



# PSNI@20: Human Rights Reflections on Policing Reform North and South

CONFERENCE REPORT



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# PSNI@20: Human Rights Reflections on Policing Reform North and South

## CONFERENCE REPORT

*Report on a joint seminar organised by*  
ICCL, CAJ, the Senator George J. Mitchell Institute for Global Peace,  
Security and Justice, and the School of Law at Queen's University Belfast.  
**Held in the Great Hall, Queen's University Belfast, 5 November 2021**

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# Conference overview

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## Introduction

*PSNI@20: Human Rights Reflections on Policing Reform North and South* was a one-day, hybrid conference held on 5 November 2021 in the Great Hall at Queen's University Belfast. There were both in-person and online attendees.

The seminar was one component part of a broader joint ICCL-CAJ project on policing oversight, funded by the Community Foundation Ireland through the All-Island Fund. It will be followed by a second seminar in Dublin in March 2022.

We acknowledge support from the Senator George J. Mitchell Institute for Global Peace, Security and Justice, and the School of Law at Queen's University Belfast.



## The Organisers

### Committee on the Administration of Justice (CAJ)

CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

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### Irish Council for Civil Liberties (ICCL)

Founded in 1976 by Mary Robinson, Kader Asmal, and Donal Barrington, ICCL is Ireland's leading human rights organisation. ICCL is fully independent of government and business and all political and religious organisations. ICCL works to promote human rights and fundamental freedoms in Ireland. Fearless in its advocacy, ICCL has been at the forefront of all of the key human rights debates in Irish society, making a significant impact on law, policy, and public opinion. Ireland is a freer and more equal place today because of ICCL's work.

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### George J. Mitchell Institute for Global Peace, Security and Justice, Queens University Belfast

Established in 2016, the Senator George J. Mitchell Institute is a flagship for interdisciplinary research in areas of major societal change. It brings together researchers from a wide range of disciplines to tackle some of the greatest global problems of our age.

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## Conference theme

Police reform and oversight has been an essential pillar of the NI peace process from the 1990s onwards. It has now been 20 years since the PSNI was established following the Independent Commission for Policing in Northern Ireland (the Patten Report), along with wider policing oversight arrangements, including the Office of the Police Ombudsman for Northern Ireland. Meanwhile, in the Republic, generational police reforms under the Commission on the Future of Policing are now entering a critical phase as legislation on the restructured oversight mechanisms is being brought forward.

The Irish Council for Civil Liberties (ICCL) and the Committee on the Administration of Justice (CAJ) have been key players in the policing reform process for many years and have played

a key role in advocating for a rights-based approach to policing within both jurisdictions.

Set against a very different social and political environment to that underpinning the Patten Commission era, twenty years on we now stand at a key juncture for advancing and sustaining policing reform, and with this comes an opportunity for us to reflect on past successes, current challenges, and risks for the future around human rights.

During this half day seminar, we heard from academics, practitioners, and others with a direct involvement in police reform and oversight. There was an opening panel on human rights, policing reform processes, and structure; a second panel discussion focused on policing at a community level; and then, finally, a 'reflections' panel drawing on the experience of those involved in policing reforms processes, North and South.



# Conference Agenda

|       |   |  |
|-------|---|--|
| 09:00 | Registration  |  |
| 09:30 | Opening   | Professor Richard English, Director, Senator George J Mitchell Institute for Global Peace, Security and Justice; and Denise Charlton, Chief Executive, Community Foundation for Ireland  |
| 09:35 | Video Address   | Professor Fionnuala Ní Aoláin, UN Special Rapporteur on the promotion and protection of human rights while countering terrorism and academic based at Queen's University Belfast and the University of Minnesota   |
| 09:50 | <b>PANEL 1</b><br><b>Human rights</b><br><b>policing reform and</b><br><b>accountability:</b><br><b>processes and</b><br><b>structure</b> | <p>CHAIR: Doireann Ansbro, Head of Legal and Policy, Irish Council for Civil Liberties</p> <p>PANELLISTS:</p> <ul style="list-style-type: none"> <li>• Dr Richard Martin, Assistant Professor of Law, LSE</li> <li>• Alyson Kilpatrick, current Chief Commissioner of NIHR and former Human Rights Advisor to the Policing Board</li> <li>• Dr Michael Maguire, Honorary Professor of Practice, Senator George J. Mitchell Institute, QUB</li> </ul> |
| 11:00 | <b>PANEL 2</b><br><b>Policing with the</b><br><b>Community</b>  | <p>CHAIR: Brian Gormally, Director, Committee on the Administration of Justice (CAJ)</p> <p>PANELLISTS:</p> <ul style="list-style-type: none"> <li>• Dr John Topping, Senior Lecturer in Criminology, QUB</li> <li>• Lilian Seenoi-Barr, Director of Programmes, North West Migrants Forum</li> <li>• Conal McFeely, Creggan Community Development Worker</li> <li>• Debbie Watters, Visiting Professor, Ulster University</li> </ul>                |
| 12:00 | Comfort Break   |  |
| 12:10 | <b>PANEL 3</b><br><b>Response and</b><br><b>Reflections Panel</b>   | <p>FACILITATOR: Dr. Vicky Conway, member of the Commission on the Future of Policing in Ireland and former member of the Policing Authority</p> <ul style="list-style-type: none"> <li>• Stephen White, Former Assistant Chief Constable, PSNI</li> <li>• Jack Nolan, former Assistant Commissioner, An Garda Síochána</li> <li>• Alyson Kilpatrick (credentials as above)</li> </ul>  |
|       | Wrap up reflections   | Dr. Vicky Conway (credentials as above)  |
| 13:30 | Event Close   |  |

# Welcome and opening remarks

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## Professor Richard English



### **Director, Senator George J Mitchell Institute for Global Peace, Security and Justice**

Good morning. A very, very warm welcome to this event on the PSNI@20, co-hosted here at Queen's University Belfast by the Senator George J. Mitchell Institute for Global Peace, Security and Justice, by the Irish Council for Civil Liberties (ICCL), and by the Committee on the Administration of Justice (CAJ). I am Richard English, Director of the Mitchell Institute here at Queen's, and one of the things we are delighted to do at the Institute is to promote dialogue, discussion, debate on really major events featuring partners with great insight, and that is what we have got this morning. So, thank you to all of you for coming. Thank you to the virtual audience, to the audience here in person in the Great Hall at Queen's. And thank you to the organisers and speakers. It is a great line-up of speakers. It is a great opportunity to pause and take reflection. I am looking forward to it enormously. And I hope that all of you will really enjoy this excellent event on the PSNI@20. On behalf of the Mitchell Institute, thank you and welcome.

## Denise Charlton



### **Chief Executive, Community Foundation for Ireland**

Thank you very much. I am very sorry that I can't be there in person, but I am delighted to be attending virtually. It is a really important moment for us at Community Foundation Ireland, for ourselves and our partners. The gathering and wider work done by those at the Council for Civil Liberties and at the Committee of Administration for Justice is a milestone on a journey we at The Community Foundation for Ireland and our partners The Community Foundation for Northern Ireland have been on to build up civil society in an All-Island context. The need for stronger civil society voices has been on a radar for quite some-time.

During our twenty-one years we have been able to nearly give out €100 million to 5,000 community organisations, and increasingly, the desire for All-Island support has been articulated. We have seen groups in both jurisdictions really eager to learn from each other, as you are today, to share research and to share experiences, plus a lot more.

## **The All-Island Fund**

Brexit obviously brought this into a real focus, and there is no need for me to revisit or rehash the difficulties that have been and are in making Brexit a reality. Suffice to say that for us at the Community Foundation for Ireland; we really saw growing concerns that large sections of society were in danger of either being dragged out by louder voices, being brushed aside, or just being ignored. So, with that and our partners, we went to private donors, and we asked them if they were willing to step up to the mark, and they did. So, we launched the All-Ireland Fund last Easter, eight weeks ago, and we were able then to unveil thirty new cross-border civil society partnerships – and they include today's work. They include work on migrants' rights, children rights, empowerment of women, clean air, environment initiatives, LGBT plus, and so much more.

## Philanthropy

But I suppose for us, for CFNI and ourselves at Community Foundation, we are really aware that this initial pilot is only scraping the surface. This initial piloting of the Fund would not have been possible without the generosity of our private donors providing €410,000 for grant-making. But actually, the issues are really complex and difficult. There's so much learning and opportunity to be shared, and we really understand that people need us to stay with them in the longer term. Reform of policing is one of those really complex issues, so we are really delighted in a small way to be participating today and to be supporting the work. In addition to the historical issues, we have really seen over the last eighteen months as well, the leadership role that ICCL and CAJ have taken. Particularly with ICCL, we have seen close hand the huge work that they have done in protecting the individual and personal rights during COVID, and that really brought home to us, as always, the real importance of both organisations' work.

You have a brilliant morning ahead. I am so jealous I am not there in the room with you. You have such a distinguished gathering of expertise, and I really look forward to seeing what comes from your deliberations.

## The Future

I am going to conclude with a call out to donors to say that, despite the success of the All-Island Fund and the work that we do, philanthropy is really underdeveloped on the island. It is far from reaching its potential. There is the opportunity to grow it as part of the recovery from the pandemic. In terms of the very important work that these organisations do and others, we really need philanthropy to step up to the plate and provide support. In Dublin, the Government is developing a new policy on philanthropy, so we'd really love people to engage so that we can create the conditions for greater philanthropy. Donor voices can really help amplify the brilliant work that has been done here today and to make sure that we can support organisations like ICCL and CAJ in the brilliant work that they do.

So, thanks so much for inviting us today. The best of luck with the conference and really looking forward to hearing all the speakers. And thank you for the wonderful work that you do.



# Keynote address

## Professor Fionnuala Ní Aoláin, *UN Special Rapporteur*



**Speaker Bio:** Professor Fionnuala Ní Aoláin is United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. She is concurrently Regents Professor and Robina Professor of Law, Public Policy and Society at the University of Minnesota Law School and Professor of Law at the Queens University, Belfast, Northern Ireland. Professor Ní Aoláin is the recipient of numerous academic awards and honors and has published extensively in the fields human rights, counter-terrorism, the law of armed conflict and transitional justice. She has held numerous public positions including in Ireland, the United Kingdom, at the International Criminal Court, and the United Nations. She is an honorary fellow of the Royal Irish Academy. Further details at: <https://www.ohchr.org/EN/Issues/Terrorism/Pages/FionnualaNiAolain.aspx>

**Synopsis:** In the context of international standards, Fionnuala reflects on the process of police reform in NI, towards a more human rights compliant model of policing.

Good morning. I am very pleased to join you. I wish it were in person at this important conference PSNI@20 Human Rights Reflections on policing reform North and South. And it is a pleasure to be here even remotely, and particularly because of my long and personal association with CAJ, the Committee on the Administration of Justice. I may now be the longest-serving member in good standing of the CAJ, having joined it in my first month at law school at the Queen's University of Belfast, walking down from the university to the luxurious pad that CAJ used to hold in Donegal St. So, it is a great pleasure to honour that a long relationship with CAJ, but also to join you today in my role as United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

So, all of us in this virtual and real room know that policing reform has travelled a very long and arduous road in Northern Ireland. When I wrote *The Politics of Force*, a book I published in 2000, addressing the use of lethal force by agents of the State in Northern Ireland across the conflict, the landscape that I saw then, the one that the Committee on the Administration of Justice and the ICCL is also deeply familiar with, is one that was really, really different from the one we see now. It was a landscape in which the police force was broadly seen as unrepresentative.

Not just under representative of religious minorities, but also unrepresentative in its gender makeup. Few women were part of the police force at that time. It was also a police force that had generated enormous controversy and legal challenge concerning its lack of accountability for and fair process in relation to

the use of force in Northern Ireland. The result of that, was decades of litigation through both local and international courts (specifically the European Court of Human Rights), addressing the use of force by agents of the State, and in particular, the kind of planning as well as the investigative processes that were in place in Northern Ireland during the conflict on the use of force.

There was also really profound challenge in the use of exceptional powers throughout the conflict in Northern Ireland and the exercise of those powers by the police. Policing in Northern Ireland was also defined by a State in which the use of counter-terrorism legislation both framed the operation of the police and the manner in which they carried out their work. Those exceptional legal regimes had an enormous impact on the fundamental rights of persons who encountered the police from the moment of arrest through to the moment of trial, and ultimately if it were the case, imprisonment. There were grave concerns, addressed particularly by the CAJ and some of the extraordinary work it carried out in the 1990s on the profiling of individuals in stop and search in particular and the impact that profiling had on day-to-day relationships between the police and the community they were to serve.

We also had a really disturbing and challenging legacy of ill-treatment in detention, signified perhaps most loudly by the Ireland-UK case, the case alleging torture, inhuman and degrading treatment under the European Convention in Northern Ireland. But despite the findings in that case and the assurances given by the UK government, we continued through the 1980s and 1990s to have allegations of ill-treatment in detention, including in particular psychological ill-treatment. The result of that landscape through the conflict was a deep and profound legacy of mistrust from the community, and a lack of trust from all sections of the community, in the integrity, fairness and treatment that they were likely to receive from the police force. And that lack of trust was a fundamental problem not only to policing in Northern Ireland, but also to the broader landscape of relationship

between the State and those it served, but also to ensure the end of the conflict in many cases arguably being one of the conditions conducive to the perpetuation of cycles of conflict.

The fact that those issues were so prominent meant that policing was at the fore of national and international conversations about Northern Ireland. The result of that was that policing became an integral part of the issues for negotiation and conversation in our peace process, and ultimately resulted in the establishment of an Independent Commission and the production of the Patten report which we will be talking about today.

So, it is true to say that policing was and remains an essential part of the peace process and its outworking. The essential nature of police reform and police progress to the transitional process in Northern Ireland has been recognised internationally, including by my colleague, Special Rapporteur Pablo de Greiff, who visited Northern Ireland in 2015 and reported on his visit to the Human Rights Council. In particular, paragraph 86 of his report really speaks to the centrality of policing reform and the great strides made in policing through the course of the peace process. Paragraph 86, I quote:

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***“In the aftermath of serious human rights violations, it is often crucial for the sake of non-recurrence, to engage in both security sector reform and the effect of the demobilisation of ex-combatants. The former is the area under the mandate where the greatest achievements have been made in Northern Ireland. The emphasis of the Police Service of Northern Ireland on human rights, together with greater citizen involvement, has brought about extraordinarily high rates of popular trust between 80 and 85% in the police service. The magnitude of this change is especially remarkable when one considers that the predecessor institution was not particularly trusted by one of the communities in Northern Ireland.”***

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I think this quote reminds us that policing reform is one of the things that was central to the success of the transition from conflict to peace. Ensuring that it remains part of the ongoing success of the transition and peace process in Northern Ireland is one of the issues before you today.

I now want to turn to say a couple of words about the Republic of Ireland. When I joined the Human Rights Commission in the Republic of Ireland in 2001, I was one of the first Commissioners appointed to the Commission, which was one of the first Belfast/Good Friday Agreement institutions to be created on the other side of the border. Many of us on that Commission were also aware of the legacies of mistrust, exclusion, and challenges for the police force - An Garda Síochána, south of the border. Though having received much less attention internationally, some of the same challenges, including legacy challenges from the conflict, were part and parcel of the landscape of policing in the Republic of Ireland. So, let me say a little bit about what some of those obvious challenges were.

- One was a culture of masculinity that many of us who had worked on issues of domestic violence, women's rights, and the legacies of gendered harm South of the border were deeply aware of. Not just in the number of bodies one would count in the police service, but a broader culture of masculinity within the police force that required fundamental redress.
- The second was a clear recognition that there were communities who received protection and communities who did not, and that there were grave differences and a grave lack of trust amongst communities in the Republic around its policing force.
- The third was the largely unseen and underacknowledged legacy of the conflict South of the border. It was often very easy to say all of the problems were north of the border, with an unwillingness to look at how the conflict itself had reshaped policing and

criminal justice processes in the Republic of Ireland – much of it in ways that undermined and limited the exercise of fundamental human rights. Here I pay particular attention to the Special Criminal Court and the ongoing challenges of the due process compliance of that court with international law; and the exceptional counterterrorism regimes that applied in the Republic of Ireland, particularly the Offences against the State Act. One of perhaps the most challenging legacies was the translation of a system that had been designed to address terrorism and counterterrorism into ordinary law through the use of many of those exceptional measures in the context of organised crime. So those legacies, too, all sit in the conversation about policing South of the border.

Let me close by making a couple of reflections about why effective human rights-policing matters; and why effective policing invariably involves and delivers human rights-based policing. Because you really do not get one without the other. I want to underscore the importance of human rights-based policing in a post-conflict context. We may be over twenty years away from the Good Friday/Belfast Peace Agreement, but many of us who have been engaged in long term peace processes in many parts of the world understand that peace is built slowly over many decades and often generational and intergenerationally achieved. So, the gains and the human rights gains in particular that were made in the Belfast Agreement are gains and rights that have to be defended. One of the experiences that many of us are also aware of is that many of those rights and those gains come under sustained assault many years away from a peace process, where there may be a view that they are no longer necessary, or those who did not like them see opportunities to undo them again. So, maintaining, consolidating, and extending the gains that were made in policing in Northern Ireland and in the Republic of Ireland in the past two decades are an important part of essentially consolidating our ongoing peace process.

The second reason why human rights-based

policing matters is really obvious. It is because we need the trust of all our communities to function well. When we leave communities behind, when certain communities end up in differential relationships with the police who serve them, then the security and safety of all is compromised, and those communities themselves are alienated from and often marginalised from the broader State. Trust in communities is hard to build, and once you lose it, it is hard to rebuild. However, it remains the case that we continue to have to work with our most marginalised communities – some of whom are in conflict with the police, some of whom do not see themselves represented in our police forces – and understand that only by gaining their trust do we build a safer and more secure society for all.

The third reason we need human rights-based policing is that the dignity of the human person matters. And often, the point where a person meets the State – usually in a vulnerable or difficult context – is by meeting the police. It is in that encounter that the human rights-based approach of the State more broadly manifests itself or not. That is a micro experience, reflective of a macro requirement that each individual person has to be treated fairly and with dignity by the State. It is also an acknowledgement of the fragility of the human person, and that we are often at our most vulnerable when we encounter the coercive arm of the State, namely the police. It is in that encounter that the State manifests itself as transparent, accountable, and serving in the interests of those who comprise the communities.

And finally, we really advance human rights-based policing when we continue to claim and support the notion that accountability matters; and that the police are accountable because the State is accountable. When both the Irish Republic and the United Kingdom have signed international human rights treaties, both regional and international, they have committed themselves to that accountability in their actions in their relationships with those under their control, citizens and non-citizens alike. So,

the importance of that accountability remains true, no matter whether we are in a conflict, post-conflict, or consolidating peace process context. So, placing human rights at the heart of what we do in policing is, in some ways, an insurance policy ensuring the accountability of the State.

I am really pleased that we are having this conversation and want to underscore that the conversation matters. Stock-taking is an essential element of improvement for those who serve the public and for civil society to engage with government and those who act for government. It underscores the importance of listening and remembering that we have learned some things in the past twenty years about what works and what does not. Those lessons are not only important for Northern Ireland and the Republic of Ireland; they are important across the globe because our jurisdictions are closely watched by others in terms of this ongoing experiment of post-conflict, not just reconciliation, but working towards a society and societies imbued with dignity and rights for all.

Thank you very much, go raibh mile maith agat.



## PANEL 1

# Human rights policing reform and accountability: processes and structure

**Facilitator:** Doireann Ansbro, ICCL (left)

**Panellists:** Dr Richard Martin, LSE (on screen); Alyson Kilpatrick, NIHRC (centre); and Dr Michael Maguire, Senator George J. Mitchell Institute (right)

# Dr Richard Martin

## Assistant Professor of Law, London School of Economics



**Speaker Bio:** Dr Richard Martin is an Assistant Professor in Law at the London School of Economics. Richard conducts socio-legal and doctrinal research at the intersection of criminal justice, human rights and public law. His recent monograph, *Policing Human Rights* (OUP: 2021), examines the role of human rights in everyday police practices and vernaculars, drawing on extensive fieldwork with the PSNI.

**Synopsis:** Richard discusses specific lessons that can be learned from human rights based police reform in NI.

Many thanks to the CAJ for the kind invitation to be involved in some small part of this really valuable event, and for giving me the formidable task of following on from Fionnuala and proceeding Alyson and Michael this morning. I spent my summers back in 2011 as a fresh-faced LLB student helping the CAJ with its watching briefs in conflict-related corners, cases and judicial reviews, many of which may still actually be live. So, it is a real pleasure to return to share some of my own research today. This turns out to be the one week I am not in Belfast, so my apologies to those in the Great Hall that have to stare at my face on the screen somewhere. But anyway, I am really grateful to the organisers for beaming me in.

My co-panellists this morning have been at the very forefront of oversight, doing a formidable job, helping to make rights real. I, on the other hand, am a mere outsider, an academic researcher looking in. But that said, I have managed to spend about a year and a half speaking to officers from various parts of the PSNI as well as members of the Policing Board to try and make sense of the Patten Report's

pioneering ideal of placing human rights at the core of policing.

This research culminated in my recent book, *Policing Human Rights*, in which I explore how and why human rights law has come to be socially constituted, organisationally conditioned, and practically interpreted and applied within PSNI. To that end, I researched four sites of police work, the public forum's host to the official police narratives, routine policing, public order policing, and police custody. A central finding from my research is the 'persistent tension' to coin the phrase used by Michael McCann, of the seeming weight and lightness of human rights. The weight of human rights stems from its potential to direct and regulate State power to better protect, respect, and fulfil special features of our common humanity, rights that should not be simply traded off in a utilitarian fashion. The way this works is rights guarantees are brought to life by way of a culture of justification, constructive oversight by independent bodies, and the mainstreaming of rights principles in frontline decision-making. The weight of human rights in Northern Ireland have arisen from the landmark



initiatives twenty years ago that flow directly from the Patten Report's recommendations. Namely, a new police oath and code of ethics, incorporating the ECHR; Extensive training and fundamental principles and standards of human rights; Statutory duty on the newly created Policing Board to monitor police compliance with the Human Rights Act; The recruitment of a specialist in-house human rights lawyer by the PSNI; and the appointment of a senior officer as the PSNI's human rights champion.

Since 2005, the PSNI has introduced over 200 human rights recommendations. However, the Northern Ireland experience also speaks, I think, to the lightness of human rights, and by that, I mean their indeterminacy and malleability; their susceptibility to being reworked and reformed by ideas, attitudes, and agendas, especially when experienced and invoked in everyday life police practices and politics. In the book, I have tried to expose the capacity of human rights to be adopted by chief officers and political parties, and imbue it with a myriad of ideas, visions, priorities, and principles which are directed to consolidate or challenge the legitimacy of police actions and conflict-related legacies.

Amongst the rank-and-file officers, meanwhile, I argue that they internalised human rights to use identity-rich, context-dependent narratives that foster their own self-management, self-efficacy, and self-consistency. Put simply, officers' interpretation and application of human rights are influenced by their own values and experiences, workplace demands, and associated subcultures as much as legal norms. Thinking specifically about the challenges, opportunities, and risks when it comes to oversight and structural reform, Alyson's authoritative report published by the ICCL is the most valuable starting point.

This morning, my modest contribution is to prompt discussion and reflection by reinforcing three of those points. Three lessons that I think can be drawn from the Northern Ireland experience.

- The first is the importance of the interaction of human rights law within officers' sites of socialisation within particular parts of police work.
- The second is the significance of situational dynamics of decision-making, especially constructive scrutiny.
- The third is human rights as guiding principles for regulation but set within a wider political community.

The first of these is that that much is made of the characteristics of police culture that function as barriers to organisational form: cynicism, a laddish culture, group solidarity, secrecy, ends over means. But references to police culture, I think, too often underplay variation within policing, and they neglect some of the complexity and variety of sub-culture, as well as the potential for the legal environment to influence these. **How officers come to be socialised in human rights is a combination of formal sources, human rights law training, policies, operational orders and briefings, but also cues taken from informal sources: officer's social encounters, interactions, adaptations with colleagues, bosses, suspects, victims, the public.**

A noteworthy finding from our research was that the majority of constables could list with considerable accuracy the Convention rights engaged in their work, and using practical terminology, the efforts made to respect those rights and reduce their interference with the principles of necessity and proportionality frequently cited. That is impressive, and that is a testament to two decades of seeking to embed these concepts and ideas in everyday training and operational processes. An important implication of this, then, is that the formalities of training, policy prefix, etc., do matter. They provide a core expectation of formally acceptable practices and serve to impart values to influence perceptions of appropriateness, the role that officers ought to play and how tasks operate in a rights-compliant manner.

Striving for the institutionalisation of human rights, though, is to recognise that the non-legal

will inevitably surround and inform the legal. Rights narratives will overlap, interweave, and dissociate with official legal pronouncements of human rights. Beyond the groups of officers who I came to label in my research as “The Common-sense Coppers” and “The Conscientious Constables”, I found other groups who I described as “The Sceptics” and “The Old Guard”, whose receptiveness towards a human rights approach to policing was more hesitant and qualified, and sometimes critical.

The challenge for reformers is to detect, engage with and channel features of informal socialisation so that these might serve to promote rights-based principles. Whether these features take the form of proud professionalism, common sense knowledge, or insistence that remarkable change is, in fact, no change at all. It is noteworthy, for example, that the PSNI’s pioneering code of ethics rarely came up when I spoke to officers about human rights. When asked explicitly, when the code would be referred to or talked about, Officers explained it would only be if a complaint was made against them or if they were preparing for promotion. If one of the aims of the code was to act as an ethical framework to assist and empower officers – in almost all discussions, this goal was lost to more cynical interpretations. An oft-cited phrase was that the code was nothing more than a stick to be policed with, emphasising its disciplinary rather than aspirational functions. The major concern was that the code’s ambiguity would be seized upon unfairly by the complaints department or the Ombudsman as a way of sanctioning officers. This was an example, I think, of some officers feeling the complainants’ rights were being prioritised over their own in their split-second high-pressure situations. The challenge for those of us keen to foster a human rights approach to policing is to engage with rather than dismiss such narratives and seek to dispel myths and allay concerns where they arise.

**Moving to the second general lesson, I think that is the importance of close attention to our officers’ engagement with human rights, and its influence in organising processes**

**and bureaucratic procedures.** There’s often a tendency for academics and reformers, in the words of policing scholar, David Sklansky, to “persist in stressing the group psychology of the police and in treating formal structures of decision-making as largely irrelevant”. I found that decisions are, unsurprisingly, affected by time, place, and the complexity of the decisions; and how differing priorities, resource constraints, and values arise in particular sites of policing. Those who make decisions relatively infrequently are more likely to approach them in a more complex way, taking more time and considering more information, an example being Public Order Commanders. Whereas those having to make regular, repetitive decisions such as custody officers or officers making arrests turn to adaptive techniques – shorthand ways of classifying and processing external cues.

The role of organisational routines in decision making is helpful, making some sense of the contrast and human rights law practices by the officers I met. Human rights came alive in public order policing through the police script that was the outworking of a hierarchical, coordinated, and resource-intensive process. Senior officers were appointed to key roles as Gold, Silver, and Bronze Commanders and were specifically trained and supported with dedicated legal and tactical advice. This was a process the PSNI spent years devising, working with Kier Starmer and Alyson Kilpatrick to get a sense of what human rights oversight expected in these very demanding situations.

The proximity to the PSNI’s in-house human rights lawyer, as well as the Policing Board’s legal advisor in planning meetings and in command rooms, reinforced the need to meaningfully consider and rationalise decisions. The prospects of in- and on-the-job trouble were a marked feature of officers’ prospective decision-making horizons. Commanders, for example, must submit, as soon as possible after a major disorder incident, a record detailing the nature of the disorder, any force used, any injuries sustained, and any damage caused to property to the Policing Board. As powerfully illustrated by the case *DB v Chief Constable*

of PSNI [2017] UKSC 7, Commanders did not always get the decision right on the scope of their powers, or indeed positive duties they have flowing from Article 11. But as the annual policing reports suggest, overall, commanders did pay close and careful attention to rights considerations.

In police custody, by contrast, the bureaucratic format of human rights law was a checklist on a computer screen, where the grounds of detention were selected from a drop-down list. Detainees' rights were riled off by custody officers hundreds of times a month following the onscreen prompts on their computer system. Individuals' rights, and procedural rights were sourced from the Police and Criminal Evidence Act. These are rights which the courts have been reluctant to interpret in a strong manner when it comes to necessity as defined by the courts for the purposes of arrest, and some arresting officers seem to have relatively little regard for those standards, at least from the perspective of custody officers. In their retrospective decision-making horizon, custody officers saw the service's target-driven ethos in part contributing to officers making dubious arrests where other means could be used – whether voluntary attendance or dealing with the issue on the spot. Formally enacted policies and practices make things harder operationally and culturally to make rights provision in individual cases, as this requires officers to push back against organisational trends, performance indicators, for example. One oversight response might be to subject this seemingly routine automatic decision-making to disruption by regular reviews, drawing on insights and experiences of a diversity of community groups who can expose our routine police practices which reify social injustices, or perpetuate inequalities. Another routine practice, of course, is stop and search, which I know John Topping will be picking up on later today. But so too were custody officers' decision-making horizons influenced by cultural affinity to fellow officers. In a subjective sense that neither solicitors nor lay visitors were sufficient sources of trouble to affect decisions, officers knew how to manage potential trouble using ploys to process cases

through custody. The task is to channel officers' wariness of trouble by promoting oversight where practices or procedures that risk violating rights are the same ones that are likely to attract the attention of proactive and constructive forms of accountability.

**This leads to the third and final lesson I think to be drawn from the Northern Ireland case study: the value of human rights as regulatory principles.** The appeal of principles is their ability, in the words of policing scholar Ian Loader, "to create opportunities for police officers to become participants in, rather than simply the object of regulatory dialogue and activity". The adherence to human rights is promoted when officers articulate and explain their decision making to colleagues, communities, oversight bodies, and other criminal justice actors using rights-based principles. This is the core of the culture of justification because this will clarify thinking, it will prompt alternative approaches not initially considered, and it will make it harder to overlook rights abuses. A principled based approach to human rights oversight ought to be accompanied by external stimulus, oversight, and assistance that promotes consultation, justification, and persuasion. This can be achieved by sending authoritative regulatory signals that prompt, encourage and reward police for meaningfully engaging with rights principles in sites of decision-making.

Here in Northern Ireland, I think that that has been achieved remarkably successfully through the Policing Board's rights-based annual human rights reporting and the launch of those each year. Crucially, by tethering human rights oversight to the Human Rights Act, that monitoring and reporting processes ensure that core concepts like legality, necessity, absolute strong qualified rights, and negative and positive duties, find expression with sufficient specificity to possibly regulate police action. I think, without doubt, the independent and impartial legal advisors of the Policing Board have been the linchpin of that regulatory system. Even when pushed, the value of this role and the integrity of the advisor could not

be doubted by members of the Policing Board I interviewed from across the political spectrum. On the theme of human-rights writing, we must remain wary of oversight fatigue within the police or Policing Board, loosening human rights as a regulatory priority, as well as performance-driven or cost-cutting agendas, which intentionally or otherwise diminish the cultural resonance and organisational status of human rights.

To speak of the human rights approach to policing somehow being “done” or “accomplished” is to performance-manage an ideal, to turn our backs on two decades of formidable work and achievement by many inside and outside the PSNI. But so too is it to fail to acknowledge the ongoing contribution that human rights principles and ever-developing standards can make in the equally ever-changing world of policing; including new tactical options like facial recognition technology and the use of big data to predict crime and allocate resources, but also to target specific populations and “bake in” existing biases. Policing is, without a doubt, an immensely challenging job. It is filled with risk. It takes great courage and professionalism to do it well. Rights-based standards are a means of navigating risky scenarios, guiding ethical decision making, and protecting the rights of officers.

I am going to conclude briefly now. It seems trite to say that at least the last century, never mind the last twenty years, reminds us of how policing in Northern Ireland can neither be understood nor debated in isolation from the wider socio-political fault lines and injustices. The political ambition, ethical ideals, and material resources which it took to reform the PSNI were themselves the outworking’s of a special socio-political, indeed constitutional, moment. But the air has a different quality today. The government’s Independent Human Rights Act Review Panel is currently assessing whether any change is required to the Human Rights Act. While Mr Dominic Raab, the new Justice Secretary, stated just this time last month and I quote, “before the next election, we will overhaul the Human Rights Act to... restore

some common sense to our justice system”.

Locally, not only has Brexit shaken the foundations of the Good Friday Agreement, but recent years have also exposed the susceptibility of human rights to ethnonational appropriation. This was strikingly illustrated during extensive efforts to introduce a Bill of Rights specific to Northern Ireland. But also, a form of human rights as war by other means is playing out in the arena of policing too. Article two of the ECHR, especially, has been mobilised to focus attention on the human rights standards to which the British State has bound itself. But for Unionists – or at least some Unionists – their reluctance to deploy rights-talk, to buy into what they considered to be a Republican agenda, has left them as quieter, ill-equipped contributors to explicitly rights-based debates.

Finally, all the while, a coordinated approach to dealing with the past seems as elusive as ever. In the absence of a coordinated approach, collective memories and conflict narratives continue to dominate the present. The recently proposed amnesty is not the easy way out this Conservative government seems to think it is. The Article 2 duty to investigate conflict-related deaths will not vanish. It will spur further litigation, the tentacles of which will continue to wrap around police, past and present. The PSNI are, I think, going to be saddled with the vexed question of what does or does not amount to a Troubles-related offence to which the amnesty would apply.

So, to conclude, we must recognise that human rights are not, as some might hope, a refuge from political rough and tumble, the panacea for police reform, or a clear cut regulatory ideal. They offer a powerful set of norms for challenging State power, but at the same time, they rely on that same power to realise them in practice. In seeking human rights reform and regulation of criminal justice actors, we must be prepared for its principles and standards to be interpreted and applied – and possibly appropriated and transformed by such actors. This calls for curiosity, as well as vigilance.



# Alyson Kilpatrick

## Current Chief Commissioner of NIHRC & former Human Rights Advisor to the Policing Board



**Speaker Bio:** Alyson Kilpatrick BL is a barrister specialising in human rights law. She has published widely including in *The Human Rights Act 1998: A Practitioner's Guide*. She is a member of the board of One Safe Place Foyle Family Justice Centre. Until May 2021, she was a member of the board of CRJI, an accredited community restorative justice scheme. Between 2009 and September 2017, Alyson was the Independent Human Rights Legal Advisor to the NI Policing Board. From 2016 to 2021, she was special legal advisor to the UK's Independent Reviewer of Terrorism Legislation. For ICCL, she conducted an independent human rights inspection of Irish policing. She has carried out and published an independent review of the ECHR compliance of a number of NI 'legacy' investigations. In 2021 she was appointed Chief Commissioner to the NI Human Rights Commission (NIHRC).

**Synopsis: Alyson discusses the importance of human rights-based policing and oversight mechanisms.**

Good morning, I am not sure Richard has left me very much to say, but any lawyer will tell you, "Give them an audience, and they will find something". When I first saw the proposed theme, I was immediately interested in participating, so thank you for having me here today. I think it is more important than ever that we reflect on what has worked and what has not worked across the island of Ireland and across policing more generally. And I have today given myself the luxury of actually doing what the title says and reflecting on the policing reform. And when you are in the midst of it, you often do not have that luxury of just reflecting on what has happened and what has worked well. So, I do not propose to talk about specifics; I will answer questions later, obviously, if you have any.

I will tell you what I – as an individual who had a very minor part to play – learned about policing reform from work North and South. And I

do that, I should make clear, in an individual capacity. I do not speak for anyone else today.

The story of policing reform in Northern Ireland started with the report of the Patten Commission and terms of reference, which were set out in the Belfast Agreement reached on Good Friday. We reference it regularly, but the text bears repeating, and it said this: "We firmly dedicate ourselves to the achievement of reconciliation, tolerance, mutual trust into the protection and vindication of the human rights of all". Policing reform was seen as a central part of that, and Fionnuala has already, very masterfully explained why a human rights approach to policing was to be the very foundation of the peace process itself, and I think we sometimes forget its centrality when we are talking about current, contemporary policing.

When I began my work in human rights and policing in Northern Ireland, I was pretty

confident that the adoption of a human rights-based approach was the right way to go. However, I did not know much about it operationally, and it was just ideological more than anything. However, having seen it up close, I am now convinced that that is the case. In my view, it is the only model of policing that will achieve the sort of reform that I suspect everyone is looking for. Even, maybe especially, those who are reluctant to use the language of rights and those who feel that a human rights approach does nothing for them; or even those that believe human rights actually pitched those who are law-abiding against those who break the law. That could not, in my view, be more wrong. Those of us who share a belief in human rights and policing have to be able to answer those questions; they are genuinely held, and there is a genuine fear. It means going back over old ground, looking at what's happened and what needs to happen next. And if we remain unsatisfied at the pace of reform, we must identify what the blocks are and try to remove them.

Let me just make clear what I mean by a human rights-based approach. It is easily said – it is not always as easy in practice. I mean - an approach that places the rights enshrined by primarily, but not only, the European Convention on Human Rights at the centre of every decision made and every action taken by the police service as a whole and by every police officer and member of civilian staff. Not just as a matter of policy but as a matter of practice. Adoption of a human rights approach should mean that human rights run seamlessly through policy, training, operational powers and duties, it should inform operational and organisational strategy, internal governance and relationships, delivery of policing services, planning of operations, police engagement with oversight bodies and the community. So, it really is all-encompassing. Within a human rights approach, police (and I think this is critical) welcome oversight and accountability and embrace transparency because they value the role of human rights protection in the protection of peace, democracy, and the rule of law.

The purpose of a human rights approach is to secure a policing service and oversight framework that is professional, efficient, effective, ultimately respected and trusted by the public they are there to serve. It recognises the police as public servants who police by consent, with the public accepting their legitimacy as defenders of human rights rather than potential violators. It places the protection of human rights at the foundation of, not as an obstacle to, their work. We should remember that this applies at the level of an individual police officer or member of civilian staff and the organisation as a whole. But it also applies to us. I think we need to remember those principles when we are looking at policing.

Police play a central role in the protection of human rights. Human rights are not protected without the police. They are not simply potential violators, but they do have a monopoly on the use of force. They can exercise intrusive powers. They can deprive us of our liberty. They can only do that to protect society from abuse, abuses of human rights. An abuse of human rights occurs when a person becomes a victim of crime, certainly, and police often talk about protecting human rights by preventing crime. But human rights, as set out in the Convention, and as we really know and feel it, goes much further than that. The Convention protects us from less visible abuses, such as invasions of privacy, restrictions on freedoms, assembly to protest, and due process if accused of wrongdoing. Police powers must be defined by clear accessible law and policy, exercised only when it is necessary to do so, and proportionately. It must not be used in any way that discriminates against an individual or group. The powers are balanced, within a human rights framework, in my view, taking account of all of those interests. A human rights framework is developed according to well-recognised principles, and empowers the police, more than anybody, to make difficult decisions in stressful situations. Certainly, in the past, police officers would have told you that themselves. It must not be forgotten that across Ireland already, as a matter of law, the police and *Gardaí* are required to comply with

the Convention. So, any approach other than a human rights-based one risks breaking the law.

**In my view, having an express legal obligation to comply, which is monitored closely with alleged breaches investigated independently, is the most critical element of reform in Northern Ireland.** The obligation must not be watered down to aspiration, principle, objective, or even values. The police often say they vindicate human rights and most certainly aspire to, but if they do not achieve that in practice, let's be clear, they will be acting unlawfully. There is real power in that, for the oversight bodies, and for the public generally. If there is a singular reflection that I have on the reform process both North and South, it is that **the police and the policing family must embrace protection and fulfilment of human rights as a *core function* as opposed to a *value of policing*.**

Oversight accountability mechanisms have to do the same, and I stress, we can't leave it to the police. Human rights compliance must be measured in general, but also in specifics. The oversight bodies must do that as actively and meticulously as they measure budgets and numerical targets. What was expected twenty years ago, from Patten and the Good Friday Agreement, was a paradigm shift by everyone involved in policing with the usually accepted way of doing or thinking about things changing completely. But before real change takes place, there must be a universal desire to change, preceded by some cultural shift, such as a genuine acceptance that the old ways have not worked, and that change is not only nice; it is necessary. Has there been the necessary paradigm shift in Northern Ireland? Well, my answer to that is 'yes and no'. That is my honest answer. Some people and organisations have, some have not, some are still clinging to reforms, others are moving rapidly away from them.

The Gardaí are now undergoing their own process, avowedly from a human rights perspective. However, when a detailed report by ICCL, which was critical of some human

rights compliance to date, was met with the stock answer "we are and always have been committed to human rights in everything we do", one has to worry that the cultural shift has not yet taken place, and that there is a failure to recognise the real need for change. And as I hope I have made clear; reform should cover policing in the broader sense, the wide policing family, relationships with the public, and the frameworks in which all of that operates. The police can't change on their own. They and we are entitled to expect the oversight and accountability bodies to embrace the integration of human rights standards with as much enthusiasm and discipline as is expected of the police themselves.

The oversight and accountability arrangements in Northern Ireland are often cited around the world as the gold standard. The model is, in my view, the gold standard in theory, but still, more needs to be done in practice. Moreover, oversight must be relentless. If recommendations are made, their implementation must be pursued and monitored routinely – if not, it can actually do more harm than good because it undermines the trust within which the police and the oversight bodies are held. It has been said many times this week, in slightly different contexts, that "there is a need for more doing and less talking", and I think that continues to be the case here. In the Republic of Ireland at the moment, until recently, there was not even much talking about a fully accountable oversight mechanism, at least not by those who really could deliver one. The Policing Authority's powers remain limited, and the inspection bodies are quite constrained. For change to be affected, the whole policing family must agree on the way forward and promote, then establish, a human rights culture and ethos across policing.

One of the great weaknesses exposed in the Northern Ireland model is the apparent dissonance between those advocating for strong human rights monitoring and those who question a commitment to human rights as a fundamental value of society. And there

remains dissension, even within the oversight mechanisms themselves, about the rights enshrined by the Convention and to whom they should apply. That has undermined the process, and it does a huge disservice to police and policing more generally.

Policing culture can be exclusionary, with police and oversight bodies reluctant to accept that external experts understand them or can add anything useful. Independent expertise in the form of independent people who are given access and then listened to is, however, crucial. Maybe I would say that, maybe that is self-serving; but often reform processes turn to independent experts when things get a little bit too difficult to deal with themselves, and Northern Ireland did it. The Republic of Ireland is doing it. Those independent people, if they are to add anything meaningful, need to be supported and protected within and without, and they must be given sufficient autonomy to do their job. I can tell you from experience that being an independent advisor can be a very lonely place, where you are neither fish nor fowl, and subject to undermining from different angles. More people should be encouraged to participate. I think it is important that more people, who are listening today or in this room today, get involved and bring their experience to the table within the oversight organisations.

I want to deal very briefly with what I, and other people like me often talk about – a golden thread of human rights, we say that it runs through everything: from everything the police do, to every element of oversight and accountability. It sounds good – it is a little bit pompous or pretentious – but it sounds good. But is it true? And how do we know if it is true? And in any event, does it make any real difference to operational policing and police-public relations? And after all this time, I am still asking myself those questions. I do not really know the answer. It is not yet true in the practical sense. But it should be, and it certainly should be the aspiration for all policing bodies. In answering those questions, it is important to recall where we started, and where we are now; and to be honest with ourselves and each other

about the failures and the successes.

If you look at structural reform of the police, the new institutional framework, and the law and policy underpinning policing, you might think the golden thread really was woven into everything; - We have done it! - That it is time to move on and stop obsessing about the police, to stop talking about human rights – that it is getting a bit boring, a bit passé. However, if you look closely at the practice and listen to the public, you will get a very different answer, in my experience. Policing still looks and feels very different to what it did when I was growing up. The change is significant, but I sense that there has been a gradual stalling of progress. Why? I do not know. Others here today may have views on that, and I look forward to hearing them. Richard's book certainly gives a fascinating insight into that and is well worth a close read. More work needs to be done at that level.

For my part, I can tell you there was a time when some of the best and most enlightened conversations I had about human rights were with police officers. They were proud to show off their commitment to a human rights-based approach. They regularly talked about how the new human rights approach was their single greatest achievement, that it made them more professional, more accountable. Those police officers to whom I spoke really believed it and they showed it in their practice. Not every police officer agreed, obviously, but it was made clear to them that it was the future of policing – that it improved policing for us and them. The Policing Board and Police Ombudsman were seeing huge increases in trust, confidence, legitimacy at the policing, at least in most contemporary operational settings, and Richard talked about public order policing and drew distinctions there in the application of human rights. The mood music at the time was terrific, the narrative was largely positive, but somewhere along the journey, I fear, the mood began to change, and the narrative has become more negative. As I say, I do not have the answer to why that is – other people are better placed to judge. Across the island, the legacy of the past and the State's



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treatment of allegations of State involvement in rights violations have put enormous strain on police-public relations. And I do not just mean conflict-related violations, but certainly those are exercising many minds at the moment. I mention this specifically because any failure to apply Convention principles to legacy issues runs the risk of casting doubt on the whole reform process. It demonstrates how a departure from a human rights approach in one area can quickly and fundamentally undermine the good work done in other areas, and very good work has been done, we should be clear about that, by the PSNI and the Gardaí in many areas.

I want to mention the importance of training. Richard has highlighted that, and I think Michael certainly has seen what happens when training is not good. Once human rights compliant policy has been devised – and that takes a while, it has to be done properly – it must be followed by effective training. The Patten report observed “training will be one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel”, and that certainly proved to be the case. Foundation training and ongoing professional development were key in Northern Ireland, but I would suggest that not enough was done to assist officers with the practical application of rights or to return to those more senior officers who were trained some years ago. The PSNI training was interactive, and

reinforced in operational scenarios, and that was crucial. They benefited enormously from the input of stakeholders with lived experience. For example, training on policing race hate crime benefited greatly from including those from minority ethnic communities. But – and it is a large “but” – if you are going to invite people in, it must be with good grace and their inclusion and training must be meaningful and lasting, and they must be listened to. Tokenism is not only pointless; it is disrespectful and damaging of relationships. So, if the community is going to be brought in to assist in training, they must be taken seriously, and recognised for the huge contribution they make. I worry that training is often one of the first casualties when times are hard or when rhetoric changes away from human rights, but it should be protected at all costs.

I am jumping issues, because I want to cover quite a lot in a very short period of time. Now I want to move on to mention national security in particular. I want to make an observation that may seem self-evident, but it is far from it in practice. Human rights compliance with what is called national security here, and State security in the South. Or, as one person described it to me recently as “the spooky stuff that scares the bejeezus out of us all” – and he was not wrong. It is the scary stuff, and it is the spooky stuff. Whatever you call it, it should not be outside human rights accountability. There is no separate legal regime. There may, however, be a separate framework within which it must be lawfully conducted, but the Human Rights Act does still apply. However, it is almost impossible to know whether it is honoured in practice and it is critical that that is addressed. This has the potential to undermine all the other good work that contemporary policing is doing and that police on the street are doing. One of the abiding questions in both jurisdictions that I discovered through my work, is whether there is an acceptable balance between public safety and security on the one hand, and fundamental freedoms on the other. I suggest there is a false premise behind that question, which informs so much of what happens in policing, which creates a serious hurdle to proper reform. It

is the wrong place to start. I accept there can occasionally be tension between the two, but they are not in an inverse relationship with each other, and it seems to me that the protection of public safety and security, in Northern Ireland at least, was best achieved by the protection of fundamental freedoms, and I think we can see that if we do reflect back on the last twenty years. Rarely is a departure a short-term measure, and I would argue never has it protected us from harm, although that often is a justification for derogation from rights. I am reminded often of the quote attributed to Benjamin Franklin, “he who put security before liberty deserves neither”. But it is not just the “lefty liberals” among us, the “bleeding hearts” who think that. Former Chief Constable, George Hamilton, regularly expressed the belief that a security threat could only be defeated by strict adherence to human rights principles, and that the undermining of trust in the police was the most serious threat to our collective safety. All I can say is, if you do not think I know anything about it, he certainly did. He was a serious operational police officer, with many years of experience.

As the Patten Commission put it in their review of policing for Northern Ireland, “secretive policing arrangements run counter not only to the principles of a democratic society but also to the achievement of fully effective policing”. In Northern Ireland, there was a real attempt by the police, at least, to account to the public through the Policing Board, for example, for national security policing. It remains far from perfect, but at least there is a recognition of the need to allow scrutiny. It shows, I think, in my experience, that processes can be put in place, if there is a willingness, to manage highly sensitive material that genuinely cannot be published. **But the starting point should always be that the public is entitled to know what the police do on their behalf.** We have surrendered to the State and the police enormous control over our lives, but we do so with certain conditions attached: that they will act within the law, that they will protect and respect our rights, that they will not discriminate against any individual or group, and that they

will be transparent and accountable. That is the bargain we make with the police, and they should be held to it. The way they are held to it is through oversight and accountability mechanisms; but also, through the public and through events like this, and research, and books.

**In the Republic, I have to say, state security appears to be exempt from any oversight, any real oversight, and that will continue to be a real hurdle to any attempt at reform if it is not addressed and it should be addressed quickly in my view.** When I was an advisor to the Northern Ireland Policing Board, I saw at close hand the challenging environment within which police operate. I often attended the command room during contentious operations. I saw real-time police decision-making. I was in no doubt about the challenge facing police and the pressure they were under, and if I had not had that access behind closed doors, up-close, I would also have been unable to report to the Policing Board, or the public, on the great successes within policing. The police struggled to report those themselves, so, ultimately, they benefited from close oversight. That is also something which former Chief Constable, George Hamilton, will say himself, and I think that is a very important lesson when looking at policing North or South.

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I want to end by echoing a lot of what Richard said, by making clear that the job of policing is an extremely challenging one. They face dangers, and I saw that myself, that most of us will never have to face. They make decisions on a daily basis, often in a split second, that can be a matter of life and death, quite literally. When making those decisions, they must balance competing rights. We talk about these rights, but they have to actually balance them in real-time. Policing is an honourable profession, entered into by many men and women who want to contribute to society and protect us from harm. We should engage with them, we should support them when we can – but you cannot support them by closing your ears or eyes to bad practice. You do the opposite – you undermine them. We should expect the best of them – that they can maintain order and combat crime, while also protecting and respecting rights. To expect any less of them is to do us and them a disservice, and to resign ourselves to an antiquated, militaristic policing regime, pitching itself against the public rather than serving the public. And that is what Patten talked about when it first looked at policing reform. We do not want to go back to that, and neither do the police. **Honest criticism never did undermine the police. It never did them any harm in my experience. But attempts to distract from bad practice always did. It always backfired. That goes for the police and for the oversight bodies.**

So, to conclude, it seems to me that if you want a model for policing, and one that really does put people first, that balances individual rights against the rights of wider society, that requires police to make decisions that are lawful, necessary, and proportionate, that guides and empowers them in exercises of discretion, that requires the greatest possible transparency and accountability and keeps people honest, you are not going to find a better model than a human rights-based approach. What I can't do today, however, is comment on whether the NI reform process itself has been a success or a failure. I wish I could, but it is not complete yet. I think that probably is one of the lessons of today. It has ebbed and flowed. It is facing

new challenges, and the very notion of reform based on human rights is still contested by some – well by many, in fact, even within the oversight and accountability mechanisms. But as I said, in my view, it is not *an answer*, it is *the only answer* to the various challenges facing policing across the island. And, it has to be more than lip service – it really has to find its way into operational practice. So before moving on to a shiny new model or polished up version of the old model, let's give this one a proper chance. I recognise how that sounds twenty years on. But in my view, Patten's reforms and the Belfast-Good Friday Agreement have not been fully implemented yet. There's a terrific body of people here, hugely invested in the shared objective to make policing better, who can complete the process with a final push. I look forward to watching others achieve what I perhaps failed at in the Policing Board. Best of luck to you, and good luck with the rest of today.

# Dr Michael Maguire

## Honorary Professor of Practice, Senator George J. Mitchell Institute, Queen's University Belfast



**Speaker Bio:** Dr Michael Maguire. Between 2012 – 2019, Dr Maguire was Police Ombudsman for Northern Ireland. Prior to joining PONI, Dr Maguire was the Chief Inspector of Criminal Justice in Northern Ireland responsible for inspection into the main justice agencies. Prior to CJINI, Dr Maguire spent 18 years (10 as Partner in a Global Consulting Firm) as a management consultant specialising in strategy and organisational development. He currently is a Lay Member of the Legal Practitioners Disciplinary Tribunal in Ireland, a Lay Member of the UK House of Commons Select Committee on Standards, and a member of the Yoo-rook Justice Commission Expert Advisory Committee.

**Synopsis: Drawing on his experience as Police Ombudsman for Northern Ireland, Michael offers insight into the role and responsibility of police oversight mechanisms.**

Thanks for the opportunity to speak on some reflections on my views on police oversight and the role of the Ombudsman's Office over the last twenty years. Inevitably, I am going to focus on my time, my tenure as Police Ombudsman between 2012 and 2019. It seems like a long time ago now, but I think that is just my mind playing tricks on me at this stage. It is a pleasure to be here at Queens. I have huge affection for this as an institution and indeed would not have had the life chances I have had, had I not received the education that I had here. And thanks also for the invitation from CAJ. I always regarded them as a critical friend during my time as Police Ombudsman, at times more critical than friend. But I think that was OK. I was able to live with that.

I do not know where I was when I heard that the Chief Executive of the Police Ombudsman Office, Sam Pollock, had resigned in April 2011. It was hardly a "where were you when Kennedy was shot?" moment. But I do remember that

my antenna was raised. Sam resigned as Chief Executive, and if he had been appointed by Nuala, he had been there for ten years. He resigned, citing a number of problems, including what he said was meddling in the Office by the Department of Justice, and importantly, what he saw as too close of a relationship with the police. His overall assertion was that the independence of the Office had been undermined and therefore compromised.

I was the Chief Inspector of Criminal Justice at the time, with inspection responsibilities for the Police Ombudsman's Office. And I knew that an allegation of a lack of independence, on the Police Ombudsman's Office, was as serious an allegation as you could make in the context of policing in Northern Ireland. As you will know, it was a critical component of police reform that an independent oversight body was established. Maurice Hayes, in his report which set up the Ombudsman's Office, said very clearly, and I quote, "the overwhelming



message I got from nearly all sides and from all political parties was the need for the investigation to be independent and to be seen to be independent". The main value that this impressed on me was independence, independence, independence. So, central to the concept of the Police Ombudsman's Office, unlike other jurisdictions, including Ireland and Britain, was that the police would not mark their own homework when it came to the investigation of complaints. And from the early days of the Office the independence of the work was clearly emphasised, and indeed clearly demonstrated, and I think the work of Nuala O'Loan, Sam Pollock, and Dave Wood as the senior investigator, and their teams, clearly established the Police Ombudsman's Office as the recognised gold standard of civilian police oversight. You only have to look at arrangements in the USA, Australia, Ireland, GB and the European countries to see the strengths of the arrangements that we have here in Northern Ireland relative to elsewhere. As Police Ombudsman, I investigated all public complaints against the police, including misconduct and criminal investigations. There was no area of policing that was outside the work of the Office. We could call ourselves into an investigation in the public interest, public reports, and so on.

I have been doing some work recently in Melbourne, in the University of Monash, with colleagues, and I can tell you they look with envy, absolute envy, at the police oversight arrangements in Northern Ireland. The breadth and the depth of what we have here in terms of the oversight architecture. But coming back to Sam's resignation, I remember saying to my deputy in CJI that we would have to watch what happened very closely. At the time I was quite prepared to call myself into an investigation into the Police Ombudsman's Office, if necessary. In the end it was not, because I was asked by Al Hutchinson to undertake an inspection into the independence of the Office and its relationship with the police. My inspection report was I have to say extremely critical, citing a number of concerns: a lowering of independence in the way the Office handled history cases; what I saw as a dysfunctional management team that

seemed to be split down the middle; an Office unduly influenced by stakeholders; reports were subjected to "buffeting" by various parties; there were difficulties with the flows of intelligence material to investigators; families, I felt, were handled badly with initial findings being presented to them and then conclusions changing over time – some for quite legitimate reasons, others I am not so sure. But one thought struck me at the time, which was that, despite the strong legislative base of the Police Ombudsman's Office, the resources, the experience that existed within the building, the strong reputation for delivery – despite all of that, independence was still seen as an issue over ten years after the Office was established. It demonstrated to me that, and certainly when I took on the role, it demonstrated that independence, while hard-won, could be easily lost and taken for granted.

**Reflecting back on it, the importance for me as Police Ombudsman of having an independent civilian office for police oversight was demonstrated in case after case.**

In my time, there were accusations that the police watched Seamus Fox being beaten to death outside Woodburn police station and did nothing. That they stood by while Kevin McDaid in Coleraine was attacked by a mob and murdered. That the senior team of the PSNI, the Chief Constable and Assistant Chief Constables, had behaved corruptly in their handling of an investigation into serving and former senior police officers. Those are about as serious allegations as you can get in the context of policing in any jurisdiction. In all these cases, and indeed others, my conclusion was that the allegations were unfounded. While there was no doubt it was uncomfortable and difficult for those officers involved in the investigation, it was absolutely necessary to have an independent investigation of those complaints. It was essential that these findings were believed and accepted, to ensure public confidence in policing. I believe the findings were accepted because the Office had established a reputation for not being afraid to criticise the police when and where it was necessary to do so.

In my time again, there were significant failures, to find the remains of James Fenton after he absconded from a hospital, and problems with other missing person cases. There was the mistaken release of Gary Haggarty, who went on to kill two people. There were errors in the investigations associated with Maria Cahill, and Peadar Heffron, and failures in the police investigations in the "On the Run" controversy. These were all high-profile cases where it was necessary to have clear accountability and the results published. But it always used to amuse me when some who had accepted the contemporary failures of policing rushed to defend, in some cases, what were the excesses of the past. And in relation to work of the Office, legacy often was seen as the third reel. There had been a challenge to the work from the publication of the first report. You may remember the confrontation between Nuala and Ronnie Flanagan over the Omagh report, which said there were significant failures in the police investigation into the Omagh bombing. He said he would publicly commit suicide if the failings were seen to be true. It was the rock upon which the tenure of Al Hutchinson perished. Yet it was the ability of the Office to tackle the past and to give confidence in this work, which either undermined its investigations into contemporary policing, or indeed strengthened confidence in those investigations, depending on your viewpoint.

In my own case, I published in the region of ten legacy reports, including investigations into Loughinisland, Joe Campbell, the Good Samaritan bomb in Derry, and the attack on Gerry Adams. It was my report on Stakeknife to the Director of Public Prosecutions, which led to the establishment of the work of Jon Boutcher. There were other reports that could not be published because of legal cases that were underway. I was at the time, and I remain, extremely proud of the work we published in this area. It helped give families some important information which they did not have before and provided some answers to the concerns which had been raised. The responses to these reports and others, however, were often attacks on the credibility of the Office which spread into

its contemporary investigations. It also caused significant operational problems at times, and increasing tensions with police, past and present. Thus, there was much criticism of the Office by retired police officers who did not like the criticism of the RUC. Most notably, there was a failed attempt to have the report into the Loughinisland Massacre quashed. There was a need for me to judicially review the Chief Constable Matt Baggott over the provision of information. And indeed, there were other public spats over information provision over a period of time.

Moving to the contemporary situation, there were accusations of a witch hunt by the Police Federation, who, in my view quite simply did not understand the concept of police oversight. Given that seventy per cent of the complaints against officers were not upheld, I have to say that if it was a witch hunt, it was a very bad one. And also, there was criticism of the Office by families and NGO's who did not like the conclusions of the reports. I used to say at the time that a good Ombudsman's Report was often like a good exam question – it was one that you knew the answer to. And that simply could not be the case. You had to have a situation where you were going to challenge, you were going to put information in the public domain, which people did not like. That was simply always going to be the case.

I remember when I was interviewed. I was the only Ombudsman who was appointed under devolution, and in my interview with Martin McGuinness and Peter Robinson, they said, "what would success look like?" and I rather tritely said, "If I am successful, I will piss both of you off". And that is the nature of the Office – there will be a product of the work of the Office simply that you will not like. I mentioned these examples only to reinforce the message that the concept of police oversight, twenty years after it was established, is still under challenge by a wide variety of stakeholders who do not like the work that it produces. And as is often the case, if you do not like the message, you try and shoot the messenger. Allied to this was the need for me to challenge, very publicly, the

Department of Justice and the Justice Minister over funding of the Office. This is not a space that any public official wants to find themselves in, but it was absolutely necessary to do so. All the while having to deal with many of the other operational problems and issues with the press.

So, what are the key messages thinking back on my time in the Office and how that may be spread over some other aspects? Well, I think as I said earlier, **you cannot take independence for granted.** It can be fragile, hard-won, easily lost. Yet it is a critical factor in the delivery of effective civilian police oversight. There will always be tension between the oversight body and the organisation it is responsible for. That is inevitable, and indeed I have to say, to some degree, desirable. It is important to recognise, however, that the police are not the only constituency – the public must have confidence in the work of the oversight arrangements if they are to work. Meaningful independence protects the public as well as the police in that regard.

But in my experience, accountability is not just about investigation. In order to maintain public confidence in oversight, I felt the results of investigations had to be published. Quite often I was accused by justice agencies of grandstanding, both in CJI and in PONI, because I put a lot of effort into the publication of reports. But I always felt it was essential that the work of the Office reached as wide an audience as possible. And the fact that around eighty per cent of those surveyed had heard of the Office of the Police Ombudsman and believed it was independent of the police, I always felt was critically important.

Again, looking back at my time, we have to think about legacy and the impact of what that had in relation to the Office itself. I was always a strong supporter of the Stormont House Agreement, which proposed a series of legacy structures to deal with the past. This seems to have been jettisoned. I felt that this would allow a properly resourced series of legacy structures to examine the past in a more comprehensive way, while allowing the Ombudsman's Office to focus on the present.

**One lesson I have learned throughout my time is that whatever structures are put in place, unfettered access to information is absolutely critical.** In the Police Ombudsman's Office, the legislation said the police must give information to the Office and this was absolutely essential in the context of confidence in police oversight and the way in which it engaged with the police itself. I have been involved in the Yoo-rrook Justice Commission in Melbourne, which is a Royal Commission, the first of its type which has been set up in Australia, looking at colonisation and its impact on First Peoples', and also the contemporary relationship between First Peoples' and the State of Victoria itself. It is the first of its kind in the history of Australia, and when helping with the terms of reference and talking to the Commissioners, I was very clear that access to information is critical. The powers of a Royal Commission and the Yoo-rrook Justice Commission gives them access across the board, which I think is hugely important. But obviously tackling legacy is not just about investigating the police and other State agencies. It is wider and includes other actors as well.

There's an entirely separate issue from that, which is *what* can be published. I think getting access to information is one thing, what you do with it, I think is another. We always were very careful in the context of reports to make sure that, while the conclusions were solid and based on strong foundations, not everything that we found was put into the public domain. That was absolutely right and necessary because of the constraints from a human rights point of view. **So, I think that the critical issue here is that more robust arrangements are required than what exists at the minute.**

So, in conclusion, to look back, the police have incredible powers; to arrest, to search, to take life. And the issues, while maybe different from twenty years ago – in the context of Black Lives Matter, the abuse of power, public order policing – the need for civilian police oversight is as strong now as it was twenty years ago. One thing we can be sure of, I think, is that the Police Ombudsman's Office was and remains a critical factor in maintaining public confidence in policing.

# Panel 1: Questions and answers

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## QUESTION 1

Richard [Martin] mentioned that operationalising human rights within a police force is not just about having the right standards and having it in the law, but also it is about social encounters. I wonder, do you think that that has been addressed in the training of the PSNI here? Or in other police forces?

## ANSWER



### Dr Richard Martin:

I think it is important to think about particular aspects of policing and the type of encounters that they have. So, an officer in the tactical support group will be dressed in an entirely different way in different communities, having very different interactions from a neighbourhood officer. Both are encountering rights every day. For neighbourhood officers, I found that they did not necessarily talk in rights terms, but the kinds of social, family, community issues they were encountering absolutely engaged rights, but rights did not necessarily resonate in the same way.

I think part of that is this kind of vigilance and curiosity, because rights had been internalised, but it was not useful to make it explicit in certain contexts, and some officers said, actually, it is not helpful to talk about rights in certain communities. It can put people off. For tactical support group officers, the idea of rights interferences was really important and reinforced and made very explicit. They had a sense that they were entering somebody else's house and this had implications for how you went about your search, both procedurally and making sure you have the appropriate authorisations. So, in those kinds of micro-contexts, the points of socialisation, rights were kind of coming in and out in different ways.

I think it is striking this balance between making rights conscious, but also not making it superficial or "going through the motions". So, if you are a community officer, how do you promote rights-based thinking in a way that makes sense when they are interacting with communities. With a tactical support group officer, I think you know there is something in being far more explicit about the privacy rights and making sure you have the appropriate authorisations. So, I think there are subtle differences, but what I would be wary of is this idea of rights fatigue and the socialisation through training of how you continue to talk about rights. So, how do you mature and develop a rights discourse twenty years on? Because one officer said, it is a bit like the safety warning that the flight attendants tell you about when you get on the plane, you just kind of turn off at a certain point, you know it, and it is the usual spiel. I think, twenty years on, how do you make it not the usual spiel, but make it still resonate. I think this goes back to Alyson's point about training and updating training, and the role of refresher courses as not just going over the same material, but actually trying to make it resonate with current policing issues.

## QUESTION 2

Obviously, there is a burden on the organisations, like the PSNI, to make sure that they are human rights compliant, and that their officers are acting in a human rights compliant way. But Patten was all about policing *with* the community - is there more that can be done to make sure that *communities* know what their rights and entitlements are under the human rights framework? Is there enough being done at the moment? And what changes do you think could happen to make sure that communities are more empowered to ensure that their human rights are being respected?

## ANSWER



### Alyson Kilpatrick:

I think you have hit the nail on the head. If people do not know they have got rights, or that they can enforce rights, then they are probably not worth having. I think the police have to do more to make their policy accessible. So, they need to publish all other policies which they still do not really do routinely – there is always something being held back. The public needs to be told by their leaders, communities need to be shown by their leaders, that human rights are a good thing. Too often in Northern Ireland, communities are told that human rights are a bad thing. That there is nothing in it for them, they do not apply to them, and that they are somehow depriving them of something that the other crowd are getting. And that is terribly disruptive, and it is just not true. So, that is rhetoric that needs to change.

In terms of the oversight bodies, absolutely they have a duty to put into the public domain, not just what the police do or what they think of it, but all the background, the rationale, the reasoning, and what the communities have said to them, and to engage with the communities. Community engagement is a bit like training. It is great in principle, but it is always the first thing that goes, and it is rarely really meaningful. So, little engagement days or events, where the same people turn up at every event and say the same thing every time, just is not the way to do it. Now I am not saying I know the answers to how you do that better, but you are absolutely right – unless the public is really engaged in this, and invested in it, it is not going to change over the longer term.





### **Dr Michael Maguire:**

I think you are absolutely right. I mean the essence of Patten, to some degree, was policing with the community. A different type of policing than what had existed before. There is no doubt the nature of the police relationship with a range of communities in Northern Ireland is vastly improved from what it used to be years ago. But I do remember when I was in CJI, it is probably a bit outdated now, but it had to do a report on policing with the community and there were both cultural and practical issues within policing which I think undermined their attempts.

First of all, it was a bit idiosyncratic – the good district commander, who had a real vision and sense of what that meant, drove it through his particular area operations. That was not to create uniformity across the board. I think there were issues around the allocation of resources – community support officers, community police officers, quite often were seen as yellow pack police officers, who were not as good as detectives, who were not as good as other types of police officers, and therefore there was a stigma attached to doing that kind of policing which was actually essential to what needed to be done. And there was also the abstraction of officers. The first time a problem hit, those officers were drawn and put into something else. That caused problems, certainly where relationships had been built up over a period of time. So, I think it is better. Is there room for improvement? Absolutely, and I think that is where the role of the likes of the Policing Board, community safety partnerships – although I think when you look at the role of community safety partnerships, I am not sure we could put our hands on hearts and say that they have been a unified success in that regard. So, I think there are both issues within policing, but also the oversight architecture and the way in which it is used to engage with police. I think there are issues where it could be developed further.

### QUESTION 3

I wanted to ask about the politics of accountability. In NI, in the Policing Board, we have a combination of independent members and 'political members'. That is an interesting and unique model, and I just wondered what Richard or Alyson think about it. Is it a model that we should be exporting to other countries around the world? Or does it belong in the NI context?

### ANSWER



#### **Alyson Kilpatrick:**

I think there are disadvantages to having politicians on these sorts of oversight bodies; however, one of the great advantages to having the politicians there is the democratic accountability, and buy-in, and the representation that it brings. But also, politicians, and because of Northern Ireland's size, politicians here have a real insight into communities, and they can sometimes be the best providers of evidence of what the police are doing, as much as the community themselves. So, I think the balance is probably in favour of having politicians, but I think it is very specific to Northern Ireland perhaps, and where it came from. But you absolutely do have to have it balanced out by really strong independent members. I found in my time, and I am not giving away any secrets, and I have said it then and I will say it again – what often happened with human rights, or with an issue that was dressed up as human rights, was that there were two extreme positions to be taken on it, depending on what your politics were – not depending on the merit of the issue, or what the police really did in the circumstances. But there was one way of looking at it, and another way of looking at it, and there could never be agreement. And so, I think that is a real danger, and I think that is heightened a little bit with politics. The other thing that has to be said, I think, in all honesty is, that with politicians on Boards, the idea was that they would not be politicians as they were sitting on the board. So, they happened to be politicians nominated by their parties, but they were not acting as party politicians while carrying out the functions of the board. I think that is where Northern Ireland sometimes got it wrong.



### **Dr Michael Maguire:**

I do not have a problem at all with the concept of politicians being involved in police oversight. It is such a contested space that I think it is important that there is political accountability in relation to policing, because of the nature of the beast. Where it becomes a problem is when it interferes with the operations of the Board. I think that is the issue. As Alyson says, the concept was that you leave your political hat at the door when you move into the police oversight arrangements. And I think if you look at the Policing Board as an observer, in my role is in CJI [Criminal Justice Inspection] but also as an Ombudsman, I could see a change over time. I think when it first was established, inevitably, the politics were critical because it was new, because of the nature and controversy of police reform, that there was inevitably going to be an element of political disquiet in relation to the Board and what it was doing. I think one of the consequences of that, in my personal opinion, was that the role of the board was to support the police, but also to hold it to account. I felt, at times, it was too much of the former rather than the latter. And I think that was a political issue more than anything else.

I do remember, at CJI, being asked for recommendations that CJI had made, by some political members. And I said, "well why don't you have them?" He said, "we don't have them, we simply don't have them". I remember giving him two volumes "that thick" of CJI recommendations, and giving them to all board members and saying, "look, there is a critical role here for the Board in delivering on some of the issues that have been developed in the context of the oversight". I think if we are talking about failures, one of the issues that I felt I did not do as well, in either role, was to try and join up the architecture of oversight. I always felt that triangle between the Policing Board, CJI, and the Ombudsman, was pretty powerful in holding the police to account. But I always felt it was too fragmented and a bit too disjointed, and we tended to operate in our own silos, in a way, which perhaps worked to the benefit of those who did not want to see strong oversight. So, I have no difficulty with the concept. I think it just becomes a problem when it starts interfering in operations, in the context of what it is you are trying to do.



## QUESTION 4

What is best practice for ensuring that covert policing or security matters are not beyond the reach of oversight in relation to human rights-based policing?

## ANSWER



### Alyson Kilpatrick:

You have to accept that they should be accountable and that is not always accepted. You have to accept that there are areas where you are never going to be able to give access to the public as well. So there has to be a balance. But there has got to be some way of independent people being able to oversee it, and there is no alternative to that. The model they have now with the independent reviewer, I think of terrorism legislation, is a really good one.

It was actually more difficult in Northern Ireland than it should be in the Republic. It should be very easy in the Republic because State security is also dealt with by Gardaí. In Northern Ireland, there are other agencies who are responsible for national security. But in the Policing Board, it was done by recognising that all those National security things were done alongside the police. And there was always an executive policing element to it. So, you could look at it from that point, going through the policing aspect. Also, I found that police really welcomed scrutiny of all the other national security stuff, because often they are the ones who are at the tail end of, say a covert operation, but they are the ones who get all the blame if it does not go right, or something comes out later on. But they can't say anything themselves. They can't say "well, it wasn't us. Yeah, that was your bad on the other organisation". So, it does everyone a favour if a light is cast on it and I would look at the Independent Reviewer of Terrorism Legislation model, and the Policing Board looking at the executive policing side of it.

But even the independent reviewer will tell you that his is not the best model of those independent reviewers and programs. The Australian model is a really good one to follow. But you have to have it, and I think it starts by acknowledging that it is necessary.



### **Dr Michael Maguire:**

I think there are a number of answers to that question. I think the legislative basis for covert policing here is different from what it is in the Republic of Ireland. We have RIPA, and that places obligations on the police in relation to agent handling, for example, the sign-off arrangements and the oversight associated with that. I can't remember what the current form of the surveillance commissioners is called, but they have access to all the material within the police itself and do reviews on a regular basis in relation to what is handled in that regard. I have always felt, because of the nature of the allegations that came to the Office, particularly in that space, that access to information was critical. If my legislation had not said the police must give me information, I would have had a problem. Now, did I get all the information? Well on occasion, no, because some of it popped up in a different context at a later stage. But as a senior police officer said to me one time, "Michael, no one is going to risk their career by not giving the Police Ombudsman information. No contemporary police officer is going to risk their career by not giving Police Ombudsman information".

I did "fight" very strongly to say, "look, you are not compartmentalising off areas of policing to say that is not for the Ombudsman to take a look at". But, as Alison says, when you do look at it, and what you do with that information, are two entirely separate issues. But you have got to give confidence that an issue is being looked at properly in that regard. And if the legislative basis of the Office had not been what it was, I think that would have been difficult.



## PANEL 2

# Policing with the Community

**Facilitator:** Brian Gormally, CAJ (not pictured)

**Panellists:** Dr John Topping, QUB (left); Lilian Seenoi-Barr, North West Migrants Forum (centre-left); Conal McFeely, Creggan Community Development Worker (centre-right); and Debbie Watters, Ulster University (right)

# Dr John Topping

## Senior Lecturer in Criminology, Queen's University Belfast



**Speaker Bio:** Dr John Topping is a senior lecturer in criminology at QUB where he specialises in policing, including police reform and accountability, along with stop and search powers. He is also a fellow at the Senator George J. Mitchell Institute for Global Peace, Security and Justice. Over the past 15 years, he has worked on a variety of research, consultancy and advisory roles with all the statutory policing institutions in Northern Ireland. In addition, he has previously acted as an Independent member of the Belfast Policing and Community Safety Partnership. He currently sits on the Executive Committee of CAJ, is Chairperson of Community Restorative Justice Ireland, and has previously been on the Executive Committee of the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO).

**Synopsis: John discusses the issues around the use of stop and search police powers in NI.**

Thanks, CAJ and ICCL, for inviting me here this morning. What I want to do, very briefly, is just to say a few opening remarks. I do not want to talk about necessarily what has happened over the past three years since then. Nor do I want to get bogged down, in the very short time that I have, in jousting around in-year stop and search statistics, and we can do that later if we want. But I want to have a look at that and briefly mention some of the complex and more longstanding issues with regard to stop and search and PSNI. What I am going to start off with, very quickly, is the elusive nature of stop and search.

Setting aside the unique, and arguably very necessary, Justice and Security Act stop and search powers because of the security situation here, it is the ordinary stop and search powers under the *Misuse of Drugs Act 1971*, the *Police and Criminal Evidence Northern Ireland Order of 1989*. MDA and PACE, as I will call them, which are the case in point. The PSNI have been

in possession of these same PACE powers as we have had in England and Wales for twenty years and beyond, yet they have tended to remain hidden in plain sight within the accountability and operational frameworks of policing that we have here. Indeed, it is very curious that between 2004/5 and 2015/16, the PSNI's use of PACE and MDA specifically has increased by seventy-four per cent. The PSNI now commands the fifth-highest stop and search usage rate in the UK for those powers. Eight out of eleven PSNI districts have stop and search rates above the average in England and Wales, and every single PSNI district has an arrest rate of below that in England and Wales for stop and search.

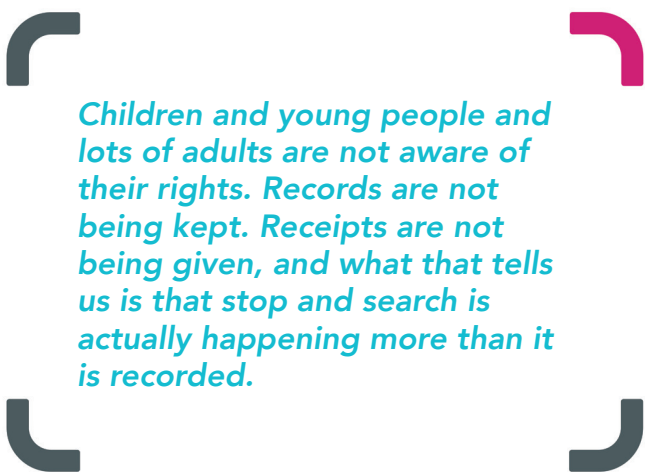
Or in other words, the PSNI – by their own annual statistics, their own scoreboard – is arguably the poorest performing police service in the UK for stop and search. It is seemingly immune to some of those reformatory moves that we have seen in England and Wales. This is compounded by the fact that the stop and



search has not been mentioned once in the last decade of Northern Ireland Policing Board policing plans. Notwithstanding Alyson and John's human rights reports, where it certainly does get some attention.

If we take, for example the *Misuse of Drugs Act*, specifically, the *Misuse of Drugs Act* actually comprises seventy-six per cent of all normal non-terrorist stop and search. But it only has an arrest rate of five per cent. That is in fact only one per cent above the much-derided Section 60 suspicion-less powers used in England and Wales. It is quite remarkable. And of course, notwithstanding the fact that the arrest rate for children, for under eighteens in Northern Ireland sits at four per cent - or ninety-six times out of a hundred there is not an arrest. So really the question is how, in a rights-based sense, has stop and search become so prolific yet unseen within the Northern Irish context. And it is also remarkable that it has taken until September 2021 for PSNI to publish their first-ever dedicated service instruction on stop and search, that a number of people, including myself, have commented on in this room. But it is something which merely restates the legal powers incumbent on PSNI anyway for stop and search. Yet, we have over a decade of empirical research which demonstrates not only the negative effect of stop and search, particularly on children and young people – as demonstrated in the recent Young Life and Times Survey run by Queen's here and by myself, and in PSNI's own survey of 3000 children and young people run this year – but also that the powers in significant instances are not being used appropriately or correctly. Children and young people and lots of adults are not aware of their rights. Records are not being kept. Receipts are not being given, and what that tells us is that stop and search is actually happening more than it is recorded.

And overwhelmingly, we know that stop and search has a net negative effect on police-community relations. In other words, as some of my own work has demonstrated over the years, the *amplicatory* effect of police culture, of organisational culture, has caused



*Children and young people and lots of adults are not aware of their rights. Records are not being kept. Receipts are not being given, and what that tells us is that stop and search is actually happening more than it is recorded.*

the legal boundaries of stop and search to be stretched and stretched and stretched. That is what the evidence tells us. But should we be surprised? Maybe something we will talk about today. On the one hand, no, because problems with PACE and MDA powers - these are the very same problems which have existed in England or Wales for decades. Yet beneath our police accountability architecture, the powers of stop and search have largely evaded that level of scrutiny. And in fact, we had the opportunity here to be ahead of policing on stop and search in the UK and Ireland, because of course we already have the *United Nations Convention on the Rights of the Child* (UNCRC) enshrined within *PACE Code of Practice A*.

But, set against policy-based evidence-making, not evidence-based policymaking (which I think has driven a lot of the stop and search usage here), what we can see are a couple of different problems. First of all, there is a sheer lack of understanding about the technicalities of stop and search within some of those oversight structures. Again, notwithstanding John and Alyson, I have given evidence to the Policing Board's performance committees on many occasions, and there are very few who actually grasp the difference between the different legal regimes within those committees.

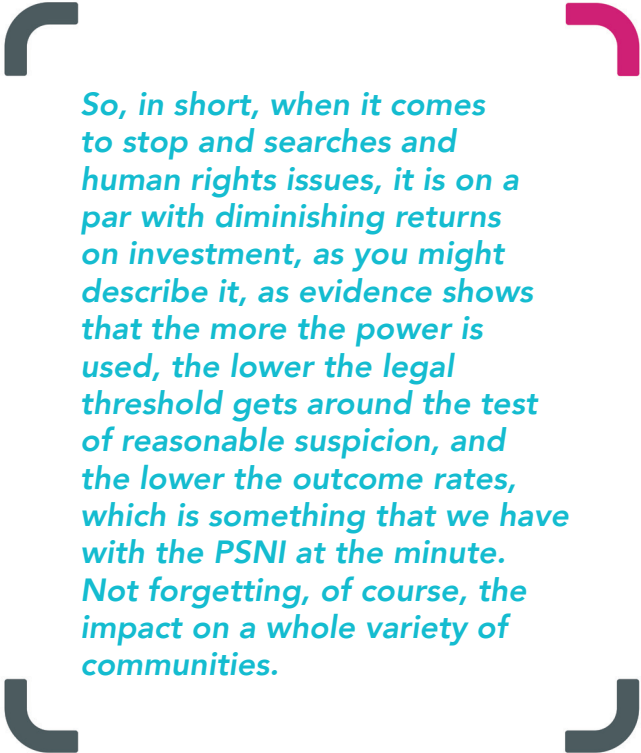
So, what are we saying? Just to briefly finish here. Stop and search occupies this dual role – a bit like Schrodinger's Cat. It is part of this overt justice curriculum, as you might call it, on one hand. Of course, stop and search on the surface



is human rights compliant. It is well regulated, it is overseen, and deals with crime. Or so we think. But it is also part of what you might call a covert justice curriculum, where the experience of people on the receiving end there is a very different story. Where relatively high levels of stop and search, mostly concentrated in socio-economically deprived areas of the country, categorise, and exclude people. And of course, not forgetting the fact that the main stop and search power of the PSNI, the *Misuse of Drugs Act* does not actually deal with drugs or crime at all. Barely at all, in terms of the outcome.

So, in short, when it comes to stop and searches and human rights issues, it is on a par with diminishing returns on investment, as you might describe it, as evidence shows that the more the power is used, the lower the legal threshold gets around the test of reasonable suspicion, and the lower the outcome rates, which is something that we have with the PSNI at the minute. Not forgetting, of course, the impact on a whole variety of communities. And really,

the question for today, and maybe we will get a discussion, is not whether a more-rights-based approach can be taken as part of PSNI stop and search usage, but it is why have not we been seeing that front and centre as part of stop and search for those ordinary powers? And three years on from the Chief Constable sitting in this very room, having spoken critically about the impacts and effects of stop and search, it would appear that the practical reality on the ground in 2021 is not so much that PSNI stop and search practice deviates from the law or civil liberties per se, but those rights do not appear to be particularly relevant for PSNI to some particular individuals and groups, particularly young males from socio-economically deprived backgrounds. We have got an emerging body of evidence around BAME communities, and also established evidence around travellers as well. So, in a rights-based sense, just to finish up, for stop and search twenty years on, I would suggest there is still an awful lot of work to do.



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# Lillian Seenoi-Barr

## Director of Programmes, North West Migrants Forum



**Speaker Bio:** Lillian Seenoi-Barr is a refugee activist and prominent Black Lives Matter campaigner. She has over 20 years' experience of working in the community sector both in Kenya and in Northern Ireland. Lillian is the founder and Director of the North West Migrant Forum. Lillian specialises in Community Development, Social Policy, and Youth Work. In both Kenya and Northern Ireland, Lillian's work has focused on human rights and social justice. In Kenya, Lillian campaigned for the rights of Maasai women and girls, particularly around female genital mutilation and early forced marriages. In the Northern Ireland context, Lillian has sought to challenge racial inequalities and build trust and understanding between minority ethnic communities and traditional communities. Lillian has recently become the first black Councillor in Northern Ireland.

**Synopsis:** *Lillian discusses some issues facing migrant and minority ethnic communities in relation to the PSNI.*

Thank you very much. It is a pleasure to be here and as a recipient of CAJ's unwavering support, I am really honoured to be asked to speak today. Back in February 2008, a conference on policing the future was held at the prestigious Waterfront Hall, attended by policing dignitaries from across the world. The policing changes process in the North of Ireland was heralded as a blueprint for democratic policing anywhere in the world. The former chairperson of the Northern Ireland Policing Board, Professor Desmond Rea, even suggested that the PSNI represent what is best in modern-day policing. From what we have heard this morning, it appears that there is some degree of progress that is welcomed, but I think we can all agree that in a democracy, structures of police governance and its workforce should reflect the demographic characteristics of the community being policed. This week, the news has been dominated by coverage of the PSNI twenty years on, with

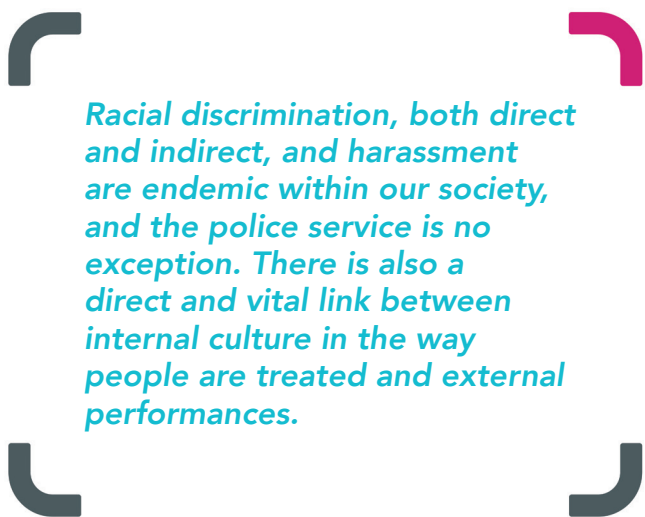
some leading figures calling on the return of fifty-fifty recruitment of Catholics and Protestants. There is evidence to suggest that the delivery of policing, whether in the form of force or service, has been inferior for some social groups than others. So today my focus is on minority ethnic communities. Sometimes it seems like minority ethnic people are the invisible communities that no one considers unless it is a fashionable topic of the day.

It is true to say the black and minority ethnic communities are underrepresented in all levels of policing and this situation does not come close to reflecting the current demographics in the North of Ireland. The history of differential treatment in policing minority ethnic communities and how they have been targeted for particular forms of policing is well documented: be it public-initiated encounters with the police, such as reporting crime; police-initiated encounters such as stop

and such which we have heard a lot about this morning; and the decisions to caution, arrest, and charge. A 2020 investigation, headed out by Vice World News and The Detail, revealed that the PSNI have one of the highest rates of using stop and search in the UK, but the lowest rates of arrest. And, in 2020 statistics that we have not been given, over 25,000 people were stopped and searched – when compared with police forces in England and Wales, between 2019 and 2020, Northern Ireland had the third-highest rate of stop and search with just six per cent of searches leading to an arrest. But the most interesting revelation was that, not only does the data show the frequent use of stop and search, but it also reveals that the police disproportionately target ethnic minorities and children. Of the 25,000 stops where ethnicity was reported, black people counted for an equivalent of 4.1% of the total, despite making up 1.8% of the total population. In 2020, over 4.2% of all COVID fines went to people of minority ethnic backgrounds, with black people making up almost half of these fines. There is no doubt that racist beliefs, xenophobic attitudes, and racial prejudice remain widespread within Northern Irish society. Whereas the most overt forms of racism and participation in the white power movement are rare; racist attitudes, anti-immigrant feelings, and xenophobic values have deeply manifested in all levels of society today. If police officers are a cross-section of society, then it can be expected that some will be racially prejudiced.

One of the most controversial areas of police targeting relates to the policing of the 6th of June 2020, Black Lives Matter protest which I organised. In my view, the protest will go down in history as the single event that exposed institutional racism in the Police Service of Northern Ireland. In a week where huge crowds were gathered outside of furniture shops, followed by a hands-off approach to a far-right protest afterwards, this was a “them and us” situation.

What led to differential treatment of public gatherings in 2020? When I try to make sense of this, stereotypes of black people have



*Racial discrimination, both direct and indirect, and harassment are endemic within our society, and the police service is no exception. There is also a direct and vital link between internal culture in the way people are treated and external performances.*

been more consistent in that black people are thought to be more prone to violence, crime, and drug abuse; to be suspicious, hard to handle, aggressive, and troublesome. Undoubtedly, the decision-making process to criminalise the Black Lives Matter Protest was reinforced by individual racial prejudices of high-ranking police officers. Racial discrimination, both direct and indirect, and harassment are endemic within our society, and the police service is no exception. There is also a direct and vital link between internal culture in the way people are treated and external performances. To date, there have been very few prosecutions and convictions under the hate crime legislation, including relating to incitement to hatred. Outcome rates for crime with a hate motivation are consistently lower than other recorded crimes. In a country where you know your community is treated differently, everyone is affected. In the words of Martin Luther King Jr., it is not possible to be in favour of justice for some people and not be in favour of justice for all.

We have evidence that shows when victims from ethnic minorities report crimes, police officers will victimise them further by detaining them or questioning those people who are suspected of being in breach of migration law. In many of the police encounters with minority ethnic people, officers consistently demonstrate little regard for their civil liberties. The unnecessary repeated harassment and the heavy-handed approach used to intimidate protesters at the

Derry Black Lives Matter protest, the caution and threats of prosecution issued to organisers, is the definition of institutional racism in policing. Nothing has been more damaging to the relationship between the police and the black community than the ill-judged use of stop and search powers, and the disproportionate policing of Black Lives Matter Protests. For young black men in particular, the humiliating experience of being repeatedly stopped and searched is a fact of life, particularly here in Belfast.

For many of us, we were left with the feeling that the police service is not a service we can depend on to protect and safeguard our human rights. It is hardly surprising that those on the receiving end should develop hostile attitudes towards policing. The simple fact is that the idea of policing by consent is compromised if systems of accountability fail to reflect the ethnic diversity of the population. It also affects how minority ethnic people are perceived and policed when police officers themselves have little contact on a social and professional level. The right to walk the streets, and the right to protest are fundamental human rights. Even if the numbers of minority ethnic police officers are depressingly low, it is crucial that the behaviours and practices of white officers who

*Even if the numbers of minority ethnic police officers are depressingly low, it is crucial that the behaviours and practices of white officers who will inevitably form the overwhelming majority are underpinned by the principles of respect, fairness, and accountability.*

will inevitably form the overwhelming majority are underpinned by the principles of respect, fairness, and accountability.

**Public confidence is the fundamental cornerstone for successful community policing.** However, seeking to achieve trust and confidence through the demonstration of fairness will not in itself be sufficient. It must be accompanied by a pursuit of openness and accountability. I would strongly argue that producing a police service that more closely reflects the population it serves is important not only as a goal but also as a means to an end in improving service provision. It increases the chance that the services provided are appropriate, relevant, accessible, and of a high standard to all members of the community.

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# Conal McFeely

## Creggan Community Development Worker



**Speaker Bio:** Conal McFeely is a founder member and the Development Executive of Creggan Enterprises (CE), a social economy enterprise company providing 120,000 square feet of retail, health, community services, and workspace provision in Derry City. In addition to providing a much-needed mechanism for economic regeneration - CE, under Conal's direction, continues to pioneer and deliver important and highly acclaimed programmes which fulfil CE's broader social remit. He is a pioneer and proactive champion of the social economy and equality and social inclusion for all. He is a strong advocate for social and economic development of the North West. Conal is a former manager at NICDA (Northern Ireland Community Development Agency) and founder member of a range of community initiatives and social enterprises.

**Synopsis:** From his own experience living in the Creggan, Conal discusses ongoing issues between the community and the police, highlighting the issue of security-based policing.

I would like to thank CAJ for giving a voice to my particular community in terms of the issue of policing. I think there is a view within the Creggan community that has not been given a voice in terms of how the particular community has been policed. I was reading an article last week in the Sunday Independent by Joe Brolly, in which he may well be correct to say that sections of the Catholic Nationalist community would now welcome improvements to community policing structures as envisaged by Patten.

However, there is no doubt that the current structures of what I would call security-based policing like those of the old RUC, in many communities (particularly in Creggan) in Derry, are not welcome. They are viewed by many as counterproductive to any notion of proper scrutiny or accountability of policing reforms that we envisaged coming from Patten. There

is certainly little evidence from my local knowledge, to suggest that the community confidence in policing is improving within my particular community. I would indeed argue that the opposite is now more likely. For people like myself who work in a community setting like Creggan, where the community does not understand or has never seen the notion of community policing in the last twenty years, all we see is security-based policing which still holds primacy. My question, in terms of this debate today, is: who is accountable when things go wrong in the community? Moreover, who is responsible when the rights of individuals and their families are infringed to such an extent that they become marginalised in their communities and are excluded from civil society? In short, I would ask who is guarding the guards?

It was envisaged by Patten that the new



foundation principle of policing reform would be a police service. In Creggan, the reality is that policing is regarded as a *force*. The people in Creggan need a proper police service – not policing by the TSG, the tactical support group, who are always acting in a manner which causes community disharmony. Why are we told by office after office, “that is above my pay grade”? Could someone please tell my particular community, when people like myself and others are trying to defuse tensions either caused or created by the TSG tactics, where officers come into the community to carry out house raids and stop and search wearing old RUC badges, why can we not get answers from anyone?

Why can Derry and Strabane District Council not get a response about TSG tactics and behaviour, as happened earlier this year, when the local police commander failed to attend the Council meeting to discuss controversial raids involving inappropriate police actions in Creggan? Why has Derry had nine police commanders in the last ten years? Why has the community policing model and neighbourhood policing structures within the Derry area been dismantled in favour of the TSG? These are questions that local communities are asking of people like myself and communities on a regular basis. And if this is the case, why is it that the Policing Board has failed to comment on the CAJ report which was commissioned by our Council and which indicated the police may be acting inappropriately? That is very unusual for the Creggan community to get a chance to raise these issues at any forum locally. So, can I ask why was a young mother who was attempting to guide her vulnerable daughter into a neighbour’s home, thrown to the ground, arrested, and handcuffed by TSG members? Who ordered that action? Who sanctioned that procedure? And who permits it?

The other question that I have not asked, is of the use of police body cameras. Why a local judge has now stated in court, that unless these footages are produced then he will throw out any cases that come before him? The other question which I would raise is, who

is sanctioning the repeated stop and search of individuals and their families in Creggan? The true scale of these answers has not been properly recorded. I recently read the latest report by Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, which informs us that in Northern Ireland, less than fifty people under section 43 and section 43A were stopped. The last time I was with a family, who produced with me over two hundred stop and search information cards which they retained over the last two years, and that was only in relation to one member of their household.

The other question which I would raise is, is it right that we should have surveillance by the police of our children? Why is it that police are asking schools and social workers to monitor our children? That question needs to be answered. There’s a view within my particular community that we are not being policed properly. We are being placed by the TSG, which is a security-led initiative. Are they above the law? Are they responding to Simon Byrne’s comments that he issued in September 2019 when he said, “if you carry on doing this, we will have your house, if you keep going we will have your car, we will have your kids, we will have your benefits and we will put you in jail”? Who has the right to target our children? We are now seeing on a regular basis in Derry, the closing down of bank accounts – not just of Dissident Republicans, but also their families, their spouses, and their children. Why is there no appeal against this process? Indeed, why are banks themselves being told that they will face prosecution if they do not close down these bank accounts? These are questions that I think need to be answered, and I go back to my original question, who is guarding the guards?

# Debbie Watters

Visiting Professor,  
Ulster University



**Speaker bio:** Deborah Watters is a Co-Director and founding member of Northern Ireland Alternatives, a community based restorative project working within grassroots loyalist communities in Northern Ireland. Debbie has been involved in the area of justice work, peace building, reconciliation, community relations and youth work for the past 30 years. Debbie served a nine-year term on the Northern Ireland Policing Board, with four of those years in the role of Vice-Chair and currently advises extensively on policing with the community and the role of accountability within the policing architecture. She is a Visiting Professor at Ulster University.

**Synopsis: Deborah discusses issues between working class Protestant communities and the police in NI.**

**T**hank you very much everyone for the opportunity to speak at this conference. I think what I have heard this morning already has been very moving, touching, and real. I work within predominantly a Loyalist community, a working-class Protestant community. Three years ago, if that community was looking in this conference, they would say "well you are all lefty do-gooder hand-wringers anyway and that is what you would say. You would say policing is all bad, and everything else is all good". They would say, "there wouldn't be stop and search if there weren't dissident Republicans. You have to fight tough with tough". So, there is a different view out there, but let me say that in July of this year I tried to organise a strategic conversation between the Chief Constable and Senior Loyalist representatives. And out of thirty people that were invited, three responded and said they would be willing to do the engagement. Twenty-seven turned down the offer to meet and have a strategic conversation with the Chief Constable.

Loyalism has always had a love/hate relationship with policing. It has always been a schizophrenic relationship, because in reality upwards of 5,000 young men from the Shankill were incarcerated as political prisoners. It was the police that lifted them, interrogated them, and took them to progress them through the system. The love/hate relationship has begun to turn in recent months into more of a hate/hate relationship. And that is not a good place for us to be. I can't really talk about policing in the absence of naming the perceived two-tier policing that loyalism feel is happening at the minute, in terms of what's happening with the Protocol and Brexit, and in terms of what's happening around COVID. All of those issues play into where we are at the minute, including, as Conal has said, high levels of stop and search in the areas like South-East Antrim, in the areas like Ballymoney, and in areas like East Belfast. But most people within the Loyalist community feel that the kind of stop and search that is happening within those areas is perfectly justified. And Alyson is right, there is a whole different narrative

around rights within working-class Protestant communities, but it does not mean it is right.

During my whole tenure on the Board, I used to go out into loyalist communities and say, “rights belong to all of us, you need to begin to understand what your rights are”, because the bottom line is, the level of stop and search that is being used, it is not proving to be effective. It is not yielding results. And actually, what it is doing is damaging confidence in policing. So, why, as John says, do we continue to do something that is not working, and something that actually is bringing our police service into conflict with the working-class and our most vulnerable communities that are already at risk because of issues like poverty, poor levels of mental health and under educational achievement? Policing in Northern Ireland cannot be done in a vacuum, and of all of those things are relevant.

I agree, there is too much security-led policing when there should be community-led policing. But the question I think is, what should policing with the community look like? If Creggan is calling out for a different type of policing, what should that look like? In reality, Creggan needs to be involved in the negotiations around that. Policing with the community means talking to individual communities and asking them what they want. The difficulty in loyalism at the minute is that people are not even willing to have the conversations. They will have them with neighbourhood [police officers], but they are not willing to have them with senior police officers because they feel that policies, practices, and the delivery of policing is discriminatory, biased, and is not rooted in policing with the community ethos.

I know I am running out of time, so let me just throw out a few things that I think could be helpful. Patten talked about a Cadet Scheme, and that has been mentioned on the news this week. The Policing Board, when I was there, talked about an Apprenticeship Scheme because of some of the language connotations around and the militaristic connotations around the Cadet Scheme. **My challenge to the**

**PSNI and to the Policing Board is that an Apprenticeship Programme that does not give direct pathways into policing is of no use.** Because what is discriminating against our communities is actually the fact that it is mostly young people from universities that are getting in. So, I agree there needs to be more Catholics – more people from Catholic working-class communities. I agree there needs to be more people from ethnic minority communities. But there also needs to be more young people from working-class Protestant communities. There are more Protestants in the police, but the ones from middle-class communities are struggling to police in working-class Protestant communities. So, what are the direct pathways into policing? That would be my one of my challenges.

**Another challenge to the PSNI around community-led policing would be a step back from stop and search.** It is not working in any community. And talk to communities about what they need, and what they want. **And finally, to the police, and to the politicians, would be to get your act together around legacy.** Because legacy was not mentioned in Patten, and because legacy is not being progressed at pace, that is poisoning how current-day communities are being policed. I suppose now that I am no longer on the Policing Board, I can say some things that I could not say before. I want to also challenge the accountability mechanisms, because the statutory remit of the Board is not only to hold the police to account, but to build confidence in policing. My challenge over the past eighteen months is: How have you been doing that? What communities have you been in? Who have you been listening to? And if you do not do that, you cannot hold the police to account for a lack of policing with the community, because actually the Board does not know and is not hearing directly from communities what they want in terms of community policing.

# Panel 2: Questions and answers

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## QUESTION 1

It is very difficult for the police to police areas where there are people still there wishing to do them harm. Especially when there are signs up on lampposts saying, “PSNI Out”, and [images of a] PSNI man walking with a target on his back. And there are malignant elements in certain communities who would still wish to do the police harm. I can understand why it is really, really difficult to police whenever the community aren’t willing to engage with the police. What are your views on this?

## ANSWER



### Debbie Watters:

I do think that is a fair challenge. I am not saying it is easy for the PSNI, and I think a lot of movement and good change has happened over the past twenty years. But I think the problem - I am not talking about neighbourhood policing. In my experience, neighbourhood policing is done really, really well. What I am attempting to do today is signal that there needs to be more systemic change within the PSNI. That they need to look at how they do security-led policing. They need to look at how they do human rights policing, and have they got that as good as they could? Personally, I would like to pay tribute today to neighbourhood policing because I think there are a lot of neighbourhood officers that are engaging in communities, that are committed to being there, that have been there for ten, fifteen, twenty years, and are building up really, really good relationships. Conal is saying there is an absence of that where he is – community policing and policing with the community.

Where I live and work, there are really good models of community policing happening, and I think that it is difficult for police to go into some areas. However, the police also have a policy that there are no “no go” areas and that they need to find ways to engage with those communities. I do think when we talk about people joining the police, over the past number of years, I know of about five young people from North Belfast and the Shankill that have joined the police and have had to move out of those areas because they wouldn’t feel safe living there. That is not just a policing issue. That is an issue for politicians, for community workers, for all of civic leadership, and for me as well. My challenge on the Board to Sinn Féin always was around not attending attestations, and around not supporting police recruitment. This is not solely a policing issue. We all have to step up, and we all have to create an environment that will make our communities much safer a place for us all to live, but for the police to police.



### Conal McFeely:

I take your point. Clearly, all I can say from the Creggan community is that the vast majority of people in the Creggan community want to see effective community policing. They would like to see that service that was outlined in the Patten Report. Unfortunately, the method of policing which, I have said is that security-led policing is causing disharmony and is causing a major disconnect within the local community. It is also creating a new generation of young people who are being stopped and searched, and people have already alluded to the situation in terms of stop and search. Stop and searches have had no impact whatsoever in bringing people to court. It is a waste of a resource. But what it does do, is it brings back that history, which people had within that particular community of how they viewed the police in the past as political policing. So, therefore, there is a job to be done. Yes, we want accountable policing. And yes, we want to see a new method of policing. The fact is that I would say for the last ten years, in particular, the impact of security-led policing has been counterproductive to getting the community to buy into policing structures, and that is why young people from the area are not interested in joining the police. We need to find ways and means of addressing that.

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### Dr John Topping:

I think a partial answer to a very complex question is that if we look to the example of the South Armagh Policing Review – that created quite a bit of controversy, but setting that [controversy] aside, the *belief* became as important as the *fact* around security policing and security-based policing, and was, in fact, a massive barrier. Whether or not that was actually required, it became an ingrained culture in the South Armagh area. So, I think looking at that and questioning and looking at the style of policing is absolutely important. So, while, of course, we do have a severe terrorist threat, as defined by MI5, it is not an inevitable fate which we need to condemn communities to by the style of policing. There are other options. It is a very good challenge, a complex problem, and I think the South Armagh Policing Review does offer a partial answer as to how we go about unpicking those very complex and difficult issues – both for the police and also communities.





### **Lillian Seenoi-Barr:**

Well, I wouldn't have any answers for you on that, but what I can say is that openness, accountability, and fairness is the only way communities can respond positively to policing. I think community engagement is essential, and a lot of people have said, "how do you engage with people who would not want to engage with you?" The only reason why communities would refuse to engage is if they are consistently being treated unfairly. The police are not a different entity from the community – they are part of the community. They are brothers, they are sisters, they are nephews, they are uncles, and they are relatives of everyone within the society that we live in. But the practice, the procedures that they use in policing communities is one that completely breaks the relationships, and they have to look at building stronger relationships with communities so that they can police them. Everyone wants to be protected. We do know that the police are critical when it comes to fighting crime. That is what they do. But they also need to protect the communities that they are supposedly fighting crime for, so they have to build relationships.

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### **Conal McFeely:**

Can I make one point? I think in terms of the importance of community policing, there was a recent motion passed, again by Derry and Strabane District Council, which is the corporate body of all the elected representatives in the city – representing some 150,000 people. They passed a motion, saying that part of the problem at the moment in terms of community policing is that we need to remove the controlling powers of MI5 from community policing. That is part and parcel of the problem.

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### **Brian Gormally:**

Yes, that is the organisation referred to in earlier discussions, and that is an issue, of course – that MI5 had the lead in intelligence, at least in terms of national security policing.

## QUESTION 2

In a country such as Northern Ireland, with such contentious social and political issues – shared distrust of the police seems to be one topic on which both sides agree. How can the PSNI prove they are not biased and do not over-police or under-police one community or the other?

## ANSWER



### Dr John Topping:

The million-dollar question. I can only speak from a stop and search perspective. I think it is a common thread throughout the panel today. I think something missing here is a bold experiment. We are talking about the ordinary stop and search powers here, not the security-related ones. I think what has been missing here has been a bold experiment and reform of stop and search powers, as we witnessed in England and Wales under Theresa May, when she was Home Secretary, actually looking at reducing the levels of usage, increasing oversight, increasing the use of independent advisory groups. Because we know at a community level – Loyalist, Republican, BAME – it is doing harm to police-community relations. The connection between ordinary stop and search, as all the evidence shows us and actually dealing or stopping or preventing crime is close to minimal.

So, are there other ways we can engage with communities? Ways that don't involve what is the most common confrontational form of policing that we have here? I think that is one big piece of the jigsaw. I think a piece of the jigsaw over the past twenty years, which quite frankly has been forgotten in the midst of all the other bigger issues of parades and protests and accountability – stop and search has been allowed to slide along in the middle. I think if we had a bit more of a brave experiment around that, we might go some way to improving police-community relations where that is most concentrated.



### Lillian Seenoi-Barr:

That is a very difficult question because obviously, everything in Northern Ireland is politicised. And depending on which side you come from, your community is more important, and also, fairness is something that is described in different ways here. But I think impartiality in policing is critical, and we have to find a way that politics has to stay out of policing for the police service to function properly. But, as John says, accountability, oversight is also critical, and we have to strengthen, perhaps, the powers of the Ombudsman and make sure that they are independent. We have to strengthen the Policing Board by maybe having more independent people rather than politicians on the Policing Board. But it is a difficult question to answer in our society where respect is at its lowest when it comes to community engagement in the first place. So, we need to work on Rights and respect for people to engage in different capacities in policing.



### **Brian Gormally:**

I think one of the difficulties is that, in some of the communities that are alienated from the police, they don't trust the oversight mechanisms, specifically the Ombudsman. I think there is a real need for engagement, direct community oversight-mechanism engagement, if only in an educational role.

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### **Conal McFeely:**

Well, it came to me that it is all back to the question of effective governance, oversight, and accountability. It is my understanding that – and I could be corrected if I am wrong – at the moment, in terms of the security agenda, the Policing Board have no remit at all. That is something that, as a matter of national security, is directed and controlled by the UK. I think that we need to find ways and means in which our local system of governance here has also got a proper oversight on the MI5 and the security agenda. If they don't have that, we will not have any change.

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### **Debbie Watters:**

To echo what has been said about the accountability mechanisms – some of our speakers said earlier that they were hard-won but easily lost. Actually, to have the type of oversight that we have, the way that we can prove it works is for communities to use them and avail of them. I think one of the groups of people we haven't touched on deliberately today is young people. So, we do know that very few young people make complaints to the Ombudsman's office. We do know that any of the engagement structures that have been set up aren't really that effective and aren't used as well. How do we get our young people to talk about the issues that they are facing – regardless of what community they come from – so that they can be involved in the change? But I would say to people and communities out there: if the policing Board doesn't go to you, go to them. Ask for a meeting with John Wadham, the human rights advisor. Write to the Chair of the Board. Write to a Chair of a Committee. They are definitely open to meeting, but you may need to be proactive, and we should all be helping our communities be proactive in that, but also, we should be pushing the accountability bodies to have their engagement strategies in place and be following through with them.



## PANEL 3

# Response and Reflections

**Facilitator:** Dr Vicky Conway, Commission on the Future of Policing in Ireland (left)  
**Panellists:** Stephen White, former PSNI Assistant Chief Constable (centre-left);  
Jack Nolan, former An Garda Síochána Assistant Commissioner (centre-right);  
Alyson Kilpatrick, NIHRC (right)



# Stephen White

Former Assistant Chief Constable,  
PSNI



**Speaker Bio:** Stephen White OBE CF BSSC (Hons) MSc MSt (Cam) is a Commissioner in the Northern Ireland Human Rights Commission in addition to being a freelance consultant focussing on rule of law and leadership. He serves as the volunteer chairman of the Royal Ulster Constabulary GC Foundation – an arms-length body sponsored by the Department of Justice and established in law to mark the sacrifices and honour the achievements of the RUC. He joined the Royal Ulster Constabulary in July 1978 immediately after graduating from QUB and served in all ranks up to Assistant Chief Constable (in the RUC and Police Service of Northern Ireland). After leaving the police service he worked for the EU (for five years as Head of Mission and as Special Adviser to the Secretary General) and, since then, as a security sector reform consultant for a variety of international agencies in numerous countries. He has published on topics such as police reform, the importance of community policing and countering violent extremism.

**Synopsis: Stephen discusses the importance of community policing and the critical aspects which are necessary to ensure it is effective.**

Good afternoon, everyone. Could I say, first of all, a big thank you to those who organised today's event and invited me to participate. I will start by saying something which is maybe obvious. I haven't been a police officer for 17 years, but during those 17 years, I have been a resident in Northern Ireland. I am a citizen of this land. I have relatives within the PSNI, and I have relatives throughout the province. So, I am very interested in policing from many aspects. The objective, I think, was about lessons learned and, in a sense, Jack and I have been given, along with Alyson, quite a difficult task, and that is to reflect on what has been said by the other speakers. I had a few PowerPoint presentations as a backup, but I consider now that they are perhaps not necessary in the sense that I just want to make a few points.

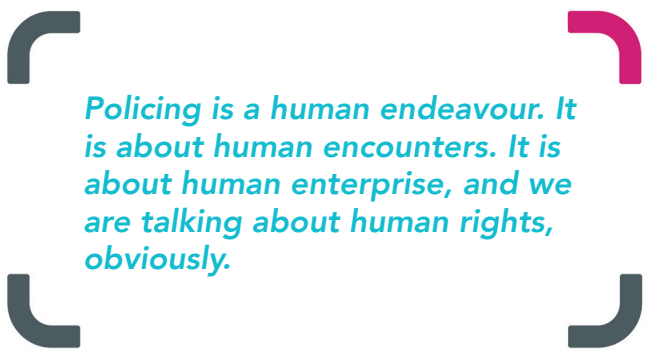
The way things have gone today makes me realise that perhaps it is better to leave a bit more time for engagement, questions, and answers, so I will be relatively short and sweet in what I want to say. But I want to start on a very positive point. In 1997, CAJ and other bodies organised a meeting here at Queens, and it was to launch the book *Human Rights on Duty: Principles for Better Policing – International Lessons for Northern Ireland*. Linda Moore and Mary O'Rawe had put the book together, and I, like a lot of young police officers in 1997 - I was certainly younger than I am now - but at that time, I was in charge of Community Policing Development. And like a lot of police officers, we felt we knew best. We felt that, in a sense, it was "them and us". You had to be a police officer to understand policing. You had to go through it. You had to be part of the culture. And while it is all very well for academics,



researchers, NGO's, human rights 'types' to critique us, criticise us and tell us what we are doing wrong, really, only cops knew how to be cops. And how wrong I was, and how wrong most of us were in our early days believing in that.

Having now worked in over 50 countries and hopefully having tried to share some of the lessons from Northern Ireland and the mistakes, it is clear to me that things work best in a collective. Things work best when there is communication and collaboration, and from my experiences, when we are working in partnership, whether it be with academics, researchers, NGOs, the community and its representatives, whether they be elected or otherwise, I think that is when we really get into problem-solving. So, I just want to make that point, and today in a sense, is an illustration of what can happen. In my opinion, it is such a mature, mutually respectful discussion. Some of the heat has gone out of the issues that were kicking around during ceasefires and preparations for the Good Friday Agreement and, of course, then the Patten Report. So that is the first thing I want to say. I really do believe we have moved on, so there is a positive side to what I am saying to begin with.

Having said that, listening to Conal and Debbie, I do recognise that there are critical issues that still need to be addressed. I am not here to defend the PSNI, in a sense, but I think some very legitimate questions were posed in terms of things like the tenure of leadership, the turnover of commanders, the engagement with the community. Certainly, all I can say is that, if I were still on duty, Conal, I would be talking to you more than once. Let us just say, we would be trying to build relationships, and I hope that is something that I, and many others, whether it is idiosyncratic, as Michael talked about it, or whether it is hit and miss – those officers who I respected most were the ones that actually put their arms around people, or at least engaged over a cup of tea. I am minded at times of areas like North Queen Street in 1996 and 1997, when things were going bad, in the middle of Drumcree, when really the only way to do



*Policing is a human endeavour. It is about human encounters. It is about human enterprise, and we are talking about human rights, obviously.*

things, to do business, was to engage with people. So, in recognising there are still some problems, big problems, I do want to say that from my perspective, there has been a lot of positive developments since Patten reported.

Policing is a human endeavour. It is about human encounters. It is about human enterprise, and we are talking about human rights, obviously. So, to me, I just want to focus on something around people. And that is, of course, leadership. I firmly believe that any police leader, or *policing* leader, because as we all know, the report of Patten was about *policing* – a new beginning to *policing*. There are many recommendations that went beyond the police organisation. I believe that anyone who is trying to move reforms forward, whether they be in the police, of the police, or indeed on the outside, need to have an understanding of three things.

First of all, they need to understand what modern, effective policing looks like. So, they need to understand community policing in its widest sense. It is not just about neighbourhood officers. If I could give two words to describe what I believe community policing is, those two words would be “consult” and “involve”. Whether that means planning a recruitment campaign, training, oversight, or development. I think the community – the communities – need to be involved, consulted, but not just words. Patten consulted with 1500 individuals and groups. But you need to also involve them. And that means interacting with them, not just once, but over and over again. So, I do believe that there needs to be an understanding of what a truly holistic approach to community policing is

all about, particularly within police leadership and community leadership.

The second thing I think that leaders in society and in the police need to understand, is Change Management or reform. Change Management is sort of a dirty word within police circles these days, but back in the day, I was given the dubious title of "Program Director of the Change Management Team". So, in 1999 when the Patten report came out, I was asked, first of all, to meet with the then Deputy Chief Constable, the late Colin Cramphorn, and to go through all of the 175 recommendations and cost them, but also start to put together a strategic plan. In a sense, the document (Patten's International Commission on Policing (ICP) Report) is the vision of success and what success might look like, but there was a need to actually start to plan, and that meant, of course, resources and expertise. So, at that time, I remember we brought in people like John Bryson, Andrew Kakabadse, and using the McKinsey's '7 Ss' model, tried to put together a proper Change Management Program. We had the Oversight Commissioner coming in to make sure that what we were doing was best practice. And of course, other bodies were being formed, and they were being asked to move forward the Policing Board, the Police Ombudsman's Office,

and so on. But having spent the last 17 years as a consultant, having the luxury to look back and try to share with others what we got right and what we got wrong, there is a checklist that I try to focus our attention on.

The first thing is that there needs to be some sort of vision. What is it we are trying to do? And in my opinion, it is about modern effective community policing, which is open and transparent, which is accountable. Accountability is what we are here to talk about today. So, that is obviously right at the core. The protection of human rights is at the core. Community policing, in the most holistic way, is at the core. So, as well as a vision of success, you also need political will. You need community support. But you also need legislation to enable it. And, of course, that is where the Police Act comes in, and I just want to mention this briefly as I go through my checklist. Section 32 defines what the role of policing will be – the same as everywhere else in the world, probably – to protect and serve, prevent crime, detect crime, keep public order. **But it also says that every police officer in Northern Ireland will do so in a way that maximises community support.** And that is the test for me. That is where, whether you are an Ombudsman, or a public representative, or a Policing Board, or a local partnership group, you can ask are the local police doing everything they can to maximise trust and build up support? It is there in law. It is not debatable; it is not negotiable. It is there in law; the PSNI is to be held to account in that manner. That is my strong view. And the PSNI are the only Police Department that has that legal requirement, to the best of my knowledge.

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I gave evidence in Washington online about six months ago to a committee looking at rule of law and justice reforms, and people were amazed that it is actually in the law. So, when police Commanders or police Constables are preparing to go on duty or to be the Gold Commander of a big operation, whether it be Drumcree or some other situation, they are duty-bound to do a community impact assessment. They are also duty-bound to make

sure that human rights, including the human rights of their officers, are high on the agenda in the planning. But as I said, that checklist of what is required for successful reform is about the vision of success, political will, community support, a strategic plan, enabling legislation, resources, time, and security; because it is very difficult to reform in the middle of a conflict, a war, a divided society. So, there are issues when one is trying to assess reform, reflecting back on 20 years; what has happened? What didn't happen? There is a checklist that I would recommend that we think about. But one of those critical success factors is resources. I am not just talking about money; I am talking about human resources. So that means recruiting the right people, making sure they are representative, training the right people, and the role of leadership is absolutely fundamental, in my opinion.

The last thing I would say and forgive me if this seems overly insensitive, but one has to recognise that we do live in a society where there are those who wish the police ill. And certainly, are not averse to taking life. So, we need to be careful that when we are planning reforms or when we are leading reforms, we are also conscious of what can counter violent extremism or what can stoke it up. Therefore, we need to avoid falling into the trap of state overreaction. Now, just as Conal and others have talked about, one bad contact can contaminate the view of the whole State. A prolonged lack of engagement or involvement can contaminate. So, one needs to understand how young men and women, in particular, get radicalised, get involved in extremism. If they feel they are being marginalised, if they feel they are not being engaged with, if they are being pushed in a way that the State has seemed to overreact. Whether we go back to the years of internment or whether it is the militarisation of a situation. One of the benefits of the Good Friday Agreement, the Patten Report, and the reforms, was that I think we made a delineation between what is a soldier and what is a police officer. I can talk from experience, quite often we created a culture where, as someone said; there is a hierarchy,

whether it be the Special Branch, whether it be the intelligence services, or whether it be the uniform branch, where people are seen as somehow lower or of less value. When you put young police officers, or indeed young soldiers, in a situation where there is conflict, where there is danger, where there is death, one has to be aware that a culture can be created. And, to make soldiers police officers, or to make police officers soldiers, to me, is a big mistake. There is a need to delineate. I could go on at length, all I want to say is that one of the speakers talked about the importance of stocktaking, the need to actually sit back and look at where we are. Be positive as to what we have achieved, but at the same time, be realistic as to the challenge that goes ahead, how things can go wrong. All it will take, as we know, is some political hiatus or some other situation that will make life difficult.

I will finish by saying this. In 1996, the Labour Party produced a paper – it was their vision for Northern Ireland. On page one (and Blair had just taken over leadership), it talked about how there will never be peace in Northern Ireland until there is a police service that is recognised and trusted by all. On page eight of the same document, it said there would never be a police service that is trusted by all until the conflict has ended, and until there is political reconciliation, and so on. And as a young man, that used to drive me mad because it is almost as if, “how can we get the police sorted out until we get the politics sorted out?” or “how can we get the politics sorted out until we get the policing sorted out?” But of course, it is incremental. **And my belief is that reforms of the police are going in the right direction. But also, they need to be mirrored by reform or improvements in the political situation.** I will leave you with that thought.

# Jack Nolan

## Former Assistant Commissioner, An Garda Síochána



**Speaker Bio:** Dr Jack Nolan is a retired senior police officer having served 40 years in policing and public service in Ireland. His most recent policing position was Commissioner in Charge of the Dublin Metropolitan Region, Ireland. He was formerly the Commissioner in charge of the Southern, Western and Southeastern Police Regions, head of Organisational Development and Strategic Planning, head of Community Relations and Public Safety departments and Director of Training & Development of An Garda Síochána. He advises on law enforcement, drugs policy, law enforcement and public health, law enforcement and community interface and police education to various bodies. He holds a PhD from TCD, an MSc from the University of Leicester and a BSc from the Open University. He is a graduate of the UK Strategic Command Course Bramshill Police College, UK.

### Synopsis: Jack discusses trends in An Garda Síochána over time.

First of all, let me say it is a pleasure and an honour to be here to address you today. Like Stephen, I was a policeman for 40 years. I retired four and a half years ago. I am still deeply involved in policing, but not in the police anymore. Having been involved in the whole change process and reform process in the Garda organisation on an incremental basis, I have to acknowledge the magnificent achievements in actualising the recommendations of the Patten Commission. I hope to offer you both an insider and outsider perspective on reform and change in An Garda Síochána. Having served from the 1970s to 2017, I spanned five decades of policing. I watched the police organisation change, and I watched the society that it policed change very significantly in that time. The day of somebody leaving the key in the door vanished, and everybody went into their house, switched on their lights, drew their curtains, and switched on their alarm in the evening time. And also,

I watched society engaging in a discourse on policing and engaging in a discourse on how the police deal with matters. Living on an island on the western coast of Europe, sometimes we can be a little bit insular, and we think reform and change only affect us, but the history of policing shows that reform is a constant feature of policing and police work for approximately 100 years now. From the early 1900s in the United States, right up to Minnesota, Ferguson in Missouri, New York City, etc., change is happening. In the UK, there have been numerous change initiatives within the police, and I often remember talking to a former colleague in the London Met who used to say, "the new change initiative has just caught up on the old one". So, these things happen. We experienced that in the South of Ireland as well.

So, An Garda Síochána is almost 100 years in existence, and the Garda organisation has always prided itself, and this is an often-quoted

statement, it prided itself on its adherence to the statement of Michael J Staines, the first Commissioner, that “the Garda Síochána will succeed not by force of arms or numbers but on their moral authority as servants of the people”. And over the course of my service, I have seen that moral authority being challenged; it hasn’t been easy or uncontentious to retain it.

For some context, up to the 1970s, policing in the Republic of Ireland was pretty stable, pretty uncontentious, and then events in the North and the overspill into the South, coupled with the triple challenges of drugs, crime, organised crime, etc, changed the whole dynamics of policing. And then the organisation had to move fast and had to move quickly to pick up. Back in 2002 or 2003, I wrote an article in the Management Journal of the Garda Organisation, at the time, Communiqué, which talked about the change process being a long march, echoing the words of Rosabeth Moss Kanter, and that long march is still going on. Interestingly enough, the initial changes were occasioned by a desire to improve, a desire to professionalise, a desire to modernise, and also by a desire to deal with issues more correctly.

Part of the initial computerisation program in the Garda organisation involved a very interesting diagnostics survey in the organisation. It was conducted by the Accenture Consultancy Company, and it found the attitude

to change to be roughly fifty-fifty. Fifty per cent wanted it; fifty per cent did not. And that was a latent or dormant issue that remained in the organisation and only peaked at different times. So, the triggers for change were modernisation, tribunal reports, oversight reports – and an interesting thing – the economic recession of 2008 through 2014. So, what changed? Well, there were structural changes, pretty natural. There were cultural changes, also. The organisation is often challenged that its culture doesn’t change, but the culture of every organisation moves, evolves, and changes over time. Stephen quite correctly touched on different elements of culture. There is a different culture between the uniform and the non-uniform sections of an organisation. There is a different culture between senior management and lower ranks. There is a different culture between the civilian members of the organisation and the uniformed members of the organisation. So, that happens.

And how did we assess what the community wants from us? We engage in widespread public attitudes surveys, which, most interestingly, provided, despite many challenges, a stubbornly high satisfaction rate in the community, particularly in relation to crime. On a national basis, everybody considered crime to be a national problem. But on a local community basis, when they were surveyed, people said, “crime isn’t that big of an issue around here”, and that dichotomy always stuck with us.

We went through a whole technological automation of many of our systems, operational changes, the introduction of new units – everything from the Criminal Assets Bureau, the Immigration Bureau’s approach, organised crime, sex offender management, all of that. But we also engaged in community policing on a local level. We ran pilots in two areas, Thomastown in County Kilkenny and Claremorris in County Mayo. They ran for a long time, but gradually we developed an understanding that community policing was the essence of what was required. And new models came in based on an urban approach, a

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large provincial town, and a rural approach, and that was supplemented by a very sophisticated community policing model in Dublin city based on small area policing issues, and that is currently being transferred or transformed into a more national approach.

What was the reaction to all of this? I looked up some newspaper cuttings and newspaper headlines, and there were very mixed reactions. In relation to introducing new rosters in 2012, as some media sources said, it was the most fundamental change in the Garda organisation. When Garda stations had to be closed as a result of the economic crisis, people said that closing Garda stations in the community hindered the genetic code of policing in this country. And a further comment was that history shows that when you make efficiency and savings during recessions, you do not run down your police force in any form.

So, all of this was going on in this period, and then we came to what I term, *and this is my term*, “the era of tribunals”. From the Morris Tribunal in 2005, the Barr Tribunal, the Hayes’ Report, the Birmingham inquiries. Every year, a new inquiry seemed to come. Every inquiry created a burning platform, and those burning platforms consumed organisational energy, consumed organisational capacity. And then, this was supplemented or engaged with the economic recession. Recruitment into the organisation – the lifeblood of an organisation, new people, new approaches – stopped. It stalled from 2009 to 2014. During that time, I was in charge of the Garda College, and we engaged in a whole new training programme. We had just completed a review of training; we developed a new programme based on problem-based learning so that our new police would learn the main problems they would encounter and learn the skills and techniques to deal with the main problems that people face. That programme had to be shelved for five years, even though it had been accredited by University College Dublin. We also had to shelve our executive leadership programme. So, during all of this, many of the training programmes – and people have referred to the

vital role that training has in police organisations – all of those had to be shelved.

And then the Patten Report in Northern Ireland, changes in the policing role in Northern Ireland, changes to the police organisation, the birth of the PSNI – all of that was happening. But we had so many challenges and so many other burning platforms; it wasn’t top of our agenda. But it did influence policy in many fashions. It influenced policy towards the Garda Síochána Act, which brought oversight, and that was something that the Garda organisation hadn’t familiarity with, and it took time for that to embed in the organisation. It also influenced our approach to human rights and human rights-based policing, and as far back as 2000, we were engaging in conferences, training, ensuring that golden thread of human rights in policing. I had often wondered where that came from; I used to hear that in the Garda College – every training program has to have a human rights element in it. And look, police organisations sit back sometimes and say, “we are happy with where we are; we are happy with progress”. Doing some research for coming here today, I looked up the Irish Human Rights Commission reports back over a number of years, and they commented positively on comprehensive training programmes, diversity works, the delivery of training programmes, strong human rights functions. The new Garda training programme has a module on policing with communities, just like here. The same concept, the same idea – policing with communities. However, the reports also said that it was difficult to assess progress, that it was hard to know where you are because we don’t have access to all your material. I think that somebody else talked about that earlier, about getting access to police information and police material. Sometimes it is not easy, but the organisation had a good appreciation of the role of human rights and its importance to policing. Interestingly enough, it didn’t appear in some later reform programmes that were published by different Commissioners.


So, that brings me to where An Garda Síochána is now. I looked at a speech that a current

Garda Commissioner, Drew Harris, made in Galway in 2019. It contained lots of things that were discussed many years ago: A new human rights strategy for the Garda organisation, a new Garda human rights section established, an external human rights advisor being appointed, an operational human rights advisor being appointed, the development of a human rights framework, operational guidance documents, the introduction of all of these documents formalises the human rights principles, the Garda decision-making model underpinned by human rights, a new training programme in collaboration with University College Limerick, new accreditation of programs. So, sitting back and being the outsider for the last four years looking in, I said, let us look at this from the aspirational angle. And what was the reality? The title of this panel relates to reflections on police reform, and I am stirred to consider the efforts of An Garda Síochána in the context of aspiration. There was a lot of aspiration. There was a lot of programmes of change. There was a lot of initiatives.

The reality is that a perfect storm of economic recession, and tribunals of inquiry, consumed the organisation's energies. I regret to say that human rights took a backseat in many regards. OK, all of our policy documents were human rights proofed – that was a given. But that wasn't really getting to the core of human rights. That was just the involvement with the

human rights phenomenon and principles. The actual participation is the actualising of it on the streets, in operational policing, on a day to day basis – not just police encounters but policing in fractured and stressed communities. I recall a conference from the early 2000s when a young Garda Sergeant made a statement that a police station should be the safest place in the world for any person. I believe the new human rights approach, as enunciated in the Garda Síochána human rights strategy of 2020 to 2022, gives the underpinnings that will allow that rhetoric to become a reality. And I look forward to seeing how the new Garda organisation deals with the many complex, diverse challenges that every police officer, male and female, meet on a daily basis.

I hope that I have given you a brief flavour of what the 20 years of policing in the South of Ireland have been like. I have been fascinated to listen to the 20 years of policing in Northern Ireland. Thank you very much for your attention.



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# Alyson Kilpatrick

## Current Chief Commissioner of NIHRC & former Human Rights Advisor to the Policing Board



See page 19 for Alyson's bio

Well, I had a good opportunity this morning, so I am not going to say much, just one very brief observation, if I may, based on what I have heard today. All of the questions that were raised, and all of the comments that were made, I think, can be dealt with by a human rights-based approach to policing because, and I know that sounds very ideological and “wishy-washy”, but if you really think about it properly and how human rights law applies, it applies in respect of each human being, so it is about human dignity. So, if a human rights-based approach is embraced properly, it doesn't matter if you come from Creggan or the Shankill; it doesn't matter what race or nationality you are. The police approach to you should be the same, and the law guides you in how you carry out your operational activities. I know that, to a lot of people, that sounds a little bit too ideological and that it can't help police on the street. But it really does. And human rights law isn't a discretionary, vague topic. There are now years of case law on it; there is legislation, it is a legal requirement. So, there are real practical answers in the Human Rights Act, which also respect and protect the rights of police officers. So, this notion that it is somehow only for certain groups is just simply wrong and results from an incomplete reading, I think, or incomplete understanding of human rights and how they work. For example, there was an issue mentioned earlier about searching children and the search of a home, perhaps with children present – the Human Rights Act will give you an answer to that. Case law will give you an answer

to that. It will tell you exactly what to do if there is a child involved in a home search; there is a right to private and family life. It is not just a sort of discretionary ideological thing; there are actually answers to it.

The last thing I would say is that I heard the comment that it is a shame the police weren't here to defend themselves, and I understand where that comes from, and it was said to me an awful lot in the past. But I think it has to be said that police have an opportunity to defend themselves every day. They have most of the power; they are on the streets every day. They can command our attention. We can't command theirs, necessarily. We can't insist on engaging with the police. And what was said today was essentially universal. There were people from very different backgrounds; you might almost say opposing backgrounds, who said exactly the same thing essentially. I heard the same thing being said by everybody, including Lilian, who is a more recent and very welcome addition to Northern Ireland. So, police have to listen to that. This is not a vendetta. It is not a campaign against you. You do have a chance to respond, but it is in your activities, and it is on the street. People want to be policed well - they don't want to have a fight with you, they don't want to have tension with you – they want to be protected and to have good relationships.

# Panel 3: Questions and answers

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## QUESTION 1

Jack [Nolan], your overview of policing in the South in the last 20 years was an interesting one. One thing you didn't talk about too much was police oversight. With reference to recent comments by the Superintendent's Association on the Police Bill about the police being 'shackled', I wonder how you respond to the assertion that the Garda don't like oversight?

## ANSWER



### Jack Nolan:

I think traditionally, police organisations have been nervous of oversight. But oversight has always existed from the perspective of An Garda Síochána. The traditional approach pre the 2005 Act was: report to the Department of Justice, report to the Minister, report to the government. Then as a side issue, you had the Garda Complaints Board, and that was replaced by the Garda Síochána Ombudsman Commission, which brought a difference. It brought a different dynamic to investigations. This is my own experience – a police officer being investigated; the police have done that for years. Being investigated by an outside body? That didn't make any difference.

But what people didn't really like, and what police didn't really like, was complaints being made to the Ombudsman Commission and then being referred back to the Garda Organisation for investigation internally because you are placed in a no-win situation then. You are still being investigated, but the perception of fairness and impartiality was diluted. Wider oversight with regards to the Policing Authority, with regards to the Garda inspectorate, etc. – that took more time. The Garda inspectorate took more time to assimilate their role as critical advisors, critical inquisitors, looking at best practice, looking at bad practice or poor practice as well. I think then when the policing authority came, it was a much easier process because the organisation had become prepared for more oversight, and it engaged in a much more open, transparent, enthusiastic (I will have to hope that the chairperson agrees with that) but a much more enthusiastic desire to show what we are doing, to show what we can do, to show what we need in order for us to do more. So that was my experience, as I say. I attended the very first public meeting of the Garda Authority in the South, and I found it a fair, demanding, but basically human rights-compliant approach.

**Vicky Conway:**

Alyson [Kilpatrick], I wonder, on the basis of your work for the report you did for the ICCL, whether you have any comments on this subject?

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**Alyson Kilpatrick:**

From what I saw, (and I accept it was a short study, I didn't get into all the offices, I didn't get to look at everything) I do think there is a split between some police in the Republic of Ireland who did embrace the idea of human rights reform and others who simply didn't. I didn't see a wholesale organisational commitment to it, at least not one that was really followed through. What I see now is that, when it comes to cross-border cooperation, there is quite a gap between the two jurisdictions, and also in relation to cooperation with each other within a human rights framework.

So, I might as well be honest; my report was critical in the areas that I looked at. And, when my report was published, the Garda response was, "well, we have always done this, and nothing is going to change now". I found that disappointing, but I did find it so very similar to what police officers used to say to me here as well, "everything you are saying to us is common sense, and we have always done this. We have always been about protecting people". But just common sense isn't enough. Human rights are law, and I think if there is anything anybody needs to take away, it's to stop thinking of this as "it is just treating people nicely" and "it is common sense". It is not. It is a legal requirement. You have to sign up wholesale. You wouldn't say that the Public Order Act is just there for a bit of guidance. You wouldn't say that PACE is there for a bit of guidance. And just incidentally, when PACE first came in in the North, everyone thought it was a disaster, that it was going to be a tragedy for policing, and they were never going to be able to police again or step on the streets again. And that just simply wasn't the case. So, while there are some real heroic voices in the South talking about human rights and policing, I think there needs to be more. And they really need to be talking about what it means, not just saying "yes, human rights are great", but actually saying what that means in terms of operational policing.

But that is just, as I say, from a short albeit up-close look at some areas.

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**Vicky Conway:**

I would add to that, that of course, whatever the policing attitude is exists within a wider context. And in Ireland, I see that very much as a political context, where I don't believe we have a full political commitment to police accountability, and I think that is evidenced in large part in the current legislation, which to my mind is a significant rollback on the oversight and accountability. We heard it mentioned earlier in Alyson's talk that the policing authority was limited, and the inspectorate was constrained, and we could look at that and whether or not and we are moving forward or backwards in that space. But I think that political context is significant in both jurisdictions. It can operate differently and take different forms, but it is still significant.



## QUESTION 2

How important were observation posts in policing the urban spaces of the Shankill-Falls divide? With hindsight, did they contribute to peacekeeping, or did they exacerbate the conflict?

## ANSWER



### Stephen White:

The answer is, I don't know. We have talked already about some problems in policing, and if something is more problematic than it is contributing to improvements in community relations, then, obviously, in my opinion, that should be looked at.

But this may be the last opportunity to speak, so I am going to say a couple of other things which may be related or do not relate to that question. The first thing is, and it does, I hope, relate. I think the role of police reformers, whoever they may be inside or outside the organisation, is, first of all, to identify the barriers and break them down. That might seem obvious, common sense, but as Alyson said, common sense maybe isn't as common or as widespread as it should be. So, if there are barriers, whether it be at the Creggan or anywhere else, or the Shankill Road, observation posts or whatever, they need to be identified and the issues resolved.

Sometimes that takes courage on behalf of leadership. It is difficult to ask a young or not so young constable to lead the way when the bosses are sitting behind a desk. That is the first thing I would say. And that includes myself, because I keep being reminded by people when we talk about "we must do this" and "we must do that". "We" means "me". So, all of us in this room and elsewhere who are interested in policing or police reform have a role to play to set the example. Someone talked about the need for champions of change, whether it be for human rights improvements or whatever, so I will say this; for example, I remember bringing some Americans over here and introducing them to a convicted IRA Prisoner, and we shook hands. And afterwards, sitting with these guys, some of them were ex-law enforcement, others were more in community relations. I said, "I found that very difficult". And they said, "well, do you not think he found it very difficult? That you would be seen as the enemy?" And it may seem an obvious thing to say, but we do get into corners. We do dehumanise each other. We do demean each other. We do demonise each other, our organisations. And I think some of us need to take the step. So, whether it is Republicans on the Policing Board, or in my case, sitting beside people who were combatants in Community Restorative Justice Ireland – I have sat with John and Kieran, and others, on that Board for three years, I think it is

important that the mould is broken, that the barriers are broken down.

The other thing I want to say if I may, and Michael, you prompted me to say this when you talked about how in Australia and elsewhere in the world, they would probably give their eyeteeth to have an accountability system or an oversight system such as we have. I was reminded of an old chief constable I used to work with, and he used to say, “self-praise is no recommendation”. So, even if we think we are the best, and I will be honest, I think we have one of the best policing systems in the world, if you look at the standard of recruits, PhD students, as well as people with life experience, our training and education investment programme is unbelievable compared to some of the police departments I have worked with in the world. But even if we have the best, you can still do better. Even if you have the best, there are people who are letting us down, and they need to be weeded out, whether that is through internal discipline, through supervision, or through oversight and accountability, so they do comply with rights.

The penultimate thing I am going to say is this – there was a lot of talk this morning about the use of force or the use of powers to stop and search. I would say that a big question, and maybe Patten more than hinted at it, is about **the use of police**. How do we use our police officers? What expectations do we have of the organisation? It is a human organisation with all the frailties and all the difficulties and all the challenges of any other group. So, there is something about expectations.

And the last thing I would say, just to reflect on what Richard said at the beginning about situational context. I don't think it is fair to be too hard on what happened 50 or 60 or more years ago because the context of the situation was different. And we do need to respect all, whether it be police widows or whether it be those who lost people in any aspect of this conflict. That is a hard lesson for police because we are all told “right from wrong”. You break the law; you pay the consequences. There is something about reconciliation. There is something about realising that we were imperfect, and sadly the situation in Northern Ireland was violent - and I come from east Belfast, where there was a lot of violence when I was a young man. There is something about treating people with fairness, and respect, and balance, as we try to balance human rights. I am sorry if that sounds a bit of a sermon, but I genuinely mean it.

### QUESTION 3

Ultimately no police service anywhere is ever going to recommend or take on oversight. It is going to be imposed politically upon it. We are trying to get the structure right at the moment in the South, and one of the ideas is to separate out the different functions. The oversight body for the police currently has a role in appointing senior officers and also in setting the strategy of the police. Can that ever be compatible with an oversight function? Should there be a delineation?

### ANSWER



#### Jack Nolan:

Not an easy question. I suppose somebody who appoints an individual and subsequently asks them to account for their performance, that there is an inherent dichotomy there. Promotion systems or appointment systems in police organisations have been the subject of significant debate and inquiry. Who has the best promotion system? What works? And generally, it is difficult to find an absolutely perfect system. Prior to the Police Authority in the Republic, promotions were via the Commissioner, etc. And many people considered that to be an unfair system. Issues of favouritism, bias etc., regularly appeared, were many times raised by individuals, many times raised by representative associations or unions. The new system has been pretty successful, as I have looked at it, principally from the outside. I have watched many of the same candidates being promoted via the new system, and I said they would have made the grade during in the old system, one way or another. What do I think? I think there is a need for a transparent appeals process so that the whole mechanism of appointment can be fully and accurately verified. But as I said, I don't see how you can absolutely, 100 per cent, say we have the best system. I actually like the new approach. I think it offers fairness, it offers an opportunity for people to display their potential, and it gives them the chance to show to an independent, transparent body what they are made of, what their functional track record is, and what their aspirations and potential for future higher offices or positions hold.



### **Stephen white:**

Delineation is important in my view, there needs to be clarity in the roles and functionality of those who are involved in either overseeing, holding to account, managing a police service. However, there is bound to be overlap. I mean, if you look at Northern Ireland, we are part of the British Police Service; so, you have Her Majesty's Inspectorate of Constabulary looking at performance and legitimacy, which is an important thing. Then you have the Ombudsman's office; you have the Criminal Justice Inspectorate; you have the Policing Board; you have local bodies. So, accountability should be seen in the widest sense. Also, accountability through the media is an extremely important thing – back in the more difficult days, shall we say, there was a lot of reticence amongst RUC officers, and in the early years of the PSNI, to go on TV and account. Hopefully, those days are gone, and people should be facing up and recognising that decisions have impacts, and they have to justify those decisions. But my view is, there should be clarity of roles. So, if it is an accountability mechanism, or an oversight mechanism, or a planning mechanism, or a consulting mechanism, there needs to be an absolutely clear job description, in a sense, so that people know where they stand and who they report to, and what the relationship is.

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### **Alyson Kilpatrick:**

When we talked earlier, there was a question asked about having politicians on the Policing Board and having independent members. I came down in favour of having politicians on the Board, as long as they were independent members. But to be fair to politicians, being an independent member doesn't mean you are not political or making political decisions, so it needs to be really careful. And so, being a politician doesn't mean you are going to act politically; and being an independent person doesn't mean you are not acting politically. And I think there has to be real scrutiny of that. And that is where there is a danger of a Board or Authority appointing senior police officers or being responsible for their resignation. Too quickly, we jump to calls for resignation, and I think here in particular, often on political grounds.

# Concluding Remarks - Dr Vicky Conway

Member of the Commission on the Future of Policing in Ireland and former member of the Policing Authority



**Speaker Bio:** Dr Vicky Conway, Associate Professor of law in Dublin City University, completed her PhD in Queen's University Belfast in 2008. She is a leading expert on policing in Ireland and is author of *Policing Twentieth Century Ireland* and *The Blue Wall of Silence: The Morris Tribunal and Police Accountability in the Republic of Ireland*. She has served twice as a member of the Policing Authority of Ireland and was a member of the recent Commission on the Future of Policing. She also served briefly as a board member of the Committee on the Administration of Justice.

**Synopsis: Vicky ends the conference by reflecting on the day's discussions.**

I was struck when Jack mentioned the dichotomy of appointing and then holding to account; that in both jurisdictions, the same body appoints, holds to account, and can lead to the resignation of the head of the police. In the South, that is the Minister for Justice. Here, it is the Policing Board. So, it is not a dichotomy that we have achieved in all spaces in either jurisdiction.

Obviously, it is a really interesting conversation; we are all here. Many, many people have stayed online, which is a great complement to the quality of the engagements today. But I think the point of looking at this from the perspective of North and South is really important. There are all kinds of, maybe symbolic, elements to that. Jack mentioned that An Garda Síochána is almost 100 years old, which of course is 100 years since partition and the division of the Policing service on this island because they were one and the same until that point in time. And we have increasing conversations about a

shared island that will bring its own challenges and questions around policing in Ireland.

I was really struck listening to Professor Ní Aoláin speaking this morning and having her reflect on where things were when she wrote her seminal text, and if you think about the problems that she was pointing to, the use of force in the way that she was referring to, detection profiling, the exceptional powers, the issues around accountability. And if you think of the conversations that we have had here today, there is no doubt that policing in Northern Ireland is in a very different place from where it was 20 or 25 years ago, and it is quite remarkable the changes in the conversation. Obviously, there are still huge issues, and the session on community policing, I found immensely impactful hearing from John, Lilian, and Conal, everyone, about the different challenges that different communities are facing. But there is also a point to which, and I always wondered this, that when you introduce



accountability and oversight mechanisms that actually work. We suddenly start to find out about these problems that were always there, because we couldn't hear about them before.

I am struck listening to John talking about stop and search, and I am slightly envious because we don't even have published data on stop and search in the South. We don't know that yet. And for me, that is a signal that our oversight mechanisms aren't doing their job fully as yet. And of course, anyone who has done a university module on policing will have encountered the theoretical perspective that in any country – and we see this in the States, going back to the Knapp Commission, or if you have watched *Serpico* or whatever – we have got a cycle of police reform that there is a scandal, there is reform, you get oversight, then you get complacency, and then you get scandal again. And I found it very powerful this morning hearing people, eminent people, so well placed to comment on this – those on the floor as well as on the podium – talking about how the work of Patten isn't done, how there may be slippages in certain areas. Even Debbie talking about how the relationship with loyalist communities may be moving from love/hate to hate/hate. That there is that intense need to keep that foot on the pedal at all times in the North is really, really strong. And we are hearing directly from communities, telling us that that needs to happen. The positioning in Creggan that we were told about, it is very, very clear.

What I also find really interesting is how, not all, but so many of the questions facing the two jurisdictions are really similar. How do we achieve effective policing with communities? How do we achieve effective accountability? How do we embed human rights? How do we deal with the question of security, both in terms of who performs it and how we oversee it? Legacy issues, which are different but exist in the South, nonetheless. Questions of training. Even down to issues of socioeconomic recruitment to the police services. These are issues that run parallel in both jurisdictions, so I will just say I am delighted that CAJ and ICCL ran this event with the support and funding that

they received and that there will be a second event in the New Year, which will shift the focus to what is happening in An Garda Síochána. I am almost glad that it started in Belfast because I do very genuinely feel that we in the South have so much to learn from the North in terms of really significant reform that can be achieved. That transformational shift in the landscape that has no doubt happened and brings us to a place where the everyday concerns of communities, whether they are children, members of ethnic minority communities, or others, that their concerns are what we are focusing on, and what we are concerned with.





**Committee on the  
Administration of Justice (CAJ) Ltd**  
1st Floor, Community House,  
Citylink Business Park,  
6A Albert Street, Belfast,  
BT12 4HQ

**Tel:** 028 9031 6000

**Email:** [info@caj.org.uk](mailto:info@caj.org.uk)

**Website:** [www.caj.org.uk](http://www.caj.org.uk)

**Twitter:** @CAJNi



**Irish Council for  
Civil Liberties (ICCL),**  
Unit 11, First Floor,  
34, Usher's Quay,  
Dublin 8, D08 DCW9

**Tel:** +353-1-9121640

**Email:** [info@iccl.ie](mailto:info@iccl.ie)

**Website:** [www.iccl.ie](http://www.iccl.ie)

**Twitter:** @ICCLtweet