

## CHAPTER 1

# THE DEVELOPMENT AND FOUNDATIONS OF MODERN POLICING

## INTRODUCTION

I (*name*) ... of (*place*) ... do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

The above constitutes the solemn declaration or oath taken by all those newly appointed to the office of constable within England and Wales, in accordance with the wording under Sched 4 to the Police Act 1996.<sup>1</sup> This is declared during a ceremony known as the 'attestation', which takes place before a justice of the peace.<sup>2</sup> On analysis, this oath provides an interesting indication as to the constitutional status of a police officer in modern times and, in essence, describes the manner in which police powers should be exercised.

Compared with many policing systems abroad, the system in England and Wales has a number of similarities and distinctions. Perhaps two of the greatest distinctions are based upon the main principle of policing in this country and the basic structure of our police service. With regard to the former, policing in this country is still fundamentally based upon the principle or concept of 'policing by consent'. This means that the police service functions in society with the consent of the majority. This has great advantages compared with many foreign policing systems, which do not enjoy this concept to the extent that it is still evident here. Among other things, this ensures a greater level of public co-operation with the police and has also enabled our police to avoid being fully and permanently equipped with firearms throughout the 20th century and, so far, into the present millennium. Although in recent years they have been equipped with a greater range of protective weaponry, such as extendable batons and CS gas spray, these are not intended to be lethal in their effects if used correctly and, so far, we have avoided a permanent para-military police force in this country.

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- 1 The wording of the original Sched 4 to the Police Act 1996 has been amended by s 83 of the Police Reform Act 2002 in order to make it more compatible with the Human Rights Act 1998.
  - 2 Newly appointed constables in the Metropolitan Police previously took the attestation before either the Commissioner or an Assistant Commissioner who, technically at least, are also justices of the peace. This practice discontinued as a result of Sched 27, para 83 of the Greater London Authority Act 1999, which provides that all constables in England and Wales will be attested before magistrates. It is this statute which contains the measures under which the relatively new Metropolitan Police Authority has been instituted.

A further distinction between foreign policing and our own domestic system is that this function in England and Wales is currently divided between 43 individual police forces, whereas policing abroad, including Europe, is often under more centralised control. In other words, we do not have a national police service, but a network of individual police forces, responsible for policing specified counties, areas or cities. During times of emergency, these forces may be co-ordinated through a centralised mutual aid procedure, but such occasions are infrequent, one of the most well known in recent times being the miners' dispute during the winter of 1984–85, where police officers from many parts of the country were sent to key mining areas to reinforce the local police presence there.

## A BRIEF HISTORICAL OVERVIEW

The general concept of policing in this country is certainly not new; in fact, various forms of law enforcement which were in the nature of policing existed since early Saxon times. Even the term 'constable' originated as far back as the Norman era.

Constables were also evident during the reign of the Tudors and Stuarts but, following a period of apparent decline in the role of such constables, growing concerns during the Georgian period regarding increasing crime and disorder led, ultimately, to the formation of the famous Bow Street Runners. A fragmented system of policing gradually evolved in other parts of London but, in 1785, the London and Westminster Police Bill was introduced, designed to form a co-ordinated policing system for the capital. This was defeated due to fierce opposition and poor management of the Bill in its passage through Parliament, although a more limited version was successfully passed seven years later.<sup>3</sup> However, crime and fears of public disorder continued to rise and, eventually, Sir Robert Peel introduced his famous Bill, which was enacted on 19 June 1829 as the Metropolitan Police Act and, subsequently, the Metropolitan Police was born. The preamble to this landmark statute reads as follows:

Whereas offences against property have, of late, increased in and near the Metropolis, and the local establishments of nightly police have been found inadequate to the prevention and detection of crime, by reason of the frequent unfitness of the individuals employed, the insufficiency of their number, the limited sphere of their authority and their want of connection and co-operation with each other. And, whereas it is expedient to substitute a new and more efficient system of police in lieu of such establishments of nightly watch and nightly police, within the limits hereinafter mentioned, and to constitute an office of police which, acting under the immediate authority of one of His Majesty's Principal Secretaries of State, shall direct and control the whole of such new system of police within those limits. Be it therefore enacted, etc ...

This signalled the formation of the first modern-style professional policing system in this country and, by 1856, all of England and Wales was covered by a network of police forces. It remains a popular belief that the main driving force behind the 1829 Act was the appalling crime rate, particularly in London. Although this was undoubtedly a major factor, there was also another issue which was equal in

<sup>3</sup> Emsley, C, *The English Police: A Political and Social History* (2nd edn, London: Longman, 1996).

importance, namely the increase in the level of public disorder that had escalated in the 18th and early 19th centuries:

The prevention of crime was stressed as the first duty of the new Metropolitan Police constables and the whole system of beat patrols ... was ostensibly designed with this in mind. But the uniform, the discipline and the organisation of the new force suggest that Peel had imported into London many of the policing practices developed in Ireland to deal with civil disorder.<sup>4</sup>

Whilst the military were used to quell rioting in London and other big cities, there were serious tactical and political disadvantages in using armed troops for this purpose. First, long delays were often experienced in transporting troops from their barracks to the scene of public disorder; subsequently, the situation was well out of hand by the time they arrived. Secondly, the only forms of weaponry available to them were potentially lethal, namely bullets or bayonets, the use of which often had drastic consequences in terms of fatal or serious injuries. In contrast, the new police were frequently able to resolve both problems by mainly using wooden truncheons to control riots and, by being deployed throughout London on regular 24 hour patrols, were able to disperse many unruly gatherings before they escalated into full scale disorder.

Although in their early days the new police were often regarded with disdain and suspicion by both general populace and even some in authority, they quickly gained the respect still found amongst the majority of the public today. Although some assert that this effect is waning, the policing system in this country is still characterised by the concept of policing by consent, which to a certain extent remains the envy of policing systems in many other parts of the world.

## THE STRUCTURE OF POLICING IN ENGLAND AND WALES

As mentioned above, there are currently 43 police forces in England and Wales. This excludes those with special jurisdiction, such as the British Transport Police and the Ministry of Defence Police, who operate in various parts of the country. The 43 police areas include the two forces in London, namely the Metropolitan Police and the City of London Police. These two London forces warrant separate coverage as distinct from those outside the capital, and these will be discussed below. At this stage, it should be noted that the chief officers of police for both the London forces are commissioners rather than chief constables; it is the latter who head police forces outside the capital.

Since 1964, the Home Secretary has had the power to amalgamate police forces and this power now exists under s 32 of the Police Act 1996, where such a move can be made on grounds of efficiency and effectiveness. Prior to enacting the 1996 Act, the Conservative Government announced plans to implement such action, although, to date, this has not occurred. Although the fragmentation of police forces throughout this country lends itself to the notion that policing in England and Wales is not under centralised control, recent developments in the structure of our police service indicates an increasing movement towards this end, which will now be discussed.

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4 *Ibid.*

In 1962, the Report of the Royal Commission on the Police<sup>5</sup> rejected the concept of a national police force under direct central government control and, in response to its report, the Police Act 1964 was passed, which enshrined the principle legal rules governing the organisation of the police service up until the mid-1990s. An important consequence of this legislation is that policing in this country is governed by three points of power, namely: the Home Secretary, who represents central government and is responsible for the overall supervision of the police service, as well as being answerable to Parliament regarding the service's function; local police authorities, responsible for the overall maintenance of police forces within their jurisdiction and ensuring local accountability; and chief officers of police, responsible primarily for making operational decisions, as well as the routine management of their forces. However, it is the subject of debate as to whether there is now an equal balance of power within this tripartite structure.

### The police authorities

The balance of power regarding policing in England and Wales was changed controversially through Pt I of the Police and Magistrates' Courts Act 1994, which was later consolidated into the Police Act 1996, and these provisions, among other things, generally endeavour to make the police service function under a more 'business management' regime.<sup>6</sup> They have also created new style police authorities, in contrast to those which existed earlier. Previously, police authorities outside London consisted of two-thirds local councillors and one-third local magistrates. These bodies varied considerably in size – at the extreme ends, from between six to over 40 members in total, although the proportion of magistrates and councillors was always the same. The Government White Paper, entitled *Police Reform – A Police Service for the 21st Century*, contained, *inter alia*, proposals that police authorities should be set to a prescribed number of 16 members. This was not itself a controversial measure, since some authorities were regarded as too small, whereas, in contrast, others had become too large and unwieldy. The main controversy was that these bodies should consist of eight local councillors, three magistrates and five persons appointed by the Home Secretary, who would also appoint the chairperson, who, in turn, would have the casting vote where necessary. These proposals were severely criticised, both within and outside Parliament, on the grounds that this would have given central government a significant increase in power over local police forces.<sup>7</sup> In the end, the Government modified its original proposals, which included allowing each police authority to elect its own chairperson and increasing the size of each authority to 17 members, of which nine are local councillors, three are local magistrates and five are independent members appointed from a shortlist compiled by the Home Secretary.

There is provision under the Police Act 1996 for the Home Secretary to increase the size of police authorities where appropriate, but the outcome must result in such bodies reaching odd numbers and the proportion of councillors, magistrates and

5 Cmnd 1728 (London: HMSO, 1962).

6 Molan, M, *Constitutional Law: The Machinery of Government* (London: Old Bailey, 1997).

7 See Jason-Lloyd, L, 'Who should have power to police the police?' (1993) *The Times*, 24 August; and also 'Changes in the police service' (1994) LXVII(2) *Police Journal* 105, April–June.

independent members approved by the Home Secretary remaining unchanged. Other aspects of these reforms included the transformation of police authorities into corporate bodies which, in turn, must have regard to any objectives determined by the Home Secretary, as well as to formulate annual local policing plans and comply with these accordingly in order to meet performance targets. Also, they must publish an annual report, which includes the extent to which the local policing plan has been complied with, as well as submit reports on relevant police matters to the Home Secretary as required by him.

Under s 40 of the Police Act 1996, the Home Secretary may direct any police authority to take remedial action if the inspectorate of constabulary report that its police force is not efficient or effective. Sections 4 and 5 of the Police Reform Act 2002 extend these provisions to include situations where the inspectorate of constabulary makes a routine or a special inspection and concludes that all or part of a police force is, or is likely to be, inefficient or ineffective. Remedial action may include the requirement to submit an action plan to the Home Secretary in conjunction with the relevant chief police officer.

Many functions of the police authorities remain as they did prior to the Police Act 1996, which include the overall duty to secure the maintenance of an effective and efficient police force by, among other things, acting as its paymaster in terms of local expenditure and controlling the police budget. Police authorities are also responsible for appointing chief constables, deputy chief constables and assistant chief constables (the latter two in consultation with the chief constable),<sup>8</sup> and may suspend or require any of them to resign or retire, although these decisions can be vetoed by the Home Secretary, who can also require a police authority to suspend, retire or require the resignation of a chief officer of police on his own initiative. The power of the Home Secretary's veto was last used in 1990 and resulted in a dispute with the Derbyshire Police Authority over the appointment of the then-chief constable for Derbyshire, which lasted for several months. However, in 2004, there was a dispute between the Home Secretary and the Humberside Police Authority regarding the Home Secretary's requirement for them to suspend the then-chief constable, which initially they refused to do.

Under the Police Reform Act 2002, police authorities of their own volition may suspend chief constables who are, or are likely to be called upon, to retire or resign on grounds of efficiency. The Home Secretary must approve this decision and may require a police authority to initiate such action. These suspension rules will also apply to the Commissioner and Deputy Commissioner of Police of the Metropolis. Similar provisions exist regarding the other Association of Chief Police Officers (ACPO) ranks, namely assistant commissioners, deputy assistant commissioners and commanders in London, and deputy chief constables and assistant chief constables outside the capital, the difference being that the Home Secretary does not have the power to require a police authority to exercise its power of suspension in such cases.

Police authorities may also employ civilian staff to assist the police force maintained by it and to enable the authority to discharge its functions, although such

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8 Or the equivalent ranks in London.

employees are under the direction and control of the chief constable. It should be noted that under the new police complaints system, civilian employees within the police service fall within the jurisdiction of the Independent Police Complaints Commission. This will include designated civilians who have been given certain police powers under the concept of the 'extended police family' (see Chapter 7). Section 51 of the Police Reform Act 2002 places a duty on police authorities to make arrangements for the independent inspection of custody suites at police stations as well as reporting on the way that detainees are dealt with. Finally, s 92 of the Police Reform Act 2002 places a duty on police authorities to produce three-year strategy plans in addition to their existing annual plans, in order to formulate medium and long-term strategies.

### **Other moves towards centralised control**

The Police Act 1997 (not to be confused with the Police Act 1996) contains a number of provisions which have implications for the police service as well as the exercise of certain powers regarding surveillance. As far as the structure of the police service is concerned, Pt I of the 1997 Act has placed the National Criminal Intelligence Service (NCIS) on a statutory footing. This organisation is staffed by police and HM Customs and Excise officers, as well as persons from the security services and has, since 1992, been involved with collating and analysing information and other intelligence in respect of matters such as international drug trafficking and money laundering, as well as other specialist crimes, including kidnap, extortion and counterfeit currency. Part II of the Act makes provision for the formation of a National Crime Squad (NCS), designed to deal with serious crime. Both these bodies, under the 1997 Act, will have implications in more than one police area. Sections 88 and 89 of the Police Reform Act 2002 inserted new ss 34A and 79A into the Police Act 1997, regarding the regulation of the NCIS and NCS within the context of their governance and administration as well as conditions of service within these bodies. The Serious Organised Crime and Police Bill 2004 proposes to replace these two bodies with a Serious Organised Crime Agency that many describe as this country's version of the FBI.

Under ss 23 and 24 of the Police Act 1996, chief constables have the power to collaborate with other police forces or provide mutual aid where additional officers or other assistance may be provided. The collaboration under s 23 includes sharing resources such as premises, training facilities, technical support and specialised services. An example of the latter includes the use of police helicopters. With regard to s 24, as mentioned above in the introduction to this chapter, the last time mutual aid was used on any mass scale was during the winter of 1984–85, during the series of strikes by the coal mining industry. As a consequence, police officers from many parts of England and Wales were sent to areas where large scale picketing was taking place. Some observers reported that seeing so many different police forces represented in one place gave the impression of a national police force, although this venture only lasted for the duration of one winter. Parallel provisions also exist under s 98 of the Police Act 1996 (previously enacted under s 141 of the Criminal Justice and Public Order Act 1994), whereby chief officers of police may request assistance from any UK police force, which includes providing additional constables. There is also provision for the Home Secretary to act on his own volition, presumably in times of emergency, where he may direct a police force within another part of the UK to provide such assistance. In other words, police officers from Northern Ireland can be called upon to reinforce

the police in any part of England, Wales or Scotland, or police in Scotland can be asked to provide mutual aid to any police force in England and Wales or to Northern Ireland, and the police in England and Wales can be called upon to provide assistance to the police in Northern Ireland or to any force in Scotland. One hopes that such an interchange may never be necessary, in view of the prospective turmoil that would necessitate such action.

Mention should also be made regarding the Association of Chief Police Officers (ACPO), which is the representative body of all police chiefs and has existed since 1948. This organisation constitutes a powerful pressure group, capable of influencing central government to a significant extent on a variety of matters affecting policing in this country. It is this body which, among other things, facilitates co-operation between police forces where necessary. Another organisation in relation to police chiefs is the Chief Police Officers' Staff Association.

### **Policing in London**

It should be noted that the police authority in respect of the City of London Police is the Common Council of the City of London, although separate and quite unique arrangements once existed regarding the Metropolitan Police. In July 2000, the Metropolitan Police Authority was instituted and this was the first time that such an authority existed within the Metropolis of London. For many years, the issue of accountability of the Metropolitan Police had been severely criticised by a number of commentators. The Home Secretary had previously constituted the police authority for the Metropolis, which has the largest police force in the UK (approximately 35,000 police officers). Although there was provision originally under s 106 of the Police and Criminal Evidence Act 1984 and, more recently, under s 96 of the Police Act 1996 for consultations between the police and local consultative groups, there had never been an actual police authority for the Metropolis of London compared with those that exist in other parts of England and Wales. Therefore, under s 106 of the 1984 Act and then s 96 of the 1996 Act, special provision was made whereby the Home Secretary issued guidance to the Metropolitan Police Commissioner in respect of obtaining the views of the community on policing the capital.

Sections 310–325 of the Greater London Authority Act 1999 now institute a police authority for the Metropolis of London. However, in April 1995, a body was formed called the Metropolitan Police *Committee*. This originally consisted of 12 members appointed by the Home Secretary to advise and assist the Metropolitan Police Commissioner in maintaining an efficient and effective police service, and this body was used to prepare for the institution of the Metropolitan Police *Authority* in July 2000. The Committee compiled regular annual reports and was under the chairmanship of Sir John Quinton.

The institution of the Metropolitan Police Authority is inextricably linked with the Greater London Authority, since the relatively new police authority consists of 23 members, 12 of which are selected by the Mayor of London and are members of the Greater London Assembly, including the Deputy Mayor. The Metropolitan Police Authority may select its own chairperson from among its own members and this does not discount the Deputy Mayor of London. Other members of the new police authority include seven independent persons and four magistrates. The independent faction includes one person appointed directly by the Home Secretary and, up until recently,

the four magistrates were appointed by the Greater London Magistrates' Courts Authority. This has been changed as a result of s 6 of the Courts Act 2003, which abolished magistrates' courts committees, including the Greater London Magistrates' Courts Authority. This change is due to the Lord Chancellor taking over responsibility for the magistrates' courts.

In effect, the powers and duties of this police authority are almost identical to those which function outside the Metropolitan Police area. These include publishing annual reports, consultations with local communities and setting objectives.

The introduction of the Metropolitan Police Authority has automatically resulted in abolishing the post of the Receiver, whose functions are now, to a large extent, performed by the new police authority, especially matters regarding finance, responsibility for which falls upon the Treasurer. The new body also plays a role in recommending to the Home Secretary the appointment of future commissioners, as well as their deputies, assistant commissioners, deputy assistant commissioners and commanders. However, whilst a similar selection procedure may be used to appoint the Commissioner, as in the police authorities outside London regarding their chief constables, this will be modified to take into account the need to protect the national interest and the international obligations of the Metropolitan Police Service, and not just its local remit. This is a particularly sensitive issue which has constituted one of the primary objections in the past to having a police authority for the Metropolis (see the coverage of the role of the Home Secretary below). The Metropolitan Police Authority is expected to account for its actions when summoned before the Greater London Assembly in much the same way as do representatives of police authorities outside London when under scrutiny by their respective local authorities. See Appendix 1, which depicts the basic structure of the Metropolitan Police Service.

## THE CONSTITUTIONAL AND GENERAL LEGAL STATUS OF THE POLICE

Historically, many constitutional lawyers have expressed varying opinions regarding the legal status of police officers. Notwithstanding the recent reforms of the police service mentioned above, there is common agreement that police officers are not servants of central government, but are officers of the Crown or of the State. Interestingly, whilst the police service is part of the executive aspect of our constitutional framework, it also has a significant measure of independence from it. As mentioned in other parts of this chapter, chief officers of police are not subject to direct orders from any person or body in relation to operational matters although, ultimately, they are answerable to their police authorities and the Home Secretary for their actions.

The general legal status of the police which is of prime interest to certain sections of the populace is their liability for wrongful acts in the course of their duty. In view of the wide duties and responsibilities incumbent upon the average police officer, inevitably, things will go wrong from time to time. There is, of course, the complaints procedure in dealing with grievances against police actions (see the end of this chapter) and, also, the police are not immune from criminal prosecutions in extreme circumstances, but to what extent are individual police officers liable for civil wrongs (torts) such as negligence, trespass and false imprisonment? Under the common law, a

police officer was personally liable for his or her wrongful or unlawful acts although, prior to the Police Act 1996, it was left to police authorities as to whether they were prepared to pay an officer's damages and legal costs. Under s 88 (as amended) of the 1996 Act, chief constables are now vicariously liable for torts and other unlawful conduct committed by their police officers in the course of their duties. Costs and damages incurred as a result or claims settled out of court are paid from the local police budget, provided the police authority gives its approval in the case of the latter. Whether the chief constable has been sued or not, the police authority may pay damages or costs awarded against a police officer within that force.

It is important to mention that police officers are not essentially employees, but holders of a public office determined principally by statute. They can be dismissed only under regulations which deal with breaches of discipline, such as misuse of authority, neglect of duty, racist behaviour, insubordination and other transgressions which bring the police service into disrepute (see also the end of this chapter). However, police officers are certainly not subject to unlimited privileges and immunities, as illustrated in the following commentary:

Indeed, legislation restricts the freedom of a police officer in a way in which no employer could by a contract of employment. Thus, police officers are not allowed to be members of a trade union or of any association which seeks to control or influence the pay or conditions of service of any police force; instead, there are Police Federations for England and Wales and for Scotland, which represent police officers in all matters of welfare and efficiency, other than questions of promotion affecting individuals, and with limited powers in relation to discipline. Police regulations impose a great many restrictions upon the private life of serving police officers, including one of constitutional importance, namely that a police officer 'shall, at all times, abstain from any activity which is likely to interfere with the impartial discharge of his duties or which is likely to give rise to the impression amongst members of the public that it may so interfere; and, in particular, [he] shall not take any active part in politics'.<sup>9</sup>

This is reinforced by para 2 of the Police (Amendment) Regulations 2004, which states:

A member of a police force shall at all times abstain from any activity which is likely to interfere with the impartial discharge of his duties or which is likely to give rise to the impression amongst members of the public that it may so interfere. A member of a police force shall in particular (a) not take any active part in politics; (b) not belong to any organisation specified or described in a determination of the Secretary of State.

Other obligations are incumbent upon police officers apart from the above duties. These include restrictions on where they may live and being obliged to report for duty with little or no prior notice under urgent circumstances. An off-duty police officer may even be expected to place him or herself on duty immediately in the event of being confronted with a particularly serious situation which may demand instant police intervention. In essence, a police officer is always on duty, hence the requirement that they carry their warrant cards at all times. This brings us to the well

9 Bradley, A and Ewing, K, *Constitutional and Administrative Law* (12th edn, London: Longman, 1997).

worn definition of a police officer who is described as a citizen in uniform *and/or the holder of a warrant card*, who has been given additional powers in the execution of his or her duty (the words in italics are mine and apply to non-uniformed officers). Is this now an accurate definition, in view of the substantial increases in police powers since it was first formulated? Can the average police officer be regarded as an ordinary citizen, even when off-duty, in view of the observations made above?

### Chief constables

With the exception of the two London forces, which were discussed above, chief officers of police in the remaining 41 police areas in England and Wales are known as chief constables. The unique constitutional status of chief constables has been described as follows:

A chief constable is nobody's servant, but an independent officer, upon whom powers and duties are directly conferred by law for the benefit of the populace. His constitutional status remains anomalous and puzzling, even after the re-organisation of the police system implemented by the Police Act 1964. It is still not clear whether anyone is entitled to give him instructions as to the performance of any of his duties,<sup>10</sup> or to what extent the Home Secretary is answerable for decisions taken by chief constables outside the Metropolis.<sup>11</sup>

The Police Act 1996 reasserts that chief constables are responsible for the direction and control of their respective police forces. However, when making operational and other decisions, he or she must have regard to the local policing plan mentioned above. In *R v Commissioner of Police for the Metropolis ex p Blackburn* (1968), at 135, Lord Denning MR gave the following guidance regarding the legal status of chief officers of police:

The office of Commissioner of Police within the Metropolis dates back to 1829, when Sir Robert Peel introduced his disciplined force. The commissioner was a justice of the peace specially appointed to administer the police force in the Metropolis. His constitutional status has never been defined either by statute or by the courts. It was considered by the Royal Commission on the Police in their report (Cmnd 1728). I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that, under the Police Act 1964, the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted and, if need be, bring the prosecution or see that it is brought but, in all these things, he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must or must not keep observation on this place or that; or that he must or must not prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone. That appears sufficiently from *Fisher v Oldham Corporation* (1930) and the Privy Council case of *Attorney General for New South Wales v Perpetual Trustee Co Ltd* (1955).

10 This statement is increasingly open to question in view of recent reforms of the police service, especially those under the Police Reform Act 2002.

11 de Smith, S and Brazier, R, *Constitutional and Administrative Law* (7th edn, London: Penguin, 1994).

In the light of many reforms of the police service since this case was decided, does this guidance have the same relevance at the present time?

Chief constables have the responsibility for appointing, promoting and, where necessary, disciplining (including dismissing) all officers below the rank of assistant chief constable. The appointment of special constables and other police auxiliaries, as well as police cadets, also falls within the responsibility of chief constables under the Police Act 1996, which also requires that they submit annual reports to the Home Secretary and their police authority, as well as any additional reports as requested by either, including the submission of criminal statistics to the Home Secretary. Although there are now fairly exhaustive mechanisms in place regarding the accountability of chief constables, the fact remains that no one can give such a person direct orders in terms of operational matters. Even the judiciary have shown great reluctance in interfering with the decisions of police chiefs, particularly with regard to the deployment of manpower and resources,<sup>12</sup> although the judges have warned that the exercise of police discretion is reviewable in the courts.<sup>13</sup> This was demonstrated in *R v Commissioner of Police for the Metropolis ex p Free Tibet Campaign and Others* (2000), where it was held that the Metropolitan Police had acted unlawfully by, *inter alia*, removing banners and using vans to block peaceful protestors from the view of the visiting Chinese President during an official visit to London.

Under s 2 of the Police Reform Act 2002, the Home Secretary may issue and revise codes of practice regarding the discharge of any functions by chief officers of police. A draft of this document must be formulated in conjunction with the Central Police Training and Development Authority, who in turn must consult with certain other bodies such as the Association of Police Authorities and the Association of Chief Police Officers; the codes of practice must then be laid before Parliament. It should be noted that there are similar provisions under s 39 of the Police Act 1996 with regard to codes of practice for police authorities; also, the Home Secretary has a duty to issue other codes of practice regarding the policing of this country. These include provisions under s 51 of the Police Reform Act 2002 where he is under a duty to issue and revise codes of practice in respect of independent custody visitors who inspect custody suites at police stations. However, the most voluminous codes of practice are those applicable to the operation of the Police and Criminal Evidence Act 1984, which will be mentioned at many stages throughout this book.

### The Home Secretary and the police

As mentioned above, a new Metropolitan Police Authority was instituted in July 2000 under the Greater London Authority Act 1999. Until this time, the Home Secretary retained his role as the police authority for the Metropolis of London, assisted by the

12 See *Harris v Sheffield United Football Club Ltd* (1987), where Neill LJ stated: 'I see the force of the argument that the court must be very slow before it interferes in any way with a decision of a chief constable about the disposition of his forces.' See also *R v Chief Constable of Sussex ex p International Trader's Ferry Ltd* (1997).

13 See *R v Commissioner of Police for the Metropolis ex p Blackburn (No 1)* (1968) and *R v Commissioner of Police for the Metropolis ex p Blackburn (No 3)* (1973).

transitional Metropolitan Police Committee. Even though the new authority has commenced its duties, the Home Secretary is still in a position to exert some influence regarding the policing of the capital. This includes having the ultimate say regarding the appointment of new commissioners. It was noted above that the Metropolitan Police Authority is, in essence, very similar to the police authorities elsewhere in England and Wales. There is one important exception to this statement and this relates to the fact that the Metropolitan Police Service plays an important role in matters which go beyond merely policing the capital. As mentioned earlier, the Metropolitan Police perform national as well as international functions, which are of a very sensitive nature, both politically and otherwise. This has constituted a powerful argument in the past against it having its own police authority. In order to ensure the effective performance of its national and international policing functions, para 104 of Sched 27 to the Greater London Authority Act 1999 provides that if the Home Secretary is not satisfied with the standard of performance of the Metropolitan Police in its national and international functions, then he may direct the Metropolitan Police Authority to take such measures as may be specified in that direction. The definition of such functions under these provisions includes the personal protection of VIPs, as well as their property, national security, counter-terrorism or 'the provision of services for any other national or international purpose'.

Notwithstanding the overall effects of these changes, the Home Secretary is still the most singularly prominent figure in respect of the policing of this country. Under the Police Act 1996 (as amended), which has preserved many of the powers held by him under the Police Act 1964, the Home Secretary may determine policing objectives in all areas, having made prior consultations with the relevant police authorities and their police chiefs. This may also include him requiring police authorities to set performance targets in order to achieve this end. However, under s 1 of the Police Reform Act 2002, which inserts a new s 36A into the Police Act 1996, the Home Secretary is under a duty to prepare an annual National Policing Plan. This must include a wide range of policing objectives such as performance targets, making regulations under the 1996 Act and the Criminal Justice and Police Act 2001 regarding police training, as well as issuing various codes of practice and dealing with complaints and misconduct. Under s 42 of the 1996 Act (as amended by s 33 of the Police Reform Act 2002), the Home Secretary may require a police authority to suspend and dismiss a chief constable following an inquiry and, if representations are made by that officer, a hearing must be convened by the Home Secretary. See *Ridge v Baldwin* (1964), where the principle of the right to a fair hearing was extended to a former chief constable, who had been dismissed from his post by a borough police authority, and that committee had not initially given him the opportunity to present his case in defence. The right to make representations to a police authority where that body dismisses a chief constable is also provided for under the 1996 Act.

Other provisions under the 1996 Act include the Home Secretary's power to order inquiries into specific incidents (the Scarman Report on the Brixton riots, for example), the appointment of inspectors of constabulary in order to assess the efficiency of individual forces, the making of regulations regarding the administration of the police service as a whole, including matters affecting national pay and conditions, as well as issuing Home Office circulars for the guidance of the police service. Under Pt 4 of the Criminal Justice and Police Act 2001, the Home Secretary has been given extensive powers to regulate police training. Among other things, he has the power to set objectives and performance targets for the Central Police Training and Development

Authority, which has the overall responsibility for providing and promoting police training in this country. The Home Secretary may also give specific and general directions to the authority in the performance of its functions.

In *R v Secretary of State for the Home Department ex p Northumbria Police Authority* (1988), police authorities in several areas, including Northumbria, sought to challenge the Home Secretary's actions regarding the issue of certain riot control equipment. Following the inner city riots in 1981, it had been apparent that the police could no longer effectively control serious disturbances using their existing standard equipment, which was largely confined to truncheons and long shields, especially when dealing with rioters throwing missiles, including fire bombs. This was acknowledged in the Scarman Report, and it was recommended that the police should be issued with stand-off weaponry, such as CS gas and plastic bullets. The police authorities mentioned above objected to such devices being issued to their police officers and refused to authorise their purchase. The Home Secretary then issued a circular to all chief constables, advising them of the availability of such equipment on permanent loan, in the event of their police authorities refusing to authorise the purchase of CS gas and plastic bullets. The Court of Appeal held that the Home Secretary had acted lawfully on two grounds. First, under ss 4 and 5 of the Police Act 1964, powers to effect the supply of equipment to the police were vested in chief constables and police authorities. However, under s 41, the Home Secretary also had powers to supply central or common services to the police service as a whole. It was held that the Home Secretary had lawfully exercised this power, as riot control equipment fell within this definition. Secondly, it was held that, in acting in this manner, the Home Secretary had correctly exercised the prerogative power to keep the Queen's peace, which was unaffected by the 1964 Act.

With regard to the present powers of the Home Secretary to regulate the standard of equipment used by the police, s 6 of the Police Reform Act 2002 enables the Home Secretary to make regulations so that all police forces in England and Wales will use certain equipment approved by him, and in the way prescribed. The reason for this power is to ensure that whenever police forces are deployed on mutual aid, they will all be using the same or similar equipment. Examples will include vehicles, IT systems, batons, incapacitant sprays, headgear or protective clothing.<sup>14</sup> Before making such regulations, the Home Secretary is under a duty to consult with the representative bodies of chief officers of police and police authorities. In order to create greater rationalisation between police forces, especially when engaged in joint operations, s 7 of the Police Reform Act 2002 makes provision for the Home Secretary to make regulations regarding police procedures and practices. However, the consultation process required before such regulations may be made is much wider than those pertaining to the regulation of police equipment.

### **Her Majesty's Inspectorate of Constabulary**

With regard to all police forces in England and Wales, many decisions of any Home Secretary and, indeed, chief police officers, are likely to be influenced by the findings of Her Majesty's Inspectorate of Constabulary, a body first instituted in 1856, which

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14 Police Reform Act 2002 'Explanatory Notes' (The Stationery Office, 2002).

inspects the efficiency and effectiveness of all police forces. The Inspectorate currently consists of inspectors of constabulary, who are mainly former chief police officers, plus a chief inspector of constabulary, who, among other things, are responsible for laying an annual report on the Inspectorate's work before Parliament. Her Majesty's inspectors of constabulary are appointed by the Queen, on the recommendation of the Home Secretary, and are empowered to inspect all police forces in England and Wales, including the Metropolitan Police which, up until fairly recently, were exempt from their scrutiny. Some inspectors are non-police officers with relevant management experience. This is a relatively new innovation that started in 1993. Under s 93 of the Criminal Justice and Police Act 2001, inspectors of constabulary may be required to inspect the Central Police Training and Development Authority on the instructions of the Home Secretary. Their inspection powers also include the National Criminal Intelligence Service and the National Crime Squad as well as any police force maintained for any police area. In addition to routine inspections of all these bodies, under s 3 of the Police Reform Act 2002, the inspectorate may be specifically required by the Home Secretary to inspect any such body in whole or part. The scope of the Inspectorate has been further enhanced by s 84 of the 2002 Act, which enables the Home Secretary's power to approve the appointment of assistant commissioners, deputy assistant commissioners, commanders, deputy chief constables and assistant chief constables to be delegated to the chief inspector of constabulary. However, it should be noted that Her Majesty's chief inspector of constabulary will reach such decisions in accordance with a special panel.

### General operational policing in England and Wales

All recruits to the police service are initially attested as constables (including part time voluntary police officers in the special constabulary, who are discussed below). This is the rank in which all police men and women must begin, regardless of educational attainment or other qualities which may result in promotion during their service. This constitutes one of the many features of the police service in England and Wales, distinct from the armed forces, where there is an officer class to which suitable new entrants may immediately enter. As a consequence, all senior officers within the police service, including those who head such forces, have progressed through all the ranks, starting with the rank of constable. The first Metropolitan Police Commissioner to have risen through all the ranks was Sir Joseph Simpson, who took office as Commissioner in 1958. This is now the normal route for all police chiefs throughout England and Wales. However, there is a fast-stream promotion scheme for police officers who demonstrate exceptional abilities after joining. This, among other things, involves attendance at the Police Staff College, where promising police officers are taught advanced management practices, as well as learning senior command skills.

All new recruits must satisfactorily complete their initial two-year probationary period as constables, which provides all police officers with an essential introduction to police duties (see Appendix 2, which depicts the overall rank structure within the police service in England and Wales). Certain aspects of the police rank structure were reformed around the early 1990s as a result of the Sheehy Report,<sup>15</sup> which

15 Sheehy Commission, *Inquiry into Police Responsibilities and Rewards*, Cm 2280 (London: HMSO, 1993).

endeavoured, *inter alia*, to streamline the management of the police service by removing some of the more senior ranks. In the end, the ranks of chief superintendent and deputy chief constable were removed, although some existing holders of those ranks were allowed to keep them. Eventually, it was intended that these posts would cease to exist, as well as deputy assistant commissioners in London. However, all these substantive ranks have now been restored.

The general requirements for entry into the police service are contingent upon good health, character, education and appearance. Entry is no longer confined to British nationality, certain Commonwealth citizens and citizens of the Irish Republic. Section 82 of the Police Reform Act 2002 now enables the police to be recruited from any nationality, although subject to regulations regarding such matters as competency in written and spoken English and residential qualification in the UK. Efforts are being made in an endeavour to make the police service more representative of the overall population in this country by focusing more recruitment on the ethnic community, which is still generally under-represented within this service.

The training of recruits initially requires about five months' full time attendance at one of the police training centres, located in regions throughout the country. Training remains a prevalent feature throughout the two-year probationary period, which takes the form of practical street experience under varying degrees of supervision, but interspersed with classroom instruction.

In terms of specialist opportunities, the police service possibly has no parallel. A constable having satisfactorily completed his or her probationary period is given the opportunity to either continue working in uniform at a local police station (divisional or sub-divisional level) or to enter any of a range of specialist areas immediately or at some other stage in their career. These include the Criminal Investigation Department, traffic division, the mounted police, the drugs squad, communications, the vice squad, dog handlers, Special Branch, VIP protection, the National Crime Squad, the National Criminal Intelligence Service, internal investigations, public order control, training, youth and community work and many more. However, many prefer to remain as uniformed officers in the basic command units of local police divisions, believing that policing at this level can provide all the variety and opportunities that specialist work can bring. There is considerable merit in this assertion, since police work is equally dependent upon both specialist, as well as 'routine', police duties.

The command structure of each police force varies from area to area, although there are certain characteristics that all forces have in common. The headquarters and local command structure of a typical provincial police force is depicted in basic form in Appendix 3, whereas the more complex organisation of the Metropolitan Police Service is represented in Appendix 1.

Whatever rank a police officer holds, the numerous statutes covering police powers refer to all police officers as holders of the office of 'constable', unless specific ranks are stipulated for certain procedural purposes. The fundamental tenet that all police officers hold the office of constable also applies to voluntary, part time police officers, who are members of the special constabulary, which will be discussed in the next section.

## The special constabulary

Fairly extensive coverage of this aspect of the police service will be made here, since it is a relatively understudied subject<sup>16</sup> and, it is submitted, warrants discussion here. The special constabulary is a very old institution which, in its original form, pre-dates the formation of the Metropolitan Police in 1829 by over 150 years. Although the early justices of the peace and lords of the manor were expected to appoint officers to enforce the law, they frequently neglected this duty and, in 1673, a statute was passed, which enabled two magistrates to appoint special constables within their respective districts. However, it was the Special Constables Act 1831 which placed this force on the general footing upon which the modern special constabulary is now based. Since then, the 'specials', as they are commonly termed, have achieved notable places within the history of the modern police service. For example, in 1848, the largest single enrolment of special constables occurred in response to fears of serious disorder arising from the Chartist movement. This resulted in no fewer than 170,000 specials being deployed in central London. The anticipated trouble was averted, since the number of specials outnumbered the protestors by over three to one. It was during both World Wars that the specials particularly excelled and often formed the bulwark of operational policing throughout many parts of the country. However, they were also involved in other high profile roles during certain events between the war years. From 1919 to 1926 they assisted in maintaining order during a series of major industrial disputes, including the General Strike, and during the early 1930s they were used extensively during a series of demonstrations in London resulting from mass unemployment.<sup>17</sup>

In more modern times, the special constabulary is an auxiliary force within the police service, which consists of men and women who serve as part time, unpaid police officers who work in a voluntary capacity. Specials receive no payment for their services,<sup>18</sup> although they receive limited out of pocket expenses, such as travel and meal allowances, together with a boot or shoe allowance. They also receive reimbursement for any loss of earnings, for example, where they attend court. Their police work is confined to whatever spare time they can devote to this end. This often involves a significant sacrifice in certain cases, since many have demanding commitments elsewhere but, in any event, they are generally expected to perform at least 16 hours' voluntary duty per month.

It is important to note that specials have full police powers, the same as regular police officers, but with one variation. Whereas members of the regular police service may exercise their powers anywhere in this country, specials are restricted to the use of police powers within their respective police areas and within those police areas which immediately border on to their own. The exception to this general rule are specials in

16 There are some exceptions. These include Gill, M and Mawby, R, *A Special Constable: A Study of the Police Reserve* (Aldershot: Avebury, 1990); and also Barron, T, 'The Special Constable's Manual' (London: Police Review, 1997).

17 *The Metropolitan Special Constabulary: An Illustrated History from 1831 to Today* (London: New Scotland Yard, 1981).

18 In previous years some police forces have introduced limited payment schemes for their specials, but these appear to have had little impact on recruitment and retention. Such schemes have therefore been abandoned.

the City of London, who may exercise their police powers in the Metropolitan Police area as well as the counties which border onto the Greater London boundaries. In addition, if specials are seconded to a different police area under mutual aid, they will have full police powers within that area. With some variations, specials are basically equipped with the same uniform as regular full time police officers, as well as certain protective clothing and equipment. The latter are necessary, because specials, as well as regular police officers, often face the same risks when on duty.

A grade structure exists within the special constabulary for those given additional responsibility for its management. This places graded officers within the special constabulary in authority above specials without or with lower grades. Some specials join the regular force having initially served in a voluntary capacity and feel that they wish to make a full time career within the police service. In this respect, a person joining the special constabulary acquires an excellent introduction to operational policing. As mentioned above, special constables, as well as regular police officers, are appointed by chief officers of police, and it is important to note that s 35 of the Police Reform Act 2002 places special constables within the jurisdiction of the Independent Police Complaints Commission.

In more recent years, there has been a significant drop in the number of special constables compared with about 30 or 40 years ago when their numbers were much higher. Although in some areas they exist in fairly large numbers, this is not reflected generally, and in some parts of the country the ratio of specials in relation to regular police officers is quite low. Despite recruitment campaigns at local and national level, the main difficulty appears to be the retention of those who do join. There are many reasons for the relatively large number of resignations from the special constabulary every year,<sup>19</sup> including the fact that some join the regular force. Meanwhile, the Government is committed to a number of initiatives designed to increase the overall strength of the special constabulary and to improve its overall effectiveness.

### THE 'EXTENDED POLICE FAMILY'

A major change in the structure of policing in England and Wales has recently been effected through Part 4, Chapter 1, and Schedules 4 and 5 to the Police Reform Act 2002. These provisions have created the concept of the 'extended police family' that is designed to give certain civilians a selected range of police powers. The 2002 Act creates five main classes of civilians who can be conferred with these powers, namely community support officers, investigating officers, detention officers, escort officers and accredited civilians. This new and controversial scheme is discussed in Chapter 7 under the heading 'Civilians given police powers'.

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<sup>19</sup> For a discussion on a suggested scheme that, *inter alia*, could improve recruitment and retention rates in the special constabulary, see Jason-Lloyd, L, 'Police reform – a better way?' (2003) 167 JP 805.

## COMPLAINTS AGAINST THE POLICE

### Introduction

The foregoing coverage has endeavoured to provide an insight into the foundations of the modern police service. The following chapters will provide an introductory guide to the key issues affecting the exercise of police powers that should assist in giving a broad picture of the increasingly complex nature of policing in this country. Inevitably, a book of this nature tends to present the subject in a rather sanitised manner, with little reference to the stark realities of the overall environment in which such powers are exercised, both from the public, as well as the police, standpoint. However high the standards of the police service may be, there must be appropriate mechanisms of accountability at all levels in order to maintain credibility. The latter is most important, for it is upon this that the concept of policing by consent depends. One of the ways in which any modern police service in a democratic society can preserve public support is by having a fair and efficient police complaints system.

### The development of the complaints system

Prior to the enactment of the Police and Criminal Evidence Act 1984, which significantly reformed this process, the police complaints system in this country had become the subject of increasing criticism. The earlier system inspired little public confidence because, *inter alia*, the complaints procedure was the same regardless of whether a complaint was serious or trivial, and this often wasted the time of senior police officers where the matter could be dealt with less formally. In addition, there were doubts about the independence of the body responsible for investigating complaints enacted under the Police Act 1976, namely, the Police Complaints Board, especially in view of reports that investigating officers had sometimes tried to persuade complainants to withdraw their allegations.<sup>20</sup> Therefore, Pt IX of the Police and Criminal Evidence Act 1984, headed 'police complaints and discipline', contained measures which constituted an overhaul of the earlier system. One of its principal reforms was the forming of the Police Complaints Authority, which replaced the Police Complaints Board.

In response to calls for further reforms, the provisions of the 1984 Act were replaced initially by the relevant measures under the Police and Magistrates' Courts Act 1994, but were subsequently recast under the Police Act 1996, together with accompanying regulations. In April 1999, that new system of police complaints and discipline was put into force, but since then there has been increasing pressure from numerous sources to reform the complaints system even further. Among other things, this was based on the belief that the Police Complaints Authority was not sufficiently independent of the police and that the system did not reflect the impartiality expected of it. Furthermore, in *Govell v UK* (Application No 27237/95), it was held that the

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<sup>20</sup> Zander, M, *The Police and Criminal Evidence Act 1984* (4th edn, London: Sweet & Maxwell, 2003).

police complaints system did not provide an adequate remedy for the purposes of Art 13 of the European Convention on Human Rights;<sup>21</sup> and in *Khan v UK* (2000) 31 EHRR 45, it was held that the Police Complaints Authority was not a sufficiently independent body and this led to a violation of Arts 13 and 8 of the European Convention. A further major influence in changing the police complaints system was the findings of the Stephen Lawrence Inquiry. All this has now led to the formation of the Independent Police Complaints Commission (the IPCC) under Pt 2 and Sched 3 to the Police Reform Act 2002. The provisions of the 2002 Act are augmented by regulations and various sources of guidance. The IPCC has been in operation since 1 April 2004, and an overview of this new body, as well as the new system of police complaints generally, will now be given.

### The new police complaints system

There are several mechanisms within the structure and functions of the IPCC that are designed to increase public confidence in the new system. Under the Police Reform Act, there must be at least 10 members of the IPCC plus a chairperson. The chairperson is appointed by the Queen and the other commissioners are appointed by the Home Secretary, but none of them should be appointed if at any time they have held the office of constable or have been a member of the National Criminal Intelligence Service or the National Crime Squad. The independence of the IPCC is further reinforced by the provisions under s 9 of the Police Reform Act 2002 which, *inter alia*, states that it 'shall be a body corporate' and it 'shall not be regarded as the servant or agent of the Crown or enjoy any status, privilege or immunity of the Crown, and the Commission's property shall not be regarded as property of, or property held on behalf of, the Crown'. In other words, it is a free-standing public body that is independent of the Government.

It should be mentioned that complaints against the police regarding incidents that occurred prior to 1 April 2004 will be dealt with by the IPCC in accordance with the earlier system. This provision has been made by the Independent Police Complaints Commission (Transitional Provisions) Order 2004.

The scope of persons who are subject to the new system is much wider than previously. At one time it was only regular police officers who were subject to the complaints process. Now, however, it includes many more classes of persons within the police service. These include not only regular police officers but also special constables and civilian employees. The latter will also include civilians who are part of the extended police family, namely community support officers, investigating officers, detention officers and escort officers. (Separate arrangements exist for dealing with complaints against accredited civilians.) The scope of complaints in this context does not include general matters of discontent such as the way that police resources are allocated and the deployment of patrols in certain areas. Complaints must relate to specific conduct by police officers. Under s 12 of the Police Reform Act, the persons who may make a complaint are the victims, witnesses and those who are adversely affected by the alleged police misconduct. The latter includes persons who have been

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21 Article 13 is the 'Right to an Effective Remedy'. Although this Article is not one of those included under the Human Rights Act 1998, the UK courts are obliged to take case law into account that has arisen from Convention jurisprudence.

placed in danger or have suffered loss or been caused distress or inconvenience. If the complaint is against a police officer above the rank of chief superintendent, that officer's police authority should record it, otherwise the chief officer of police should record the complaint if it involves an officer below that rank. The complainant should receive a copy of the complaint and an appeal may be made to the IPCC in the event of a refusal to record it. If a complaint is sent direct to the IPCC, this will be transferred to the police with the consent of the complainant, although this will be done anyway if it is considered to be in the public interest. Serious complaints such as those involving death, serious injury, serious sexual offences, serious race, sex or religious discrimination, serious corruption and any serious arrestable offence must be referred by the police to the IPCC, otherwise they have a discretion to refer cases. In certain instances, the IPCC may 'call-in' a specific case that requires the police to refer it for their consideration.

Schedule 3, para 8 to the Police Reform Act 2002 preserves the earlier practice of resolving less serious complaints through a relatively informal procedure. Under the previous system, this was called 'informal resolution', but under the new regime, it is named 'local resolution'. The complainant must consent to this procedure and may appeal if it is not followed. Incidents that have often proved appropriate for this procedure include a general lack of politeness that may be resolved through a simple apology, or other informal methods such as the officer providing an explanation for his or her conduct. However, the IPCC must decide how a complaint will be dealt with in more serious cases which, in turn, may be referred back to the police for investigation. The new rules enable the police to conduct investigations without the supervision of the IPCC or this may be done under its supervision. The latter constitutes a new procedure under the complaints system whereby the IPCC may actually manage or direct an investigation. This is another change compared with the earlier system that is intended to engender greater public confidence in the way in which complaints against the police are dealt with. It is submitted that this may have been modelled on the way that the Criminal Cases Review Commission review alleged miscarriages of justice under the Criminal Appeal Act 1995. This enables them in certain cases to adopt a 'hands on' approach in which the police are under their direct supervision rather than being allowed to deal with the investigation at their own discretion, although the latter may still apply where appropriate. Alternatively, they may conduct investigations using their own staff, which is also a procedure sometimes used by the Criminal Cases Review Commission.

One of the key changes in the new system is that complainants will have greater involvement in this process compared with the earlier regime. These include the IPCC having to take into account the complainant's views as to whether an investigation should be managed or conducted using in-house staff. Complainants will also be entitled to regular progress reports and to notification of decisions taken, as well as having access to several routes of appeal at different stages in the investigation, including the outcome. In addition, complainants are permitted to be present during disciplinary hearings and may be accompanied by up to three friends. However, complainants do not have any right to legal representation.

Whether the police or the IPCC have investigated the complaint, on its completion the relevant body must decide whether to forward the matter to the Director of Public Prosecutions in order to consider any criminal charges. If the matter is not referred to the DPP or the decision is taken not to prosecute, consideration must be given

regarding any disciplinary action. In certain circumstances, the IPCC may direct that a disciplinary hearing is conducted in public.

## The Police Appeals Tribunal

As a result of a complaint, a police officer may be subject to dismissal from the force, be required to resign or be reduced in rank. These (and other sanctions) may also apply in consequence of other misconduct where this is identified by a person within the police service or where the officer's performance of his or her duties is unsatisfactory. A police officer may ultimately appeal against any of the three specific sanctions listed above to the new Police Appeals Tribunal, which replaces the earlier system whereby police officers could appeal to the Home Secretary. This body has a slightly different composition depending upon whether the appellant is a senior officer or not. The common ground is that there must always be a legally qualified chairperson, a member of a police authority and a former or serving chief officer from another police force. On the conclusion of the proceedings, the Police Appeals Tribunal will either uphold the original decision or make an order which is less severe than the original decision.

The Code of Conduct under Sched 1 to the Police (Conduct) Regulations 2004, which came into force on 1 April 2004, sets out the standards expected of police officers, which, if not reached, can lead to disciplinary action being taken, whether or not a complaint is involved. All police officers are subject to the regulations, regardless of rank, and they now also apply to special constables. The regulations not only state the procedures involved in cases of misconduct, they also contain the Code of Conduct, which is reproduced as follows:

### SCHEDULE 1

#### Code of Conduct

##### Honesty and integrity

- 1 It is of paramount importance that the public has faith in the honesty and integrity of police officers. Officers should therefore be open and truthful in their dealings, avoid being improperly beholden to any person or institution and discharge their duties with integrity.

##### Fairness and impartiality

- 2 Police officers have a particular responsibility to act with fairness and impartiality in all their dealings with the public and their colleagues.

##### Politeness and tolerance

- 3 Officers should treat members of the public and colleagues with courtesy and respect, avoiding abusive or deriding attitudes or behaviour. In particular, officers must avoid: favouritism of an individual or group; all forms of harassment, victimisation or unreasonable discrimination; and overbearing conduct to a colleague, particularly to one junior in rank or service.

##### Use of force and abuse of authority

- 4 Officers must never knowingly use more force than is reasonable, nor should they abuse their authority.

##### Performance of duties

- 5 Officers should be conscientious and diligent in the performance of their duties. Officers should attend work promptly when rostered for duty. If absent through sickness or injury, they should avoid activities likely to retard their return to duty.

**Lawful orders**

- 6 The police service is a disciplined body. Unless there is good and sufficient cause to do otherwise, officers must obey all lawful orders and abide by the provisions of Police Regulations. Officers should support their colleagues in the execution of their lawful duties and oppose any improper behaviour, reporting it where appropriate.

**Confidentiality**

- 7 Information which comes into the possession of the police should be treated as confidential. It should not be used for personal benefit and nor should it be divulged to other parties, except in the proper course of police duty. Similarly, officers should respect as confidential, information about force policy and operations, unless authorised to disclose it in the course of their duties.

**Criminal offences**

- 8 Officers must report any proceedings for a criminal offence taken against them. Conviction of a criminal offence or the administration of a caution may, of itself, result in further action being taken.

**Property**

- 9 Officers must exercise reasonable care to prevent loss or damage to property (excluding their own personal property, but including police property).

**Sobriety**

- 10 Whilst on duty, officers must be sober. Officers should not consume alcohol when on duty, unless specifically authorised to do so or it becomes necessary for the proper discharge of police duty.

**Appearance**

- 11 Unless on duties which dictate otherwise, officers should always be well turned out, clean and tidy whilst on duty in uniform or in plain clothes.

**General conduct**

- 12 Whether on or off duty, police officers should not behave in a way which is likely to bring discredit upon the police service.

**Notes**

- (a) The primary duties of those who hold the office of constable are the protection of life and property, the preservation of the Queen's peace and the prevention and detection of criminal offences. To fulfil these duties, they are granted extraordinary powers; the public and the police service therefore have the right to expect the highest standards of conduct from them.
- (b) This Code sets out the principles which guide police officers' conduct. It does not seek to restrict officers' discretion; rather, it aims to define the parameters of conduct within which that discretion should be exercised. However, it is important to note that any breach of the principles in this Code may result in action being taken by the organisation, which, in serious cases, could involve dismissal.
- (c) Police behaviour, whether on or off duty, affects public confidence in the police service. Any conduct which brings or is likely to bring discredit to the police service may be the subject of sanction. Accordingly, any allegation of conduct which could, if proved, bring or be likely to bring discredit to the police service should be investigated in order to establish whether or not a breach of the Code has occurred and whether formal disciplinary action is appropriate. No investigation is required where the conduct, if proved, would not bring or would not be likely to bring, discredit to the police service.

### Other forms of redress

'Probably the strongest means of enforcement of good conduct by the police is the exclusion of improperly obtained evidence under ss 76 and 78 of the Police and Criminal Evidence Act 1984.'<sup>22</sup> Apart from this potent sanction (discussed in subsequent chapters), there are other ways in which misconduct by the police may be dealt with. In the more extreme cases where, for instance, property may have been damaged unnecessarily by officers during a search or where excessive or unnecessary force was used in the exercise of their powers, a criminal prosecution could ensue, especially where the damage or any injury was severe or, in the latter instance, even fatal. With regard to fatalities, it is mandatory for a coroner to empanel a jury for an inquest where a person has died as a result of injuries inflicted by the police or where a person has died in police custody. In more recent years, a small number of police officers have faced homicide charges arising from such proceedings. However, such cases are comparatively rare. In situations where non-fatal harm is inflicted, it is more common for civil action to be taken against the police. Whilst breaches of the provisions of the Police and Criminal Evidence Act or the Codes of Practice do not necessarily give rise to criminal or civil liability, a breach may be relevant in other actions and taken into account by the courts.

A fairly common civil action taken against the police is the tort of trespass to the person, the two main forms of which are an assault and battery, and false imprisonment. An assault and battery constitutes the unlawful application of force against another person, no matter how slight. Therefore, no injury need be inflicted, although the case will attract greater damages if personal injury resulted from the conduct in question. The court will also take into account any actions by the claimant which may have contributed to the incident. An assault and battery would apply in instances where excessive force was used by the police in exercising their powers or where a person was unlawfully searched or detained, even if very little restraint was applied against that person. False imprisonment will apply in cases where a person has been unlawfully deprived of his or her liberty, even if this was for a short time. This does not only mean unlawful detention in a police station, but will apply if a person was unlawfully detained elsewhere. Although there is no single tort of wrongful arrest or detention, this conduct usually falls under the heading of false imprisonment and, if any measure of force was used, an assault and battery as well.

The police may also be subject to an action under trespass to land where, for instance, they have entered property without lawful authority. If damage has been done to the property or anything in it, then they could also be liable for an action under trespass to goods. Other civil actions may include negligence and malicious prosecution. However, many cases are settled out of court – a common feature of the civil law process.

22 Cape, E and Luqmani, J, *Defending Suspects at Police Stations: The Practitioners' Guide to Advice and Representation* (3rd edn, London: Legal Action Group, 1999). See also *R v Fennelley* (1989).

Before departing from the issue of police misconduct, it is submitted that a very candid and realistic view of this subject can be found in the following extract from a comparatively little-known publication:<sup>23</sup>

In its various ugly forms, violence is all too prevalent a part of the hurly burly of the police officer's daily life in some areas. Many assaults take place. Every day, police officers are injured in London. All these incidents are hurtful and unpleasant and, occasionally, some are very serious indeed, leading to grave incapacity and, tragically, even to death. Rightly, there is always public concern about these assaults; much is said, and many new initiatives are proposed, in the quest to reduce the level of violence in our society though, alas, progress seems painfully slow to those of us who have to face it daily. And when things go badly awry, on an individual or on a Force basis, and police are accused of assault or brutality, the spotlight rightly falls on us. Out of even relatively simple cases, great debates arise. Accusation and counter-accusation abound.

The actions of individual officers are probed again and again. Explanations, though they be true or false, are hoisted up to the light and penetrated and shaken, sometimes with scant regard to the fact that, at the time, the officer had not the facility of this fine hindsight and was obliged to judge things in an instant, to react immediately. But that is the way of police life, of course, and it is proper and right that there should be careful public invigilation of our use of force. And the more so since, on a number of occasions, we have been found wanting; incidents ranging from careless over-reaction and burly excess to deliberate and wicked assault have been levelled, and proved, against individual officers. All the more important, then, that we should develop our ability to remain calm and restrained, and to apply force economically and humanely.

You should regard it as a matter of personal pride to be able to arrest a violent offender, quell a breach of the peace or deal expeditiously with a disturbed or drunken man quietly, skilfully and with the minimum of fuss. Your training has just that in view and it is important that police officers should develop the expertise and maintain their physical fitness to do these things well. Your experience will show you that, as your skills improve, so your confidence grows and the chances of your receiving an injury diminish ... You should strive to exhibit those attitudes, whatever the pressures and the provocation. The more often you succeed in doing this, the greater will be your resolution when next faced with violence, and the more impressive your example to other officers.

It may be appropriate at this point to mention briefly some specific offences which can be committed *against* the police. Two of the most well known are those of assault and obstructing police under s 89(1) and (2) of the Police Act 1996. Assault on police under sub-s (1) is triable summarily and is usually confined to cases which fall within the ambit of a common assault, although it has been known for the prosecution to downgrade rather more serious cases to this level. As will be seen in succeeding chapters, it is essential that the police officer in question is acting in the execution of his or her duty for this offence to be committed, and this offence extends to persons who are assisting police officers. The maximum sentence on conviction for assault on police is 51 weeks<sup>24</sup> imprisonment and/or a fine not exceeding £5,000. The offence under

23 Metropolitan Police, *The Principles of Policing and Guidance for Professional Behaviour* (London: Metropolitan Police, 1985).

24 This apparently odd figure is the new maximum sentence imposed for shorter custodial sentences under the Criminal Justice Act 2003.

sub-s (2) of wilfully obstructing police includes resisting a constable in the execution of his or her duty. Whilst resisting may involve such acts as tearing away from a police officer's hold, obstructing police may not always necessitate physical contact. It has been held that any act which makes it more difficult for the police to perform their duty can amount to obstruction. This includes providing deliberately misleading information and warning persons committing offences of approaching police officers. Persons assisting the police also fall within the ambit of these offences, which are triable summarily and punishable by a maximum of 51 weeks' imprisonment and/or a fine not exceeding £1,000.

