

# **Review of the Police Complaints Authority**

**The Honourable Sir Rodney Gallen**  
*October 2000*

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1. **Summary**
- 1.1 **The purpose of the review was to review the role of the Police Complaints Authority in investigating and resolving complaints in instances concerning the police. The review was specifically not to re-examine any particular case.**
- 1.2 **Until the last quarter of the 20<sup>th</sup> century, complaints against the police were investigated by the police and determined within the police organisation internally.**
- 1.3 **Changes in society in countries comparable to our own, resulted in increasing pressure for such complaints to be determined by an independent authority.**
- 1.4 **The Brixton Riots in 1981 led to the Scarman Enquiry.**
- 1.5 **Lord Scarman noted a complete breakdown in confidence between the Brixton community and the police and he examined proposals for independent authorities in Canada and Australia.**
- 1.6 **An authority was set up in England. Generally the procedure adopted involved an internal enquiry by the police subject to oversight by or review from, the authority.**
- 1.7 **In this country, reports were sought from a representative committee, as a result of which a bill was introduced to the House and debated in 1988.**
- 1.8 **In New Zealand as in other countries, the establishment of an independent Authority was opposed by the police. The basis of that opposition was a concern that police officers in emergency situations ought not to be concerned over the possibility of a later enquiry by a body which was not aware of the pressures faced by police where immediate decisions were required and also, that there was a risk of malicious complaints which might affect both policing and investigation of criminal actions.**
- 1.9 **The Bill was passed by Parliament and has remained in force ever since. An Authority in terms of its requirements was set up and has operated according to the provisions of the Statute.**
- 1.10 **The New Zealand Statute followed the English pattern. Although the Authority has the power to investigate, it was not resourced to enable it to set up an investigation. It has operated as Authorities did in England, Australia and Canada, overseeing investigations where this was appropriate and reviewing the results of investigations carried out by the police.**
- 1.11 **The jurisdiction of the Authority is to investigate allegations of misconduct or a neglect of duty by members of the police and practices, policies or procedures which affect complainants. It is not an appellate Authority from other jurisdictions, nor has it any capacity to enquire into matters of guilt or innocence in criminal cases.**
- 1.12 **The standards of behaviour which are expected from members of the police by the community need to be the subject of ongoing discussions between the Authority and the police, to avoid the possibility that there may be conflict between the police disciplinary code and the standards which the Authority considers acceptable to the community.**

- 1.13 In the early years, the Authority enquired into two complaints by way of a hearing. This procedure has not generally however been followed because of difficulties relating to the conduct of a hearing.**
- 1.14 Consideration was given by the first two authorities appointed under the Act to the question of whether or not the Authority should have an independent investigative capacity and discussed in annual reports. Generally the conclusion was that this was not a practical possibility.**
- 1.15 There has recently been a rise in criticism of the Authority substantially directed, not at the Authority as such, but at its reliance upon police investigations of complaints against the police.**
- 1.16 In submissions, the point was made repeatedly that investigation of complaints against the police by members of that service, lacked independence.**
- 1.17 A number of submissions claimed that members of minority groups in society and young people, were reluctant to complain because of the fear that there would be resentment by the police in respect of any such complaint.**
- 1.18 A similar concern as to lack of independence has arisen in other comparable countries including both Great Britain and Australia.**
- 1.19 It is essential in the interests of both the community in the police that there should be confidence by the community in the police and by both the community and the police in any authority responsible for the investigation of complaints.**
- 1.20 Whether justified or not, there is a perception in the community that investigation by the police of complaints against the police was neither independent nor appropriate.**
- 1.21 Because of the necessity for confidence, the existence of such a perception whether or not it is correct justifies a reconsideration of the approach taken at the time the Act was passed.**
- 1.22 Similar conclusions have been arrived at in England and Australia and in particular, in North Ireland.**
- 1.23 The name of the Authority suggests that it is a part of the police and for that reason, it ought to be changed to the “Independent Authority for the Investigation of Complaints Against the Police”, to be known by the acronym IACP.**
- 1.24 The Authority, in order to generate confidence, must be seen as independent and accordingly, it should be a stand alone Authority, an Officer of Parliament, responsible to Parliament.**
- 1.25 The Authority should no longer consist of one person. I propose it consist of three; the Chairperson ought to be a person who holds or has held judicial office, there should be a Maori member which recognises the significance of the Treaty of Waitangi and there should be a lay person who represents the community generally.**
- 1.26 Under the present system, the Authority defers the consideration of complaints where there is a continuing police investigation. In some cases,**

- the Authority oversees an investigation even though no complaint has been received.
- 1.27 The Authority categorises complaints. In a majority of cases where it is considered that they are suitable for resolution at district level then the investigation is carried out by the police at that level and the complainant is advised of his or her entitlement to take the matter up with the Authority if dissatisfied with police handling of the complaint. A vast majority of complaints handled in this way are settled to the satisfaction of the persons concerned.
- 1.28 There are advantages in the current practice but there are also disadvantages.
- 1.29 Although the Authority has power to investigate itself, it does not have the resources to carry out investigations.
- 1.30 In the majority of cases, it will still be appropriate to use the present procedures and endeavour to resolve them at district level. This will retain the advantages which such a procedure has. Nevertheless, there will be cases where it is inappropriate to use this procedure and alternatives have therefore to be considered.
- 1.31 One such process is by way of hearing. Where a hearing is held then it ought to be conducted in an inquisitional manner rather than by adversarial procedure. The Authority may conduct such hearing itself or engage other qualified persons to do so.
- 1.32 In the case of hearings, and indeed all forms of investigation, the standard of proof required should reflect the seriousness of the allegations under consideration. It is not helpful to fix the standard of proof by reference to either the civil or criminal standard of proof required by courts.
- 1.33 Generally speaking, hearings should be held only in the most serious cases and whether or not a case is serious is a matter for the determination of the Authority bearing in mind what is the best method of ascertaining the truth and restoring the confidence of the community.
- 1.34 In appropriate cases, the Authority ought to have an investigative capacity of its own. For that purpose, the Authority should be funded to engage the services of investigators, some of these could be recruited from persons with investigative expertise in other jurisdictions, some should be either retired police officers or police officers seconded from the police service when approaching retirement. During the period of secondment they would be employed only by the Authority and have no police responsibilities. The Authority should also have power to coopt persons whether from the police or not on a temporary basis to investigate particular cases.
- 1.35 Whatever method of investigation is adopted, the desirability of conciliation ought to be to the forefront and wherever possible, complaints should be resolved in this way.
- 1.36 In appropriate cases, the principles of restorative justice as developed by the Thames Valley Police in England, should be considered.
- 1.37 At the conclusion of an investigation, the Authority should continue to be confined to making recommendations to the Commissioner. The Authority

- should not have a prosecuting function and in cases where it concludes that a prosecution should be considered, then the matter should be referred to the Solicitor General for decisions with regard to possible prosecution.
- 1.38** If the Authority is dissatisfied with the response of the Commissioner, then it should have the power to refer the matter to Parliament.
- 1.39** The Authority should have the responsibility to consider whether or not any patterns or links appear in complaints which it has investigated and draw such matters to the attention of the Commissioner.
- 1.40** In the case of investigations and material ascertained on investigation the present requirement of secrecy ought to be maintained subject to a discretion in the Authority to disclose material where it considers it appropriate to do so in the public interest. The vast majority of conclusions will not merit publication. In the case of conclusions which it is in the public interest to publish the Authority should continue to do as it has done, publish subject to an overriding discretion to suppress all or part of conclusions where there are good reasons to do so.
- 1.41** Material ascertained by the Authority on investigation should be available where it is exculpatory to persons who are involved in other proceedings. It ought not however to be available for any other purpose or for any hearing in order to ensure that persons are not inhibited from making material available to the Authority.
- 1.42** Although some concern was expressed that the Authority maintained a central organisation and operated from Wellington, in the circumstances it would be inappropriate to change this at least at present. The Authority should however bear in mind the importance for some complainants at least having the opportunity to make a complaint face to face rather than in writing.

## **2. Introduction**

### **2.1 Appointment to Review**

**2.2** The Police Complaints Authority Act 1988 was signed into law on 10 March 1988 and subject to minor amendments has remained in force ever since.

**2.3** As a result of a number of incidents which have occurred over the past two or three years there has been a considerable amount of public and media comment raising questions relating to the Authority and in particular the way in which its investigations have been conducted.

**2.4** Although this comment arose as a result of incidents within this country, it is worth noting that similar questions and concerns have arisen in other countries which have adopted comparable processes for the resolution of disputes between members of the public and members of the police. In particular this has occurred in England, Canada and Australia.

**2.5 Noting that the Authority had been in existence for twelve years the Minister of Justice considered it appropriate to hold a review of the structure of the Authority as set up under the 1988 Act and at the end of May of this year he requested me to conduct a review the terms of reference for which were as follows:**

***Purpose***

**To review the role of the Police Complaints Authority in investigating and resolving complaints and incidents concerning the Police. The review will not re-examine any particular case investigated by the Authority.**

***Terms of Reference***

**To review the performance of the Police Complaints Authority in the twelve years since the passage of the Police Complaints Authority Act 1988 (the Act), and to report to the Minister of Justice (Hon Phil Goff) by 31 October 2000, having particular regard to:**

- (a) The Authority's strengths and achievements**
- (b) Any weaknesses that may exist in the Authority's structure, legislative mandate or performance**
- (c) The relationship of the Authority to Ministers, the Police, and the three branches of government generally**
- (d) Whether any improvements could be made, and if so, what.**

**In the course of making this assessment and making his recommendations the reviewer will be required to examine and report on the following questions:**

- (a) Has the Authority achieved its statutory objectives (with particular reference to section 12 of the Act)?**
- (b) How do the statutory objectives stand up in light of experience?**
- (c) How is the division of responsibilities for investigating matters allocated between the Commissioner of Police and the Authority?**
- (d) How efficient has the Authority been in using its resources?**
- (e) How effective has the Authority been in dealing with complaints which arise from or are related to police policies, procedures or general practices?**
- (f) How effective has the system of using Police to conduct investigations been? This should include consideration of the police investigators' ability to access information and familiarity with police structure and practice.**
- (g) What safeguards against possible bias are built into the investigation process and how effectively have they operated?**
- (h) Should the Authority have an independent investigative capacity for serious complaints and incidents, and how might that operate, including consideration of potential financial implications?**

- (i) To what degree should the function of the Authority be carried out in private and in secrecy, and what degree of transparency is advisable in the Authority's operations?**
- (j) Should the Authority have the power to initiate a prosecution of a police officer?**
- (k) What skills, experience, and qualifications would be desirable in the officers and employees of the Authority?**
- (l) Whether any amendments should be proposed to the role of the Authority?**
- (m) What improvements, if any, could be made to the structure, processes and position of the Authority within the three branches of the New Zealand Government?**
- (n) How accessible has the Authority been to the public in reality, and how accessible is it perceived to be by the public?**

***Process for the Conduct of the Review***

**2.6.1** When submissions were sought, letters seeking submissions indicated the terms of reference but emphasised the review would address two key questions. These were expressed in the following terms:

- (i) Should the Authority have an independent investigative capacity for serious complaints and incidents, and**
- (ii) To what degree should the function of the Authority be carried out in private and secrecy.**

**Almost all the submissions concentrated on the two key questions and many did not specifically address the actual terms of reference since these were largely encompassed in the two key questions.**

**2.6.2** It is important to note that I was specifically requested not to consider or report on any particular incidents or complaints with which the Authority had been involved. Not surprisingly a number of submissions were received from people who had a sense of grievance with regard to particular incidents and in each case those persons were advised that it was not within the scope of the review to comment upon particular cases. I should say however that in each case I took into account such submissions and consider that a number of valuable comments were made which were relevant to the scope of the inquiry itself as distinct from the particular concern out of which the submission arose. In particular, although I have received submissions which related to the incidents which occurred in Waitara earlier this year, and which have been the subject of considerable media interest and comment, I have not made any investigation into the events which surrounded this incident and I wish to make it clear that nothing in this review is to be taken as involving a comment upon that incident or its outcome.

- 2.6.3** It was envisaged at the outset that the review would be conducted by way of written submissions. This has the particular advantage that people making submissions have an opportunity to refine their views and express them with greater depth and particularity. Written submissions also allowed me to study those submissions in relation to others submitted and in greater depth than would have been possible where some kind of oral hearing was conducted. The time scale did not allow for oral hearings and in any event difficulties would have arisen in determining where such hearings should take place. To have conducted them in a reasonable number of situations throughout the country would have greatly extended the time required to report.
- 2.6.4** Nevertheless I did take the opportunity to interview the three persons who have constituted the Authority during its existence, and also persons closely connected with the work of the Authority and with the police. I have also been fortunate to receive submissions from former Ministers and from Members of Parliament who had had some involvement with the work of the Authority. I was assisted by a large number of submissions from individuals and from organisations involved with persons who had for one reason or another been involved in complaint situations.
- 2.6.5** Because it was envisaged that the review would be conducted over a comparatively limited period of time, it was decided to seek submissions by 18 August. A considerable number of submissions were received by that date. A number of persons indicated that they were unable to comply with the particular time-scale for various reasons and in each case they were encouraged to submit submissions after the original date. All submissions received were considered at whatever date they were received, some being received as late as October.
- 2.6.6** Although the submissions varied greatly in content there was much common ground. Many points made and repeated in the various submissions have reflected in the recommendations contained in this report.
- 2.6.7** I also had available to me a substantial amount of background material including reports and commentaries compiled by persons associated with the operation of similar agencies in countries comparable to our own. In addition, I had available and read reports submitted to conferences which had a bearing on the subject matter of this review and also, academic material.
- 2.6.8** This material was supplemented by reports prepared for the Home Office in England, which are at present the subject of study by the Home Office, and which were further elucidated by enquiries made by the Secretary for Justice during a visit to England. While the views so expressed vary there is a remarkable consensus in the opinions expressed on the operation of such

authorities, although I note that in the academic material there is little direct reference to the experience in New Zealand. It is likely that this results from the fact that the situation in New Zealand, although the subject of some disagreement has been less controversial than in other comparable countries.

### **3. Background**

**3.1 In the Annual Report for the year ended 30 June 1994 the then Police Complaints Authority Sir John Jeffries referred to comments made by Professor Carl Klockars. Professor Klockars drew attention to the fact that what distinguishes police from every other domestic institution is that they exercise a general right to use coercive force. The Professor noted that it was that right which made the police so valuable to society. Some of the academic material and reports note the significance of the power reposed in the police to use coercive force and submissions from the Commissioner of Police make it clear that the police are well aware of the importance in the community of the use of coercive force and the need for the community to supervise that use.**

**3.2 Unfortunately, it is inevitable that the use of coercive force will give rise to situations of some stress and not infrequently to resentment. It was no doubt such reasons which gave rise to concern expressed at the time police services were first introduced in the nineteenth century. In the first annual report of the Authority the then Authority, Sir Peter Quilliam referred to reported complaints of excessive police force in 1841. A public meeting was called to express concern.**

**3.3 The whole concept of coercion involves compelling people to do what they do not want to do, or to prevent them from doing what they actually want to do. In such situations the police act as agents for the majority of the community whose wishes are expressed through constituted authority. Obviously there will frequently be a fine line between what conduct is acceptable and what is not and where there are divisions in the community itself this can pose difficulties for the police. Where people have been frustrated by the use of police compulsion, then there is bound to be a reaction and where it is considered that the police were not justified in the action which they took then there is likely to be complaint from those affected. Of course the use of compulsive force is not the only basis for complaints against the police. The use of inappropriate language or an unfortunate attitude give rise to concern and there is an instructive note in a report by Sir John Jeffries when he was the authority, drawing attention to the fact that complaints were not uncommon from people whose own language and behaviour had fallen short of what could reasonably be considered appropriate. Nevertheless, he made the point that it was not**

**open to police officers to respond in kind. A perusal of the annual reports gives an indication of the wide variety of activity which has given rise to complaint.**

### ***History in other countries***

- 3.4.1 The traditional response to complaints about the police was an internal investigation conducted by police officers. In countries with a similar background to ours, members of the police have always been required to comply with a strict disciplinary code and this remains the case today. Where a complaint was received an enquiry was carried out by police officers and what was considered to be appropriate action taken by the superiors of the officer or officers concerned. There is evidence to support the view that in some cases at least such investigations resulted in outcomes of some severity as far as individual police officers were concerned. Nevertheless it was inevitable that such a procedure would give rise to dissatisfaction where complainants took the view that police officers had not acted with independence in cases where members of the Police Service concerned were the subject of complaint. There was also a concern from more marginalised members of society that the making of a complaint might result in retaliatory action from members of the police.**
- 3.4.2. Until the 60s and 70s of the twentieth century the situation in the common law world remained much the same. Although from time to time there were complaints about actions of the police and concerns as to the investigation of such complaints, the nature of society was such that the bulk of the law-abiding populace did not come into any open conflict with members of the police. There was little sympathy with those who did complain since they were frequently categorised as non-law abiding members of society. The conclusion could reasonably be drawn that the relationship between most members of society and the police in this, and comparable countries, was one of confidence, the one in the other. There were, of course, exceptions. Until the acceptability of trade union organisation became established in society, employment disputes tended to pit the police against striking workers. There were other areas of conflict in society, but speaking generally the majority of the population considered the police to be supporters of a stable society and had little sympathy for those whom they saw as disruptive elements.**
- 3.4.3 This situation changed with the advent of various protest movements. In many cases the persons involved in such movements came from those sections of society which had in the past enjoyed a relation of confidence with the police, and which had been prepared to express any disagreement with governmental policies by way of the ballot box.**
- 3.4.4 The advent of the Vietnam War, and similar issues, changed all that completely. For the first time so-called respectable members of society**

**found themselves in direct opposition to the police. The police were placed in an extremely invidious situation, on the one hand they had the obligation to uphold the law as it stood, on the other they were confronted by members of society who considered on moral grounds that certain governmental activities were unacceptable. In such a situation it was inevitable that major conflicts would occur and an erosion of that confidence, which is so essential to stability in a community, occurred and accelerated. All of this was accompanied by a much greater readiness on the part of members of society to query previously accepted attitudes and standards.**

- 3.4.5 In New Zealand demonstrations against the Springbok Tour in 1981 brought the changes in society and societal attitudes into sharp focus. Opposition to the Vietnam War had come largely from students and more radical elements in society. The opposition to the Springbok Tour and to Apartheid generally was much more broadly-based.**

### ***Brixton Riots***

- 3.5.1** In addition the make-up of society, in countries such as England, changed markedly as a result of immigration which occurred after the Second World War and during the conversion of the old British Empire to the British Commonwealth. This resulted in a degree of racial tension during the course of which the police were seen as agents of a repressive government and hostile to certain sections of the community. An example of such a situation was the Brixton Riots of 1981.
- 3.5.2** In April of 1981 scenes of violence and disorder occurred in Brixton when the Police were attacked on the streets with stones, bricks, iron bars and petrol bombs. What occurred was said to have brought about a temporary collapse of law and order in the centre of an inner suburb of London. Subsequently Lord Scarman was appointed by the Secretary of State for the Home Department to enquire urgently into the serious disorder in Brixton on 10-12 April 1981 and to report with the power to make recommendations. Lord Scarman conducted the enquiry entrusted to him in two phases. First, he considered the course of events, and secondly the underlying causes of the disorder. In that part of his report which dealt with proposed law reform he devoted some attention to what he referred to as reform of the Police Complaints procedure. Without dealing with this in detail it is enough to say that the procedure under the legislation which applied to policing in England involved an internal police enquiry.
- 3.5.3** Lord Scarman referred to a proposal in Canada where a bill had been introduced which would establish an independent system for dealing with complaints against the police. He was also aware that a bill had been introduced in Australia making provision for investigation by the Commonwealth Ombudsman and for the establishment of a disciplinary tribunal. He suggested that the Canadian proposal merited serious consideration as a possible model for reform of the procedures in England. It was apparent that the existing procedures in England for dealing with complaints against the police could not deal with situations where the alienation which existed in Brixton divided the community and the police. In particular, Lord Scarman noted that a significant minority group within the community had no confidence at all in the police and believed that its members were the subject of unfair and discriminatory treatment. In such a situation, there was no prospect that such persons would accept that the criticisms made by them of police action would be adequately dealt with by an internal police enquiry. The actions which had occurred in Brixton were so serious that some remedy was essential.
- 3.5.4** Eventually, a system was set up in England which involved the creation of an independent authority with powers to oversee the investigation of complaints. For practical reasons, the investigation of complaints was, in

most cases, carried out by police officers but under the oversight of the authority, which based its conclusions on the investigations they carried out.

### *New Zealand*

- 3.6.1** In both Australia and New Zealand similar concerns had arisen, although for rather different reasons. In both countries there was a strong feeling that there ought to be some kind of independent authority to which complaints could be made and which could be dealt with outside the police service itself.
- 3.6.2** It should not be overlooked however that the situation in New Zealand differed markedly from that which existed in other comparable countries. The New Zealand Police Service was a unified organisation centrally controlled which served the whole country. In both England and Australia there were separate police organisations to deal with separate areas.
- 3.6.3** There was however one common situation. In every case the proposals were opposed, and strongly opposed by the police.
- 3.6.4** This opposition is understandable enough. The task of the police is a difficult one, and one which inevitably involves conflicts and confrontation with hostile elements of society. The police were genuinely concerned that their work would be needlessly complicated by malicious complaints from such people, and the point was forcibly made that police officers in situations of emergency or difficulty ought not to have to contemplate the possibility that their actions would later be considered by persons who did not have either the understanding of the situations which the police were required to deal with, or a proper assessment of the kind of people with whom the police were so frequently confronted. The point was validly made that there is a considerable difference from reacting to a situation which is developing and may well be conceived as dangerous and a subsequent analysis of that situation with the benefit of hindsight and where the exigencies of the time do not operate.
- 3.6.5** There was also a concern that people who were the subject of prosecution might be tempted to use the complaints procedure to obstruct the prosecution.
- 3.6.6** In certain cases, and this did not apply in New Zealand, it became subsequently apparent that police opposition arose out of a concern that certain corrupt practices might be exposed.
- 3.6.7** In this country a report was sought by the then Minister of Police, the Hon Ann Hercus, on the concept of an independent examiner of complaints against the police. A committee was set up to report which consisted of the Hon Sir David Beattie as Chairman, Janice Lowe the then Chief Legal

**Adviser to the Department of Justice, KI Murray Crown Counsel from the Crown Law Office, Whaimutu Dewes the Office Solicitor of the Department of Maori Affairs, and Superintendent Paul Mears a senior legal adviser to the NZ Police. The committee was appointed to prepare a draft bill which it did. The report included as an introductory statement a quotation from a 1976 Canadian Commission of Enquiry relating to public complaints, internal discipline and grievance procedure within the Royal Canadian Mounted Police. That read as follows,**

**“When the public complaint procedures of the force are discussed there are diverse interests that must be acknowledged and taken into account.**

**A public complaint procedure that favours the interest of a complainant**

**at the expense of the member of the force is no more likely to provide satisfaction than a procedure which does the reverse. The interest of the general public and the force also are involved and must be accorded due consideration. It was with an awareness of the need to balance these interests in an equitable manner that the Commission undertook its investigations and formulated its recommendations.”**

**3.6.8 On the basis of that report a bill was introduced to the House. The debate on the second reading of that bill on the 16 February 1988 was introduced by the Minister of Justice on behalf of the Minister of Police. The Minister noted that the existing system whereby the Police investigated complaints against police members was fundamentally flawed because a suspicion of partiality must remain in the minds of complainants. He noted that it was fundamental to our system of justice that people should not be judges in their own cause. Having referred to the report of Lord Scarman, he accepted an emphasis contained in that report that a complaints procedure generally acknowledged to be fair and impartial to the public and to the police was essential if the police were to enjoy the degree of public support they needed in order to discharge their own risky and necessary tasks. Opposition to the bill was largely based on a concern that the police would be seriously disadvantaged by investigations conducted by an independent authority and that the passing of the Act proposed would be of itself an indication of a lack of confidence in the police service. Such a point of view was of course important because it has been emphasised in so much of the material dealing with this subject that the question of confidence is of overriding importance. The bill was nevertheless passed and apart from certain minor amendments the Act then passed by Parliament has remained in force until the present time.**

**3.6.9 While at times no doubt the complaints procedure has been an irritation to members of the police, by and large the concerns which were expressed in**

**opposition to the Bill have not been realised. It is now generally accepted that some such procedure is inevitable and has advantages for the police as well as the public. I think it can be said that some such procedure must be available if that confidence between the public and the police which is essential to a well organised society is to be established and maintained.**

#### **4 The Scheme of the Act**

**4.1 It is unnecessary to go through this in detail, but it is important to point out certain salient aspects;**

- the Authority is a single person appointed by the Governor-General and must have legal qualifications;**
- the appointment is for a fixed term;**
- the Authority has the power to appoint such officers and employees as may be necessary for the efficient carrying out of its functions, powers and duties – the number of persons to be so appointed is to be determined from time to time by the Minister of Justice.**

**4.2 The functions of the Authority are set out in section 12 of the Act.**

**4.3 The Commissioner is under a duty to notify the Authority of certain incidents involving death or serious bodily harm.**

**4.4 The complaint may be made in various ways.**

**4.5 There is a duty on the Commissioner to notify the Authority of complaints made.**

**4.6 Section 17 makes provision for action upon receipt of the complaint.**

**4.7 Section 19 is important, as it provides subsequent powers in relation to the handling of a complaint.**

**4.8 Section 20 deals with the obligation of the Commissioner on a police investigation.**

**4.9 The Commissioner is under an obligation to provide information and assistance within section 21.**

**4.10 Section 22 provides that nothing is to prevent the Commissioner from commencing or continuing a police investigation and the Commissioner may request the Authority to investigate any matter.**

**4.11 Section 23 which deals with the proceedings of the Authority is important for the purposes of this review.**

**4.12 Procedure is set out in section 24 which sets out the Powers of the Authority in relation to investigations.**

**4.13 Section 25 provides for protection and privilege of witnesses.**

- 4.14 Section 23 deals with procedure and provides in particular that every investigation is to be conducted in private.**
- 4.15 Section 29 requires the Commissioner to advise the Authority of any action which it is intended to take, or has taken, in respect of the recommendation. This section is important.**
- 4.16 It is to be noted that the Authority's power to transmit the matter to the Attorney-General, for tabling in the House, is dependent upon a decision that the Commissioner's action is inadequate.**
- 4.17 Section 31 provides that adverse comment is not to be made unless the person the subject of it has been given an opportunity to be heard.**
- 4.18 Section 32 requires the maintenance of secrecy.**
- 4.19 Section 34 allows the Authority to publish reports relating to the general exercise of its functions or any particular case, or cases, but in particular provides that no report is to contravene the provisions of section 26(1) of the Act which includes provision that publication is not to be given to any material which might prejudice inter alia the prevention, investigation or protection of offences. While section 26 contemplates the provision of a certificate to that effect from the Attorney-General, section 34 provides that the material is not to be disclosed whether or not any certificate has been given and must be regarded as very restrictive.**
- 4.20 Section 37 provides that it is an offence to obstruct and/or resist the Authority or to fail to comply with any requirement of the Authority. The penalty provided by the section is a maximum fine of \$2000.**
- 4.21 For convenience I have set out certain sections of the Act in Annex 1.**

## **5. Jurisdiction**

- 5.1 Sir Peter Quilliam noted that the scope and limits of the jurisdiction were to be found in the Act itself particularly in Section 12 which is expressed in comparatively vague terms.**
- 5.2 In very general terms, it can be said that the purpose of the Authority is to investigate allegations of misconduct or neglect of duty by members of the police and practices, policies or procedures which affect complainants. In addition, it has the power to investigate incidents involving death or serious bodily injury where these are notified as required by the Act. In context, such an investigation must be as to whether or not there was any**

**misconduct or neglect of duty or practice, policy or procedure which was unacceptable.**

- 5.3 It should be emphasised that the Authority is not a court and its activities are not a substitute for court action. On the one hand, the Authority is not restricted in its scope in a way that a Court would be as to procedure. On the other hand, there is a limit as to what it can enquire into and it cannot act as a substitute or parallel court.**
- 5.4 This is important because some dissatisfaction with the outcome of complaints made to the Authority arises out of a misconception as to what such an Authority can reasonably be expected to do. The Authority is not an appellate body and has no right to act as though it was dealing with an appeal from a court of competent jurisdiction. Nor has it any right to act in the capacity of a court in for example making awards of damages. Where complainants are dissatisfied with the outcome of legal proceedings then they must follow the appropriate channels of appeal. They cannot substitute the Authority for that purpose. Nor can the Authority re-enquire into matters of guilt or innocence. The Authority's powers relate not to the outcome of a criminal investigation but to the way in which it is carried out.**
- 5.5 Nevertheless, the fact that a court would have jurisdiction does not prevent the Authority from investigating the behaviour of police officers where there is an allegation of misconduct or neglect of duty.**
- 5.6 Obviously there will be situations where some conflict could occur and the Authority has traditionally dealt with such situations by postponing any investigation until such time as the court proceedings were concluded.**
- 5.7 Clearly, it was right to adopt this attitude. It would be quite inappropriate for parallel proceedings to exist at the same time and for material obtained during the course of an investigation by the Authority to be available in the parallel court proceedings (other than the special case referred to later).**
- 5.8 Nevertheless, it should also be said that the fact that a court has come to a particular conclusion does not prevent the Authority from considering the actions of members of the police which may have figured in the court proceedings nor does it prevent the Authority from coming to a conclusion contrary to that at which the court arrived with regard to that behaviour. The conclusion of the Authority however cannot have any effect on the outcome of the court proceedings, whether civil or criminal. Many complainants do not appreciate this distinction and I accept that it is difficult for the Authority to explain to people why in certain circumstances the complaints procedure cannot be used to circumvent or set aside a decision made by a court of competent jurisdiction. It needs also to be emphasised that the Authority does not exist as a means of reinvestigating**

**matters which have been before the courts. It may be appropriate for the Authority to comment upon the manner of the investigation. It cannot and it would be quite undesirable for it to become involved in reconsideration of the outcome of cases heard in other jurisdictions. In some jurisdictions, there has been concern as to whether or not it is appropriate for the Authority to hear complaints by one police officer about another. Such a situation would arise in respect of so called whistle-blowing complaints. It should be made clear that the Authority has jurisdiction to deal with such matters. In addition, it should also be clear that the Authority may receive complaints from persons other than the person the subject of the conduct of which complaint is made. This would arise for example in the case of parents complaining in respect of conduct towards a child.**

**6. Standards of behaviour for Police**

**6.1 The standards of behaviour which are expected of members of the police are contained generally in that legislation which constitutes and controls the police service and in the supplementary material such as the Police Disciplinary Code, which is contained in the police regulations of 1992. In a helpful submission from the Police Managers Guild the point was made that there could be a fundamental conflict between the approach of the Authority dealing with complaints under the Police Complaints Authority Act and the Police Disciplinary Code. Such a conflict could occur where conduct, which was acceptable within the Disciplinary Code, was seen by the Authority as being unacceptable to the community. The submission noted that it was important that the approach adopted by the Authority should be complementary to that contained in the Police Disciplinary Code otherwise members of the police would simply not be aware of the standards which the Authority considered it appropriate that they should meet and comply with.**

**6.2 The concern has validity but I do not think the Authority should be restricted in dealing with matters brought before it by way of complaint to assessing whether or not the conduct complained of is a breach of the Disciplinary Code. If the Authority were so restricted, there would be a risk that it would be bound by the outcome of parallel police disciplinary proceedings. Further, what is acceptable and what is not acceptable as far as the community itself is concerned may change with time. For example, comparatively robust direct disciplinary action taken by police against young persons in the 1930's would not be acceptable today.**

**6.3 Nevertheless, the point made is an important one. Police officers are entitled to know the standards which the Authority considers appropriate and it is in this context that section of the Act which permits the Authority**

**to investigate complaints as to practices, policies or procedures is significant.**

**6.4 In view of the fact that concern has been expressed by the Police Managers Guild, I recommend that the Authority maintain discussions with the Commissioner of Police to ascertain where concerns exist and endeavour to resolve them by establishing codes of practice, and as a result any significant changes in procedures. I understand that this has in any event always been the practice.**

**7. The operation of the Authority subsequent to its establishment**

**7.1 The first Authority appointed was the Hon Sir Peter Quilliam and he presented the first annual report covering the period from 1 April 1989 – 31 March 1990. In his introduction the Authority noted the importance of public confidence from the point of view of the police and he expressed the view that it would clearly be an aid to establishing that confidence if the public knew that there was an independent body with adequate powers of oversight prepared where necessary to examine critically complaints made concerning the way in which the police went about their task. The Authority summarised the way in which he had proceeded during the course of the year and noted the co-operation which he had received from the police. He gave some consideration to systems operating overseas but noted that these were of little assistance as far as New Zealand was concerned because the New Zealand system of one single police force was not mirrored by the systems in force in other comparable countries. The federal nature of those countries differed and police services were organised in an entirely different way. He categorised and analysed the complaints and then set out certain general conclusions. In particular he drew attention to the fact that a significant justification for the establishment of the authority might well be its ability to act quickly when serious matters relating to the police arose. He noted that an investigating officer from the authority was on the scene in certain serious cases within hours of the accident of which complaint was made having occurred with the consequent advantages to which this gave rise.**

**7.2 During his time as Authority, Sir Peter dealt with two complaints by way of a hearing attended by witnesses and counsel. Both complaints arose out of high profile incidents where there was considerable public interest and concern. I received a submission from a person who had been counsel engaged in these enquiries which strongly supported this method of dealing with matters of that kind noting that all matters of concern were brought out into the open in the presence of those directly concerned with them. I understand that the lack of any formal structure to such hearings and the absence of necessary powers and authorities made the conduct of such**

hearings difficult and was one reason why the procedure has not since been followed. I make further comments on this later in this review.

**7.3** The fourth annual report for the year ended 30 June 1993 was presented by the Hon Sir John Jeffries who had replaced Hon Sir Peter Quilliam as Authority. He noted that the merger of the Police with the Traffic Safety Service from 1 July 1992 had been a contributing factor to an increase of 22% in complaints over the previous year. He went on to note that the change in the role played by the police to meet the community's need had also affected the position of the authority. He drew attention to the fact that the traditional role of the police had had to expand to meet the problems arising from the prevalence of drug misuse with its link to organised commercially based criminal behaviour. He noted too that there had been a rise in sexual violence and abuse of children as well as the activities of gangs, and he referred to three separate clearly identifiable trends in society which had emerged. The first of those was the rise of protest movement and the effect which this had on the necessity for policing, the second was the need for the police to act and intervene in domestic situations, and the third was the need for police intervention and assistance of persons engaged in enforcement of statutory obligations such as customs officers' searches, noise control officers and implementation of bylaw requirements. Trends and concerns noted by Sir John were an indication of significant changes in society bound to result in conflict situations which would pose difficulties for police officers. There were also indications of changes in society which would create major difficulties for the police in controlling them.

**7.4** In his annual report for the year ended 30 June 1994 Sir John Jeffries took the opportunity to consider in some depth the system for dealing with complaints adopted in New Zealand. He drew attention to the fact that that system involved civilian oversight. He considered criticisms of the system and drew attention to the fact that the most frequently encountered comment or criticism was that the police personnel were designated investigators of the complaint with the consequent appearance of compromise of independence. He expressed the view that there were advantages in police investigation of complaints in that:

- the investigation was conducted in the realisation that it would be independently reviewed by the authority,
- police investigators were trained in this type of investigation and had the advantage of close personal experience in assessing what was acceptable and what was not,
- such a method of investigation made available an effective opportunity for conciliation and
- that the cost of full independent investigation would involve a greatly increased budget and an expansion of the Authority requiring offices in the main centres.

He concluded that a system whereby investigation was largely carried out by police officers under the supervision of the authority was appropriate.

- 7.5 He noted too that such a method of investigation had been adopted in all states in Australia which was the state where the conditions were closest to those of our own. He noted that the same applied in the United Kingdom. He drew attention also to the fact that police involvement in investigation was of itself a powerful educative inducement to higher standards of conduct. Finally he noted that a police investigator was in a much stronger position to ascertain what had occurred than a civilian investigator who might well meet up with difficulties in getting answers and explanations.
- 7.6 On retirement of Sir John Jeffries, Judge Jaine was appointed as Police Complaints Authority and he remained the Authority until his retirement in July of this year.
- 7.7 Through no fault of the Authority, there had been an accumulation of incomplete police investigations, which Judge Jaine had to deal with at the beginning of his tenure of office. Over 500 were returned from the police investigators which had to be completed and involved an immense amount of work. The reports during his tenure of office note however the wide variety of matters considered and indicate a number of advances with regard to particular procedures. Such advances were successfully negotiated with the Commissioner and led to improved approaches and procedures. The work of the Authority increased as did the difficulties associated with it. Each report identified and analysed emerging concerns.

7.8 **Number of complaints received:**

<b>Year ending 31 March</b>	<b>Numbers of complaints received</b>
<b>1990</b>	<b>795</b>
<b>1991</b>	<b>891</b>
<b>1992</b>	<b>1,347</b>
<b>30 June 1994</b>	<b>1,607</b>
<b>1995</b>	<b>2,620</b>
<b>1996</b>	<b>2,635</b>
<b>1997</b>	<b>2,759</b>
<b>1998</b>	<b>2,615</b>
<b>1999</b>	<b>2,530</b>

**8. The Current Position**

- 8.1 Over recent times there has been a considerable rise in criticism of operations of the Authority. Those criticisms were mirrored in the submissions which were received during the course of this review. In

**addition, a number of complaints were made directly to the Minister and to members of parliament expressing dissatisfaction with the present system. Most of the complaints which were made either during the course of this review or directly to the Minister arose out of particular cases and situations and it is not within the scope of my authority to consider such cases. Where they were referred to, however, in individual submissions, I have read the submissions and in some cases at least there were positive suggestions which can be reasonably taken into account if changes are contemplated.**

- 8.2 It is inevitable that in situations of the kind with which the Authority is required to deal there is bound to be an element of dissatisfaction on one side or another arising out of the nature of the dispute itself. The Authority is not infrequently in quite an invidious position. It is dependent for its inquiries on the police who are seen as one of the protagonists in any such dispute, and it is prevented by the provisions of privacy and secrecy from making available the material which might justify its conclusion in the individual case or to the public generally. The Minister, in setting up this review, acknowledged that many of the criticisms were ill founded. In the nature of things it is dissatisfaction from complainants who are not accepting of the outcome which has most figured in the submissions made during the course of this review. It is also certain that there will have been situations where members of the police are also unhappy with the outcome**
- 8.3 The point should be made however that the vast majority of complaints made to the Authority were determined if not to the entire satisfaction of the parties in a manner to the extent which brought them to an end. The majority of the submissions made, even where these were critical of the present organisation, powers and functions of the Authority, took the view that any dissatisfaction with the present situation was not occasioned by any fault on the part of the Authority itself but rather by the limitations under which it was required to work.**
- 8.4 Leaving aside the allegations in individual cases, the dissatisfaction expressed almost entirely arose out of the concern that the investigations in each case were actually made by the police and the comment was repeatedly made that no one could expect persons connected with the organisation against which the complaint was made to act fairly and independently. If the whole of the information were available to those expressing dissatisfaction it would become apparent that those concerns were not always justified. Nevertheless it should be said that in a sufficient number of unconnected cases comments were made which could lead to the view that at the lowest level of investigation the complaints were not always approached in an appropriate way. This is a matter to which I need to return.**

- 8.5** A number of submissions alleged that it was felt by sections of society who felt themselves to be disadvantaged, that complaints were unlikely to succeed and that such persons were afraid of retaliatory action on the part of the police. In fact the laying of charges may very well have nothing to do with complaints but it is the perception of this which is concerning. Although such criticisms were directed against the Authority in fact they were really making the point that since the Authority was dependent for the material which it obtained on investigation being ascertained by the police, the Authority would know only one side of the story and would not be aware of any retaliatory action taken by the police.
- 8.6** A number of submissions made allegations that people of Maori or Polynesian background did not feel generally that their concerns would be taken seriously or were likely to survive an investigation by the police. This was not accepted by the police and to some extent it may be more of a perception than a reality. Nevertheless, what happened in Brixton is a reminder why it is undesirable to ignore any such attitudes, whether justified or not.
- 8.7** Particular concern was expressed in a number of submissions over the position of young people. It was alleged that most felt powerless in dealing with the police and that many had been subjected to unacceptable behaviour but would not complain on the basis that more influential members of society would be unlikely to believe any comment or criticisms which they made.
- 8.8** One organisation which expressed a concern of this kind obtained the views of a number of young people both at school and at a training course. Those views were expressed by the young people concerned in their own words. Copies of the responses which they made to the questions put to them were referred to me. I have some reservation over the nature of the survey which was carried out as indeed did the organisation which produced it. Nevertheless, it is of interest as it indicates the views of a considerable number of young people who may be likely to come up against the police during the ordinary course of their lives. In a significant number of cases the comment was made that they would not complain because they had been told that the police would be believed rather than themselves and that they would be likely to be the recipient of retaliatory action if they complained. Whether this is true or not, as has already been said, the perception of such a response is not a desirable trend in society or any group of society and the fact that it exists ought to lead to some attempt being made to diminish such attitudes and concerns.
- 8.9** One submission expressed concern in general terms as to an imbalance of power between the police on one hand and what were described as ordinary citizens. The police are part of the community and ought to be seen as the

way in which the community enforces appropriate standards of behaviour within the community. The police ought not to be seen as some separate power nor is it desirable that the community should be seen as divided into various groups with differing attitudes towards the police and the community as a whole. In fact however, in a more complex society, some divisions are inevitable and as the submission pointed out, the Authority occupies an important position in ensuring that the balances are kept. It is important that the Authority should not be seen as aligned to any particular group or sector within society.

## **9. The current position in other countries**

**9.1 In some of the countries where complaints authorities of the kind set up in New Zealand were considered, the opposition of the police was so strong that the authorities never had any real chance of success and were ineffective from the start. This was certainly the case in the United States in a number of jurisdictions, and in at least one state in Australia.**

### ***Great Britain***

**9.2 The kind of dissatisfaction which has surfaced in New Zealand has also become apparent in Great Britain - two reports have recently been made to the Home Office with regard to the operation of the British equivalent of the system which operates in New Zealand. The reports indicated changes were necessary in the constitution of the authority, but most significantly recommended that in certain types of complaint, investigation should be conducted by wholly independent investigators employed directly by the authority. The Home Office in England is at present considering the various proposals before it and it had been hoped that before the completion of this review some material might have been available to indicate the way in which the government in Great Britain was considering any changes in their implementation. I am informed however, that it is unlikely that any decisions will be made before the end of the year or until next year.**

### ***Canada***

**9.3 The report of the Police Complaints Commissioner of British Columbia for the year 1999, which was made available to me, indicates that there is no system in Canada in which the police are not involved in investigating complaints against the police. But it is noteworthy that in British Columbia, in serious cases, the Commissioner may order not only a further investigation but a public hearing, and in the case of a public hearing this is conducted by a retired judge. The results are not subject to any appeal other than an appeal on a point of law to the Court of Appeal.**

### ***Australian States***

- 9.4.1** In Australia, there are various systems in force. The special report to Parliament of *Project Dresden* in April of this year, which was an audit of the New South Wales Police Service Internal Investigations, made considerable criticism of a system under which the investigations are conducted by the police.
- 9.4.2** Perhaps the most significant Australian example is that which exists in Queensland That can only be understood in relation to the history of matters of this kind in that state. It appears that there was extremely strong police opposition to any independent authority of the kind that was set up in New Zealand, and it was also plain that the police position received substantial government support. For that reason the initial proposals for an independent authority were not effectual. Subsequently however, investigations indicated a high level of serious corruption in the police services in Queensland. The consequence was the setting up of a commission which controls matters of this kind and which has very wide ranging powers indeed. The significance for New Zealand is comparatively limited. We have been fortunate in that we have not faced the kind of serious corruption which investigations indicated existed in Queensland, and the need for the commission which was set up in that state was affected by other matters which do not have any direct relevance to New Zealand. It should not however be forgotten that an extreme situation requires extreme measures and the question of confidence which forms a basis for all matters of this kind could only be restored in that case by measures which are much stronger than need consideration here.

***General***

- 9.5.1** I had available to me a substantial amount of material both academic as well as reports from complaints authorities. In almost every case, that material indicated a dissatisfaction with systems of investigation conducted by the police themselves. The position may be summed up in the words of a report on the situation in Northern Ireland. In that country, of course, the situation was far more serious than has ever existed here. There was a necessity for any system set up to accommodate the sectarian divisions in that country and the extremes of behaviour which the police were required to control. That summary indicated, however, that in every country where a system for the resolution of complaints similar to that which was set up in New Zealand has been established there has been a progression from investigation by the police themselves through supervision of that investigation to a demand for independent investigation.
- 9.5.2** One submission drew attention to the fact that as early as the Scarman report of 1981 comments were made indicating that an independent service for the investigation of complaints against the police was necessary. In most systems an attempt was made to secure that independence by way of

**supervision of an investigation carried out by the police. It is not however the view which Lord Scarman expressed.**

**10. The need for changes in New Zealand**

**10.1 While New Zealand has not experienced the extreme situations which have given rise to concern overseas, there have been incidents which have given rise to a high level of public and individual concern whether justified or not.**

**10.2 While endeavouring to avoid any direct reference to a particular case it is also apparent that there is a perception on the part of some members of the public of prejudice by police officers and indeed a complaint of racism. While it is apparent from reading the literature that the position in New Zealand has not been as serious as it has in certain other countries, nevertheless there are similarities at least as far as public perception is concerned. It is important to take steps to deal with the concerns which have arisen here before they become as serious as those which plainly exist in other comparable countries.**

**10.3 The vast majority of submissions were critical of investigations into the conduct of members of the police being carried out by police while in some cases allegations were made of what were contended to be failures in particular cases. The real problem is that there is a general perception which whether or not it has any genuine basis in fact considers that investigation by the police leads almost inevitably to an outcome favourable to the police. A study of the complaints actually dealt with by the Authority makes it plain that in at least a majority of cases the investigation by the police is thorough and fair and that the supervision of the Authority is effective but the contrary perception nevertheless remains and where subjective confidence is essential, then that perception gives rise to concern. To keep perspective however, the percentage of cases where the result gives rise to continuing dissatisfaction and further complaints is very small.**

**10.4 There were a significant number of submissions which indicated that lawyers and organisations working within the community were not prepared to make complaints because of a concern with the existing system and this concern was greatest where potential claimants were young or members of minority groups. There will always of course be dissatisfaction in matters of this kind. Nothing that the Authority could do would satisfy some people. There is a level of misunderstanding as to the purpose of the Authority and there is an indication that in some cases at least the motivation for making a complaint is suspect. Nevertheless, the level of general dissatisfaction whether justified or not, is high enough to justify the consideration of changes.**

- 10.5** A number of submissions complained of delay. The problem for the Authority is that when it is dependent upon investigations being carried out by police officers it must await the conclusion of those investigations. It is understandable enough that police officers who may be required to take responsibility for a number of operations at the same time will not necessarily see enquiries made on behalf of Authority as having top priority. I have been assured that this concern is recognised by the police and that instructions had been given that will ensure delays are minimised. Nevertheless, it is plain that delays have occurred in the past and contributed to the present concerns expressed in the submissions. Those delays are upsetting also to police officers, the subject of complaints. In fact, delays have, as a result of intensive effort by the Authority, been in most cases, greatly reduced.
- 10.6** As I endeavoured to emphasise at the outset of this report the most important thing from the point of view of society in the resolution of complaints of this kind, is that the public should have confidence in the police, that the police should have confidence in the public, and that both should have confidence in the operation and conclusions of any authority which is designed to ensure that matters of dispute are resolved.
- 10.7** The question of confidence is an overriding one, and it is my view on the basis of the submissions which I have received and the material which has been made available to me, that the present level of dissatisfaction over the operation of the authority has given rise to a situation where that necessary confidence has been seriously affected. In the interests of society generally some consideration must be given to changes which might hopefully lead to the establishment of that level of confidence which is essential in a society such as ours.
- 10.8** I should like to emphasise however that in coming to this conclusion I have not done so because of individual cases, a number of which have been referred to me, but rather because of the general level of concern raised by the submissions and in the hope that the changes recommended might make the task of the Authority easier and the conclusions more likely to lead to that essential confidence from both the public and the police.
- 10.9** It should not be overlooked that this is equally important from the point of view of the police. Officers must know that complaints will be investigated fairly and in a manner which recognises the difficulties which the police face. Some submissions indicated concern within the police at investigations being carried out by police officers particularly when there was a conflict of interest.
- 11.** The Name of the Authority

- 11.1** The name of the Authority has given rise to misunderstanding as to its independence. While the name itself is very similar to that which has been used in every community where an authority of this kind has been set up, the understandable inclusion of the reference to “police” has tended to lead persons having dealings with the Authority to assume that it is in some way subordinate to, or an integral part of the police service. This is reinforced by the use of members of the police to carry out investigations when complaints have been received. I am told that on a number of occasions persons getting in touch with the Authority have asked to speak to persons with reference to police ranks, clearly indicating a belief that the Authority is an arm of the police.
- 11.2** A name such as, “The Independent Authority for the Investigation of Complaints against the Police” puts an emphasis on both aspects but is long and clumsy. The initial letters do not provide a particularly memorable acronym. Since however there is such a high degree of misunderstanding with regard to the function of the Authority there is something to be said for making it apparent by the title itself as to what it is intended to do and does do. On the whole, and in the absence of any better suggestion, I recommend that the name of the Authority be changed and that it be changed to ‘The Independent Authority for the Investigation of Complaints Against the Police’. There is no real disadvantage in the Authority generally being known by the partial acronym IACP and I recommend accordingly. I note that that is the recommendation of one of the reports in England.
- 11.3** A problem which immediately arises however is that a member of the public who is not familiar with the name of the Authority is much more likely to look under “police” than under “independent” when looking at the telephone book. At present for alphabetical reasons, the entry for the Authority appears in close juxtaposition to the entries for the police which tends to reinforce the conclusion that it is directly associated with the police. However there is no great difficulty in including the changed name of the Authority under its appropriate first initial but putting a cross reference under “police”.
- 12. To Whom the Authority is responsible**
- 12.1** In some jurisdictions when an Authority comparable to that which operates in this country was set up, it was set up as a part of the Ombudsman's Office.
- 12.2** This has the clear advantage that it is seen as independent in the way in which the Ombudsman is seen as independent, and it also makes available

**to the authority the resources of the Ombudsman's Office. There has never been any doubt as to the independence of the Ombudsmen's office and that reputation would be of advantage of the Complaints Authority.**

- 12.3 There are however disadvantages. The situation of the police differs from all other government authorities with which the Ombudsman is concerned, and because of the necessity of the police to exercise coercive physical powers this difference must be recognised in the status of the authority which investigates complaints against them.**
- 12.4 There is also some risk that if the authority is seen as merely a part of the Ombudsman's Office that it will be seen as having some kind of lesser status. This is a matter of significance where the question of overall confidence is of importance.**
- 12.5 It must also to some extent reflect upon the status of the Authority itself. That is, the person or persons who constitute it. The first two persons to hold the position of Authority in New Zealand were both retired judges of the High Court. There could be some difficulty in persuading persons of judicial status to accept a subordinate position in the Ombudsman's Office. This is a matter of significance to the police. The status of the Authority matters in persuading the police service to have confidence in it and it is also important to the police that the Authority should be specialist in the sense of having an insight into the particular nature of the role of the police in society and the difficulties which they face in pursuing that role.**
- 12.6 I have had the opportunity of discussing this matter with the Ombudsman. Because of the jurisdiction exercised by the Ombudsman with regard to prisoners, the Ombudsman's Office has a degree of expertise with regard to matters which are at least similar to those faced by the Police Complaints Authority. There is no doubt that the Ombudsmen would accept a necessity for independence if the two organisations were to some extent amalgamated and there would be economic advantages in sharing resources. There must be a risk however of some difficulties arising within any such organisation. There must be a final responsibility for determining disputed matters. The organisation headed by the Chief Ombudsman is more extensive and deals with more matters than the Police Complaints Authority.**
- 12.7 I gave consideration to the possibility that the two organisations might share resources while in all other respects maintaining independence but on reflection this appears to me to be a quite impractical solution. There would always be competition for the use of resources. One of the strengths of the present Police Complaints Authority is the esprit de corps which obviously exists within the office and this has the additional advantage that every member of the office is aware of the purpose for which it exists and is equipped therefore to deal with the matters which come in. This could not**

**be the case if there were shared resources and there would be much less possibility of staff acquiring the valuable expertise which is at present available to the Authority and reduces to some extent its requirement for additional resources.**

**12.8 The question is also important because of the proposed reform of crown entities at present under consideration by the Executive. After considering this question and discussing it with a number of interested parties I have come to the clear view that an organisation of this kind ought to stand apart from Executive Government and that it should be an Officer of Parliament in the way in which the Ombudsman reports directly to Parliament. I have already endeavoured to stress the importance of confidence with regard to the Authority. That confidence has been to some extent as far as the public is concerned, compromised by what is seen as a lack of independence from the Executive. The subordination to or inclusion of the Authority within some arm of the Executive or with the Ombudsman must inevitably be seen as leading to an identification with that arm or organisation and that is not always compatible with the independence which is sought. In the case of the police, there is a concern that there might be some intrusion into decision making by persons within the Ombudsman's office who have no real understanding of the difficulties to which reference has already been made.**

**12.9 There is a further reason which must be kept in mind. All of the academic enquiries which have taken place with regard to complaints investigations organisations have stressed the importance of the organisation not being politicised. It is also apparent that it is highly undesirable for the police to be seen as in any way politicised or as having too close an association with Executive Government. The analysis of the situation in Queensland suggests the problems arose because the relationship in that state between the police and the Executive Arm of government was undesirably close and resulted in a politicisation of the police. That gave rise to problems requiring the much more draconian provisions now operating in that state. No such situation exists or has been suggested to exist in New Zealand but it is important to prevent any possibility of it arising and in this respect the independence of the Authority must be regarded as of prime importance. Academic opinion in Australia is strongly in favour of direct responsibility to Parliament.**

**12.10 I recommend therefore that the Authority should be a stand-alone Authority, as an Officer of Parliament in the same way as the Ombudsmen.**

**13. The Constitution of the Authority**

**13.1 The next question which arises is the constitution of the Authority itself.**

- 13.2** In New Zealand, as in overseas jurisdictions, this position has normally been held by one person. This is not, however, universal and in the English situation the Authority consists of a number of persons. The proposals for reform in that country maintain this position.
- 13.3** A number of the submissions made to me expressed the view that the Authority ought to consist of more than one person noting that this gave an opportunity for the representation of various interested sections of society.
- 13.4** A greater number carries a greater strength and therefore assists in maintaining the independence of the Authority. It is rather simpler for a group of persons working together to confront opposition and to make it plain that it intends to pursue its obligations in spite of opposition. It is not uncommon in high-profile cases for there to be a considerable degree of public support for a complainant including media support which puts pressure on the Authority. On the other hand, the police quite properly constitute a formidable organisation and where the Authority is dependent on co-operation as it inevitably is, a lone Authority can be in an invidious position.
- 13.5** More than one submission made the point that in a multi-cultural society such as New Zealand it was desirable that more than one of those groups constituting society should be represented in the person of the authority itself.
- 13.6** In a recent high profile complaint suggestions were made that the police had exhibited racism in the particular incident and that this was an example of an attitude prevalent in the particular district. There would be much to be said for a situation, such as that being subjected to consideration by an authority, which included as one of its number a person from the racial group in respect of which the complaint was made. Complaints of racism are extremely divisive in any society and difficult to counteract. An Authority which was seen as representing more than one segment of society would be much more likely to engender confidence and would be much less vulnerable to an attack based on allegations of a lack of understanding of a particular racial point of view.
- 13.7** The Treaty of Waitangi is a treaty, as the Court of Appeal has advised us, of partnership. It was a treaty which preserved certain rights to both of the treaty partners. There would be much to be said for ensuring that at least one person on the authority represented the Māori partner of the treaty.
- 13.8** A number of the submissions claim that Māori and Polynesian people had particular concerns with regard to complaints against the police. Whether or not such complaints are justified, the Brixton situation outlined in the Scarman Report makes it apparent that where suggestions of racism arise

against the police, these must be dealt with rapidly and effectively to avoid the building of entrenched attitudes which are dangerous to society and to the police alike. It would in my view make for a reinforcement of that confidence for which the Authority is designed if those interests were directly represented on the Authority.

- 13.9** In addition, because of the community concern at incidents of this kind, it would greatly assist in reassuring the community that the Authority is not only genuinely independent, but takes account of community concerns where there was a community representative identified as such. It is desirable for this reason that a lay member of the community should also be involved. This is a significant aspect of the complaints procedure run, for example, by the Law Society. Such a procedure could also accept a particular responsibility for the concerns of younger people.
- 13.10** I recommend therefore, that the authority should consist of three persons, of whom the chairperson should be a person having held or holding high judicial office. There should be an appropriately qualified member of the Māori or Polynesian community, and a person who could be seen as representing the community generally as a layperson.
- 13.11** Practical problems may arise as to how a three person Authority operates. That is beyond the scope of this review but I am sure they are not insuperable. The position of the deputy would also require consideration.

#### **14. Investigation of complaints**

##### ***Current practice***

- 14.1.1** Incidents covered by the provisions of section 13 of the Act must be reported to the Authority as soon as practicable. In such cases, where there is a police investigation proceeding, the Authority generally defers a consideration of the incident until the completion of the police investigation. In cases involving death or grievous bodily harm, the Authority where it considers it appropriate to do so, attends the scene and oversees the police investigation although it does not participate in that investigation. Oversight in such cases is very important direct oversight has been exercised by the Authority in a number of important cases from the beginning of the police investigation of an incident.
- 14.1.2** The Authority frequently defers investigation in the case of a continuing police investigation to avoid any conflict or to avoid any situation developing where there could be difficulty over the availability of information from one investigation to the other.

- 14.1.3 The Authority classifies every complaint received as either requiring a full investigation or as being suitable for complaint resolution at district level. If it is in doubt as to the appropriate course to take in classifying then it requests a preliminary report. It also considers whether in appropriate cases there should be direct contemporaneous oversight of a police investigation.**
- 14.1.4 Those complaints which are considered suitable for resolution at district level are those involving a minor breach of misconduct or a neglect of duty. They are dealt with as was the traditional approach, entirely by the police and at the conclusion a letter indicating the outcome of the enquiry is sent by the police to the complainant and a copy of that is made available to the Authority.**
- 14.1.5 Where it is considered that the complaint may be resolved at district level, the complainant is advised in writing of the entitlement to take the matter up with the Authority if dissatisfied with police handling of the complaint. It is rare for this option to be taken up which indicates that the majority of complaints are dealt with to the satisfaction of the complainant.**
- 14.1.6 Where it comes to the notice of the police authorities that there has been an incident of an alleged serious misconduct or neglect of duty, then as a result of a Memorandum of Understanding between the Authority and the police the incident is reported to the Authority which regards the notification as if it were a complaint.**
- 14.1.7 Where the Authority arranges for an investigation by means of the police, the district commander of the district from which the complaint arises is responsible for appointing an investigating officer. Police procedures require the district commander to consult with the complainant before appointing the investigator who must be an officer senior in rank to the member complained of. Procedures for investigation are governed by the police general instructions.**
- 14.1.8 A number of the submissions indicated that these procedures had not on all occasions been followed. It was a consistent theme of submissions that complainants had not been consulted with regard to the investigation or that the officer who conducted the investigation was not satisfactory to the complainant.**
- 14.1.9 Investigations of this kind are conducted under the jurisdiction of the Internal Affairs section of the police. I took the opportunity to discuss the questions which arose with the Superintendent in charge of such matters. I have been assured that although in the past procedures have not always been followed as required, considerable efforts have been made to ensure that they are.**

**14.1.10** While I accept that assurance and am sure that that is the policy of the Department, there remains room for concern that the procedures have not always been followed in the past and that it is difficult for both the officer in charge and the Authority to be sure that in all cases they are followed if that information is not available to them.

**14.1.11** Although the Authority has the power to investigate, in New Zealand as in all other comparable countries, the Authority was not funded to engage independent investigators but rather relied apart from those few cases where hearings were conducted, on investigations carried out by the police under the supervision of the Authority. Effectively the Authority became a reviewing Authority of the work carried out by the police.

**14.1.12** In a number of cases where the Authority was aware of a serious situation at a very early stage (and such situations occurred, where under the provisions of Section 13 the Commissioner was obliged to advise the Authority of instances that had occurred involving death or serious injury), the Authority was able to place a member of its staff in a position to observe the police investigation itself from its early stages, which put it in a good position to deal with any concerns which arose whether by way of complaint or otherwise. In a number of cases, the Authority himself undertook the oversight. Because such cases are advised under statutory obligation by the Commissioner, there may never be a complaint.

*Advantages of current practice*

**14.2.1** Apart from such cases, however, the authority has relied upon investigations to be carried out by the police. There are good practical reasons why such an approach should at least initially have been adopted.

- The police will have already been involved in the situation and will have at least the first necessary information available.
- The police are skilled at investigating incidents of this kind.
- To set up an entirely independent set of investigators to investigate such matters must involve, in at least some cases, an unnecessary double investigation.
- Perhaps most importantly, however, the police investigators, because they are a part of the system which they are called upon to investigate, are in a very strong position to carry out such an investigation. Such an officer will know what ought, or ought not, to have been done and will be well ahead of somebody approaching the matter without that advantage.

**14.2.2** In addition it is hardly surprising that the police service having an entirely appropriate esprit de corps will tend to close ranks against an outsider, setting up what has been referred to as the “blue veil”. An outside investigator coming up against a reluctance of police officers to provide

information or to assist in the investigation for whatever reason is not in a strong position to review such matters. Such an investigator will not know who to ask, will not perhaps be aware of the police procedures which have been followed, will not know when he or she is not being given the full information when some particular line of inquiry ought to be pursued. An officer of the police because of his or her involvement in the service, is in a better position than anybody else to penetrate that veil, and is also much more likely than any outsider to pick up when there is some degree of cover up or when there is a significant and relevant evasion. Nevertheless, an outside investigator coming with the backing of the Commissioner has great authority.

- 14.2.3 It should also not be forgotten that the police have in the past tended to be more severe on their own in certain categories of case than outsiders would have been. There are many members of the police service in this country who do not wish the traditions of their service to be tarnished by unacceptable behaviour by any member.

*Disadvantages of current practice*

- 14.3.1 Nevertheless there are manifest disadvantages in using the police to investigate complaints against their own members. First the situation looks wrong to the outsider. The police service not infrequently looks to be a monolithic society and, in such circumstances, to expect one member of that society to investigate complaints against another is asking a great deal.
- 14.3.2 The persons required to investigate are not infrequently at the very least, acquainted with the person or persons being investigated. Sometimes they are friends or workmates, or have worked together in the past. In such circumstances, to carry out an investigation of the kind required imposes great burdens on the officer concerned and inevitably leads to a feeling, on the part of those initiating the inquiry, that its result has been coloured by the association.
- 14.3.3 When a small town situation is involved then there is a likelihood that the persons who are asked questions, other than the person against whom the complaint is made, will be friends and associates of the person whose activities are the subject of inquiry. It is impossible in such circumstances for such persons who can be equated with witnesses, to be properly objective and neutral. Their sympathies will naturally be with the officers whom they know well and it is unlikely that they will have a neutral attitude towards victims who are either unknown to them or who have been involved in some kind of activity which the police have a concern with. There is a serious risk too that complainants who have a bad record will not be taken seriously for that reason alone.

- 14.3.4** One submission suggested that investigating officers were inevitably captured by a police culture and adopt a ‘there but for the grace of God go I’ attitude. That they have a mindset to justify, rather than to critically examine the actions under scrutiny. In a more positive way, it is at least possible that police officers valuing the good name of the service might be reluctant to reveal to outsiders failures which they do not themselves accept, preferring to deal with these within the service itself.
- 14.3.5** Whether consciously or unconsciously there is a risk and a perceived risk that officers making investigations will act more slowly than is desirable because they may have other responsibilities, that they may not carry out tests which they would carry out in other circumstances, that they do not conduct interviews as quickly as possible, and that they fail to put contradictory material to officers being interviewed. The investigation may be seen as secondary to other work.
- 14.3.6** It has been suggested that police officers place too much reliance on previous conduct between a victim and the police. It is understandable enough that where there has been a degree of feeling between a particular police officer and a complainant arising out of an incident which has been investigated by the police, either on that or some other occasion, an investigating police officer will see a complaint in the light of that bad feeling and tend to discount the concerns which are expressed. It is also suggested that there is a reluctance to involve qualified and experienced expert witnesses where it is appropriate that they should be brought into the matter. The investigation of a complaint differs markedly from an investigation which may lead to a prosecution. To bring in some expensive expert to deal with a matter raised by a complaint which is not seen as a particularly serious one by the investigating officer would be to load the investigation with a cost which it is not always seen to justify.
- 14.3.7** It is contended that there is a risk that investigating officers would be subjected to peer pressure from other officers, and that this could be both direct and indirect.
- 14.3.8** The comment was made that there is a reluctance on the part of complainants and witnesses to come forward when they know that the investigation will be conducted by the police. In some cases their dealings with the police in the past have not been friendly and in others they have a reluctance to become involved in what they see as a police matter.
- 14.3.9** It has also been suggested that the approach of police officers to complainants, or persons associated with them, has in many cases tended to be antagonistic and not conducive to either giving rise to confidence or to obtaining the necessary factual information. The fact that this arises from the necessity for police in conducting investigations to do so on a testing

**basis is not always apparent to persons in the situation of a complainant. More than one submission suggested that when complaints were made about police officers where criminal proceedings were in progress, or contemplated, such a complaint would result in charges being pressed when they might not otherwise have been or to result in more serious charges being laid. There is of course a reverse to this complaint. It is at least possible that a police officer may feel that it is necessary to demonstrate that he or she has not been diverted from their duty by a complaint and therefore to be more severe in response to it. The fact that motivation for charges on a particular basis may have nothing to do with the complaint is not perceived.**

- 14.3.10 From the police point of view, concern has been expressed that there are some persons who endeavour to use complaints as a means of assisting the defence in defended criminal proceedings or as a means of obtaining information to which they would not otherwise be entitled. There could be an advantage to the police in such situations if the investigation is conducted directly by the Authority. Provided information obtained by the Authority is not disclosed for use in criminal proceedings (other than as subsequently recommended), there need not be any disadvantage to the police prosecution of an offence and because of the independence of the Authority, it would not be open to a defendant in criminal proceedings to complain that the defence had been affected by the investigation.**
- 14.3.11 There is a risk that persons with a criminal past will be reluctant or not prepared to make complaints where they believe that the complaint will be investigated by police officers. A similar situation arises in respect of young people, a significant number of whom according to the submissions have an attitude towards the police which is not conducive to confidence either way. Similar comments can be made in respect of young Polynesians. Submissions indicate that the general attitude of young people is that there is no prospect of them being believed in a police investigation where the contrary view is asserted by a police officer. While this may not in fact be true, it is certainly the way in which such situations are perceived. Further, there has to be a serious risk of intimidation in cases where persons are by reason of their age or race, confronted with an authority figure against which they perceive themselves as being powerless. Even if the view adopted by such complainants is distorted, it may be enough to prevent complaints being made at all.**
- 14.3.12 There is also in such situations a risk of a perception of racial bias whether or not that actually exists.**
- 14.3.13 Even where there is no racial bias, there is a risk that one will be perceived. It is enough to refer to the comments of Lord Scarman in the Brixton**

**Report to make it plain that a community can build up a concern based on assumptions which may or may not have a basis in reality.**

**14.3.14 Concern was expressed both by submissions from a police background and the Authority that malicious and hoax complaints are a possibility which must be taken into account. The Authority investigating such matters through its own investigators would be in a much stronger position to reject complaints on such a basis than the police where the suggestion would always be made that the action was taken by way of reaction to a critical complaint.**

## **15. Procedure for handling complaints**

- 15.1 There are a number of ways in which complaints have traditionally been dealt with and others which I suggest could be used by the Authority to advantage if the necessary resources were supplied. Those methods of disposition are as follows:**
- (i) investigation and disposition by the police service as traditionally carried out**
  - (ii) by investigation by the police subject to supervision by the Authority either during the course of the investigation or at its conclusion**
  - (iii) by way of hearing**
  - (iv) by investigation by the Authority itself**
  - (v) by conciliation**
  - (vi) by restorative justice procedures.**
- 15.2 The first two have already been referred to. They should remain as prime methods of dealing with the bulk of complaints.**
- 15.3 Whatever method of disposition is adopted it is important to stress that the decision of the Authority cannot be pre-empted by decisions or conclusions arising from police enquiries as distinct from Authority investigations however conducted. At least one submission drew attention to the undesirability of police statements before the Authority had concluded its investigation.**

### ***Hearing***

- 15.4.1 In British Columbia, in serious cases, a hearing is held. A hearing where all parties concerned are either present or represented and relevant material placed before the person or persons required to make a decision avoids the concerns which arise where the investigation is carried out by the police for the Authority. It avoids the problem which exists where persons feel that their material has not been adequately investigated or where they have had no opportunity because they have no knowledge of the inquiries which have been made to correct false impressions. It also has the advantage that it**

avoids the problems which arise out of a necessity to preserve privacy. Other than in quite exceptional cases, neither party need feel that there is material unknown to them which could affect the outcome but which they have no opportunity of refuting.

- 15.4.2 Hearing is a procedure which has much to commend it. In the early years of the operation of the authority in New Zealand, two hearings were held. Both arose out of highly controversial situations at the time. I am informed that there were major difficulties associated with hearings of this kind in that the lack of an established framework such as is available to the courts meant that the Authority conducting the hearing did not have the advantage of either the conventional attitude towards behaviour at such hearings or the means to ensure that the hearing was decisive of the matters in issue in a way likely to be acceptable to those involved. I have had a submission made to me however which strongly contends that in the very fraught situation out of which the complaints arose, the public hearing involved both transparency and the opportunity for direct involvement of all concerned.
- 15.4.3 I appreciate that there are disadvantages in such a procedure. Its adversarial quality tends to detract from the possibility of conciliation and in addition public aspects may make it more difficult to obtain information necessary to ensure that there is a just result.
- 15.4.4 The experience in Canada appears to suggest that it is a desirable way of proceeding in those very serious situations where it is important that the public as a whole are convinced that a complaint has been properly investigated and dealt with.
- 15.4.5 Under the Canadian system, if a hearing is held then the complaints authority undertakes to act as prosecutor. While I can see the practical advantages of this, it has the very serious disadvantage that the authority is then compelled to take sides. Where, as I believe to be the case, the most important consideration is one of confidence both ways, this is an immediate setting up of the authority directly contrary to the police. In Canada the hearing is conducted by a retired or sitting judicial authority other than the Authority itself. When hearings were conducted in New Zealand in the past, this was done with the authority acting as judge. The chairperson of the Authority, if my recommendations are accepted, will be a person of such status in any event. While the Authority may conduct hearings, it ought also to have the power to refer such hearings to other appropriate people to conduct. A particular case may make this desirable or pressure of work on the Authority may require it. It may not always be necessary for all members of the Authority to sit.

**15.4.6** A decision then has to be made as to whether the adversarial procedure is an appropriate one. Having given some anxious consideration to the matter, I have come to the conclusion that it would be better to follow an inquisitional approach. This would allow the authority to call witnesses who could be questioned by counsel for the authority and by other counsel involved. It would have the advantage of allowing the authority to remain detached from the confrontational aspects of the inquiry and to be seen to retain its independence. The difficulties which arose with respect to the earlier hearings held could be resolved if the Authority was given all the necessary powers to act as a Commission of Inquiry under the Act. While this might require a certain amount of fine-tuning, generally speaking it would be sufficient to resolve those problems. The Authority must have the power to set its own procedures.

**15.4.7** Accordingly it is my recommendation that the Authority should have a discretion in an appropriate case:

- (i)** to hold a hearing with the powers conferred on a Commission of Inquiry, and setting its own procedure
- (ii)** that hearing should be inquisitional rather than adversarial,
- (iii)** counsel should be permitted to attend and to question
- (iv)** there should be no right of appeal other than on a point of law and to the Court of Appeal.

**15.4.8** The question arises as to whether or not a hearing ought to be public. The general question of whether or not the Authority's proceedings should be in public or in private will be examined later in this review. At this stage it is sufficient to say that as far as a hearing is concerned, the matter must be in discretion of the Authority as to the extent as to which any or all of the proceedings are made public, but in coming to its decision the Authority will no doubt take into account the considerations examined later.

#### ***Standard of Proof***

**15.5.1** There has been a considerable dispute as to whether the appropriate standard of proof whatever method of disposition is used ought to be the criminal standard of beyond reasonable doubt or whether the civil standard of on the balance of probabilities is sufficient.

**15.5.2** Most jurisdictions started with the criminal standard but there is a perceptible trend towards the civil standard in some overseas jurisdictions.

**15.5.3** I do not think it is helpful to adopt rigid standards of this kind. It is understandable that members of the police subject to the complaint should feel that something with the serious consequences of a complaint ought to be proved beyond reasonable doubt. It is also understandable that persons complaining should consider that bearing in mind their lack of resources the civil standard is more appropriate.

**15.5.4 Courts have had little difficulty in appropriate cases in adopting a standard which reflects the seriousness of the matter under consideration. In other words, where the complaint makes allegations which are categorised as serious then the standard of proof which ought to be required should reflect the seriousness of the allegations. On the other hand, where the complaint, although significant to the persons concerned, is of behaviour which would not be categorised as so serious then it is not unreasonable that the standard of proof be considered in a more lenient way.**

***Categorisation of Complaints***

**15.6.1 If hearings are to be held in order to dispose of complaints it is necessary to know whether all complaints are to be dealt with in this way or whether only complaints which are seen as particularly suitable for this type of approach.**

**15.6.2 Generally speaking resolution by hearing should be reserved only for cases described as the most serious cases.**

**15.6.3 Section 13 of the present Act requires the Commissioner to notify the Authority when incidents occur which involve death or serious bodily harm caused or appearing to be caused by a member of the police acting in the execution of his duty.**

**15.6.4 It is reasonable to preserve this as at least one type of incident which can be regarded as serious whether or not there is a complaint.**

**15.6.5 In the British Columbia situation a hearing may be ordered after considering six factors;**

- (a) The seriousness of the complaint**
- (b) The seriousness of the harm done;**
- (c) Whether a public hearing is needed to discover the truth;**
- (d) Whether there was a flaw in the investigation done by the police department and measures proposed are inappropriate or inadequate, or the disciplinary authority's interpretation of the code of conduct was incorrect;**
- (e) Whether a public hearing is necessary to restore or preserve public confidence in the complaint process and in the police;**
- (f) Whether the allegation is a disciplinary default under the code of professional conduct regulation.**

**15.6.6 No attempt is made to give a definition which would lead to a definition of the seriousness of the complaint or the seriousness of the harm done and some difficulty has arisen in this country in interpreting similar matters under the provisions of section 13.**

**15.6.7 In my view in the end it is unnecessary and indeed undesirable to set out rigid definitions which would determine whether or not a complaint comes within the category which would justify a hearing. Most people as a matter of common sense are aware of what constitutes a serious complaint, and it will be serious where the Canadian criteria are present. As to the seriousness of the harm done, again this is a matter to be determined within the context within which the particular complaint arises. In my view the six criteria set out in the Canadian statute are valuable indicators but should be seen as no more than that, any more than section 13 is other than an indicator. The matter in the end should be one for the Authority to determine and for the Authority to decide whether or not a hearing is the best method of ascertaining the truth and/or restoring the confidence of the community, which is the basic purpose of the Authority in any event.**

## **16. An Independent Investigative Capacity**

**16.1 The great majority of the submissions suggested strongly that it was time for the authority to have an investigative capacity of its own. Similar conclusions have been arrived at in England and in Australia. The literature makes it clear that such a conclusion has eventually been arrived at in every jurisdiction where an authority of this kind has been set up. While this may seem to favour the concern of the complainant for independence, there are also advantages to the police in the adopting of an independent investigative procedure. The police would no longer be subject to the same criticisms, but more importantly, they would be less likely to be affected by doubtful complaints brought by persons the subject of criminal proceedings, for ulterior motives. They would also be relieved of the uncomfortable obligation to investigate colleagues.**

**16.2 In New South Wales, the audit report on the investigation of police complaints noted the importance of the recognition of links and patterns which identified serious shortcomings. The Authority being independent and being involved solely in matters of this kind is in the best possible position to identify such links or patterns and this is a strong argument for the Authority being involved in direct investigation itself. In addition, there is a protection for whistle blowers. If members of the police are aware of undesirable practices occurring it would be difficult to deal with those through the ordinary police channels of authority. It would be much simpler to ensure that the necessary material was available to the Authority which would be in a position to take any necessary action.**

**16.3 There is also the question of police morale. It is obvious that if the Authority is seen as being an unsympathetic and constant critic of the police this will have an effect on morale. But if on the other hand the Authority is able to build up the confidence of the police and it has that confidence at**

**present, then there should be no effect on morale, rather, those members of the police which includes the vast majority of persons in the service, can feel the confidence that if there are undesirable activities occurring, these will be dealt with and the standards of the service maintained.**

- 16.4 Concern was expressed in submissions on behalf of both complainants and the police of delays in completing investigations. It was acknowledged that such delays were generally the responsibility of the investigating police officers rather than the Authority. No doubt in some cases at least delays occurred because the Authority investigation was seen as having less immediate urgency than other work on which an officer is engaged. It would clearly be advantageous to both police and complainants if this kind of delay could be avoided and on the whole, it seems more likely to be avoided if the Authority has in appropriate cases an investigative capacity.**
- 16.5 This gives rise however to a number of problems. First there is the financial one. To properly provide an investigative capacity sufficient to deal with the number of complaints which the authority receives would involve the expenditure of considerable sums of money. Two submissions claimed that this would be to some extent illusory. Investigations which are conducted by the police are not conducted free of charge. Officers who are obliged to take part in them are not available for other police duties. They are conducted under the auspices of the Internal Affairs Division of the Police and the cost of doing so is assessed by the police as a part of the expenditure of the amount voted by Parliament for the police budget. The suggestion was made that if the police were no longer required to carry out such investigative work, then that cost could be subtracted from the police Vote and used to fund the Authority. Since the work that would be done would be approximately the same, then the actual transfer of funds would not result in any increased expenditure.**
- 16.6 This is clearly overly-simplistic the majority of complaints will still be investigated in the same way as at present. The police officers who are no longer required to carry out such investigations would still be members of the police and still require to be paid whether they were carrying out this work or not. As I understand the position no officers would be employed solely on work of this kind and it is necessary to bear in mind their other responsibilities.**
- 16.7 According to the submission from the Police Commissioner, during the year ended 30 June 2000 a total of 1,768 complaint files were opened and police devoted 58,355 productivity hours to police discipline. This did not all relate to complaints investigation however. While these figures provide a starting point, they do not provide an adequate basis for determining how many persons would need to be employed by the Authority if it conducted the investigatory process itself. The reason for this is that the majority of**

**complaints are comparatively minor and could continue to be dealt with by the police as they are at present. For the year ended 30 June 1999 108 files were opened under the provisions of Section 13 which would normally be seen as comparatively serious. The number of files opened in the year were 1,682. The seriousness of complaints as distinct from incidents reported under section 13 cannot readily be assessed without a very detailed analysis. The seriousness depends upon the assessment of a number of factors of which the consequences of the action complained of are only one. Quite apart of this, the nature of some complaints must mean that the investigation will take a much greater length of time and use of resources than others.**

- 16.8 If the Authority is to accept the responsibility of conducting investigations, it will still be necessary for the Authority to supervise investigations carried out on its behalf and it will be necessary in order to meet the concerns which have been expressed in so many of the submissions for the Authority to accept responsibility in a greater number of complaints than it might at first appear to be the case. The problem is one of perception and the Authority ought not to be seen as downgrading the significance of complaints.**
- 16.9 Further, if conciliation is to be encouraged or other alternative means of resolution, then the Authority would need the staff to ensure that such procedures were competently carried out and inevitably investigation would be necessary.**
- 16.10 A submission tendered by the Treasury suggested that if I came to the conclusion that an independent investigative capacity was necessary, the costing of it should be carefully analysed. I agree that this would ultimately be a necessity, but it is impossible for me to carry out such an analysis. I have neither the information nor the means to conduct it. If this recommendation is accepted then I understand the Ministry of Justice would need to make the necessary assessment of cost which was involved.**

**17. Availability of Investigators**

- 17.1 If the authority were to set up an independent investigative section it would need to get appropriately qualified investigators from somewhere. Some of the submissions suggested that it would be possible to get appropriately qualified people from retired policemen and no doubt this is so. This however also gives rise to the same kind of difficulty to which reference has already been made that they are likely to be seen as having some sort of affinity with the police service.**

- 17.2** Nevertheless, people who are complete outsiders to the police would not have the same knowledge of police procedures and might have more difficulty in obtaining the confidence of the people being interviewed.
- 17.3** The solution suggested in England is that a certain number of police officers should be either employed permanently by, or seconded to, the Authority. The problem with seconded officers is that the perception may remain of a lack of independence.
- 17.4** As several submissions pointed out, there are other services in this country where investigation is a significant factor and it ought to be possible to get either permanently or on secondment a number of investigators from such sources as the Customs, the Serious Fraud Office, and other equivalent authorities.
- 17.5** There are advantages in having some investigating officers with a police background and these could be recruited from retired officers and some from officers who could be seconded for the remainder of their careers. It should also be open to the Authority by arrangement with the Commissioner to obtain the services of a particular officer for a particular complaint. Where the nature of the complaint make it undesirable to use an investigating officer with a police background then those from a different background could be used.
- 17.6** I recommend therefore that the Authority be empowered and resourced to recruit a sufficient number of investigating officers with supporting staff to enable it to conduct its own investigations in appropriate cases. The number will need to be established in practice. Any suggestions can only be arbitrary. I suggest six would be an appropriate starting point. The Authority should also have the power to engage persons appropriately qualified on temporary basis.

## **18. Conciliation of Complaints**

- 18.1** The emphasis which I have endeavoured to maintain throughout this review is a necessity to ensure that confidence is established and maintained between the public and the police and the Authority.
- 18.2** All of the research on the subject of dealing with complaints of this kind puts an emphasis on the necessity to as far as possible achieve conciliation. This is seen as a desirable outcome by the police themselves and is in fact the consequence of the resolution of many minor complaints. It should be the first concern of the Authority to ensure that conciliation is attempted if at all possible. That should be a significant factor in determining the nature of the investigation and who should investigate it. A number of submissions

**indicate that at present at least largely for reasons of secrecy, complainants are often not aware of the extent and progress of an investigation and no opportunity occurs for any kind of conciliation. The officer in charge of these matters at the Police Internal Affairs Department, is aware of the situation and there have been changes made in the way in which investigations are carried out which to some extent will obviate this problem but it is necessary to impress upon all concerned the importance of such an approach and it is also necessary for the Authority to ensure that the investigation proceeds in such a manner that the priority of conciliation is maintained.**

- 18.3 In the case of minor complaints investigated by the police themselves, provided this emphasis is maintained, no doubt these matters will most frequently be resolved as they are at present without any ongoing concerns.**
- 18.4 In other cases however, conciliation is unlikely to be achieved without some outside assistance.**
- 18.5 If the Authority is funded to engage investigating officers then it is important that those should be persons who have conciliation skills as well as investigative skills so that they can endeavour to arrive at some resolution which increases understanding between the parties and allows both to consider that the situation has been adequately resolved. If at all possible, an officer should be appointed whose primary function is the promotion of conciliation and who can be available in appropriate cases not only to investigate but also to conciliate and mediate.**
- 18.6 Whether it is seen as conciliation or mediation the best outcome for all concerned is one where the matter in dispute has been resolved to the satisfaction of both parties.**

## **19. Restorative Justice**

- 19.1 One submission noted that the Thames Valley Police in England have adopted the principles of restorative justice for the resolution of complaints against the police made within its jurisdiction.**
- 19.2 I was able to obtain information on this scheme and the way in which it has operated. It has been seen by both complainants and the police as being an extremely effective and appropriate way of resolving situations of this kind.**
- 19.3 The principles of restorative justice differ from those which apply to conciliation.**

- 19.4** As a method of resolution of matters of this kind it has much to recommend it.
- 19.5** Rather than set out the detail of the way in which these principles are applied in the Thames Valley situation, I attach material obtained from Thames Valley Police as Annex 2 to this report. As in the case of conciliation procedures of this kind designed to maintain and restore appropriate relationships between members of the public and the police should be promoted at every opportunity. I have already suggested that somebody with conciliation skills ought to be appointed specifically for this purpose. It would be of assistance if the same person was also skilled in promoting resolution by way of restorative justice procedures and was in a position to pursue these where appropriate.
- 20.** Recommendations of the Authority and consequent action on complaints
- 20.1** The present system involves the Authority making recommendations to the Commissioner. A number of submissions expressed concern at this, and the question arises as to what powers, if any, the authority should have on the conclusion of an inquiry.
- 20.2** In serious cases, where criminal activity is disclosed, then a decision has to be made as to how such matters are dealt with.
- 20.3** There have been suggestions at various times (and a number of submissions supported this) that the Authority should have a prosecuting function, and indeed in Canada, in the case of hearings, the Authority acts as the prosecutor.
- 20.4** I do not recommend such a step. The Authority's task on investigating would be made immeasurably more difficult if it was thought that as a consequence the authority would be initiating prosecution action directly. Not only are there consequences for the investigation, but consequences for the individual rights of persons concerned in making evidence available which might be used in other than the investigation of the complaint itself.
- 20.5** The independence of the Authority must not be brought into doubt. If it were then it would forfeit the confidence of both public and police, and the whole purpose of the exercise would be lost. An investigator would face much increased difficulty if persons being questioned with regard to the complaint were aware that consideration would be given subsequently to a prosecution. All prospective conciliation would also be seriously reduced.
- 20.6** The question of who should conduct prosecutions in New Zealand has been the subject of consideration by the Law Commission. In the meantime I

**recommend that where the Authority arrives at a conclusion that some criminal activity, or some activity which should be followed through the courts, criminal or civil, has been disclosed by the inquiry then the matter should be referred to the Solicitor General. The Solicitor General ought not to have access to material on the Authority's file and could refer where necessary material to the police for investigation.**

- 20.7 In lesser cases the question arises as to what is an appropriate response as far as the authority is concerned.**
- 20.8 Some of the submissions alleged that recommendations from the authority were frequently ignored by the police, and that there were effectively no consequences to an offending officer at all. While there is no evidence before me to support this allegation and I have no doubt that the Commissioner will reject it, that this perception is in the community gives rise to concern. To some extent this perception may have arisen out of the secrecy which it has been considered necessary for the Authority to operate under, so that in some cases the complainant was not aware of the consequences to the officer.**
- 20.9 Complainants dissatisfied with the outcome as far as a particular police officer is concerned sometimes mistake the jurisdiction of the Authority. The Authority is not there to replace the criminal courts or to impose penalties which could not otherwise be imposed. It is there to ensure that members of the police operate according to standards which are acceptable to the community which the police are engaged to protect. Complaints that an ineffective or insufficiently severe penalty is being imposed proceed from a misunderstanding of what the Authority is designed to achieve. The Authority's function is to ascertain whether or not improper or unacceptable behaviour has occurred on the part of a police officer or whether or not unacceptable practices are occurring. The consequences of the identification of such failures are for others to determine. The Authority may make recommendations as to what may be seen as an appropriate outcome but a complaint as to a lack of penalties or recompense may be misconceived if directed at the Authority. If the Authority considers that the reaction of the appropriate authorities to a recommendation is inadequate, then the Authority ought to have the option of referring the matter to Parliament as occurs in the case of the Ombudsman.**
- 20.10 On a different aspect, at least one submission asked whether any attempt had been made to collate the consequences of complaints, and to identify whether particular officers or practices were the subject of more complaints than others. Such a collation is now made by the Commissioner. It has been noted elsewhere that the Authority is in a very good position to note undesirable trends and patterns and report regarding them.**

**20.11** A difficulty which has arisen in this area is the fact that the Authority does not have control over police practices and procedures nor should it. Police operations would be severely affected if some outside Authority was in a position to directly control the practices and procedures which the police adopt. The job which the police are required to perform might well become impossible. The Authority does not have and could not be expected to have the background or expertise necessary to make any such changes. It is for those reasons that it has never been accepted as appropriate for the Authority to do other than make recommendations in respect of matters which become apparent to it on investigation and this has always been done.

**20.12** In my view the powers of the Authority ought to continue as at present and be confined to the making of recommendations. Such recommendations need not be confined to the individual case, but can refer to practices and procedures.

**20.13** In the case of practices and procedures, reference has already been made to the necessity to ensure that the Police are aware of the standards which the Authority considers appropriate. Where the Authority considers that practices and procedures do not conform or that the Code of Discipline itself as it is interpreted are not satisfactory from the point of view of the community, then it is the obligation of the Authority to point that out by its recommendations to the Commissioner and some significant changes have been made as a result of such recommendations.

**20.14** If there is an indication that a particular officer, or officers, have been involved in an unacceptable number of such situations then the Commissioner should be advised of that view and requested to take steps to ensure that it has been made clear to the officer concerned that such behaviour is not acceptable and if necessary the officer ought to be transferred to other duties. If it is necessary to amend the powers of the Commissioner to enable that to be done, then such amendment should be made.

**20.15** The Commissioner ought to be under an obligation to respond to the recommendation indicating precisely what action has been taken or not taken as a result of it. The effect of such recommendations supplemented by the knowledge that if necessary they can be communicated to Parliament and/or publicised give them great significance.

## **21. Secrecy and Privacy**

**21.1** One of the two major aspects of the inquiry is the extent to which the investigations and conclusions of the authority ought to be kept private.

**21.2** The emphasis in the present Act is on the retention of privacy, and that is no doubt because it is considered that both complainants and police are more likely to respond in depth and completely if they believe that the communications they make will be kept private. There has been some criticism of the Authority including editorial comment that it does not make available material ascertained by an investigation. Such an attitude is understandable. In a matter as sensitive as the relationship between members of the public and the police however, the Authority must act in such a way that it will maintain confidence both of members of the public and of the police.

***Disclosure to Complainants***

**21.3.1** A major problem arises as to how much available material ought to be disclosed to the complainant or the person, or persons, against who the complaint is made. A number of submissions complained that they heard nothing of the progress of the investigation from the time of the initial complaint and received no approach until they were advised of the ultimate outcome. I am informed by the police that there is now a requirement that the complainant should be both seen and kept in touch with the progress of the investigation and if that practice is followed then this particular concern will be lessened.

**21.3.2** A number of the submissions expressed in very strong terms a concern that the complainant had never had any opportunity to answer material contained in the police investigation, and that persons who had relevant information had never been seen.

**21.3.3** Although there are arguments in favour of privacy, nevertheless it is a fundamental principle that people whose rights are involved whether as citizens or as members of the police service should have an opportunity to answer criticisms which are made of them.

**21.3.4** In the end it doesn't seem to me that it is possible to lay down hard and fast rules, other than that the overriding principle is one of justice to all concerned.

**21.3.5** The Authority must be left to determine the extent to which material disclosed during the investigation is made available to parties concerned with it. In most cases, the requirements of natural justice will mean that material affecting a party should be disclosed to that party to enable them to have an opportunity to refute it. If for some exceptional reason the Authority considered such disclosure of any material would lead to a totally unacceptable risk then it should have the power to suppress it not otherwise.

***Availability of Material Discovered on Investigation for other purposes***

- 21.4.1** It was a repeated criticism in submissions made to me that in comparatively minor matters, a complaint was likely to lead to some retaliatory action on the part of police officers. While this is not accepted by the police it is a perception which must be corrected. If prosecution action is taken by the appropriate organisation then that prosecution must depend upon the investigations carried out by that organisation, not on those carried out by the Authority. This principle must apply to persons making and supporting a complaint as well as to the police. Police officers ought also to be entitled to protection. There must be no suggestion that a person making a complaint or giving information in support of that complaint will have that information used against them in other proceedings (save of course by way of recommendation at the conclusion of the enquiry). It is also important that the Authority should not be used as the basis of a fishing expedition where information can be obtained and used in other proceedings altogether. There ought to be a fixed principle that material disclosed to the Authority is not to be available for any other purpose (other than where it is exculpatory in criminal proceedings). One submission to me made the point that where a criminal offence was disclosed during the course of the enquiry the material which supported that conclusion ought to be available to a prosecuting authority. I do not agree with that contention. If the Authority is to succeed in building up that confidence to which reference has been made, it is important that complainants and police should feel able to speak freely to an investigating officer without what they disclosed being used against them in other proceedings.
- 21.4.2** Problems arise with regard to access to files created by the police in police investigations and investigations made on behalf of the Authority. There was a submission that there are many members of the police service who simply regard Authority files as police files to which access can be obtained as a matter of course. Whether this is factually correct or incorrect is less important than the perception that material may be available in this way. Where there is a degree of sensitivity as there may frequently be, this is a strong argument for the Authority conducting its own investigation. As one submission put it, it is unreasonable to expect the police officer to separate the two functions as the same officer is involved in both.
- 21.4.3** It is important too that the present access to a police investigation file should not be frustrated by that file being in some way categorised as being made on behalf of the Complaints Authority. The Privacy Commissioner has expressed concern with regard to this. This emphasises the need for such files to be kept entirely separate. Where the Authority itself conducts an investigation there is no problem. Where an investigation is conducted by the police, then it is important from the outset that file should be kept entirely separate from a police investigation file so that there can be no suggestion that material to which a person subject to an investigation would

normally have access is not denied by a categorisation of this kind. By contrast, material on the Authority's file should not be available (except for exculpatory purposes) even in a police disciplinary enquiry.

- 21.4.4** The above considerations are so important that I consider the conclusion to be inevitable that investigations must continue to be conducted in private with the material so gathered being kept secret as at present other than where it ought to be disclosed to a party as discussed above or where for some quite exceptional reason the Authority considers the public interest requires disclosure.
- 21.4.5** A number of submissions expressed concern at what was seen as mischievous complaints. They consider that there should be some response to these which discourage their making. It is difficult to see how any such system could be implemented without giving rise to the danger that genuine complaints may be discouraged by a threat of reprisals. In the end I think the Authority's power to reject complaints is as far as it is reasonable to go.
- 21.4.6** One particular problem arises when access to a file is sought by a complainant in order to be used in other proceedings. A suggestion was made that an astute defence lawyer might initiate proceedings by way of complaint in order to obtain material for the purposes of assisting a defence such as unguarded comments from a police officer. If this was seen as a significant risk, then it is likely that the responses of police officers to an investigation conducted by the Authority or anybody else might be significantly truncated. On the other hand it should also be said that if material was contained on an authority's file which had a significant effect on contemporaneous criminal proceedings of an exculpatory kind, then there is a serious risk of injustice if it is not disclosed. In the end, the same approach is all that can be recommended. The Authority must have discretion to determine when it is and when it is not appropriate to release material of this kind.

### *Hearings*

- 21.5.1** I understand that the two hearings which were held by the Authority in early days of its existence were both held in private, although of course all persons concerned with the enquiry were present. Principles to which reference has already been made that is, that information given to the Authority should not be used in other proceedings suggest that hearings ought not to be held in public.
- 21.5.2** In at least one submission emphasis was placed on the fact that police officers or other persons who have made evidence available during the course of an investigation or at a hearing, may in a case of high public profile be subjected to harassment and be placed in an impossible position although the enquiry is not one designed to indicate whether or not there

has been criminal activity but only whether or not the appropriate standards have not been achieved. No doubt that is a factor which the Authority would take into account.

- 21.5.3** It is for the Authority to fix its own procedures and this must extend to whether or not the hearing is public. There may be circumstances where a public hearing is justified but in most cases such hearings ought to continue to be conducted in private.

***Disclosure of Conclusions***

- 21.6.1** Current practice is to advise complainants of the outcome of an investigation by letter. The restrictions on the Authority as to the publicising of material make such letters not infrequently less informative than the complainant considers appropriate. I think however there is room for the final letter from the Authority being more informative as to the investigation and its results than some of the letters which were forwarded to me in support of submissions which complained of the inadequacy of the information given. The principles which apply to disclosure of investigative material must also apply to the conclusion. While the Authority must retain a general discretion to suppress material where in the circumstances it considers this desirable generally those affected by the decision are entitled to know the basis of the conclusions.
- 21.6.2** The vast majority of complaints will have no relevance to anybody other than the persons directly affected. There should be no obligation to publish such decisions and it must be a matter for the Authority to determine whether or not a particular decision has features which make it desirable in the public interest to publish it.
- 21.6.3** The Authority has always published decisions in whole or in part when it considered it was in the public interest to do so. It is plainly in the public interest that material which has a bearing on matters of public concern and the rights of the citizen should be available to the public. This is particularly important in the case of the Police Complaints Authority where the confidence of the community must be maintained and where members of the community are entitled to know what they can expect from the police. Where therefore in the case of investigatory material the emphasis must be on the preservation of secrecy the emphasis on the conclusions ought to be in favour of publication. Here too however the Authority must retain a discretion to suppress publication of all or part of a decision where it considers it necessary to do so.
- 21.6.4** Generally it may be said that it is in the public interest that material which has a bearing on public opinion and the rights of the citizen should be available to the public so that that opinion may properly be formulated with regard to all of the facts on which it ought to be based. This is particularly important in a situation such as that of the Police Complaints Authority

where confidence is all-important. That confidence can only arise where all interested persons are fully apprised of the way in which particular decisions have been arrived at.

- 21.6.5** Accepting that that is the general position, it is also true that attaining a just result in an individual case may mean that the Authority may need to exercise a discretion to suppress publication of all or part of the material which is obtained during the course of its investigation, or which is contained in the decision.
- 21.6.6** In certain high profile cases, a police officer's safety or that of his family may be put at risk if material were disclosed in an inappropriate way. Such a situation occurred recently where the news media voluntarily accepted the undesirability of publishing the name of a police officer. One newspaper however did not see the necessity of conforming to this principle taking the view it was outweighed by other considerations. It may also be necessary to protect individual officers who have given information which may be unpopular for one reason or another within the police service or outside it.
- 21.6.7** This must be a matter to be left to the discretion of the authority and in the circumstances it would be undesirable to fetter that discretion by providing too many restrictions upon it.

#### ***Malicious complaints***

- 21.7.1** In one submission it was pointed out that some complaints made are malicious and made in response to police investigations carried out in a perfectly proper manner. It was also submitted that in such cases the purpose of the complaint is sometimes to embarrass or take revenge against the officer concerned, and may be designed to assist in some undesirable way in the defence of criminal proceedings or to prevent an investigation taking place where criminal proceedings are contemplated.
- 21.7.2** Such cases will inevitably be a matter for the Authority to resolve, and where it is apparent on the investigation that such ulterior motives lie behind the complaint then the authority ought to have the power to deal with the matter accordingly and to ensure in any case that material obtained by the authority is not used improperly in other proceedings or inappropriately disclosed.
- 21.7.3** In both these cases the Authority would no doubt take the circumstances into account in determining whether or not the conclusions should be published. There may be good reasons why they should not.

#### ***Conclusions***

- 21.8.1** The present statutory provisions require the maintenance of secrecy subject to power to disclose for the purpose of carrying out investigations or any

**other duties or in order to establish ground for the Authority's conclusions and recommendations. Such a blanket provision gives rise to difficulty. In my view there should be an emphasis on secrecy in order to preserve privacy during the course of the investigation and as to material ascertained during that investigation unless the Authority considers that the interests of the community in having access to such material outweigh the privacy considerations for those involved. In the case of conclusions, the needs of the community must tend generally to disclosure subject to the right of the Authority to suppress conclusions entirely where it considers that this is justified in the circumstances of the case and it must have an absolute discretion to suppress any part or parts of a conclusion which it considers undesirable to disclose bearing in mind the need both to ensure that the public is kept informed and people are not discouraged from providing information which leads to a just result. Material ascertained on investigation should not be available for use in any court or for any other purpose other than where it might be exculpatory in criminal proceedings. It is entirely a matter for the Authority to determine whether or not any material is exculpatory in that sense and no part of any file or material ascertained by the Authority on investigation shall be subject to search or to disclosure without the consent of the Authority.**

## **22. The Method of Lodging Complaints and the Location of the Authority**

### ***Lodging complaints***

**22.1.1 The Authority has made a major effort to ensure that it is comparatively simple for a complainant to lodge a complaint. This can be done with the police, or through various community organisations, through the courts, or through members of parliament. Unfortunately there are at least sections of the community who are not aware of the ability to lodge complaints otherwise than through the police. A number of the submissions made to me suggested a widening of the places and procedures where, and by which, a complaint can be made. The suggestions contained in some of those submissions asked that the places where complaints could be made should be widened to include certain organisations which the Authority has already authorised to accept complaints on its behalf.**

**22.1.2 From the beginning the Authority has been exercised by the necessity to ensure that on the one hand there was general, easy public access to the Authority and on the other that the Authority was not seen as touting for business and causing complaints to be made which might not otherwise have ever needed to be brought. In my view the balance achieved by the Authority in this regard has been successful. There is criticism of the appropriateness or otherwise of complaints being made at police stations. It is understandable people would feel to some extent intimidated by what could easily be seen as a hostile attitude towards such complaints. However,**

**it would be quite unrealistic to exclude police stations as a place where complaints can be made. In many cases where such complaints are appropriately received then the process of conciliation can proceed without the necessity for further formality. Police stations are also far more widely dispersed than the other organisations which have generally been accepted as appropriate places for the laying of complaints. It is my view that it ought to be possible for complaints to be laid at police stations, courts, community law offices, and equivalent organisations and directly to the authority as is now the case.**

### ***Location of Authority***

**22.2.1 One submission suggested that the Authority ought to have branch offices in various places to enable complaints to be made to it directly. While at first sight this has some attraction, it also gives rise to major difficulties. It means that the Authority would be obliged to acquire additional staff. It also is of itself selective. It would clearly be impracticable to have an office of the authority in every court centre throughout the country, and unless it did the argument as to availability tends to lose a considerable part of its strength.**

**22.2.2 It would mean that an investigative officer or staff would be isolated from the rest of the Authority and there would be the risk that approaches to complaints differed depending on the area where the complaint was made.**

**22.2.3 One submission indicated that it was particularly important for Maori people and presumably other Polynesian complainants to be able to make a complaint on a face to face basis. Some people found writing a letter or completing a form difficult and the submission suggested that there were a number of occasions in the experience of the organisation which made the submission when complainants had not found the police cooperative in terms of how to make a complaint. The Authority maintains an 0800 number but the submission noted that in common with other sections of society, there are many people who do not find it easy to record messages.**

**22.2.4 In my view, and I recommend, the authority should retain its central organisation but may need to extend the number of organisations to which a complaint can be made, and in particular include places or organisations which are more likely to be acceptable to those individuals and groups within society who do not find it easy to go to organisations which are seen as being part of the establishment.**

## **23. Specific Terms of Reference**

23.1 The specific terms of reference require a consideration of specific questions. While all of these are dealt with in the preceding material, it is appropriate that specific reference should be made to each at this stage of the report.

*a) The Authority's strengths and achievements*

In spite of the criticisms which have been made of the authority, it has many achievements to its credit. While there has been inevitable dissatisfaction in respect of certain of the matters referred to the authority, it is also true that from the beginning the vast majority of complainants whose matters of complaint dealt with by the authority fairly and expeditiously. The authority in its review of the investigations carried out on its behalf by the police, has been a salutary reminder that investigations carried out will be looked at by an outside observer and there have been many occasions when the authority has required further investigations to be made before a conclusion was reached. The very existence of the authority is a reminder to the police service that its actions will be the subject of scrutiny in cases where complaint is made. Although there was a criticism the police did not alter any practices or procedures as a result of intervention by the authority, it is apparent from the material available to me that there have been substantial modifications on a number of occasions. The Authority was a pioneer in this field in New Zealand and it has achieved much during its comparatively short existence. The Authority has had the advantage of being served by dedicated and competent personnel from its inception. Where there have been criticisms, some of these could have been effectively dealt with if the Authority had been in a position to disclose the information which it had obtained as a result of the investigations which were carried out. That it has not been in a position to do this should not be taken as a criticism of the Authority itself.

*(b) Any weaknesses that may exist in the Authority's structure, legislative mandate or performance*

The structure of the authority has been inadequate to establish, in the eyes of the public, that it has a genuine independence from the police. There is a perception that because of its name, and its dependence upon the police to carry out its investigations it is not truly independent. There is also a criticism that the authority has been unable effectively to identify particular areas of unsatisfactory operation including personnel whose behaviour has been the subject of scrutiny within the police, or to ensure that the police modify practices which the authority considers gave rise to genuine dissatisfaction. Nevertheless it is appropriate to stress that the vast majority of the submissions, even where these were critical of the authority, were not critical of the authority as such, rather they considered that it had not been given the necessary investigative resources to allow it to achieve that independence which justified its

existence. Insofar as there ought to be any change in its legislative mandate then where the recommendations made, if accepted, require legislative amendment, this will alter the legislative mandate and bring it into line with what in my view is necessary to establish and reinforce that attitude in both public and police which gives rise to confidence.

**(c) *The relationship of the Authority to Ministers, the Police and the three branches of Government generally***

To give rise to that confidence which is essential for the acceptable use, by the police on behalf of the community, of physical coercion the authority must be seen as being independent. In a number of cases the criticism which was contained in the submissions arose directly from the resolution of cases within the justice system. The independence of the authority which would give rise to the necessary confidence is something that ought not to be compromised by a public perception of some undesirable association with the police or the Executive. For that reason I have made the recommendation that the authority should report, as does the Ombudsman, directly to parliament rather than to one of the ministries.

**(d) *Whether any improvements could be made, and if so what?***

The improvements which I suggest are contained in the list of recommendations set out in this report.

**(a) *Has the Authority achieved its statutory objectives (with particular reference to section 12 of the Act)?***

This is the general function section which contemplates the receipt of complaints and the investigation of such complaints to be followed by action contemplated by the act itself. Within the limits imposed by the Act it is reasonable to conclude the authority has achieved the statutory objectives, but the short title contemplates that the authority will be independent, and for the reasons set out above, while I am satisfied that the authority has been independent in its approach it has not been seen to be independent because of the necessity for it to arrange for investigations to be carried out by the police. The authority has in fact, as contemplated by the Act, been not so much an investigative authority as a reviewing authority. To the extent that the Act was designed to meet the needs identified at the time of its passing to satisfy members of the public that complaints would be dealt with independently it has not achieved those objectives, because the public perception of the authority is that it is not sufficiently independent.

**(b) *How do the statutory objectives stand up in light of experience?***

To the extent that the statutory objectives are designed to allay concerns of members of the public and to lead, as far as possible, to a relationship of confidence between the public and the police, the Act has fallen short because of the inherent limitations built into its structure. The authority is rather unfairly seen as being merely an arm of the police, accepting the results of

investigations carried out by the police because of its inability to conduct such investigations directly itself. As a review authority it is dependent upon the material made available to it, and it is the perception of a significant proportion of the public that, because of its dependency upon the police to carry out investigations, the authority lacks true independence.

- (c) *How is the division of responsibilities for investigating matters allocated between the Commissioner of Police and the Authority?*

While it has been the practice of the Authority, in cases where it was considered appropriate to do so, to send an observer to monitor the investigations carried out by the police, in the vast majority of cases it is not within the resources of the authority to carry out an independent investigation. In actual fact, almost all matters have been investigated by the Commissioner of Police. The division of responsibilities has been determined by the lack of resources on the part of the Authority.

- (d) *How efficient has the Authority been in using its resources?*

Although there were criticisms contained in the submissions these all related to the manner in which the authority was set up to operate, rather than to the efficiency with which it operated within these limits. I am satisfied on the information available to me that the authority has been extremely efficient in using its resources within the limitations imposed upon it by its authorising statute. It has had a small and dedicated staff who have accepted a wide range of responsibilities.

- (e) *How effective has the Authority been in dealing with complaints which arise from or are related to police policies, procedures or general practices?*

At least one of the submissions made a detailed complaint in this regard, and asserted that on no occasion has the authority taken action which has resulted in any alteration in police policies, procedures or practices. Inquiry, however, indicates that on a number of occasions the authority has made direct representations to the police authorities through the Commissioner to alter certain practices and procedures, particularly with regard to the investigation of complaints and has succeeded in having significant changes made. Such approaches have been made in private, and it is understandable that individual complainants would be unaware of such procedures. Reference is made to such matters in the annual reports of the authority. But as one former authority observed, little if any publicity has been given to these reports and although they were available to the appropriate members of parliament and ministers on no occasion has any response been received after the reports were referred. They have not been taken up in the media and it is therefore understandable that the population generally is unaware of the way in which the authority has acted in this area.

- (f) *How effective has the system of using police to conduct investigations been?*

I repeat the comments contained above. While the system of using police to conduct investigations has been in the vast majority of cases efficient and satisfactory, in a significant number of cases criticism which appear to have some basis in fact have been made and it is plain that as far as the community in general is concerned the procedure is not seen as being independent.

- (g) *What safeguards against possible bias are built into the investigation process and how efficiently have they operated?*

The principal safeguard is that the authority exists as a review authority and has access to all of the material which was obtained during the course of the investigation, and therefore has an opportunity to reconsider it. This, while a significant safeguard, is to some extent illusory since the authority would only be aware of the material which is placed before it as a result of the investigation and has no knowledge of the way in which the investigation was conducted in personal terms, or of the material which may not have been included or not sought. A significant number of the submissions made in the course of this review complain that the investigation had been selective and that there was no opportunity to contradict material which was factually incorrect.

A second safeguard has been built in as a result of the efforts of the authority over the years in ensuring that at least in appropriate cases officers from areas remote from that containing the officer the subject of complaint have been used for the investigation. But again, it is apparent from the submissions that this is not a universal practice. The conclusion has to be that the safeguards in the system are insufficient at least to lead to a public perception that investigations are independent and effective.

- (h) *Should the Authority have an independent investigative capacity for serious complaints and incidents, and how might that operate including consideration of potential financial implications?*

This too has been dealt with at length above and I repeat my recommendation that there ought to be such an independent investigative capacity.

- (i) *To what degree should the function of the Authority be carried out in private and in secrecy, and what degree of transparency is advisable in the Authority's operations?*

This too has been dealt with at some length above. The nature of the jurisdiction is such that there will certainly be occasions when privacy and secrecy are necessary in the investigative process and in the distribution of the conclusion. But the underlying principle of openness in a matter which affects the community in such depth must mean that the ordinary emphasis ought to be on disclosure to all concerned, and where appropriate to the public generally. However, it must be left to the discretion of the authority to determine whether in particular circumstances the function should be carried out in privacy and in secrecy or not, and to what extent. It should be accepted

as an underlying principle that material made available to the Authority during the course of an investigation however carried out ought not to be available in any other forum or for any other purpose or proceedings, other than in an appropriate case exculpatory material which might be important to a defendant.

- (j) *Should the Authority have the power to initiate a prosecution of a police officer?*  
As discussed above I am satisfied that the authority should not have that power in spite of the fact that a number of the submissions recommended it. In my view, where the authority considers that the behaviour is such as to justify the intervention of the criminal law then the matter should be referred to the Office of the Solicitor-General where such decisions should be made.
- (k) *What skills, experience and qualifications would be desirable in the officers and employees of the authority?*  
The first and most significant requirement is one of independence, and it is in this area that most criticisms have been laid. Employees must not only, however, be independent they must be open-minded and they must have the investigative capacities and skills to carry out an inquiry of the kind necessitated by the varying matters the subjects of complaints. They must have the ability of empathising with the people who are concerned with the complaints, they must also have sufficient knowledge of police structures and procedures to ensure that they are able to make the inquiries in an effective manner resulting in a proper conclusion. At the same time it is also important that they should have a knowledge of the various sectors of which the community is made up so that factors associated with these can also be taken into account in considering matters which require investigation. This is not to criticise the existing employee's officers and employees of the Authority. The task which they have been required to carry out is a supervisory one, not an investigative one. Their skills have been necessary in seeking the material which was made available to them, not in obtaining it.
- (l) *Whether any amendments should be proposed to the role of the Authority?*  
The general recommendations deal with this matter, but in particular I draw attention to the fact that in my view the authority ought to deal with its investigative process by way of hearing in a greater number of cases than has been thought appropriate in the past.
- (m) *What improvements, if any, could be made to the structure, processes and position of the Authority within the three branches of New Zealand Government?*  
This too has been dealt with above. While the authority could benefit from the availability of the sources of the various departments with which it must come into contact, the importance of the role it plays and the necessity to emphasise independence result in it being my recommendation that like the Ombudsman the authority should report directly to parliament.

(n) *How accessible has the Authority been to the public in reality, and how accessible is it perceived to be by the public?*

**One of the submissions suggested that the authority had not been generally accessible to the public because the ability to make complaints was confined to certain specific places and not sufficiently widely dispersed, and in addition the authority ought not be based solely in Wellington but to have branch offices in significant parts of the country. I think in fact the authority has been accessible and has been generally perceived to be so by the public. The general tenor of the criticisms contained in the submissions is not as to the accessibility of the authority, but its inability to investigate with independence.**

## **24. Recommendations**

- 1. The name of the Authority should be changed to “the independent Authority for the Investigation of Complaints against the police”. The Authority will then generally be known under the acronym IACP.**
- 2. The Authority should be an Officer of Parliament reporting to Parliament and directly responsible to Parliament.**
- 3. The Authority should consist of three persons of whom the Chairperson should be someone who holds or has held high judicial office. The second member of the Authority should represent the Maori section of the New Zealand population as a recognition of Treaty Partnership responsibilities. The third member should represent the lay population of New Zealand as a whole.**
- 4. In appropriate cases, the Authority should investigate complaints by way of a hearing attended by parties and their representatives. Such a hearing should be presided over by the Authority with the power to regulate its own procedures and should be inquisitorial in nature. For the purposes of conducting such an enquiry, the Authority should have the powers of a Commission of Enquiry. The Authority could also have the power to engage a qualified person or persons to conduct hearings in appropriate cases.**
- 5. In any form of investigation, the standard of proof which should be sought ought to be one which reflects the seriousness or significance of the complaint to the community.**
- 6. In categorising complaints with the purpose of deciding what form of investigation should be followed, the Authority should take into account the seriousness of the complaint, the seriousness of the harm done, whether a public hearing is necessary to restore or preserve public confidence in the complaint process and in the police. Regardless of whether or not any of the foregoing criteria apply, the Authority should have an overall concern as to the significance of the complaint from the point of view of the public.**
- 7. The majority of complaints should continue to be disposed of by investigation and disposition by the police at district level subject to oversight from the Authority and the right of a complainant to request the Authority to undertake the investigation directly. The Authority should not be bound however to accept such a request, it being the responsibility of the Authority to determine the appropriate method of disposition.**
- 8. The Authority ought to be resourced to provide an independent investigative capacity.**

- 9. For this purpose, the Authority should be authorised to engage the services of investigating officers together with the necessary supporting staff.**
- 10. The Authority should endeavour to obtain the services of persons appropriately qualified to conduct investigations but who come from a background other than the police.**
- 11. Investigating officers might also be either retired police officers or officers approaching retirement seconded by the police to the Authority for appropriate periods during which time they would be engaged by the Authority and work only for the Authority, not retaining any police duties. The Authority should also have the power by arrangement with the Commissioner, to coopt police officers for specific cases.**
- 12. Police officers seconded in this way must be to such matters as superannuation rights.**
- 13. There should be an emphasis in respect of all complaints on conciliation and persons appointed in an investigative capacity should have the necessary skills to ensure that this emphasis is maintained.**
- 14. In appropriate cases, the principles of restorative justice as developed by the Thames Valley Police in the United Kingdom, should be applied.**
- 15. The Authority ought not to be a prosecuting Authority. Where on its investigation, the Authority considers it possible that a criminal act has occurred then the Authority ought to refer such matters to the Solicitor General for a determination as to whether or not further action should be taken.**
- 16. The Authority on the conclusion of an investigation, should be confined to the making of recommendations to the Police Commissioner and should have the necessary power to obtain a response. If the Authority does not consider the response satisfactory, then it should have the right to refer the matter to Parliament to whom it is responsible.**
- 17. In considering its recommendations to the Commissioner, the Authority should consider whether or not any pattern of behaviour may be perceived which gives rise to concern and advise the Commissioner accordingly.**
- 18. The Authority must maintain discussions with the Commissioner or persons appointed by him to ensure that the police are aware of the standards which the Authority considers appropriate and whether such concerns should be included in codes of practice.**

- 19. While bearing in mind the right of the public to be aware of matters which concern the community at large, the Authority must retain a discretion as to the extent to which investigations or material obtained upon investigations are made public, bearing in mind the need to ensure privacy as far as complainants are concerned and the protection of police officers against malicious complaints, or where circumstances require confidentiality. Similar considerations apply to the release of reports on the conclusion of such enquiries.**
- 20. In the case of investigations and material ascertained on investigation the present requirement of secrecy ought to be maintained subject to a discretion in the Authority to disclose material where it considers it appropriate to do so in the public interest.**
- 21. The vast majority of conclusions will not merit publication. In the case of conclusions which it is in the public interest to publish the Authority should continue to do as it has done, publish subject to an overriding discretion to suppress all or part of conclusions where there are good reasons to do so.**

## RELEVANT SECTIONS OF THE ACT

### 12. Functions of Authority—

#### (1) The functions of the Authority shall be—

##### (a) To receive complaints—

- (i) **Alleging any misconduct or neglect of duty by any member of the Police; or**
- (ii) Concerning any practice, policy, or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity:
- (b) **To investigate of its own motion, where it is satisfied that there are reasonable grounds to carry out an investigation in the public interest, any incident involving death or serious bodily harm notified to the Authority by the Commissioner under section 13 of this Act:**
- (c) **To take such action in respect of complaints, incidents, and other matters as is contemplated by this Act.**

#### (2) **In the course of taking action in respect of any complaint the Authority may investigate any apparent misconduct or neglect of duty by a member of the Police, or any Police practice, policy, or procedure, which appears to the Authority to relate to the complaint, notwithstanding that the complaint itself does not refer to that misconduct, neglect, practice, policy, or procedure.**

**Nothing in subsection (1) of this section shall authorise the Authority to investigate any matter relating to the terms and conditions of service of any person as a member of the Police.**

### 17. Action upon receipt of complaint—

#### (1) **On receiving or being notified of a complaint under this Act, the Authority may do all or any of the following:**

- (a) **Investigate the complaint itself, whether or not the Police have commenced a Police investigation:**
- (b) **Defer action until the receipt of a report from the Commissioner on a Police investigation of the complaint:**
- (c) **Oversee a Police investigation of the complaint:**
- (d) **Decide, in accordance with section 18 of this Act, to take no action on the complaint.**

#### [(2) **Subject to subsection (2A) of this section, the Authority shall, as soon as practicable, advise the Commissioner and the complainant of the procedure it proposes to adopt under subsection (1) of this section.**

**[(2A) Where—**

- (a) A complaint is made to the Police; and**
- (b) The Authority decides to adopt the procedure provided for in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section; and**
- (c) The Authority is satisfied that the Police will inform the complainant of the procedure to be followed,—**
  - the Authority is not required to inform the complainant in accordance with subsection (2) of this section of the procedure it proposes to follow.]

**Where any complaint appears to the Authority to be capable of resolution by conciliation in accordance with any conciliation procedure established by or under the Police Act 1958, it may indicate that view to the Commissioner.**

**The Authority may decide to take no further action in certain circumstances.**

**19. Subsequent powers in relation to complaint—**

**The Authority may at any time—**

- (a) Review a Police investigation of a complaint:**
- (b) Decide to investigate a complaint itself:**
- (c) Where it oversees a Police investigation, give such directions to the Police concerning the investigation as it thinks fit:**
- (d) Direct the Police to re-open an investigation, and thereafter oversee the investigation:**
- (e) Direct the Police to reconsider their proposals for action on a complaint:**
  - **(f) Decide, in accordance with section 18 of this Act, to take no further action on the complaint:**
- (g) Decide that no action by the Authority is required on the ground that it considers that the outcome of a Police investigation is satisfactory.**

**20. Duty of Commissioner to report to Authority on Police investigation of complaint—**

- (1) The Commissioner shall as soon as practicable, and in no case later than 2 months, after the completion of a Police investigation of a complaint, report to the Authority—**
  - (a) Whether the complaint has been upheld and, if so, what action has been taken or is proposed to be taken to rectify the matter:**
  - (b) Whether the complaint has been settled by conciliation.**
- **(2) When reporting to the Authority under this section, the Commissioner shall supply to the Authority accompanying material sufficient to enable the Authority to assess the adequacy of the Police investigation.**

**The Commissioner may consult the Authority on any Police proposals for action on a complaint before reporting to the Authority under this section.**

- 21. Commissioner to provide information and assistance at request of Authority—**
- (1) The Commissioner shall, whenever the Authority so requests, provide to the Authority all such information and assistance as is necessary for the proper performance by the Authority of its functions in relation to its investigation of any complaint, incident, or other matter under this Act.**
  - (2) Where the Authority oversees a Police investigation of a complaint, the Commissioner shall, whenever the Authority so requests, provide to the Authority—**
    - (a) Any or all information in the possession or under the control of the Police that is relevant to the complaint:**
    - (b) A report on the progress of the investigation.**
- 23. Proceedings of Authority—**
- (1) Before proceeding to investigate any matter under this Act the Authority shall inform the Commissioner, the complainant (if any), and, unless the interests of justice otherwise require, any person alleged to be aggrieved (if not the complainant) of its intentions to make the investigation.**
  - (2) Every investigation by the Authority under this Act shall be conducted in private.**
  - (3) Subject to section 31 of this Act,—**
    - (a) The Authority may hear or obtain information from such persons as it thinks fit, including, where it considers that cultural matters are a factor relevant to a complaint or investigation, information from such persons as the Authority thinks have knowledge or experience in those matters:**
    - (b) It shall not be necessary for the Authority to hold any hearing:**
    - (c) No person shall be entitled as of right to be heard by the Authority.**
  - [(4) Subject to the provisions of this Act, the Authority may regulate its procedure in such manner as it thinks fit.]**
- 24. Powers of Authority in relation to investigations—**
- (1) The Authority may require any person who in its opinion is able to give information relating to any matter under investigation by the Authority to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Authority are relevant to the subject-matter of the investigation.**
  - (2) The Authority may summon before it and examine on oath any person who in its opinion is able to give any information relating to the matter under**

**investigation, and may for the purpose administer an oath to any person so summoned.**

**Every such examination by the Authority shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).**

**29. Implementation of recommendations of Authority—**

- (1) The Commissioner shall, as soon as reasonably practicable after receiving any recommendation of the Authority under section 27(2) or section 28(2) of this Act,—
  - (a) **Notify the Authority of the action (if any) proposed to be taken to give effect to the recommendation; and**
  - (b) **Give reasons for any proposal to depart from, or not to implement, any such recommendation.**
- (2) **If, within a reasonable time after a recommendation is made, no action is taken which seems to the Authority to be adequate and appropriate, the Authority may, after considering any comments made by the Commissioner,—**
  - (a) **Send a copy of its opinion and recommendations on the matter, together with the comments of the Commissioner, to the Attorney-General and the Minister of Police; and**
  - (b) **Where it considers it appropriate, transmit to the Attorney-General for tabling in the House of Representatives such report on the matter as it thinks fit.**
  - The Attorney-General shall, as soon as practicable after receiving a report under subsection (2)(b) of this section, lay the report before the House of Representatives.

## Introduction

- 1.1 In 1996, Thames Valley Police began to introduce the principles of Restorative Justice into its policing activities. Using a problem solving approach, the organisation realised that in order to tackle crime and unacceptable behaviour in a way that ensured long term results, it would be necessary to work with all those involved; not just professional organisations, but those who were affected by the incident - the people themselves.
- 1.2 Young people who committed crimes which were suitable for a police caution were encouraged to meet their victims. The anecdotal results were encouraging. Officers were reporting cases of offenders and victims becoming friends, victims employing offenders, and, in one case, a victim said: 'This is the first time since the attack that I no longer feel like a victim. I can carry on with my life now.'
- 1.3 The method used was simple. Where a person admitted responsibility-for an act, they were encouraged to face those who were affected by that act. The perpetrator, with their support network (parent, friend) met with others affected, such as the victim, their supporters, and others from the community, including any professionals who may have had a part to play.
- 1.4 The meeting was called a Restorative Conference. Similar approaches were developing across the UK: mediation had been running for many years, and the use of **Family** Group Conferences was increasing. All had the same aim - to encourage individuals to accept responsibility so that they were more likely to understand the affects of their behaviour, make real amends and not continue behaving in that way.
- 1.5 As the belief in Restorative Justice in Thames- Valley Police grew, other uses were developed. Personnel officers were trained to deal with grievances in the workplace at an early stage, in the hope that more formal procedures could be averted with minimal disruption to staff, and police officers began dealing with long term neighbour disputes by calling everyone together to talk through their problems and help them find solutions.
- 1.6 Restorative Justice has three main components: (i) acknowledging the principles of Restorative Justice (see Appendix E); (ii) applying them to working practices within the organisation; and (iii) using the styles of restorative conferencing, or mediation, where appropriate.
- 1.7 In 1998 the Police Complaints Authority began to work with Thames Valley Police to explore the possibility of using restorative principles within the formal and highly regulated police complaints process. A restorative approach offers an educational and constructive solution to conflict between police and the public, and police officers and the organisation. The opportunity to meet provides people with answers which formal processes may not do. Additionally, it is intended to build upon the arrangements which already exist within the fairly restrictive Informal Resolution process (to be heard, listened to, to be understood and perhaps to receive a personal apology). Once each side of the story is told, people might see things in a different light; much could be learnt.

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- 1.8 A restorative approach also provides an alternative to the formal and legalistic process, if carefully used and monitored, and acceptable to all those involved.
- 1.9 According to statistics from the Police Complaints Authority 1998/1999 Annual Report, 29% of fully investigated cases result in some form of disciplinary outcome (including Advice and Written Warning). Therefore, it follows that in 71% of those cases, little or nothing happens from the point of view of the complainant. It does not necessarily follow, however, that all of those cases are without basis or that the complainant has not had a bad experience of the police. Any opportunity for officers to learn about how their approach affects others, so that they can reflect on whether to change that approach, must be welcome. Equally, an officer may feel aggrieved that a complaint was made, and may wish to share with the complainant either their side of the story, or how they were affected by the investigation.
- 1.10 There are many 'low level' complaints, such as incivility or attitude which, whilst serious to the complainant, do not lend themselves to the lengthy and costly formal investigation process. A Restorative Intervention, at an early stage could provide a cheaper, quicker and more satisfactory way to answer such complaints both from the point of view of the police and the public.
- 1.11 It would be wrong to assume that even where there is a disciplinary response to a complaint that this always meets the needs and expectations of the complainant (or, indeed, officers and their line managers). It is the PCA's experience that complainants **often find** even the severest disciplinary sanctions inadequate or irrelevant. What they are looking for is openness and transparency in the complaints process, proof that their experience has been acknowledged and will be learnt from. In these situations Restorative Interventions could be an invaluable adjunct to all levels of discipline.
- 1.12 The potential of conferencing must not be underestimated. Moreover, there may be occasions, (for example, following a disciplinary hearing) when an officer is transferred from one police area to another, where a conference would be useful for that officer and the new shift, to understand at first hand their experiences, rather than rely on rumour. Equally, when an officer leaves an old shift, in some circumstances, (for example, when that officer has committed disciplinary offences against members of that shift), the remaining staff may benefit from a conference with their supervisors. Conferencing is -a powerful management tool.
- 1.13 In October 1999 a project commenced involving Thames Valley Police, the Joint Branch Board of the Police Federation and the Police Complaints Authority to establish how the theory could work in practice, and within the existing regulations. This document outlines the proposals. Five models have been drawn up, which are explained in further detail in this paper.
- 1.14 In order not to confuse the use of Restorative Justice when applied to the police complaints process with other applications, the term 'Restorative Intervention' will be used in the complaints context. It can take on the form of a conference or mediation.
- 1.15 Whilst many people clamour for set rules and conditions, restorative justice can, in theory, apply to anyone and any incident. As a basis for inclusion, it may be prudent to ask the question: 'If the complaint is substantiated, will the officer remain with Thames Valley Police?' If the answer is: 'Yes', then, as a valued member of the organisation, it is in their and the organisation's best interests that the case is dealt with in the most effective, fair and positive way, maximising learning and accountability.
- 1.16 Even if an officer does face dismissal, an Intervention at an appropriate stage should not be ruled out as it may still allow that officer and others involved to feel that they have been treated fairly.



1.17 The following table compares traditional systems with a restorative approach:

Figure I

#### **ADVERSARIAL SYSTEM**

Disciplinary breach defined as an act against the Code of Conduct as stated in the Police (Conduct) Regulations 1999

- Punishment will change behaviour/ be seen as justice and the threat of punishment will deter
- Officer is accountable to the police service
- Accountability is equated to punishment and suffering. The more serious the 'offence,' the more serious the punishment
- Complainants and others affected are involved in an adversarial, polarisation process
- Complainant is defined only in material loss; officer in terms of the act committed

Behaviour is individual choice with individual responsibility

Maintenance of standards is imposed by the police **service**

#### **RESTORATIVE APPROACH**

Unprofessional behaviour is an act against people and the policing community

- Taking responsibility and repairing harm are the main focus, not punishment (although not excluded)
- Officer is accountable to the complainant and the police service
- Accountability is taking responsibility for behaviour, and taking action to repair the harm. The outcomes are measured by the amount of reparation achieved
- Everyone affected-by the behaviour has a role in the process to resolve the harm
- Complainants are defined by their losses and their participation in the process; officers by the taking of responsibility and repairing harm
- Behaviour has individual and social dimensions, officers being accountable for their behaviour, the police community being accountable for officers to participate in the process, make reparation and pursue professional standards
- Maintenance of standards is shared between individuals and the police service

## **2**

### **Aims and Objectives**

- 2.1 The purpose of introducing a Restorative Intervention option into the formal process is to allow for openness, acknowledgement and behavioural change. Formal hearings and sanctions are not ruled out. The key word is 'option'. The principles of restorative justice require that everyone, within a 'safe environment, is able to make an informed choice about whether to participate and how they participate, and that their decision is always respected. Coercion and threats are not acceptable. Thames Valley Police should be responsible for ensuring that its staff are able to participate; this in effect makes supervisors accountable to their facilitators and officers to participate in the process, and allows an opportunity for supervisors to provide positive support.
- 2.2 The organisation will consider if the case is suitable for a Restorative Intervention, ensuring that issues around proportionality are acknowledged, and that sanctions are applied when appropriate.

2.3 By having the option of a Restorative intervention, the following objectives may be realised:

to allow those affected to have a greater role in the process; to maximise learning and reflection to foster future behaviour; to allow officers to become accountable to those who have been harmed; to allow all involved to feel that they have been dealt with fairly; and to effectively manage dissatisfaction.

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2.4 In addition to a formal evaluation of the project, the key performance indicators, will be:

number of complaints made; number of cases dealt with restoratively; number of reparation agreements achieved; number of officers receiving formal sanctions; and satisfaction levels of complainants, Thames Valley Police and the PCA.

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**3**

### The process

3.1 Under the Police Act 1996, all complaints made by a member of the public about the conduct of an officer must be investigated unless it is suitable for an Informal Resolution. Cases will only be suitable for Informal Resolution if the member of public concerned gives their consent and the chief officer of police is satisfied that the conduct complained of, even if proved, would not justify criminal or disciplinary proceedings. If it is not possible to informally resolve the complaint, it must be formally investigated.

3.2 Headquarters Professional Standards Department are responsible for investigating complaint cases which have not been resolved locally on police area. They also liaise with the independent Police Complaints Authority who ensure that cases are investigated thoroughly and fairly.

3.3 The formal complaints system lends itself to five main streams and each are outlined below, with the help of flow charts:

**4**

### Model 1 : Informal Resolution

**'Low level' cases where a Restorative Intervention could be offered as an alternative to formal Investigation, as part of an attempt to informally resolve the complaint**

4.1 On average, areas and headquarters informally resolve 126 complaints a year. Many of these are in a restorative style as many officers are using Restorative Justice in their daily work. The complaint will be recorded (Section 69(1)), but rather than formal investigation commencing immediately, it could be handed to an officer trained in Restorative Justice, to assess its suitability for a Restorative Intervention as part of an attempt to informally resolve the complaint.

4.2 Incivility, attitude and some system related cases are examples of suitable types of complaint. The factors to be considered are: (i) is the nature of the complaint suitable, and (ii) are all parties willing to participate?

- 4.3 The fact that the complaint has been seen as suitable for Informal Resolution suggests that the nature of the complaint is suitable for a Restorative Intervention. There can be no hard and fast rules, or criteria, laid down. In theory every incident which involves a conflict is suitable, at some stage, for a Restorative Intervention.
- 4.4 A person trained in Restorative Intervention should make a personal visit, or at the very least a telephone call to all of the parties involved must be made to outline the potential and purpose of a Restorative Intervention. Full information must be given to allow everyone to make informed choices. If any of the parties involved do not wish to meet but the complainant does wish the matter resolved without a full investigation, an indirect approach, aimed at repairing the harm, should be attempted.
- 4.5 The officer's supervisor should normally be fully involved in the process as a matter of routine, unless they are already involved in a way which would conflict with the process. Area Commanders and Department Heads should also be expected to play a positive role for the officer and the organisation, especially with system or policy related complaints. Officers who agree to a Restorative Intervention will be expected to cooperate with the facilitator responsible for the case.
- 4.6 If any of the parties do not wish to pursue a Restorative Intervention and if other means of informal resolution are not possible, then the formal procedure will be instigated.
- 4.7 Where a Restorative Intervention is used, it will be arranged by a facilitator trained to Level 1 by Thames Valley Police. If it goes well, the parties will agree to closure of the case. Under the Police Act 1996 a formal investigation must take place for all complaints not suitable for Informal Resolution or where Informal Resolution is impossible. In effect this means that, where the complainant does not accept the outcome in such cases, the requirement to move to formal investigation cannot be dispensed with without legislative change. It has to be recognised that many officers would not find this attractive and would not agree to a Restorative Intervention if they then have the 'threat' of formal investigation. The Thames Valley Joint Branch Board of the Police Federation would not recommend this option to officers seeking their advice. However, there is some early evidence that individual officers may have a different view, and it is important that they have the informed choice to make. It is also a fail-safe for the complainant in the event that a Restorative Intervention is mishandled through no fault of their own.
- 4.8 If conducted as part of Informal Resolution, any statement made about **that complaint** during the Restorative Intervention process would be inadmissible in any subsequent criminal, civil or disciplinary proceedings (Section 86(1)). In the event that the complaint is subsequently investigated, the fact that a Restorative Intervention as part of an attempt to informally resolve the complaint has taken place will be noted. Any other information will only be provided with the permission of all participants. No record will be kept on an officer's file. If the case has been carefully chosen as being one which is suitable for Informal Resolution, it is fair to suggest that the outcome of a formal investigation would not normally result in further proceedings, although of course no guarantees can be made. All these factors should be available to all parties at the time they are making their decisions about whether to participate in a Restorative Intervention.
- 4.9 The flow chart to illustrate this model is at Appendix A.

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## **Model 2 : Complaint from member of public - Restorative intervention as an alternative closure to Advice/Written Warning or Misconduct Hearing**

### **Complaint from member of the public, not suitable for Informal Resolution following completed investigation and substantiated complaint**

- 5.1 To comply with the Police Act 1996, the complaint will be received, recorded and investigated in the normal manner, but there is no reason why the investigating officer should not explain to the parties the principles of Restorative Intervention. The purpose would be to assess, at an early stage of the enquiry, whether an intervention might be possible. They must not, however, make any promises or guarantees about the outcome of the case.
- 5.2 Once the enquiry is completed and the complaint substantiated, an officer trained in Restorative Justice will assess whether the case is suitable for a Restorative intervention, bearing in mind any advice from the investigating officer and the views of the Head of the Professional Standards Department. This will involve contacting the participants before a recommendation is sent to the PCA. (One cannot recommend a Restorative Intervention without first establishing whether the participants agree to it). The participants will need to know that the PCA have the final decision on whether a Restorative Intervention takes the place of the advice/written warning/misconduct hearing.
- 5.3 A personal visit, or at the very least a telephone call to all of the parties involved, must be made to outline the potential and purpose of a Restorative Intervention. Full information must be given to allow everyone to make informed choices. If any of the parties involved do not wish to meet face to face, but do wish the matter resolved in a restorative way, an indirect approach, aimed at repairing the harm, should be considered.
- 5.4 A memorandum from the Assistant Chief Constable (Operational Support) will then be sent to the Police Complaints Authority outlining the reasons why it is proposed to bring disciplinary proceedings, and recommending a Restorative Intervention instead. The report cannot be conditional on the officer agreeing to or performing well in a Restorative Intervention. Previously, proposals were made without reference to the parties involved, so as not to raise expectations. In order for this model to work effectively, it will be necessary for the parties to be consulted prior to the PCA being informed. The PCA are in agreement with this. The parties will be told that the PCA may disagree with the proposal and may direct that disciplinary action should be taken. No guarantee will be given to the officer, prior to the report going to the PCA, that if he/she agrees to participate in a Restorative Intervention, disciplinary proceedings will not be brought. If it has not been possible to proceed with a Restorative Intervention, the PCA should not be given the reasons, so that it cannot influence their decisions on recommending discipline.
- 5.5 The PCA have agreed to 'fast track' those files recommended for Restorative Intervention, to maximise effectiveness.
- 5.6 If the recommendation is for a Restorative Intervention to be attempted, its success should not be a condition of whether or not further action is taken. There is an element of risk that if it does not go well the officer does not receive any further sanction, but it might fail through no fault of the officer, and it would be unfair to penalise him/her

further. If it does not go well due to the attitude or behaviour of the officer, there is no reason why their supervisor cannot give them appropriate advice, as a normal managerial procedure.

- 5.7 If there is no recommendation for a Restorative Intervention, the normal options for addressing the officer's conduct will apply, (although there is no legal reason why a Restorative Intervention could not be offered following whatever action has been agreed with the PCA). In cases where the PCA do not accept the recommendation for Restorative Intervention, they will provide full details of their reasons.
- 5.8 In cases where the recommendation for a Restorative Intervention is accepted by the PCA, the case will be returned to the Restorative Justice facilitator who will arrange for the intervention to take place, leading to closure of the case. In the event that any of the parties are unhappy with the outcome of the intervention, attempts must be made to address their concerns, although there will be no avenue for further formal procedures following on from the intervention. Again, all participants need to be aware of this when making their choices of whether to participate or not.
- 5.9 The officer's supervisor should normally be fully involved in the process as a matter of routine, unless they are already involved in a way **which would conflict with the** process. Area Commanders and Department Heads should also be expected to play a positive role for the officer and the organisation. Officers who agree to a Restorative Intervention will be expected to co-operate with the facilitator responsible for the case.
- 5.10 A record will be kept that the intervention took place, (see Appendix F). It will include details of persons present, the date and time of the conference, and details of any agreements made. Participants will be allowed to see what is recorded. No other documentation, unless agreed by all participants, will be kept by the facilitator (except data necessary for evaluation purposes). Participants will be asked not to take notes during the conference. They will be asked to respect the confidential nature of the conference, but this cannot prevent them making notes contemporaneously. It has to be accepted that those taking part in a Restorative Intervention might keep their own record which would be admissible in future proceedings (except in Informal Resolutions). The facilitator should therefore record anything of relevance which may be needed to rebut civil claims, being mindful of the sensitive nature of the conference. All participants must be aware, when making their decisions, that confidentiality cannot be guaranteed.
- 5.11 In the interests of impartiality, it may be necessary for a person not connected with Thames Valley Police to facilitate the intervention. When assessing the suitability of a case for a Restorative Intervention, all parties should be asked whether they prefer a member of the police (including civilians) or an independent person to deal with them. In some cases it may be fairer to have two facilitators, one independent, one a Thames Valley Police employee. There are several highly skilled mediators around the Thames Valley area, and use should be made of them where appropriate. They **will** be paid from a central budget and will sign a confidentiality contract with Thames Valley Police prior to being engaged.
- 5.12 The flow chart to illustrate this model is at Appendix B.

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## 6

**: Model 3 Internal Complaint - Restorative Intervention as an alternative closure to Advice/Written Warning or Misconduct Hearing****Internal complaint/allegation of misconduct following completed investigation and substantiated complaint/allegation**

- 6.1 When the incident is of an internal nature, for example, politeness and tolerance or performance of duties, once it has been investigated and substantiated a person trained in restorative justice will assess its suitability for a Restorative Intervention, which will include any recommendations made by the investigating officer. In addition, the Assistant Chief Constable (Operational Support), or the Head of Professional Standards, acting as Supervising Officer, needs to agree to this process. If anyone does not agree, normal procedures will apply.
- 6.2 A Restorative Intervention is entirely non-statutory and voluntary, and a refusal to participate by the officer must not be regarded as a negative factor when deciding on a sanction. Care must be exercised to show the officer that he/she was not being treated more unfairly when sanctioned, because of a refusal to participate.
- 6.3 A personal visit, or at the very least a telephone call to all of the parties involved, must be made to outline the potential and purpose of a Restorative Intervention. Full information must be given to allow everyone to make informed choices. If any of the parties involved do not wish to meet face to face, but do wish the matter resolved in a restorative way, an indirect approach, known often as shuttle mediation, should be considered.
- 6.4 If a Restorative Intervention is arranged, it will lead to closure of the case. No further sanctions should be imposed. In the event that any of the parties are unhappy with the outcome of the intervention, attempts must be made to address their concerns, although there will be no avenue for further formal procedures following on from the intervention. Again, all participants need to be aware of this when making their choices of whether to participate or not.
- 6.5 The officer's supervisor should normally be fully involved in the process as a matter of routine, unless they are already involved in a way which would conflict with the process. Area Commanders and Department Heads should also be expected to play a positive role for the officer and the organisation. Officers who agree to a Restorative Intervention will be expected to co-operate with the facilitator responsible for the case.
- 6.6 A record will be kept that the intervention took place (see Appendix F). It will include details of persons present, the date and time of the conference, and details of any agreements made. Participants will be allowed to see what is recorded. No other documentation, unless agreed by all participants, will be kept by the facilitator (except data necessary for evaluation purposes). Participants will be asked not to take notes during the conference. They will be asked to respect the confidential nature of the conference, but this cannot prevent them making notes contemporaneously. It has to be accepted that those taking part in a Restorative Intervention might keep their own record which would be admissible in future proceedings (except in Informal Resolutions). The Facilitator should therefore record anything of relevance which may be needed to rebut civil claims, being mindful of the sensitive nature of the conference. All participants must be aware, when making their decisions, that confidentiality cannot be guaranteed.
- 6.7 In the interests of impartiality, it may be necessary for a person not connected with Thames Valley Police to facilitate the intervention. When assessing the suitability of a case for a Restorative Intervention, all parties should be asked whether they prefer a member of the police (including civilians) or an independent person to deal with them.



In some cases it may be fairer to have two facilitators - one independent, one a Thames Valley Police' employee. There are several highly skilled mediators around the Thames Valley area, and use should be made of them where appropriate. They will be paid from a central budget and will sign a confidentiality contract with Thames Valley Police prior to being engaged.

- 6.8 The flow chart to illustrate this model is at Appendix C.

## 7

### **Model 4 : Restorative Intervention as an available**

- 7.2 The complaint or internal investigation will have been recorded and investigated in the normal manner, and a misconduct hearing date arranged. Prior to that hearing, an officer trained in Restorative Justice, and not the investigating officer, (although their views will be taken into consideration) will assess..the suitability of the case, without prejudice to the convening of the hearing, for a Restorative Intervention. This will include the views of the Department Head. The assessment will be available at the misconduct hearing, but the presiding officers will not be aware of it until after the finding.
- 7.2 There can be no hard and fast rules, or criteria, laid down. In theory every incident which involves a conflict is suitable for a Restorative Intervention. What matters is whether the complainant, the organisation, and the officer(s) complained of are willing to participate.
- 7.3 If the failure to reach the standard is proved, the officer who is the subject of the complaint, the person acting on their behalf or the presiding officer can request an adjournment of sentencing for a Restorative Intervention to be carried out, based on the information available to the hearing. This could, in some cases, influence the final decision on sanctions.
- 7.4 If the officers conducting the hearing decide on sanctions immediately, there is, in theory, no reason why a Restorative Intervention could not be offered subsequently.
- 7.5 If the officers conducting the hearing agree to the Restorative Intervention, the hearing should be adjourned prior to sanction for a trained facilitator to arrange for the intervention to take place.
- 7.6 The officer's supervisor should normally be fully involved in the process as a matter of routine, unless they are already involved in a way which would conflict with the process. Area Commanders and Department Heads should also be expected to play a positive role for the officer and the organisation. Officers who agree to a Restorative Intervention will be expected to co-operate with the facilitator responsible for the case.
- 7.7 A record will be kept that the intervention took place (see Appendix F). It will include details of persons present, the date and time of the conference, and details of any agreements or outcomes made. Participants will be allowed to see what is recorded.

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No other documentation will be kept by the facilitator, unless agreed by all participants, except data necessary for evaluation purposes. Participants will be asked not to take notes during the conference. They will be asked to respect the confidential nature of the conference, but this cannot prevent them making notes contemporaneously. It has to be accepted that those taking part in a Restorative Intervention might keep their own record which would be admissible in future proceedings (except in Informal Resolutions). The Facilitator should therefore record anything of relevance which may be needed to rebut civil claims, being mindful of the sensitive nature of the conference. All **participants must** be aware, when making their decisions, that confidentiality cannot be guaranteed.

- 7.8 In the interests of impartiality, it may be necessary for a person not connected with Thames Valley Police to facilitate the intervention. When assessing the suitability of a case for a Restorative Intervention, all parties should be asked whether they prefer a member of the police (including civilians) or an independent person to deal with them. In some cases it may be fairer to have two facilitators - one independent, one a Thames Valley Police employee. There are several highly skilled mediators around the Thames Valley area, and use should be made of them where appropriate. They will be paid from a central budget and will sign a confidentiality contract with Thames Valley Police prior to being engaged.
- 7.9 The agreed record of the Intervention will be fed back by the facilitator to the officers conducting the hearing at the time that the hearing is reconvened. The officers conducting the hearing will then take that report into account when deciding on whether or not to impose a sanction. A balance will need to be drawn between dealing with the personal nature of the complaint/misconduct and improving the future conduct of the officer(s), whilst sending a clear signal to others about the seriousness and unacceptable nature of the conduct. For this reason it will not be possible to guarantee, prior to the intervention, that all sanctions would be excluded in the event of an intervention being attempted.
- 7.10 If, despite initial indications that a Restorative Intervention would be possible, it does not go ahead, the facilitator will report this back to the presiding officers when the hearing reconvenes. The presiding officers should not be told the reasons for the failure, in order to prevent the officer subject of the complaint being additionally penalised if the intervention could not go ahead because of a refusal to participate.
- 7.11 Once the hearing has been reconvened, the officers conducting the hearing can decide on sanctions, or indeed 'no sanctions'.
- 7.12 The flow chart to illustrate this model is shown at Appendix fl.

## 8

**Model 5: Where cases are unsubstantiated rV**

- 8.1 The facilitators should also be available to address any concerns of those involved where cases are unsubstantiated or found not proven. This should be viewed as a way of managing dissatisfaction, and is not intended to form part of the grievance procedure. Organisational de-briefs could be conducted in this manner. Some form of Restorative Intervention may still be viable, from both the point of view of the complainant and the officer. An intervention may be needed between the officer and their shift (old or new shift), their supervisors or the complainant.
- 8.2 One example, which is not uncommon, is where a member of the public complains about an officer's conduct and there is insufficient evidence to substantiate the case. The complainant may not be happy, but has no option but to accept the outcome. They may still have a need to tell someone about their experience. If the officer agrees to a meeting it should be arranged and controlled by a trained facilitator. The officer must be aware that it is purely voluntary, and that nothing adverse will be drawn if they decline the meeting. No record would be kept, unless agreed by all participants. The complainant must be made aware that the process is not a form of appeal and the outcome would not be changed. In the (probably more likely) event that the officer does not wish to meet the complainant, a facilitator will be made available to listen to the complainant, and where necessary take back to the police area any learning points which may improve police service.
- 8.3 The need for some further form of Restorative Intervention may be identified from different sources, for example the PCA, the officer who is the subject of the complaint, his/her supervisor or the complainant. If it is not resolved locally on the police area, it should be drawn to the attention of the Restorative Justice Go-ordinator within the Headquarters Professional Standards Department, who will make the necessary arrangements. Supervisory officers should consider the potential benefits of becoming involved.
- 8.4 By having this flexibility, it is hoped to address the concerns of some of the 71% mentioned in paragraph 1.9.

## 9

**Protocols**

- 9.1 The principles of Restorative Justice, as outlined at Appendix E, will be respected.
- 9.2 The protocols of a Restorative Intervention will follow the same lines as for restorative cautioning. The fundamental principle is that all participants must feel safe, give fully informed consent to participate, and must not be coerced or threatened in any way. All parties must be treated with respect and courtesy and should not feel that to decline to participate may be detrimental to their interests. The intervention, whilst for many will be difficult emotionally, should aim to leave everyone with a feeling that they have been treated fairly and positively.
- 9.3 Where a face to face meeting is arranged, a venue will be found which is acceptable to all participants. If necessary, use will need to be made of premises not connected to Thames Valley Police. In these cases any cost of room hire will be met by a central budget, as will appropriate refreshment facilities.
- 9.4 The form to record the Restorative Intervention is shown at Appendix F The survey form which will be given to all participants is shown at Appendix G.

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- 9.5 A training programme will be available for interested people who wish to be used as facilitators. It will be open to all, regardless of rank or role within Thames Valley Police.
- 9.6 The pilot scheme will run for a period of twelve months. Each case will be assessed in terms of efficiency and fairness. In the event that it is not working towards its intended aims, the scheme can be suspended whilst a way forward is agreed by the working party.

## 10

### **Evaluation**

- 10.1 The scheme is to be independently evaluated and a tender has been submitted for funding. At the time of writing this is still being considered.

### **Implementation**

#### **Consultation**

- 11.1 It is necessary to have full consultation and agreement with the Federation, Head of Professional Standards, the Chief Constable's Management Team, the Police Authority and the PCA prior to commencing the project. In order to avoid 'justice by geography', the project should apply equally to all complaint cases within Thames Valley, and not be restricted to one or two areas.
- 11.2 A series of workshops was held throughout the month of March 2000, aimed at superintendents, members of the JBi3 Federation complaints sub committee and Professional Standards case workers. In order to maximise effectiveness of the project, an awareness programme must commence to reach all members of the organisation, and especially supervisors. Leaflets will be designed and distributed throughout the force area.

#### **Training**

- 11.3 A training course was run for ten members of the organisation, equipping them with the skills to be facilitators. As acceptance for this project increases, more staff may need to be trained.

#### **Budget**

- 11.4 A central budget within the Professional Standards Department should be made available to meet any costs incurred.

#### **Police Authority**

- 11.5 The Police Complaints Sub Committee of the Thames Valley Police Authority ensure that complaints are being dealt with under the requirements of the Police Act 1996. In addition to the current panel files submitted to the Authority for inspection at their bimonthly meetings, details of cases dealt with through restorative processes will be

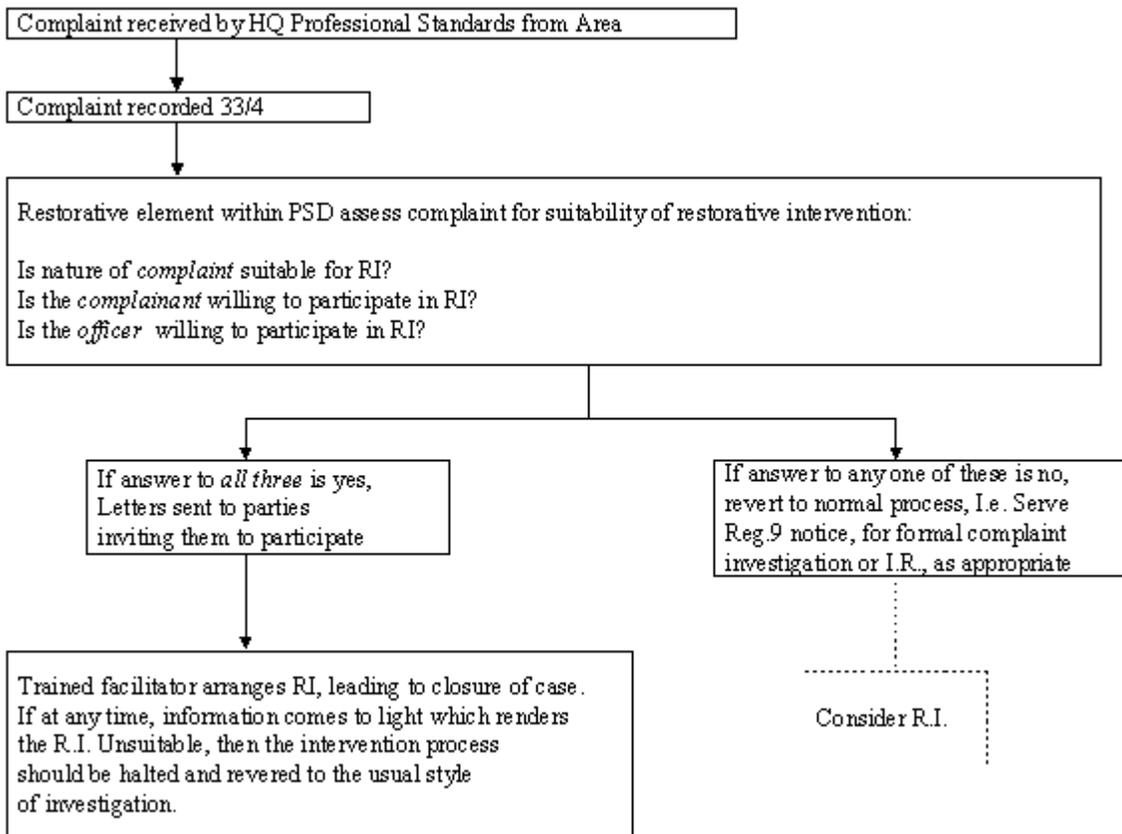
included for similar inspection. The file will include the record of the Restorative Intervention as at Appendix F, and any other follow up reports, if appropriate. In the event that they are unhappy with any of the procedures, concerns can be raised in the usual manner (through the Head of Professional Standards Department at the bimonthly meetings).

## 12 Conclusion

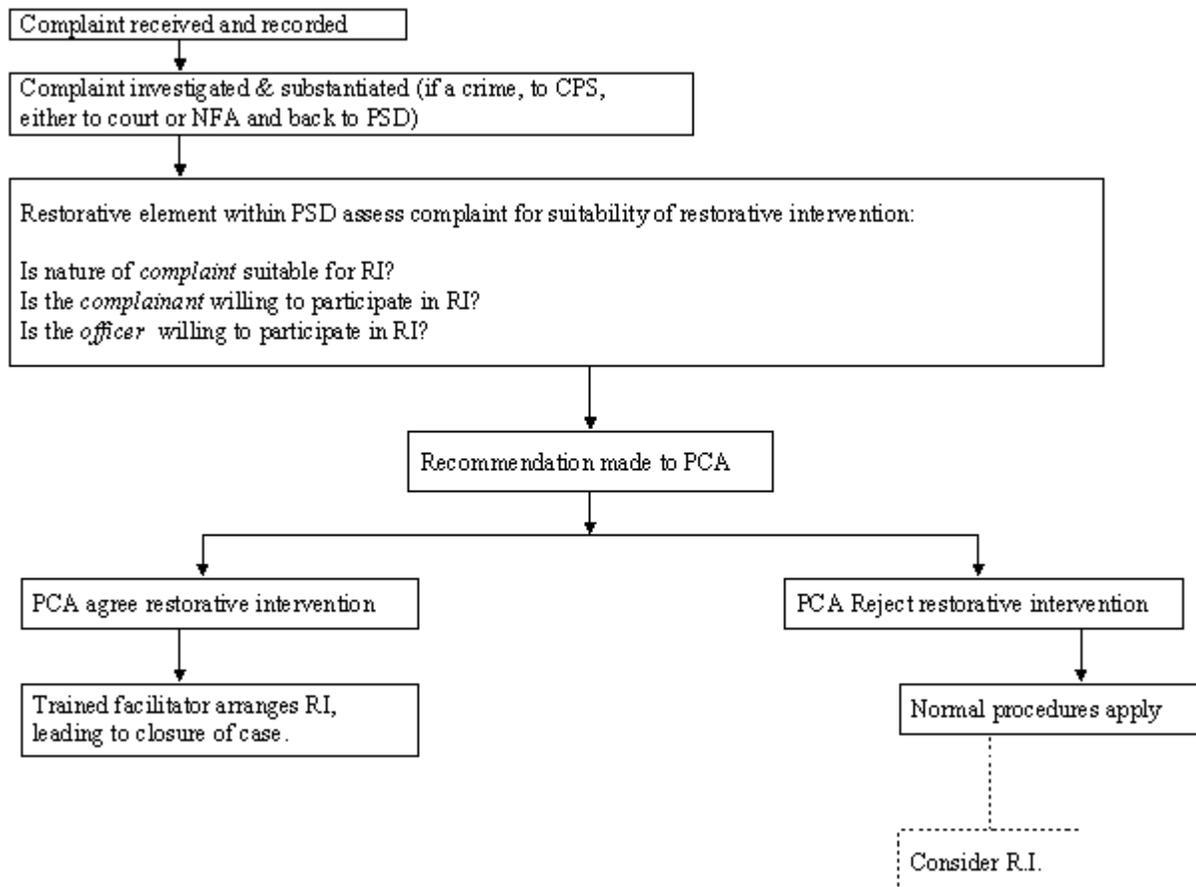
- 12.1 There will always be cases which, by their serious nature or aggravating factors, make a Restorative Intervention unsuitable. Officers will, on occasions, still be dismissed or required to resign. However, for many cases, the opportunity for officers and Thames Valley Police to maximise learning and minimise harm will be present.
- 12.2 From the point of view of the Police Complaints Authority, this approach provides a much needed opportunity for members of the public to participate in a process which goes some way towards addressing their needs, regardless of the outcome of the case.
- 12.3 A restorative approach provides an opportunity for the organisation to be really creative in its problem-solving style, as it can go far beyond the complaint itself. We often hear of the need to provide intervention assistance to young offenders. An example of this would be to provide counselling or mentoring, or help to combat drug abuse. The same should be considered for our staff. If, as a result of a complaint investigation it emerged that an officer was heavily in debt, how much harder would a fine be for him/her? A restorative approach could consider issues beyond a conference. One way of helping that officer (at their request of course) may be to arrange that an amount of money is deducted from their salary at source to go directly into repaying the debt. The possibilities are limitless. There are significant opportunities to show how committed Thames Valley Police are to valuing its staff and communities.
- 12.4 Another potential for productive creativity is that of reparation. Reparation is an opportunity for the officer to repair, in a tangible way, some of the harm caused, if they are willing. Reparation can be in the form of an apology or an offer of some work. It may be that an officer wishes to demonstrate that they can be trusted, and therefore volunteers to do additional work in their own time for a limited period. A reparation agreement is entirely voluntary and cannot be enforced.
- 12.5 Restorative Justice cannot be explained in a few sentences, and the proposal to introduce it into the police complaints procedure cannot cover all eventualities. Restorative Justice is flexible, moving to respond to the different needs of those involved. The key difference is the involvement, however great or slight, of those people personally affected by an incident. Their involvement makes a difference - a creative, problem solving approach which allows members of Thames Valley Police and the policing community to feel valued. It is this approach which Thames Valley Police holds dear.

## Restorative Interventions in the police complaints process

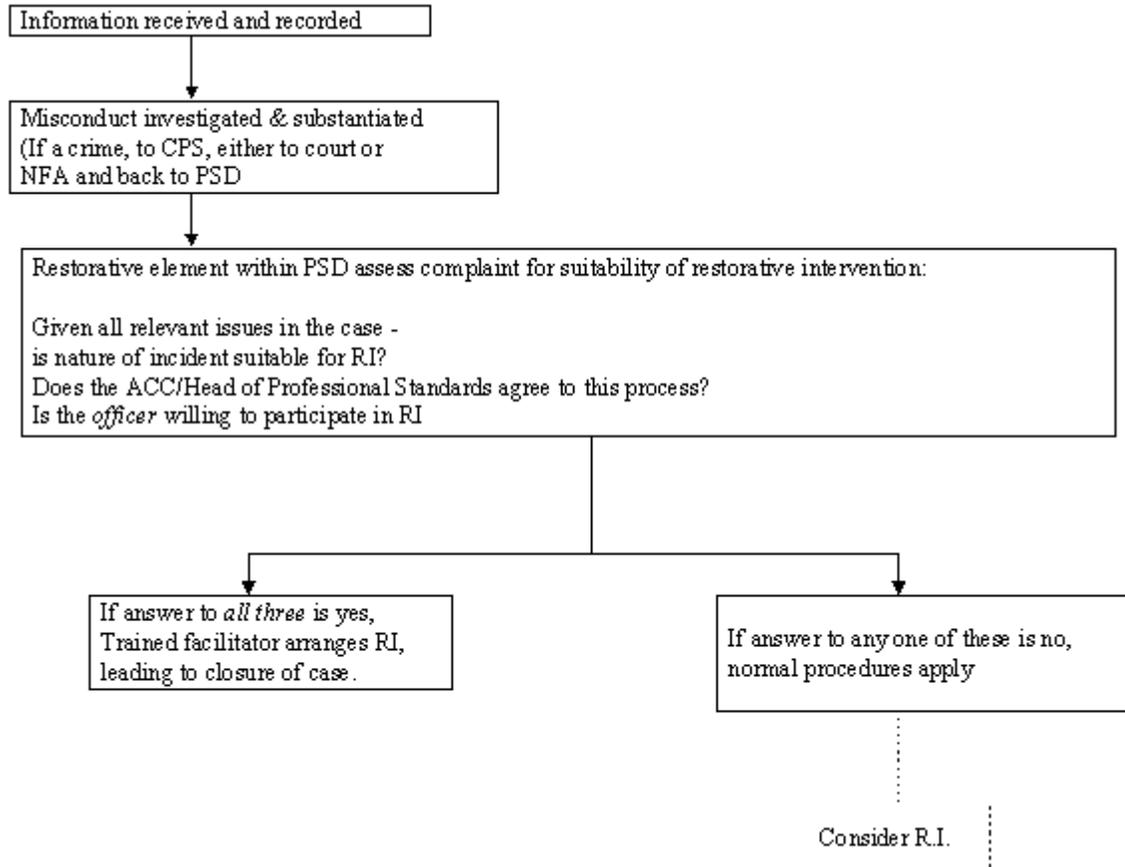
### Model I - RI as an alternative to Formal Investigation of minor complaint suitable for Informal Resolution (which has not been successfully resolved at Area level)



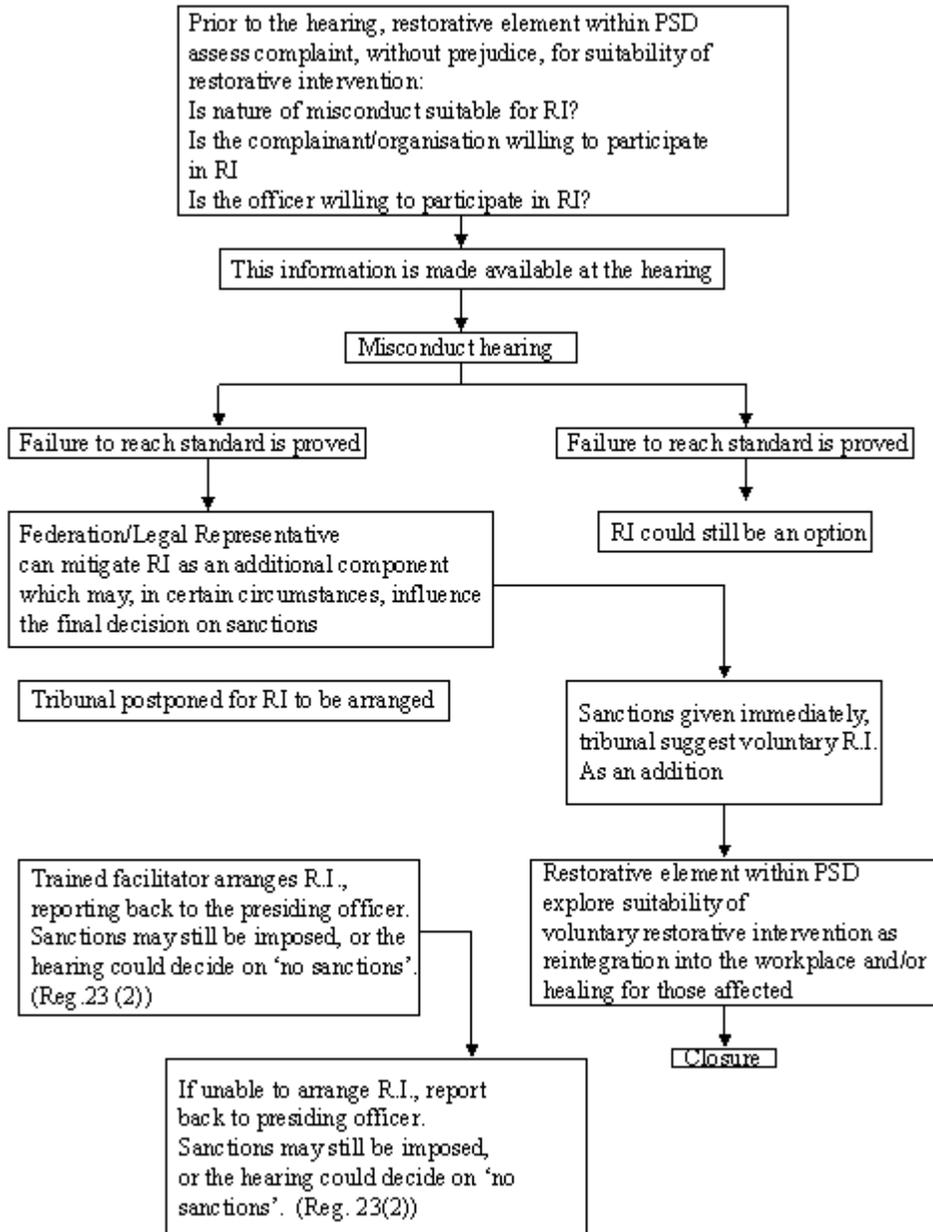
**Model 2 - complaint from member of the public, not suitable for Informal Resolution following completed investigation and substantiated complaint -RI as alternative closure to Advice/Written Warning or Misconduct Hearing**



**Model 3 - internal investigation, not suitable for Informal Resolution following completed investigation and substantiated complaint - R.I. as alternative closure to Advice/Written Warning or Misconduct Hearing**



**Model 4 - RI as an available disposal at a Misconduct Hearing**



Principles of Restorative Justice:

Restorative Justice in Thames Valley is underpinned by the principles which focus on the six key approaches. Whilst the approaches remain constant, the detail may change as Restorative Justice evolves and is applied to other activities. The principles are detailed below.

A balanced approach,

- (i) which involves the victim and family, the community, and the offender and family;
- (ii) which empowers victims as active participants;
- (iii) which achieves a mutual agreement through dialogue;
- (iv) which seeks to make offenders accountable for the affect of their actions on the victim and community;
- (v) which enables offenders to become responsible and to contribute to the community by repairing the harm; and
- (vi) which creates safer communities.

An holistic approach,

- (i) which works in partnership with other agencies;
- (ii) which enhances greater understanding of others involved;
- (iii) which involves an awareness of other research and practices;
- (iv) which adopts a problem-solving style;
- (v) which extends the principles to other arenas; and
- (vi) which adopts a strategy to consult and communicate internally and externally.

A positive approach,

- (i) which ensures that all involved are restored by the process;
- (ii) which distinguishes between the individual and their actions;
- (iii) which uses reintegrative shaming, not stigmatising; and
- (iv) which requires professionals to facilitate, not to prescribe solutions.

A tailored approach,

- (i) which is focused to meet individual needs;
- (ii) which considers all relevant information about all parties; and
- (iii) which seeks a response that is in proportion to the offence committed;
- (iv) which uses the pivotal role of restorative conferencing facilitators; and
- (v) which provides a structured range of applications.

An accountable approach,

- (i) which ensures the process is accountable to the public and the law;
- (ii) which ensures that the professionals are accountable; and
- (iii) which safeguards all involved in the process.

**A structured approach,**

- (i) which requires consistent criteria for staff selection and training;
- (ii) which provides training appropriate to role not rank;
- (iii) which provides a consistent system of mentoring;
- (iv) which provides awareness training to impact on organisational culture; and
- (v) which identifies decision makers with specified responsibilities.

THAMES VALLEY POLICE  
RECORD OF RESTORATIVE INTERVENTION

1. Type of intervention:

- Conference
- Face to face meeting
- Indirect mediation
- Secondary conference

2. Date of intervention .....

3. Time spent in preparation:

- Complainant and supporters .....
- Officer .....
- Officer supporters .....
- Supervisory officers .....
- Federation .....
- Other .....

4. Time commenced: ..... Time concluded: .....

Total: .....

5. Officer's name: ..... Station/department: .....

6. Complainant's name: .....

Age: ..... Ethnicity: .....

Male/female

7. Number of participants:

8. Verbal apology given: yes/no

9. Written apology agreed: yes/no

10. Other reparation agreed: yes/no

11. Number of observers:

12. Position within the complaints process:

- |                          |
|--------------------------|
| 1. White (IC1)           |
| 2. Black Caribbean (IC3) |
| 3. Black African (IC3)   |
| 4. Black other (IC3)     |
| 5. Indian (IC4)          |
| 6. Pakistani (IC4)       |
| 7. Bangladeshi (IC4)     |
| 8. Chinese (ICS)         |
| 9. Other (IC6)           |

13. Facilitator:

14. Other comments:

**THAMES VALLEY POLICE**

**PARTICIPANT SURVEY**

*We would appreciate it if you could find the time to complete this short questionnaire relating to the restorative intervention that you attended. The feedback will be used to help us to improve the service that we provide. Responses are confidential, however you are welcome to indicate your name or role within the conference.*

1. Please circle to indicate your gender

Male

Female

2. Please circle the category below which best indicates the group to which you belong.

1. White (IC 1)

2. Black Caribbean (IC3)

3. Black African (IC3)

4. Black other (IC3)

5. Indian (IC4)

6. Pakistani (IC4)

7. Bangladeshi (IC4)

8. Chinese (ICS)

9. Other (IC6)

3. Overall, how satisfied were you with the conference as the method of dealing with this case?

Very satisfied

Satisfied

Neither satisfied nor dissatisfied

Dissatisfied

Very dissatisfied

4. Do you feel you were sufficiently prepared for the conference?

Yes

No

Not sure .

Can you suggest how we could improve the ways in which we prepare people for a conference?

5. Do you feel that the conference encouraged the officer who was the subject of the complaint to accept responsibility for his/her actions?

Yes

No

To some extent

Don't know

6. Do you feel that you were listened to during the conference?

Yes

No

To some extent

7. Do you feel that you were treated fairly during the conference?

Yes

No

To some extent

8. How satisfied were you with the conference facilitator?.

Very satisfied

Satisfied

Neither satisfied nor dissatisfied

Dissatisfied

Very dissatisfied

9. I-low satisfied were you with the conference facilities (room, refreshments etc.)?

Very satisfied

Satisfied 0

Neither satisfied nor dissatisfied

Dissatisfied

Very dissatisfied



10. Do you feel that you participated in developing any agreement to repair the harm?

Yes  No  To some extent  N/A

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-----  
-----

11. How satisfied were you with any agreements made at the end of the conference?

Very satisfied  Satisfied  Neither satisfied nor dissatisfied   
Dissatisfied  Very dissatisfied  N/A

-  
-----

12. Do you feel that any agreement made was fair?

Yes  No  To some extent  Don't know   
NIA

-----  
-----  
-----

13. Do you think that it was beneficial to involve you in the conference?

-----  
-----  
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14. Would you participate in a conference again?

Yes  No  Don't know

15. Do you think the meeting was beneficial to:

The officer subject of the complaint	Yes <input type="checkbox"/>	No <input type="checkbox"/>	To some extent <input type="checkbox"/>	Don't know <input type="checkbox"/>
The person making the complaint	Yes <input type="checkbox"/>	No <input type="checkbox"/>	To some extent <input type="checkbox"/>	Don't know <input type="checkbox"/>
Thames Valley Police organisation	,Yes <input type="checkbox"/>	No <input type="checkbox"/>	To some extent <input type="checkbox"/>	Don't know <input type="checkbox"/>

16. We would welcome any comments you might have which would help us to improve this process

## AGREEMENT

The procedures outlined in this document form the protocols for the purposes of a pilot project within Thames Valley Police. The project be reviewed by the working party in June 2001.

Each signatory to the protocols will be able to call a meeting of the steering group if it appears that unforeseen problems are being encountered. Where there is still disagreement then there will be a facility for a temporary suspension of the pilot whilst further efforts are made to resolve these problems.

Signed

Date

Glenn Maybury, Chair, Thames Valley Police Authority

Signed

Date

Charles Pollard, Chief Constable

Signed

Date

Martin Elliott, TVP JBB, Police Federation

Signed

Date

Jo Dobry, Police Complaints Authority

