



Northern Ireland Office

# *A POLICE OMBUDSMAN FOR NORTHERN IRELAND?*

*A review of the  
police complaints  
system in  
Northern Ireland by  
Dr Maurice Hayes*

*January 1997*

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# *Executive Summary*

This review of the arrangements for handling complaints against the police should be seen in the context of a tripartite review: how the police are organised in relation to political control and accountability, how the police organise themselves to provide a service to the community and how complaints by members of the public against police officers are handled. If the first two elements can be got right, arrangements for dealing with complaints become less important. A complaints system on its own will not compensate for failure to do so.

The great prize that is being sought is public confidence in, and support for, the police.

The main principles which should underpin a police complaints system in Northern Ireland are:

- The Chief Constable should be responsible for discipline in the force and should be accountable to the Police Authority for Northern Ireland (PANI) for it.
- The public should have confidence in the system.
- The police should also have confidence, "including a genuine belief that misconduct... will be detected and appropriately dealt with"<sup>1</sup> and that the system will reinforce "... high standards of ethical conduct and integrity, which are recognised as having strong leadership support."<sup>1</sup>
- The system should be open, fair, easily understood and widely accessible.
- It should not be burdened by an excess of paperwork.
- It should be affordable.

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. While there were systemic failings in the present arrangements they lacked credibility because of lack of independence, because it was the Chief Constable who decided what was a complaint, because there was no power of initiative, and because the complaints were investigated by police officers (in about 10% of the more serious cases under supervision by Independent Commission for Police Complaints- ICPC) - "police investigating police."

The main value which was impressed on me was independence, independence, independence.

<sup>1</sup>The Hon Justice Wood, paragraph 3.2 of the Interim Report of the Royal Commission into the New South Wales Police Service.

Independence should be demonstrated by the person or body concerned having control of the process: the power to decide what is a complaint, the power to intervene in the public interest, the power to decide how and by whom the complaint should be investigated and the power to recommend action to the relevant authorities.

My main recommendation, therefore, is that there should be a Police Ombudsman, responsible to Parliament with the duty to investigate complaints and to report his/her findings. This would be a full-time post and should be filled by a judge or a person of the quality and experience of a senior judicial figure.

The Ombudsman would recruit a staff which might include investigators from Customs and Excise or DHSS, lawyers, people with police experience and others. He/she would investigate complaints against police even where the action complained of might amount to criminal behaviour, if proven, and would in such cases carry the criminal investigation through to a recommendation to the Director of Public Prosecutions.

All complaints about the police, and not just those on conduct, should be made through the Ombudsman in the first place. Where complaints are substantially against policy or operational instructions the Ombudsman will pass them to the Chief Constable or Police Authority. The Ombudsman would decide how complaints, or those aspects of complaints, which relate to the conduct of officers would be handled, except that he/she would have a duty to provide for the investigation of serious incidents involving death in police custody or under pursuit, allegations of serious assault by a police officer, serious abuse of power etc.. Maximum use should be made of informal resolution.

There should be a dynamic built into the system which would encourage the police to co-operate with the Ombudsman. The metaphor might be of sale and lease back, where the Ombudsman would take control of all complaints and as public confidence in the police developed and the system gained credibility he/she could remit investigation to the police under supervision or subject to audit as appropriate.

There should be a change in the standard of proof required in disciplinary cases from the criminal standard to a sliding scale appropriate to the seriousness of the alleged offence or the severity of the sanctions which might be imposed.

Tribunals in disciplinary cases should be heard by a wholly independent tribunal to establish the facts, with presentation by the Ombudsman. Discipline would be a matter for the Chief Constable (or the Police Authority for the most senior ranks).

There should be a commitment at all levels in the police to establishing the highest professional standards and in taking action to prevent complaints arising.

Police training should include courses in mediation and conciliation skills and in interpersonal relationships and awareness of the culture of minority groups.

The Ombudsman should analyse the incidence of complaints and the extent to which specific practices or policies or the use of certain types of equipment tend to increase the occasion for complaint.

Police management and police officers generally should be encouraged to use complaints as a tool of management to improve the quality of service rather than as something to be resisted.

The new system should not involve any increase in overall expenditure and may show some savings through the elimination of duplication, the greater use of informal resolution, and the more efficient focusing of resources.

The staff of ICPC should form the nucleus of the core staff of the Ombudsman's office. In the transitional period steps should be taken by ICPC and the RUC to prepare for the new system and to introduce those changes which do not require legislation.



# 1. Introduction

**1.1** On 28 November 1995 I was appointed by the Secretary of State to conduct a review of the police complaints system in Northern Ireland on the following terms of reference.

**1.2** *"Objective of the Review: To review the operation of the existing mechanisms for dealing with complaints against the police by members of the public and to recommend whatever changes would be sensible to:*

- *secure greater public and police confidence in the system for handling complaints about the conduct of individual police officers;*
- *provide protection for police officers against malicious or vexatious complaints;*
- *accommodate complaints about standards of service and policing policies;*
- *ensure that the systems are accessible, well publicised, provide an effective response and are easy to use;*

*having full regard to:*

- *the need to protect the operational independence of the police; and*
- *the need to ensure affordability and value for money in public spending."*

**1.3** I was also given guidance on methodology.

*"The Review should be carried out by an independent person and should consider and take into account:*

- *submissions from the police service, the Police Authority for Northern Ireland (PANI) and the Independent Commission for Police Complaints (ICPC), interest groups, political parties and members of the public;*
- *fact-finding studies into the operation of the current systems;*
- *other relevant analysis of the effectiveness of the existing system; and*
- *best practice in the development and management of police and public sector complaints procedures world-wide."*

**1.4** It was important for me to establish at the outset of my review whether or not I was bound by the need to maintain comparable legislation if I saw a need to move further away from current practice in England and Wales. The Minister of State, Sir John Wheeler, helpfully and unequivocally told me that I was not so bound.

**1.5** Although I have paid close attention to all the objectives, I have regarded the first as the most important: the need to secure greater public and police confidence in the system for handling complaints. It became clear to me at an early stage that there is a worrying lack of public confidence, and indeed police trust, in the existing system.

- 1.6** There are two problems facing anyone who undertakes this task. There is the lesser, technical problem of devising a workable set of mechanisms for handling complaints. The greater challenge is to produce a scheme which will secure public and political acceptability in a divided society with differential attitudes to police, differing experience of police actions, and a range of expectations of how the police will behave in any set of circumstances.
- 1.7** I am well aware too that for the last quarter of a century at least policing in Northern Ireland has often been far removed from the idyllic picture of the village bobby or the avuncular certainties of Dixon of Dock Green, that the Royal Ulster Constabulary (RUC) over that period have experienced violent death both on and off duty and attacks on, and intimidation of, police officers and their families and a constant high level of threat and resulting stress. Policing is one of the most bitterly divisive issues on the Northern Ireland political agenda.
- 1.8** Nevertheless it is a necessary and a vital task in any democratic society to ensure that there is effective policing, responsive to need and responsible to the community it serves. Society entrusts its policemen and women with substantial powers and, of necessity, a great deal of discretion in how those powers are exercised. It is right that the public should be assured that the police act responsibly and fairly and within the law, and that there is a readily available means of investigation and redress whenever there appears to be a lapse in the high standard of probity expected of those who uphold the law.
- 1.9** It is also important that there should be a readily available and speedy means of vindicating the honest officer who has been maliciously or erroneously accused of abuse of power.
- 1.10** The main safeguards for the citizen against abuse of power by an individual police officer are the law, the accountability of the Chief Constable to a representative and effective police authority, the quality of management in the police, and a speedy and effective system for dealing with individual complaints.
- 1.11** I have from the beginning of the exercise seen complaints as part, and not the most important, of a threefold process designed to secure public confidence in the system of policing and the consent and support of the communities to that arrangement. There is first the question of how policing is to be structured both in relation to the communities and to the political process in order to secure both accountability and acceptability. Second, is how the police organise themselves in order to provide a service which is responsive to the needs of the community. Thirdly, there is the system for dealing with complaints. If the first two elements can be got right then complaints will be less of an issue. However, as a corollary to that, no complaints system, however sophisticated, will compensate for failure to reach a satisfactory resolution of the broader questions of structure, management and political accountability.
- 1.12** My review, therefore, forms part of a wider reform agenda for the police service in Northern Ireland. I think it is important to see this report in that context. The Government's White Paper on policing structures "Foundations for Policing", argues the need to give the community a greater say in the direction of policing through new police objective setting, planning and monitoring arrangements. The Fundamental Review of Policing (mainly carried out within the RUC) has examined the policing needs of the community and how best the police can deliver those needs. Most importantly, this review has looked at the organisation of the police and this could well have a significant impact on its acceptability and accountability. No doubt both these initiatives will be the subject of vigorous debate in the political arena and policing will stay high on the agenda for some time.



- 1.13** I have said to many of those I have met that if the White Paper proposals and the fundamental review changes are successful then my review of police complaints becomes much easier and less relevant in the overall scheme. If, however, the other reviews are not seen through, or are not credible when introduced, then any complaint process will be less effective. An efficient complaints system which has broad public confidence is, of course, extremely important and worthwhile in its own right, but it will not be a cure-all solution for all policing issues.
- 1.14** What I am proposing seeks to regain public confidence in a more independent and accessible complaints system, while maintaining police confidence and not breaking the bank. What the changes cannot do is to single-handedly bring complete accountability, or acceptability or reform police culture and organisation.
- 1.15** This is not a new problem. Neither is it confined to Northern Ireland. The Scarman Report<sup>1</sup> into the Brixton Riots in 1981 is founded on two crucial principles: that police should consult the communities they serve and be accountable to them for their actions. On the latter, and directly relating to complaints, Lord Scarman went on to say:
- "The problem (with the current system) stems from the fact that the machinery for the investigation of police misconduct and for maintaining discipline remains in the hands of the police themselves. Until both these functions are carried out by an independent body, confidence will not be restored."*
- 1.16** The question is also being faced in most developed countries. There has been increasing insistence on some degree of civilian oversight of the investigation of complaints about police behaviour. Increasingly, too, questions are being raised about the credibility of investigations where the police investigate the police. In part this is a manifestation of a wider tendency to question authority, to challenge professional opinion in all fields, of a growing public awareness of the rights of the citizen as a consumer of public and professional services and a growing scepticism about both the motives and the methods of those holding office. I have no reason to think that the police are any more at risk than any other professional group, but neither are they less fallible or more immune to criticism. And police, like other groups, must, in the words of Peter Imbert when Commissioner of the Metropolitan Police, "respond to well-founded criticism with a willingness to change"<sup>2</sup>.

## *Background/Aims and Methodology*

- 1.17** I have seen it as my task to carry out a systems audit of the present arrangements, to look at other models, to draw on the experience of those who have operated them, and to suggest a possible workable system of dealing with complaints in Northern Ireland.
- 1.18** Throughout my consideration of the complaints system, I have tried to involve those who are operating the current arrangements and to seek the comments of both those who supported and those who were critical of them. I have tried to get honest opinions on where the system is failing and on what its strengths are. In return, I have been open about my own thoughts on these issues and how, in the light of the collective views I have received, and my consideration of them, I think the system can be improved.

<sup>1</sup>Cmnd 8427

<sup>2</sup>Quoted in David Rose "In the Name of the Law", Jonathan Cape 1996. p 255, ISBN 0-224-03744-7



- 1.19** I consulted as widely as I could. In particular I placed advertisements in the press and wrote to a wide variety of those who, experience showed, would have an interest in the system. Included in the list were the police, the Independent Commission for Police Complaints, the Police Authority, the Director of Public Prosecutions, political parties and councils. I received a good number of written submissions and had around 50 formal meetings in Northern Ireland and a great number of informal contacts.
- 1.20** I began my work by a review of the literature, both in the UK and internationally. In this I was helped by Professor Brice Dickson of the University of Ulster and Professor Dermot Walsh of Limerick University who had both published extensively on these questions. I am grateful to them and to a wide range of academics in a variety of disciplines both at home and abroad who were willing to talk to me about their research and to give me the benefit of their own theories. I had the advantage too of my own experience as Ombudsman and of my contacts with Ombudsmen in many countries, some of whom had direct experience of handling complaints against the police.
- 1.21** I spent a good deal of time meeting the members and staff of the Independent Commission for Police Complaints, in the Complaints and Discipline Department of the RUC and with the Police Authority. While all were helpful, the ICPC were particularly so and I am grateful to the Chairman and to the Chief Executive and his staff for the openness with which they approached my review and for giving me access, as I wished, to files and case notes. I read many files, some of which were shown to me as typical or particularly interesting cases, and others which I selected at random. While it was not my task to review or reopen any of the complaints dealt with, and I do not refer to any directly in this report, they do inform my consideration of the process and influence the recommendations I bring forward for change.
- 1.22** I have also spoken to many police officers. I have had a very informative meeting with HM Inspector of Constabulary and with several retired senior officers of the RUC and other police forces. At all levels, both formally and informally, through their representatives and individually, my aim was to attempt to understand the conditions in which the police work and in which complaints are likely to arise. I have also spoken to complainants, to some who did not make complaints although they might well have done so, and to lawyers with experience of criminal cases and of investigations concerning police actions.
- 1.23** I have met members of all the main political parties, either as party representatives or as elected councillors. I have visited a number of local councils and spoken to the Community and Police Liaison Committees.
- 1.24** In addition, I held a seminar involving 20 people including practitioners (Royal Ulster Constabulary, Independent Commission for Police Complaints, Police Authority for Northern Ireland, police unions), and those with outside experience, including the Ombudsman, Consumer Council, Committee on the Administration of Justice and academics, in July. At this we discussed the principles underlying the system and possible models for the complaints body.
- 1.25** I was able, too, to make use of opinion polls which had been commissioned by, among others, the Police Authority and ICPC, which threw interesting light on the public awareness of the complaints system, its acceptability and credibility. I also commissioned some research among those who had made complaints to find out how many of them had found the experience satisfactory.



- 1.26** Although at first sight outside my terms of reference, I found myself being drawn into comment on police management, on police personnel management, on police training and culture. While these were entirely tangential to my inquiry, they might well be central to any programme to ensure that complaints do not arise, and that when they do, they are dealt with as openly, as quickly, and as fairly as possible. I have, therefore, commented briefly on these issues.
- 1.27** There are several important features of the present system which are not widely appreciated. It is clear that the circumstances in which a complaint is likely to arise are rarely pleasurable for either party. No one likes to be stopped or questioned much less apprehended or taken into custody. Very often these actions take place far from the public gaze or indeed from supervision. Complaints therefore often result in a conflict of evidence which it is inherently difficult to resolve.
- 1.28** It is also the case that many complaints arise out of police action in the course of crowd control in demonstrations and riots when feelings on both sides can run high. There are complaints which arise from actions taken when officers were under attack or perceived themselves to be under threat. Others arise out of methods of arrest or interrogation and while most are genuine some, it is suspected, are made as a form of defence in court proceedings.
- 1.29** Some police officers regard all complaints as malicious or as a challenge to their authority. Some indeed are and the system must deal with these without deterring the honest citizen who feels wronged. Some complaints are made, justifiably or not, to assist the defence in a later trial. Some range from quality of service issues like rudeness, or incivility, or an excess of zeal, through the unreasonable use of force to death in custody or wrongfully at the hands of a police officer. They range from carelessness to indiscretion, from minor misdemeanour to potentially serious criminal charges. The system for dealing with complaints must be capable of dealing with all these.
- 1.30** What became apparent fairly early, from talking to people and from opinion polls and prior comment, was a lack of faith in the present system. This largely arises from the length of the process, the low number of complaints found to have been substantiated and the small number of police officers who had been brought to court, or convicted, or even disciplined as a result of a complaint by a member of the public. While it is not a very satisfactory indicator of the effectiveness of a complaints system to count the penalties inflicted as if it were a scalp hunt, nevertheless, the extremely low rate of substantiation can reflect only a less than totally effective complaints system or a more than perfect standard of police behaviour in all circumstances. This, as was pointed out to me on several occasions, contrasts with the large amounts which are being paid out to satisfy civil claims for damages. It is hard to rebut the comment of one demoralised complainant who asked why, if nothing was wrong, was all that money being paid out; and if all this money was being paid, why had nobody been disciplined?
- 1.31** Complaints investigations must also fit into the wider legal system in which the complainants may themselves be under investigation for crimes or where there may be civil cases pending. It is also noteworthy that around three-quarters of the 2,500<sup>1</sup> or so cases of complaint<sup>2</sup> received annually potentially involve an allegation which, if proven, could amount to a criminal offence.

<sup>1</sup>Excluding those informally resolved by the police

<sup>2</sup>A case of complaint may involve more than one complaint



- 1.32** Coupled to all of this is, of course, what people want to achieve by complaining. Some, I would say most, want their complaint to be handled speedily and fairly and to see some form of justice whether through an officer being charged or disciplined or, as is most often the case, by receiving an explanation or apology.
- 1.33** In light of all the potentially conflicting demands on the complaints system I thought it was important to identify the strengths and weaknesses of the current system, and the aims, and principles on which a model complaints system ought to be founded. Looking at the latter, however, I recognised, and encouraged others to recognise, that the principles were to a large extent dependent on each other and on the circumstances and the nature of the complaint. One of the key questions I go into detail on later, is the weighting, or priority, to give to each. Having established all this, I then had to determine what complaints machinery would match this template of aims and principles. As I found from the discussions I had, the principles themselves were reasonably easily identifiable. The weighting to be given to them and the consequent nature of the system were less readily agreed.
- 1.34** My terms of reference also asked me to look at international experience. Most relevantly to the origins of the existing system I visited England. I also sought to look at complaints systems which were regarded as useful comparators in terms of the nature of the problems in the country concerned, or the type of body used to investigate complaints. I therefore visited the Republic of Ireland, United States (New York), New Zealand, Hong Kong, Australia (New South Wales and Queensland), and Canada (Ontario). In each of the countries I visited I spoke not only to police and legislators and those in charge of investigations, but to academics, lawyers, human rights activists and journalists. I reflect my experiences of the systems in these countries in the discussion of issues in the report and I have included a more detailed note at Annex 11. I am particularly grateful to Mr James Grew, Chairman of ICPC, for giving me the benefit of his advice and experience and his vast range of contacts as Chairman of the International Association of Civilian Oversight of Law Enforcement.
- 1.35** It is worth recording, however, that while the issues are similar the world over the solutions are not. I have no doubt that systems must be tailored to suit local administrative arrangements and culture. I found that there was no bolt-on system that could simply be lifted and applied here. Nevertheless, there were elements of the different systems I saw which I believe are instructive and which can be applied or adapted for Northern Ireland. I have, therefore, tried to examine all the aspects of the current system, openly and constructively involving those most closely concerned with complaints but also those who have been critical of the system. I make recommendations for change in this report which I think will produce a sensible complaints system which can deal with complaints of different types in different ways, taking account of the expectation of the complainant and the seriousness of their allegation. Overall I have found that those who operate the complaints system in Northern Ireland are well intentioned, dedicated people who have sought to operate the current procedures to the best of their ability. They have, however, been held back from achieving significant public confidence, partly, admittedly, by the no-win nature of their work, but also by the limitations of the system itself. It is the absence of a clear independent element which controls and conducts investigations into complaints and the lack of flexibility and transparency which are crucial in this regard. I have sought to address these and other related, and important, problems in this report.



- 1.36** I had reached broad conclusions on the form of my recommendations by the beginning of July and had tested these with practitioners and others interested in the subject. I detected at that time a fairly broad measure of acceptance both of the principles and the geometry of a possible system. My main conclusion was that to be credible any system had to be seen to be independent. The operational problem was how to demonstrate that independence in practice.
- 1.37** The events of July and August and since, as they involved the RUC and the public, have seriously damaged relationships and lessened both credibility and acceptability in important segments of the population. An opinion poll commissioned by PANI and published on 5 December<sup>1</sup> shows the damage. It found that among Protestants favourable views on the performance of local police were slightly lower than in 1995 (77% against 75%) but Catholic opinion had changed significantly (67% to 55%). It was also noticeable that the disparity in views expressed by Protestants and Catholics was considerable. For example, on a question on how police performed across Northern Ireland as a whole 85% of Protestants noted the performance as good whereas the same category saw a 48% rating from Catholics. On the vexed question of public order, almost two-thirds of Catholics had little or no confidence in the fairness of the police - almost a mirror image of opinion in the Protestant community.
- 1.38** Although the survey does not include questions on complaints it does ask about treatment of the different religions by the police. When looking at policing in Northern Ireland as a whole 71% of Protestants saw equal treatment compared to 26% of Catholics.
- 1.39** On the future of the RUC, which was the same question used in a 1995 survey, we see a move in Protestant opinion. 54%, down from 61%, want the police to carry on as it is now, while 38%, up from 29%, support reform. Among Catholic respondents 13%, down from 28%, support the status quo, 46%, up from 38%, want reform and 32%, unchanged, want it to be replaced. Overall 42% see no need for reform but 38% want reform, plus 15% want replacement. The reform lobby increased by one-third.
- 1.40** Clearly this survey was done on the foot of a tense summer but the results cannot be ignored - the greatest swing in both communities is to reform and I would hope that my review will help that process.
- 1.41** In the light of this, and my own perceptions of the flux of public opinion, I decided that I should take some time to reflect on my recommendations and to revisit some of the people to whom I had talked earlier. This did not result in any change in the broad thrust of the recommendations, except to convince me that both the appearance and the actuality of independence must be emphasised, that the complaints body should have a higher public profile and that it was even more important to ensure that any new systems were introduced in the context of a broader review of the arrangements for delivering a police service.

<sup>1</sup>"A Partnership for Change", Police Authority for Northern Ireland, December 1996

## 2. Purpose, Objectives And Principles Of A Complaints System

2.1 In his 1981 report on the Brixton Disorders<sup>1</sup> Lord Scarman said:

*"The police officer must act within the law... but there is also the constitutional control of accountability. The police must exercise independent judgement: but they are also servants of the community. They must enforce the law on behalf of the community: indeed they cannot effectively enforce it without the support of the community. The community pays them and provides them with resources.*

*So there has to be some way in which to secure that the independent judgement of the police can not only operate within the law but with the support of the community."*

2.2 There are a number of ways in which the police are held to account; to the law, to the Secretary of State, to the community, through the Police Authority. Part of this accountability framework is the complaints machinery. As with the other means of making the police accountable it too must have widespread support in the community. The United Nations' view<sup>2</sup> is that "law enforcement agencies must be accountable to the community as a whole" and "provisions shall be made for the receipt and processing of complaints against law enforcement officials made by members of the public, and existence of those provisions shall be publicised". Put another way<sup>3</sup>, the complaints procedure is "... intended to serve a public purpose for the benefit of the whole community: the upholding of standards by public officials to whom the community has granted awesome and extensive powers". The SDLP's 1995 paper on policing<sup>4</sup> makes the point that in Northern Ireland, "A key element in accountability is a satisfactory system for the handling of police complaints".

2.3 It is also instructive to ask why people complain. Again Harrison and Cragg have a useful explanation:

*"Most commonly the [complainant] will seek damages and the lawyer will pursue a civil claim, possibly using the complaints procedure as a supporting strategy.*

*However, in many cases [complainants] are motivated by wider concerns: to seek symbolic justice for the wrong done, to clear their name and restore their reputation, to establish a point of principle, to see an officer personally held to account or punished or to seek an apology and admission that the [complainant's] rights were abused ...*

*Similarly the [complainant] may have a wider social or political agenda and be seeking to use the legal process to challenge a widespread police practice, to challenge a conventional interpretation of the law or to focus public attention on a community or political campaign."*

<sup>1</sup>Cmd 8427

<sup>2</sup>United Nations High Commissioner for Human Rights: "Pocketbook" for Law Enforcement Officials, UN Publication, ISBN 92-1-154122-0

<sup>3</sup>John Harrison and Stephen Cragg: Police Misconduct: Legal Remedies, ISBN 0-905-99-58-3

<sup>4</sup>SDLP, Policing in Northern Ireland, November 1995



## ***Objectives of a Complaints System***

**2.4** There are many and various formulations of the objectives of a complaints system but perhaps the most relevant in the context of Northern Ireland system are:

(1) **To ensure the highest standards of conduct on the part of individual officers**

In a disciplined service like the police, with their extensive and unique powers, it is important that the complaints system should encourage individual officers to maintain a universally high standard of behaviour and should deter those who might engage in conduct which falls below the standards that a citizen reasonably expects of a competent and disciplined officer. This means that it should operate as an effective disincentive to both abusive conduct and unprofessional service. It should also punish those found guilty of disciplinary offences and ensure that cases where criminal offences occur are brought before the courts.

(2) **To improve police performance**

The system should enable police managers to detect and remedy weaknesses whether in policy, in personnel or in organisational structure, thereby improving their standards of service.

(3) **To satisfy complainants**

Most formal complaints are individualised, in the sense that they stem from the fact that a citizen feels aggrieved at how he or she has been treated by a police officer. It follows that a primary objective of the complaints system should be to provide a remedy for that citizen (while, of course, also recognising the rights of police officers to vindication where the complaint is unfounded).

(4) **To enhance public confidence in the police**

While the complaint of an individual may not seem to be of great significance, it does matter to the complainant. Complainants share their experiences with their friends, and a series of unsatisfied complainants can colour the attitude of whole communities to the police. As well as that, there has been a number of high profile cases which clearly have had an impact on public opinion, and where the failure to secure satisfactory explanations has damaged the reputation both of the police and the complaints system.

**2.5** This final objective, along with those of improving performance and satisfying complaints, is also relevant to complaints against policing policy or standards of service which I have been asked to consider. There can be no doubt that policing of riots, marches, funerals or sporting events, for example can lead to conflict with the community. Complaints arising from such occasions may well be aimed at the policy or operational decision taken by police management rather than actions of individual officers. Nevertheless, the objectives of any system for dealing with such complaints are much the same.

**2.6** None of the objectives is self contained. They certainly overlap and may, on occasion, conflict. It is also important to remember that the complaints mechanism is not the only means used to achieve these objectives. In fact, citizen complaints procedures are a relatively recent addition to the more traditional mechanisms, and even these are likely, in the more serious cases, to be superseded by civil action for damages.



## Principles

- 2.7** I deal with this issue in greater detail in Chapter 10. The key, however, is public confidence in the system for handling complaints against the police. This means the public must believe in the system and to do this they need to be able to understand it and trust it.
- 2.8** The problem I have found is that while there may be a minimal level of understanding of how the system works there is no confidence. One of the vexed problems is still that found by Lord Scarman in 1981<sup>1</sup> in England "... by and large, people do not trust the police to investigate the police". But there are others. The system focuses too much on innocence and guilt for the more minor cases, instead of customer satisfaction, cases take too long, there is little systematic reporting back to the complainant [who loses sight of what he/she sees as his/her action], and there is insufficient action to draw lessons from the complaints and to use these as a tool of management.
- 2.9** However, this principle must be balanced against the need for the police to have confidence in the system too. The Committee on the Administration of Justice describes this well<sup>2</sup>:
- "Clearly the attitude of the police must be regarded as crucial, and indeed one of the lessons which emerges most strongly from a study of foreign attempts to use civilian investigators is that those systems which met with a measure of success were introduced after very thorough negotiation with the police, and those systems which failed often did so because of police opposition.... and it must be remembered that relations with the public are felt most intensely by the junior ranks in any police service, for they are at the cutting edge of its relationship with the public."*
- 2.10** The two principles are often seen as contradictory, but I am convinced that this need not be the case. Indeed a system which gains public support while being fair to the police, is in police interests too. Anything which underpins the credibility and acceptability of the police makes life easier for the individual officer and officers cleared by an independent organisation would be seen to be clearly vindicated.
- 2.11** Aside from these key principles there are several others that any system, whether in Northern Ireland, or elsewhere in the world must aspire to. Each jurisdiction, however, will put different emphasis on different ones.
- 2.12** In common with the rest of the public service, policy must take account of Citizen's Charter recommendations for complaints systems<sup>3</sup>. Relevantly these include that the system should:
- be accessible, well publicised, easy to understand and provide an effective response;
  - provide feedback and information to the organisation about its weaknesses, as seen by the customer;
  - be speedy, with time limits, have customer service goals, and keep complainants informed of progress and, as far as possible, outcome;
  - respect people's desire for confidentiality; and
  - involve full and fair investigation.

<sup>1</sup>Cmnd 8427

<sup>2</sup>CAJ, "A fresh look at Complaints Against the Police" 1993, ISBN 1 873285 06

<sup>3</sup>The Citizen's Charter for Northern Ireland, Complaints Review Group, Effective Complaints Systems - Principles and Checklist, 1993

- 2.13** Formal procedures are essential, but it will frequently be possible to resolve a complaint without recourse to such procedures. Furthermore it may be possible to forestall complaints by swift action when an error or lapse of service is discovered.
- 2.14** Interestingly, although these Charter principles focus on satisfaction and on feedback (and should arguably gain the confidence both of those complaining and the organisation concerned) they do not rely on the need for a system to manage the discipline of staff through punishment or deterrence. It is clear that this need for “discipline in the ranks” is the main emphasis of the current police complaints system in Northern Ireland. It concentrates on substantiation of allegations about individual officers, it does not, save arguably through informal resolution, look to satisfaction for the complainant or indeed to any great extent at wider issues.
- 2.15** As Laurence Lustgarten comments<sup>1</sup> on the approach taken to police misconduct:

*“The legal outlook is inherently negative, individualistic and orientated towards sanctions. Rewards and incentives, and measures devoted to altering misguided group values and solidarities which reinforce objectionable conduct are beyond its capabilities. It does not concern itself directly with the organisational context which stimulates misconduct.”*

<sup>1</sup>Laurence Lustgarten, *The Governance of Police*, 1986 ISBN 0-421-31910-0



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## 3. *Background To The Current System*

### *Historical Background*

- 3.1** The current system has its origins in the Police (Northern Ireland) Order 1977. This established the Police Complaints Board, very much on the lines of its counterpart in England and Wales, to provide independent oversight of complaints against police officers. The Board was to consider the results of the police investigation and to consider whether an officer or officers should be charged with disciplinary offences. The Board could, therefore, only consider disciplinary aspects of cases.
- 3.2** In 1979 the Royal Commission on Criminal Procedure noted a number of issues including complaints systems and argued the case for fully independent methods of both investigating and adjudicating complaints. The Commission reported in 1981 as did Lord Scarman who produced a report into the Brixton disorders of April 1981. Lord Scarman recommended the introduction of an independent element in the investigation of complaints and the establishment of a conciliation process:
- "If public confidence in the complaints system is to be achieved, any solution falling short of a system of independent complaints available for all complaints (other than the most trivial) is unlikely to be successful.*
- The existing system lacks a sufficiently independent element particularly in the consideration of the more serious complaints. It is clear to me that many will continue to criticise it so long as the investigation of complaints remains in police hands."*<sup>1</sup>
- 3.3** This led to changes in England and Wales in the Police and Criminal Evidence Act 1984. Similar changes were made in Northern Ireland in the Police (Northern Ireland) Order 1987 which established the Independent Commission for Police Complaints in February 1988, but there are significant differences setting the two systems apart. As the Minister of State in the Northern Ireland Office, Sir Nicholas Scott said in the debate in the House on the Order<sup>2</sup>: "The purpose of the Order is to introduce new procedures for dealing with complaints against the RUC which are broadly in line with those which apply in England and Wales, but supplemented by additional measures which take account of the particular sensitivities of policing in Northern Ireland." Sadly, in retrospect, neither system went as far as Scarman had recommended.
- 3.4** In Northern Ireland, but not in England and Wales, the Secretary of State and the Police Authority were given the power to refer to the ICPC any matter which appeared to them to indicate that an offence had been committed by the police officer even where there was no complaint if it was desirable in the public interest that the Commission should supervise the investigation. In addition, the ICPC sees all complaints once an investigating officer has been appointed. It also sees all cases informally resolved by the police on a 4-monthly basis. The Police Complaints Authority in England and Wales does not see informally resolved cases and sees only serious cases early on, the others being referred after the investigation.

<sup>1</sup>Cmd 8427

<sup>2</sup>Hansard Col 811, 6 May 1987



**3.5** The changes made in England and Wales in 1984 and in Northern Ireland in 1988 sought to strengthen the independent element in the investigation of complaints. As Lord Scarman<sup>1</sup> had said:

*"By and large, people do not trust the police to investigate the police ... unless there is a strengthening of the independent "non-police" element in the system, public confidence will continue to be lacking."*

**3.6** Significantly, the changes involved the complaints body in the criminal aspect of cases. Not only was the body involved in the supervision of cases being investigated but it also had a power to refer cases to the Director of Public Prosecutions (this power has seldom been used in practice because the police under a direction from the DPP refer all cases involving a possible criminal element themselves). In contrast to other parts of the UK, the power of the Secretary of State, of PANI and of the Chief Constable to refer cases to ICPC for supervision in the absence of a complaint has been used very sparingly.

**3.7** The ICPC is required to report to the Secretary of State on the workings of the police complaints system. In doing so it has sought changes to the 1987 Order. The Commission's second review, published on 22 March 1994, made six recommendations. These are helpfully summarised in the ICPC's most recent annual report<sup>2</sup>.

- (1) *In the interests of maintaining the concept of a genuinely independent and impartial system, the Commission again advocated that it should be in a position to direct the Chief Constable to record a complaint where there is a difference of view over its validity.*
- (2) *The Commission confirmed the need to amend Article 8 of the Order by giving the Commission a reserve power to "call in" for supervision in the public interest those matters considered by the Commission to be grave or exceptional, and where no complaint has been made.*
- (3) *In addition to extending Article 8 powers to the Commission, the Chief Constable and, where appropriate, the Police Authority should be required to notify the Commission immediately where death or serious bodily harm has been caused or may have been caused to any person by a police officer.*
- (4) *The Commission was still of the opinion that it should be able to use its discretion to concentrate its resources on those cases of public concern which were deserving of very close scrutiny, without being constrained by the number of mandatory supervisions.*
- (5) *As an alternative to the flawed tribunal system, the Commission suggested that the Chief Constable's role as chairperson should be balanced by two assessors drawn from a panel independent of both the Commission and the RUC, appointed for the purpose, with the case being presented by a lawyer employed by the Commission.*
- (6) *The informal resolution procedure should be reviewed with the intention of making its use less restrictive.*

<sup>1</sup> Cmnd 8427

<sup>2</sup> Annual Report for 1995 ISBN 0-10-255896-5



- 3.8** On 28 March 1995 the Secretary of State announced his decisions on the recommendations. In brief, he accepted recommendations 5 and 6 in full and recommendations 2 and 3 in part. On 2, he did not agree that the Commission should have a "call-in" power but did agree that it should have a power to draw to his attention its concerns in non-complaint cases. On 3, he accepted that the Commission should be notified immediately of all deaths which may have been caused by police officers. The legislation necessary to enable these changes was made in October 1995; the Police (Amendment) (Northern Ireland) Order 1995. Regulations are now required to bring the changes into effect.
- 3.9** This Order further extends the differences between Great Britain and Northern Ireland. In addition to outlining the existing legislation as the benchmark from which my review started I have also done it to highlight another important fact. That is that there is a clear distinction in the nature of complaints in Northern Ireland compared with England and Wales and this has led to the two systems having developed in different ways. The Government has described the two systems as "comparable but with modifications for local circumstances".
- 3.10** My very clear view is that it is regrettable that the Secretary of State did not accept the ICPC recommendations in full. This would not have compensated for systemic failings, but it would have helped both the effectiveness of the Commission and its credibility if its well considered and essentially modest recommendations had been accepted.

## *Statistics/Standard of Proof*

- 4.6** Statistics on the system are given in detail in Annex 4. In brief, however, in 1995<sup>1</sup> 2,345 cases<sup>2</sup> were received by the ICPC with another 450 carried forward from 1994. 566 other cases of complaint were informally resolved by the police. Of the total caseload 365 cases were investigated by the police under the supervision of the ICPC. The most common allegations were of assault (81% of cases), and incivility (30%).
- 4.7** Over 2,600 cases were closed in 1995. 20% of these were withdrawn and 20% closed with the approval of the ICPC because they were, for example, incapable of investigation, anonymous, repetitious, vexatious or oppressive. Nearly 1,400 cases, therefore, were fully investigated. 1,061 of these had been referred to the Director of Public Prosecutions and he directed 14 criminal charges (compared with 6 in 1994). Formal disciplinary charges were made in 15 cases and informal disciplinary action in 99.
- 4.8** Since the Commission was formed in 1988 there have been 68 cases where criminal charges have been brought against police officers by the DPP following investigations and 189 instances in which disciplinary charges have been brought by the police or ICPC. The substantiation rate in Northern Ireland has been criticised as being unrealistically low. This view has come not only from the seasoned critics of the existing system, but also from those operating the system. This is a difficult area for any complaints organisation and is, for example, dependent on recording practices. However, even using the most sympathetic method, of considering the rate for cases completed by the Commission, the figure for those cases leading to formal disciplinary action was 1.5% in 1994 and 1.1% in 1995, (the figure for cases arising in the holding centres is almost zero). This compares with an England and Wales average of 2.2% in 1994 and 2.1% in 1995<sup>3</sup>. International rates also vary. For example, in California in 1995 it was 39 out of 585 complaints, 6.7%. In New York 3% of all cases dealt with were substantiated, in Ontario the figure was 4.3% in 1995, while in 1995/6 it was 14% in New Zealand.
- 4.9** This tells me two things. One is that Northern Ireland has a low rate of substantiation and the other is that high rates should not be regarded as likely or realistic.
- 4.10** There are numerous theories put forward for the low substantiation rate in Northern Ireland. These include the problem of obtaining independent witness evidence; the related difficulty of police allegedly closing ranks; the claim that investigators are of mixed ability and varying enthusiasm; that complainants and solicitors have no faith in the system; that complainants are encouraged to withdraw by the police or that they are encouraged to make false complaints and that the ICPC has no real power. There are undoubtedly problems in these areas, but the single most important reason, mentioned by virtually everyone, was the standard of proof used in determining disciplinary cases.

<sup>1</sup>Figures from ICPC Annual Report 1995

<sup>2</sup>A case may involve more than one complaint

<sup>3</sup>There are a number of forces in England and Wales with similar substantiation rates to Northern Ireland. These include Greater Manchester 2,630 complaints cases completed in 1995, 0.6% substantiation; Merseyside 1,873, 1.3%; South Yorkshire 522, 0.4%; Surrey 428, 0.7%; the Met 10,128, 1.24%. However, others have a significantly higher rate. Cambridgeshire 388, 6.4%; Norfolk 393, 10.2%; Thames Valley 747, 8.57%. For comparison the figure for the Ombudsman in Northern Ireland was 82% in 1995; he found maladministration in 40 of the 49 cases he investigated. The stringent screening process used to filter cases in the first weeks is, however, important in the Ombudsman's system



**4.11** As Lord Colville said in 1992 in his report into the operation of the Northern Ireland (Emergency Provisions) Act 1991:

*"If a disciplinary system seldom if ever reaches an adverse decision about a person who works, after training, within a disciplined structure, it is more likely that the system is faulty than that nobody in that profession or discipline ever makes even the most minor mistake or commits some foible. The public do not believe it and loses confidence in the system. The profession or discipline loses more in efficiency and usefulness than its individual members gain by perceived, or real immunity."*

**4.12** Although focusing on the holding centres, the comments apply more generally.

**4.13** The standard of proof used in considering criminal charges against the police, whether arising from complaints or otherwise is the criminal standard, beyond reasonable doubt. This is quite right, no one I have spoken to, or who made submissions, advocated any change to this; police officers should not be worse off than a member of the public would be.

**4.14** The problem, however, is that the criminal standard is carried into police discipline and very often 'beyond reasonable doubt' becomes 'beyond a shadow of a doubt'. As someone with experience of personnel management, I find this to be inappropriate. It does not make sense to determine a complaint that a police officer was rude or lazy by using the criminal standard. It would not and does not happen in other professions. Some professional regulatory bodies have adopted the standard of 'clear and cogent proof', and there is a fairly widespread search for a mezzanine level of proof between the criminal and civil standards. In most other jurisdictions police discipline is handled as a matter of employment law in which weight of evidence is determined using the civil rather than the criminal standard of proof.

**4.15** The Government is already alive to this issue. Following the recommendations in the Royal Commission on Criminal Justice<sup>1</sup> and proposals put forward by the Home Secretary<sup>2</sup> in England and Wales, in April 1995 the Northern Ireland Office issued a consultative document on the draft Police (Amendment) (Northern Ireland) Order 1995. In this it announced various changes to the complaints and discipline arrangements, generally mirroring those in England and Wales, including the need to revise the standard of proof for disciplinary cases. The Home Secretary then announced in July this year that the standard in England and Wales would be "reasonableness". The precise details are being worked out. I note that there was widespread support for this change and that this included the Police Federation, the police union representing the rank and file in England and Wales. (although I understand they remain to be convinced of the detail).

**4.16** As mentioned, in Northern Ireland, I have found an almost unanimous acceptance of the need for change from senior police officers, PANI, the ICPC and more widely. Indeed the weakness in this area has been apparent for some time. Laurence Lustgarten<sup>3</sup> commented in his book "The Governance of Police" in 1986:

*"... the application of the criminal standard to the civil process of disciplinary proceedings is a serious and unjustifiable obstacle to the substantiation of charges ..."*

<sup>1</sup>Chaired by Viscount Runciman of Doxford, Report July 1993, Cm 2263. The Commission recommended, paragraph 103, that the standard of proof should not be the criminal standard

<sup>2</sup>Consultation Document on Police Personnel Procedure, 5 April 1993

<sup>3</sup>The Governance of Police, 1986, Sweet & Maxwell, ISBN 0-421-31910-0

- 4.17** I am afraid, however, that the Police Federation in Northern Ireland, which in fairness was helpful and open to debate on reform to the complaints system generally, was not inclined to accept any change in the standard of proof. They are on their own in this view, and must be persuaded of the need for change.
- 4.18** The experience of other jurisdictions is that some have already changed to the standards generally accepted in other employments. In New York, for example, the standard used is a "preponderance of the evidence". In Berkeley "the standard of proof used for all complaints, however serious, is that of the evidence being clear and convincing, which is specifically described as being intermediate between the criminal and the civil standards"<sup>1</sup>. In the Republic of Ireland, although the statute is silent on the point, the standard used is the balance of probabilities. The statute is also silent in New Zealand, but the criminal standard is applied. In New South Wales the standard is taken from the 'Brigenshaw case' and is described as a sliding scale requiring "comfortable satisfaction".
- 4.19** **My view, and my recommendation, is that there should be a sliding scale.** An officer charged with a minor disciplinary offence which would have a relatively minor sanction should have his/her case heard using a standard akin to the civil one, the balance of probabilities. If, however, a career or reputation is at stake, or the outcome could be dismissal, requirement to resign, or reduction in rank, then those considering the case should be sure that the case is proven, and the criminal standard or something similar would seem more appropriate. In the words of Lord Denning: "The more serious the allegation the higher the degree of probability required"<sup>2</sup>.
- 4.20** **I would see this as a sliding scale determined by the severity of the possible outcome.** Ultimately I expect that a change in the standard of proof will increase the substantiation rate and should, therefore, help to engender public confidence in the system.

### *Civil Cases*

- 4.21** The complaints system is complicated by the fact the complainants' solicitors will often lodge a complaint as a supporting strategy to a civil claim. Figures from PANI show that around £500K is paid out annually on civil claims including cases of assault, wrongful arrest, false arrest, overholding. A detailed breakdown is not available but it is reasonably clear that a number of cases relate to complaints or might otherwise have led to a complaint.
- 4.22** Two related points arise from this. The first is the likelihood of a situation where complaints cannot be satisfactorily investigated because complainants will not cooperate for fear of prejudicing their civil case. Then, when their case is concluded, and whether or not they are successful, they have no further interest in their complaints. This leads to a large number of complaints clogging up the system and then, effectively, having to be written off.
- 4.23** The second point is that where civil claims are successful then it is "unsatisfactory for the reputation of the police service when it is reported in the press that large sums in damages have been awarded or agreed to be paid in respect of serious misconduct by identified police officers and it then becomes known that no disciplinary action is to be taken against the officers concerned"<sup>3</sup>.

<sup>1</sup>CAJ, A Fresh Look at Complaints Against the Police, December 1993. ISBN 1-873286-06

<sup>2</sup>Hornal v Neuberger Products Ltd [1957]. 1QB 247, quoted in D Rose, In the Name of the Law, 1996, Jonathan Cape, ISBN 0-224-03744-7

<sup>3</sup>Viscount Runciman's Royal Commission on Criminal Justice Report, July 1993 Cm 2263





- 4.24 There are no easy solutions. It is unsatisfactory to write-off cases quickly where there may have been misconduct. Yet, when the police do try to take cases forward, they cannot conduct a satisfactory investigation if the complainant refuses to co-operate. There may well be reasons too for failure to take effective disciplinary action following the settlement of a civil claim. Civil actions involve a lower standard of proof than disciplinary cases. Equally, cases may, for example, be settled out of court or involve a technical breach of regulations or force orders which at the end of an often very long period it is not sensible or practicable to pursue.
- 4.25 There is very little that can be done, or arguably should be done, to stop a complainant's solicitor lodging tactical complaints. However, the real question is what is it in the system that stops them co-operating with an investigation. One answer is that the statements made on the complaint end up among the papers of the defence at the hearing of the civil case, and that complainants faced with the possibility that their own statements might be used against them have stopped cooperating. The effect is that there is little chance of any disciplinary action being taken against the officer concerned.
- 4.26 There are three things that could help this situation. The first is a change in the standard of proof in disciplinary cases. This should reduce the number of cases where a civil case against an identified officer is upheld and yet no action is brought. The second would be to take the investigation of complaints out of the hands of the police. At present the perception can be that the Authority settle, the police do nothing and the police largely are left to defend this. An independent investigation and recommendation would provide a buffer between complainant and police, and would indeed be a protection to the integrity of the police disciplinary system. The third is to look at the rules on disclosure of documents. This is a difficult area which I cover in greater detail at the end of Chapter 16.
- 4.27 With changes in these areas complainants should be more ready to pursue their complaint and the complaints body could soon identify and discontinue those cases where the complainant was not cooperating.
- 4.28 I quoted Viscount Runciman earlier. He referred to another point in his report<sup>1</sup> which I want to touch on. He recommended that:
- "Where a civil action is brought against a police authority as a result of alleged malpractice by a police officer, that officer should, if the facts seem to the chief officer to justify it, be subject to disciplinary proceedings, which may in appropriate circumstances be conducted notwithstanding pending civil proceedings."*
- 4.29 This is an important point which I fully support. If the Government has not already done so, **I recommend that there should also be an arrangement whereby the complaints body is notified, probably by PANI, of all civil cases involving possible misconduct of officers as they arise and again when they are concluded.**
- 4.30 I appreciate that the absence of a complaint may make this result difficult to achieve at present (although the Authority could use the legislation to call in the ICPC in a serious case).

<sup>1</sup>The Royal Commission on Criminal Justice, Cm 2263, July 1993



## *Trends/Special Reports*

- 4.31** A further issue on the operation of the current system is the examination of trends and the production of special reports.
- 4.32** The ICPC has not used its power to make special reports to the Secretary of State<sup>1</sup>. It has done very little research work or analysis. With the exceptions, therefore, of the Annual and Triennial Reports, which are important, it has focused its efforts on individual cases rather than acting strategically. I accept that this is to some extent a result of resource constraints and the problem, which the ICPC has highlighted in its Triennial Reports, that its discussion of individual cases at Commission meetings is restricted by the fact that two members have to absent themselves in case they are to be involved in a tribunal on the case at a later stage. The legislation is also fairly restrictive.
- 4.33** Nevertheless the value of a more strategic approach can be seen from other jurisdictions.
- 4.34** In England and Wales the Police Complaints Authority has made comments on training, and is focusing on cases involving rigid handcuffs and new batons so that it can give feedback on best practice.
- 4.35** In New Zealand the Complaints Authority has reached an agreement with the police that he would be informed of incidents involving death and serious injury from police vehicle pursuits, deaths in custody, and shootings, whether or not there was a complaint, because he wants to focus on these areas. He would usually publish his reports, and has published around 30 in 4 years. The Authority sees the importance of the considerable body of knowledge he has accumulated and regards his primary function as delivering a block of useful information on complaints for use in police training and for changes in operational policy rather than the imposition of discipline.
- 4.36** In New South Wales the Ombudsman, who deals with the majority of complaints against the police, has issued specific reports on, for example, "police conciliation", witness protection and police internal investigations.
- 4.37** **I recommend that the complaints body should issue special reports covering such issues, as well as reports on specific cases. It should also examine and report on trends<sup>2</sup>.**
- 4.38** **There is a strong argument for all reports to be published, although there may rarely be occasions when this is not appropriate. The question of protecting the interests of the individuals directly affected by the complaint also needs to be considered. However the system should favour openness, which is right as a matter of principle and should help to educate the public on the complexity of the issues surrounding complaints.**

<sup>1</sup>Article 17, Police (Northern Ireland) Order 1987

<sup>2</sup>See also Chapters 11 and 18

## 5. *Informal Resolution*

- 5.1** Informal resolution is a procedure which has been used increasingly to resolve less serious complaints and has a focus more on customer satisfaction than on discipline per se. I regard it as of sufficient importance to require a separate chapter.
- 5.2** The procedure was introduced for the first time by Article 5 of the 1987 Order<sup>1</sup>. On receiving a complaint the Chief Constable is first required to consider whether the complaint is suitable for informal resolution. This procedure can only be used, however, if the action complained of, even if proven, would not justify a criminal or disciplinary charge and, crucially, if the complainant is content for this approach to be used. At any stage the complainant can opt out of the procedure and request a formal investigation (as can the police if, for example, it is clear that informal resolution is impossible). The procedure, therefore, can be used with the agreement of the complainant for more minor cases where it is clear that the conduct complained of, even if proved, would justify a criminal or disciplinary charge. In other words cases where the allegation is such that, even if proved, it would not be dealt with by criminal or disciplinary charges, but by informal action. These might include incivility, verbal abuse, harassment, technical assaults, neglect of duty and improper driving or searches - what I would call quality of service complaints.
- 5.3** The member of the police appointed to investigate the case is required to seek the views of the complainant and the officer or officers concerned. He/she must try to seek to satisfy the complainant that the complaint has been dealt with appropriately and the officer(s) that his or her interests have been protected.
- 5.4** At the end of the process the complainant is asked to make a written statement to sign off his/her complaint. Not all do this. In addition, a complainant receives a letter from a Superintendent in Complaints and Discipline Department summarising the outcome of the case. This is important because it gives the complainant a formal opportunity to ask for a full investigation. A criticism is that the police can put pressure on the person to sign off. My view is that the arrangement is helpful, but it needs to be balanced with safeguards. These protect complainants and the integrity of the police. The police currently issue a leaflet to complainants explaining the process at the outset and this helpful practice should continue. The signing-off statement at the end of the process, however, should be standardised and should explain that the complainant can still opt for a formal investigation. There would then be no need for a further letter from Complaints and Discipline Department.
- 5.5** The ICPC is not directly involved in the informal resolution of complaints but the police are required by statute to send a record of such cases to the Commission every 4 months. In practice the police send reports on a monthly basis. The ICPC monitors these to ensure they were suitable cases for informal resolution.

### *Statistics/Satisfaction*

- 5.6** 566 cases were informally resolved in Northern Ireland in 1995 compared to 469 the previous year and 51 in the 10 months of operation when the system came into being. In terms of cases closed 18.3% were informally resolved in 1995 compared to 15.7%, 10% and 7.6% in the previous 3 years.

<sup>1</sup>Also see the RUC (Complaints) (Informal Resolution) Regulations 1988 and the RUC (Complaints) (Informal Resolution) (Amendment) Regulations 1993. My comments here do not specifically refer to the use of informal resolution for complaints against senior officers where the arrangements would be essentially the same but with the Authority taking decisions



**5.7** An interesting table on outcomes from the ICPC report is:-

	<b>Number</b>	<b>%</b>
1. Constructive advice given to officer(s). Complainant satisfied.	127	22.4
2. Apology given to complainant. Complainant satisfied.	65	11.5
3. Explanation given/action taken accepted by complainant as satisfactory.	242	42.8
4. Complainant stated satisfaction at the matter being brought to the attention of officer(s) concerned.	110	19.4
5. Stalemate situation - complainant understands and accepts that nothing further can be achieved.	<u>22</u>	3.9
	<b>TOTAL</b>	<b>566</b>

**5.8** Categories 1-4 represent the most satisfactory outcome of informal resolution. The total of these four categories has steadily increased since 1988 and rose from 94.3% in 1994 to 96.1% in 1995. The satisfaction figure in New South Wales is 80% plus.

**5.9** Maguire and Corbett looked closely at informal resolution in England and Wales in their 1991 study<sup>1</sup>. They looked at the process from the point of view of the complainant and the officers complained of. On complainants they found that despite "various irritations" the overall verdict in 1991 tended to be positive. "Substantially higher levels of satisfaction with the outcome were found among those whose cases were informally resolved... We also asked people whether, in retrospect, they would have preferred a formal investigation. Only 10 per cent replied in the affirmative and a similar proportion were unsure."

**5.10** Police officers, however, had mixed feelings. There was a degree of suspicion and "...incomplete knowledge and incorrect perceptions about informal resolution were common".

**5.11** This survey was done in 1991 and the increase in the number of cases informally resolved in England and Wales where the figure is 30-40% of cases and in Northern Ireland suggests that there is a greater acceptance now among police officers of the merits of the process.

## ***Reform***

**5.12** Almost all of those involved officially in the system advocate greater use of informal resolution as "... a flexible and simple procedure" (Chief Constable's 1995 report), "whilst welcoming the improving situation, Her Majesty's Inspector of Constabulary (HMIC) would point out that this is still less than half the proportion in most England and Wales forces". (HMIC Report 1995), "Another positive feature of the 1987 Order is the informal resolution procedure. It is speedy, inexpensive, and frequently results in complainant satisfaction" (ICPC Triennial Review Report 1991-94).

**5.13** There has been a push by HMIC and the ICPC for the system to be used to its fullest extent and there are also those that want the boundaries extended. The ICPC stated in the 1991-94 Review that it saw merit in the procedures governing informal resolution being made less restrictive. The Secretary of State in his response to the review agreed that this area should be examined (it is part of my study). The Chairman of the Police Complaints Authority, Peter Moorehouse also commented on the issue in his 1995 report. He said:

<sup>1</sup>The Study of the Police Complaints System. ISBN 0-11-34-1007-7



*"As far as the Authority's workload is concerned we believe that the number of complaints dealt with by informal resolution could be increased by raising the level at which complaints must be formally investigated. We believe that this could be achieved without jeopardising the objectivity of the complaints procedure. Indeed, it would make better use of what is one of the best features of the procedure. It would also have the advantage of resolving more complaints speedily, and to the satisfaction of the complainant, whilst keeping them within the management of the police service"<sup>1</sup>.*

- 5.14** There is also a great deal of support for this type of informal complaint resolution in other jurisdictions.
- 5.15** Informal resolution is an option in Ontario. In New York there are two informal ways of resolving complaints (under the heading of Alternative Dispute Resolution) which require the agreement of the complainant and the subject officer. One, mediation, is not about discipline, and the discussions cannot be used in other proceedings. It involves a neutral third party who seeks to engage the parties in discussion in an attempt to arrive at a mutually agreeable solution. If successful a resolution statement is kept. The alternative is conciliation which is used to teach police officers appropriate behaviour and is done by the civilian complaints body's staff. The complainant receives a letter once the process has been completed.
- 5.16** Had the sole push for this change been from the police then, no doubt, there would have been a corresponding suspicion from outside the police, including from the police complaints bodies. The push, however has come from those bodies and, with one exception (which I shall come back to), I have found in my consultations that people see informal resolution as focusing on the complainant's grievance, and the resolution of this, rather than on the possible guilt of the officer concerned, and they welcome this. In addition, the time taken to deal with complaints is much less, which is to the advantage of everyone concerned. Also, the informality of the process (coupled no doubt with the statutory fact that nothing a complainant or officer says can be used in any disciplinary criminal or civil proceedings)<sup>2</sup> means that establishing the facts is, relative to the formal investigations, much easier. It also means that the police officer is not under the shadow of a prolonged investigation or a possible disciplinary charge.
- 5.17** The figures on satisfaction quoted above speak for themselves. The comparison with my survey of complainants (Annex 9) is striking. My survey did not cover cases informally resolved and 11% were satisfied and 74% dissatisfied with the handling of their case.
- 5.18** The informal resolution procedure, therefore, has a great deal to recommend it. It is also a useful example of the principle of subsidiarity of function - of dealing with matters at the lowest level possible consistent with fairness and effectiveness. The question then is could or should it be extended. All my discussions point in the direction of more use of informal resolution with a wider range but with clear safeguards to protect against the allegation that this might be used by the police as a convenient means to sweep complaints under the carpet. Indeed this possibility is a current cause for concern. There was a feeling among some of those who spoke to me that the current system belittled certain categories of complaint such as harassment, especially if this was persistent and there was a related worry that it was sometimes these cases which needed supervision which they did not get.

<sup>1</sup>The 1995/96 Annual Report of the Police Complaints Authority, ISBN 0-10-276496-4

<sup>2</sup>Article 22(3) of the 1987 Order



- 5.19** I recommend the progressively more extensive use of informal resolution where this is appropriate, and greater flexibility in the selection of cases for informal resolution. The requirement that a case, if proven, should not lead to a disciplinary or criminal offence is too broad. The complaints body should have the power to refer any case for informal resolution (apart from those involving death or serious injury or possible serious corruption). Referral may follow a preliminary investigation, or sift of a case - a process which I discuss in Chapter 13. Obviously the more serious the allegation the less likely it is that a case would be suitable for such resolution. The body might also decide to instigate a full investigation of a complaint which might otherwise have been selected for informal resolution where there is a particular concern (for example a string of complaints from an individual or against a particular officer or station). **In the main the process should continue to be reserved more for standard of service complaints rather than blatant or serious breaches of discipline or the law.**
- 5.20** I recommend too that the complaints body should closely monitor the use made of informal resolution, by random detailed review of completed cases, by surveys of complainants, and by sampling. It should also audit outcomes, study trends and look at the incidence of complaints, and whether these tend to be associated individuals, or stations, or particular operational policies or practices. A small but important point I have already mentioned in this chapter is that complainants should be asked to "sign off" using a pro forma which makes it clear that the case can be referred for formal investigation should they want this.
- 5.21** There may, of course, be cases under this model in which minor criminal or disciplinary offences are revealed during the resolution. The body (and police) would want to watch this carefully, but it is the price to be paid for expanding the category which complainants have most satisfaction with.
- 5.22** Maguire and Corbett's<sup>1</sup> comments reinforce my view that this is the right way to go. Their study states:-

*"In view of the relatively high level of customer satisfaction with this means of settling complaints it is worth considering the extent to which its use might be expanded. We interviewed several complainants who had received minor injuries on arrest who willingly admitted that they had struggled, yet continued to feel that the actions of the arresting officer had 'gone over the top'. ...They neither wished to withdraw, nor were especially keen to have a formal investigation carried out, but would have been content with an informal resolution to 'make their point'. There are clearly dangers in channelling what might be serious abuses of police powers into a system in which the officers concerned face no risk of discipline... If arrangements were made for more formal and more rigorous monitoring of informally resolved complaints by independent outsiders, we would have little hesitation in recommending much wider use of the informal resolution machinery."*

<sup>1</sup>A Study of the Police Complaints System 1991. ISBN 0-11-34 1007-7



- 23** The proposal ties in with the world-wide move to regard complaints as a tool of management and to seek to treat complainants as customers who need to be satisfied, at least by the process if not by the outcome, rather than as nuisances to be deterred or avoided. This change can already be seen in Northern Ireland where the Government introduced legislation<sup>1</sup> in 1995 to enable more flexible arrangements to be introduced drawing on modern personnel management practices prevalent elsewhere in the public service. The idea is to move away from procedures which are complex, legalistic and inflexible. The new legislation will provide a new mechanism, at management level, for dealing with poor performance or failure to meet acceptable standards as well as a more flexible definition of when it is appropriate to bring disciplinary action for misconduct.
- 24** I think that a change to a more flexible approach in handling complaints fits well with this more general trend.
- 25** For this broader approach to achieve maximum benefit it will require the continuing support of the police and the ongoing education of officers in its working. Also, and bearing in mind that the use of this procedure should increase and should be seen as a customer service as well as a management tool, **there would be advantage in designating RUC officers to be informal resolution officers. Obviously they should be posted in stations receiving the largest number of complaints and will need to have close working relationships with the complaints body and Complaints and Discipline Department, but they should also be trained in conciliation, mediation and conflict resolution techniques.**

<sup>1</sup>The Police (Amendment) (Northern Ireland) Order 1995

## 6. *Mechanisms For Deciding On And Hearing Disciplinary Charges*

- 6.1** This is a fairly intricate area and it is worth explaining the arrangements in place. Where the Chief Constable brings a charge against an officer under internal discipline, it is heard by either one or two senior officers depending on the maximum punishment the investigating officer believes is possible. The charged officer may appeal the decision on both finding and punishment to the Chief Constable and from there, again on finding and punishment, to the Secretary of State. The Secretary of State may appoint a team to carry out an inquiry (comprising a barrister, a representative from Her Majesty's Inspectorate of Constabulary and a former police officer). They may hold a hearing and will in any event report to the Secretary of State. These arrangements are set to change in regulations to be made under the Police (Amendment) (Northern Ireland) Order 1995. The consultation paper stated that a misconduct hearing would be heard by a senior officer and two assessors of at least superintendent rank. It would be open to a guilty officer to appeal to the Chief Constable but he/she would not be able to appeal further unless he/she had been dismissed, required to resign or reduced in rank. Such an appeal would no longer be to the Secretary of State but would be to a new independent police appeals tribunal. I understand that it is proposed that this would be along the lines of the tribunal established in England and Wales in the Police and Magistrates' Courts Act 1994<sup>1</sup>.
- 6.2** This states that the tribunal should consist of four members appointed by the Police Authority ie:
- one, the Chairman, nominated by the Lord Chancellor and with legal qualification and experience;
  - one from the Authority;
  - one Chief Officer (or retired in the last five years) other than the chief of the force in question;
  - one a retired member of the Police Federation.
- 6.3** Cases against 49 officers were dealt with by internal disciplinary action in 1995, 2 were appealed to the Secretary of State. This gives an idea of the number of cases likely to reach the police appeals tribunal.
- 6.4** On cases arising from a complaint by a member of the public, at present once the question of criminality is out of the way, the Chief Constable decides on discipline. As for internal cases there would be a hearing and appeal to the Chief Constable and ultimately to the Secretary of State. In practice the decision is made by the Assistant Chief Constable in charge of Complaints and Discipline Branch. The police must send a memorandum to the ICPC stating whether the Chief Constable intends preferring disciplinary charges and if not what his reasons are<sup>2</sup>. This need not be done, however, if the officer has been charged and has admitted the charge.

<sup>1</sup>Schedule 5, paragraph 2; a different arrangement is provided for senior officers

<sup>2</sup>Article 10 of the Police (Northern Ireland) Order 1987



- 6.5** Where the Chief Constable has not preferred charges or does not propose to then the ICPC may recommend and ultimately direct him to do so. This arrangement is changing under the Police (Amendment) (Northern Ireland) Order 1995 to require the ICPC to give reasons for its recommendation before directing charges.
- 6.6** Where a charge is directed by the ICPC, or the ICPC believes it to be desirable because of exceptional circumstances affecting a case, then the case is heard by a disciplinary tribunal<sup>1</sup>. This tribunal comprises the Chief Constable, as Chairman, and two ICPC members who had no previous involvement in the case. The decision of the tribunal on guilt is on majority verdict, while punishment is for the Chief Constable, after consulting the others. This arrangement is to change slightly with the two ICPC members being replaced by two independent members drawn from a panel appointed for this purpose<sup>2</sup>. As with internal cases an appeal can be made to the Secretary of State. Cases against 18 officers led to formal disciplinary action from complaints by the public in 1995. There were 3 tribunals in 1995 and there have been 16 since 1988. Of the 16, in one an officer pleaded guilty and in the other 15 findings of not guilty were made.

### *Need for change?*

- 6.7** I have mentioned the need to change the standard of proof. In addition, in less serious cases **more needs to be done to reduce the formality of the proceedings, to keep the subject officer and complainant informed and to speed matters on. Indeed, for all cases, targets need to be set and monitored.** The process is often dependent on other factors, but delay is unfair to all concerned and ought to be reduced to a minimum.
- 6.8** This then leaves two important questions unanswered. What changes are necessary for considering whether there is a breach of discipline arising from a complaint and for hearing these cases, and who should decide punishment? My terms of reference do not extend to internal disciplinary cases, but the proposed change in the arrangements there seems sensible and is relevant to the position on complaints.
- 6.9** A significant weakness of the present system is that the Chief Constable, in those cases where charges are directed by the ICPC, having declined to take action, is then required to chair the tribunal set up to consider the case. Furthermore, the case is prepared for the tribunal by a middle-ranking officer who knows that his/her senior officers did not favour action.
- 6.10** There are strong arguments for taking disciplinary tribunals out of police hands. For example, the Standing Advisory Commission on Human Rights (SACHR) said in its submission to me, and in its 17th and 19th reports:

*“The Commission’s view is that neither the Chief Constable nor any other member of the RUC should be a member of the tribunal. ... Furthermore the Chief Constable should not have the responsibility for presenting the case .... The tribunal’s function should be to determine the question of guilt; disciplinary action should continue to be a matter for the Chief Constable.”<sup>3</sup>*

<sup>1</sup> Article 14 of the Police (Northern Ireland) Order 1987

<sup>2</sup> Provision for this tribunal is to be made by regulations under sections 25 and 26 of the Police Act (Northern Ireland) 1970

<sup>3</sup> The Seventeenth Report of the Standing Advisory Commission on Human Rights, Report for 1991/92, HC 54, ISBN 0-10-205493-2.  
The Nineteenth Report of the Standing Advisory Commission on Human Rights, Report for 1993/94, HC 495, ISBN 0-10-249594-7

- 6.11** The Report to the Government of the United Kingdom by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment which was published on 17 November 1994 states that the composition of the disciplinary tribunal could be reviewed:

*"At first sight, a tribunal which, on the one hand, has as its chairman the head of the police force to which the person facing charges belongs and, on the other hand, has as its other members 2 persons from the body which has recommended disciplinary charges, is unlikely to be considered as impartial by either complainants or police officers. The ICPC has itself been critical of the present arrangements and recently called for the establishment of 'a truly independent tribunal with a legally qualified Chairman to hear disciplinary charges'."*

- 6.12** I recommend that there should be a change here, both in the type of tribunal and by the complaints body being given the role of presenting cases to it. On presentation, as an interim arrangement the ICPC should be given a greater part in the preparation of cases it has recommended or directed<sup>1</sup>.

- 6.13** It is not easy, however, to come up with a new arrangement. **A two-tier system is necessary to allow for appeals. The proposed new police appeals mechanism to replace the Secretary of State in internal cases could fulfil the appellate role but this still leaves a means for hearings at first instance to be established.**

- 6.14** There seem to be three options. The first is to keep the proposed arrangement<sup>2</sup> but with the safeguards of presentation by the complaints body and the automatic right of appeal by the Body. The second is to replace the Chief Constable on this tribunal with another 'independent'. Its composition vis a vis the police appeals tribunal would need to be considered, but it could, for example, be chaired by a lawyer, with a representative of the officer (a Federation representative) and of the complainant (perhaps from the CAB) on the panel. The final option is to look elsewhere, and, for example, to use the Industrial Tribunal to hear cases (it has the advantage of being a standing tribunal readily available to hear cases).

- 6.15** I recommend that further thought should be given to this area when the Government is taking forward its police discipline reforms with a view to the establishment of a wholly independent disciplinary tribunal.

- 6.16** The other unanswered question is who should make decisions on punishment. I have no doubt that this should be done by the Chief Constable<sup>3</sup>. This is a key part of management and it would undermine the Chief Constable's responsibility for discipline were it removed from him. The Police Authority in their submission recommended that this responsibility should remain with the Chief, and I have already quoted the similar view of SACHR. One of the most consistent critics of the current system, the Committee on the Administration of Justice in its 1993 pamphlet on police complaints states<sup>4</sup>:

*"The norm in the field of discipline is for any civilian authority, of whatever nature, to have only the power to make recommendations about disciplinary penalties to the chief of police. In passing we feel it right to say that in our view that norm conforms to an important principle ..., namely that, subject to the overall jurisdiction of the courts or any special authority established by law for the purpose, ... the authority in charge of any organisation, be it an individual or a corporate body, must be in control of its own house."*

- 6.17** I recommend that the Chief Constable should retain this responsibility for all but senior officers where the responsibility would remain with PANI.

<sup>1</sup>In England and Wales the Police Complaints Authority after much lobbying is consulted

<sup>2</sup>To become the Chief Constable and 2 independents drawn from a panel

<sup>3</sup>Appeal tribunals should be able to consider, and decide upon, finding and punishment

<sup>4</sup>CAJ Pamphlet No 23. "A Fresh Look at Complaints Against the Police"



## 7. *Statistics*

- 7.1** There is no doubting the importance of figures. I have, for example, already mentioned the scrutiny given to substantiation rates. Statistics are sought and used by the media, interest groups (including internationally by the United Nations Human Rights Committee and locally by the Committee on the Administration of Justice), academics, public and, perhaps, most importantly, by PANI, the ICPC and the police themselves<sup>1</sup>.
- 7.2** Clearly, therefore, it is important that the figures are readily available, accurate and well presented. PANI, ICPC and RUC (who were planning computerisation) are alive to this. I think, however, that more can be done. We have seen, for example, the value of research work by Maguire and Corbett<sup>2</sup> for the Home Office and by Landau in Canada<sup>3</sup>.
- 7.3** I have no doubt, therefore, that in spite of the work and analysis already done there is room for greater use to be made of the figures. There has, for example, been no research done on the Northern Ireland system.
- 7.4** In addition, I am concerned that the information made publicly available in the various reports is not entirely consistent. This is in part due to different methods of presentation. However, the Chief Constable's Annual Report for 1995 makes reference to "complaints" completed (and a complainant may make more than one complaint) whereas the ICPC uses the measure of "cases completed". This leads to different statistics being presented on the same information. In addition, the figures do not always tally. The Chief Constable refers to 3,251 cases completed whereas the figure in the ICPC report seems to be 3,193. In addition, the Chief Constable's report states that there were 73 complaints substantiated (ie leading to formal discipline) as well as 115 cases where informal disciplinary action was taken. The ICPC report, however, refers to 15 formal cases (22 charges) and 99 cases of informal disciplinary action. There is no consistency either in the treatment of complaints which have been withdrawn or discontinued for lack of cooperation. It is also noteworthy that the figures are not classified in the reports by religion, ethnic minority or sex. Other information, for example in recent surveys which has been broken down in this way has provided interesting results.
- 7.5** **I recommend, therefore, that the new complaints body should become the focal point for statistics on complaints (the RUC would of course continue to keep figures on internal discipline). I also recommend that the complaints body should review the nature of the statistics kept in consultation with, in particular, the police, PANI and Her Majesty's Inspector of Constabulary to agree arrangements that can satisfy management needs as well as the public interest in the subject. Appropriate computerisation would, of course, be essential.**
- 7.6** **Gathering of these statistics should be centralised with the complaints body. The police should not have to supply figures to PANI and NIO as well. It should be the task of the complaints body to collate the figures and provide regular information in digest form to other users and to the public.**

<sup>1</sup>The police have, for example, carried out an internal research project on the main causes of complaint and have introduced a Complaint Prevention Programme where officers from Complaints and Discipline Department visit parts of the Force to increase awareness on the level and causes of complaint and possible preventative action

<sup>2</sup>Maguire and Corbett, a study of the police complaints system ISBN 0-11-34 1007-7, 1991

<sup>3</sup>Landau, When police investigate police: A view from complainants, Canadian Journal of Criminology July 1996

- 7.7** One additional point struck me. **The police and ICPC present substantiation rates against all closed complaints, which gives the lowest percentage of substantiation possible. I would argue this misrepresents the system.** For example, at the obvious end of the scale, where someone lodges a complaint which turns out to be vexatious this could not have been substantiated. There are less obvious cases and **in reviewing the statistical requirements I suggest the complaints body should look at this issue too.**



## 8. *The Role Of The Police Authority In Relation To Complaints*

**8.1** The Police Authority for Northern Ireland has responsibility under the current legislation:

- (a) to cause the investigation of complaints about the conduct of a senior officer and to act on the report;
- (b) to "...keep itself informed as to the working of (the complaints process)";<sup>1</sup>

**8.2** In addition it has the power to refer cases to the ICPC for supervision under Article 8(2).

### *(a) Investigation of complaints*

**8.3** Very few complaints about senior officers have been made to the Authority, but their view is that the legislation is unsatisfactory. They are charged with appointing a police officer to investigate the complaint and the ICPC may be involved in a supervisory role, and must supervise if there is an allegation of death or serious injury. Once the investigation has been completed the report is sent to PANI, which must send it to the Director of Public Prosecutions "...unless satisfied that no criminal offence has been committed"<sup>2</sup>. The Authority must also consider the disciplinary aspects of a case<sup>3</sup>. PANI must, therefore, decide whether or not the senior officer has committed a disciplinary offence and cause the officer to be charged accordingly. The case will go to a special tribunal<sup>4</sup>, and, after receiving the tribunal's report, it is for the Authority to decide on punishment. An officer may appeal against finding and punishment to the Secretary of State.

**8.4** Clearly with so few cases, they have I understand only received 1 complaint in 1990, PANI does not have the opportunity to gain expertise in this area. Furthermore, it is currently being involved in areas (appointment of investigating officers and taking decisions to refer cases to the DPP) which it has no need to be involved in.

**8.5** **I recommend, therefore, that the Authority should not become involved in the process until the stage where decisions on punishment are being considered. Further, the tribunal and appeal mechanisms should be essentially the same for all cases. This proposal essentially would put senior officers in the same position as less senior officers.**

<sup>1</sup>Article 15, Police (Northern Ireland) Order 1987

<sup>2</sup>Article 10, Police (Northern Ireland) Order 1987

<sup>3</sup>Regulations 29-48, RUC (Discipline and Disciplinary Appeals) Regulations 1988

<sup>4</sup>A single person appointed by the Authority, with the approval of the Secretary of State, assisted by one or more assessors appointed by the Authority, again with Secretary of State approval. One of the assessors must have knowledge of police administration

- 8.6** The Authority in its paper to me said it would like to see a change along the lines I am suggesting.

*(b) Monitoring*

- 8.7** This practice is undertaken by the Authority's Community Relations Committee. Its objective is "to keep itself informed as to the efficiency and effectiveness of the complaints and discipline procedures in pursuit of the Authority's responsibility for the maintenance of an adequate and efficient police force". The Authority obtains monthly statistical returns from the RUC on new complaints and quarterly reports on the completed cases. There is also some discussion with the police in Complaints and Discipline Department and with the ICPC.

- 8.8** I think there is value in the Committee continuing to receive the figures, particularly to inform its thinking in other areas (for example the work the Authority is doing on parades and on young people and minorities could benefit from an examination of the complaints figures). However, the Authority feels constrained by the fact they cannot look at individual cases. I have considered whether or not they should look at them and have concluded, **and recommend, that this function more easily falls to the complaints body.** They will be looking at the cases in detail and should examine them, and not just the high profile ones, with a view to seeing if there are lessons to be learned. Where there are, they should report their findings to the police and, as appropriate, to PANI.

*(c) Article 8(2) "Call-in"*

- 8.9** Under Article 8(2) of the Police Complaints (Northern Ireland) Order 1987 the Authority has a power to refer a matter to the ICPC which appears to indicate that a police officer may have committed an offence, if it also appears to PANI that it is in the public interest. This power does not apply in England and Wales. It has never been used by PANI.

- 8.10** The Authority in its submission to me comments that this power is restricted by the requirement in the Secretary of State's Guidance to the Chief Constable on Complaints which states that the power should only be used in exceptional circumstances and after full consultation between the Secretary of State, Police Authority and Chief Constable. The Authority "considers that the timescales involved in such a process effectively nullify any real power the Authority might have...". It would like a more accessible power to refer such matters.

- 8.11** I can understand this. I comment on call-in or own motion powers for the complaints body in Chapter 12. If the complaints body had the power to intervene without having to wait for a complaint, this would lessen the need for a call-in power for PANI and indeed the Secretary of State. In other words the body would call itself in. Nevertheless, in light of their special roles I **recommend that each should have the power to refer cases to the body. This power should require consultation with the body and the RUC, though not necessarily jointly, but should not require agreement and should not be dependent on consideration by any other party<sup>1</sup>.**

<sup>1</sup>At present consideration by the Secretary of State or PANI is dependent on the Chief Constable first having considered the possibility of calling in the ICPC himself



## 9. *Strengths And Weaknesses Of The Complaints System*

9.1 I think it is helpful, at this stage, without trying to be exhaustive, to identify the significant strengths and weaknesses in the existing system. Of course, many of these depend on the view of the beholder, but I have tried to set out those which arose most often during my review.

### *Strengths*

- Complaints can be lodged in a wide variety of ways; they do not have to be lodged at police stations and can be lodged by third parties or by telephone.
- There is no absolute limitation period for the lodging of complaints - generally speaking a complaint will not be investigated only if it is lodged more than 12 months after the event.
- The division between informal and formal resolution of complaints is widely seen as sensible, especially as the complainant can always veto an informal resolution if he or she does not think it is appropriate. The related fact that statements made for the purpose of informal resolution are not admissible in subsequent criminal, civil or disciplinary procedures has undoubtedly increased the success of this procedure.
- The ICPC can recommend and ultimately direct that disciplinary charges must be laid against an officer and may direct a tribunal if it considers that it is desirable because of the exceptional circumstances of the case (but see below).
- The statutory and mandatory duty for the ICPC to supervise the investigation of the most serious cases can be regarded as an important safeguard.
- The fact that the Commission sees all cases, including those informally resolved.
- I have found the members and staff in the Commission to be dedicated and overall thorough in their approach. They in turn have a generally favourable opinion of the commitment and diligence of those officers in Complaints and Discipline in the RUC they are working with. I have no doubt that both parties seek generally to get to the bottom of allegations, although they are often hamstrung by the procedures they are following or, on occasion, by the failure of complainants to co-operate or witnesses to come forward.

- The handling of complaints and discipline in the RUC is audited by Her Majesty's Inspector of Constabulary as part of his annual inspection of the RUC. PANI is also required to keep itself informed about the way in which complaints are dealt with (but see below).
- The investigation of a complaint is not in Northern Ireland, as it is in some jurisdictions, dependent on the criminal aspects of a case being concluded. Although clearly no decision on the disciplinary aspects can be reached in most cases until the outcome of the criminal proceedings is known. Each case is considered on its merits, but many are either concluded or taken as far as they can be, in parallel with the criminal investigation.
- The officer formulating charges must ensure that the officer accused is aware of his/her right to be legally represented where the punishment on a finding of guilt is dismissal, requirement to resign or reduction in rank.
- The make-up of the hearing of a disciplinary charge, in other words the rank of the officer(s) appointed to hear the case, gives the officer an indication of the level of punishment which might be imposed if he/she is found guilty.

### *Weaknesses*

- The formal complaints system in Northern Ireland deals only with allegations of misconduct by identified police officers. It excludes more general complaints, from whatever source, about police policies and practices.
- The Chief Constable (or the Police Authority for senior officers) is not obliged to refer a complaint to the ICPC unless he has decided to appoint an investigating officer (in which case he must notify the ICPC within 48 hours). The Police (Amendment) (Northern Ireland) Order 1995, will improve the position on the latter by requiring the Chief Constable to refer complaints to the ICPC earlier, as soon as he has recorded them.
- A frequently raised criticism is that it is the Chief Constable of the RUC who decides what is or is not a complaint.
- Many, including the ICPC, regard the fact that the Commission needs to receive an actual complaint before it can involve itself in high profile or public interest incidents as a major weakness. For, although the Chief Constable, Police Authority and Secretary of State have the power to "call in" the ICPC for non-complaint cases, the power has rarely been used. The Secretary of State, for example, has used the power once.
- All investigations in Northern Ireland are carried out by police officers in the Complaints and Discipline Department of the RUC, albeit that 365 of the 2,343 investigations undertaken in 1995 were conducted under the supervision of a member of the ICPC. This weakness is highlighted by the survey of complainants I conducted (see Annex 9).



- In an investigation not supervised by the ICPC, no memorandum needs to be sent to the ICPC by the Chief Constable if disciplinary charges have been preferred and the officer concerned has admitted them. This deprives the ICPC of the opportunity to decide whether the investigation was conducted to its satisfaction or not and more importantly whether the right disciplinary charges were preferred.
- Most disciplinary hearings are heard by senior police officers alone.
- The standard of proof in disciplinary hearings in Northern Ireland is "beyond a reasonable doubt". Although seen as fair for cases where dismissal or loss of rank is involved, very few thought this standard was acceptable for less serious cases.
- The rule against "double-jeopardy" means that police officers may escape disciplinary charges even where they have been acquitted of criminal charges due to a technicality.
- A complainant is often invited to interview at a police station, which is often not a place he or she feels comfortable about visiting.
- Although in supervised cases the ICPC members can attend interviews with complainants and accused officers, they cannot ask direct questions.
- The use of part-time members in the ICPC, although useful in drawing together a broader range of experience, is not efficient as it builds delay into cases, makes case management more difficult, and is not helpful to staff.
- The Police Authority is unhappy about its role in monitoring complaints. It currently meets this role by examining statistics and wants a more meaningful input.
- The Authority regards its function in dealing with complaints against senior officers as badly defined, and has no procedures for this.
- The ICPC and Complaints and Discipline Department in the RUC each keep statistics, but they do not tally.
- Even in those cases where the ICPC directs a disciplinary charge to be heard by a tribunal it does not present the case. Rather it is presented by a police officer (who would know that his/her senior officers decided a charge was not appropriate).
- Complainants' expectations of timescale are not met, and they do not feel they are kept adequately informed of progress in a case. This is allied to the absence of publicly available timeframes.
- Equally delay is unfair to the police officer who has the threat of disciplinary action hanging over him or her perhaps for a year or more.

- Too many cases are withdrawn or dispensed with (1,114 in 1995, or 41% of the cases closed) and the general view of the 1% substantiation rate is that it is unrealistically low.
- Some of the complainants I met felt bruised by a system which they felt had treated them badly, had not given them satisfaction and had treated their complaints in a mechanistic way. Those who felt most strongly about them were people who had never had any contact with the police before.
- Although it can ensure cases are sent to the Director of Public Prosecutions, the ICPC has no power to make recommendations to the DPP, and does not otherwise communicate its view on completed investigations to the DPP other than by the issue of a statement of satisfaction with the investigation. In some of the files of completed investigations which I read, I was surprised, given the weight of evidence which it seemed appropriate to test in a court, that the recommendation of the investigating officers was against a prosecution. I sensed that my surprise was shared by the ICPC officers who had been involved in the case. I have no doubt that the DPP would have found this view helpful.



# *10. A New Northern Ireland Police Complaints System - Principles*

**10.1** In this section I try to set out the principles on which an effective complaints system might be grounded. These are:

- The Chief Constable should be responsible for discipline in the force and should be accountable to the Police Authority for it.
- Management in the police should manage. Management should be responsible for establishing norms of behaviour which do not give rise to complaints, for training and direction of personnel, for operational decisions and for dealing with complaints as they arise.
- The public should have confidence in the system.
- The police should also have confidence in the system, “including a genuine belief that misconduct ... will be detected and appropriately dealt with”<sup>1</sup> and that the system will reinforce “... high standards of ethical conduct and integrity, which are recognised as having strong leadership support”<sup>2</sup>.
- The system will publicly vindicate the honest officer who has been wrongly accused.
- The system should be open, fair, easily understood and widely accessible.
- Complainant and police officer should be given the opportunity to state their case freely and should be kept informed of progress.
- The system must recognise and manage the different requirements of criminal or disciplinary investigations (depending on the nature of the complaint).
- It should be effective; dealing with complaints speedily, with specified time limits; operate for the benefit of the public and police officers; and ensure, as far as possible, that police officers are disciplined for wrong doing.
- Police should as far as possible be protected from malicious, vexatious or repetitious complaints.

<sup>1</sup>The Hon Justice Wood, paragraph 3.2 of the Interim Report of the Royal Commission into the New South Wales Police Service  
<sup>2</sup>As above

- Complainants should be kept informed of progress and, again as far as possible, of outcome.
- The system should also be able to manage the diversity of complaints and therefore, sufficiently flexible to provide different mechanisms. Complaints should be dealt with at the lowest level possible, for example, lapses in service need not be dealt with in the same way as an alleged assault.
- It should not be burdened by an excess of paperwork.
- Investigations, where required, should be impartial and thorough.
- It should be affordable.
- It should provide management information/feedback to the police.
- The internal and external systems of discipline in the police service should be complementary.
- An officer should have a right of appeal against disciplinary action to an external tribunal.
- Divisions of responsibility between agencies involved in the complaint system should be clear.



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# *11. The Police Ombudsman*

- 11.1** I must now decide what sort of body with what powers and functions would best secure the implementation of these principles in Northern Ireland.
- 11.2** The overriding requirement which was impressed on me from all sides, including influential voices in the police and retired police officers and members of ICPC, was independence, independence, independence. The question is how best to express this independence and how it will work in practice.
- 11.3** The best guarantee of independence is that the complaints body should have control of the process and I deal with this in detail in the next chapter. What I mean is it should be able to decide what is a complaint, how and by whom it is to be investigated and to recommend action as a result. They should be able to initiate action where the public interest requires it even where a complaint has not been made, and in the event of specified serious events, should be required to take immediate action to investigate the circumstances.
- 11.4** Contrary to what I might have expected, surprisingly few of the people I met focused on the nature of the complaints body itself. The main issues were control of the process and independent investigation. Those who did raise the issue focused principally on the stature of the Chairman.
- 11.5** The main points to be considered are the nature of the body, whether it should be similar in form to the ICPC with a Chairman, or Commissioner at its head or whether it should be a policing ombudsman, and whether full-time or part-time.
- 11.6** There are international models for each. In England and Wales, the Republic of Ireland, Queensland, Ontario, New York and New Zealand there are varying types of Commissioner, sometimes acting alone, sometimes with other members, whereas in New South Wales, and other parts of Australia, the function falls to the Ombudsman's Office (as was once the case also in New Zealand).
- 11.7** I found there to be very little distinction in practice between what the bodies did. What was clear, however, was the value of having a legally experienced and substantial person at the helm. This was typified by a representative of a civil liberties organisation in New Zealand who said, in effect, that his organisation may not like the arrangement in place but at least they knew Judge Jeffries was there and was quickly on the spot when there had been a major incident. On the other hand specialisation seemed relevant to profile.
- 11.8** In Northern Ireland the ICPC has worked hard, but the surveys show that the public's knowledge of their work is not great. While recognising the promotional and educational work that has been done, and the dedication and energy of the Chairman and members, I think that the complaints body needs to take a much higher profile and that a public figure with a full-time commitment, and preferably with legal experience, is needed to gain public attention and respect. I suggest legal experience because of the dependence on evidence, standard of proof etc. and the need to reassure police officers that they too will be treated fairly and that complaints will be investigated in accordance with principles of natural justice.

Indeed this is a legal requirement in Ontario and Justice Wood<sup>1</sup> recommends it for New South Wales' new police corruption commission. Given that the complaints body would have control of the process (see later) this would probably raise its media profile - the Chairman would have to have the skills to handle this attention as well as important relationships with, in particular, the Government, senior police officers, the Police Authority, the Director of Public Prosecutions, police unions and, of course, complainants.

- 11.9** The next question is the chair of what? In other words, how would the complaints body be organised and would members (or investigators) be full or part-timers?
- 11.10** I believe that despite the undoubted value of the range of experience which part-time members bring to the task, and the benefit of being in touch with the local communities, there is greater advantage in having the full-time commitment of a single person with perhaps a couple of deputies. Members of the ICPC in practice handle cases individually, there is no great sense of corporate identity (as was manifest by the submission of 9 separate papers) and (in part because of the need to preserve members for service on tribunals) none of the case conferencing or the discussion of significant cases which might build up a sort of jurisprudence. Full-time membership too for all members would improve staff management and morale and would make it easier to manage the workload.
- 11.11** One solution would be to simply add the police to the list of bodies already investigated by the Northern Ireland Ombudsman and give the job to him. I have decided against this because although police too are public servants, the nature of the work and the constabulary powers are quite different. In those places where the Ombudsman is responsible for the investigation of complaints against the police, there has tended to be a deputy committed to this work. Too often the police work is submerged in the other tasks of the office and the opportunity to have a distinctive profile is lost. I believe too that the police would be more likely to accept the concept of an Ombudsman if he/she were to specialise in police complaints. There is a well recognised danger that a single function Ombudsman can sometimes get too close to the culture of the organisation under scrutiny - a phenomenon known as "agency-capture". Nevertheless I believe that the importance of the work and the likely volume warrants the appointment of a dedicated Police Ombudsman and **I recommend the creation of this office.**
- 11.12** There are advantages in creating the office on the Ombudsman model. The public know what an Ombudsman is, and the title has attained a high degree of credibility internationally. Just as important, politicians, government departments and public officials are accustomed to working with the Ombudsman. There are well established canons for appointment, for ensuring independence, for reporting and for Parliamentary scrutiny and public accountability. **I recommend therefore that in setting up the office, the legislation should draw as far as possible on the precedents of the Parliamentary Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints.**
- 11.13** It is important to ensure the independence of the Ombudsman as a paramount value in this context. There is general agreement internationally on what is needed.

<sup>1</sup>Royal Commission into the New South Wales Police Service, Interim Report, February 1996



- 11.14** Larry B Hills<sup>1</sup> has developed a typification of nine criteria for the model ombudsman. The office should be legally established, functionally autonomous, external to the administration, operationally independent of executive and legislature, specialist, expert and non-partisan, normatively universalistic, client-centred but not anti-administration and properly accountable and visible.
- 11.15** More simply, the accepted characteristics of the classic ombudsman are an office created by statute, reporting to the legislature, with tenure, accessible to the citizen, having powers of discovery, protected by privilege, with powers to investigate and make recommendations.
- 11.16** For this reason **the Police Ombudsman should, like the other official Ombudsmen, be an officer of Parliament<sup>2</sup> and should be required to report annually to Parliament (where the report would be examined by an appropriate Committee) and have the power to make special reports to Parliament. In the annual report, and indeed on reports on individual cases, he/she would be expected to analyse trends and to draw attention to policies and practices which for some reason or other seemed to give rise to an inordinate number of complaints, such as the method of arrest or confinement, the use of CS gas or baton rounds, or a particular piece of equipment. He/she might also analyse the geographic spread of complaints and whether these seemed to be associated with a particular station or management style.**
- 11.17** He/she should hold office, on good behaviour, until retirement, removable only by a process of impeachment. The post should be a full time one and should be filled by a judge or a person of the quality and experience of a senior judicial figure. Obstruction of the Ombudsman in an investigation should be dealt with by reference to the High Court.
- 11.18** It should also have for the police the benefit of added credibility in having been vindicated by a strong independent outside body when a complaint has been found unsubstantiated.
- 11.19** The essential difference from the current system, which I expand on in subsequent chapters, is that the Ombudsman should have control of the process, with the power and the capability to conduct investigations, including criminal investigations. In doing so, he/she will play a variety of roles - deciding prima facie on the admissibility of the complaint and the appropriate method for dealing with it. When in charge of the investigation the Ombudsman will act rather as an examining magistrate, assembling a team of investigators and directing their work up to and including the point of a report and recommendation to the DPP. He/she will recommend disciplinary action to the Chief Constable and present the case to a disciplinary tribunal where this is appropriate. Where a complaint has been substantiated he/she will represent the interests of the complainant in seeking satisfaction.
- 11.20** While a change in the structure of the complaints body is important to its success a change in its ethos is equally important. At present the whole

<sup>1</sup>Larry B Hills. *The Model Ombudsman* Princeton 1969

<sup>2</sup>In the event of law and order powers at present reserved being transferred to a Northern Ireland Assembly along with responsibility for policing, then the functions in relation to the Police Ombudsman would transfer too

complaints system has tended to focus too much on retribution and insufficiently on customer service and satisfaction. The trend towards informal resolution has been an important change but more needs to be done. The fundamental change in the process I am recommending provides an opportunity to move to a more customer related service. While serious criminal or disciplinary matters should, of course, still be dealt with formally this does not detract from the need to keep complainants and subject officers informed and of the need to seek to deal with things expeditiously. **It would be important, therefore, for the new body to establish shortly after its formation a charter or ethos which should be publicly available.**

- 11.21** On location, given the size of Northern Ireland, there may be a case for the body having one office, and in Belfast (although the current offices would need to be expanded substantially). **Consideration should be given, however, in the light of experience, to the establishment of satellites**, although a key issue here will be balance between the financial cost and access for the public.



# 12. Control Of The Process

- 12.1** I made the observation at nearly all the discussions I had that the inability of the ICPC to decide what was or was not a complaint effectively seemed to me to remove one leg of the stool of credibility. I cannot recall any dissent.
- 12.2** The issue here is that of responsibility for police complaints. At present the Chief Constable<sup>1</sup> decides what a complaint is, whether or not it is suitable for informal resolution etc. The Commission can influence the handling of cases it supervises, and can direct that a case should be sent to the Director of Public Prosecutions or that the Chief Constable should bring disciplinary charges. It cannot, however, as mentioned, decide what a complaint is, or decide on its own initiative to supervise non-complaint cases<sup>2</sup> or influence the nature of the recommendation to the DPP.
- 12.3** This was a matter of concern to me at the outset of the review and became more acute as I looked in more detail at our system and at other systems.
- 12.4** In nearly all other jurisdictions I looked at the decision on what amounts to a complaint is made by the civilian oversight body. This was the case in Queensland, New Zealand, New South Wales, New York, the Republic of Ireland, but not in Ontario, although the Commission there can, exceptionally, initiate a complaint. This decision-making facility often included the power of call-in and, in New South Wales and New Zealand, for example, they can also look at matters of internal police discipline.
- 12.5** The 1994/95 Community Attitudes Survey of around 2,000 people is particularly relevant. In answer to the question of "who do you think should be responsible for police complaints" twice as many (32%) chose the option of a completely independent body outside the police compared to the next highest choice, the Chief Constable (16%). Twelve per cent chose the ICPC, 12% other and 17% did not know.
- 12.6** It is also interesting that the ICPC has been calling for greater authority over the process. It has sought, through its two Triennial Reviews, 1988-1990 and 1991-1994, the right to see complaints at an earlier stage and a call-in power.
- 12.7** The Government has recognised their concern. In 1995 it conceded that the ICPC should have the first and at least a greater say in the other. Some have argued that if the Government had acted sooner or if the ICPC had used its existing powers more imaginatively, then there would not be the lack of confidence in the system currently seen. Notwithstanding this, there is no doubt that the independent complaints body needs greater control of the process now to regain credibility and public confidence. **I recommend that, to seek to achieve this, the Complaints Body should have complete control of the process. It should decide what constitutes a complaint and determine how it will be handled, for example by investigation or by informal resolution (I deal with the precise mechanics of this later) and by whom.**

<sup>1</sup>Or PANI for complaints against senior officer

<sup>2</sup>Under Article 8 of the Police (Northern Ireland) Order 1987 Order the Chief Constable, Secretary of State or PANI can call them in, in certain circumstances

- 12.8** In effect it will have responsibility for the system. The police should, of course, be able to raise any concerns with the Ombudsman, but unlike at present he/she would have the final decision.
- 12.9** The 20th Annual Report of the Standing Advisory Commission on Human Rights<sup>1</sup> makes the case clearly. "The Commission believes that, after consultation with the Chief Constable, the ICPC should make the final decision on what constitutes a complaint... Unless the ICPC has the final say as to what constitutes a complaint in situations where there is a difference of opinion with the Chief Constable, public perceptions of the ICPC as a fully independent body will continue to be impaired."
- 12.10** The related issue is the question of call-in, sometimes called an own-motion power. **If the above recommendation was not accepted then it would still in my view be essential to give the Complaints Body its own call-in power, not one dependent on others as proposed at present.** There has been a clear reluctance on the part of the Chief Constable, Secretary of State and Police Authority to use their call-in powers<sup>2</sup>. This may be explained partly by the strictness of the criteria laid down. The effect is that public confidence has suffered. One would have expected the calling in of the ICPC in high profile public interest cases to have been all but automatic as it clearly is in virtually all the police forces in England and Wales. The irony is that the use of the call-in powers is a protection for the police and not, as they seem to think, a threat.
- 12.11** The common argument against giving such a power to the ICPC is that it takes them outside the role of purely dealing with complaints. This is an unnecessary and unhelpful distinction. New Zealand which essentially has a complaint-based system, shows how well a broader approach can work. There an agreement has been reached between the Complaints Authority and the police that incidents, not complaints, involving death or serious injury are automatically referred to the Police Complaints Authority. It is the occurrence of the serious event that triggers civilian oversight not any subsequent complaint, which may in any case be delayed. In New Zealand deaths or serious injuries in vehicle pursuits, death in custody and use of firearms by police are automatically referred to the PCA.
- 12.12** In my view in Northern Ireland we are past the stage of simply having an understanding or memorandum between the ICPC and police. The Complaints Body needs its own power. That is not to say that a memorandum could not be drawn up to show the type of case the ICPC is interested in so that they can be informed of it or that steps could not be taken to improve the current situation until a new system has been installed.
- 12.13** I hope, however, that this is academic, as it will be if control of the process is given to the complaints body as I recommend. **In this case, control will mean that the Ombudsman can "call himself/herself in" for incidents which, were there complaints, he/she would want to be involved in.** For completeness I should repeat my comment in Chapter 8 that both the Secretary of State and Police Authority should retain call-in powers.

<sup>1</sup>The Twentieth Report of the Standing Advisory Commission on Human Rights, Report for 1994/95, HC 506, ISBN 0-10-250695-7  
<sup>2</sup>Article 8 of the Police (Northern Ireland) Order 1987



# 13. Investigation

- 13.1** The debate about the best, or perhaps most appropriate, means of investigating police complaints has been raging for many years. I found little difficulty in getting people to agree the principles for a complaints system but considerable difficulty reaching agreement on the relative weight to be given to these. Those advocating public confidence saw independent investigation as crucial, others either wanting to preserve police confidence or concerned about the ability and therefore credibility of independent investigators argued for a less extreme measure.
- 13.2** Before setting out my conclusions on this, I think it is important to look again, briefly, at the evolution of the current system, at the options that are available and at the comments of those with experience and knowledge of police complaints systems.

## History

- 13.3** Briefly<sup>1</sup>, after much public disquiet and amid calls for independent investigation, independent oversight bodies were established in England and Wales (1976) and Northern Ireland (1977) which considered outcomes of police investigations. These arrangements failed to secure sufficient public confidence and again amid calls for independent investigation the Government responded by establishing bodies, the Police Complaints Authority (1985), and the Independent Commission for Police Complaints (1988) with supervisory powers, with an emphasis on the most serious cases<sup>2</sup>.
- 13.4** Before the current arrangements were arrived at in England and Wales and in Northern Ireland, there were calls for independent investigation. Lord Scarman in his Report commented in 1981 on the need for independence in the police complaints system in England and Wales<sup>3</sup>:

*"I conclude that the decision whether to establish a new procedure for the independent investigation of complaints must rest on a judgement whether the gain in public confidence which would ensue outweighs the resource and financial costs involved.*

*My own view is that if public confidence in the complaints procedure is to be achieved any solution falling short of a system of independent investigation available for all complaints (other than the frivolous) which are not withdrawn, is unlikely to be successful."*

- 13.5** The calls were not silenced. Laurence Lustgarten<sup>4</sup> in 1986 commented:

*"It is unlikely that the Police Complaints Authority will satisfy critics of the complaints system.... It is neither fish nor fowl. It does not conduct investigations itself, and though its chairman is a lawyer and former ombudsman, its members have little experience or knowledge of criminal investigations.*

<sup>1</sup>See Chapter 3 for a fuller account

<sup>2</sup>It is worth noting that the Chief Constable may appoint an officer from an outside force to investigate complaints, but this power has been very rarely exercised in Northern Ireland (less rarely in England and Wales)

<sup>3</sup>Royal Commission into the Brixton Disorder, 1981 Cmnd 8427

<sup>4</sup>"The Governance of Police", P157, ISBN 0-421-31910-0

These limitations ensure that the police will continue to dominate investigations of complaints against themselves. Justice may not be done, and at all events will not be seen to be done. What is required is a corps of skilled investigators independent of any police force under the direction of a politically accountable authority ..."

- 13.6** Confirmation of this point was given by Maguire and Corbett<sup>1</sup> in 1991 in their Home Office sponsored research:

*"... it is quite clear that the overall experiences and views of most complainants were so negative that the only way they could be satisfied would be through radical change in the system ... .*

- 13.7** Maguire and Corbett had asked the following basic question:

*'Which of the following statements do you most agree with:*

- (i) *The police should investigate complaints themselves;*
- (ii) *The police should investigate complaints themselves, but under the supervision of an outside body;*
- (iii) *The whole investigation should be carried out by someone other than the police.'*

They found that nearly 90 per cent replied that the whole investigation should be carried out by someone other than the police.

- 13.8** Maguire and Corbett refer in their survey to the benefits that the PCA has brought through supervision to investigations and to public confidence. They state:

*"... We concluded that its very existence has probably had some 'sharpening up' effect upon (investigating officers), if only in matters of detail. (There was also some evidence that it helped to expedite some investigations and that it marginally increased complainant satisfaction.)"*

- 13.9** However, Maguire and Corbett go on to say:

*"However, what is equally important is that it is carried out in a conspicuously active style, sufficient to convince outsiders that it is ensuring a thorough and unbiased investigation. Passive supervision achieves little more than the post hoc monitoring of reports. And even very active supervision, although possibly influential (and certainly, in our experience, rigorous and conscientious), does not always appear to be so to outsiders."*

- 13.10** Recent surveys in Northern Ireland give a similar picture. The PANI report published in March 1996 on its community consultation exercise stated that 70% of respondents who raised police complaints said that complaints should be handled entirely by investigators who are independent of the police<sup>2</sup>.

- 13.11** The 1994/95 Community Attitudes Survey asked "Who do you think should be responsible for looking into complaints against the police". 32% wanted a completely independent body outside the police which was virtually twice as high as any other response. The breakdown by religion was 27% Protestant and 40% Catholic.

<sup>1</sup>Maguire & Corbett, *A Study of the Police Complaints System*, 1991 HMSO, ISBN 0-11-34-1007-7

<sup>2</sup>Police Authority for Northern Ireland "Everyone's Police. A Partnership for Change. A Report on a Community Consultation undertaken by the Police Authority for Northern Ireland in 1995". Published by the Police Authority



**13.12** The ICPC submission to me included papers from each member. There was no consensus on the issue of independent investigation. Concerns were expressed by some about the use of seconded officers or independent investigators quoting experience in other jurisdictions. Others, however, advocated these approaches.

**13.13** This might lead one to expect strong support for independence from the Police Complaints Authority. However, in the Chairman's comments in the 1995/6 Annual Report<sup>1</sup> it states:

*"I cannot conclude this foreword without again addressing the vexed question of 'police investigating police'. The Authority remains convinced of the quality and objectivity of current investigations. Nevertheless, it would welcome the same powers as are available to the Criminal Cases Review Commission under which an ad hoc, non-police, investigating team can be appointed in exceptional circumstances. However, the readiness with which certain senior police officers, together with the Police Federation, express a willingness to accept or indeed support the appointment of a wholly independent investigative body should be of concern to the police service as a whole."*

**13.14** In addition, the Police Federation in its submission to me said:

*"... the RUC ... must be treated equally with its counterparts in GB. ... we would be opposed to such procedures which are at variance with the principles applied in Great Britain. ... There is considerable merit in the prospect of creating a new ad hoc organisation within Government itself to which complaints may be referred directly and which would in turn be itself responsible for directing and overseeing investigations in much the same way as ICPC do presently."*

**13.15** The United Nations Human Rights Committee in a report in July 1995<sup>2</sup> said:

*"The Committee is concerned that, notwithstanding establishment in the UK of mechanisms for external supervision of investigations of incidents in which the police ... are allegedly involved, especially incidents that result in the death or wounding of persons, as the investigations are still carried out by the police, they lack sufficient credibility ... specific efforts (should) be made to enhance in Northern Ireland confidence in the administration of justice ... by putting in place transparently fair procedures for independent investigation of complaints"*.

**13.16** Looking at the Northern Irish system Hamilton, Moore and Trimble<sup>3</sup> concluded:

*"It would appear ... that while the actual investigations are carried out by officers within the police service itself, there is very little prospect of achieving widespread confidence in the system."*

**13.17** The Committee on the Administration of Justice in a report on the 1996 marching season<sup>4</sup> which it published in October 1996 reiterates its view:

*"We cannot but conclude ...that the only complaints system which would truly promote public confidence in the investigation of complaints is a completely independent one."*

<sup>1</sup>The 1995/6 Annual Report of the Police Complaints Authority, ISBN 0-10-276496-4

<sup>2</sup>Comments on a Report submitted by the UK Government under Article 40 of the Covenant on Human Rights, CPC/C/79

<sup>3</sup>Policing a Divided Society: Issues and Perceptions in Northern Ireland 1995, ISBN 1-859-23-027 X

<sup>4</sup>The Misrule of Law: A report on the policing of events during the summer of 1996 in Northern Ireland, October 1996

**13.18** The former Chief Constable<sup>1</sup> also said in 1992 that he would not stand in the way of a fully independent system if there were a groundswell of opinion in favour of it. More recently the new Chief Constable, Ronnie Flanagan, was quoted in the Sunday Times on 3 November 1996 as aspiring for the establishment of an independent body for police complaints.

## *Discussion*

**13.19** In July I gathered a 20 strong group including practitioners (RUC, ICPC, PANI, Police Unions), and those with outside experience, for example the Ombudsman, Consumer Council, Committee on the Administration of Justice and academics. Armed with the various principles and aims and objectives of the system I sought to discuss with them what independence meant and what models existed for its provision.

**13.20** My conclusions from this seminar, and more generally, were, and I have reflected on these since the events of the summer, that the wide range of complaints from the death in custody or police shooting incident to the more 'minor' of, say, rudeness all needed to be managed more effectively. I should say here that 'minor' cases can often be important and occasionally less straightforward than the well trodden ground of more serious ones. In particular, those who allege assault on a number of occasions, or repeated harassment from the police, need the protection of a thorough, impartial and therefore probably independent investigation (such investigations are, of course, a protection for innocent officers too).

**13.21** I have already mentioned that by and large I found the RUC investigating officers to be competent and diligent, as were the ICPC members and staff. I also see police ownership of and confidence in the system as important. However, confidence of complainants and the broader public is crucial and, with the exception of informal resolution cases, this is not there. People do not believe in the system.

**13.22** I was not convinced by the argument put forward that only police can investigate police. I have seen other jurisdictions where this is not the case (New South Wales, Queensland). Also, in our own jurisdiction, Customs Officers, Immigration officials, DHSS and Inland Revenue staff all investigate cases, and the Government appears to have conceded that independent investigators can work for the Criminal Cases Review Commission<sup>2</sup>. The expertise is there, although I accept that police officers are well equipped to carry out investigations and do not face the problem of breaking into the culture of the police. It is also important to concentrate finite resources carefully and effectively.

**13.23** What then are the options?

**13.24** The debate has moved on from whether or not there should be external oversight to the nature and degree of this civilian involvement.

**13.25** There are, therefore, essentially three models for investigation:

- investigation by the police with external oversight,
- complete handling and investigation of police misconduct by a body external to the police service; and
- combination of police investigation with external oversight for more minor matters with more serious ones being investigated by the external body.

<sup>1</sup>Sir Hugh Annesley QPM

<sup>2</sup>Section 21 of the Criminal Appeals Act 1995 states that the Commission, in addition to asking the police to carry out investigations, may undertake or arrange for others to undertake inquiries and obtain, or arrange for others to obtain, statements, opinions or reports



- 13.26** Obviously there are different shades within each of these. For example, the nature of the oversight in the first model could be adjusted from a desk exercise to a hands on role.
- 13.27** Of these models the first reflects the current position in Northern Ireland. The police investigate, and therefore take primary responsibility for their own affairs. However, the system also recognises the importance of independent involvement, through supervision which can occur not just in the cases the ICPC must supervise (death and serious injury) but also in any other complaint the ICPC wants to examine. It is projected as a balance between police interest and public interest. Yet, in spite of the ICPC's supervision of an increasing number of cases it has not achieved widespread public confidence. There are various underlying reasons for this. The standard of proof is one, delay and control are others, as (unfairly in my view) is the public perception of the thoroughness of investigation itself.
- 13.28** There are steps that could be taken to strengthen the supervisory role. These include giving the ICPC greater involvement in supervision including the ability to ask questions of the complainant and officer complained about (at present the police investigating officer (IO) alone does this, although he/she would usually discuss the line of questioning beforehand with the ICPC member), and the ability to make recommendations on the criminal aspects of cases to the DPP. At present the ICPC member simply issues a statement expressing satisfaction, or otherwise, with the IO's report.
- 13.29** It is interesting to note that only Northern Ireland and England and Wales have this model. The Republic of Ireland, New Zealand and Ontario have a similar system but there the complaints body also has the power to carry out investigations in certain circumstances. In the Republic to my knowledge this power has not been exercised and in Ontario only rarely. Although the power is used in New Zealand, it is not used frequently and when it is the investigation is usually a joint Authority/police one. The main reason for the lack of use seems to be a question of resources, particularly bearing in mind that the very cases it could be used for are the most serious ones involving perhaps long, complex and expensive investigations.
- 13.30** The second option is to have complete external investigation with the complaints body investigating all cases and recommending action, whether criminal or disciplinary.
- 13.31** I saw no example of this system. It is difficult, therefore, to comment with the benefit of experience. Although it would be simple and would, for example, remove all duplication. It would remove the responsibility completely from the police (even for the most minor cases). It would do this at a time when there is a need and a drive, not least from within the police, for greater management responsibility in the police service. It would also present difficulties in terms of finding sufficient investigating officers to manage the workload. There would also be problems in breaking in to the police culture. Such a body is unlikely to gain police confidence easily and this in turn is bound to affect its credibility.
- 13.32** The only body I met advocating this completely independent approach was the Committee on the Administration of Justice. It was convinced that, in the short to medium term at least, anything else would fail to gain credibility and public confidence.
- 13.33** The final option is a mix of police investigation with independent oversight and investigation by an independent complaints body (usually in the most serious cases). Informal resolution is also employed by the police for minor matters. This is essentially, I think, what the Chief Constable Ronnie Flanagan and to a large extent the ICPC are seeking.

- 13.34** In my view this model will only function effectively if the Complaints Body has control of the whole process, in other words it decides what a complaint is and who investigates it (and where it is the police, it retains the right to take the case back) and it makes recommendations to the DPP and decides disciplinary outcomes on all cases. As my work on the review progressed so my conclusion that control equated to public confidence hardened. Clearly, however, it is incumbent on the Complaints Body to show the police that its control need not mean a loss in their confidence. The Body is there to protect their interests too.
- 13.35** The Body must also have sufficient expertise, knowledge and linked to this resources to conduct its own cases. As mentioned, the Police Complaints Commissioner in Ontario, as well as the Ombudsman in New South Wales have the power to investigate but rarely do, mainly because of a lack of resources. They have, effectively, been almost exclusively restricted to an oversight role.
- 13.36** This "mixed" oversight/investigation model exists in Queensland with the Criminal Justice Commission (CJC) which I visited. The Commission investigates serious crimes with mixed teams of seconded state police officers and civilians, and supervises the police investigation of less serious cases. It has the power to initiate an investigation where there is no complaint and recommends charges and directs them in serious cases.
- 13.37** This option provides the greatest degree of independence I have seen in action. The CJC is required to investigate the most serious cases, yet it involves the police in some investigations (whether through the use of the seconded officers on its staff or through the police investigating effectively for it) and thereby gives them responsibility and ownership. The system enables the CJC to capitalise on police expertise while, through the use of secondees, removing the officers from the culture.
- 13.38** However, this is also a weakness as police involvement (even when drawn from outside forces) can be seen as being in opposition to public confidence - on one interpretation the police are still investigating themselves.
- 13.39** A corollary difficulty is that the police officer, when a complaint is not sustained, does not have the benefit in the public eye of having been vindicated by an independent body.
- 13.40** New York's system is also arguably in this "mixed" category. In New York, however, the investigators are all civilian. This gives independence but removes police ownership and expertise. More tellingly, however, the New York system excludes the complaints body from investigating the most serious cases.
- 13.41** The difficulty here is that different models pull in different ways on the principles I have identified and one has to make a decision on what to give precedence to. As Commissioner Wood wisely said<sup>1</sup>:

*"The selection of an appropriate model depends heavily upon factors specific to the police agency concerned, including the needs of the communities it serves, ... and the strength of the police culture."*

<sup>1</sup>The Hon Justice J R T Wood, Royal Commission into the New South Wales Police Service, Interim Report, February 1996, P85



## Conclusion

- 13.42** Having considered carefully the various models, the experience of other jurisdictions and the views of those I met, and one of which I have quoted earlier, **I have reached the conclusion that a variant of the "mixed model" would be best for Northern Ireland in the longer term.**
- 13.43** **Under this arrangement complaints would be categorised under three headings: serious complaints possibly involving criminal action (such as death in custody, serious injury etc), which the Complaints Body has a statutory duty to investigate; less serious but still substantial complaints which might, at the discretion of the Complaints Body, be remitted to the police for investigation and report, either supervised or unsupervised; and quality of service type complaints which would be remitted to the police for informal resolution.**
- 13.44** **However, this might be the ideal towards which the service should develop. The lack of confidence in the system in Northern Ireland, especially since the summer, suggests that in the initial stages the Ombudsman should probably investigate all but those complaints considered appropriate for informal resolution.**
- 13.45** **An important element of the arrangements would be constant monitoring and systematic audit of police investigations and informal resolutions.**
- 13.46** This arrangement would create the necessity for dialogue between the Ombudsman and the police, and would give the police an interest in developing a constructive working relationship. For this reason **it would be better not to specify the category of complaints to be investigated in the statute, except to the extent that serious cases involving death, serious injury and possible serious abuse of power or corruption should always fall to be investigated by the Ombudsman.** The other thresholds between informal resolution, police investigation, supervised investigation and independent investigation would be set by the Ombudsman and could be moved over time when in his/her judgement, public confidence in the police warrants this and should probably be expressed in protocols agreed between the Ombudsman and Chief Constable and published.
- 13.47** The metaphor that comes to mind is of the concept of 'sale and lease back'. The Ombudsman will initially take control of all complaints, but would progressively delegate some of the investigation to the police as public confidence is established.
- 13.48** In effect my proposal is for complainants to enter a contract with the Complaints Body which both parties undertake to see the process through to the best of their ability. The Complaints Body retains overall responsibility and the complainant's contract is with him/her but some cases might be sub-contracted to the police for investigation. As confidence increases in the subcontractor I can foresee it being given more work.
- 13.49** As I have remarked, the presumption in the early days should be that the Ombudsman would investigate in most cases except where informal resolution is appropriate. In any case, the discretion to remit should be exercised with care. While some people have agreed that the Complaints Body should concentrate on the really serious cases, it has also been pointed out to me that more minor cases can often arouse more public concern and are often less expertly handled than the serious ones.

- 13.50** Maguire and Corbett<sup>1</sup> also focus on this when considering the merit of mandatory supervision:

*"The case can certainly be argued for ... giving members (of the PCA) a free choice on supervision, encouraging them to take on fewer cases, which they then would have time to supervise more actively. On the other hand, complaints of assault (some of which might be excluded because of the low chances of substantiation) in whatever circumstances they occur, can be argued to be among the most serious of all. This is not only by dint of the injuries caused, but because, if genuine, they represent an abuse of the crucial power which marks off the police from the rest of society - the right, where necessary, to use force to uphold the law."*

- 13.51** **The importance of settling complaints at the lowest level possible cannot be stated too often.** Informal resolution, following a complaint to the Ombudsman, would be appropriate in cases such as complaints of incivility, failure to provide a 'service', impropriety in connection with a search (unless damage was alleged), minor irregularities in procedure, neglect of duty, obscene or improper language (but not where the language complained of was racist, sectarian or defamatory), any case where if it were a member of the public proceedings would not be taken, eg minor traffic breaches and cases of assault such as a mere push (without any aggravating feature such as intimidation) or any matter where the appropriate response for a supervising officer would normally be a word of advice given at the time [based on Meadus].<sup>2</sup>

- 13.52** The crucial factor is that all complaints would come to the Ombudsman.

- 13.53** Admissible complaints are broken down into categories requiring independent investigation, investigation by police under supervision, police investigation or informal resolution. At this stage the Complaints Body may choose, as the Ombudsman does in Northern Ireland, or as the bodies do in, for example, New South Wales and Queensland, to carry out a preliminary sift or investigation of cases which are not clear or where a little more information is needed. The idea is that this will avoid full investigations for some cases and identify the right kind of investigation for others.

- 13.54** My experience as Ombudsman showed me the value of this preliminary stage - it undoubtedly cut out delays later. Justice Wood<sup>3</sup> comments in his interim report:

*"This power is widely regarded as fundamental to an effective complaints system."*

- 13.55** Serious cases requiring rapid reaction would, of course, prompt immediate action to begin an investigation.

- 13.56** The advantages of this three-tier, yet flexible, system are that it would leave complainants, solicitors etc. clear that the Ombudsman is in charge and is responsible, while involving the police too. It reduces wasted effort and unnecessary use of resources by using a preliminary sift and by the Ombudsman alone considering whether criminal charges or disciplinary action is appropriate.

<sup>1</sup>Maguire and Corbett, *A Study of Police Complaints*, 1991, ISBN 0-11-341007-7

<sup>2</sup>*Unpeeling Tradition: Contemporary Policing*: Eds Keith Bryett and Colleen Lewis ISBN 0-7329-2786-2 MacMillan Education (Australia)

<sup>3</sup>The Hon Justice J R T Wood, *Royal Commission into the New South Wales Police Service, Interim Report*, February 1996, p 85



- 13.57** There are two main reasons for leaving the police with an investigative role in the longer term. First, they will have to have some capacity to manage internal disciplinary cases, but it also gives the police some ownership of and involvement in the complaints process generally. Furthermore, in time it may well be that the number of cases referred to the police by the Ombudsman would be increased as public confidence in the system increases and thresholds move to accommodate developments in informal resolution, and a greater degree of self-regulation.
- 13.58** A flow chart showing the new system is given at Annex 6.
- 13.59** The next question is how the system would work in practice. Again I have given this a good deal of thought. Certain key points kept arising.

### *Investigators*

- 13.60** My proposed arrangement involves the Ombudsman in the investigation of complaints. The questions are will this work and where will he/she get his/her investigators from?
- 13.61** The arguments for police investigators have been made on many occasions. They have particular skills, they know the culture and are, essentially, accepted by the police service. There is also an argument that it makes the police more responsible and concerned about their discipline. On the other side it is argued that such a system cannot gain public confidence.
- 13.62** The arguments for independent investigators are also well documented. There are such investigators in the Customs & Excise, Inland Revenue, Immigration and the Department of Health, for example. They bring a different experience and although they would not be overly familiar with police practices they do have experience in, for instance, interviewing, preserving and compiling evidence etc. Above all what they have is independence. The major potential difficulties are the removal of police responsibility and the ability of investigators to "break in" to the culture by making contacts with the police and knowing their way around. I have seen ICPC cases where it was the persistence and local knowledge of the police investigators which provided the breakthrough. It is also argued that if the police were to be totally divorced from the system then they would be resentful and would make strenuous efforts to be uncooperative. Resource considerations are also relevant.
- 13.63** I have considered the weight of the arguments carefully and, going back to the principles, I want to see a system which places the emphasis on public confidence (a point reflected in the recently appointed Chief Constable's comments), while not losing police confidence or co-operation.
- 13.64** Therefore, **I have proposed that the Ombudsman should have his/her own body of investigators. I have been impressed by the quality of the investigative staff in the ICPC (and indeed all the support staff) and I would anticipate that they would provide a valuable nucleus on which to build a core investigative staff for the new office<sup>1</sup>. Others could be civilians such as lawyers or investigators from the bodies I have mentioned above. They could also include former police who served in Great Britain forces.** The difficult question is whether or not they should also include former RUC officers or serving police officers on secondment<sup>2</sup>. In Queensland, for example, investigations are carried out by seconded state police officers.

<sup>1</sup>I would expect the other staff to form the administrative management support. There would also be advantage in a regular exchange of staff with the Assembly Ombudsman and other regulatory bodies

<sup>2</sup>Secondment is not possible under current legislation in Northern Ireland



- 13.65** This will depend to some extent on the number of investigators required. There is certainly an argument that while the body is finding its feet it ought to have police expertise available to it. This may come from former officers from outside the RUC but obviously RUC officers would have local knowledge and could be valuable to the bodies' investigation teams and may help its acceptability to the police. The counter-argument, and I recognise the strength of this, is that the public's confidence would be dashed; "surely this is still the police investigating the police" would be the cry.
- 13.66** I am confident that this would not be the case, but the difficult decision is whether a police presence is sufficiently important to the success of the body to warrant the possible damage to its credibility. The systems in Ontario, New Zealand and especially Queensland have, in different circumstances to Northern Ireland, found the use of seconded officers as invaluable. New South Wales uses officers from outside the area.
- 13.67** **After much thought my recommendation is that the Ombudsman should seek to maintain a balanced and diverse staff drawn from a wide range of backgrounds, and that this balance may change over time but that RUC officers could be involved, whether as direct recruits or on secondment, at the discretion of the Ombudsman. Although public credibility of the system is paramount, the importance of having some officers with a knowledge of local policing structures and procedures should not be discounted lightly.**
- 13.68** **In addition, the Ombudsman should select and recruit the officers.** As the Labour Party's paper on policing in Northern Ireland said<sup>1</sup>, **they should be high flying officers seconded for a short period.** The experience of other jurisdictions, and my own as Ombudsman, was the importance of choosing one's own staff to ensure suitability and quality rather than depending on assignment or secondment. The knock on effect would be that the police would not see the postings as dead-end ones but rather as developmental. There is also an argument that service with the Ombudsman should be a requirement for middle-ranking officers seeking advancement, however, this is an issue for others.

### *Complaints where a crime is alleged*

- 13.69** The principle of independent control means that the Ombudsman should decide how complaints should be investigated, and by whom. Where there is a serious allegation involving a death, or serious injury, a shooting or other specified event, the Ombudsman would be required to conduct the investigation. In other cases he/she would have the options of an independent investigation, investigation by the police, supervised if necessary (with the Ombudsman making decisions and having the power to direct a review or repossess the investigation) or informal resolution.
- 13.70** **On the model I am recommending, therefore, the Ombudsman would have the responsibility to investigate a complaint where a criminal offence may have been committed by a police officer.** At present these are investigated by the police, as is all crime. If there is to be an independent investigation, it is important that the Ombudsman is in at the start before there can be any question of evidence being tampered with or lost and while the events are fresh in the minds of witnesses. Credibility demands no less. The public is not reassured by police officers investigating other police officers for criminal, any more than non-criminal, charges. Equally, of course, police officers are entitled to no lower standards of investigation, and no less degree of protection than any other citizen.

<sup>1</sup>Labour Party Consultation Paper April 1996, "Policing in Northern Ireland, A service for all people"



- 13.71** For the sake of clarity I want to spell out what I mean by investigation of criminal matters. I mean criminal acts by a police officer, not by any member of the public. The Ombudsman could, at his/her discretion, be involved automatically if there is a serious incident involving a police officer. This would be the case whether or not there was a complaint and whether or not the possible offence was a crime or against discipline.
- 13.72** In cases where there is one main actor, and that a police officer, and where a civilian is involved only as a victim, or where the offence complained of relates to the actions of the officer and any possible criminality in the actions of the civilian concerned is clearly subordinate to the seriousness of the main charge, the Ombudsman would carry out the only investigation.
- 13.73** If, however, the behaviour complained of occurred in the course of apprehending someone who was themselves involved in criminal activity, and where the officer's actions are clearly subsidiary and of a level not to constitute a crime, if proven, but a disciplinary offence, then it would be for CID to investigate the criminal aspects and for the Ombudsman's investigation to concentrate on the actions of the officer which form the basis of the complaint.
- 13.74** In cases where there was potential criminality on both sides, **the Ombudsman, while taking precedence**, would agree a sensible division of responsibility with the police for the investigation of the behaviour of the officer on the one hand and the potentially criminal activities of the complainant on the other, and the two would be investigated in tandem.
- 13.75** **The vesting of the "priority" in the Ombudsman is an important safeguard and is necessary to ensure public confidence.** Annex 5 gives examples of types of cases and how they might be handled.
- 13.76** In our current system it is often argued that all suspected crimes are investigated by the police and that the complaints body should not stray into criminal investigations; put simply, the Chief Constable has an unquestionable constitutional responsibility to investigate crime and only the police should do so.
- 13.77** I cannot agree. Crimes are investigated not only by police, but by the Inland Revenue, Serious Fraud Office and others. Furthermore I cannot see any insurmountable practical reason why trained and competent civilians cannot do this work, especially where they are supported by others with police training and experience. The Special Investigation Unit in Ontario investigates nothing but possible serious crimes by the police, and the Criminal Justice Commission in Queensland investigate them using its teams (which include police and ex-police).
- 13.78** My recommendation here is not intended to reflect a lack of faith in police investigation. Rather it is a measure aimed at enhancing public confidence and, to a lesser extent, at removing duplication. The police would, as now, have a general duty to preserve evidence and to co-operate with the investigation. In cases where manpower was needed in numbers at short notice in the course of an investigation to comb a site or for house to house enquiries, the Ombudsman should be able to call on the Chief Constable and the local police to provide assistance.

- 13.79** This approach avoids the duplication, even the triplication, of having the ground tramped over by CID, by Complaints and Discipline and by the ICPC. The model I recommend is, in effect, a fusion of the functions of two bodies in Canada, the Commissioner for Police Complaints (which works through the police) and the Special Investigation Unit (which independently investigates allegations of serious crime by police officers) - which in the opinion of many people in Canada might well be merged there too.

### *Discipline*

- 13.80** In cases where the question of criminal prosecution did not arise, or where the DPP had decided against prosecution, **the Ombudsman should make a recommendation for disciplinary action to the Chief Constable<sup>1</sup>. If the Chief Constable agrees, or the Ombudsman is convinced by his arguments, then the case would be heard by the police, with the normal appeal mechanisms. If the Chief Constable disagrees then (if the Ombudsman was not convinced by his arguments) the case would then go to an independent tribunal at which the case would be presented by the Ombudsman (see Chapter 6). Again the question of discipline once the facts had been established would be a matter for the Chief Constable<sup>2</sup>.**
- 13.81** I have mentioned the need for the system to be dynamic. This is the case here too. Over time the Ombudsman could devolve certain cases or groups of cases back to the police for investigation to consider and to deal with all disciplinary aspects.

<sup>1</sup>Or Police Authority for senior officers. This procedure would apply whether or not the Ombudsman had remitted the original file to the police for investigation

<sup>2</sup>Or Police Authority for senior officers



# 14. Costs And Staffing

- 14.1** It is convenient to deal here with the question of the resources needed for the body as a whole. Obviously, most of its costs would be on staff and most of its staff will be investigators. Such operations do not come cheap, but in the words of Lord Scarman<sup>1</sup>:

*"Government has to decide whether the gain in public confidence which would accrue outweighs the resource and financial costs concerned."*

- 14.2** I do believe that there is already enough money in the system to fund the activities of the Ombudsman, if it were reallocated.
- 14.3** Clearly the Ombudsman needs extra resources compared to the ICPC to meet the additional staffing costs, to commission forensic work, etc and to undertake analyses of trends, training and to increase his/her public profile.

## Deputies

- 14.4** I have dealt with the investigation and support staff elements earlier. **There should also, probably, be two full-time deputies one of whom should be legally qualified, and it would be an advantage if the other had senior police experience. Both should be graded at a level to deal comfortably with senior police and civil servants.** A possible organisation chart is given in Annex 7.

## Running Costs

- 14.5** I think it is important to consider resources in two respects. The first is more straightforward: the overall cost of the core activities of the office. On this I **recommend that the cost of the office be a separate vote, funded through the Northern Ireland Block, as is currently the case for the Assembly Ombudsman and the Northern Ireland Audit Office (or if handled through the Northern Ireland Block under the control of the Secretary of State, be treated as if it were separate).**
- 14.6** The other issue is more difficult: the need to be able to meet costs associated with abnormally expensive (probably high profile, or prolonged) cases<sup>2</sup>. The Ombudsman should not be neutered through a lack of funds.
- 14.7** **For general running costs I anticipate that a total figure of a little over £2m<sup>3</sup> would be adequate.** As I will explain, this could be offset by savings in Complaints and Discipline and the transfer of resources from PANI to the Ombudsman's office.

<sup>1</sup>1981 Report into the Brixton Riots, Cmnd 8427

<sup>2</sup>These could be cases where the Complaints Body is investigating an act by an officer and there is no police criminal investigation of anything else. For example an officer acting "on a frolic of his/her own". The body would have to arrange, and pay for, forensic tests, interviews etc. Although I would expect the local police commander to assist by providing police resources where labour intensive duties, such as combing a field, are required. He would have to do this now and it should be no different under my proposed scheme

<sup>3</sup>The ICPC currently costs £850K and C&D £6,000K, although in the latter case this is a gross figure making allowances for notional costs/overheads

- 14.8** I believe that changes in the culture of policing, the modernisation of the system of internal discipline and the avoidance of duplication will allow for substantial savings in Complaints and Discipline Department. These, if transferred to the Ombudsman's office should be enough to fund the normal operations of that office. If there was an extraordinarily complex and lengthy investigation of a criminal case, this would have had to be funded by PANI in any case, and the transfer of responsibility to the Ombudsman would require not extra expense but a change in the accounting procedure. I believe that a hard look at value for money would confirm that both normal and extraordinary expenditure could be contained within what is currently being spent.
- 14.9** It is also worth bearing in mind that the duplication in the current system will effectively be removed. The reclassification of disciplinary offences as misconduct<sup>1</sup>, coupled with the expansion of the informal resolution category should reduce the number of formal investigations required and thereby free up resources which can then be reallocated. There would, I expect, be some increase in the number of cases if my recommended model gains public confidence, but I anticipate that this would be less than the number moved out of the formal investigation category for informal resolution.
- 14.10** The RUC currently has 6 team leading Superintendents and 32 investigators in Complaints and Discipline Department dealing with public complaints and internal discipline<sup>2</sup>. Thirteen sergeants and constables act as assistant investigators and there is administrative support. The Branch also calls on outside offices to carry out informal resolutions and for internal investigation. The ICPC has 9 members, all but one part-timers (roughly the equivalent of 4 full-time staff).
- 14.11** Last year around 1,400 complaints were "fully" investigated; for the reasons mentioned above this figure should drop. About 360 of these cases were supervised by the ICPC.
- 14.12** Assuming for argument's sake that the complaints body investigates 1,000 cases and the police 400, then Complaints and Discipline would require at most two-fifths of the number of investigators it has at present. This would potentially release 4 Superintendents, 14 Chief Inspectors, 5 Inspectors, 4 Sergeants and 4 Constables to a value, using crude net figures, of £1,300K in salaries and overheads.
- 14.13** Although the saving identified is a notional amount, the RUC complement could be reduced (clearly this could not be done overnight) and the "money saved" transferred to the Complaints Body to add to the £200K the ICPC has for members' remuneration<sup>3</sup>. There could also be a restructuring of the staffing arrangement in the ICPC which would "release" or transfer some of the £430K support staff costs for investigation.
- 14.14** As mentioned earlier staff could be assembled from other parts of the public service such as Customs and Excise, Inland Revenue and DHSS, from serving or seconded or retired police officers from the RUC and other forces and more generally to give a range of investigative/mediation human relations and personnel management skills. My preliminary enquiries indicate that

<sup>1</sup>To flow from the Police (Amendment) (Northern Ireland) Order 1995

<sup>2</sup>These investigators may have to deal with internal discipline, but around 95% of their time is spent on external complaints. Internal cases are normally handled by investigators outside C&D. Under the Government's proposals for reform of discipline they would, however, gain a role in investigating allegations of misconduct (that is serious disciplinary breaches). The number of cases is predicted to be relatively low

<sup>3</sup>Some of this would have to be allocated for the Chairperson's costs etc



investigating and supervisory officers in the ICPC, civilian investigators elsewhere and lawyers are paid at rates substantially lower than officers with equivalent responsibilities in Complaints and Discipline. Compared to the cost of the current arrangements there is room for significant savings which would be used for additional investigators as well as policy and support staff.

- 4.15 I anticipate that the body would have maybe 30 investigation-type staff** (instead of the 9 members and around 10 support staff of the ICPC). **This increase is important, there is more work required of the body in terms of control; keeping parties informed; handling cases through to conclusion; and presentation to hearings.**
- 4.16** While discussing staffing I should mention a small but important point. The ICPC currently splits its main body of staff into two. One section dealing with supervision of cases on behalf of members and the other disciplinary aspects of cases. I am not convinced of the need for this split for the new Body. I can see the argument for having two members, and two sets of staff, examining cases, but for efficiency and continuity **I think it is better for the investigation staff to see a case through from receipt to the end. In other words to the DPP (if appropriate) through the criminal process (again if applicable) and then on to discipline, including presenting the case to any tribunal. This would reduce duplication and delay.**
- 4.17** As I have mentioned, a problem could arise with a long and complex investigation which would require a large number of people and where costs would easily outstrip the budget for the office. In such circumstances the Ombudsman should have the capacity to expand quickly, to assemble a team of investigators, or perhaps contract out the investigation to another UK police force.
- 4.18** The funding of these, hopefully exceptional, cases appears more difficult. **I believe it requires a formula for transfer of funds from the PANI vote to the Ombudsman. This solution takes account of the fact that currently PANI would be meeting the costs of these cases. It is, however, an important issue which must be dealt with.**
- 4.19** Complaints bodies in other jurisdictions which appear strong on paper have often been unable to carry out independent investigations, even where permitted by statute, because of resource starvation. It would be catastrophic for the proposed body if it were unable to conduct a proper investigation into a high profile case. The question, therefore, is how to ensure the Ombudsman can undertake these investigations without bankrupting his/her office while at the same time ensuring that he/she takes account of the need for financial stringency. **I recommend that the Body should also have a statutory duty to carry out investigations into all deaths, suicides in custody, and incidents where firearms are discharged<sup>1</sup>. This not only ensures it looks at these cases, which public confidence demands, but also would give any bids it needs to make for additional resources extra weight.**
- 4.20** I also recommend, however, that a case review or case management mechanism should be established for the high profile investigations. **This would provide for an uninvolved member of staff at the Complaints Body to review progress and resource allocation on serious cases on, say, a monthly basis.** This is an approach currently used by some police services for major crime investigations.

<sup>1</sup> The precise categories need to be tied down by agreement between the parties



# 15. Access To The System/Openness

- 15.1** I have looked carefully at the question of access from the point of view of the "customer". This is obviously important in terms of securing the confidence and satisfaction of complainants. It covers a number of things, including not just the physical environment in which a complainant is expected to lodge their complaint and to be interviewed, but also covers the "comfort" of a complainant in a different sense. For example, how well publicised the ways of making a complaint are. I would also regard the need to keep complainants involved in the system, and informed of progress, as well as the way they are treated by the investigating officers, as important elements. People should be able to make a complaint almost anywhere.
- 15.2** It must be recognised that police stations in Northern Ireland are not welcoming structures and that even if they were, many people would not be comfortable visiting them. **Insofar as this is possible, therefore, interviews should be arranged for more neutral venues. This might include the complainant's home, a solicitor's office, or the Ombudsman's offices.** There are, of course, security considerations for the police to bear in mind, but these should be less if the investigating officer is from the independent office. It may be that the use of civilian investigators may also make complainants feel more at ease with the system.
- 15.3** **There would also be merit in extending the ways in which a complaint can be lodged. Certainly the complainant should still be able to lodge a complaint through a solicitor, with the Ombudsman's office or at a police station or PANI (and third party complaints should still be permitted) but complaints might also be made via Citizen's Advice Bureaux and I recommend that the Ombudsman should reach agreement with organisations like the CAB on this or through district councillors or elected representatives and at district council offices.** In addition, however, as I have seen in other jurisdictions such as in Ontario, and like the Northern Ireland Ombudsman, **there would also be merit in having a free-phone number for complainants,** not least to show that the system is completely open and there are no barriers placed in the way of complainants.
- 15.4** One of the aspects of the current system that complainants involved in formal investigations find unsatisfactory and off-putting was the way that they were treated during the investigation. They did not feel that they were involved in the process, let alone kept informed of developments. Clearly this points to the advantages of informal resolution, but this is not suitable in every case. **I recommend monthly reports to complainants or their solicitors (and to the accused officer) setting out the action taken on a case in the previous month.** This may not always contain a great deal of information but at the least the complainant will know the case is still alive and the police or the Ombudsman's investigator will have to account for their custody of the case. Complainants should know what is happening and why there are delays.



I mentioned earlier the continued provision of a leaflet to complainants on informal resolution. **There should also be a more general leaflet, not wholly unlike the ICPC one, given to complainants at the outset of the process setting out the various steps and timescales.** This, coupled with the monthly reporting, should enable them to understand the process better.

**15.5** There is one area in which some feel that the access provisions are too generous to complainants. There is an effective 12-month time period within which complaints must be made (unless they can show good reason for the delay). There is an argument, and a valid one, that the earlier complaints are lodged the more effective the investigation can be. Clearly witnesses, forensic evidence and so on is more likely to be available in the hours or days after an incident than in the months after it. **There is much to be said for aligning this with the current Ombudsman legislation where complaints must be made within 6 months, but with the Ombudsman having discretion to extend the limit for reasons given, and I recommend this.**

**15.6** In their book advising on how to take actions against the police Harrison and Cragg state<sup>1</sup>:

*"If a complaint is to be made, it should be made early on, while events are still fresh in the minds of the complainant, the officer and any witnesses"*

**15.7** **Another important element in openness is the provision of a detailed concluding report to the complainant.** My experience of cases in Northern Ireland is that fairly standard letters are sent out to complainants which do not really do justice to the investigation that is taking place or satisfy sufficiently the complainant's interest in the case. **In other jurisdictions, New Zealand being an example, a full copy of the investigating officer's report is sent to the complainant unless it contains sensitive information. I think that we should move in this direction.** The problems of the disclosure of investigating officer's reports (and they are not currently disclosed unless the court directs otherwise) would be lessened.

**15.8** **More attention needs to be paid generally to the language in letters, leaflets and other documents. As far as possible they should be clear, in plain words, trying to convey essential information to the ordinary person as helpfully as possible.**

<sup>1</sup>Police Misconduct: Legal Remedies - 3rd edition, 1995 ISBN 0-905099-58-3

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# *16. Complaints Which Are Malicious, Repetitious Or Incapable Of Investigation*

- 16.1** The Royal Ulster Constabulary (Complaints etc.) Regulations 1988<sup>1</sup> provide that the ICPC may, at the request of the RUC, dispense with complaints which are anonymous, repetitious or incapable of investigation. In the latter case before seeking dispensation, the police will write to the complainant and any solicitor to make them aware that unless they co-operate then dispensation will be requested. The request is accompanied by such papers as are available and a note setting out the reasons for the request. This provision was extended by the Royal Ulster Constabulary (Complaints etc.) (Amendment) Regulations 1990 to include complaints that were vexatious, oppressive or otherwise an abuse of complaints procedures.
- 16.2** The reason for these provisions appears to be twofold: to stop the system becoming clogged up and also as a recognition that police officers are vulnerable to malicious complaints. "Police officers are ... particularly vulnerable to malicious and fabricated accusations of a nature not normally made against other professions and often designed to protect the complainant from prosecution"<sup>2</sup>. In 1995 the ICPC granted dispensations in 572 of the 2,627 cases closed, a fifth of all cases. It is also relevant to note that a further fifth, 572 cases, were withdrawn.
- 16.3** There are two points for consideration here. Whether or not more can or should be done to exclude certain types of complaints and what can be done to encourage complainants to co-operate.

## *Exclusion of Complainants*

- 16.4** The Police Federation<sup>3</sup> made the point to me that malicious or vexatious complaints left their members under a shadow while an investigating officer tried to get the complainant to co-operate, which often they did not do. The Federation advocated a new provision which would make malicious complaints a criminal offence, or allow police officers to take legal action against those who make them.

<sup>1</sup>1988 No 9, see also the Schedule

<sup>2</sup>Viscount Runciman, Report by the Royal Commission on Criminal Justice, July 1993 Cm 2263

<sup>3</sup>The police representative body for officers of Chief Inspector rank and below



- 16.5** I can understand the Federation's point and I have a great deal of sympathy with their argument and with the hardship to police officers which prompts it. I do not think, however, that introducing a new criminal offence is a satisfactory answer. In fact officers could bring civil cases against complainants or a charge of wasting police time could be brought with the Director of Public Prosecutions' agreement. This offence is committed if police employment is wasted by a person making a false report tending to show that an offence has been committed or that they have information that is material to a police enquiry<sup>1</sup>.
- 16.6** I do not pretend that these avenues are wise or likely to be successful. Indeed I know of only one case where the Garda Síochána brought a case of wasting police time and that was unsuccessful. In Queensland, where an offence of "making a false complaint" is in place it is very rarely used, for fear of deterring genuine complaints. It should be mentioned, however, that the offence pre-dates the complaints system. In addition, it is interesting to note that where the offence is proven the court can award costs, including the costs of the wasted police investigation, against the false complainant.
- 16.7** Avenues already exist in Northern Ireland. I do not think that new offences will help. We are seeking to establish public trust and confidence in the complaints system and, frankly, the inclusion of a provision of this nature would give the wrong signal.
- 16.8** That is not to say that the problem should be ignored, but I think it should be, and can be, tackled on a different front along with the problem of anonymous, repetitious etc. cases. Laurence Lustgarten illustrates the point:
- "The police are ... highly vulnerable to false complaints, because discrediting them may deflect attention from or minimise the alleged victim's own criminality. That fact does not, however, imply that allegations of police misconduct by offenders should be deemed prima facie false, or that they formally or in practice require more substantive proof than where a 'respectable' person is involved. Much police misconduct does indeed involve lawbreakers, but the judicial process exists to impose sanctions upon them and they do not otherwise forfeit their liberties. It simply means that the mechanisms for adjudicating misconduct must employ a process of factfinding not unduly weighted in favour of either complainants or constables."*<sup>2</sup>
- 16.9** It is also worth quoting from Maguire and Corbett's study from a section about motivation behind complaints.
- "Although it is virtually received wisdom among police officers that the majority of complaints are made by criminals in the hope of affecting the outcome of charges against them, this was not borne out by our evidence. Most of the 'criminal' complainants we interviewed doubted that complaints were effective in this way, and seemed any way to have had other motives for complaining: like most other complainants, they believed they had been treated wrongly and wanted this recognised and 'put right'. Most of them, too, despite adversarial contact with the police in the past, were complaining for the first time in their lives."*<sup>3</sup>
- 16.10** It is true too that some complainants are paranoid. It is also true that paranoids sometimes have a legitimate complaint which should be heard.

<sup>1</sup>Criminal Law Act (Northern Ireland) 1967 s5(3)

<sup>2</sup>The Governance of Police, 1986, ISBN 0-421-31910-0

<sup>3</sup>A study of the Police Complaints System, 1981, HMSO, ISBN 0-11-341007-7

- 16.11** In the first place the system I am proposing should be speedier (where criminal considerations against a complainant do not hold things up) and more open so that the officer subject to complaint knows where the process has got to. More fundamentally, however, the transfer of the control over the system to the Complaints Body removes the problem currently faced where the police do not like to seek dispensation and will not unless they have pursued the case as far they can. They do not want to be seen giving up on cases. From a public perception point of view this is understandable.
- 16.12** However, the Ombudsman, being independent, will be able to sift cases out much sooner, possibly by using a preliminary investigation. He/she will also be able to discontinue cases at later stages. It would be sensible, of course, for the complaints body to continue the practice of giving complainants (and solicitors) a final chance to cooperate or explain their case before discontinuing it.
- 16.13** It would, however, help to meet some of the worries by the police if the Police Ombudsman were explicitly given the discretion to refuse, or discontinue the investigation of a complaint which he has grounds to believe is malicious or vexatious, or where he/she has found bad faith in the complainant.

### *Co-operation of Complainants*

- 16.14** It is also important to consider what can be done to encourage complainants to pursue complaints. As I began my review I was aware of a feeling among police officers and ICPC staff that complaints were lodged by solicitors or complainants for tactical reasons, mainly because they were also making civil claims against the police or because they had been charged by the police (around half of complaints are of assault and these often follow an arrest and charge). I was subsequently aware through my survey that complainants using solicitors were less satisfied with the process than almost any other users.
- 16.15** My initial view was that this problem was not healthy but that not much could be done. I thought the lowering of the standard of proof might have a bearing, and the police should continue to look at trends in this area to feedback lessons to management on scenarios that lead to such complaints. Also the Ombudsman could seek to discontinue such cases where co-operation is not forthcoming. As I have mentioned the complainant is contracting with the complaints body and the complainant's side of the deal is to co-operate to the best of his or her ability.
- 16.16** However, I soon realised that this issue was more complex. I met representatives of the Law Society's Criminal Lawyers Committee and of the solicitors who most often use the complaints system. The message from both was the same, and hard hitting. They advised their clients not to complain or, if they did, not to co-operate. Solicitors felt that if clients did co-operate then they could find their statement used against them in any charges they faced.
- 16.17** This position on complaining is illustrated by the comments of John Wadham, legal director of Liberty<sup>1</sup>.

*"If you sue and the case gets to court, it means the police officer has to defend his or her actions in open court in front of a jury .... If you make a complaint, you are relegated to the position of bystander. Our advice would be only complain if there is a tactical virtue in it".*

<sup>1</sup>Quoted in the Independent 6 September 1995



- 16.18** More worryingly the solicitors also related tales (and I do not know, and nor did they, how widespread the practices are) about deals being done by Complaints and Discipline staff at the back of the courts and of "honest first time complainants" lodging complaints about police behaviour, only to end up being charged<sup>1</sup>. This latter point had led solicitors to advise clients that the dangers of complaining or at least co-operating outweighed the benefit.
- 16.19** I have to say that these frank comments were a poor reflection on the complaints system. Clearly if true they are unacceptable practices. There can be no more justification for them than there is for pressure on complainants to withdraw.
- 16.20** Under my proposed system complainants and solicitors should be reassured to some extent by the fact that control of complaints will no longer be in police hands. This should remove the possibility of bargaining at the back of court. On the question of charges being laid because of a complaint this could I fear still happen, but I would hope police management would be more alive to the issue and the Ombudsman should be watchful of it. Were it picked up internally or by the Ombudsman it could amount to an abuse of authority by the officer.
- 16.21** The concern over the disclosure of the complainant's statement is another matter and to understand it one has to look a little deeper at the process.
- 16.22** A typical scenario might be:
- X scuffles with police officer - both hurt. Officer charges X, X complains via his/her solicitor as well as lodging a civil claim for damages. X's solicitor informs the police that his client will not co-operate with the police on the complaint until after the criminal case against X is finalised. (I am told this is almost always the case.) In the meantime the police take the complaint as far as they can and await the trial. Their investigation of X's alleged crime and the part completed complaint file are sent to the DPP.
- After the case against X is heard the police try to reactivate the complaint. Often X is not interested, it may be 18 months after the incident and he/she could still be pursuing a civil case. If a civil case is ongoing and X will not co-operate then the police will usually seek to draw their complaint report together and submit it to the ICPC for a decision on dispensation. (They do not wait for a civil case, which may be 2 years further away because this is too long and would prejudice the case against the police officer.)
- 16.23** Clearly it would be in the interests of the complaints process for the complainant to cooperate much earlier on. If they do not have a solicitor often they will (the police warn them that their statement will be referred to the DPP). However, the view expressed to me by solicitors was that co-operation meant the complainant's statement on the complaint ended up with those prosecuting the charge against their client and may be used against their client in court. (The solicitor would, of course, have access to the subject officer's statement even though their client did not co-operate but the solicitors doubted the value of this - "the officers knew what to do at interview".)
- 16.24** It occurred to me, therefore, that **a simple solution would be to ban disclosure of statements made by officers and complainants as part of the complaints case - roughly as is done in informal resolution.** In such circumstances a solicitor might be better able to advise his/her client to cooperate in the interests of justice. It would also follow the practice for the Parliamentary Ombudsman where statements made are not admissible in court.
- 16.25** **I recommend that this change should be considered.**

<sup>1</sup>The Committee on the Administration of Justice makes a similar point in its paper "The Misrule of Law - A report on the policing of events during the summer of 1996 in Northern Ireland", published in October 1996 (ISBN 1873 285 434). It states: "There also ... seems to be a fairly widespread assumption - rightly or wrongly - that the police will lay charges against people making complaints, both with a view to discouraging them from pursuing the complaint, and to undermining the force of their complaint"

# 17. Other Issues

## (a) Time Limits

- 17.1** A clear message from my small survey (Annex 9), and from my discussions in other jurisdictions, is the importance of cases being dealt with, and being seen to be dealt with, expeditiously. There are few statutory requirements on complaints but the RUC and ICPC have their own targets<sup>1</sup>. The police currently aim to complete cases in 111 days. Her Majesty's Inspector of Constabulary found, however, in a sample of files that 50% took more than this. The ICPC have various time targets including:-
- to decide on supervision on a complaint in 7 days.
  - to issue 90% of statements within 10 days of receiving an investigation report on a supervised case.
  - on discipline cases to clear 70% of cases in 4 weeks.
  - to reply to letters from complainants or their representative within 10 days.
- 17.2** The most difficult of these is to clear disciplinary cases and I suspect the use of part-time members plays a part in delay.
- 17.3** The problem is not confined to Northern Ireland. In England and Wales there are targets of 120 days for the police and 28 days for the Police Complaints Authority to consider completed investigation files. Last year 64% of supervised cases were completed in the 120-day period and it took an average of 36 days, up from 31 the previous year, to consider completed files.
- 17.4** It is interesting also to look further afield. In New York the public are advised that the exact time taken will depend on the complexity of the investigation and the co-operation of the parties and the process may take from 3-6 months. In New South Wales and the Republic the police are given 6 months to complete investigations, although this can be extended. In Queensland two-thirds of complaints are dealt with by the Commission within 4 weeks.
- 17.5** What is clear is that there are a number of outside factors affecting time limits. For example, police investigation cases cannot be finalised until related criminal proceedings against a complainant are dealt with and inevitably supervised cases take longer because they are generally the most serious ones. In addition, the Director of Public Prosecutions is outside the control of the police and ICPC as are complainants and their solicitors.
- 17.6** Nevertheless I think that more needs to be done. The Ombudsman will have control of the process and should, in consultation with the police and the Director of Public Prosecutions, draw up a document akin to the "voluntary declaration of intent" in England and Wales. The time limits arrived at should be monitored and reviewed and reported upon and complainants and subject officers should be told what to expect and be kept informed of changes.

<sup>1</sup>It would I suggest be helpful for both the Police and ICPC to mention progress in meeting certain key targets in their annual reports



- 17.7** A target of 6 months to clear a complaint should be the norm. The time limit for informal resolution would of course be much less - days preferably, but a month at the outside. The Ombudsman should set targets of clearance rates as performance indicators and measure activity against these.
- 17.8** The Ombudsman would be required to report monthly to the complainant and to the officer complained against on the progress of the investigation. He/she would also issue a report, in clear terms, at the close of the investigation setting out the facts and the reasons for his/her determination of the complaint. This would be supplied to the complainant, the officer concerned and the Chief Constable.

### **(b) Off-Duty Conduct**

- 17.9** In some of the countries I visited a complaint could be made by a civilian against an off-duty police officer. These often arose from domestic or neighbour disputes with no direct relationship to policing. I did not think this was fair. It is of course quite proper for the Chief Constable to require certain standards of behaviour of officers at all times and to protect the good name of the force by disciplinary measures. I am referring only to those cases which arise as a result of a complaint by a civilian. I do not recall the issue arising during my discussions in Northern Ireland, and I think this is because the current guidance on the matter produced by the Secretary of State is about right.

- 17.10** It states:

*"The mere fact that the investigation of an incident (eg a traffic accident) reported by a member of the public, shows that the other party involved is a member of the RUC will not usually be a sufficient reason to justify the matter being recorded as a complaint against a member. Whether it should be so recorded will be very much a matter of judgement taken in light of the circumstances of the particular case. Consideration should be given to the nature and substance of the report made by the member of the public and his reasons for making it. In most cases such a report, relating to off-duty conduct, will only need to be recorded as 'against a member of the police force' if the fact of being a member is essential to the burden of the complaint."*

- 17.11** I recommend that complaints against off-duty police officers should not be investigated by the Ombudsman except in cases where the officer has used (or perhaps abused) the fact that he/she is a police officer.

### **(c) Deployment/Identification**

- 17.12** A particular problem arises on those occasions when local police have to be supplemented by mobile support units. By definition they are generally deployed in situations of special difficulty.
- 17.13** This was raised by some of the political parties and the Committee on the Administration of Justice who were concerned that by attitude and training and lack of local attachment these reinforcements might be less aware of the sensitivities of local communities and might be more likely to generate complaints than the local police who had an ongoing relationship with the communities.

- 17.14 This is a matter to which special attention should be paid in the deployment and tasking of such forces.**
- 17.15** On identification, where all reasonable efforts to identify the culprit or culprits of clearly established misbehaviour have failed on the rocks of group identity I believe that **further thought should be given to the position of the officer immediately in charge. If he/she has failed to maintain proper control of his/her officers for example, through a lack of supervision, then this should lead to disciplinary action.**
- 17.16** The identification issue is also referred to in the next section.

#### *(d) Outcomes*

- 17.17** One of the more minor issues that was raised during the course of my review was the question of expanding the number of options available on the outcome of a case. At present the only options for completed cases are substantiated or unsubstantiated. The ICPC in its submission to me called for a new categorisation enabling it to state that "while it was satisfied that a breach of discipline had occurred, it was unable to ascertain which officer(s) had been responsible". They argue that such a change would allow them to reflect more accurately the outcome of complaints and may play a part in increasing complainant confidence.
- 17.18** Other jurisdictions have varying approaches to this issue. In New Zealand they have a category of "sustained in whole/part". In New York they can determine that a case was substantiated but that the "departmental employee was unknown"<sup>1</sup>. In New South Wales there is a category of "unable to determine".
- 17.19** In Northern Ireland the identification of officers is a problem in a good number of cases and the ICPC believes that the new category, unlike in New York, would be used. **I recommend, therefore, that this category should be available to the Complaints Body.**
- 17.20** I do not think, however, that an additional, or complementary, category of "unable to determine" as seen in new South Wales would be appropriate. I think that this would be a subjective category which could be difficult to distinguish from the unsubstantiated one. In any event I believe that the changes I have proposed, and in particular a change in the standard of proof in disciplinary cases, should mean that it is easier to determine cases one way or another.

#### *(e) Director of Public Prosecutions*

- 17.21** I met the Director during my review. I have mentioned elsewhere **his role in the new system which would be to receive reports, no longer from the police, but from the Ombudsman. He would return them to the Ombudsman with a direction (or a request for further enquiries etc).** The Director, in spite of the discretion given to the Chief Constable under the 1987 Order, has asked the police to refer all cases to him where there is an allegation or a possibility of a criminal offence against an officer. **I suggest that the ambiguity here should be cleared up as it was in England and Wales in the 1994 Police and Magistrates' Courts Act which left the police with no discretion but to refer cases. Obviously in Northern Ireland this would apply to the Ombudsman.**

<sup>1</sup>It seems, however, that this category is very seldom used. For example the January-June 1995 report shows that no cases fell into this category. The reason appears to be that investigations are truncated in these cases. The same report says that 102 cases were truncated because they could not identify the officers



- 17.22** I also think that there is scope for discussion between the ICPC, or its replacement, the police and the DPP about time limits and reducing delays. Again, I dealt with this subject in more depth elsewhere.

*(f) Administrative Accountability*

- 17.23** **The Police Ombudsman should be added to the schedule of bodies in the jurisdiction of the Assembly Ombudsman. This would provide for the investigation of complaints about maladministration of the Police Ombudsman in the exercise of his/her administrative functions without, of course, forming a court of appeal against his/her decision on complaints investigated or policies.** In suggesting this arrangement I have taken account of the fact that the police complaints issue is regarded as a reserved matter and as such accountability etc is normally to Whitehall bodies. My proposal is to make the position of the body comparable to the administrative arrangements that have been made for the Northern Ireland Civil Service group of staff in the Northern Ireland Office.

*(g) Apologising for Mistakes/Compensation*

- 17.24** I was surprised to find that until 10 years or so ago police officers effectively were not allowed to apologise to members of the public. As I understand it they may only do so now with the permission of the Sub-Divisional Commander. Although this may be prudent in very serious cases where corporate liability is at stake, more generally I think it is indicative of an organisation that has a fear of doing wrong, yet it is operating in a society which now accepts that the police are not infallible. It is a little beyond my terms of reference, but **it is change in areas like this that will make the police service more able to relate and interact with complainants and the wider public as well.**
- 17.25** **Where the complainant has been out of pocket in pursuing his/her complaint, or where there has been measurable loss resulting from the police action complained of, for example, the complaint has been substantiated, the Ombudsman should be able in appropriate cases, and entirely at his/her discretion, to recommend to the Chief Constable the payment of an ex gratia sum. I would anticipate that this would be a modest amount, perhaps up to the limit payable in the small claims court. The Ombudsman's recommendation should be a sufficient authority for the Chief Constable to pay.**
- 17.26** **The Ombudsman should also be able to reimburse necessary travelling and other expenses required to enable a complainant to attend for interview or otherwise to pursue his/her complaint. He/she would not normally pay legal expenses, but could do so in exceptional circumstances.**

*(h) Complaints by Minorities*

- 17.27** When I was reviewing a random selection of files in the ICPC I found a complaint made by a member of an ethnic minority. The ICPC decided not to supervise the case. Clearly this was a matter for them rather than me. However, it does raise the point that cases of this kind do need to be given special attention. I would suggest, therefore, that **cases from ethnic minorities and indeed from other minority groups such as the young or travellers or homosexuals should be watched particularly carefully and the statistical systems should be installed which can identify these cases.**

**17.28** The Ombudsman will want to watch for a disproportionately high number of complaints from these groups or, indeed, a disproportionately high number of complaints from these groups which are not upheld<sup>1</sup>.

**(i) Internal Discipline/Training/Prevention**

**17.29** Although not specifically under my terms of reference I found the issue of police internal disciplinary arrangements a frequent part of my discussions. It undoubtedly has an effect on police culture, and as complaints might lead to disciplinary action, on these too and it is worth covering in my report.

**17.30** That discipline is taken seriously is endorsed by the figures in the Chief Constable's report for 1995. During that year constructive discussion, advice and admonishment was given in respect of 115 cases of complaint from members of the public and of 238 cases of indiscipline reported by senior officers. In the same year formal disciplinary charges were heard and completed against 67 officers (49 internal and 18 as a result of complaints). Among those disciplined internally, 3 officers were dismissed, 4 were required to resign, 2 were reduced in rank, 1 suffered reduction in pay, 8 were fined, 21 were reprimanded, 7 cautioned and 3 were cleared. Of the cases resulting from complaints, in contrast, the highest sanction was a reprimand in 2 cases and a caution in 3. 13 out of 18 were found not guilty. These figures have led some people to infer that police disciplinary proceedings tend to take a more serious view and to impose higher levels of punishment when the complaint originates with a senior officer rather than with a member of the public.

**17.31** **The Ombudsman would normally not investigate internal disciplinary cases within the police, unless asked to do so by the Chief Constable, but he/she should be kept informed of the number and progress of such cases.**

**17.32** My impression of internal police discipline is that it is unnecessarily draconian and adversarial. Police discipline would appear to be much more severe than in civil service departments, and while it is important that the police officer should maintain the highest standard of probity there is a clear distinction to be made between a serious offence and a trivial misdemeanour.

**17.33** The brigading of Complaints and Discipline in the same department under that title reinforces the notion that a complaint must inevitably be followed by discipline, which is not the case in most occupations. The degree of formality, the adversarial nature of the proceedings and the potentially harsh sanctions make disciplinary proceedings something of a trial for the officer. The length of time during which proceedings can drag out make it worse. All this, I believe contributes to the culture of solidarity which makes middle management reluctant to act and fellow officers slow to break ranks and appear as whistle blowers in a case of improper behaviour of a colleague.

**17.34** I would expect that the development of modern management and personnel practice in the RUC would induce a climate in which minor lapses, whether leading to a complaint or not, are dealt with by management as it arises and that corrective action is educational and advisory rather than punitive or retaliatory.

**17.35** There is much to be said for concentrating on developing professional standards and for committing the best young officers to this work. Indeed there is an argument for making service in a professional standards division, or secondment to the Ombudsman, a requirement for promotion to senior rank.

<sup>1</sup>Home Office research found that complaints by black people were less likely to be upheld than those by white people, Stephens and Willis, ethnic minorities and complaints against the police 1982



- 17.36** The outstanding example I found of a different approach to complaints against the police was in New York.
- 17.37** There they regarded the need for full investigation and oversight as important but they came to the view that this was all about closing the doors after the horse had bolted. They, therefore, put considerable effort and resources into analysing the causes of complaint and then trying to prevent them happening, principally through investing in management and training. The benefits in terms of public/police confidence were clear.
- 17.38** I know that the RUC has its own complaints prevention programme and Her Majesty's Inspector of Constabulary has raised the issue in his reports<sup>1</sup> and I hope with the benefit of better computerised and human analysis of complaints, that they will put resources into developing this programme and other initiatives in conjunction with the Ombudsman.
- 17.39** **I cannot overestimate the importance of action to prevent complaints arising in the first place. This requires the commitment and the visible support of the most senior officers and the development of an ethos of service which permeates the force, a willingness to admit error, to apologise and a refusal to defend the indefensible.**
- 17.40** **Many complaints will be avoided by the examination of policies and procedures and by the regular re-evaluation of equipment and techniques.** The introduction of safeguards such as PACE and tape recording of interviews, for example, have had a marked effect.
- 17.41** **What is more important, however, is to secure a change in the culture, where wrongful behaviour is seen to be a reflection on the whole force and where there is open and frank discussion of the standard of service expected and support rather than recrimination or retaliation for those who admit to honest mistakes.**
- 17.42** **It would help too if more officers were trained in inter-personal skills, in conciliation and mediation and some of this training was shared with other professional groups such as teachers and social workers.**

*(j) "Double Jeopardy"*

- 17.43** At present where a member of the police force has been acquitted of a criminal offence then, effectively, he/she cannot be charged with any offence against discipline which is in substance the same as that offence. Where he/she is convicted then the officer may be charged of the disciplinary offence of having been found guilty of a criminal offence.
- 17.44** A number of those I met mentioned this issue as an area that needed consideration. It is already under consideration by the Government. In the Northern Ireland Office Consultation Paper issued in 1993<sup>2</sup>:

<sup>1</sup>See, for example, HMIC's report into the RUC 1995, ISBN 1-85893-459-1, where he comments on the need to use available information to assist supervisory officers to improve police behaviour, and he suggests the use of a bulletin for constables "in an effort to lessen the number of complaints made against them"

<sup>2</sup>Police Discipline Procedures - A Consultation Paper, August 1993



*"The move to a management approach to misconduct procedures raises important questions about the action which might be proper if an officer charged with a criminal offence is acquitted. A reasonable employer might nevertheless conclude - in individual cases - that the person concerned had not met the standards required for the job. Police managers at present do not have this option. Because the procedures associated with the Discipline Code are so like criminal proceedings, the view has been taken that to take disciplinary proceedings when the outcome of related criminal proceedings is an acquittal would be to place the officer concerned in 'double jeopardy'. An officer therefore cannot be charged with a disciplinary offence which is in substance the same as a criminal charge.*

*The Government believes that this position is untenable when the focus is changed from quasi-judicial disciplinary procedures to proper management action in relation to staff. Notwithstanding that particular behaviour by an officer is found not to be a crime, it may still constitute unacceptable behaviour for a police officer. For example, a police officer who removes property from premises and fails to record having done so, may or may not be committing theft and may or may not be charged and found guilty - but he or she has clearly failed both to obey Force Orders and to fulfil his or her duty of care for the property of members of the public.*

*The implication of this is that whereas the DPP must reach a decision on the need to prosecute or the courts must examine whether an officer is guilty as charged, police managers have an interest in the matter which is quite different in character. The Secretary of State considers that there should in any event be available to police managers, management decisions ranging from taking no action (because the officer is considered entirely free from fault), to the imposition of further training or some form of warning, or the institution of proceedings for unsatisfactory performance or misconduct, depending on the nature of the case."*

- 17.45** The Explanatory Document on the draft Police (Amendment) (Northern Ireland) Order 1995<sup>1</sup> recorded the outcome of the consultation. It stated that the so-called "double jeopardy" rule would be abolished.
- 17.46** This will mean that management will be free to take appropriate action in respect of an officer who has not met police standards (even though he or she may have been acquitted of a criminal offence).
- 17.47** The Police (Amendment) (Northern Ireland) Order 1995 was made in November 1995, although the provisions on complaints and discipline, which I understand are being worked upon, are not yet in operation. **I very much welcome this move, with its emphasis on management by police managers. The removal of the "double jeopardy" rule, which does not operate in most of the countries I visited, ties in with this, and with the proposed, and necessary, change in the standard of proof for disciplinary cases.**

<sup>1</sup>Proposal for a Draft Order in Council, Police (Amendment) (Northern Ireland) Order 1995, Explanatory Document issued by the NIO 25 April 1995



# 18. *Complaints About Police Operational Policy/Standards Of Service*

- 18.1 Although the current police complaints system does not cover complaints against police operational policy, my terms of reference specifically ask me to make recommendations to "accommodate complaints about standards of service and policing policies".
- 18.2 I found it convenient in considering this issue to extend the portmanteau phrase "standards of service and policing policies" to include:
- (1) Standards of service, where the police force or an individual officer fails to provide the standard of service and the sort of response which a citizen might reasonably expect in a particular circumstance, or fails to pursue an inquiry with due diligence.
  - (2) Policing policies: broad policies about how police services should be organised and carried out, the overall numbers of police, the sort and scale of equipment to be used, the broad ordering of priorities and the allocation of budgets.
  - (3) Operational instructions: the arrangements made to deal with the policing of a specific event or series of events, or with the detection or prevention of different forms of crime mainly matters within the professional judgement and competence of a disciplined force.
- 18.3 All of these issues can arise in the investigation of any complaint about the behaviour of an individual officer or group of officers. **If the complaint arises because the officer has exceeded or ignored or wilfully misinterpreted orders, or has behaved in an undisciplined or potentially criminal fashion, or has given instructions to a subordinate which are clearly at odds with force orders or general policy, then these are clearly matters for the Ombudsman and should be investigated by him/her.** If, however, the Ombudsman finds that the officer has behaved properly within the policy, then it would be unjust to hold him/her to account.
- 18.4 **The question then arises how to investigate and adjudicate on the policy issues.** These are not usually matters for an Ombudsman, nor are they easily justiciable. A failure to respond to a call as quickly as the citizen might wish, or a decision to drop a case, might arise from organisational constraints or scarcity of personnel, or a reordering of priorities at divisional or regional level. **In these circumstances, the Ombudsman, while unable to uphold the complaint against the individual officer, could refer the operational issue to the appropriate authority, and would, in an annual or other report, draw attention to those policies or instructions which seemed of their nature to give rise to an inordinate number of complaints.**

- 18.5** It is when the complaint is made against policy or operational instructions in the first place that difficulties arise.
- 18.6** I found the current arrangements to be lacking in clarity, not providing for clear lines of responsibility, tending to produce defensive reactions from the various agencies, and not at all satisfactory to those wishing to complain. Recent comments by the Committee for the Administration of Justice illustrate the point:
- “Complaints have to be made against individual officers and in connection with individual events. It is not at all clear what people do if they want to register a complaint about police tactics in general or about patterns of inappropriate behaviour.”<sup>1</sup>*
- 18.7** Currently this type of complaint is dealt with by the police themselves, with the source of the response depending both on who the complainant was and the nature of the complaint. For example, questions about general policy would invariably be answered by RUC Headquarters or possibly a Divisional Commander, whereas questions about province-wide issues such as drugs might be referred for reply to the Drugs Squad. The RUC Charter states that correspondence will be acknowledged and a full written reply sent within 28 days, or an explanation given for the delay. Few commentators on the more contentious issues seem to be satisfied that this is sufficient.
- 18.8** The ICPC has no role in these complaints (except to the extent that the undisciplined behaviour of individual officers is an issue) and has not asked for one.
- 18.9** PANI, however, does receive a number of complaints of this nature. It deals with those regarded as coming within its remit by seeking reports from the Chief Constable. The Authority would like to be given a specific remit with appropriate powers to investigate this type of complaint.
- 18.10** The Secretary of State receives complaints too about broad policy issues as well as specific events. The policy issues he deals with himself. For the others he would seek a report from the police or the ICPC before replying.
- 18.11** I found the police at all levels to be very anxious to protect their operational independence - and for good reasons. They are reluctant to be put in a position where operational policy could be determined by political rather than professional policing considerations. It is clear, too, that nobody could manage any service satisfactorily in which every operational decision could be questioned, on the run as it were.
- 18.12** Clearly, though, there must be a halfway house between the sort of surveillance and second-guessing which would bring the wheels to a halt and untrammelled freedom on the part of the police to do what they wish in the exercise of operational independence. There must be a forum in which such matters can be raised, policies and actions reviewed and changes made if necessary. The police too must be answerable for their actions. Some authoritative body representing the community, acting on behalf of an aggrieved individual or on its own initiative should be in a position to seek ex post facto explanations and comments from the Chief Constable on a significant issue and require him to justify or account for the police action.
- 18.13** In my view, the proper locus for this discussion is with an energetic, well informed, politically aware, representative and sensible Police Authority which itself carries the confidence and respect of the public.

<sup>1</sup>“The Misrule of law - A report on the policing of events during the summer of 1996 in Northern Ireland”, October 1996, ISBN 1873 285 434



- 18.14 That is not in any way to diminish the role of the Ombudsman. If the operational policies result in discriminatory treatment of any group, or if officers behave in an improper or ill-directed way, or use undue force or lack civility, then there are clearly grounds for complaint against individuals which the Ombudsman might investigate. If in the course of the investigation it becomes clear that it is the policies themselves or the operational decisions which have caused or contributed to the complaints, then the Ombudsman should draw attention to those in his/her reports and advise the police or the Police Authority accordingly.
- 18.15 In keeping with the thrust of my recommendations I **suggest that the Ombudsman should be the focus for all complaints about policing whether the policy issues are incidental or central to the complaint. This would provide a clear route for raising matters of concern and would, I believe, simplify matters for complainants. In those complaints where policy or operational matters were paramount, the Ombudsman would investigate those aspects which involve officer behaviour and possible breaches of discipline or criminal behaviour, having passed on the operational and policy issues to the Chief Constable or PANI as appropriate (or to the Secretary of State where it is his responsibility that is in question) and notifying the complainant accordingly. Conversely, complaints received by the other agencies should be transmitted as quickly as possible to the Ombudsman to consider whether he/she should investigate the disciplinary aspects.**
- 18.16 I recommend, therefore, that the Ombudsman should deal with those aspects of complaints which involve officer behaviour, while being able also to comment on the impact of operational or general policies in generating likely grounds for complaint.
- 18.17 **Operational issues should be a matter for the Chief Constable, answerable to the Police Authority.** Operational independence is valid only within a framework of accountability in which the Chief Constable justifies his stewardship of these substantial powers to the Authority. **The Authority would also be responsible, in turn, for considering complaints about general policies and reviewing or moderating them as necessary.**
- 18.18 This procedure provides a crucial and pivotal role for the Police Authority. Currently PANI has power (under the 1970 Police Act) to hold the Chief Constable to account for the policing service provided to the community. The continuance of this task is envisaged in the White Paper "Foundations for Policing". The White Paper also proposes the further development of Community and Police Liaison Committees (CPLCs) and the introduction of **Policing Plans** as currently in use in England and Wales. These, I understand, will require police at divisional level to lay out their priorities and procedures for discussion with district councillors and other interest groups. **This should, at least, help to forestall standards of service type complaints and to allow for a prior discussion of the possible effects of decisions about policing and operational policies.**
- 18.19 The Plans, in particular, should provide a means for avoiding complaints. As I understand it, they will effect the local implementation of policing objectives set by PANI and the setting of those objectives will themselves involve a significant input from the community. **This should provide a conduit for the community to affect policing policy, to indicate its view of priorities and of the methods and equipment proposed to be used.**

- 18.20** In addition, **CPLCs should have a greater role in the ex post facto accountability of the police. They could use their meetings to ask the police about actions taken in their areas and to have a better dialogue than they seem to manage at present.** The police, too, in a new climate of openness and accountability should be open and forthright in explaining the basis for operational decisions or in accepting criticism where these went wrong.
- 18.21** The opportunity should be taken in the legislation arising from the tripartite review of policing to clarify the role of the Authority and to establish it as the body to which the Chief Constable is responsible for providing a police service for the community.



# 19. Summary Of Recommendations<sup>1</sup>

## *The Police Ombudsman*

- 19.1 A dedicated Police Ombudsman should be appointed who should be an officer of Parliament and required to report annually to Parliament and would have the power to make special reports (paras 11.11-11.16).
- 19.2 The post should be a full-time one held on good behaviour, until retirement and should be filled by a judge or a person of the quality and experience of a senior judicial figure (para 11.17).
- 19.3 The Ombudsman should establish a charter or ethos which should be publicly available (para 11.20).
- 19.4 The Ombudsman's office should be administratively accountable to the Assembly Ombudsman (para 17.23).

## *Control of the Process*

- 19.5 The Ombudsman should have complete control of the complaints process. He should decide what constitutes a complaint and determine how it will be handled and by whom (para 12.7). Control will mean that the Ombudsman can "call him/herself in" for incidents which, were they complaints he/she would want to be involved in (para 12.13).
- 19.6 The Secretary of State and Police Authority for Northern Ireland should retain their "call-in" powers (para 8.11).

## *Investigation*

- 19.7 The Ombudsman would categorise complaints under three headings: serious complaints, possibly involving criminal action (such as death in custody, serious injury etc), which the Complaints Body has a statutory duty to investigate; less serious but still substantial complaints which might, at the discretion of the Complaints body, be remitted to the police for investigation and report, either supervised or unsupervised; and quality of service type complaints which would be remitted to the police for informal resolution (para 13.43).
- 19.8 The Ombudsman would, therefore, have the responsibility to investigate a complaint where a criminal offence may have been committed by a police officer (para 13.70).

<sup>1</sup>These do not include transitional arrangements which are covered in Chapter 20

- 19.9** The Ombudsman should have his/her own body of investigators and should seek to maintain a balanced and diverse staff including ICPC investigative staff, civilian investigators (for example from DHSS, or Customs and Excise) or lawyers. The investigators could also include former police who served in Great Britain forces and could be RUC officers, whether as direct recruits or on secondment, at the discretion of the Ombudsman (paras 13.64 and 13.67). In the latter case the Ombudsman would select and recruit the officers (para 13.68).
- 19.10** The Ombudsman would make recommendations on cases to the Director of Public Prosecutions (paras 14.16 and 17.21) and, once any criminal aspects were concluded, would make recommendations to the Chief Constable on disciplinary action, with the possibility of the case being referred to a disciplinary tribunal where the case would be presented by the Ombudsman. The question of discipline once the facts had been established would be for the Chief Constable (or Police Authority for senior officers) (paras 6.16 and 13.80).
- 19.11** The disciplinary tribunal should be changed to a wholly independent one (paras 6.12 and 6.13).

### *Costs/Staffing*

- 19.12** The Ombudsman should probably have two full-time deputies, one legally qualified and the other possibly with senior police experience (para 14.4).
- 19.13** It is anticipated that the Ombudsman would have around 30 investigation-type staff (para 14.15).
- 19.14** The cost of the office, around £2m, should be a separate vote, funded through the Northern Ireland Block (paras 14.5 and 14.7).
- 19.15** There should be enough money in the system to fund the Ombudsman's office, if the resources are reallocated (para 14.2).
- 19.16** For high profile, expensive cases there should be a formula for transfer of funds from the PANI vote to the Ombudsman (para 14.18).
- 19.17** A case review or case management mechanism in the Complaints Body should be established for the high profile investigations to review progress and resource allocation on serious cases (para 14.20).

### *Reports*

- 19.18** The Ombudsman should, in his/her annual report, in reports on individual cases or in special reports, analyse trends and draw attention to policies and practices which give rise to an inordinate number of complaints. The Ombudsman might also analyse the geographical spread of complaints (paras 4.37 and 11.16).
- 19.19** This is a strong argument for all reports to be published (para 4.38).



### *Informal Resolution*

- 19.20** Progressively more extensive use should be made of informal resolution where this is appropriate, and greater flexibility in the selection of cases for informal resolution. The requirement that a case, if proven, should not lead to a disciplinary or criminal offence is too broad. The Ombudsman should have the power to refer any case for informal resolution (apart from those involving death or serious injury or possible serious corruption). In the main, however, the process should continue to be reserved more for standard of service complaints rather than blatant or serious breaches of discipline of the law (para 5.19).
- 19.21** RUC officers should be designated as informal resolution officers in stations receiving large numbers of complaints, and they should be trained in conciliation, mediation and conflict/resolution techniques (para 5.25).
- 19.22** The Ombudsman should monitor the use made of informal resolution by random detailed review of completed cases, by surveys of complainants and by sampling (para 5.20).

### *Standard of Proof*

- 19.23** There should be a sliding scale determined by the severity of the possible outcome (paras 4.19 and 4.20).

### *Police Authority*

- 19.24** The Authority's current role in investigating complaints should be removed, with it only becoming involved in the process at the stage where decisions on punishment are being considered (para 8.5).

### *Statistics*

- 19.25** Given its control of the system, the Complaints Body should become the focal point for statistics on complaints. The Complaints Body should gather and disseminate statistics. It should review the nature of the statistics kept in consultation with, in particular, the police, PANI and HMIC (paras 7.5 and 7.6).

### *Access to the System/Openness*

- 19.26** The ways in which a complaint can be lodged should be extended and a freephone number established (para 15.3).
- 19.27** Interviews should, where possible, be arranged for more neutral venues (para 15.2).
- 19.28** Complainants (and accused officers) should be kept better informed on issues such as timescale and should receive monthly reports on progress as well as, wherever possible, a detailed concluding report on a complaint (paras 15.4, 15.7 and 17.8).

**19.29** Greater attention should be paid to the language in letters, leaflets and other documents (para 15.8).

**19.30** The time limit for lodging a complaint should be 6 months, but with the Ombudsman having the discretion to extend the limit for reasons given (para 15.5).

### *Complaints which are Malicious, Repetitious or Incapable of Investigation*

**19.31** The Ombudsman should sift cases out much sooner, possibly by using a preliminary investigation. The Ombudsman should have the discretion to refuse or discontinue the investigation of a complaint which he has grounds to believe is malicious or vexatious or where he/she has found bad faith in the complainant (paras 16.12 and 16.13).

**19.32** Consideration should be given to banning disclosure of statements made by officers and complainants in a complaints case to encourage complainants, particularly those represented by solicitors, to co-operate in the process in the interests of justice (para 16.24).

### *Time Limits*

**19.33** A target of 6 months to clear a complaint (not subject to criminal proceedings) should be the norm. The time limit for informal resolution would be much less, days preferably, but a month at the outside. The Ombudsman should set targets of clearance rates as performance indicators and measure activity against these (para 17.7).

### *Civil Cases*

**19.34** The Ombudsman should be notified of all civil cases involving possible misconduct of officers as they arise and again when they are concluded (para 4.29).

### *Off-Duty Conduct*

**19.35** Complaints against off-duty officers should not be investigated by the Ombudsman except in cases where the officer has used (or perhaps abused) the fact that he/she is a police officer (para 17.11).

### *Deployment/Identification*

**19.36** Special attention should be paid in the deployment and tasking of mobile support units (para 17.14).



- 19.37** Where all reasonable efforts to identify the culprit or culprits of clearly established misbehaviour have failed on the rocks of group identify further thought should be given to the position of the officer immediately in charge. If he/she has failed to maintain proper control of his/her officers, for example through a lack of supervision, then this should lead to disciplinary action (para 17.15).

### *Outcomes*

- 19.38** A new category of "substantiated, but officer(s) unidentified" should be available to the Complaints Body (para 17.19).

### *Director of Public Prosecutions*

- 19.39** The position on which cases should be referred to the Director of Public Prosecutions should be clarified (para 17.21).

### *Compensation*

- 19.40** Where the complainant has been out of pocket in pursuing his/her complaint, or where there has been measurable loss resulting from the police action complained of, for example, the complaint has been substantiated, the Ombudsman should be able in appropriate cases, and entirely at his/her discretion, to recommend to the Chief Constable the payment of an ex gratia sum. This would be a modest amount (para 17.25).
- 19.41** The Ombudsman should also be able to reimburse necessary travelling and other expenses required to enable a complainant to attend for interview or otherwise to pursue his/her complaint. He/she would not normally pay legal expenses, but could do so in exceptional circumstances (para 17.26).

### *Complaints by Minorities*

- 19.42** Cases from ethnic minorities and other minority groups should be watched particularly carefully and statistical systems should be installed which can identify these cases (para 17.27).

### *Internal Discipline/Training/Prevention*

- 19.43** The Ombudsman would normally not investigate internal disciplinary cases within the police, unless asked to do so by the Chief Constable, but he/she should be kept informed of the number and progress of such cases (para 17.31).
- 19.44** A change in police culture needs to be secured, where wrongful behaviour is seen to be a reflection on the whole force and where there is open and frank discussion of the standard of service expected and support rather than recrimination or retaliation for those who admit to honest mistakes. Also, more officers should be trained in inter-personal skills, in conciliation and mediation, with some of this training shared with other professional groups such as teachers and social workers (paras 17.41 and 17.42).

- 19.45** More should be done to prevent complaints arising in the first place (para 17.39).

### *Double Jeopardy*

- 19.46** The Government's proposed change on double jeopardy should be taken forward (para 17.47).

### *Complaints about Police Operational Policy/Standards of Service*

- 19.47** The Ombudsman should be the focus for all complaints about policing whether the policy issues are incidental or central to the complaint. In those complaints where policy or operational matters were paramount, the Ombudsman would investigate those aspects which involve officer behaviour and possible breaches of discipline or criminal behaviour, having passed on the operational and policy issues to the Chief Constable or PANI as appropriate (or to the Secretary of State where it is his responsibility that is in question) and notifying the complainant accordingly. Conversely, complaints received by the other agencies should be transmitted as quickly as possible to the Ombudsman to consider whether he/she should investigate the disciplinary aspects (para 18.15).
- 19.48** The Ombudsman would, therefore, deal with those aspects of complaints which involve officer behaviour, while being able also to comment on the impact of operational or general policies in generating likely grounds for complaint (para 18.16).
- 19.49** Operational issues would be a matter for the Chief Constable, answerable to the Police Authority. The Authority would be responsible for considering complaints about general policies and reviewing or moderating them as necessary (paras 18.17).
- 19.50** Proposed policing plans should be used to help forestall standards of service-type complaints and to allow for a prior discussion of the possible effects of decisions about policing and operational policies (para 18.18).
- 19.51** Community and Police Liaison Committees should have a greater role in the ex post facto accountability of the police (para 18.20).
- 19.52** The opportunity should be taken in the legislation arising from the tripartite review of policing to clarify the role of the Authority and to establish it as the body to which the Chief Constable is responsible for providing a police service for the community (para 18.21).



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## *20. Transitional Arrangements*

- 20.1** It is quite clear that if my recommendations are accepted, and whether or not the other bits of the jigsaw can be got into place at the same time, it will be at least a couple of years before legislation has been enacted and the new systems have been put in place.
- 20.2** Meantime, of course, complaints will continue to arise and must be dealt with. Meantime too every effort must continue to be made to increase public confidence in the arrangements for policing. The ICPC will remain in office, so too presumably will PANI. In the interim period therefore it is necessary to maintain the level of activity and the morale of ICPC and their staff. Every effort should be made too to prepare the way for the new structures and the new procedures. Not every change requires legislation, and not every one requires additional expense either.
- 20.3** A start could be made by implementing the recommendations of the last triennial review in full.
- 20.4** The ICPC should adopt a higher profile and reassure its own staff of the continuing value of their work and their place in the new arrangements. Pay and grading of senior staff should reflect the importance of the work and the importance of being able to negotiate on an equal level with senior police and departmental officials.
- 20.5** The Chairman's post should be held on a full-time basis and the new Chairperson might well have legal qualifications.
- 20.6** The changes in relation to the standard of proof and reform of police discipline and management which are already in train should be implemented as soon as possible.
- 20.7** More generally, police internal discipline could be made less adversarial, with a greater emphasis on the positive maintenance of professional standards.
- 20.8** The use of informal resolution should be greatly extended, insofar as the legislation currently permits.
- 20.9** The ICPC should act more strategically, for example in looking at trends and complaint prevention, and should be involved in the preparation of cases for disciplinary tribunals.
- 20.10** Senior leadership in the RUC should show a commitment to dealing with complaints fairly and openly and at the lowest level possible, and a willingness to pursue lapses in behaviour where these occur.
- 20.11** Police training could include training in inter-personal relationships, mediation and conflict resolution skills and awareness of difference and diversity in a divided society.

- 20.12** Members and staff of ICPC could themselves avail of training in this area and in investigative techniques - on the lines of the courses provided by John Jay College for the Civilian Complaints Review Board in New York, see Annex 10.
- 20.13** Consistent and intensive effort should be made to reduce the incidence of complaints by analysing policies, operational priorities and the use of equipment.
- 20.14** A review of leaflets, forms and letters could be undertaken to enable complainants to understand the system better. Statistics and time limits for cases should also be reviewed.
- 20.15** Consideration should be given to the ICPC becoming the receiving and distributing point for complaints about policing policy or operational instructions in advance of the change in the legislation necessary to enable it to receive all complaints.



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# *Glossary*

Complaint/case of complaint	Unless otherwise stated these terms are used to refer to cases of complaint, which may be made up of a number of complaints
C&D/ Complaints and Discipline	Complaints and Discipline Department in the Royal Ulster Constabulary
DPP	Director of Public Prosecutions (Northern Ireland)
ICPC	Independent Commission for Police Complaints (sometimes referred to as the Commission)
IO	Investigating officer
NIO	Northern Ireland Office
PANI	Police Authority for Northern Ireland. Also referred to as the Police Authority and the Authority
RUC	Royal Ulster Constabulary
SACHR	Standing Advisory Commission on Human Rights
Police Complaints Authority (PCA)	England and Wales equivalent of the Independent Commission for Police Complaints
HMIC	Her Majesty's Inspector of Constabulary
1987 Order	Police (Northern Ireland) Order 1987

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# *Acknowledgements*

I would like to record my thanks to Sir Hugh Annesley and his successor as Chief Constable Mr Ronnie Flanagan, to Deputy Chief Constable Blair Wallace, Assistant Chief Constable Archie Hayes and his officers for their assistance and to James Grew and the members and staff of the ICPC for theirs and to Ministers and senior officers in the NIO who left me alone to get on with the task. Professors Brice Dickson and Dermot Walsh also gave tremendous support through research work and advice and helped identify for me the crunch areas.

In addition, I should like to thank all those who gave up their time to send in submissions and to meet me. I ought to mention particularly those in other jurisdictions who were so helpful and, indeed, the Consular and other staff who made the arrangements for my visits.

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# *Terms Of Reference For Review Of The Police Complaints System In Northern Ireland*

## *Objective of the Review*

To review the operation of the existing mechanisms for dealing with complaints against the police by members of the public and to recommend whatever changes would be sensible to:

- secure greater public and police confidence in the system for handling complaints about the conduct of individual police officers;
- provide protection for police officers against malicious or vexatious complaints;
- accommodate complaints about standards of service and policing policies;
- ensure that the systems are accessible, well publicised, provide an effective response and are easy to use;

having full regard to:

- the need to protect the operational independence of the police; and
- the need to ensure affordability and value for money in public spending.

## *Methodology*

The Review should be carried out by an independent person and should consider and take into account:

- submissions from the police service, the Police Authority and Independent Commission for Police Complaints, interest groups, political parties and members of the public;
- fact-finding studies into the operation of the current systems;
- other relevant analysis of the effectiveness of the existing system; and
- best practice in the development and management of police and public sector complaints procedures world-wide.

# *The System - In Practice*

## *The current complaints system in Northern Ireland<sup>1</sup>*

### *Lodging and copying a complaint*

The complaint is lodged with the police or with the Independent Commission for Police Complaints (ICPC). If the ICPC receives a complaint it must (usually) transmit it to the Chief Constable [regulation 4].

A complaint can be lodged by a third party. But the complainant or the officer complained against can be denied a copy of the complaint if the Chief Constable of the RUC is of the opinion that supplying a copy "might prejudice any criminal investigation or proceedings pending" or "would be contrary to the public interest (and the Secretary of State agrees)" [reg 12(2)].

### *Preserving evidence*

The Chief Constable of the RUC is under a duty "to take any steps that appear to him to be desirable for the purpose of obtaining or preserving evidence relating to the conduct complained of" [Article 4(1)].

If the Chief Constable of the RUC decides that he is "the appropriate authority", he must record the complaint [Article 5(1)].

The Chief Constable of the RUC is the appropriate authority for all RUC officers except the senior officers. The appropriate authority for senior officers (ie those above the rank of chief superintendent) is the Police Authority for Northern Ireland.

### *Disapplying the procedures*

The procedures in the 1987 Order do not apply if the complainant indicates in writing that he or she wishes to withdraw the complaint [reg 16(1)].

The ICPC can dispense with the procedures in the 1987 Order if both the Chief Constable of the RUC and the ICPC are of the opinion that the complaint is anonymous or repetitious or that "it is not reasonably practicable to complete the investigation" [reg 17(1)]. Such impracticability can arise only if:

- it is not reasonably practicable to communicate with the complainant, or
- the complainant refuses or fails to make a statement or afford other reasonable assistance for the purposes of the investigation, or
- too much time has elapsed since the event forming the subject matter of the complaint.

<sup>1</sup>[References are to articles in the Police (NI) Order 1987 and, unless otherwise specified, to regulations in the RUC (Complaints etc) Regulations 1988]



## ***Informal resolution***

After recording the complaint the Chief Constable of the RUC must consider whether the complaint is suitable for informal resolution [Article 5(2)].

If the Chief Constable of the RUC considers it is suitable for informal resolution he must seek to resolve it informally [Article 5(4)], but:

- no complaint can be dealt with informally unless the complainant consents to this [Article 5(9)(a)], and
- no complaint can be dealt with informally unless the Chief Constable of the RUC is satisfied that the conduct complained of would not justify a criminal or disciplinary charge [Article 5(9)(b)].

The officer appointed to try to resolve the complaint informally “shall take such steps as appear to him appropriate” [reg 4(1)(c) of the RUC (Complaints) (Informal Resolution) Regs 1988]. No apology must be tendered for the conduct in question unless the officer concerned has admitted the conduct [reg 4(2) of those Regs]. The ICPC must be informed about the outcome of informal resolutions [reg 5(1) of those Regs].

## ***Formal investigations***

If it appears that informal resolution is not suitable, or not possible, the Chief Constable of the RUC must appoint a member of the RUC, or of another UK police force, to investigate the complaint formally [Articles 5(3) and (5)].

At this point the Chief Constable of the RUC must also refer the complaint to the ICPC [Article 7(1)] not later than the end of the day following the day on which it becomes clear to the Chief Constable that a formal investigation is required [reg 13].

## ***Supervised investigations***

The ICPC must supervise the investigation of complaints of death or serious injury and may supervise the investigation of other complaints [Articles 9(1) and (3)(a)]. It must notify the Chief Constable of its intention to supervise within 7 days of the receipt of the complaint [reg 5(1)].

The ICPC may also have referred to it by the Chief Constable of the RUC, the Secretary of State for Northern Ireland or the Police Authority for Northern Ireland any matter which, although not the subject of a complaint, appears to indicate that a police officer may have committed a criminal offence or an offence against discipline [article 8]. But such references by the Chief Constable are possible only if the matter is grave or there are exceptional circumstances [Article 8(1)] and by the Secretary of State or Police Authority only if it appears to them that it is desirable in the public interest that the Commission should supervise the investigation of the matter [Article 8(2)].

When supervising an investigation the ICPC can insist on approving the appointment of an investigator [article 9(5)]. It can also demand to see “such information and documents as it may reasonably require” [reg 6] and it can “issue directions imposing such additional requirements as to the conduct of the investigation as appear to it to be necessary” [reg 8(1)]. In practice police investigators keep in contact with the ICPC supervising member. The member can attend interviews, although they cannot ask questions.

## *Once the investigation is over*

At the end of an unsupervised investigation of a complaint, the investigating officer sends a report to the Chief Constable making a recommendation on whether or not the case should be referred to the Director of Public Prosecutions [Article 5(8)].

At the end of a supervised investigation of a complaint, the investigating officer sends a report to the ICPC and a copy to the Chief Constable [Article 9(7)]. The ICPC considers the report and sends a statement to the Chief Constable saying whether or not it thinks the investigation has been carried out satisfactorily [Article 9(8)]. The statement may also deal with any other matters relating to the investigation as the ICPC considers should be brought to the attention of the Chief Constable, the complainant or the officer complained about, or which the ICPC considers should be dealt with in the public interest [reg 10(1)(a) and (b)].

No disciplinary charge can be brought after a supervised investigation until the ICPC issues its statement of satisfaction [Article 9(12)]. Neither can criminal charges be brought, unless "it appears to the Director [of Public Prosecutions] that there are exceptional circumstances which make it undesirable to wait for" the statement [Article 9(13) and (14)].

## *Cases involving possible criminal offences*

Once he receives the investigating officer's report, or a copy of it, the Assistant Chief Constable must determine whether it indicates that a police officer may have committed a criminal offence and whether the offence is such that the officer ought to be charged [Article 10(3)]. If he answers yes to these questions he must send a copy of the investigation officer's report to the Director of Public Prosecutions [Article 10(4)].

Prior to the Assistant Chief Constable's determination in this context there may already have been consultation between the investigation officer and the DPP [reg 7].

If the Assistant Chief Constable concludes that an offence has not been committed or that an officer or he/she ought not to be charged must send a memorandum to the ICPC stating whether disciplinary charges are being preferred against the officer and, if not, why not [Article 10(6) and (7)]. The memorandum must also state the Assistant Chief Constable's opinion of the complaint [Article 10(8)(b)]. At this point following an unsupervised investigation the Assistant Chief Constable must include with the memorandum to the ICPC the investigation officer's report [Article 10(9)].

If the ICPC, after examining the police report, concludes that criminal charges ought to be brought against the officer complained about [Article 12(1)] then it must direct the Chief Constable to send the report to the DPP [Article 12(2)].

## *Disciplinary charges*

The ICPC may also recommend the preferment of disciplinary charges against a police officer [article 13(1)] and, if these recommendations are rejected by the Chief Constable of the RUC, it can direct their preferment [Article 13(3)].

If the ICPC so directs, disciplinary charges must be heard by a disciplinary tribunal consisting of the Chief Constable in the Chair and two members of the ICPC.

After the disciplinary tribunal has heard the case and come to a conclusion, only the Chief Constable can determine what punishment, if any, to impose on the officer(s) concerned [Article 14].



## ***Reporting duties of the ICPC***

The ICPC must issue to the Secretary of State an annual report and a review report every three years [Article 17(3) and (4)]. It must also report to the Secretary of State "on such matters relating generally to its functions as the Secretary of State may specify" [Article 17(1)].

The ICPC may report to the Secretary of State "on any matters coming to its notice under this Part [of the 1987 Order] to which it considers that his attention should be drawn by reason of their gravity or of other exceptional circumstances" [Article 17(2)].

## ***Organisation and funding***

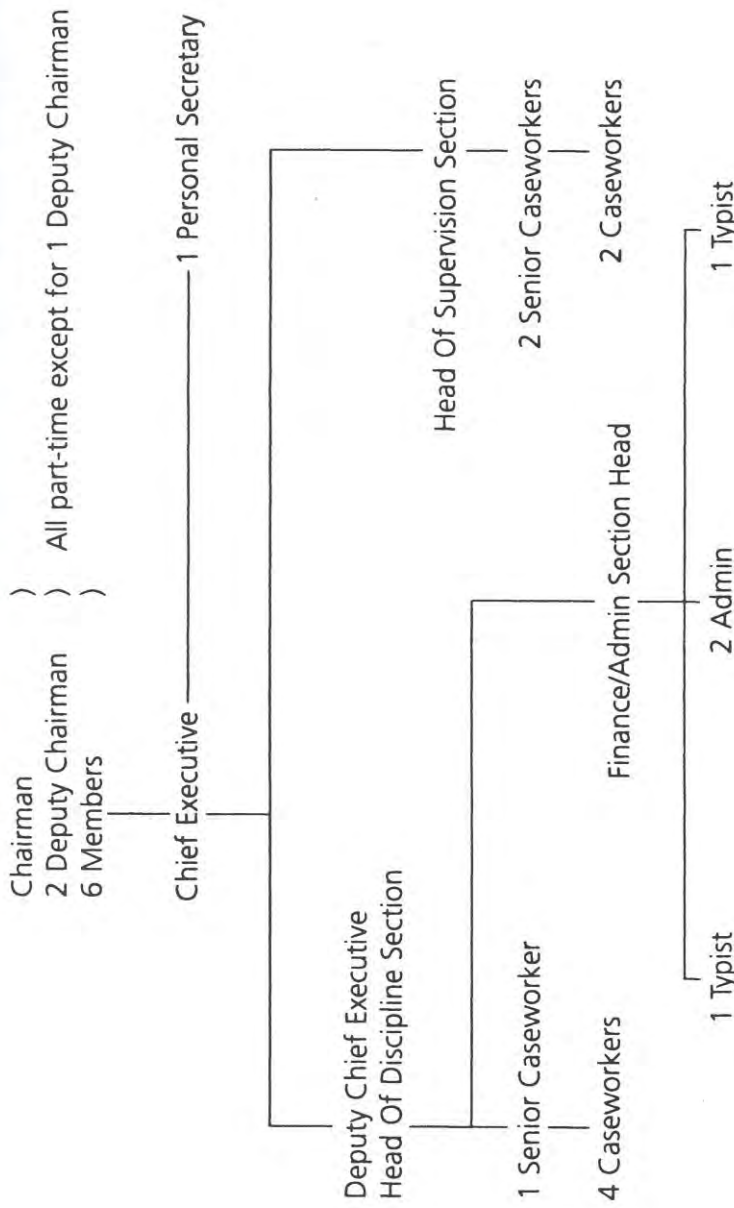
The ICPC comprises a Chair, 2 Vice- Chairs, and 6 members. Only one of these is full time. The Commission has 18 or so staff, including a Chief Executive (ranked at Civil Service grade 7), caseworkers and support staff. It has a budget of £850k.

The Complaints and Discipline Branch of the RUC has a budget of about £6000k and a staff of around 60 officers, including half an Assistant Chief Constable, 11 Superintendents and 35 Chief Inspectors and Inspectors. Around 55 of the total are directly involved with complaints- related work. There are also over 25 civil servant administrative staff and a number of typists.

Organisation charts for the ICPC and the Complaints and Discipline Department of the RUC are given in the next annex.

# Independent Commission For Police Complaints

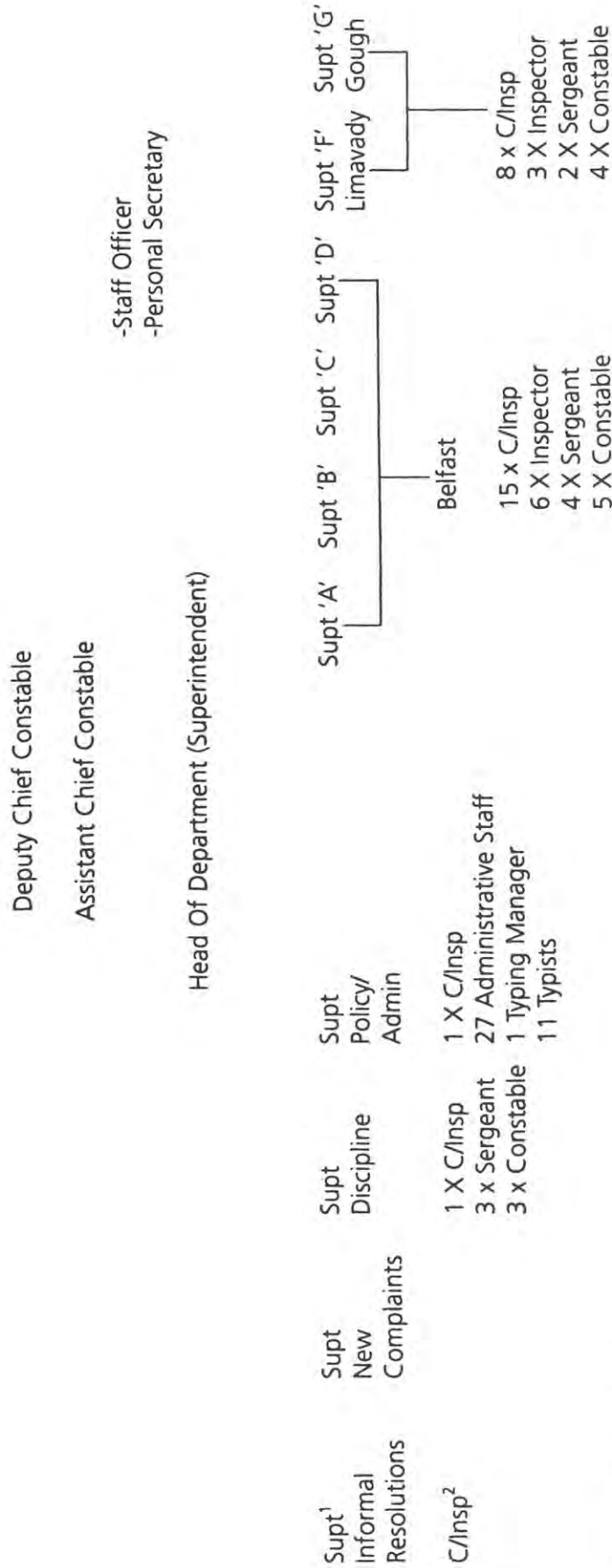
*Current Organisation Chart (9.8.96)*



Budget for 1995/96: £850K  
 £197K members' costs, £430K staff costs, £223K other operating payments



## *Organisational Structure Of Complaints And Discipline Department In The RUC*



<sup>1</sup>Superintendent  
<sup>2</sup>Chief Inspector

# Statistics

New Cases <sup>(1)</sup>	1995 2328 (plus 2 x Article 8 <sup>(2)</sup> )	1994 2810 (plus 1 x Article 8)	1993 2418 (plus 1 x Article 8)
Supervised	363	353	252
• Mandatory	84	84	83
• Discretionary	281	269	169
Closed	2627	2628	2542
• Withdrawn	572	512	533
• Dispensation granted <sup>(3)</sup>	572	775	730
• 1987 Order did not apply	11	21	70
• Informally resolved other receipt	99	106	-
• Completed by Commission	1373	1214	1209
• Completed cases referred to DPP	1061	908	958
Informally resolved	566 <sup>(4)</sup>	469	274

- (1) A case may involve more than one complaint.
- (2) Article 8 referrals are cases sent to the ICPC by the Chief Constable, Secretary of State or Police Authority where there is no complaint, yet an officer may have committed an offence and there are either exceptional circumstances (for the Chief Constable) or a public interest (Secretary of State or Police Authority).
- (3) A provision in the Royal Ulster Constabulary (Complaints etc) Regulations 1988 allows dispensation for complaints which are anonymous, repetitious, vexatious or incapable of investigation. The figure is down by 40% since 1990.
- (4) Representing 29% of all complaints fully investigated and 18% of all complaints closed and a 25% increase in the number of informally resolved cases from 1994.



Breakdown of most common allegations for cases dealt with by the Commission. (There is often more than one allegation in a case.)

	1995	1994	1993
<b>Total</b>	2385	1878	1989
Includes			
• Assault	1113	831	926
• Incivility	418	319	327
• Irregularity in police procedure	229	152	216
• Neglect of Duty	127	108	88
• Oppressive conduct/harassment	196	211	181
• Unlawful arrest/detention	104	95	96
• Misc crime	55	30	24
Criminal Charges by DPP (Cases)	14	6	6
Disciplinary Charges (Cases)	15	18	15
Informal disciplinary action <sup>(1)</sup> (Cases)	99	91	63
<b>Emergency Legislation <sup>(2)</sup></b>			
Cases of complaint	191	354	299
Percentage of all cases	7%	14%	12%
Dispensation Granted	87	192	179
Withdrawn	10	12	-
Insufficient Evidence	89	150	99
Disciplinary Charges	2	-	-
Informal Disciplinary Charges	3	-	2

- (1) For minor "disciplinary" offences; includes constructive discussion, advice or admonishment;
- (2) Most common allegations in 1995 were assault, unlawful arrest/detention/trespass to person, verbal abuse and "miscellaneous".

### *Complaints Statistics for 1996*

The summer has seen a major increase in complaints.

The table below shows complaints by **date of receipt**. The figure for July was significantly up as was that for August, but September seems to have returned to a more normal level. It is projected that the figure for 1996 will be 5-8% up on 1995.

	Avge per <sup>(1)</sup> month	1995			Avge per month	1996		
		July	Aug	Sept		July	Aug	Sept
<b>Total cases</b>	269	279	311	301	290	421 <sup>(2)</sup>	277 <sup>(3)</sup>	256

- (1) Average figure in 1994, 295
- (2) Highest figure since records began in 1991
- (3) Fourth highest figure

In July and August the figures for assault (over 60% of complaints) were about 15% higher than the average. There were 296 complaints of this in July, 281 in August, and 159 in September.

The average weekly figure, using the date of incident, in 1996 for the first six months was 52 (highest 76, lowest 28). In the week beginning Monday 8 July the figure is over 320 (with 97 on 12 July). Assault figures for the first six months average 33 incidents per week (highest 51, lowest 15). In the 8 July week the figure was 248.

# *How The Proposed System Would Work - Practical Examples*

Clearly there is no point in proposing a system which cannot actually be translated into a practical working arrangement. Reflecting on the views of the police and discussions with those involved with other jurisdictions, I thought it would be helpful to set out how I would see the system managing different cases, focusing principally on possible crimes. There are essentially two broad scenarios. One is where an officer(s) has possibly committed an offence, whether criminal or disciplinary, without there being a possible criminal offence by the "victim". The other would involve a possible offence by the member of the public.

The Ombudsman would have the authority and ability to investigate any offence by an officer arising from a complaint or from a serious incident where the Ombudsman calls him/herself in.

If there is no possible offence by the "victim"/member of the public then the Ombudsman (unless he/she has concluded, for example, as a result of a preliminary sift that there is no case to answer, or he/she has delegated the case to the police, for example, for informal resolution), clearly has to make all the decisions on the case. He/she would assemble their team and decide on interviews, preservation of evidence etc.

Where, however, the "victim" may have committed an offence the police would be investigating this aspect. There would be two investigations going on in parallel. The Ombudsman would be investigating the police officer's conduct and would have first call on witnesses etc. He/she would have this priority in all cases unless he/she, after discussion with the police investigator, concluded that the police should take the lead. In this case the police investigator would still be required to make statements, forensics etc available to the Ombudsman.

The sort of case where the Ombudsman might concede priority would be where the police officer's alleged crime is clearly a minor one relative to serious behaviour by the civilian, or where the officer's offence could only amount to a minor breach of discipline.

In all cases where there are parallel investigations the Ombudsman and police investigator should, of course, agree plans and procedures, to avoid duplication and wasted effort.

## *(a) Civilian Shot/Unprovoked Assault by a Police Officer*

These are examples of possible crimes by an officer but with no crime by a civilian, or possibly no value in investigating their crime. Currently there will be a police investigation into the officer's conduct which, if there was a complaint, the ICPC may well supervise.

Under my proposal there will be no police investigation. As mentioned, the civilian's conduct has not been examined and the possible crime by the police officer would be investigated by the Ombudsman.



The Ombudsman's involvement would be triggered either by a complaint or, indeed, by the Ombudsman calling himself/herself in. The Ombudsman would assemble a team of investigators and this team would interview witnesses, arrange forensic tests, and instruct Scenes of Crime Officers etc. It is important to emphasise that all this work would be commissioned by the Ombudsman's team as there will be no police investigation to draw upon. Occasionally, however, RUC personnel would have to be called upon, via their local commander, to assist. This might happen, for example, if an area needed to be combed for evidence or house to house enquiries were required. It was suggested to me that these commanders would not co-operate with the Ombudsman, particularly at a time when they are having devolved responsibility for the resources in their area. I do not agree with this. The local commanders currently provide the resources and the fact that it is the Ombudsman calling on them should make no difference. It would, of course, be quite proper for them to discuss the level of resources required with the Ombudsman and the Ombudsman and Chief Constable would want to keep overall arrangements under review. I have also mentioned, in the report, the need for the Ombudsman to employ a system, like crime management currently used by the police, where a member of his/her staff uninformed with the case reviews its progress, including issues on cost.

Once the investigation is completed the Ombudsman would send his/her report with a recommendation to the Director of Public Prosecutions. Any further enquiries required by the DPP would be done by the Ombudsman. Were a prosecution directed the Ombudsman would handle the service of the charge warrant and any witness statements<sup>1</sup>. He/she would also handle the media aspects.

Once the criminal aspect had been dealt with the Ombudsman would look at the disciplinary aspects of the case to see if there had been a disciplinary breach and would make a recommendation to the Chief Constable. The precise mechanics are dealt with in more detail in the main body of the report. The Ombudsman may also want to draw the Chief Constable's attention to policy issues, for example, on handling of firearms or training and to copy this report to the Police Authority.

### *Practical Issues*

The Ombudsman and his/her investigative staff would need to have sufficient powers to carry out their functions. Clearly if there were seconded police officers they would have these but civilian investigators would need to be able to act under the Police and Criminal Evidence Order Codes of Practice<sup>2</sup>. For example, they would need to be able to conduct interviews, carry out identification parades, carry out searches and to take samples. It would not be sufficient to rely on the seconded police officers having these powers as this would be an unacceptable constrain on the operation of the office.

The Ombudsman will also need to pay for the forensic work which his/her staff commission.

There are, of course, other practical considerations. In the first place the Ombudsman should be able to conduct interviews in a wider variety of locations and, hopefully, witnesses will be more willing to come forward.

In summary, the Ombudsman will be conducting the type of investigation currently conducted by the police and will need to have the powers, staffing and resources to do this.

### *(b) Robber Shot by Police*

During a bank robbery, two apparently armed robbers are confronted by police, one is shot dead and the other injured.

<sup>1</sup> I had some concern about the weight this responsibility might place on the Ombudsman and I think this should be kept under review. However, there were only 14 criminal charges arising from complaints last year which would appear to be manageable by the Ombudsman's staff

<sup>2</sup> There are clear precedents for this including Customs and Excise and Inland Revenue staff



Many of the issues are the same as for (a) but this type of case requires the investigation of two aspects. The first is the criminality of the behaviour of the robbers. Were they in fact robbers? Were they in fact armed robbers? The second concerns the behaviour of the individual police officer(s). Is there any question that anything other than reasonable force was used (in other words is there any question of the criminal law having been broken or is there any question of a disciplinary offence having been committed, for example, in the way the incident was handled).

Clearly the first is an investigation that should be carried out by the police and probably with an officer of Superintendent rank in charge who would establish terms of reference for his/her investigation. He/she would be taking witness statements, including from the police officer(s), he/she would have scenes of crimes officers and forensic scientists as well as photography and may have to do searches, identification parades etc. Much of this work would require him/her to act under the PACE (Police and Criminal Evidence Order) Codes of Practice.

The other investigation of the actions of the police officer(s) would currently be done by the superintendent (with the criminal and disciplinary aspects being looked at in tandem, with an investigating officer from Complaints and Discipline Branch and possibly supervised by the ICPC involved). Under my proposal this investigation, whether there is a complaint or not, would be conducted by the Ombudsman's office. His/her investigation officer will establish contact with the police Superintendent at a very early stage and will need access to the police evidence, for example, witness statements and forensics etc. It may well be that he/she will want to do additional forensic work and, possibly, search the police officer's house (and will, therefore, need relevant PACE powers to do this) he/she will probably want to re-interview the police officer and again would need PACE powers to do this. On this occasion, however, the officer would not be interviewed as a witness but as a possible suspect. The investigator would, therefore, have to serve the 'PACE caution' on the officer as well as what is known as the 17(3) notice which warns the officer of possible disciplinary action. These interviews could be in a police station (for example, they are used by Customs & Excise officers or elsewhere). The Ombudsman's investigator would want to keep in close contact with the Superintendent and, as at present, would generally not be able to complete his/her case until the investigation into the robbery and any prosecution, including appeals, are finalised. The Ombudsman would submit a report on the officer's conduct to the DPP and the DPP would consider whether a prosecution should be brought or not. In any event, the case will be returned to the Ombudsman to consider the disciplinary aspects and the Ombudsman will then make a recommendation on these to the Chief Constable. Proper documentation and labelling will need to be learnt and done.

### *Practical Issues*

Clearly it is essential that the police and Ombudsman co-operate and that the Ombudsman investigator has sufficient powers under PACE to carry out his/her task. He/she will also need to have access to the police investigation and be able to pay for any additional forensic work that he/she does on top of that carried out by the Superintendent. However, realistically there should not be a great deal.

I mention in the account of the Ontario system the experience of the Special Investigation Unit which investigates the most serious cases in Ontario without police assistance. One of the issues there was the precedence given to the respective investigators. There the Director of the SIU is given first bite at interviews and evidence etc. My view is that the Police Ombudsman should have this priority and may well use it in serious cases. There would, however, be close negotiation and discussion between the police investigator and the Ombudsman's investigator and they should agree a running order which may well reverse the priority in practice in less serious cases. In all cases the Ombudsman's investigator should have early access to all material coming into the police possession. Failures by the police to co-operate with the Ombudsman should be a disciplinary offence. I would expect the most senior RUC officers to make the requirement for cooperation with the Ombudsman crystal clear when the body is set up.

Where cases are referred to the DPP by the Ombudsman then, if the DPP directs a prosecution, he will return the papers to the Ombudsman for the service of the charge warrant and any witness summons.

As for (a) the Ombudsman's staff would need investigative powers.



### ***(c) Major crowd trouble at a parade or football fixture***

A typical scenario is a hostile crowd which has to be shepherded by the police and while this is happening there is a confrontation involving running battles, with petrol bombs and stones thrown at the police and plastic baton rounds fired. There may be several arrests, some after the event, with a number of complaints lodged and civil claims made.

The first issue here is immediacy. The Ombudsman may have to be out on the ground straightaway for reassurance and possibly to speak to the media. Under my system he/she would not need a complaint and could come in because of the incident - there need be no delay while a call-in or complaint is awaited.

The police would be investigating possible criminal activity by the marchers/supporters and, in parallel, the Ombudsman would be looking at the conduct of the officers where this has been called into question, whether by a complainant or, for example, television coverage.

The use of the preliminary sift mechanism would be vital to sort out the major from the less serious cases. After the sift the Ombudsman could make an informed decision on allocation of resources. He/she would want to liaise with the police investigators and carry out his/her own interviews, forensic tests etc. As mentioned he/she would have first call on witnesses etc, subject to agreement to the contrary, and access to everything the police have.

At the conclusion of his/her investigation a report would go to the DPP and so on. One difference, however, from the robbery incident is the greater likelihood of policy issues arising which the Ombudsman will want to report on to the Chief Constable and Police Authority.

### ***(d) Suicide in custody***

In this case there may be no complaint but the Ombudsman is likely to call him/herself in. As with (a) the Ombudsman would probably conduct the only investigation. His/her investigators would have to do all interviews, document gathering, forensics etc. They would have a call on Scenes of Crime Officers and RUC photographers.

Once concluded the investigation file would be sent to the DPP etc.

### ***(e) Alleged Assault During Arrest***

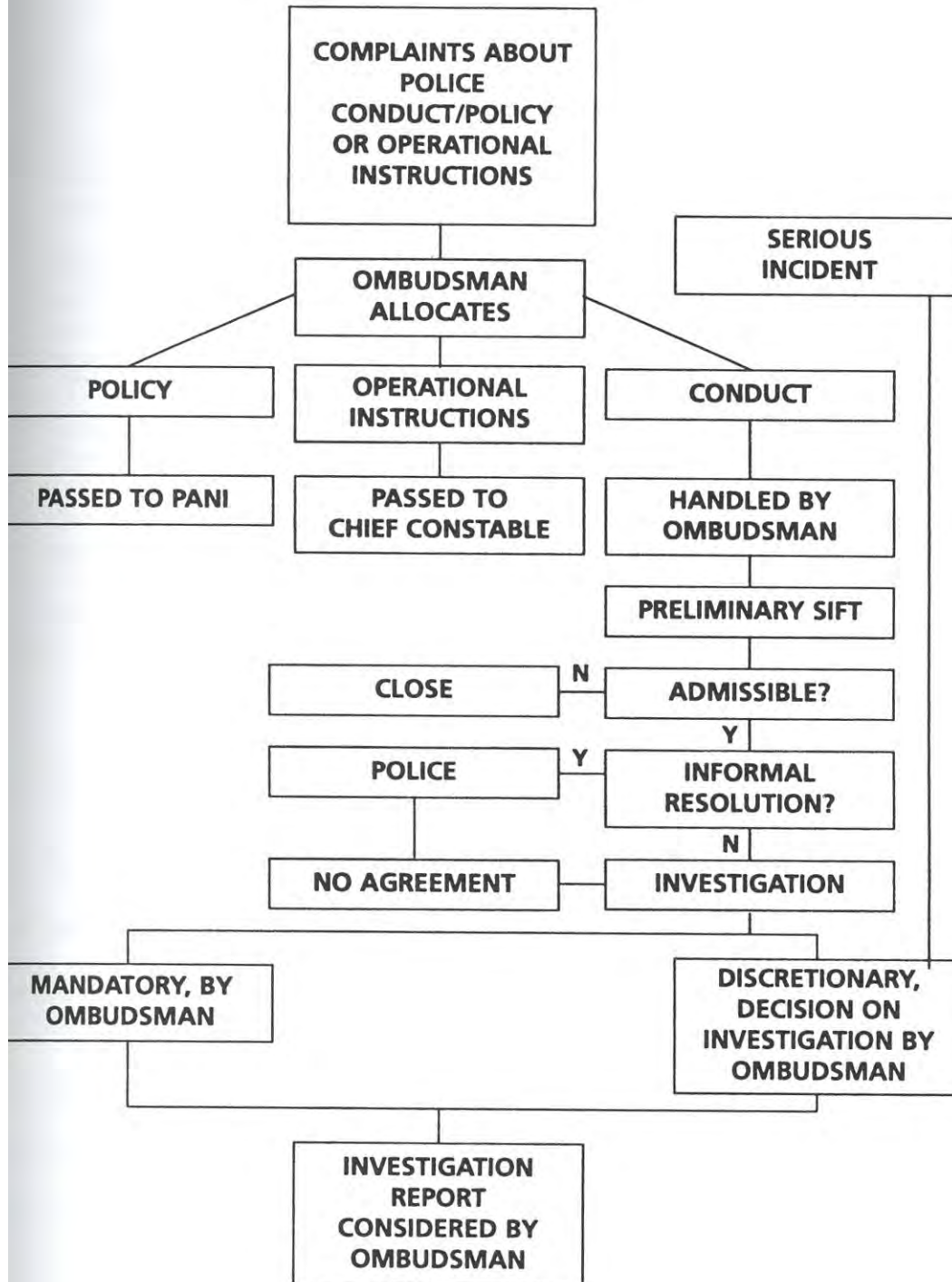
In this case a police officer in arresting an individual is involved in a scuffle and he/she charges the individual with assault. The individual then makes a complaint of assault against the officer. This is a very common occurrence.

Here the police constable is the arresting officer and he/she does the paperwork on the possible crime by the member of the public. There is no separate police officer appointed. The police officer arranges the forensic work, takes witness statements etc. His/her file will go to the DPP. As with more serious cases, the complaint file would not be closed until the end of any criminal actions against the member of the public. Currently the complaint would be investigated by an officer from Complaints and Discipline, and this may or may not be supervised by the ICPC.

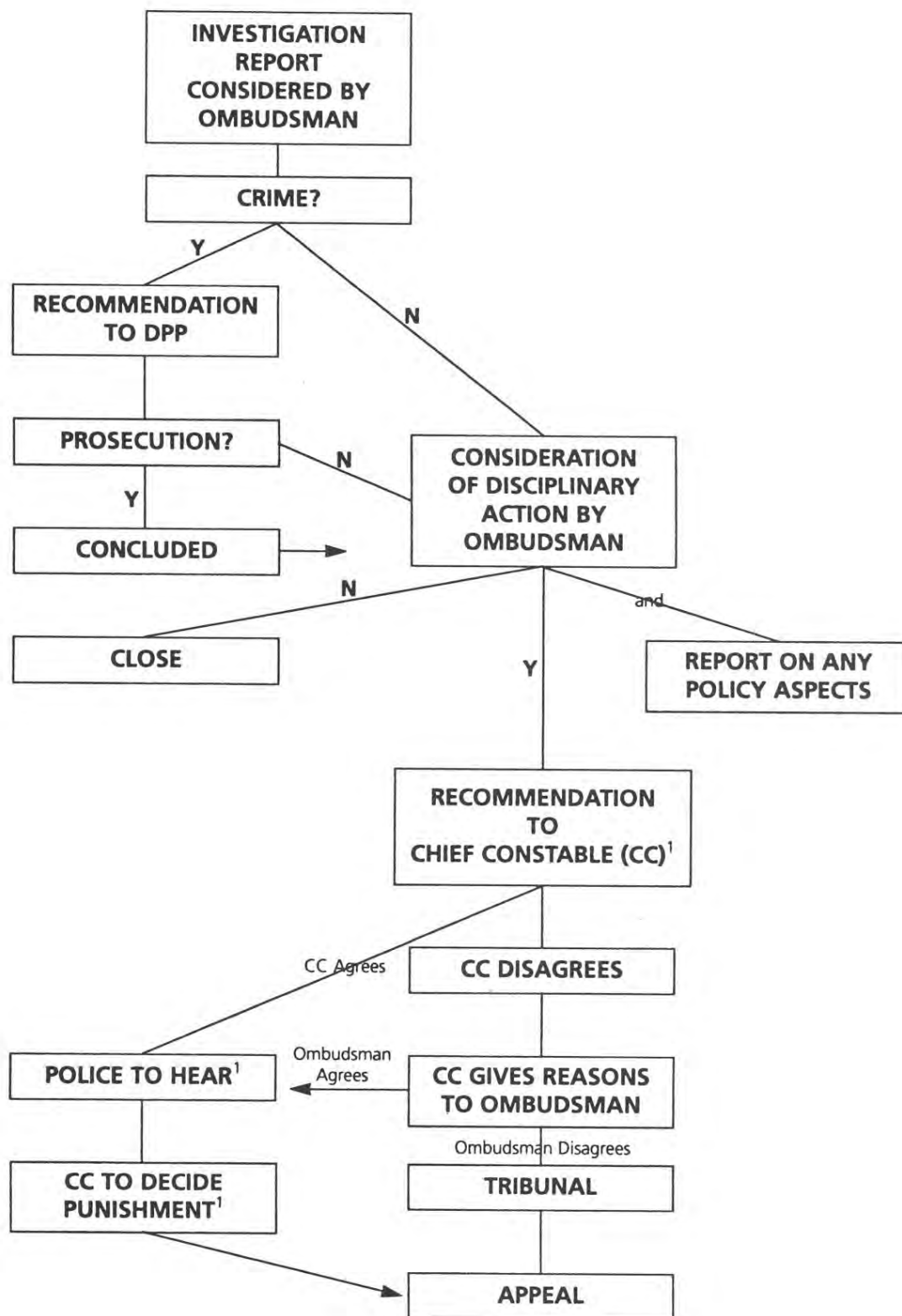
Under my proposed arrangement, the Ombudsman's investigator would replace the RUC Complaints and Discipline Department one. He/she would want to see all the documents that the police constable had gathered and may want additional forensics (which he/she would have to pay for) and may want to interview the police officer and any other witnesses. Again if he/she interviewed the officer he/she would need to caution him/her under PACE as well as under "17(3)". Again there would be questions of serving warrants and witness statements if charges are brought.

As before, once the DPP had finished with the case it would be returned to the Ombudsman to consider the disciplinary aspects, policy issues etc.

# How The Proposed System Would Work - A Flow Chart

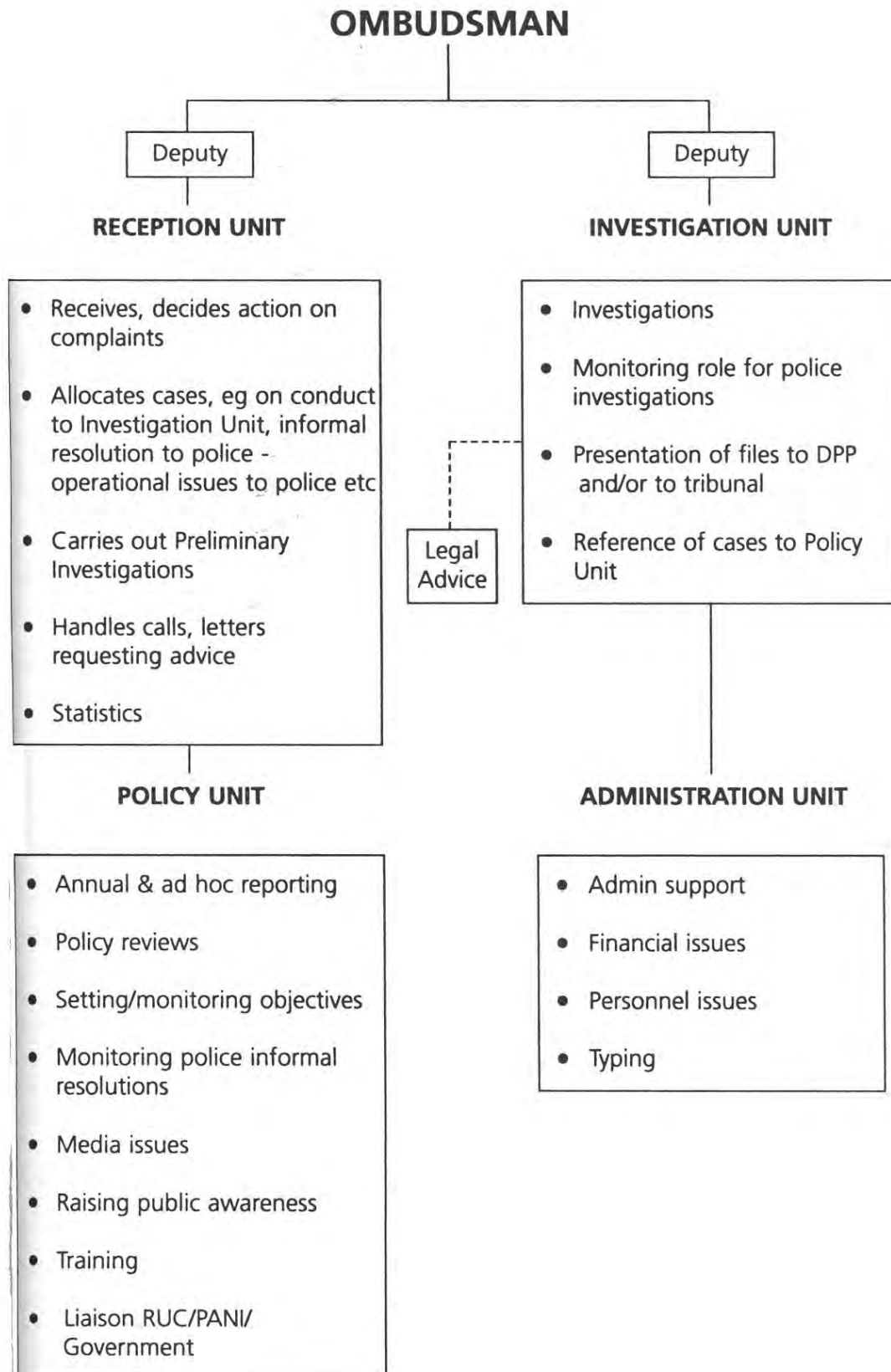






<sup>1</sup>PANI for senior officers

# Organisation Chart For The Proposed System





# *Recent Surveys Covering Police Complaints*

## *1. Questions In The Northern Ireland Social Omnibus Survey Commissioned By The ICPC, Early 1995*

### *Introduction*

#### **How to make a complaint**

70% of the population know how to go about making a complaint and when probed further, all of these know proper and acceptable ways of doing so.

#### **Existence of Commission**

49% of the population are aware of the Commission. For the age range 25-64, the figure is 53-62%, and in the under 25 age group 30% know of the existence of the Commission.

#### **The Commission's role**

Of those people who are aware of the existence of the Commission, 56% know of the supervising role played in investigating complaints and 45% understand the role in disciplining police officers.

#### **Independence**

50% of the people who know of the Commission are aware of its independence from police, 63% of its independence from Government, and 33% were of the view that the Commission is part of the police. In this area there is a marked difference in knowledge between the Protestant and Roman Catholic communities. Amongst Protestants, 56% are aware of the independence from police, but this is only 38% amongst Roman Catholics.

#### **Confidence in the complaints system**

Overall, 53% of people expressed confidence in the Commission's handling of complaints. Again there were significant differences in the responses received from the younger element of the population, ie under 25 (31%) and between Protestant (65%) and Roman Catholic (27%).

## *2. Police Authority Report On A Community Consultation Exercise Undertaken In 1995*

Only a small proportion of the submissions (152, about 2%) mentioned the complaints system. Most writers agreed in principle that the RUC should not be above the law; for example, "when policemen have done wrong they need to be disciplined and punished".

Most writers (93%) expressed some degree of dissatisfaction with the present complaints system. What was felt to be needed was "a more efficient complaints system, with wider powers of investigation, and which operates quickly to allay public fears". By far the most common proposition, made by about 70% of writers, was the need for a fully independent complaints investigation body; "a sound and independent complaints procedure to enable fairness and accountability to be demonstrated" or "an independent body which the police would have no control or interference with". The implication is that the concept of the police investigating the police and the limiting of the ICPC's role to that of merely overseeing the investigation of complaints are both felt to be unsatisfactory, for example, "all complaints should be investigated by the ICPC, not the RUC", and "any serious charges made against the police should be automatically investigated by a body completely separate and having no connections with the Force, and all findings made public".

A handful of submissions warned of the danger of frivolous or malicious complaints, and asked that "RUC Officers be given protection against unfounded allegations, and where a complaint has been found to be malicious, compensation is exacted". It was also suggested that those deemed to have made a malicious complaint should be "prosecuted through the Courts".

### ***3. Community Attitudes Survey - Third Report, July 1996***

Most respondents would contact the local police station or officer if they wanted to make a complaint against a police officer and this was reflected in each of the three years of the survey. While over one-third in 1994/95 stated that they did not know who was mainly responsible for looking into complaints made against the police, over one-fifth mentioned the Independent Commission for Police Complaints. In 1994/95 and 1993/94, almost one-third felt that a completely independent body outside the police should be responsible for looking into complaints made against the police. A large proportion of respondents each year could not identify a group or body who should be responsible for looking into complaints made against the police.

To make a complaint about the way in which a police officer behaved towards them or someone the respondent knew, most (60%) in 1994/95 said they would contact the local police station or local police officer (Table 2.24). Protestants were more likely than Catholics to say that they would first contact the police directly to make a complaint. This pattern of responses was observed in all the years of the survey although the difference between Protestants and Catholics in choosing the option of approaching the police directly was most marked in 1994/95. Catholic respondents were slightly more likely than Protestants to say that they would first approach a Member of Parliament or local councillor to make a complaint about a police officer.



Table 2.24

If you wanted to make a complaint about the way in which a police officer in your area behaved towards you or towards someone you know, who would you first think of contacting?

All persons aged 16 and over

	1992/93	1993/94	1994/95		
	Total	Total	Total	Protestant	Catholic
<b>Base = 100%</b>	<b>2085</b>	<b>2044</b>	<b>2025</b>	<b>1212</b>	<b>813</b>
Local police station or officer	57%	63%	60%	66%	50%
RUC Headquarters or Chief Constable	7%	5%	5%	6%	5%
Police Authority for Northern Ireland	1%	1%	0%	1%	0%
Independent Commission for Police Complaints	1%	1%	1%	1%	1%
(Local) Community and police liaison committee	0%	0%	0%	0%	0%
Member of Parliament	9%	6%	6%	5%	9%
District or Local Councillor	3%	3%	4%	2%	7%
District or local council officer	0%	0%	-	-	-
Press or Media	0%	0%	0%	0%	0%
Other	10%	9%	9%	7%	13%
Wouldn't contact anyone	0%	4%	5%	4%	6%
Don't know/Refusal	10%	8%	9%	9%	10%

A large degree of uncertainty was evident about who was thought to be responsible for looking into complaints made against the police (Table 2.25). Over one-third (35%) were unable to answer the question comprising a higher proportion of Catholics than Protestants. The body which most respondents mentioned in connection with looking into police complaints was the Independent Commission for Police Complaints (21%). The other person most frequently mentioned in connection with looking into complaints made against the police was the Chief Constable of the RUC (17%).

**Table 2.25**

**Who do you think is mainly responsible for looking into complaints against the police?**

All persons aged 16 and over

	1992/93	1993/94	1994/95		
	Total	Total	Total	Protestant	Catholic
<b>Base = 100%</b>	<b>2085</b>	<b>2044</b>	<b>2025</b>	<b>1212</b>	<b>813</b>
The Home Office	1%	0%	1%	1%	0%
The Northern Ireland Office	2%	2%	2%	2%	2%
Police Authority for Northern Ireland	9%	7%	10%	12%	9%
Chief Constable of the Ruc	15%	17%	17%	16%	19%
Independent Commission for Police Complaints	26%	27%	21%	22%	20%
(Local) Community and police liaison committee	1%	0%	0%	0%	0%
The Courts/Judiciary	1%	0%	0%	-	1%
District or local council	1%	0%	1%	1%	1%
Complete Independent body outside the police	*	1%	1%	1%	1%
Other	8%	10%	11%	12%	10%
No one in particular	1%	1%	1%	0%	1%
Don't know/Refusal	35%	35%	35%	33%	37%

\* Option not included in 1992/93

In the 1993/94 year, the additional option of "completely independent body outside the police" was added to both the question about who the respondent thought was mainly responsible for looking into complaints made against the police and to the question which asked respondents who they thought should be responsible for looking into complaints made against the police.

The inclusion of this option for the latter question in particular makes it difficult to reach an informed decision concerning changes to this question over time (Table 2.26). The main effect of including the additional option was to reduce the number of respondents who thought that somebody other than those listed should be responsible for looking into complaints against the police from 22% in 1992/93 to 10% in 1993/94 and 12% in 1994/95. Almost one-third of respondents (32%) in 1994/95 chose the option of "completely independent body outside the police". Two-fifths of Catholics compared to over one-quarter of Protestants (27%) chose this option. The individual or groups next most frequently mentioned in 1994/95 included the Chief Constable of the RUC (16%) and the Independent Commission for Police Complaints (12%).



Table 2.26

## Who do you think should be responsible for police complaints?

All persons aged 16 and over

	1992/93	1993/94	1994/95		
	Total	Total	Total	Protestant	Catholic
<b>Base = 100%</b>	<b>2085</b>	<b>2044</b>	<b>2025</b>	<b>1212</b>	<b>813</b>
The Home Office	1%	0%	1%	1%	0%
The Northern Ireland Office	2%	1%	2%	2%	1%
Police Authority for Northern Ireland	4%	4%	5%	7%	2%
Chief Constable of the Ruc	16%	13%	16%	16%	16%
Independent Commission for Police Complaints	29%	19%	12%	13%	9%
(Local) Community and police liaison committee	2%	1%	1%	1%	1%
The Courts/Judiciary	2%	0%	1%	0%	1%
District or local council	2%	1%	2%	1%	3%
Completely Independent body outside the police	*	30%	32%	27%	40%
Other	22%	10%	12%	13%	9%
No one in particular	1%	1%	1%	2%	1%
Don't know/Refusal	20%	19%	17%	18%	16%

\* Option not included in 1992/93

## *Irish Times - September 1996*

The poll commissioned by the Irish Times and published on 9/10 September 1996 highlighted the importance of the issue of the acceptability of the police service. 1149 people were asked which of three challenges, dealing with campaigns of terrorist violence, continuing intimidation and punishment beatings, or making the police service more acceptable to both communities, should be the new Chief Constable's top priority. 41% felt terrorist violence, 41% making the service more acceptable and 16% punishment beatings. There was little variation in the figures by age, sex and occupation but there was a significant difference in the figures between Protestants and Catholics.

<b>Top priority for Chief Constable</b>	<b>Protestant</b>	<b>Catholic</b>
Renewed campaigns of violence	49%	29%
Police Service more acceptable	31%	54%
Continuing Intimidation/Punishment	17%	14%
Other	3%	3%



# *Survey Of Northern Ireland Complainants - Experience And Perception Of The Police Complaints Procedure*

## *The Sample*

295 survey forms were sent to individuals who had made complaints against the police. The addresses were randomly generated by the Independent Commission for Police Complaints from those whose cases were closed in 1995. In all 82 people replied. This represented a response rate of 28%. The following is an analysis of the responses. Care must be taken in reading too much into the results where very small numbers are being examined. Not all complainants answered all questions. A copy of the questionnaire is attached.

## *Respondents*

78% of respondents were male and 22% were female. Most respondents supplied information on religion (91%). In answer to the religion question 49% of people declared themselves as Protestants, 38% as Catholics, 4% as of other religions and 9% failed to answer.

Protestant complainants were 82.5% male and 17.5% female. This contrasts with Catholic complainants where there was much higher female representation - 32% - almost double that in the Protestant group.

## *Satisfaction*

Most respondents, irrespective of sex or religion, were unhappy with the way in which their complaint had been handled - 9% of all who answered this question said that they were fairly dissatisfied with the process while a further 65% said that they were very dissatisfied.

<b>Level of Satisfaction</b>	<b>% of Valid Responses</b>
Very Satisfied	1
Fairly Satisfied	10
Neither	15
Fairly Dissatisfied	9
Very Dissatisfied	65

There were some differences between Protestants and Catholics in overall dissatisfaction with 64% of Protestants expressing some degree of dissatisfaction against 81% of Catholics.

<b>Protestant Satisfaction</b>	<b>% of Valid Responses</b>
Very Satisfied	0
Fairly Satisfied	15
Neither	15
Fairly Dissatisfied	4
Very Dissatisfied	60

<b>Catholic Satisfaction</b>	<b>% of Valid Responses</b>
Very Satisfied	3
Fairly Satisfied	3
Neither	13
Fairly Dissatisfied	10
Very Dissatisfied	71

Although I know the ICPC has found a positive difference in satisfaction where it was supervising a case, sample sizes were too small in this survey to detect any real difference in satisfaction for those who had their cases supervised. An examination of satisfaction by who the complainant first made his or her complaint to, shows that those who complained to a solicitor (23 cases) or doctor (12 cases) were significantly less satisfied than those who went to the police (42) or ICPC (3). 78.3% of those who complained first to a solicitor were very dissatisfied compared to 75% for doctor and 55% for the police.

### *Investigating Complaints*

When they initially complained most people (64%) recognised that the police themselves would be carrying out the investigation. Over one quarter (26%) however believed that an outside agency would be involved. A higher percentage of Protestants (72.5%) than Catholics (53%) thought that the police would be leading the investigation. One third of Catholics believed that an outside body investigated complaints against the police.



When asked their preferred investigator (should they have cause for making a future complaint against the police) 83% of all respondents indicated that they would prefer a non-police investigator working for an independent body. Only one respondent chose the present system with police as investigators with a further 8.5% choosing the police as investigators working under the supervision of an independent body.

When asked what was handled effectively in the investigation of their individual case 83% of respondents declared that nothing was handled effectively. 7% thought that the interview was handled effectively while only one complainant thought that everything had been handled well. There were difference in perception between different religions. 93% of Catholics thought that nothing was handled effectively against 82% of Protestants. All those who thought that the interview had been handled effectively were Protestants.

### *Improvements*

As may be expected the majority of ideas for improvement centred on employing outside investigators (44%), other respondents (6%) simply advocated some change to the system believing "anything should be better than what's on offer at the minute". 16% concluded that the complainant was at a disadvantage as a policeman's word was always believed. 10% pointed to the need for speedier resolution of complaints. Other comments included the need to change police culture (8%) and the desirability of keeping people informed and removing the location of the interview from the police station.

Most complainants expressed a preference for lodging complaints with a solicitor (57%). 22% named the ICPC, with only 6% listing the police. Not one Catholic respondent named the police as a preferred location for lodging complaints, while 13% of Protestants did. 23% of Protestants named the ICPC with 49% preferring a solicitor against Catholic figures of 16% for ICPC and 64.5% for solicitors.

### *Reasons for Complaint*

Complainants were asked to tick boxes specifying possible different reasons for their complaints. They were not asked to rank them in order of importance. 22 complainants named one basis; 23 named two; 19 three and 18 more than this. Clearly these are the grounds of complaint as they saw them, and they might differ from the grounds that would have been officially recorded.

As would be expected, 56% of complaints (46) included an allegation of assault. However, abuse of authority was higher, at 60% (49 cases). The next highest were discourtesy, 35 cases, and abusive language 32 cases. It is interesting to note, however, that in only 2 cases was abuse of authority the sole basis of complaint and in only 1 was abusive language the sole ground. This contrasts with assault, where the figure is 10 cases.

<b>Complaint</b>	<b>% of Cases</b>
Discourtesy	43
Abusive Language	39
Assault	56
Abuse of Authority	60
False Arrest	24
Theft	1
Neglect of Duty	23
Other	10

## ***Complaint Outcome***

In over half the cases (53%) the complaint was not upheld. Complaints were upheld in 9% of cases and withdrawn in 32% of cases. In 6% of cases there was no outcome recorded. Very similar figures appear across religions with 28% of Protestant complainants withdrawing, 54% not being upheld and 10% being upheld against proportions for Catholics of 32%, 55% and 6.5% respectively.

The figure of 9% for upheld cases is higher than expected; the actual figure for substantiated cases is usually in the region of 1-2%. It is not clear however why the figure in the survey is, relatively, so high. It is possible that some of those responding did not understand the question fully or that all those who had their cases upheld replied. What is clear, however, is that even those who had their case upheld were dissatisfied with the system, although they were slightly less negative than those who withdrew or did not have their complaints upheld. This fact points to a problem with aspects of the process/system rather than the outcome.

Of those withdrawing most (46%) claimed that the reason for this was that they were persuaded not to go ahead. Around half of these stated that this "persuasion" involved verbal abuse or the threat of physical violence and in 4 other cases the complainants withdrew because they believed this would lead to charges against them being dropped. 12% found the experience too stressful while 4% (one person) spontaneously withdrew after considering it not serious enough (surprisingly, this withdrawal refers to a case of assault).

## ***Length of Time***

Most complainants (72%) thought that their complaint would be resolved in 6 months or less. 18% thought less than one month, 35% thought between 1-3 months, 19% between 4-6 months. 17% thought it would take between 7-12 months, while 11.5% thought that it would be longer than this.

The average time complainants thought their cases had actually taken was nearly 9 months. The spread of answers was from 2 weeks to about two and a half years.

Overall the impression was that actual timings were too long. 54% of respondents thought that it took much too long for their complaint to be dealt with. 24% thought the time reasonable. Again there was much similarity in views by religion. 25% of Protestant complainants thought the time reasonable, 22% thought it a little too long, while 53% thought it much too long. The comparable figures for Catholic complainants were 21%, 21% and 59%.

## ***Information on Progress***

18% of complainants were kept fully informed as the investigation progressed. 38% claimed that they were not informed, while 39.5% said they had some information but would have liked more. A much lower percentage of Catholic complainants felt fully informed (13%) compared to Protestants (20%). A comparable percentage of both (Catholics 42% - Protestants 40%) felt that they were not kept informed.



## *Concluding Comments*

Complainants were asked to record any other comments they wanted. The following were typical of the comments made:

- "The public can never win against the police because the system is geared to protect the interests of the police"
- "It is an unfair system whereby the accused judge themselves"
- "I would like to see impartial treatment for all members of the public regardless of the fact that the complaint is made against a police officer ie. those who appear to have influence and special treatment granting them immunity from the course of justice"
- "My previously high opinion of the RUC and justice for the victim has taken a severe knock and means that in future I would have little faith in the RUC"
- "Because the complaints procedure is not perceived to be fair and thereby make individual officers accountable for their actions, some members of the force believe they are the law, not the enforcers of it..."

# *Training For The Civilian Complaint Review Board*

*Example Of The Course Curriculum*

*Conducted By John Jay College Of Criminal Justice, New  
York*

## *Criminal Law/Criminal Procedure*

### **Laws of Evidence:**

Role of the investigator - fact finder  
Evidence on how a case is proven or not proven  
Planning an investigative strategy up front  
Evidentiary issues confronted by the investigator  
Examination of witnesses and typical trial/administrative hearing procedures  
Circumstantial evidence  
Hearsay issues - hearsay and the administrative hearing  
Admission exception to hearsay rule  
Presumptions legal tests in evaluating the veracity of witnesses  
Motive, bias, interested witness, etc ...

### **Penal Law Article 240 "Offences against Public Order, Public Sensibilities and the Right to Privacy":**

The summons versus the arrest  
Police discretionary powers ...

## *Case Management*

### **Introduction and Orientation:**

**Nature of the investigation process - the collection of information followed by its organisation and analysis:**

Role of the investigator ...

### **Investigative plan - elements of:**

Case file organisation ...

### **Rules of evidence:**

Relevant ...  
Material ...

### **Investigative reports:**

Organisation ...



## **Interviewing**

Interviewing/interrogation: defined, compared and contrasted ...

### **The interviewee's impact on a successful interview:**

Preparation ...

### **The interviewer: some common traps:**

Neglecting to probe in crucial spots  
Forgetting a previous response ...

### **Conducting the interview:**

How to start the interview  
Gaining the confidence of the interviewee ...

### **Special components of interviewing: sophisticated techniques of questioning:**

Guidelines for effective questioning ...

### **Special components of interviewing: good listening skills:**

## **Pre-trial/pre-hearing preparation**

### **Testifying:**

Administrative hearings contrasted to judicial proceedings ...

### **The witness:**

Role of the witness  
The right to call witnesses ...

### **Witness demeanour:**

Dress, carriage and stature ...

### **The witness testifies:**

Memorisation of testimony  
How to deal with stress  
Responding to questions ...

### **Witness preparation:**

Complete witness preparation: direct, cross and redirect examinations ...

### **An overview of the rules of evidence relative to testifying at an administrative hearing:**

Special considerations applicable to administrative hearings  
Admissible evidence ...

# *International Experience - Systems Operating In Other Common Law Jurisdictions*

My terms of reference tasked me to examine systems being used in other jurisdictions. I visited England, the Republic of Ireland, New Zealand, Australia, New York and Canada. It was not difficult to agree with my hosts the principles underlying their systems; they are essentially the same the world over. The value of the visits, however, was to see close up the different systems that flowed from these principals to meet the different, sometimes subtly different, circumstances in each jurisdiction.

I also made a point, as far as possible, in meeting not only representatives of the police department handling complaints and of the complaints body but also police union representatives, ombudsmen, academics, Human Rights organisations, pressure groups and crime reporters. This helped me to gain a greater understanding of the system in place and to get a feel for the problems it had in its creation and operation. I focused particularly on how systems sought to balance police and public confidence and how they managed the self-regulation/independent investigation debate.

Commissioner, the Hon Justice J R T Wood, in his interim report<sup>1</sup> into his Inquiry into the New South Wales Police Service saw there as being essentially four different ways of handling complaints:

- complete self-regulation within the police service;
- complete handling and investigation of police misconduct by a body external to the police service;
- investigation by police with external oversight; and
- combination of police investigation with external oversight for most matters and investigation by an external body for a specified class of matters.

Our present system is beyond the “complete self-regulation” model which has no supporters I have met.. The first of these is universally regarded as inappropriate today and the second does not exist in a pure form. What follows is an examination of the systems I saw which fall into the third and fourth categories.

Our present system is beyond the “complete self-regulation” model which has no supporters I have met.

## *Police Complaints Authority - England and Wales*

The Northern Ireland system was based on that in England and Wales, which was established by the Police and Criminal Evidence Act 1984. The two systems are similar, but I have highlighted some important differences in Chapter 3.

<sup>1</sup>Royal Commission into the New South Wales Police Service, Interim Report, February 1996, p74 ISBN 0 646 27386 8



The PCA has a Chairman, Deputy and 11 members, all full time, and 51 support staff.

There were 9,979 cases of complaint in 1995/96. The PCA supervised 1,142 complaints cases and 111 "public interest"-type incidents which were referred to it by Chief Constables.

The Authority considered a total of 9,816 cases, dispensations were granted in 5,656 cases (principally because the complainant refused or failed to co-operate with the investigation). The Authority reviewed the detailed files of the other 4,154 cases, which were fully investigated. 253 formal disciplinary charges were brought and 860 were the subject of informal disciplinary action.

The budget for 1995/96 was £3,891K including £1,178K for staff salaries and wages and £684K for members.

### ***Garda Siochana Complaints Board (GSCB)***

Similar to the Commission in Northern Ireland, the Garda Board was established by the Garda Siochana (Complaints) Act 1986. The legislation is currently being reviewed.

The system is overseen by a Complaints Board comprising 9 members. The Chairman and at least 3 members must be practising lawyers of not less than 10 years' standing. They hold office for a 5-year term. The Garda Commissioner or a deputy Commissioner is an ordinary member of the Board. Day-to-day management is left to the Chief Executive.

Complainants must be directly affected by, or a witness to, the conduct, on or off duty, of a police officer to lodge a complaint. Complaints made orally (but not by telephone) or in writing and can be lodged through a parent, guardian, solicitor or agent at the Board's Office or with the police. Complaints must be lodged in 6 months and will, as in Northern Ireland, be excluded if they are frivolous or vexatious. Police officers cannot make complaints. The Board cannot initiate a complaint in its own right.

The Board's Chief Executive decides whether or not a complaint is admissible. In Northern Ireland this decision is made by the police. Investigations are usually carried out by the police, though the Board may give directions. The investigation must be done in 30 days, or an interim report issued. The Board may investigate, or reinvestigate, cases if it believes it to be in the public interest (but has never done so). It may also supervise investigations.

On receiving a complaint from the Chief Executive the Garda Commissioner can, for more minor cases seek to resolve the complaint informally. Before doing so, however, he must have the consent of both the complainant and the subject officer. A record of the resolution must be kept and sent to the Board. At any stage of a informal resolution the Garda may ask the Commissioner to formally investigate the complaint. As in Northern Ireland statements made by the complainant or the Garda are not admissible in any other proceedings.

Investigation reports from the police are sent to the Chief Executive who passes them with a written recommendation to the Board. If the investigation report suggests a possible criminal offence to the Board then it must refer the case to the Director of Public Prosecutions. If a minor disciplinary offence may have been committed then the Board, after considering any representations from the subject officer, will refer the

case to the Commissioner to deal with it informally by way of advice, admonishment or warning. If a more serious disciplinary offence is apparent then the Board refers the case to the Police Complaints Tribunal comprising two members appointed from the GSCB (including a solicitor or barrister) and one by the Garda Commissioner of Chief Superintendent rank or above. Interestingly the Chief Executive presents the case and not (as in NI) the police<sup>1</sup>.

The Tribunals sit in private, they are legalistic and although the statute was silent on the point, which includes dismissal the civil standard of proof is used. The Tribunal decides on guilt and on punishment. An officer can appeal a decision to the Garda Síochána a Police Appeal Board, made up of a judge and two others, one an experienced solicitor/barrister but no current or ex Garda appointments to it are by Government for 5-year terms.

## *Statistics*

1,054 complaints were received in 1994, a 22% increase on 1993, a continuing upward trend. Added to complaints carried forward from the previous year the total caseload for 1995 was over 14,000. Of these, 6% were withdrawn and 20% were deemed inadmissible. Of the 1,000 or so complaints left, 462 were concluded. 24% of these were withdrawn<sup>2</sup>, 10% (44) informally resolved<sup>3</sup>, 3.5% (16) involved a minor breach of discipline and 2.5% (20) charges of a potentially serious breach of discipline were referred to the Tribunal. The DPP did not direct prosecutions in any of the 98 cases he considered in 1994.

Of the 331 inadmissible cases in 1995, 56% were not admissible because the conduct would not amount to an offence or breach of discipline, 25% were frivolous or vexatious and 11% were out of time, because they were over six months old.

Of admissible complaints 63%, by far the largest number, involved abuse of authority.

The Disciplinary Tribunal made decisions in 12 cases in 1994. In four hearings five members of the Garda were found guilty of being in breach of discipline, four of the five received reductions in pay, there was no penalty imposed on the fifth.

## *New South Wales (NSW)*

The arrangements for handling complaints against the police in NSW are governed by the Police Service Act 1990 and dealt with by the NSW Police Service, the Ombudsman and the Independent Commission Against Corruption (ICAC), which, as its name suggests, focuses on complaints of corruption.

The Ombudsman in NSW deals with complaints about public bodies and about the police. Its role is to ensure that the police investigation and management of complaints is efficient, thorough and responsive.

<sup>1</sup>A test case brought by the Garda Representative Association is currently running which challenges the legality of the Complaints Board presenting and hearing cases. Cases are heard on the civil standard, although this issue is before the Supreme Court on appeal by the Garda Representative Association

<sup>2</sup>This category includes the failure of a complainant to co-operate in the process of dealing with the complaint

<sup>3</sup>Down from 63 in 1993



Complaints about police conduct, which must be in writing, can be made to the police or the Ombudsman. Those received by the police must be copied to the Ombudsman. Most allege excessive use of force, unreasonable arrest, harassment, neglect of duty or breach of procedure. Under an agreement between the Ombudsman and the Commissioner of Police Complaints about "internal management" matters do not attract the operation of the complaints process. These include complaints such as absence from duty and a failure to inform witnesses of a court date. In 1994, 621 matters were dealt with in this way. The Ombudsman received 5,056 formal written complaints in 1994/95. Complaints can be made by one police officer against another. The Ombudsman does not have an own motion power and would like one to investigate public interest matters where there is no complaint.

The Ombudsman decides how complaints are dealt with. She may, for example, decide that they are outside her jurisdiction; should be conciliated by the police or Ombudsman; be subject to a preliminary investigation or fully investigated by the police or Ombudsman.

An important aspect of this system is the initial sift.

The Ombudsman may also decide that a complaint should be discontinued. 35% of cases are declined at the outset because they lacked sufficient evidence, were trivial, frivolous or vexatious, alternative redress is available or the complaint does not have sufficient interest in the conduct complained of.

In addition to deciding how a complaint should be handled the Ombudsman's office can:

- monitor progress of investigations
- direct a further investigation of a complaint
- investigate or reinvestigate a complaint itself
- make a finding (of sustained or otherwise)
- review the action proposed, or taken, by the Police Commissioner on a sustained complaint
- grant an extension of time for the completion of an investigation

Although, therefore, the Ombudsman can conduct an investigation or a reinvestigation he/she has rarely done so because of resource problems.

The police report to the Ombudsman on cases it conciliates or investigates. The complainant may ask for their case to be re-examined where it is not sustained. Most of these requests are declined but some cases are further investigated.

Under the legislation conciliation is not permitted for certain complaints. The Ombudsman and Police Commissioner have agreed types of cases suitable for conciliation. These include failure to act, rudeness, partiality. The Ombudsman audits cases that have been conciliated. 29% of complaints in 1995 were conciliated compared with 7% in 1986/7. Attempts are continuing to extend this means of resolving complaints. 84% of complainants in a survey in 1984 were satisfied with their conciliations. Where cases are not clearcut preliminary enquiries will be asked for by the Ombudsman. The police contact complainants and the Ombudsman by telephone to clarify issues (the police use a checklist of information). This enables decisions to be made on cases much earlier.



The police service has a specific central unit (the Professional Integrity Branch of the Office of Professional Responsibility) to investigate complaints and corruption about agencies not attached to a specific geographic region while other complaints are investigated by Regional Internal Affairs or by Regional line command in the four regions.

An officer being interviewed who may have committed a disciplinary offence is notified of this fact and can be directed to answer questions. Failure to do so can attract disciplinary action. On the other hand statements by officers in cases which are conciliated are not admissible. Hearings can be held by the Ombudsman. Witnesses (though at the police officer the subject of complaint) can be compelled to attend and answer questions.

Almost half complaints dealt with by the Ombudsman's Office concern the police. This requires the deployment of \$2m of its \$4.4m budget in 1995 and 21 of its 39 investigative staff. The staff includes seconded police officers:

### 1995

5,056	written complaints
4,756	determined
650	fully investigated
1,687	declined at outset
1,010	preliminary enquiries
1,198	conciliated (29%)
227	discontinued

Of those investigated:

89	unable to be determined
278	not sustained (43%)
283	sustained (44%)

An analysis of sustained cases in 1994/95 showed 20% resulted in criminal charges, 31 in departmental charges and 68% in disciplinary action. If an officer denies charges (other than criminal) they will go before the Police Tribunal. It decides the case using a civil type standard. Punishment is for the Commissioner.

The Ombudsman reports to the Commissioner, police officer, and it can be sent provided to the complainant? She makes recommendations and the Commissioner decides what action to take and informs the Ombudsman. If the Ombudsman disagrees with the Commissioner and they cannot resolve their difference they can refer the case to a police tribunal which may direct the Commissioner to take action of the nature specified by the Ombudsman. The provision has never been used.

The Ombudsman makes annual reports and can make special reports, including to Parliament, for instance, reports have been made on arrest procedures and handling minorities. The Ombudsman is accountable to a Parliamentary Committee.

Statutory time limits apply to the completion of investigation reports by the police service. (90 days for non-internal affairs and 180 for others). The Ombudsman may extend these. In addition the time taken thereafter is monitored. 70% of cases are now completed in 12 months compared to 50% in 1989/90.

The Ombudsman is concerned about the fact that the police see internal affairs as an unattractive place to work. It has proposed additional allowances and fast track promotions or to make service in IA a prerequisite to promotion to higher rank.



NSW also has an Independent Commission Against Corruption to investigate complaints about corruption. The Commissioner and Ombudsman must report suspected corrupt practice to it. As corruption is not regarded as a widespread problem in Northern Ireland and there are very few complaints about it, no further details are given here<sup>1</sup>.

The Police Board, equivalent to the Police Authority in Northern Ireland, does not have a formal role in the police complaints system. However, as part of its wider policy role it monitors complaints.

### *Criminal Justice Commission (CJC), Queensland, Australia*

This system had the greatest independence of any I looked at, although it stops short of complete independence in that police retain responsibility of some investigations and these investigations used by CJC itself include seconded police officers. A recent CJC survey indicated that 86% of those surveyed thought that complaints should be investigated by an external agency.

The CJC was established in 1990<sup>2</sup> on foot of a report by the Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Misconduct. This report was critical of internal investigation of police complaints and saw independence as fundamental to the complaints body. Queensland has 6,000 police officers and a population of 3 million.

The Commission's membership is a Chairperson and four part-time Commissioners appointed by a Parliamentary Committee on the recommendation of the Attorney General. A majority and the votes of at least 2 parties are needed. The Chairperson has to be a lawyer. The Commission meets fortnightly, and may have additional special meetings. It is accountable to the Parliamentary Committee, an arrangement that has not always worked well.

The Commission has five divisions; the Corruption Prevention Division, Official Misconduct Division, Witness Protection Division, Research and Co-ordination Division, and an Intelligence Division. Its responsibilities, therefore, extend beyond police complaints or indeed policing. Its functions on policing include; investigating alleged or suspected misconduct by members of the Queensland Police Service (QPS), receiving minor complaints that are dealt with internally by the QPS, reporting on and overseeing reform of the QPS and providing policy directives and recommendations on law enforcement priorities, education and training.

A complaint may be received by mail, telephone or in person. The office has a 24-hour operation. All are assessed by the Commission and allocated for action. In 90% of cases a preliminary investigation is carried out and a significant number of these are found not to have been substantiated. The working criteria used to allocate cases is reproduced at the end of this section.

All complaints must be reported by the QPS to the CJC, where they are divided into three categories. The handling of the complaint is dependent on the category:

<sup>1</sup>A more detailed description of ICAC's role is given in Mr Justice Wood's Interim Report

<sup>2</sup>By the Criminal Justice Act 1989, the Police Service Administration Act 1990 is also relevant

## *Breaches of Discipline*

These are breaches of any provisions in the Police Service Administration Act 1990 or directions of the Police Commissioner. These complaints are described by the CJC as involving "a violation or dereliction of duty". These are dealt with internally, usually within the officer's region, and the CJC has no further role in them. The CJC and QPS have been working on the use of informal resolution for minor cases and have found that training officers is important, as are checks. They have found that the process is successful in reducing time taken and improving complainant satisfaction. The complainant and officer must agree to informal resolution and must "sign off" the complaint.

## *Misconduct Matters*

If the CJC determines that a complaint is a misconduct matter, it is responsible for its investigation. It can, however, refer minor misconduct cases back to the QPS for investigation on behalf of the CJC. It has evolved that minor assault is investigated in this way. Misconduct matters are defined as disgraceful, improper or other conduct unbecoming an officer; or conduct that does not meet the standard of conduct reasonably expected by the community of a police officer.

When the investigation has been completed, the CJC reviews the investigation report, examines recommendations and determines if the complaint has been substantiated. Minor misconduct matters can be referred to the police for informal resolution.

## *Official Misconduct*

This is the most serious category and involves conduct that constitutes or could constitute a criminal offence or disciplinary breach warranting dismissal. The conduct must involve the officer acting in his or her capacity as a police officer in a manner that is not honest or impartial, involves a breach of trust or a misuse of information. If the complaint falls into this category then the CJC investigates it<sup>1</sup>. These cases are usually considered by a multi-disciplinary team within the CJC. The teams usually comprise seconded police officers, civilian investigators, including former police, and lawyers.

The CJC has an own motion or call-in power. Also, and unlike some other jurisdictions, the CJC has the power to investigate internal police complaints and members of the QPS are under a duty to report suspected misconduct to the Commissioner of Police and to the CJC. Failure to do so is an offence. In addition, certain incidents must be reported; for example, injuries caused by high speed motor vehicle pursuits, deaths or attempted suicides in police custody or any serious injury resulting from police action. The CJC may dismiss frivolous or vexatious complaints<sup>2</sup>. The Commission found that its workload was increasing and it was required to investigate cases that it did not regard as meriting full investigations. The legislation was, therefore, amended in 1992 to provide that the complaint complying to the CJC could decide not to investigate a complaint if it lacks substance or credibility and it may also discontinue the investigation of a complaint.

<sup>1</sup>In certain cases the CJC may ask the QPS to investigate a complaint in this category, or to carry out parts of investigations, for example, if the complaint arose in an inaccessible area or the CJC may ask the QPS to conduct a preliminary investigation into a complaint where it is not clear that it does amount to official misconduct. However these cases are under the supervision of the CJC and the report is provided to the CJC

<sup>2</sup>There is an offence in Queensland of "making a false complaint", but it is very rarely used, not least because of the fear of putting genuine complainants off



The CJC when investigating a case has wide-ranging powers. It can require a person to provide information or material that it considers relevant to its investigation. It can enter and search premises of any "unit of public administration" including the QPS and inspect, seize or remove records. It can also apply for a warrant to enter and search other premises. It can summons persons to attend and can apply to a judge for authority to use a listening device.

As mentioned, the CJC carries out its own investigations into misconduct and official misconduct cases and reviews the investigations by the police into minor misconduct cases. It may report to the Director of Public Prosecutions where a crime is suspected. On discipline, in the misconduct cases, the CJC makes recommendations to the Commissioner of Police. If the Commissioner disagrees with a CJC recommendation, the CJC has no avenue of appeal. It has asked for the power to refer such cases to the Misconduct Tribunal. In relation to official misconduct, if the CJC recommends that an officer be charged with official misconduct, it can require the Commissioner to have a police officer charged and placed before a misconduct tribunal<sup>1</sup>. The misconduct tribunals are attached to the CJC administratively but operate independently, they consider charges and if they find them upheld, then the tribunals have the power to determine the punishment ranging from dismissal to a fine. The subject officer may appeal to the Supreme Court. The standard of proof applied is a sliding scale dependent on the seriousness of the case.

The tribunals also have a role in respect of disciplinary charges brought by the Commissioner on misconduct cases. The tribunal here has the power to review decisions made and its decisions are final. Officers are entitled to legal representation in misconduct and official misconduct cases, but only for internal discipline if the officer considering the case so decides.

The Commission may make recommendations for procedural changes. They regard this as a very important function. Their Guidance says:

*"... in many instances, the Commission regards the making of these recommendations as being a more significant outcome than any individual prosecution or disciplinary action."*

### *Time/Keeping Parties Informed*

Two-thirds of complaints are dealt with by the CJC within 4 weeks of receipt (obviously including those discontinued). The QPS by comparison deal with their 20% of cases in 18-28 weeks. Reports are sent to the complainant and officer on a monthly basis and at the end of the process. The latter is typically 1½ pages long. The CJC may also telephone or meet the complainant.

### *Research and Co-ordination Division*

This Division conducts research into policing issues and liaises with the Official Misconduct Division. It has produced a report, for example in February 1994, on "Informal Complaints Resolution in the Queensland Police Service - A Progress Report". Reports are made to the Parliamentary Committee and can be confidential. The Annual Report is to Parliament. The CJC regards its report-making power as a powerful lever on the police.

### *Corruption Prevention Division*

A small unit which focuses on prevention by concentrating on education and training.

<sup>1</sup>Headed by a lawyer. Usually hears around 12 cases per annum

## Disclosure

As in Northern Ireland, solicitors see a problem in Queensland of a complainant's statement being made available to the prosecution.

## Resources

The CJC's budget for 1995/96 was \$22,480K, with 65% of this expended on staff and \$8,500K on Official Misconduct Division (OMD).

## Staffing

The staff of the Commission working in the police complaints area at 30 June 1995 was:

Executive	2
General Counsel and Misconduct Tribunals	5
Official Misconduct	135
Corporate Services	48

The Commission's total staff for all its work is 269. The OMD accounts for 50% of the resources of the Commission and represents, in personnel and funding terms, about 2% of the resources available to the QPS. The make-up of the OMD is: 47 seconded police investigators (seconded for 2-3 years), 11 civilian investigators (almost all former police), 16 seconded police surveillance officers, 4 police and civilian technical officers, 19 lawyers, 9 accountants, 6 complaints officers and 20 registry and support personnel. It therefore involves a relatively large proportion of police officers and this has led to some arguments that it cannot be independent. The Commission, however, believes that these officers, who come to it as part of their career progression, and are picked by the Commission, soon become part of the CJC working for its aims and values. The Chairperson was quite clear that there were no practical problems with this arrangement and there were advantages in that the officers knew where to go to break into the culture etc. He does not, on the other hand, see any major perception problems. Interestingly, the Commission also recruits former police officers as its civilian investigators and these former officers comprise about 10% of its investigation staff.

## Statistics

The CJC had 1,560 misconduct and 1,155 breach of discipline cases in 1995/96. These figures have remained broadly constant over the last 4 years.

The table below shows outcomes of allegations<sup>1</sup> of misconduct as determined by the CJC. For this purpose, a matter is defined as substantiated if the CJC recommended to the Police Commissioner that a criminal or disciplinary charge be laid, or referred the matter to the Misconduct Tribunals, the Director of Public Prosecutions or another prosecution authority. The overall substantiation rate is relatively low compared with the rate for matters **investigated by** the CJC (as opposed to **simply received by it**). This substantiation rate for the latter has increased from 16.4% in 1991/92 to 32.5% in 1994/95, although the figure for 1995/96 was 20.6%. The CJC puts the increase in the substantiation rate down to:

- more 'weak' cases being screened out prior to being investigated<sup>2</sup>; and
- more time and effort being concentrated upon a smaller number of matters.

<sup>1</sup>A single 'complaint' may involve several specific allegations

<sup>2</sup>As a result of a change to the Criminal Justice Act in 1992 the CJC is now able to exercise more discretion in selecting complaints to investigate



<b>Percent Of Allegations</b>	<b>1993/4 (n=3495)</b>	<b>1994/5 (n=3881)</b>	<b>1995/6 (n=3531)</b>
Substantiated	9.1	10.1	3.8
Not Substantiated	20.9	21.0	14.8
Not Investigated	27.9	26.7	32.9
Referred to QPS or other agency for investigation or informal resolution	35.0	38.2	32.2
Other (including withdrawn)	5.8	3.1	4.4
Unfinished	1.3	0.9	11.9
Number of allegations investigated and finalised by CJC	1051	1204	659
Number of allegations substantiated by CJC <sup>1</sup>	319	391	136
Substantiation rate for matters investigated by CJC (%)	30.3	32.5	20.6

The Misconduct Tribunal has an original jurisdiction and an appellate one. In its original jurisdiction in 1995 3 matters were heard, 1 was upheld and 2 dismissed. In 1996 3 matters were heard, with 2 upheld and 1 awaiting decision.

In its appellate jurisdiction in 1995 6 appeals were heard with 2 upheld in part, 3 dismissed, and 1 officer resigned prior to decision. In 1996 6 appeals were heard, 1 was upheld; 2 upheld in part, 2 appeals dismissed and 1 awaiting decision.

### *Post Script*

The future of the CJC is in doubt. The current Government, which fell as a consequence of allegations in the Fitzgerald Inquiry which led to the establishment of the CJC, has allegedly made a deal with the police to restrict the CJC to the investigation of serious criminal matters only. In addition the CJC has recently been hit with a 6.5% cut (\$2.7m) in its budget.

<sup>1</sup>“Substantiated” indicates that a criminal or disciplinary charge was recommended by the CJC

## *Criteria To Be Considered In Determining Whether The Criminal Justice Commission In Queensland Should Investigate*

### **Degree of seriousness of alleged misconduct**

- Is the misconduct of a trivial or technical nature only?
- Are there any mitigating or aggravating circumstances?
- Would the consequence of prosecution action or disciplinary action be unduly harsh and oppressive or be likely to be regarded as such by most officers of the relevant unit of public administration?
- Would the investigation or resultant prosecution action or disciplinary action be perceived as counter-productive, for example, by bringing the law or the criminal justice system (or the disciplinary system) into disrepute?
- Does the alleged misconduct involve a group of persons acting in concert?
- Is the alleged misconduct of a continuing nature?

### **Public interest**

- Does the community have a genuine interest in having the matter investigated?
- If the matter is not investigated, what will be the effect on public order and morale?
- Does the matter relate to essential institutions such as the Parliament, the Courts or the QPS to the extent that public confidence in those institutions may be eroded if the matter is not investigated and the alleged wrong-doers brought to justice?

### **The likelihood of the Commission being able to conduct a successful investigation**

- How stale is the alleged misconduct?
- Are there likely to be problems in locating or interviewing relevant witnesses?
- Is the complainant willing to co-operate with the investigation and any consequent prosecution action or disciplinary action?

### **What resources are likely to be committed to the investigation if the matter is to be properly investigated**

- How long is the investigation likely to take?
- How many investigators and other personnel will need to be deployed in the investigation?
- What additional expense is required to undertake the investigation?



### **Special circumstances relating to the alleged wrong-doer**

- What is the age and experience of the alleged wrong-doer?
- What is the state of his or her physical and mental health?
- Has the alleged wrong-doer been convicted of or disciplined for misconduct of a similar nature, or been the subject of allegations of misconduct of a similar nature?
- Are there any other relevant personal particulars of the alleged wrong-doer?

### **The prevalence of the alleged misconduct**

- Is there a need to investigate and take prosecution action or disciplinary action by way of a deterrent, whether personal or general?

**Is the state or any other person or body likely to be entitled to claim compensation, reparation or forfeiture if prosecution action is successful?**

**Is any other agency investigating or capable of investigating the alleged misconduct?**

### **The obsolescence or obscurity of the law or rule breached**

- Particularly in relation to proposed disciplinary action, is the rule no longer generally complied with?

**Is the alleged wrong-doer willing to co-operate in the investigation or prosecution of others or has the alleged wrong-doer already done so, and if so, to what extent?**

## ***New York City: Civilian Complaint Review Board (CCRB)***

Up to 1993 there was a CCRB made up of 12 members, including a Chair. Six appointed by the Mayor were members of the public (one from each borough plus one), and six were appointed by the Police Commissioner from his civilian executive staff. This system involved the supervision of investigations. In 1993 the New York City Charter was amended and an all-civilian, that is non-police, board was established.

The statute sets out the mission and purpose of the CCRB:

“It is in the interest of the people of the City of New York and the New York City Police Department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be made complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the Police Department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct.”

The Board is now made up of 13 members of the public appointed by the Mayor for 3-year terms. There are one from each of the five boroughs nominated by the City Council, three with law enforcement experience nominated by the Police Commissioner and five appointed by the Mayor. The Board must reflect the diversity of the City of New York. The Board meetings, which are open to the public, are held monthly.

Misconduct complaints about NYPD officers (and other Police Departments) totalling 38,000 are made to the CCRB in writing, by telephone or personally and can be made by a victim or witness. A freephone number is available 24 hours a day. Complaints may also be made to the police or to governmental offices. The percentage made to the CCRB has increased with most complaints made by telephone to the CCRB (1,326), in person to a police station (706) or by telephone to the police (335).

The CCRB investigates, reviews, hears and makes findings and recommends action on complaints of police misconduct involving force, abuse of authority, discourtesy or offensive language (it considers only disciplinary not criminal aspects). Other types of misconduct do not fall to the CCRB. The other types include operational police misconduct (eg failure to act), organisational police misconduct also known as a failure of organisational discipline (eg sleeping on duty). Such complaints are dealt with by the Office of Chief of Department of the NYPD. Complaints of corruption and of death or serious injury are investigated by the police Internal Affairs Bureau which has around 600 officers.

After establishing that a complaint is within its jurisdiction and there is a prima facie case, a CCRB intake officer meets a complainant to take a complete statement. Only then will an investigator be assigned. The investigator, who is not one of the Board members, for example, look at records, interview and issue subpoenas to access documents or to secure a testimony. An officer is required to answer relevant questions to the best of his knowledge and ability, but has the right not to be compelled to incriminate himself and has the right to counsel. However, there is no right of silence and if an officer fails to answer a question this could result in suspension and possibly charges of insubordination. Completed investigations are referred to the CCRB and it makes findings and then recommends which are sent to the Police Commissioner. In 22% or so of cases investigations cannot be completed for a variety of reasons, for example, non-co-operation or difficulty in identifying the subject officer. These cases will be reviewed by the Board and may be closed. They may, however, be reopened if a previously unavailable complainant or witness comes forward.

Another option is Alternative Dispute Resolution Procedures (ADR). A formal investigator is not required for these. Instead, mediation or conciliation is tried. Mediation is informal and non-disciplinary and both parties must agree to it. It is conducted by a qualified, neutral third party. It has only very rarely been used.

Conciliation, which is solely at the discretion of the complainant, involves an officer discussing the complaint with a senior CCRB staff member who gives advice on proper procedures.

Whether ADR is offered depends on the nature of the complaint. The procedures require the comments of the complainant in every case. No record is kept of the content of the procedures but conciliation is noted in an officer's CCRB history. An officer can only have one ADR procedure in a 12-month period.

Interestingly complainants are given only 10 business days to come to interview, plus one reminder, and if they do not come forward the case is "administratively closed". This happens in about one third of cases. A complaint may be reopened by the Board. It takes CCRB about 3-6 months to complete the whole process, that is investigation and Board review. It notifies the complainant of receipt within 7 days, and then has to report within 45 days of receipt and then every 45 days thereafter. It must notify the complainant within 5 days of the completion of the investigation, and 7 days after its finding.



## ***Outcomes***

An investigated case will be put to a 3-member panel of Board members, or to the full Board, and its decision could be:

- Substantiated and a recommendation made to the Commissioner on appropriate disciplinary action. The Board has no redress if the Commissioner does not accept the recommendation.
- Unsubstantiated, the investigation disclosed insufficient evidence to establish by a preponderance of the evidence that the subject officer has committed the alleged act.
- An officer may be exonerated - the incident occurred but there was no misconduct.
- Unfounded, the acts alleged did not occur.

Where an accused officer cannot be identified attempts are still made to consider the allegations.

The standard of proof to be used by the panel or full Board is the "preponderance of the evidence". In other words a majority of evidence must weigh in favour of the allegation. Complainants and officers are notified in writing by the Board of its finding and recommendations, if any.

The Board may recommend "charges and specifications"; if it does, and the Commissioner brings a charge, it would normally be heard by an internal disciplinary hearing or at the City's Office of Administrative Trials and Hearings. The case is prosecuted by the Advocate's Office in the Police Department. The "judge" will forward to the Police Commissioner his recommendations on fact, law and on penalty. Where the Commission disagrees with a CCRB or Hearing recommendation he must explain his findings in writing. An officer may appeal an adverse decision of the Commissioner to the courts. The Board may also recommend "Command Discipline", which is imposed by the subject officer's commanding officer. It is effectively informal action, with a note on the officer's record. A third level of recommendation is "instruction". This is again for the officer's commanding officer who would instruct him on proper procedures. This does not go on the officer's record but does go on his CCRB history.

## ***Reports***

The CCRB will include in investigation reports to the Police Commissioner broader issues raised by the case. It will also report separately to him on more general issues such as patterns, and policy issues. The CCRB also publishes 6-monthly reports.

## ***Training***

John Jay College runs an in-depth course for the investigators at the CCRB to prepare them for their role. The police in New York recognise the importance of training to improving standards, preventing complaints and they put a good deal of effort and resources into this. For example, they have a compulsory ethics and cultural diversity course.

## *Community Outreach*

The CCRB has an outreach mandate, for example, it holds public information meetings to learn about the CCRB's mandate. Investigators can take complaints at these. The Board also makes presentations to community based organisations.

It has also tried to increase its media presence to inform people about its role. As part of this it identified 500 or so sites for displaying literature including hospital casualty departments, schools and colleges, and libraries.

## *Statistics*

The CCRB has had problems with a backlog of work. 2,854 complaints were filed in the first 6 months of 1995. This figure is a 32% increase on the same period in 1994, with 1994 seeing a 37% increase on 1993. The CCRB monitors, among other things, the ethnicity of complainants and of subject officers, the length of service of each subject officer, the sex of the complainant and the officer, number of complaints by police area and by police department. Precincts are ranked according to the number of complaints made.

Of the 3,961 cases reviewed by the CCRB in the first half of 1996, 1,285 (32%) were completed investigations. Of these 119 (9.3%) were substantiated, this is 3% of all cases dealt with. 409 cases (10%) were conciliated or mediated.

	No	%
Fully investigated	1,285	100
Substantiated	119	9.3
Unsubstantiated	974	76
Exonerated	93	7
Unfounded	99	7.7

Those substantiated are referred to the Police Commissioner for consideration of disciplinary action. 31 cases were dealt with in the first half of 1996. Instruction (training) was given in 14, command discipline in 4 and no action in 13. Of the 61 cases outstanding at the end of the previous reporting cycle the Police Commissioner took the following action: 3 guilty after hearing, 10 not guilty after hearing, 1 guilty plea, 9 instructions (training), 8 informal discipline, 11 cases dismissed, 15 no action (some time-barred), 2 no case, and 2 other.

Investigations in 861 cases (22%) could not be completed, primarily because of the complainant's or alleged victim's unavailability or lack of co-operation. 33% of cases were administratively closed because of no response from the complainant. Complaints about force are one and a half times more common than abuse of authority or discourtesy, with relatively few about offensive language.

## *Finance/Staffing*

The budget of the CCRB in 1996/97 is \$5,794K and its complement was 146 including 87 investigators. All, as the name suggests, are civilians and most have degrees, which need not be in law.

The Board has been seeking outside funding sources to help finance its advertising campaigns.



## *Ontario Police Complaints Commissioner*

In Ontario there is an independent, civilian-based complaints body, established under the Police Services Act 1990. Its mandate is to oversee the investigation and resolution of public complaints regarding police conduct in the 117 Ontario police forces. The Police Complaints Commissioner is appointed by the Attorney General, but on an Order of Parliament. He is answerable to the Attorney General.

Complaints can be made in person or by post to the police or the Police Complaints Commissioner's offices or by telephone at the Commissioner's offices (he has regional outlets). They must be lodged within 6 months, although the Commissioner can extend the time. All complaints are sent to the Commissioner. The Commissioner may, in exceptional circumstances, initiate a complaint.

Complaints may be informally resolved or investigated or declared frivolous, vexatious or made in bad faith by the Chief of Police subject to review by the Commissioner. Informal resolution to be concluded requires the written consent of both the complainant and the subject officer (in Northern Ireland it does not require the officer's consent). All cases informally resolved are reviewed by the Commissioner. The Commission and Police have been working to extend the use of this procedure.

Investigations are undertaken by special divisions in the police forces (the Public Complaints Investigation Branches). An integral part of this process is a requirement on the investigating officer to send a monthly written report to the complainant, the officer concerned and the Commissioner. This is a detailed account of the work done on the case and makes the system much more open.

The Commissioner usually monitors these cases but he can undertake investigations himself, for example, when asked to do so by a force, or where a matter of public interest arises. Usually the Commissioner's own staff would undertake these investigations, but in a pilot earlier this year a police officer was seconded to him for the duration of an investigation. The Commissioner regarded this as an effective arrangement and an efficient use of resources.

At the end of the investigation the usual possibilities of no action, a criminal charge, or disciplinary action (whether formal or informal) are available. Where disciplinary charges are brought the case may be sent to a Board of Inquiry for a public hearing (see below) or to an internal police disciplinary hearing. The complainant, officer and Commissioner receive a final report.

The Commissioner monitors these decisions and may review them, on his own initiative, where it is considered to be in the public interest. He can re-investigate if he chooses.

The complainant or an officer also has the right to ask for a case to be reviewed by the Commissioner. The Commissioner may either decide on no further action or, if it is in the public interest, order a hearing before the Board of Inquiry.

In addition, the Commissioner may make recommendations to the Chief of Police and government on policing practices.

The Board of Inquiry is independent of the Commissioner's office. It is a 3 member tribunal with original and appellate (appeals from the internal disciplinary hearing) jurisdictions. The Chair is a lawyer appointed by the Attorney General, the second member a non-lawyer appointed on the recommendation of the Police Association and the third is a non-lawyer recommended by the Association of Municipalities of

Ontario. No police officer can be a member. Unlike in Northern Ireland, the case is presented by the Commissioner's office (rather than the police) and the hearing is open to the public. The case must be "clear and convincing" evidence which is a standard regarded as being nearer the civil than criminal burden and, indeed, replaced the criminal standard. The Board heard 16 cases in 1995 and has a budget of \$500K.

When proved the Chief of Police makes a submission as to penalty and the Board taking account of this may impose penalties ranging from reprimand to dismissal. Either party can appeal a decision of a Board to the Divisional Court.

Another feature of the Ontario system is the attention given to training. Staff are given a two-week orientation training programme with sessions on outreach, complaint intake, monitoring and investigating complaints, the Board of Inquiry and administrative matters.

The Commissioner also has a programme of training and information sessions for the various police and community stakeholders. On top of these he does "evening community forums" where the public are invited to open discussions with a panel comprising representatives from the Commissioner's Office, Board of Inquiry and the local police service.

The Commissioner also has a programme to review access to the complaints system. As part of this they have, for example, agreed for other organisations to serve as points of contact to assist the public. A particular feature of the Ontario system, which I did not experience anywhere else, is the Special Investigations Unit (SIU) which is responsible to the Attorney General. It is also established under the Police Services Act. In 1994/5 its budget was \$1.9m. The Director of the SIU cannot have been a police officer and investigators cannot be current police officers. It may on its own initiative or at the request of the Attorney General or Solicitor General investigate the circumstances surrounding serious injuries, sexual assaults or deaths that may have resulted from criminal offences committed by police officers (this would not normally include off-duty conduct). The service is required to notify the SIU of such cases immediately. Investigations are carried out by SIU investigators. 176 occurrences were reported to and investigated by the SIU in 1995, 68 were "custody injuries" and 52 "vehicle injuries". The Director has sole authority to decide whether or not criminal charges are warranted. The SIU has no role in discipline.

The SIU can compel officers (other than subject officers) to make statements and this has led to the police refusing to co-operate with it on several occasions.

The SIU faced difficulties at the outset because of its lack of investigative experience. This is not such a problem now. However, there can be difficulties when investigations are being conducted by a police force and the SIU. Operating procedures have been drawn up to help things run smoothly. These cover, for example, preservation of evidence and priorities for interviewing witnesses. In short, a full exchange of physical evidence is provided for and the SIU has priority in respect of witness interviews and collection and inspection of physical evidence.

The SIU issues a press release when an incident happens that it is going to investigate. At the end of an investigation a press release is also issued outlining the Director's decision.

As in Northern Ireland, the 'Police Authority' equivalent in Ontario, the Ontario Civilian Commission on Police Services, has a role in the discipline of Chiefs of Police.



## **Statistics**

Files containing 6,062 allegations were closed in 1995. There were 3,178 failure to act allegations, 1,327 allegations of threats, verbal abuse or harassment, 1,010 of assault or excessive force and 547 of misuse of authority.

In 1995 the 6,062 allegations contained in 3,462 cases, had the following outcomes:

<b>Region</b>	<b>Informal Resolution</b>	<b>Withdrawal</b>	<b>Not dealt with/ frivolous vexatious</b>	<b>Other</b>	<b>Chief/OPP Commissioner's decision- no further action</b>	<b>Chief/OPP Commissioner's S.90 decisions laying information admonished disciplinary hearing board of inquiry</b>	<b>Total provincial complaint</b>
<b>TOTAL</b>	166	893	433	376	1,446	148	3,462

These figures are not dissimilar to 1994. 4.3% of 1995 cases were substantiated, compared to 5.3% in 1994. 4.8% were informally resolved.

As mentioned the Complaints Commissioner can be asked, or can choose, to review cases. In 1995, 472 were accepted for review, 465 were decided to require 'no further action', 1 was informally resolved, 6 withdrawn and none sent to the Board of Inquiry (in previous years a small number were sent).

## **Footnote**

The Attorney General on 9 October 1996 appointed a Lawyer to review all civilian oversight agencies of policing in Ontario. The aim is to streamline oversight processes and eliminate any duplication. It would be fair to say that this announcement caught the Commissioner by surprise.

## *New Zealand - Police Complaints Authority*

New Zealand has a population of 3.6 million and a police service of 8,400 officers. It has a statutory Police Complaints Authority established in 1988. The Authority must be a qualified barrister or solicitor of the High Court. He is appointed by the Governor General on the recommendation of the House of Representatives. He is a full-time appointee, has a deputy and three investigators.

There was initial political opposition to the Bill introducing the Authority as well as opposition from police unions, but it is now widely regarded as an effective system by both police and public (although the Authority himself still sees some resistance from the police).

The Authority receives complaints alleging misconduct or neglect of duty. The most common allegations are attitude, language, use of force, use of dogs and failure to keep the public informed. The Police Commissioner must notify the Authority of every complaint received. The Authority can 'call-in' cases involving death or serious bodily harm. He now regards the system in operation as incident-based, as opposed to complaint-based. Therefore, he is notified of all deaths or serious injuries resulting from vehicle pursuit, deaths in custody or from shootings. Also, as a result of a "memorandum of understanding" between the Authority and the Commissioner the latter must advise the Authority of certain kinds of internal misconduct. The Police Complaints Authority has a range of options, to:-

- investigate the complaint (a power occasionally used), this can either be from the beginning or at any later stage in the case, and includes re-investigating a police investigation);
- supervise a police investigation (often referred to as a joint investigation);
- monitor other cases where the police have investigated;
- decide that no action is required by the police;
- allocate the case for a formal resolution by the police.

When notified of the outcome of an investigation, complainants are told that if they are not satisfied they can refer the matter to the Authority for review. Where he carries out an investigation, the complainant and the subject police officer are given a copy of the report. Informal resolution has been used in about 25% of cases and the cases dealt with in this way are allocated to the relevant police district (of which there are 27) by the Authority. A complainant may opt out of the informal resolution procedure at any stage.

Although the statute is silent on the standard of proof the one used is "beyond reasonable doubt".

The Authority has focused on particular types of cases such as accidents resulting from car chases involving police vehicles and incidents involving Pacific Islanders or Maoris and has drawn attention to patterns or trends in his annual reports or in special reports. He has done nearly 30 special reports in the past 4 years and usually publishes these. He sees the presentation to the police of a "block of useful information on complaints" rather than a "block of discipline" as essential.



The Commissioner has a maximum of 2 months to complete an investigation and report to the Authority. The Authority can direct the police to reconsider their proposals for action and he can direct the police to re-open an investigation. Where the Authority disagrees with the action proposed by the Commissioner he may make recommendations supported by reasons (for example a more serious disciplinary charge should be brought). The Commissioner then has to notify the Authority of the action he takes and give reasons if he departs from the Authority's recommendations. The Authority, if he is unhappy, may send a copy of his recommendation to the Attorney General and Minister for Justice and may send a report for tabling in the House of Representatives to the Attorney.

### *Statistics*

2,635 complaints were received in the period 1 July 1995 to 30 June 1996, 2,444 were investigated. Of the 2,635, 37 were refused (1.4%) and 55 withdrawn (2%). The most common grounds for complaint were attitude/language 441 (18%), use of force 361 (15%) and failure to investigate (a neglect of duty complaint) 227 (9%).

The figure of 2,444 (cases accepted) included 90 automatically referred, without the need for a complaint, because they included death, serious injury, and attempted suicide or suicide in police custody.

Of the 750 cases completed, 106 (14%) were sustained, 186 (25%) conciliated and 401 (54%) not substantiated.



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