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HUMAN RIGHTS

“Everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Universal Declaration of Human Rights.¹

- 4.1** It is a central proposition of this report that the fundamental purpose of policing should be, in the words of the Agreement, the protection and vindication of the human rights of all. Our consultations showed clear agreement across the communities in Northern Ireland that people want the police to protect their human rights from infringement by others, and to respect their human rights in the exercise of that duty. Article 28 of the Universal Declaration of Human Rights states: “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised”. The role of the police is to help achieve that social and international order. They must, for example, uphold the laws that safeguard the lives of citizens. There should be no conflict between human rights and policing. Policing means protecting human rights.
- 4.2** As Ralph Crawshaw points out, however, in practice tension does occur between human rights and policing². Police have powers to limit rights and freedoms, for example, by arresting people. The article from the Universal Declaration of Human Rights quoted at the top of this chapter is clear enough, but not easy to implement. Yet the judgments that police officers make every day on this point determine the difference between good policing and bad.
- 4.3** They also determine the difference between effective policing and ineffective policing. We cannot emphasize too strongly that human rights are not an impediment to effective policing but, on the contrary, vital to its achievement. Bad application or promiscuous use of powers to limit a person’s human rights – by such means as arrest, stop and search, house searches – can lead to bad police relations with entire neighbourhoods, thereby rendering effective policing of those neighbourhoods impossible. In extreme cases, human rights abuses by police can lead to wrongful convictions, which do immense damage to the standing of the police and therefore also to their effectiveness. Upholding human rights and upholding the law should be one and the same thing.
- 4.4** We do not, in this report, make judgments about the extent to which the RUC may or may not have been culpable in the past of inattention to human rights or abuse of human rights. We have of course read a number of reports about policing in Northern Ireland by local and international observers. We have also had access to any papers we have wished to see concerning past investigations into the RUC. We have taken account of all this in our report and our recommendations. But we were not charged in our terms of reference to make judgments about

¹ Article 29, paragraph 2, Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948

² Crawshaw, R., speech delivered at conference “The Agreement: A New Beginning for Policing in Northern Ireland”, organised by the Committee on the Administration of Justice, Belfast 26-27 February 1999

the past. As we said in Chapter 1, our approach is restorative rather than retributive. Moreover, the relationship between human rights and policing is a subject which is now commanding the attention of police services around the world. The Council of Europe is running a programme covering its 40 member countries called “Police and Human Rights 1997-2000”. In Canada the Royal Canadian Mounted Police has been overhauling its entire policing ethos for several years. John Jay College in New York has given “Human Dignity” training to police officers from over fifty countries. The aim of these programmes is to develop and sustain a human rights culture within police organizations. No police service that we visited over the past year would claim to have achieved that yet, even the Royal Canadian Mounted Police, which is perhaps furthest advanced in the effort. But all were convinced that it was a vital enterprise, good for society and good for policing.

4.5 In our contacts with the RUC, we found them broadly aware of these issues but at a very early stage of considering how to address them, and then mainly in the context of specific implications for policing of the Human Rights Act 1998 (see box 1). Human rights training in the RUC also lags behind other police organizations we have spoken to. In the new curriculum (introduced only this year), of 700 sessions of training there are only 2 sessions dedicated to human rights, compared with 40 of drill and 63 of firearms training; the preponderance of these last two subjects reflects the security situation that has afflicted Northern Ireland and its distorting effect on policing, including the integration of human rights into policing culture.

1 – IMPACT ON POLICING OF THE HUMAN RIGHTS ACT 1998

The Human Rights Act gives direct effect in United Kingdom courts to rights and freedoms set out in the European Convention on Human Rights*. Police organisations in the United Kingdom have been considering the implications of the Act for policing. Many of the requirements of the Convention are already covered by police procedures and codes of practice. But the Association of Chief Police Officers in Scotland have identified a number of areas which may be affected, including:

- **Pre-trial Procedures.** Rights to challenge the lawfulness of loss of liberty mean that the police are likely to have to make more detailed disclosure at an earlier stage of the full evidence they have available, for example, at a 7-day remand hearing (disclosure at present takes place considerably later in proceedings).
- **Custody of Arrested Persons.** As well as challenges to individuals being detained unlawfully, human rights legislation makes it possible to challenge the police if they decide to liberate an individual who then goes on to commit crime. This could have a significant impact upon bail decisions.
- **Covert Policing.** Article 8 – the right to privacy – has implications for the ability of the police to conduct covert policing. Covert policing methods are permitted provided they are in the interests of public safety, prevention of crime or the protection of the rights and freedoms of others.
- **Emergency Planning.** Article 2 – right to life – imposes an obligation on the police to protect an individual's right to life. This extends to events such as demonstrations where the police have responsibility to safeguard the public, and looks likely to affect the existing position of civil liability of the police.

* The Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up within the Council of Europe and signed on 4 November 1950, more commonly referred to as the European Convention on Human Rights.

- 4.6** *We recommend a comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach.* We make a number of specific recommendations below, but the achievement of such an approach goes beyond a series of specific actions. It is more a matter of the philosophy of policing, and should inspire everything that a police service does. It should be seen as the core of this report.
- 4.7** First, the importance of human rights as the very purpose of policing should be instilled in every officer from the start. *We recommend a new oath to be taken individually by all new and existing police officers, expressing an explicit commitment to upholding human rights. The text might be as follows –*
- “I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, and that in so doing I will act with fairness, integrity, diligence and impartiality, uphold fundamental human rights and accord equal respect to all individuals and to their traditions and beliefs.”**
- 4.8** Next, *we recommend a new Code of Ethics, to replace the existing, largely procedural code, integrating the European Convention on Human Rights into police practice.* A good model would be the draft Code produced by the Association of Chief Police Officers (ACPO) in 1992 and published in *Police Review* in December that year (see Annex 5), updated to take account of the impact of the Human Rights Act 1998. *Codes of practice on all aspects of policing, including covert law enforcement techniques, should be strictly in accordance with the European Convention on Human Rights.* As far as covert policing is concerned the Codes of Practice issued by the Associations of Chief Police Officers (ACPO and ACPO-Scotland) and HM Customs and Excise in May 1999³ should, we believe, apply in the whole of the United Kingdom, including Northern Ireland, and we understand that legislation is now being prepared to apply the principles of the ACPO document. (We deal with covert policing issues in more detail in Chapter 6.)
- 4.9** Training will be one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel. *We recommend that all police officers, and police civilians, should be trained (and updated as required) in the fundamental principles and standards of human rights and the practical implications for policing.* As we explain in more detail in Chapter 16 on training, *we recommend the human rights dimension should be integrated into every module of police training.*
- 4.10** *We recommend that awareness of human rights issues and respect for human rights in the performance of duty should be an important element in the appraisal of individuals in the police service.*
- 4.11** *We further recommend that a lawyer with specific expertise in the field of human rights should be appointed to the staff of the police legal services.* This lawyer should be consulted about proposed police operations that raise human rights considerations.
- 4.12** *Finally, we recommend that the performance of the police service as a whole in respect of human rights, as in other respects, should be monitored closely by the Policing Board (see Chapter 6).*

³ “Codes of Practice. Covert Law Enforcement Techniques” – The Associations of Chief Police Officers and HM Customs and Excise, May 1999

4.13 The purpose of this programme is that the police should perform functions within the law and be fully respectful of human rights both in the technical sense and in the behavioural sense (to borrow again from Crawshaw⁴). Technically, they should know the laws well and master policing skills, for example how to interview suspects, so that they are less likely to be tempted to resort to unethical methods in order to get results. Behaviourally, they should perceive their jobs in terms of the protection of human rights. Respect for the human rights of all, including suspects, should be an instinct rather than a procedural point to be remembered.

⁴ Crawshaw, R., *op.cit.*