

Assistant Chief Constable Sam Kinkaid
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14 September, 2001

Re: Draft Force Order on the Role of Defence Lawyers

Further to my letter of 22 August, I can now give you the Commission's comments on the draft Force Order.

The Commission is pleased to see that the draft Force Order refers not just to Article 6 of the European Convention on Human Rights but also to various provisions in the UN's Basic Principles on the Role of Lawyers. We welcome this acknowledgement that non-binding human rights standards should nevertheless be adhered to by public authorities in Northern Ireland. The following comments are given in that light!

Para 1.1

We would prefer it if one of the listed functions of the police was "the protection of the human rights of everyone in society". While we were unsuccessful in getting the Bill which became the Police (NI) Act 2000 changed to reflect this point, we note that the Chief Constable has frequently said in public that the protection of human rights is indeed one of the police's duties. It would therefore be consistent to mention this in the Force Order.

Para 2.1 (or a new para 2.3?)

In addition to Article 6, Article 14 of the European Convention may be worth summarising. It is important that police officers know that there can be no discrimination in the way in which Article 6 rights are allocated.

Whilst we can appreciate that the Force Order is not the place in which to replicate large chunks of the PACE Codes of Practice and the Terrorism Act Codes of Practice, we think it would be useful to give more exact references to the relevant paragraphs of those Codes and to summarise them in bullet points (e.g. by saying that they require police officers not to say anything intended to dissuade a suspect from seeking legal advice).

Para 2.3

We wonder on what basis the selection of “Articles” from the UN Basic Principles was made (they should be called Principles, not Articles). We would recommend the inclusion of Principles 2, 5 and 7. As you know, these provide that efficient procedures and responsive mechanisms must exist for effective and equal access to lawyers without distinction of any kind (Principle 2), that all persons must be immediately informed of their right to be assisted by a lawyer of their choice upon arrest or detention or when charged (Principle 5) and that all persons arrested or detained must have prompt access to a lawyer, and never later than 48 hours after the arrest or detention (Principle 7).

We would also recommend that the Force Order should contain some references to another UN document, the so-called *Declaration on Human Rights Defenders*, agreed by the General Assembly on 9 December 1998. Its full name is the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. Article 1 states that everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. Article 6 states that everyone has the right to obtain and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems. Article 9(3)(c) states that everyone has the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms. We think the Force Order could at least summarise the effects of these Articles. For ease of reference the full text of the Declaration is enclosed.

Para 3.4

This may be the appropriate place to state expressly that police officers must not threaten, obstruct or harass solicitors when they are performing their legitimate functions. It could be added that any such behaviour is a breach of the Code of Discipline (is it?) and/or that it will be viewed very seriously by commanding officers in the police.

The Commission hopes you find these comments of some help. If there is time for the Commission to be consulted again once the next draft is prepared, we would be happy to respond accordingly.

Brice Dickson
Chief Commissioner