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Mr McElhinney 6.8 PM
These notes are useful. Have there been
further development, North or South (is our
ROINN AN TAOISIGH Bill the subject
of consultation, or has it been introduced on Second
Stage, following the? haven't proposals got to end
Uimhir.....a....consultat.

Misc.

F. 2.

To: Mr McCarthy
From: J Hurley

Mr Hurley - HK
24.6.85

This note summarises the main features of the two schemes

Burkely 24/6/85

1 Please see the attached minute from Mr McElhinney in which he compares briefly the proposed police complaints system in Northern Ireland with its counterpart here. I would add the following points.

2 The proposed systems in both jurisdictions are similar in that they give an independent body the duty of supervising the investigation of serious complaints against the police. The proposed commission in Northern Ireland can get an officer from the RUC or from another UK police force to conduct the investigation. In the Republic, the investigation of complaints will in general continue to be done by the Gardai but, in exceptional circumstances, the Director of the Complaints Board can conduct an independent investigation at the Board's request. It might be considered that the Northern system has a slight advantage from the point of view of independence in that a member of an outside police force could be requested to conduct the investigation. However, the difference in the two systems can be attributed to the fact that there are a number of police forces in the UK, unlike here. When a senior Garda investigates a complaint against a member of the force in a different part of the country, the effect is probably the same as when a police officer from Britain investigates a complaint against a member of the RUC.

3 In the Northern system, the Secretary of State can order the Commission to investigate incidents in which it appears an officer might have committed a criminal or disciplinary offence but which may not be the subject of a particular complaint. This is thought to cover incidents such as disputed shootings and the firing of plastic bullets where the victim may conceivably neglect to file a complaint.

ROINN AN TAOISIGH

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In contrast, our system will only permit complaints to be made by the individual directly affected or his legal representative. This difference can be explained by the different circumstances in the North.

4 A Garda will be obliged under our system to furnish information, in certain circumstances, answer questions or produce documents which the investigating officer requires. This is intended to apply in relation to disciplinary rather than criminal proceedings and is designed to overcome difficulties which have recently become apparent when Gardai refused to cooperate with internal investigations. I suspect that a corresponding provision does not exist in Northern Ireland and that such a provision is not proposed.

5 Both systems provide for the resolution of minor complaints by informal methods.

6 The Director of Public Prosecutions has a somewhat different role in the North as compared with here in relation to the complaints procedures. Here, the board can refer the matter to him if they feel that a crime was committed. In the North, the Director of Public Prosecutions is involved throughout and the investigating officer, apart from reporting to the proposed commission, has access to the Director as well. Based on his report, the Director decides what action to take. The commission's supervisory role will end when it issues its certificate.

7 Our system will involve a fairly radical change in the method of dealing with disciplinary charges. At present, such charges are heard by a one-man or three-man body made up entirely of Gardai. An appeal lies to an Appeal Board which is also appointed by the Commissioner and two out of the three members must be senior Garda officers. The new system

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excluding
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meetings
BDR

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of the Complaints Board

provides for the hearing of disciplinary charges by a tribunal of three ~~board members~~. An appeal will lie to an Appeal Board comprising a Circuit Court Judge and two Lawyers appointed by the Government. The Northern system for dealing with disciplinary charges will not be changed very much. At present, such charges are heard by the Chief Constable or Deputy Chief Constable or, in certain circumstances, by another senior officer not below the rank of Chief Superintendent or by the Disciplinary Board. An appeal lies from the decision of such a tribunal to the Chief Constable (unless the original decision is his). A further appeal lies to the Secretary of State (which is the first appeal where the original decision was made by the Chief Constable). The Secretary of State can appoint a tribunal to advise him. It is now proposed that there will be a statutory entitlement to a hearing of an appeal to the Secretary of State by an Advisory Tribunal in more extensive circumstances than obtain at present. The tribunal will comprise a chairman, who will be legally qualified, a serving or retired member of the Inspectorate of Constabulary or a retired Chief Officer and the third member will be a retired officer drawn from ranks identical with or close to that of the appellant.

PH. 19/6/85.

ROINN AN TAOISIGH

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To: Mr J Hurley
From: P McElhinney

Re: Comparisons between

- 1) Proposals for Police Complaints Procedures in Northern Ireland and
- 2) Proposals for a Garda Siochana (Complaints) Bill in this State)

I have made a brief assessment below of the main features of and points of difference between the two proposed police complaints procedures in both parts of the island ~~respectively~~.

1 Proposals for Police Complaints Procedures in Northern Ireland

A new independent commission is proposed to replace the present police complaints board. It would have more extensive powers than the board it replaces. It would be able to determine whether the investigations of complaints against the police should be undertaken by an officer of the RUC or of an outside force. It could also direct the investigating officer about the conduct and pace of the inquiry and would also supervise throughout, judging at the end of the process whether to issue a certificate of satisfaction in respect of each investigation. Responsibility for investigations will remain with the police but the commission will be automatically informed of any complaint. The likely make-up of the Commission has yet to be decided.

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The Secretary of State for Northern Ireland would hold reserve powers in respect of the Commission and he could issue an order to the Commission to investigate any incident involving the RUC in public controversy. These would involve cases, for example, of disputed shootings and firing of plastic bullets.

2 Proposed Garda Siochana Complaints Board

A part-time Board would be appointed by the Government and including a Deputy or Assistant Garda Commissioner who would supervise the investigation of complaints.

The Board would have a full-time staff and a Director to issue investigation tasks to officers on his staff. The Director could also conduct an independent investigation at the Board's request.

The Board would decide what action to take following the investigation of a complaint. If a criminal offence was judged to have occurred and was regarded as being too serious to be dealt with by disciplinary action, the matter would be referred to the DPP. If a breach of discipline only had occurred, the Board would refer the matter to a tribunal consisting of 3 board members and including a nominee of the Garda Commissioner's.

A right of appeal to an Appeal Board would exist consisting of a Circuit Court judge as Chairman and two lawyers appointed by the Government.

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In principle, the Government have also approved the inclusion in the draft bill, of a provision imposing a duty on a Garda, in certain circumstances, to furnish information to the officer investigating a complaint against him.

The essential difference between the two proposed systems is the greater degree of involvement of the Garda Siochana in the proposed procedures for this State, than is the case with the Northern Ireland proposals which, as far as can be seen at present, will have a wider non-police involvement in their proposed commission. The reserve powers vested in the Northern Ireland Secretary of State are also a key distinguishing factor. These differences would be largely due to the particular circumstances of nationalist alienation from the security forces in Northern Ireland and the need to provide impartial, extra-police assessors of complaints. The Northern Ireland Secretary, Mr Hurd is on record, furthermore, as saying that he hoped that members of the minority community would take part in the commission.

May 1985

POLICE COMPLAINTS AND DISCIPLINE

A CONSULTATIVE PAPER

POLICE COMPLAINTS PROCEDURES: FOREWORD BY SECRETARY OF STATE

The rule of law is the corner-stone of democracy. In Northern Ireland the RUC has the primary role in maintaining the rule of law in the face of repeated attempts by terrorists to subvert it. The RUC carry out this task valiantly and with increasing success. But the strain which is sometimes imposed on the normal relationship between the police and the community is immense. It is therefore important that we should have the best possible arrangements for assuring both the citizen and the police that justice and fair play will prevail whenever any individual member of the public feels that he has suffered an injustice by the actions of a police officer.

The police, and society as a whole, have an equal interest in ensuring that grievances, whether real or imagined, are investigated and the right action taken, and that complaints are not disregarded. If such grievances are left to fester they will help those whose main aim is to infect and poison confidence in the police. The RUC need co-operation and the confidence of the whole community in order to fight terrorism successfully and to enforce the rule of law. It is as important for police to protect individual rights as it is to prevent and detect crime. The individual citizen must be satisfied that effective checks and balances exist to redress any wrong-doing by individual police officers.

The Government's proposals for reform of the police complaints procedure in Northern Ireland, set out in this discussion paper, have been framed with these considerations in mind. They take full account of the corresponding changes which are being introduced in England and Wales, amended as seems sensible to meet Northern Ireland's particular needs. I believe that they represent a system which will be, and will be seen to be, fair and equitable both to the individual citizen and to the police.

A major feature of the new system will be the introduction of an independent element in the supervision of the investigation of complaints. The new Police Complaints Commission will have a broadly based membership. It will be entirely independent of the Government and the police. It will have a statutory duty to supervise the investigation of the most serious complaints about police conduct, and it will also have powers to allow it to supervise the formal investigation of any other complaints as it wishes. The actual process of investigation will continue to be carried out by police officers for I do not believe that it would be either practicable or right for such investigations to be carried out by any other group or body. The ultimate responsibility for the investigation of alleged crimes, whether committed by a policeman or by a private citizen, properly rests with the Chief Constable. So too does responsibility for the discipline of his force. The Chief Constable must be responsible for discharging those tasks. But it is also right that the process of investigation of complaints against the police themselves should be independently supervised. That will be the main role of the

Police Complaints Commission.

The Commission will be notified automatically of all specific and serious complaints which are received by the Chief Constable against any member of the Royal Ulster Constabulary. It will be the responsibility of the Commission to ensure that the investigation is carried out quickly, thoroughly and impartially. In cases it supervises, the Commission will have powers to determine whether the investigation should be undertaken by an officer of the force, or from an outside force. It will also have power to specify which particular officer should conduct the investigation, and whether additional manpower or other resources should be devoted to the investigation.

While the investigation is in progress the investigating Officer will keep in touch with the Commission, which will receive periodic reports. It will be open to the Commission to direct the investigating officer as to the conduct of the investigation, and to require him to justify the scope and pace of the investigation. When the investigation is completed, the investigating officer's report will be submitted to the Commission, and copied to the Chief Constable. In each case the Commission will issue a certificate stating whether or not it was satisfied with the conduct of the investigation, and that certificate will be made available to the complainant.

There may also be occasions where no formal complaint has been received but where there are indications that a police officer may have committed a criminal or disciplinary offence. Such matters could arise in the course of routine police enquiries, or they could be a matter of public interest. It is therefore proposed that the Chief Constable should be empowered to draw the attention of the Commission to any such matter which he feels requires its involvement. The Secretary of State should also be able to ask the Commission to supervise the investigation of any such matter in the public interest. This last proposal goes beyond what is enacted for England and Wales. I believe it would be a useful and sensible innovation for Northern Ireland.

The Commission will be required to report annually to the Secretary of State about the operation of its powers and duties; and to review the working of the new arrangements every three years. It will also be able to make special reports on any matter of exceptional interest concerning its functions. Finally it is proposed that the Secretary of State would be able to ask the Commission to report to him generally on any aspect of its functions.

One other aspect of the proposals warrants special mention. That is the means by which minor complaints may be resolved without resort to the full rigours of formal investigation. Many complainants have no desire to become involved in a full-scale police investigation when all they may require is an explanation or an apology for an incident which, when put in perspective, may be seen to have been more a misunderstanding than anything else. Under the proposed scheme of informal resolution it would be open to the investigating police officer

to decide that a particular complaint can be dealt with informally and to arrange for a meeting of the parties to discuss the matter. I hope that this informal process will allow amicable understandings to be reached in appropriate cases.

These are important reforms. A complaints procedure in which all can have confidence is an essential part of modern policing in any country where the police are under the law. The public have to believe that the procedure is fair and thorough; so do the police. The procedure must take account of the difficult and often dangerous conditions in which the police work. We have worked out our proposals with care to meet these requirements, and I look forward to hearing the views of all concerned upon them.

Douglas Hurd.

Secretary of State
for Northern Ireland

April 1985