Police, Government and Accountability

Second Edition

Ian Oliver

POLICE, GOVERNMENT AND ACCOUNTABILITY

Also by Ian Oliver

THE METROPOLITAN POLICE APPROACH TO THE PROSECUTION OF JUVENILE OFFENDERS

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Second Edition

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'The day is here! It has come! Doom has burst forth, the rod has budded, arrogance has blossomed.'

Ezekiel 7:10

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Foreword

'Keeping politicians away from the police' was the heading they put on a piece I wrote for the *Daily Telegraph* in 1987 about the first edition of this book. I said then that it struck me as the most penetrating survey of the police since a Royal Commission on the Police reported more than 30 years ago. It still does, but this second edition has become even more pertinent. Mr Oliver's central theme is the imperative need to keep our police politically impartial and independent of all governments. In earlier days the threat to this seemed to come mainly from local government; from police committees of not very broadminded but slightly bossy men who found the autonomy of their chief constable in respect of police operations hard to accept, indeed unacceptable. So they administered pinpricks to remind him and his officers of where they stood.

In more recent times it has been central government which, inadvertently perhaps, has posed the bigger threat to Mr Oliver's citadel of independent police forces. For example, a modern police force costs a lot of money. A government grappling with the inexorable rise of public spending has to look at this. It applies fresh methods of financial control, which shift the balance of power from police towards government. As Dr Oliver does well to point out, the business-school doctrine has a firm grip on Whitehall. Getting better value for your money is the name of the game. Admirable – but in this crucial balance between police and politicians, it gives the politician more right to intervene – and so tips the scales towards him.

Then again, we have become much more sensitive about the rights of citizens. I have never privately thought that the Citizens' Charter was what Bertie Wooster would have called the ripest of ideas, and I thought it came oddly from a Tory government. But there it is, and of course it indirectly brings government into a sort of 'third-umpire' role between the police and the citizen.

Reading through this book I am struck by the patience of any chief constable who can find time, amid other more pressing duties, to digest and conform to the obligations which government in recent times has discovered for him. There are too

many hedges. I am faintly shocked to find how many of these have been planted since the Tory party took office 17 years ago.

There is however another factor, which this scholarly book omits, because it is not relevant to its central theme. There has recently been a big shift in the minds of most citizens as to where the main danger to life, limb and property now lies. Between 1945 and 1990, roughly speaking, the heaviest cloud in the sky was nuclear war; and external aggression which would lead fatally to a battle escalating into that kind of war.

Now if we were closely to examine the nightmares of the man on a Clapham omnibus, his wife and adolescent children, we would come up with something else. As one who tries to keep modern developments in some sort of historical proportion – what else is the point of growing old? – I am not wholly persuaded that the threat to life and property today is all that heavier than it was in days of footpads and highwaymen and garrotters. But the public certainly thinks it is. So does the police officer, who has to go unarmed against an increasingly nasty minority. And the politician, always sensitive to electoral vibrations, has increasingly made 'law 'n order' a political issue. For the protection of all that we hold most dear, we look towards the Home Secretary more anxiously today than to the Minister of Defence.

And then again, we have witnessed the ascending power of the terrorist. Northern Ireland since 1969, the Middle East, Islamic fundamentalism – they have implanted an impression that a main threat to our lives and property and peace of mind has shifted from the external to the internal.

It follows that what we have come to expect from police forces in this country has undergone a slow but immensely important change. There have fallen on the police the mantles worn in times of war by people like the SAS, the Paras, the Brigade of Guards, the Royal Navy and the fighter pilots.

David Lloyd George, who took us through the final, desperate years of the First World War, came to believe that war was too important to be left to generals. The political struggle between him and the generals in the last reel of that war, followed by the great German breakthrough in March 1918, which nearly did us in, is part of history.

Whenever the role of the armed forces has become decisive,

politicians have been constitutionally incapable of keeping their sticky fingers out of it. Consider Churchill at the time of the Dardanelles, or Eden at Suez, or Thatcher during the Falklands War. When the safety of the realm seems to be at stake, the politician always edges forward.

And, in my judgement, that is what has been happening to the police. It is because the role of the police in our society has become so much more important, even since Dr Oliver first wrote this book in the 1980s, that the politician has moved forward. These things are bound together.

But – very big but – none of this invalidates Dr Oliver's central theme: it strengthens it. There are precious few examples on record of where a politician has improved our chances on the battlefield. I suppose Churchill's choice of Montgomery at a critical point in the Desert War was one of them, but they are rare.

And, with the best of intentions, the Home Secretary is not going appreciably to improve the chances of the police today against a formidable threat to the person and to property by butting in too much. On the contrary, the more ministers feel they can trust the police to carry out their duties faithfully, and can resist the itch to stand at their elbow and hedge them around – then the sounder the rest of us can sleep in our beds.

LORD DEEDES

Preface

The second edition of this book was made necessary by central government reforms of policing in the shape of the Police and Magistrates' Courts Act 1994. As we approach the millennium the hope for the police service was that a proper assessment of future policing requirements in the twenty-first century would be undertaken and, after adequate public consultation, a constructive and informed judgement would be made about improvements in the model of accountability and the way in which the public could be satisfied that they were receiving a thoroughly professional service capable of acting impartially and independently in the public interest.

What has occurred has been something significantly different. Major constitutional changes have occurred without much informed public debate and dogma has been substituted for professional judgement resulting in piecemeal and inadequate reforms which may threaten the very independence of the police service. The model of accountability which has been created in England and Wales is suspect and has arguably brought about constitutional change which may alter the traditional freedom from political control that the police service has enjoyed since 1964 and which is so essential to the democratic well-being of the country. Little satisfaction can be gained from what has happened in Scotland and Northern Ireland.

Particular attention has been paid to the situation in Northern Ireland because the apparent end of 25 years of terrorism brought about an opportunity for a new model of accountable policing to be created which would suit the needs of an historically divided community and which would ensure that the constitutional values identified by the Royal Commission Report in 1962 could be adopted and tested in a socially acceptable manner. Unfortunately, the political will to achieve that new model has been absent.

The inevitable conclusion must be that there remains an urgent need for modern policing and public accountability to be reviewed by way of a Royal Commission. Failure to undertake such a comprehensive enquiry will result in a less than satisfactory situation arising throughout the United Kingdom

and an internationally respected public service will suffer a major setback in terms of its ability to claim that it remains politically independent and impartial in terms of its operational performance. The service may be constrained by considerations other than the public interest.

Aberdeen IAN OLIVER
May 1996

1 Introduction

For over 30 years the British police service was secure in its assertion that it was a group of organisations free from direct political control or interference in operational matters. The service was justly proud that its reputation for independence and impartiality was admired around the world and it had no fear that government would interfere with that constitutional position. Indeed these features were so fundamental to the British policing system that any change to such a tried and tested model would have been thought to be inconceivable – independent policing was said to be a bedrock of British democracy. The tripartite structure of control of policing, comprising a partnership of central government, local government and chief constable, was believed to be the model that provided for what a former Home Secretary, R.A. Butler, had described as the 'checks and balances' of the British Constitution. Indeed Butler stood out against pressure for greater centralisation in the control of police when he said to the ACPO Summer Conference of 1962,

> I am quite convinced that it would be wrong for one man or one government to be in charge directly of the whole police of this country. Our constitution is based on 'checks and balances'. This has kept our liberty through the generations. (*The Times*, 27 June 1962)

But it was not always such a clearly defined position and there is little doubt that when large numbers of small forces existed, with different types of local government committees, that political pressure, not to say domination in the case of some of the old 'Watch Committees', was common. Even today there are serving police officers who remember how dependent they once were for advancement on the patronage of the chairman of the Watch Committee, who might also have been a local publican.

Nevertheless, despite that almost universal confidence and despite the united opposition of representative bodies in the police service in the United Kingdom, a Conservative government ignored professional advice and public opinion and

created a model of policing in England and Wales which has arguably changed the structure of control from one of partnership under the tripartite system to a linear model whereby it is possible for a Home Secretary to dominate policing in such a way that the independence and impartiality of the service may be replaced by the political subordination of the chief constable and the police authority. The Secretary of State for Scotland resisted any move to impose such influence over policing matters north of the border, and the position in Northern Ireland has not been formalised by way of new legislation (1996), but the indications are that the English model will be emulated.

This book attempts to describe the models of the accountability of the police service in the United Kingdom before and after the Police and Magistrates' Courts Act 1994.

2 The Royal Commission on the Police 1962

The most convenient starting point for a discussion of the modern accountability of the police service is the 1962 *Final Report of the Royal Commission on the Police.*[1]

REASONS FOR SETTING UP THE ROYAL COMMISSION

According to the Commissioners, there were a number of unrelated and sometimes trivial incidents that 'engendered misgivings about the state of the police'.[2] The cumulative effect of these incidents, no doubt fanned by excessive press reporting and certainly exacerbated by the inability of Members of Parliament to raise questions in the House of Commons about matters affecting the police outside the Metropolitan Police District, was to give rise to the impression that the police service was not properly accountable, that complaints by members of the public were not properly handled, and that the constitutional position of police officers within the state was ill-defined.

The incidents which attracted much publicity and 'engendered misgivings' in the public mind were concerned, primarily, with chief constables. In 1956 the Chief Constable of Cardiganshire was the subject of disciplinary proceedings arising from allegations that the force was not being administered in a proper manner, the result of which was the eventual amalgamation of the Cardiganshire Constabulary with that of Carmarthenshire in order to bring about greater efficiency. In 1957 the Chief Constable of Brighton and other senior officers of the force were charged with corruption; the Chief Constable was acquitted but two officers were sentenced to imprisonment and the Chief Constable was criticised by the court, as a consequence of which he was subsequently dismissed by the Watch Committee, although his appeal against dismissal was upheld by the House of Lords on the grounds of a breach of the rules of natural justice by the Committee.[3] This case was followed in the

same year by the prosecution of the Chief Constable of Worcester, who was convicted of fraud and imprisoned.

In December 1957 a youth was assaulted by one of two police officers on duty in Thurso; because of the general atmosphere of dissatisfaction with police conduct and two parliamentary debates on the matter, a tribunal of inquiry was appointed under the Tribunals of Inquiry (Evidence) Act 1921. The members of the tribunal found that the boy had been subjected to a minor assault by one of the officers but that he had been guilty of provocative conduct, and that had the matter been the subject of prosecution under Scottish law it was unlikely that a conviction would have ensued from the evidence available.[4]

In July 1959 there was a dispute between the Watch Committee of Nottingham City and the then Chief Constable, Captain Athelstan Popkess, resulting in the latter's suspension from duty. There had been a prolonged disagreement between the two parties, stemming from an investigation by the Chief Constable, advised by the Director of Public Prosecutions, into certain matters concerning the claiming of expenses and the carrying out of some work by the Corporation. The Town Clerk and the Watch Committee asked the Chief Constable to supply them with details of the police investigation; the Chief Constable refused to do so. As a result of this refusal, the Watch Committee suspended the Chief Constable from duty pending further consideration of the matter. The Town Clerk had considered that the Chief Constable may have been biased in his inquiries, whereas the Chief Constable considered the request for information about the investigation of an alleged criminal matter to be interference in the course of justice and with his independent right to enforce the law. The Home Secretary intervened and took the view that the circumstances did not justify suspension from duty and commented that the Chief Constable would have been in breach of his duty had he complied with the instruction. Captain Popkess was reinstated by the Watch Committee and he retired that year.

Although not typical of the difficulties experienced by police authorities and chief constables, this case, more than the others, raised constitutional problems for detailed consideration, because it highlighted the areas in which the true relationship between police authorities, chief constables and to a certain

extent the Home Secretary, were unclear. Marshall took the view that even after the report of the Royal Commission, the position was not clearly stated,[5] and certainly public debate in the early 1980s lent force to that view.

Another case in December 1958 resulted in the House of Commons debating a motion censuring the Home Secretary, as Police Authority for the Metropolitan Police, for allowing £300 of public money to be used in an out-of-court settlement following an alleged assault and false imprisonment against a Mr Garrett by PC Eastmond. The case never came to court and the officer involved was not disciplined. As in the Thurso case, allegations were made in the House that the methods of dealing with public complaints against the police were unsatisfactory.[6]

All of these cases came at a time when there was public alarm at the apparent increase in crime, when police morale was low, partly because of pay and conditions of service and partly because of public criticism, and when workforce levels within the service were reduced. The result was that the Home Secretary of the day announced in Parliament, during the censure debate on the Garrett and Eastmond case, that provision would be made by Her Majesty's Government for an independent review of police problems.

The main reason for the setting up of the Royal Commission was the perceived need to redefine the constitutional position of the police and to satisfy the growing demand that police should be properly accountable in a way that would not interfere with their public duties.

TERMS OF REFERENCE AND OBJECTIVES OF THE COMMISSION

The Royal Commission was appointed to:

> review the constitutional position of the police throughout Great Britain, the arrangements for their control and administration and, in particular, to consider:
> (1) the constitution and function of local police authorities;
> (2) the status and accountability of members of police forces, including chief officers of police;

(3) the relationship of the police with the public and the means of ensuring that complaints by the public against the police are effectively dealt with; and
(4) the broad principles which should govern the remuneration of the constable, having regard to the nature and extent of police duties and responsibilities and the need to attract and retain an adequate number of recruits with the proper qualifications.

In addition to the formal terms of reference the Commission set out to secure three objectives in framing its recommendations:

(i) A system of control over the police, and a basic organisation which, while enabling them to perform their duties impartially, will achieve the maximum efficiency and the best use of manpower.
(ii) Adequate means within this system of bringing the police to account and so of keeping a constitutionally proper check upon mistakes and errors of judgement.
(iii) Arrangements for ensuring that complaints against police are properly dealt with.

PURPOSE OF RECOMMENDATIONS

The Commissioners considered that the purpose of their recommendations was:

> to bring the police under more effective control by making them more fully accountable, while securing that they are no longer hampered in carrying out their tasks by the remnants of a system designed many years ago in different conditions for different purposes.

They took a practical and realistic approach to the problems that presented themselves in the early 1960s and recognised that while history and tradition were important to any organisation it was equally necessary to recognise that outmoded thinking and a stubborn refusal to change would adversely affect the development of the police and their ability to face the challenges presented by the second half of the twentieth century.

At the time of writing the Royal Commission Report there were 125 separate police forces in England and Wales and 33 in Scotland. The Commissioners saw no illogicality in the way that such a proliferation of forces had developed in the Victorian era because many policing problems were seen to be essentially local and a large part of government was local government. Such development was seen to be entirely consistent with the spirit of an age which cherished the notion of personal liberty and opposed the concept of State control in such matters.

Nevertheless, the Commissioners felt challenged to examine how far that thinking was suited to the 1960s and whether tradition had been allowed to inhibit the proper development of the police service. Not surprisingly, one of the major considerations before the Commission was how far the police were hampered by their structure and organisation in the fight against crime.

It was obvious to the Commissioners that had the quest for a structure of police which would produce operational efficiency in preserving law and order, in preventing and detecting crime and in handling road traffic been a dominant consideration then it was improbable that there would have been so many separate police forces in Great Britain. This in turn begged the question as to whether a single police service under central government control was a better alternative.

Such considerations for police reorganisation are of great constitutional significance and importance whenever they occur and change should not be lightly undertaken without strong evidence that it is both necessary and likely to bring about the improvements desired. In the event, the Commissioners received no evidence, and were therefore not persuaded, that a system of local forces was to blame for the rise in crime in post-war years; was constitutionally improper; or was likely to fail to meet any foreseeable contingencies in the next few decades. The Commissioners concluded that their objectives could be achieved without fundamental disturbance to the existing system but they were not blind to the need for significant improvement in police administration and arrangement and there was a clear recognition that central government had a responsibility for the efficiency of police throughout Great Britain.

Royal Commission recommendations preserved the idea of local forces but these were to be brought under more effective central control. In framing their recommendations, the Commissioners recognised the valuable role which could be played by local citizens in enhancing the standing of their local force and in promoting its well-being; they also acknowledged, as a fundamental principle,

> 'that the rate-payer, through his elected representatives, should have a voice in the scale and cost of the policing of the community in which he lives.'

RECOGNITION OF THE TRADITIONAL STATUS OF THE POLICE

Traditionally, the office of constable is defined along the lines of the judgement of Viscount Simmonds, when he said of a policeman that he is an officer 'whose authority is original, not delegated, and exercised at his own discretion by virtue of his office'.[7]

The Royal Commission received a great deal of evidence based on 'judicial pronouncements' which was used to demonstrate that there was no 'master and servant' relationship between the police authority and the constable or between the Crown and the constable, and to emphasise the point that the courts within the United Kingdom and the Commonwealth had always asserted the independent character of the office. In any case in which the status of the constable was at issue, reference was always made to the now famous cases of *Fisher v The Mayor and Corporation of Oldham* [1930],[8] and *Attorney General for New South Wales v Perpetual Trustee Company Limited* [1955].[9]

The Fisher case involved a claim against the Oldham Corporation, as the local police authority, for damages for a wrongful arrest by police officers; the New South Wales case involved a claim on behalf of the Crown for the loss of the services of a police officer injured in a road traffic accident. Both cases addressed the question of whether or not there was a 'master and servant' relationship between the police authority/Crown and the police officers involved. In his judgement Mr Justice

McCardie cited, with approval, the following passage from *Enever v The King* [1903]:

> Now the powers of a constable, qua peace officer, whether conferred by common law or statute law, are exercised by him by virtue of his office and cannot be exercised on the responsibility of any person but himself . . . A constable, therefore, when acting as a peace officer, is not exercising a delegated authority, but an original authority.

In his judgement Mr Justice McCardie went on to say:

> Prima facie . . . a police constable is not the servant of the Borough. He is a servant of the State, a ministerial officer of the central power, though subject in some respects to local supervision and local regulation.

The New South Wales case has also been used as a justification for the view that a constable is not subordinate in his office. But, although Viscount Simmonds approved the observations of McCardie J, neither case should be taken as establishing anything other than a statement of the law as it then stood regarding the relationship of a constable with his appointing authority and the Crown for the purpose of defining liability for wrongful acts.

In Scotland the courts appear to have been more cautious in their judgements, but they have placed equal emphasis on the freedom from direction by the police authority in the discharge of police duties. Lord Salveson in *Muir v Magistrates of Hamilton* [1910][10] said of the police authority that it was: 'merely the administrative body appointed by statute to levy the necessary funds at the expense of the rate-payers', and this seems to have been the generally accepted view in Scotland. In his memorandum on the 'Constitutional Position of the Police in Scotland', Professor J.B. Mitchell of the University of Edinburgh submitted to the Royal Commission the following views:

> The regulation of the constitutional position of any body or organisation within the State is always the result of the conflict of a variety of ideals or principles.
>
> The neutrality of the force, and thus its insulation from political bodies, is clearly desirable, but complete autonomy,

> while aiding neutrality and possibly leading to greater efficiency, is inconceivable in a society which expects those who wield power to be ultimately responsible to the community.

With regard to the duties of police authorities in the broad sense, Professor Mitchell saw them as being limited to the function of 'paymasters', and his general conclusion on the constitutional position was:

> Nevertheless the role of police is peculiar, any clarification of lines of responsibility and any increase in answerability are likely to entail other risks and perhaps some losses. With minor amendments, particularly in regard to delictual matters, it seems that the present situation does not afford many grounds for criticism.[11]

The evidence submitted by the Association of County Councils in Scotland seemed to put the matter beyond any real dispute as far as the position north of the border was concerned:

> It is essential if justice is to be done that the policeman in a given situation should be able to act speedily on his own initiative without reference to a superior authority or without waiting for a committee decision. It is also essential, from the point of view of the policeman's own peace of mind, that he should know that he has complete freedom of decision when executing his duties and that he is answerable to the law alone for his actions.[12]

Neither was this particular point challenged in the 'Memorandum of Evidence' submitted by the Scottish Home Department.

Thus far the constitutional position of the police constable seems to have been well established by the courts and well accepted by both central and local government alike. Indeed, the Royal Commission recommended that there should be no change in the legal status of the constable, although it did find it necessary to comment thus:

> traditional thinking has tended to invest the constable's position with a character which in some ways has little to do with modern conditions . . . It appears odd that a constable enjoys a traditional status which implies a degree of independence belied by his subordinate rank in the force.

Nevertheless, the Commissioners concluded that the situation was justified by the fact that in the execution of his many faceted duties the constable 'ought to be manifestly impartial and uninfluenced by external pressures'; it went on to say:

> His impartiality would be jeopardised, and public confidence in it shaken, if in this field he were to be made the servant of too local a body. For these reasons we regard the present legal status of the constables as appropriate to his functions, and we therefore make no recommendation to alter it. (Cmnd 1728, paras 68–9)

THE ESTABLISHMENT OF THE TRIPARTITE SYSTEM OF CONTROL

The recommendations made by the Royal Commission refined and continued the important idea of a partnership between central and local government in the administration of the police service, but with a shifting of the emphasis towards firmer control by central government. They also recognised the importance of the constitutional independence of the constable and recommended no alteration of the legal status of police officers of any rank although they did recommend that chief constables should be subject to more effective supervision.

Thus emerged the formal model for the control of police which over the ensuing years was to become known as the *tripartite system* of partnership between central and local government and the chief constable. This model, combined with the doctrine of 'constabulary independence' in operational matters, set the pattern for the control of the police in Great Britain for over 30 years. Although the whole issue of police accountability was vigorously debated during the 1970s and 1980s in particular, and numerous books and papers were written on the subject during these years, nonetheless, the importance of an apolitical police service, whose members were able to treat everyone equally and impartially under the law, came to be seen as a bedrock of democracy, and a respect for that policing model became an accepted norm both in Great Britain and throughout the world.

ARRANGEMENTS FOR THE CONTROL OF THE POLICE

The Commissioners recognised the 'exceptional independence' attached to the office of constable but also acknowledged that the existence of the discipline code, rank structure and the system of public complaint against the police enabled them to say that they saw no need to recommend any new form of control over officers below the rank of chief constable. It was thought that public misgivings could be allayed if the chief constable could be shown to be properly accountable to a police authority; effectively, what was required was a form of redress against the inefficient or biased chief constable.

The overwhelming weight of evidence placed before the Royal Commission by representatives of both central and local government and by the police was that the existing 'ill defined' arrangements worked well, and while the Commissioners conceded that this apparent paradox had much to commend it, they indicated that this acknowledgement was not to say that such a system was constitutionally proper. The Commissioners frequently expressed an anxiety to achieve a system of control of the police which in no way interfered with their legal obligations, independent status and wide-ranging discretion while at the same time requiring them to act reasonably in the public interest, *taking account* of legitimate public opinion and *giving account* for the way in which they carried out their duties on behalf of their local communities.

At the same time there was a concern to ensure the maximum 'operational efficiency' which should not be inhibited by undue local influence but should be enhanced, wherever possible, by a unified and co-operative approach between forces.

On balance the Royal Commission came down in favour of maintaining the status quo but it made recommendations that sought to persuade central government that it should legislate in such a way as to improve upon administrative arrangements and where necessary enlarge and amalgamate forces to promote efficiency. The Commission did not regard the creation of a national police service as constitutionally objectionable or politically dangerous, but was persuaded that there was much value in an improved system of local forces with greater direction and influence centrally.

In short, the Royal Commission arrived at a policing philo-

sophy which promoted the benefits of a national police service without the perceived disadvantages of a State controlled force. The model was to acknowledge the overall responsibility of central government for law and order and policing; to recognise the legitimate desire of the ratepayer to have a say in the scale and cost of policing of the community in which he lived and to be able to offer advice and guidance as well as comment and opinion to the chief constable through elected representatives on the police authority; and, most importantly, to preserve the constitutional independence of the office of constable.

The Commissioners commented that the system worked well because, on the whole, it had been worked by reasonable people on both sides. However, they were quick to acknowledge that not all people were reasonable on every occasion:

> The fact remains, however, that it [the system] does undoubtedly provide opportunities for the exercise of ill-advised influence on the police, and occasionally these opportunities have been exploited.

In particular the Commission was careful to make recommendations for the circumstances in which an inefficient chief constable could be removed from office and made recommendations that made it clear that the function of the police authority could not extend beyond the giving of advice on matters connected with policing.

> Thus the relationship between a police authority and its chief constable will in this field differ from that between other council committees and their chief officers. In the latter case the role of the official is to advise the committee and to implement its decisions on matters of policy; but the decisions themselves are the responsibility of the elected body. In the case of the police these positions will be reversed. The role of the police authority will be to advise the chief constable on general matters connected with the policing of the area; but decisions will be the responsibility of the chief constable alone. However, the lack of local control which this relationship implies will be offset by increasing a chief constable's accountability for his actions, and also by improvements in the cohesion of separate police forces . . . designed to make the police function more effectively as a national body.[13]

3 The Police Act 1964

The Royal Commission Report made 111 recommendations in all and the main thrust of the Report was intended to bring order to what was nothing more than a 'patchwork' of forces of every shape and size, over which there was a variety of influences and controls and which were more an accident of history rather than the result of organisation and development designed to promote efficiency. The final report was presented to Parliament in May 1962 and the government of the day moved quickly to legislate for police reform by introducing the Police Act 1964 which received Royal approval in June of that year. The position in Scotland was addressed by the introduction of the Police (Scotland) Act 1967.

From 1964 until the introduction of the Police and Magistrates' Courts Act 1994 the responsibilities of the various members of the *tripartite structure* of control were as follows:

CENTRAL GOVERNMENT

Despite the fact that the Royal Commission recommended that the Home Secretary and the Secretary of State for Scotland should be given a statutory responsibility for the efficiency of the police, but that they should not be given powers of direction over operational matters on the grounds that this could affect police impartiality and independent judgement, the government did not introduce such a statutory responsibility. In the same way that policing was seen to be a matter based upon the co-operation and the consent of the communities served, so too was it preferred that the Secretaries of State should act, in most matters, by persuasion and consultation rather than by statutory direction. Although no legal responsibility for efficiency rested with them, the practical effects of the Police Acts have been for it to be accepted that both the Home Secretary, and to a lesser extent the Secretary of State for Scotland, are required to exercise such powers as they have in such a way as to bring about an efficient police service.

The Police Act 1964 gave the Home Secretary certain powers

to be exercised to such an extent as appeared to him to be best calculated to promote the efficiency of the police service. In reality, the powers and influence of the Home Secretary over police matters are enormous, and it would be very difficult for either a police authority or a chief constable to act in a way which was contrary to his wishes. Clearly, there are areas concerned with law enforcement and operational matters which are solely within the authority of the chief constable, and provided that he carries out these duties in an efficient and lawful manner it is unlikely that a Secretary of State would wish to interfere. However, the chief constable's freedom of action, whilst being seen to be extensive, is governed by circulars and regulations issued by the Secretary of State (and occasionally Government Law Officers) which are designed to encourage the best practice and a degree of homogeneity among forces, as advocated by the Royal Commission.

Under the provisions of the 1964 Act, the Home Secretary made regulations governing the pay and conditions of service; approved items of equipment and uniform for police use; approved the appointment of chief officers of police by police authorities; and acted as the appellate authority in matters of police discipline. In addition, the Home Secretary maintains many support services for the mutual benefit of forces and he acts as Police Authority for the Metropolitan Police.

In Scotland, the Secretary of State did not have the same general duty imposed upon him with regard to police efficiency; nonetheless, the distinction is academic as it is inconceivable that a Secretary of State would deny his interest in securing an efficient police service in Scotland. According to a former Permanent Under Secretary at the Scottish Office, 'the basic function of the State – its raison d'être – is the maintenance of law and order'.[14] All other functions depend on this even though, constitutionally, this may produce the apparent paradox that both central government and the police are responsible for law and order and yet 'No minister of the Crown etc . . .' can give directions to a chief constable (or any other police officer) on how to enforce the law, and the police are not agents of government.[15]

The degree to which government is responsible and answerable for the behaviour of the police is precise and limited by the Police Acts, but it may be argued that the amendments to

the 1964 Act by the Police and Magistrates' Courts Act 1994 could have altered that position in England and Wales.

Consultation within the tripartite arrangement is essential for each of the participants to be able to fulfil its role satisfactorily and the Police Act 1964 included a number of statutory bodies to enable formal consultation to take place and to provide for advice to be offered to the Secretaries of State. There is much day-to-day exchange of correspondence between the parties. However, such formal consultation as occurs is through representative bodies and associations, some of which are provided for within the Police Acts, whereas others are voluntary associations which have come to exercise formal and important influence on the Secretaries of State. For example, the only police staff association which has a statutory basis is the Police Federation, representing all ranks up to chief inspector, but both the Superintendents' Association and the Associations of Chief Police Officers (ACPO/ACPOS) are non-statutory bodies which have gained significant government recognition over the years.

There are many ways, in addition to statutory provisions, which enable the Secretary of State to act to promote the efficiency of the police service, while at the same time leaving a fair degree of influence in local matters to local government. Under the 1964 Act much was left to the good sense, or otherwise, of the parties involved; it was recognised that no act of Parliament could cater for every contingency in every relationship, and for the partnership idea to work, then goodwill and common sense needed to be demonstrated on all sides. Unfortunately, experience over the 30 years since the 1964 Act has shown that people are not always reasonable and several pressures which developed put a strain on the notion of accountability which, on occasions, seemed to stretch the structure to breaking point. (Several examples are given in the first edition of this book, published in 1987.)

Under the 1964 Act policing was funded by both central and local government with the Home Secretary being the major contributor on a 51/49 split for provincial forces. Provincial police authorities enjoyed a specific grant of 51 per cent towards approved expenditure which was not cash limited. Local authorities contributed the balance of 49 per cent, although it was often argued that, because this contribution was substantially

from income received by way of revenue support grant and non-domestic rates emanating from central government, the true picture was of an 80 per cent + contribution from the centre. The split for the Metropolitan Police was 52/48 with local authorities' contributions being precepted by the Receiver for the Metropolitan Police District – the additional one per cent took account of certain national responsibilities falling on that force including policing the Capital city; the Metropolitan Police total was cash limited.

In addition, the Home Secretary approved expenditure on capital items and the level of expenditure on vehicles and other major items of equipment.

All of the Secretaries of State powers and responsibilities under the 1964/67 Acts were designed to ensure:

(a) that the Police Authorities were effective in the exercise of their duties;
(b) that the police service was efficient;
(c) that there was inter-force collaboration and co-operation in the interests of efficiency; and
(d) the provision of ancillary services to promote police efficiency.

In order that the Secretaries of State could satisfy themselves that they were fulfilling their function properly under the Police Acts and that forces were 'efficient', they relied heavily on Her Majesty's Inspectorate of Constabulary.

LOCAL GOVERNMENT

Under the 1964 Act (before amendment in 1994) each provincial force in England and Wales had a police authority comprising two-thirds members who were elected councillors and one-third appointed magistrates; in Scotland every member of a police authority is an elected councillor. The authorities for single counties were committees of the county council but where the force boundary overlapped counties which were combined in a single police area, the authority was a body corporate with membership, so far as possible, representing a political and regional balance with members coming from the constituent counties and magistrates' associations.

Following the abolition of the metropolitan county councils in 1986, provision was made for joint police authorities known as Metropolitan County Police Authorities with councillor membership being drawn from district councils in the relevant areas and magistrate members being nominated by a 'Joint Magistrates' Committee'.

The principal duty of the police authority in England and Wales was to *secure the maintenance of an adequate and efficient police force for its area*; no such provision was made in the 1967 Act for police authorities in Scotland. In addition to this the functions of authorities in Great Britain could be described as follows:

(i) To appoint the Chief Constable and, after consultation with him, appoint the Deputy and Assistant Chief Constables; and to determine the number of persons of each rank in the force (both functions subject to the approval of the Secretary of State).

(ii) Subject to the consent of the Secretary of State, the Police Authority may provide and maintain such buildings, structures and premises, and make such alterations as may be necessary; also (subject to regulations) it may provide and maintain such vehicles, apparatus, clothing and other equipment as may be required for police purposes.

(iii) The Authority shall pay to the constables of the force pay and allowances in accordance with regulations and reimburse expenses reasonably incurred by them in the performance of their duty.

(iv) The authority shall keep itself informed as to the manner in which complaints made by members of the public against constables are dealt with by the Chief Constable.

(v) It shall act as discipline authority for chief officers; with the approval of the Secretary of State it could call on any chief officer to retire in the interests of efficiency, or dismiss a chief officer, or call upon him to resign, by way of discipline. The Secretary of State could require a police authority to exercise its powers as above to secure the retirement of a chief officer on the grounds of efficiency.

(vi) A police authority is entitled to receive an annual report in writing from the Chief Constable on the policing of the area for which the force is maintained, and it may, subject to the agreement of the Chief Constable that a

> report is necessary for the discharge of the authority's functions and that disclosure of the information represented would not be contrary to the public interest, call for a report on such matters as may be required, being matters connected with the policing of the area. In the event of a disagreement between the Police Authority and the Chief Constable, the Secretary of State would be the final arbiter on the matter.

In addition the authority could carry out other functions such as the acquisition of land and the negotiation of contracts concerned with general policing functions; and the employment of police cadets, traffic wardens and civilian staff. All of its activities are subject to the influence or approval of the Secretary of State who exercises a very powerful centralising force; it would be difficult for any authority to act in a way that was considerably at odds with the views of the Secretary of State.

Under the Police and Criminal Evidence Act 1984, Section 106, an additional responsibility was placed on authorities in England and Wales which required them to make arrangements, after consulting with the chief constable of their area, to obtain views of people in that area about matters concerning policing and for securing their co-operation with the police in the prevention of crime. This came about as a result of a recommendation by Lord Scarman in his report upon the disturbances which occurred in Brixton in 1981.[16]

THE CHIEF CONSTABLE

In its evidence to the Royal Commission, the Association of Chief Police Officers took the view that the role and position of the chief constable was not easy to define but it thought it important that in addition to his direct responsibilities for his own force it should be noted that:

> A Chief Constable is not merely a figure in local affairs but one who plays a much wider part in the general life and security of the country.

In addition, ACPO divided the responsibilities of this office into three categories:

(i) Responsibilities under the law and to the public for the maintenance of the Queen's Peace, the protection of life and property, the prevention and detection of crime, and the general enforcement of the law.
(ii) Responsibilities to the Police Authority for carrying out the day-to-day administration of the force and for advising the authority in matters of policy within their jurisdiction.
(iii) Responsibilities to the force itself, the contentment, welfare, efficiency and discipline of all branches, including the civilians under his command.

The Chief Constables (Scotland) Association concurred with the views expressed by ACPO on these points.

In terms of the 1964 Act the chief constable is responsible for the *'direction and control'* of his force in England and Wales; in Scotland he is given the *'direction'* of the force; in the absence of any view to the contrary in over 30 years it may be assumed that these two expressions have the same effect in terms of responsibility.

The Police Acts are silent on the operational independence of the police but it was the clear intention of the Royal Commissioners that the constitutional status of a constable should remain unchanged and, by definition, a chief constable enjoys the independent status of a constable. Although the topic has received much debate and commentary since the passing of the 1964 Act, legal judgements, political statements and academic commentary have served to reinforce the doctrine of *'constabulary independence'* to a point where any doubts about its validity have been dispelled. Such dispute as there has been has turned on the point not that the doctrine was wrong but that some people would wish to see it changed. The established view of the chief constable's position with regard to his *'operational'* duties is generally accepted to be that laid down by Lord Denning in 1968 when he said:

> No Minister of the Crown can tell him that he must or must not keep observation on this place or that; or that he must or must not prosecute this man or that one. Nor can any Police Authority tell him so. The responsibility of law enforcement lies on him. He is answerable to the law alone.[17]

A similar view was taken on this issue in Scotland.

It is likely that the government of the day felt that the tripartite structure was ideally suited to iron out any disputes that arose and because it is inherently difficult to legislate for any precise division of powers and responsibilities and for legislation to take account of personalities, it was better to allow for arbitration by the Secretary of State. This is what R.A. Butler described as '*checks and balances*'.

4 Pressures for Change

It is not surprising that social pressures and tensions combined with changing public attitudes should lead to a desire for greater clarification of the roles and responsibilities of the respective members of the tripartite structure. Certainly the police service itself was in the vanguard of the pressure for change and was on record in the 1980s in asking for a comprehensive review in the form of a Royal Commission.

There were rumblings of discontent about the effectiveness of police authorities in the mid-1970s, after the effects of local government reorganisation were felt and a second round of compulsory amalgamations of police forces had taken place. Not all elected representatives were content with the changes brought about by the 1964 Act, and when the Local Government Act 1972 became effective in England and Wales, areas which had once been boroughs enjoying the right of membership of police authorities and which had some say in the accountability of the police, were denied that right because they became districts under a two-tier system of local government. Policing became the responsibility of the upper-tier county councils.

As forces became larger, following two rounds of compulsory amalgamations brought about by the Home Secretary, it was argued that accountability had become more remote and less 'local'. This view was acknowledged by the then Chief Constable of the West Midlands Police, a large force comprising nearly 7000 officers, when he wrote:

> There must be grounds for debate whether the county council, let alone the police authority with 16 elected representatives and 8 magistrates, can really claim to voice the wishes of the community at large in policing affairs. Personally, I feel that as a police area it is too big and that the police force, unless one works very hard at it, can be very remote and impersonal.[18]

Another point of contention was the introduction of *appointed* magistrates on all police authorities in England and Wales after

1964; this was seen by some councillors to detract from democratic accountability to *elected* members.

The reform of local government in the 1970s was a time of great turmoil. Prior to the implementation of the Local Government Act 1972, the pattern of local government in England and Wales presented a picture of unnecessary complications and confusion; apart from the Greater London area, which had been reorganised in 1963, there were 45 administrative counties, 79 county boroughs, 227 non-county boroughs and 410 rural districts, each with its own elected council. The rural districts were further divided into parishes, with each parish having an elected council or a general parish meeting, or both.

The solution to this tangled web of confusion was a two-tier system of local authorities. Under the Local Government Act 1972, England was divided into six metropolitan counties outside London (Greater Manchester, Merseyside, South Yorkshire, Tyne and Wear, West Midlands and West Yorkshire), and 39 non-metropolitan counties. The metropolitan counties had populations of between 1 and 3 million, and the non-metropolitan areas had populations of between 280 000 and 1½ million. The Act divided the metropolitan counties into 36 metropolitan districts, and the Local Government Boundary Commission recommended that the non-metropolitan counties should be divided into 296 districts. Each county and district had its own council with executive powers and duties, and the total number of local authorities in England was reduced by two-thirds. In Wales, eight new counties were formed and 37 county districts; community councils were also formed. In Scotland, a similar two-tier structure of regions and districts and islands councils was introduced.

THE BAINS REPORT

In 1971 a working group was set up to consider the structure of the new local government, and its report was published in 1972. The Report became known as the Bains Report (after the chairman, M.A. Bains, Clerk of Kent County Council). In Scotland, a similar working party published its report in 1973, which became known as the Paterson Report (after the chairman, I.V. Paterson, County Clerk of Lanark).

The Bains Report was most noteworthy for its promotion of the idea of 'corporate management' and the recommendation that each authority should appoint a chief executive to act as the leader of the officers of the authority and principal adviser to the council on matters of general policy. The idea of 'corporateness' envisaged that each authority would have a corporate planning unit involving officers from various departments of the authority directly in all of the council's planning processes. There should be mutual interest between the various specialist department officers, who should each have a say in the planning of various enterprises, so that all interests would be involved in the 'interest of the community' served by the council. The underlying philosophy of Bains appears to have been to encourage each department of the council to take part in 'management teams' who would plan the development of the whole idea.

It was the original desire of the Bains Committee to include the chief constable in the chief executive's management team, presumably with the intention that there should be much greater involvement between the police and local government to the extent that each would have an influence on the other when planning the future activities of the council. Despite the theory and the intention behind the recommendation, the reality in the early years after Bains was that the relationship between some chief constables and chief executives and their management teams, and in some cases between the chief constable and the council and/or the police committee, became very strained.

It is not generally known outside police circles that there were two editions of the Bains Report; the circumstances of how this came about were described in some detail by the Chief Constable of Greater Manchester Police, James Anderton, in a paper presented to the Royal Institute of Public Administration in 1981. Anderton was an Assistant to Her Majesty's Chief Inspector of Constabulary at the Home Office in August 1972 when he was asked to read, and assess, the implications of the Report with regard to the police service. He described the fundamental error and misunderstanding in that report:

> standing out like sore thumbs were clearly determined but wholly inaccurate diagrams of the local position of the police

> which, had they remained unaltered, would have denied and effectively prevented the statutory independence and the constitutional relationship which the police necessarily enjoy with the community. In short, Chief Constables were erroneously regarded as chief officers of the Local Authority, which they were not, never have been and never should be, and members of the proposed management teams in . . . counties. Furthermore, paragraph 9.14 of the report ominously pointed out that each chief officer would be 'directly responsible to the Chief Executive'.

Anderton went on to describe the 'almost total disdain' that the Bains Report, in its interim stage, showed for the proven integrity of police committees by the stated opinion that the special constitutional provisions relating to them 'will inhibit a free and unfettered approach to management structures'.

He continued:

> It was almost as though they knew nothing of the history and development of the police in the United Kingdom, and had never heard of the Report of the Royal Commission on Police in 1962 or the Police Act which followed it in 1964.

As soon as this 'monumental gaffe' was discovered, a report was made by HMCIC to the Home Office and the Report was withdrawn by HMSO, to be followed soon afterwards by a second edition which recognised the special position of the chief constables. The second edition contained a note which Anderton agreed was a most sensible arrangement:

> The Chief Constable . . . is not an officer of the Local Authority but an independent officer of the Crown. However, the Police Authority will have claims upon the total resources of the council and it is therefore essential that he should work in close co-operation with the Chief Executive and the management team for the purposes of corporate planning.

No similar note appears in the Paterson Report, but the relationship of the chief constable is shown by a dotted line in the diagram of the county council departments, and it is acknowledged that the police are not a department of the council.

Nevertheless, the seeds of the conflict had been sown, and the total ignorance or deliberate overlooking of the constitutional

position of the chief constable was apparent throughout the United Kingdom. In ACPO and ACPO(Scotland) circles, stories abound of the nature of disagreements mainly between the new chief executives and chief constables, and in particular of the insistence that police forces had become a 'department' of the new councils.

Serious public disorder in the early 1980s followed by the prolonged Miners' Strike in 1984–5 raised many more issues about control of the police, allegations of interference in policing by the central government in order to defeat the National Union of Miners and protestations of impotence by councillors who found themselves unable to challenge actions by chief constables whose 'uncontrolled expenditure' in dealing with a massive trades dispute appeared to put normal policing at risk.[19]

The fact that there was no statutory definition of policing in England and Wales, and only a limited one in Scotland, was seen to add to the confusion. Society and the range of duties required of the police are infinitely variable; crime trends change from year to year as do circumstances relating to public order, industrial unrest and international terrorism. Often both central and local government expect the police to be not only a law enforcement agency, but also an all-embracing crutch to prop up the deficiencies of many other social organisations – a social service of last resort. Many extraneous duties have been either imposed upon or assumed by an already heavily burdened police service, in addition to the normal tasks of policing and servicing a highly volatile and complex society.

As if these pressures were not enough, both surreptitiously and by way of declared election policies, policing became a live political issue during the late 1970s and throughout the 1980s and 1990s. Political parties began to vie with one another as to which one could truly claim to be *the* party of 'Law and Order'. Having opened Pandora's Box, it became impossible to move policing away from the political agenda and whilst the subject is clearly a matter for legitimate political debate, many regret the intrusion of 'party political point scoring' which seems to have brought with it a greater desire on the part of some to control policing issues and to venture into those areas of policing which have to be independent and impartial. The model of independence which the Royal Commission was at pains to define and protect was subjected to constant pressure during

the course of the next 30 years such that the legitimate demand for improved efficiency and accountability brought with it a drive towards the centralisation of power.

Clearly few, if any, organisations can claim to be ultra-efficient with no room for improvement, and the police service had made no pretence of that in advocating policies for change. With the passage of years it had become obvious that the responsibility on central government to ensure efficiency, effectiveness and value for money combined with political and media commentary on several sensational cases in which police conduct had been called into question, had created an overwhelming pressure for change from both outside and within the police service.

However, the management of change is a sophisticated skill that is not amenable to spontaneous and unplanned action.

THE DEMAND FOR BUSINESS ACUMEN IN THE POLICE SERVICE

There is no doubt that during the 1980s the government became very concerned about police efficiency, effectiveness and value for money. Public expenditure generally was a very large target for the government to review and reduce to the optimum possible efficiency level; there was no room for management which failed to act in a business-like manner and although the police were not subjected to '*bottom line*' thinking in quite the same way as private sector businesses and forces were not required to produce an annual profit and loss account, a new awareness that there should be a more professional approach to the administration of the police did emerge.

In 1983 the Home Office had issued circular 114/83 under the title *Manpower, Efficiency and Effectiveness* which was designed to inform Police Authorities and Chief Constables in England and Wales

> of the considerations which the Home Secretary will take into account in carrying out his statutory responsibility for approving police establishments; to invite Chief Officers and Police Authorities to keep their objectives, resources and priorities under review; and to inform Police Authorities and

> Chief Officers of the relevant matters on which the Home Secretary has asked HM Inspectors of Constabulary to concentrate.

Under the Circular, the Inspectorate was seen as having a key role in enhancing police effectiveness, and the inspections were to be specifically directed

> towards the way in which Chief Officers, in consultation with the Police Authority and the local community, identify problems, set realistic objectives and clear priorities, keep those priorities and objectives under review, deploy manpower and other resources in accordance with them, and provide themselves with practical means of assessing the extent to which chief officers are achieving their objectives.

This Circular put a new complexion on the way in which the Inspectorate was to be viewed and whilst no fundamental objection could be raised about the basic principles of good and effective management, the Circular did raise the issue of how far a police authority would be able to use this philosophy as a way of exercising financial control over *operational* matters. The greater *centralisation* of control by the Home Office was another issue which was feverishly discussed at the time.

Not long after this initiative occurred the police service found itself the sometimes unhappy subject of another form of external scrutiny in the form of the Audit Commission, some of whose reports appeared to show the service in a poor light as far as financial management was concerned.

The Home Office took a positive lead in persuading and cajoling chief constables to set out clearly their aims and objectives in a way that would demonstrate a more public accountability. Police authorities were encouraged to be more active in their role as providers, and new people were appointed to the Inspectorate with a clear brief from the Home Office to be more searching in their force inspections. Clear efforts were made to find new ways of performance measurement and suddenly the police service found itself involved in a debate on how to establish meaningful *performance indicators* that could be used to compare forces and which, it was hoped, would eventually inform both the Home Office and a more demanding public whether or not 'value for money' was being achieved.

In 1991 the government launched the notion of 'Charters' as a measure of the service provided in the public sector and members of the public were encouraged to expect a guaranteed minimum level of acceptable service – or receive, in some cases, compensation for non-achievement or in others an explanation of why performance had not been delivered. 'Charter Marks' proliferated and a new culture was encouraged.

During this period the service was not standing idly by and awaiting new demands for change; indeed, in many ways the police had taken a lead in reforming the management of the service in a number of significant ways.

In 1988 ACPO had initiated the *Operational Policing Review,* which was published in March 1990. This was a major scrutiny of the demands upon the police service, combined with assessments of public and staff opinions about the nature of policing and its priorities in an increasingly difficult world. The *Review* involved consultation and input from all the staff associations and a major public opinion survey which was funded by the Police Federation; it was published under the auspices of the Joint Consultative Committee which comprised representatives of ACPO, the Superintendents' Association of England and Wales and the Police Federation of England and Wales. The JCC described the *Review* as being a unique and major step forward in the policy-making process of the police service, born out of the financial difficulties that the service was experiencing under a government which frequently claimed that it was giving police all of the resources needed to fulfil their duties.

> The Operational Policing Review came into being when each of the members of the JCC agreed that the dull ache that the service had long experienced in relation to resources was changing into acute pain.

It was being claimed that too much was expected from a service that was very much under resourced in terms of workforce, finance and equipment, and that the resulting pressures were placing at serious risk the traditional concept of policing by consent. As a result, this form of public accountability was being sacrificed for the 'balance sheet' thinking emanating from the Treasury. Policing policies were being guided by financial targets rather than by professional judgement which was in tune

with and responsive to community needs. It was acknowledged that there had been an increase in government provision for policing since 1979, but the *Review* argued that this had failed to keep pace with demand and was really only making up for years of historical deficit. Also, it was recognised that the public perception of policing was often simplistic and sometimes naïve.

In order to address these issues and to try to put its own house in order the service was united in its professional attempt to research and then manage the problems as well as to provide evidence in support of the demand for increased resources. The *Review* also set out to identify the numerous and responsible ways in which the service had introduced national and local initiatives to improve management, and to give value for money without sacrificing the traditional concept of community policing. On the matter of efficiencies there was concern that these would be judged only in terms of a productivity that was measurable; it was feared that this might be at the expense of those unquantifiable functions of policing which were publicly expected and appreciated but which might fall into desuetude.

The *Review* was clearly a police view of problems and whilst there was much good work done and the pattern was set for greater 'compatibility' initiatives and policies between forces, it was difficult to resist the obvious criticisms that, for a whole range of reasons, not all of police making, greater efficiencies were necessary and the service could be accused of failing to approach all of its tasks with business-like acumen. Not surprisingly, the early response to the *Review* by the Home Office was to imply that this was special pleading by an over-indulged and inefficient service which wanted to solve its problems by 'throwing money at the problem' when greater efficiencies within the organisation could provide much of what was needed. The received wisdom in government circles was that 'good housekeeping' would enable the service to be both more efficient and more cost effective. This theory may have been sound but the reality was somewhat different, and to a certain extent the government acknowledged this in its later legislation.

Partly as a result of the *Operational Policing Review*, the notion of total quality management (TQM) was being promoted

throughout the service and at a Quality of Service Seminar held in December 1990 at the Police Staff College, Bramshill, the *Statement of Common Purpose and Values* was launched. This again reflected a desire on the part of the police to demonstrate publicly those aims and objectives which it had followed for years but which it had failed to enunciate. The *Statement* was a recognition that the service had to convince its customers that it stood for values which were universally appreciated and against which it was willing to be judged. This statement was common to all forces in England and Wales and it was an example of the way in which ACPO was determined to play a greater role in police policy making that should be universally accepted by all forces, except where there were justifiable local reasons for demurral.

The Statement of Common Purpose and Values

> The purpose of the Police Service is to uphold the law fairly and firmly: to prevent crime; to pursue and bring to justice those who break the law; to keep the Queen's Peace; to protect, help and reassure the community: and to be seen to do all this with integrity, common sense and sound judgement.
>
> We must be compassionate, courteous and patient, acting without fear or favour or prejudice to the rights of others. We need to be professional, calm and restrained in the face of violence and apply only that force which is necessary to accomplish our lawful duty.
>
> We must strive to reduce the fears of the public and, so far as we can, to reflect their priorities in the action we take. We must respond to well-founded criticism with a willingness to change.

Not all of the initiatives came from ACPO. In October 1991 the Police Federation for England and Wales launched *The Policing Agenda* at a time when a general election was thought to be imminent. 'Law and Order' was firmly on the political agendas of all parties, and the Federation was concerned to ensure that any election debate on the subject would be informed by the issues of concern to the police. The Federations in Scotland and Northern Ireland also endorsed the *Agenda* because

it was felt that it dealt with all the major law and order issues facing the police. The *Agenda* identified nine major points of concern, ranging from adequate police resources and organisation of the service to the efficiency of the whole of the criminal justice system and its impact upon the public at large; *the final point was a demand for a Royal Commission on Policing.*

The government response was not to concede a Royal Commission but to set up instead an Independent Inquiry into Police Pay and Conditions.

INQUIRY INTO POLICE RESPONSIBILITIES AND REWARDS ('SHEEHY', CM. 2280, 1 JUNE 1993)

Kenneth Clarke was appointed Home Secretary in April 1992 and came this office with a reputation of being a tough politician who was keen to apply some severe reforms to the police service in the same determined way that he had approached education and health. Clarke had what was perceived by some to be an aggressive and uncompromising style, and within a very short time of taking up his post he attended the Police Federation Conference at Scarborough and surprised the service by announcing that he intended setting up an inquiry into pay and conditions of service.

The Inquiry was presented as a sympathetic assessment of the needs of the service in order to enable it to respond to modern circumstances and to facilitate better ways of getting the policing job done. Clarke acknowledged publicly that the service had done a good amount of work in reforming its own internal organisation, but he was concerned to apply modern business methods, incentive rewards and differential payments across a broad spectrum of responsibility. All of this was a long way from the Royal Commission favoured by the Federation and others in the service, and the haste with which Clarke had made his announcement without consulting the staff associations did not augur well for the police; it seemed that the service was to be denied the wide-ranging review of policing needs that it had been calling for and it did not seem at all likely that the Sheehy Inquiry would result in the sort of informed consultation that had occurred during the Royal Commission of 1960–2.

Terms of Reference

The terms of reference of the Inquiry were:

To examine the rank structure, remuneration and conditions of service of the police service in England and Wales, in Scotland and in Northern Ireland, to recommend what changes, if any, would be sensible to ensure

- rank structures and conditions of service, which reflect the current roles and responsibilities of police officers;
- enough flexibility in the distribution of rewards to ensure that responsibilities and performance may be properly recognised in changing circumstances;
- remuneration set and maintained at a level to ensure the recruitment, retention and motivation of officers of the right quality;

having full regard to

- the principle recommended by the Edmund Davies Inquiry that police pay should reflect the special nature of the police officer's role;
- the principles set out in the police service statement of common purpose and values;
- the need to ensure affordability and value for money in public spending.

Background

The Inquiry should consider and take into account

- the result of fact-finding studies into
  - (i) the current roles and responsibilities of police officers;
  - (ii) the current manpower profiles of the police forces and the possible impact on career development of changes in police retirement policy;
- relevant recommendations by the Audit Commission;
- all work currently being undertaken relating to manpower and personnel issues, including work on police performance measures and indicators;
- developments in pay generally;

— the special and different circumstances of the Royal Ulster Constabulary.

The Inquiry Team was announced in July of 1992 and comprised people who were in no way associated with, or had any particular knowledge of, the police service, under the Chairmanship of Sir Patrick Sheehy, the Chairman of British–American Tobacco Industries. To the dismay of the Police Federation, the team was entirely representative of top management and it was the understanding of Sheehy and his team that

> as we understand it, (we were) appointed on the basis of experience of managing large organisations inside and outside the public sector.

There was much suspicion within the representative police associations that the appointment of the Inquiry members had more to do with reducing the costs of policing than with improving the structure and defining the responsibilities of the service in such a way as to improve the quality and efficiency of policing offered to the public. The service was awash with rumours, informed leaks and Audit Commission commentaries which led members to believe that they could not place much confidence in Sheehy. The agenda appeared to have been set prior to the Inquiry.

Part of the current 'received wisdom' in business management was the need to reduce costs by 'flattening the management pyramid'; the provision of motivation and incentive by way of differential pay, bonus schemes and performance-related payments; and worst of all in police terms, the notion that no one was entitled to 'a job for life' and that fixed-term appointments should be introduced into the service to combat inefficiencies and complacency. In terms of discipline and incapability procedures the view was that formal discipline codes and hearings akin to criminal courts were outdated and that discipline was more a matter of good management procedures than formal censure. Applying such thinking to the police was viewed within the service as just one more failure to understand the underlying ethos of policing, and this was extremely damaging to the morale of a service whose opinions appeared to have been regarded as irrelevant.

At first sight, and in some ways, the police rejection of such

ideas could be portrayed as being selfish, resistant to change and protective of a sinecure. However, whilst it would be foolish to pretend that there was no concern about personal rewards and benefits, there was a much greater concern raised by all of the representative associations. The strength of the British policing model which was much admired internationally lay in the constitutional independence which enabled the service to treat all citizens in an even-handed and impartial manner. What was seen to be put at risk by the establishment of the Sheehy Inquiry and its eventual proposals, which matched very closely the initial rumours, was this very independence and impartiality. The service was not overly motivated by financial rewards but the Edmund Davies Inquiry into Pay and Conditions of Service Report in 1979 had recognised the importance of having the police sufficiently well paid for them to be relatively immune from the temptation of financial corruption. The concept of security attached to the office of constable was not designed to protect lazy police officers from dismissal but rather to maintain the integrity of constables who were not liable to dismissal at the whim of the old Watch Committee-style of management which had prevailed in some formerly 'rotten' boroughs. The introduction of the idea of fixed-term contracts for any officer was seen as likely to produce a vulnerability to undue influence which had hitherto been absent from the service, at least since the passing of the Police Act in 1964.

In short, some of the ideas for reform that were being proposed were so alien to police thinking and so contrary to the constitutional interests of the greater community that it is not surprising that they were largely rejected by police officers at all levels in the United Kingdom.

The Sheehy Report was to be presented to Parliament in June of 1993 but it was not published until 31 July. All staff associations rejected the Report as being unsuitable as *the* model for police reform and the Police Federation in England and Wales described it publicly as a 'blue print for disaster'. By this time Michael Howard had been appointed Home Secretary (Kenneth Clarke having moved on to become Chancellor of the Exchequer) and he had been advised by Sir Patrick Sheehy, by way of a press conference, that it was his opinion that the Report had to be accepted '*in toto*' – it was not to be treated

as an '*à la carte*' menu from which preferred items could be chosen and others discarded. The Sheehy Report was to be a complete package of reform.

After much police pressure from all levels of the service, the Home Secretary was at pains to describe Sheehy as a report *to* government which it would consider; it was not to be taken as *a Government Report.*

THE GOVERNMENT WHITE PAPER – *POLICE REFORM*[21]

In June 1993 the government published its long awaited White Paper giving its proposals for reform of the police service in England and Wales which would take it into the twenty-first century. As a statement of government policy which would be introduced into Parliament in the form of a bill to give legal effect to the proposals it raised many issues of concern, not least of which was that it provided a model of policing which was amenable to direct political control.

The document was introduced as a proposal for updating the framework and arrangements within which the police had worked and for strengthening the role of police authorities. Chief constables were told that they would have greater freedom to manage in order to provide a service capable of meeting local priorities. Bonds between local communities and their police forces were to be strengthened and the government was to play its part in setting *key overall priorities.* The police service was no longer to be alone in fighting crime; the public were to play their part and there was to be a strengthened partnership between the police and the public in the war against crime with the aim of creating a safer country in which to live. In line with the Citizens' Charter it was the aim to ensure that police would be aware of the needs and wishes of citizens and would be better able to respond to them; and that the people would be more supportive of the police in their efforts to defend the values of society.

In summary the main aims of the service were said to be:

- to fight and prevent crime
- to uphold the law

- to bring to justice those who break the law
- to protect, help and reassure the community
- in meeting those aims, to provide good value for money.

The police were required to continue to maintain the traditional role of 'policing by consent' and a guarantee that the exercise of police powers would continue to be separate from the exercise of political authority was given.

Having identified what the government believed the main aims of policing to be, the White Paper set out the government's strategy for enabling the police to meet those aims more effectively.

The Main Proposals of the White Paper

- The government will set *key objectives* which it will expect the police to secure. These objectives will reflect the government's belief that fighting crime and the protection of the public should be the top priority in police work. Police performance will be measured against these objectives.
- Chief constables will be empowered to deliver a service which responds better to local needs. They will be held more accountable for the performance of their forces. Chief constables will be given greater freedom to manage the resources at their disposal to help them in the fight against crime.
- Local police authorities will be strengthened and made more effective. They will be smaller and have broader representation. They will ensure that policing meets local needs and the government's key objectives. They will be held to account for the results.
- In keeping with the Citizens' Charter police authorities will have a duty to consult local people. They will be required to take account of the views of local people in setting priorities and to tell people how well their force has done.
- Police authorities will also be required to produce local strategies for involving the public in the fight against crime. These strategies could include more effective arrangements for neighbourhood watch or for recruitment to the Special Constabulary.

- Police forces will be expected to streamline their management to devolve resources and responsibility to the level where they can be deployed most effectively. The main responsibility for local policing will go to the local commanders who are in touch with their local communities.
- The way in which the police are funded will change. Police authorities and police forces will have greater freedom to decide for themselves how best to spend their money. Central government grant to the police will in future be cash limited.
- The government will relinquish detailed controls on finance and manpower.
- The independent Inspectorate of Constabulary will be strengthened to ensure that standards are maintained and that the best quality service is provided.
- For the first time, there will be police authority arrangements for the Metropolitan Police outside the Home Office but directly accountable to the Home Secretary.
- In the light of the recommendations of the Sheehy Inquiry, there are likely to be changes to police rank structure, pay and conditions of service.
- The procedures for amalgamating police forces will be simplified so that changes where justified can be implemented.
- There will be new procedures to ensure that poor performance by individual officers is dealt with fairly and effectively.
- There will be new separate arrangements for dealing with misconduct by police officers.

The Perceived Need for Change

According to the White Paper:

> Overlapping responsibilities, unnecessary controls, and confused lines of accountability frustrate the ability of the police service to meet the needs of the public

and the intention of the government in dealing with this frustration was to remove the obstacles to best police performance by legislating to:

- focus effort to improve performance in key areas, notably the prevention and detection of crime;

- clarify the roles of chief constables, police authorities and the Home Secretary, to improve accountability for police performance;
- enable police leaders to ensure good performance within a modern management framework.

There was little new in this thinking; what was surprising was the degree of central control that was implicit in the proposals. Previous Home Secretaries had been at pains to step back from direct political interference in, and direction of, professional policing matters. Endorsing the Royal Commission model, William Whitelaw, the then Home Secretary, speaking in Edinburgh in 1980 saw

> . . . a real need to ensure that the views of the public are adequately taken into account in the development of policing policies. That must never happen to the detriment of the independence of chief officers in operational matters . . . On the other hand, I think it has become increasingly desirable that police authorities should see themselves not just as providers of resources but as a means whereby the Chief Constable can give account of his policing to the democratically elected representatives of the community and, in turn, they can express to him the views of the community on these policies.[22]

According to government thinking in 1993 it was necessary for police to have a clear idea of the expectations and priorities of the community in order for them to police effectively. It was firmly stated that the government had taken the view that '*The main job of the police is to catch criminals*' and yet there was no evidence to support that assertion as being the public and the police priority. Indeed, the evidence from surveys undertaken within the police and public during the preparation of the *Operational Policing Review* did not support that view at all. This in turn begged the question of how the government could issue a confident statement of need in a White Paper without the benefit of a comprehensive consultation across a broad spectrum of public opinion. It further questioned why a government which had declared itself to be so dedicated to 'Law and Order' could logically resist the call for

a Royal Commission on Policing. If the foundation of policing into the twenty-first century was to be set in legislation there was surely some merit in taking the time to consult upon and to review policing as widely and as comprehensively as possible, in order that a valuable piece of legislation could be produced instead of making do with major amendments to a 30-year-old act.

The White Paper comprised many assertions that were then said to be in need of attention so that police could be more accountable. There was little supportive evidence upon which an hitherto uninformed person could make a reasonable judgement before commenting upon the need for reform. The White Paper baldly stated that policing often lacked 'clarity of purpose' and that 'if the police are not focusing on the right objectives, it is for the public, with government in the lead, to give the police service a clear steer about what is wanted.'

According to government thinking the defects in the policing framework were an obstacle to the delivery of an effective police service, and the flexibility of the 1964 model had been tested to the limit by 1993. Each party to the tripartite structure was allegedly in a state of confusion about their respective roles:

> *The HOME SECRETARY* is expected to answer to Parliament for a service for which he has no direct responsibility. The Government provides the majority of funding, but the size of the contribution . . . is not within his control. He is able to set the strategic framework for policing only through informal but bureaucratic methods such as Home Office Circulars and guidance. At the same time he is required to make detailed decisions about how many police officers there should be in each force and to determine their pay and conditions of service.
>
> *POLICE AUTHORITIES* are responsible for budget setting, but decisions about important elements of expenditure are subject to central control. The police authority has a responsibility for making arrangements to obtain the views of local people about policing. But its ability to ensure that those views are reflected in the strategic direction of the force is limited. At the same time its responsibilities for civilian staff and other

resources can draw it into detailed management issues which should be the responsibility of the Chief Constable.

The CHIEF CONSTABLE directs the police officers within the force, but is not the employer of the civilian staff who work alongside them. He has to rely on the police authority to provide him with essential equipment. He is in practice responsible for the disbursement of the available resources, but his ability to deploy them to their best effect is constrained by both local and central intervention. This inhibits effective devolution of management responsibility within the force, because the flexibility which can be given to local managers is limited.

All of this entanglement of responsibilities was said to lead to uncertain lines of accountability and to difficulty in finding sufficient basis for calling any of the parties to account; the only formal sanctions available were measures of last resort. The Home Secretary could withhold the payment of grant if he considered that a police authority was not maintaining an adequate and efficient force; or the police authority could require the chief constable to retire in the interests of efficiency.

Many other things were identified as being unsatisfactory not only about police management but also about the status or structure of the variety of police authorities. However, a significant cause for concern underlying the observations and comments in the White Paper was the expense and funding arrangements of policing.

The overall expenditure on the police service for 1993/4 was estimated to be £6.2 billion, which was said to be an increase in real terms of 88 per cent since 1979. Provincial funding was not cash limited and the government was extremely anxious to restrain public expenditure generally and police spending in particular, which it regarded as having been exceptionally generous in the period from 1979.

The restraints on public spending were compelling the financial management initiative to take a very strong hold on police expenditure and while the financial stringency and value for money formulae were acknowledged as being necessary, what offended many chief police officers was the fact that they had been blamed for profligacy and poor management when it was

the structure that had been wrong. To that extent the White Paper was welcomed but history and personal experience suggested that the indecent rush to reform without adequate and proper consultation would lead, inevitably, to internal cutbacks and excessive under-funding – and such proved to be the early experience of some forces in England and Wales; of course others benefited from increases but there was no understanding of the logic behind the new funding arrangement. Chief officers could be forgiven for believing that far from the proposals giving them greater freedom to manage effectively, the reality would be a greater freedom to manage fewer resources with a greater potential for criticism and blame. ACPO had pointed out that without a properly calculated funding formula then policing would change significantly in a way that would not be publicly acceptable. Reducing the police budget appeared to be more important than increasing effectiveness, efficiency and quality of service. In an organisation which spends in excess of 80 per cent of its total budget on the workforce, the opportunities for efficiency savings are finite and once the maximum possible efficiency has been achieved then the way to save money is likely to lead to a reduction in the workforce: this would lead to a reduced service and arguably reduced efficiency, but that all depends upon definition and perception.

The Proposed Redefinition of Roles within the Tripartite Structure: Strengthening the Police Authorities

There is no doubt that in the decades after the passing of the Police Act 1964 there had been much debate about the efficiency of police authorities with a significant polarisation of views. On the one hand there had been the notion of corporacy fostered by Bains and at the other extreme there had been blatant attempts at raw party political control of policing by some English authorities during the Miners' Strike in the mid-1980s. (See the first edition of this book for details.) Some academic research had suggested that authorities, for the most part, fulfilled a perfunctory role with no significant contribution to the development of local policing initiatives and that many members were either ill equipped to challenge the local chief constable and the Home Office or did not regard the

police authority as a particularly important body in political terms. In quieter times, some police authorities were seen by some to be non-effective.

Whatever the perception of politicians and however independent the Royal Commission model was intended to be, the reality was that more and more the budgetary considerations played a significant part in the way policing was regarded in local government terms. Police resources had to be found in competition with other services and were often unduly influenced by political issues or Home Office regulations.

In 1979 Jack Straw, MP (Labour, Blackburn), had attempted to amend the Police Act 1964 by introducing the Police Authorities (Powers) Bill into Parliament. It was a short bill containing only ten clauses but the thrust of his initiative was to give authorities in England and Wales the power to determine the 'general policing policies' for their area, subject to certain safeguards in the hands of the chief constable to delay any decision, in certain circumstances, for up to six months. The Bill included a requirement on the chief constable to exercise his powers in accordance with the general policing policies for his area. Straw's stated aim was to introduce greater democratic influence over general policing and a greater accountability of the chief constable and his senior officers. The Bill failed, as did a similar one in 1980, and was resisted by police and others on the grounds that such interference with the constitutional position of police and the model proposed by the Royal Commission was both unnecessary and dangerous; it was thought that the case had not been made out for such change and the proposals appeared to have been forthcoming to deal with individuals who were prominent at the time rather than general matters of principle. It was also argued that the role of the police authorities in policing terms was purely advisory and that the 'direction and control' of the force was a matter for the chief constable. Further, it was noted that the police authority was just one of the organisations which a chief constable would listen to when deciding on local policing priorities. What Straw was proposing was the notional maintenance of the chief constable's operational independence and the exercise of his professional judgement within locally and politically defined parameters which could be significantly different from those of a neighbouring locality; it was, in the view of many, a recipe

for differential and fragmented policing throughout England and Wales.

WHITE PAPER PROPOSALS

Police Authorities

The proposals for reform of the powers of police authorities in the 1993 White Paper bore striking similarities to some of those advanced by Jack Straw which had been rejected in 1979 as being inappropriate.

The government emphasis was on creating provincial police authorities of independent status and identical form whose focus should be upon ensuring an adequate and efficient local force. In order to achieve that position the future main tasks of all these authorities were proposed to be:

- To establish the local priorities for policing in consultation with the chief constable.
- To ensure that there are effective arrangements for consulting local communities about policing and for reflecting those views in local policing priorities.
- To set the total budget for policing for the year.
- To approve and publish a costed plan for policing. The police authority will need to ensure that the plan is designed to deliver both the government's key objectives and those which are set locally.
- To monitor the financial and other performance of the police force during the year in terms of key and local objectives and targets.
- To maintain a dialogue with the Home Office about the achievement of key and local objectives for policing.
- To publish annual performance results in a standard form in order to allow comparison against other forces.

The focus of the authority's attention was said to be on the standards of service which its force provides and in order to achieve this the chief constable and the authority would need to work closely together to ensure that the chief constable and the force provided a service which met local and national needs. Direction and control of the force was to remain with the chief

constable and the authority was to have no control over operational matters but the chief constable would be expected to take account of the authority's views on operational policing.

A new relationship between the police and the Home Office was said to be an important proposal. The Home Office would monitor the performance of all forces in terms of the *key national performance indicators* on the basis of information supplied quarterly by police authorities. This information, it was said, would help the Home Secretary to keep in touch with local performance whilst at the same time enabling authorities to feed local policing concerns into central policy making at an early stage. Some feared that it would lead to the establishment of 'league tables' on the performance of different forces.

Additionally the authorities were to have two key roles:

- They would act on behalf of local people as the 'customer' of the service provided by the force and this would require the authority to consult the public about the work of the police.
- They would help to build a partnership between the police and the local community by explaining what people could do to support the police in their work. This would oblige the authority to *involve* the public in the work of the police.

The authority would have a duty to specify the level of service which would be needed and then assess and publish the results in easily understandable terms. If the authority was not satisfied with the performance of the force it could expect the chief constable to take whatever action was necessary to secure improvements. The police authorities would themselves be audited by the Audit Commission which has responsibilities for looking at value for money and efficiency generally.

Membership of Police Authorities

Apart from the standardisation of size of all provincial authorities to a membership of 16 persons, the government proposed redefining the structure in order to broaden local representation in membership. Half were to be democratically elected local councillors; the other half would comprise three appointed local magistrates and five local people appointed by the Home Secretary. The aim of such appointments was said

to be to ensure that each police authority contained within its overall membership 'a range of people with the experience, skills, motivation and energy which the authority will need'.

The local council members were required to reflect the broad political and geographical balance of the local authorities in the relevant areas and a number of ways of achieving this were suggested in the White Paper. New selection panels were to be established for the magistrates to ensure that authority members continued to be nominated by representatives of all the magistrates in the areas concerned. No formal procedures were proposed for those to be nominated by the Home Secretary. The proposal was that the Home Secretary would appoint the chairman, who would be paid a salary, from among the overall membership; the chairman would enjoy a formal casting vote where that was procedurally necessary.

It was proposed that all local police authorities would in future have:

- The specific task of working with the local chief constable in identifying local policing priorities and in deciding how best to fight crime.
- Autonomous status and power to run their own affairs in setting the budget.
- Members from across the community with all the skills needed for the authority.
- Clear responsibility for the performance of the force and clear duties to fulfil that responsibility.
- More responsibility for consulting local people in setting the local policing agenda and for keeping them informed about the performance of their local force.
- Responsibility for encouraging local people to help the police in the fight against crime.

The Home Secretary

It was proposed that the Home Secretary should ensure that the best possible police service would be achieved by putting in place a clear framework for the assessment of performance and for the control of expenditure while allowing decisions about the allocation of resources to be made at local level.

By setting a small number of key objectives for policing it was thought that the Home Secretary could give the police service

a clear steer on priorities in order to ensure that the police delivered the service that was wanted by the public. The Home Secretary would hold each authority responsible for the performance of its local force, and if performance was poor then he would expect the authority and the chief constable to offer an explanation and take appropriate action to secure improvements. In assisting him to arrive at his judgement on policing, the Home Secretary intended to take the advice of Her Majesty's Inspectorate of Constabulary. Sanctions were to be available against any authority which failed in its duty, and it was proposed that the government would ensure that a remedy was available to it in the rare cases of authority failure. In the event that an authority failed to set an adequate budget, the Home Secretary would take power to direct the authority to ensure the provision of adequate funding.

The Chief Constable

> The Government intends to ensure that Chief Constables are able to deliver the service which is required without *unnecessary* interference.

It was said that clarification of the Home Secretary's strategic role and the establishment of defined responsibilities for police authorities would create a framework which would help chief constables as the professional managers and leaders of the police service to carry out their responsibilities.

In future the chief constables would be judged by results but they would be given greater flexibility to decide how the resources provided by the authority would be deployed in order to achieve these results.

In short the White Paper stated that it proposed to enhance the chief constable's flexibility of management by giving him:

- the ability to decide upon the numbers of police officers and civilian staff needed;
- full management responsibility for all police officers and civilians;
- greater choice about the working patterns of staff;
- the devolution of operational and management responsibility to local level;
- new arrangements for pay, rank structure, conditions of service, and for dealing with poor performance;

- better training for all staff;
- the reduction of paperwork to the essential minimum.

The White Paper contained numerous other proposals but the significant cause for concern in police circles, after consideration of the Sheehy Report and the White Paper, was the almost subliminal proposal for major constitutional change. Despite repeated professional warnings from all UK representative associations about the dangers of interfering with the constitutional status of the police, the government announced as a policy its intention to place the police in England and Wales in a totally different position from that which they had enjoyed for 30 years. Notwithstanding the advice of the Royal Commission Report which had been enshrined in the 1964 Police Act and which had become part of the foundations of British democracy, the apolitical status of policing was to be changed under the guise of providing greater freedom from central interference and a wider flexibility within the management structure. What was proposed by the government as professional freedom was perceived by many to be direct political control of police priorities, an illusory freedom to manage dependent upon efficiency savings which in turn was thought to be an astute shifting of responsibility, and therefore blame, from the Home Secretary to the chief constables and the police authorities. There was to be a greater potential for interference in policing decisions by a police authority whose function in such matters had previously been advisory. Add to this the proposal within the Sheehy Report that chief officers and superintending ranks should be on fixed-term appointments and the direct line of control from the Home Secretary was arguably complete in the following way:

- The Home Secretary sets national key policing objectives and measures success or failure by way of key performance indicators.
- New model police authorities are proposed in which the Home Secretary appoints five independent members at will; he appoints and pays the Chairman who has a casting vote; the authority is required to identify local policing priorities (in accordance with national key objectives), approve a costed policing plan, and to hold the chief constable accountable for satisfactory performance.

- The Home Secretary requires the authority (under sanctions for non-performance) to monitor the financial and other performance of the police in terms of key national and local objectives and targets which are subject to inspection by HM Inspectorate of Constabulary (appointed on the recommendation of the Home Secretary and themselves subject to a clear statement of duties and responsibilities and defined performance indicators) and the Audit Commission (concerned with value for money and efficiency).
- The chief constable (appointed by the authority with the approval of the Home Secretary) is to be on a fixed-term appointment (not *contract*); his direction and control of the force is substantially within the defined national key objectives and locally costed policing plans and he remains operationally independent within substantially fixed parameters.

The 'man on the Clapham omnibus' might have been forgiven for regarding such a proposed arrangement as significantly more subject to central political control and influence than was the case under the 1964 tripartite structure. Certainly ACPO regarded the new proposals as a change from *tripartite partnership* to *linear control.*

ACPO'S RESPONSE TO THE WHITE PAPER

The Association of Chief Police Officers in England, Wales and Northern Ireland welcomed a number of the proposals for reform, particularly those which reinforced the public's duty to help the police by way of a partnership approach; the plans to reduce paperwork within the service; and those which would enable chief constables to enjoy greater freedom to manage their resources. However, other areas gave rise to serious concern.

Exception was taken to the emphasis in the White Paper which suggested that the key role of policing is 'fighting crime'. It was pointed out that this failed to recognise that the police provide a 24-hour emergency service, keep the peace and act as a social service of last resort. Such roles could not be seen as mere adjuncts to 'crime fighting' and were integral to the prevention and detection of crime in a way that the public

recognised and expected. The White Paper proposals were seen to be likely to result in policing being reduced to short-term, proactive enforcement which would be measured by arrests and response times rather than overall public satisfaction with the quality of an all-embracing social service within the total criminal justice system.

Particular concern was expressed at the proposals relating to the composition and role of the reformed police authorities. ACPO stressed that British policing is provided by 'the police of the people, not of the State'; for the most part policing is local and its legitimacy stems from the relationship that exists between the local force and the community, and in particular through the relationship between the force and the police authority.

No objection was raised to the inclusion of appointed members in the newly proposed authorities, but it was emphasised that for such appointees to be relevant they would need to bring a real 'added value' to the authority. They would have to be acceptable to the local community, and the community would have to have a say in the selection of such appointees – they would not be acceptable as the Home Secretary's 'placemen'.

The suggestion that the Home Secretary should appoint the chairman was rejected as a matter of extreme concern to the Association which was only prepared to accept that the chairman should be elected by the authority itself from amongst its members. It was the firm opinion of ACPO that:

> The combination of the proposals for (1) the Home Secretary to appoint the Chairman; (2) the Home Secretary to appoint the additional members; (3) the Chairman to be paid; (4) the reduction in the elected member proportion of the authority to one half in total; (5) the restriction of the number of elected members to eight – even in the areas where that number patently will leave parts of the electorate unrepresented; and (6) the setting of national objectives measured by standards determined nationally, adds up to a loss of the accountability of the police authority to the local community. The important balance of the tripartite structure will be upset and the concept of a proper sharing of power in the policing of this country lost. These proposals provide an unacceptable shift of power to the centre.

A particular source of concern for ACPO was the danger of damage to the integrity of policing which could arise as a result of giving the new police authorities too much power and the consequential weakening of the chief constable's position by the proposed introduction of fixed-term appointments and performance-related pay. The result of the proposals in the view of ACPO was a greater centralisation of power in the Home Office, an imbalance in the tripartite partnership and a dilution of the operational independence and apolitical position of the chief constable which amounted to a potential for political domination of policing. Such a shift of power was unacceptable not only to ACPO but also to all of the other police representative associations in the United Kingdom.

Although Scotland was untouched by the proposals in the White Paper, there was a shared apprehension that what was occurring was a major constitutional change in the role and accountability of the service which had not been placed openly on the public agenda in such a way that the ordinary person would appreciate what was at issue. The emphasis in the proposals for reform described by the White Paper were for an improved management/value for money stance rather than for a position that could alter the independent and impartial service that had been in place at least since 1964.

The service recognised that its status could be altered by Parliament at any time but it took the view that such change should come about only after a thoroughly reasoned public debate that was likely to result in a significant improvement on the status quo. Both the government White Paper and the Sheehy Inquiry on Police Reform were seen to be significantly flawed. The White Paper was thought to be based upon unfounded assertions, and Sheehy appeared marred by a failure to understand the ethos of policing. The result was thought to be precipitate change for cosmetic reasons rather than intelligent restructuring.

THE POSITION IN SCOTLAND

On 9 July 1993 Phil Gallie, MP (Conservative, Ayr), asked the Secretary of State for Scotland to make a statement in the House about his proposals for police reform in Scotland. The Secretary

of State responded by way of a written answer in which he indicated that he intended to make certain administrative changes in the organisation of police funding designed to ensure a greater flexibility of management, similar to those which were proposed in the White Paper issued for England and Wales. Significantly, the Secretary of State stated that the eight forces in Scotland would remain and no mention was made of any proposals to change the structure of police authorities other than the fact that with the reorganisation of local government it would be necessary to establish joint police committees where forces covered more than one council area.

In line with the government's proposals in the Justice Charter for Scotland and the Citizens' Charter, the Secretary of State intended to take steps to ensure a greater public accountability of the police by encouraging public consultation about priorities for policing, the publication of annual targets and reports on performance achieved against those targets. What was significantly different about the Scottish position was that there was no mention of setting key policing objectives for Scotland, neither was there any suggestion that police authorities would be statutorily required to set local policing priorities in accordance with nationally set objectives.

Although substantial changes were presaged in the statement, it was clear that Scottish Office ministers had accepted the views of the police representative associations that the tripartite structure of police governance should be preserved. It was recognised that local interests played a substantial role in the management of policing and the grave constitutional dangers of altering the Royal Commission model were acknowledged. Nevertheless, the Scottish Secretary did indicate that it was his intention to consider the implications of Sheehy and following on from that all the signs were present that fixed-term appointments for chief officers and superintending ranks would be provided for in any legislation. Given the thrust of the Government's policy towards performance-related pay and fixed-term appointments, it would have been too much to expect that he would resile from that position.

5 The Police and Magistrates' Courts Act 1994

The Police and Magistrates' Courts Bill was published in December 1993 and it was decided that it would begin its Parliamentary progress in the House of Lords. This decision proved disastrous for the government as the impetus generated by the successful lobbying of the police representative associations began to have its effect.

To a certain extent the White Paper on Police Reform had passed almost unnoticed in media terms when it was first published, largely because it had been overshadowed by 'Sheehy'. It was not until the service itself realised the serious implications of the proposals that any public focus was directed upon the White Paper. A vigorous campaign of information was undertaken on the basis that the service always recognised the right of the government through Parliament to bring about constitutional change; but its was also the position that whilst it was proposed to put on record its own views, it was equally determined that there should be an informed public debate on the issues and that once laws had been enacted as a result of that debate then the service would accept the position and comply with the legislation regardless of its own preferences.

Ironically the service had never been more willing for change and it had even accepted the inevitability of the amalgamation of forces in England and Wales, being prepared to see the 43 forces reduced to maybe half that number. A similar attitude prevailed in Scotland where it was agreed by all chief constables that if government intended to reduce the number of forces in Scotland from eight to 3 or 4 then it would be as well to create a national force, provided that satisfactory proposals were forthcoming with regard to the relationship between the chief constable and the Secretary of State. It was regarded as being imperative that a proper constitutional relationship which preserved the independent status of the chief officer from political control should be achieved if 'nationalisation' became a

serious proposal. In the event, the Secretary of State for Scotland decided that he was satisfied with the efficiency of the eight forces in Scotland and no amalgamations were proposed.

One issue of major constitutional importance for Scotland arose in the inclusion of a clause in which it was proposed to give the Secretary of State a reserve power to direct chief constables to take part in joint activities. The proposed clause was as follows:

> 45. After section 12 of the 1967 Act there shall be inserted:
>
> 'Participation in joint activities
>
> 12A. Without prejudice to section 12 of this Act, where
>
> (a) a police force is, for the purpose of preventing the commission of crime generally or of preventing the commission of a particular category of crime, or of facilitating, generally or as regards a particular category of crime, the detection of crime, engaged in an activity; and
>
> (b) the Secretary of State is, on the advice of an inspector of constabulary, satisfied that the efficiency of policing in Scotland, or in some larger area of Scotland than that for which the police force so engaged is maintained, would be enhanced were some other police force to participate in the activity,
>
> he may *direct* that other police force so to participate.'

All of the representative associations in Scotland were dismayed that it had been thought necessary to include such a clause in the Bill and they made very strong representations to the Secretary of State through the Police Advisory Board for Scotland to have it withdrawn from the Bill during its Committee stage in the House of Lords. The eight chief constables reaffirmed to the Secretary of State that their intention is always to co-operate in appropriate joint measures which may be necessary for preventing or detecting any particular category of crime

or for addressing any other form of unlawful activity. On the strength of this assurance the clause was withdrawn.

At no time did the associations take the view that government ministers intended to interfere in the operational independence of police in Scotland. Rather they formed the opinion that clause 45 created the model whereby outside observers could level the criticism, as they had in the case of the Miners' Strike, that police were an operational arm of specific government policy. Clearly ministers understood that concern in Scotland and acted accordingly.

The general progress of the Bill through Parliament was anything but smooth and there were several issues upon which the government had to offer alternative proposals before the Bill could pass into law. Despite the fact that the Bill was littered with clauses upon which all or some of the associations took issue, the significant cause for concern lay in the implications for the potential politicisation of policing in England and Wales.

It should not be assumed that all of the objections stemmed only from police organisations; there were very real public concerns that were voiced both in the media and by way of representatives in Parliament. Surprisingly, one of the main protagonists for preventing some of the government proposals for the reform of police authorities, particularly the appointment of the chairman by the Home Secretary, was the respected elder statesman of the Conservative Party, himself a former Home Secretary, The Rt. Hon. The Viscount Whitelaw, KT CH MC. Other former Home Secretaries and a former Prime Minister, Lord Callaghan, objected to some of the reforms with great vigour and substantial amendments had to be introduced into the Bill.

The Bill received Royal Assent on 22 July 1994 and it was included in an accompanying press release from the Home Office that all police reforms would be in place by 1 April 1995. The comment attributed to the Home Secretary by that release was as follows:

> This Act is a major milestone for the police service of the future. It gives more power to police authorities and chief constables so they can concentrate their resources on the fight against crime at a local, as well as a national, level. Upholding law and order is a matter for everyone – not just

the police. Now local people can say what they want the police to focus on and every year the police will publish a report about how well they have done. For the first time people from every walk of life can become members of police authorities. Their contribution will bring valuable new insights.

But there are other ways that the ranks of ordinary men and women can join the police in the front line against crime. More and more people work in civilian support to forces up and down the country and, every day, members of the public are rallying to the call to give freely of their time in the special constabulary.

I want the best for – and the best from – the police service. Together we will win against the thugs and the criminals that destroy our communities. I believe that an active partnership between Government, the public and the police is the way forward. The Police and Magistrates' Courts Act gives us the framework for the future.

ACCOUNTABILITY – POLICE AND MAGISTRATES' COURTS ACT 1994

In terms of accountability this Act is most important for the change in the tripartite model of control which it introduced in England and Wales, and the introduction of fixed-term appointments for chief officers in Great Britain, with the provision that such fixed terms could also be introduced at some future time for superintending ranks. It has been asserted that even before 1994 all ranks from constable to chief officer could have been subject to fixed terms of employment although, in practice, the concept was not one which had affected the thinking of officers after 1964. From 1994 only chief officers and superintendents have fallen into the category to which fixed-term appointments could apply; it was only for chief officers that fixed-term appointments became effective after 1 April 1995, the power to apply that to superintending ranks being held in reserve.

Substantially the 1994 Act was one series of amendments primarily to the Police Act 1964. Sections 1–3 and Schedules 1 and 2 amend the 1964 Act in relation to police areas, police forces and, most importantly, police authorities.

THE NEW POLICE AUTHORITIES IN ENGLAND AND WALES

Membership

Section 3 provides that normally each police authority shall consist of 17 members although provision is made that the Secretary of State may by order increase that membership to an odd number greater than 17. Such order must be made by way of a statutory instrument which shall be laid before Parliament. Where the membership of the authority is set at 17

- nine shall be members of a relevant council
- five shall be independent
- three shall be magistrates.

Where the authority is more than 17

- the greatest number shall be members of the relevant council(s)
- the independents shall be such number not exceeding one-third of the authority
- the remainder shall be magistrates.

A council or joint council shall exercise its powers of appointment, so far as possible, to create a balance between political parties represented on the council.

Schedule 2 makes provision for tenure of appointment, disqualification, removal from office, and other administrative matters.

Eligibility for Membership of Police Authority
No person may be a member of an authority if:

- they have reached the age of 70 years;
- they are in a paid position made or confirmed by the authority;
- they are bankrupt or disqualified by virtue of provisions under the Company Directors' Disqualification Act 1986 or the Insolvency Act 1986;
- within five years of the appointment or since the appointment they have been sentenced to imprisonment for a period of not less than three months.

Independent Membership
No person may be selected as an independent member if:

- they have not attained the age of 21 years;
- they do not live or work in the area;
- they are either councillors or magistrates within the area;
- they are members of the selection panel;
- they are members of the police force;
- they are officers or employees of the authority or a relevant council within the police authority area (an exception to this is anyone who is employed as a teacher).

Importantly *the chairman of the police authority shall be appointed from among the members by those members.* During the passage of the Bill and in the White Paper on Police Reform it had been proposed that the Home Secretary would appoint the chairman from among members of the authority and the five independent members; it was also proposed that the chairman would be paid a salary. Not surprisingly suspicion arose and much criticism was made of this model which would have given the Home Secretary undue influence over both the selection and the performance of the chairman and a significant number of authority members. Objection was raised to, and was successful in preventing, the creation of the Home Secretary's 'placemen', which was seen to be constitutionally dangerous.

With regard to the independent members, provision is made in Schedule 2 of the 1994 Act for the setting up of selection panels for such members in each police area. The panels comprise three members appointed thus:

- one by the designated members of the police authority;
- one by the Secretary of State;
- one by the other two appointed members.

Membership of the panel is for two years or until the member attains the age of 70 years, whichever comes first. The functions of the panel are:

- to nominate willing persons (unless unable to do so, the panel should nominate four times the number (in normal cases 20) of possible appointees);
- to notify the Secretary of State the persons so nominated;
- so far as reasonably practicable, to ensure that nominees

represent the interests of a wide range of people within the community in the police area;
- to include persons with skills, knowledge or experience in such fields as may be specified by regulations made by the Secretary of State.

Once the Secretary of State has received the list of nominees he shall as soon as practicable prepare a short list of half the number submitted from which the police authority may choose the independent members. This arrangement has gone some way to alleviate the criticisms that the selection of independent members was to be entirely within his discretion and that the notion of independence would have been 'tainted'.

Functions and Duties of Police Authorities

Under Section 4 of the 1994 Act, which replaces Section 4 of the 1964 Act, a duty is placed on every police authority to 'secure the maintenance of an efficient *and effective* police force for its area', and in the discharge of its functions the authority shall have regard to:

(a) any objectives determined by the Secretary of State under Section 28A of the Police Act 1964 (as amended);
(b) any objectives determined by the Authority under Section 4A;
(c) any performance targets established by the Authority whether in compliance with Section 28B or otherwise;
(d) any local policing plan issued by the Authority under Section 4B.

In discharging any function to which a code of practice issued under Section 28C of the Police Act 1964 relates, the authority shall have regard to that code. Section 28C empowers the Secretary of State to lay before Parliament codes of practice for the discharge of any of the functions of a police authority.

A police authority must comply with any directions issued under Section 28B and Section 28D of the Police Act 1964. Section 28B relates to directions to police authorities by the Secretary of State to aim to achieve levels of performance – 'performance targets' – in seeking to comply with a key objective set by him under Section 28A. Section 28D refers to remedial measures which the Secretary of State may direct if he receives

an adverse report from HM Inspectorate of Constabulary after an inspection of the force under Section 38 of the Police Act 1964.

Local Policing Objectives
Before the beginning of each financial year the authority shall determine objectives for the policing of the area during that year. These objectives must be consistent with the national objectives set by the Secretary of State under Section 28A; they should not be formalised without consideration of any views obtained in accordance with arrangements made under Section 106 of the Police and Criminal Evidence Act 1984 (arrangements for obtaining views of the community on policing).

Local Policing Plans
Before the beginning of each financial year the authority must issue a plan setting out the proposed arrangements for the policing of the area during this year – the *local policing plan.* This plan is to include a statement of the authority's priorities for the year, the financial resources expected to be available and the proposed allocation of those resources and shall give particulars of:

(a) any national objectives determined by the Secretary of State;
(b) any local objectives determined by the authority;
(c) any performance targets established by the authority whether as set by the Secretary of State or otherwise.

A draft of the local policing plan shall be prepared by the chief constable and submitted for the authority to consider, and before issuing any plan which differs from that prepared by the chief constable the authority must consult that officer.

The plan is to be published in such manner as appears appropriate to the authority and a copy must be sent to the Secretary of State.

Annual Reports by Police Authorities
As soon as possible after the end of each financial year every police authority must issue a report on the policing of its area and this report must include an assessment of the extent to which the local policing plan has been carried out. The report shall be published as appropriate and a copy must be sent to the Secretary of State.

Other Functions of Police Authorities

Chief Officers of Police. Section 5 of the 1994 Act adds Section 5A to the 1964 Act which amends the provisions for the appointment and removal of the chief constable by the authority, but subject to the approval of the Secretary of State.

Section 6 substitutes a new Section 6 to the 1964 Act which abolishes the rank of deputy chief constable and provides that every force shall have at least one officer in the rank of assistant chief constable who shall be appointed by the police authority after consultation with the chief constable and subject to the approval of the Secretary of State.

After consulting with the authority a chief constable shall designate one of the assistant chief constables to exercise the powers and duties of the chief constable during his absence or during a vacancy in that office. (Similar provisions apply to Scotland.)

Police Fund. Each police authority in England and Wales shall keep a police fund into which all receipts shall be paid and out of which all expenditure shall be paid. Proper accounts must be kept by the authority and they are subject to audit by the Audit Commission. It is recommended in the Financial Code defined by the Secretary of State that there should also be an internal audit committee who should review the accounts.

Civilian Employees. Section 10 of the 1994 Act replaces Section 10 of the 1964 Act and provides that a police authority may employ persons to assist the police force maintained by it or otherwise to enable the authority to discharge its functions. Persons employed to assist the force shall be under the direction and control of the chief constable: those employed to enable the authority to discharge its functions shall not be subject to the direction and control of the chief constable. In the event of a disagreement on the issue the matter shall be determined by the Secretary of State. Under new Section 10A of the 1964 Act, the authority shall appoint a Clerk. Section 10B empowers the authority to appoint any person statutorily required to be appointed to a specified office under the authority or to designate a person as having specified duties or responsibilities, and notwithstanding any provisions of the Act to the contrary,

the authority may appoint or designate an employee or some other person not holding an appointment under the authority.

Discipline of Chief Officers. The police authority remains the discipline authority for chief police officers (Ss 5, 6 and 37 Police Act 1964 and Schedule 3 as amended). A new appeals tribunal is established under the 1964 Act.

Public Consultation. Under Section 106, Police and Criminal Evidence Act 1984 each police authority is required to consult the chief constable and then make arrangements to:

- obtain the views of local people about matters concerning the policing of the area, and
- obtain their co-operation with the police in preventing crime.

Home Office Circular 54/1982 and Scottish Office Circular 2/83 had been issued in anticipation of the 1984 Act, encouraging such activity and giving guidance on how the best results might be achieved. In some areas, Police Community Consultative Groups have been established and there has been an increasing use of public opinion surveys.

Special Reports. The authority may require the chief constable to give a report on any matter concerned with the policing of the area. Certain safeguards, including an appeal to the Secretary of State, guard against the disclosure of confidential matters or those which are not necessary to the authority in order for it to fulfil its function.

In addition there are numerous other functions which a police authority may undertake not directly concerned with police accountability.

New Financial Arrangements of Police Authorities

The estimated expenditure on policing in England and Wales in 1995/6 was in excess of £6 billion. It was financed in several ways; firstly through a *Specific Grant* of just over £3 billion, which was supposed to equate with 51 per cent of expenditure on policing by way of central government contribution; approximately one-third of the expenditure was met through the

Revenue Support Grant and through *Non-Domestic Rates* (collected nationally then apportioned on a per capita basis); and the final part was contributed by way of the *Council Tax.* The Secretary of State has powers to define spending either in excess or because an authority is not providing enough funding.

For each police authority a *Standard Spending Assessment (SSA)* is calculated, which is a means whereby total funding is distributed to police authorities by way of a formula. The formula is currently based on five key activities (crime management, core management, traffic management, public reassurance and community policing), which have a variable impact on forces, their relative cost related to factors such as population, mileage, relative deprivation, etc., which can be used in Revenue Support Grant and SSA calculations.

All police authorities receive from the Home Office the specific grant (representing 51 per cent of assessed policing costs) and each authority is a free-standing preceptory (or tax-setting) body.

Revenue Expenditure

National revenue comprises:

- Home Office specific grant (51 per cent) distributed by SSA.
- National non-domestic rates (each authority receives a share).
- Revenue Support Grant (administered by the Department of Environment and allocated to each authority at a level which should enable it to set a standard precept in order to incur expenditure at the level of its Standard Spending Assessment).

Local precept (Council Tax)

The remainder of expenditure met by the local taxpayer is less than 10 per cent nationally. Police authorities will collect this from councils through a precept which is limited (capped) by central government. In turn the councils include this sum in what they collect from local taxpayers and allocate the appropriate amount to the authority.

Capital Expenditure

Land purchase, buildings, vehicle fleets, plant and equipment will be charged to the capital account.

Capital expenditure is financed (on average) thus:

- Special Grant from central government (51 per cent).
- Borrowing (30 per cent).
- Local resources 19 per cent (capital receipts from sale of capital assets and contributions from the revenue budget).

Budget Arrangements
Precept to be announced by end of February for collection in the next financial year. The budget has to be set in consultation with the chief constable and the treasurer and must be in accordance with the costed policing plan.

Financial Management Code of Practice
Part of the intention behind the reform measures introduced by central government was that chief officers should take as much administrative responsibility for their forces as can reasonably be devolved. In order to facilitate progress in this area, the Secretary of State exercised his powers under the 1994 Act to issue a Financial Management Code of Practice as a guide as to how that devolution could be achieved.

Under this code more financial responsibility is passed to the chief constable and the force provided that the chief constable can demonstrate that the force has sufficient financial control systems in place. The police authority must satisfy itself that expenditure is being controlled within approved budgets and must monitor any changes in priorities in a previously approved policing plan.

The authority must appoint a treasurer to administer its financial affairs; he must prepare accounts for annual publication and co-operate with the chief constable in ensuring satisfactory financial arrangements within the force. The treasurer must co-operate with external auditors and under the financial code it is recommended that the authority sets up an internal audit committee in order to satisfy members on financial matters and to liaise with external auditors.

POWERS AND DUTIES OF THE SECRETARY OF STATE

Under the tripartite system of police governance it was always intended that the Secretary of State should be the dominant partner, on the basis that the basic function of central govern-

ment was to preserve law and order. Under the 1964 arrangements there was a general duty placed on the Secretary of State (Section 28) requiring him to exercise his powers under the Act in such a manner and to such an extent as appears to him to be best calculated to promote the efficiency of the police. Broadly speaking, the powers of the Secretary of State under the 1964 Act were designed to ensure:

(a) that police authorities are effective in the exercise of their duties;
(b) that the police service is efficient;
(c) that there is inter-force collaboration and co-operation in the interests of efficiency;
(d) that there is provision of ancillary services to promote efficiency.

Throughout the 1964 and 1994 Acts there are a number of significant powers accorded to the Home Secretary who is accountable to Parliament for the provision of an efficient and effective police service. The significant difference under the 1994 Act from the functions under the 1964 Act is that there has been a move away from detail to a position more in line with strategic direction. The Home Secretary is no longer responsible for detailed control over the numbers of officers in each force and matters of capital expenditure; such protection as is offered in financial matters rests in the fact that there is a cash limit on Police Grant.

Key Objectives

Section 15 of the 1994 Act adds a new Section 28A to the 1964 Act which allows the Secretary of State by order to determine objectives for the policing of the areas of all police authorities (Key Objectives). Before making such an order the Secretary of State is obliged to consult:

(a) persons whom he considers to represent the interests of police authorities; and
(b) persons whom he considers to represent the interests of chief constables.

With regard to those persons described at (a), the Association of County Councils (ACC) amended its constitution in January

1995 to enable a Committee of Local Police Authorities to be established.

It was anticipated that the Association of Metropolitan Authorities (AMA) would organise a similar committee.

Clearly chief constables in England and Wales would expect to be represented by ACPO.

The order must be contained in a statutory instrument laid before Parliament.

The Key Objectives for 1995/6 were:

- to maintain, and if possible increase, the number of detections for violent crimes;
- to increase the numbers of detections for burglaries of people's homes;
- to target and prevent crimes which are a particular local problem, including drug-related criminality, in partnership with the public and other local agencies;
- to provide high visibility policing so as to reassure the public;
- to respond promptly to emergency calls from the public.

There is nothing in the Act which requires the Key Objectives to be set annually and it is perfectly possible for set objectives to remain in force over a number of years.

Performance Targets

Under Section 28B the Secretary of State may direct police authorities to establish levels of performance ('performance targets') to be aimed at in seeking to achieve the objectives. A direction may be given to all or any one or more particular authorities and may impose conditions to which performance targets must conform, and different conditions may be applied for different authorities. The Secretary of State must make arrangements to publish any directions in such manner as he thinks fit.

Codes of Practice

Section 28C provides that the Secretary of State may issue codes of practice relating to the discharge by police authorities of any of their functions and any such codes and revisions of codes shall be laid before Parliament.

Power of Direction after Adverse Report

The Secretary of State may at any time require the Inspectors of Constabulary to carry out an inspection (under Section 38 of the 1964 Act) of any police force maintained under Section 2. Where that report indicates that the force inspected is not efficient or not effective, or in the opinion of the inspector the force will cease to be efficient or effective unless remedial measures are taken, then the Secretary of State may direct the police authority to take such measures as he may specify.

Reports from Police Authorities

Whenever required by the Secretary of State a police authority must submit a report on such matters connected with the discharge of its functions, or otherwise with the policing of its area, as the Secretary of State may specify. The report may be published in such manner as the Secretary of State thinks fit.

Other Functions of the Secretary of State

- *Police grant and other grants – (New Section 31 Police Act 1964)*
  Each financial year the Secretary of State shall make grants for police purposes to police authorities and, in the case of the Metropolitan Police, to the Receiver.
  With the approval of the Treasury, the Secretary of State shall determine the aggregate amount of grants to be made and the specific amount to be allocated to each authority. The Secretary of State, with the approval of the Treasury, may make grants in respect of capital expenditure and he may also make grants in connection with the safeguarding of national security.
- *Regulations for police forces (Section 33 as amended)*
  For the administration of forces, this section is extended to include the conduct, efficiency and effectiveness of members of police forces and the maintenance of discipline.
- *Appeals against dismissal*
  The appellate function of the Secretary of State in matters of discipline is replaced by a new police appeals tribunal.
- *Reports from Inspectors of Constabulary*
  Provision is made that the Secretary of State may publish

all or part of an inspector's report in such manner as he thinks fit.

- *Common Services – Section 41 of the 1964 Act*
  Is amended to take account of the promotion of efficiency and effectiveness of forces in the provision of services on behalf of all police forces, such as the Police National Computer (PNC) and the National Criminal Intelligence Service (NCIS).
- *Alteration to police areas*
  Amends the manner in which police areas may be altered.
- *Reports from chief constables*
  The Secretary of State may require a chief constable to submit a report to him on the policing of the relevant force area.

Many of the powers given to the Home Secretary are used infrequently and may properly be described as 'reserve powers' which enable him to step in when something in the normal course of events appears to be going wrong. They are exceptional powers for exceptional circumstances and are not intended to undermine the independence and statutory functions of either the police authority or the chief constable, provided always that such are operating efficiently and effectively.

THE CHIEF CONSTABLE

Chief constables remain responsible for the direction and control of the force (including after 1994 the civilian staff) and in the discharge of their functions in England and Wales they are required to have regard to the local policing plan issued by the police authority. After 1994 a greater emphasis was placed on giving the chief constable more control of the budget so that it would be possible to relate operational priorities to the capacity to spend money in the way that appears to be most appropriate in the management of the force. In short, the intention behind the 1994 Act was said to be that the police authority should adopt the position of strategic management and strategic policy making while the chief constable should manage the force so far as possible in accordance with the strategic plans. The chief constable retains operational independence.

POLICE AUTHORITIES IN SCOTLAND

Following the reform of local government in Scotland under the Local Government (Scotland) Act 1994 the two-tier system of regional and district councils was replaced (on 1 April 1996) by 32 unitary authorities, each one of which became the police authority for its own area. The eight existing forces in Scotland remained intact after the reorganisation and it was therefore necessary to establish joint boards by way of an amalgamation order for six of the forces; the Fife and Dumfries and Galloway Regions became single authorities and the new councils became the police authority for these areas. The joint police boards established by the amalgamation orders exercise most of the functions of police authorities and councillors are appointed to these boards so far as possible to represent the political make up of the constituent areas. The statutory amalgamation schemes specify membership from each council and police expenditure is apportioned among the councils. Police grant is paid at 51 per cent of expenditure on police; from 1 April 1996 it became subject to a cash limit. Police authorities raise the remaining 49 per cent of expenditure from their other sources of income. The Secretary of State for Scotland has power to restrict overall expenditure by each constituent council, though not by joint boards. He has also power of direction over expenditure if a force is found to be inefficient. Police authorities are expected to delegate control of the force budget to the chief constable who in turn is expected to appoint a force finance officer.

Setting Policing Priorities

There are no statutory requirements in Scotland for consultation on priorities but it is normal practice, which the Secretary of State expects to continue, for chief constables to consult widely and continuously on objectives and priorities. Chief constables have sole responsibility for operational matters and the deployment of personnel and it is recognised that they must have the primary responsibility for identifying and setting priorities.

The objectives for the force are set by the chief constable and based on this primary concern local objectives are set by

divisional commanders. Naturally it is good practice to monitor how far it has been possible to achieve these objectives, and in the normal course of events these matters will be included in the chief constable's annual report, together with an indication of future objectives.

The Accounts Commission has a statutory responsibility for monitoring performance in all local authority services and in that role it has developed a number of performance indicators for police against which local councillors may make an assessment of how well the force is performing. These performance indicators are common to a wider range of indicators used by HM Inspectorate of Constabulary in its examination of the efficiency and standards of the Scottish police service. In addition the Secretary of State has taken powers to prescribe matters upon which chief constables should comment in their annual reports. In this way he can prescribe common coverage by all forces upon core or topical items so that some comparison may be made.

The Justice Charter for Scotland was published in November 1991 and sets out what people may reasonably expect from the police, and how they in turn can assist the police. It covers consultation with local people; the setting and publishing of target times for the police to attend incidents and to answer telephone calls; and also targets for the amount of time spent by police in patrolling on foot. Each force in Scotland has published its own policing charter.

The Police Act 1996 received Royal Assent on 22 May 1996 and it served to consolidate the Police Act 1964, Part IX of the Police and Criminal Evidence Act 1984 – dealing with complaints against police, Chapter 1 of Part I of the Police and Magistrates' Courts Act 1994 and certain other enactments relating to the police. The result of this consolidating act has brought about no substantial change in the effect of the 1994 Act but several of the amended sections of the Police Act 1964 are now differently numbered in the Police Act 1996.

6 Her Majesty's Inspectorate of Constabulary

The introduction of an inspectorate followed the passing of the County and Borough Police Act in 1856. This Act was important because through it Parliament acknowledged that central government had a responsibility to ensure that a regular law enforcement agency was established in every county and borough throughout the Kingdom and that it had a responsibility to ensure that all police forces were operating in an efficient manner. The Inspectors of Constabulary were introduced to ensure that local authorities complied with the statutory requirement to establish police forces and that those forces maintained a minimum standard of efficiency. They were also authorised to see that the newly introduced government grant (originally 25 per cent but increased to 50 per cent in 1874 and 51 per cent in 1986) was both deserved and properly applied.

In 1857 there were 237 forces subject to inspection, of which only 110 were found to be efficient; by 1890 the number of forces had dropped to 193 and none was reported to be inefficient at that time although there are examples of reported inefficiency thereafter. Certainly there were later occasions when the grant was either withheld or the threat was made in order to force compliance with the wishes of the Secretary of State. In modern times much attention has been focused upon Derbyshire Constabulary, and in three consecutive years (1992–4) the Inspector has declined to issue a certificate of efficiency as a result of alleged 'progressive and serious under-funding by the police authority'.

Inspectors of Constabulary are appointed by virtue of Section 38 of the Police Act 1964 and, in Scotland, Section 33 of the Police (Scotland) Act 1967 (as amended by the Police and Magistrates' Courts Act 1994). Constitutionally they have an independent status: they are *Her Majesty's* Inspectors and not Home Office employees, although some have called into question the reality of that independence particularly when some of the inspectors refer to themselves as 'servants of the Home

Secretary'. In professional terms there is no doubt that the inspectors exercise an independent judgment but it is one which is often used within strictly defined limits laid down by the Home Secretary or Home Office officials.

Normally the inspectors are retired chief constables, although that was not always the case, and again in 1993 two inspectors were appointed who had no former association with the police service; these appointments were made in accordance with the government's intention set out in the Citizens' Charter that all inspectorates should include a 'lay element'. Naturally the practice of appointing former chief constables had been criticised and Brogden made the point that:

> As former senior officers in the police service their interpretation of the activities and effectiveness of local forces are those of the state functionary, not those of the consumer or recipient.[23]

The inspectors are appointed by the Sovereign on the advice of the appropriate Secretary of State under the Sign Manual; they are not police officers although those who were benefit under police pension regulations. The lay inspectors were appointed on short-term contracts. The inspectors hold office during Her Majesty's pleasure and are paid out of monies provided by Parliament with the approval of the Treasury. One of the inspectors may be appointed Chief Inspector of Constabulary (enabled by Her Majesty's Inspectors of Constabulary Act 1945 – which also provided for a Chief Inspector of Constabulary in Scotland) and provision is made for Assistant Inspectors and Staff Officers as well as administrative and secretarial support.

It is of interest to note that the Royal Commission Report in 1962 recommended that a Chief Inspector should be appointed for Great Britain but that course of action was not followed and there is a separate Inspectorate for Scotland which nevertheless enjoys a very close relationship with its counterpart south of the border.

DUTIES OF INSPECTORS

The statutory basis for the bulk of the Inspectorate's work may be found in Section 38 of the Police Act 1964 (as amended)

and Section 33 of the Police (Scotland) Act 1967 (as amended). The requirements in England and Wales are:

- for inspectors of constabulary to inspect and report to the Secretary of State on the efficiency and effectiveness of police forces in England and Wales, including the City of London and Metropolitan Police forces;
- for inspectors to carry out such other duties for the purpose of furthering police efficiency and effectiveness as the Secretary of State may from time to time direct; (This duty does not exist in Scotland.)
- for inspectors, when required to do so by the Secretary of State, to carry out a special inspection for the purposes of Section 28D of the Police Act 1964 (as inserted by the Police and Magistrates' Courts Act 1994);
- for the Secretary of State to publish Inspectorate reports (in whole or in part);
- for the Secretary of State to send a copy of the published report to the police authority and to the chief officer of the force concerned;
- for the police authority to prepare and publish its comments on the Inspectorate report, together with any comments made by the chief constable;
- for the police authority to send a copy of the document it publishes to the Secretary of State.

Section 95 of the Police and Criminal Evidence Act 1984 also requires Inspectors of Constabulary to keep themselves informed of the workings of the provisions of that Act concerning the handling and investigation of complaints against the police. In Scotland the Inspectors of Constabulary are given an additional power with regard to the examination of the handling of complaints against constables by virtue of a new Section 40a of the Police (Scotland) Act 1967 (Section 61, Police and Magistrates' Courts Act 1994). Where a member of the public has made a complaint the Inspectors of Constabulary may, at the request of the complainant, examine the way in which the chief constable has dealt with the complaint. The inspector must report his findings to the complainant and send copies of his report to the chief constable and the constable who is the subject of the complaint and he may *direct* the chief constable to *reconsider* the complaint and he may *instruct* him to have regard

to further information that may have become available. The inspector cannot give direction where a complaint has been or is the subject of proceedings against the constable. Where an examination has been carried out, the Secretary of State may require the inspector to submit to him and the police authority a written report concerning the examination. It should be emphasised that the inspector does not have any power to alter the decision of the chief constable.

When the debate was ongoing about the role of the Inspectorate in this particular matter, ACPOS tried to persuade the Secretary of State for Scotland that the power to direct and instruct was inappropriate to the office of an inspector whose role was as an independent adviser, and that it was unnecessary to give such powers on the grounds that the inspector could comment adversely and publicly on a chief constable's efficiency with regard to the handling of complaints if his advice on the matter was ignored. ACPOS took the view that no chief constable would disregard the advice from an inspector, but the Secretary of State was not persuaded and approved legislation which arguably creates a situation where the inspector is forced into a partisan position, and which is contrary to the views expressed by the Royal Commission in 1962.

Inspection of Police Forces

Under the Police Act 1964 (as amended) the primary duty of the Inspectorate is to inspect all forces in England and Wales, including the Metropolitan Police, and to report to the Home Secretary on their efficiency and effectiveness. The inspections are designed to ensure that forces are achieving the best results with the resources available to them and that they are effective in that those results are the right ones which are consistent with the Home Secretary's key objectives and those set locally by police authorities.

The inspectors are appointed because of the knowledge and professional expertise that they may be expected to bring to their role. The Secretary of State is content that the Inspectorate should decide what to inspect, how the inspection should be carried out and what the findings should be, but in so doing the inspectors are required to take account of:

- Key objectives.
- Local policing plans.
- Home Office policy on policing issues.

In applying their own independent judgement as to the efficiency and effectiveness of a force, the Home Secretary expects the inspectors to provide an assessment of

- performance against the performance indicators associated with the Key Objectives and any other performance indicators promulgated by Home Office Circular;
- the effectiveness of the force strategy for achieving both key and local objectives;
- the adequacy of local strategies for promoting partnership between the police and the community as well as other matters affecting the policing service provided by the force.

Annually additional priorities may be identified for the inspection process in consultation between the Inspectorate and the Home Office Police Department. HMIs may also focus on such other issues as they think fit.

Written reports are submitted to the Home Secretary with copies to the police authority and the chief constable; there is a statutory requirement to publish the reports (in whole or in part) and the Chief Inspector of Constabulary is required to submit his annual report on policing to the Home Secretary who must lay it before Parliament.

Professional Advice on Policing to Home Secretary and Home Office

The Inspectorate is the principal, but not the sole source of professional advice on all aspects of policing to the Home Secretary and the Home Office. It does not form part of the Home Office's policy-making function, but the Inspectorate is expected to contribute professional and expert advice on policing and other issues when requested to do so by either the Home Secretary or the Home Office.

In particular the Inspectorate is expected to contribute advice on the selection of:

- key objectives
- performance indicators and targets
- policing plans.

It is also required to evaluate responses to Inspectorate reports from chief constables and police authorities; and to bring to the attention of the Home Office any perceived deficiencies in police performance and service delivery, and to advise on any appropriate remedial action to be taken.

Professional Advice on Policing to Police Forces and Police Authorities

An important part of the Inspectorate's function is in the provision of advice to police forces and to police authorities. It is also important that the dissemination of good practice about policing forms part of the Inspectorate function and in this regard a *Directory of Good Practice* is formulated and circulated to forces at the end of the year. An example of a specific project followed on from the publication of the Audit Commission Report *Helping with Enquiries* which was a study of crime management within forces, when the Inspectorate began joint work with the Commission and the Association of Chief Police Officers resulting in a detailed management guide to the implementation of the good practice principles set out in the Commission's Report. The handbook was published in 1994.

With regard to the appointment of chief officers the Inspectorate will give advice on the suitability of candidates to police authorities. The Home Secretary, who is required to approve such appointments, will also look to the Inspectors for an opinion as to suitability.

After the Police and Magistrates' Courts Act 1994 received Royal Assent, the Home Secretary wrote to the Chief Inspector of Constabulary setting out a statement of duties and responsibilities which he expected the Inspectorate to fulfil and laying particular emphasis on the need to encourage effective partnerships between police and the public. The Home Secretary made the point that he took the view that society could not expect police to make headway in tackling crime on their own and that there was an enormous fund of goodwill on the part of the public to the police which should be tapped in order to assist the police in their very demanding and difficult role.

It was not until 1994 that the Inspectorate enjoyed a statutory right to inspect the Metropolitan Police although there had been an informal arrangement in existence since 1988 whereby,

at the invitation of the Commissioner, an inspector examined and reported on some areas of that force.

Prior to 1988, the official view was that the Commissioner of Police of the Metropolis was the principal adviser to the Home Secretary as police authority for London and therefore it would have been inappropriate for the Inspectorate to have a role in offering advice to the Home Secretary on the Metropolitan Police. The Inspectorate also inspects the Royal Ulster Constabulary by invitation, although there is provision in the Police Act (Northern Ireland) 1970 for the Secretary of State to appoint an Inspector (or Inspectors) of Constabulary. It is interesting to note that the Hunt Committee recommended that the Royal Ulster Constabulary should be inspected by the Great Britain Inspectorate, with one of the inspectors having a special responsibility for Northern Ireland in order to secure an impartial and professionally competent assessment of that force. Clearly this sensible arrangement has been followed and any future legislation ought to take account of this system and regularise it.

Occasionally the Inspectorate will give professional advice and guidance to other organisations and agencies, including the inspection of constabularies for which the Home Secretary has no responsibility and some overseas forces. In such cases the Inspectorate is expected to recover the full costs of the service it provides.

THE INSPECTION PROCESS

The process of police reform which had been ongoing for a decade, and which was reflected in the Police and Magistrates' Courts Act 1994, brought about change in the way in which the Inspectorate undertook its annual inspection programme. According to the Chief Inspector of Constabulary in England and Wales the changes were 'aimed at providing the Secretary of State and the public with better information about how forces perform and at encouraging forces to develop output-oriented management regimes'.

Prior to 1994 the inspection process had taken the form of a total annual review of each police force so that the Secretary of State could be assured by the inspectors that forces were efficient and therefore entitled to the Central Government

Grant of 51 per cent. Increasingly it was becoming apparent that there was not a need for such a rigorous and thoroughgoing inspection process and so a new pattern of inspections began to emerge. In the early 1990s the process became biennial, but after 1993 the Inspectorate began an *annual performance review* combined with a full examination of every aspect of force activity every *third* year; this is described as the *primary inspection.* In the intervening years the Inspectorate examine how forces perform against local policing plans.

In addition to the above, the Inspectorate also undertakes a series of *thematic inspections* during which a single function across a number of forces is examined for the sole purpose of reviewing the effectiveness of that function. Such inspections make no comment on the overall efficiency of a particular force but seek to establish and promulgate best practice for the benefit of the whole of the police service.

A similar pattern of inspections is undertaken in Scotland, although those parts of the Police and Magistrates' Courts Act 1994 which deal with reformed police authorities, national key objectives and local policing plans do not apply. Clearly the Inspectorate function north of the border shares the same aim in securing information and then disseminating best practice in order to encourage, where appropriate, a high degree of homogeneity.

HM INSPECTORATE – COMMENTARY

The Royal Commission of Police Report of 1962 indicated some very clear views on the Inspectorate and those issues touching upon the constitutional position of chief constables, their operational independence and their relationship with central government in terms of overall efficiency.

It will be remembered that whilst the Royal Commission was ambivalent about the advantages of a national police force rather than a number of local forces, they saw no risk in placing the police under the control of a well-disposed government either in constitutional terms or in terms of creating 'political control'. The final opinion of the Royal Commission remained in favour of maintaining a series of local forces; in preserving the legal status of the chief constable in terms of his political

independence and the fact that he was to be neither a Crown nor a local authority servant:

> But his conduct and efficiency in his office should be subject to control and supervision . . .

This resulted in the establishment of the tripartite structure of police governance and the Inspectorate fell within the central government sphere of influence.

The number and size of forces in the early 1960s (the Royal Commission recommended a minimum optimum size of 500 officers) made it essential that the Inspectorate should develop, *inter alia*, a very strong co-ordinating role in terms of overall police efficiency. To this end it took the line that the Chief Inspector of Constabulary (recommended for the whole of Great Britain) should be responsible for:

> a Central Government unit, charged with the planning of policing methods, the development of new equipment (such as communication facilities and the design and standardisation of vehicles) and the study of new techniques . . .

A duty of the Home Department, working through the Chief Inspector, was seen as being necessary to ensure the dissemination of the results of the central unit's research and the speedy adoption of those results throughout the country. Inspectors of Constabulary as the primary links between the Chief Inspector and the chief constables would be responsible:

> for ensuring that new equipment, ideas and techniques are promptly adopted by the police throughout Great Britain. (para 246)

Clearly the Royal Commissioners preferred the idea of some form of State direction in regard to policing policies, methods and equipment coming from central government through the Inspectorate. The purpose of the Inspectorate was seen to be fourfold:

- to inspect each force in terms of efficiency and the competence of the chief constable;
- arising from the inspections to form opinions about the adequacy of provision made by the police authority;
- to ensure that the results of central research are made

available to forces and that new knowledge and up-to-date techniques are being applied;
- to be responsible for advising upon arrangements for promoting collaboration between forces and the development of ancillary services.

Although their primary duties were seen to be to the Secretaries of State, the inspectors should in addition keep in close touch with police authorities.

In all of this activity it was not thought to be proper that the Inspectors should have a power of direction over chief constables or police authorities and the Royal Commission proposed the achievement of results by persuasion and goodwill. However, the Royal Commission formed the opinion that additional powers should be conferred upon the Secretaries of State in order to achieve homogeneity but that the powers should normally be exercised only after advice from the Inspectorate.

The Police Acts which followed on from the Royal Commission Report dealt only partially with the views expressed with regard to 'homogeneity' between forces. Having rejected the idea of a national police force the problem remained in drawing together the patchwork of small forces into a service which applied similar policies and philosophies across the country. Any pattern would need to allow for local variations to suit local differences, whilst at the same time preserving the apolitical nature of the police and the operational independence and constitutional status of constables in general, and more specifically, chief constables. That precious independence and freedom from political control had to be achieved within an overall policing model that ensured equality and commonality for citizens within the criminal justice system; independence could not be allowed to develop into arbitrariness and irrationality; there had to be some form of conformity and the Royal Commission envisaged this being developed by the influence of a national (GB) and independent set of police advisers in HM Inspectorate of Constabulary.

The great debate on police accountability throughout the 1970s and 1980s was often polarised between those who wished to achieve political control of policing and some chief constables who were overly defensive of their political and operational independence. It was frequently beset by misunderstandings,

ignorance and a looseness of terminology combined with barren and thoughtless assertions depending upon which particular line was supported. Clearly the Miners' Strike in the mid-1980s focused attention on some major areas of concern that needed to be addressed.

Experience in the Home Office (no doubt prompted by the views of HM Treasury) had brought about the need to focus on how efficiency, effectiveness and value for money could be achieved within a police service which valued its independence.

In November 1983 the Home Office Circular (114/83) pointed the way in which the Home Secretary was thinking about overall police efficiency, commonality of purpose and value for money and it was clear from this that HM Inspectorate was to be the vehicle by which he would require the service to set clear objectives and operational targets and against which their effectiveness would be measured.

When this circular was issued it brought into sharp focus those views which had been expressed by the Royal Commission but which had lain dormant in the decades following the Police Acts. Clearly the service needed time to settle down and adjust to the tripartite model of control, and it is a sad fact that many of the police authorities failed to grasp the nettle in terms of exercising their influence over the way in which the police service operated. Equally the role of the Inspectorate was confined to the annual ritual of force inspections, and whilst it did make some attempt to standardise good practice that was not thought to be the most important of its functions.

The more business-like approach to assessment of the police service presaged by Circular 114/83 was one of many straws in the wind that indicated a desire on the part of central government, urged on by some local authorities, to ensure that not only was the service more accountable for how it served the public generally but also that it was, so far as possible, properly accountable for the increasing millions of pounds of public money that were being spent by a government which had placed much of its credibility on the 'Law and Order' ticket.

Increasingly the service was seeking ways of improving its performance and of satisfying a more demanding breed of members of police authorities, some of whom had experienced what they saw to be a profligate and largely uncontrollable service in action during the Miners' Strike of the mid-1980s. In addition,

technology was being introduced to the service and there was a clear need for all concerned to be satisfied that money was being wisely and efficiently spent.

In police circles the received wisdom of the late 1980s was seen to lie in the twin themes of 'accountability and value for money' and whilst some saw in this new dynamism the threat of government centralisation of power and the spectre of a State controlled National Police Force, it is probably fairer to say that the cosy image of local policing had been catapulted into the national arena. At a time when successful business organisations were responding to a world recession by tightening their belts, identifying core functions, flattening the management pyramid and seeking efficient ways of evaluating their own performance through key indicators, it was perhaps only natural that such disciplines should be introduced and encouraged throughout the police service.

At this time the service was exposed to more public scrutiny than it had ever experienced since its inception and many areas of perceived inefficiency, waste and management incompetence were revealed. A series of reports by the Audit Commission identified areas in which it thought great improvements could be made and there was a new willingness and enthusiasm within the service to address the tarnished image of 'avuncular Bumbledom' and demonstrate that it was capable of setting its own house in order. ACPO addressed many of the management problems by producing its *Statement of Common Purpose* and by setting out a declaration of the ethical values adopted by the service. The litmus test for the new generation of senior officers became the 'business-school' approach to policing. A proliferation of '*Mission Statements*', '*Aims and Objectives*', '*Common Principles*' and '*Performance Indicators*' appeared in almost every Annual Report and the new jargon required terminology that embraced '*devolved budgeting*', '*basic command units*' and the eternal '*value for money*' – often a euphemism for cutting the budget.

The 'business-school' approach to policing had arrived and things would never be quite the same again. In 1992 the Home Secretary had announced the setting up of the Inquiry into Police Responsibilities and Rewards under the chairmanship of Sir Patrick Sheehy, an eminent businessman. As previously stated, none of his inquiry team was in any way associated with

or appeared to have any particular knowledge of the police service and consequently, a business ethos was applied to the assessment of a public service. Many observed that such a service could not be treated entirely as if it were a concern motivated by profit and loss accounts. At the same time there was a very cogent argument that for too long some police managers had suggested that too many aspects of police work were unquantifiable to allow effective assessment and evaluation of police performance. This bluff had now been called and the 'business genie' was out of the bottle. A new era of assessment and measurement had been unleashed upon a largely unsuspecting police service.

With the build up of steam set in motion by the 1983 Circular came the recognition of the need to improve and be more accountable so that the public could judge whether policing was being conducted efficiently and effectively.

During the latter half of the 1980s and the early 1990s, moves were apparent within the Home Office to ensure that relatively young and dynamic chief constables who might reasonably have expected professional advancement were recruited to the Inspectorate in anticipation that, through their example, the new ethos could be spread more rapidly through the service.

In June 1993 the government issued its White Paper on its proposals for reform of the police service in England and Wales. No such paper was issued in Scotland, but in an answer to a Parliamentary Question the Secretary of State gave a brief outline of his general proposals for reform, some of which followed those indicated for England and Wales.

With regard to the Inspectorate function, the White Paper indicated that the Inspectorate was to continue to have a key independent role as

> a watchdog monitoring police performance and ensuring the standards are maintained.

It declared that the Inspectorate was to be strengthened and that the government intended to reinforce the Inspectorate's ability to act as 'an independent, open and objective assessor of the quality of policing' based on principles laid down in the Citizens' Charter of openness, independence and the involvement of a lay element. What was to be required was the provision of broad and objective assessments. Nonetheless, there

was an inference to be drawn that the Inspectorate was but one way in which future assessment of the quality of the service would be made.

Notwithstanding this focus of attention on the enhanced role of the Inspectorate, there remained within the service a vague unease that the inspectors were becoming more and more the 'creatures of the Home Secretary' and, some would add irreverently, 'in his own image'. The notion of their independence was being challenged and instead of their fulfilling a truly independent and impartial role they were perceived as the Secretary of State's 'enforcers' to the detriment of the independence of the chief constables.

The problem lay not so much in the good sense behind the thinking that the Home Secretary should be able to achieve the common approach to policing that the Royal Commission had recognised as being necessary, but that the public perception would be of a police service stripped of its treasured impartiality and independence and carrying out policing policies and policing objectives dictated by central government. The push for reform was right but the new constitutional model seemed to be wrong and the strengthening of the Inspectorate seemed to lend weight to the fears of those who thought it important for the service to be demonstrably apolitical. This may seem an esoteric issue, but it was an important one. An additional matter that seemed to blur the issue of independence, both of the police service and of the Inspectorate, lay in the fact that, for some reason, the Inspectorate wear uniforms which are very much like those of senior police officers, giving rise to the belief, in the public mind, that the Inspectors are police officers who work for the Home Secretary and instruct chief constables on the running of their police forces. If the independence and impartiality of the service is important in the government's view, and if it is important to demonstrate that the service is inspected by independent people, then the wearing of uniforms is an anachronism which should be abolished as it serves no valuable purpose and gives rise to uncertainty and misconceptions.

7 The Metropolitan Police

The Metropolitan Police is approximately five times larger than any other UK force, with a workforce of approximately 40 000 officers and civilian personnel. It was inaugurated on 29 September 1829 and, by virtue of its originating statute, the Metropolitan Police Act 1829, it is under the direction of 'one of His Majesty's Principal Secretaries of State' (the Home Secretary) who is the police authority.

The force is under the command of the Commissioner of Police of the Metropolis who is appointed by the Sovereign (on the advice of the Home Secretary) under the Sign Manual (Metropolitan Police Act 1829 S1). He is not attested as a constable, although by S62 and Schedule 8 of the Police Act 1964 he is a Chief Officer of Police; neither he nor the Assistant Commissioners are members of the Metropolitan Police. The Commissioner holds office during the Sovereign's pleasure although custom had developed that the Commissioner would serve for a limited term, usually five years, but under the provisions of the Police and Magistrates' Courts Act 1994 chief officers outside the Metropolitan Police will be on fixed-term engagements of between four and seven years and it is likely that the Home Secretary may apply that type of engagement within the Metropolitan Police.

It is possible for the Commissioner's appointment to be terminated by the Home Secretary by way of advice to the Sovereign but this would have to be for good cause and the Home Secretary is responsible for his executive actions to Parliament. No Commissioner has been dismissed although there is on record a recent case in which an Assistant Commissioner had his appointment terminated after a prolonged investigation into his conduct, which included an allegation of shoplifting. It may also be assumed that any Commissioner who felt that he no longer enjoyed the confidence of the Home Secretary, particularly if this became a matter of public knowledge, would tender his resignation and it is believed that there have been occasions when the Commissioner of the day has been effectively required to resign.

The relationship between the Commissioner and the Home Secretary as police authority is not set out clearly in statute and although in theory the Home Secretary enjoys two formal positions in relation to the Metropolitan Police, it has to be remembered that he is a member of government and is unlikely to divorce himself from Cabinet responsibility when fulfilling his role as police authority. In his dealings with Parliament, the Home Secretary gives information on many aspects of police activities, while at the same time drawing to the attention of Parliament the operational independence of the Commissioner. Prior to 1994, the relationship developed by custom and convention and, in the absence of a specific formula, it was vital that the individual office holders had a clear understanding of the constitutional principles governing the independent role of the police and the political sensitivities of the Home Secretary's position. The Home Secretary is personally and directly responsible for the administration and related policy of the force, but in practice he delegates many of his functions to a Home Office official who undertakes the many day-to-day issues on his behalf; that official is now a member of the Metropolitan Police Committee Secretariat.

It is important that the Commissioner and the Home Secretary have a close personal relationship and the description given by Sir William Harcourt was often quoted in this regard: 'They should act together as confidential colleagues',[24] although a former Commissioner, Sir Robert Mark, draws attention to the fact that during his five-year term of office he served with four different Home Secretaries.

Another point of interest is that the Royal Commissions on Police in 1929 and 1960 were both triggered by Parliamentary criticism of the handling of individual cases by the Metropolitan Police. By way of demonstrating public accountability and assuaging public opinion, in each case the Home Secretary of the day appointed a Royal Commission.

PUBLIC DEMAND FOR REPRESENTATION ON A POLICE AUTHORITY FOR LONDON

In 1995/6 the estimated costs of running the Metropolitan Police stood at £1 687.828 million which represents a precept

of £47.86 per property in Band D of the council tax valuation tables.

Although the financial arrangements for the Metropolitan Police involve a degree of contribution by the 32 London boroughs, no local authority plays any direct part in its management and it has for long been a source of discontent that elected representatives in local government have no say in how the force functions, and this constant cause of dissatisfaction has been likened to the situation which provoked the slogan for American Independence – 'No taxation without representation'.

The 1960 Royal Commission accepted the argument that there were good reasons why the control of the Metropolitan Police should be different. It is a force that faces exceptional responsibilities in policing the Capital city and in dealing with matters of national and international importance, and many of its responsibilities were thought to transcend the capacity of a locally based authority, comprising representatives from hugely disparate and diverse boroughs, to understand and deal with such issues. The government holds the view that the Metropolitan Police is much more than a local service and that the 'national interest in its functions must continue to be safeguarded'.

Needless to say, that argument did not convince the protagonists for change and many cogent and persuasive arguments have been put forward over the years supporting the line that the people of London should be given substantial representation as to how the Metropolitan Police is called to account.

It would be misleading for anyone to suggest that no provision has been made for local authorities to be made aware of how their money is spent, and significant efforts have been made in establishing a series of committees which have facilitated the scrutiny of accounts. However, this scrutiny has been retrospective and such influence over them as there has been has not given the elected representatives full satisfaction. Neither is there a direct forum in which elected representatives, acting as a police authority, have been able to offer comment, advice and guidance to the Commissioner in the formulation of his policing policies and his financial priorities. Notwithstanding the greatly improved opportunities that have existed for consultations under the provisions of S106 of the Police and Criminal Evidence Act 1984, dissatisfaction still prevails in

many quarters that Londoners are deprived of a properly structured police authority; the role of the Secretary of State is seen by some to be very much central government control at the expense of local democracy.

THE GREATER LONDON COUNCIL PROPOSALS

The most significant and revolutionary recent proposal for the establishment of a police authority for London came from the now defunct Greater London Council. Matters came to a head in March 1982 when the GLC adopted the policy:

> That a police authority for the Metropolis be composed of elected representatives of the GLC and the London Borough Councils to which the police would be accountable in matters of policing policy practices and operations.

A year later the GLC published a consultative document on 'democratic control of the police in London' entitled *A New Police Authority for London* which suggested some extreme and unconstitutional measures of police governance. However, some of the suggestions were in line with the views expressed by Jack Straw, MP, in his proposals for greater police accountability, and however one chooses to view the GLC document, it should not simply be dismissed as the irrelevant demands of the extreme left. Clearly there was a strongly felt need for a greater say in the policing of London, and some of the suggestions made have now been enacted in the Police and Magistrates' Courts Act 1994.

The view that the Metropolitan Police was not truly accountable and was 'impervious to outside influence' (GLC Document) was shared in part by Her Majesty's Opposition in Parliament and in a proposed amendment to the Police and Criminal Evidence Bill (later to become the Act of 1984) which was then progressing through the House, a new schedule to the Police Act 1964 was tabled which provided that the constitution of a police authority for London should be a committee of the GLC consisting of such numbers of members as the Council should determine with the power of 'direction and control' of the force resting with the authority rather than the Commissioner.

GOVERNMENT PROPOSALS FOR REFORM

The government made some concession to the pressure for the creation of a London Police Authority in a statement on the police made to Parliament by the then Home Secretary, Kenneth Clarke, on 23 March 1993:

> I have . . . re-examined the role of the Home Secretary in relation to the Metropolitan Police. I propose to establish for the first time a police authority for the Metropolitan Police on the new National Model separate from the Home Office and with essentially the same tasks as police authorities elsewhere.

Between the delivery of this statement to Parliament and the publication of the White Paper in June of that year, Kenneth Clarke was replaced as Home Secretary by Michael Howard and clearly there had been a change of policy with regard to the provision of a police authority for London. Speaking in the House of Lords on 17 February 1994, Earl Ferrers, the government spokesman, said that on reconsideration of this matter the government had concluded that it would be contrary to the national interest to remove from the Home Secretary his legal authority over the Metropolitan Police, and that it was the intention to make administrative rather than statutory reforms with regard to this issue.

The White Paper contained the following statement which presaged what Earl Ferrers later referred to during debate on the Police and Magistrates' Courts Bill:

> The Home Secretary intends that a new body to help him oversee the performance of the Metropolitan Police should be established outside the Home Office. It is not proposed that there should be a police authority in the same way as those for other forces. Because of the special national interest in the work of the Metropolitan Police, both in policing the capital and because of its wider role, for example in combating terrorism, all the members of the new body will be appointed and directly accountable to the Home Secretary. He will, as now, answer to Parliament for his responsibilities.

It was stated that the new body would have no more than 16 members and probably fewer and the Home Secretary was to

ensure that those appointed would bring with them an ability to hold the Metropolitan Police to account on his behalf and on behalf of the people of London. The purpose of the body was said to be that it would support both the Home Secretary and the Commissioner in their work towards improving the effectiveness of the force in challenging and dealing with crime on the streets of London.

In particular the Home Secretary would require the new body to assist him in:

- setting the budget;
- approving and publishing a costed plan for policing which reflects both key and local objectives;
- monitoring the performance of the force;
- holding the Commissioner to account for the delivery of the agreed objectives; *and*
- publishing annual performance results in a form which will allow them to be compared with the performances of forces elsewhere.

The White Paper listed several ways in which an existing accountability system would operate in tandem with the Metropolitan Police Committee and these included:

- the operation of 41 Police Community Consultation Groups under S106 Police and Criminal Evidence Act 1984;
- the regular meetings between the London MPs and the Home Secretary about the Commissioner's Corporate Strategy;
- the meetings with the local authority associations to discuss financial matters;
- the annual debate in Parliament about 'Policing London';
- the Home Secretary's day-to-day duty to answer Parliamentary Questions about the Metropolitan Police;

and the view was expressed that these should continue in partnerships with the new body. In particular it was said that the Home Secretary would expect this new body to take account of the views expressed through the consultative groups when considering local objectives and the contents of the London Policing Plan. 'That way Londoners will be able to make their voices heard' (Cmn 2281, Chapter 11, para. 9).

In addition it was proposed that although it was intended that the Commissioner and Assistant Commissioners should continue to be Crown appointments, the Home Secretary should take account of the advice of the new body before making recommendations to the Queen; in the case of the Assistant Commissioner appointments, it was stated that the views of the Commissioner should also be taken into account.

When the Police and Magistrates' Courts Act 1994 received Royal Assent there was no provision for a new advisory body to be set up in London.

THE NEW METROPOLITAN POLICE COMMITTEE

In December 1994 the Chairman of the Metropolitan Police Committee was announced and on 9 February 1995 the Home Secretary released the names of eleven people whom he had appointed to that committee; only two members happened to be elected councillors, from the Boroughs of Wandsworth and Bexley. It was stressed in a written answer to a parliamentary question of 16 February 1995:

> we made it clear that members would be appointed individually and not as representatives of any particular body.

In a further written answer on 20 February 1995 it was stated that all applicants to serve on the Committee were considered by a government minister and the Chairman of the Committee and each was selected after due regard had been taken of the individual merits of the candidates and the overall need to balance the skills and experience of individuals against the needs of the Committee as a whole. Twenty candidates were short-listed from over 100 applicants who had been invited by the Home Office to apply.

The functions of the Committee were described by the Home Secretary on 9 February 1995 as being:

> to advise me in relation to the discharge of certain of my functions as police authority for the Metropolitan Police. The functions in question are based on those which, outside London, are the responsibility of police authorities established under the Police and Magistrates Courts' Act 1994. In par-

ticular the Metropolitan Police Committee will be required to advise me about

- establishing priorities for policing, in consultation with the Commissioner of Police of the Metropolis and local communities, particularly the consultative bodies established under S106 of the Police and Criminal Evidence Act 1984;
- approval and publication of an annual costed plan for policing designed to achieve both the objectives set for police forces outside London under Section 28A of the Police Act 1964 and those I have approved for the Metropolitan Police District;
- monitoring by reference to the policing plan the financial and other performance of the Metropolitan Police during the year;
- considering proposals for expenditure which require my approval; and
- publication of annual performance results in a standard form to allow comparison of performance against other forces.

The Metropolitan Police Committee will be required to advise me on other matters relating to the Metropolitan Police as necessary.

In order that the Committee should have information upon which to make its recommendations and assessments, the Home Secretary gave a direction to the Commissioner under the Metropolitan Police Act 1829:

Whereas I consider that it would be in the interests of the more efficient administration of the Metropolitan Police to appoint a Committee, to be known as the Metropolitan Police Committee, to advise me about the matters set out in the attached schedule, in pursuance of Section 1 of the Metropolitan Police Act 1829, I hereby direct you to provide the said Metropolitan Police Committee with such information and assistance as it may reasonably require in order to discharge its functions as so specified.

Michael Howard
One of Her Majesty's Principal Secretaries of State

(The attached schedule referred to listed the Committee functions described above.)

The Metropolitan Police Committee may properly be described as a non-statutory, non-departmental public body without executive functions. It is non-elected, appointed from invitees and non-representative of any body other than the individual appointees themselves. To that extent it is difficult to see how any of the protagonists for a fully fledged police authority could be satisfied that their interests are properly represented and taken account of particularly as the Liaison Committees referred to as being a source of information and advice are in themselves non-elected and representative of no one but the individual members. As an instrument of public accountability its credibility appears to be extremely limited and no truly satisfactory explanation has been given for the government's volte-face in this matter.

SECRETARIAT

To assist the Metropolitan Police in its functions, and in order to allow the proper delegation of the minor matters formerly carried out by Home Office staff in regard to the day-to-day approval of minor force orders and regulations, a Secretariat has been appointed. The main function of the Secretariat is to provide the Metropolitan Police Committee with administrative support which would include:

- provision of briefing and advice to the Home Secretary and the processing of correspondence;
- advice to the Home Secretary on resource issues affecting his function as police authority;
- representing the interests of the Committee at certain meetings;
- advice on Crown appointments to the force;
- co-ordination of responses to various publications and reports issued by or about the Metropolitan Police.

The estimated annual cost of servicing the Metropolitan Police Committee during 1995/6 was put at £399 000 and includes the cost of eight full-time and two part-time staff, accommodation costs and other expenses.

THE CITY OF LONDON POLICE

Section 62 and Schedule 8 of the Police Act 1964 provide that the police authority for the City of London Police is the Common Council of the Corporation of London. The chief officer of the force is the Commissioner of the City of London Police whose appointment requires Royal Assent. The force was formally established by the City of London Police Act 1839, Section 14 of which gave the Secretary of State power to exercise influence over the general governance of the Police Force. Section 56 gave authority for the Common Council to appoint a Committee to carry out the requirements of the Act, and to delegate its authority to that Committee. The functions of the Common Council as the police authority for the City of London were delegated to a Police Committee in 1985.

In an attempt to bring conformity to all police authorities under the Police and Magistrates' Courts Bill (which was progressing through Parliament), the Home Office approached the Common Council representatives and explained its requirements but also indicated that there were certain legal difficulties affecting legislation for the City. The Home Office proposed that agreement might be reached without the complication of legislation and asked the Common Council to give an undertaking that it would abide by the principles enshrined in the new Act. In particular the Common Council was asked if it would:

- limit the size of the Police Committee (acting as police authority); and
- have careful regard to such guidance as the Home Office may issue on annual plans, statements of objectives and other matters envisaged by the reforms.

In return for such an undertaking the Home Office was prepared to exempt the City of London from the compulsory changes to police authorities contained in the proposed legislation. The undertaking was given and when the Bill became the Police and Magistrates' Courts Act 1994 the City of London was so excluded.

The Common Council pointed out to the Home Office that it comprised the 'mix' of people which the Home Secretary wished in all police authorities – local residents, magistrates and business people – and drew attention to the fact that the

objective assessments made by the Inspectorate of Constabulary had expressed satisfaction at the way in which the Police Committee had operated in the past.

Somewhat reluctantly the number of representatives on the Police Committee was reduced to 17 by the Common Council and a letter was sent to the Home Office from the Town Clerk including the following statements:

> The City of London's Police Authority has a special relationship with the Home Secretary who, by virtue of Section 14 of the City of London Police Act 1839, exercises influence over the general governance of the force. Subject to such modifications as the Home Office agree are required to meet the particular circumstances of the City's policing arrangements, the Authority will apply the government reforms. The Authority therefore agrees with the Home Office that it will continue to base its submissions to the Home Secretary under Section 14 of the City of London Police Act 1839 on the Home Office's guidance to police forces elsewhere and undertakes that these submissions will have careful regard to such guidance as the Home Office may issue on annual plans, statements of objectives and other matters envisaged by the reforms.
>
> It is also agreed in the circumstances that the number of Members of the Court of Common Council on the Police Committee will be limited to 17 (or such greater number as may be agreed for Police Authorities generally).
>
> As regards the appointment of Chairman of the City's Police Authority, the Authority will as necessary consult the Home Secretary.

The Home Office replied, expressing its satisfaction with these undertakings.

8 Non-Home Office Forces

In addition to the 52 United Kingdom Forces which are subject to tripartite models of accountability, there are a number of other police agencies which operate under various statutes and to a much more limited extent than under the Police Acts 1964/1967; these forces are often referred to as 'non-Home Office' forces and the most notable of them exercise their jurisdiction throughout the United Kingdom. The three major forces are much more within the public purview than the minor Parks and Harbour Police, and in recent years they have attempted to demonstrate a much higher degree of public accountability.

The significant changes that have occurred in the police service have had a corresponding effect on these other forces and this change, combined with moves towards privatisation in the railways, the promotion of agency status in government departments and other commercial pressures, has meant that there is no final stability within these organisations and so the descriptions given at the time of publication may change.

THE MINISTRY OF DEFENCE POLICE

The MOD Police was formed in 1971 by combining together the Admiralty, Army Department and Air Force Constabularies, but it was not until 1987 that the authority and responsibilities of the organisation were formally addressed by statute. It is a national force with responsibilities and jurisdiction throughout the United Kingdom. Members of the MOD Police have the powers and privileges of constables in any place to which Section 2 of the Ministry of Defence Police Act 1987 applies which, broadly speaking, encompasses any land, vehicles, vessels, aircraft and hovercraft in the possession of, or under the control of, in use for the purposes of the MOD and associated organisations, and the Crown.

In addition, members of the Ministry of Defence Police are regularly called upon to assist Home Office Police in the vicinity of MOD property. In doing so, they utilise powers contained

in Section 2 Ministry of Defence Police Act 1987, which gives full constabulary powers to MOD officers when so engaged. In 1994/5 officers assisted Home Office forces on 4319 occasions, ranging from minor enquiries to arrests for serious offences.

Members of the force have a broad remit and their duties may include for example acting under a 'Deputation' on behalf of the Customs and Excise; they may also be called upon to investigate crimes on board any of HM Ships or on Crown bases overseas.

The force is subject to the overriding authority of the Secretary of State for Defence who appoints the Chief Constable who in turn is responsible for the direction and control of the force. The total number of officers stands at 4470 and there are approximately 250 civilian staff. Officers operating in England and Wales are attested under the Police Act 1964; in Scotland they are required to make a declaration under the Police (Scotland) Act 1967 and in Northern Ireland they must take and subscribe to the same oath as a member of the RUC.

Police Committee

The Secretary of State for Defence appoints a committee known as the MOD Police Committee whose function it is to advise him with respect to such matters concerning the MOD Police as he may from time to time require and he makes regulations concerning the membership and procedure of the Committee. At the time of writing the MOD Police Committee comprised ten members who held the following positions:

Chairman
- 2nd Permanent Under Secretary (MOD)
- Vice Chief Defence Staff
- Deputy Under Secretary, Civilian Management MOD
- Chief of Staff, UK Land Forces
- Director General, Naval Personnel Strategy and Plans
- Senior Air Staff Officer, Strike Command
- A former HM Chief Inspector of Constabulary, England and Wales
- HM Chief Inspector of Constabulary, Scotland
- Directorate of Security Policy, MOD

Clerk • Assistant Under Secretary (Security and Counter Terrorism)

Those in attendance at Committee meetings may include the Chief and Deputy Chief Constable of MOD Police, the Head of the MDP Secretariat and the Secretary to the Police Committee.

Inspection

The force is inspected by HM Inspectorate of Constabulary every four years within guidelines set out in Home Office Circular 67/94. In addition the force invites inspections by a number of other expert bodies in relation to such matters as police dogs and the use of firearms. The force is also inspected by qualified manpower auditors who determine the most efficient and effective number of officers at a particular location.

Annual Report

The Chief Constable prepares and publishes an Annual Report for the information of the Secretary of State and the Police Committee, and this document is widely distributed for public information.

Agency Status

On 1 April 1996 the Chief Constable assumed the additional role of Chief Executive when the MOD Police assumed Agency Status which stems from a Government Efficiency Unit Report entitled 'Improving Management in Government: The Next Steps' (1988).

As Chief Executive the Chief Constable took on additional responsibilities such as budgetary control and personnel management and he could be required to appear before the Public Accounts Committee to account for the discharge of his newly delegated responsibilities. None of these additional duties should impinge upon the constitutional independence of the chief constable.

In December 1995 Nicholas Soames, the Defence Minister, was reported as saying:

The MOD Police fulfil a very important role, but they are extremely expensive.

We must carefully examine where we need the MOD Police to exercise constabulary powers and where we do not need people of such superior quality.

There are some complex issues to be resolved.

The Minister was reported as saying that he would liaise with civilian police when coming to conclusions over the force's future.

BRITISH TRANSPORT POLICE

BTP is the national force responsible for law and order on Britain's railway system, including London Underground, Docklands Light Railway and Channel Tunnel through trains. It comprises an organisation of some 2180 sworn officers and 410 civilian staff under the direction and control of a Chief Constable appointed by a Police Committee set up by the British Railways Board. The Board acts as the employer within the terms of the scheme laid down by the Secretary of State for Transport, after consultation with BRB under Section 132 Railways Act 1993. The current one is the British Transport Police Scheme (Amendment) order 1994 which sets out the organisational arrangements of the force.

Article 4 of the Scheme provides that the Chief Constable of the Force must report on his administration of the Force to the Police Committee which is responsible for securing the maintenance of an adequate and efficient British Transport Police Force. The Chief Constable has a statutory responsibility for the direction and control of the Force and by agreement he reports to the Police Committee on four occasions throughout the year; in addition, the Chief Constable publishes an Annual Report.

The Police Committee consists of a Chairman appointed by BRB and:

(a) not more than six other members appointed by the Board, one of whom must have a wide experience of the control and administration of the police (the professional member), and at least one who has a wide experience of the

interests and concerns of users of railway services and facilities (this appointment is made in consultation with the Central Rail Users' Consultative Committee);

(b) one member appointed by each of the other Boards using the services of BTP (that is, Railtrack and London Underground Limited which also represents the interests of the Docklands Light Railway).

The role of the BTP Committee is to:

(i) monitor the administration of the Force by the Chief Constable;
(ii) secure the maintenance of an adequate and efficient police service;
(iii) determine the Force establishment including numbers in each rank;
(iv) provide and maintain equipment required by the Force;
(v) make recommendations to the represented Boards relating to the Force; and
(vi) exercise powers in relation to the Force on behalf of BRB.

Although not required by statute, the British Transport Police Committee and the Chief Constable provide an annual policing plan which sets out the proposed arrangements for policing during the next financial year.

Accountability for the British Transport Police is currently held by the Secretary of State for Transport in so far as this statutory role includes approving the BTP Force Scheme, acting as appellate authority on individual disciplinary appeals under Part IX of the Police and Criminal Evidence (PACE) Act 1984, approving Police Service Agreements with the various rail operators post-privatisation and answering Parliamentary Questions.

Areas of the Force are subjected to an annual inspection by the Committee's professional member and, by invitation of the Committee, Her Majesty's Inspector of Constabulary for South East Region undertakes periodic inspections of the Force.

At present BRB has an important role in appointing members of the Police Committee, employing constables and the majority of the civilian staff and in exercising the ultimate responsibility for the administration of the Force. However, the whole system associated with the railways is undergoing great change and it is anticipated that BRB will become defunct post-privatisation;

that being the case, it seems likely that central government may take steps to pass legislation establishing another form of police authority. It is unclear whether or not the intention is to make the new authority accountable to the Home Secretary and, in effect, translate BTP into a 'Home Office' Force, but there are cogent arguments to be made for making that transition and much depends upon any recommendations that may be forthcoming from HM Inspectorate.

Jurisdiction

England and Wales: Jurisdiction is provided under Section 53 British Transport Commission Act 1949 as amended by Section 25 British Railways Act 1978 and the British Transport Police (Jurisdiction) Act 1994.

> Except to the extent that any other enactment confers more extensive powers on a constable appointed under Section 53, any constable so appointed shall, for the duration of his appointment, only act as a constable –
> (a) in, on and in the vicinity of any policed premises; and
> (b) elsewhere, in relation to matters connected with, or affecting –
> (i) the British Railways Board;
> (ii) a subsidiary of that Board; or
> (iii) a police services user,
> or the undertaking of any person falling within sub-paragraph (i), (ii) or (iii) of this paragraph;
> and if and to the extent that he is acting as a constable in pursuance of a transport police services agreement, he shall (without prejudice to the foregoing limitations) only so act within the terms of that agreement.

Transport Police Officers have all the powers, protection and privileges of a constable within their jurisdiction and when acting elsewhere for matters affecting their jurisdiction. They take an Oath of Allegiance in the same form as the Police Act 1964.

In Section 53

> 'police services user' means any person who is a party to a transport police services agreement, other than the British Railways Board or a subsidiary of that Board;

'policed premises' means –

(a) any land, building or other structure, or any rolling stock, which is owned or used by, leased or hired to, or under the management of, British Railways Board or a subsidiary of that Board, or

(b) any land, building, or other structure, or any rolling stock –

  (i) which is owned or used by, leased or hired to, or under the management of, a police services user; and

  (ii) in respect of which the services of a constable appointed under sub-section (1) of this section are made available to that police services user under or by virtue of a transport police services agreement.

Scotland: Jurisdiction is given under Section 53 British Transport Commission Act 1949 as substituted by the British Railways Order Confirmation Act 1980, and as amended by Paragraph 2, Schedule 10, Railways Act 1993.

Section 53(4):

Every constable appointed shall during the continuance of his appointment have all the powers, protection and privileges of a constable –

(a) in, on and in the vicinity of the railways, harbour docks, inland underways, stations, wharves, garages, hotels, works, depots and other premises, and in vessels and hovercraft, belonging to or leased to or worked by –

  (i) any of the Boards or their wholly owned subsidiaries; or

  (ii) any person who is a party to an agreement with the British Railways Board for making available to that person the services of constables so appointed;

(b) elsewhere, but only for the purpose of –

  (i) carrying out investigations; and

  (ii) arresting any person –

  (aa) whom he has followed from, or from the vicinity of any such premises or from any such vessel or hovercraft, in circumstances where that person

could have been arrested in, or in the vicinity of, such premises, or in such vessel or hovercraft; or

(bb) who is in possession of goods or money which the constable reasonably believes to have been stolen from, or from the vicinity of, any such premises or from such vessel or hovercraft, or from the custody of the transport police.

UNITED KINGDOM ATOMIC ENERGY AUTHORITY CONSTABULARY

The UKAEA is empowered under Section 3 of the Atomic Energy Authority Act 1954 and other enactments to nominate individuals under the Special Constables Act of 1923 to be special constables able to exercise police powers in respect of the premises and property of the Authority, British Nuclear Fuels plc and URENCO and following the granting of these powers the UK Atomic Energy Authority Constabulary was formed. In 1994 the number of officers in the Constabulary stood at 500.

Members of the constabulary are employees of UKAEA and their police service costs are recovered from the three associated companies. By agreement the companies take part in the non-operational management of the constabulary and by that agreement the companies contribute on an equitable basis to the total costs of the maintenance of the force. Under the agreement the UKAEA is required to establish a Committee with the duty to consider all the issues relating to the constabulary and to formulate recommendations on such issues to the UKAEA, the committee is referred to as the AEAC Police Authority.

Role of AEAC Police Authority

The 'Police Authority' is subject to directions by the Secretary of State for Trade and Industry in regard to certain police matters, otherwise its role is to consider and formulate an agreed view, AEAC's objectives and to propose for adoption a 'policing plan' which sets out the proposed arrangements for policing during the next financial year. The policing plan should include a statement of AEAC's priorities for the year, the expected

financial resources and the allocation of those resources and shall give particulars of:

(a) any objectives of the parties for AEAC;
(b) any objectives of the parties which have been agreed with the Chief Constable (which may include longer term plans beyond the current financial year);
(c) any performance targets of the parties which have been agreed between the companies involved.

The Chief Constable is required to prepare the draft Policing Plan and before proposing any plan which differs from that prepared by the Chief Constable the Police Authority shall consult the Chief Constable.

In addition to the Policing Plan the Chief Constable shall prepare for the information of the Police Authority a Strategic Plan which shall outline his proposals for policing arrangements for the next five-year period together with an estimate of anticipated expenditure for that period.

As soon as possible after the end of the financial year the Police Authority shall have the opportunity to consider in draft the Chief Constable's Annual Report and express views concerning that draft. The Report shall include an assessment of the extent to which the Policing Plan has been carried out. The joint agreement contains a declaration that nothing shall prejudice or diminish the sole responsibility and absolute discretion of the Chief Constable in relation to law enforcement and operational policing matters. Yet it also expects the Chief Constable to make reasonable efforts to keep the appropriate persons at relevant sites or premises informed about his intentions and decisions.

Membership of the Police Authority

The Authority shall comprise two representatives of UKAEA, two representatives of BNFL, one representative of URENCO and one representative of DTI. The Chief Constable and the AEAC Police Adviser shall be entitled to attend meetings and shall do so if so requested, but they shall not be members of the Authority. Chairmanship shall rotate on an annual basis between one of the UKAEA and BNFL representatives, and the Secretariat shall be provided by UKAEA.

Obligations to the Parties to the Agreement

UKAEA shall so exercise its powers to nominate special constables under the 1923 Act and its power as the employer of constables so nominated as to give effect to the views of the Police Authority unless prevented from doing so by factors beyond its control (including decisions by the Secretary of State).

UKAEA shall consult the other parties over the selection and appointment of the Chief Constable and Assistant Chief Constable.

UKAEA has the power under the agreement to dissolve the police authority and amend the agreement by giving two years' written notice to the other parties.

9 Northern Ireland

A BRIEF HISTORY

> It is a truism that the police forces in any country operate within the context and in the climate of political conditions and stability of that country. Their task of enforcing law and order is inevitably affected by social, economic and other circumstances arising out of these general conditions; it must perforce be more onerous in an unstable situation. We feel it desirable to make this obvious point, in view of the special difficulties under which the police have operated in the past, which may persist in the Province in the future, which are not of the making of the police themselves, and which make their task at times both difficult and distasteful. (*Report of Advisory Committee on Police in Northern Ireland*, Cmnd 535, October 1969)[25]

For anyone to attempt to write with accuracy and authority on the problems of Northern Ireland requires a considerable amount of understanding, knowledge and impartial judgement which would be difficult, and some might say impossible, to acquire in a lifetime. Thus, it would be impertinent for an outside observer without much first-hand experience to try to comment with any authority on 'the Troubles', their causes and solutions. It is important therefore to emphasise that this study of police and government in Northern Ireland is intended only to examine that relationship as it has existed since 1969. It is not an attempt to evaluate the social and political problems in the Province. Inevitably some mention will be made of the problems that exist, but, as far as possible, an attempt has been made to examine only the constitutional developments as they affect the relationships between police and government and the effect these relationships have on the accountability of police in Northern Ireland.

That history has more than one interpretation is nowhere more apparent than in Northern Ireland, and because historical factors are important it is necessary to give a brief account of developments in Northern Ireland which culminated in

severe public disorder in 1969, the year that may be regarded as the turning point in relationships between police and government. Certainly, 1969 was a watershed in the social life of the community when the grievances of nearly 50 years erupted in violence on a scale that had not occurred since 1922 and which continued, albeit at a steadily diminishing level, for more than 25 years. During those years of turmoil, some social problems have been resolved or compounded and new ones have arisen, but the solutions to the major conflicts and differences appear to be as elusive now as they were in 1969. On 31 August 1994 the Provisional Irish Republican Army (PIRA) commenced a ceasefire which lasted until 9 February 1996 when a large bomb was detonated in London and the PIRA announced that the ceasefire had ended. The Loyalist para-militaries followed suit some weeks later and have, at the time of writing, continued a fragile ceasefire. During the years of conflict, however, there have been developments and advances about which the people of Northern Ireland should be proud: there has been the transition of the Royal Ulster Constabulary (RUC) from what was popularly believed to be a government-controlled, paramilitary police force into a thoroughly professional and publicly accountable body. Although the RUC is an armed force, with a strong anti-terrorist role, its policies and policing philosophy are geared to the eventual disarming of the force, a return to 'normality', and the establishment of a police service organised on traditional lines. How long that takes will depend very much on the political will of the community to proscribe terrorism, but the indications of a successful policy as far as policing is concerned are available for all to see.

Given that history is open to all manner of interpretations, depending upon which political gloss one is prepared to apply to it, almost all Command Papers that have considered the troubles that burst upon the Northern Irish scene in 1969 agree that they occurred because of grievances, either real or imagined, that stemmed from the fact that since the setting up of the government of Northern Ireland under the Government of Ireland Act 1920, one political party had been in power continuously, with the result that no effective parliamentary opposition had been established. According to a report entitled *Disturbances in Northern Ireland* by Lord Cameron (the Cameron Report):

> An Opposition which can never become a Government tends to lose a sense of responsibility, and a party in power which can never (in foreseeable circumstances) be turned out, tends to be complacent and insensitive to criticism or acceptance of any need for change or reform.[26]

The evidence of complacency on the part of the Northern Ireland government manifested itself in a failure to do anything about poor housing conditions and political manipulation of the allocation of housing on sectarian lines. Also, gerrymandering took place in certain areas where the early disorders occurred, namely, Dungannon, Armagh and Londonderry, where the arrangement of ward boundaries for local government purposes bore no relationship to the relative number of Unionists or non-Unionists in the area. This naturally led to the suspicion that the Unionists had used the artificially created electoral majority to favour their own supporters, both in the allocation of housing and in the making of public appointments. It was widely reported that, in largely Catholic areas, Protestant Unionists were seen to hold the best jobs in public office.

The basic problem for the police stemmed from the hostility that was generated over the years between two deeply divided communities whose differences are superficially described as being between Catholics and Protestants, but which go much deeper than sectarianism. Northern Ireland has a population of approximately 1½ million people, which is divided roughly in the proportion of two-thirds Protestant and one-third Roman Catholic. Ireland, as a whole, has what is described as a 'double minority' problem: the Roman Catholic minority resident in Northern Ireland becomes absorbed into a significant Catholic majority when the population of all 32 counties is considered; and the Protestants are the minority in the whole country by a ratio of 3:1.

Conflict appears to be inherent in Irish history and the protagonists in favour of a united Ireland and those who are opposed to political links with Great Britain speak of the 800-year-old conflict. Certainly, the current problems have their roots in the seventeenth century, when the old Province of Ulster became the last part of Ireland to be brought under English government. In order to maintain the subjugation of

the population, a system of 'plantation' was introduced, under which the Catholic landowners were dispossessed and their land was given to Scottish and English Protestants who were loyal to the Crown. This caused a situation where the immigrant Protestants were in possession of the richer lands, while the remaining native population was left with poorer soil and therefore a poorer standard of living. Not surprisingly, the 'plantations' were a twofold source of resentment which has lasted until modern times. Thereafter, the pattern of Irish development was almost continuous faction and dissent: on the one hand were the dispossessed, seething with resentment, a feeling of injustice and the humiliation of having been conquered, and on the other were the Protestant immigrants, in an alien land, constantly in fear of an uprising against them.

The seventeenth century holds the historical ingredients of sectarian conflict. In 1641 the much feared 'uprising' occurred, when thousands of Protestants were slain at the hands of the Catholics. Later in the century occurred two significant events which are still commemorated today. The siege of Londonderry by Catholic troops on 12 July 1689 and the victory of the Protestant King William of Orange at the Battle of the Boyne on 12 August 1690. Each event is now celebrated in the marching days of the Unionist Orange Orders which undoubtedly create tensions in the Province. At that time, the disputes and rivalries were undoubtedly based on religion, but as the centuries have passed economic, social and political differences have become interwoven in the strife.

With the industrial advances of the nineteenth century and the development of the shipbuilding and textile industries, the focus of conflict shifted to the cities, where the work was plentiful. People moved into Belfast in large numbers and brought with them at least 200 years of resentment. Marches, demonstrations and hostility, often in the form of street fighting and rioting, became normal for the North of Ireland, and clashes with the police were regular occurrences. Resentment against the immigrants remained, and the nineteenth century saw pressure for 'Home Rule' from both sides of the Irish Sea, the outcome of which was the eventual separation of Ireland into North and South in 1922. Northern Ireland became known in common parlance as 'Ulster', which in itself was a bone of contention because it consisted only of six counties out of the nine

which were the traditional Province of Ulster; the remaining 26 counties became the Irish Free State, known by many as Eire. This too caused arguments because Eire is the Gaelic name for Ireland, and many both in the North and South wanted to recognise only a united Ireland.

The majority (Protestant) population of Northern Ireland remained intensely loyal to Britain, and a minority was prepared to fight for the right to remain British. However, some have described that 'loyalty' as being only to a Britain that was not prepared to consider the eventual reunification of Ireland. Under the Government of Ireland Act 1920, Northern Ireland remained subordinate to Westminster, but it had its own Parliament at Stormont. The state had its own government, its own Prime Minister, its own royal representative in the form of a governor, who lived in a mansion in Hillsborough, County Down, and its own police force, which was State controlled and directly accountable to the Minister of Home Affairs. To all intents and purposes, Northern Ireland was able to run its own affairs, with virtually no interest or interference from Westminster. As the former Home Secretary, James Callaghan, points out:

> Northern Ireland was dealt with by the General Department of the Home Office, a body which covered such matters as ceremonial functions, British Summer Time, London Taxi Cabs, Liquor Licensing, the administration of state-owned pubs in Carlisle, and the protection of animals and birds.[27]

Northern Ireland was resented by the Catholic minority from its inception, and it was seen as an unnecessary and unjustified concession to the Protestant descendants of the 'plantation' families who had no right to the land in Ireland. The pattern of events from 1922 fed on prejudice and hostility, and for varying periods armed groups of terrorists adopted a policy of sabotage, non-co-operation and intimidation, all of which was designed to make Westminster believe that Northern Ireland was ungovernable, so that eventual re-unification of Ireland would become politically desirable in the British mind.

From the beginning, the pattern was set for Unionist dominance of the Northern Ireland Parliament, and the patterns of discrimination in favour of the Protestant majority developed over the next 50 years, culminating in prolonged and severe

public disorder that stretched the resources of the police to breaking point and beyond. In addition to the problems brought about by the Northern Ireland government's complacency and ineptitude, and the apathy of the Westminster government towards Irish affairs, another factor was identified by the Cameron Report as having a significant bearing on the social division: segregated education. The Roman Catholic Church maintained the view that Catholic children should be educated only in Roman Catholic schools, and this was seen by the Cameron Commission and others as playing its part in both initiating and maintaining division and differences among young people:

> The religious division within the community is that which has tended to provide the greatest bitterness, and religious disturbances have tended to be intensified because the Catholic proportion of the population is more concentrated in the rural areas and southern districts and on the whole tends to be economically poorer than the Protestant population.[28]

At the time of the formation of Northern Ireland there was a preponderance of Roman Catholics in the border areas and across the border, so that the Protestants, both historically and politically, adopted what the then Mr Justice Scarman described as a 'siege mentality'. It also led the Cameron Commission to describe Londonderry as a 'frontier post' facing a predominantly Catholic hinterland across the border in Donegal. The Cameron Commission reported that by 1964 a change had occurred, and that a larger Catholic middle class had grown up in the towns and cities which was not prepared to accept an imposed 'inferiority' and was most unhappy about what it perceived as an anti-Catholic discrimination by a Unionist Protestant-dominated state. From this time, many Catholics became involved in a civil rights movement, called the Campaign for Social Justice in Northern Ireland, which was created to secure the redress of an accumulation of grievances. In 1967 the Northern Ireland Civil Rights Association (NICRA), modelled on the National Council for Civil Liberties (NCCL), was formed. This organisation received a great deal of financial backing and support from the Catholics, whose sense of frustration at the lack of progress towards reform in job and housing discrimination by Unionist Protestants, universal adult

franchise in local government elections, and fairer electoral boundaries in local government wards, had led them to seek redress by association and peaceful means.

As the civil rights movement grew, so too did the hostility between the two communities. As Cameron put it:

> Officially, the Association (NICRA) campaigned only on civil rights issues, but in practice its activities tended to polarise the Northern Ireland community in traditional directions. It was bound to attract opposition from many Protestant Unionists who saw or professed to see its success as a threat to their supremacy, indeed to their survival as a community. The movement also attracted the attention and support of certain left-wing extremists, some of whom by infiltration gained positions of influence within the movement, and their readiness to provoke and profit by violence was crucial at various stages in the disturbances, although their activities and influence were condemned and opposed by many of the movement's leaders and supporters.[29]

Sadly, the situation in Northern Ireland deteriorated; on 5 October 1968 such a wave of violence and public disorder spread across the Province that it overwhelmed the normal forces of law and order. In 1969 the army was called upon to restore peace and stability. In 1972 direct rule from Westminster was introduced and this has remained to the present day – with the exception of the short-lived power-sharing Executive during the first five months of 1974. At the height of the trouble there were in excess of 21 000 troops in Northern Ireland 'in aid of the civil power'. Large numbers of them still remain, and the pages of recent history are full of tragedy.

There is no doubt that 1968 and 1969 were turning points in the history of the Royal Ulster Constabulary. The events at the beginning of the disorder were shattering both to the morale and to the reputation of the force, and it was to be many years before the RUC made a recovery, both in reputation and professional standards, which eventually earned both the admiration and respect of professionals throughout the world.

It has been alleged that the RUC did not enjoy a good reputation throughout the whole of the Province, even before 1969. For the minority population, the RUC was seen as an armed representative body of the Unionist government (in

1969 only 11 per cent of the force had been recruited from the Catholic minority) and there were historical reasons why 'the police' were distrusted by some of the population. In the circumstances of social discontent, poor housing, unemployment and discrimination, the RUC was unwelcome in parts of Northern Ireland, and there were certain areas which, it was alleged, had been 'No-go' areas to the RUC for the two years preceding 1969. According to senior officers of the RUC, this was a carefully nurtured perception of the force by those who wished to denigrate it for political reasons; it is claimed by the RUC that the force enjoyed a good relationship with both Catholic and Protestant communities.

It has to be remembered that there were (and are) many people who saw advantage in denigrating the representatives of law and order, and several reports speak of campaigns to discredit the RUC. Ten years after the beginning of the current troubles, a report of a committee of inquiry into police procedures said:

> There is a co-ordinated and extensive campaign to discredit the RUC . . . No other police force in the UK is called on to deal with so much violent crime in such unpromising circumstances as the RUC.[30]

At the time of the disturbances, the *Report of the Advisory Committee on Police in Northern Ireland* (the Hunt Committee), which included two distinguished police officers, recognised that certain policemen had conducted themselves badly in dealing with members of the public, and they expressed deep concern that the image of the RUC had suffered in 'the eyes of the world' as a result of the indiscipline. However, their Report went on to say:

> We feel bound to deplore the extent to which some press and television coverage of these events has resulted in magnifying, in the minds of readers and viewers, the actual extent of the disorders, in generalising the impression of misconduct by the police and of bad relations between police and public, while sometimes failing correspondingly to illustrate the calm which has prevailed in most parts of Ulster, or the degree of deliberate provocation, the danger and the strain under which the police, frequently for long periods, tried to

> do their duty, as well as the fact that the greater majority acted not only with courage but with restraint.[31]

The Cameron Report detailed the misconduct of police officers, and the commentary of the government of Northern Ireland on that Report spoke of systematic attempts to discredit and undermine the police and all constituted legal authority. However, Callaghan took the view that the Cameron Report's description of police behaviour in the early days of the disturbances was 'a pretty cool account of what appeared to have been a major breakdown in discipline, of a kind which would not have been tolerated in a British police force'. None the less, Mr Justice Scarman was able to give credit to an undermanned force that was attempting to do a difficult job in extreme conditions:

> overall the RUC struggled to do their duty in a situation which they could not control. Their courage, as casualties and long hours of stress and strain took their toll, was beyond praise; their ultimate failure to maintain order arose not from their mistakes, nor from any lack of professional skill, but from exhaustion and shortage of numbers. Once large-scale disturbances occur, they are not susceptible to control by police . . . There are limits to the efficiency of the police and the criminal law: confronted with such disturbances, the police and the ordinary processes of the criminal law, are of no avail.[32]

10 The Police in Northern Ireland

THE ROYAL ULSTER CONSTABULARY

It is convenient to take as a starting point the *Report of the Advisory Committee on Police in Northern Ireland.* As a direct result of the breakdown of law and order throughout Ulster, the Minister of Home Affairs for Northern Ireland, the equivalent of the Home Secretary in England and Wales, appointed an Advisory Committee

> to examine the recruitment, organisation, structure and composition of the Royal Ulster Constabulary and the Ulster Special Constabulary and their respective functions and to recommend as necessary what changes are required to provide for the efficient enforcement of law and order in Northern Ireland.[33]

The Committee was appointed on 26 August 1969 and submitted its report to the Northern Ireland Parliament on 3 October 1969, which was an indication of the degree of urgency that was attached to the 'law and order' situation in the Province. It may also be taken as an indication that the government of Northern Ireland, no doubt prompted by Westminster, recognised that there were serious defects, both in constitutional and operational terms, in the policing arrangements for Northern Ireland.

As a result of intermittent but prolonged terrorism, policing in Northern Ireland had diverged from the traditional methods adopted in Great Britain, and for this reason it was considered necessary to bring in senior police officers from England and Scotland to act as advisers to the Northern Ireland government. The committee was chaired by Baron Hunt, and the two police officers appointed were Sir James Robertson from Scotland and Robert Mark, later to become Commissioner of the Metropolitan Police, from England. There is no doubt that the Minister of Home Affairs would have taken advice on the appointment of committee members from the Westminster

government, and the appointment of Mark would have come as no surprise since the Home Secretary of the day, James Callaghan, had sent both Mark and Douglas Osmond (Chief Constable of Hampshire) to act as his professional observers in Ulster on 15 August 1969.[34] These two officers had reported to Callaghan that, in their opinion, all was not well at the top level in the RUC, and in particular they had observed that the Minister of Home Affairs appeared to be totally dependent upon the Inspector General, who was the sole source of intelligence and professional advice, and that the Minister seemed to accept a subordinate role to the police chief.[35] Other serious defects had been identified by Osmond and Mark, which had been reported both by Callaghan and Osmond to the Prime Minister, Harold Wilson.[36] Callaghan's view of what he saw as political control of the RUC was that it was wrong, and he was determined to bring his influence to bear in changing the RUC from an armed and paramilitary force into a traditional police force organised on the British policing model.

In many ways the policing of Ireland had always had a 'colonial' flavour, and even the title of the chief officer was reminiscent of the Inspector Generals of colonial forces. From 1836, Ireland had been policed by a national force controlled by a single Police Authority, and although the local authorities were required to meet half of the cost of policing, they were subsequently relieved of that burden, save in exceptional circumstances. Originally, the force was known as 'The Constabulary of Ireland', but it became known as 'The Royal Irish Constabulary' during the reign of Queen Victoria. Following the partition of Ireland after the introduction of the Government of Ireland Act 1920, the force covering Northern Ireland became known as the Royal Ulster Constabulary. It served under the command of an Inspector General, with a maximum establishment level limited by statute to 3000 men.[37] The Inspector General was directly responsible to the Minister of Home Affairs for the maintenance of law and order, and the force was funded by the government of Northern Ireland; thus there was no police authority organised on a local basis as in mainland Great Britain. The statutory limit of 3000 men was lifted by the Constabulary Act (NI) 1963, and the establishment then became determined by the Minister of Home Affairs, subject to the approval of the Minister of Finance.[38]

The violent history of Ireland meant that the police had a dual role to perform: the conduct of normal police duties with the principal emphasis being placed on the military nature of their security duties. In many ways, the RUC was perceived as an army of occupation during the times of terrorist activity, and to the Catholic minority the police (particularly the 'B Specials' – see later) were seen as a Protestant army biased in favour of the majority. That was neither a permanent nor a completely fair portrayal of the RUC, and discussions with RUC officers have indicated that in much of the Province the force was able to carry on a traditional and friendly role within the community. Nevertheless, when trouble occurred, as it did in 1969, the RUC was seen by many to be 'a force apart', and both Mark and Osmond, and later the Hunt Committee, were critical of the 'blockhouse' mentality that prevailed in some areas, particularly near the border. In particular, the Hunt Committee was anxious for the RUC to shed its military priorities and its security-oriented role and that it should:

> play a leading part, not only in enforcing law and order, but in helping to create a new climate of respect for the law, a new attitude of friendship between its members and the public, and a sense of obligation among all men of goodwill to co-operate with the police in fulfilling their civic duties in the Province . . . with a view to enabling both the police and the citizens of Ulster to move towards a better relationship with one another in order to achieve this common need and purpose.

As events have turned out, this was a laudable but very premature ambition, although it has remained part of RUC policy that this aim should be achieved.

Apart from its desire that the police in Northern Ireland should move away from the military image, which was the first recommendation of the Hunt Committee, a lack of accountability to the public was identified. The law governing the relationship between the government of Northern Ireland and the RUC was seen to be both vague and unsatisfactory. Although the Minister of Home Affairs was said to be responsible for law and order, the Inspector General was responsible for operational control of the police and for policies with regard to law enforcement. In fact the Inspector General was accountable to no

one for his operational policies. To an uninformed and partisan public, the RUC was seen to be closely aligned with a succession of Unionist governments that had not changed in character since 1922. The Committee saw this as being totally unsatisfactory, not least because it created a situation where allegations of partiality were difficult to refute. Nevertheless, Hunt was quick to recognise the dangers that could arise if the Inspector General and the RUC were subjected to political pressures on the one hand, and the corresponding dangers of allowing the force to remain politically unaccountable on the other. Therefore, the second, and in many ways the most important, recommendation was that a Police Authority for Northern Ireland should be established.

It was thought that ideally the proposed Authority should comprise elected representatives, but a realistic assessment of the prevailing political situation was that this would not have given fair representation to the minority parties and communities, and so a compromise solution was recommended. The Hunt Committee was of the opinion that the political difficulty could be bypassed if some of the members of the proposed Authority were chosen by representative bodies and some were appointed by the Governor of Northern Ireland to reflect the different population groupings in the Province – particularly the Roman Catholic minority. The formal recommendation was that a Police Authority should be created by statute, and that membership should be as follows:

Association of County Councils	3
County Borough of Belfast	2
County Borough of Londonderry	1
Queen's University, Belfast	1
New University of Ulster	1
Incorporated Law Society of Northern Ireland	1
Resident Magistracy	1
Northern Ireland Committee of the Irish Congress of Trades Unions	2
Chambers of Commerce	2
Ministry of Home Affairs	2

with four additional members, of whom one would be the chairman, nominated by His Excellency the Governor for Northern Ireland.

The proposed structure of the Police Authority was different from anything that had been known in Great Britain. Although the Committee recognised that the circumstances of Ulster prevented an authority based on elected representatives at that time, there was no proposal that the structure should change once normality returned to the Province; nor was there any recommendation that the magistracy should play a substantial role in the Authority, possibly because of their difficult position in a strife-torn situation, but also possibly because of the influence from Sir James Robertson, whose Scottish system did not include the one-third representation of magistrates that occurred in English and Welsh authorities. The Police Authority for Northern Ireland is examined in greater detail later in the book.

The responsibilities proposed for the Police Authority were similar to those which prevailed in the mainland, subject to the authority of the Minister of Home Affairs, but in the Northern Ireland situation they were quite revolutionary. The intention was to make the Inspector General accountable to a representative body which could also act as a channel of communication for the expressed fears and desires of the community. Clearly, it was in keeping with the intention of the Hunt Committee that an unarmed police force should establish normal, friendly relationships with the community in the hope that this would lead to a breakdown of any hostilities directed against the police force, and that the establishment of good relationships would lead to a more stable community.

At the same time that the Hunt Committee was examining the structure of the RUC and preparing its almost predictable recommendations, it is apparent that the Home Secretary, James Callaghan, was applying pressure to the Northern Ireland government to secure the replacement of the Inspector General.[39] No doubt the Westminster government had been startled into action which at that stage was likely to lead to a situation of direct rule, however much that prospect may have been distasteful. The Home Secretary had taken the position that, as far as he was concerned, policing arrangements in Ulster were unsatisfactory, due in no small measure to the personalities of the current Inspector General and Minister of Home Affairs, and that either he or the Northern Ireland government had to remedy that situation before a state of civil war developed.

As an additional remedy to the situation which is alleged to have developed, whereby the Minister of Home Affairs became solely dependent for his professional advice on the Inspector General, the Advisory Committee recommended (a) that the Minister should be empowered to require that the force should be inspected as he may direct, but in any event not less than once a year by Her Majesty's Inspectorate of Constabulary, and (b) that one of the Inspectors should have a special responsibility for Northern Ireland. The use of the Inspectorate was recommended in order to secure an impartial and professionally competent assessment of the force. This was clearly a sensible arrangement, which makes it surprising that when the Police Act (Northern Ireland) 1970 was promulgated, which gave effect to many of the Hunt recommendations, Section 16 provided a power for the Minister of Home Affairs to appoint an Inspector (or Inspectors) of Constabulary. In fact, there has existed an arrangement whereby the RUC is inspected by one of the Inspectors of Constabulary for England and Wales by invitation, and an Inspector within Northern Ireland has not been appointed.

A further recommendation to secure good communications between the Minister of Home Affairs, the Inspector General, the Police Authority and members of the force, was the setting up of an advisory board similar in constitution to those that existed on the mainland.

In the short time available to it, the Hunt Committee was unlikely to have been able to make any recommendations for the reorganisation of the Royal Ulster Constabulary which were not based almost entirely upon policing arrangements in Great Britain. The purpose of the exercise was to change the paramilitary Royal Ulster Constabulary into an unarmed 'mirror-image' of a traditional force in Great Britain, and all of the recommendations were made with that in mind, even to the extent of changing the colour of the uniform from green to blue (a recommendation that was never adopted).

The philosophy of the Hunt Committee was summed up in the following paragraph:

> Policing in a free society depends upon a wide measure of public approval and consent. This has never been obtained in the long-term by military or para-military means. We believe

> that any police force, military in appearance and equipment, is less acceptable to minority and moderate opinion than if it is clearly civilian in character, particularly now that better education and improved communications have spread awareness of the rights of the civilians.[40]

Most of the emphasis of the recommendations was placed upon securing and maintaining good and lasting relationships with the community. As far as policing methods were concerned, special emphasis was placed upon community relations in all its forms – work with youth, good press relations, the establishment of police liaison committees (particularly in Londonderry) and the re-opening of some local police stations. As far as prosecutions were concerned, it was thought that

> the impartiality of the police may be questioned if they were responsible for deciding who shall be prosecuted and thereafter for acting in court as prosecutor.

The Committee therefore recommended that the Scottish system of independent public prosecutors should be adopted.

Certain legislative changes were recommended, particularly with regard to the Civil Authorities (Special Powers) Acts (Northern Ireland) 1922–43 and to regulations made under these Acts, which had aroused much public concern and criticism. The 'Special Powers Act', as it was known, had been widely resented because the extensive and authoritarian powers that it gave to police to combat terrorism were alleged to have been used too extensively against ordinary members of the community. While recognising that some emergency powers might be necessary, the Advisory Committee was of the opinion that better police–public relationships could be established if the Acts were repealed and anti-terrorist matters were dealt with under normal legislation which provided better control by the courts and thus a better accountability to the public.

In a further effort to ensure that police officers could be seen to be publicly 'impartial and independent', the Hunt Committee was of the opinion that membership of certain organisations, such as the Orange Order, was incompatible with membership of the RUC, and without casting any doubts on the ability of officers to behave impartially, the Committee recommended

that it was necessary for that impartiality to be seen to be beyond doubt.

In order to speed up the process of transition from a paramilitary force to a traditional organisation, the Advisory Committee recommended closer links with forces in Great Britain. This relationship would provide RUC members with 'wider horizons', shared experiences in training, research and planning, communications, and in particular a boost to morale once the feeling of isolation was broken down. In addition, the advantage of 'mutual aid' between Ulster and the mainland was recognised by Hunt in view of the fact that a shortage of manpower had been apparent during the rioting: some officers had been on duty continuously on the 'front line' at Londonderry in excess of 36 hours. The associated recommendations encouraged permanent interchange between officers of the RUC and Great Britain forces, as well as attachments and secondments for specific purposes. In fact, a Police Act 1969 was passed very quickly to give effect to the mutual aid provision for the RUC by Great Britain forces. Callaghan outlined plans to send 1500 Metropolitan Police officers to Ulster which never materialised, partly because of opposition by the Police Federation, who would not operate the 'Special Powers Act', and partly because the Labour government lost power before the plans could come to fruition.

THE ULSTER SPECIAL CONSTABULARY

A brief mention needs to be made of the Ulster Special Constabulary, since it was different from what one would normally understand by the term 'special constabulary', and at least part of the organisation was viewed by the minority population as a private Protestant army organised by the Orange Order.[41]

Recruiting for the Ulster Special Constabulary (USC) began in November 1920 during the period of turmoil leading to the establishment of the government and Parliament of Northern Ireland. There were three classes of enlistment:

1 Class A involved a willingness to perform full-time duty.
2 Class B involved part-time duty.

3 Class C provided a reserve list of volunteers available for call-up during a grave emergency.

By 1921 over 8000 men had been recruited into Class A, and platoons of these men could be posted anywhere in Northern Ireland. A further 25000 men were recruited to Class B, and platoons of these were available for local protection duties in the area in which they resided. Nearly 11000 volunteered for Class C. During the transition period to a Northern Ireland government, the USC bore a heavy responsibility for law and order while the Royal Irish Constabulary was run down and the RUC was established in June 1922.

As some semblance of normality returned, both Class A and Class C were stood down, but Class B was retained (the 'B Specials') against the possibility of further troubles developing. At the outbreak of the Second World War in 1939, there were 13000 'B Specials' available for general 'Home Guard-type' duties. Because constitutional arrangements in Northern Ireland prevented the establishment of a Home Guard Unit as an auxiliary of the military, a second section of the USC was established, bringing the combined strength to 40000 men, who were all armed and equipped for defence duties. After the war the USC reverted to its former reserve policing role and reduced in strength to about 10000. Between 1956 and 1962, when the IRA conducted a terrorist campaign, over 1700 members of the USC were mobilised for full-time duty; the remainder operated on a part-time basis.

The role of the USC members varied between city and county. In the cities normal police duties would be operated, whereas the men from the counties usually carried out guard duties of a military nature, as required by the RUC. The county specials were armed and trained as soldiers.

The USC was organised and controlled by the RUC, and although there were no official restrictions about recruitment, it is a fact that no Catholic was a member of the 'B Specials' in 1969; not surprisingly, this was viewed with dismay and alarm by the Catholic minority. When the 'B Specials' were formed, some Catholics did join: there were 28 Catholic recruits within the first few weeks. However, the polarisation and intimidation of the 1920–2 period prevented more from joining, resulting

in an almost exclusively Protestant Loyalist force. Similar events occurred after 1970, in which year a very large number of Catholics joined the Ulster Defence Regiment, the part-time RUC 'R', and, of course, the RUC. Intimidation, murder and internment ended much of the initial Catholic enthusiasm for joining such organisations.

The Hunt Committee recognised that the USC were loyal officers who were fulfilling paramilitary duties under the control of the RUC. Having recommended the disarming of the RUC, it would have been illogical to have maintained an armed Special Volunteer force, whose duties were primarily concerned with the security of the state and therefore should more properly be carried out by the military controlled from Westminster.

In a diplomatic way the Advisory Committee recommended the disbanding of the USC (effectively the 'B Specials') and suggested the establishment of a locally recruited, part-time force under the command of the General Officer Commanding (Northern Ireland), which in fact became the Ulster Defence Regiment (UDR). Many 'B Specials' joined the UDR. Subsequently the Ulster Defence Regiment was absorbed into the Royal Irish Rangers and this in turn became the Royal Irish Regiment.

THE POLICE ACT (NORTHERN IRELAND) 1970

Swift action followed the publication of the Hunt Report. On 26 May 1970 the Police Act (Northern Ireland) 1970 was introduced by the Westminster Parliament, whose power to legislate for Northern Ireland on any matter it so chose remained undiminished, notwithstanding devolution under the Government of Ireland Act 1920. Many of Hunt's recommendations were embodied in the statute and, not surprisingly, the Act was modelled on the Police Acts of 1964 and 1967 which applied to the mainland forces. Until March 1972, when direct rule was introduced in Northern Ireland by the Westminster Parliament, the equivalent powers of the Secretary of State with regard to mainland forces were vested in the Minister of Home Affairs, and thereafter in the Secretary of State for Northern Ireland; the chief officer of the force was referred to in the Act as 'Inspector General', but almost immediately the style 'Chief

Constable' was adopted and this title was introduced by way of a Statutory Instrument in 1970.

The Act was an important turning point for the Royal Ulster Constabulary, which began the role change that was intended to establish traditional policing methods in Northern Ireland by an unarmed force. Circumstances were to frustrate the transition envisaged by the Hunt Committee, which itself conceded that in the short time available to it the Committee was not fully aware of certain facts and political undertones which were to govern the life of the people for many years to come. It is also fair to say that even those who were steeped in the political history of Northern Ireland were not altogether aware of the eventual power and influence of the conflicting forces that were unleashed in 1969. To a certain extent, the terrorist aspect of Northern Ireland is incidental to the study of the relationships that exist between police and government in the long term, and no attempt will be made to consider the political implications beyond those which have an immediate bearing on the accountability of the police in Northern Ireland. However, it is difficult to separate the day-to-day effect that terrorism has had on both administration and policy for over 25 years, and in the immediate situation it colours almost everything that occurs in that relationship. It remains to be seen what changes will take place when a return to normality occurs.

The most important feature of the 1970 Act, as far as police accountability is concerned, was the creation of the recommended Police Authority for Northern Ireland. Under Section 1, the Authority was established as a body corporate vested with the duty to secure the maintenance of an adequate and efficient police force with similar powers and obligations as were possessed by Police Authorities in England and Wales. The direction and control of the force rested with the Chief Constable, who was made vicariously liable for the actions of his officers in defined circumstances and who had imposed upon him the same obligations with regard to reports as mainland chief constables. The Secretary of State for Northern Ireland stood in relationship to the Police Authority and the Chief Constable in much the same way as his colleagues across the water. The force was funded 100 per cent by central government, since there was no local authority arrangement with regard to a national force.

11 The Role of the Army in Northern Ireland

It would seem that both the government of Northern Ireland and the Westminster government were taken by surprise in 1969 by the extent of civil disorder and the inability of the RUC to cope with it. Although it was the Unionist government that requested Westminster to authorise the army to deal with the rioting, it is apparent that central government had a hand in initiating that request. The situation was a difficult one from a political viewpoint: Westminster had to retain its control of the army and thus of the security situation in Northern Ireland, since it would have been unlawful to allow the troops to be under the control of the Unionist government which was viewed with suspicion, if not outright hostility, by many of the minority Catholic community. The causes of the rioting were seen to be largely a result of the neglect of the Unionists over the previous fifty years. The Northern Ireland government was under the impression that the troops could go in and restore order with a short, sharp and effective action and then withdraw. However, it was apparent to the Prime Minister, James Callaghan, and the Minister of Defence, Denis Healey, that once the army had been committed it would have to remain in the Province for at least two years. Indeed, Callaghan saw the use of the army as being one step nearer to the assumption of direct rule by Westminster and warned the Unionist government of his feelings in this matter.[42]

The situation deteriorated to such an extent that on 14 August 1969 the formal request for military aid was made by the Unionist government, and the troops were committed while the following statement was issued by Callaghan:

> The Government of Northern Ireland has informed the UK Government that as a result of severe and prolonged rioting in Londonderry, it has no alternative but to ask for the assistance of the troops at present stationed in Northern Ireland to prevent a breakdown of law and order.

After three days and two nights of continuous duty the RUC find it necessary to fall back on their police stations, thus exposing the citizens of Londonderry to the prospect of looting and danger to life.

The UK Government has received assessments of the situation from the Northern Ireland Government and the GOC NI and has agreed to this request in order to restore order in Londonderry with the greatest possible speed.

The GOC NI has been instructed to take all the necessary steps, acting impartially between citizen and citizen, to restore law and order. Troops will be withdrawn as soon as this is accomplished. This is a limited operation and during it the troops will remain in direct and exclusive control of the GOC who will continue to be responsible to the UK Government.

This announcement had profound effects in the Province. Many Loyalists felt that 'their' police had been defied and humiliated, and in Londonderry the troops were welcomed by the Catholics as their saviours from the excesses of the violent Protestants – a state of euphoria that was not to last very long. Not long after the troops were committed in Londonderry, there was trouble in Belfast, and the Catholics called for the protection of the troops. Thus began a 'policing action' for the army which military observers have reported as the most costly and unrewarding that the British army has ever had to face. Northern Ireland was not another Malaya, Kenya or Aden, and it could not be treated as such, although the early military tactics were based almost entirely on their colonial policing experiences.

There had been a garrison of some 3000 troops based in Northern Ireland permanently, with the underlying purpose of providing a back-up to the police in the event of serious public disorder. However, following the decline in terrorist activity after 1962, there had been no real consideration that military aid to the civil power would be necessary. In view of the confusion and urgency of the situation that arose in August 1969, it seems likely that the full implications of using the army in Northern Ireland had not been foreseen. A further statement was issued by the Westminster government on 19 August 1969 which was to sow the seeds of an immense relationship problem for the police and the army; this statement became known as 'the Downing Street Declaration':

> It was agreed that the General Officer Commanding Northern Ireland will with immediate effect assume overall responsibility for security operations. He will continue to be responsible directly to the Ministry of Defence but will work in closest co-operation with the Northern Ireland government and the Inspector General of the Royal Ulster Constabulary. *For all security operations, the GOC will have full control of the deployment and tasks of the RUC.* For normal police duties outside the field of security, the RUC will remain answerable to the Inspector General, who will be responsible to the Northern Ireland Government. (emphasis added)[43]

This 'declaration' was clearly *ultra vires*, for without a specific Act of Parliament, the Westminster government had no power to place the police under the control of the GOC (NI), or anyone else, for any purpose – security or otherwise.

Thus, from August 1969 until March 1972, when the Westminster government assumed full responsibility for and control of Ulster, the army was present in a 'policing' capacity, acting as agent of the Westminster government, with the GOC exercising an extensive amount of control and influence over the RUC for 'security' purposes. 'Normal' policing arrangements were left to the Inspector General (Chief Constable from 1970 onwards), who was answerable to the Minister of Home Affairs in the Northern Ireland government, and had been appointed from the mainland on the advice (and one suspects insistence) of the Westminster government. This was clearly not a situation in which the army was acting 'in aid of the civil power' and not one which was likely to satisfy any professional police officer. Indeed, Callaghan himself later spoke of 'recurring friction' between the Inspector General and the GOC.[44]

According to the *Manual of Military Law* (Part II, Section V),[45] the soldier differs in no way from an ordinary member of the public in the eyes of the law when called to the aid of the civil power. Two obligations under common law were quoted in the *Manual*:

(a) every citizen is bound to come to the aid of the civil power when assistance is required by that power to enforce law and order;
(b) to enforce law and order no one is allowed to use more force than is necessary.

In addition to the common law obligation, there was an additional duty laid upon the military by Queen's Regulations[46] which does not apply to other citizens. This stated that, in disturbances where the civil authority has not asked for help, there is an obligation to take action to quell that disturbance and to restore order even in cases where the civil authority may give direction to the contrary if, in the judgement of the military commander, action is deemed to be really necessary.

Brigadier Shortis, a military historian, pointed out that the *Manual of Military Law* was long overdue for revision, partly because it had been published at a time when some of its contents had become invalidated by changes in the criminal law, and partly because genuine doubts had arisen about the 'civil authority'.[47] Historically, under the Riot Act 1714 (which was repealed in 1967 and superseded by the Criminal Law Amendment Act 1968), it was the magistracy who were normally regarded as having the authority to call out the troops. Following a speech delivered by Sir Robert Mark at Leicester University in 1976, when he queried the legal position, the Home Secretary confirmed that the use of the army would no longer be sanctioned by the magistracy but by the Home Secretary.[48]

Evelegh was critical of this uncertainty, which he claimed left the army to operate in Northern Ireland without discernible constitutional rules to guide it or a clear chain of constitutional responsibility, which in turn caused it to operate with a certain aimlessness and with repeated changes of policy as it tried to respond to each new wave of pressure.[49]

An article in a national newspaper in 1978 said of the commitment of troops to Northern Ireland in 1969:

> they were sent under common law as aid to the civil power, but for the first four years the legal status of the army was a mass of contradictions.[50]

Martial law is always regarded as a policy of last resort, and it is clear constitutional law that it can only be imposed out of necessity and never as a matter of convenience. It follows that once the urgency passes from the situation, military intervention should cease. Clearly, the situation that prevailed in 1969 was one in which there was an urgent need for the intervention of the army to restore law and order to prevent serious disturbances and to preserve life. Callaghan states that when the

army was committed in 1969, it was 'in aid of the civil power', in other words, the government of Northern Ireland and the Royal Ulster Constabulary. The army remained accountable to the Westminster government, and arguably the GOC had been given effective control over the RUC, certainly as far as security was concerned. It is a moot point as to whether an armed bank raid to secure funds for a terrorist organisation was for normal police investigation or a matter of security. The RUC were acknowledged to be under strength, and a situation had been created, unwittingly, by the Westminster government which caused professional uncertainty and potential friction for the newly appointed Chief Constable.

The theory of 'in aid of the civil power' is that it is the Chief Constable who directs his police force and, by agreement with the GOC, secures the co-operation of the military in effecting a policing function by the use of soldiers. What appears to have happened in Northern Ireland is that the GOC had been given the senior role. What was at first a relatively straightforward task of dealing with mob violence and rioting, gradually changed into one of combating organised terrorism. At the same time the army was operating in such a way and at such a level as to allow the RUC to regroup, that is, to retrain and reorganise to enable it to operate effectively in a policing role throughout the Province. The Hunt Committee had, with the best of intentions and for the right 'long-term' reasons, severely curtailed the ability of the RUC to act as an effective force against the ever-increasing terrorist activity that developed after 1969 and was not a major original cause of the troubles.[51] According to Fox, this means that the army in Northern Ireland

> have been used not merely as an aid to the civil authority but, in some respects, in place of the civil authority. They have been, and are being, used not merely to restore order on the streets but also to assist in restoring the authority of the civil power.[52]

As Fox pointed out, no formal proclamation of martial law was made, since this would have meant an abrogation of responsibility by the civil authority. However, even the most casual observer between 1969 and 1973 would have been forgiven for assuming that all the ingredients of such a state were present: internment had been introduced by the Northern

Ireland government, which meant imprisoning people without trial, the suspension of *habeas corpus*, trial without jury in certain cases, and the extensive use by the army of dubiously legal techniques which had been used in relatively remote colonial 'policing actions'. Until the passing of the Northern Ireland (Emergency Provisions) Act 1973,[53] which was one of the first legislative acts taken by the Westminster government after its assumption of direct rule in March 1972, the justification for the activities described was dubiously attributed to the 'Special Powers Act' which has been passed by the Northern Ireland Parliament in 1922.

> Thus, by the enactment of emergency laws, the Government has provided a great deal of the substance of martial law in Northern Ireland whilst avoiding its form. By so doing, the Government has affirmed that the Irish conflict has political, economic, and cultural, as well as military forms, and it recognises that to narrow the conflict to one-dimensional military form would be playing into the hands of the terrorists.[54]

However, the passing of the Northern Ireland (Emergency Provisions) Acts did not really clarify the position of the army in Ulster *vis-à-vis* the police. It has to be remembered that the degree of urgency in committing troops to Northern Ireland came about largely because the RUC was not in a position to maintain basic law and order when the pressures of mob violence were upon them. That 'inability' was recognised, at least by Westminster, as being a relatively long-term disadvantage, and so the support of the army was equally likely to be a long-term necessity. All that these 'Emergency Acts' did was to give the soldiers specific powers to undertake their policing role, and that not very well, if the views of Evelegh are accepted.[55]

Various commentators have pointed to the constitutional incorrectness of central government controlling and directing 'policing operations' by the army. The army is politically subordinate to the government, the police service is not:

> it is worth pointing out that there is an interest conflict in the proposition that the same force can discharge both military and police duties in the same area. It is humanly impossible for the army to build up appropriate police–citizen

> relations of respect, trust and tolerance by day, whilst engaging in guerilla warfare by night. What is remarkable is the extent of British success in blending the two roles, but they seem inherently incompatible.[56]

For a period this appears to have been what the government had tried to do in the form of political expediency, ignoring the finer points of constitutional law. It would be possible to put forward the argument that because the army was supposed to be acting in support of the civil power in Northern Ireland, then the exercise of discretion, which plays such an important part in a policing role, including the choice to ignore some laws and to enforce others, could be extended to it in its 'policing' capacity. But some observers have questioned the validity of the argument that allows discretionary policing to ignore 'no-go' areas for long periods at the behest of central government. Evelegh argued that in their 'policing' role soldiers should be treated in exactly the same way as police officers, that is, as independent officers of the Crown, rather than being subject to the political control of central government. That particular constitutional problem seems to have been ignored and, as things were to develop later, the 'primacy of the police' was both established and accepted by the army.

The annual reports of the Chief Constables from 1970 onwards pay tribute to the generally good relationships that were established between the police and the army from 1969. It would be foolish to suppose that personalities did not play a large part in those relationships, and certainly the Chief Constables were placed in an unusual position in the early years after the commitment of the military. On the one hand, the Chief Constable would have been grateful for the support of the army (normal facilities for mutual aid from mainland forces did not exist before 1969, and even after that date there were difficulties); on the other hand, any chief officer would be anxious to establish the position where it was the police who were responsible both for matters of security and for law and order, aided by the army, rather than being in a partially subordinate role. Furthermore, the history of past police/military co-operation in an internal security situation has been littered with difficulties owing to conflicting views about timescales. Usually the army would favour a speedy, firm and effective solution,

whereas the police attitude would be concerned with the long-term situation and the effect of miliary actions on a community that would have to be policed after the army had left.[57]

In Northern Ireland the army had to suffer the brunt of burgeoning terrorist activity in the early years while struggling under the burden of uncertainty about its powers. Certainly, the lessons learned in other colonial 'police actions' were applied very firmly throughout the early 1970s:

> the army maintained very comprehensive intelligence records on people, houses and vehicles in those areas where the IRA operated. These records were maintained by house visits, or 'head checks', searches and a comprehensive P (personal) check system operating 24 hours a day on the streets and in the pubs. Such measures made the movement of wanted IRA men extremely difficult and the associations revealed by 'sighting reports' led to many arrests, often in red-handed circumstances. Despite these successes in purely operational terms, a very heavy price was paid in relations with the community as a whole, since cause and effect became blurred in the minds of the general public so that the counter-measures were seen as the cause of the troubles rather than the Provisional IRA's actions.[58]

Nevertheless, the statement by the Westminster government on 19 August 1969 concerning the power of the GOC, combined with the temporary inability of the RUC to function as it would have wished, led to a situation in which the army almost took over the role of the police. Clearly, both circumstances and personalities would have had much to do with that development, whether it was intentional or not, and one writer perceived the position of the army in 1975 as follows:

> When the army was brought on to the streets of Derry in August 1969 they were sent there 'in support of the civil power'; that is to say as an auxiliary to the RUC. In theory, therefore, military units in Ulster awaited a request for help from the police before becoming involved in civil disturbances. In practice this strategy became less and less applicable over the following years and the army increasingly came to take over the functions of the police in Northern Ireland. This came about not through any subversive conspiracy on

> the part of the army, but because the police were unable to operate on their own in districts where the IRA were particularly strong. The military machine, being by nature bureaucratic, also took to itself various functions on the periphery of the army's daily duties. Thus soldiers became not only policemen patrolling the streets as the police might do elsewhere in the United Kingdom, but also community relations experts, housing assistants, intelligence men and plain clothes officers. The intelligence corps provided an alternative to the Special Branch. The plain clothes army patrols – in early 1974 assisted by men from units of the 22nd Regiment, Special Air Service based at Hereford – became a kind of unofficial CID, operating quite outside the control of the RUC, under the immediate and exclusive control of the Commander Land Forces at Lisburn. The army ran its own 'black propaganda' operations, forging posters and documents and leaking sometimes untruthful information to journalists about politicians or extremist leaders whom they disliked. There are lawyers in Belfast who would say, with some justification, that a few soldiers have also acted as unofficial judges, juries and executioners, because troops dressed as civilians have been involved in at least half a dozen disturbing but still unexplained shooting incidents. As the arrest operation in north Belfast was to prove again within a week, the army were not obliged to inform the police of their actions in advance. In many ways they no longer supported the civil power because they had themselves become the civil power in Northern Ireland.[59]

Whether or not that description of the army was entirely accurate, the circumstances described fit very closely the pattern of events that occurred in Malaya and Aden, and certainly there were reported occasions when much of the activity described occurred in Northern Ireland. There is no doubt that many people in Ulster saw the army performing the dominant 'policing' role, and some years after the military were committed to regular duty in the Province there were some areas, particularly in the south, where the presence of RUC officers at police stations which were both fortified and defended by the army, was a token.[60]

Nevertheless, some courageous RUC officers insisted on

patrolling with the army and entering areas which were supposed to be 'no-go' to the police, and over the years there have been countless examples of how the army and police have operated together. From 1973 to 1978 there were two regiments of the Royal Military Police (who had the powers of constables in Northern Ireland) in the Province, whose duty was to support the RUC and who carried out joint patrols with police officers and in Special Patrol Groups (SPGs).[61]

In the words of the 1974 Annual Report of the Chief Constable of the RUC:

> The Royal Military Police worked in harmony throughout the year in divisions with the Special Patrol Group. Military police duties have been varied and their efforts in a civil policing role are fully appreciated and merit the gratitude of all for the excellent contribution they have made to peace and security during the year.

12 The Primacy of the Police

It is interesting to note that for a period from 1975 the annual reports of the Chief Constable do not contain much information about the role of the army in Northern Ireland. There are polite acknowledgements of the co-operation given by the military to the RUC, but not much detail. The Annual Report for 1976 is of interest because it gives several clues to a developing police strategy that heralded a transition from a situation where the police, of necessity, had an almost subordinate role to the army, to one where the police took over responsibility for the security of the Province, assisted by the army. This was a position that every senior police officer would have regarded as being correct, even from the outset of the troubles in 1969, but which the army had ignored, partly because of Callaghan's statement on 19 August 1969, and partly because the reality was that the RUC could not maintain the dominant role, for reasons that have been discussed earlier.

In May 1976 a new Chief Constable, Kenneth Newman, who was well-versed in constitutional law, took command of the RUC and announced his objectives for the force. They included 'a basic shift in security strategy' and the intention to deal with terrorism by effective law enforcement executed by highly professional and sophisticated police methods. To assist in realising those objectives, 'The full weight of the army is therefore being deployed in a detailed way which best serves police purposes and is governed by police objectives'.[62]

Emphasis was also being placed on what was described as 'enlightened law enforcement', which was an effort to identify the force as closely and as fully as possible with the community and to be sensitive to its needs and feelings. This community relations philosophy was very much in line with police thinking in Great Britain; it had been recommended by the Hunt Committee and showed a determination on the part of the Chief Constable to establish a 'traditional' police force within the Province as part of the strategy to defeat terrorism and to bring 'normality' to Northern Ireland. It may be assumed that

such a philosophy also demonstrated the new Chief Constable's determination to maintain the professional independence of the police in operational matters.

On 2 July 1976 the Secretary of State for Northern Ireland, Merlyn Rees, moved in Parliament 'That the Northern Ireland (Various Emergency Provisions) (Continuance) Order 1976, a draft of which was laid before the House on 27 May, be approved'.[63] The debate that ensued revealed some interesting information about the changing role of the RUC and endorsed the philosophy that came to be referred to as 'the primacy of the police'.[64]

The Secretary of State made reference to a ministerial committee which had considered law and order within the Province from February 1976 until June of that year, and which had concluded that:

> The only way forward is the way in which law and order has always been established in this country – by the police working to the law and securing its effective administration. Every other way of introducing law and order will always alienate one or other section or group of the community, who will come to feel that they have been unfairly dealt with. Alienation will grow and lawlessness will increase.

The committee had gone on to acknowledge that the police had to secure acceptance and integration in the community and that for some time to come the army would continue to provide 'the basic security buttress'. This was nothing new; it was a rehearsal of what the Hunt Committee had identified as being essential to the RUC, and it was in line with the views of successive Chief Constables, who had learnt the lesson of the importance of good community relations in a hard school. Nevertheless, it was an important turning point for the RUC, which took the force one step nearer to a traditional role despite the continuing need for it to be armed.

The policy of the restoration of the 'primacy of the rule of law' has been reported as being solely due to the then Secretary of State for Northern Ireland, Merlyn Rees, who introduced the change as a result of the recommendations of the working party which he established. The policy then advanced by Rees was endorsed by Cabinet, was introduced in September/

October 1976, and pertains to this day. It was this policy that was projected by the new Chief Constable.[65]

In the foreword to the 1977 Annual Report the Chief Constable was able to comment:

> the policy of restoring primary responsibility for law and order to the RUC, with the army acting in support, increasingly became a visible reality during the year. The accelerating implementation of this policy made a significant impact on the security situation, and this in turn engendered greater confidence in the community and respect for the police.

The Report went on to state that in security matters the changed strategy mentioned in the 1976 Report – the concept of the police assuming the principal role – 'was translated into a positive reality which could be seen in action'.

Indeed, 1977 was acknowledged to be the year when the Royal Ulster Constabulary assumed full responsibility both for law and order and for security within the Province; according to an official document used to brief soldiers being posted to Ulster,

> The current role of the army in Northern Ireland is to support the RUC to defeat terrorism. This represents a change in role from 1969 when it was to assist the civil authorities to restore law and order. In 1977 the RUC, however, assumed formal responsibility for security in the Province.

Clearly, this development must have been a boost to the RUC, which had been working hard to recover both status and morale after the shattering events of 1969, but in the view of some observers the primacy of the police was not well received by some military personnel. According to Boyle, Hadden and Hillyard, after the RUC assumed the dominant role in 1977,

> There is a good deal of frustration in the army over this curtailment of their operations, and their effective subordination to the police in respect of the processes of arrest and prosecution.[66]

It is not clear how widespread this reaction in the army was supposed to be, but it is understandable if military personnel, who had been doing a difficult job for eight years, felt some resentment at seeing their ability to handle that situation

restricted by a force which had hitherto been unable to cope. There is no doubt that there was a degree of suspicion within the army about the partiality of the RUC to the Protestant cause, and it would not be surprising if senior military personnel were resentful of losing the ability to control the destiny of the army within the Province. It is not clear to what extent personality clashes at senior levels in the army and the police contributed to any friction that occurred after the primacy of police had been established, but it would appear that there was conflict. It is also true that the army itself was undergoing a deterioration in its acceptability to both communities in Ulster by this time, and this may have added to any tensions.

By 1979 the apparent rivalry between police and army for the control of security policy was very much a matter for government concern. An article in *The Guardian* drew attention to the deterioration of the army's popularity and the improved standing of the RUC that had come about from its professional development over the previous ten years.[67] The methods used by the army in defeating terrorism raised a lot of questions and, no doubt, caused a degree of resentment within the police, who were trying to defeat terrorism by clear 'law and order' policies, mindful as they were of the long-term effects that any other methods would have on police–public relations. The policing philosophy recommended by Hunt had been designed to ensure the development of a traditional police force that was constitutionally accountable to the law-abiding members of the community. As long as any degree of subordination of the RUC to the army remained, the full development of that ambition was not possible for the police.

In 1980 a new Chief Constable, John Hermon, was appointed to command the Royal Ulster Constabulary and in his first report he emphasised the importance he attached to continuing with the policy outlined by Hunt:

> The RUC for its part is dedicated to assisting the community, to giving it increasing support and to conducting its own affairs in a just and impartial manner. We are committed to being an accountable police force; accountable to the law and to responsible agencies such as your Authority and Her Majesty's Inspectorate of Constabulary. In return, we ask for responsibility by the community and its goodwill and support

> in the belief that the end of terrorism lies in the strength of the bond that exists between the police and the people they serve.

Despite a generous tribute to the co-operation received by the RUC from the army in the 1979 Report, that was the year when matters between police and the military seemed to come to a head, at least in the eyes of central government. In October 1979 Sir Maurice Oldfield took up his appointment as a 'co-ordinator' of security. His arrival on the scene followed shortly after a new Secretary of State for Northern Ireland had taken office, and just before the appointment of both a new Chief Constable and a new GOC(NI). There was no precedent for the creation of a security co-ordinator and, as events turned out, the job seemed to disappear almost as quickly as it arrived. Presumably the co-ordinator was central government's attempt to smooth out any difficulties that remained between the police and the army, but it is difficult to understand why this position was thought to be necessary since any 'co-ordination' that was necessary should have been carried out by the Secretary of State for Northern Ireland.

The police approach to security and to dealing with terrorism was one of 'enlightened law enforcement' as laid down by the Chief Constable in 1976, which meant a skilful, patient, professional and thorough fight against crime which should be dealt with in the normal manner through the courts. The army, on the other hand, was inclined to the view that they should be mounting a campaign against insurgency, as it had done so successfully in Malaya. However, the army also felt that there was little point in achieving any kind of success against terrorism in a particular area if this was not followed by a social and economic effort to improve the underlying causes of trouble. In particular, the army drew attention to the high unemployment, the poverty and the poor housing conditions in Roman Catholic West Belfast. Generally, the army appeared to be undergoing the frustrations that the police service had identified over the years, and to many soldiers there appeared to be a role conflict for the army, which seemed trapped in a 'policing situation' which it no longer controlled and which showed little signs of ending. The toll on the security forces in terms of life and limb, not to mention the emotional trauma, had been

enormous, and the army wanted a new approach to break what they saw as a stalemate, while the police wanted the return to normality to leave them in an acceptable position once the army had withdrawn. The corollary of the primacy of the police as stated in 1977 was, for them, the independence of the police without the army in a policing role at all, although it was recognised that the army presence would be necessary for some time to come.

Following the announcement of the appointment of the security co-ordinator, an article in *The Observer* drew attention to the different attitudes emanating from the police and the army. *The Observer* quoted an RUC spokesman as saying:

> The Chief Constable (has) stated his constitutional position of independence, his freedom from political control and his accountability to the law and to the law alone.[68]

The differences between the army and the RUC were encapsulated in the army's description of Oldfield as a 'head' or 'supremo', whereas the RUC stressed the term 'co-ordinator'. Army commanders were quoted as complaining of 'a shortage of resources, muddled priorities and an unwillingness to plan against terrorism socially and economically', and *The Observer* saw the security co-ordinator's role as being 'to eliminate the present duplication between the army and police and to end rivalries'. The Secretary of State was quoted as saying that 'Sir Maurice would be involved in detailed, painstaking work, designed to eliminate waste of manpower'. No doubt that was a euphemism for the elimination of conflict perceived by central government.

The RUC was anxious to avoid both the actuality and the public perception of their being subordinate to a government appointee so soon after establishing the 'primacy of the police', and it appears that the army was anxious to use the appointment of the security co-ordinator as a public manifestation of the army's view that the anti-terrorist campaign was not being conducted properly.

According to one observer, the army's attitude was not one of strident militarism, but after eleven years in Ulster it was born of 'a frustration that a problem which they believe is susceptible to legal and practical solutions is being perpetuated by political supineness'.[69]

Whatever the frustrations of the army, both constitutional law and public opinion were on the side of traditional policing methods, and any attempt by either military commanders or central government representatives to dominate policing was unwise. Indeed, the statement issued by the Westminster government on 19 August 1969, placing the RUC under the control of the GOC, was a constitutional blunder which may well have contributed to the very friction which Callaghan himself was so anxious to avoid. However, the RUC was quick to see the sense of the philosophies outlined by the Hunt Committee, and a succession of Chief Constables established a community policing policy which was well supported by a police authority which had the financial power and central government backing to ensure that the pre-1969 position would not be repeated and that 'traditional' policing would prevail in the long term.

The impetus that was started by Hunt and reinforced by successive Chief Constables was re-emphasised in November 1980 by the GOC(NI) in an address to the Belfast City Council, when he took the opportunity of issuing a joint statement by himself and the Chief Constable:

> We assure the people of Northern Ireland that we, the professionals, are being provided with all the resources we require to do the job. Together we have the men, we have the equipment, we have the strength and we have the will to see an end to the current violence. But the responsible support of the total law-abiding community will be necessary if we are to succeed.[70]

Perhaps the friction that existed between the police and the army was a natural consequence of years of difficulty dealing with an apparently insoluble problem. Although the army came to recognise that it was present to aid the RUC and that it had a 'policing' role to perform as part of its anti-terrorist function, it may have been difficult for it to acknowledge that its role in its normal relationship with central government was to contain a situation of violent opposition to the government in order to allow a political solution to be reached. In this regard it had both a supportive and a differing role from the police, whose concerns were independent of party politics and should not have been influenced by them.

Whatever the difficulties for the security forces between 1977 and 1980, the friction seems to have died away thereafter; official documents contain acknowledgements of mutual respect and co-operation between police and the army, and the post of security co-ordinator lapsed. The Annual Report of the Chief Constable in 1982 is typical of the statements of co-operation and the development of a policing ethos that was entirely in keeping with the attitudes that prevailed in Great Britain. After recognising the RUC's indebtedness to the army and acknowledging the 'warm comradeship' between them, the following statement appeared:

> as the RUC gains in strength and professionalism and as the level of terrorist violence is more and more diminished, so is the future need for military support reduced.

In reality it was to be another 14 years before the terrorist threat was reduced to a level whereby the military presence could be significantly reduced and it would appear that successive Chief Constables had followed a policy of increasing police professionalism in the anticipation and hope that the RUC alone would eventually be able to sustain law and order.

The Current Role of the Army

In August 1994 the PIRA announced a ceasefire which lasted for over 17 months; this line was followed by the Loyalist paramilitaries a few weeks later.

In principle, the role of the military did not change as a result of the ceasefires, although tactics and the number of soldiers committed on the streets altered. The army remained in support of the RUC and, where appropriate, units were tasked by RUC commanders.

In practice, after the ceasefire the RUC had been able to operate effectively and to respond quickly to public calls for assistance without the assistance of military support on every occasion. As a consequence, military patrolling decreased by 75 per cent across the province and in Belfast, Londonderry and in many provincial towns and villages routine military patrols have ceased to operate. In the few remaining areas where the military did patrol, they did so with a police officer accompanying them and in charge of operations.

The reduction in the demand for military resources allowed two major army units to be relocated from Northern Ireland and two major army bases to be vacated.

On 9 February 1996 the IRA detonated a large bomb at South Quay in London's dockland and declared that the cease-fire had ended. As a result more troops were posted to Northern Ireland and greater security returned to the Province with army patrols in support of the RUC being resumed. At the time of writing, Loyalist paramilitaries are threatening a return to violence.

13 The Police Authority for Northern Ireland (PANI)

The constitution of the Police Authority was laid down in Schedule 1 of the Police Act (Northern Ireland) 1970, as follows:

> The Authority consists of a chairman who is paid such remuneration and other allowances (including allowances by way of superannuation) as the Secretary of State, with the approval of the Treasury, may determine; and a vice-chairman and no fewer than fourteen nor more than twenty members appointed by the Secretary of State, who may be paid such allowances as he may determine, again with the approval of the Treasury. The powers of appointment must be exercised by the Secretary of State so as to secure, as far as practicable, membership of the Police Authority that is representative of the community in Northern Ireland; and as far as practicable, members appointed must include persons representative of the interests of:
>
> (i) local authorities and other public bodies (including universities and other institutions of higher education);
> (ii) the legal profession;
> (iii) trade unions;
> (iv) agriculture, industry and commerce;
> (v) voluntary organisations having as their principal object, or one of their principal objects, the welfare of children or young persons;
>
> and a person appointed to represent the Secretary of State.

The Secretary of State must consult such organisations and persons as appear to him to represent the respective interests above before making such appointments. Membership of the Police Authority is for a term of three years, but members may

be re-appointed. The Secretary of State may fill casual vacancies that occur, and a person appointed to such a vacant post shall be eligible to serve the residue of the term of the member in whose place he is appointed and may be subject to reappointment at the end of that term.

Members may resign their appointments by giving notice to the Secretary of State, and if, in the opinion of the Secretary of State, a member becomes unfit to continue or incapable of performing his duties, then the Secretary of State may terminate his membership. In February 1996, the Chairman and one other member were dismissed from office by the Secretary of State. Certain conditions of fitness to continue in office are laid down. The quorum for a meeting of the Police Authority is eight but the Authority may constitute committees of such five or more of its members as the Authority may appoint and may delegate to a committee so constituted any of the functions of the Authority.

Section 3 of the Act provides for the appointment of a chief administrative officer to be secretary of the Police Authority, and it allows the Authority to make arrangements for administrative, secretarial or other assistance to be provided for the Authority from the civil service.

The creation of the Police Authority by the 1970 Act created in Northern Ireland a modified tripartite structure of control similar to that which was evident in Great Britain and which was clearly established and recommended by the Royal Commission Report on Police in 1962. The merit of this system was that it was said to create a system of 'checks and balances' that prevented overweening power being vested in any one element and the possibility of political interference threatening police independence and impartiality.

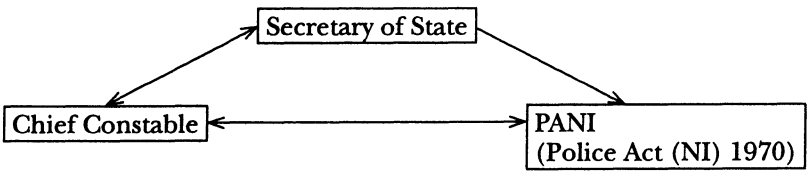

Figure 13.1 PANI – the Constitutional Framework

RESPONSIBILITIES OF THE THREE MEMBERS OF THE TRIPARTITE STRUCTURE

PANI

The primary duty of the Police Authority is 'to secure the maintenance of an adequate and efficient police force in Northern Ireland' (S1 Police Act (NI) 1970).

- It is also responsible for appointing the Chief Police Officers (Chief Constable, Deputy Chief Constable, Assistant Chief Constables) subject to the approval of Secretary of State.
- It obtains resources from the Secretary of State and plays a direct part in the management with regard to buildings, vehicles and equipment.
- It employs civilian staff.
- It has a statutory responsibility to make arrangements in consultation with the Chief Constable for consulting the community about policing matters (PACE (NI) Order 1989).
- It receives an annual report from the Chief Constable on policing and may call for other reports in order to fulfil its functions as an authority subject to certain conditions.
- It has an obligation to keep itself informed as to the manner in which complaints against police are dealt with by the Chief Constable.
- It is the discipline authority for Chief Police Officers.

Chief Constable

The Chief Constable is charged with the direction and control of the force (Police Act (NI) 1970 S6(2)).

He has a duty to act impartially and independently in carrying out his functions and is answerable to the other parts of the tripartite structure for the efficient enforcement of the criminal law. The Chief Constable is operationally independent and cannot be given instructions by either the Secretary of State or PANI about police operations. He advises the Secretary of State on security policy, and is accountable to the Police Authority for the efficient and proper use of resources. As part of his duties, he must supply PANI with an annual report about policing in

Northern Ireland. Finally, he is the discipline authority for all officers below Chief Officer rank.

Secretary of State

The Secretary of State is responsible and accountable to Parliament for overseeing the statutory framework for the delivery of policing in Northern Ireland. He is responsible for 100 per cent funding of the RUC. The Secretary of State also has a special responsibility for security in the Province and he establishes the overall policy for tackling terrorism which is implemented by the RUC supported by the army.

By statute the Secretary of State currently approves the level of expenditure on policing: he authorises establishment/workforce levels and makes regulations concerning pay and conditions of service and the use of equipment. His approval is required for the appointment of Chief Police Officers by PANI. Currently he has responsibilities for disciplinary appeals.

THE ACTIVITIES OF PANI

Since its inception on 29 June 1970 the Police Authority has produced reports on its activities and progress. In recent times it has been PANI's practice to issue a triennial report, the most recent of which was published in 1994, and all of these documents make interesting and informative reading. The reports outline the committee structure approach that has been adopted and its relationship with the Chief Constable/RUC and the Authority's management of resources. In addition to its statutory functions PANI has identified three main executive functions:

(i) *The Community Role*
To act as a conduit between the community and the police service.

(ii) *Management of Resources*
PANI's main activities in the field of corporate planning and financial arrangements are:
— the exercise of financial and budgetary control over police service expenditure.

— the development in conjunction with the RUC of strategic and corporate planning systems which it claims 'enables the Authority to make a full contribution of the determination of aims, objectives and priorities for the police service'.
— the promotion of sound financial management practices, including the development and implementation in conjunction with the RUC, of a computerised financial and management accounting information system for the police service.
— planning for greater delegation of responsibility for the management of the various support services to the RUC.

(iii) *Support Services*
The provision of buildings, transport, information technology, telecommunications, catering and supplies and civilian support staff, as well as a wide range of ancillary services.

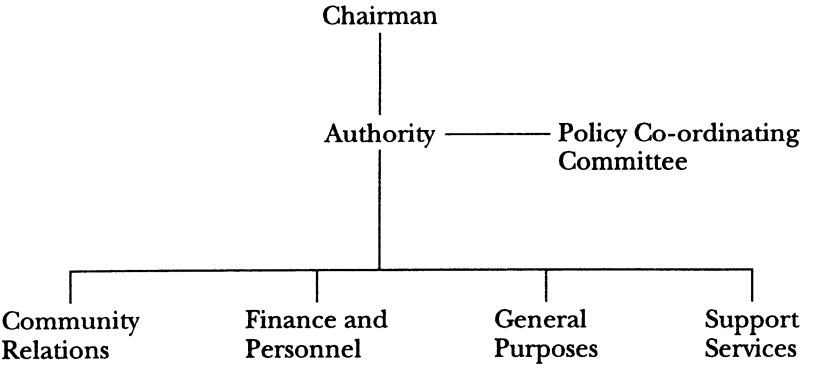

Figure 13.2 The Committee Structure of PANI

The Authority states that it takes an active liaison role with the Secretary of State and the Chief Constable on a wide range of issues of common concern. It operates through a series of committees which report to the full Authority at its monthly meetings.

> Underlying all of this (activity) is the Authority's concern to ensure that the RUC is acceptable and effective and is seen as such by the people of Northern Ireland.

Just how difficult it is for PANI to achieve its objectives is outlined in the outgoing Chairman's foreword to the 1994 Triennial Report in which he pays tribute to all who have served on PANI over the years.

> There are few public posts which require such commitment. Let us not forget that two members of the Authority were murdered by terrorists; others have been victims of bomb attacks and intimidation, while all have resisted the threat that hangs over them.

The point is also made that suppliers and contractors have been subjected to intimidation and threats and that 25 people have been murdered, whilst others have been injured, as a direct result of the terrorist campaign to disrupt supplies and the building programme.

The Report emphasises that the most direct threat is faced by the RUC officers who have paid dearly for policing a divided society with 296 officers murdered and over 7000 injured (at the time the Report went to press).

Clearly the army has also suffered grievous losses during the 25 years that it has been present in the Province in support of the RUC.

PROPOSALS FOR THE REFORM OF POLICING STRUCTURES

In 1992 the Home Secretary announced the setting up of the Inquiry into Police Responsibilities and Rewards under the Chairmanship of Sir Patrick Sheehy. The Report was published in 1993 and at the same time the government issued a White Paper on proposals for Police Reform (Cm. 2281) relating to England and Wales. Both of these reports had implications for the whole of the British policing model and presaged significant changes in the tripartite structure of control.

Early in 1994 the Northern Ireland Office issued a consultation document entitled *Policing in the Community* in which the policing structures in Northern Ireland were examined and suggestions proffered for changes which it said were designed to strengthen the framework for policing in the Province and at the same time improve the effectiveness of the police service

while ensuring that the RUC is properly accountable to the whole community. This paper propounded the government view that certain deficiencies in the structure had become apparent over the years, such that it had become difficult for PANI to operate in the way that Hunt had intended; that it should be:

> some body representative of the community as a whole, to which he [the Chief Constable] can be accountable, and through which the wishes and fears of the community can be expressed.

The NIO document was closely aligned to the White Paper on Police Reform proposals for England and Wales which led to the Police and Magistrates' Courts Act 1994 and which expressed the firmly held government view that it needed to take legislative action to enhance the partnership concept between police and the community in line with the principles published in the Citizens' Charter. The aim was said to be that such reform would

> ensure that the police respond better to the needs and wishes of the citizens; and that people are supportive of the police in their efforts to defend the values of our society.

The document was published after consultation with PANI and the Chief Constable.

THE NIO VIEW OF THE NEED FOR CHANGE

After 30 years of the model based on the Police Act 1964 as recommended by the Royal Commission Report of 1962, the government had concluded that the roles and responsibilities of the three parties in England and Wales – Secretary of State, police authority and chief constable – needed to be redefined and updated. That perception seems to have been more an assertion by central government rather than on the basis of any publicly disclosed consultation; nevertheless, the situation in 1994 was markedly different from that which had prevailed in 1964 and there is no doubt that the 1964 Act was widely seen to be in need of improvement.

The NIO took the view that after 25 years of a hybrid model, hastily designed in 1969 on predictable recommendations by

Hunt, PANI suffered from a number of shortcomings, some of which were similar to those perceived to exist in England and Wales, but some unique to Northern Ireland. The difficulties peculiar to the Province were thought to be:

- the funding arrangements
- the absence of a significant history of local involvement in policing
- the divided community
- the special demands arising from the security situation.

Some other particular deficiencies in the tripartite system of control were identified as follows:

PANI

The Authority has a statutory responsibility in consultation with the Chief Constable for making arrangements to obtain views of local people about policing (PACE (NI) Order 1989), but presently there is no statutory mechanism to ensure that those views are reflected in the strategic direction of the force.

It does not raise revenue or have ultimate control over the provision of resources for the police and is not in a position to exercise its authority through decisions about the level of resources for the police.

The NIO paper asserts that other ways must be found to monitor and hold police accountable, because some important groups perceive PANI to be ineffective and therefore are unwilling to accept appointment to the Authority. The consequence of this unwillingness is that PANI cannot claim, and is not seen, to be supported by all sections of the community.

Chief Constable

The difficulties with regard to the Chief Constable were seen to be:

- the fact that he is not the employer or manager of civilian support staff who are employed by PANI;
- that he is not responsible for either providing or managing the wide range of support services on which his operational effectiveness depends;

- that the present system of management creates duplication of effort and unnecessary bureaucracy.

Secretary of State

There is a lack of clarity about his responsibilities for policing and the 1970 Police Act does not reflect the present range of responsibilities.

Overall, the NIO document perceived the combination of problems thus:

> Responsibilities for police finance, for security and for community issues are dispersed between the three elements of the structure. This entanglement of responsibilities leads to uncertain lines of accountability. It can also lead to slow decision making and a wasteful duplication of resources.

Clearly the document *Policing in the Community* was the NIO endorsement of central government's drive for reform and must have been prepared as a result of the White Paper for England and Wales. However, there is little doubt that PANI had suffered a crisis of identity and effectiveness over the years as well as failing fully to live up to the vision of Hunt. It found itself in a position where it was 'unloved' by some and squeezed out of the tripartite equation both by the urgency of the security situation, which was controlled and operated by the other two partners, and by its own lack of credibility in the eyes of some important groupings in the Province.

PANI was clearly unhappy about its ability to represent the interests of all sections of the Northern Ireland community. It had produced a very interesting and revealing, if somewhat contradictory, document about its own perceptions of itself in November 1993, mainly prompted by the indications of government thinking in the White Paper on Police Reform in England and Wales.

THE PANI RESPONSE TO THE HOME OFFICE PAPER

The Police Authority took cognizance of the White Paper on Police Reform in England and Wales largely because it anticipated proposals for reform that would emanate from the Northern

Ireland Office (see above – *Policing in the Community*). The main thrust of the paper was to the effect that the tripartite structure for the governance of police in Northern Ireland was 'unworkable in the absence of clear direction as to how it should operate'.

This opinion was reinforced in the strongest possible terms by the statement that for the relationship to operate efficiently there needed to be 'goodwill, common sense, mutual understanding and trust' which, in the Authority's view, could not be guaranteed. In the absence of these qualities in the relationship, combined with the vagueness in the legislation, '*there had been a profound and damaging effect on relationships*'.

From the perspective of PANI some of the major causes of confusion were reported to be:

(a) The Authority is responsible for budget setting but important elements of expenditure are subject to central control.
(b) The Chief Constable has sole discretion over the way in which he directs and controls his resources; the Authority is accountable for police expenditure but has no control over the way in which police resources are deployed.
(c) The Authority is responsible for making arrangements to obtain the views of local people about policing but is unable to ensure that these views are reflected in the strategic direction of the RUC.
(d) The Authority's responsibility to act as the body through which the police should be accountable to the community conflicts with its responsibility to provide the police with support services.
(e) The Authority's support service responsibilities involve the Authority in detailed management issues which arguably should be the responsibility of the Chief Constable.
(f) The Authority's financial management and support service responsibilities make it difficult for the RUC to devolve management responsibility within the force.

Experience, based on an assessment of the previous 24 years, had persuaded PANI that in order for it to be effective in the way envisaged by Hunt it needed to be dynamic not only in its role of representing community interests in policing but also in ensuring that, so far as possible in the peculiar circumstances

of Northern Ireland, it should ensure a civilian policing ethos whereby the RUC was able to be 'servants of the community rather than defenders of the State'.

PANI recognised very clearly that the absence of an elected body at which policing matters could be considered sharpened the need for a meaningful arrangement whereby 'all sections of the community can have a say in how they are policed'. In order to achieve that position, PANI argued the need for it to be a strong, effective and actively representative body. It also endorsed the need for the Chief Constable to have independent direction and control of his force, free from any form of political interference and control.

Notwithstanding the difficulties which it had experienced as an effective Authority and the peculiar circumstances prevailing in the Province which prevented the creation of a mainly elected body, PANI was adamant about its actual ability to represent all of the people of Northern Ireland:

> . . . the present Authority *is* representative of Northern Ireland society. Members come from all six counties . . . and are drawn from public life, industry, commerce and the voluntary sector. Both communities are represented with 60% having a perceived Protestant and 40% perceived Roman Catholic background. The pattern compares very favourably with the model advocated in the Home Office White Paper. However, improvement is necessary.

The difference between reality and perception was vitally important in PANI's assessment.

Insofar as the community gave any consideration to the Police Authority at all, PANI took the view that it was not perceived to be representative of community interests in policing matters throughout the wider community. This in turn raised other problems associated with PANI's image:

(a) The threat against members of the Authority is high. Two members had been murdered in the 1970s, one had resigned after PIRA threats and the personal security measures that members are advised to take have been a disincentive to membership.

The result of this is that much of the Authority's work

has been largely anonymous, behind the scenes and without the consequent publicity which would enable the community to make a more accurate judgement of the effectiveness or otherwise of the Authority.

(b) The Authority lacked credibility because of the refusal of the Social and Democratic Labour Party and the Northern Ireland Committee of the Irish Congress of Trade Unions to put forward representatives as potential members. Other bodies, such as the Committee on the Administration of Justice, were publicly critical of the inability of PANI to exercise the kinds of controls over the RUC which it judged to be necessary (see later).

These organisations shared the opinion that the Authority was unable to render the RUC accountable to the community in a meaningful way.

(c) The problems above were compounded in PANI's opinion by its conflicting roles (see above) and that it was widely seen as a body which 'provides for and supports the RUC rather than a body which monitors the performance of the police on behalf of the community'.

Despite its protestations that it 'is representative of Northern Ireland society' PANI was clearly uncomfortable about a number of issues touching on its fundamental role and its representative constitution. It would seem that PANI wanted to move from its statutory role of *provider/adviser* to one of *monitor/director* (see later). Also, in order to dispel what it saw as misinformed public opinion about its integrity as a body representative of all sections of the community in Northern Ireland, PANI expressed the very firm opinion that the method of selecting its members was fundamentally flawed on the basis that, subject to certain conditions, all members are selected by the Secretary of State.

Full recognition and acknowledgement was given to the reasons why direct election to the Authority was not possible in the foreseeable future, but in order to make the Authority more obviously independent of central government PANI suggested:

- a review and expansion of the list of bodies from which the membership must be drawn; *and*
- allowing the nominated bodies to nominate their own representatives directly to the Authority.

Obviously PANI was uncomfortable with the situation in which it found itself and appeared to have taken the view that it is very much the junior partner in the tripartite structure when its firm belief was that that position was neither envisaged by Hunt nor compatible with the proposals for reform expounded in the Home Office White Paper. Its poor public image, combined with its own frustrations about its role and its inability to have a substantial and enforceable influence on the Chief Constable's policing policies, led PANI to make the following observations about clarifying the alleged ambiguities of function between itself and the Chief Constable:

(a) PANI should be empowered to *compel* the Chief Constable to take account of its views on operational policing with appropriate sanctions for failure.
(b) The Chief Constable should not be able to deny the Police Authority access to any report that it calls for to enable it to fulfil its role.
(c) When the law (as proposed in the Home Office White Paper on Reform) introduces the concept of an annual policing plan for a police area, there should be a clear indication as to who should have the final say about the content (Chief Constable or PANI).

Again the Authority stressed its commitment to the direction and control of the RUC remaining with the Chief Constable and claimed that throughout its history it had sought to maintain and protect the Chief Constable's independence in his operational direction and control of the RUC; but the 1993 document signalled a major change in thinking and the expressions of profound dissatisfaction with the Authority's lack of power and the failure of two of the parties (Chief Constable and PANI) to secure a large measure of agreement has resulted in a call for empowerment of the Police Authority.

PANI appeared to demand the ability for it to be able to influence the Chief Constable's operational policies to such a degree that failure to comply with its wishes would result in sanctions. The Chief Constable's independent direction and control of the RUC was to be a shadow of the position enshrined in the Royal Commission Report and the successive Police Acts in the United Kingdom and was to be operable only within clearly defined

parameters laid down by PANI; even the Secretary of State was to be sidelined in his involvement in the selection of Authority members. This thinking was a major proposal for change in the constitutional independence of the office of constable and would have, if implemented, serious implications for traditional independence and impartiality; it would also change the system of police governance from the tripartite model to a *linear structure* in which PANI saw itself as the lead player.

THE AUTHORITY'S PROPOSALS FOR REFORM

As a starting point in its proposals for reform PANI outlined the following principles:

(a) The main aim of the Police Service in Northern Ireland should be as in Great Britain to:
- fight and prevent crime;
- uphold the law;
- bring to justice those who break the law;
- protect, help and reassure the community; and
- in meeting these aims, to provide good value for money.

(b) PANI recognises that the 'special and different circumstances' in Northern Ireland make it essential that the exercise of police powers is, and is seen to be, separate from political authority but in the absence of a local administration there should be a *strong* Police Authority.

(c) The RUC should be representative of the community as a whole and should be widely accepted as a body which is in tune with the community, belongs to the community and draws its strength and support from the community. It should be impartial in every sense and be seen to operate in such a way that it is fully accountable to the public for its actions.

(d) The tripartite structure of the Secretary of State, PANI and the Chief Constable providing a system of checks and balances between the powers of the three parties should be maintained.

(e) PANI should be representative of the community as a whole and should be a body to which the Chief Constable

is accountable in every sense and through which the wishes and fears of the community can be expressed.

(f) 'The citizens of Northern Ireland, through PANI, should have considerable influence over matters of general policing, including for example the way in which the Chief Constable settles general policies in regard to law enforcement, the disposition of the force, the concentration of resources on any particular type of crime or concern, the manner in which he handles political demonstrations or processions and allocates and instructs police officers when preventing breaches of the peace arising from industrial disputes, the methods he employs in dealing with outbreaks of violence or of resistance to authority and his policy on enforcing the traffic laws.' Within this context the Chief Constable should remain independent and immune from outside influence and pressure in regard to such matters as enforcement of the criminal law in particular cases.

(g) PANI should be involved and seen to be involved in the formulation of overall policing policy in conjunction with the Chief Constable and within any framework defined by the Secretary of State.

(h) The roles, responsibilities and accountability of the three parties within the tripartite structure should be precisely defined in statute.

Proposals for Defining the Responsibilities of the Members of the Tripartite Structure

Secretary of State
His main responsibilities would include:

- promulgation of overall policy and strategy on policing, security and law and order, including laying down key objectives on an annual basis;
- the approval of Policing Plans agreed by PANI in discussion with the Chief Constable;
- the provision of the Police Grant to support the achievement of the agreed strategy; and
- monitoring police performance, including receipt of reports from HMIC.

PANI
Its main responsibilities would include:

- the preparation and publication, in conjunction with the Chief Constable, of overall policing strategies and annual, costed policing plans including the measurement of police achievement against agreed objectives;
- providing the police with the financial resources necessary to achieve agreed objectives and accountable to the Secretary of State, in conjunction with the Chief Constable, for the propriety and cost effectiveness of police expenditure;
- identifying the community's policing needs and reflecting these to the Chief Constable;
- monitoring, through the Authority's own contacts with the community and a network of Community Police Liaison Committees, the community's satisfaction with the police;
- producing local strategies for involving the police in crime prevention and the fight against crime;
- appointing and disciplining chief officers and keeping itself informed as to the manner in which complaints against police are dealt with.

Chief Constable
His main responsibilities would include:

- the independent direction and control of the police;
- the effective utilisation and management of all resources in accordance with agreed plans and strategies;
- the preparation, in consultation with PANI, of overall policing strategies and annual, costed policing plans; and
- accounting to PANI for the performance of the police in accordance with the policing objectives agreed between the three parties.

The conclusion of the 1993 document produced by PANI before the publication of *Policing in the Community* was a reiteration of its perceived need for a rationalisation of the tripartite structure in support of government thinking as enunciated in the Home Office White Paper:

> This should lead to an increase in support for the police and in the long term the result should be a more effective,

accountable and acceptable police service for all the people of Northern Ireland.

In March 1994 the Police Authority issued a very brief statement welcoming the Northern Ireland Office consultation paper *Policing in the Community*. The Chairman of PANI said:

> As it is proposed that the Authority will have responsibilities with regard to establishing and monitoring community objectives and policing priorities, it is vitally important that watertight mechanisms to achieve this are eventually reflected in new legislation.
>
> It will be important that the breadth of the Authority interest is properly reflected in statute.

OTHER PERCEPTIONS OF PANI AND THE NEED FOR REFORM

PANI's view that it was perceived as a non-representative body was shared by important organisations and was reflected in comments by the Northern Ireland Committee of the Irish Congress of Trade Unions and the Committee on the Administration of Justice in Northern Ireland (the Northern Ireland Civil Liberties Council).

Originally the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC) had supplied two members to PANI when it was established in 1970; however, by 1980 a decision of the Northern Ireland Committee's Annual Conference led to its withdrawal from PANI. Broadly, the reason given was the question of the accountability of the RUC to the Authority and particularly that of the Chief Constable. In short, because of its concerns about a number of issues, including the handling of complaints against police, the allegations of ill-treatment of suspects at the Castlereagh holding centre, and the perceived lack of co-operation between the Chief Constable and PANI on these and other matters, the Northern Ireland Committee felt that it was unable to make a meaningful contribution to PANI. NIC also felt that PANI failed to represent the aspirations of Hunt.

Between 1980 and 1994 a number of approaches were received by the Northern Ireland Committee for it to submit

further nominations for membership of PANI but on each occasion, despite acknowledging that many of its original misgivings had been addressed, it felt unable to comply with the requests because the Northern Ireland Committee's view of how the RUC should be accountable to PANI differed substantially from the reality of the situation.

In response to the NIO document *Policing in the Community*, the Northern Ireland Committee of the Irish Congress of Trade Unions submitted its views on reform issues and endorsed the continuance of the tripartite structure of control of policing but with a much more clearly defined and strengthened role for PANI. The Committee indicated that PANI 'should have sufficient authority to ensure that its views are fully taken into account'. It also expressed the opinion that legislation should lay down a statutory responsibility of the Chief Constable to the Authority and that the mechanism of accountability should be clearly defined. The general thrust of the Committee's argument was very much in accordance with the views expressed by PANI and clearly there was a belief that the system of accountability was too weak, leaving PANI in an untenable position compared with what had been intended by Hunt in 1969.

The Northern Ireland Committee of the Irish Congress of Trade Unions felt that the remit of PANI had been too severely limited, even in the Northern Ireland Office proposals, and expressed the view that there should be no distinction between issues of security and community policing. Indeed, the Committee found it difficult to accept that any policing issue should be outwith PANI's consideration and in particular it could not see how a wide variety of issues such as

- joint army/police patrolling
- searches of people (often young mobs) on the street
- search and arrest operations
- policing of funerals
- rostering/re-rostering and policing of marches and rallies
- repeated questioning of individuals, leading to allegations of harassment
- fatal and serious injuries caused by shootings which create public controversy

could be divorced from community concern.

Whilst the Northern Ireland Committee had been at pains

to recognise and acknowledge the dedication and commitment to public service of the RUC, it nevertheless remained unconvinced that PANI was an effective vehicle for representing the interests of the community in policing matters and adhered to the view that a cogent way of registering this viewpoint was by continuing to abstain from membership.

COMMITTEE ON THE ADMINISTRATION OF JUSTICE

In 1988 the Northern Ireland Committee on the Administration of Justice issued a pamphlet entitled *Police Accountability in Northern Ireland* in which it identified what it perceived to be shortcomings in policing arrangements in Northern Ireland and in particular that PANI was not fulfilling the role clearly enunciated by Hunt – 'expressing the concerns and needs of the community to the police and holding them accountable for ensuring that those concerns were implemented into policing policies'.

The Committee on the Administration of Justice were of the opinion that the line with regard to the tripartite structure of police control was ill defined and that the respective roles of the three members were not clear. The view of the Committee on the Administration of Justice both in the 1988 pamphlet and in the response to the Northern Ireland Office document *Policing in the Community* was that the Authority should have a much more positive and influential role in ensuring that community concerns about policing were properly addressed. Indeed, the Committee on the Administration of Justice expressed the opinion that PANI should take a more prominent role than the Secretary of State in deciding on the importance of policy issues on the basis that it was the body charged with representing the views of the community to the Chief Constable.

A major source of concern for the Committee on the Administration of Justice was the fact that PANI appeared to be excluded entirely from any say in security policy objectives and related matters. A consistent opinion expressed was that such detailed matters as 'the employment of informers, the use of lethal force and plastic bullets, the policing of funerals, the controlling of marches, the setting up of vehicle check points, the closing of roads, the deployment of undercover officers, the

treatment of detainees, the recording of interviews or the handling of security information' should all be within the purview of PANI, which should be empowered to have a substantial 'say' in policies concerning these sensitive and life-threatening issues. Anything less would mean that the Authority was a cosmetic 'veneer of accountability'.

THE SDLP VIEW ON POLICE ACCOUNTABILITY

The SDLP view of the accountability of the RUC and its relationship with PANI seems to focus more closely than some others on the political structure of the Province and the basic divisions between the Nationalist and the Unionist communities. In the view of the SDLP, its perception of the RUC is that policing and political problems are inextricably intertwined and interlocked; it is not possible to solve the one problem without solving the other.

Whilst paying tribute to the dedication and public service of the RUC during the years of conflict, the SDLP recognised the Nationalist viewpoint that they were uncomfortable with the RUC's role in upholding controversial emergency legislation which alienated the force from one-third of the community because of its 'Unionist ethos'.

The SDLP took the view that PANI was a weak or non-effective organisation that was unable to hold the Chief Constable to account in a meaningful way, and that the government's proposals for reform of the tripartite model in its document *Policing in the Community* were peripheral. In particular, the SDLP felt that it had no reason to change its long-standing attitude to PANI so long as it continued to have little or no influence over policing decisions which had a major impact on the Nationalist community.

The party line on policing issues was stated (1995) to be that minor adjustments to the status quo of accountability were unacceptable and that:

> The only lasting situation is to provide a police service with which the Nationalist community can readily identify and in which they can feel a sense of ownership.

In emphasising what the party thought to be the essence of community–police co-operation, the deputy leader, Seamus Mallon, said:

> Support to be meaningful means people from mainstream Nationalist areas joining a police service with a sense of pride, not guilt, and without censure from their community. It means serving and protecting the community as an indigenous part of that community and in turn being protected by it; it means the active involvement of Nationalists in a way which has not been possible since Northern Ireland was created. It is the granting of allegiance for the first time, to a system of policing with which they can identify politically and ideologically.

The SDLP put forward proposals for regional policing on a multi-tiered basis which would transform the RUC from what the party perceived it to be – a State controlled paramilitary organisation accountable to central government in Westminster, rather than to local communities, with the Chief Constable asserting an 'operational independence' on an unprecedented scale with regard to his relationship to PANI. Without a political restructuring of Northern Ireland it is probable that the SDLP will maintain a stance of non-involvement in PANI.

SINN FEIN

The view of Sinn Fein appears to be an uncompromising commitment to the Nationalist view that the policing of the minority Nationalist community by the majority Unionist community is unacceptable and the only solution possible is the disbandment of the RUC and its replacement by four regional forces.

The Sinn Fein view was summarised in the Report of the Opsahl Commission as follows:

> Unless genuine representatives of the nationalist community are given an executive role in policing, nationalists cannot take responsibility for it. It is unreasonable to expect a police force made up largely of members of one community to be acceptable to the other community in a divided society like Northern Ireland.[71]

For Sinn Fein the RUC was too representative of the Unionist ethos and PANI was a toothless body that could not assert genuine cross-community feeling to either central government or the RUC in a worthwhile way; the force had too many of the trappings of Unionism for it to be acceptable and, in particular, the name *Royal* Ulster Constabulary was unacceptable.

14 Developments after 1994

The publication of the Triennial Report (1991–4) by PANI coincided with the end of a fairly long term of office for the outgoing Chairman, who took the opportunity to declare personal views in the report on the way forward. Clearly his thinking was influenced by the proposals for reform in England and Wales combined with a frustration born out of the necessarily low profile of the Authority during the previous 24 years and his belief that PANI was deprived of any way in which it could ensure that its views would be reflected in policing policy.

At the same time reform of the police service was very much on the political agenda, as were significant initiatives to bring an end to the armed conflict in the Province. In August 1994 the PIRA announced a cessation of violence designed to bring about a political rather than a physical resolution to the conflict. In October of that year, loyalist paramilitary organisations followed suit, and so began a fragile peace which, if successful, would signal profound changes in the life of Northern Ireland. Clearly policing issues would be very high on any new political agenda if peace prevailed.

Out of a confidence stemming from the 'ceasefire', the new Chairman of PANI took the view that 1995 was an opportune time to raise the public profile of the Authority and to embark upon a public consultation exercise in which it sought to encourage as many members of a divided community as possible to submit their views about how the police could best serve them in the future. The consultation was a twofold process in which invitations were extended for written submissions to be sent to the Authority's Community Consultation Unit, after which they would be analysed and the results publicly debated with a copy of any conclusions being forwarded to the Secretary of State and the Chief Constable.

Coincidentally, PANI conducted a series of explanatory meetings throughout the Province in which the purpose of the exercise was explained in the hope that more informed written submissions would be forthcoming; in the event over 8000 responses were submitted to PANI.

'POLICE AND ACCOUNTABILITY'

In August 1995 the new Chairman of PANI gave an inaugural lecture entitled 'Police and Accountability' during a conference at University College, Galway, on 'Policing the Peace'. It was an interesting address because it sought to represent the views of PANI on the future of policing in Northern Ireland and the role that the Authority hoped it might undertake. In a clear statement, the Chairman said,

> Most fundamentally the new policing order must continue to leave the Chief Constable and the men and women under his command, operationally independent of the direct political control and direction of elected politicians; it must leave them free and able to pursue their professional duties impartially, even handedly, independently and neutrally; and it must leave the lines of accountability in the tripartite structure clarified, strengthened and enshrined in legislation.

At the same time the Chairman asserted the need for a 'strong, vigorous, independent police authority . . . to whom the Chief Constable could be properly accountable'.

Whilst deprecating any move to an actual or publicly perceived political domination of policing, the Chairman was anxious that PANI would have some teeth in terms of representing the wider interests of the community and that there should be clear and unequivocal legislation which ensured PANI power to effectively regulate the relationship between police and the community at large.

Specifically the Chairman envisaged laws which would provide the Authority with *powers* (as opposed to influence) to render the police accountable to the community which from time to time would necessitate

- the need to question the policy of the Chief Constable and aspects of the way in which he and his colleagues carry out their duties and responsibilities.

There was an acknowledgement that the relationship between PANI and the Chief Constable is bound to contain tension. It was advised that the relationship should be:

- comfortable but not cosy;
- at arm's length but not distant;

- constructive and based on discussion about policies *and not about personalities.*

The Chairman called for the Authority to be given powers to

> evaluate, approve and audit RUC expenditure and hold the organisation to account for its performance standards in terms of how well it does its job: reducing crime levels; detecting criminals and other offenders; making the roads safer and providing the communities with help and assistance whether in emergencies or otherwise.

An integral part of the exercise of such powers would be the introduction of locally based and costed policing plans and their inclusion in an overall policing strategy. Specifically PANI wanted to follow the idea of costed policing plans similar to those in England and Wales under the Police and Magistrates' Courts Act, but the Authority wanted to go much further by having supporting plans for each police sub-division based upon consultation with local people.

It would seem that PANI envisaged three plans:

- a three to five year strategic policing plan prepared by the Chief Constable which would comprise objectives agreed with the Secretary of State and PANI and approved by PANI;
- an annual costed policing plan;
- sub-divisional costed policing plans.

All three plans would be published and PANI would monitor and review the performance of the RUC, giving an account of the extent to which targets and objectives had been met in the Authority's annual report.

PANI appeared to be determined that police resources should be agreed only after a detailed assessment of society's policing needs. Such needs would be reviewed and monitored by PANI so that the RUC could prepare a flexible but properly constructed strategy.

Hand in hand with this thrust to a community-based strategic plan PANI was anxious to ensure community representation by building upon the network of Community Police Liaison Committees (CPLCs) such that every police sub-division would have a committee which could be consulted about the sub-divisional policing plan. Eventually it was hoped to establish a

CPLC steering group comprising representatives from every such committee. Such a steering group would have more members than PANI, neither of which group is made up of elected members.

Clearly substantial changes were taking place within a political and social environment that had been in a state of extreme uncertainty for over a quarter of a century.

On the government's part the active thrust towards peace and stability could be seen in several political initiatives. In December 1993 the 'Downing Street Declaration' outlined a framework agreed between the British and Irish governments designed to secure peace in Northern Ireland and rejection of violence. The Declaration was founded upon the basic principles of democracy and consent and was a reassertion that the future of Northern Ireland would be resolved by the wishes of the majority of people living there.

Following upon the joint declaration a document entitled *Frameworks for the Future* was published on 22 February 1995 and was intended to serve as 'an aid to further discussion and negotiation between the parties' for the purpose of achieving an overall political settlement which could achieve a new beginning in Northern Ireland and its Southern neighbour. The document contained two sets of proposals:

(a) *Framework for Accountable Government,* which described the UK government's understanding of potentially acceptable elements for new institutions in Northern Ireland *which would improve local accountability* as part of a comprehensive settlement.

(b) *Framework for Agreement,* which described a shared understanding between the British and Irish governments on how political arrangements between North and South might be made to attract wide public support.

The documents envisaged and proposed a Northern Ireland Assembly designed to give people more control over local matters; they also proposed ways in which greater co-operation between North and South could be secured in a structured way which would bring together members of the Northern Ireland Assembly and the Irish Parliament for the mutual benefit of people on both sides of the border.

Within this template for reform the matter of policing and

security within Northern Ireland was given prominent consideration and in that regard it was stated at paragraphs 13 and 14 of the *Frameworks for the Future* document that:

> Government wish to see the maintenance and development of a police service in Northern Ireland that is effective, operationally independent and accountable to the community which it serves. It must be capable of maintaining law and order and of responding to any renewed terrorist threat should that prove necessary.

Subject to these premises the government stated that it was open to the consideration of proposals designed to enhance the extent to which the community at large in Northern Ireland can identify with and give full support to the police service.

It is obvious that in any transition from years of conflict to the provision of an unarmed and traditional police service, a great deal of caution is necessary. While the possibility of renewed terrorist activity remains, the RUC needs to be in a position to respond in a positive and effective way to combat that threat. This means that the active support of the armed services remains necessary and the emergency legislation remains in place, with the government retaining direct responsibility for security matters. As the threat diminishes so corresponding changes can be expected to take place. For example, if an Assembly is in existence then there is an increased likelihood that the responsibility for policing matters would pass from the Secretary of State for Northern Ireland to an appropriate committee of that Assembly.

At this point, it seems that there is some confusion in the document. It suggests that matters such as funding and the setting and monitoring of police objectives could be undertaken by an Assembly committee; if that is so, where will PANI stand in the tripartite structure?

In June 1995 the Secretary of State for Northern Ireland addressed the Police Federation Conference and outlined the government's intentions with regard to Security and Policing issues. Naturally the long-term aim was a return to normal policing as envisaged by the Hunt Report in 1969, and in order to achieve that position the Secretary of State stated that any changes had to be founded upon professional assessments and the community's views of its policing needs and priorities, all

of which had to be assessed. Clearly a review of the force structure, systems, strategy and the size of the workforce would be needed but the fundamental and essential requirement was seen to be for 'an impartial, efficient and effective police service, responsive to community needs and free of partisan control, serving all the people of Northern Ireland; a service that is part of the society drawn from and supported by it'.

The Secretary of State outlined a process of reflection and consultation which involved the tripartite process:

- PANI's community consultation exercise;
- an internal review of the RUC by the acting Deputy Chief Constable;
- central government policy for reform as reflected in the document *Policing in the Community*

and concluded his address by stressing the central government's continuing commitment to certain basic principles:

- retention of the tripartite structure;
- safeguarding the operational independence of police;
- strengthening accountability mechanisms;
- encouraging police/community links;
- improvement in value for money by giving the Chief Constable greater freedom to manage and deploy policing resources.

The address included a declaration of the government's intentions to publish more detailed proposals for necessary reforms in the autumn of 1995. The indications appeared to be that the government was substantially committed to the types of reform that had taken place in England and Wales as a result of the Police and Magistrates' Courts Act 1994.

15 *Foundations for Policing* (Cm 3249): The White Paper on Police Structures in Northern Ireland

On 16 October 1995, during the second Standing Committee debate on the Police (Amendment) Order (Northern Ireland) 1995, Sir John Wheeler, Minister of State at the Northern Ireland Office, stated the Government's intention of publishing a White Paper on proposals for the reform of police structures in Northern Ireland before the end of the year; this intention was repeated on 7 December when he was reported to have said, 'The Government will be publishing a White Paper soon.' It was apparent that the Government proposals for new structures would follow closely on *Policing in the Community* and would have very strong similarities to those established in England and Wales under the Police and Magistrates' Courts Act 1994.

The Government objectives for the various policing reforms were declared to be:

- to enhance *community confidence* in and *support* for the police;
- to improve efficiency, economy and effectiveness; and
- to give focus and direction to the debate on policing and build consensus.

These objectives were declared in the context of the Government's perception of the problems with the existing policing structures, such as:

- the confused roles of the three key players – Secretary of State, PANI and the Chief Constable;
- the uncertain lines of accountability;
- the financial management structures which restrict the freedom of the Chief Constable;

- PANI's lack of influence over policing strategy;
- unnecessary bureaucracy which inhibits good management and adversely affects efficiency and cost effectiveness.

The Government was satisfied that in the light of the consultation which had taken place as a result of the publishing of *Policing in the Community,* consensus had been identified on:

- the need for reform;
- the continuance of the tripartite structure;
- the importance of impartiality, integrity, accountability and the operational independence of the police.

Two clear priorities were said to have emerged – *accountability* and *operational independence*; the Government committed itself to them but acknowledged that the RUC must always be responsible to the whole community.

The Government's commitment to a White Paper on police reform was made in the knowledge of PANI's extensive community consultation exercise and its pending report and the review of operational policing by the Deputy Chief Constable who was not due to report until the summer of 1996.

After some considerable delay, the White Paper was published on 1 May 1996 in the certain knowledge that its proposals, based substantially on the English and Welsh model created under the Police and Magistrates' Courts Act 1994, were likely to be subjected to severe criticism and the fact that it would be unlikely that it would be possible to bring forward primary legislation giving effect to the proposals before the next General Election. Indeed, the White Paper was published more as a further discussion document than as a specific proposal for substantive legislation; the document contained the acknowledgement that any future legislation would need to be:

> informed by the forthcoming discussions on policing in all party political negotiations, to take place on an open agenda, and would be shaped to reflect any agreements which emerge.

The central thrust of the proposals in the White Paper was said to be the reform of the tripartite structure in order to achieve greater efficiency and effectiveness in policing but it was stressed that any reforms had to be considered in the light

of 'the prevailing political and security environment'. No finite period for consultation was set but it was reiterated that the White Paper contained foundation proposals for reform that would have to be modelled in the light of any agreement that might emerge from the ongoing political negotiations; to that extent it was unclear whether the foundations were built on rock or sand.

The underlying Key Objective to the proposals was said to be the Government's determination to provide a public service which

(i) is fair, efficient, effective and impartial;
(ii) is accountable to the community;
(iii) is flexible, responsive and capable of adapting to new circumstances; and so
(iv) commands widespread confidence and support within the community.

All of these reform proposals have to be seen in the context of major political initiatives to secure peace in Northern Ireland after over 25 years of terrorism and the more-than-fragile hope that peace was more likely to be capable of achievement in 1996 than at any other time since the beginning of the troubles. To that extent, the importance of an acceptable police service in a divided community could not be more important to democracy and social stability.

The results of PANI's Community Consultation exercise had been published on 26 March 1996 and PANI had stated that it looked forward with interest to the Secretary of State's proposals for the reform of the tripartite structure. What had emerged from that consultation was a clear support for a police force free from any political or partisan control and which was truly accountable to the community.

RESPONSIBILITIES OF THE PARTNERS IN ACCOUNTABILITY

The reasons for reform of the tripartite structure and the Government proposals were almost an exact copy of those given for England and Wales and produced in the Police and

Magistrates' Courts Act 1994. The respective partnership functions that were proposed were:

A. The Secretary of State

He would retain overall responsibility for law and order with specific responsibility for security policy and be responsible for maintaining the statutory framework for policing, including the police complaints system.

- *Objectives, Planning and Reporting*

The Secretary of State will:

(a) set, in conjunction with the Chief Constable and PANI, the Government's *objectives* and *performance indicators* for the police service;
(b) endorse the *annual policing plan*, once approved by PANI;
(c) review progress towards objectives;
(d) ensure adequate inspection and audit of the police service (HMIC and Audit Commission);
(e) require PANI or the Chief Constable to take appropriate action in the event of an adverse report by HMIC;
(f) call for *ad hoc* reports from Chief Constable and PANI as necessary.

- *Finance*

The Secretary of State will:

(a) determine and provide (100 per cent) the Police Grant; fund PANI and other police related functions such as Common Police Services, etc;
(b) monitor financial spend against budget;
(c) issue financial instructions and guidance.

- *Personnel*

The Secretary of State will:

(a) appoint the membership of PANI;
(b) approve the appointment of the Chief Constable and Chief Police Officers, and if appropriate, require PANI to call upon them to retire in the interests of efficiency or effectiveness;

(c) appoint Members of the Independent Commission for Police Complaints.

- *Policing Policy*

The Secretary of State will issue guidance on policing matters and on best policing practice.

B. The Chief Constable

The Chief Constable will retain direction and control of the police force and civilian personnel and will advise the Secretary of State on security issues.

In addition he will be required to:

(a) have regard to the objectives set by the Secretary of State and PANI in his direction and control of the force and in the preparation of his strategic and annual policing plans;
(b) consult, as appropriate, with Government, PANI and other criminal justice agencies in the development and implementation of policing plans; and
(c) consult the Secretary of State and have regard to his views on matters of national security, *or where there is a public interest.*

- *Objectives, Planning and Reporting*

The Chief Constable will:

(a) prepare and publish three-to-five-year strategic policing plans reflecting the stated objectives of the Secretary of State and PANI;
(b) prepare annual policing plans having regard to the set objectives and submit them for approval by PANI and the Secretary of State;
(c) produce and publish an Annual Report to the Secretary of State and PANI on policing; and
(d) produce regular reports on progress towards targets and objectives and *ad hoc* reports (in accordance with the provisions of Section 15 Police Act (NI) 1970) when required to do so.

- *Finance*

The Chief Constable will be responsible for managing *all* policing resources within his delegated authority. He will be required to exercise his financial management responsibilities subject to the instructions laid down by the Secretary of State and PANI and in so doing he will:

(a) consult PANI and have regard to its views on any potentially controversial issues;
(b) provide detailed reports to PANI and the Secretary of State on financial expenditure; and
(c) notify and explain to PANI any significant changes which impact on the annual policing plan.

C. Police Authority for Northern Ireland (PANI)

The major responsibilities of PANI will be to:

(a) provide an interface between the community and the police;
(b) oversee police service delivery;
(c) hold the Chief Constable to account for the policing service provided; and thus
(d) *secure the maintenance of an effective and efficient police service.*

- *Objectives, Planning and Reporting*

PANI will have a responsibility systematically to obtain the views of the community and make these known to the Chief Constable and the Secretary of State, and:

(a) in consultation with the Secretary of State, the Chief Constable and the Community, to establish objectives for the provision of police services;
(b) assess, approve and publish (after endorsement by Secretary of State) the Chief Constable's annual policing plans;
(c) review and report on progress on the achievement of policing performance against objectives and targets outlined in annual policing plans; and
(b) publish an Annual Report.

- *Finance*

PANI will take delivery of the Police Grant but delegate day-to-day management to the Chief Constable; it will hold the

Chief Constable to account by monitoring financial expenditure against agreed objectives.

- *Personnel*

PANI will be responsible for appointing, setting the pay and disciplining Chief Officers of Police subject to the approval of the Secretary of State.

It will have power to call upon the Chief Constable to retire in the interests of efficiency and effectiveness subject to approval by the Secretary of State.

- *Other*

PANI will be a consultee on:

(a) public order;
(b) police buildings; and
(c) potentially controversial purchases of equipment, goods or services.

PANI will also be responsible for:

(a) maintaining a network of statutory-based Community Police Liaison Committees (CPLCs) and facilitating initiatives to prevent crime;
(b) maintaining a *lay visitor* scheme to prisoners in police custody;
(c) keeping itself informed of the operation of the police complaints system;
(d) in consultation with the Secretary of State and Chief Constable, sponsoring and publishing research into policing issues.

COMPOSITION AND METHOD OF APPOINTMENT OF PANI

In response to various observations that PANI was not truly representative of all the people of Northern Ireland and criticisms of the way in which members were appointed to the Authority by PANI itself, the White Paper proposed a long-term strategy for appointing members to the Authority.

The White Paper acknowledged the recommendations of

the Nolan Committee on Standards in Public Life and stated that appointments would, in future, be made in a more open manner but would still be the responsibility of the Secretary of State. The White Paper did not define the way in which future members would be appointed but invited comments and proposals and suggested that the appointments might be advertised and then applicants might be subject to scrutiny by an 'advisory panel' which would include an element independent of Government and which would make recommendations to the Secretary of State.

The Government acknowledged calls for a body which would be 'more representative and effective' and recognised the importance of ensuring the independence of PANI to call the police to account and to ensure that the force was free from political or partisan control. There was also a commitment to a greater flexibility over the number of members and the range of interests which they must represent.

DUTIES OF POLICE OFFICERS

In addition to the proposed reforms to the tripartite structure, the Government expressed the view that all police officers acting under the direction and control of the Chief Constable should be explicitly required by legislation to carry out their duties and uphold the law:

- impartially, without favour or affection, malice or ill will, without regard to status, gender, race, culture and tradition, religious beliefs, political beliefs or aspirations, and with an understanding of differing views;
- treating all persons with courtesy, consideration and dignity, recognising the individuality and value of every person; and
- for the benefit of the community as a whole.

Given the existence of a discipline code, the RUC Statement of Purpose and Values, which broadly corresponds with that in England and Wales, and the code of professional policing ethics, it is difficult to see what this proposed statutory obligation would achieve that an appropriate oath of office and comprehensive Force Orders could not. The White Paper proposals do little to add to the required professionalism of policing and

do not define the duties of a constable; they are likely to be seen as suggesting to serving officers that they have failed to achieve the specified standards in the past, and by members of some groups in Northern Ireland as little more than a cosmetic exercise.

CONCLUSIONS

To all intents and purposes the proposed reforms outlined above are very similar to those brought about by the Police and Magistrates' Courts Act 1994 in England and Wales. It is difficult to see how the possibility of a 'linear' model of accountability could satisfy the wishes of a divided community; the White Paper was bound to provoke substantial criticisms from both communities. Also it could be said that the proposals lacked conviction in that far from being a firm statement of the Government's intention to introduce legislation in a specific manner, it was really only another open-ended discussion document that had to be shaped by ongoing political developments. The timing of the White Paper – delayed as it was to coincide with the forum elections which were proposed for the end of May and presumably with the intention of influencing debate on the future of policing in Northern Ireland – was questionable. It could also be said that for the Government to await consensus before acting on its declared intention to reform the tripartite structure would be to invite unreasonable delay. Some form of leadership is better than procrastination but a hybrid White Paper which was, in effect, a duplication of the position in England and Wales, was hardly bold and dynamic leadership. The question has to be asked why it was necessary to copy the England and Wales model, as opposed to that which prevailed in Scotland, or why a completely new model suitable to the special needs of the Province could not have been developed.

The direct line of influence and control from the Secretary of State to the Chief Constable will not go unnoticed in the Nationalist community and it is relatively simple to imagine how that model could be criticised by those who for the last twenty-five years have been so hostile to and suspicious of what they have perceived to be Unionist-favouring policies.

16 Conclusions

Very few organisations could claim to be in the enviable position of not needing to review and reform procedures and certainly the police service had recognised that fact and had pursued a vigorous approach to reform during the 1980s and 1990s (nowadays most forces maintain a programme of constant analysis and review). Indeed the then Home Secretary, Kenneth Clarke, had acknowledged that the service had been very active in trying to set its own house in order in terms of efficiency, effectiveness and reform, when he announced the setting up of the Committee of Inquiry under the Chairmanship of Sir Patrick Sheehy. It also became public knowledge, during the period in which the Police and Magistrates' Courts Act 1994 was being debated, that many of the inhibitions on good and efficient management of police resources were as a result of regulations and Home Office requirements rather than poor administration by senior officers. Regardless of the reasons, there is no doubt that the police service in the 1980s and 1990s throughout the UK was in need of thoroughgoing reform in order to prepare it for a much greater and more demanding policing role into the twenty-first century and to equip itself properly in terms of managing advances in technology. There was also a need to re-examine the accountability of the service in light of the increased focus of attention on policing and in order to ensure that the service was 'transparent' in its dealings with those whom it was in place to serve.

Unfortunately the performance of the tripartite structure identified by the Royal Commission Report in 1962 had failed, in some cases, to live up to the expectations of the Commissioners and the true status of police accountability had been called into question throughout the turbulent decade of the 1980s. The Royal Commission had recognised and acknowledged the desirability of encouraging and enabling 'the rate-payer through his elected representatives [to have] a voice in the scale and cost of the policing of the community in which he lives'. It had also expressed the need to achieve a system of control of the police which 'in no way interfered with their legal obligations, independent status and wide ranging discretion while at the

same time requiring them to act reasonably in the public interest, *taking account* of legitimate public opinion and *giving account* for the way in which they carried out their duties on behalf of their local communities'.

The thrust for reform within the police and other public sector organisations came at a time when 'law and order' and, implicitly, policing had become a very potent political issue. It would be foolish to pretend that 'law and order' had not been a political matter prior to 1979, but in broad terms, little national political mileage had been attached to what had been, in many ways, a cross-party issue. Opinions often differed about some specifics of law and order but, prior to the 1979 election, it is not thought that the simplistic and inaccurate equation of 'more police officers on the streets bring about a reduction in crime' had been exploited so specifically in terms of party political advantage. Throughout the 1980s and 1990s the 'law and order' issue became a frequently debated matter and it may be thought that when the fallacy of simplistic and vote-catching statements had been exposed then the spotlight was moved to the broader issue of the efficiency of the police service. If crime continued to rise, despite greater public expenditure on the police, it followed logically that it was necessary to examine the way in which the police approached their tasks to ensure that they were cost-effective.

No exception could be taken if such an examination were to be conducted in an independent and business-like manner, and the gentle persuasion to review and reform undertaken by the Home Office after 1983 could not be seriously faulted. However, problems appear to have arisen across the whole police spectrum when precipitate and pedantic reforms were introduced in the form of an assertive (rather than evidential) White Paper and a hasty and ill-informed Inquiry Report by the Sheehy Committee. To some officers the Home Office enthusiasm for current and fashionable management dogma in the public service was anathema. Specifically, the major cause for concern within the police service was that a constitutional change was occurring without adequate public consultation and with little apparent thought to the long-term consequences of such change.

Notwithstanding the intention of a clear public accountability under the tripartite system of control proposed by the Royal Commission, the reality was that procedural and operational

deficiencies were seen to exist during the course of the 30 years after the Police Act 1964. Yet these deficiencies were often as a result of a failure to implement the measures provided under the system, rather than because of any inherent failings within the model.

For various reasons there were differences between the tripartite models adopted in different parts of the UK, but, generally speaking, those models were thought to comply broadly with the intentions outlined by the Royal Commission Report in 1962. After 1994 the tripartite model and the consequences of change in police control were far more significant and gave rise to three very different methods of accountability within the United Kingdom.

In England and Wales it is arguable that the tripartite system has been changed to a *linear* system of very powerful central government influence; in Scotland the police authority model has been altered in that while the authorities comprise solely elected representatives, the proliferation of unitary authorities under local government reform has encouraged a parochialism that may be difficult to co-ordinate and which may have a direct impact upon a chief constable's operational independence.

In Northern Ireland, at a time when a great opportunity to create a new model of police accountability has presented itself, the indications are that there will be instead a slavish adherence to the English model which may do little to encourage a divided community to believe that it will have the desired level of influence over policing matters.

In its support of the tripartite model of accountability the police associations in the UK made much of the importance of *local* considerations in police/community relations, perhaps to their ultimate disadvantage. Whilst there is no doubt that much policing is local in nature and most people who give the matter any consideration see it in local terms, there is a huge national and international dimension about crime which requires much more than a parochial approach to law enforcement and criminal interdiction. Clearly the police service has recognised and acted upon the need to have a greater inter-agency co-operation and declarations of intent by the Home Secretary in 1995 in the political forum of his party conference indicated that the government too had recognised belatedly the need for policing to be seen in national and international terms.

Much was made in the debate about the reform of the police during the early 1990s, of the need to consult with the public and to take account of public expectations in terms of identifying policing priorities and setting out objectives. Naturally this thinking was in line with the Royal Commission acknowledgement of the need to give the rate-payer a say in how his taxes were spent on policing. Unfortunately simplistic notions of policing exist in the public mind and in order for the public to be able to make an informed and accurate comment on priorities it is necessary for it to have a much better knowledge of what policing is all about and what the realistic options are before arriving at a 'prioritised' assessment of need.

In theory the public representatives on the police authorities are the ones who should have an in-depth knowledge of the issues and under the 1964 model the authority's function was to offer 'advice and guidance' to the Chief Constable whose judgement in operational matters was final.

The indication over 30 years of police authorities under the 1964 model was that some authorities were not fully 'informed', were content to place their trust in the chief constable's judgement, and did little to question or contribute to police priorities; others attempted party political manipulation through financial and procedural tactics; and still others found that they had little time to fulfil their role properly because of other pressures in local authority business.

Under the 1994 model it seems that, in England and Wales at least, there has been a much greater move to central government influence over local forces and the activities of the police authorities. It is perhaps too soon to judge whether or not the potential for centralisation will become a reality, but the fact that such influence is possible under an arguably less democratic model has given some observers cause for concern.

A few more 'straws in the wind' have exacerbated that concern; for example, the transition of the MOD Police to agency status may well commend itself to the Home Office as a line to be followed with other forces, with chief constables doubling up as chief executives and eventually being replaced by administrators with no policing background. The unwillingness of the Home Secretary to establish anything other than an ostensible police authority in the form of a non-executive police committee for the Metropolitan Police appears to indicate a lack of

commitment to public accountability in London; and the apparent failure of the Northern Ireland Office to seize the opportunity for extensive reform in Northern Ireland by establishing a truly representative body of opinion to express the wishes of a divided community was faint hearted and disappointing.

Nevertheless, the police service in the United Kingdom has always prided itself on its ability to make things work despite any difficulties that may be apparent. There is little doubt that officers will continue to serve the public in an open, even-handed and impartial way and that vocation will continue to represent an important aspect of the British policing model in the foreseeable future.

The fact that some politicians have failed to recognise the importance of an independent and impartial police service to demonstrate that it is not subject to political interference and government direction in operational matters is disappointing, but so far the indications are that there is a genuine commitment to providing a good and efficient police service and it seems likely that there will always be differences of opinion about the best way of achieving that efficiency whilst maintaining impartiality.

On a day-to-day basis constitutional matters may seem to be esoteric and rarefied issues but the recent past contains examples of the damage that raw party politics can bring into operational policing and any government would be wise to avoid seeking direction and control and should actively encourage public understanding of the issues and a vigorous system of accountability as advocated by the Royal Commission in 1962.

In terms of establishing a credible model of reform under the Police and Magistrates' Courts Act 1994, central government has arguably failed both the public and the police service.

It is a matter of grave concern to the police service that policing has become a major item on the various party political agendas with politicians seeking advantage at the expense of cross-party unity in maintaining an independent and impartial organisation which is properly accountable in its public service.

All major reforms of the police before 1994 were the product of either a Royal Commission Report or a Departmental Committee under which objective recommendations had been forthcoming. The current reforms of the police have occurred without proper public consultation and as a result of the dog-

matic views of central government; they do not represent cross-party views, are not universally accepted as intellectually sound and are not the result of adequate and empirical research. That being so, this does not augur well for the stability and well-being of the police service. Furthermore, the fact that significant constitutional uncertainty has arisen as a result of the models produced in England and Wales, and which are likely to appear in Northern Ireland, gives rise to the probability of further political wrangling in the near future over what the proper model of police accountability should be.

The call for a Royal Commission on Policing was answered by central government with a barely credible White Paper and a flawed Inquiry into pay and conditions of service.

The impartiality of policing is so fundamental to the well-being of any democracy that it would be a wise government which recognised the damage that has been done both to the service and its public image by piecemeal and ill-conceived reforms and responded by acknowledging the error and appointing a Royal Commission to look into the role of police in the twenty-first century and how true and satisfactory accountability can be achieved.

Failure to conduct a thorough review of the governance of the police will result in a less credible service and an international reputation for quality may be sacrificed on the altar of party political dogma. A commitment to excellence and consensus will eliminate the continuation of raw party politics and will ensure the preservation of a vital public interest. The need for a Royal Commission of Inquiry into the role, accountability and constitutional position of the police is as vital now as when first called for by the service in the 1980s. The present position brought about by the Police and Magistrates' Courts Act 1994 is unsatisfactory, does not have the confidence of the police service and has failed to take account of modern public opinion. Most crucially, it is not based upon any informed assessment of policing and social needs in the early decades of the next century.

The logical and credible conclusion must be for the government to recognise the need for a proper and comprehensive assessment of all aspects of policing so that the service can advance into the next century confident of a clear constitutional mandate and proper channels of accountability as a vital,

politically independent and impartial public service. Perception is as important as reality and there is a clear danger that the present perception of recent police reforms is that they are piecemeal, fail to clarify the police role and raise the suspicion of undue centralisation of power and influence in the hands of central government. To face the future confidently, British policing must remain of the people, not of the State.

Notes

1. *Final Report of the Royal Commission on the Police,* 1962 (Cmnd 1728).
2. Cmnd 1728, para. 9.
3. See *Ridge v Baldwin* [1964] AC 40.
4. *The Allegation of Assault on John Waters* (Cmnd 718) (HMSO, April 1959).
5. See Geoffrey Marshall, *Police and Government* (Methuen, 1965), p. 14.
6. 613 *HC Deb* 5s, Cols 1239–1303.
7. *Attorney General for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 477.
8. 1930 2 KB 364.
9. See note 7.
10. 1910 1 SLT 164.
11. R.C. Min. of Evidence, 11–27, Appendix 11, pp. 92–101.
12. R.C. Min. of Evidence, pp. 1330–62.
13. Cmnd 1728, para. 166.
14. Sir William Kerr Fraser PUS, Scottish Office James Smart Lecture 1981.
15. *R v Commr of Police* ex parte *Blackburn* [1968] 1 ALL ER 763.
16. Lord Scarman Report, Cmnd 8427.
17. See note 15.
18. Sir Philip Knights, 'Ultimate Command – The Responsibilities of Chief Constables in the 1980s', *Police Journal,* 1981, pp. 381 *et seq.*
19. See Oliver, *Police, Government and Accountability* (Macmillan 1987), pp. 210 *et seq.*
20. See Oliver, *Police, Government and Accountability,* pp. 50 *et seq.*
21. *Police Reform – The Government's Proposals for the Police Service in England and Wales,* Cm 2281, June 1993.
22. James Smart Lecture 1980.
23. M. Brogden, *The Police: Autonomy and Consent* (Academic Press, 1982), p. 111.
24. 330 *Parl. Deb.* 3rd s.c. 1163.
25. *Report of the Advisory Committee on Police in Northern Ireland,* Cmnd 535, October 1969, para. 8.
26. *Disturbances in Northern Ireland,* report of the Commission appointed by the Governor of Northern Ireland, Cmnd 532, para. 7 (the Cameron Report).
27. James Callaghan, *A House Divided* (Collins, 1973). See also Brian Faulkner, *Memoirs of a Statesman* (Weidenfeld & Nicolson, 1978), Chap. 3.
28. The Cameron Report, para. 10.
29. The Cameron Report, para. 12.
30. *Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland,* Cmnd 7497, 1979.
31. *Report of the Advisory Committee on Police in Northern Ireland,* October 1969, Cmnd 535, para. 13.

32. Cmnd 566, para. 3:10. *Violence and Disturbances in Northern Ireland, 1969.* Report of the Tribunal of Inquiry by Mr Justice Scarman.
33. Cmnd 535.
34. Callaghan, *A House Divided*, p. 50.
35. Officers who served with the Inspector General, with whom I discussed this point, were adamant that the IG was not a 'dominant' man and that this was a wrong impression.
36. See Callaghan, *A House Divided*, at pp. 55–6. See also The Cameron Report, pp. 102–4, for a description of the relationship between the government of Northern Ireland and the RUC.
37. Constabulary Act (Northern Ireland) 1922 Section 1(3).
38. The recruited strength of the RUC as at 31 July 1969 was 3052; the authorised established level was 3500. In addition, the Ulster Special Constabulary, which had been mobilised for full-time duty with the RUC, had 425 men.
39. For an account of this, see Callaghan, *A House Divided.* Sir Arthur Young, former Commissioner of the City of London Police, was appointed and took up his post on 10 October 1969. See also Brian Faulkner, *Memoirs of a Statesman* (Weidenfeld & Nicolson, 1978), p. 70.
40. Cmnd 535, para. 81.
41. See Dervla Murphy, *A Place Apart* (Murray, 1978) and Michael Farrell, *Arming the Protestants* (Pluto Press, 1983).
42. Callaghan, *A House Divided.*
43. Cmnd 4154, August 1969; also quoted in Robin Evelegh, *Peace-Keeping in a Democratic Society: The Lessons of Northern Ireland*, p. 16 (Hurst, 1978). See also Brigadier C.T. Shortis, *Public Order in the 80s* (Seaford House Papers, 1981); Faulkner, *Memoirs of a Statesman*, p. 64, where the author describes a conversation in which the then Prime Minister of Northern Ireland claimed that he had secured the agreement of the Inspector General to the arrangement whereby the GOC should be supreme security commander; and Merlyn Rees, *Northern Ireland: a Personal Perspective* (Methuen, 1985).
44. Callaghan, *A House Divided*, p. 143. See also Desmond Hamill, *Pig in the Middle: The Army in Northern Ireland 1969–1984* (Methuen, 1985), pp. 39 and 40; and Faulkner, *Memoirs of a Statesman*, p. 70.
45. Observers acknowledge that this was out of date and seriously in need of revision. Part V of the ninth edition was issued in 1968 and does not appear to have been amended since that time. See Evelegh, *Peace-Keeping in a Democratic Society*; G. Marshall, 'The Armed Forces and Industrial Disputes in the UK', published in *Armed Forces and Society*, February 1979; and Shortis, *Public Order in the 80s.*
46. QR for the Army 1961, paragraphs J1164a and amendment 92 of March 1975.
47. Shortis, *Public Order in the 80s.*
48. *Hansard*, August 1976, Col. 616.
49. Evelegh, *Peace-Keeping in a Democratic Society*, p. 3.
50. *The Guardian*, 20 March 1978. Criticism of the 'unconstitutional' role of the army in the province has been voiced on many occasions, but particular reference should be made to an article by Professor Claire

Palley, 'No-Go Area Between the Cabinet and the Army', *The Times*, 13 February 1973. See also 'The Dangers of Using the Army in Law and Order Situations', a speech by Enoch Powell, MP, to the Bexleyheath Political Forum, 4 October 1977; Captain K.O. Fox, 'Public Order: the Law and the Military', *Army Quarterly*, April 1974; 'The Place of the British Army in Public Order', a paper by General Sir Edwin Bramall delivered to the Royal Society for the Encouragement of Arts, Manufactures and Commerce, on 6 February 1980. See also Desmond Hamill, *Pig in the Middle*, p. 96.

John Hume, MP, challenged the powers of the army after he had been charged on 18 August 1971 with failing to disperse (with others) when ordered so to do by an army officer purporting to be acting under the Special Powers Act. Hume had been convicted at the magistrates' court and appealed on the grounds that powers attributed to the army under the Special Powers Act were unconstitutional. In the High Court at Belfast, Lowry LCJ upheld the appeal and quashed the conviction. Reference was made to the Government of Ireland Act 1920, which imposed a restriction on Stormont from giving legal powers to the army.

51. The Cameron Report, Cmnd 532.
52. Fox, 'Public Order: the Law and the Military', p. 304.
53. The Northern Ireland (Emergency Provisions) Act 1973 was based on recommendations by Lord Diplock (Cmnd 5185) in his Report to the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland. The Act gave soldiers broadly the same powers as those under the 1922 Act, but the precise circumstances in which they could be used were clearly defined. There were further Acts in 1975 and 1978, the latter being a consolidating Act which was itself considered in a report by Sir George Baker (Cmnd 9222) published in April 1984.
54. Fox, 'Public Order'.
55. Evelegh, *Peace-Keeping in a Democratic Society.*
56. Patrick O'Farrell, 'The British Army in Northern Ireland', *Pacific Defence Reporter*, December/January 1975.
57. See Brigadier G.L.C. Cooper, 'Some Aspects of Conflict in Ulster', April 1973. Extract from BAR, No. 43.
58. Shortis, *Public Order in the 80s.* See also A.F.N. Clarke, *Contact* (Secker & Warburg, 1983), for one man's view of the army's role in search situations; K. Boyle *et al.*, *Law and State: The Case of Northern Ireland* (Martin Robertson, 1978), who quote figures supplied by the Northern Ireland Information Service that in 1973 the army searched 75 000 houses; and Boyle *et al.*, *Ten Years on in Northern Ireland* (The Cobden Trust, 1980). For an account of one difficult 'police action' involving the army, see Lord Widgery's Report of the Tribunal appointed to inquire into the events on Sunday 30 January 1972, the so-called 'Bloody Sunday', which led to the loss of life in connection with the procession on that day.
59. R. Fisk, *The Point of No Return* (Times Books, 1975), p. 101.
60. See Clarke, *Contact.* With regard to terrorist attacks, see *Annual Report*

of Chief Constable 1971: 'All this meant an end to our open stations and, in some areas, the saloon car. Instead we had to resort to high security fences, floodlighting, barbed-wire, sand-bagging and "hard-skinned" vehicles with crews wearing protective garments' (p. ix).

61. See Colonel Jerome J. Haggerty, 'The War that Never Stopped Bleeding', *Military Review*, Vol. 49, 1979. See also *Chief Constable's Annual Report 1973*, pp. 12 and 13, which also speaks of good police/army liaison; and *Chief Constable's Annual Report 1974*, p. 15, which gives details of the work of the army/police SPG throughout 1974.
62. *Annual Report 1976*, p. viii. On 1 May 1976 the Senior Deputy Chief Constable, Kenneth Newman, became Chief Constable of the RUC. Before transferring to the RUC, Newman had been Commander in Charge of the Community and Race Relations Branch (A7) at New Scotland Yard; he held a degree in law.
63. *Hansard*, 2 July 1976, Cols 879–923.
64. This is an unfortunate piece of terminology which the Chief Constable of the RUC was at pains to point out should really be 'the primacy of the rule of law', for which the police are primarily responsible in terms of enforcement.
65. Personal and private correspondence. See also Hamill, *Pig in the Middle*, in which the author describes the frustration of Merlyn Rees, as Secretary of State for Northern Ireland, at the inability of the police to cope with the strike action which paralysed the Province in 1974 (the Ulster Workers' Council strike) and the unwillingness of the army to 'police' a civil matter such as a trade dispute. See also Merlyn Rees, *Northern Ireland: a Personal Perspective* (Methuen, 1985).
66. Boyle *et al.*, *Ten Years on in Northern Ireland.*
67. Anne McHardy, *The Guardian*, 3 February 1979.
68. *The Observer*, 7 October 1979. See also *The Listener*, 28 February 1980.
69. Simon Berthon, 'A New Approach to Defeat the IRA', *The Listener*, 28 February 1980.
70. 'Till the Job is Done – A Pledge to the Ulster People', *Soldier News*, November 1980.
71. The Opsahl Report on Northern Ireland, *A Citizens Inquiry*, edited by Andy Pollack (The Lilliput Press 1992).

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