

The Policing You Don't See – New Report from CAJ

CAJ has published a major report on covert policing after conducting an extensive research project lasting over a year. Drawing on prior work the report develops a human rights based framework from international standards and the Patten Report and uses it to analyse past and present practice with respect to contemporary policing in Northern Ireland.

The programme of police reform ushered in by the peace settlement placed great emphasis on accountability and transparency. The Report of the Independent Commission on Policing in Northern Ireland (the Patten Report) which flowed from the Belfast/Good Friday Agreement explicitly recommended that these principles should apply to covert policing. For example, the Patten Report advocated that “Codes of Practice on all aspects of policing, including covert law enforcement techniques, should be in strict accordance with the European Convention on Human Rights;” and that such codes of practice should be publicly available.

Despite this background the British government, in a paper appended to the 2006 St Andrews’ Agreement, set out “future national security arrangements in Northern Ireland” with inherent backsliding on the prior human rights based agreements. This document shifted the most sensitive areas of covert policing outside the post-Patten accountability arrangements. The policy formalised the previously largely undeclared role of the Security Service (MI5) in covert policing in Northern Ireland and actually transferred primacy to MI5 over “national security” policing.

The first chapter of the report draws on international standards and the recommendations of Patten to elaborate a human rights framework for covert policing. The second chapter examines the evidence of past human rights abuses in covert policing in Northern Ireland. The third chapter examines the specific role of MI5 during the conflict, as far as it is known from official reports and other sources, and what little we know of its operations since the St Andrews Agreement. The fourth chapter outlines and analyses the mechanisms that exist to officially provide accountability in respect of MI5. The final chapter provides a critique of the application and impact in practice of the St Andrew’s safeguards. It also benchmarks the arrangements following the transfer of primacy over ‘national security’ policing to MI5 against the human rights and Patten frameworks for covert policing outlined in the first chapter. This chapter concludes by exploring the question of who is running the most sensitive area of policing in Northern Ireland and examining the breadth of the accountability gap which has emerged since the transfer.

The report concludes that the UK level oversight of MI5 is plainly inadequate and that the local mechanisms that hold the PSNI to account are evaded by the Security Service. It argues that this situation falls woefully short of international standards and has the capacity to undermine confidence in policing as a whole.

In response to the report, Brian Gormally, Director of CAJ said:

“There is overwhelming evidence from official inquiries that there were many abuses in covert policing in the past. These did immense damage to the rule of law and arguably prolonged the conflict. Since the peace agreement there have been huge reforms to the police service designed to prevent such abuses ever happening again.

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“Unfortunately, the secret Security Service – implicated in past abuses – has not been so reformed and has been put in charge of a highly important area of mainstream policing. MI5 has primacy in covert ‘national security’ policing and gives ‘strategic direction’ to the PSNI in this area.

“The Patten report recommended the downsizing, deinstitutionalisation and integration of Special Branch within the PSNI and the oversight of the PSNI by an independent board rather than a government minister. However, since the St Andrews’ Agreement perhaps the most sensitive area of policing is being run by a parallel police force – ‘a force outside a force’ – answerable to ‘direct rule’ Ministers and subject to separate and ineffective oversight arrangements. If the Chief Constable’s assertion at the time of St Andrews that MI5 would focus only on dissident republicans remains true, the practical impact of this is that two different covert policing regimes, in terms of operational techniques, standards and oversight, are now in place for republicans and loyalists.

“Our research shows that the UK level oversight of MI5 is ineffective. Limited additional accountability measures were promised in the St Andrews’ Agreement but some of the most significant commitments, to publish policy frameworks, have not been honoured. Related policy documents which have been released to CAJ under Freedom of Information rather than being safeguards actually appear designed to limit accountability and show an obsession with keeping anything with the label ‘national security’ secret from our devolved institutions.

“Whilst the Prime Minister after St Andrews gave assurances that PSNI officers working with MI5 would be ‘solely accountable’ to the Chief Constable and Policing Board, this is contradicted by these documents which stipulate that PSNI officers, up to and including the Chief Constable, working on national security matters are not accountable to the Policing Board but rather to the NIO.

“MI5 – secret, unreformed and unaccountable – is now running one of the most sensitive areas of policing. This is a disaster waiting to happen to confidence in the rule of law and our peace settlement. CAJ wants a full, independent review with the aim of bringing covert policing here in line with human rights standards.”

The text of the report is available at: caj.org.uk/contents/1141

The New Police Ombudsman for Northern Ireland speaks at CAJ’s AGM

Dr Michael Maguire, the new Police Ombudsman for Northern Ireland, gave one of his first formal speaking engagements at CAJ’s AGM on 26 November 2012. He highlighted the importance of the Office of the Police Ombudsman for Northern Ireland (‘OPONI’), while noting the criticism it had received by both the Criminal Justice Inspection (‘CJINI’) and by CAJ. He summarised the areas where progress had been made in the four months since he took up his post and spoke of his approach to future work at OPONI.

Since Dr Maguire’s appointment, he has sought to address the recommendations made in the CJINI report released in 2011. He explained that the Historical Investigations Directorate is now better resourced, with ‘two separate investigation teams, a review team and a business support unit that will engage with families and their representatives on a more consistent basis and help with the public statements surrounding individual investigations.’ Dr Maguire has also sought to ensure that the necessary checks and balances are in place when the investigation teams access sensitive material. In addition, he is developing a system to prioritise cases, which will help ensure consistency in decision making and provide clarity on timing for affected families.

In terms of future work, Dr Maguire underlined his focus on the robustness and independence of the investigation process and the quality of the work undertaken, including a consistent approach to both quality

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and access to information. He is also committed to building a new and united senior management structure, on which work has progressed. In addition, he intends to agree a Memorandum of Understanding with the Department of Justice in the interests of independence and transparent communication. In relation to historical cases, Dr Maguire has invited CJINI to undertake a review, after which OPONI will either begin work again in this area, or address any outstanding issues that require attention. He acknowledged the importance of rebuilding public confidence in OPONI, and encouraged stakeholders, including CAJ, to continue to act as 'critical friends'.

Dr Maguire specifically addressed the treatment of 'collusion' in OPONI's investigations. He noted that some commentators find the term to be meaningless, while others would like to see it included in nearly every historical report. Dr Maguire stated that, even though collusion is not a crime as such, it still can take place and, if so, should be recognised as such in reports. He also cautioned against its overuse in reports, to avoid inaccurate usage or a dilution of its meaning. He does not, as yet, plan to form a new definition of 'collusion', but will apply the Cory and Stevens definition on a case by case basis.

Dr Maguire also underlined the central need for evidence in any investigation. He explained that there is no guarantee that a complainant would be happy with the result of an investigation, as conclusions can only rest on evidence, which is particularly difficult to access in historical cases. He outlined OPONI's responsibility to handle sensitive information appropriately, which might involve limitations on what could be said in public about covert or sensitive intelligence material. Dr Maguire affirmed that he was committed to providing as clear a narrative and understanding of events as is possible on the evidence available.

In the four months since taking up his post, Dr Maguire has met with diverse stakeholders and he explained that he would not be able to meet all of their expectations, some of which were irreconcilable. He explained that OPONI should have the confidence to stand by its reports, based on a professional, independent, impartial and high quality approach, even if not all stakeholders are satisfied with the reports' conclusions. He called for realism in the collaboration with this new beginning for the History Directorate of OPONI, and looked forward to working with CAJ on this fundamental issue.

Dr Maguire then answered questions from the floor. In relation to an all encompassing truth recovery process, he recognised the difficulties in dealing with the past, but underlined that OPONI's role was to respond to complaints received and not to address the wider debate on truth recovery. In relation to a concern that officers would 'lose' evidence under investigation by OPONI, Dr Maguire cautioned that any such behavior was unlawful and should be officially reported, and explained that OPONI had strong powers to recover information. In relation to the handling of covert intelligence, he recognised the conflict between supporting investigations (for which investigators' access was critical) and protecting individuals (for which there might be limitations to what material can be in the public domain). He explained that these would be balanced on a case-by-case basis.

CAJ was pleased to host Dr Maguire and to give our membership the opportunity to engage fully and critically with the work of OPONI at this important time.



‘The First Six Months Are Crucial’

In December 2010 CAJ published *Prisons and Prisoners in Northern Ireland: Putting human rights at the heart of prison reform*. From 2002 until that CAJ report more than 40 reports and reviews into the prison system had been written by a range of agencies. The concerns were repeated in many of these reports demonstrating that core recommendations to the prison service had not been effectively, efficiently or consistently acted upon.

Indeed, over the years the Northern Ireland Prison Service (NIPS), and the Department of Justice (DOJ) – or its predecessor prior to devolution, the Northern Ireland Office (NIO) – has repeatedly been called upon to create a more suitable women’s prison, remove fine defaulters from the prison system and to deal with concerns around the emphasis on security within the prison, the disproportionate cost per prisoner, and the high level of staff absenteeism, among other issues. Through the years the response to the reviews and reports was slow and ineffective.

Finally, in line with the Hillsborough Agreement, in June 2010 the Minister for Justice appointed the Prison Review Team (PRT). This team was led by Anne Owers, a former Chief Inspector of Prisons, in a ‘review of the conditions of detention, management and oversight of all prisons.’ The PRT published its Final Report (the Owers Report) in October 2011. At the time they stated that their interim report, which had been published the previous February, had ‘identified significant and long-lasting problems in the Northern Ireland Prison Service and called for a programme of change and transformation of culture, approach and working practices’. Worryingly, they wrote ‘yet little has changed in practice in the succeeding eight months’. They warned: ‘this is a unique opportunity to create a public sector prison system that is a model of excellence. It should not be wasted. Though the transformation will take time to complete, the next six months will be crucial’. When the final report was published, the Minister of Justice acknowledged that ‘end to end reform of the Prison Service cannot be achieved overnight’ and re-iterated how vital the subsequent six months would be.

Despite some significant challenges to the implementation of a courageous and principled Owers Report, including the threat by the First Minister to resign if British symbols were addressed, the Minister for Justice declared, ‘reform of the Northern Ireland Prison Service is unstoppable’.

Unfortunately the start of the reform programme has been protracted: in December 2011 the Minister appointed a *Prisons Reform Oversight Group* to oversee the implementation of the PRT recommendations. However, membership of the group was not complete until spring 2012 when, given a significant number of PRT recommendations related to health issues, the DHSSPS Permanent Secretary McCormick joined the Group. Other delays were caused by the employment and then speedy resignation of the NIPS employed ‘change manager’ whose role was to take forward the Strategic Efficiency and Effectiveness Programme (SEE), as well as other senior Managers within the prison system.

The pace now appears to be picking up. The oversight mechanism appears thorough, at least for DOJ and operational healthcare recommendations. The NIPS ‘Change Team’ has created ‘descriptions’ which ‘provide clarity on the definition, scope and outcomes for each [PRT] recommendation’. Once NIPS, DOJ or DHSSPS believe that a PRT recommendation has been completed, ‘outputs’ are then presented to the Oversight Group to sign off as implemented. The Criminal Justice Inspection (CJI) (or health service inspectorate – the RQIA) will in turn provide an independent evaluation of the implementation of recommendations by measuring ‘outcomes’ against baseline data which was collected by the NIPS Change Team at the start of the reform process. By considering the intent behind each recommendation and the ‘spirit’ of implementation, CJI aims to provide an assessment of the resulting ‘outcomes for prisoners’ so as to ensure that the implementation process is not merely a ‘tick-box’ exercise. Whilst to date no PRT recommendations have reached the stage of completion having been put through this process, it is nevertheless welcome that the structure is now in place.

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However, an important issue for CAJ is the present lack of an overall Implementation Plan that incorporates all the PRT recommendations and involves not just NIPS but also DOJ, DHSSPS, the Prisoner Ombudsman, and Department of Employment and Learning (DEL). Oversight of implementation is made more difficult without an official Implementation Plan and, as has happened in the past, recommendations can be 'cherry-picked' or fall through the cracks and go unnoticed and unimplemented, or implemented only in part.

Turning to specific issues:

- The Millimetre Wave Body Scanners for searching prisoners have been piloted in Magilligan and Hydebank Wood, but there is continued delay with the Transmission X-Ray technology being used at Maghaberry. The Millimetre Wave Body Scanner has reduced the need for searches and prisoners are seemingly only physically searched if the scanner picks up a signal of something 'suspicious'. The delay with rolling out the Transmission X-ray technology is based on concerns around its potential health impact. It has never been used in a prison situation and is apparently at least a year away from being installed as NIPS are undertaking medical research in relation to potential long-term implications.
- The long-standing prison staff Framework Agreement was replaced by the Staff Deployment Agreement between the Prison Officers Association (POA) and NIPS. This agreement includes a new 'operating model' which aims to create a less security-focused prison (subject of much criticism in the past) by amending staff to prisoner ratios, introducing new roles such as Custody Officer and Offender Supervisors and simplifying the management structure.
- The PRT also recommended people under 18 years old should not be held at Hydebank Wood. This requires new legislation and the Minister for Justice has indicated that this will be introduced in 2013 but as of 1 November Young offenders will no longer be detained at Hydebank Wood unless the circumstances are most exceptional. In parallel, the Minister has agreed to propose legislation to change fine default to a civil offence rather than a criminal offence so as to keep fine defaulters out of prison.

Notwithstanding the progress, several specific concerns remain. One relates to the recognised need for cultural change within the prison system. Progress on the new code of ethics and code of discipline, two aspects needed for facilitating the creation of a new ethos and culture, has been slow. It seems that they are still under development and have to be approved by the NIPS management board, the trade union partners and the Department of Finance and Personnel (DFP).

It was also recognised that it was necessary to bring new staff on board (which required the retirement of at least some existing staff). There had been criticism that those officers taking part in the Voluntary Early Retirement 'exit' scheme could in fact re-apply to NIPS. On broader questions it has been reported that the recruitment process did not diversify staff (in terms of ethnicity and/or religion) as had been hoped. It was also reported the new recruits have 'exceptional' capabilities and have 'raised the bar' of expectations of prison staff.

In relation to women a purpose-built custodial facility has been discussed for years and it appears as though the Minister is fully committed to finally creating a dedicated women's centre, although approval from DFP is still needed. The Minister has approved the development of a new, separate secure custodial facility for a small number of women which will seemingly be balanced with alternatives to custody.

One final concern is that no mention of human rights has been made by NIPS in relation to prison reform despite the fact that the PRT Interim Report (February 2011) recommended that the vision and aims of the prison system should be in line with human rights and indeed international best practice and the PRT Final Report (October 2011) stated that 'Human rights are not a list of don'ts but a live, practical and positive grounding for running a prison.' CAJ has long espoused that building a prison system founded on human rights is for a good of all: prisoners, prison staff and society. In fact, in our 2010 publication we noted that

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NIPS had committed itself in the Corporate Plan 2009-12 and Business Plan 2009-10 “to protecting the human rights and dignity of our staff, prisoners and all others with whom we come into contact” and [had] highlighted in its plan to “continue to take forward a comprehensive review of all...existing policies, practices and procedures to ensure that they are human rights compliant”. Worryingly, NIPS’ value on human rights appears to be watered down in that the more recent Business Plan and Corporate Plan merely states ‘we will continue to implement all statutory obligations, e.g., those in relation to Equality and Diversity; Human Rights; Freedom of Information and data control; and Health and Safety’.

To finish on a positive note, it would seem that all the players – DOJ, NIPS, CJI and the Oversight Group – recognise that Northern Ireland has a real opportunity. Northern Ireland is small with a relatively small prison population which offers the prospect to be innovative in rolling out policies and practices. As one official has stated, there is the opportunity to put Northern Ireland on the map for other countries to look to when considering prison reform, offering almost ‘prison tourism’.

A longer version of this article will be published on the Rights NI Blog.

Terry Enright obituary

A bright light went out on 20 November 2012: Terry Enright (senior) died. Terry was long active in CAJ: he attended events, spoke on platforms, and “lent” us his marvellous wife, Mary, to be a member of the Executive Committee for many years.

Tributes described Terry as “a tireless activist and campaigner”, “a true trade unionist” and “fearless community activist (who has) inspired a whole generation of young people through his work across the community”. Terry was branch secretary and a founder member of the Greater Belfast community and voluntary sector branch of UNISON. He was a key early mover in establishing the Policy Appraisal and Fair Treatment Coalition which became the Equality Coalition and shaped the Agreement’s strong equality provisions.

Despite or maybe because of personal tragedy – his much-loved eldest son was murdered in a ‘drive-by’ loyalist shooting after the INLA killed Billy Wright – Terry was a powerful advocate for peace and justice. Less than a year after his son’s murder, he shared a panel with Billy Mitchell, Patrick Yu, and Monica Wilson, explaining the centrality of equality to peace-building to the visiting UN High Commissioner for Human Rights. Terry said:

“I know that we may look and sound like a strange coalition, but there has been a common interest between all the areas of disadvantage that we represent..... Billy the loyalist constituency, and myself, the republican/nationalist constituency, are here to show that when people from Protestant and Catholic working class communities come together they can, while recognising the issues which divide them, put their differences to one side and work together to improve the quality of life of all our people.”

Mary Robinson responded: *“your alliance required that difference be respected and that difference, if effectively mobilised, is a strength not a weakness. You have argued for the most awkward, difficult and complex inequalities to be recognised and addressed – you have also provided a model of how best to do this”.*

He was also a constant advocate for a Bill of Rights - at a Human Rights Consortium event in 2003 Terry said:

“....we need these things written into a Bill of Rights because it is not enough for our Executive and our politicians to sit down and agree the Good Friday Agreement, agree the Programme for Government, and write in lots of things about social inclusion and equality, and then do nothing about it. The Bill of Rights will ensure that government takes responsibility for all of those things...It is all about responsibility and accountability.”

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Inez McCormack captures Terry's approach very well. She says

*"We went to him for help when we were starting the Participation and Practice of Rights Project. We asked "Is this a good idea Terry? He said... "it's about ***** time that somebody did something like this." That's how we got going."*

Whether lobbying civil servants and politicians, working with young people, campaigning for his union members, or protecting 'his' beloved Black Mountain, Terry didn't stand any nonsense. In the face of someone being pompous – a wry, caustic, and normally unrepeatable (!) remark would have us all in stitches. He was rarely without a cigarette and did not think much of the smoking ban. Not wanting to miss anything, he was often found in the back-row of an event, lighting up anyway – and occasionally setting off fire alarms.

At his burial, it was said that everything Terry (and Mary) did was driven by love – love of nature, love of the Irish language and culture, but above all love of people. He particularly loved and believed in the essential goodness of young people and he and his family –and the Terry Enright Foundation that they established in memory of Terry Óg – have transformed the lives of countless young people who might otherwise have been written off by society.

Terry was a true human rights defender who inspired those of us who had the honour and privilege of knowing and working with him. Ar dheis Dé go raibh a anam.

This tribute was written by Maggie Beirne, Martin O'Brien and Aideen Gilmore



Terry Enright

Civil Liberties Diary - October 2012

2 October

A motion that called for same-sex couples to be allowed to marry was defeated in the NI Assembly. The motion looked to introduce legislation to guarantee that couples of any sex or gender identity would receive equal benefits under the law.

4 October

An Audit Office report has indicated that the PSNI rehired more than 1,000 former RUC officers on temporary contracts after they took large redundancy packages. According to the report, approximately a fifth of all officers who left after the Patten Report were recruited and rehired by the PSNI. The report also questioned the awarding of temporary contracts without competition to Grafton Recruitment at the cost of 44 million pounds.

5 October

Six months after a similar case, another patient has died after 24 hours on an A&E trolley. The man died in the emergency department of the Antrim Area Hospital while waiting for a bed. The Northern Health and Social Care Trust has faced criticism over the past year regarding its A&E patient delays; the worst in Northern Ireland. The Trust has set a target of no patient waiting more than 12 hours for a bed.

8 October

The NewsLetter has brought an application to the High Court against the OFMDFM office alleging that the office has not complied with Freedom of

Information requests. It is the first time that such a legal challenge has been mounted in the UK.

Anonymity orders granted to criminal defendants has risen to an all-time high, with a 40 percent rise in the publication of names and other details from 2011. The latest orders have been granted under section 11 of the Contempt of Court Act 1981, which allows courts to withhold detailed information about defendants as it deems necessary.

10 October

Health Minister Edwin Poots unveiled plans to halve the number of state-run residential homes. This proposal will close 28 of the current 56 facilities within five years, as a measure to enable older people to remain at home in their later years.

11 October

The OFMDFM announced a series of signature projects to improve literacy and numeracy levels among children from deprived areas. These programmes will give 150 recently graduated teachers two-year contracts to deliver one-to-one tuition to pupils who are projected to receive lower than a C grade in their maths and English GCSEs. Additionally, 80 newly qualified teachers will deliver one-to-one tuition to primary school pupils who are struggling with reading and maths.

19 October

Mr Justice Treacy has ruled that same sex couples should be allowed to adopt children together in Northern Ireland. Until now, both single people and

heterosexual married couples were allowed to adopt, but couples in civil partnerships were not recognized as in a marriage. The landmark decision now enables same sex couples in civil partnerships to adopt as a couple.

The Marie Stopes Clinic opened in Belfast, providing sexual health and family planning services, HIV testing and counselling, ultrasound scanning, treatment for sexually transmitted infections, and abortions for women who are up to nine weeks pregnant, as legal under NI legislation.

23 October

Auditors have reported that Northern Ireland has spent over 250 million pounds to settle negligence claims over the last five years. The highest number of claims have been in cases involving women's care; more specifically, a third of cases were found to be obstetrics and gynaecology negligence cases.

Compiled by Elizabeth Super from various newspapers

Just News

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