



**THEMATIC REPORT ON THE IMPLEMENTATION  
OF RECOMMENDATIONS BY THE INDEPENDENT  
COMMISSION ON POLICING FOR  
NORTHERN IRELAND:**

**HUMAN RIGHTS AND ACCOUNTABILITY**

OFFICE OF THE OVERSIGHT COMMISSIONER  
FOR POLICING REFORM

SEPTEMBER 2005



Oversight Commissioner  
Al Hutchinson

This is the 14th report on the progress of the policing reforms in Northern Ireland, which flow from the 175 recommendations published by the Independent Commission on Policing for Northern Ireland in 1999.

As I indicated in my last report, released in June of 2005, a great deal of progress has been achieved, and as a consequence the oversight team and I have assessed 114 of the 175 recommendations to be sufficiently completed as to be deemed implemented. This leaves 61 recommendations which we will continue to monitor for the remainder of our oversight mandate.

I will therefore focus a number of my remaining reports on some of the critically important themes that ran through the Independent Commission's 1999 report, and which we feel provide the lifeblood not only of the Independent Commission's vision on policing reform in Northern Ireland, but the vision expressed in the Good Friday Agreement, subsequently endorsed by so many: the development of a police service capable of attracting and sustaining support from the community as a whole.

My two previous thematic oversight reports addressed issues of training and policing with the community respectively. The present report will focus on the key themes of human rights and accountability, and the many policing issues that surround these concepts.

Sadly, this 14th oversight report follows a brief period in September 2005 which witnessed increasingly violent public order disturbances in many parts of Belfast. The intensity of these incidents had not been seen for some time, and harkens back to a darker period of Northern Ireland's history which many had hoped would remain in the past. This is deeply disappointing for many reasons. For example, it is my firm belief that this is not the image that the majority of people in Northern Ireland wish to portray to the world. In addition, incidents like these are disappointing because they stand in such stark contrast to the many significant advances that have been made in policing.

They also fail to acknowledge the real and serious efforts made by the principal agencies, including the Police Service of Northern Ireland, the Policing Board, the District Policing Partnerships, and the Ombudsman, to make the new beginning to policing a functioning reality. Nor do such actions lend support to the genuine and significant efforts on the part of many ordinary men and women who chose to work towards a more positive and stable future for Northern Ireland.

Nonetheless, this is a wake-up call and these events serve as a painful reminder that not everyone shares the goals spelled out by the Independent Commission and the Good Friday Agreement, nor have the benefits of economic and social growth and stability yet extended to all. However, these difficult times provide a test for the kind of human rights-based policing model recommended by the Independent Commission. This also provides a test for the complex policing accountability structures that have successfully been put in place over the past four years or so, particularly for the individuals who feel aggrieved by police actions, for the police officers



whose duty it is to police regardless of present circumstances, and ultimately for the agencies and accountability bodies designed to govern the Police Service under such difficult conditions.

If nothing else, these unfortunate events serve to highlight the crucial role that accountability structures will play in the future policing of Northern Ireland, and the perceptive nature of the Independent Commission's recommendations in this regard. It is my considered view that the policing reforms already in place are not jeopardised in the long term. This is not only because of the resilience and strength that I believe to be hallmarks of the people of Northern Ireland, but the inescapable fact that a clear majority of the community continue to push for the kinds of changes spelled out by the Independent Commission and reported on by myself and the oversight team.

In my role as the Oversight Commissioner responsible for monitoring and reporting on the progress of the policing reforms in Northern Ireland, let me be blunt: politics has failed policing in Northern Ireland. This is a general observation rather than a statement directed at any specific political group or individual, and simply points out a fact which has substantial consequences for the necessary reforms to policing. Coupled with a lack of acceptance, in some quarters, of the individual and societal responsibilities that accompany expected rights, the current democratic deficit creates the risk of either undermining or stagnating efforts to create a widely accepted, human rights-based, accountable policing service. A return to an embattled, fortress Police Service is the goal of only a few. I know that the police do not want this, and I remain convinced that the majority of people in Northern Ireland do not want this either.

In spite of these risks, the fundamental building blocks for a representative, fair, impartial and accountable policing service are now firmly set in place and will prevail. The Police Service, its leadership and the men and women in uniform, whose job it is to serve the public, have done what was asked and expected of them. The Policing Board has and will continue to provide solid governance and leadership in monitoring and supporting the Police Service. The District Policing Partnerships stand as the most conspicuous symbol for community engagement and involvement, and the work they have undertaken to date cannot easily be ignored. The Police Ombudsman continues to fairly and impartially act on the public's behalf to ensure that police officers act within the law in the performance of their duties. All of these organisations, and more importantly the individuals who staff them, are inexorably improving local policing services and increasing public trust in democratic policing. They collectively deserve an enormous amount of credit.

The next few months will be critical, and I would not wish to give the impression that the reforms recommended by the Independent Commission can be brought about under any circumstance. That being said however, I have no doubt, nor do any of my oversight team, that judging by past achievements and current efforts, the new beginning for policing will become a reality despite the efforts of those guided only by their own narrow agendas.

H. Alan Hutchinson  
Oversight Commissioner



» abbreviations

ACC	Assistant Chief Constable
ACPO	Association of Chief Police Officers
CCTV	Closed Circuit Television
DCU	District Command Unit
DPP	District Policing Partnership
HMIC	Her Majesty's Inspectorate of Constabulary
LAC	Learning Advisory Council
NIO	Northern Ireland Office
PSNI	Police Service of Northern Ireland
SLA	Service Level Agreement
TED	Training, Education and Development
UK	United Kingdom

» human rights



*“...our consultations showed clear agreement across the communities in Northern Ireland that people want the police to protect their human rights from infringement by others... and to respect their human rights in the exercise of that duty”*

### Introduction

The Independent Commission understood the centrality of human rights in the policing arrangements it recommended for Northern Ireland. The choice of human rights as the first substantive area to be dealt with was both deliberate and significant. In addition, there are recommendations on human rights in several other chapters, and its spirit or theme can be said to underlie the entire report. The theme of human rights is also the subject of this section. Its aim is to examine the intentions and expectations contained in the Independent Commission's recommendations on human rights, a list of which is attached as Appendix 'A'. In addition, we will examine the results achieved to date by the various policing institutions themselves, in particular the Police Service of Northern Ireland (PSNI). This process should also serve to identify and raise the strategic and practical issues that remain to be addressed.

### Background and Context

The Independent Commission's report made clear that the fundamental purpose of policing should be “the protection and vindication of the human rights of all”, and that there should be no conflict between human rights and policing, since policing ultimately entails the protection of human rights. As noted in our Report No. 13, released in June of 2005, the majority of organisations, structures, and systems required to instil a human rights ethos are now in place and functioning as intended.

However, the inculcation of human rights as a core policing value is not something that easily lends itself to measurement by enumerating organisations, systems or procedures. Although proxy measures can be developed that provide at least some indication, a human rights ethos ideally represents a value system that flows deeply throughout a police organisation, and which ultimately manifests itself not only in written policies and organisational doctrine, but also in individual behaviour. These issues are now becoming the subject of greater public enquiry, and many government, non-governmental and private groups are in the process of building a comprehensive body of reliable, professionally gathered survey data on policing in Northern Ireland. This body of knowledge forms the basis upon which future studies and attempts to inform this crucial debate will rest.

Community expectations and involvement also have an impact on building a human rights ethos in policing. Holding the police to high standards should rightly be seen as beyond argument, however it must also be recognised that this places a corresponding duty on the community. If policing is to be successful the community must help to create a supportive environment, one that assists the police in their efforts to make society safer, and strengthens the understanding of human rights in their duties.

The important questions in the present context are whether a human rights ethos has been successfully embedded in the Police Service of Northern Ireland, and whether or not attempts to do so can already be discerned in the prevailing police culture, and in the behaviour of individual officers? That a significant amount of work has gone into restructuring the Police Service and in changing the operational mode of policing is no longer in dispute; the thirteen oversight reports produced to date certainly testify to these achievements.

What remains less certain at this point in time is whether the police culture and all officers have embedded the human rights ethos to the degree envisioned by the Independent Commission, nor is it clear whether the community has understood and embraced its reciprocal responsibilities. Violent public order incidents in early September of 2005 would seem to demonstrate that not all of the community is yet willing to acknowledge the role it must play in ensuring the delivery of a more normalised mode of policing, based soundly upon a framework of human rights.

As the Independent Commission rightly pointed out there are inevitable tensions between the demands of human rights and those of policing. Police officers have extraordinary powers to limit individual rights and freedoms, and the judgments they make, whether in word or in deed, often determine the difference between the public's perceptions of what constitutes 'good' or 'bad' policing.

The Independent Commission understood that unilateral police actions or intentions could not in and of themselves conclusively address public concerns about police conduct. It therefore recommended a more multilateral process, which both served to articulate public expectations of police performance, and create external mechanisms for ensuring the centrality of human rights in policing. This was to be achieved in part by making the police as publicly accountable as possible, not only to specific agencies but also to the law and to the community.

These mechanisms have now been in place for some time, and include but are not limited to the Policing Board, the Police Ombudsman and the District Policing Partnerships; our own reports on the degree and pace of implementation of the Independent Commission's recommendations also represent an accountability function. Accountability and the active monitoring of police performance, not least for continuing to embed a human rights ethos, was considered central to the Independent Commission's recommendations, and will be examined in greater detail in the accountability section that follows.

The Independent Commission's report commenced by recommending the creation of an overarching and comprehensive programme of action to focus the approach to policing in Northern Ireland on human rights. The Commission also recommended more specific actions including the promulgation of a new oath for all serving police officers, the development of a code of ethics, the expansion of human rights training for recruits, serving officers and civilian staff, and the incorporation of human rights awareness and practice into individual performance evaluations.



The Commission also recommended the appointment of an internal human rights legal advisor to assist the Police Service to proactively identify the human rights implications of its programmes and activities, and of specific operations while still in the planning stage. To ensure the proper governance and scrutiny of these activities, the Commission recommended that the newly formed Policing Board actively monitor the human rights performance of the Police Service.

#### Accomplishments

The Police Service has largely implemented the Independent Commission's recommendations by developing a comprehensive programme of action to focus policing on a human rights-based approach. The Police Service developed a Human Rights Programme of Action, which was released in September of 2004. This breaks police activities down into seven sometimes overlapping components: 1) basic values, 2) staff, 3) training, 4) management practice, 5) operational policing, 6) structure, and 7) accountability. Other areas implemented under the activities identified in the Programme of Action relate to specific aspects of the Independent Commission's recommendations, including the adoption of a new police attestation. The attestation has been in use for all police officers since 2001, and was formally acknowledged by officers recruited prior to 2001.

The Police Service launched a new Code of Ethics in February of 2003. This fully incorporates the provisions of the European Convention on Human Rights, and came into effect on 14 March 2003. Police officers who fail to meet the standards as spelled out in the Code become subject to disciplinary action. We have repeatedly remarked on the positive qualities and comprehensiveness of the Code of Ethics, and on the fact that it represents a solid policing good practice. It should be noted that aside from internal scrutiny, police officers' adherence to the Code of Ethics will also be continually monitored and evaluated by the Policing Board and its two Human Rights Advisors.

The Independent Commission also made recommendations related to the key aspect of human rights training, as the means whereby the fundamentals and practicalities of a human rights-based approach to policing could be embedded in both police officers and civilian staff. The Police Service arranged for a number of focussed human rights training sessions in 2001, and provided a pocket-sized Aide-memoire on human rights to all police officers. Initial human rights awareness training was also part of the Police Service's Course for All, held between November of 2002 and April of 2003.

The Course for All reinforced awareness of the constitutional structures for policing in Northern Ireland, the impact of the new Code of Ethics, and also the importance of the provisions of the new police attestation, and ultimately included over 12,000 police officers and civilian staff. The Police Service's training and development strategy now identifies human rights as a core theme for training, and a human rights audit of all lesson plans has been completed.

We acknowledge the initial solid effort made by the Police Service in this respect, but would point out that the creation of such an approach to policing will be an evolving requirement. There is also a continual need to update police officers, an issue which was subsequently identified in the Policing Board's 2005 Human Rights Monitoring Report. Other aspects of training are discussed further below, and will be addressed in greater detail in an upcoming oversight report scheduled for release in December of 2005.

In terms of strengthening the Police Service's own internal mechanisms, its annual performance review of police officers has now been modified to include a component on human rights. This process includes a Human Rights Assessment Guide to assist both reviewers and officers being appraised. The Policing Board's Human Rights Monitoring Report observes that the identification of human rights as a discrete element of appraisal is not sufficient however, and that it must be related both to tangible rewards and the Police Service's promotions and selections processes. The impact of the appraisal system's human rights component will also continue to be monitored under related recommendations, some of which are addressed further below.

In 2001 the Police Service created a position for a human rights legal advisor, and engaged a qualified civilian human rights lawyer. The legal advisor has had a positive impact over time by providing legal advice and vetting police policy, as well as by assisting human rights training throughout the Police Service. The advisor is a key link between the organisation and the Policing Board's Human Rights Advisors, and also represents the PSNI with policing partners both within and outside of Northern Ireland.

The final recommendation of the Independent Commission's Human Rights Chapter addresses the critical inter-relationships of effective governance and accountability, and successful human rights-based policing. A key recommendation was that the Policing Board closely monitors the human rights performance of the Police Service as a whole. We have assessed this recommendation to be implemented, and that the Policing Board has accomplished this important task in an objective, professional and committed manner. The Board initially established a Human Rights and Professional Standards Committee and subsequently engaged a noted human rights lawyer in February of 2003, to act as the principal advisor on human rights. Together with a second experienced lawyer engaged by the Board, the Human Rights Advisor developed an extensive programme of ongoing human rights evaluation, as well as a detailed monitoring framework, endorsed and released by the Board in December of 2003.

The Policing Board is currently in the process of filling another human rights position to support the work entailed by its monitoring responsibilities. The degree and comprehensiveness of this monitoring effort is best represented by the Policing Board's Human Rights Index, which is attached to this report as Appendix 'B'. Further detail on the Policing Board's work, including the Police Service's related Human Rights Programme of Action, can be located at: [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)

Since launching its human rights monitoring programme the Policing Board has released a number of public reports on human rights, in addition to its regular annual policing plans and other reports. The initial human rights report was the Human Rights Monitoring Framework released in December of 2003. This was followed by a special report on human rights and the policing of the 2004 Ardoyne Parade, released in November of 2004. The third report was the first Human Rights Monitoring Report already noted, released in March of 2005. Reports are currently being prepared in relation to the human rights policing performance during the recent Ardoyne and Whiterock parades.

These and other accomplishments permit the Policing Board to fulfil its proper governance role with respect to monitoring the human rights performance of the Police Service. With such a



comprehensive system in place the focus may now shift to the system's underlying purpose: to hold the Chief Constable and the Police Service to account for their human rights performance.

#### Remaining Issues

As noted at the outset of this report, the thematic approach taken is designed to highlight the strategic and remaining practical issues with respect to focussing policing in Northern Ireland on a human rights-based approach. A great deal of credit must go to the leadership of the Police Service for introducing systems to achieve this objective, and for its commitment to a human rights-based policing regime. The Policing Board has also embraced this concept unequivocally, and is actively engaged in its governance role through its extensive monitoring programme. It is both legally and structurally equipped to deal with any related issues that might arise in the future.

Nonetheless, at a strategic level there exists the risk that in the longer-term the development of a human rights-based policing culture, both within and outside the Police Service, may not ultimately be sustainable. As pointed out above, this issue does not rest solely with the Police Service, or with other policing institutions, who have clearly evidenced their commitment to these ideals. The onus must shift to the wider community, and the absence in some areas of an environment even remotely conducive to the delivery of this kind of policing service, a service which is ostensibly desired by all; this is bound to have its own effect.

The kind of human rights-based policing envisioned by the Independent Commission cannot be delivered under any circumstance. Paradoxically, by refusing to accept the inevitable police-community relationships and duties demanded by this kind of policing, its ultimate achievement may only be delayed. The consequences of this refusal came sharply into focus following a particularly violent weekend of public disorder on the 10th and 11th of September, 2005.

This was preceded however, by a lengthy period of increasing tensions in some communities, variously reflected by increasing levels of threat and intimidation both against people and institutions, including the Policing Board and several District Policing Partnerships. Recent months have also witnessed increasing attacks of a racial, homophobic or sectarian nature, as well as increasing levels of criminality designed both to control territory and build on existing criminal enterprises. Under such circumstances policing resources better applied elsewhere, such as routine patrol, crime prevention and public education, will continue to be diverted to incidents more related to public disorder.

These violent incidents, which many in Northern Ireland and elsewhere had hoped were a phenomenon of the past, have an enormous impact on policing, an impact which will likely be felt for many years to come and only adds to the challenges of the existing change agenda. There is a risk not only of jeopardising the Independent Commission's underlying intentions, but more importantly the crucial efforts and sacrifices made by members of the community who have come forward to assist the Police Service in achieving its goal of becoming a human rights-focussed organisation. There is a further risk that individual police officers will conclude that the inevitable option is to retrench to a policing mode more reminiscent of armoured landrovers and fortified police stations, rather than risk the failure of more progressive approaches. The ultimate consequences of this, it should be stressed, will affect not only the police but also the policed.

Avoiding such scenarios will require not only the strategic vision and efforts of the Policing Board and others, but the support of the Police Service and the wider community. Unfortunately our

evaluations and other publicly available information seem to indicate that the attitudes of some towards the police, particularly those of the young, is in fact hardening. Attitudes towards people of different communities, ethnic groups and beliefs also appear to be hardening. This should be of concern to everyone, as the development of such perceptions among the young and more readily influenced represents yet another barrier to the creation of a human rights-based Police Service, something the wider community both desires and deserves.

As the Independent Commission pointed out in 1999, if the Policing Board is to help increase the confidence of the public in policing it will need to assure the public that it is holding the Police Service to account as intended. One of the primary areas of importance will be creating, maintaining and sustaining a human rights culture among police officers. The public must know and be assured that the Chief Constable is being held to account, strenuously if necessary, for any failures to meet the high standards set by the Policing Board and others.

As we have observed above, the Board, its advisors and staff have made significant achievements in supporting and monitoring the Police Service in its ongoing efforts to implement the Independent Commission's human rights recommendations. The Policing Board's wide-ranging Human Rights Monitoring Report, and its detailed analysis of efforts to focus on a human rights-based policing model, provides an excellent example of this.

However, as a practical matter there are training issues raised by the Human Rights Monitoring Report to consider. It notes the need for the Police Service to engage in an expert and comprehensive external evaluation of the actual impact human rights training is having on police behaviour. In other words, the outcomes of training efforts require some examination if the Police Service is to be assured that its training programme is working as intended. The Report also notes the need for an annual programme of action with specific targets on compliance with the Human Rights Act of 1998, as well as any other requirements that might be specified by the Policing Board or that impact on human rights training. We fully concur with these proposals, and encourage a continual internal and external evaluation of the Police Service's Human Rights Programme of Action.

The centrality of training is acknowledged in the Human Rights Programme of Action, which aptly points out that training is the key area in developing a human rights-based philosophy of and approach to policing. Although training as a whole will be addressed more comprehensively in a thematic report scheduled for release in December of 2005, there are several issues relating to human rights training that may be addressed in the present report, not least because of their importance to overall efforts to embed a human rights-focussed mode of policing.

It should be understood that training in human rights is not an inoculation that once given assures compliance for life. Although there are mechanisms, some of which are addressed above, that nominally assess and influence the human rights training curriculum and programme, there does not seem to be any wider evaluative mechanism to determine with greater certainty what impact human rights training is having on the actual behaviour of police officers, both new and serving. It is important that the Police Service aggressively and regularly monitors its own human rights performance with a view to evaluating its own human rights training regime, and modifying or strengthening this if necessary.



Failing to do so may result in the misallocation of human and financial resources, and also has the potential to undercut the many genuine efforts by police officers to practice the policing mode envisioned by the Independent Commission. It may also perpetuate a policing style that is perceived as less progressive, which in turn affects public perceptions of the police effectiveness and the Police Service's interactions with the public.

In other words, both the Police Service and the community need to know and believe that there is a strong link between what police officers learn and how they act in public and interact with citizens. Effective human rights training is also essential to the future success of the Police Service, and current efforts will need to be sustained if the human rights development of the PSNI's emerging generation of leaders is to proceed.

Although, as noted above, specific and reliable data on the outcomes of human rights training are not yet available there are measures that must serve as proxies of a sort, at least until such time as the Policing Board and others, including the Police Service itself, begin to generate reliable information more often. For this and other reasons the centrality of agencies like the Policing Board, the Police Ombudsman and the Northern Ireland Statistics and Research Agency becomes increasingly apparent.

Using the Ombudsman's published statistical information as an example, indications point to a discernable downward trend in the number of public complaints made against the Police Service, from a high of 3,599 complaints in 2000/2001 to 2,885 complaints for 2004/2005. More tellingly perhaps, over the same period the number of allegations of oppressive police behaviour dropped from 49% of all allegations made to 37% of all allegations. This must be balanced against a rise in the number of allegations of failures in duty between 2000/2001 and 2004/2005, from 23% of all allegations made to 41% of all allegations. Although any drop in allegations of oppressive behaviour is to be welcomed, a concurrent increase in the number of what essentially represent quality of service complaints should be no less significant, and symbolises the type of issue requiring consistent future examination mentioned.

#### **Related Human Rights Recommendations**

The Independent Commission noted that the policing arrangements proposed in its report should be based on principles of the protection of human rights and professional integrity, and that these arrangements should be unambiguously accepted and actively supported by the entire community. The notion of the protection of human rights permeates the Commission's report, and extends well beyond the initial chapter on human rights. Some of the recommendations addressed below will also be touched upon in the following chapter on accountability, as they will contain aspects of both human rights and accountability.

The Independent Commission recommended that in addition to its ten elected members, the Policing Board should select nine independent members from a range of different fields. The aim was to find a representative group of individuals with the expertise to probe and scrutinise different areas of police performance, including the safeguarding of human rights. The Policing Board has since established a permanent Human Rights and Professional Standards Committee. Among other things this Committee is tasked with securing, promoting and supporting professional, human rights and ethical standards within the Police Service, monitoring police compliance with professional, human rights and ethical standards, developing a programme for

monitoring police performance in complying with the Human Rights Act, and monitoring police performance in public order situations. The Committee also oversees the work of the Board's two Human Rights Advisors. The Policing Plan 2005 - 2008 has specific performance targets for the continued promotion of awareness and understanding of a human rights approach to policing.

The Independent Commission also recommended that new legislation on covert policing be fully compliant with the European Convention on Human Rights, and have the same application in Northern Ireland as in the rest of the United Kingdom. This was implemented when the Regulation of Investigatory Powers Act (2000) came into force. This Act has the same application throughout the United Kingdom, is compliant with the European Convention on Human Rights, and has related Codes of Practice, which were issued in August of 2002.

A further recommendation involves the responsibility for inspecting all custody and interrogation suites, which presently rests with the Policing Board. It was recommended that lay visitors be empowered to inspect the conditions of detention facilities and observe interviews on camera if detainees agreed. The necessary designations were made by the Government in 2003. The Policing Board also extended the responsibility for inspecting all custody and interrogation suites to the existing Custody Visiting Scheme. It is our view that allowing outsiders to inspect custody suites and to witness interviews if necessary, acts directly to safeguard the human rights of both detainees and police or detention facility staff. In a last step towards implementation, Lay Visitors' Reports Orders were recently released by the Government, which will come into effect on 1 October 2005.

Finally, the Independent Commission recommended that, as a matter of priority, all members of the Police Service be instructed in the implications for policing of the Human Rights Act 1998, the European Convention on Human Rights and the Universal Declaration of Human Rights. As noted above, the Police Service accomplished this by developing a mandatory Course for All. Among other things, the Course addressed human rights and related legislation such as the Human Rights Act 1998, the European Convention on Human Rights and the Universal Declaration of Human Rights. By December of 2003 over 12,000 uniformed and civilian Police Service employees had taken part in the Course, which represents an excellent beginning to the ongoing development of police staff in this regard. While our previous reports, and others such as those of the Human Rights Commission, have noted deficiencies with the Course for All, the issue now is how the Police Service will build on and sustain this effort.



▶▶ **accountability**



*"If full accountability is to be achieved and if policing is to be effective, efficient, fair and impartial, all aspects of accountability including democratic accountability, transparency, legal accountability, financial accountability and internal accountability, must be addressed... Accountability should run through the bloodstream of the whole body of a police service and it is at least as much a matter of the culture and ethos of the service as it is of institutional mechanisms"*

### Introduction

The Independent Commission understood that the sustainability of the many policing changes it recommended ultimately depended on an effective governance structure. This would both become involved in and help guide progress, and be responsible for holding the principal agency, in this case the PSNI, to account for results. Accountability in its various aspects is the principal theme of this section of the report. It will review the Independent Commission's intentions and expectations regarding governance and accountability structures, and will delineate and examine results achieved to date. Finally, as in the human rights section, this process should serve to identify the strategic and practical issues that remain to be addressed.

### Background and Context

The Independent Commission observed that, for many reasons, the issue of police accountability had a particular resonance in Northern Ireland, and that changing the policing governance structures would be crucial to increasing public trust and confidence in the police. It recognised that a new beginning for democratic accountability was the key to a new beginning for policing, and to involving the community as a whole in the delivery of a policing service.

The basis for improving the democratic accountability of the police, in both the "subordinate or obedient" and the "explanatory and cooperative" senses, was already provided for in the Good Friday Agreement of 1998 and the Independent Commission subsequently devoted over 80 of its 175 recommendations to issues of accountability and transparency, in either a direct or indirect sense. These are listed in Appendix 'C' attached to this report.

The Independent Commission identified and commented in depth on a number of different forms of accountability, which were addressed in Chapter 5 of its report. These are: democratic accountability, transparency, legal accountability, and financial accountability. Democratic accountability is the process by which the community's elected representatives or their appointees inform the police as to what they envisage as police priorities, and then hold the police to account for their delivery. Police transparency will in turn keep the community informed of progress, while allowing it to ask questions about what was done and why. Legal accountability is the process by which the police are held to account if they misuse their powers, while financial accountability covers the proper and efficient use of public funds by the police and others.

Another important type of accountability covered by the Independent Commission's recommendations focussed on internal accountability within the Police Service. In one sense this involves the means whereby individual officers are held to account by the Police Service for their

conduct and the performance of their duties. In another sense however, this involves a supplementary obligation on the part of the Police Service, in ensuring that both police and civilian staff receive proper support and development in their efforts.

Collectively these differing but interdependent types of accountability were intended to lead to the development of an essential and productive partnership between the police and the public, based on mutually understood expectations and candour. What our oversight evaluations categorically evidence and describe is that all of the agencies impacted by the Independent Commission's recommendations, particularly the Police Service, have demonstrated considerable determination and courage in moving the agreed policing reform agenda forward. Moreover, this has been accomplished under often difficult circumstances, and during a time when the concurrent lack of progress and support in the political sphere has often resulted in the disproportionate scrutiny of the primary agencies, again the Police Service in particular.

Courage and determination have also been shown by the DPPs, some of whose members continue to be threatened and targeted both for their beliefs and their active participation in the new beginning to policing. Aside from their being callous and shameful, these acts will ultimately prove self-defeating, as the end effect of each threat or act of intimidation is only to remind everyone of the crucial need to engage with the existing policing reform process. This should always be done with a view to securing the most accountable and effective policing possible for the community. Fortunately, DPPs and the majority of their members have chosen to proceed on this critical course regardless of the many obstacles, both accidental and deliberate, they confront.

The primary accountability structures described above are augmented by other mechanisms which include increased contacts with other statutory agencies in Northern Ireland, non-governmental organisations, elected officials at all levels, informal community groups, as well as a vigorous media. What seems largely beyond dispute is that the Police Service of Northern Ireland is now and will continue to be one of the most overseen and accountable police agencies anywhere.

However, accountability mechanisms should never be viewed as obstructions to effective policing, but should rather be seen as integral parts and protectors of it. The Independent Commission acknowledged the singular role police officers play in society, and the natural tension that exists between the need to uphold the rule of law on one hand, while exercising a considerable amount of independent professional judgment in doing so on the other.

The Independent Commission was unequivocal in its view that effective accountability structures were one important means of monitoring and perhaps limiting the powers of the police. However, the Commission was also unambiguous in its view that these structures existed in part to confer legitimacy on the police and the use of police powers in performing a vital social function. In other words, with the public's right to monitor, find fault with and influence police actions came a corresponding obligation to engage with and assist the police in the furtherance of what is ultimately a fundamental public good: community safety.



## Democratic Accountability

Police officers are servants of the community. However, as noted above, they cannot perform their role effectively without the support of the community. This places an obligation on the police to be open and informative about their work, and amenable to public scrutiny. The Independent Commission recommended the creation of specific structural and institutional relationships between the police and the Government, as well as between the police and the community. These key relationships, and their associated agencies, including the Policing Board, the District Policing Partnerships, and the Police Ombudsman, are addressed in turn below.

### 1. Role Simplification

The Independent Commission recommended that the complicated provisions of the Police (Northern Ireland) Act 1998, with respect to the respective roles of the Secretary of State, the (then) Police Authority and the Chief Constable in setting objectives, performance targets and policy plans, should be simplified. While the Chief Constable would be deemed to have operational responsibility for the exercise of his functions, and the activities of the police officers and civilian staff under his direction, the powers of the Policing Board should be clearly defined and robust, both in relation to the role of the Secretary of State, or the Northern Ireland Executive after the devolution of policing powers, and to that of the Chief Constable.

Neither the Policing Board nor the Secretary of State, or the Northern Ireland Assembly following devolution, should have the power to direct the Chief Constable as to how to exercise those functions. In addition, while the Secretary of State or his successor should continue to be able to set long-term policing objectives and principles, it is the Policing Board who should set medium-term objectives and priorities, and who should be responsible for the overall monitoring of police performance, particularly with respect to delivering against those objectives.

### Accomplishments

Section 39 of the former Police (Northern Ireland) Act 1998 provided that the Secretary of State could issue guidance to the police as to the exercise of their functions. This power was noted by the Independent Commission to be unique to Northern Ireland, and has since been repealed in Schedule 8 of the Police (Northern Ireland) Act 2000, which came into force in November of 2001. Section 24 of this Act also provides for the Secretary of State to determine, and from time to time revise, long term objectives for the policing of Northern Ireland, while sections 25 and 26 stipulate that the Policing Board should have the power to determine, and from time to time revise, the objectives for the policing of Northern Ireland.

### 2. The Policing Board

The Independent Commission noted several problems with the accountability structures existing at the time it wrote, including the fact that the (then) Police Authority acted as the employer for civilian police employees, as well as providing executive services to the police. In other words, it appeared to act more as a “service provider” than a “regulator” as was ultimately recommended. In order to ensure that any new structure would function in a more regulatory fashion, the Independent Commission made clear that any future monitoring agency would be an important institution, vital to the new beginning for policing and to the success of all the new policing arrangements.

To be effective the new Policing Board, as the established mechanism to assess and oversee the performance of both the Chief Constable and of the Police Service as a whole, would have to command respect and credibility and must have real power and responsibility. The solution recommended by the Independent Commission was a Policing Board with a majority elected membership; this would build on the consensual constitutional arrangements of the Good Friday Agreement. These ten “elected” members would be augmented by nine “independent” members to reinforce the Board’s credentials and credibility by bringing solid administrative and other managerial expertise to its efforts.

In the Independent Commission’s estimation, a Policing Board which came with its own democratic credentials would ensure that neither the Government nor the Police Service would be in a position to easily disregard its views. Aside from being an institution of central importance, setting the objectives for policing and monitoring police performance, the Policing Board would also have the power to compel reports and initiate inquiries as necessary, thereby exercising significant authority over the Police Service. More specifically, the Policing Board would have the power to require the Chief Constable to report on any issue pertaining to the performance of his functions or those of the Police Service. The Independent Commission recommended that this obligation to report should extend to explaining operational decisions.

Moreover, the Board should have the option to request the Police Ombudsman, the Inspectorate of Constabulary or the Audit Office to conduct or contribute to such an inquiry, or use its own staff, even private consultants, for such a purpose. The grounds on which the Chief Constable might question this requirement should be strictly limited to issues such as those involving national security, sensitive personnel matters and cases before the courts. The Policing Board should also have the power, subject only to the same limitation, to follow up any report from the Chief Constable by initiating an inquiry into any aspect of the police service or police conduct.

### Accomplishments

The Policing Board was established in November of 2001 according to the recommendations spelled out by the Independent Commission. The Policing Board is responsible for overseeing the Police Service on behalf of the community, and for ensuring the delivery of an effective and efficient policing service. The mechanisms put in place to achieve these objectives include among many others a human rights monitoring framework, and human resources and training strategies with specific performance indicators.

Most importantly, the Chief Constable is held to account against annual policing objectives and targets contained in policing strategies and plans agreed between the Policing Board and the Police Service. These contain specific objectives, targets and performance indicators, against which the performance of the Police Service and the Chief Constable are ultimately measured.

As recommended, the Policing Board reports publicly on its objectives and strategic priorities, and undergoes full audits and reports on the community representation of its staff. Regular public accountability meetings between the Board and the Police Service have been instituted, with the Chief Constable and senior management team in attendance to answer questions from Board members and from the public. Further details on the Board’s work, including the minutes of its various committees, can be found in its many publications and on its website at:

[www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)



Since the Policing Board was established in 2001 it has negotiated multiple policing budgets with the Treasury and has taken over chief officer staffing decisions. It has also played a crucial role in aspects of financial accountability, which will be discussed in greater detail below. The Board has appointed senior officers at the rank of Assistant Chief Constable and above, completed staffing actions include those for the Chief Constable, the Deputy Chief Constable and four Assistant Chief Constables.

Among other areas the Policing Board is charged with monitoring the PSNI's human rights performance. To address this responsibility the Board engaged two distinguished human rights lawyers, Mr. Keir Starmer QC in February of 2003, and Ms. Jane Gordon in June of 2003. A Human Rights Monitoring Framework was then developed, which was endorsed by the Board in December of 2003. The Board subsequently prepared a report on public order disturbances in the Ardoyne area of Belfast in July of 2004; this report was released in November of 2004. The Policing Board then published its first full Human Rights Monitoring Report in March of 2005. Further reports are currently being prepared on the 2005 Ardoyne and Whiterock parades.

The Policing Board has been the subject of a special report into its functions by the Parliamentary Northern Ireland Affairs Committee. The Committee's report was thorough and comprehensive, and its findings overwhelmingly positive and supportive of the Board's efforts and objectives. The Committee also conducted a review of the functions of the Police Ombudsman, whose role will be discussed in greater detail below.

Although the Committee noted the need for closer cooperation between the Policing Board and Ombudsman, and that information leaks by some Board members had led to a certain loss of confidence in the Board on the part of the Police Service and the Ombudsman, it also noted that the Policing Board had developed a constructive relationship with the Police Service under difficult circumstances. The Committee further remarked on the Board's commendable and important efforts to engage with the public, in particular its attempts to make accountability meetings more accessible to the public.

The Policing Board has also participated in a number of self-evaluation exercises, the first of which was conducted under the auspices of the UK-wide Association of Police Authorities. The Board has engaged a distinguished committee headed by Sir Keith Povey, recently Her Majesty's Senior Inspector of Constabulary, to undertake a wider evaluation of the Board's performance among policing partners and other key stakeholders. These kinds of evaluative and qualitative enquiries offer useful feedback to the Board on its role and functions. In addition, they assist the Board in its evolution and help build credibility and confidence among both police officers and the wider community.

### 3. The District Policing Partnerships

The Independent Commission's report focussed among other areas on the decentralisation of policing, both with respect to the management of police operations and the way in which police interacted with the community. An integral element of a more localised policing accountability structure as envisioned by the Independent Commission were the District Policing Partnerships (DPP). The Independent Commission recommended that each District Council establish a DPP coterminous with a police district, and that these should engage in constant dialogue at local levels between the police and the community. The Commission also recommended that the majority of

a DPP's members be elected, while the remaining independent members were to be selected by the local Council, with the agreement of the Policing Board.

The primary function of the DPPs was to be advisory, explanatory and consultative: they should represent the consumer; voice the concerns of citizens and monitor the performance of the police in their districts. In addition, DPPs were intended to be forums for promoting a partnership of community and police in the collective delivery of community safety. These functions would also allow the Policing Board, as the primary accountability and governance institution, to exercise its mandate of formally holding the Police Service to account.

The Independent Commission further recommended that monthly meetings between the DPP and the District Commander take place, at which the police should present reports and answer questions, and the DPP should reflect community concerns and priorities to the police. DPPs were also to be the focus of public consultation at district level for the annual Northern Ireland Policing Plan.

#### Accomplishments

DPPs were established in 2003 and give each DCU Commander the means to consult and collaboratively analyse policing problems with the local community. DPPs are tasked with monitoring police performance, assisting in the development of local policing priorities and strategies, representing community opinion to the police, and assisting the police in obtaining the goodwill of the public. The Independent Commission's recommendation to augment DPPs financially directly through council rates was not adopted by the Government and was not addressed in legislation.

The Policing Board continues to work towards developing an understanding of policing among DPP members by arranging for training sessions on topics including the human rights performance of the Police Service, the police budget and the estate strategy among others. DPP training needs are assessed regularly and programmes modified or developed as required. DPP training is the responsibility of the Policing Board's Community and Training Division, and is assisted by three regional DPP supervisors. The DPP training agenda is based on feedback from DPP members. Topics identified through this process included the DPP's role in local policing plans, and public consultation methodologies among others. A review of the role and performance of DPPs was undertaken by the Board in 2004, and it has provided training and support to those DPP members who were appointed in 2005.

DPP members were also provided training by the Police Ombudsman, who visited 26 DPPs to answer questions from members and provide information on police complaints profiles in their respective areas. In addition, the Board has held a number of larger conferences and seminars for DPP members on issues such as human resources and after-hours public disturbances. These are important initiatives and it must be remembered that the type of expertise required of DPP members is not easily developed; without it DPP members would be unable to interact as informed participants in the development of responsive and effective local policing strategies.

#### Transparency

For many reasons the effectiveness of any system of police accountability depends on the quality of information provided by the Police Service. Any form of accountability is ultimately at the



mercy of the monitored agency's willingness to cooperate and provide relevant, meaningful and detailed information about its plans, policies and practices. The degree to which accountability improves the delivery of policing service to the community will depend on the quality of the information provided, and on the degree to which the public perceives information being provided to be relevant to its concerns and wishes.

The Independent Commission fittingly identified transparency as an integral part of a more accountable, community and human rights-based approach to policing. If the Police Service fails in its duty to provide the Policing Board and others with concise, accurate and timely information, a breach of public faith and confidence will be the outcome. However, transparency is not a discrete issue but constitutes a crucial element of a more accountable, human rights-focused and community-based approach to policing.

The Commission recommended a number of ways to make the policing, and policing oversight process more transparent, including that police codes of practice, in the sense of the principles, legal and ethical guidelines which govern all aspects of police work, be made publicly available. Except where the public interest might be damaged, minutes of Policing Board meetings and papers should also be made available, as should the minutes of DPP meetings. It was further suggested not only that Board meetings should be held in public, but should on occasion be held outside Belfast in order to raise the Policing Board's profile throughout Northern Ireland.

#### Accomplishments

There are now a number of mechanisms in place to address the need for timely and relevant information including the Police Service's revised communications strategy, an updated website, annual and other reports, and the ongoing and public work of the Policing Board, DPPs, Ombudsman and others. In addition, those seeking information now have the power and support of the Freedom of Information Act in their efforts. This Act came into force in January of 2005, and has an enormous potential for making public services more transparent and accountable. To facilitate the release of requested information, the Police Service has created a Freedom of Information Team to review all publications for compliance with the Freedom of Information Act. Ultimately, the courts and public enquiries also have a role to play in terms of gaining access to vital information.

The Police Service's Transparency Policy was published on 11 April 2003 after extensive consultation with the Policing Board. In conformity with guidelines prepared by the Association of Chief Police Officers (ACPO), the Police Service publishes all statements of policy. The Police Service has developed a comprehensive publication policy, which sets forth guidelines for the release of information by the Police Service to the public, and refers explicitly to elements of the Independent Commission's recommendations as well as to our own performance indicators.

The Police Service publishes annual reports by the Chief Constable. These include statistics on crime, road traffic accidents, domestic, racial and homophobic attacks as well as security-related incidents. The annual reports also include information on complaints against police officers and any subsequent disciplinary hearings. These and other publications are available on the PSNI website at [www.psnipolice.uk](http://www.psnipolice.uk).

Although basic points of access such as websites are not intended to satisfy every requirement for information from the public they are nonetheless crucial. Not only do they provide information

on a variety of topics, usually enough to meet the requirements of most of the general public, they are also a window into the organisation and should be indicative of its readiness to share information freely.

There are several examples of greater openness and transparency on the part of the police. As noted in the preceding chapter on human rights, the Policing Board's human rights advisors published a report in November of 2004 on the policing of a contentious parade in the Ardoyne area of Belfast earlier that year. Their final assessment was that the policing operation as a whole complied with the requirements of the Human Rights Act, however they also wished to put on record the unrestricted access given to them by the police, and that no request for information made by the Human Rights Advisors had been refused. Equally, we wish to note that the Police Service has provided full access and information to the oversight team throughout the five years of our oversight evaluations.

The Independent Commission considered it important that interested members of the public should be able to learn more about police work if they so chose. The primary aim was to provide a means for the public to familiarise itself with police procedures, while permitting the police to explain the legal environment in which they operate and some of the constraints they face. These kinds of relationships would also show how community-police partnerships could work to best effect. One of the ways in which this is now accomplished is represented by the PSNI's Learning Advisory Council (LAC), which gives greater access to a permanent body of outside voluntary members made up of business and academic leaders to review and participate in the development of police training.

The registration of notifiable interests is another issue considered by the Independent Commission to benefit from greater openness. Although progress on its related recommendation has been somewhat sporadic, the Police Service has reported that as at 31 August 2005 almost 7,000 members had followed existing PSNI policy and completed the registration process. This is in spite of the fact that certain legal ambiguities surrounding this process continue to exist, and require Government to ensure legislative clarity. This number represents approximately 70% of all members, and to date roughly 8.5% have registered a membership in one of the listed organisations. This number may rise or fall once all members have completed the registration process.

As noted above, recommendations on increasing openness and transparency touched on more than access to information. For example, the Independent Commission considered it vital for police recruits to continue to consider themselves, and the Police Service as a whole, an integral part of the community. This was intended not only to bring outside expertise into the police training structure, but to encourage officers to train and develop outside the narrow confines of the Police College and the courses it offered, joining with non-police students wherever possible.

In response, the Police Service has developed a written policy for public attendance at specific training sessions, and the PSNI's Community Safety Policy Unit has organised workshops aimed at educating and informing the public about policing issues of interest. Since launching its revised training programme the Police Service has noticeably enhanced its relationships with local learning institutions such as Queens University Belfast, the University of Ulster, the Open University and



the Association of Northern Ireland Colleges. In addition, members of the Policing Board and the District Policing Partnerships have attended courses developed by Training Branch.

In a related transparency initiative, the Secretary of State released the necessary designations to authorise lay visitors to inspect detention facilities. This scheme was approved in 2003 and is not only a form of accountability, but ensures that the rights of both detained citizens and detention facility staff are protected. That same year the Policing Board extended the responsibility for inspecting all custody and interrogation suites to the existing Custody Visiting Scheme. The Policing Board agreed that only those custody visitors who are willing to assume an expanded role, and observe terrorist suspect interviews on camera, would be required to do so. The Policing Board requires and receives monthly reports from the custody visitors summarising their activities. These also contain observations pertaining to detainees' complaints, as well as recommendations for physical improvements. Oversight evaluations have confirmed that custody visitors perform unannounced inspections at various police custody facilities on a routine basis.

Ultimately, improving transparency and projecting an image of openness and effective cooperation depends as much on public perceptions as on any specific transparency mechanism. It would be disingenuous to say that all interested agencies and individuals consider the Police Service as open or transparent as it could be. For instance, some non-statutory organisations perceive many of the Police Service's consultation exercises to be overly formulaic. Rather than seeking input through consultation on issues or positions that remain open to modification, such exercises are often seen to involve the communication of decisions already made or positions already taken. The Police Service will ultimately have to find the proper balance between degrees of openness and the need to maintain control of certain kinds of information, and the central role of transparency in building crucial links with the community. However, negative perceptions notwithstanding, recent statistics clearly indicate a slow but steady improvement in the public's approval of the police generally, and in its endorsement of policing objectives.

## Legal Accountability

In society the police are tasked with upholding and if necessary enforcing the law, but like any other citizen police officers must act within the law at all times. Legal accountability is the process by which the Police Service is held to account if its officers misuse their extensive powers. As the Independent Commission pointed out, police officers should have a sound knowledge of the law and their powers under it.

They require sufficient discretion to do their jobs well, but at the same time need to be monitored in their adherence to the law. Any errors need to be identified and addressed, and abuses punished. It is critical for the credibility of the police that all this should not only be the case but that it should be seen to be the case. The establishment of a credible system for dealing with complaints against the police is a critical part of the response to this issue.

### 1. The Ombudsman

Police officers are employed by the community to provide a policing service, and the community must have the ability to ensure that it gets the service it requires. By extension, members of the public require a system whereby they have the ability to voice their displeasure at the level or type of service they are receiving. In other words they require a credible and effective police

complaints system. To be more productive it was considered essential that the complaints system exist outside and independent of the police.

The Independent Commission strongly emphasised the importance of the Police Ombudsman in the policing arrangements it proposed. This agency was seen as critical to the question of police accountability to the law, to public trust in the police and to the protection of human rights. The Independent Commission aligned itself fully with the earlier Hayes recommendations on a fully independent Ombudsman, and concurred that this office would be an effective mechanism for holding the police accountable to the law. The Ombudsman was to have powers to investigate as well as draw conclusions from clustering in patterns of complaints, and to make recommendations both to police management and to the Policing Board. The Policing Board should use such data to review and help develop police policies or practices. Moreover, complaints information should be used by police managers at all levels as a tool to help identify personnel or training needs.

### Accomplishments

Following lengthy public consultations the Government established the Office of the Police Ombudsman through the Police (Northern Ireland) Act 1998. This office is independent of both the Chief Constable and the Policing Board, and is accountable to Parliament through the Secretary of State. The Ombudsman's legal powers were subsequently expanded in succeeding police legislation, to include among other things the power to conduct enquiries as directed by the Secretary of State, specified in the Police (Northern Ireland) Act 2000. Subsequent powers to conduct investigations into current police practice or policy were specified in the Police (Northern Ireland) Act 2003. Officials exercising the Ombudsman's functions have been given the powers of constable, and obstructing these officials constitutes a criminal offence.

Among other things, the Ombudsman is responsible for securing both an efficient, effective and independent complaints system, as well as the confidence of the public and the police. With unique investigatory and reporting powers, the Ombudsman prepares trending and tracking reports on public complaints against the police. Since coming into being it has prepared over 80 Regulation 20 reports; these are reports the Ombudsman is obligated to produce in any instance of the discharge of police firearms, personal protection weapons or baton guns. Other areas, such as the police use of CS spray, may also become the subject of Regulation 20 reports. Many of these reports ultimately touch on many aspects of police practice, and the Ombudsman has made in excess of 136 recommendations on police policy or practice, or alternatively regarding the need for further or improved training.

The role and contribution of the Police Ombudsman has been an indisputable asset to the processes of police accountability in Northern Ireland. This was echoed in an April 2004 HMIC assessment of the Ombudsman, which noted that the PSNI was the only police service in the UK subject to wholly independent scrutiny and investigation of public complaints made against its officers. This constitutes a unique and exceptional accountability tool.

In addition, a 2005 report by the Parliamentary Northern Ireland affairs Committee noted that the Ombudsman's Office had made significant progress consolidating its role as well as contributing positively to developing policing policy and practice. Improvements in areas like the police use of batons and live fire were noted as good examples. The important working relationship that had



developed between the Police Service and the Ombudsman was also described as constructive. The Committee further noted the importance of establishing the credibility of the new police complaints system and securing a high level of confidence across the community. The Ombudsman has achieved both, principally by actively and continually engaging with the Police Service, the Policing Board and the public.

A solid example of greater levels of constructive interaction between the Ombudsman and the Police Service is represented by joint efforts to review PSNI policy on house searches. Although initiated by the Ombudsman based on complaints information received, this work will be undertaken in conjunction with and assistance of the Police Service. The review will focus on police searches of private residences and will examine among other things the types of searches undertaken, why they took place, the rights of individuals present, and the proportionality of search procedures as these affect relations between police and the public. The ultimate aim of this kind of investigation is to ensure effective and professional policing, and this kind of approach can hopefully be duplicated in other areas of investigation as well.

We certainly concur with the Northern Ireland Affairs Committee's finding as laid out above, although we recognise that some police officers will continue to perceive the Ombudsman as less than fair or impartial, and that represents an area for further work. However, the Committee noted that the Police Ombudsman had made significant efforts to improve police officers' understanding of its critical role. The Ombudsman has also made efforts to improve the understanding of young people in Northern Ireland regarding policing and police complaints; such efforts are imperative in supporting the ongoing transition to a more normalised policing environment, particularly given the involvement of many young people in recent public order disturbances and in other serious criminality.

More encouragingly, a public opinion survey conducted in March of 2005 indicated that the public are increasingly aware of the Police Ombudsman and its role, with 86% of respondents saying they had heard of the Ombudsman. These surveys also showed that public confidence in the Ombudsman's impartiality was increasing, with 78% of respondents saying they were confident that complaints were dealt with impartially; this is up from 61% in 2002. Interestingly, while 81% of Catholic respondents were confident that complaints were dealt with impartially, only 74% of Protestant respondents agreed. However, this number had risen significantly from 2002, when only 51% of Protestant respondents were of that view. Perhaps equally important, 78% of all respondents thought that the Police Ombudsman would help to ensure that the police did a better job, arguably the Ombudsman's ultimate purpose.

## 2. Covert Policing

The Independent Commission wished to ensure that covert law enforcement techniques employed by police and other security agencies in the United Kingdom, including interception, surveillance, informants and undercover operations, were fully compliant with the European Convention on Human Rights. It recommended that any such legislation should apply in Northern Ireland as it did in the rest of the United Kingdom. In addition, codes of practice on these matters should be made publicly available. The Commission also felt that there should be more comprehensive and independent scrutiny of these important and sensitive areas of policing, and that accountability for them should be as local as possible. It recommended that a senior judicial figure should be based in Northern Ireland and act as a commissioner for covert law enforcement.

This commissioner's remit would include surveillance, the use of informants and undercover operations, as well as the interception of communications. In addition, the commissioner was to have powers to inspect the police and other agencies acting in support of the police, as well as to require documents or information to be produced either directly or through the Police Ombudsman, the Policing Board or others. Finally, the Independent Commission recommended that there should be a complaints tribunal, comprising senior members of the legal profession, with full powers to investigate cases referred to it, either directly or through the Police Ombudsman, involving covert law enforcement operations.

### Accomplishments

The recommendations on covert policing operations were addressed through the Regulation of Investigatory Powers Act (2000). Passage of the Act made covert policing compliant with the European Convention on Human rights, which in turn was required to be compliant with the Human Rights Act 1998 that incorporated the European Convention into UK law. Codes of Practice were adopted in August of 2002.

The Regulation of Investigatory Powers Act also provides for a surveillance commissioner for Northern Ireland. The Act provides for a complaints tribunal through authorities contained in sections 65 to 70. There is also a UK-wide investigatory powers tribunal. Reports released by the Chief Surveillance Commissioner for the United Kingdom covering 2001/2002, 2002/2003 and 2003/2004 indicate that oversight of covert law enforcement practices is sound.

## Financial Accountability

The Independent Commission recommended a substantial strengthening of financial accountability for the Police Service, including a fully costed Annual Policing Plan, a strong audit department within the Policing Board and a more systematic use of the Audit Office to study police resource management, either at the behest of the Policing Board or on its own initiative. In addition, the Policing Board should be responsible for negotiating the policing budget with the Government, and for allocating the Police Service's budget to the Chief Constable.

### Accomplishments

The recommendations in this area were largely implemented by the end of 2004, although the Chief Constable was confirmed as Accounting Officer for the PSNI in November of 2001. The underlying objectives of these recommendations are being achieved in a number of ways. With respect to the budgeting process, upon its establishment in 2001 the Policing Board carried forward the former Police Authority's existing planning and budgetary processes into fiscal year 2001/2002. By the following year, both the reconstituted Police Service and Policing Board had established their own costed annual policing plans, along with extensive audit capabilities.

The Police Service, in conjunction with the Policing Board, prepares 3 - 5 year policing strategies as well as a fully costed annual policing plan. The first of these was released covering fiscal year 2003/2004. Policing strategies and plans include the setting out of proposed arrangements, priorities and performance targets, and address requirements for the education and training of police officers and civilian staff. The Independent Commission also recommended that there must be clear links between financial plans, policy plans and strategic plans.



As the Independent Commission noted, it is properly the business of the Policing Board to determine the allocation of the budget to the Chief Constable, and to hold him or her responsible for the efficient and effective use of public resources. Oversight evaluations indicate that this process is now in place and is functioning as intended. The Policing Board, in its crucial governance role, has ensured the necessary levels of appropriate fiscal oversight. Appropriate policies are in place, with capable financial management by an experienced Senior Director for Finance and Support Services. The Police Service continues to demonstrate financial accountability, while the Audit Committee of the Policing Board also continues to monitor police financial information. Finally, the Police Service has a functioning Best Value regime in place.

### Internal Accountability

It is important for the new beginning to policing in Northern Ireland that all police officers are committed to the new policing style. The underlying objective of internal accountability systems is that officers who, even after coaching, consistently fail to meet the standards and objectives set by the Police Service are dealt with fairly and appropriately. Following a detailed discussion of how the Police Service would be accountable to the community, in other words external accountability, the Independent Commission addressed the important issue of internal accountability, which in most police organisations is primarily a matter of discipline.

The Independent Commission noted that internal accountability should be a matter for management. Specifically, it stressed that "police managers from the top of the organisation downwards, should define clearly for all their staff the role that is expected of each of them in meeting the objectives agreed for the police service as a whole. Everyone needs to be clear about their personal performance objectives and the behavioural standards expected of them". Put another way, a police officer's lack of understanding of organisational objectives and standards might be less a case of individual neglect, and more one of a serious failing of management.

Police officers also needed to be monitored against these objectives and standards, while benefiting from regular performance reviews with their line manager. But punitive discipline was only seen as a last option, with officers who fell short of what was required having access to help through coaching and training as appropriate. If performance remained inadequate, then administrative action would become necessary.

The Independent Commission recommended that it should be a high priority of police management to ensure that the appraisal system was fully effective. The Commission also recommended that the appraisal system be used in the promotions and selections processes. It recommended further that an officer's capacity for change should also be assessed and taken into account in the promotion and selection process, and that awareness of and respect for human rights should be an important element in the appraisal process. District Commanders should also be required to regularly account to their senior officers for the patterns of crime and police activities in their respective districts, and to explain how they proposed to address any problems.

The Independent Commission noted a number of weaknesses with the Police Service's system for trend analysis, which in the past was done manually, and recommended that an automated trend identification system be introduced. Such a system could be programmed to identify officers attracting more than two complaints of a similar nature within a set period, with line managers then being alerted. It was also seen as important that trend information was followed up by

management, and that managers were well equipped to counsel those officers whose behaviour had been brought to their attention. The Commission therefore also recommended that the use of trend information be followed up by management, and as appropriate by the department responsible for discipline, and that guidance was drawn up to help managers use this information effectively.

Those police services which conducted routine random checks on their officers' behaviour, using people posing as members of the public who were seeking assistance from the police, or otherwise attracting police attention, were to be commended. Many such organisations also conduct random checks on officers' personal integrity. The Independent Commission was impressed with this form of rigorous self-examination, and recommended that the Police Service and police managers use random checks as a way to monitor the behaviour of their officers in dealings with the public and their integrity.

Finally, in order to remove ineffective or incompetent officers, but who might have fallen short of committing major disciplinary offences, the Independent Commission recommended that police managers use all the tools at their disposal to ensure that high professional and ethical standards were met, noting that many police services had introduced administrative dismissal procedures to deal with such cases.

### Achievements

The Police Service introduced its revised Code of Ethics in February of 2003. The Code explicitly cites international conventions, notably the European Convention on Human Rights, the United Nations Code of Conduct for Law Enforcement Officials, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the European Police Code of Ethics. The new Code of Ethics became the conduct regulations for all police officers in the PSNI when the Police (Northern Ireland) Act 2003 came into force in March of 2003.

A revised Police Appraisal System was introduced by General Order 8/2003, Annual Performance Review, in April of 2003. The system is designed to function with devolved responsibility to regions, DCUs and Headquarters departments. Personnel Branch is responsible for review and analysis. Police officers from Constable up to and including Chief Superintendent are now appraised in April of each year on their performance over the preceding 12 months. The new appraisal process focuses on personal development and includes a factor for evaluating openness to change, as well as a human rights component. The Chief Constable is assessed by the Policing Board, the Deputy Chief Constable by the Chief Constable, and Assistant Chief Constables by the Deputy Chief Constable; all are measured for their performance against policing objectives set by the Policing Board and in accordance with ACPO standards.

There is now police policy which includes direction for identifying suspected disparities in the performance of individual officers, and which prescribes preventive strategies with the desirable attributes of an early warning system. There are random checks on officers' behaviour and an anonymous internal telephone line if wrongdoing is suspected by fellow officers.

The basic requirements for trending and tracking for repeat problems and patterns are fulfilled through cooperation with the Ombudsman and reliance on an internal information system.





Information on complaints against individual officers is reported monthly and disseminated electronically in generic form to DCU Commanders. Complaint statistics by DCU, including complaint outcomes, are publicly available on the Ombudsman's website. A protocol has been developed between the Police Service and the Ombudsman which also allows complaints statistics to be screened for officers with multiple complaints, thereby allowing police managers to intervene as appropriate at an earlier stage.

Finally in terms of management training and broadening the scope and understanding of Police Service managers, it has introduced a number of leadership programmes, including the Leadership Grid Module, which enable participants to develop skills in leadership, problem solving and more pertinently, personnel management. Progress to date has been enhanced by the establishment of the Learning Advisory Council, which among other things promotes the participation of a broad spectrum of community leaders in the PSNI's training programmes. As noted above, management training and other aspects of the Police Service's training and development programme will be addressed in greater detail in our upcoming thematic report on training, scheduled for release in December of 2005.

## Remaining Issues

### 1. Devolution of Policing Powers

Recommendations 20 to 26 deal with a variety of subjects, including the role of the Secretary of State, the devolution of policing powers to the local assembly, the role and powers of the Policing Board, and the operational responsibility of the Chief Constable. Aside from acknowledging the inherent complexity of these issues, it is critical to remember that none of the above recommendation were intended to be seen in isolation. Because they all deal with important though differing aspects of democratic accountability, they were meant to be read collectively.

The principle for devolving the Government's responsibilities for policing to the Northern Ireland Assembly, once this is operating, is contained in the Good Friday Agreement. With the exception of matters of national security, the Independent Commission agreed with this principle and noted that it would clearly be in keeping with the notion of enhanced democratic accountability. It also recommended that this should be done as soon as possible.

However, in order to avoid the risk that in the evolved arrangements of the future there might be too direct a relationship between a minister and the police, or the danger that a minister might be seen to exercise too strong a partisan influence over the police, the Independent Commission strongly recommended that the powers of the Policing Board, particularly in relation to the Secretary of State and the Chief Constable, not be diminished in any way when policing powers pass from the Secretary of State to the Northern Ireland Assembly. In other words, the Policing Board is intended to be the primary monitoring and governance body regardless of any other arrangements made by Government or others. This is a crucial point to keep in mind, and the central role of the Policing Board in any future arrangements cannot be overstressed.

Among the Independent Commission's many recommendations were those touching on the devolution of policing powers to the Northern Ireland Assembly. These were considered to be an important set of recommendations, particularly regarding the long-term implications of policing reform. The essence of these recommendations also address issues of greater police accountability as the people of Northern Ireland were intended to have a greater say and stake in

the policing issues that effected them directly. As the Assembly is currently not in operation the responsibility for policing continues to rest with the Government, as represented by the Secretary of State, and with the Policing Board. As our thirteen reports to date clearly indicate, much progress on implementing the Independent Commission's recommendations has already been made. However, an even greater degree of involvement by the community and its elected representatives would be more conducive to sustaining policing changes already made in Northern Ireland, and would go some way to addressing the democratic deficit that arguably exists at the present time.

### 2. Operational Responsibility

One of the most difficult issues the Independent Commission considered was the question of the Chief Constable's "operational independence", although it noted that the term "operational responsibility" was preferred, as this emphasised the Chief Constable's right and duty to take operational decisions. The term operational independence itself was not found in any legislation, nor was it properly defined; the term operational independence was essentially extrapolated from the phrase "direction and control", included in many statutory descriptions of the functions of police chiefs or chief constables.

It was clear that neither the Government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct a police operation. Regardless of the impact of any of its other recommendations, the Independent Commission had never intended to shift the responsibility for the operational and other management of the Police Service away from the Chief Constable. However, this does not mean that the Independent Commission intended for the Chief Constable's conduct of an operational matter to be exempted from inquiry or review after the fact.

Following extensive research and consultation in several countries, the Independent Commission concluded that it was important to allow the heads of police services sufficient flexibility to perform their functions and to exercise their responsibilities, but difficult if not impossible to define the full scope of a police officer's duties. In other words, it is critical that the Chief Constable, like any other public official, be free both to exercise his responsibilities, although this should be balanced against the principle that all public officials must be fully accountable in a democratic society. Given the extraordinary powers conferred on them by society, this statement rings particularly true for police officers.

The Northern Ireland Office's obligations in this regard were met with the enactment of section 33 of the Police (Northern Ireland) Act 2000. The development of written policy is the joint responsibility of the Policing Board and the Police Service, however they have determined that the development of written policy is not necessary at this time. There is verbal acceptance and understanding of this subject on the part of the Policing Board and the Police Service, and there are no concerns in terms of the Chief Constable's scope of operational responsibility conflicting with the obligations and responsibilities of the Policing Board. The oversight team is satisfied to monitor this as an evolving process, in the event it becomes a future issue.

In addition, an important mechanism was established through the powers bestowed on the Policing Board by sections 59 and 60 of the Police (Northern Ireland) Act 2000, which enables the



Board to call for reports from the Chief Constable, or hold inquiries if deemed necessary. These powers are significant, and have the potential to permit the Board a degree of access and scrutiny not available to the former Police Authority. To date the Policing Board has not found it necessary to employ these powers.

### 3. District Policing Partnerships

On a final note, we wish once more to raise the issue of the continuing intimidation of DPP members. As pointed out above this is both reprehensible and ultimately self-defeating and pointless. What our work to date has shown unequivocally is that the collective endeavour of most to bring about the new beginning to policing is well underway, and that it is highly unlikely that it could be reversed. Thus, the degree of participation and interest exhibited by the wider community in DPPs and other ways of engaging with the Police Service represent only one concrete example among many. However, given the significant amount of work and effort ordinary people are devoting to this effort, it will be important to guard against overlap and role confusion between DPPs and other groups interacting directly with police, including police liaison committees, various community groups, and particularly Community Safety Partnerships.

### Related Accountability Recommendations

This section is intended to illustrate that accountability and transparency are broad and expandable concepts. As we have pointed out above, accountability can cover issues that range from the democratic accountability of police to society through its elected representatives, to the need for police managers to ensure that police officers act with integrity and within the law. Aside from core accountability agencies such as the Policing Board and the Ombudsman, other organisations and groups also have important roles to play. For example, Her Majesty's Inspectorate of Constabulary and the Criminal Justice Inspectorate of Northern Ireland all have statutory oversight of certain aspects of the Police Service change programme and other areas, as does the Justice Oversight Commissioner.

The Human Rights Commission and the Equality Commission hold the Police Service to account depending on the issue, as do a significant number of non-governmental organisations like the Committee for the Administration of Justice, British-Irish Rights Watch and the Pat Finucane Centre. As pointed out above, the Office of the Oversight Commissioner also acts as an accountability mechanism, given its legislated responsibilities to monitor and report publicly the degree and pace of implementing the Independent Commission's recommendations. Equally, robust media scrutiny is an important form of accountability.

As noted a large number of consultative groups and forums, from Community Safety Partnerships, Community Police Liaison Committees to informal groups, interact with police on a continual basis. The number of various consultative groups reported to us recently stood at approximately 600. This represents a significant effort on the parts of both police and the public, and underscores the absurdity of the view that the wider community in Northern Ireland has disengaged with policing.

A renewed emphasis on policing with the community has also increased direct contacts between the police and the public; significantly, this is true of contacts in areas where such occurrences would have been rare even five years ago. In addition, there is a Lay Visitor's scheme to allow the scrutiny of holding centres, new interrogation suites with CCTV that Lay Visitors now have access to if appropriate, and others, all of which act as forms of accountability mechanisms to ensure that police and custody officers, as well as detainees, interact within a safe and legal environment.

All of the Independent Commission's recommendations for new accountability structures were intended to ensure that Northern Ireland had effective and democratically-based policing oversight mechanisms, as well as closer partnerships between police and the community. It is important to remember that in addition to recommending a new accountability structure, with the Policing Board, the Ombudsman, DPPs and other processes, the Independent Commission spoke of a corresponding responsibility on the part of the community to both recognise the legitimacy of the police and, more importantly, assist them in carrying out their public duties.

Clerical and other leaders have repeatedly and publicly expressed their continuing support for the Police Service, and particularly for the need to encourage young people from all communities to become police officers. As noted in our previous reports, these important and public demonstrations of support for the Police Service have had an enormously positive impact both on the policing debate, and on the Police Service's successful recruiting campaign.

### Accomplishments

The Independent Commission encouraged and recommended the introduction of a mechanism to ensure the provision of effective, targeted internal services and accountability, whether resource, administrative or developmental in nature. This was intended to be accomplished through clearly defined Service Level Agreements (SLAs), which would stipulate exactly what the expectations and responsibilities of the 'service provider' were, as well as those of the 'consumer'. SLAs have now been completed in a number of areas including between C-3 Intelligence, C-4 Crime Support and DCUs. In addition, after a lengthy delay, SLAs now address the training needs of DCUs and the relevant services offered by Training Branch. This is addressed in General Order 13/2005, District Training, which came into force in May of 2005. SLAs commit both parties to cooperate in the provision of any required training, while allowing Training Branch to ensure a minimum level of training standards.

Other areas of internal accountability include recommendations aimed at keeping police managers informed as to security operations within their DCU. For example, the Police Service's Implementation Plan, adopted in November of 2003, includes specific policy statements requiring C-3 Intelligence briefings to the regional ACCs and DCU Commanders. Intelligence officers are now required to keep DCU Commanders well briefed on security activities in their districts; DCU Commanders are also to be fully consulted before security operations are undertaken in their districts.

Another example of ensuring accountability for police actions is the Independent Commission's recommendations on the use of lay visitors, in other words volunteer members of the public, to inspect detention facilities noted above, particularly for persons arrested under anti-terrorism



## ►► appendix a human rights recommendations

legalisation. There are two aspects of this. The first concerns the audio and video recording of interviews. This came into effect in January of 1999, however following a pilot scheme introduced in 2002, by April of 2005 the Police Service had only installed CCTV equipment in four out of seventeen sites. In addition, the Independent Commission also recommended that responsibility for inspecting all custody and interrogation suites should rest with the Policing Board, and that lay visitors be empowered not only to inspect the conditions of detention, but also to observe interviews on camera, subject to the consent of the detainee.

The necessary designations to authorise lay visitors and the inspection scheme were made by the Secretary of the State in 2003; the Policing Board also extended the responsibility for inspecting all custody and interrogation suites to the existing Custody Visiting Scheme in 2003. The Policing Board requires and receives monthly reports from the custody visitors summarising their activities and ensuring that the goals pertaining to detainees' complaints, as well as recommendations for physical improvements, are accomplished. We have confirmed that custody visitors perform unannounced inspections at various police custody facilities on a routine basis, and thereby perform a valuable function in providing some transparency of and access to the detention facilities to the public, while simultaneously working towards safeguarding the human rights of detainees. The Government has now completed new Lay Visitors' Reports Orders, which will come into effect on 1 October 2005.



## ▶▶ appendix b policing board's human rights index

### RECOMMENDATIONS WITH EITHER DIRECT OR INDIRECT HUMAN RIGHTS IMPLICATIONS

Recommendation	Issue/Area
1– 7	Human Rights
17	Composition of Policing Board
39	Covert Law Enforcement
64	Inspection of Custody Suites
77	Police Appraisal System
142	Training Needs and Priorities
156	Neutral Working Environment



## 1. General Principles

- 1.1 In the performance of their duties, police officers<sup>1</sup> should respect and protect human dignity and maintain and uphold the human rights of all persons.<sup>2</sup> [**Code of Ethics for the PSNI (“PSNI Code of Ethics”), Article 1.3**] (UN Code of Conduct for Law Enforcement Officials (“UN Code of Conduct”);<sup>3</sup>Article 2).
- 1.2 Those rights include the right to life, the prohibition on torture, inhuman or degrading treatment and punishment, the right to liberty, the right to a fair trial, the right to privacy, freedom of thought, religion, expression, association and assembly and the prohibition on discrimination (ECHR Articles 2 to 14).
- 1.3 The right to life, the prohibition on torture, inhuman or degrading treatment and punishment are absolute rights, which means that they cannot be restricted for any reason, including the public interest.
- 1.4 The right to liberty, the right to a fair trial, the right to privacy, freedom of thought, religion, expression, association and assembly and the prohibition on discrimination are qualified rights, which means that they can be restricted, but only where such restriction is for a legitimate reason and is also strictly necessary and proportionate.
- 1.5 Relevant in assessing whether a restriction is proportionate is the question of whether the same objective could be achieved by less restrictive alternatives.
- 1.6 Police officers should act with integrity, impartiality and dignity. Police officers should refrain from and vigorously oppose all acts of corruption [**PSNI Code of Ethics, Articles 1.3, 7.5**] (European Declaration on the Police<sup>4</sup>, A2; Recommendation (2001) 10 on the European Code of Police Ethics<sup>5</sup> (“European Code of Police Ethics”), Articles 44, 46; UN Code of Conduct, Article 7).
- 1.7 A police officer should carry out orders properly issued by his/her superior; but s/he shall refrain from carrying out any order he knows, or ought to know, is unlawful [**PSNI Code of Ethics, Article 1.5**] (European Code of Police Ethics, Article 39; European Declaration on the Police, A4).
- 1.8 Police officers should receive thorough general training, professional training and in-service training, as well as appropriate instruction, in social problems, human rights and in particular the ECHR (European Declaration on the Police, Article B3, European Code of Police Ethics, Article 26).
- 1.9 Police officers should enjoy the same human rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law and in conformity with the ECHR (European Code of Ethics, Article 31).

<sup>1</sup> Defined as including all officers of the law whether appointed or elected, who exercise police powers, especially the powers of arrest or detention (UN Code of Conduct for Law Enforcement Officials adopted by GA Resolution 34(169) of 17 December 1979).

<sup>2</sup> Human rights are here defined by reference to national and international law. Among the relevant international instruments are the UDHR; the ICCPR; CAT; CERD; CEDAW and the Standard Minimum Rules for the Treatment of Prisoners.

<sup>3</sup> Adopted by GA Resolution 34/169 of 17 December 1979.

<sup>4</sup> Resolution 690 of the Parliamentary Assembly of the Council of Europe (1979).

<sup>5</sup> Adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, together with Explanatory Memorandum.

## 2. EQUALITY/NON-DISCRIMINATION

- 2.1 Police officers have an over-arching obligation in relation to non-discrimination and should not discriminate (or aid or incite others to discriminate) on any grounds including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [**PSNI Code of Ethics, Article 6.2**] (UDHR, Article 2; ICCPR Article 26; ECHR Article 14; CERD Article 5; CEDAW Article 2; CRC Article Convention relating to the Status of Refugees<sup>6</sup> Article 3; Convention relating to the Status of Stateless Persons<sup>7</sup> Article 3; Northern Ireland Act 1998, s76).
- 2.2 The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights (European Framework Convention for the Protection of National Minorities,<sup>8</sup> Article 1) and discrimination based on belonging to a national minority is prohibited (European Framework Convention for the Protection of National Minorities, Article 4.1).
- 2.3 No one should be subject to discrimination on the grounds of religion or other belief (Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion and Belief<sup>9</sup>, Article 2(1)).

## 3. Protecting the Public

- 3.1 In certain well-defined circumstances, the police are under an obligation to take preventative operational measures to protect individuals whose lives are at risk from the criminal acts of others (Osman v UK (1998) 29 EHRR 245).
- 3.2 Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the police (Osman v UK (1998) 29 EHRR 245).
- 3.3 What is required of the police is therefore that they take all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known (Osman v UK (1998) 29 EHRR 245).
- 3.4 This obligation can also arise where the risk to life does not come from the criminal acts of others; for, example, it can extend to an obligation to take reasonable steps to prevent self-imposed risks to life (e.g. suicide) (Keenan v UK (2001) 33 EHRR 38).
- 3.5 Failing to pass on important information concerning a risk to an individual's life to the appropriate person or body can breach this obligation (Edwards v UK (1992) 15 EHRR 417).

## 4. Use of Force

### Basic Provisions

- 4.1 Every human being has the inherent right to life (UDHR Article 3; ICCPR Article 6; ECHR Article 2; European Code of Police Ethics, Article 35).

<sup>6</sup> In force 22 April 1954.

<sup>7</sup> In force 6 June 1960. European Treaty Series No.157.1 February 1995.

<sup>8</sup> European treaty Series No.157.1 February 1995.

<sup>9</sup> Proclaimed by GA Resolution 36/55 of 25 November 1981.



- 4.2 Torture, cruel, inhuman or degrading treatment or punishment is prohibited absolutely [PSNI Code of Ethics, Article 1.4] (UDHR Article 5; ICCPR Article 7; CAT Article 2 (1); CRC Article 37 (a); ECHR Article 3; UN Body of Principles, Principle 6; UN Code of Conduct for Law Enforcement Officials Article 5; European Declaration on the Police, Article A3; European Code of Police Ethics, Article 36).
- 4.3 Torture includes deliberate inhuman treatment causing very serious and cruel suffering (Ireland v UK (1978) 2 EHRR 25, ECtHR) which has a purpose, such as the obtaining of information or confession, or the infliction of punishment (The Greek Case (1969) 12 Yearbook 1; Aksoy v Turkey (1996) 23 EHRR 553).
- 4.4 Treatment/punishment will be inhuman if it 'causes intense physical or mental suffering.' It is less severe than torture but can include threats of torture and the infliction of psychological harm (Ireland v UK (1978) 2 EHRR 25, ECtHR).
- 4.5 Treatment/punishment will be degrading if it arouses in the victim a feeling of fear, anguish and inferiority capable of debasing him or her and breaking his or her physical or moral resistance (Ireland v UK (1978) 2 EHRR 25, ECtHR); but only if it reaches a particular level of severity.
- 4.6 Arbitrary or abusive use of force and firearms by police officers is never acceptable (European Code of Police Ethics, Article 37) and is punishable as a criminal offence.
- 4.7 Deprivation of life will not constitute a breach of ECHR Article 2 if, but only if, it results from the use of force which is no more than absolutely necessary:
- (i) in self-defence or in defence of any others where there is an imminent threat of death or serious injury (Wolfram v Germany (1986) 49 DR 213; Diaz Ruano v Spain (1994) A/285-B);
  - (ii) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained (Farrell v UK (1982) 30 DR 96 and (1984) 38 DR 44; Kelly v UK (1993) (App.No.17579/90);
  - (iii) in action lawfully taken for the purpose of quelling a riot or insurrection (ECHR Article 2; McCann v UK EHRR (1995) 21 EHRR 97).
- 4.8 Exceptional circumstances, such as internal political instability or any other public emergency, cannot be invoked to justify any departure from these basic principles (Principles on the Use of Force, Principle 8).
- Justification**
- 4.9 If it is possible to do so, police officers should apply non-violent means before resorting to the use of force and firearms. Force and firearms may only be used when strictly necessary (i.e. where other means would be ineffective or stand no chance of achieving the intended result) and to the minimum extent required to obtain a legitimate objective. [PSNI Code, Article 4.1] (European Code of Police Ethics, Article 37; UN Code of Conduct for Law Enforcement Officials, Article 3; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("UN Principles on the Use of Force"), Principles 4 and 13; McCann v UK (1995) 21 EHRR 97).
- 4.10 Force can be used to effect an arrest, but it must always be strictly necessary and proportionate (Raninen v Finland (1997) 26 EHRR 563).
- 4.11 Handcuffing is legitimate, but only where justified as strictly necessary and proportionate (Raninen v Finland (1997) 26 EHRR 563).
- 4.12 Police officers should not use force against persons in custody or detention except where strictly necessary for the maintenance of security and order within the institution or when personal safety is threatened [PSNI Code of Ethics, Article 5.2] (UN Principles on the Use of Force, Principle 15).
- Use of Firearms**
- 4.13 The use of firearms should be considered an extreme measure (UN Code of Conduct, Commentary on Article 3).
- 4.14 Firearms should only be used against persons:
- (i) in self-defence; or in defence of others against the imminent threat of death or serious injury; or
  - (ii) to prevent the perpetuation of a particularly serious crime involving great threat to life; or
  - (iii) to arrest a person presenting a danger to life or of serious injury and who is resisting authority; or
  - (iv) to prevent his or her escape.
- 4.15 Before firearms are employed, police officers should identify themselves and give clear warning of their intent to use firearms, affording sufficient time for the warning to be observed, unless to do so would place the law enforcement officer at risk or create a risk of death or serious harm to other persons [PSNI Code of Ethics, Article 4.5] (UN Principles on the Use of Force, Principle 10).
- 4.16 Whenever the use of firearms is unavoidable, police officers should
- (i) exercise restraint in such use, acting in proportion to the seriousness of the offence and the legitimate objective to be achieved;
  - (ii) minimise damage and injury and respect and preserve human life;
  - (iii) render assistance and medical aid to any injured or affected persons at the earliest opportunity; (iv) notify relatives or close friends of injured or affected persons at the earliest opportunity. [PSNI Code of Ethics, Article 4.3] (UN Principles on the Use of Force, Principle 5).
- Internal Procedures and Follow-up Investigations**
- 4.17 Police training at all levels should include practical training on the use of force and limits with regard to established human rights principles (European Code of Police Ethics, Article 29).



- 4.18 Effective reporting and review procedures should be put in place regarding injuries and/or deaths resulting from the use of force and firearms by police officers. In cases of death and serious injury, a detailed report should be sent to the competent authorities (UN Principles on the Use of Force, Principles 6 and 22).
- 4.19 In addition, an effective official investigation is required whenever an individual is killed as a result of force being used by an agent of the state and/or when it is arguable that there has been a breach of Article 2 or Article 3 of the ECHR (*Angelova v Bulgaria*, 13 June 2002; *R (Wright) v Home Office* (2001) UKHRR 1399 (2002) HRLR 1; *Finucane v UK* Times Law Reports (18 July 2003)).
- 4.20 The investigation must be prompt, thorough, impartial and careful so as to ensure accountability and responsibility (*Angelova v Bulgaria*, 13 June 2002).
- 4.21 The investigation must involve an assessment of the organisation and planning (if any) of the operation during which lethal force was used. The training, instructions and communications of those who used lethal force and those who lay behind the operation are relevant to that determination (*McCann v UK* (1995) 21 EHRR 97).
- 4.22 An effective official investigation requires the appropriate authorities to secure all the relevant evidence concerning the incident causing death and to analyse the cause of death (*Angelova v Bulgaria*, 13 June 2002); it also requires a degree of public and independent scrutiny and the involvement of the family of the deceased in the procedure to the extent necessary to safe guard their legitimate interests (*Angelova v Bulgaria*, 13 June 2002).
- 4.23 The duty to investigate suspicious deaths can arise even where there is no suggestion of any state involvement in causing death either deliberately or by omission (*Menson v UK*, 6 May 2003); the form of the investigation will vary with the circumstances, but must always be prompt, rigorous and impartial (*Menson v UK*, 6 May 2003); in order to be effective, the investigation should be conducted by individuals independent of the alleged perpetrators (*Finucane v UK* (2003) Times Law Reports (18 July 2003)).
- 4.24 The duty to investigate is a continuing one (*ReMcCarr Application for Judicial Review* [2003] NI 117).
- 5. Public Order**
- 5.1 Everyone has the right to freedom of peaceful assembly and of association (UDHR Article 20; ICCPR Articles 21 and 22; ECHR Article 11; CERD Article 5(d)(ix)).
- 5.2 These are qualified rights; they can be restricted, but only where a restriction is lawful, legitimate, necessary and proportionate.
- 5.3 The right to peaceful assembly is not confined to static meetings; it also covers marches and processions (*Rassemblement Jurassien and Unite Jurassienne v Switzerland* (1979) 17 DR 138; *Christians Against Racism and Fascism v UK* (1980) 21 DR 138).
- 5.4 The purpose of the assembly is irrelevant, so long as it is peaceful. The mere fact that an assembly may result in disorder does not automatically preclude Article 11 ECHR protection - peaceful intent is sufficient, even if unintentional disorder results (*Christians Against Racism and Fascism v UK* (1980) 21 DR 138).
- 5.5 As with free speech under Article 10 ECHR, an assembly may annoy or give offence, but is nonetheless protected under Article 11 ECHR (*Refah Partisi v Turkey* (2002) 35 EHRR 56).
- 5.6 In particular, those opposed to official views must find a place for the expression of their views (*Piermont v France* (1995) 20 EHRR 301).
- 5.7 Where there is a threat of disruption or disorder from others, the relevant authorities (including the police) are under a duty to take appropriate steps to protect those who want to exercise their right of peaceful assembly (*Plattform Ärzte Für das Leben v Austria* (1988) 13 EHRR 204).
- 5.8 There is no absolute duty to protect those who want to exercise their right of peaceful assembly; the obligation is to take 'reasonable and appropriate measures', and a fairly wide discretion is left to the authorities responsible for regulating the assembly (*Plattform Ärzte Für das Leben v Austria* (1988) 13 EHRR 204).
- 5.9 A requirement of prior notice or authorisation for a march or meeting is not necessarily a breach of Article 11 ECHR, so long as the purpose behind the procedure is not to frustrate peaceful assemblies (*Rassemblement Jurassien and Unite Jurassienne v Switzerland* (1979) 17 DR 138).
- 5.10 But orders banning meetings and marches are justified only in extreme circumstances, where there is a real danger of disorder that cannot be prevented by other less stringent measures (*Christians Against Racism and Fascism v UK* (1980) 21 DR 138).
- 5.11 Restrictions on the political activities of police officers, including the right of assembly, can be justified under the ECHR on the basis that a politically neutral police force is in the public interest (*Rekvenyi v Hungary* (20 May 1999)).
- 6. Criminal Investigations**
- Basic Provisions**
- 6.1 Everyone has a right to respect for his/her private and family life, his home and his correspondence. No one shall be subjected to arbitrary interference with his/her privacy, family, home or correspondence. (UDHR, Article 12; ICCPR, Article 17; ECHR, Article 8).
- 6.2 The police shall only interfere with an individual's right to privacy when strictly necessary and for a legitimate purpose (ECHR, Article 8 (2), European Code of Ethics, Article 41); all interferences with an individual's right to privacy must also be proportionate to the legitimate purpose which justifies such interference (ECHR Article 8(2)).
- 6.3 Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons [PSNI Code of Ethics Article 2.1.2.2] (European Code of Police Ethics, Article 49).
- 6.4 Collection, storage and use of personal data by the police shall be carried out in accordance with international data protection principles [including the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000 and associated Codes of Practice



and the PACE (NI) Order 1989) and in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes [PSNI Code of Ethics, Article 3.1] (European Code of Ethics, Article 42).

- 6.5 Matters of a confidential nature in the possession of police officers shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise [PSNI Code of Ethics, Article 3.3] (UN Code of Conduct for Law Enforcement Officials, Article 4).

#### Surveillance

- 6.6 Surveillance is an interference with privacy and therefore must be prescribed by law, strictly necessary and proportionate (Kopp v Switzerland (1998) 27 EHRR 214) [**PSNI Code of Ethics, Article 3.2**].
- 6.7 Intercepting telephone calls is a form of surveillance and therefore must also be prescribed by law, strictly necessary and proportionate (Malone v UK (1984) 7 EHRR 14; Halford v UK (1997) 24 EHRR 523); intercepting pager messages is also a form of surveillance and therefore must also be prescribed by law, strictly necessary and proportionate (Taylor-Sabori v UK, 22 October 2002); each case must be justified on its own facts.
- 6.8 The use of CCTV cameras, even in public places, can raise privacy issues under Article 8 ECHR and therefore must be prescribed by law, strictly necessary and proportionate (Peck v UK, 28 January 2003); the use of CCTV cameras includes disclosure of the contents of any images obtained by such use (Peck v UK, 28 January 2003; Perry v UK App.No 63737/00 (17 July 2003)).
- 6.9 Gathering information in files about a particular individual raises privacy issues and therefore must also be prescribed by law, strictly necessary and proportionate, even where the information has not been gathered by an intrusive or covert method (Rotaru v Romania (2000) 8 BHRC 449).
- 6.10 There must be proper methods of accountability regarding both the authorisation and the use of police surveillance and other information-gathering activities.
- 6.11 Investigations into allegations of abuse must be independent (Govell v UK [1999] EHRLR 101).

#### Informers and undercover officers

- 6.12 It is legitimate for the state to use informers and undercover officers in the investigation of crime (Ludi v Switzerland (1992) 15 EHRR 173).
- 6.13 But informers and undercover officers should not incite an individual to commit a crime s/he would not otherwise commit (Teixira de Castro v Portugal (1998) 28 EHRR 101; R v Looseley [2001] 1 WLR 2060).
- 6.14 When deciding whether conduct amounts to 'state-created crime' the question is whether, in all the circumstances, the conduct of the police is so seriously improper as to bring the administration of justice into disrepute (R v Looseley [2001] 1 WLR 2060).

- 6.15 If an individual freely takes advantage of an opportunity to break the law given to him by a police officer, the police officer is not to be regarded as being guilty of 'entrapment' (R v Looseley [2001] 1 WLR 2060).
- 6.16 The right to silence cannot be invoked to exclude statements made voluntarily to informers or undercover officers, unless they deliberately manipulate the situation to elicit incriminating evidence; placing an informant in a cell with others with instructions to elicit certain information amounts to deliberate manipulation and thus breaches the right to silence (Allan v UK 5 November 2002).

#### Search and seizure

- 6.17 Search and seizure interfere with privacy and therefore must be prescribed by law, strictly necessary and proportionate [**PSNI Code of Ethics, Article 3.2**] (Camenzind v Switzerland (1997) 28 EHRR 458; Niemietz v Germany (1992) 16 EHRR 97).
- 6.18 The right to privacy can extend to business or work premises (Niemietz v Germany (1992) 16 EHRR 97).
- 6.19 Consent to search and seizure will not be valid unless it is genuine and informed.

#### Fingerprints, samples and personal data

- 6.20 Taking fingerprints, samples and personal data interferes with privacy and therefore must be prescribed by law, strictly necessary and proportionate (Murray v UK (1994) 19 EHRR 193).
- 6.21 Any consent to the taking of samples must be informed consent.
- 6.22 Retaining fingerprints, samples and personal data also interferes with privacy and therefore must be prescribed by law, strictly necessary and proportionate (X v Germany (1976) 3 DR 104; R (Marper) v Chief Constable of South Yorkshire [2003] 1 All ER 148).
- 6.23 Retaining fingerprints, samples and personal data of individuals who were charged but not subsequently convicted can be justified under the ECHR (R (Marper) v Chief Constable of South Yorkshire [2003] 1 All ER 148).

#### 7. Arrest and Pre-Trial Issues

##### Basic Provisions

- 7.1 Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary arrest or detention (UDHR Articles 3 and 9, ICCPR Article 9 (1); CERD Article 5(b); ECHR Article 5(1)).
- 7.2 Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee (European Code of Police Ethics, Article 54).
- 7.3 Arrest and detention should be carried out strictly in accordance with the law (ECHR Article 5 (1); UN Body of Principles, Principle 2).





- 7.4 All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person [PSNI Code of Ethics, Article 5.1] (ICCPR Article 10; CRC Article 37(c); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [“UN Body of Principles”], Principle 1; Police and Criminal Evidence (NI) Order 1989 Codes of Practice C-E).
- 7.5 Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to, the effective control of a judicial or other authority (UN Body of Principles, Principle 4).
- 7.6 The unacknowledged detention of an individual is a breach of the right to liberty. Having assumed control over an individual, it is incumbent on the authorities to account for his/her whereabouts (Kurt v Turkey (1998) 27 EHRR 373).
- 7.7 All money, valuables, clothing and other property belonging to a detainee which he is not allowed to retain shall be placed in safe custody [PSNI Code of Ethics, Article 8.1] (Standard Minimum Rules for the Treatment of Prisoners, Rule 43).

#### Reasonable suspicion

- 7.8 There must be a reasonable suspicion that an individual has committed a criminal offence before an arrest is made [PSNI Code of Ethics, Article 2.2] (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157; European Code of Police Ethics, Article 47).
- 7.9 Having a ‘reasonable suspicion’ presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157).
- 7.10 The honesty and good faith of suspicion constitute indispensable elements of its reasonableness (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157; R v Feeney (1997) 2 SCR 13).

#### Reasons

- 7.11 Everyone arrested should be informed, in a language/he understands of the reasons for his/her arrest (ICCPR Article 9(2); ECHR Article 5(2); UN Body of Principles, Principle 10).
- 7.12 Notification should be at the time of arrest or as soon as practicable thereafter (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157).
- 7.13 Sufficient details should be given to enable the person arrested to know the basis upon which s/he is being held (Kelly v Jamaica (UN HRC 253/1987; 8 April 1991; A/46/40).
- 7.14 Detained persons should be provided with information on and an explanation of their rights and how to avail themselves of their rights (UN Body of Principles, Principle 13; European Code of Police Ethics, Article 55).
- 7.15 The reasons for the arrest, the time of the arrest, the identity of the police officers concerned and the place of custody of the detained person should be recorded (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 7(1)) and such record should be communicated to the detained person or his counsel, if any (UN Body of Principles, Principle 12).

- 7.16 Detained persons should be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of their choice of their arrest, detention or imprisonment (UN Body of Principles, Principle 16 (1); European Code of Police Ethics, Article 57).

#### External Communication

- 7.17 Communication of a detained person with the outside world, in particular, his/her family and legal representative, should not be denied for more than a matter of days (UN Body of Principles, Principle 15) and shall be allowed<sup>10</sup> under supervision at regular intervals thereafter (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 37; McVeigh, O’Neill and Evans v UK, (1981) 5 EHRR 71).

#### Access to a lawyer

- 7.18 Everybody should be informed of the right to be assisted by a lawyer upon arrest (UN Basic Principles on the Role of Lawyers, Principle 5).
- 7.19 Access to a lawyer is fundamental and should not be delayed (UN Basic Principles on the Role of Lawyers, Principle 5; Murray v UK (1996) 22 EHRR 29).
- 7.20 Communications between a suspect and his/her lawyer should be confidential (S v Switzerland (1991) 14 EHRR 667) and in admissible as evidence unless they are concerned with a continuing or contemplated crime (UN Body of Principles, Principle 18(5)).
- 7.21 The right of access to a lawyer must be effective.
- 7.22 However, there is no right to access to a lawyer before a roadside breath test is administered (Campbell v DPP (2002) EWCA 1314); and access to a lawyer can be delayed where there is a proper basis for believing that there is a risk that such access will frustrate the arrest of other suspects (Brennan v UK (2002) 34 EHRR 18).

#### Questioning

- 7.23 No suspects while being interrogated should be subject to violence, threats or methods of interrogation which impair his/her capacity of decision or judgement (UN Body of Principles, Principle 21 (2)).
- 7.24 All suspects have the right to remain silent during questioning (ICCPR, Article 14 (3) (g); Article 40 (2) (b) (iv); Funke v France (1993) 16 EHRR 297; Saunders v UK (1996) 23 EHRR 313) but adverse inferences can be drawn from silence, so long as they are fair and legitimate (Murray v UK (1996) 22 EHRR 29; Condon v UK (2000) 31 EHRR 1; Beckles v UK (2003) 36 EHRR 13); however, appropriate weight must be given to the explanation given by the defendant for exercising his right to silence (Beckles v UK, 8 October 2002, (2003) 36 EHRR 13).
- 7.25 Any force used during interrogation (e.g. slapping and kicking) is inhuman treatment (Ribitsch v Austria (1995) 21 EHRR 573; Tomasi v France (1992) 15 EHRR 1).
- 7.26 The time and place of all interrogations should be recorded (UN HRC General Comment 20; UN Body of Principles, Principle 23(1)).



- 7.27 Registers should be kept of all those in custody, which should be accessible to relatives and friends (UN HRC General Comment 20).

#### The right to be brought promptly before a court

- 7.28 Everyone arrested for a criminal offence has the right to be brought promptly before a court (ICCPR Article 9(3); ECHR Article 5(3); CRC Article 40 (2) (b) (iii); UN Body of Principles, Principle 37; Brogan v UK (1998) 11 EHRR 117).
- 7.29 An assessment of 'promptness' has to be made in the light of the object and purpose of this requirement, which is to protect the individual against arbitrary interference by the state<sup>12</sup>; the European Court of Human Rights works to a rule of thumb that ordinarily the period of detention before a person is brought before a court should not be longer than four days (Tas v Turkey (2001) 33 EHRR 15).
- 7.30 The court before which a person is brought must have power to order release (Ireland v UK (1978) 2 EHRR 25). Alternatively, a detained person may be brought before an officer authorised by law to exercise judicial power (ECHR Article 5(3)). Such an officer must have some of the attributes of a judge: s/he must be independent, impartial and must consider the facts and have power to order release (Schuesser v Switzerland (1979) 2 EHRR 417).

#### Bail

- 7.31 The general presumption is that those awaiting trial should not be detained (ICCPR Article 9 (3); UN HRC General Comment 8; UN Body of Principles, Principle 39; Tokyo Rules, Rule 6; Wemhoff v Germany (1968) 1 EHRR 55).
- 7.32 Bail may be refused if it is necessary and for a good reason, such as fear of absconding, interference with the course of justice and protection of others, but the reasons must be relevant and sufficient (Stogmuller v Austria (1969) 1 EHRR 155; Neumeister v Austria (1968) 1 EHRR 91; Tomasi v France (1992) 15 EHRR 551; Van Alphen v Netherlands, UN HRC Communication No.305/1988, HRC 1990 Report, Annex IX.M)
- 7.33 Bail may be conditional (Wemhoff v Germany (1968) 1 EHRR 55). Material relevant to the decision whether to grant bail should in principle be disclosed, but may be edited to protect the identity of informants (Re Donaldson's Application for Bail [2003] NI 93).

## 8 Detention

### Basic Provisions

- 8.1 Torture, inhuman and degrading treatment is prohibited absolutely [PSNI Code of Ethics, Article 1.4] (UDHR Article 5; ICCPR Article 7; CAT Article 2 (1); CRC Article 37(a); ECHR Article 3; UN Body of Principles, Principle 6; UN Code of Conduct, Article 5; Chahal v UK (1996) 23 EHRR 413; Osifelo v R (1995) 3 LRC 602).

- 8.2 No justification or excuses, including state of war, threat of war, internal political instability or any other public emergency (such as combating organised terrorism and crime: Selcuk and Askar v Turkey (1998) 26 EHRR 477), may be invoked to justify the prohibition on torture, inhuman and degrading treatment (CAT Article 2 (2); UN Body of Principles, Principle 6; UN HRC General Comment 20). The victim's conduct is irrelevant (Chahal v UK (1996) 23 EHRR 413).
- 8.3 Where an individual enters custody uninjured and is later found to have injuries, it is incumbent on the detaining authorities to explain how the injuries occurred or risk the drawing of an adverse inference (Ribitsch v Austria (1995) 21 EHRR 573; Russell v Home Office, 2 March 2001).

### Conditions of detention and ill-treatment

- 8.4 Detained persons should be given the right to a medical examination on admission (UN Body of Principles, Principle 24). The full protection of the health of persons in custody should be ensured and medical attention provided when required [PSNI Code of Ethics, Article 5.3] (UN Code of Conduct, Article 6; UN Standard Minimum Rules for the Treatment of Prisoners, Rule 22).
- 8.5 Any unnecessary and deliberate force against those in detention is inhuman (Ribitsch v Austria (1995) 21 EHRR 573); deliberately striking a defendant and handcuffing him causing real injury is capable of amounting to inhuman treatment (Egmez v Cyprus (2002) 34 EHRR 29).
- 8.6 Very special reasons are needed to justify solitary confinement, restrictions on wearing own clothes and eating own food for those awaiting trial (Blanchard v Minister of Justice (2000) 1 LRC 671).
- 8.7 Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 33).
- 8.8 Allegations<sup>12</sup> of ill-treatment, including all suspected cases of extra-legal, arbitrary and summary executions, must be properly, promptly and impartially investigated (CAT Articles 12 and 13; UN Body of Principles, Principle 7; UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions<sup>13</sup>; Assenov v Bulgaria (1998) 28 EHRR 652).
- 8.9 Evidence obtained by ill-treatment must be excluded at trial (CAT Article 15; Austria v Italy (1963) 6 Yearbook 740, European Commission on Human Rights).

<sup>12</sup> Including complaints by relatives or other reliable reports.

<sup>13</sup> Recommended by Economic and Social Council Resolution 1989/65 of 24 May 1989.

<sup>11</sup> The degree of flexibility in interpreting and applying the notion of 'promptness' is very limited (TV v Malta (1999) 289 EHRR 185). It implies a delay not exceeding a few days (UN HRC General Comment 8). A delay of over four days is too long (Brogan v UK (1998) 11 EHRR 117) and where there is no basis for an arrest, overnight is too long (Banda v Gunaratne (1996) 3 LRC 508).



## 9 Children

- 9.1 In all actions concerning children, the best interests of the child are the primary consideration (CRC Article 3(1)).
- 9.2 A child must be afforded such protection and care as is necessary for his or her well-being (CRC, Article 3 (2); UN Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") "Rule 5).
- 9.3 Protecting a child's privacy is of paramount importance (ICCPR Article 14 (1); CRC Article 40(2); Beijing Rules, Rules 8 and 21). In principle, no information that may lead to the identification of a juvenile offender should be published (Beijing Rules, Rule 8.2). Records of juvenile offenders should be kept strictly confidential and closed to third parties (Beijing Rules, Rule 21.1).
- 9.4 Arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time (CRC Article 37 (b); Beijing Rules, Rule 13.1; UN Rules for the Protection of Juveniles Deprived of their Liberty<sup>14</sup>, Rules 1 and 2).
- 9.5 Detention pending trial should be limited to exceptional circumstances and whenever possible be avoided and replaced by alternative measures such as close supervision (Beijing Rules, Rule 13.2; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 17).
- 9.6 While in custody, children should receive care, protection and all necessary individual assistance (social, educational, vocational, psychological, medical and physical) that they require in view of their age, sex and personality (Beijing Rules, Rule 13.5; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 28).
- 9.7 A child's parents or guardian should be immediately notified of the apprehension of their child and a judge or other competent official or body should without delay consider the issue of release (Beijing Rules, Rule 10).
- 9.8 Police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime should be specially instructed and trained (Beijing Rules, Rule 12.1).
- 9.9 Adaptations to the criminal justice system are needed where children are on trial (T and V v UK (1999) 30 EHRR 121). Basic procedural safeguards<sup>15</sup> should be guaranteed at all stages of any criminal proceedings (Beijing Rules, Rule 7.1).
- 9.10 The procedure should take account of the child's age and the need to promote their rehabilitation (ICCPR Article 14 (4)).
- 9.11 A child capable of forming his/her own views should have the opportunity to be heard and express those views freely in any judicial, administrative or other matter affecting him/her, either directly or through a representative or other appropriate body. The child's views should be given due weight in accordance with the age and maturity of the child (CRC, Article 12).

<sup>14</sup> Adopted by GA Resolution 40/33 of 29 November 1985.

<sup>15</sup> Adopted by GA Resolution 45/113 of 14 December 1990.

<sup>16</sup> Such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to a lawyer, the right to the presence of a parent or guardian, the right to confront or cross-examine witnesses and the right to appeal to a higher authority.

## 10 VICTIMS

- 10.1 Victims<sup>17</sup> should be treated with compassion and respect for their dignity [PSNI Code of Ethics, Article 2.1]. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 4).
- 10.2 Police officers should provide the necessary support, assistance and information to victims without discrimination (European Code of Ethics, Article 52).
- 10.3 Certain victims, including children and other vulnerable individuals are entitled to special protection (Stubbings v UK (1996) 23 EHRR 213).
- 10.4 Victims should be informed of the timing and progress of the investigation of their cases and subsequent proceedings [PSNI Code of Ethics, Article 2.1] (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 6).

<sup>17</sup> Defined as any persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of domestic criminal law including those laws proscribing criminal abuse of power: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by GA Resolution 40/34 of 29 November 1985.

▶▶ **appendix c**  
**accountability recommendations**



### RECOMMENDATIONS WITH EITHER DIRECT OR INDIRECT ACCOUNTABILITY IMPLICATIONS

Recommendation	Issue/Area
8 – 43	Accountability
45	Dedicated Neighbourhood Policing Teams
46	Service in Neighbourhood Policing Teams
49	Role of Neighbourhood Policing Teams
50	Attendance at Police Training Courses
54	Devolved Authority of District Commanders
63	Video Recording in Custody Suites
64	Inspection of Custody Suites
67 & 68	Conditions for the Approval of Parades
71, 73 & 74	Police Performance in Public Order Situations
72	Police Officers' Identification Numbers
75	Police Management of Change
77	Police Appraisal System
78	Accountability of District Commanders
79 & 80	Trend Information on Complaints
81	Random Checks on Officers' Behaviour
82	Ensuring High Ethical Standards
83	Tenure Policy on Police Postings
84, 85 & 86	Management of Sickness Absence
94 & 96	Creation of New District Commands
97	Reorganisation of Police Headquarters
98	Special Branch
100	Informing District Commands about Security Operations
112	Staff of Policing Board, NIO and Police Ombudsman
113	Support from Community Leaders

### RECOMMENDATIONS WITH EITHER DIRECT OR INDIRECT ACCOUNTABILITY IMPLICATIONS

Recommendation	Issue/Area
117	Recruitment Agency / Lay Involvement in Recruitment
125	Disqualification from Entry into the Police Service
126	Registration of Interests
132	SLAs on Training
133	Civilian Input into Recruit Training
142 & 143	Training Needs and Priorities
147	Publication of Training Curricula
148	Public Attendance at Police Training Sessions
157, 162 & 163	Cooperation Between Police Service and An Garda Síochána
166	Personnel Exchanges with GB Police Services
172	Appointment of Commissioner
173 & 174	Functions of Commissioner