such officers will seriously undermine public confidence in the ability of the new police service to genuinely mark a break with the past.

- Welcome as the new oath is, it needs to be given substance. Currently, two training lessons devoted to human rights indicates a very low priority given to human rights especially when one considers that 63 lessons are devoted to firearms training (see 4.5). In fact, the use of firearms poses the most serious threat to human rights (ie threat to the right to life) and consequently requires human rights principles to be at its core and not peripheral.
- The proposal for a new Code of Ethics integrating the European Convention on Human Rights into police practice is welcome (4.8). The Code should incorporate not only the ECHR but also other international standards relevant to policing eg:
 - UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
 - UN Code of Conduct for Law Enforcement Officials;
 - UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
 - Council of Europe Declaration on Policing.

CAJ recommends that community consultation take place in developing this Code, the results of which should be published. Breach of the Code should be a disciplinary offence.

- CAJ endorses the view that human rights training is not just about the content of training courses but the very philosophy which should imbue police training (4.9). There should be in-depth consultation with, and involvement by, human rights and equality experts, the voluntary and community sector and interest groups representing the most vulnerable in our society (eg children, gays and lesbians, the mentally ill, members of ethnic minorities etc.) in the design, content and delivery of training.
- The reference to covert policing being bound by human rights principles is an important and positive proposal (4.8).
- The incorporation of human rights tests into the personnel appraisal system is potentially very valuable (4.10). Collaborative consultation with human rights and human resource experts will be necessary in developing proposals for maximising the potential of this recommendation. It is important that appraisal systems are used both to build on developing strengths – for example by identifying specific training needs in relation to human rights - as well as to highlight defects in performance. It may also be that these tests can be used to ensure that those who have been responsible for serious human rights abuses in the past can progress no further in the new policing service.
- CAJ welcomes the proposed appointment of a human rights lawyer to the staff of the police legal services and their role in advising on proposed operations. However, to be really valuable, the human rights lawyer's advice must be available prospectively as well as retrospectively to any oversight bodies (4.11).

Indeed it would be appropriate to ensure that such written advice be routinely copied to the oversight bodies. In addition the necessary resources should be allocated to this project - it is difficult to imagine that one staff member alone can carry this responsibility.

- The Policing Board will perform a crucial role in monitoring human rights (4.12). It is surprising, therefore, that no reference is made to the need for its members (and indeed other new police institutions) to accept a Mission Statement committing themselves to human rights and impartiality, or requiring them to have experience, knowledge or training in this area. This oversight should be rectified.

It was of particular surprise to CAJ that the Patten Commission did not engage at all with the equality implications for policing of the Northern Ireland Act. Given the failure to make any references to this issue in the report, we provide below some background to explain the relevance of this legislation to the human rights dimension of policing.

Under **section 75 of the Northern Ireland Act** (which brought forward the provisions of the Good Friday Agreement) a new duty was placed on public authorities requiring them to have due regard to the need to promote equality of opportunity. Significantly, the duty extended not just to persons of different religious belief/political opinion, but also racial group, age, marital status or sexual orientation, men and women generally; between persons with a disability and persons without; and between persons with a dependant and persons without.

Whilst the legislation covers a range of public bodies, including Government Departments, District Councils, and Non-Departmental Public Bodies, it is a matter for the discretion of the Secretary of State as to whether the duty covers the new Northern Ireland Police Service. Indeed, when asked whether it was intended to designate the RUC as a public body for these purposes, Minister of State Adam Ingram said of the then Secretary of State "On section 75, I should make it clear that the Secretary of State fully intends that the RUC should be subject to that provision as soon as possible. I cannot speak for the Chief Constable, but I know he attaches great importance to these issues". Mr Ingram clearly expected some specific recommendation on this matter from Patten, since he noted in the same letter (to CAJ, dated 4 August 1999) that the Patten report was likely to be issued before any designation order was issued or the Act came into force.

In the event, Patten chose not to comment. In the meantime, certain reservations on the part of the Chief Constable have come more clearly to the surface. Thus, it is CAJ's understanding that the Chief Constable has argued that the duty might have an adverse impact on the ability of the police service to perform its functions. In particular he has expressed concern that any attempt to monitor the functions of the police service in order to establish how they impact on people of different religious backgrounds, could be seen to be divisive. He also believes that the increased workload might divert attention from the day-to-day operational matters of the organisation.

These are clearly serious issues that need to be addressed. Undoubtedly, collecting information on community background from individuals for example who are subject to being stopped and questioned is a sensitive matter. However, it is worth pointing out that in the 1980s some argued that the monitoring of employees' community background imposed by the fair employment legislation would be 'divisive' or would encourage sectarianism. Such fears proved to be groundless. In relation to the

increased workload created by the duty, it is worth pointing out that a range of other public bodies will be subject to the same provisions, and equality is seen as a sufficiently important objective to merit additional effort. In the Hansard debates of the Northern Ireland Act, the Minister promised that exceptions to the duty to develop equality schemes would be very limited, and there was no suggestion that a vast public service, such as policing, would fall entirely outside its provisions.

Patten did not address very explicitly issues of sectarianism within the police - whether at the level of individual officers or at the level of allegations of institutionalised sectarianism. Although section 75 cannot resolve all of the issues around sectarianism, it can assist in the construction of a service that promotes equality of opportunity between the two communities. Moreover, there is an additional benefit with section 75, in that it extends beyond the two main communities and covers issues such as race, gender, and sexual orientation. In a profession that has been traditionally a white, male, heterosexual (and in Northern Ireland Protestant) preserve, we believe that section 75 offers a unique opportunity to ensure that all members of Northern Irish society feel confidence in their police service.

It is also worth pointing out that the MacPherson report, published in response to the Steven Lawrence inquiry in England recommended that the Metropolitan Police be subject to the statutory duty requirements of the Race Relations Act 1976. Subjecting the new Northern Ireland Police Service to section 75 of the Northern Ireland Act would clearly be in line with this recommendation.

While therefore it would be important that the police be designated a public authority for the purposes of section 75, this will only mark the beginning of a process of change. Given the analogies being drawn between the cases of Stephen Lawrence and Robert Hamill, CAJ believes that a specific task force should be established to effectively tackle the issue of sectarianism within the police. Such a taskforce should be independent of the police and have adequate resources. It should have access to the cultural audit produced for the Patten Commission and other relevant materials which would allow them to monitor attitudinal and behavioural trends over time.

Accountability

CAJ shares the view of the Patten Commission that the present arrangements have not provided a basis for democratic accountability (5.7) and endorses the highly critical remarks about the Police Authority for Northern Ireland (see 5.12 and 5.15).

- Like the Commission, CAJ had expressed concerns about the Police Act – its content and timing (5.11). Presumably, given Patten’s reservations, there will be a total overhaul of its provisions. At the time of the draft Police Bill, CAJ made extensive comments, only a few of which were eventually accepted. We assume that in any total overhaul of the legislation there will again be an opportunity to make detailed comments.
- CAJ agrees with the Commission that the “Agreement provides a basis for improving the democratic accountability of the police in both the ‘subordinate’ and ‘explanatory and cooperative’ senses.” We welcome the recommendation that “**an entirely new** Policing Board be created, to replace the present Police Authority”[CAJ emphasis] (6.2). We understand this formulation to refer both to the powers and to the composition of the successor body.

- Some of the powers removed from the civic oversight body, the Police Authority, (Police (NI) Act 1998) are to be vested in its successor body eg overall setting of objectives and longer term planning and, very importantly, financial oversight. This transfer of powers to a civic oversight body in turn withdraws some of these responsibilities from both the Secretary of State and Chief Constable, and we believe may therefore make the tripartite structure more healthily balanced (6.3 – 6.9).
- It would appear that the new Policing Board can still not dismiss the Chief Constable but merely ask him/her to retire in the interests of efficiency and effectiveness (6.9). CAJ had previously asked that provision be made for the Chief Constable being “removed from office for cause”. We remain convinced that such a formulation would provide for more effective accountability.
- The move to more democratic representation in the Policing Board with membership being drawn from elected Assembly members is in general positive (6.11-6.13). There may however be an argument (at least in the short term) for greater representation from community/business/trade union representatives etc. (CAJ had proposed one third, rather than 50%, elected politicians). We also wonder why there is no specific reference - apart from staffing questions - to the need to take into account balance issues relating to gender and other under-represented social groups in the composition of the Board (such a reference is made with regard to the DPPBs). In 6.14, reference is made to the first "chairman" and thereafter references are also in the male gender. Certainly, apart from the religious/political divide, Assembly members are not very representative in terms of the gender, class, race, and other divisions within Northern Irish society. The decision to limit party political involvement to those parties in the executive, without very clear justification, will understandably be challenged by some people and will skew the party political balance to the larger political parties only.
- CAJ considers it important that the relevant legislation should be specific about what is or is not a matter of national security and therefore exempt from close scrutiny (6.15 and also 6.22, 6.43 – 6.45). Operational matters and the operation of emergency powers should not form part of the legal definition of ‘national security’ and this should be specifically and clearly stated in the legislation. The term national security should be defined as narrowly as possible.
- Confusion about the respective roles of the Secretary of State, Police Authority and Chief Constable has been a flaw in the current system. The clarification of roles of the various oversight bodies within the new arrangements is therefore most welcome and should be incorporated into legislative provisions in due course (6.16).
- It seems appropriate (in line with other moves) to withdraw the Secretary of State’s power to issue guidance to the police and the exercise of their duty (6.18).
- In the past, Chief Constables have been able to rely extensively on the doctrine of “operational independence” when resisting scrutiny of their actions (see 6.19). CAJ had recommended that the Commission define this term, although we understand some of the Commission’s reservations in this regard. The Policing Commission has addressed very seriously the issue of retrospective accountability, by appearing to give the new Policing Board much greater powers to hold the Chief Constable to account for his/her actions (see 6.21-6.23).

Although noting the concept of "operational responsibility", we found it disappointing that there was no suggestion of the Policing Board being involved in the pre-planning of major police actions, as is done in other jurisdictions. This appears a lost opportunity to ensure greater rigour in determining the limits of the "operational independence" doctrine. CAJ welcomes the obligation to seek the advice of a human rights lawyer (to be recruited to the police legal team) on operations that might raise human rights concerns. However, if this measure is to have any effect, it would be vital that any such advice is routinely copied to the Policing Board, thus at least enhancing their ex post facto questioning of the Chief Constable.

- CAJ welcomes the recommendation that the Policing Board should have the power to follow up any report from the Chief Constable by initiating an inquiry into any aspect of the police service or police conduct (6.23). We agree that it is important that the Board be able to request another agency to conduct an inquiry and also should have the capacity to do so itself. The power of the Board to demand co-operation from police officers in inquiries is both welcome and necessary.
- CAJ welcomes the emphasis in the Patten report on different layers of accountability to match different levels of policing. However, we have some serious concerns about both the proposed membership and powers of the District Policing Partnership Boards (6.26 – 6.33). The weakness and unrepresentative nature of Council based Community Police Liaison Committees (CPLCs) has already been demonstrated (and indeed Patten sees DPPBs as replacing these bodies). However, CAJ is unconvinced that the new bodies will not share some of the flaws of the bodies they are supplanting.
- Patten recommends a very strong link between DPPBs and local District Councils, which is somewhat surprising given the failed history of local Council-based CPLCs. The new bodies will be committees of District Councils, have a Council chair, have a majority Council membership, with other members appointed by the Council, and 25% of their funding provided by the Council (6.26, 6.32). Given that Councillors are elected, while individual members will be selected by the Council, and that the chair will be a local Councillor, there is a danger of creating a two-tier system, with independent members having a lower status than the elected members. This imbalance is likely to be exacerbated by the fact that the Policing Board is expected to meet with the chairs of the DPPBs (who will all be Councillors). The current composition of District Councils means that it will prove very difficult for the DPPB to be broadly representative of the district in terms of gender, age and cultural background as Patten recommends (6.26). (This latter fact will also have implications for the Policing Board - see reference to the Board's periodic meetings with the chairs of the DPPBs, who will all be District Councillors).
- It is extremely important to clarify in law and regulations what is meant by the recommendation that the views expressed by DPPBs should be "fully taken into account" by the police and Policing Board (6.30). The proposed function of the DPPBs to be "advisory, explanatory and consultative" (6.29) is very minimal, and local oversight bodies need to be more than merely consultative. If the term "fully taken into account" is not given some legal grounding, it is difficult to see any real distinction between DPPBs and the currently disparaged Council based or 'mixed' Council/community CPLCs.

- Whatever form of accountability structures are developed at this level, those involved would benefit from relevant training.
- CAJ is concerned at the lack of clarity about the future of accountability fora at the local level (6.34). Undoubtedly there has been a growth in the number and membership of local community based CPLCs. Patten says little about these but clearly intends for them to be retained and perhaps increased in number. However, many of these still face problems of unrepresentativeness, a reluctance to deal with controversial issues, ineffectiveness in resolving community safety problems, and a tendency to be police-led rather than community-driven. Under-funding has exacerbated the difficulties faced by CPLCs in trying to carry out their work.
- It is disappointing, therefore, that Patten has missed the opportunity to look afresh at accountability at the local/neighbourhood level and indeed explicitly states that recommendations will not be made about how CPLCs should be organised (6.34). We recognise the positive impulse behind the recommendation that every police beat manager should aim to develop a consultative forum in his or her area (6.34). However, best practice elsewhere suggests that police-led fora will fail to involve those constituencies and individuals most alienated from the police and will therefore be ineffective in resolving police – community conflicts.
- Moves towards greater transparency in policing are welcome (6.36) (although the term ‘public interest’ needs to be defined). CAJ agrees with the Commission that is important that ‘police interest’ and ‘public interest’ are not taken as necessarily one and the same (6.38).
- Codes of Conduct etc. should be made available widely (and be made a matter of consultation) (6.38).
- The proposals regarding the Police Ombudsperson go much further than the changes introduced in the Police (NI) Act 1998. It is clear that this institution is seen as a lynchpin in the new policing arrangements and CAJ welcomes the importance accorded to this body being pro-active, monitoring trends, carrying out research, and being effectively resourced in personnel and financial terms. A surprising omission, however, is in the training arena. While recognising that the Ombudsperson should keep a distance from operational policing, it is a pity that some reference is not made to the contribution that the Ombudsperson could make to effective training policies.
- CAJ welcomes the fact that Patten explicitly and fully endorses the Hayes report “*A Police Ombudsman for Northern Ireland?*”, and we assume that this amounts to a rejection of the provisions in the Police (NI) Act which provides an insufficient legislative base for the pro-active and important office Hayes called for. Unfortunately – much of this rejection is implicit. Patten does not insist that independent investigation of complaints against the police should be the norm – particularly in any transition period. The report talks of the need for an independent office – but does not state that the guidance from the Secretary of State envisaged by the 1998 Act (6.18) is problematic, not solely with regard to the police, but also in terms of its potential for limiting the activities of the Ombudsoffice.

- The Patten report does not make specific recommendations as to the standard of proof required for the upholding of complaints. Yet, Patten fully endorses Hayes' proposals, and Hayes indicated that the excessively high standard of proof required was a key obstacle in the current complaints system. CAJ has argued that the standard of proof necessary to substantiate a complaint against a police officer should always be the 'balance of probabilities', though for the purpose of any criminal proceedings arising out of the same incident the standard would become 'beyond a reasonable doubt' (the normal criminal standard). A criminal prosecution should not be an automatic bar to internal discipline.
- It is clear to CAJ that Patten goes further than Hayes in a number of small but important ways, but we would still have concerns that there may not be enough to ensure the complete break with the past that is necessary. If this office is to instil confidence in the general public, CAJ would recommend that:
 - the Ombudsperson's remit should be widened so as not just to include complaints from members of the public – but also other officers/organisations;
 - the vexed issue of disciplinary tribunal composition and operation be revisited;
 - there needs to be a duty to co-operate with all Ombudsoffice investigations, and clear legislative sanctions for non-cooperation and protection for whistleblowers;
 - the Ombudsperson needs not only to have access to all past reports on the RUC as proposed, but also needs to have powers to take such action on the reports as she/he considers necessary;
 - that there be clarification of the role of the Ombudsperson in holding a register of police affiliations (15.16). We assume that this information on named officers will be accessible to members of the public as and when necessary - for example, for the purpose of court proceedings.
- Patten recognises (in Recommendation 38) that the Ombudsperson is an 'important institution in the governance of NI'. As such it should be 'staffed and resourced accordingly'; CAJ would emphasise the need to resource this office properly and to recruit and retain high calibre staff. The Ombudsperson's strength lies in the recognition that dealing with individual complaints is only one part of a much broader function. It is vital that the office does not merely respond to complaints from members of the public – but is also concerned in making policy and practice recommendations and investigating matters even in the absence of a complaint. There needs to be legislative guidance as to what constitutes the 'public interest' in this regard. There also needs to be further indication as to how data on trends and patterns is to be compiled and used – with police managers called to account for how this information and other recommendations from the Ombudsperson are used and implemented.
- CAJ welcomes the fact that covert policing has been addressed directly (6.43-6.45). We view positively the idea of appointing a single Commissioner and Tribunal to oversee all intrusive surveillance policing (6.44). We would strongly disagree with the suggestion that this Commissioner needs to be appointed from the ranks of the current or retired judiciary. There is no reason why a senior lawyer with experience in criminal law would not be a suitable candidate.
- The reports of the Surveillance Commissioner should be made publicly available.

- Like the Patten Commission, CAJ is pleased that legislation is in preparation to ensure that covert law enforcement techniques in the UK are fully compliant with the European Convention on Human Rights (6.43) - and, we would add, other relevant international human rights standards. It is clear that informant and undercover activities have the capacity to raise serious Article 6 (fair trial) and Article 8 (privacy) issues. We look forward to studying this issue in more detail when the draft legislation is circulated for consultation.
- CAJ welcomes the proposal to establish a Complaints Tribunal in principle, but will want to look closely at the detailed legislative provisions regarding composition, powers etc.

Policing with the Community

- The Commission was urged almost everywhere, and at almost every public meeting, to emphasise the value of close police community relations, so it is excellent that community policing should be recognised as the core function of the police services (7.9). CAJ agrees with the Commission that the security situation alone cannot be used to justify the absence of community policing in many parts of Northern Ireland, and that leadership commitment to changing the style of policing is necessary if the situation is to improve (7.6).
- The Commission rightly recognises that public safety cannot be left to the police alone. Work in local areas to tackle crime and its associated problems can be much more effective in the longer term than a rapid response "firebrigade" style of policing (7.3). It must be remembered, however, that community projects like those cited in the Report, though cost-effective, need to be adequately resourced. Unfortunately diversionary projects and community development work are seriously under-funded in Northern Ireland. This is an issue which may be addressed by the Criminal Justice Review, but it is a pity that the Commission on Policing did not discuss in any detail the need to divert resources from the policing budget towards the community side of these partnerships.
- CAJ welcomes the philosophy expressed in this chapter that the community should be facilitated in expressing its concern and priorities to the police and hearing police explanations on their conduct and performance (7.4). However, given our concerns about the accountability mechanisms proposed earlier in the report, we are unsure how meaningful the community's role in determining police policies and conduct will be in reality. The Commission notes that partnership is not just a matter of style but is also an attitude of mind (7.4). In our view, to be real, partnership must also be about equal access to information and actual power in decision making. Capacity-building and training for community people should be available and resourced from the policing budget. Unfortunately, it seems that the emphasis is very much on the police determining how and when to work with the community and not on there being a need for a strong partnership approach where the community served and the police are participating on equal terms. This situation will need to be independently and closely monitored.
- As the Commission notes, the allocation of resources within the RUC has mitigated against the development of effective community policing (7.7). It is well documented that community policing has been relegated to second place in

favour of security policing in Northern Ireland. The proposals relating to the re-thinking of police structures and priorities to give community policing a more central role are, therefore, very welcome (7.8-7.9). Independent monitoring and evaluation will be important in measuring how successful the change has been in refocusing policing. The appraisal system will need to be effectively used to encourage those officers who respond positively to the changed philosophy and to address the problem of those officers who do not.

- The proposal to set up dedicated policing teams for each neighbourhood or local area is a positive development (7.10). We note that each team is to be headed by a sergeant or inspector. It is important in this situation that this officer is vested with the authority and control over adequate resources to take decisions about local policing in collaboration with local community fora.
- It is good that members of policing teams are recommended to serve at least three and preferably five years in the same neighbourhood (7.11). While CAJ has long argued it is crucial that police officers wear prominently displayed IDs, we are not convinced that the time is right for police officers to be expected to display their names. Indeed this may prove counterproductive and may mean that officers with the 'wrong' name are unable to serve in particular areas.
- The recommendation that all probationary police officers undertake the operational phases of their probationary training doing team policing in the community is a good one (7.12). A placement with a community group should also be considered an important part of the training programme.
- CAJ welcomes the idea of more local contact and easier communications between the police and the local community as epitomised in the recommendation regarding the need for more foot patrols (7.13). At the same time, we realise that research has repeatedly indicated that foot patrols, while good for boosting community confidence, are largely ineffective in actually reducing crime in local areas. Moreover, this trend can lead to the police - albeit at the behest of local people - regularly moving young people on, with the different community tensions that this can create. We propose that if this specific recommendation is implemented, it be subject to close monitoring to assess its value.
- The proposal that neighbourhood policing teams be empowered to determine their own local priorities and set their own objectives is excellent (7.14). CAJ had urged that decisions are made as locally as possible. However, it is important that this process is not entirely police-led. It should not be the police who determine whether to listen to community workers, businesses, youth clubs and so on; otherwise, we will not advance very far in involving local communities and in ensuring effective accountability over local policing.
- CAJ had recommended that the police move towards a problem-solving approach and welcomes the proposals on this (7.14-7.17). The information gathered in pursuance of this approach (eg crime pattern and complaint pattern analysis) should be available to accountability bodies including the person.
- We welcome the proposal that members of the District Policing Partnership Boards should be able to attend police training courses if they wish to do so (7.17), on condition that this recommendation is not intended to be exclusionary and deny access to other interested groups/bodies.

Policing in a Peaceful Society

CAJ has consistently argued that certain aspects of policing in Northern Ireland have fuelled the conflict rather than contributing to its resolution. Changes to policing are therefore necessary regardless of the prevailing security situation. However, we recognise that the improved political circumstances make the process of change easier, and we urge the speedy implementation of Patten's constructive proposals. Given that police intelligence is normally relied upon to determine the latest security situation, it is particularly important that care be taken to avoid having the pace of policing change dictated by the police themselves. Independent assessment and monitoring in this regard is crucial.

- CAJ welcomes the recommendations aimed at making police stations and mobile patrols more accessible, and reducing the role of the army. All of these have the potential to improve police/community relationships (8.4 - 8.12).
- The section on the role of the army is surprisingly short given their role in policing in Northern Ireland (8.11). CAJ welcomes any reduction in the army's role and notes that this is particularly important given Patten's focus on ensuring greater police accountability. It is clearly illogical to strengthen civic oversight of policing, emphasise community-police partnership arrangements, and tighten up police complaints mechanisms, and yet allow the regular army, the RIR, and other security forces which are not subject to such controls, to regularly act in lieu of the police. Insofar as these organisations continue to perform a policing function, they should be made subject to similar controls and training to that of their police counterparts.
- The recommendation on emergency powers is particularly disappointing and even somewhat illogical (8.13-8.14). Human rights organisations have long campaigned for the repeal of emergency powers and there is a concern that if this does not happen, other proposed changes will be fatally undermined. There appears to be little recognition in the report of the fact that the existence of emergency powers has lent itself to serious human rights abuses, and that this is a worldwide phenomenon. Insufficient weight is accorded to the fact that emergency legislation is not justified under international law, and should therefore have been abandoned some time ago. Indeed the United Nations Human Rights Committee and the Committee against Torture have called on a number of occasions for the repeal of emergency laws, and the UN Committee on the Rights of the Child has expressed concern about the use of emergency legislation in regard to children. Given the importance noted elsewhere in the report about the centrality of international human rights standards, it is unfortunate that this opportunity was not taken to remedy the situation.
- CAJ welcomes the recommendation that records should be kept of all stop and search initiatives and other actions taken pursuant to the emergency powers (8.14). These records should be available for scrutiny by bodies such as the Ombudsperson and the Policing Board. Given the experience of discriminatory patterns of policing, it is imperative that details be recorded of the community background of the subjects of a stop and search or of house searches. The RUC has consistently resisted the recording of stop and search by religion, but the MacPherson report on the Stephen Lawrence case in England has demonstrated the value of detailed recording practices to uncover patterns of discrimination.

- CAJ welcomes the recommendation to close interrogation or holding centres (8.15), since this has long been urged by various UN bodies. This measure should be implemented immediately. We understand that the Chief Constable believes closing the holding centres immediately might put an end to arrests under the Prevention of Terrorism Act, since those arrested under the PTA are detained in holding centres. CAJ is of the opinion that there is no legal basis for this concern.
- While recognising the difficulties in achieving this, CAJ believes that we must retain the goal of securing an unarmed policing service at the earliest opportunity (8.17). Until then, the use of firearms must be strictly monitored.
- CAJ welcomes the introduction of video recording in PACE custody suites (8.16) and the responsibilities being conferred on the Police Board and Lay Visitors with regard to inspections. We assume that the Lay Visitors will have powers to inspect conditions for young people held under PACE in Lisnevin Juvenile Justice Centre and would welcome confirmation of this. We also request clarification about whether the Police Ombudsperson will be able to deal with complaints about the treatment of young people held under PACE in Lisnevin. CAJ has previously recommended the creation of a Minister for Children; alternatively an Ombudsperson for Children would ensure that such issues are not marginalised; whether a children-specific oversight mechanism is introduced or not, we hope that the Criminal Justice Review will be commenting on this vital issue of monitoring society's treatment of young people who offend.
- It is disappointing that the Commission failed to take the opportunity to comment upon the importance of solicitors being present during interview of those held under emergency laws and – given the controversial circumstances surrounding the deaths of defence lawyers Pat Finucane and Rosemary Nelson – the importance of according due respect to the function of defence lawyers.
- Para 8.18 states that the RUC have not shot anyone dead since 1991. This is factually incorrect - Pearse Jordan, an unarmed IRA member, was shot by the RUC in West Belfast in November 1992, and Robin Maxwell was shot dead during an attempted robbery in Newtownards in 1994.

Public Order Policing

- Restrictions on the use of plastic bullets, readily available guidance governing their use, and proposed research into alternative crowd control techniques are welcome and long overdue.(9.15-9.17 & 9.20) However, the restrictions only seek to make plastic bullets a more acceptable crowd control weapon, whilst the UN Committee Against Torture determined that it was a totally inappropriate weapon. We would urge the new Secretary of State to accept the advice of the UN in this matter and withdraw plastic bullets with immediate effect.
- Positively, it is suggested that the Policing Board monitor the performance of the police in public order situations and follow up any concerns. We welcome this, assuming of course that the Board will have the necessary powers to influence policing policy and practices in this regard as and when thought necessary. We also welcome the idea of the police working closely with relevant local bodies to

lessen the potential of public order disturbances, but recognise that such co-operation will only become possible as and when sufficient trust starts to develop between all involved (9.9 and 9.19).

- CAJ believes that the statistics provided for injuries caused by plastic bullets are misleading. In para 9.12, it is suggested that 615 injuries have occurred since 1981, which would amount to an average of less than 35 a year. We assume that this figure draws upon official statistics, which we and others have queried previously. To take 1996 as an example, Her Majesty's Inspector of Constabulary (who had been specially asked to review the use of plastic bullets in the summer of that year) recorded some 20 plastic bullet injuries between 1 January and 25 August 1996. However, in a medical article published earlier this year, doctors reported treating 155 patients for plastic bullet injuries during the course of the single week of 8-14 July 1996. The reasons for poor statistics in this area are manifold, but this should make one particularly wary of citing any statistics at all, still less citing them without any disclaimer. (On a separate but related point, the figure supplied for the deaths due to plastic and rubber bullets is inaccurate, since there were six not five deaths before 1981).
- It is also regrettable that the whole debate about plastic bullets is couched in the report in terms of security force response to serious public disorder and rioting. The report never clearly acknowledges that plastic baton rounds have been fired in non-riot situations and, even more importantly, many of the deaths have involved non-rioters (9.13). Of the fourteen deaths caused by plastic bullets, the authorities concerned only made a finding of rioting in four cases; in six of the cases the judge or inquest jury explicitly ruled that the deceased had been an innocent victim.
- CAJ concurs with the view expressed in Patten that it is surprising and, in our view, alarming that neither the RUC nor the Police Authority (PANI) has seriously researched alternatives to plastic bullets (9.14).
- If plastic bullets are to be retained, despite all pleas to the contrary, the commitment to tightening up the procedures for their use must be immediate. CAJ welcomes the fact that reports on plastic bullet usage will be submitted to the Policing Board and to the Police Ombudsperson. In England and Wales, the Home Secretary is also to be notified of the circumstances leading to their use, and we see no reason that a similar level of political oversight should not apply in Northern Ireland. Accordingly, CAJ would urge the revised ACPO guidelines for the use of plastic bullets in Northern Ireland incorporate reference to the Secretary of State in place of the Home Secretary (with reference, as appropriate, to any changes likely to occur with devolution).

Management and Personnel

- In its comparative study of policing in different jurisdictions, Human Rights on Duty, CAJ noted that good leadership is crucial in ensuring that change is implemented. We are pleased to see that the Commission has prioritised the issue of managing change (10.3). Given the history and recent experience of human rights abuse associated with the RUC, however, we reiterate the concerns expressed in the introduction that the current command structure is apparently to be left intact. The nature of change outlined by Patten is very fundamental and we have serious doubts as to whether such radical change can

be effectively brought forward by the very leadership that has repeatedly defended the status quo. The stock response of the RUC leadership to criticism and to suggestions for change has been essentially one of denial, and this has not even changed perceptibly in the wake of the Patten report. Resistance to change is noticeable at very senior management levels, and yet a commitment within the police itself to change is a sine qua non of effective and visionary leadership.

- Overall, CAJ believes that the Commission has developed a series of good recommendations on change management, rotation of posts, addressing personnel problems and very importantly has emphasised the value of civilianisation. We agree with the Commission that it is important to have the right Change Management Team; that there is a need to have specialists in change management; and that it is important to emphasise civilianisation in this regard (10.3). We are very interested to see how this recommendation will be implemented and are worried by early signals that the RUC leadership are moving ahead without external involvement. The process of change could be seriously undermined if it is left in the hands of those within the current management structures. CAJ recommends that consideration be given to the possibility of seconding officers from other forces, particularly those with experience of equality and human rights issues, and experts in change management from civilian backgrounds. We support the report's recommendation that the programme of change be presented to the Policing Board for their views, and for discussion with the Oversight Commissioner.
- Disturbing examples of the current levels of centralisation and control are cited (see paras 10.5-10.7) and we endorse the argument made for strengthening the role of local commanders. We would however note the remarks made earlier about the need for more localised decision making to be seen not only as an internal policing issue. Strengthening the hand of local police commanders should go hand-in-hand with more local community involvement.
- CAJ welcomes the emphasis placed on performance appraisal, and the links made to more targeted training and to wider administrative and managerial questions (10.8). The Commission clearly found that the current arrangements are poor and major change will need to be made. It is normal management practice, for example, that appointments and promotions draw extensively on a solid appraisal system. We assume that characteristics such as "the capacity to change" and "awareness of and respect for human rights" will be assessed in the future arrangements, and this will of course require that some clear criteria are established to measure these abilities. It is a matter of natural justice for the officers concerned, and a valuable principle of public service generally, that there be greater transparency around the criteria being used in the appraisal system.
- CAJ generally welcomes the proposals made for greater rotation of officers, and the civilianisation of certain key functions - particularly in the area of personnel management, administration and training (10.16, 10.22-10.24). The extent to which some of these senior level posts are to be civilianised was somewhat ambiguous, so we would urge that the approach be one of civilianising except where it is demonstrably not appropriate. On the basis of the report, it would appear that the norm until now has been to only civilianise when there is a strong argument to do so, and it seems wise to turn this approach on its head to achieve a much higher proportion of civilian appointments. We certainly welcome the proposal that the Policing Board monitor advances in this area.

force, would have the same result. Certainly, in line with the Commission, but not the Fundamental Review, CAJ believes that these measures should take place with immediate effect. It is also unclear what the Commission intended by amalgamating support units of Special Branch into the wider service, unless this again was an attempt to break up Special Branch and scatter current staff. Hopefully, such a measure would ensure that long term Special Branch officers do not (even inadvertently) undermine the process of change as has been the case in other police forces undergoing major transition.

- CAJ welcomes the ending of the Full Time Reserve (12.17) and the proposals to creatively use the existence of a Part Time Reserve to reach out to under-represented geographical areas or social groups (12.18). We assume that such officers will benefit from the same training and employment rights as regular officers. We would, however, be concerned if the existence of a Part Time Reserve were seen as the primary vehicle by which to increase the number of women (or other under-represented constituencies) to the new policing arrangements. We again reiterate our disappointment that the Commission did not adequately address issues of the under-representation of groups other than Catholics, and hope that the new institutions when established (the Oversight Commissioner, Policing Board, DPPBs etc) all look to broader concerns around representation.
- Elsewhere, this submission addresses questions of the pace of change. However, we feel it important to note that whereas the RUC's Fundamental Review made many (indeed most) of its structural and organisational proposals dependant on the security situation, Patten rejects this timetable out-of-hand. "We too believe that substantial restructuring is necessary and, unlike the 'Fundamental Review', we believe that much of it should happen with immediate effect" (12.3).
- CAJ had expressed serious reservations about some structural models that encouraged a "balkanisation" of the police service. We welcome the rejection by the Commission of any such trend (see 14.3), and we feel that their structural proposals should in principle be successful in devolving greater responsibility to the local level whilst avoiding this risk.

Size of the police service

We address in the next section some of the implications of the specific targets and timetables proposed, but in general terms CAJ has not taken any formal position on the ideal overall size of the new police service. Experience from other jurisdictions emphasises the importance of Northern Ireland avoiding long-term "over-policing" and we therefore warmly welcome the proposed reduction in size. The provision of good redundancy and re-training packages for those officers choosing to leave follows good practice elsewhere. While we recognise that some of these proposals will make initially heavy demands on public expenditure, the expected long term savings in terms of the contribution good policing can make to the establishment of a more stable and peaceful society are incalculable. Note that here, the term "policing" is used advisedly, since we should not overlook the fact that community safety is not secured by the police alone. It would certainly be counter-productive to direct all policing resources into the institution of policing.

Composition of the Police Service & Recruitment

Clearly this is one of the key issues surrounding the future of the new Police Service, and there are a number of points which the CAJ feels need to be clarified.

- A lot of the emphasis is on community leaders, the GAA and people outside the police encouraging Catholics and nationalists to put themselves forward (15.2) and, while important, it is crucially important that such opinion formers feel that the changes proposed are sufficient. In this regard, the failure to tackle the problem of officers retained who may have been involved in human rights abuses is a very serious deficiency of the report (we commented on this serious flaw in the report in some detail already - see introduction).
- CAJ would endorse the principle that merit must remain a critical criterion for selection for the police service (15.9). However, we would take exception to the Commission's argument that "we do not propose that religious or cultural identity, gender or ethnicity should be treated as a makeweight for merit". This we believe betrays a very simplistic notion of the concept of merit that fails to appreciate the culturally relativistic nature of the term. Whilst CAJ would not argue that applicants should be selected primarily on the grounds of religious or ethnic identity, it is clear that community identity can and should play its part in what constitutes 'merit' in relation to the new policing service. In other words, a police service can only hope to achieve the trust and confidence of the whole community if it is representative of the whole community. In these circumstances, requiring that officers be drawn from different communities in order to ensure representativeness is, we believe, valid.
- In its own submissions to Patten, CAJ argued strongly for clear targets and timetables, and we put forward a number of pro-active recruitment options which have been pursued in other jurisdictions. The setting of quotas (15.10) is a very vexed one but one that we included in the array of options, since it has been tried reasonably successfully elsewhere. We certainly have some reservations about this approach, however, in principle, we believe that the Commission has sought to strike the right balance. Firstly, there is clearly a need for radical, previously untried, methods if we are to transform the currently unrepresentative force into a pluralist and representative police service. Secondly, the central concept of merit is being retained, and no-one will be considered for appointment unless they meet the agreed criteria for serving in the new police arrangements. Thirdly, the current proportions of Catholics and Protestants in the relevant age cohort are roughly 50/50 according to the Commission, so that this mechanistic device is essentially a tool for ensuring that recruits more properly reflect the potential applicant pool. Last but not least, the Commission has suggested that these exceptional measures be taken for a limited period of time, when it is to be hoped that the composition of the new service will better mirror society as a whole. Given these checks and balances, given our own exhortation to the Commission to propose realistic but ambitious targets and timetables, and given the exceptional need for a representative police service which can command confidence right across the community, we feel that the Commission has sought to strike the right balance. To avoid any backlash for new officers recruited under this scheme, it would be important to monitor its implementation very closely and provide the necessary managerial and other support. Experience from elsewhere suggests that the introduction of quotas can create difficult working relationships if not well managed.

- Aside from the question of principle, however, there is the concern as to whether these targets and timetables are both realistic and ambitious enough? Without access to much more of the information which the Commission had to hand for its modelling exercise, it is difficult for CAJ to comment knowledgeably on the assumptions made in the report about compositional change. All that can be usefully said at this stage, therefore, is that changes in the current community imbalance will be a key test of the success or otherwise of the Patten programme of policing change. It is vital therefore that compositional change, and the speed of that change, be carefully monitored, so that any "slippage" is quickly remedied.
- CAJ was very disappointed that the only proposals for targets were made with relation to the two main religious traditions. Given the level of under representation among other groups such as women or ethnic minorities, CAJ felt that a more imaginative approach could have been adopted to try and create a more heterogeneous policing service. We refer elsewhere to the importance of the police being designated for the purposes of section 75 of the Northern Ireland Act, and the contribution this could make to ensuring that policing in Northern Ireland is no longer seen to be mainly a preserve of white, Protestant, heterosexual males. In this context, CAJ welcomed the proposals aimed at encouraging recruits with caring responsibilities to join the police service (15.11 - part time working, childcare provision, job sharing etc). It is perhaps unfortunate, however, that these measures - which are clearly intended to address the gender imbalance in policing - all seem to perpetuate the assumption that the only barrier to female representation relates to their childbearing role. There appear to be no specific recommendations at all relating to improving the representation of ethnic minorities or other under-represented groups, despite a number of concrete proposals made in submissions to the Commission.
- Patten reiterates the concern expressed last year by the Westminster based cross-party parliamentary NI Affairs Committee that too rigorous a process screening out recruits on the basis of minor juvenile offences could disproportionately disadvantage young Catholics/nationalists (15.13). CAJ welcomes the value of examining all such criteria to ensure that direct or indirect discrimination is not occurring at the point of recruitment.
- CAJ has reflected again on the question of police and Orange Order membership (15.14) in the light of the overall package of change that Patten recommends. As noted in the report, "police officers, like everyone else, are entitled to their private views, and to join legal organisations that reflect those views". Certainly, as a civil liberties organisation, CAJ would be very hesitant to support the imposition of any unnecessary restrictions on people's individual freedoms. In our early submissions on this point, we in fact recommended what Patten has proposed - a register of interests. The fact that this register will be available to the Police Ombudsperson is particularly positive (assuming that access to such information for use in court proceedings etc. is to be allowed). However, our initial recommendation was accompanied by other checks and balances which Patten has rejected (most particularly the ending of abusive emergency powers, the screening of existing officers as well as potential recruits, and specific anti-sectarian policies). Given that Patten felt unable to introduce such checks and balances, we think that the Commission has seriously under-estimated the problem posed to the reality and perception of impartial policing by membership of the loyal or Masonic orders. This problem is compounded in different ways.

Firstly, there is no attempt in the report to clarify why the Commission sees no contradiction between the new oath of all police officers to "accord equal respect to all individuals and to their traditions and beliefs", and the Orange Order oath to "strenuously oppose the fatal errors and doctrines of the Church of Rome, and scrupulously avoid countenancing (by his presence or otherwise) any act or ceremony of Popish worship". It is insufficient to suggest that one (the Orange Order) oath is subordinate to the other (police) oath in terms of the officer's professional duties. Secondly, Patten does not comment, even in passing, on the recognised right that states have to limit the freedom of association of police officers where those activities would be considered incompatible "with the police force's functions and a police officer's duty of impartiality". Thus, it is a principle of international law, that the nature of police work may require the imposition of certain additional responsibilities or limitations on the individuals concerned. Thirdly, the Commission says little or nothing about the use to which any register might appropriately be put. Thus, for example, it is unclear if the register could be used by management to deploy officers in public order situations in such a way as to ensure that there could be no potential conflict of interest between their private and their public activities. It is clearly vital that the register be used by the police service and the Policing Board to assess trends that could reflect upon the service as a whole.

Training, Education and Development

CAJ welcomed the recognition in Patten that the police, as currently constituted, are too militaristic, too insular and give too little attention to human rights. Accordingly, we welcomed the fact that all officers undergo human rights training (16.4); that there should be increased civilian input (16.10); that there is to be a reduction in the hours spent on drill (16.14); that the passing out parade is to be replaced with a graduation ceremony (16.13); that more integrated community awareness training is to be developed (16.17); and that re-training is being proposed (see especially 16.20 and 16.21). We also welcome the recommendations aimed at greater transparency (16.25-16.26). While welcoming the facility for the Policing Board and others to attend training sessions, we assume that this also means that the Policing Board, DPPBs, and the Police Ombudsperson (see earlier remarks in this regard) can have some policy input into training and not act merely as passive observers. We were disappointed that there is not more of a move away from the concept of a traditional police academy, and indeed the proposal to create a purpose-built police college seems to exacerbate rather than undermine the current isolation of police training. Given the lack of very explicit reference to community involvement in the design and monitoring of training, it would be important to include reference to these functions in the draft legislation establishing the Policing Board and other policing oversight bodies.

Culture, Ethos and Symbols

It may perhaps appear ironic that CAJ has so little to say under this rubric, given the extensive media coverage for Patten's recommendations about the flying of the union flag, the badge, the title of the new police etc. Human rights groups, however, draw for the most part upon international law and international good practice, and it is therefore understandable that we have little to offer in discussing specific details

regarding which flags should be flown, when and where, or what uniforms/badges/insignia would be appropriate.

We understand the difficulties and pain caused for many within the community with proposals suggesting such an apparently radical departure from the symbols and practices of the past. It seems to us, however, that the Commission on Policing had a clear brief from the Good Friday Agreement to "ensure that policing arrangements including...culture, ethos, and symbols, are such that in a new approach, Northern Ireland has a police service that can enjoy widespread support from, and is seen as an integral part of the community as a whole". In light of the public consultative process, it is clear that the current culture, ethos and symbols create a serious obstacle to securing confidence in some, mainly nationalist, circles. It is equally clear from listening to mainly unionist concerns around the importance of retaining the current symbols, that a pluralist environment (with British and Irish symbols treated on an equal footing) would fail to secure their support. The Commission itself noted that "the argument about symbols is not an argument about policing, but an argument about the constitution".

If the new policing arrangements are to be "unambiguously accepted and actively supported by the **entire** community" (Good Friday Agreement, CAJ emphasis), they must be insulated from partisan politics. Moreover, there needs to be a recognition that many people do not consider themselves either nationalist or unionist, and that the growing pluralism and diversity of Northern Irish society needs to be reflected in the symbols of the new policing structures. Accordingly, CAJ has consistently emphasised the importance of a neutral working environment. A neutral working environment allows both for a more representative workforce and public image, and it signals a clear break with the past. While we had (and have) no very fixed ideas as to how best this such a neutral environment might be established, we believe that the Commission has come up with a series of ideas which are clearly intended to achieve this goal

Cooperation with other police services

There are a number of recommendations on the issue of strengthening and institutionalising links between the Irish Garda Síochána, other police forces and the new service. As noted earlier with regard to the RIR, and to contracting-out or buying-in services, it is vital that hard-earned human rights and equality principles permeate any and all aspects of policing. It would be counter-productive and unfair on the regular force if they were expected to achieve high standards, but others working alongside them were not measured by similar yardsticks. Training programmes and oversight bodies will have to ensure a consistency of approach, regardless of the specific delivery mechanism which is selected.

Implementation

Implementation of the many positive proposals recommended by Patten is of course the key to their success - and we would urge speedy implementation as soon as the period of consultation is complete. We and others have long argued many of the changes that Patten has proposed, and further delay will only undermine confidence in the government's commitment to the undertakings made in the Good Friday Agreement, which were so roundly endorsed subsequently by referendum.

CAJ is very aware of the fact that extensive work was required to translate the human rights and equality commitments in the Good Friday Agreement into legislative reality (in terms of the Northern Ireland Act 1998). The same is likely to be true of Patten's proposals. Of course, the transition from drawing board to legislative text, to change on the ground, will be further hampered if serious opposition starts to mobilise in official circles. Government must ensure that this is not allowed to happen and must ensure that the police, the Police Federation, the Northern Ireland Office, and all those tasked with bringing about the agreed changes, are left in no doubt about the inevitability of the process of change.

Of particular concern however is the suggestion, in some of the recommendations put forward in Patten, that the security situation will determine the pace of change. This in fact means that it will be the Chief Constable who will essentially dictate the pace of change, since the government relies heavily on his/her analysis of security developments. Neither the Chief Constable, nor elements in the police establishment hostile to change, can be given such a pivotal role. After all, it would be ludicrous to conclude that an institution needing the kind of fundamental change as that recommended by Patten, could itself determine when and how that change would occur. Once the consultation process is over, there ought to be no delay in pushing ahead with the many positive changes proposed in the Patten report.

But the pace of change is not the sole cause of concern. In our August 1998 submission to the Policing Commission, CAJ noted that "It is vital that the Commission propose a system by which its recommendations can be monitored over time, and against which the activities of the relevant authorities can be measured. However radical and important are your eventual recommendations, they will have no relevance if there is no system put in place for their monitoring and adaptation. Change, especially change of the order required, will be complex and multi-layered and your Commission can only be the start of the process. It cannot and must not be the end".

We therefore welcome Patten's proposal that "an eminent person" from a country other than the UK or Ireland be appointed to be an oversight commissioner to supervise implementation of the recommendations (19.4). This person is to be appointed for five years, apparently on a part time basis although with support staff. CAJ entirely endorses this proposal. We would, however, emphasise, on the basis of international experience, that it is vital that sufficient resources be put at the disposal of this person, and that the appointment process be open and transparent. The Commission said that the person should not play a simple stock-taking role, but should provide an important impetus to the process of transformation. To do this effectively, he or she will need to have sufficient prestige and expertise to inspire confidence, have a clear commitment to human rights (given that this philosophy is meant to imbue the new policing arrangements), have access to adequate resources, and have sufficient powers to intervene actively and regularly in the transition process.

Selected bibliography of CAJ policing material made available to the Commission on Policing for Northern Ireland

This listing of material relates to general policing policy and public order policing. Additional materials are available on request, as is a full publications list from CAJ's office (45-47 Donegall Street, Belfast BT1 2FG)

- CAJ submission to the Commission on Policing for Northern Ireland, August 1998
- Plastic Bullets: A briefing paper, June 1998
- Policing Bibliography: material gathered in connection with international policing report Human Rights on Duty, March 1998
- Submission to the Police (NI) Bill, February 1998
- Human Rights on Duty: Principles for better policing - international lessons for NI, December 1997
- Policing the Police, 1997
- Commentary by CAJ on the 1996 Primary Inspection Report by Her Majesty's Inspectorate of Constabulary, 1997
- The Misrule of Law, October 1996
- Submission to the Police Authority Consultation on the future of policing in NI, August 1995
- Fresh Look at Complaints Against the Police, 1993
- Plastic Bullets and the Law, 1990
- Cause for Complaint, 1990
- Police Accountability in NI, 1988
- Consultation between the police and the public, 1985

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