

**CAJ Commentary on
Report no.2 of the Oversight Commissioner
(September 2001)**

Performance Indicators

Background

The Independent Commission on Policing for Northern Ireland (hereafter referred to as the Patten Commission) recommended in its major report into policing reform in Northern Ireland (published in September 1999)¹ that: *“An eminent person, from a country other than the UK or Ireland, should be appointed as soon as possible as an oversight commissioner with responsibility for supervising the implementation of our recommendations”*.

Subsequently, Tom Constantine, former head of the US Drug Enforcement Administration was appointed as Oversight Commissioner and gathered a team around him with “in excess of 225 years of service in law enforcement”.² The first report issued by the Oversight Commissioner team in January 2001 consisted largely of introducing the team and explaining how the Oversight Commissioner intended to carry out his work. The second report (issued in September 2001) looked at each of the 175 recommendations emanating from Patten and proposed a series of Performance Indicators that the Oversight Commissioner team will use when assessing the extent to which the recommendation has or has not been implemented effectively. The following commentary from CAJ focuses on those Performance Indicators.

Of immediate relevance to the following commentary is the fact that CAJ issued a circular in April 2001,³ entitled Benchmarks for the Oversight Commissioner that drew extensively on material developed by the Council of Europe for police forces throughout the 41 European member states. CAJ will therefore examine the Oversight Commissioner’s Performance Indicators against its earlier benchmarks document.

General Comment

In general terms, the Performance Indicators proposed by the Oversight Commissioner are excellent, and they should provide the Commissioner and

¹ For full report – see “A new beginning: policing in Northern Ireland”; www.nio.gov

² Oversight Commissioner, Report no 3, December 2001, page11

³ CAJ submission no S.109, £3; for short synopsis of CAJ’s longer term work on policing, see appendix.

the general public with an extensive insight into the police change process. CAJ did note however a few areas where further indicators could usefully be added. The Commissioner has indicated that the team intend to “monitor changes and trends in the area and make adjustments as necessary”, and accordingly the CAJ offers the following commentary.

Human Rights (Patten recs 1-7)

Patten noted *“It is a central proposition of this report that the fundamental purpose of policing should be, in the words of the Agreement, the protection and vindication of the human rights of all”*. Accordingly, the first, very important Patten recommendations focused on how human rights could be promoted in the practice of policing. The Performance Indicators suggested by the Oversight Commissioner are all extremely relevant in this regard. However, CAJ, with the assistance of the extensive work done previously by the Council of Europe, had recommended some indicators that are not included by the Oversight Commissioner and which would also appear very relevant and helpful.

For example, CAJ would propose the following additional Performance Indicators -

Recommendation 1 (human rights approach) –

- Evidence that human rights is included in ‘Mission Statement’ for policing and that the Policing Board regularly requires the Chief Constable to report on the human rights performance of officers

Recommendation 3 (Code of Ethics) –

- Evidence that officers (new and old) are aware of and abiding by the new Code of Ethics
- Evidence of any problems arising as between the Code of Ethics and the issue of notifiable associations

Recommendation 4 (human rights training) –

- Evidence that training and practices on the ground reflect the programme for action
- Evidence that the police service has been open to the involvement of non-police personnel in the design, delivery and evaluation of training.

With reference to one of the Performance Indicators already proposed by the Oversight Commissioner (see no.10), it is not clear why the Oversight Commissioner has limited external involvement in evaluation to NGOs? In fact the current wording might seem to exclude a role for the Human Rights Commission and Equality Commissions.

Recommendation 6 (human rights lawyer) -

- Evidence of human rights lawyer being consulted “about proposed police operations that raise human rights considerations” as Patten

proposed. (In Patten's para 4.11, it is clearly envisaged that the incumbent should be involved in pre-planning discussions and not just post facto).

Recommendation 7(monitoring) –

- Evidence that record-keeping systems will help identify human rights abuses, create a proper audit trail, and facilitate remedial action
- Evidence that concerns (whether individual grievances or policy concerns) about human rights abuses are appropriately addressed
- Evidence of human rights expertise on Policing Board and of induction/further training in human rights matters

Accountability (Patten reccs 8-43)

Some additional Performance Indicators that the Oversight Commissioner may want to consider in assessing compliance with Patten –

Recommendations 8-9 (creation of Policing Board) -

- Evidence of the Policing Board developing a responsibility for many issues well advanced by the police in the transitional phase (Code of Ethics, training plans, Codes of Practice)

Recommendation 13 (monitoring) -

- Evidence of Board engaging with communities with different experiences of policing: minority communities, women's groups, vulnerable groups etc. to assess police response to different needs

Recommendation 15 (coordination with other agencies) -

With reference to Performance Indicator no.4 proposed by the Oversight Commissioner, it is not clear if the NI Human Rights Commission is considered an 'agency'. It is clearly not an NGO (non-governmental organisation), and may therefore not be covered at all by the current formulation. The Oversight Commissioner should consider referring more explicitly here, and indeed more frequently throughout the text, to the importance of consulting with the Human Rights and Equality Commissions.

Recommendations 16-19 (composition) -

When checking the diversity of background (Performance Indicator no.6), presumably the Oversight Commissioner will be examining Patten's comments on this issue ie: "*We recommend that the nine independent members be selected from a range of different fields – including business, trade unions, voluntary organisations, community groups and the legal profession – with the aim of finding a group of individuals representative of the community as a whole with the expertise both to set policing priorities and to probe and scrutinise different areas of police performance, from management of resources to the safeguarding of human rights...*" On first sight, the government seems not to have followed this recommendation very closely in determining the current composition of the Policing Board.

Recommendation 22 (tri-partite arrangements) –

The current Performance Indicators focus on the legislation, but it will also be important to ensure that in practice, the legal changes have in fact brought about much greater clarity in the practical working out of the tri-partite arrangement. Accordingly, CAJ would propose the addition of the following:

- Evidence of any problems arising in the respective roles between the Secretary of State, Chief Constable and Policing Board

Recommendation 24 (operational responsibility) -

The current Performance Indicators proposed focus essentially on written policies; the Oversight Commissioner needs to assess what in fact is the practice? It may be good to adapt for use and add here some of the indicators which the Oversight Commissioner suggests elsewhere – see, for example, comments on recommendations 29-30 & 34:

- Assessment of functions through interviews with Policing Board members; observations of Board meetings and study of Board minutes; and discussions with the Chief Constable.
- Assessment of reports, minutes, schedules concerning the regularity and quality of Policing Board contacts with the Chief Constable.

Recommendations 25-26 (reports and inquiries) -

Several grounds can be relied upon by the Chief Constable when referring to the Secretary of State any Policing Board request for a report or inquiry. The current Indicators do not address this issue, so it may be worth adding a further Indicator that monitors what grounds are used in any such ‘appeal’ process.

- Assessment of the grounds on which reports and/or inquiries are referred to the Secretary of State by the Chief Constable

Recommendation 27(DPPs) -

No reference is made in the current Performance Indicators to Patten’s comments about the composition of the District Policing Partnerships. He said that “*the independent members should be selected to represent business and trade union interests and to provide expertise in matters pertaining to community safety. Taken as a whole, each DPPB (sic) should be broadly representative of the district in terms of religion, gender, age and cultural background*”. It would be good to incorporate here some of the Performance Indicators that the Oversight Commissioner had suggested in connection with the composition of the Policing Board (see page 23).

- Evidence of party affiliations of DPP members
- Evidence of party political membership reflecting electorates
- Assessment of CV of members for diversity

Recommendation 38 (Police Ombudsman)–

Patten recommended that “*the Police Ombudsman should be, and be seen to be, an important institution in the governance of Northern Ireland*”. A useful additional Performance Indicator would therefore be:

- Evidence of positive attitude expressed by government and leading police authorities regarding the importance of the institution

Recommendations 39-41 (covert law enforcement) –

Again, it is worth adding a further Performance Indicator that would assess qualitative rather than quantitative data.

- Evidence of any problems arising in relations between the respective bodies active on these questions (via Policing Board minutes, Ombudsman reports etc).

Community Policing

Recommendation 44 (core function) -

Since community policing must be two-way and cannot be solely police-led, CAJ would propose the addition of the following Indicators –

- Evidence of efforts to build capacity and train community leadership to ensure effective community-police partnerships
- Evidence of revision of resource allocation to better support community/policing efforts and greater community involvement in resource decisions
- Evidence of attitudinal change in police to a more community problem solving approach

Recommendation 48 (foot patrols)

An increase in foot patrols was proposed by Patten to improve police/community relations, so it seems vital to assess what the public thinks of the change. This is not covered by the current Performance Indicators, so CAJ would propose adding:

- Evidence of public attitudes to patrolling on foot (by surveys etc)

Policing in a Peaceful Society

Recommendation 54 (devolved authority)

One of the Indicators cited here “evidence of police taking into account the information gathered in consultation with the local community” might be usefully adapted and added as an Indicator of a number of other recommendations.

Recommendations 58-59 (army role) –

CAJ is aware of a number of concerns regarding the division of work between the army and police, and feels that it would be important for the Oversight Commissioner to keep an eye on developments in this domain. Accordingly, we would recommend the addition of the following:

- Evidence of any problems arising in the army/police division of responsibility, especially in public order situations

Recommendations 60-61 (emergency powers)

The Council of Europe places a lot of emphasis on good audit trails and record keeping to allow for greater accountability. The NI Human Rights Commission highlighted some particular problems in the context of police

record keeping and plastic bullets,⁴ and the section 75 duty will impose much more rigorous record keeping on the police in future. It would therefore be useful to add to the current Performance Indicators -

- Evidence of records being kept in line with the Northern Ireland Act (section 75) and the equality duty, and any patterns arising.

Public Order Policing

Recommendations 66, 69-70, 71,73,74

There were a number of additional Performance Indicators that CAJ believes could usefully be added in this chapter:

- Evidence of operational policing oriented towards problem-solving and pro-active policing (*the Council of Europe proposes that the indicators for this test being met include consideration of proportionality and subsidiarity in tactical planning and professional attitudes*)
- Evidence of the guidelines for the use of public order equipment being available to the general public
- Evidence of recommendations from external bodies – the Police Ombudsman, the NI Human Rights Commission etc. being pursued
- Evidence of close collaboration between the examination of alternative public order responses and the examination of appropriate training and accountability mechanisms

Recommendation 72 (ID numbers) –

It would be important for the Oversight Commissioner to examine -

- Evidence of any problems being highlighted by members of the public

Management and Personnel

Recommendation 77 (police appraisal system) –

The current Performance Indicator (no.4) refers to Patten recommendations, but is not very specific. It may be better to make this measure more explicit -

- Evidence that the factors to be included from the Patten report in any appraisal system include – human rights performance (recc. 5), problem solving skills (recc. 50), managing & adapting to change (reccs. 75 and 77), and managerial ability to maintain a neutral environment (recc.156). *All recommendation numbers relate to Patten.*

Recommendations 81/82 (Integrity & Ethnical behaviour) -

This is an obvious place to incorporate reference to the NIHRC, and close consultation with community groups, ethnic minority representatives etc.

⁴ Report entitled “The Recording of the Use of Plastic Bullets in Northern Ireland”, Northern Ireland Human Rights Commissioner, May 2001.

Recommendations 84-86 (sickness) -

CAJ sees no reason why this issue is not essentially 'delegated' to Her Majesty's Inspector of Constabulary (HMIC) and other 'internal' scrutiny mechanisms (police, Policing Board etc).

Recommendations 87-88 (Widow's Fund) -

The wording here in Performance Indicators 8 and 9, asking for evidence of involvement of the affected individuals, and of a process for regular assessment and evaluation, is very welcome and could usefully be replicated in other areas where CAJ has argued for more involvement of the 'policed'.

Recommendations 90-92 (Efficiency Initiatives) -

The Oversight Commissioner has replicated the language of the Implementation Plan in referring to "efficiency initiatives" rather than Patten's term of "civilianisation". Civilianisation was argued by Patten as "*being central to our vision of a police service for the 21st century*". While efficiency was referred to, the value of developing "*a more open culture in a traditionally closed organisation*" was also highlighted as one of the important benefits of civilianisation. Given this, the original language should probably be retained.

Policing Structures

Recommendation 94-96 (District Commands) -

A series of very positive indicators are used here by the Oversight Commissioner, and CAJ thinks that they could usefully be replicated elsewhere – especially:

- Documentation reflecting that police commanders have determined local priorities and set their objectives within a local policing plan and in consultation with the DPP and other community representatives (no 10)
- Evidence of invitations to participate extended to community members by name, group affiliation, or local standing, together with records of acceptance or rejection and lists of persons actually consulted either personally or in the context of group meetings (no 11)
- Evidence of results achieved...including the status of relationships with community representatives (no 12)

Recommendations 98-101(Special Branch) -

No reference is made here to the composition of the Special Branch (nor indeed in Patten) though personnel changes throughout the force should presumably also be reflected in important specialised units such as Special Branch/CID. We would therefore propose the following -

- Evidence of the religious and gender breakdown of staff before commencement of the change process and thereafter

Recommendation 104 (Part Time Reserve) -

Patten referred to the value of "*a part time reserve locally recruited from every neighbourhood in Northern Ireland, including a large proportion of women officers*". In assessing the extent to which women take up this challenge it

may be worth including in Performance Indicator no 10 specific reference to the need to monitor existence or not of “caring responsibilities” to allow for possible later analysis.

Size of the Police Service

Recommendation 105 (size) –

A Performance Indicator is included by which one would assess the impact on organisational capability of the ‘down-sizing’ proposals (Performance Indicator no.4). It would also be worth adding an additional indicator that would look on the impact such measures have on composition -

- Assessment of the strategy to determine the impact on composition of the police service and take corrective measures to adjust the strategy when warranted

Recommendations 105-110 (severance/retraining etc) -

Specific reference should be made here to assessing the situation with the assistance of the Police Federation.

Composition and Recruitment

Recommendations 111-112 (civilian staff) -

Given Section 75 of the Northern Ireland Act, the police and the Policing Board will be obliged to monitor their composition against all the section 75 categories – not just religion/politics or gender. Patten concentrated, almost to the exclusion of everything else, on the under-representation of Catholics and nationalists, but the Oversight Commissioner would be better advised to look at all the under-represented groups and ensure that the new policing arrangements will meet the Good Friday requirement that the police service should be “*representative in terms of the make-up of the community as a whole*”.

Recommendations 113-115 (community leaders/schools)

It seems important also to assess any possible problems as seen from the perspective of people other than the police, and so it is recommended to add the following indicator:

- Evidence of any difficulties expressed by community leaders and teachers and evidence of engagement on the part of the police with those obstacles

Recommendations 117 –122, 123, 125 (recruitment)

The Council of Europe had extensive comments on the importance of recruitment practices taking into consideration the various groups represented in society, the need to avoid discriminatory behaviour, the need to respect differences etc. One way of addressing this might be to add:

- Evidence of cooperation with other agencies with relevant experience in this area, in particular the NI Human Rights Commission and the Equality Commission

Recommendation 126 (notifiable interests) -

The legislation (see Performance Indicator no.2) is not very explicit on what constitutes a 'notifiable association'. The Oversight Commissioner should accordingly also look for:

- Evidence of the extent to which the Chief Constable's guidance meets concerns about any potential real or perceived conflict of interest (see Patten, para 15.15).

Training, Education and Development

Recommendations 129-149 (training, education & development) -

Any police service meeting the requirement that it be "accountable, responsive, communicative and transparent" (see no 2b) would need to involve non-police personnel in its training needs analysis, and to have the 'users' help in the design as well as the delivery of training. The level of involvement of non-police personnel needs to be explicitly monitored in the implementation of Patten's recommendations on training. The detailed Performance Indicators given for recommendation 133 are very helpful and could be usefully integrated at other relevant places in the work of the Oversight Commissioner (see for example recommendation 146 which is much less explicit about civilian involvement)

Culture, Ethos, Symbols

Recommendation 156 (neutral working environment) -

Fair employment legislation is referred to here, but section 75 of the Northern Ireland Act is also relevant. It would also be necessary, if managers are to be assessed on their ability to maintain a neutral working environment, to provide them with the necessary support in terms of anti-discrimination training, anti-harassment policies etc. It is not clear if this is to be pursued by the police and/or the Oversight Commissioner since Patten does not make a specific recommendation on this matter.

Cooperation

Recommendation 157 – cooperation with An Garda Siochana

It would be worth adding -

- Evidence of any differential practices (especially in public order situations) being shown by officers differently recruited, requiring a re-assessment of training or managerial practices

Oversight Commissioner

Recommendations 172-175

Clearly the Oversight Commissioner is not intended to monitor his own behaviour, but it might be helpful nevertheless to indicate some of the measures that other people can use when assessing if he and his team are meeting their own objectives. For example, one could imagine citing -

- Evidence of 4-monthly published reports
- Evidence of soliciting reactions to the reports and soliciting input from police and non-police sources to inform those reports
- Evidence of meetings with Ministers, NIO officials, the Chief Constable, the Policing Board, DPs and “others as appropriate”, to cite the Implementation Plan and Patten.