

Comments from the Northern Ireland Human Rights Commission on the PSNI Consultation Paper on “A Programme of Action to Focus Policing on a Human Rights Based Approach” (Patten Recommendation No.1)

The Northern Ireland Human Rights Commission welcomes the preparation and distribution of this consultation paper and is grateful for the opportunity to make some comments on it. We received the paper on 24 January 2002 and are returning our comments within four weeks.

The Commission commends the Police Service of Northern Ireland for its efforts in producing this Programme of Action, a task which is by no means easy. We found the document clear and easy to understand. There is much in the document of which we approve and the critical comments which follow should not detract from the fact that the Commission is pleased that such good progress has been made in this area to date.

Chapter 1 introduces the paper by setting Patten Recommendation No.1 in the context of the many subsequent Patten Recommendations which relate to human rights. We consider this to be a sensible approach but we would have liked to see a fuller account of what “a focus on a human rights based approach” actually means for policing. Such a focus, we believe, amounts to more than the sum of the activities being undertaken in implementation of other Patten Recommendations. Chapter 3 of the paper borrows heavily from a Council of Europe document on policing and sets out what the PSNI has done, is doing and will do in seven areas of police work (Basic Values, Staff, Training, Management Practice, Operational Policing, Structure and Accountability). We have comments to make later on this over-reliance on the Council of Europe taxonomy, but at this stage our point is that Chapter 1 could benefit from a more general account of what attitudes and mindset are entailed by a human rights approach to any field of activity. It would be a good place to talk, for example, of concepts such as fairness, openness and respect for human dignity. Without having to refer specifically to what may or may not have been done badly in the past, the chapter could usefully speak in more upbeat and exhortatory terms, stressing (for example) that the Programme of Action is intended to ensure that people’s experience of policing is a positive one and that day-to-day police practice – the “police culture” if you like – is imbued with an ethos of respect, service and propriety. The aim should be to make the PSNI one of the most highly rated police services in the world so far as its regard for human rights standards is concerned. Some mention of the importance of the realisation of this aim for the future peace and stability of Northern Ireland may also be worthwhile, as may a reference to other bodies which are working to achieve the same goal (such as the Police Ombudsman’s Office, the Human Rights Commission and the Equality Commission).

We would be pleased if Chapter 1 could say, in addition, that adhering to internationally accepted rules and principles for the protection of human rights – those agreed at the UN level as well as those agreed within the Council of Europe and most obviously articulated in the European Convention on Human Rights – is part of the context informing the Programme of Action. The PSNI is already drawing upon some of the UN standards (both hard and soft) in the draft Code of Ethics and in some Force Orders, so it can truthfully claim to be mindful of them.

In Chapter 2 of the document information is given on how the other human rights recommendations in Patten are being implemented. While appreciating that the document is meant to be focusing on Recommendation No.1, the Commission believes that a little more detail could usefully be supplied about the implementation of the other recommendations. The links between the methods of implementation could then be drawn out and the complementary nature of the work being done on Recommendation No.1 could be made more apparent. For example, more could be said about how the attestation is being brought to the attention of all police officers and how they are being enabled to understand it and its importance. The use made of human rights standards in the draft Code of Ethics could likewise be highlighted, as could the work being done on human rights training (e.g. in the Certificate course at the University of Ulster and in the so-called Course For All). We do not

object to the involvement of the Human Rights Commission being mentioned where appropriate, provided we are not described as having endorsed or approved something when we have not in fact done so. But the PSNI did, for example, consult us on the advertisement for the human rights lawyer (Recommendation No.6) and we commented at some length both on the Human Rights Act training and on the University of Ulster Document (Recommendation No.4).

In relation to Recommendation No.37, if the reference to an outside consultancy is intended to be Shandwick Worldwide, the Commission needs to place on record here that when the Chief Commissioner met with a representative of that organisation on 26 October 2001 no mention was made of the fact that the interview was being conducted in fulfilment of Recommendation No.37. Moreover the Commission's own experience of the willingness of the PSNI to be transparent is not a totally favourable one. There are several documents which we have been refused access to, despite a commitment on our part to confidentiality.

The level of detail provided for Recommendation No.156 would also be appropriate for the other recommendations discussed.

Chapter 3 gets to the heart of the matter. The Commission naturally accepts that the Council of Europe's "Is your Police Service a Human Rights Champion?" approach is a good one, and we respect the care which has been paid to considering its seven components in relation to Northern Ireland. In response to Question 1 on page 11 of the consultation document, our view is that the Council of Europe approach is indeed valid. But at various points we would like more references to actual international standards on human rights, such as those laid down in UN documents or in judgements of the European Court of Human Rights. The "tests" and "indicators" set out in the Table in Appendix A are not always, as admitted on page 10 of the document, very appropriate for the Northern Ireland situation. Appendix A is also clearly in draft form and it was not obvious to the Commission whether the intention is to insert into the third column of the Tables the various bullet points listed earlier in Chapter 3 under the headings "Work already completed", "Work that is ongoing" and "Work required to be undertaken".

There is some repetition in the bullet points under each of the seven components. For instance the proposed Code of Ethics is referred to in relation to Basic Values, Staff, Training *and* Operational Policing. We do not fully understand how this will be reflected when Table A comes to be completed, not least because the 25 "descriptions" into which the seven components are broken down are in turn "tested" by a number of "indicators" and these indicators seem to require quite specific measures which will not be repeatable. Putting this differently, while the bullet points in Chapter 3 give the impression that quite a lot has been, is being and will be done in Northern Ireland, this does not mean that the Council of Europe's performance indicators will all be satisfied. Thus it is very difficult for commentators such as ourselves at this stage to answer your (repeated) questions concerning each component: we cannot say whether we are content with the work which is ongoing in relation to each component, or which is still required to be done, until we see what column 3 of Table A looks like when completed.

The bullet points in Chapter 3 are also quite variable. Some of them set out the provisions of legislation (e.g. on page 18), but do not say what the PSNI is doing to operationalise those provisions. Many of the pieces of "work carried out" or "work completed" are not in fact pieces of PSNI work at all. While the Human Rights Commission is content for reference to be made to these developments, they should not be portrayed as actions taken by the PSNI itself. Instead the Programme of Action should state how the PSNI is, or will be, interacting with the bodies responsible for these developments (e.g. the Policing Board, the Police Ombudsman and even the Human Rights Commission). Merely stating what laws have been put in place on (e.g) accountability (Component 7) can hardly be presented as part of a programme of action to focus policing on a human rights-based approach – or if it can, the PSNI should not be the body claiming credit for it.

As regards the third component of the Council of Europe's framework (Training – pages 16-17 of the document) we have to record that there has been relatively little consultation with this Commission on human rights training activities, whether those already during 2001 or those planned for 2002. The Commission was sent a copy of the Training, Education and Development Strategy for consultation but we did not receive feedback on how our comments were received or on what happened next. (It is best practice to provide feedback to consultees.) Nor do we think that the consultation was "widespread", as claimed on page 16 of the document under review. Other activities in 2001 about which the Commission was not informed include (a) the training of trainers by lecturers at Queen's University, (b) the training of civilians, (c) the training of policy writers and (d) the training of officers involved in prosecutions. On-going activities which are at an advanced stage but about which the Commission has not been notified include (a) the Tutor Constable Scheme, (b) training on human rights proofing for policy experts and (c) developments to the TED Strategy. Nor have we been consulted on a range of other related activities which have been suggested for the future, such as a cultural audit, external surveys and training for District Policing Partnership Board members.

The document under review does not mention the Commission's report on the police's Human Rights Act training which we observed, nor how the recommendations we made have been viewed.

On page 24, the reference to the Independent Commissioner for Data Protection should in fact be to the Information Commissioner.

As regards the matters listed under Recommendation 1 on page 25, we do not think the annual assessment of human rights training should be provided by the Human Rights Legal Adviser alone. While we accept that this task was made part of that person's job description with our approval, we never envisaged it being a task which would be left to that person alone. It should, we feel, be undertaken by evaluators from outside the PSNI. This is a point we have consistently made. We are surprised that the latest version of the Certificate course document from the University of Ulster still appears to ignore the need for completely independent external evaluation of police training. We are also surprised not to see included in the list on page 25 any reference to the monitoring of complaints or civil actions lodged against officers of the PSNI to see whether they are raising allegations of breaches of human rights and, if so, which ones. And it is surprising to see no mention made of the need to engage with relevant NGOs in this context.

The Commission approves of the proposal in Recommendation 2 for an annual report to be produced on human rights and policing.

We would suggest, finally, that your Programme of Action might benefit from including some kind of indicator concerning the state of the working relationship between the Police Service and the Human Rights Commission. We would suggest that it should commit the Police Service to meet formally with the Commission at least three times per year. At these meetings reports could be exchanged and discussed on progress achieved in the field of human rights and parts, if not all, of the agreed minutes of those meetings could be made available to the public (perhaps through our respective websites).

We hope these comments are of some assistance to the PSNI in the period when the draft consultation document is being revised. The Commission may submit further comments in due course and is willing to be contacted if clarification is needed of any of the points so far made.

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