

COMPLAINTS AGAINST THE POLICE

Memorandum by the Commonwealth Secretariat
and a paper by PROFESSOR SIR ROY MARSHALL,
C.B.E., M.A., Ph.D., LL.D., Barrister,
Vice-Chancellor of the University of Hull.

In the past several years the police in many Commonwealth jurisdictions have been very much in the public eye. While civil liberties groups have voiced disquiet about the manner in which complaints against the police are handled, others have been pressing for increased police powers to stem the rise in crime.

2. It is widely recognised that the maintenance of public order depends to a large degree on a public which respects its laws and wishes to see them fairly enforced. One of the keys to achieving such a state of affairs is public confidence in, and respect for, their police.

3. In establishing and maintaining such confidence, the existence of adequate machinery to handle complaints against the police is widely considered to be essential.

4. At the same time, a balance must be struck between the rights of the public and the need for the police to be able to act with confidence in the discharge of their duties.

5. The annexed paper has been prepared at the invitation of the Secretariat by Sir Roy Marshall, a distinguished Barbadian lawyer who has also had experience as a member of the (UK) Police Complaints' Board.

COMPLAINTS AGAINST THE POLICE

A discussion paper by
 PROFESSOR SIR ROY MARSHALL,
 C.B.E., M.A., Ph.D., LL.D.

Introduction

This paper is not intended to be, and is not, comprehensive and definitive. It does not cover the entire Commonwealth and it does not deal with all aspects of the subject "Complaints against the Police". Its preparation has been facilitated by material provided by relevant departments and agencies in Australia, Barbados, Canada, Hong Kong, Fiji, New Zealand and Singapore.

2. The procedure for dealing with complaints against the police has been a matter of increasing public concern and debate¹ over the last two decades. The concern is not surprising in the context of modern society. Police have considerable powers over the liberty and safety of the citizen in societies, whose emphasis is on rights as much as, and perhaps more than, obligations and in which abuse of power, when admitted or discovered, is the subject of extensive media coverage. The subject is of great importance and often of considerable difficulty. The powers of the police and their good name depend largely on the confidence felt by the public that a complaint made against a police officer will always be fully and impartially investigated and that, if it is proved, redress will follow. At the same time police officers need to be protected against vexatious or malicious accusations to which their duties at times make them liable.

3. The debate reflects a wide spectrum of opinion as to both the state of public opinion and what needs to be done to retain or recover public confidence. There are some who share the view of Sir Eric St Johnston² that "there are in society some who wish to denigrate the police and who are never prepared to believe that the police are honest and objective. It will never be possible to satisfy such people who are usually articulate and voluble. It is never possible to appease the unappeasable and I do not believe that one should try to do so by altering a well established and well tried system which satisfies the majority."

4. In its extreme form this appraisal of the situation goes beyond the complacent and becomes alarmist. The following is quoted by Gelhorn³ to illustrate the reaction of American police associations to the introduction of civilian review boards into the procedures for handling complaints against the police:

"How can law and order be maintained if policemen are bound in chains - if policemen are deprived not only of their necessary powers, but also their ordinary rights as citizens? The answer is that there are those hidden far in the background in the push to set up review boards who do not want law and order maintained. Their purposes could be served by a breakdown in law enforcement.... Review Boards can and do serve as a secret weapon for the Communist Party."

5. When we turn to what needs to be done the main criticism is based on the principle that justice is not seen to be done if the police continue to investigate and adjudicate complaints, since that makes them judges in their own cause. This was expressed forcibly by the late Professor Goodhart in a dissenting Report of the Royal Commission on the Police in 1962.⁴ "Unfortunately even though the Chief Constable may be scrupulously fair, this will not answer the major criticism against the present system, which is that it violates the basic principle of justice that no man shall be a judge in his own cause". It is inevitable that some complainants will feel that it is in the interest of the Chief Constable that as few as possible of his police officers should be found guilty of wrong-doing, and that this has influenced his judgment. The fact that the interest is indirect does not affect the point for, as Lord Campbell said in Dimes v Grand Junction Canal Co.:⁵ "It is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest." Professor Goodhart went on to point out that when Sir

Robert Peel appointed the original Commissioners of the Metropolitan Police, he insisted that one should be an army officer, and the other a trained lawyer so as to give confidence to the public that the police were acting under the law.

6. Lord Scarman makes the point compellingly in his Report on the Brixton Disorders:⁶ "It is clear to me that many will continue to criticise it (the present machinery) so long as the investigation of complaints remains in police hands. These people argue that the fact that the police investigate the police means that the investigation, if not obviously rigged in favour of the accused police officer, is likely to be generally favourable to him."

7. It is in fact this principle of natural justice which prompts the search for ways of introducing an independent element into the complaints machinery. We shall examine later the various forms which this has taken and may take.

8. But there is a contrary view about the merits of an external and independent element. It is described by Milte and Weber in Police in Australia⁷ and by Goldstein⁸ in the Journal of Criminal Law, Criminology and Police Science. The argument is that the police are trained to maintain and promote law and order and that conflicting demands are made of them by their supervisors in pursuance of that object. They are expected both to get results and to observe a code of conduct in so doing. But since much of their work is by its nature covert, supervision is sometimes non-existent. There is therefore a temptation to cut corners. The risks of doing so are great since the protagonists of law and order (to whom according to this viewpoint the investigation and adjudication of complaints are invariably allotted) are usually tolerant of police action taken in pursuit of that aim. Hence protests tend to fall on deaf ears whether those of superior officers in the force or of external assessors. This tolerance is facilitated by the esprit de corps which is a concomitant of a disciplined force where a norm of secrecy and mutual protectiveness is likely to develop and gather strength. Paradoxically, resort to the system of external investigation and adjudication is capable of destroying the system of law enforcement itself by undermining its structural integrity. Such a system misapprehends the realities of police work and reliance upon it has no better chance of success than reliance upon the criminal law to achieve social control. It would be more profitable to seek a remedy by trying to motivate the force itself to observe their code of conduct, and to reduce the pressures upon them to disregard it. To achieve this will require something akin to an educational and managerial revolution. The proposed managerial changes involve a loosening of the hierarchial organisation of the force.

9. The case for having an independent element in the complaints machinery is unlikely to be impeded by such views; but this is not to say that some aspects of them do not merit serious consideration. I have in mind the importance of the education and training of police officers for their role in modern society. The views of Sir Kenneth Newman, the Metropolitan Police Commissioner, on this issue are important. He believes that the police officers should be part of a force imbued with the view that to succeed in today's often turbulent society, it must be impartial and adhere to the rule of law itself. In his view "the rights of the individual are as much an objective of the police as the detection of criminals and that does require something of a shift in thinking."⁹

Procedures

10. I do not propose to give a detailed description of every aspect of the procedures for handling complaints in the many countries of the Commonwealth but rather to draw attention to some of their main features and to discuss the important issues that arise.

The lodging of complaints

11. It seems to be generally accepted that many individuals feel reluctant to complain about anything to anybody in authority, and particularly so to the police. This is especially true of those with criminal records (at least until they have been charged) but there are also many with unblemished reputations who are timorous about lodging complaints. There is also the fact that a high proportion¹⁰ of those who do complain withdraw their complaints before they are investigated.

12. Reluctance to make and pursue complaints is leading to a consensus of view that:

- the police station should not be the only place at which complaints can be made;
- complaints should be capable of being made by others on behalf of the

complainant;

- information should be made widely available to members of the public about the various methods of making complaints;¹¹
- there should be no requirement for a complaint to be made under oath;
- anonymous complaints should not be rejected out of hand but should be investigated as far as possible; and
- the formalities for dealing with complaints should aim at satisfying the complainant as much as proving the police officer to be wrong.

13. As Lord Scarman has said about the last point:¹² a great number of complaints could, if both sides agreed, be dealt with by informal conciliation rather than formal investigation. In many cases all that is sought is the opportunity to register a grievance and receive in return a few words of explanation or apology. This recommendation is supported by the Home Affairs Committee in their Fourth Report and has been accepted by the British Government ^{12a}.

The investigation of complaints

14. In the countries examined investigation of the police by the police is the norm, but safeguards both internal and external are common.

15. Internal safeguards put the investigation into the hands of a senior officer from a different chain of command from the officer complained of, or from another Force. This is done in England and Wales, Barbados, Fiji and New Zealand.

16. Alternatively, the safeguard is found in the setting up of a special investigative unit within the Force itself. Thus in the Metropolitan Police District of England a specialised section has been established within the Force to conduct investigations into the conduct of officers suspected of being, or alleged by members of the public to be, guilty of breaches of discipline or criminal offences. It is called A10 and comprises officers from both criminal investigation and uniformed departments. It consists of officers chosen from the service and not volunteers. Tours of duty are short. Its commander is of a rank equal to that of the persons in charge of the divisions whose personnel may be the subject of an A10 investigation. Such an investigation occurs in the case of all serious complaints including allegations of crime by police officers. A10 has been used as the model for the Australian Internal Investigation Division which investigates initially all complaints about the conduct of police officers as distinct from those relating to the practices and procedures of the Force, which are ordinarily investigated by the Ombudsman.

17. In Hong Kong complaints are investigated by the Complaints and Internal Investigations Branch of the Royal Hong Kong Police Force. The Branch has two main functions:

- (i) the investigation and processing of complaints, which is done by the Complaints against the Police Office (CAPO) with support functions provided by the headquarters staff, and
- (ii) the investigation of some of the more serious cases of misconduct within the Force, which is done by the Internal Investigations Office (I10). It is headed by a Superintendent.

18. In Singapore complaints of a serious nature and all complaints from members of the public are investigated by the Internal Investigation Section of the Force. This is under the control of the Personal Division of the Manpower and Administration Department of the Force. It is headed by a Deputy Superintendent of Police.

19. Increasingly, however, safeguards are found in some form of supervision or control of the investigation by an independent external body. This is the situation in Toronto and Australia and to some extent in Fiji and New Zealand. It has been proposed for England and Wales. The Metropolitan Police Force Complaints Project Act, 1981, of Ontario establishes a three-year pilot project for Toronto. It creates the office of Public Complaints Commissioner which is totally separate and distinct from the Metropolitan Toronto Police Force. The main duty of the Commissioner is to monitor the handling of a complaint at the initial stages by the Metro Force and to conduct a full review if the

citizen is dissatisfied with the initial handling. Complaints may be made in the first instance directly to his office, and if not so made must be reported to him. He can intervene in the investigation at any time in exceptional circumstances, particularly when there is undue delay or other impropriety in the initial investigation. He also has the power to intervene after the receipt of the initial report from the police, which must be prepared within 30 days from the time the complaint is received. He also has important powers with regard to adjudication which will be considered later.

20. In Australia the Complaints (Australian Federal Police) Act, 1981, came into force as recently as 1 May 1982. It applies to complaints in respect of members of the Australian Federal Police and its purpose is to establish a system which permits just and thorough investigation of complaints against the police, while at the same time upholding morale and discipline in the difficult work police have to do.

21. As I have already indicated, a complaint by a member of the public as to the conduct of an individual police officer may be made either to the police or to the Ombudsman; and where made to a police officer, the Ombudsman must be notified. Normally, the investigation is carried out by the Internal Investigation Division, which I have already mentioned. If the Ombudsman is dissatisfied with the report of the Investigation Division on a complaint, he may ask for a further investigation by the Investigation Division or he may carry out an investigation by his own office. In special circumstances the Commissioner of Police and the Ombudsman may agree that either the Ombudsman or a person outside the Investigation Division should make the initial investigation of a complaint. If the Ombudsman and the Commissioner cannot agree the Minister decides.

22. In Fiji and New Zealand any complainant who is dissatisfied with the police investigation into a complaint may ask the Ombudsman to investigate or review the matter.

23. In England and Wales investigations are carried out by the police who report their results to the Deputy Chief Constable, who sends a copy together with his decision to the Police Complaints Board, established by the Police Act, 1976, to provide an independent element in the investigation and adjudication of complaints. The Board do not themselves carry out investigations, but may request additional information from the Deputy Chief Constable, and if they disagree with his decision may direct that disciplinary proceedings should be taken.

24. In 1980 the Board published their First Triennial Report.¹³ They expressed themselves satisfied that, in the vast majority of cases "a thorough and fair investigation has been made by the police into the complainant's allegations."¹⁴ Nevertheless they recognised that genuine public anxiety existed in cases where unexplained serious injury was sustained during the course of arrest or while in police custody, and they recommended that this category of complaint only should be dealt with by a specialist body of investigating officers, seconded for a period of two or three years from all police forces in England and Wales and answerable, not to a police officer, but to a "lawyer of experience and repute... preferably one who has exercised judicial office." This recommendation was supported by the Royal Commission on Criminal Procedure.¹⁵ In July 1980 the Government set up a Working Party under the Chairmanship of Lord Plowden to consider the possible implementation of the Board's recommendation. The Working Party reported in March 1981¹⁶ and instead of the proposed specialist team recommended the more frequent use of officers from outside forces to investigate serious cases and the granting of extra powers of supervision either to the Director of Public Prosecutions or the Chairman of the Police Complaints Board. In July 1981 the Government set up a further Working Group under Lord Belstead to examine the matter further and their Report¹⁷ endorses and builds upon the approach advocated by the Plowden Working Party.

25. A number of different proposals were put to the House of Commons Home Affairs Committee. The National Council for Civil Liberties proposed an independent system that would give to a body outside the police force (possibly the Police Complaints Board) the responsibility for investigating complaints with an augmented staff of investigators, some of them seconded police officers. The Commission for Local Administration also favoured independent investigation by a system of local or regional ombudsmen similar to that in operation for complaints against maladministration in local government. Lord Scarman supported the system introduced in Toronto in 1981.

26. In its evidence the Home Office adopting the recommendations of the Plowden and Belstead Working Parties rejected total acceptance of the principle of external investigation. Instead they suggested different procedures for different categories of complaints - for the

"less serious" a new informal procedure aimed at bringing about conciliation (conciliation is a feature of the Australian and Toronto systems); for an intervening category - the more substantial - retention of existing procedures - and for the really serious,¹⁸ investigation by a senior police officer from an outside force acting under the supervision of an independent assessor who might be either the Director of Public Prosecutions or the Chairman of the Police Complaints Board.

27. The House of Commons Home Affairs Committee made two sets of proposals which are not entirely self-consistent. First, they supported the proposals of the Royal Commission on Criminal Procedure for the introduction of a Crown Prosecutor system to cover every police force area. In their view such a system modelled on the Procurators Fiscal of Scotland, would provide the most promising framework for the investigation of complaints against the police.

28. The Committee saw this as a long term solution and therefore made a second set of proposals for the short-term. They were not convinced that an independent organisation would do a more effective job than senior officers in the actual investigation of complaints. However they accepted that external safeguards are necessary to command the confidence of public and police alike. They saw such safeguards emerging through the establishment of regional Complaints Offices, headed by independent assessors, who would assume overall responsibility for the handling of complaints alleging a serious criminal offence. The offices would also be involved in the settlement by conciliation of complaints not involving criminal allegations, and would act as a convenient point of contact for members of the public who had reason to feel concerned about the handling of minor or disciplinary complaints. There is a great deal of imprecision about their second set of proposals, and about the relationship between that and the first.

29. In its recent White Paper, the Government has confirmed its adoption of the Home Office evidence as presented to the House of Commons Affairs Committee, and indicated that the independent assessor will be the Chairman or Deputy Chairman of the Police Complaints Board.^{18a} It defers decision on the Home Affairs Committee's proposals for the establishment of a Crown Prosecutor system, pending the completion of a Study in depth on the best model for the organisation of an independent prosecutions service, the problems that might arise, how they could be solved and the resource implications.^{18b} The Government sees merit in a system of regional Complaints Offices, but is unwilling to establish a full network of such Offices from the outset.^{18c}

30. Exceptionally the safeguard is found by placing the investigation of certain types of misconduct on the part of the police in the hands of an agency which is virtually a second police force. Thus in Hong Kong neither CAPO nor 110 investigate corruption *per se*. Investigations into that type of misconduct are the responsibility of the Independent Commission against Corruption, which, however, maintains operational links with both CAPO and 110. Similarly in Singapore investigations into corruption and offences involving dangerous drugs on the part of police officers are carried out by the Corrupt Practices Investigation Bureau or the Central Narcotics Bureau. This is done without any police involvement. Indeed, if a matter is reported to the police involving corruption or dangerous drugs, they immediately hand over the case to one or other of the Bureaux. These special agencies or second police forces appear to be confined to those forms of improper conduct on the part of the police which are destructive of the system of law enforcement itself.

Critique

31. It is clear that there are a number of conflicts to be resolved in determining how far investigation of complaints against the police should be conducted by an independent external agency. These are well brought out in the Home Office evidence¹⁹ to the House of Commons Home Affairs Select Committee. One has to reconcile the conflicting interests that exist between satisfying complainants and being fair to the officers complained against, and between independent investigation and management responsibility - (i.e. how to make Chief Officers of Police fully accountable if they are not also responsible). In resolving this conflict one has to take account of a number of practical considerations. If you establish an independent body, to whom is it accountable? Is it to deal with all, or only some, and if so, which complaints? How would the role of the independent body fit in with the role of the Director of Public Prosecutions where he is constitutionally responsible for the prosecution of criminal charges? How would the independent body relate to the Chief of Police in the preferment of disciplinary charges? Is the cost of an independent investigatory body tolerable in the light of the functions it may be called upon to perform? Does the extent of public concern warrant the introduction in all cases of an independent body?

32. Would it be ultimately more cost-effective to relieve the police of the task of investigating themselves and thus leave them free to spend more time on the investigation of crime? Is it sensible that police should have to spend time on investigating whether one of their members has been rude to the complainant, if the consequence is that they have less time to look into, say, burglary? On the other hand, what is the outcome of external investigation likely to be upon the Chief Officer's responsibility for the discipline of his own force? In the light of these difficulties, it should not come as a matter of surprise that no country has yet gone over to a system of totally independent investigation for all complaints in all circumstances. Compromise in this area is to be expected and as we have seen it may take many forms.

Adjudication

33. When the investigation is complete and a report made it has to be evaluated with a view to determining what action to take. There are three possibilities that a prosecution should be instituted for a criminal offence; that disciplinary action should be taken either through the laying and hearing of charges or, without going that far, by the issue of a warning or the giving of a caution or doing something similar; or that no action be taken. I leave for later discussion cases where criminal proceedings may be brought: the conduct complained of may be capable of being both a crime and a breach of discipline and accordingly the scope of the "double jeopardy" principle has to be examined. This section is concerned only with the disciplinary consequences of the investigation.

34. The laying and hearing of charges may be done by the police entirely without external supervision. This was the situation in England and Wales until the Police Act, 1976. That Act established the independent Police Complaints Board, to which Deputy Chief Constables are obliged to send a copy of the report of the officer investigating the complaint together with a memorandum stating whether he has decided to bring disciplinary charges and, if not, his reasons for not doing so. The Board may request additional information from the Deputy Chief Constable and, if they disagree with his decision, may advise, or, in the last resort, direct that disciplinary proceedings be taken. In the event of such a direction the charges are heard by a Tribunal chaired by the Chief Constable and comprising two members of the Board who have had no previous connection with the complaint. In the absence of a direction the Chief Constable alone hears the charges. Where there is a Tribunal, the decision is by majority, but the fixing of the penalty is done by the Chief Constable after consulting the other two members.

35. This is the procedure for discipline. Where, however, the Deputy Chief Constable, after considering the report of the investigating officer, is not satisfied that no criminal offence may have been committed, he refers the matter to the Director of Public Prosecutions, whose decision effectively rules out the bringing of disciplinary charges as we shall see later.

36. In New Zealand the hearing is by a Tribunal of two, one only of whom is a member of the Police, in cases where the complaint affects commissioned officers below the rank of Chief Superintendent. In the case of non-commissioned officers, the Commissioner of Police appoints a single person, whether a member of the police or not, to hear the charges. Similarly in Barbados the Police Service Commission, and in Singapore the Public Service Commission, has disciplinary jurisdiction over certain ranks of commissioned officers.

37. In addition in some countries, there is provision for ex post facto review. Thus in New Zealand, a dissatisfied complainant can ask the Ombudsman to review the way in which the police handled his complaint with a view to determining what, if anything, had not been administered properly. The main disadvantage of this system is that it does not affect the action taken in a particular case.

38. In his Report for 1978 the New Zealand Ombudsman drew attention to three limitations upon his ability to make effective investigations of complaints about the police. First, a jurisdictional limitation. The Ombudsman can only investigate matters "relating to a matter of administration". He found that Commissioners of Police regarded some vital decisions - whether to accept a complaint, or to commence a criminal prosecution - as not "relating to matters of administration", but as being an independent exercise of judgment and discretion vested in them by law. Their view was supported by an opinion from the Crown Law Office which went even further in contending that the law enforcement operations of the police

generally did not relate to matters of administration. The Ombudsman does not accept this view, but the difference remains unresolved, no situation having arisen in practice which made it necessary to test it.

39. It is interesting that a similar jurisdictional problem exists in England and Wales. The Police Complaints Board deals with "complaints" which are not substantively defined in the Police Act, 1976. The Home Office Circular giving guidance on the Act does, however, state that complaints about the general administration, efficiency, or procedures of the force are not required to be recorded by the police. Since the Board has no functions until a complaint is recorded, they are powerless to look into force procedures. They express dissatisfaction in their First Triennial Report²⁰ that "the body which has the final word on the disciplinary aspects of complaints should have no say in whether a matter should be treated as a complaint in the first instance."

40. A second difficulty facing the New Zealand Ombudsman was that of determining what was actually said or done in the absence of a written record of independent witness. The Ombudsman recognises that this is not readily soluble as do the Police Complaints Board in their Report for 1978²¹ and their First Triennial Report²² where they say: "It is not easy for someone utterly convinced of the truth of his complaint to be persuaded that a denial by the officer cannot be formally challenged in the absence of evidence to point to which side is being truthful. Our function is to ensure that every effort has been made to find such evidence as may exist. We cannot manufacture it. And it cannot be said too often that a police officer who is accused has the same right to the presumption of innocence as anyone else."

41. The Ombudsman's third difficulty was that of deciding upon an appropriate recommendation for remedial action. This is inherent in a system of ex post facto review of the administrative aspects of a complaint, but it also affects other systems whose aim is to establish and punish breach of discipline rather than to provide redress for the complainant.

42. In Hong Kong there is also an independent element in the police complaints machinery. This is provided by the UMELCO Police Group (Unofficial Members of the Executive and Legislative Councils), whose terms of reference are:

- (i) to monitor and when it considers appropriate to review the handling by the Police of complaints by the public;
- (ii) to keep under review statistics of the types of conduct by Police Officers which lead to complaints by members of the public;
- (iii) to identify any faults in police procedure which lead or might lead to complaints; and
- (iv) when it considers appropriate, to make recommendations to the Commissioner of Police or where necessary to the Governor.

43. In yet other countries there is provision for the adjudication itself to be done by external bodies. In Australia after considering the report of the Investigation Division or the report of his own investigation, the Ombudsman may recommend that criminal or disciplinary charges be brought. If the Commissioner does not agree with the recommendation, the matter is referred to the Attorney-General who decides what charges, if any, are to be brought.

44. Criminal charges are brought in the ordinary Courts; disciplinary charges originating from a complaint from a member of the public are dealt with by the Federal Police Disciplinary Tribunal; other disciplinary charges are also heard by the Tribunal if the member of the force so requests or the Commissioner so determines. The Tribunal consists of a Judge, magistrate or legal practitioner. Where the Tribunal is constituted by a Judge, he determines both guilt and punishment. Where constituted otherwise it deals with guilt and refers the question of punishment to the Commissioner.

45. In Toronto, where the complainant is dissatisfied with the initial investigation the Public Complaints Commissioner may order a hearing in public before an independent Police Complaints Board, which may be constituted by a single legally trained member or by a panel of three members. The Board consists of fifteen members, five legally trained.

Critique

46. The search for ways of introducing or expanding the independent element in the investigation and adjudication of complaints against the police reveals a broad spectrum of opinion, a sample of which is appended hereto as Appendices E and F. What is to be expected, however, is that the greater the size of the independent element, the greater will be the demand for a strengthening of the "civil rights" of police officers who are complained against. This is now the position in England and Wales. After years of opposition to any independent element in police complaints procedures, the Police Federation and the Police Superintendents' Association made a complete turnabout and expressed their conversion to a wholly independent system with, in return, increased legal protection for officers who are complained against. This would include legal representation in disciplinary proceedings, the application of rules of evidence and the Judge's Rules, and appeals to the Crown Court.

47. The House of Commons Home Affairs Committee rejected the quid pro quo.²³ They agree that police officers should have exactly the same rights when faced with a criminal charge as are enjoyed by any other citizen, but they do not consider that the police should be entitled to expect a higher standard of legal protection in relation to alleged offences against discipline than is available to members of most other professions.

48. The difficulty is manifest in determining the extent of the right of silence in the face of questions arising in the course of the investigation of a disciplinary offence or during the conduct of the hearing. Here you have two competing principles -one, that a person ought not to be required to answer questions which incriminate him or may tend, by admission, to prove that he has committed an offence; the other, that a member of a discipline service, sworn to uphold the law, ought not to be allowed to frustrate investigations and disciplinary hearings by refusing to answer relevant questions.

49. In Australia, the Complaints (Australian Federal Police) Act, 1981, deals with the problem in the following way. Where the investigation is carried out by the Investigation Division, a member of the force can be directed to furnish information, produce documents and answer questions that are relevant.²⁴ The member is not excused from this requirement on the ground that to do so would be contrary to the public interest, would expose him to a penalty or would tend to incriminate him; but the information, document or answer is not admissible in evidence against him in any civil or criminal proceedings other than disciplinary proceedings. Refusal without reasonable excuse, renders the member liable to a penalty or imprisonment.

50. The Ombudsman has similar powers in relation to investigations conducted by him.²⁵

51. When the matter gets to the Tribunal, however, a member is liable in the same way as in the course of an investigation to produce documents and answer questions, but it is a reasonable excuse for him to do so on the grounds that it would show that he had committed either a crime or a breach of discipline. Where, however, the hearing concerns a matter into which the Minister has directed the Tribunal to hold the enquiry²⁶ the member must produce the document or answer the question, even if it does incriminate him in relation to that hearing, but the answer and the document are not admissible against him in any subsequent civil or criminal proceedings.

51. The principal that a person is not obliged to answer questions in a criminal prosecution which would tend to prove him guilty is not affected.

The relationship between criminal offences and breaches of discipline: the double jeopardy principle²⁷

52. The rule against "double jeopardy" means that the same person may not be punished more than once by the criminal law for the same offence, or be called upon to defend himself in a criminal court more than once against the same charge. In short a verdict of conviction or acquittal is final. Accordingly a police officer who is convicted or acquitted of a criminal charge in a criminal court is entitled to plead autrefois acquit or autrefois convict as a bar to any subsequent prosecution based on the same facts.

53. It must be emphasised that what is prohibited is double punishment for the same offence - not double punishment for the same act.²⁸ As Humphreys J. said in R v Thomas²⁹

"It is not the law that a person shall not be liable to be punished twice for the same

act; it has never been so stated in any case, and the Interpretation Act itself does not say so. What (that Act) says is: 'No person shall be liable to be punished twice for the same offence.' Not only is it not the law that a person shall not be punished twice for the same act, but it never has been the law."

54. There are numerous instances of the same act giving rise to both criminal and non-criminal proceedings. A motorist found guilty of dangerous driving may be sued in a civil court for damages suffered as a result of such driving: a doctor charged with rape may be struck off for infamous conduct in a professional respect even if he is acquitted on the ground that the woman consented: a soldier may be disciplined for breach of Queen's Regulations even if he has been convicted - or acquitted - in a criminal court on charges arising out of the same facts. And Police Discipline Regulations in most countries make it a specific disciplinary offence to have been convicted of a criminal charge. In short neither conviction nor acquittal is a bar to disciplinary proceedings arising from the same act or omission.³⁰

55. The provisions of the Police Act, 1976 in England and Wales distorts the position as set out above. Section 11 provides that, where a member of a police force has been acquitted or convicted of a criminal offence, he is not to be charged with any offence against discipline which is in substance the same as the offence of which he has been convicted or acquitted, though this does not apply when the disciplinary offence consists of having been found guilty on a criminal charge.

56. Section 3(8) provides that the Police Complaints Board in discharging their functions must have regard to any guidance given by the Secretary of State which may affect the preferring or withdrawal of disciplinary charges. The guidance of the Home Secretary³¹ is to the effect that "where it has been decided after reference to the Director of Public Prosecutions (or otherwise) that criminal proceedings should not be taken, there should normally be no disciplinary charges if the evidence required to substantiate a disciplinary charge is the same as that required to substantiate the criminal charge."

57. The combined effect of the legislation and the guidance is that the Police Complaints Board have regarded themselves as precluded from recommending or directing disciplinary proceedings in practically every case where the Director of Public Prosecutions has directed that no criminal prosecution should take place because there is insufficient evidence to justify that course. It is different where the Director decides not to prosecute on other grounds (e.g. that it is not in the public interest to do so). It is interesting that in Hong Kong the relationship between criminal and disciplinary proceedings is interpreted in the same way as in England and Wales.

58. A number of bodies³² who gave evidence to the House of Commons Home Affairs Committee were critical of the view taken by the Police Complaints Board. They contend that the Police Complaints Board is not absolutely bound by the Home Office guidance: their obligation is to have regard to it. Moreover, the obligation is not as extensive as the Board appear to think. It does not preclude discipline in all cases where the Director refuses to prosecute because of insufficient evidence: it merely indicates that to be the normal result.

59. What seems to be incontrovertible, is that Section 11 alters the common law rules of autrefois acquit and autrefois convict. The common law prohibited a second trial for the same criminal offence: it did not prevent disciplinary action following after criminal charges, whether successfully prosecuted or otherwise. Section 11 does prevent such action where the "offence against discipline" is in substance the same as the criminal offence. It is not in every case that this will be so, e.g., the criminal offence may require proof of mens rea: the disciplinary offence may not, in which case disciplinary proceedings will be available notwithstanding the criminal charge.

60. What is equally incontrovertible is that the Home Office guidelines go further than Section 11 requires. It is not directed towards the similarities in substance between the crime and the breach of discipline: it is concerned with the similarities in evidence required to prove them. To this extent it can be contended to be ultra vires.

61. The situation in England and Wales is clearly open to criticism and there will be widespread support for the recommendation of the House of Commons Home Affairs Committee³³ that the Home Office guidelines should be revised both to clarify the position of Chief Constables and the Police Complaints Board and to ensure that there is no

diminution of their statutory power to take disciplinary action, if necessary, even where the Director of Public Prosecutions has decided against prosecution.

62. The Government White Paper indicates that in future the Chief Constable will be given much greater discretion as to the cases which he refers to the Director of Public Prosecutions for possible criminal charges and those which he deals with himself for possible preferment of disciplinary charges. As regards the latter the Police Complaints Board could direct the Chief Constable to refer the matter to the Director of Public Prosecutions if they consider the matter to be too serious to be treated as one of discipline only.³⁴ But the Government continues to regard it as right that in respect of the same events a police officer should not be liable to be proceeded against both in respect of a criminal offence and for a like offence under the discipline code.³⁵

63. It would be wrong, however, to assume that such changes will lead to a markedly greater number of disciplinary proceedings being instituted. After all in deciding not to prosecute the Director of Public Prosecutions having made a deliberate evaluation of the evidence finds it insufficient. Another body invested with the power to institute disciplinary proceedings is, in my submission, unlikely to come to a different conclusion on the same evidence in relation to substantively similar disciplinary offences.

Summary

64. There is considerable support in every country, which has examined the matter, for the introduction of an independent element into police complaints procedures. In many such countries some safeguards now exist, both within police forces and outside them, aimed at ensuring that as far as practicable complaints are effectively investigated and fairly adjudicated. It is for consideration how far these safeguards can or should be extended. There are difficult problems of how best to reconcile conflicting interests between satisfying complainants and being fair to the officers complained against, and between independent investigation and management responsibility (i.e. how to make Chief Officers of Police fully accountable if they are not also fully responsible). It is to be expected that the greater the size of the independent element the greater will be the demand for strengthening the "civil rights" of police officers who are complained against. They (and more particularly their associations) are more likely to be willing to forego such rights when they appear before their own Chief Constables than when they are arraigned before Disciplinary Tribunals. An immediate problem will be to reconcile two competing principles affecting the right of silence - one, that a person ought not to be required to answer questions which incriminate him, and the other, that a member of a disciplined service, sworn to uphold the law, ought not to be allowed to frustrate investigations and disciplinary hearings by refusing to answer relevant questions. The Australian legislation sets a worthwhile precedent in this regard. The statutory departures in England and Wales from the common law rules of "double jeopardy" have protected police officers from disciplinary proceedings in situations in which members of other professions are not. This generates an inordinate degree of public suspicion and is not attended by any counteracting advantages.

FOOTNOTES

1. The bibliography is extensive: see Appendix A
2. Report on the Victorian Police Force, Melbourne, 1971, para. 25.
3. When Americans Complain, 172 quoting "Police Review Boards - A Threat to Law Enforcement" 3-4 (undated but distributed in 1965).
4. Cmnd. 1728 (1962) HMSO para. 63.
5. (1852) 3 H.L. Cas. 794.
6. Cmnd. 8427 (1981) HMSO.
7. Butterworths (Australia) 1977. Chapter 13 "Discipline and Complaints Investigation"
8. "Administrative Problems in the Control of Police Behaviour" (1967) 58 J.C.L.C. And P.S. 160.

9. The Times October 2, 1982.
10. 49 per cent of all complaints in England and Wales in 1980 (15,205 out of 31,009).
11. The form which such information takes in England and Wales and in Toronto is shown in Appendices B, C and D. The "Police and Public" leaflet in England is to be amended in the light of the changes proposed in the Government Reply to the Fourth Report from the Home Affairs Committee. See Cmnd. 8681, 1982 para 12.
12. Op. cit. para 7,24.
- 12a. Cmnd. 8681 1982, paras 18 and 19.
13. Cmnd. 7966.
14. Ibid. para 62.
15. Cmnd. 8092, para 4, 119.
16. Cmnd. 8193.
17. Published as Appendix E to the Home Office Memorandum to the House of Commons Home Affairs Committee Enquiry into Police Complaints Procedures: HC 98 - 11 (1982) pp. 222 - 230.
18. The "really serious" includes death and serious injury: "serious injury" means medical evidence of fracture, damage to internal organs, impairment of bodily function, deep cut or laceration, but not bruising or superficial laceration.
- 18a. Cmnd. 8681, 1982 Annex A para 25.
- 18b. Ibid para 14.
- 18c. Ibid para 16.
19. H.C. 98-11 (1982) pp. 205 et seq.
20. Cmnd. 7966, para 27.
21. Ibid para 47.
22. Op. cit. para 117.
23. H.C. 98 - 1 para 50.
24. Section 7.
25. Ibid s.27.
26. Ibid ss. 70 and 83.
27. For a lucid exposition, see Appendix 13 H.C. 98-11.
28. See Mohamed Yussoff Bin Samadi v Attorney-General of Singapore (1975) 1 Malayan Law Journal 1 at p.2 per Chua J.
29. [1950] 1 K.B. 26 at p.31.
30. R. v Statutory Committee of Pharmaceutical Society of Great Britain [1981] 2 All E.R. 805.
31. Home Office Circular No. 32/1980.
32. Especially the National Council for Civil Liberties and Justice.
33. H.C. 98 - 1, para 15.

34. Cmnd. 8681, 1982 para 8 and Annex A paras 13-15.

35. Ibid para 8.

APPENDIX A

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Police and public

Complaints against the police

Police Acts 1964 and 1976

This leaflet explains the procedure for members of the public who consider they have grounds for complaint against the conduct of a member of a police force in England and Wales. It also explains the way in which complaints are investigated and what action may be taken on them.*

The procedure described in this leaflet applies only to complaints about incidents occurring after 31 May 1977.

The handling of complaints

The law requires the chief officer of each police force to see that complaints against members of his force are promptly recorded, and are investigated. The deputy chief constable of a force outside London, or a senior officer in the Metropolitan or City of London Police, is responsible for considering what action to take as a result of each investigation. There is also an independent element in the procedure. This is provided by the Director of Public Prosecutions where a complaint suggests that a police officer may have broken the criminal law, and by the Police Complaints Board where there may have been an offence against police discipline. The records of complaints are regularly inspected by HM Inspectors of Constabulary and police authorities are required by law to keep themselves informed about the manner in which complaints are dealt with.

Making a complaint

Any complaint about the conduct of a police officer should be made in writing to the chief officer of the police force concerned (who is the Chief Constable of a force outside London and in London the Commissioner of Police of the Metropolitan or of the City of London Police), or by calling at any police station. Only the police have the authority to investigate complaints against police officers. If a complainant writes to the Police Complaints Board, or to anyone other than the appropriate chief officer, his complaint has to be sent on to that chief officer; otherwise it cannot be investigated.

**The relevant statutory provisions in England and Wales are sections 49 and 50 of the Police Act 1964, the Police Act 1976, the Police (Discipline) Regulations 1977, the Police (Complaints) (General) Regulations 1977, the Police (Copies of Complaints) Regulations 1977 and the Police (Withdrawn, Anonymous etc Complaints) Regulations 1977. Under these provisions the chief officer can delegate his responsibilities for investigating and considering a complaint to his deputy or, in the Metropolitan or City of London Police, to another senior officer.*

The investigation of a complaint

The investigation of a complaint against a police officer is carried out by a senior officer who may come from a different police force. It will normally start at once. If, however, the complaint is closely associated with criminal proceedings against the complainant or someone else and those charges are to be heard in court, the investigation will not as a rule begin until after the court proceedings are completed. The complainant will be asked to make a full statement, and the police will also seek information from anyone else who can help to establish the facts. The police officer who is complained about will also have an opportunity to make a statement. At the end of the investigation, a report will be sent to the deputy chief constable.

Criminal proceedings

Police officers, like everyone else, are subject to the law of the land. When a deputy chief constable receives the report of an investigation into a complaint he must first send it to the Director of Public Prosecutions unless he is satisfied that no criminal offence has been committed. The Director will consider whether or not criminal proceedings should be brought and he will inform both the deputy chief constable and the complainant whether or not he proposes to prosecute. If there is a prosecution, the complainant can be called upon to give evidence before the court.

Disciplinary proceedings

Police officers are also subject to a strict discipline code. The deputy chief constable will therefore consider (after any reference has been made to the Director of Public Prosecutions) whether as a result of the investigation of a complaint the evidence is such as to justify bringing a disciplinary charge. If the deputy chief constable decides that a disciplinary charge would not be justified he must send a report to the Police Complaints Board. If the Board accept that no disciplinary charges should be brought, they will inform the deputy chief constable and the complainant. If, however, the Board disagree with the deputy chief constable, they may recommend, and in the absence of agreement direct, that disciplinary charges should be brought. Where charges are to be brought the police will inform the complainant. (Even if a complaint proves to have some substance, it may not be necessary to deal with it by formal disciplinary charges; for example, advice to the officer concerned may be more appropriate.)

Hearing of disciplinary charges

Where disciplinary charges are brought against a police officer, there is a formal hearing. This will normally be before the chief officer alone but, in exceptional circumstances, the Police Complaints Board may direct that the charges should be heard by a tribunal consisting of the chief officer and two members of the Board. The hearing is in private, but, unless the accused officer has admitted the charges, the complainant has a right to attend and will normally be expected to give evidence.

Civil proceedings

A complainant may have a remedy at civil law. The police cannot give advice as to whether there is cause for a civil action this is a matter for a solicitor. A Citizens Advice Bureau will be able to provide a list of solicitors practising in the area who can advise on this matter and give information about legal aid and advice schemes. If a complainant wishes to bring a civil action, the investigation of the complaint may sometimes be deferred until the civil action has been completed.

The rights of the officer

A police officer against whom a complaint has been made will normally receive a copy of the original complaint or of an account of it if the complaint was not made in writing. He is given a copy automatically if he is charged with any disciplinary offence as a result of the complaint; if he is not charged he can ask for a copy when the case is closed. A false and malicious complaint against a police officer may lead to his bringing legal proceedings for defamation.

Reminder

This leaflet explains what happens if you make a complaint about the conduct of a police officer. Inquiries into complaints are thorough and take a lot of police time. Before you complain please think carefully whether your complaint is against the police; it might, for example, be against some part of the law that the police have to enforce. Remember that the police do a difficult and dangerous job on behalf of us all.

Prepared by the Home Office and the Central Office of Information 1977.

Printed in England for Her Majesty's Stationery Office by Walter Jenn Ltd.
Dd. 520622 Pro. 8964

contact

the Public Complaints Commissioner

A civilian service set up to resolve disputes
between You and Your Police.

Questions & Answers about police complaints in Metropolitan Toronto

New procedures are now in place for handling complaints from members of the public against police officers on the Metropolitan Toronto Police Force. This new system is a marked departure from the previous one where the police alone were responsible for these matters.

A citizen can now lodge a grievance directly with an independent civilian who is not connected with the police in any way. This person, the Public Complaints Commissioner, has the power to do his own investigation, completely separate from that conducted by the police. He is responsible for making sure that all complaints concerning allegations of misconduct are dealt with promptly and fairly.

As well, he may order a public hearing by the newly established Police Complaints Board. The members of this Board are also independent civilians.

The Public Complaints Commissioner is in a position to identify those police practices or procedures which may be particularly productive of citizen complaints and he can recommend that appropriate changes are made to remedy these situations.

To assist the public, the Office of the Public Complaints Commissioner has assembled answers to the following common questions often put to it about the Metropolitan Police Force Complaints Project Act, 1981.

Question

Where do I make a complaint about the conduct of a police officer on the Metropolitan Toronto Police Force?

Answer

You may make your complaint at any one of the following locations:

- a) the Office of the Public Complaints Commissioner, 157 Bloor Street West, Toronto, Ontario M5S 1P7, telephone: 963-1141.
- b) the Metropolitan Toronto Police Public Complaints Investigation Bureau, 3080 Yonge Street, Toronto, Ontario M4N 3N1, telephone: 967-2367.
- c) any police station in Metropolitan Toronto (telephone 967-2222 for the station closest to you).

Question

When does the Public Complaints Commissioner become involved with my complaint?

Answer

IMMEDIATELY. No matter where you make your complaint, a copy is sent to the Office of the Public Complaints Commissioner. He monitors the investigation from the start.

Question

Who will investigate my complaint?

Answer

Initially, your complaint will be investigated by a police officer from the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force. The Bureau is a separate unit within the Force.

If it is possible for your complaint to be resolved informally, the officer in charge of the Bureau may attempt to do so, but only if you and the police officer involved agree.

Question

Can the Office of the Public Complaints Commissioner investigate my complaint?

Answer

YES. The Public Complaints Commissioner can conduct his own civilian investigation 30 days after you make your complaint. In some situations, the Public Complaints Commissioner can start his own investigation immediately.

Question

When do I find out about the status of my complaint?

Answer

In general, within 30 days of making a complaint, you will receive an interim report on the investigation done up to that time. You will also receive further reports during the course of the investigation and a final report when it is completed. All of these reports are in writing.

Question

What happens after the final investigation report is made?

Answer

The Chief of Police will review the matter, decide what action, if any, is to be taken, and give written notice of his decision to you, the Public Complaints Commissioner, and the police officer concerned.

Question

What if I am not satisfied with the decision made by the Chief of Police?

Answer

You may ask the Public Complaints Commissioner to conduct a review. He may order that a public hearing be held by the Police Complaints Board, if he believes that it is in the public interest to hold such a hearing.

Question

What is the Police Complaints Board?

Answer

The Police Complaints Board is a group of civilians specifically appointed to conduct hearings into citizens' complaints about the conduct of police officers on the Metropolitan Toronto Police Force. The Public Complaints Commissioner is the Chairman of the Board and he assigns members of the Board to conduct these hearings.

Question

Do I have the right to attend the Police Complaints Board hearing and take part in it?

Answer

YES. You will be notified in writing of the date of the hearing. A lawyer will present the case to the Board but you may choose to be represented by your own lawyer or an agent. You will also be given a chance, before the hearing, to examine any written evidence or any report that will be given in evidence at the hearing.

Question

If the Police Complaints Board finds that the police officer is guilty of misconduct, what penalties can it impose?

Answer

The penalties that can be imposed by the Police Complaints Board depend on the nature of the misconduct. The maximum penalty that the Board can impose is dismissal of the police officer from the Metropolitan Toronto Police Force.

Question

What if I want to complain about a police officer who does not belong to the Metropolitan Toronto Police Force?

Answer

Consult a member of the police force concerned, the local board of commissioners of police or the local municipal council. You may also contact the Ontario Police Commission, 25 Grosvenor Street, Toronto, Ontario M4A 2G9, telephone: 965-6071.

Question

What if I want to charge a police officer with a criminal offence or sue the police officer in the civil courts?

Answer

Your right to take either of these alternatives is not affected by this new complaints procedure.

You may charge a police officer with a criminal offence by attending at the office of a Justice of the Peace. For the office nearest you, telephone 965-7541.

If you want to sue a police officer, you should contact a lawyer.

All civil suits and some criminal charges must be started within six months of the date the incident occurred.

Question

Where can I get more information about the Metropolitan Police Force Complaints Project Act?

Answer

You can obtain a copy of the Act from the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario, telephone: 965-2054.

As well, you can telephone the Office of the Public Complaints Commissioner at 963-1141.

If you make a complaint, you will be given a document that sets out the procedures that are followed and your rights under the Act.



Sidney B. Linden, Q.C.
Public Complaints
Commissioner

During the course of this pilot project I am hopeful that I will be able to count on the support of the citizens of Metropolitan Toronto, the Metropolitan Police Force and the Metropolitan Toronto Police Association.

I am confident that the expressions of goodwill received since my appointment as Public Complaints Commissioner will continue to provide a foundation for an atmosphere of co-operation and mutual respect that will ensure the success of this unique experiment.

Sincerely,

A handwritten signature in cursive script, reading "S. B. Linden".

SIDNEY B. LINDEN, Q.C.
PUBLIC COMPLAINTS COMMISSIONER

Mr. Linden is a native of Toronto who, until his appointment as Public Complaints Commissioner, was a prominent member of the criminal bar and a well-known labour arbitrator. He was General Counsel to the Canadian Civil Liberties Association and served on its Board of Directors. He was Vice-President of the Criminal Lawyers Association and also active on the Legal Aid Committee of the Law Society of Upper Canada.

The Metropolitan Police Force Complaints Project Act, 1981, was proclaimed December 21, 1981. The project is funded by the Ontario Ministry of the Attorney General and the Municipality of Metropolitan Toronto.



The Office of the
Public Complaints Commissioner

157 Bloor Street West, Toronto, Ontario M5S 1P7
Telephone: 963 1141

METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT, 1981**POLICE COMPLAINT PROCEDURES AND RIGHTS
OF A PERSON MAKING A COMPLAINT**

To the Complainant:

This statement briefly sets out the procedures that will be followed upon receipt of your complaint against a member of The Metropolitan Toronto Police Force and your rights under the **Metropolitan Police Force Complaints Project Act, 1981**.

Who Sees Your Complaint

1. No matter where your complaint is recorded a copy of the complaint will be sent to the Public Complaints Commissioner and the Public Complaints Investigation Bureau (the Bureau) of the Metropolitan Toronto Police Force.
2. The police officer concerned will be informed of the substance of the complaint unless the investigation might be adversely affected if the police officer is so informed.

Informal Resolution

3. The person in charge of the Bureau will consider whether your complaint can be resolved informally and if this is possible he will attempt to do so, but only if he has your consent and the consent of the police officer concerned.
4. No complaint can be resolved informally unless both you and the police officer concerned agree in writing to the resolution.

Investigations and Reports

5. If the complaint is not resolved informally, the Bureau will investigate the complaint. The investigator will interview you, the police officer concerned and any other witnesses.
6. You will receive a report not later than thirty days after you make your complaint and on a monthly basis thereafter unless the investigation of the complaint might be adversely affected by a report or there are no new matters to report. The Public Complaints Commissioner will also receive these reports.
7. If at any time you are not satisfied with the manner in which your complaint is being handled you may contact the Office of the Public Complaints Commissioner, telephone: 963-1141
8. In certain situations the Public Complaints Commissioner may decide to do his own investigation before the Bureau completes its investigation.
9. When the Bureau investigation has been completed, a final report will be sent to you, the Public Complaints Commissioner, the chief of police and the police officer concerned.

Decision of the Chief of Police

10. The chief of police or his designate will review all investigation reports and make one of the following decisions:
 - i. Order further investigation.
 - ii. Decide that no further action is warranted.
 - iii. Cause a charge to be laid against the police officer and refer the matter to the Crown Attorney for prosecution.
 - iv. Refer the matter to the Police Complaints Board for a hearing.
 - v. Cause disciplinary proceedings to be taken against the police officer under the Police Act.
 - vi. Counsel or caution the police officer regarding his conduct.
11. You will be informed in writing of the decision made by the chief of police.

Review By Public Complaints Commissioner

12. If you are not satisfied with any of the following decisions you may request the Public Complaints Commissioner to review the matter:
 - i. The decision of the chief of police that no further action is warranted.
 - ii. The decision of the chief of police to counsel or caution the police officer regarding his conduct.
 - iii. The decision made in a disciplinary proceeding under the **Police Act**.
13. Upon receipt of your request, the Public Complaints Commissioner will review the matter, and his staff have broad powers to investigate. Documents must be made available, and individuals can be subpoenaed to answer questions.
14. After his review, the Public Complaints Commissioner may order a hearing before the Police Complaints Board where he feels that the public interest requires it. If he decides that there should not be a hearing, he will give you his reasons. The Public Complaints Commissioner will write to you, the chief of police and the police officer concerned about his decision.

Police Complaints Board Hearing

15. If a Police Complaints Board hearing is ordered, you will be notified in writing of the date and place of the hearing. You have a right to attend and take part in the hearing and to be represented by counsel or an agent. You will also be given an opportunity, prior to the hearing, to examine any written or documentary evidence or any report that will be given in evidence at the hearing. The hearing will be open to the public. You will receive a copy of the Board's decision.

(Being Annex A to The Government Reply to the Fourth Report from the Home Affairs Committee, Cmnd. 8681 1982)

ANNEX A

THE GOVERNMENT'S PROPOSED NEW ARRANGEMENTS FOR HANDLING COMPLAINTS AGAINST THE POLICE

PRESENT SYSTEM

1. The effect of the existing legislation is that every complaint by a member of the public against a member of a police force, unless withdrawn or not proceeded with by the complainant, has to be investigated by a senior police officer whose report receives independent consideration. Where there is an allegation of criminal conduct the report of the investigation must be sent to the Director of Public Prosecutions (DPP) who advises whether the officer should be charged with a criminal offence. After any reference to the DPP the report is submitted to the Police Complaints Board (PCB) for their consideration of the disciplinary aspects. A more detailed account of present arrangements is at the Appendix.

THE PROPOSED NEW THREE-TIER APPROACH

2. It is proposed to substitute for the present uniform arrangements a three-tier system to operate according to the seriousness of the case. It would allow relatively minor matters to be dealt with locally by informal resolution and, in the most serious complaints, would provide for an independent element in the process of investigation. Thus:—

- (a) less serious complaints would be subject to an informal procedure, including an element of conciliation;
- (b) more substantial complaints and those where informal resolution could not be achieved would be investigated and independently considered by the PCB, although complaints involving crime would no longer be automatically referred to the DPP;
- (c) the most serious complaints would be subject to investigation by a senior police officer normally, but not exclusively, from an outside force under the supervision of an independent assessor.

The details of the scheme are set out below.

RECEIPT OF COMPLAINTS

3. Although the chief officer of police would remain the receiving point for complaints and no action could start until a complaint was brought to a force's attention, a complaint could be lodged either by the complainant or by any person on his behalf, orally or in writing. Thus, it would be open to a complainant to go, for example, to a citizen's advice bureau or community relations officer and for them to forward the complaint to the police.

4. On receipt of a complaint against a member of his force the chief officer would cause it to be recorded and to have made such preliminary inquiries as were necessary to decide whether the matter should be handled initially by informal resolution or by formal investigation and, if the latter, whether the independent assessor should be involved. He may also need to initiate immediate local action, e.g. in order to preserve evidence.

5. Informal resolution would *not* be an option where the complaint alleged:—
- (a) a criminal offence with which the officer had not been charged and which would either require reference of the report to the DPP or which in the opinion of the chief officer merited criminal proceedings without such reference (see paragraphs 13–15 below); or
 - (b) conduct which, if supporting evidence were forthcoming, would be likely to result in the officer in practice being charged with an offence against the Police Discipline Code.

INFORMAL RESOLUTION

6. The complainant would be seen (unless this were impracticable) by a supervisory officer of a rank not less than Inspector who would explain that, subject to paragraph 5 above, the matter could be dealt with, according to the complainant's wishes, either informally or by investigation by a senior police officer and reference to the DPP and PCB, as appropriate, for independent consideration of the outcome.

7. Where informality was preferred the supervisory officer would make such arrangements as he considered appropriate for this purpose. It would be open to him to resolve the matter in such a way as proved acceptable to the complainant. The outcome would be recorded by the police in a register available for inspection by the police authority and HM Inspector of Constabulary, and from which it would be open to a complainant to ask for a copy of the record of the entry for his complaint at any time within three months of its outcome being entered in the register. No entry of any kind relating to either attempted or successful informal resolution would be made in the personal record of an officer.

8. The arrangements made for the informal resolution process might include, at the supervisory officer's discretion, a meeting attended by a lay person where the complainant so wished. No officer could be compelled to attend such a meeting if he did not so wish. The function of the lay person would be to represent a non-police presence in support of the conciliation process and to assist in arriving at a conclusion in accordance with paragraph 7 above. The lay person could be drawn from a panel of people, perhaps maintained by the police authority for this purpose; he or she would have had no previous connection with the complainant or interest in the case.

Mutual protection of police officer and complainant

9. In order to preserve the informality of the procedure and encourage a co-operative and forthcoming spirit, it would be necessary to ensure that both the police officer and the complainant felt they could enter conciliation without running avoidable personal risks. Accordingly, provided no material change of circumstance occurred as envisaged in paragraph 12 below, no reference would be allowed in any subsequent disciplinary or criminal proceedings to what an officer said or did in the conciliation process, and any statement by him made in the course of preliminary enquiries or for conciliation purposes would not be admissible. That is to say, any proceedings could normally be based only on statements made to the officer appointed to conduct a formal investigation. Nor would anything said or done in the course of informal resolution be admissible in any subsequent civil proceedings by the complainant. By the same token there would be no arrangements for a copy of the complaint to be available to the officer concerned.

Oversight

10. Whilst the PCB's locus would continue to be confined to where a complaint was dealt with by formal investigation, the present requirement for police authorities and Inspectors of Constabulary to keep themselves informed as to the manner in which complaints are dealt with by chief officers (section 50 of the Police Act 1964) would be developed. Thus, both could be required, for example, to inform themselves also about how the system of informal resolution worked in practice and to encourage resort to that system so far as possible. In addition, Inspectors could be charged with identifying good practice generally, disseminating knowledge of it through the service and, with police authorities, encouraging its adoption, ultimately by inclusion in guidance issued by the Home Secretary. No amendment of the existing legislation would be necessary for this purpose.

FORMAL INVESTIGATION AND INDEPENDENT CONSIDERATION

11. Where a complaint could not be resolved informally to his or the complainant's satisfaction or was of a nature described in paragraph 5 above the chief officer would be required to cause it to be investigated by a senior officer¹ from a different division or from another force, appointed for the purpose, as now. This would be subject to the grant of any dispensation by the PCB from the requirements in respect of complaints which were anonymous, repetitive or otherwise incapable of investigation, as presently provided by Regulation 4 of the Police (Withdrawn, Anonymous Etc Complaints) Regulations 1977.

12. Where in the course of attempted conciliation information came to light which brought the complaint within paragraph 5 above, the process would cease and the complaint would be referred for formal investigation.

Reference to DPP and PCB

13. Existing arrangements in relation to allegations of criminal conduct would be changed. At present the chief officer is required to submit investigation reports to the DPP in every case. In future, however, this automatic requirement would be varied but in such a way as to allow the chief officer to decide lesser criminal allegations himself and to bring either criminal or (without the consent of the Board) disciplinary proceedings without going to the DPP first. There would, however, be a safeguard since the PCB would be empowered to direct that the papers be submitted to the DPP (without considering whether or not the evidence was sufficient) if of the opinion that the allegation, if true, was too serious to be disposed of disciplinary.

14. This would have the effects of reducing the flow of more trivial cases to the DPP. Guidance would be issued to chief officers on how the arrangements were to be operated.

15. In the cases that continued to be referred to him, the DPP would consider whether the evidence was sufficient for criminal proceedings and would so advise the chief officer and the complainant, as now. After any reference to the DPP, the PCB would consider the disciplinary aspects, as now.

¹Of the rank of chief inspector or above is intended (as now required in the Metropolitan Police) rather than superintendent as for the provinces at present. This and a related change that would permit the delegation of chief officer functions to assistant chief constable could be accomplished by regulations under existing powers.

INVESTIGATION UNDER THE INDEPENDENT ASSESSOR

Mandatory reference

16. Where a complaint alleged that police action had been responsible for a death or serious injury¹, and in the view of the chief officer it could have been caused in the way alleged, he would be required to refer it to the independent assessor.

Discretionary reference

17. The chief officer would be able to refer any other case to the assessor where he considered it right to do so by reason of the gravity of the allegation or other exceptional circumstances. (This would facilitate the reference of a "serious case of assault" not falling within paragraph 16 above, e.g. where the injury itself although not very serious was consistent with the assault alleged and for which there was apparently no other explanation; or a serious corruption case.)

Reserve powers

18. The assessor would be empowered at his discretion to require a chief officer to submit for consideration any complaint not already referred to him, together with such information as may be necessary to enable the assessor to decide whether by reason of the gravity of the allegation or other exceptional circumstances it should be investigated under his supervision.

Independent assessor's decision on handling

19. In any case referred to, or called in by, him the assessor would consider the chief officer's proposals for investigation and decide either:—

- (a) that the investigation should be carried out under his supervision by an officer from a different division of the force or from another force; or
- (b) that the case should be referred back to the chief officer to be dealt with as at paragraphs 11–15 above.

For purposes of (a) the independent assessor would be empowered to endorse the nomination of the investigating officer or to require the submission of alternative proposals.

Conduct of investigation under independent assessor

20. In relation to the conduct of the investigation the function of the assessor would be to ensure that the investigation was done expeditiously, thoroughly and impartially. In the exercise of that function, he would be empowered to make such reasonable directions as were necessary, with the consent of the DPP in matters concerning the collection of evidence for possible criminal proceedings.

¹"Serious injury" means medical evidence of fracture, damage to internal organ, impairment of bodily function, deep cut or laceration, but not bruising or superficial laceration.

Reports

21. The investigating officer would be required to make to the assessor, and copy to the chief officer concerned, such interim reports as the assessor might reasonably require.

22. Where in the opinion of the investigating officer the investigation revealed internal disciplinary matters not arising directly from the complaint or giving rise to proposals for the suspension of officers under suspicion these would be reported by him directly to the chief officer. Such reports would have to be copied to the assessor.

23. The investigating officer's final report would be submitted to the assessor and copied to the chief officer. The chief officer would submit the report to the DPP as necessary. When the assessor was satisfied with the conduct of the investigation he would notify the chief officer and DPP as appropriate. No decisions on criminal or disciplinary action would be taken until the assessor had signified his satisfaction with the investigation. Where the DPP decided against prosecution the chief officer would consider the need for disciplinary proceedings and refer the report to the PCB.

24. Any request by the DPP or chief officer for further information for their respective purposes would be notified to the assessor.

Location of assessor

25. The assessor would be the Chairman of the Police Complaints Board or a Deputy appointed for this purpose. Assistant assessors to whom his functions could be delegated would be appointed as members of the Board as necessary. The working methods and location of the assistant assessor would not be prescribed although they would be expected to maintain close and direct contact with the conduct of the investigation. They might be appointed initially on a broad regional basis and a comprehensive regional presence would not be ruled out if experience suggested it was desirable.

APPENDIX

THE PRESENT SYSTEM

1. Under section 49 of the Police Act 1964, where the chief officer¹ of police for any police area receives a complaint from a member of the public against a member of his force, he must, unless the complaint alleges an offence with which the officer has already been charged, record the complaint forthwith and cause it to be investigated. By virtue of this provision he may, and shall if so directed by the Secretary of State, request the chief officer of police for any other police area to provide an officer to carry out the investigation, and that chief officer must comply with the request. Under the Police (Discipline) Regulations 1977 a complaint which suggests that the officer concerned may have offended against the Regulations must be investigated by an officer of the rank of superintendent or above and from a different division of the force.²

¹In practice the functions of the chief officer under section 49 and the connected functions under the Police Act 1976 are delegated to the deputy chief constable, or his equivalent in the Metropolitan and City of London forces.

²In the Metropolitan Police the requirement is for an officer of the rank of chief inspector or above. The Regulations also require that in the Metropolitan Police he be from a different "sub-division". But a change in nomenclature in 1978 brought the Metropolitan Police more into line with other forces, and what were formerly sub-divisions are, in practice, now known as "divisions".

2. The investigating officer submits his report to the deputy chief constable. Where it is alleged that an officer has committed a criminal offence the deputy chief constable is required by section 49(3) of the Police Act 1964, unless he is satisfied that no criminal offence has been committed, to send the report to the Director of Public Prosecutions. The Director recommends whether or not the officer should be charged with a criminal offence. After any reference has been made to the Director on the criminal aspects the deputy chief constable decides whether the circumstances are such as to justify bringing a disciplinary charge against the officer in accordance with the Police (Discipline) Regulations. He is required by the Police Act 1976 to send to the Police Complaints Board a copy of the investigating officer's report together with a memorandum stating whether he has decided to bring disciplinary proceedings against the officer concerned and, if he has not, his reasons for not doing so. If the Board disagree with the decision of the deputy chief constable not to bring proceedings, they may recommend that disciplinary charges be brought. Where such charges are preferred and are denied by the officer the Board can direct that they be heard by a tribunal of two members of the Board in addition to the chief officer instead of the chief officer sitting alone. In the last resort the Board may direct that charges be brought, and in these circumstances, if they are denied by the officer, they must be heard by a tribunal.

3. Section 50 of the Police Act 1964 requires every police authority in carrying out their duty with respect to the maintenance of an adequate and efficient police force, and HM Inspectors of Constabulary in carrying out their duties with respect to the efficiency of any police force, to keep themselves informed as to the manner in which complaints are dealt with by the chief officer.

(Being Appendix 7 of Evidence Submitted to the Home Affairs Committee 1981-2 H.C. 98 - JJ)

APPENDIX 7

Memorandum submitted by the Commission for Local Administration in England

COMPLAINTS AGAINST THE POLICE--AN OMBUDSMAN SYSTEM

1. As requested when representatives of the Commission gave evidence to the Home Affairs Committee on 24 February 1982, this paper suggests the kind of procedures that might be introduced into the arrangements for considering complaints against the police if it were decided that these should be centred on a Police Ombudsman system.

2. In the written evidence they have already submitted to the Home Affairs Committee, the Commission set down the principles on which a complaint system should be based and their impressions after nearly eight years of investigating complaints. The points made can be summarised by saying that a complaint system:

- must be fair to the complainant and to those against whom a complaint is made, and thus carry their confidence;
- must be well publicised and known to those who may wish to use it;
- must be easy to use and sensitive and unbureaucratic in operation;
- must provide the possibility, through a local complaint procedure, for complaints to be settled locally;
- but must include a completely independent person (Police Ombudsman) to whom a complaint can be referred if local settlement is not possible, or if for other reasons the complaint needs independent investigation;
- must provide the Police Ombudsman with his own investigative and independent financial resources, and the power to recommend appropriate action, backed by some system for ensuring that such action was taken.

STAGE 1

3. Any complaint is best settled locally if that can be done properly, i.e. without pressure being exerted on the complainant or important issues, for example the need to improve administration or discipline, being concealed.

4. There should be a time limit within which complaints should be made. All complaints should be registered locally at a local police station but preferably in a way that need not involve a complainant in having to put his complaint to the very officer against whom the complaint was made. Complaints could therefore be made:

- (a) direct by the complainant at the police station; or
- (b) by the complainant to a Member of Parliament; or
- (c) by the complainant to a member of the Police Authority; or
- (d) by the complainant to a local organisation such as a Citizens' Advice Bureau.

5. Whichever channel was used, the complaint would end up at the local police station. Each police force would be required to have a local complaint procedure, and as part of it a simple arrangement for recording all complaints received. Every complainant, whichever channel he or she use, should then be given a simple statement about the complaint procedure, including a clear reference to the right to take a complaint to the independent Police Ombudsman if he or she was not satisfied with the way the complaint was handled under the local complaint procedure.

STAGE 2--CONCILIATION

6. To judge from the high number of complaints against the police which are "withdrawn or not proceeded with", there is ample scope (as with complaints against other bodies) for informal conciliation leading to local settlement, for example of a complaint of rudeness or minor inefficiency.

7. The local complaint procedure would deal with these complaints and should ensure that a complaint was handled with the minimum of bureaucracy and formality. The procedure should be set out in a readily understandable document explaining, for example, which local officers would be responsible for doing the conciliating.

8. When a complaint was settled at this local level the fact would be recorded in the register kept by the police, and any person or body who had referred the complaint should be told the outcome in sufficient detail to show that the settlement was genuine.

9. Certain classes of complaint, i.e. those classified by the legislation as serious, would be excluded from the local conciliation procedure. After registration by the police they would be sent straight to the Police Ombudsman.

STAGE 3

10. This stage would be for the Police Ombudsman to handle. It would cover consideration and investigation of:

- (a) the special classes of complaint referred to in paragraph 9;
- (b) complaints not settled locally by conciliation for whatever reason (e.g. a complainant might claim that, although the complaint in itself was minor, it raised issues which should be considered by an independent person);
- (c) complaints where the police themselves felt, and the complainant agreed, that the Police Ombudsman should be left to make an investigation and judgment.

11. The complaints where conciliation had failed—category (b)—could reach the Police Ombudsman either direct from the complainant or from the third party through whom the complaint was originally referred. But they should always be in writing, and in a form to satisfy the Police Ombudsman that the complainant himself wanted him to deal with the matter

THE OMBUDSMAN'S ROLE

12. The number of complaints that would reach the Police Ombudsman for consideration in a year is difficult to quantify, but might be somewhere between 3,000 (the present number of complaints of assault or serious injury) and 16,000 (the present total number of complaints not withdrawn).

13. It is suggested that the legislation would have to cover the following:

- (a) as with local government, more than one Police Ombudsman would be required: a national Commission could be the solution consisting of full-time Police Ombudsmen responsible for particular areas, large enough to prevent their becoming indented with a particular police force;
- (b) the source of the Police Ombudsman's investigative staff: it is suggested that they need not be drawn from police forces although, as with other Ombudsmen, some of them could be seconded or former policemen. The vital thing is to get people of high calibre with the right human and intellectual qualities. It could be helpful to have provision also for *ad hoc* secondment of specialists to assist in investigating particular complaints;
- (c) the investigative procedure, as with all existing Ombudsmen, should be at the discretion of the Police Ombudsman; and he should have power to secure such evidence as he considered necessary and to allow anyone involved in the complaint to be represented.
- (d) no complaint should be investigated without the police force concerned, and any individual officers involved, being given a reasonable opportunity to comment on the allegations made;
- (e) as part of his discretion, the Police Ombudsman should be free to decide that a complaint referred to him should not be investigated further (giving the reasons for his decision), or that efforts at local settlement should be made, perhaps with the help of one of his staff;
- (f) the process for investigating the complaint should be in private, and should lead to a written report containing the Police Ombudsman's findings, but not normally the names of those involved. The report should always be sent to the Chief Constable concerned as well as to the complainant and to anyone through whom the complaint was referred. The Police Ombudsman should have discretion also to send it to the Director of Public Prosecutions if action by him seemed necessary. Provisions regarding privilege would be required;

- (g) if in light of a report the Police Ombudsman considered that the Chief Constable should take some specific action, either disciplinary or administrative, e.g. to improve procedures, the Chief Constable should be required to respond and tell the Police Ombudsman what action he had taken or proposed to take. If the Police ombudsman was not satisfied with that action he should be bound to report to the Police Authority (the Home Secretary in the case of the Metropolis) so that the Authority could consider the matter. (Under Section 50, Police Act 1964, they must keep themselves informed on the manner in which complaints against the police are dealt with by the Chief Constable);
- (h) the Commission of Police Ombudsmen, should also have the *right* to report on individual cases to the Home Affairs Committee of the House of Commons, and the *duty* to report to the Committee annually on the year's work as a whole.

14. The Commission believe that arrangements on these lines, would be practicable, would command public and police confidence, and could lead to many complaints being dealt with locally under a standard simple procedure which would not waste time or money through the automatic involvement of high-ranking officers. There would be a need, however, regularly to monitor the working of the procedure locally, a task which might be performed either by the Police Authority or by the staff of the Police Ombudsman.

21 Queen Anne's Gate
London SW1H 9BU

10 March 1982