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20 April 2007

Dear Sir/Madam,

Re: Review of PSNI Code of Ethics

Thank you for sending a copy of the Code of Ethics to the Committee on the Administration of Justice (CAJ) for comment. We had commented extensively on earlier versions of this text, and some of the comments below reiterate points that we made earlier; other points are new and arise directly from the revised text.

Ethical standards required

1. **Article 1.5:** CAJ had commented previously that this might be a good juncture in the Code to indicate to police officers that there is an obligation on them both to obey lawful orders, and also not to obey unlawful orders. The formulation currently indicates that no officer will suffer disciplinary action for refusing to carry out an unlawful order, but this is somewhat ‘passive’ guidance. The European Policing Code of Ethics contains very useful language that the NI Code could draw upon. For example – “police personnel at all levels shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates” (article 16). “Police must always verify the lawfulness of their intended actions” (article 38). “Police personnel shall carry out orders properly issued by their superiors, but they shall have a duty to refrain from carrying out orders which are clearly illegal and to report such orders, without fear of sanction” (article 39). This last formulation in particular seems to convey the elements of your 1.5 but is more assertive.
2. **Article 2.1:** CAJ welcomes the strengthening of the language here regarding the importance of accountability and responsibility in police investigations.
3. **Article 4:** CAJ suggested in earlier comments that it would be useful to make explicit reference in this section to the question of plastic bullets, so that police officers are clear that the same standards apply to the discharge of live

ammunition and the use of AEPs. Given the discussion about whether plastic bullets constitute a “lethal” or “less lethal” weapon, it seems important to be clear that plastic bullets are included within the meaning of “firearms” in this element of the Code. Either in addition, or alternatively, reference might need to be made in this text to the detailed guidelines that exist in relation to the use of force, and specifically to the use of plastic bullets and CS spray?

It is also unclear if the text sufficiently emphasises the principle of “necessity” as well as those of “proportionality” and “legality”. See on for our comments on the Explanatory Notes in this regard.

4. **Article 4.2:** CAJ welcomes the reference to the need to provide medical assistance as appropriate.
5. **Article 4.6:** CAJ still believes that stress counselling should be “provided” not simply “offered”. It is the experience of many police services around the world that counselling is not availed of, unless actively encouraged and insisted upon by good management practices.
6. **Article 5.3:** The European Policing Code refers to detainees having access to medical help of their choice whenever possible – we propose that this be incorporated into the text.
7. **Article 7:** CAJ had previously proposed the addition of a clause that appears in the European Policing Code to the effect that “persons who have been convicted of serious crimes shall be disqualified from police work” (article 24). Perhaps this issue is covered elsewhere in disciplinary rules, since it is not mentioned in this text?

Explanatory Notes

Article 1: Opening sentence may be better to read “The public and officer colleagues” to avoid having to use a gendered term. Most of these explanatory notes seem very clear and will be of assistance to police officers seeking to comply with both the letter and the spirit of the Code.

Article 1.6: Is the “Police Service policy on political activity” a document that is in the public domain? In the absence of a study of it, the only query we would have here relates to the summary point that says “Officers are permitted to participate in cause issues that are conducted independently of mainstream political parties”. Perhaps the meaning of this point is clearer in the full text? On the face of it, it is not clear what a “cause issue” is (or is it a typo?); and are they able to engage in such activities if they are carried out by non-mainstream political parties (ie presumably Republican Sinn Fein or the Conservative party)? Maybe it would be better to formulate this in terms of “permitted to engage in activities that are not associated with any single political party” – if that is the intended meaning?

Article 4: It is good to focus as you do here on the issue of proportionality “all use of force must be the minimum appropriate in the circumstances”. However, it is

noteworthy that the text does not draw on the element in the UN Code of Conduct that also talks of the principle of “necessity” – “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty” (article 4). The ECHR also talks of proportionality and necessity - “force which is no more than absolutely necessary”. We think that neither the Code of Ethics, nor the Explanatory notes are clear enough in this regard. Given, as you say, that this is without doubt one of the most important areas of policing, officers need as much guidance as possible in this arena.

Article 6: It is not clear why “sensitive” or “suspect” grounds such as sex, race and sexual orientation have been highlighted in this way. If the reference is to be retained, it would seem necessary to add “religion/politics” as an issue that is particularly sensitive and suspect in the Northern Ireland context.

CAJ feels unable to comment knowledgeably at this time about the text relating to **complaints procedures**, since we have not followed recent developments in this area. We noted, however, with approval, the comments on the “standard of proof” and “attendance at hearing”, both of which should make it easier to discipline misbehaviour, whilst properly protecting the rights of individual accused.

As to the “fast track proceedings”, will this have any implications for the work of the Police Ombudsman’s Office? Could an officer by being fast-tracked to dismissal thereby avoid investigation by the Police Ombudsman’s Office? We assume that this is not the case, since reference is made to pending “criminal proceedings”, suggesting a stage post-Ombudsman inquiry, but it would be unfortunate if the PSNI dismissed officers to avoid the embarrassment of the Ombudsman completing an investigation (or even appeared to do so). We note and welcome the reference to weighing up carefully “public interest” as well as the rights of the accused officer in making such decisions. However, it is not clear on the face of it, if the “public interest” would automatically consider the importance to maintaining confidence in policing of the Ombudsman being able to complete an investigation once started?

Last but not least, we raised some broader issues in previous comments and will attach those for information (see extract from “CAJ comments on Draft Code of Ethics for the Police Service of Northern Ireland” (October 2001).

We hope that the above comments are of assistance in finalising the Code –

Yours sincerely,

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