

## 6

### ACCOUNTABILITY II: A NEW BEGINNING

- 6.1** This chapter makes recommendations for future arrangements covering the various aspects of accountability covered in Chapter 5: democratic accountability; transparency; legal accountability; and financial accountability.

#### Democratic Accountability

##### A new Policing Board

- 6.2** The Agreement provides a basis for improving the democratic accountability of the police in both the “subordinate” and “explanatory and cooperative” senses. A new beginning for democratic accountability is key to a new beginning for policing and to involving the community as a whole in the delivery of policing. *We recommend that an entirely new Policing Board be created, to replace the present Police Authority.*

##### Functions of the Policing Board

- 6.3** *We recommend that the statutory primary function of the Policing Board should be to hold the Chief Constable and the police service publicly to account.* The Board should be empowered and equipped to scrutinise the performance of the police effectively, as we discuss below.
- 6.4** We believe that the complicated provisions of the Police (Northern Ireland) Act 1998 as to the respective roles of the Secretary of State, the Police Authority and the Chief Constable in setting objectives, performance targets and policy plans, can and should be greatly simplified. In essence we believe that the Secretary of State (or successor after responsibility for policing is devolved) should be able to set long-term governmental objectives or principles; the Policing Board should set medium-term objectives and priorities; and the police should develop the short-term tactical plans for delivering those objectives.
- 6.5** Accordingly *we recommend that the Policing Board should set objectives and priorities for policing over a 3 to 5 year period, taking account of any longer term objectives or principles set by the Secretary of State or successor. It should then be responsible for adopting a 3 to 5 year strategy, prepared by the Chief Constable through a process of discussion with the Board, which should reflect the objectives and priorities set by the Board.*
- 6.6** *We recommend that the Board should be responsible for adopting an Annual Policing Plan, developed by the Chief Constable, through a process of discussion with the Board, on the basis of objectives and priorities set by the Board, and within the agreed 3 to 5 year strategy.*
- 6.7** *We recommend that the Board should be responsible for negotiating the annual policing budget with the Northern Ireland Office, or with the appropriate successor body after devolution of policing. It should then allocate the police service budget to the Chief Constable and monitor police performance against the budget (see paragraphs 6.16 and 6.17 and the section on financial accountability at paragraphs 6.46 and 6.47).*

- 6.8** *We recommend that the Board should monitor police performance against the Annual Policing Plan and the 3–5 year strategy. It should watch crime trends and patterns, and police performance in public order situations. It should also follow such things as recruitment patterns and trends, including fair employment and equal opportunities performance, and training needs. It should assess public satisfaction with the police service and, in liaison with the Police Ombudsman, patterns and trends in complaints against the police (see later section on the powers of the Policing Board).*
- 6.9** *We recommend that the Board should have responsibility for appointing all chief officers<sup>1</sup> and civilian equivalents and for determining the length of their contracts. All appointments should be subject to approval by the Secretary of State (and successor after devolution – see para. 6.15 below) and the Chief Constable should be consulted in relation to the appointment of subordinate chief officers and civilian equivalents. The Board should have the power to call upon the Chief Constable to retire in the interests of efficiency and effectiveness subject to the approval of the Secretary of State (and successor) and to the right to make representations as at present. Similarly, the Board should have the same power in relation to other chief officers and civilian equivalents exercisable subject to the approval of the Secretary of State (and successor) and to the same right to make representations and after consultation with the Chief Constable. The Secretary of State should have power to require the Policing Board to call upon the Chief Constable to retire on the same grounds but this power should be exercisable only after consultation with the Board and subject to the same right to make representations already referred to. Additionally, after devolution the relevant Northern Ireland minister should have power to call for the retirement of the Chief Constable on the same grounds but this should be subject to the agreement of the Policing Board and the approval of the Secretary of State with an equivalent right to make representations. The Board should be the disciplinary authority for chief officers and civilian equivalents.*
- 6.10** The title “Policing Board” is deliberate. We see the role of the new body going beyond supervision of the police service itself, extending to the wider issues of policing and the contributions that people and organizations other than the police can make towards public safety. *We recommend that the Policing Board should coordinate its work closely with other agencies whose work touches on public safety, including education, environment, economic development, housing and health authorities, as well as social services, youth services and the probation service, and with appropriate non-governmental organizations.* We have in mind arrangements analogous with, though not identical to, those being established in Britain as a result of the Crime and Disorder Act 1998, or those that exist in some other countries, for example the Netherlands, where Community Safety Plans are compiled in cooperation between the police and other government agencies. Taking as examples two subjects raised with us in many submissions, a strategy to reduce vandalism should dovetail the activities of the police, the Housing Executive, the Department of the Environment, Department of Education, the probation service and relevant community organizations; and a strategy against drug abuse should involve health and education departments, youth services and other government or non-governmental organizations. A comprehensive approach would bring several benefits, including better coordination of efforts and therefore better use of aggregate resources, greater integration of the police service in the “normal” life of Northern Ireland, and reorientation towards “normal crime” and disorder as opposed to the political violence that has so distorted policing in the past. Besides the RUC there

<sup>1</sup> The term “chief officer” includes the ranks of Chief Constable, Deputy Chief Constable and Assistant Chief Constable.

are two small statutory police forces in Northern Ireland – the Belfast Harbour Police and the Belfast International Airport Police. The desirability of the continuance of these arrangements, or the public supervision of these forces by the Policing Board, and the application of our recommendations on policing to them, are matters for consideration by the government, or after devolution by the Northern Ireland Assembly. Furthermore, in the future it is possible that either Parliament or the Northern Ireland Assembly will decide to bring the private security industry under statutory regulation. In that event we suggest that the Policing Board might be a suitable regulatory body for the industry.

### **Membership of the Policing Board**

- 6.11** The Policing Board will be an important institution, vital to the new beginning for policing and to the success of all the new policing arrangements recommended in this report. It must command respect and credibility and must have real power and responsibility. A majority elected membership is essential to this objective. It builds on the consensual constitutional arrangements of the Agreement, including the election of an Assembly and the establishment of an Executive, and breaks the existing identification of the Police Authority with the Secretary of State (and therefore with the disputed state itself). *We recommend that the Policing Board should have 19 members, 10 of whom should be Assembly members drawn from the parties that comprise the new Northern Ireland Executive, selected on the d'Hondt system<sup>2</sup>, who should not at the same time hold ministerial office in the Executive.*
- 6.12** Neither government nor the police could easily disregard the views of a Board which has its own democratic credentials. The remaining nine members of the Policing Board should reinforce the credentials and credibility of the Board by bringing solid expertise which would be relevant to the work of the Board. Again, our objective is to create a body whose views command respect and cannot be taken lightly by either government or police; and a body which reflects the cultural mix of society as a whole (a recommendation made in the MacPherson report of 1999<sup>3</sup> in respect of police authorities in England and Wales). *We recommend that the nine independent members be selected from a range of different fields – including business, trade unions, voluntary organizations, community groups and the legal profession – with the aim of finding a group of individuals representative of the community as a whole, with the expertise both to set policing priorities and to probe and scrutinize different areas of police performance, from management of resources to the safeguarding of human rights. We recommend that their appointments should be for four years; but if it were necessary for the purpose of continuity to ensure that not all Board positions fell vacant at the same time as elections to the Assembly, some of these appointments could be for an initial period of two years.*
- 6.13** *We further recommend that the independent members be appointed by the Secretary of State, in consultation with the First Minister and the Deputy First Minister, until such time as responsibility for policing is devolved, at which point the appointments should be made by the First Minister and the Deputy First Minister acting together. Until devolution, the Secretary of State should also determine the remuneration and expenses of Board members, in consultation with the First Minister and the Deputy First Minister.*

<sup>2</sup> The d'Hondt system is the selection method prescribed in the Agreement for the allocation of ministerial positions in the Northern Ireland Executive to the political parties, based on the number of seats held in the Assembly.

<sup>3</sup> "The Stephen Lawrence Inquiry: Report on an Inquiry by Sir William MacPherson of Cluny". The Stationery Office, London February 1999

**6.14** The Policing Board will be an institution of central importance, setting the objectives for policing, monitoring police performance, initiating inquiries as necessary and exercising real authority over the police service. The first chairman of the Board will be a crucial figure, and a key determinant of whether the new Board rises to the challenge of the extensive reform programme set out in this report. *We recommend that a Board member of high quality and standing in the community be appointed by the Secretary of State, with the agreement of the First Minister and the Deputy First Minister, for an initial term of four years.* After this time the Board membership should elect the chairman.

### **Powers of the Policing Board, Government and the Chief Constable**

**6.15** The powers of the Policing Board must be clearly defined and robust, both in relation to the role of the Secretary of State, or the Northern Ireland Executive after devolution, and that of the Chief Constable. It is fitting here to say something about the issue of devolution. The Agreement says that the British government is in principle prepared to devolve responsibility for policing. This would clearly be in keeping with the principle of enhanced democratic accountability. *We recommend that responsibility for policing be devolved to the Northern Ireland Executive as soon as possible, except for matters of national security* (on which, see also paragraphs 6.22 and 6.43 to 6.45). It is, however, vital that the clock is not turned back to the situation before 1969, when the police were seen to be subject to direction by the Minister of Home Affairs. If, in the devolved arrangements of the future, there were too direct a relationship between a minister and the police, there would be a danger that that minister could be seen to be exercising partisan influence over the police. This is a risk that must be avoided. *We therefore strongly recommend that the powers of the Policing Board proposed in this report, in relation to both government (as now represented by the Secretary of State) and the Chief Constable, be in no way diminished when the government role in the tripartite arrangement passes to the Northern Ireland Executive.*

**6.16** The convoluted provisions of the Police (Northern Ireland) Act 1998 with regard to the setting of principles, objectives and targets have already been mentioned. *We recommend that these provisions be simplified so that the respective roles of the Secretary of State (or successor), the Policing Board and the Chief Constable are clear.* Government should retain the power to set principles and broad overall objectives for policing. But the Policing Board should have the power to set the objectives, priorities and performance targets for Northern Ireland in both the 3-5 year strategy and the Annual Policing Plan. We see no justification for government to second-guess the Board in these matters in the way that is currently provided for. It is enough that the Board must negotiate the policing budget with government, and that government therefore needs to be convinced that the request for funds is reasonable.

**6.17** The 1998/99 Inspection Report of Her Majesty's Inspector of Constabulary (HMIC)<sup>4</sup> is critical of the current financial planning process. In particular he highlights the absence of proper links between financial plans, policy plans and strategic plans. These plans must be linked together to be effective, and steps must be taken to ensure that they are. This, however, does not diminish the need for clear delineation of arrangements for financial control and accountability. The memorandum setting out the financial relationship with the Policing Board should be so formulated as to ensure that there is no blurring of these responsibilities, and that the government does not, as in the past, become involved in what is properly the business of the Board: to

<sup>4</sup> 1998/99 Inspection, RUC. A Report by HMIC. NIO, Belfast July 1999

determine the allocation of the budget to the Chief Constable and to hold him/her responsible for the efficient and effective use of resources.

- 6.18** The Police (Northern Ireland) Act 1998 provides, in section 39, that the Secretary of State may issue guidance to police as to the exercise of their functions. This power is unique to Northern Ireland – for example, the Home Secretary has no such power in respect of police services in England and Wales. We have sought, but have not received, coherent explanations of the rationale for this provision. It has been suggested to us that guidance under the section would not be binding and that, therefore, it does not empower the Secretary of State to direct the police. We are not persuaded that this is so or, at any rate, that such guidance would be so perceived by recipients. We do not believe that the Secretary of State or a future minister in the Northern Ireland Executive should even appear to have the power to direct the police. *We recommend that this provision of the Police Act be repealed.* We would add that if, as was urged on us, the effect of section 39 is limited to authorising the issuing of guidance which members of the police service would be free to adopt or reject as they see fit, we consider the provision to be unnecessary. For decades Home Office circulars have offered guidance to police services in England and Wales without the necessity of any statutory authorisation. Generally, the RUC has followed the advice contained in such circulars when germane to its functions. No doubt the issuing of government circulars will continue and will continue to be adopted as appropriate by the police service in Northern Ireland.
- 6.19** One of the most difficult issues we have considered is the question of “operational independence”. Some respondents urged us to define operational independence, or at least to define the powers and responsibilities of the police. The Police Authority and the Committee on the Administration of Justice both advocated this. The Authority told us that under the present arrangements if a chief constable decided that a matter was operational, and therefore within the scope of police independence, there was nothing that they could do to pursue it. We have consulted extensively in several countries, talking both to police and to those who are responsible for holding them accountable. The overwhelming advice is that it is important to allow a chief constable sufficient flexibility to perform his or her functions and exercise his or her responsibilities, but difficult if not impossible to define the full scope of a police officer’s duties. The term “operational independence” is neither to be found in nor is it defined in any legislation. It is an extrapolation from the phrase “direction and control” included in statutory descriptions of the functions of chief constables. But, however it may be defined, it is not acceptable that scrutiny of the police should be impeded by the assertion, valid or otherwise, that the current legislation empowering such scrutiny is limited to matters outside the scope of operational independence.
- 6.20** Long consideration has led us to the view that the term “operational independence” is itself a large part of the problem. In a democratic society, all public officials must be fully accountable to the institutions of that society for the due performance of their functions, and a chief of police cannot be an exception. No public official, including a chief of police, can be said to be “independent”. Indeed, given the extraordinary powers conferred on the police, it is essential that their exercise is subject to the closest and most effective scrutiny possible. The arguments involved in support of “operational independence” – that it minimises the risk of political influence and that it properly imposes on the Chief Constable the burden of taking decisions on matters about which only he or she has all the facts and expertise needed – are powerful arguments, but they support a case not for “independence” but for “responsibility”. We strongly prefer the term “operational responsibility” to the term “operational independence”.

- 6.21** Operational responsibility means that it is the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case. But the term "operational independence" suggests that it might be, and invocation of the concept by a recalcitrant chief constable could have the effect that it was. It is important to be clear that a chief constable, like any other public official, must be both free to exercise his or her responsibilities but also capable of being held to account afterwards for the manner in which he/she exercises them. *We recommend that the Chief Constable should be deemed to have operational responsibility for the exercise of his or her functions and the activities of the police officers and civilian staff under his or her direction and control.* Neither the Policing Board nor the Secretary of State (or Northern Ireland Executive) should have the power to direct the Chief Constable as to how to exercise those functions.
- 6.22** *We recommend that the Policing Board should 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 obligation to report should extend to explaining operational decisions.* 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. *We recommend that, if there is a disagreement between the Board and the Chief Constable over whether it is appropriate for a report to be provided on a particular matter, it should be for the Chief Constable to refer the question to the Secretary of State for a decision as to whether the Board's requirement should stand.* As in the rest of the United Kingdom (including Scotland under the new devolved arrangements there), the Chief Constable remains fully accountable for the involvement of police in matters involving national security, even though his or her main accountability in such matters is to the Secretary of State rather than to the Policing Board.
- 6.23** *We further recommend that the Policing Board should have the power, subject only to the same limitation set out in paragraph 6.22, to follow up any report from the Chief Constable by initiating an inquiry into any aspect of the police service or police conduct. Depending on the circumstances, 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 to use the Board's own staff, or even private consultants for such a purpose.* It will be important for the Board to coordinate its activities with these other bodies, so as to avoid a confused proliferation of scrutiny into the police service. The Board should have the responsibility for overall monitoring of police performance, and its activities will therefore be bound to overlap to some extent with those of the more specialised agencies like the Ombudsman or the Audit Office. Sensible practical understandings will have to be worked out as to who leads on particular issues. We consider it important, however, that the Board should have the power to request another agency to conduct an inquiry and should have the capacity to do so itself. It is also essential that all members of the police service be required to cooperate with that inquiry. Without such an obligation, the Board would be dependent on reports from the Chief Constable with no effective follow-up capacity. It would therefore be powerless against a recalcitrant chief constable unless it was prepared to call for his or her retirement. To be truly effective an institution needs to have more than just one, extreme power which by its nature is difficult to use.
- 6.24** The Policing Board will need to be staffed and resourced to perform the functions described

earlier. For example, its staff will need the expertise to be fully involved in the development of the Annual Policing Plan. They should include experts in budgets, value for money, human rights and other key aspects of policing which the Board will need to monitor. These staff should be able to conduct or participate in inquiries of the kind recommended in paragraph 6.23. The establishment of the Board need not be large. We see no reason why it should be more than 30 to 50 (much less than the 600 or so staff that the Police Authority has had in the recent past). The key point is quality. The Board should be staffed as a high quality regulatory body; and it may well require flexibility over remuneration packages to get the right people for the job.

### **District Policing Partnership Boards**

- 6.25** The Policing Board will be the central institution for democratic accountability. But an important theme of this report is that policing should be decentralised, and that there should be constant dialogue at local levels between the police and the community. Over the past few years there has been a rapid growth in the number of Community and Police Liaison Committees (CPLCs), and over 100 of these now exist. They are formed in a number of different ways – some comprise District Councillors, some are made up of independent members, some are mixed – and their performance also varies. There are a number of serious weaknesses with the network of CPLCs, not least the problem that there are several areas of Northern Ireland where it has not been possible to establish them and, not unconnected with this, the lack of participation in the Committees by some significant political parties. Some respondents told this Commission that they saw their local CPLCs as rather elitist, and in general our impression was that ordinary citizens were not in practice using, or able to use, the CPLCs as forums for putting across their views. Only 29% of respondents in our own public attitudes survey were aware of CPLCs, and nearly 40% of those said they did not know what the CPLCs actually did.
- 6.26** *We recommend that each District Council should establish a District Policing Partnership Board (DPPB) as a committee of the Council, with a majority elected membership, the remaining independent members to be selected by the Council with the agreement of the Policing Board. We envisage that the number of members on each DPPB might be 15, 17 or 19, the number of elected members being 8, 9 or 10 respectively, reflecting the balance of the District Council. As with the Policing Board, the independent members should be selected to represent business and trade union interests and to provide expertise in matters pertaining to community safety. Taken as a whole, each DPPB should be broadly representative of the district in terms of religion, gender, age and cultural background. We recommend that the chair of the DPPB should be held by an elected member, with rotation between parties from year to year.*
- 6.27** Because of the disproportionate size of the Belfast District Council area, *we recommend that the District Policing Partnership Board in Belfast should have four sub-groups, covering North, South, East and West Belfast*, and the organisational structure of the police service should reflect this – see Chapter 12.
- 6.28** All DPPBs, or DPPB sub-committees in the case of Belfast, should be coterminous with a police district (see Chapter 12 on the structure of the police service). If, in due course, the Assembly decides to reduce the present 26 District Council areas, the number of DPPBs (and police districts) should in principle follow suit.

- 6.29** The function of the DPPBs should be advisory, explanatory and consultative. The Boards should represent the consumer, voice the concerns of citizens and monitor the performance of the police in their districts, as well as that of other protective agencies such as the fire service, environmental protection, public health and consumer protection authorities. Some council chief executives are already playing an informal coordinating role among these agencies, and the same is true in other parts of the United Kingdom. Like the Policing Board, the DPPBs should be encouraged to see policing in its widest sense, involving and consulting non-governmental organisations and community groups concerned with safety issues as well as statutory agencies.
- 6.30** *We recommend monthly meetings between the DPPB and the police District Commander, at which the police should present reports and answer questions and the Board should reflect community concerns and priorities to the police.* We do not recommend that the DPPBs should have powers comparable with those of the Policing Board, such as powers of appointment or investigation and responsibility for approving plans and allocating budgets, but *we do recommend that the views expressed by DPPBs should be taken fully into account by the police and by the Policing Board in the formulation of policing plans and strategies at the central level.* We also envisage the DPPBs as forums for promoting a partnership of community and police in the collective delivery of community safety. That is to say, if policing problems are beyond the capacity of the police alone to resolve – because, for example, they are linked to inadequacies of transport or housing or youth facilities – the DPPBs may identify the wider difficulties and draw them to the attention of the appropriate authorities for the purpose of developing a joint response.
- 6.31** The DPPB should be the focus of public consultation at district level for the annual Northern Ireland Policing Plan. The District Commander should consult with the DPPB in the preparation of the district police plan, which should in turn inform the preparation of the Annual Policing Plan for Northern Ireland as a whole. *We recommend that the DPPB should submit an annual report to the District Council, and publish it.*
- 6.32** The DPPBs will need to be provided with adequate secretarial and support services by the District Council Chief Executive. *We recommend that the approved administration costs should attract a 75% grant from the Policing Board, the remaining 25% to be funded by the District Council.*
- 6.33** Additionally, *we recommend that District Councils should have the power to contribute an amount initially up to the equivalent of a rate of 3p in the pound<sup>5</sup> towards the improved policing of the district, which could enable the DPPB to purchase additional services from the police or other statutory agencies, or from the private sector.* They might choose to use the money for security cameras in commercial centres, or to fund youth club schemes: it would be for them to decide, in consultation with their local police.
- 6.34** The DPPBs would supplant those existing CPLCs which are based on District Councils and operating at district level. There are, however, dozens of other CPLCs operating at various levels, down to small neighbourhood areas and single estates. We do not intend either to replace these or to recommend how they should be organized. Below district level, local communities and police should be encouraged to develop consultative forums on lines that suit them and their neighbourhoods. *We recommend that it should be the aim of every police beat manager to have such*

<sup>5</sup> District Councils already have a general power to raise up to 5p in the pound for economic development.



*a forum in his or her patrol area.*

- 6.35** *We recommend that the Policing Board should maintain regular contact with the DPPBs, through periodic meetings of chairpersons, annual conferences, seminars, training courses and by including them in the circulation of information.*

## **Transparency**

- 6.36** *We recommend that the Policing Board should meet in public once a month, to receive a report from the Chief Constable. We suggest that meetings should from time to time be held outside Belfast, so as to give the Policing Board a visible profile throughout Northern Ireland. Minutes of Policing Board meetings and Board papers should be publicly available except where the public interest would be damaged.*

- 6.37** *We recommend that District Policing Partnership Boards should also meet in public once a month, and procedures should allow for members of the public to address questions to the Board and, through the chair, to the police. The minutes of DPPB meetings should also be made public.*

- 6.38** *We further recommend that the police service itself should take steps to improve its transparency. There are many ways in which this should be done. Police codes of practice should be publicly available; this does not mean, for example, that all details of police operational techniques should be released – they clearly should not – but the principles, and legal and ethical guidelines governing all aspects of police work should be, including such covert aspects as surveillance and the handling of informants (cf the ACPO Codes of Practice on these matters referred to in Chapter 4). *The presumption should be that everything should be available for public scrutiny unless it is in the public interest – not the police interest – to hold it back.* It follows that there should be readily available and clearly drafted notes on matters which the public are likely to be interested to see. It was our experience during the period of our review that briefing notes and statistics on a range of issues of interest to us – and therefore probably to others – were not readily available. Avon and Somerset police have an impressive range of methods of consulting and explaining themselves to the public, including breakfast seminars for business leaders, local councillors and other groups, factsheets, articles, interviews and radio phone-in programmes, in addition to more than 500 partnership schemes and projects. Transparency is not a discrete issue but part and parcel of a more accountable, more community-based and more rights-based approach to policing. We return to this subject again in the chapters on policing style and on management and personnel in the police service.*

## **Legal Accountability**

### **The Police Ombudsman**

- 6.39** Professor Philip Stenning, in a review of complaints procedures in British Columbia, argued that “An effective process for handling public complaints against the police requires many things: a sound legislative foundation; dedicated, competent, experienced and/or trained personnel to administer it; a reasonable level of commitment and cooperation on the part of the police organisations and personnel to whom the process applies; an adequate degree of knowledge of, confidence in, and willingness to use the process, and good faith, on the part of potential complainants in particular and the public more generally; and the commitment of adequate

resources for full and effective implementation of the process”<sup>6</sup>. He recommended that the process should be: accessible, fair to complainants and police officers, respectful of human rights and dignity, open and accountable, timely, thorough, impartial, independent and should take account of both the “public interest” and the interests of the parties involved in the complaint. It should also be appropriately balanced between formal and informal procedures for resolving complaints, between remedial and punitive dispositions, and between internal management and external oversight. It should provide appropriate systemic information to police management and governing authorities, and it should avoid unnecessary duplication or overlap with internal disciplinary and grievance processes.

**6.40** One of our commissioners, Dr Maurice Hayes, was asked by the Northern Ireland Secretary of State in 1996 to review the police complaints system. His report of January 1997 found the existing system inadequate and recommended an independent Police Ombudsman with his/her own independent team of investigators, and a change in the standard of proof required in police disciplinary cases. The Hayes report was accepted by all parties in Northern Ireland and by the police themselves, and its recommendations passed into law in 1998. We believe that full implementation of this report would lead to the establishment of a complaints process in Northern Ireland which would meet all the Stenning criteria. We have been encouraged by the success of the Office of Police Complaints Commissioner in South Africa which very closely models the structures and procedures recommended in Dr Hayes’ report. We also note that Sir William MacPherson recommended independent investigation of serious complaints against the police, in his report of the Stephen Lawrence inquiry<sup>7</sup>. At the time of writing this report the office of Ombudsman is still in the process of being established and we are not in a position to assess how successful it will be. However, this Commission as a whole aligns itself fully with Dr Hayes’ recommendations and believes that a fully independent Ombudsman operating as he envisaged in his report should be a most effective mechanism for holding the police accountable to the law.

**6.41** *We recommend that:*

- *The Police Ombudsman should be, and be seen to be, an important institution in the governance of Northern Ireland, and should be staffed and resourced accordingly.* Budgets should be negotiated with, and finance provided through, the Northern Ireland Office (or its successor department), both for the core staff of the office and to provide for exceptional demands created by large-scale investigations.
- *The Ombudsman should take initiatives, not merely react to specific complaints received. He/she should exercise the power to initiate inquiries or investigations even if no specific complaint has been received.*
- *The Ombudsman should be responsible for compiling data on trends and patterns in complaints against the police, or accumulations of complaints against individual officers (and appropriate systems for managing such data will be needed – see also Chapter 10 on Management and Chapter 11 on Information Technology), and should work with the police to address issues emerging from this data.* It is important that management at all levels should use information from the complaints system as a tool of management and to identify training needs. The Policing Board should utilise such data in developing or reviewing policies or practices. There

<sup>6</sup> Stenning, P., “Review of Part 9 (Complaint Procedure) of the British Columbia Police Act as amended by Section 36 of SBC 1997, c.37”

<sup>7</sup> The Stephen Lawrence Inquiry, op.cit.

should be no doubt of the Ombudsman's power to investigate and draw conclusions from clustering in patterns of complaints and to make recommendations for change to police management and the Policing Board.

- *The Ombudsman should have a dynamic cooperative relationship with both the police and the Policing Board, as well as other bodies involved in community safety issues.*
- *The Ombudsman should exercise the right to investigate and comment on police policies and practices, where these are perceived to give rise to difficulties, even if the conduct of individual officers may not itself be culpable, and should draw any such observations to the attention of the Chief Constable and the Policing Board.*
- *The Ombudsman should have access to all past reports on the RUC.*

**6.42** We cannot emphasize too strongly the importance of the office of Police Ombudsman in the future policing arrangements proposed in this report. The institution is critical to the question of police accountability to the law, to public trust in the police and to the protection of human rights. We welcome the fact that, under the Police (Northern Ireland) Act 1998, officials exercising the Ombudsman's functions have been given the powers of constable, and that obstruction of these officials constitutes a criminal offence.

### **Covert Policing**

**6.43** In Chapter 4 we referred to legislation now in preparation 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 – are fully compliant with the European Convention on Human Rights. We welcome this and *recommend that any such legislation should apply in Northern Ireland as well as the rest of the United Kingdom.* We have already recommended, in paragraph 6.38 that codes of practice on these matters should be made publicly available.

**6.44** At present there is a commissioner in Northern Ireland, appointed under the Police Act 1997, who provides independent oversight of the Chief Constable's use of the power to authorise certain types of surveillance. There is also a commissioner appointed under the Interception of Communications Act 1985, who provides independent oversight of the use by the Secretary of State of the power to authorise interceptions of communications. This commissioner covers the whole of the United Kingdom and is based in England. Other aspects of covert policing are not subject to the same sort of independent oversight. We believe that there should be much more comprehensive independent scrutiny of this important and sensitive area of policing, and we also believe that accountability in this area should be as local as possible. *We recommend that there should be a commissioner for covert law enforcement in Northern Ireland.* The commissioner should be a senior judicial figure, based in Northern Ireland, whose remit should include surveillance, use of informants and undercover operations, as well as interceptions of communications. He or she should have powers to inspect the police (and other agencies acting in support of the police) and to require documents or information to be produced, either in response to representations received, directly or through the Police Ombudsman, the Policing Board or others, or on his or her own initiative. The commissioner should not be responsible for authorising operations, but he or she should conduct sufficient inquiries to ascertain whether covert policing techniques are being used: with due regard for the law; only when there is a

justification for them; and when conventional policing techniques could not reasonably be expected to achieve the objective. The commissioner should check that justifications for continuing specific covert operations are regularly reviewed, and that records of operations are maintained accurately and securely, with adequate safeguards against unauthorised disclosure.

- 6.45** *We further recommend 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.* This could either be a tribunal for Northern Ireland or, if there is to be such a body set up for the United Kingdom as a whole, there should be at least one member from Northern Ireland whenever cases involving Northern Ireland are under consideration.

### **Financial Accountability**

- 6.46** *We recommend a substantial strengthening of financial accountability, including: a fully costed Annual Policing Plan; a strong audit department within the Policing Board, staffed by experts in budgeting, financial management and value for money programmes; and 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.* As noted above, the Policing Board would be responsible for negotiating the policing budget with government, and allocating the police service budget to the Chief Constable. It should agree expenditure sub-heads with the Chief Constable and should be responsible for approving any major transfers of expenditure between sub-heads within the year, and for approving any major capital expenditure (see also paragraph 6.17).
- 6.47** *We also recommend that the Chief Constable should be designated a sub-accounting officer, in addition to the Chief Executive of the Policing Board, so that either or both may be called, together with the Permanent Under Secretary as principal accounting officer, to give evidence to the Public Accounts Committee.* These arrangements should be varied as appropriate when responsibility for policing is devolved, depending on the mechanisms agreed at that time for funding the Northern Ireland policing budget. But in any event the Chief Constable should remain an accounting officer.