THE ADMINISTRATION OF JUSTICE IN NORTHERN IRELAND : A STUDY

Terms of Reference

1. In the note attached to his minute of 27 November 1987 to PS/PUS, Mr Burns proposed a thorough but rapid in-house study of public confidence in the administration of justice in Northern Ireland in which he sought answers to the following questions.

a. What is the evidence for a (relative) lack of public confidence in nationalist circles in the administration of justice in Northern Ireland ? How deep does the lack of confidence run ? And, crucially, what are the factors that appear to prompt this lack of confidence ?

b. What steps (either in theory or in practice) seem necessary to overcome that lack of confidence ? Do we need individual steps tackling individual issues ? Or do we need some larger, quasi-political, gesture which, like the Anglo-Irish Agreement itself, will signal a convincing change in attitude? Or do we need both ?

c. Are the answers at b. likely to reduce the level of unionist confidence in the administration of justice ? Indeed, is there any evidence that there is already some lack of unionist confidence in the administration of justice ? Are any measures needed to counteract this, or any unionist dismay at the measures identified at b. ?

2. It was agreed that I should carry out the study and report by the end of January 1988.

Methodology

3. The study was carried out in two parts: first a review of all recent published material on the administration of justice in Northern Ireland, and comment and survey work concerning attitudes of the community in Northern Ireland towards the administration of justice and law and order issues (Bibliography at Annex A); and second a series of meetings and interviews with a wide range of people in Northern Ireland who could be considered to be in touch with those most directly affected by the administration of justice. Those consulted are listed at Annex B. I am most grateful for the help of Dr Harbison and the staff of PPRU with the first part of my study; and for the help of Mr McConnell, Dr Alford and the staff of PAB with the second part. The weight to be attached to the findings of this study must therefore take account of the facts that I have drawn on published comment and survey work which in some cases are not absolutely current and which were not always targeted specifically on my terms of reference; and that my own human research was necessarily impressionistic and often conducted semi-covertly.

4. It very soon became apparent that everyone in Northern Ireland defined the administration of justice differently from everyone else and in almost all cases took it to mean more than just the composition and procedures of the courts. In the light of this, at an early stage in my study, I refined the questions posed by Mr Burns into a survey of attitudes, perceptions and views of the system of justice in Northern Ireland. For the purposes of the study, the system of justice was defined as the workings of the whole body of emergency and temporary legislation dealing with terrorism (ie EPAs 1978 and 1987 and the PTA 1984).

5. The framework of questions to which I sought answers followed the following lines.

a. What are the subjects which raise most concern and dissatisfaction for people in Northern Ireland ?

b. Is there wide-spread dissatisfaction with the system of justice within the Catholic/Protestant community ?

c. If yes, how strong is that dissatisfaction and is it an opinion that it is a major factor in contributing to disaffection from the institutions of government and law and order in Northern Ireland within the Catholic/Protestant community ?

d. If yes, do you think the dissatisfaction is spread evenly across all groups in the Catholic/Protestant community or does it differ in intensity between groups within the community ?

e. If there is dissatisfaction is it possible to identify the main factors that cause it ?

f. If these factors can be identified do they differ between groups and, if so, in what way ?

g. Are there any views on what realistic, practical actions HMG could take to improve the situation ?

6. With the reading and field work now completed this report seeks to draw together the findings of both parts of the study, to draw general conclusions and to make recommendations.

The Context of the Study: The Administration of Justice in Northern Ireland

7. As mentioned above, the administration of justice in Northern Ireland is interpreted by people in different ways. It is taken by very few people to mean only the Diplock Court system. It is taken by many to include: the law which defines offences; the way that law is enforced by the police and, in the case of emergency legislation, by the armed forces; the court process (including the Diplock Courts) through trial, judgement and, where applicable, sentencing; and post-trial disposals such as probation and imprisonment.

8. The courts therefore are only a part of the system and the Diplock courts only a very small part of the work of the courts. This is illustrated by the table at Annex C reproduced from the Judicial Statistics for Northern Ireland for 1986 showing that there was a total of 1325 cases disposed of in the Crown Courts in that year of which 329 were scheduled offences, in 264 of which the accused pleaded guilty. A total of 218 Crown Court cases went to trial, of which 65 were for scheduled offences. In the same year 301 criminal cases were heard by the Court of Appeal, of which 163 (or 54%) were scheduled cases. 43% of scheduled appeals were successful. The number of civil cases heard by the Court of Appeal was 41.

9. In the same year the County Courts disposed of 4093 appeals from Magistrate's Courts, 1967 criminal injury cases and 2248 other civil cases; and the Magistrates Courts dealt with 95384 charges including 10774 indictable offences. (All these figures are taken from the Judicial Statistics for Northern Ireland produced by the NI Courts Service.)

10. All oral evidence confirmed that the work and practice of the Diplock Courts directly affected only a very small proportion of the Catholic community and an even smaller proportion of the Protestant community.

The Literature

11. Evidence, so far as it exists, on the attitudes and perceptions of the community to the administration of justice tends often to be based on brief attitude surveys or opinion polls commissioned by the media to coincide with significant events such as elections. Hence they tend to yield fairly undifferentiated data on attitudes and perceptions rather than evidence at the more detailed level that was being sought in this study. Nevetheless, I was able to identify a small number of sources which gave good indications of general levels of satisfaction with the administration of justice in the Catholic and Protestant communities.

12. I took my research back as far as the opinion poll on attitudes towards law and order in Northern Ireland carried out by Price Waterhouse Associates for the Belfast Telegraph and published on 6 February 1985 (see Annex D). The two questions which were most relevant to this study were as follows:

a. Question: "Do you think that in the main the legal system in Northern Ireland dispenses justice very fairly, fairly, unfairly or very unfairly ?"

Response	Catholic (%)	Protestant (%)
Very fairly	4	25
Fairly	32	64
Unfairly	37	7
Very unfairly	20	2
Don't know	7	2

b. Question: "How fair do you think the RUC is in the discharge of its duties in Northern Ireland ?"

Response	Catholic (%)	Protestant (%)
Very fair	4	37
Fair	43	59
Unfair	38	3
Very unfair	15	1

13. The responses to both these questions indicate that in early 1985 substantial proportions of the Catholic community (57% and 53% respectively) thought that to some degree the legal system was unfair and that the RUC was unfair in the discharge of its duties. Protestants on the other hand (89% and 96% respectively) mostly thought that both were fair to some degree. It should be noted that a particular source of disaffection with the administration of justice with both communities at the time was the use of the "supergrass" system to secure convictions in terrorist cases.

14. Other survey work of interest includes: the work on the law and the security forces carried out in 1986 by the Policy Studies Institute (PSI) for SACHR (Annex E); the questions on attitudes to the police in the 1985 NI Continuous Household Survey (CHS) (Annex F); and Professor John Darby's literature reviews on the impact of the conflict in 1984, 1985 and 1987 (copies of which I am holding if required). I summarise below a synthesis of the evidence available in this material which is relevant to this study.

15. The June 1986 PSI Survey revealed that Catholics cited unemployment as the biggest problem in Northern Ireland today and selected the provision of equal opportunities as the one change most needed to end the troubles. Not surprisingly, the Protestant community regarded the Anglo-Irish Agreement as the single biggest problem in Northern Ireland, taking precedence over political violence and intimidation. There is little survey evidence of general widespread alienation from the institutions of law and order within the Protestant community but some evidence of an erosion of confidence in the police and the courts.

16. Although inequality of job opportunities and discrimination in unemployment appear to be generally more salient with the Catholic community than dissatisfaction with the system of justice, nevertheless according to the PSI Survey the courts were perceived to be unfair when dealing with Catholics. As the survey highlights, the most worrying finding is that 21% of Catholics appear to have lost confidence completely in the way the courts treat their own group. This loss of confidence by Catholics in the way the courts treat Catholics does not extend to the majority of them but it does affect a substantial minority: somewhere between 20% and 40% depending on the criterion used. Unusually, in the light of attitudes to other perceived injustices by Catholics, there was no consistent tendency for working class Catholics to be more critical of the courts than those belonging to the middle class. Nor did the dissatisfaction come from Sinn Fein supporters alone; 40% of SDLP supporters thought that the courts were unfair to some degree when dealing with Catholics.

17. With regard to the police and the armed forces, 68% of Catholics appear to believe that the Regular Army treats both sides of the community even-handedly while the proportions for the RUC and for the UDR are 42% and 27% respectively. The proportion of Catholics who believe that the security forces treat Protestants better than Catholics is 28% for the Army, 56% for the RUC and 68% for the UDR. Thus the PSI survey shows that there is considerably more confidence among Catholics in the even-handedness of the Army than of either the police or the UDR.

18. The survey evidence is that dissatisfaction with law and order matters is not spread evenly across all groups in Catholic/Protestant communities and that it does differ in intensity between groups within communities. People living in exclusively Catholic areas tend to express more disaffection than those living in mixed areas. Interesting differences also emerge in the CHS data at Annex F on the attitudes of Protestants and Catholics to the quality of the job done by the police, particularly when socio-economic data are taken into consideration (remembering that these data pre-date the signing of the Anglo-Irish Agreement). Overall 60% of Catholics appear to believe that the police do a good job while 16% believe that their performance is poor. A further 22% were unwilling to offer an opinion. When socio-economic groups (or class) are taken into account, then 77% of Catholics in the professional, employer and managerial class perceive the police as doing a good job, as do 70% of the intermediate non-manual group; but the proportion drops to 57% among the unskilled manual and to 45% among those who are unemployed.

19. These surveys and opinion polls do not, however, indicate the causes of the apparent lack of confidence in the legal system and in the police by a worryingly high proportion of the Catholic community, although they perhaps offer a clue by indicating that the lack of confidence is highest in communities that are, to all intents and purposes, exclusively Catholic and working class. There is, nevertheless, considerable literature on what are considered to be the causes of concern in the system of justice in Northern Ireland. A review of that literature has identified the following main areas of alleged concern:

a. the oppressive use of their stop, search, arrest and seizure powers by the security forces, particularly in Catholic working class areas;

b. the unlawful use of lethal force by the security forces;

c. no system of investigating complaints against the security forces that commands public confidence;

d. the lenient treatment of members of the security forces by the prosecuting authorities and by the courts;

e. the undue delays in bringing an accused to trial who has been remanded in custody;

f. the non-jury mode of trial;

g. the rules on admissibility of evidence in trials for scheduled offences;

h. biased sentencing;

i. oppressive use of port controls in GB under the Prevention of Terrorism Act (PTA);

j. use of exclusion powers under the PTA;

k. an unrepresentative judiciary;

l. an insufficiently compassionate approach to the length of sentences served by young persons imprisoned for terrorist offences;

m. a biased policy on the location of convicted prisoners; and

n. strip searching of prisoners.

20. Among the reforms which have been advocated are the following:

a. repeal of Section 14 EPA - the powers of arrest of members of HM forces;

b. the establishment of effective police/community liaison committees;

c. the creation of a body, independent of the police, with powers to investigate complaints of criminal behaviour by members of the security forces;

d. the introduction of statutory time limits on the period from first remand to trial for scheduled offences;

e. the reintroduction of jury trial - with special safeguards - for all offences;

f. the replacement of the single judge in the trial of scheduled offences by three judges or a judge and lay assessors;

g. the restoration to trials of scheduled offences of the common law rules on admissibility of evidence;

h. rules to prevent a judge in a Diplock Court from continuing with a trial after he has examined evidence which he has then ruled inadmissible;

i. the introduction of more Catholic judges on to the Bench, particularly in the County Court;

j. repeal of the PTA 1984 or, at least, repeal of the port powers and of the exclusion powers;

k. a more liberal policy of releasing on licence young offenders convicted of scheduled offences and serving indeterminate sentences;

l. a system permitting persons from Northern Ireland convicted of terrorist crimes in GB to serve their sentences in prisons in Northern Ireland. It is argued that if this is not justified on its merits, it is nevertheless required as a reciprocal move to take account of the fact that members of the regular armed forces convicted of crimes in Northern Ireland invariably serve their sentences in GB prisons;

m. introduce an offence of unlawful killing;

n. ban strip searching;

o. ban the use of plastic baton rounds; and

p. repeal the EPAs 1978 and 1987.

The Oral Evidence

21. Over the period from 20 December 1987 to 26 January 1988, with the assistance in some instances of PAB staff, I discussed the system of justice and its effects on the community (and particularly the Catholic community) with as many people as possible from Northern Ireland who worked within the system of justice, were actively concerned with the effects of the system on the community or were close to those in the community affected by the system. The full list of those consulted is at Annex B but among them were the Director of Public Prosecutions for Northern Ireland, the Director of the NI Courts Service, Anthony Campbell QC, the Chairman, Secretary and some members of the Standing Advisory Commission on Human Rights (SACHR), members of the Committee on the Administration of Justice, Catholic priests, barristers, solicitors, journalists, the Chief Probation Officer and members of the NI Probation Service, Sir Kenneth Bloomfield, Dr Maurice Hayes and other senior members of the NIO and of the NICS outside the NIO, Professor John Darby, Dr Drew Hamilton of the New University of Ulster and his team of research workers carrying out field community studies across Northern Ireland (in Omagh, Londonderry, Castlederg and Divis/Twinbrook in Belfast).

Most were unaware of the precise nature of the study I was conducting but knew that I was working in the field of the emergency legislation and was interested in its impact on communities in Northern Ireland.

22. I have been struck by the very high degree of consensus in the responses I have received. There was unanimity that in the Catholic community the overriding concerns were with unemployment and what is perceived as general discrimination against Catholics. It was also readily conceded that the 30-35% of the Catholic community that is strongly Republican and would tend to support Sinn Fein is and will remain dissatisfied with all aspects of what it sees as British colonial rule. They will cynically use those of its institutions (such as its health, social security and housing provisions and its courts) from which they can benefit while denying the legitimacy of those institutions. No reforms short of a commitment by HMG to a united Ireland will satisfy this group.

23. Nevertheless, most of those I talked to identified a feeling of injustice among a majority of Catholics of all classes and political allegiances (but felt most strongly by the working class) at the way their lives were affected by the system of justice. The strongest grievance was not with the courts, which had little or no direct impact on the lives of the majority of Catholics, but with the way they - and in particular juveniles and young people - were treated in their daily contacts with the police. Interestingly, this concern was also expressed by Protestant working class communities where I was able to draw on the current experiences of the NUU community field researchers and of the Civil Representative Organisation.

Policing

24. In general terms the concern is that the police are over-aggressive and provocative: they are conditioned and equipped to deal with terrorism, trained mainly to act as part of a group and not as individual constables, and incapable of differentiating between acts of terrorism and political rioting and acts of petty

lawlessness, vandalism and unruly behaviour typical of young people in deprived working class areas with high levels of youth unemployment throughout the British Isles. In general, it is alleged that very little community policing is attempted and that in most Catholic working class areas the police are, at best, reluctant to deal with "ordinary" crime. There were a number of complaints that the police abuse their powers under the EPA by using them to detain or arrest young people in circumstances where there can be no "reasonable suspicion" of involvement in terrorism. It was pointed out that when community spokesmen or representatives spoke to more senior police officers there was often a greater awareness of and sensitivity to concerns and grievances but that the daily interface was with young, "macho" policemen whose demeanour and attitudes provoked a hostile response.

25. It was reported that there is no confidence in the handling of complaints against the security forces. Complaints to one policeman about verbal or minor physical harrassment by other policemen are widely considered in Catholic and Protestant working class communities to be a waste of time. Consequently redress for more serious misconduct is considered unlikely. Anecdotal evidence of failures to prosecute or of acquittals of members of the security forces for instances of the use of unreasonable force is high in the Catholic community and among civil rights activists.

26. The oral evidence overwhelmingly confirmed the survey evidence that the Regular Army were perceived to be the most even-handed in dealing with the public, that there was some widespread dissatisfaction with the police and that, to all Catholics, the UDR were anathema.

The Courts

27. The first and most important point to make is that, with the exception of those who were civil rights activists or who had political points to make, there was no deep or widespread concern expressed to me about the quality of justice available to Catholics or Protestants in the Diplock Courts. As has been pointed out

earlier, the working of the Diplock Courts directly affects only a very small proportion of the people in Northern Ireland. All but one or two members of the Committee on the Administration of Justice agreed that the 3-Judge court issue had been misconceived by the Irish Government, although there was a fair degree of understanding how the quality of justice in the Diplock Courts had come to be called into question during the time of the "supergrass" trials when the Anglo-Irish Agreement was being negotiated. It was also conceded by many that the subsequent decisions of the Court of Appeal had done much to restore confidence in the system but at the cost of depriving a large number of people (who were subsequently acquitted) of their freedom for an unacceptably long time.

28. The majority of those consulted - including Catholic lawyers and Priests - believed that the judges in the Diplock Courts were generally fair, although occasional unfortunate obiter dicta by some such as the late Lord Justice Gibson were still remembered and resented. The Lord Chief Justice was very much seen by all the lawyers I consulted as a resolute defender of the independence and the integrity of the Northern Ireland Courts and of their reputation for the fair administration of justice in the British tradition of the Common Law.

29. Most acknowledged that a complete return to jury trial for all criminal cases in the present polarised atmosphere of fear and intimidation was not possible; although some felt that more could be done to prevent non-terrorist offenders being tried for scheduled offences. The community field researcher in Divis/Twinbrook made a point mentioned by others that there were some who would positively fear a return to jury trial for scheduled offences because of the high likelihood of biased juries producing unsafe or perverse convictions.

30. Some, such as the members of the Committee on the Administration of Justice, took up a more principled and less pragmatic position and, drawing on the well-documented criticism of the Diplock Courts, called for a return to jury trial, a reversion

to the Common Law rules on admissibility of evidence and the like. Some reassurance was also sought that there would be no return to convictions on uncorroborated accomplice evidence.

31. Some Catholic solicitors were concerned at delays apparently caused by waiting for bail applications in scheduled cases to be heard by High Court Judges and suggested that power to award bail in scheduled cases should be extended to Resident Magistrates. However, the DPP (NI) responded to this criticism by saying the delay would very rarely be more than 24 hours and that this was more than offset by the consistency and high quality of justice in bail applications heard in the High Court.

32. Just as there had been a virtual consensus that 3-Judge Courts had been a non-issue for the great majority of Catholics in Northern Ireland, so there was widespread agreement that reforms in the Diplock Court system would have little or no effect on the confidence of most Catholics in the British system of justice. Indeed, to my surprise, when asked what measures HMG could take which would have the greatest impact on Catholic views of the system of justice, all of the Catholic priests and a significant number of middle-class, Catholic people in the professions referred to two matters, outside the jurisdiction of the Secretary of State. These were freedom for those imprisoned and an admission of miscarriage of justice in the Birmingham and Guildford bombing cases, and repatriation to Northern Ireland prisons of those persons from Northern Ireland imprisoned in GB for terrorist offences.

33. My discussions on attitudes and perceptions of Catholics to the administration of justice in the courts have led me to the conclusion that while there is a general suspicion of the quality of British justice <u>throughout the UK</u> when applied to the Irish (ie Irish Catholics), only legal academics and those with an active interest in civil rights issues have substantive concerns about the Diplock system. I am speculating here, but it seems to me that Catholics in Northern Ireland have been conditioned to accept different treatment under the law from the remainder of UK citizens and that they resent being treated differently but, given that

unwelcome situation, they accept that in general the Diplock system is fair. It is only when the system is perceived to operate unfairly (eg during the "supergrass" trials) that the latent resentment can be mobilised into protest. At the present time, a significant proportion of the oral evidence points to the Birmingham and Guildford bombing cases being regarded as unfair, and to the retention of convicted Northern Irish prisoners in GB prisons as being unnecessarily vindictive.

Other Matters

34. As I explained at the outset, many people take the system of justice to mean more than the courts and the administration of justice. It is necessary to mention, therefore, an undercurrent of feeling, not necessarily confined to the Catholic community nor just to Father Denis Faul, that the Government could show more compassion to young prisoners, particularly Secretary of State's Pleasure prisoners serving indeterminate sentences. An indication that where the retributive element of a period of custody might reasonably be considered spent, the Government was prepared to risk early release back into a supportive community might, according to some, reap disproportionate benefits.

The Protestant Community

35. There is undoubtedly considerable evidence that the presence and behaviour of the police in Protestant working class areas is regarded as often insensitive and provocative. Because, in general, there is not the background threat of a terrorist attack on the police, the hostility between the community and the police more accurately mirrors similar mutual antagonism in working class communities throughout the British Isles. Most observers believe this hostility has become significantly more explicit since the signing of the Anglo-Irish Agreement and the subsequent loyalist protests and disorder. A higher police profile and more aggressive policing in Protestant areas has produced the predictable hostile reaction that could be expected anywhere.

36. The level of self-serving intimidation and racketeering within the Protestant community has inspired antagonism towards loyalist paramilitary groups. However, this antagonism has not been reflected in a correspondingly greater respect for the law and the forces of law and order because of the evident failure to deal with the problem. Even within the business community there is some evidence of an acquiescence to the pressures of intimidation and a diminution in respect for law and order.

37. PAB have pointed out that the general reaction of the Protestant community to the system of justice is rather complex. On the one hand there is respect for the security forces, the courts and the prison system because they provide the defence against Republican violence, but on the other hand they believe not enough is being done. This reaction is directed less against those who actually execute policy than against the Government whose job is perceived to be to provide the ways and means for justice to be administered effectively. However, in looking for a fully effective impartial application of justice there is a crucial ambivalence in the Protestant position: on the one hand very few have any time for the loyalist paramilitary groups and there is general satisfaction when they are arrested and convicted; on the other hand, however, they believe that because the police can more easily operate within Protestant areas (and because the loyalist paramilitaries are usually more inept), there is a disproportionate attrition rate against terrorists within the Protestant community. This is not regarded as wrong but as evidence that more PIRA/Sinn Fein activists should be arrested and convicted.

38. As to whether any measures designed to increase the confidence of Catholics in the system of justice would bring about a corresponding reduction in the level of Protestant confidence, it is a sad fact that all the evidence shows that most Protestants and Catholics evaluate most Government measures on a "zero-sum" basis ie "what are we losing, what are they gaining ?" There would therefore be a certainty that any measures to improve confidence in the system of justice - no matter how objectively desirable - would instinctively be condemned by most Protestants if their purpose was

declared explicitly to assist the minority community or to accede to the representations of the Irish Government. Nevertheless, there may be sufficient concern in both communities about certain aspects of the system of justice (such as policing) that remedial measures could be presented as objectively desirable and of benefit to everyone in Northern Ireland.

Conclusions

39. There is substantial survey, research and oral evidence that there is a significant level of concern at or dissatisfaction with the system of justice among Catholics in Northern Ireland. It is not as strong as concern at unemployment and discrimination. It is strongest and endemic in that 30-35% of the Catholic community that is strongly Republican and which tends to support Sinn Fein. It is also strongest in predominantly Catholic working class areas where the presence of the security forces is most visible and, because of the ever-present terrorist threat, most hostile. Nevertheless a general perception of dissatisfaction or of unequal treatment runs right across the Catholic community and, not surprisingly, is more clearly articulated by the well educated, salaried and professional classes.

40. In its most diffuse form the concern is a perception that British justice (throughout the UK, not just in Northern Ireland) treats Irish Catholics differently from other UK citizens (eg the outcome of the Stalker/Sampson enquiry, the Birmingham and Guildford bombing cases, the working of the PTA 1984, the use of lethal force by the security forces, the retention of Irish prisoners in GB prisons, etc.) In its most acute and identifiable form it is concern at the way of policing Catholic working class areas. It is claimed that it manifests itself in the police assumption that all working class Catholics are terrorists or should be treated as potential terrorists. There is widespread concern at the insensitive and provocative behaviour of young, predominantly Protestant policemen who are perceived to have been trained as a counter-terrorist paramilitary force, not as constables in the

tradition of British community policing. Many complain at the use of the EPA powers by the security forces to stop, question, search, seize and arrest to harass Catholics, particularly young people. And there is concern at the perceived greater readiness of the security forces to use plastic baton rounds and firearms in Catholic areas than in Protestant areas. There is also a perception that "ordinary" crime is deliberately neglected by the police in Catholic working class areas.

41. There is little evidence at present of any major specific concerns among the majority of Catholics about the working of the Diplock Courts. That is not to say that reforms of the Emergency Provisions which were welcomed by the Irish Government and by the SDLP would not help to some small extent to reassure Catholics that HMG was making serious efforts to move towards treating the people of Northern Ireland under the same criminal law as the rest of the people of the United Kingdom. However, on the evidence available the Government would be deluding itself if it thought reforms of the EPA were going to have a significant impact on the majority of the Catholic community.

42. There is some evidence that movement by the Government over the treatment of Secretary of State's Pleasure prisoners would be welcomed by the Catholic community generally (and by many in the Protestant community). It would be seen as a sign of understanding that some young people who were involved in the commission of serious scheduled offences may not have been aware of the full consequences of their actions at the time and that once appropriate retribution has been exacted, it would be merciful to fix a determinate sentence and work towards rehabilitation.

43. The evidence indicates that there is a significant degree of concern in Protestant working class areas at policing methods. Feelings do not run as strongly as in Catholic areas but the causes of concern are the same: a young, paramilitary police force trained primarily to counter terrorism is insensitive, anonymous and provocative in its relationships with the public - particularly the young working class and unemployed. Community policing seems a low

priority. There is no evidence that Protestants generally are dissatisfied with the working of the courts, and in particular, the Diplock Courts impinge directly on an even smaller proportion of the Protestant community than of the Catholic community. In general Protestants as much as Catholics would welcome a softening in the Government's handling of SOSP prisoners.

44. All the evidence indicates that any measures or reforms in the system of justice that were justified on the grounds of increasing the confidence of the Catholic community in the system would be resented by the Protestant community. If they were seen to be carried out at the behest of the Irish Government that resentment would be greatly exacerbated. But there is considerable evidence that some concerns about the system of justice are shared by both communities.

Recommendations

45. In order to avoid accusations of making concessions to the Irish Government with all the negative consequences that would have for the Protestant community the Government should seek to identify and implement reforms in the system of justice which are objectively desirable and which would be generally welcomed by both communities.

46. Policing is a matter of widespread cross-community concern, particularly as it affects young people in working class areas. Whatever the Chief Constable may say about the RUC's commitment to community relations and community policing, the overwhelming evidence is that it is not working. A number of people - both Catholic and Protestant - pointed out to me the absurdity of a Code of Conduct that is not publicly available. Many lamented the absence of police/community liaison committees at Sub-Divisional and Divisional level where local concerns could be aired in a frank but friendly atmosphere. There is a need for a more public acknowledgement by the RUC of the need for better relations with the public. More emphasis in police recruit training should be placed on the traditional office of constable - an individual citizen among equal citizens not a paramilitary force subduing an alien or hostile people.

47. In the face of the breakdown in effective local government brought about both by Protestant reaction to Sinn Fein's participation and by protests at the Anglo-Irish Agreement, the system of police/community liaison committees has broken down. The Police Authority have so far refused to contemplate replacing them with some other form of community representation. It is for consideration that this should no longer be allowed to continue and I recommend that urgent work should be put in hand to establish, wherever possible, police/community liaison committees at Sub-Divisional and Divisional level. If necessary the Secretary of State should be advised to approach the Chairman of the Police Authority personally to bring about movement in this important area.

48. The reaction to the outcome of the Stalker/Sampson enquiry has only illustrated on a magnified scale the widespread lack of confidence in a system where complaints against the police are investigated by the police. I recommend that the new police complaints arrangements are carefully monitored to ensure that prompt and sensitive redress is available to the genuine victims of improper or unlawful conduct by police officers.

49. There are areas for reform in the EPAs 1978 and 1987 which would be generally welcomed by the public as moves towards the law as it is applied throughout the remainder of the United Kingdom. There is no realistic possibility of piecemeal reform. Because the EPAs are excepted matters, reforms can generally only be effected by Bill. It is, therefore, unrealistic to contemplate taking measures in advance of the new legislation which must replace the EPAs before May 1992 when they expire. This will be major and controversial legislation and highly political. Any reforms, therefore, will assume a greater political importance than might otherwise be the case. It is for consideration, therefore, that the Government may wish to seize the initiative and announce in an early statement, the principles that will determine its approach to framing the replacement legislation and the areas where it will be looking to make reforms. I recommend an approach along the following lines:

a. The Principle. The principle should be to derogate as little as possible from the criminal law and the policing and criminal justice system that apply in the rest of the United Kingdom.

b. Powers of Arrest. Consideration should be given to whether the armed forces should retain their powers of arrest under the EPA. Restricting those powers to constables would reflect the diminishing use in practice of the arrest powers by the armed forces and would encourage the accompaniment of Army patrols by policemen.

c. Jury Trial. The principle of the Common Law that every man when accused of a crime is entitled to a trial of fact before his peers should be reiterated as the ultimate aim of the Government. Consideration should be given afresh to the proposal that a person accused of a scheduled offence should be tried by jury unless the case is certified-in for trial under the Diplock provisions. The argument that this would prove an intolerable burden for the Attorney-General and for the staff of the DPP should be further probed, and the claim that the act of certifying-in in effect indicates guilt should be re-examined. If the Attorney-General's objections to this are conclusive then consideration should be given to removing more offences from the schedule. The DPP himself has suggested removing aggravated burglary and robbery with violence from the Schedule to the EPA on the basis that if the offences were committed with firearms or explosives then they could be brought within the Schedule by framing the appropriate firearms or explosives offences. The DPP has also offered to make available to the NIO all of his records of offences that remain within the Schedule but which have been scheduled out over the years. This would allow research to see if there is any consistent pattern of offences which are usually certified out and which might suggest further offences which could be removed from the Schedule.

d. Admissibility of Evidence. Since other work in the Office is urgently considering increasing the material that is admissible in the trial of scheduled offences, there is little point in recommending a return to the Common Law rules of admissibility nor would this be a sensible recommendation in the light of the acknowledged difficulty in securing the conviction of known terrorists. However, there has been considerable criticism that Section 8 EPA allows a judge trying a scheduled offence to continue hearing the trial after he has examined a statement by the accused and ruled it inadmissible. The concern is that although he has ruled it inadmissible, he will be unable to dismiss it entirely from his mind when bringing a verdict whereas in a jury trial, the jury would have no knowledge of the inadmissible statement when bringing their verdict. Consideration should be given to providing that where a judge trying a scheduled offence rules a statement by the accused inadmissible then he must direct that the trial shall be restarted before a different judge who will be unaware of the inadmissible statement.

e. Executive Detention. Consideration should be given once again to repealing Section 12 EPA. This would be welcomed as a significant political gesture and it can be made at no practical cost. If the security situation deteriorated to such an extent that executive detention was required, extended arrests under Section 12 PTA would allow all those to be detained to be held in custody while emergency legislation was pushed through Parliament. Similar action would be required in any event in the present situation in order to re-activate Section 12 EPA.

f. Accomplice Evidence. The general criminal law in England, Wales and Northern Ireland does not rule out a conviction on the uncorroborated evidence of an accomplice of the accused; leaving it to the Court to determine what weight should be attached to that evidence. Nevertheless, in practice it is difficult to envisage the DPP (NI) recommending a prosecution

on such evidence alone in the light of the Court of Appeal's judgements in the "supergrass" trials. It is therefore for consideration that considerable benefits in terms of confidence in the administration of justice could be obtained at little practical cost if the EPA were amended to provide that a Diplock Court shall not convict on the uncorroborated evidence of an accomplice of the accused.

g. Unlawful Killing. It has been argued that the prosecuting authorities often recommend no prosecution against members of the security forces who have killed members of the public while carrying out their duties because the only possible offence is murder which carries with it a mandatory life sentence on conviction. The circumstances do not usually fit a charge of manslaughter. Consideration should perhaps be given to creating a lesser offence of unlawful killing which would cover the circumstances where it is alleged that a member of the security forces on duty killed someone by the use of more force than was reasonable in the circumstances. This would perhaps encourage the prosecuting authorities to bring more such cases to trial and would perhaps lead to convictions with sentences commensurate with the circumstances in which the unlawful killing took place.

50. In the light of the evidence that Catholics generally believe that they are treated differently under the law, there can be little doubt that any new legislation requiring a declaration of non-violence by candidates for local elections in Northern Ireland will be perceived by the Catholic community as legislation directed against a Catholic political party, Sinn Fein. The fact that PIRA and Sinn Fein are inseparable will be overlooked in the general resentment at what will be portrayed as discriminatory, sectarian legislation. I recommend that if this legislation is to be proceeded with consideration should be given to ensuring a degree of symmetry of justice by proscribing the UDA. While these two measures are seemingly unrelated they are strongly connected in the minds of Catholics who continually compare the treatment by the

Government of PIRA and Sinn Fein with the treatment of the UDA. Although, in itself the act of proscription might have little practical effect, it could have a dramatic political effect on the Catholic community and there must be doubt whether the UDA continues to have the credibility or the following to indulge in mass defiance of the law.

51. In the light of the concern felt in both communities about the fate of Secretary of State's Pleasure prisoners, I recommend that consideration be given to ways of making such sentences determinate at the earliest opportunity and to encouraging rehabilitation into the community soon after the retributive element of custody has been spent.

B A BLACKWELL
29 January 1988