

**NORTHERN IRELAND OFFICE**

**GUIDANCE TO THE  
CHIEF CONSTABLE  
ON POLICE COMPLAINTS  
AND DISCIPLINE PROCEDURES**

**1988 EDITION**

# CONTENTS

## SECTION 1

### Statutory Provisions

	<i>Paragraphs</i>
General	1-2

## SECTION 2

### Action on Receiving Complaint

Definition of Complaint	1-3
Registering Complaints	4
Immediate Action	5
Preservation of Evidence	6
Determination of the "Appropriate Authority"	7
Complaints Received by the Independent Commission for Police Complaints	8
The Recording of Complaints	9-15
Itemisation of matters of Complaint	16-19
Members not on duty	20-21
Complaints by Civilians employed at Police Establishments	22
Statistical Returns-for HM Chief Inspector's Report	23
Statistical Returns-to the Police Authority	24
Application to Part-time members of the RUC Reserve	25-29

## SECTION 3

### Informal Resolution of Complaints

Introduction	1-2
Procedure	3-7
Statements made during Informal Resolution Process	8-9
Desk Top Resolution	10-11
Meeting between Complainant and Member Concerned	12
Cessation of Procedure	13
Information to Complainant and Member Concerned	14-16
Commission's Oversight of Proceedings	17

## SECTION 4

### Formal Investigation Procedure

Introduction	1-3
Selection of Investigating Officer	4-9
Conduct of Investigation	10-12
Timing of Investigations	13-16
Reports	17
Ill-Founded Complaints	18
Special Classes of Complaint	
(A) Withdrawn Complaints	19-21
(B) Complaints where action may be waived by the Commission	22-24
Safeguards for Members subject to Investigation	25-29

## SECTION 5

## Reference of Other Matters to the Commission

	<i>Paragraphs</i>
Responsibility of appropriate authority to have "other matters" investigated	1-2
Matters referred under Article 8(1) of the Order (appropriate authority)	3
Matters referred under Article 8(2) of the Order; (Secretary of State and PANI Reserve Powers)	4-5
General	6

## SECTION 6

### Functions of the Independent Commission for Police Complaints

General	1
Supervision of Investigations	2-3
Cases referred to the Commission	4-5
Approval of Investigating Officer	6
Conduct of Investigation	7-11
Disciplinary Role	12
Special Reports by the Commission	13
Delegation of functions of the Commission	14

## SECTION 7

### Consideration of and Action on Investigation Report

Action by the Chief Constable	1-2
The Role of the Director of Public Prosecutions	3-6
The Relationship between Criminal and Disciplinary Proceedings	7
Where Criminal Proceedings have already taken place	8-14
Where the Director had decided that Criminal Proceedings should not be brought	15-17
Member admitting Disciplinary Charge	18
Reports on cases not arising out of Complaints	19
Attitude of Complainant	20

## SECTION 8

### Memorandum and Information to be Submitted to the Commission

Procedures	1-9
Requests by the Commission for additional information	10-11
Powers of the Commission in relation to the bringing of charges	12-14
Advance warning of urgent cases	15
The Commission's power to direct that a matter be referred to DPP	16
Withdrawal of charges before the hearing	17
Confidentiality	18
Cases covering more than one matter of Complaint	19-20
Power of the Commission to direct that charges be heard by a Disciplinary Tribunal	21-23
Hearing of related charges by a Disciplinary Tribunal	24
Change of admission or denial before the hearing of charges	25
Accused member ceasing to serve	26

## SECTION 9

### Information and assistance for Complainant and member concerned

Leaflet for members of the public	1
Notification of the outcome of a Complaint	2
To the Complainant	<i>Paragraphs</i> 3-6

To the member concerned	7-9
Copies of Complaints	10-15
Confidentiality of documents prepared in the course of investigation	16-19

## SECTION 10

### Roles of HM Inspectors of Constabulary and Police Authority in relation to complaints

General	1-6
Disclosure and confidentiality	7
Information concerning the Commission	8

## SECTION 11

### Disciplinary arrangements for officers up to and including Chief Superintendent

General	1-2
Delegation of certain functions of Chief Constable	3-5
References where officer conducting hearing has knowledge of case	6-8
Discipline Code	9
Discreditable conduct (discipline code, Paragraph 1)	10-13
Disobedience to orders (discipline code, Paragraph 3)	14
Wilful or careless falsehood (discipline code, Paragraph 5)	15
Discriminatory behaviour (discipline code, Paragraph 10)	16-17
Damage to police property (discipline code, Paragraph 13)	18
Drunkenness or drug taking (discipline code, Paragraph 14)	19
Alternative charges	20
Schedule 2 to the RUC Regulations 1984	21
Disciplinary Proceedings	
-Responsibility for arranging the hearing	22-23
-Disciplinary Hearing	24-25
-Hearing before a Disciplinary Tribunal	26-27
Standard of Proof	28
Evidence	29-30
Rehabilitation of Offenders (Northern Ireland) Order 1978	31
Punishment	32-34
-Punishment in 'remitted' cases	35-36
Criminal Conduct: Timing of Disciplinary Hearing	37
New Tenancies while awaiting Disciplinary Hearing	38
Medical Treatment	39-40
Information to the Commission as to the outcome of Disciplinary Proceedings	41
Suspended Members	42-44
Probationers	45
Records of Members' Fingerprints	46
Internal Appeals	47
Function of the Police Association in relation to Disciplinary and Appeals proceedings	48

## SECTION 12

### Complaints and discipline arrangements for Senior Officers (above the rank of Chief Superintendent)

General	1-3
Action on receipt of a Complaint	4-5
The Investigation of Complaints and other matters involving Senior Officers	6-8
Conduct of Investigations	9-10
Reference of other matters to the Commission (and Reserve Power)	11
	<i>Paragraphs</i>
Investigating Officer's Report	12-13
Action on receiving Investigating Officer's Report	14-17

Rights of the accused officer	18-20
Responsibility for arranging the Hearing	21
Hearing by a Tribunal (Regulation 36)	22
Procedure at Hearing	23-24
Evidence	25
Standard of Proof	26
Adjournments	27
Conclusion of Hearing	28-29
Medical Treatment	30-31
Suspension (Regulations 47 and 48)	32-34

## SECTION 13

### Disciplinary Appeals

General	1
Notice of Appeal	2-5
Notification to member concerned of right of Appeal	6
Withdrawal and amendment of notice of Appeal	7-8
Opportunity to make further representations	9
Respondent	
-Senior Officers	10
-Other members	11-13
Appeal Tribunals	
-Remission of Cases by the Northern Ireland Secretary	14-15
-On Written or Oral Evidence	16-17
Documentation to be sent to Appeal Tribunal	18-19
Statements in lieu of Oral Evidence	20
Giving of Reasons	21
Taxing of Appellant's Costs	22

## ANNEXES

Annex A	Notes on the Police (Northern Ireland) Order 1987
Annex B	Notes on the RUC (Discipline and Disciplinary Appeals) Regulations 1988; and notes on the RUC Reserve (Discipline and Disciplinary Appeals) Regulations
Annex C	Notes on the RUC (Complaints etc.) Regulations 1988
Annex D	Timing of Investigations of a Complaint where there are pending Criminal Proceedings
Annex E	Disciplinary Procedure in cases where Criminal Proceedings are to be instituted against a member
Annex F	Notes on disciplinary hearings before the Chief Officer and before a tribunal
Annex G	Form and notes for annual return of statistics on complaints, discipline and commendations
Annex H	Form and notes for statistical return to the Police Authority
Annex J	Leaflet <sup>1</sup> "Do you have a complaint against the Police?"
Annex K	Cases to be referred to Commission by telex/telephone

---

1. 1990

## SECTION 1

### STATUTORY PROVISIONS

#### GENERAL

1.1 The statutory provisions which govern the handling of complaints, disciplinary matters, and appeals, are contained in the following legislation:

- (a) The Police (NI) Order 1987 (referred to as "the Order");
- (b) The RUC (Complaints etc.) Regulations 1988 (referred to as "the Complaints Regulations");
- (c) The RUC (Complaints) (informal Resolution) Regulations 1988 (referred to as "the Informal Resolution Regulations");
- (d) The RUC (Discipline and Disciplinary Appeals) Regulations 1988 (referred to as "the Discipline Regulations");
- (e) The RUC Reserve (Part-time) (Discipline and Disciplinary Appeals) Regulations 1988 (referred to as "the Reserve Discipline Regulations").

1.2 Explanatory notes on this legislation are attached at Annexes A - C. For ease of reference, the text of the guidance refers throughout to the Chief Constable. These references should be read with due regard to the provisions in the various Regulations for delegation of the Chief Constable's functions in complaints and discipline matters to the Deputy Chief Constable or an Assistant Chief Constable. Similarly, any reference to the Commission should be taken as a reference to the Independent Commission for Police Complaints for Northern Ireland.

## SECTION 2

### ACTION ON RECEIVING COMPLAINT

#### DEFINITION OF A COMPLAINT

2.1 For the purposes of the procedures set out in the Order, a "complaint" is defined as any complaint about the conduct of a member of the police force which is submitted by or on behalf of a member of the public.

2.2 However, Article 4(4) of the Order specifically excludes from the procedures, any complaints which relate to the Chief Constable's direction or control of the RUC. This means that complaints about the general administration, efficiency and procedures of the RUC, together with the Chief Constable's deployment and use of manpower and material resources are excluded from consideration. The most appropriate method for dealing with complaints about those matters is for the Police Authority by virtue of its powers under Section 15(2) of the Police Act (NI) 1970, to call for a report from the Chief Constable; and any such complaints received by the Commission should be sent to the Chief constable and copied to the Police Authority. Where the Commission expresses a view on whether a particular matter, which comes to its attention, should or should not be treated as a complaint as defined by the Order, the Chief Constable will, no doubt, have regard to this. But subject to any determination by the courts, the decision remains one for the Chief Constable.

2.3 In addition, Article 4(5) of the Order, provides that none of the procedures apply to any conduct which forms the whole or a part of a complaint where that conduct has already been the subject of criminal or disciplinary proceedings. If the matter has already been investigated, and has resulted in a criminal or disciplinary charge, there is nothing to be gained by having it recorded and investigated as a formal complaint.

#### REGISTERING OF COMPLAINTS

2.4 A complainant may register a complaint in person, by contacting the police directly. But if he does not wish to do so, he may ask a third party to register the complaint on his behalf. The third party might be a friend, a solicitor, an MP or other elected representative, or any other individual; indeed, the complainant may also register his complaint with the Police Authority, the Citizen's Advice Bureau, the Commission itself or any other organisation. The complainant should give the third party the full details of his complaint and his verbal consent (or if he wishes his written consent) to their passing his complaint to the police.

#### IMMEDIATE ACTION

2.5 The Chief Constable is required to take the following immediate steps upon receipt of a complaint (Articles 4 and 5 of the Order):

- (a) to obtain and preserve evidence;
- (b) determine the "appropriate authority";
- (c) record the complaint (where the Chief Constable is the "appropriate authority");
- (d) send the complaint to the Police Authority (where it is the "appropriate authority") and notify the complainant accordingly.

2.6 [Article 4(1) of the Order places a duty on the Chief Constable to take whatever preliminary steps are necessary to obtain or preserve evidence. This duty must be carried out even though it might later transpire that the Chief Constable is not the appropriate authority in respect of the complaint. The steps to be taken will include for example, any immediate searches or observations which may be necessary. Where there might be a long delay, for example in a case which is sub-judice, consideration should be given to the need to preserve relevant records which might otherwise be destroyed as a matter of force routine. (The duty to obtain or preserve evidence exists whether or not the complaint is one to which the guidelines set out in Annex D apply). Where the allegation is one of assault by a member it is advisable to make immediate arrangements to have the complainant and the member medically examined, with their consent. The examination should, whenever possible, be carried out by a forensic medical officer or at a hospital if medical attention is required urgently. In addition, a note should be made of the general conditions of

the complainant and the member and this should include references to any visible signs of injury or discomfort. Photographs of both parties can also be useful.]

#### **DETERMINATION OF THE "APPROPRIATE AUTHORITY"**

2.7 After taking any action necessary to preserve evidence, the Chief Constable should determine whether he is the appropriate authority in relation to the member concerned. The determination of the appropriate authority is made by reference to the rank of the officer against whom the complaint has been made. Article 2(2) of the Order defines the "appropriate authority", which in relation to members above the rank of Chief Superintendent is the Police Authority; and in relation to all other members, is the Chief Constable.

#### **COMPLAINTS RECEIVED BY THE INDEPENDENT COMMISSION FOR POLICE COMPLAINTS**

2.8 Where the Commission receives a complaint which has not been submitted to the appropriate authority, it is required by Regulation 4(1) of the Complaints Regulations 1988 to send it to that authority, unless the complainant does not wish it to be sent; but in that case, the Commission should explain to the complainant that this would prevent his complaint from being investigated, and that the Commission would therefore be unable to exercise its powers of supervision. However, if the Commission is satisfied that the public interest so requires, it may send the complaint to the appropriate authority under Regulation 4(2) without the complainant's consent. Where the appropriate authority receives a complaint passed to it from the Commission it should treat the complaint as if it had been received direct from the complainant.

#### **THE RECORDING OF COMPLAINTS**

2.9 The appropriate authority must record the complaint as soon as possible after receiving it; and in a general register of complaints, which should be kept under the following headings:

- i. date, time and place complaint was received, and by whom;
- ii. name and address of complainant;
- iii. date, time, place and nature of incident or conduct complained of;
- iv. particulars of member complained of;
- v. name of investigating officer if complaint subject to formal investigation;
- vi. name of appointed member in a case disposed of by informal resolution;
- vii. date of referral to the Commission, under Article 7 of the Order;
- viii. date of informal resolution and details of outcome;
- ix. date of any reference to the Commission under Regulation 17 of the Complaints Regulations specifying whether the complaint was anonymous, repetitious or incapable of investigation;
- x. whether the investigation was supervised by the Commission under Article 9 of the Order and, if so, whether supervision was under subsections 9(1)(a) or 9(3)(a);
- xi. date on which investigating officer's report submitted to the Chief Constable/ Police Authority/ Commission;
- xii. (for officers other than senior officers) date on which Chief Constable's memorandum sent to the Commission under the provisions of Article 10 of the Order;
- xiii. outcome of complaint (where formally investigated), **including** particulars of any punishment awarded;
- xiv. means by which complainant has been told of result. This will be done by the Police Authority, if a senior officer is involved; and in most other cases by the Commission; (but see paragraph 9.3).

2.10 The Chief Constable will probably find it most convenient to keep the RUC's complaints' register centrally, but may wish to consider how far it would be useful to keep corresponding records on a Divisional basis.

2.11 Where information comes to light which indicates that the nature of a complaint is different from that recorded in the register (e.g. if the injury suffered by the complainant turns out to be more or less serious than was first thought) an appropriate addition should be made to the register as soon as possible.

2.12 It is also important, that full records be kept of cases dealt with informally; these should be easily identifiable from the register which should be completed in sufficient detail as to enable a person inspecting it to form a view about the appropriateness of informal resolution of the complaint.



2.13 It may not always be immediately clear, from initial contact between the complainant and the police that the matter of concern amounts to a complaint for the purposes of the Order. It may therefore be appropriate for the complainant to be seen by a supervisory officer for purposes of clarification. Where it turns out that a complaint within the meaning of Article 2 of the Order was intended, but the complainant wishes to withdraw it (or does not want it to be pursued) the complaint should still be recorded and be shown as having been withdrawn or not proceeded with.

2.14 Regulation 28 of the Discipline Regulations requires a record to be kept at RUC headquarters of every formal disciplinary charge against a member and the result. This record should include, but need not distinguish between, both the charges brought as a result of a complaint from a member of the public, and charges arising from purely internal force procedures.

2.15 The Secretary of State is aware that some Chief Officers find it useful to keep divisional discipline books. This practice has some advantage in that it enables minor matters to be disposed of without formal disciplinary hearings and allows comparative information to be provided to the Chief Constable and to Her Majesty's Inspectors about the operation of different divisions in the force. However, the Secretary of State considers that, at the time an entry is made in a divisional discipline book, the member concerned should be informed of what that entry will be; and that the divisional book should be a separate record from (a) the complaints register containing the records required to be kept under Article 5 of the Order and (b) the Chief Constable's discipline book required to be kept at Headquarters under Regulation 28 of the Discipline Regulations.

## ITEMISATION OF MATTERS OF COMPLAINT

2.16 Complaints should be recorded on a common basis, because significance is attached in Parliament, and elsewhere, to the published figures on complaints. Therefore the figures, particularly those relating to substantiated complaints, must be accurately recorded and every effort must be made to ensure that the records compiled by the RUC, the Police Authority and the Commission are not at variance. In addition the powers of the Commission in relation to the bringing of disciplinary charges, when a complaints case is referred to it, operate in respect of "the conduct which was the subject of the investigation". Where disciplinary charges have not been brought in respect of any particular matter (whether this represents the whole or only part of a complaint), the Commission may recommend that charges should be brought. It is thus desirable to distinguish, to the extent possible, the individual matters of complaint referred to the Commission.

2.17 The extent to which evidence has been forthcoming to support a complainant's allegation will determine whether or not a complaint is substantiated. Circumstances may arise in which a complaint is shown to have been justified but disciplinary proceedings are either not possible, or are inappropriate. For example, the conduct complained of cannot be attributed to a particular member or members; the member concerned has left the force; the conduct complained of is not sufficiently serious to warrant formal proceedings; or the member's youth or inexperience (or other extenuating circumstances) makes advice a more suitable course. In such cases, the complaint should be recorded as substantiated and shown within that category, in statistical returns, as having been dealt with other than by criminal or disciplinary proceedings. [See Annex G, Part B, para IV]

2.18 In deciding how many matters of complaint should be recorded in cases of doubt, and in considering what matters have been complained of in any particular situation, the Chief Constable should have regard to the following principles:

- (a) Where a complainant on one occasion, or in one letter, makes several complaints of different kinds (for example that an officer assaulted him and was at the same time uncivil) this should be recorded as **two** matters of complaint. The main object of distinguishing, and separately recording, different matters in this way, is to enable the figures for substantiated and unsubstantiated complaints to be properly given. If it were established that a member was uncivil, but did not assault the complainant, this would make one substantiated and one unsubstantiated complaint. If the matters of complaint were not recorded separately, there would be no satisfactory way of arriving at the number of substantiated complaints.
- (b) Where a person complains of a series of like actions, whether or not involving more than one member, in the course of one continuing incident, (for example, assault on arrest and again in the car on the way to the station) this should be recorded as a **single** complaint, which in turn will be recorded as substantiated if the subsequent investigation establishes that any one of the alleged actions in fact took place.

- (c) Where a group of people make similar complaints of the treatment they have received, on a single occasion, (for example, where a number of persons are arrested in a single operation and several of them subsequently complain separately that they were assaulted), each person's complaint should be recorded and counted separately.
- (d) Where several complaints are made by different people about one incident (for example, in addition to the victim, witnesses may independently make complaints regarding an assault by a member) this should be recorded and counted as one matter of complaint, since only one action is complained about.
- [<sup>2</sup>(e) Where the subsequent investigation of a complaint reveals a number of breaches of discipline, all such breaches which arose directly from the incident which gave rise to the complaint, and which affected the complainant, should be treated as separate items of complaint and so recorded and dealt with, regardless of whether they have been identified by the complainant in the context of his complaint, unless the complainant has specifically expressed wishes to the contrary. Any other ancillary matters and breaches of discipline arising from the incident which did not affect the complainant and are discovered during the course of the investigation need not be recorded.]

2.19 But there is nothing to prevent the police from investigating a number of related matters by way of a single investigation; nor from considering them together as regards either disciplinary or criminal action or reference to the Director of Public Prosecutions or to the Commission. However, if the investigation, and subsequent action does relate to a number of separate matters complained of, the Chief Constable should make this clear when sending the appropriate documents to the Commission. The Commission will need to know (see Article 10 of the Order) whether or not disciplinary charges have been preferred in respect of each of the matters complained of. The guidance in paragraph 2.9 provides that the outcome of each complaint should be recorded separately.

#### **MEMBERS NOT ON DUTY**

2.20 The mere fact that the investigation of an incident (eg a traffic accident) reported by a member of the public, shows that the other party involved is a member of the RUC will not usually be a sufficient reason to justify the matter being recorded as a complaint against a member. Whether it should be so recorded will be very much a matter of judgement taken in light of the circumstances of the particular case. Consideration should be given to the nature and substance of the report made by the member of the public and his reasons for making it. In most cases such a report, relating to off-duty conduct, will only need to be recorded as "against a member of the police force" if the fact of being a member is essential to the burden of the complaint. It should be borne in mind that "a member of the police force" includes RUC Reserve members employed on a full-time or part-time basis.

2.21 There may also be other cases which do not involve any allegation of a criminal offence, nor arise out of a member's duty, e.g., complaints arising from domestic quarrels, matrimonial difficulties, disputes between landlord and tenant and other civil disputes, but which may fall within the provisions of the Order. The procedure set out in the Discipline Regulations, however, applies only to complaints "from which it appears that a member of the police force may have committed an offence"; and it should not usually be found necessary to invoke this procedure to deal with complaints arising out of such matters.

#### **COMPLAINTS BY CIVILIANS EMPLOYED AT POLICE ESTABLISHMENTS**

2.22 Whether a complaint by a civilian employee should be treated as an Article 2 complaint, will depend largely upon its nature and circumstances. There may be occasions on which the status of a civilian employee is irrelevant to the subject matter of the complaint and this will apply particularly where the complaint arises from an alleged incident which occurred outside work. Conversely, an allegation arising from everyday working relationships between civilian employees and members of the police force should normally be treated as an internal matter (and frequently one for resolution by management and industrial relations techniques) since the civilian is not then in the same position as a member of the public.

[<sup>1</sup>2.22A It is emphasised that the investigation of any matters drawn to the attention of the Chief Constable is not precluded by the mere fact that they do not fall to be recorded as complaints under Article 5 of the Order. The Discipline Regulations (Regulation 5) set out arrangements for inquiry into any report, allegation or complaint, whatever the source, where such inquiry seems appropriate. Furthermore, Article 8 of the Order permits the refer-

ence of such matters to the Commission at the discretion of the appropriate authority for them to consider supervising the investigation (see also para 6.2).]

## **STATISTICAL RETURNS**

### **For HM Chief inspector's Report**

2.23 The Chief Constable is asked to make an annual statistical return of complaints, discipline and commendations for the annual report of HM Chief Inspector of Constabulary and for other purposes. The form to be used for this is at Annex G together with notes of guidance on its completion.

### **To the Police Authority**

2.24 In addition, the Chief Constable should provide the Police Authority with a statistical return of all complaints from members of the public against members of the force. This should indicate how the complaints have been dealt with, and include details of references to, and action taken by, the Commission. A suggested form, with notes, is at Annex H (for other information to be supplied to the Police Authority see also paragraphs 10.3-10.5).

## **APPLICATION TO PART-TIME MEMBERS OF THE RUC RESERVE**

2.25 The provisions of the Order apply equally to part-time members of the RUC Reserve as they do to full-time members of the Reserve and all members of the RUC. Moreover, the Reserve Discipline Regulations, which apply only to part-time members of the RUC(R) are broadly similar to the provisions of Part II of the Discipline Regulations which are applicable to the full-time Reserve and members of the RUC of and below the rank of Chief Superintendent.

2.26 Accordingly, the provisions of this Guidance, as outlined in Sections 2-10 inclusive and in Annexes D, E, G, H, J and K should be applied in respect of complaints and discipline matters affecting the part-time Reserve. However, Section 11 and Annex F have only limited application, because part-time members have no right to be legally represented at any hearing or internal appeal, and have no right of further appeal to the Secretary of State from a decision given by the Chief Constable or Chairman of a Disciplinary Tribunal, at a first instance hearing. Those arrangements (which apply to full-time Reserve and regular members) were designed to safeguard the rights of members in regular employment and whose careers in the RUC were likely to be jeopardised if serious disciplinary charges were laid against them. But the same considerations do not apply to members serving only in a part-time capacity, and for whom the termination of service with the part-time Reserve would not have such serious consequences. Sections 12 and 13 of this Guidance have no application to part-time members.

### **Hearings**

2.27 It is expected that in the vast majority of cases, disciplinary charges against part-time members will be heard by the appropriate Divisional Commander. But in order to cater for those (rare) occasions where, for convenience, it would be appropriate to deal with charges against a number of members (including part-time members) at a single hearing, the Reserve Discipline Regulations provide that charges against a part-time member may be heard by the Chief Constable, a disciplinary board or any officer not below the rank of Chief Superintendent. Moreover, any officer hearing a charge against a part-time member will have a range of punishments available to him similar to those applicable to members of the RUC and full-time Reserve, including services dispensed with or requirement to resign; however it should be borne in mind that punishment by means of reduction in salary or a fine may not be imposed on a part-time member.

### **Internal Appeals**

2.28 Where the charges against a part-time member are dealt with at first instance by anyone other than the Chief Constable, the part-time member has a right of internal appeal to the Chief Constable or to an officer not below the rank of Senior Assistant Chief Constable deputed to hear the internal appeal. However, in most cases, it is expected that internal appeals (against decisions taken usually by a Chief Superintendent at first instance hearing) will in prac-

tice be dealt with by the appropriate Senior Assistant Chief Constable. But where the first instance hearing was conducted by the Chief Constable or the Chairman of a Disciplinary Tribunal convened at the direction of the Commission, the part-time member has no right of appeal to the Secretary of State.

### **Representation**

2.29 Where a part-time member faces charges, he may be represented at the hearing, or at an internal appeal, by a serving member of the RUC or RUC(R) full-time or a serving member of a home police force.

## SECTION 3

### INFORMAL RESOLUTION OF COMPLAINTS

#### (MEMBERS OF THE RANK OF CHIEF SUPERINTENDENT OR BELOW)

#### INTRODUCTION

3.1 Informal resolution is intended to provide a flexible and simple procedure for dealing with complaints of a minor nature which would otherwise attract the extensive and rigorous process of formal investigation. Complaints are only suitable for informal resolution if the conduct complained of, even if proved, would not justify a criminal or disciplinary charge, and if the complainant is content for the case to be handled in this way. In other words, the procedure is appropriate where it is clear from the outset that any alleged criminal behaviour or breach of the discipline code is such that, if proved, would be dealt with **not** by criminal or formal discipline charges, but by an informal warning or by advice; or where preliminary investigation reveals that the conduct was both lawful and reasonable.

3.2 Examples of complaints of criminal behaviour to which the informal resolution procedures might be considered appropriate, are those alleging trivial offences involving the use of motor vehicles and minor non-traffic cases, or the disciplinary offence of incivility, or an assault in the nature of a mere push without aggravating features such as an endeavour to obtain an admission. In such cases, if a civilian in similar circumstances would not be proceeded against, or if the appropriate action would be words of advice administered at the time, then informal resolution would generally be acceptable.

#### PROCEDURE

3.3 After the Chief Constable has recorded a complaint, he should consider whether informal resolution is appropriate, and he may appoint a member to assist him in determining that question (Article 5(2) of the Order). The Chief Constable may therefore care to consider the appointment of a member who should consider the suitability of informal resolution. If the member, deputed to consider the case, thinks that informal resolution is a possibility, he will inform the Chief Constable accordingly and the case may then be referred to another member to undertake it (ie to act as the appointed member as specified in Article 5(4) of the Order). However, the member initially deputed to handle the question might himself act as "appointed member" and seek an informal resolution; in many cases, that may prove the simplest and most straightforward way to proceed. But Article 5(6) of the Order provides that a member who has acted as the appointed member **may not subsequently undertake the formal investigation of the case** if that should become necessary; although there is nothing to prevent a member who has been involved in the preliminary stages (short of becoming the appointed member) from acting as investigating officer later.

3.4 A complaint may not need to be dealt with under either of the above-mentioned procedures where:

- (a) it is clearly directed at the administrative procedures or instructions of the force (see paragraph 2.2); or
- (b) it appears to be anonymous or repetitive (see paragraphs 4.22 and 4.23).

Preliminary inquiries may be of assistance in determining whether a complaint falls into any of these categories.

3.5 Article 9(3) of the Order and Regulation 3(3) of the Informal Resolution Regulations provide that, where the Commission determines to supervise the investigation of a complaint, it should not be dealt with by way of informal resolution. If, while attempts at informal resolution are being made, the Commission decides to supervise the investigation of the complaint, the informal resolution procedure must be discontinued forthwith, and the procedure appropriate to formal investigation should be followed. However, it is recognised that the Commission will rarely, if ever, be involved in the informal resolution process in this way, since it would not usually wish to concern itself with minor matters where no criminal or disciplinary charge is warranted.

3.6 Regulation 4(1) of the Informal Resolution Regulations requires that, as soon as practicable after the Chief Constable decides to attempt to resolve a complaint informally, the appointed member should seek the views of both the complainant and the member against whom the complaint has been made. He may at the same time, or thereafter, take any steps which appear to him to be appropriate to resolve the complaint. It should be noted that the ap-

pointed member's task is to achieve a position in which the complainant is satisfied that his complaint has been dealt with in an appropriate manner, while at the same time the interests of the member concerned are protected in line with the regulations and this guidance.

3.7 This will not necessarily require an apology on behalf of either the RUC or the member concerned. In some instances it will be sufficient for the appointed member to explain the law or the procedures under which the member concerned was operating at the time of the incident which gave rise to the complaint. In yet others it will be clear to the appointed member that there is an irreconcilable difference in the complainant's and the member's description of the incident which gave rise to the complaint. In such a case it may be sufficient to explain the position to the complainant and invite him to accept that nothing further can be done. The only limit placed on the appointed member's freedom to approach the resolution of the complaint in the most appropriate way, is found in Regulation 4(2). This provides that the appointed member shall not render any apology on behalf of the member concerned unless that member has admitted the conduct complained of.

[<sup>2</sup>3.7A A member appointed to seek the informal resolution of a complaint should be sensitive to problems some complainants may have in coming into police stations and should consider whether, in appropriate circumstances, it may be possible to offer alternative facilities. The safety of all concerned will of course be paramount.]

### STATEMENTS MADE DURING INFORMAL RESOLUTION PROCESS

3.8 Steps should be taken to ensure that a member volunteering an oral or written statement to the appointed member is aware of the effect of the provisions of Article 22(3) and (4) of the Order. Article 22(3) provides that any statement made for the purpose of informal resolution **will not be admissible** in subsequent criminal, civil or disciplinary proceedings. Article 22(4), however, exempts from the effect of Article 22(3) any material which consists of or includes an admission relating to a matter which does not fall to be resolved informally.

3.9 It thus follows that if a member, **or a complainant**, makes any statement in the course of an attempt to resolve a complaint informally then, whether or not the attempt is successful, provided the statement contains only material concerned with matters which may be resolved informally, no use may subsequently be made of that statement by either party in criminal, civil or disciplinary proceedings. If the attempt at informal resolution fails and a formal investigation takes place, fresh statements must be taken specifically for the purpose of the formal investigation if they may eventually be required for criminal, civil or disciplinary proceedings. However, if during the course of an attempt to resolve a complaint informally a statement is made which consists of an admission relating to any matter which does **not** fall to be resolved informally (for example because it fails within the provisions of Regulation 3(3) of the Informal Resolution Regulations or merely **includes** such an admission) **then that statement is admissible in subsequent proceedings.**

### DESK-TOP RESOLUTION

3.10 Regulation 4(1) of the Informal Resolution Regulations contains an important provision which allows a supervisory member of whatever rank, to deal speedily with a complaint, if it appears to him that it can be resolved informally at the time it is made. It permits the supervisory member to receive a complaint and, to deal with it **at the time:-**

- (a) if the member concerned is present, and willing to explain his understanding of the incident which has given rise to the complaint; and
- (b) if the complainant accepts the explanation or, if appropriate, the apology as a satisfactory outcome. (Where this is done, the general guidance set out in paragraph 3.12 below should be borne in mind by the supervisory officer).

3.11 In a case dealt with in this way, the supervisory member should report the matter to the member appointed by the Chief Constable to address the issue of informal resolution (see paragraph 3.3). If that appointed member is satisfied with the handling of the complaint, he may make a record in the complaints register and write to the complainant recording briefly his understanding of the way in which the complaint was handled and indicating his intention of recording it as having been informally resolved. It is recommended that standard criteria should be established as to the extent to which supervisory members (of specified rank) may deal with complaints in this manner.

## **MEETING BETWEEN COMPLAINANT AND MEMBER CONCERNED**

3.12 If the appointed member considers that the informal resolution of a complaint is likely to be assisted by a meeting between the complainant and the member whose conduct is the subject of complaint (ie the member concerned) or between those persons together with any other person considered appropriate - he may make the necessary arrangements. [2 In doing so, he should be sensitive to problems some complainants may have in coming into police stations and should consider whether, in appropriate circumstances, it may be possible to offer alternative facilities. The safety of all concerned will of course be paramount.] However, the member concerned shall not be obliged to attend such a meeting if one is arranged. A meeting may provide an opportunity for the complainant and the member concerned to exchange points of view and for any misunderstandings to be cleared up. It will allow the member concerned, where he admits the conduct complained of, to apologise for it, or give an explanation of it, to the complainant in person if he wishes to do so. If the member concerned considers that his conduct was reasonable in all the circumstances, a meeting will allow him to state his case to the complainant. The appointed member should do his best to ensure that a meeting is conducted in a civil and orderly manner. The parties concerned may find it reassuring to have a lay person or a 'friend' present at the meeting as an independent presence and this should not be discouraged. Whilst there can be no objection to the complainant being accompanied by a solicitor, the member concerned should normally be advised of this if it is known in advance of the meeting. In such a case care should be taken that the meeting does not become over-formalised in a way which might inhibit the resolution of the complaint.

## **CESSATION OF PROCEDURE**

3.13 If in the course of the informal resolution procedure (whether by reason of a fresh allegation by the complainant, an admission by the member concerned, or some other means) evidence comes to light of a more serious complaint which might require a formal investigation, the procedures should be terminated forthwith and the matter reported to the Chief Constable immediately.

## **INFORMATION TO COMPLAINANT AND MEMBER CONCERNED**

3.14 Under Regulation 5 of the informal Resolution Regulations a complainant is entitled to obtain a copy of the record relating to the complaint if he applies for one within 3 months of the date on which either it was resolved or it ceased for any other reason to be dealt with by way of informal resolution. The complainant should be informed of that right at the conclusion of the informal resolution procedure. In addition, the member concerned, if he wishes, should be given a copy of any record supplied to the complainant under the Regulation.

3.15 No entry relating to the attempted or successful informal resolution of a complaint should be made in the personal record of the officer concerned.

3.16 Where it appears to the Chief Constable, after attempts have been made to resolve a complaint informally, that informal resolution is impossible, or that the complaint is for any other reason not suitable for informal resolution, he must arrange for it to be formally investigated. The Chief Constable must then send the complaint to the commission in line with the provisions of Article 7(1) of the order, and follow the procedures for which guidance is given in Section 4.

## **COMMISSION'S OVERSIGHT OF PROCEDURES**

3.17 Oversight of the procedure for dealing with less serious complaints by way of informal resolution will fall to the Commission as part of its functions under the Order. Paragraph 2.9 refers to the maintenance of a register of complaints, including those which are settled by informal resolution. The record of the outcome of complaints dealt with by way of informal resolution together with copies of such complaints must be sent to the Commission on a 4-monthly basis. The records of complaints informally resolved should be sufficiently detailed to enable the Commission to form a judgement as to the general suitability for informal resolution of cases handled in this way, as well as the means by which such resolution was conducted.

## SECTION 4

### FORMAL INVESTIGATION PROCEDURE

#### (Complaints, Reports and other Allegations)

#### INTRODUCTION

4.1 This section sets out the procedure to be followed where a member of the rank of chief superintendent or below is the subject of a complaint, report or allegation requiring formal investigation. For the procedures in respect of a senior officer see section 12.

4.2 Regulation 5 of the Discipline Regulations provides that in the case of any complaint, report or allegation from which it appears that a member may have committed an offence against discipline, an officer shall be appointed to investigate the matter. Even where an investigation itself has to be delayed, the appointment of the investigating officer should be made as soon as possible (in some cases subject to the approval of the Independent Commission for Police Complaints - see paragraph 4.6) so that the accused officer may be afforded the safeguards laid down in the Discipline Regulations. As a preliminary step however, it has to be borne in mind that the less serious complaints might be suitable for informal resolution (see Section 3).

4.3 Where the Chief Constable appoints a member to investigate a complaint formally he should refer the complaint to the Commission within the time limit specified in the Complaints Regulations. Complaints, alleging the commission of offences listed in Annex K should be referred to the commission not later than the end of the day following the day on which the complaint was initially submitted. Prompt referral will enable the Commission to consider whether the investigation warrants its mandatory or discretionary supervision; however, the Chief Constable may find it appropriate to draw the Commission's attention to any case which he considers would warrant its involvement.

#### SELECTION OF INVESTIGATING OFFICER

4.4 The investigation of a complaint must be, and should clearly be seen to be, absolutely impartial. The Chief Constable should ensure that the investigating officer is of the appropriate rank and experience; has a thorough knowledge of the relevant Regulations and the guidance; and has no operational responsibility for, or connection with, the member against whom the complaint is directed. Under Regulation 5(5) of the Discipline Regulations, the investigating officer must be serving in a different sub-division or branch from the member complained against. Moreover it is clearly in the interests of fairness that the Chief Constable, having regard to any representations made by the member concerned, ensures that there are no other grounds (for example recent service in the same sub-division or branch or previous connection with the complainant) on which the impartiality of the investigating officer might be questioned (though there is no objection to one investigating officer dealing with successive complaints from a persistent complainant).

4.5 Whether or not an investigating officer has been appointed, the Chief Constable may consider that an officer from another police force should conduct the investigation. Before deciding to call in an officer from another force, the Chief Constable should take into account the seriousness of the allegations; the rank of the member or members against whom they have been made; and the extent to which the complaint has given rise to adverse publicity. The appointment of an investigating officer from another force might be appropriate especially where a number of complaints allege widespread malpractice or where a particular complaint arouses serious public concern. Of course the investigating officer should have had no previous contact with the case nor recent contact with the RUC such as might give rise to doubts about his impartiality. However there is nothing to prevent an officer who has investigated a particular complaint from being asked to investigate a second complaint arising from the same circumstances.

4.6 Where the Commission supervises the investigation of a complaint or other matter referred under Article 8 of the Order, it may choose to exercise its right to approve the appointment of the investigating officer (Article 9(5) of the Order). Therefore, in referring a case to the Commission, the Chief Constable should indicate the name and



rank of the member he has appointed or whom he proposes to appoint. Where this information is not immediately available, the Commission should be told that it will follow as soon as possible. If the Chief Constable has already made the appointment (e.g. because of the need to begin the investigation urgently) and the Commission is not satisfied, it may ask him to propose the appointment of another member, including one from another police force. The Chief Constable is obliged to comply with such a request and he should not formally make the new appointment until the Commission has approved it.

4.7 Where an investigating officer is appointed from another force, the claim in respect of the reasonable costs of the providing force in relation to such appointment should be met by the Police Authority.

4.8 Both the Order and the Discipline Regulations make provision for the appointment of investigating officers of certain ranks. However when dealing with complaints which appear to have serious implications, whether by reason of the allegations or the number and standing of the officers involved, the Chief Constable should always consider whether the investigation warrants the appointment of an investigating officer of the rank of superintendent or above.

4.9 Subject to the Commission's power to approve the investigating officer's appointment (see paragraph 6.6), once an investigating officer has been appointed he will normally be responsible (perhaps under the supervision of the Commission) for the whole of the investigation covering both the original complaint by the member of the public (if there was one) and any criminal or disciplinary matters which may arise from it or which may come to light in the course of his inquiries. It is important, however, that, whether the Commission is exercising its supervisory function or not, the Chief Constable should maintain close oversight of the progress of each investigation. In particular, he should know at once if an investigation has met serious difficulty or if serious delay is in prospect. This should ensure speedy progress and the quick resolution of difficulties through central direction. The investigating officer should also be instructed to seek the advice of the Chief Constable-or, of the Commission where it is supervising an investigation-if in the course of his inquiries more serious allegations are disclosed or if it appears that a greater number of members may be involved in the allegations than at first seemed likely.

## CONDUCT OF THE INVESTIGATION

4.10 Inquiries should be carried out as expeditiously and thoroughly as reasonably practicable, due regard being had to the requirements of justice and the law and practice relating to prosecutions (see also paragraph 4.13). The investigating officer should normally arrange to see the complainant without delay at the outset of the investigation, unless the complainant specifically refuses. If there are special considerations which mean the investigation cannot be started (e.g. where statements cannot be taken from the complainant straightaway because of related judicial proceedings), the position should be explained to him. Such action, which enables the complainant to have an early and frank discussion with the investigating officer, can do much to resolve ill-founded complaints arising from misunderstandings. In other cases, the complainant may decide that he does not wish to pursue his complaint against an individual member if he is satisfied that something is being done to remedy the grievance (e.g. by changes in administrative arrangements). Nevertheless care must be taken to avoid pressure being exerted on a complainant to withdraw his allegations. (For the procedure where a complainant withdraws his complaint or agrees not to pursue it, see paragraphs 4.19-4.21).

[<sup>2</sup>4.10A Investigating officers should be sensitive to problems some complainants may have in coming into police stations and should consider whether, in appropriate circumstances, it may be possible to offer alternative facilities. The safety of all concerned will of course be paramount.]

4.11 The purpose of an investigation is to establish the facts about the incident or conduct complained of and, in the light of those facts, to enable an objective assessment to be made of the merits of the complaint; it is therefore important that the investigation should be conducted in a manner which will enable both the member complained of, and the complainant to recognise this. Indeed, it should be evident from the report, that the investigation has been carried out impartially; that the member concerned has been afforded the safeguards provided in the Discipline Regulations; and that no pressure has been put on the complainant or any other witness.

4.12 It is also important, that the investigation should be completed as quickly as may be practicable. It sometimes occurs that an investigation may be unavoidably protracted for reasons beyond the control of the investigating

officer. In this event, an early explanation should be given in writing to the complainant with a copy going to the member concerned; and both should be kept informed (**in writing**) of the reasons if the delay persists, unless there are special circumstances which would render this inappropriate.

[<sup>1</sup>4.12A From time to time in the course of an investigation, it will be helpful to take evidence from an officer who, as part of his normal duties, has been assigned to a specialised area of police work in which he has acquired an expert knowledge relevant to the particular investigation. The questions that are put to him must, naturally, be within his knowledge and competence and it is not a matter for his discretion whether or not he will make available such expert knowledge. For the avoidance of suggestions of bias, it might sometimes be inappropriate for an officer to give evidence if he has some relationship or acquaintance with any person who might be affected by his statement, but, for example, mere membership of the same force as a person under investigation should not of itself be taken to raise such a difficulty.]

## **TIMING OF INVESTIGATIONS**

### **Criminal Proceedings**

4.13 Special considerations arise in regard to the timing of the investigation of a complaint recorded under Article 5 of the Order against a member, where the complaint is related to some aspect of pending criminal proceedings against a member of the public, for example against the complainant or his friends. There may also be difficulty in investigating a complaint where the related trial has been completed but an appeal is pending. The Secretary of State considers that it would be appropriate for the Chief Constable to adhere to the practices set out in Annex D to this guidance. The practice, whereby the Chief Constable may consult with the Director of Public Prosecutions on any matter concerning the handling of investigations in cases of special difficulty, is unaffected by what is said in Annex D.

[<sup>1</sup>4.14 Where in the course of an investigation material comes to light which is likely to be of assistance to the complainant or any other person in defending pending criminal proceedings, or which suggests that such proceedings are unsafe or ill-founded, the Chief Constable should bring it to the notice of the Director of Public Prosecutions. This also applies where any appeal has yet to be disposed of. Where the information calls into question the safety of a conviction in a case where the proceedings, including any appeal, have been completed, the Chief Constable should report the relevant information to *Criminal Justice Division, Northern Ireland Office, Massey House, Stoney Road, Belfast, BT4 3SX* (telephone Belfast 763255).

### **Civil Proceedings**

4.15 Where a member, of the public has initiated civil proceedings against the Chief Constable in respect of the conduct of a member of the force or has indicated an intention to do so, the matter should not automatically be recorded as a complaint. Instead, efforts should be made to determine whether the person concerned wishes the matter to be treated as a complaint and is willing to co-operate in its investigation. If he wishes a complaint to be recorded but is unwilling to co-operate in the investigation, it should be made clear to him that as civil proceedings are often protracted, it is unlikely that a satisfactory investigation will be possible when they are completed and that the delay may in certain circumstances preclude disciplinary proceedings being brought against the member concerned. His wishes should also be ascertained where a person has made a complaint which has been recorded and subsequently embarks on civil proceedings in the same matter. If in such a case, for example on legal advice, the complainant wishes to withdraw his complaint the records should be noted accordingly; if he refuses further co-operation in the investigation while declining to withdraw the complaint, he should be warned as above of the possible consequences of delay.

4.16 However where the person concerned asks for the matter to be recorded or maintained as a complaint and indicates willingness to co-operate in the investigation, the normal procedures should be followed including submission of the report to the Director of Public Prosecutions, if appropriate, and to the Commission under the relevant provisions of the 1987 Order. The existence of civil proceedings should be mentioned to the Director of Public Prosecutions and the Commission at the time the case is submitted. The Chief Constable should indicate also whether it is his view that any disciplinary action that seems appropriate should be delayed until the proceedings in the civil courts have been finished. In deciding whether to defer disciplinary action, the Chief Constable will need to consider the effect of deferment on the maintenance of force discipline and the interests of the member concerned.

4.16A Nothing in the preceding paragraphs should be taken as precluding investigation of the matters raised in a civil action where this is necessary in order to prepare for the legal proceedings.]

## **REPORTS**

4.17 When the investigating officer has completed the investigation, or has taken it as far as he reasonably can, he should submit a report to the Chief Constable. If the investigation has been supervised by the Commission he should instead submit the report to the Commission and send a copy to the Chief Constable. Because the report will be relevant to an assessment of the merits of a complaint, it may need to include background material about the complainant, which may be potentially damaging to him. Nevertheless, the investigating officer should take care not to include information or comment which is not relevant to the complaint.

## **ILL-FOUNDED COMPLAINTS**

4.18 Where in the course of a formal investigation it becomes clear to the investigating officer that the complaint is ill-founded or that the effort involved in pursuing it would be disproportionate, it is open to him to prepare an early report to the Chief Constable (or to the Commission, if it is supervising the investigation) recommending that it is not worth pursuing the matter further. In such cases the complaint and the investigating officer's report will still have to be referred to the Commission under the provisions of Article 10 of the Order and this should be done with the minimum of delay so that, if the Commission agrees, the matter may be brought to a swift conclusion.

## **SPECIAL CLASSES OF COMPLAINT**

### **A. WITHDRAWN COMPLAINTS**

4.19 Regulation 16 of the Complaints Regulations provides for the requirements of formal investigation or informal resolution to be dispensed with, when a complaint is withdrawn.

4.20 A complaint is to be regarded as withdrawn when a signed written statement is received from the complainant (or his solicitor or other authorised agent) that he withdraws his complaint or that he does not wish any further steps to be taken in regard to it. To avoid doubt and subsequent argument, the statement should be worded in unequivocal terms (but it is suggested that the use of an expression such as "unreservedly withdrawn" is best avoided). It should be made clear to the complainant that this will normally bring action on his complaint to an end. If the case has been referred to the Commission (or if the Commission forwarded the complaint to the Chief Constable in the first place) the Chief Constable should inform the Commission that the complaint has been withdrawn, enclosing a copy of the statement of withdrawal. Where only part of the complaint is withdrawn, the other parts must still be pursued in the normal way.

4.21 There is nothing to prevent the Chief Constable, if he thinks it necessary in the circumstances of a particular case, from pursuing inquiries into an allegation despite the withdrawal of the original complaint by the member of the public concerned. This may well be the case where the allegation is of the commission of a crime. In such a case, since the complaint has been withdrawn, the effect of Regulation 16 of the Complaints Regulations is that the provisions of Article 10 of the Order no longer operate to require reference to the Director of Public Prosecutions. In deciding whether the case should nevertheless go to the Director it will be appropriate for the Chief Constable to apply the normal test applicable where an allegation of crime is received against a member of the police force otherwise than by a complaint from a member of the public. Where a complaint is withdrawn but the allegation is nevertheless pursued, the investigation becomes a purely internal matter and the procedures described in Section 7 of this guidance need not be followed (unless the Chief Constable considers it appropriate to refer the matter to the Commission under the provisions of Article 8(1) of the Order).

### **B. COMPLAINTS WHERE ACTION MAY BE WAIVED BY THE COMMISSION**

4.22 Regulation 17 of (and the Schedule to) the Complaints Regulations apply where a complaint, which has been recorded under Article 5 of the Order, appears to fall into one of the following categories:

- i. where a complaint bears no indication of the maker's identity; or, where the complaint is in respect of conduct towards another person, of that other person's identity; or of how such a person can be contacted; or where, after reasonable inquiries it proves impossible to contact him or establish his identity within a reasonable time or by reasonable means. If a waiver is sought, the Commission must be told what inquiries were made;
- ii. where investigation is not reasonably practicable because the complainant (or, where the complaint is in respect of conduct towards another person, that other person) refuses to co-operate with the police in their inquiries; for example, if, after the completion of related criminal proceedings, he fails to reply to requests asking him to see the investigating officer, or to provide other specified assistance; or if any other steps detailed by the Chief Constable have also failed to secure an interview or the required assistance. [<sup>1</sup>Wherever possible a letter should be sent to the complainant by recorded delivery explaining that a waiver will be sought from the Commission if he fails to provide further assistance within a specified time, normally 21 days. If a waiver is subsequently sought the Chief Constable should give the Commission details of the action taken to attempt to secure an interview or otherwise establish contact with the person concerned and forward a copy of any letter sent to him;]
- iii. where the complaint repeats, without any additional grounds and containing no fresh allegations or evidence, the substance of a previous complaint which has either been dealt with or withdrawn [<sup>2</sup>or informally resolved in accordance with the provisions of Article 5 of the Order]. If a waiver is sought the Chief Constable should include a copy of the old complaint or a reference to previous correspondence for purposes of comparison and, where appropriate, a copy of the statement of withdrawal [<sup>2</sup>or a copy of the outcome of the informal resolution procedure made under regulation 5 of the RUC (Complaints) (Informal Resolution) Regulations 1988.
- iv. Where the complaint is vexatious, oppressive or otherwise seeks to abuse the complaints system or to harass a particular member. If a waiver is sought, a full explanation must be given of the reasons for the request.
- v. Where more than 12 months have elapsed between the incident which gave rise to the complaint and the making of the complaint, and it would be unjust to the members accused to initiate an investigation after the events concerned have faded from memory. Where possible a letter should be sent to the complainant by recorded delivery explaining that consideration is being given to seeking a waiver from the Independent Commission for Police Complaints and inviting him to set out the reasons for the delay within 21 days. If a waiver is subsequently sought the Chief Constable should give the Commission details of any reasons which the complainant has provided.]

4.23 The Chief Constable should send a copy of the complaint to the Commission with a memorandum explaining why he considers that the complaint falls into one or other of these categories, giving his reasons for taking that view; and inviting the Commission to agree that there is no need for any further action to be taken. The Chief Constable may make a request under this provision, even where the investigation of the complaint, or an attempt at informal resolution, is underway. The Commission may ask for further information before reaching a decision, but if it agrees to the request, no further action need be taken except to record the outcome in the complaints register.

4.24 If the Commission does not agree with the Chief Constable's view then, following consultation with him, investigation of the complaint (or the attempt at informal resolution) and subsequent action may proceed in the normal way. Of course, the Chief Constable may consider that even where a complaint does fall into one of these categories, it nevertheless merits investigation or other appropriate action. For example, an anonymous complaint may contain allegations which are serious enough to require investigation, possibly under the supervision of the Commission. In such a case the investigation and subsequent action may proceed in the normal way.

#### **SAFEGUARDS FOR MEMBERS SUBJECT TO INVESTIGATION**

[<sup>4</sup>4.25 Since almost any well-founded complaint which is the subject of formal investigation could lead to disciplinary proceedings, the member concerned should have an early opportunity to comment on it. The Discipline Regulations provide arrangements which will safeguard the member but which will not inhibit him, should he so wish, from making a candid statement which may establish that the complaint is unfounded or exaggerated. The courts have read Regulation 6 as conferring an important safeguard in giving a member an opportunity to collect evidence and prepare his defence at as early a stage as possible, not merely to make a candid statement to refute the complaint or demonstrate that it was exaggerated. Where a complaint received and recorded under Article 5 of the Order is formally investigated the member concerned should, subject to what is said below, as soon as practicable be served with

a formal notice which complies with Regulation 6 telling him in writing of its nature and inviting him to make a statement. The statement will be voluntary and will be admissible in evidence should there be any disciplinary proceedings arising from the complaint.

4.26 When the member concerned is invited to make the statement he must be given, **in writing**, the appropriate caution/s in accordance with Regulation 6 and in the format set out in Schedule 1A to the Discipline Regulations (for statements made in the course of the informal resolution procedure - see paragraph 3.8). A member has the right to consult a "friend" at all stages of the investigation. He should be told of that right at the time a notice under Regulation 6 informs him of the complaint which has been made against him and although he has already been given written notice setting out the terms of the appropriate caution/s, they should be explained verbally to him at this stage. The right to be informed of the nature of the complaint is subject only to the need to avoid prejudicing the investigation itself.

4.26A The notice under Regulation 6 should be served on the member as soon as practicable subject only to the proviso set out in the Regulation that service of the notice should not prejudice the Investigating Officer's enquiry or any other investigation of the matter. It is recognised that the primary responsibility for the timing of the service of the notice under Regulation 6 is a matter for the Investigating officer and it is the Investigating Officer who may be asked to account as may be appropriate to the Director of Public Prosecutions, the criminal courts or a disciplinary authority for the timing of the service of the notice. There may be occasions where it is not practicable to serve the Regulation 6 Notice at the start of the investigation or where service might prejudice the investigation. In these circumstances the Secretary of State considers that it would be advisable for the force to have clear arrangements under which service in such circumstances is subject to scrutiny and review in order to avoid undue delay.

4.26B It is not essential to collect and consider all the evidence before service of the Regulation 6 Notice, and it will sometimes be anticipated at the time of service that the description of the report, allegation or complaint might later be made more specific or may otherwise change (for example, because the complainant or other material witness has yet to be interviewed). In such a case there is no objection to the subsequent service of a further or amended Regulation 6 Notice when the necessary information is to hand.

4.26C Although interpretation of the Regulation is a matter for the courts, it is the view of the Secretary of State that the notice is required to be served personally by the Investigating Officer, by a member of the Investigating Team, or by another designated officer of appropriate rank on his behalf.]

4.27 Nothing in the Regulations (or in the preceding paragraph) is intended to change the practice whereby the usual criminal investigation will take place, if a member is the subject of information coming to the attention of the Chief Constable by way of complaint or otherwise, and which suggests that the member may have committed a criminal offence. In such a case, the member need not be informed immediately of the allegations if this might impede the investigation of the alleged criminal offence. Where, in the course of the investigation, the member has been cautioned in the customary manner (ie [under the Code of Practice for the Detention, Treatment and Questioning of Persons by Police officers]) any statement made under caution will be admissible in evidence in any disciplinary proceedings arising from the complaint (as well as in criminal proceedings).

4.28 [Where a member is alleged to have committed a criminal offence, it is essential that, as indicated in paragraphs 4.26 and 4.27, he should be cautioned under the Code of Practice for the Detention, Treatment and Questioning of persons by police officers or served with a Regulation 6 Notice together with relevant caution/s, in writing, under that Regulation, as may be appropriate, at the earliest possible moment. In such circumstances the member should not be required to make a duty statement.]

4.29 Regulation 5 of the Discipline Regulations which deals with the appointment of an investigating officer (who may be appointed from another force) makes it clear that the procedure laid down in the Regulation is applicable to a complaint which has been recorded under Article 5 of the Order and which suggests that an offence has been committed which might lead to disciplinary proceedings, as well as to any other report or allegation from which it appears that a member of the police force may have committed an offence against discipline.

## SECTION 5

### REFERENCE OF OTHER MATTERS TO THE COMMISSION

#### RESPONSIBILITY OF APPROPRIATE AUTHORITY TO HAVE 'OTHER MATTERS' INVESTIGATED

5.1 Public apprehensions about police misconduct are not always evidenced by the registering of formal complaints; and matters may arise which, though not the subject of a formal complaint, may nevertheless indicate that a member may have committed a criminal or disciplinary offence. Such matters can come to the attention of the Chief Constable (or the Police Authority) in a number of ways; for example, as the result of information or reports which necessitate internal disciplinary enquiries, or in expressions of public concern by the media.

5.2 It is therefore natural, but also important, that the Chief Constable (and the Police Authority) take account of those matters which might detrimentally affect the public's perception of policing. Where such matters indicate that a member may have committed a criminal or disciplinary offence, it is clearly necessary that they be fully investigated in order to allay public misgivings and to minimise the damage which might be caused to the reputation of the RUC should questions remain unanswered.

#### MATTERS REFERRED UNDER ARTICLE 8(1) OF THE ORDER (Appropriate Authority)

5.3 The Chief Constable and the Police Authority (as "appropriate authorities") have discretion to refer the investigation of any matter, not the subject of a complaint but relating to the conduct of a member, to the Commission for supervision. The appropriate authority should exercise its judgement as to whether or not the matter in question is sufficiently grave or has arisen in such exceptional circumstances as would warrant the Commission's involvement. It should also provide the Commission with as much information as possible about the matter, together with a view as to why it considers that the investigation should be supervised. Since the Commission has discretion as to its involvement (Article 9(3)(b) of the Order) it may require to be satisfied that the appropriate authority has given sufficient consideration to the matter in question and that it meets the criteria for referral in this way. If the Commission accepts that its supervision is warranted, the procedures in the Order which govern the investigation of complaints, their reference to the DPP, consideration of criminal matters and the Commission's involvement in subsequent disciplinary procedures, will apply to matters referred under Article 8(1), as they apply in respect of formal complaints investigations.

#### MATTERS REFERRED UNDER ARTICLE 8(2) OF THE ORDER; (SECRETARY OF STATE AND PANI RESERVE POWERS)

5.4 The principle governing the use of powers conferred by Article 8(1) is the same as that upon which Article 8(2) depends; but the essential difference is that these "reserve powers" will be used only where the public interest demands. Accordingly, the Secretary of State, and the Police Authority in its own right (and not as an "appropriate authority") have discretion to refer the investigation of any matter, again not the subject of a formal complaint but relating to the conduct of a member, to the Commission for supervision where they consider it is desirable in the public interest. The Secretary of State considers that this power will only be used in the most exceptional circumstances, after a full consultation between the Secretary of State, the Police Authority and the Chief Constable, and after a careful assessment of those factors which, in terms of seriousness, gravity and public interest, set the matter apart from those which the "appropriate authority" would ordinarily have been expected to refer to the Commission under Article 8(1).

5.5 Where the "reserve power" is used, the Commission will be required to supervise the investigation (Article 9(2) of the Order) and, once again, all the procedures appropriate to the formal investigation of complaints, including the Commission's involvement in subsequent disciplinary proceedings, will apply and a copy of the investigating officer's report will be sent to the Secretary of State, the Police Authority and the Chief Constable in all cases.

#### GENERAL

5.6 It is important to note however, that matters relating to the Chief Constable's direction and control of the RUC are outside the scope of referrals under Article 8. Matters dealt with under Article 8(1) and (2) (as with complaints) must relate to the conduct of members and to the likely commission of criminal/disciplinary offences.

## SECTION 6

### FUNCTIONS OF THE INDEPENDENT COMMISSION FOR POLICE COMPLAINTS

#### GENERAL

6.1 The Commission, which is established by the Order, replaces the Police Complaints Board; it will take over the Board's functions in relation to disciplinary matters arising from complaints but will also be responsible for supervising police investigations into complaints and for monitoring the effectiveness of the informal resolution procedures.

#### SUPERVISION OF INVESTIGATIONS

6.2 All complaints subject to formal investigation must be referred to the Commission by the appropriate authority. It will then be a matter for the Commission to determine, in light of Article 9 of the Order, whether or not the investigation warrants its mandatory supervision. The Commission must also supervise the investigation of matters referred to it under Article 8(2), and may, at its discretion, supervise any other investigation.

6.3 As it develops experience of the new arrangements, the Commission should become more adept at identifying those cases which it is required to supervise. It is of course recognised that in "borderline" cases, the Commission may well decide to supervise the investigation; but if its decision to supervise has been taken in light of a judgement about the nature of an injury which later turns out to be less serious than initially indicated, the Commission may then wish to exercise its supervisory powers with less rigour than it may have anticipated. However, there will be no question of the Commission withdrawing from an investigation which it is required or has determined to supervise, and it must issue a statement in every such case.

#### CASES REFERRED TO THE COMMISSION

6.4 The Commission should receive formal investigation cases by the end of the day after the day on which it becomes clear to the appropriate authority that the complaint warrants formal investigation. However there may be cases where it is not immediately apparent that the complaint should be subject to formal investigation; therefore, since referral has to take place within so short a time scale, the Secretary of State considers that it should be of benefit to both the RUC and the Commission, if cases alleging the commission of any offence listed at Annex K were referred to the Commission not later than the end of the day following the day on which the complaint was initially submitted. Complaints about offences not listed in the Annex, and those which involve minor matters which may be subject to consideration for informal resolution, should be referred to the Commission within the specified time limit, once a decision is taken about formal/informal disposal.

6.5 Referral, in all cases, will be deemed to have taken place when the Commission has received the information constituting the record of complaint. If referral is made by telephone, the call and its contents should be confirmed immediately to the Commission in writing. There is no time limit regarding the referral to the Commission of matters under Article 8; but it will be borne in mind that the value of the Commission's independent supervision may in large measure depend upon its being involved from a very early stage.

#### APPROVAL OF INVESTIGATING OFFICER

6.6 It will be for the Commission to decide whether to exercise its powers under Article 9 of the Order to approve the appointment of the investigating officer: and in reaching its decision, will consider the information already provided by the appropriate authority as indicated in paragraph 4.6. The Commission may approve or veto the appointment in any case, and may require that an investigating officer be appointed from another police force. Where no appointment has been made, the Commission's approval must be sought beforehand.

#### CONDUCT OF INVESTIGATION



6.7 Where the Commission supervises an investigation (and this includes a complaint or an Article 8 matter) it will also have power to impose reasonable requirements affecting the conduct of the investigation and the use of resources employed to carry it out; for example it may ask that an enquiry follow a particular course or that the investigating officer should carry out a more searching examination of matters already considered. It will be able to appoint one of its own members to take personal responsibility for the supervision of a particular investigation and to keep in close touch with the investigating officer throughout the course of his enquiries.

6.8 However, before making any requirement affecting the resources to be employed in an investigation, the Commission must seek the views of the Chief Constable who is, of course, responsible for making those resources available. The Commission should have regard to any views the Chief Constable may express.

6.9 At the end of an investigation which it has supervised, the Commission must prepare a statement for issue to the appropriate authority, the complainant and the member whose conduct has been investigated. The statement should indicate whether the Commission was satisfied with the conduct of the investigation, and specifying any respect in which it was not. The Commission's statement is intended as a sanction of last resort and it is hoped that the Commission will rarely, if ever, find it necessary to make an adverse statement. However it will be open to the Commission to enter certain qualifications when recording a satisfactory verdict on an investigation, without implying that it was dissatisfied with the investigation as a whole. The Commission will also be able to record its reasons for being satisfied with an investigation or its supervision which it considers should be brought to the attention of the appropriate authority, the complainant, or the member whose conduct was investigated. The Commission should preserve the confidentiality of investigation reports and accompanying statements (see paragraphs 9.16-9.17).

6.10 If the Commission is supervising the investigation of a complaint which is withdrawn, the investigating officer is not required to submit a report to the Commission under Article 9(7) of the Order, nor will the Commission be required to make an appropriate statement under Article 9(8). The Commission should however be supplied on request with any information bearing on the circumstances in which the complaint was withdrawn, together with a copy of the complainant's notice of withdrawal, if the copy has not already been sent, see paragraph 4.20.

6.11 A member conducting an investigation under the supervision of the Commission should bear in mind not only the need to observe the formal requirements of the Commission in regard to the supply of information and the conduct of the investigation, but also the desirability of keeping the Commission abreast of significant developments in the investigation. In particular the investigating officer is reminded of the procedure (set out in paragraph 7.4) which requires him to inform the Commission of the outcome of consultations between the Royal Ulster Constabulary and the Director of Public Prosecutions.

## **DISCIPLINARY ROLE**

6.12 After the Chief Constable has considered the investigating officer's report, and after any reference to the Director of Public Prosecutions, he must consider the disciplinary aspects of the case. If he decides either to charge the member or not, he must notify the Commission by memorandum. If the Commission accepts that no charges are called for, it will notify the Chief Constable and the complainant. Where the Chief Constable has decided that, although the investigating officer's report indicates that a member has committed a criminal offence, the member ought not to be charged, the Commission, if it disagrees with the Chief Constable's decision, may direct him to send the report to the Director of Public Prosecutions. Similarly, where the Chief Constable has decided not to bring charges, and the Commission is not satisfied with his decision, it may ask for further information and may discuss the matter with the Chief Constable. In the last resort it may direct that disciplinary charges be brought. In that case, the charges will be heard by a Disciplinary Tribunal comprising a Chairman who shall be the Chief Constable or the Chief Constable of another UK police force and two members of the Commission who have had no connection with the case.

## **SPECIAL REPORTS BY THE COMMISSION**

6.13 The Commission is empowered by Article 17(2) of the Order to make a special report to the Secretary of State on any grave or exceptional matter which comes to its notice and which it considers should be drawn to his attention. It is for the Commission to decide what constitutes a grave matter. Special reports are required to be copied

to the Police Authority and the Chief Constable. It is for the recipients of such a report to decide what action it is appropriate for them to take in regard to it.

#### **DELEGATION OF FUNCTIONS OF THE COMMISSION**

6.14 Paragraph 10(2) of Schedule 1 to the Order gives the Commission power, subject to the approval of the Secretary of State, to make arrangements for the delegation of the discharge of its functions. These arrangements will include provision that all decisions on cases referred to the Commission under article 10 of the Order will be taken by one or more members of the Commission (if they are not taken by the Commission as a whole).

## SECTION 7

### CONSIDERATION OF AND ACTION ON INVESTIGATION REPORT

#### ACTION BY THE CHIEF CONSTABLE

7.1 When the Chief Constable receives an investigating officer's report submitted under Article 5(8) of the Order, or a copy report submitted under Article 9(7), he should consider its criminal and disciplinary aspects. However under the provisions of Article 9(12) of the Order, where the Commission has supervised the investigation, no disciplinary charge may be brought until the Chief Constable has received the statement which the Commission is required to submit to him under article 9(8). Similarly, under the provisions of Article 9(13) of the Order neither the Chief Constable nor the Director of Public Prosecutions may bring criminal proceedings until the Chief Constable has received the Commission's statement. However, Article 9(14) disappplies the latter restriction in cases where it appears to the Director that there are exceptional circumstances which make it undesirable to wait for the statement to be submitted.

7.2 A complaint may cover several matters or several complaints may relate to the same incident. It will be evident that one complaint on one matter can raise varying issues and give rise to one or more of several possible outcomes: it could lead to one or more criminal charges, to one or more disciplinary charges, to advice to the member concerned, to civil proceedings being brought against the police; or to no disciplinary action. Equally, if the Chief Constable decides to take disciplinary action, there will often be a range of possible charges or possible combinations of charges which might be preferred against the member concerned from which the Chief Constable will have to choose the most appropriate in all the circumstances of the case. In the great majority of cases, however, the Chief Constable should have little difficulty in deciding what is appropriate. In particular he can continue, as at present, to select more important matters for formal disciplinary action and dispose of smaller matters without recourse to a disciplinary hearing, i.e., by a word of warning or advice from a senior officer. In a complaints case it will, of course, be necessary for the Chief Constable to indicate, in referring the case to the Commission, that he considers such a course to be appropriate and why (see paragraphs 8.6 and 8.7).

#### THE ROLE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

7.3 If the Chief Constable determines that the report indicates that a criminal offence **may** have been committed by a member and that the member **ought to be charged with it**, then he must send a copy of the report to the Director of Public Prosecutions. This requirement extends to all types of criminal offences but allows the Chief Constable discretion to consider whether any such offence is minor enough to be dealt with under the disciplinary code rather than as a criminal offence. It should be emphasised, however, that the requirement is not met by referring only those cases where, in the Chief Constable's view, there is sufficient evidence to show that a criminal offence has been committed: he must refer any case where such an offence **may** have been committed (provided, of course, that he considers that, if the evidence is sufficient, the member concerned ought to be charged with the offence). Where information from a source other than a report submitted under Article 5(8) or 9(7) of the Order indicates to the Chief Constable that a member may have committed a criminal offence and that the officer ought to be charged with it, he should refer the case to the Director of Public Prosecutions, even though the circumstances of the offence have required a charge to be preferred forthwith. [2Moreover, it is not sufficient for the Chief Constable to refer only those cases where he feels that a criminal charge would be likely to succeed. Provided the requirements of Article 10 of the Order are met, all such cases should be referred to the Director of Public Prosecutions regardless of whether it may appear that the charge could fail: this is a judgement which only the Director of Public Prosecutions has the authority to make.]

7.4 Where a criminal offence may have been committed it may exceptionally happen that in the course of an investigation the investigating officer will consider it desirable to make arrangements to seek the advice of the Director of Public Prosecutions. Where the Commission is supervising the investigation, the investigating officer should inform the Commission of the nature and outcome of any such consultations between the Royal Ulster Constabulary and the Director of Public Prosecutions.

7.5 The Director of Public Prosecutions will inform the Chief Constable of his decision whether or not a member should be prosecuted. The Director does not give reasons for his decision, but where the decision is against

prosecution, his reply to the Chief Constable will normally indicate whether he considers that the evidence is insufficient to justify criminal proceedings or that criminal proceedings are not necessary in the public interest. The Director may sometimes indicate to the Chief Constable that, although criminal proceedings are not appropriate, it is still open to him to consider disposing of the matter by means of disciplinary action. The Chief Constable, in any letter to the complainant, will merely inform the complainant either that the Director has directed no prosecution, or that the Director has directed a prosecution, giving brief details of the nature of the offence. The Chief Constable will not inform the complainant of any reason given by the Director for his decision not to initiate criminal proceedings.

7.6 Where the report indicates no criminal offence or that one may have been committed but the Chief Constable considers that the member ought **not** to be charged with it, he is required by Article 10(6) of the Order to refer the case to the Commission, stating whether he proposes to prefer disciplinary charges and, if not, his reasons for not proposing to do so. The Commission may decide to exercise its power under Article 12(2) to direct that the case should in fact be referred to the Director of Public Prosecutions, and therefore the Chief Constable should not prefer the charges proposed in his memorandum until the Commission has indicated to him that it is content with his proposals.

## **THE RELATIONSHIP BETWEEN CRIMINAL AND DISCIPLINARY PROCEEDINGS**

7.7 Members of the RUC are subject to the criminal law and to a discipline code. As a result, alleged misconduct may render a member liable to both criminal and disciplinary proceedings. It is necessary that where both these systems may apply, they are operated in ways which are neither unfair to the member nor against the public interest. In deciding whether to prefer a disciplinary charge the Chief Constable should consider:-

- (a) the effect of any criminal proceedings which have already taken place; and
- (b) the effect of any decision by the Director of Public Prosecutions that criminal proceedings should not be brought.

## **WHERE CRIMINAL PROCEEDINGS HAVE ALREADY TAKEN PLACE**

7.8 Article 22 of the Order provides that a member brought before the courts on a criminal charge should not, whether acquitted or convicted, thereafter be charged with a disciplinary offence which is in substance the same (save that criminal conduct itself constitutes a disciplinary offence). This is because, since the required standard of proof in disciplinary proceedings is the same as that in criminal proceedings, to bring a disciplinary charge following a criminal charge would be in effect to try the member twice for the same offence. This is the only statutory bar to disciplinary proceedings and the sole situation in which it is appropriate to say that "double jeopardy" obtains.

7.9 In considering whether Article 22 operates, close attention should be paid to the similarity in the elements of the criminal charge and the possible disciplinary charge. In some cases they may not be as similar as appears at first sight: the mental element of the criminal offence may be lacking in the disciplinary offence, or the conduct involved may differ. Where this is so, there is no bar to disciplinary proceedings, because the two offences are not in substance the same. As examples, in criminal proceedings against a member for corruption it is necessary to establish that the member agreed to show favour to the person from whom he agreed to accept a gift or consideration but this element is absent from the disciplinary offence of accepting a gratuity; a criminal charge of perjury involves proof that an allegedly false statement was material to the proceedings in which it was made, but a disciplinary charge of falsehood does not, and a Theft Act charge will require proof of an intention permanently to deprive a person of his property or permanently to evade payment of a debt, whereas these elements are absent from disciplinary offences relating to the care of property or failure to discharge debts. By contrast, the criminal charge of assault and the disciplinary charge of unnecessary violence is the most common example of such charges being in substance the same.

7.10 There will also be cases where an acquittal on a criminal charge may be very relevant to the question whether to prefer a disciplinary charge, notwithstanding that the charges are not in substance the same, so that Article 22 of the Order does not operate. This will be so, in particular, when a matter essential to the proof of the disciplinary charge was in issue in the criminal proceedings and was apparently resolved in the member's favour. In the first example quoted in paragraph 7.9, if the essential issue in a trial for corruption was whether the member received a gift, rather than whether he showed favour in return for a gift, it may not be appropriate to prefer a disciplinary charge of accepting a gratuity following an acquittal in the criminal proceedings.

7.11 Article 22 of the Order does not apply to a charge of criminal conduct under paragraph 17 of the discipline code in Schedule 1 of the Discipline Regulations which consists of having been found guilty of a criminal offence. The Secretary of State considers that where a member has been convicted of a criminal offence there is no reason in principle why the disciplinary charge of conviction for that offence should not then be preferred. If, for example, a member has committed a serious crime, his fitness to remain in the force is clearly in doubt and it is right that the Chief Constable should be able to prefer the disciplinary charge of conviction for a criminal offence so that suitable action may be taken. (See also paragraph 11.37).

7.12 [It is emphasised that where a member has been found guilty of a criminal offence, there is discretion whether or not to bring a charge under paragraph 17 of the Discipline Code. Generally speaking, the accused having been sentenced by a court, the only matter outstanding is his fitness for the responsibilities of his rank or as a member. There may be cases where some lesser punishment than dismissal or reduction in rank, such as reprimand (though not a monetary punishment - see Regulation 24(1) of the Discipline Regulations) would be appropriate. In some cases involving conviction for comparatively trivial offences, including minor traffic offences without aggravating factors, formal disciplinary action will, in all probability, rarely be necessary. These considerations continue to apply where the court has given a suspended or deferred sentence, a conditional or absolute discharge, or put the member on probation. The conduct in question comes within the scope of paragraph 17 of the Discipline Code since these sentences follow a finding of guilt.]

7.13 Cases may arise which involve both a criminal offence which is to be the subject of prosecution, and misconduct not amounting to a crime which is separate from the criminal charge and could properly be made the subject of disciplinary charges. The procedure to be followed in regard to the bringing of disciplinary charges will depend on the nature of the case. In an internal disciplinary case, where no complaint is involved, and the Chief Constable is satisfied that no further disciplinary enquiries might be needed during or as a result of the criminal proceedings, then if it is practicable, the disciplinary charges should be framed and notified at the earliest opportunity, but the member should be informed that the charges will not be proceeded with until the result of the criminal charges is known.

7.14 [In a complaints case, the decision to prefer disciplinary charges must await the determination of the question of criminal proceedings, or the completion of the trial if the member concerned is charged with a criminal offence. However, it is strongly recommended that at the time the member is charged with the criminal offence, he should, to leave him in no doubt, be served with a written statement that the disciplinary aspects of the case remain outstanding. He should be told that no disciplinary proceedings will be taken until the outcome of the trial is known. The underlying policy here is that after having stood trial on a criminal charge the member should not then learn for the first time that he must also face disciplinary charges. The member concerned will naturally be aware of the protection given by Article 22 of the Order. (See also paragraph 3 of Annex E).]

#### **WHERE THE DIRECTOR HAS DECIDED THAT CRIMINAL PROCEEDINGS SHOULD NOT BE BROUGHT**

7.15 Here Article 22 of the Order does not operate and all cases fall to be considered individually on their merits. However, account should be taken of such a decision by the Director if the criminal offence which he has considered is in substance the same as the disciplinary offence under consideration (i.e. the sort of examination outlined in paragraph 7.9 will be relevant here also) and his decision is on the grounds that the available evidence is insufficient: if the Director has decided that the evidence is insufficient for criminal prosecution it is for consideration whether it is sufficient for disciplinary proceedings. Ultimately, however, having considered each case on its merits, the disciplinary authority is free to bring proceedings if it thinks in all the circumstances that it is fair and appropriate to do so.

7.16 In a separate category are cases where the alleged misconduct is fairly trivial when regarded as a criminal offence, but far more serious in the context of a disciplined service. Cases of common assault, minor thefts of police property and the use of bad language to a member of the public might fall within this category. In such cases, the Director may decide that the offence is not such as to merit prosecution (he may use the expression that it would not be in the public interest to bring a criminal charge). If this is so, his decision is not relevant to the question whether disciplinary proceedings should be brought since he has not expressed the view that the evidence is insufficient to justify criminal proceedings. It follows, therefore, that the disciplinary authority is free to take what action it thinks appropriate in such instances without further regard to the Director's decision.

7.17 Where a disciplinary charge is brought in a case which the Director has decided that there should be no prosecution, the accused member should be supplied with a copy of the Director's letter notifying his decision, unless the Chief Constable, after such consultation with the Director as may be necessary, considers that there are special reasons against doing so in a particular case.

#### **MEMBER ADMITTING DISCIPLINARY CHARGE**

7.18 Except in cases in which Article 10(6) applies, a case need not be referred to the Commission under the provisions of Article 10 of the Order if disciplinary charges have been preferred and the accused has admitted the charges and has not withdrawn his admission. In such a case, the Chief Constable is required by Article 11 of the Order to submit to the Commission at the conclusion of the disciplinary proceedings a memorandum setting out the particulars of the disciplinary charges preferred and of any punishment imposed.

#### **REPORTS ON CASES NOT ARISING OUT OF COMPLAINTS**

7.19 The Commission's responsibilities in disciplinary matters extend only to those cases in which an investigating officer's report was submitted under the provisions of Article 5(8) or 9(7) of the Order, i.e. where it relates to a case arising out of a complaint or out of a matter the investigation of which was supervised by the Commission after being referred under Article 8. In all other cases the Chief Constable will decide whether it would be appropriate to bring a disciplinary charge or charges under Regulation 7 of the Discipline Regulations against the member concerned and, if he does not bring such charges, whether any other action is appropriate to deal with the matter. He may then proceed with the preferring of any charges and with arrangements for the hearing of those charges. The Commission is not involved.

#### **ATTITUDE OF COMPLAINANT**

7.20 [It can normally be assumed that a person who has made a complaint against a member will be prepared to substantiate that complaint in criminal or disciplinary proceedings. If a witness indicates an unwillingness to attend a disciplinary hearing, the Chief Constable may apply to the Crown office of the Supreme Court for a subpoena ad testificandum. (In such cases, service of the subpoena will be in accordance with the Rules of the Supreme Court). Complainants should not be asked to express a preference for criminal or disciplinary proceedings, or for attending one type of hearing rather than the other. Any unsolicited expression of the complainant's feelings should nevertheless be recorded.]

## SECTION 8

### MEMORANDUM AND INFORMATION TO BE SUBMITTED TO THE COMMISSION

#### PROCEDURES

8.1 After receiving the report of an investigation under Articles 5(8) or 9(7) of the Order, the Chief Constable is required first to consider matters related to any criminal offence revealed in the report (see Section 7). Thereafter he should consider the disciplinary aspects of the report and is required to send the Commission a memorandum, setting out his opinion of the complaint or other matter to which it relates. The memorandum must also contain particulars of:

- (a) any disciplinary charges which he has preferred, or proposes to prefer, in respect of the conduct investigated;
- (b) any exceptional circumstances which lead him to consider that the charges should be heard by a Disciplinary Tribunal; and
- (c) where he has not brought disciplinary charges, and does not propose to do so, his reasons for not doing so.

8.2 The requirements will apply even in cases not supervised by the Commission; however, in such cases, the Chief Constable should send the memorandum to the Commission together with:

- (a) a copy of the complaint or, if it was made orally, a copy of the record of it; and
- (b) a copy of the investigating officer's report with the relevant supporting statements and other documents annexed to the report by the investigating officer.

8.3 In any case where the Chief Constable has preferred disciplinary charges against the member concerned (and Article 10(6) of the Order does not apply), and the member has admitted the charge and not withdrawn the admission, he need not send a memorandum to the Commission. Instead, at the close of the discipline proceedings, including any appeal to the Secretary of State, the Chief Constable is required to send the Commission:

- (a) particulars of the charges preferred, and of any punishment awarded; and
- (b) where the charges related to a complaint and the investigation was not supervised by the Commission:
  - (i) a copy of the complaint or the record of it, and
  - (ii) a copy of the investigating officer's report and supporting documents.

8.4 Details of any disciplinary charges preferred may be submitted by means of a copy of the discipline form (Schedule 2 of the Discipline Regulations) if this is convenient. Where the investigation report has been submitted to the Director of Public Prosecutions under Article 10(4) of the Order, the Commission will need to be told, particularly if no disciplinary charges are preferred, what the Director's decision was and the terms in which it was expressed. This may be done by the Chief Constable sending the Commission a copy of the Director's letter.

8.5 The Secretary of State considers that the Chief Constable's opinion on the merits of any complaint (which should make clear whether he considers the complaint to be substantiated in whole or in part) will be invaluable to the Commission, as indeed will be his advice on any matters connected with the complaint. Where he has brought charges, the Chief Constable's opinion on the question whether or not there are exceptional circumstances calling for a Disciplinary Tribunal (see paragraph 8.21) will be particularly important to the Commission.

8.6 Where disciplinary charges are brought, the link between them and the complaint which led to them will normally be obvious. But this may not be so clear where no charges have been brought. The Commission will therefore need to have a statement of the Chief Constable's reasons for not bringing charges. For example:

- (a) there is no evidence to substantiate the complaint (or non-complaint matter);
- (b) the matter can be dealt with by giving suitable advice to the member concerned;
- (c) criminal proceedings have been brought which leave no aspect of the complaint (or non-complaint matter) outstanding; or
- (d) there is insufficient evidence to support a disciplinary charge (e.g. there are no independent witnesses).

It should be noted that this is not intended to be an exhaustive list and in a complicated case a fuller account of the circumstances may be necessary, but it is suggested that a short explanation on these lines will suffice in the majority of cases.

8.7 Where the matter can be dealt with by "suitable advice" it is important that the memorandum to the Commission should explain what the 'suitable advice' would consist of; the term is an imprecise one which may be used to cover different forms of advice. The memorandum should, therefore, indicate exactly what the Chief Constable has in mind in the individual case, at what level the member concerned would be interviewed and the substance of what would be said to him. Although the giving of advice may not have been proposed in the memorandum sent to it, the Commission might nevertheless feel that such advice would be appropriate and accordingly suggest this to the Chief Constable.

8.8 The Commission is not concerned with disciplinary charges other than those in respect of matters complained of or matters the investigation of which has been supervised by the commission. It is possible, for example, that the investigation of a complaint might bring to light a disciplinary offence wholly unconnected with it (e.g. a complaint that a constable had been rude on a particular occasion might bring to light that he was absent from his beat). It is unnecessary for the Commission to consider such an offence or any charge which might be brought as a result; this is purely a matter of internal discipline.

8.9 In addition to the statutory requirements for information to be forwarded to the Commission, details of any relevant action taken or contemplated following the investigation of a complaint (other than the preferring of formal disciplinary charges) may be made, available to it; and the Commission may also be told what information on this action can properly be conveyed to the complainant in cases where it has accepted the Chief Constable's decision that no disciplinary charge should be preferred (see paragraph 9.4). If the Chief Constable receives any representations from the complainant or from the member concerned for or against the holding of a Disciplinary Tribunal he should send copies of them to the Commission.

#### **REQUESTS BY THE COMMISSION FOR ADDITIONAL INFORMATION**

8.10 Under Article 13(8) of the Order the Chief Constable is required to comply with a request from the Commission for any information which it may reasonably require for the exercise of its functions under that Article which relates to the Commission's powers in respect of disciplinary charges. Such information may be in addition to the information contained in the investigation report and other documents submitted to it.

8.11 It is expected that the Commission will on occasions need to call for additional information, and that such requests are unlikely to involve extra inquiries as opposed to the supply of information readily available to the police. If, however, the Chief Constable is of the opinion that to comply with any such request would be prejudicial to the interests of justice or that the required information is not obtainable without disproportionate effort on the part of the police, then he may make representations to the Commission to this effect.

#### **POWERS OF THE COMMISSION IN RELATION TO THE BRINGING OF CHARGES**

8.12 The Commission is required under Article 23(4) of the Order to have regard to any guidance given to it by the Secretary of State with respect to such matters affecting the preferring and withdrawing of disciplinary charges as are the subject of current guidance by him to the police. The Secretary of State has issued guidance to the Commission to follow the criteria set out in paragraphs 7.2, 7.7 - 7.10, 7.15 - 7.16 and 11.10 - 11.20.

#### **Recommendation by the Commission**

8.13 Where the Commission considers that a disciplinary charge should be preferred against a member in respect of a matter complained of which has not already been the subject of disciplinary charges, it will recommend to the Chief Constable the charge which it considers should be preferred, giving reasons for its recommendation. The Commission must be specific as to the charge which it regards as appropriate. The Chief Constable will inform the Commission whether he accepts its recommendation and if he does, proceed to prefer the charges. (The Commission will normally indicate at the same time whether it considers that the charge should be heard by a Disciplinary Tribunal.)



### **Direction by the Commission**

8.14 Where the Chief Constable disagrees with the Commission's recommendation to prefer a disciplinary charge, he may inform it, giving his reasons. The Commission may accept this; or it may enter into further discussions; or it may direct that specific charges be brought, again giving reasons for its direction in writing. If a direction is made, the Chief Constable must prefer the charge forthwith and inform the member concerned, and the complainant, that the charge has been brought at the direction of the Commission. [2The charge will be heard and determined by a Disciplinary Tribunal constituted in accordance with Article 14 of the order. Punishment in findings of guilt will be determined by the Chairman in accordance with the provisions of that Article.]

### **ADVANCE WARNING OF URGENT CASES**

8.15 The Commission will consider and reach a decision on all cases submitted to it under Article 10 of the Order as expeditiously as practicable, but there may be cases where it is particularly important that the Commission should act with especial urgency. It is suggested that in such cases the Chief Constable should try to give it advance warning.

### **THE COMMISSION'S POWER TO DIRECT THAT A MATTER BE REFERRED TO THE DIRECTOR OF PUBLIC PROSECUTIONS**

8.16 Article 12 of the Order provides that, where a case is referred to the Commission under Article 10 or 11, if the Commission considers that criminal proceedings against the member concerned would be justified, it may direct the Chief Constable to send the case to the Director of Public Prosecutions. The Chief Constable must comply with this direction. In such a case, the procedure set out in paragraphs 8.1 - 8.3 must be followed once the Director has given his decision in the case.

### **WITHDRAWAL OF CHARGES BEFORE THE HEARING**

8.17 Where the Chief Constable considers that a charge brought against a member following a complaint should be withdrawn before the hearing, Article 13 of the Order requires him to seek the leave of the Commission to do so, giving reasons for his view that the charge should be withdrawn. This is because the withdrawal of charges makes the case broadly analogous with those in which no disciplinary charges have been preferred and which fall to be considered by the Commission under Article 10 of the Order (see also Annex F, paragraph 21).

### **CONFIDENTIALITY**

8.18 Where the Chief Constable prefers disciplinary charges before reference to the Commission, he must not, of course, arrange for the charges, if denied, to be heard until the Commission has considered whether a Disciplinary Tribunal should be held. It is implicit in the procedure laid down in the Order that the Chief Constable should not make known his decision (which must of necessity be provisional) that charges should not be preferred in respect of any complaint before the Commission has reached its decision on the case. Where there has been discussion between the Chief Constable and the Commission this will be treated as confidential.

### **CASES COVERING MORE THAN ONE MATTER OF COMPLAINT**

8.19 Paragraphs 2.15 to 2.18 deal with itemisation of complaints and explain the importance of distinguishing different matters within a single statement of complaint. Where a case contains several individual matters of complaint, it will occasionally happen that the Chief Constable considers that the evidence justifies disciplinary charges in respect of some matters but not of others. Except in cases to which Article 10(6) of the Order applies, he is, of course, at liberty to bring such charges without reference to the Commission, but he will still have to refer the other matters to the Commission, which retains its powers to recommend or direct the bringing of charges in respect of them. [f the Commission decides to exercise its powers, the member concerned might find himself faced with a second charge some time after the first.

8.20 To avoid this difficulty, the Chief Constable may therefore wish to consider the following procedure, for use in cases **other than those which must be referred to the Commission under Article 10(6) of the Order**. If the Chief Constable thinks that the charges he wishes to bring, cover the main substance of the complaint, he will proceed to bring them and then refer the case to the Commission explaining his reasons for choosing to bring charges in respect of those matters and not of others, and giving his view as to whether they should be heard by a Disciplinary Tribunal. If the charges he wishes to bring cover a minor part of the complaint only, he should not bring the charges but refer the case to the Commission, telling it, however, of the charges that he intends to bring and again explaining his reasons for that intention; if the Commission exercises its powers to recommend or direct the bringing of charges in respect of the other, major, matters complained of, the Chief Constable will then be able to bring all the charges at the same time. It is stressed that it is a matter for the discretion of the Chief Constable whether he decides to bring charges before reference to the Commission in the situation described. Equally, it is for the Commission to decide whether it wishes to exercise its powers to recommend or direct the bringing of charges in respect of any matter complained of in respect of which charges have not already been brought.

#### **POWER OF THE COMMISSION TO DIRECT THAT CHARGES BE HEARD BY A DISCIPLINARY TRIBUNAL**

8.21 Under Article 14(2) of the Order, the Commission may direct that a disciplinary charge should be heard by a Disciplinary Tribunal instead of by the Chief Constable, if it considers this to be desirable by reason of any exceptional circumstances affecting the case. The Commission may exercise this power only in respect of charges arising from matters referred to it and to which a memorandum from the Chief Constable, issued under Article 10, relates. A Disciplinary Tribunal cannot be convened to hear charges which the Chief Constable has brought on his own initiative, unless the member concerned does not admit the charges. Factors which are likely to be relevant to this decision are, the intrinsic seriousness of the charge; the complexity or difficulty of the case; the gravity of public disquiet; or the particular circumstances.

8.22 Where the Commission decides that a charge should be heard by a Disciplinary Tribunal, the Chief Constable may himself wish to discuss the decision with the commission, if he considers there are arguments pointing the other way (this may of course, apply equally where the Commission has not recommended a Disciplinary Tribunal and the Chief Constable feels that one is justified). The Chief Constable should ensure that the Commission is aware of any representation he may have received on that point once the charges have been brought.

8.23 In all cases both the member concerned and the complainant should be informed at the earliest opportunity of a decision that a charge will be heard by a Tribunal.

#### **HEARING OF RELATED CHARGES BY A DISCIPLINARY TRIBUNAL**

8.24 Article 14(10) of the Order provides that, where a Disciplinary Tribunal is to be held, other charges against the accused member may also be heard by the Tribunal, if this seems to the Chief Constable to be convenient and fair. This is intended to allow the Disciplinary Tribunal to deal with charges relating to other offences which may have come to light in the course of the investigation of a complaint, although these are not relevant to the complaint itself (see paragraph 8.19). The accused member should be told at once of any charge to be so heard, and the Commission should also be informed as soon as possible.

#### **CHANGE OF ADMISSION OR DENIAL BEFORE THE HEARING OF CHARGES**

8.25 If, before the hearing, the accused member changes his plea from a denial to an admission, in respect of a charge which the Commission has decided should be heard before a Disciplinary Tribunal, then the Commission should be informed immediately. If, before the hearing of charges which have been admitted by the accused member (so that no memorandum will have been submitted under Article 10) the accused withdraws his admission, the hearing will have to be postponed until the necessary submission under the provisions of Article 10 has been made to the Commission. The Commission may then direct that the charges should be heard by a Disciplinary Tribunal.

#### **ACCUSED MEMBER CEASING TO SERVE**

8.26 The fact that a member who is the subject of a complaint or of a non-complaint matter ceases to serve as a police officer (or had already ceased to serve before the complaint was received) does not put the matter outside the purview of the Commission. The case should therefore be treated in accordance with the normal procedures as far as is practicable and a report sent to the Commission, notwithstanding that there could be no question of disciplinary proceedings. The Commission should also be informed if the member ceases to serve while a report under Article 10 of the Order is currently with it; or if, charges having been preferred (whether or not after reference to the Commission), the member ceases to serve before a disciplinary hearing is held. The Commission would find it helpful to be informed as to the circumstances in which a member left the police service after a complaint had been lodged.

## SECTION 9

### INFORMATION AND ASSISTANCE FOR COMPLAINANT AND MEMBER CONCERNED

#### LEAFLET FOR MEMBERS OF THE PUBLIC

9.1 A leaflet explaining the complaints procedure has been prepared and is available from Police Division, Northern Ireland Office. Copies of the leaflet should be made available at every police station and anywhere else where the Chief Constable considers it desirable, and a copy should be supplied to any member of the public who asks for one. Copies have also been issued by the Northern Ireland Office to the Commission, the Police Authority, Citizens Advice Bureaux, libraries, Belfast Law Centre and local security offices of the Department of Health and Social Services. The leaflet is not intended to be a substitute for the oral advice and explanation of procedure that is usually given to a complainant by the member who interviews him thereafter, but it may be found useful to give a copy to each complainant as a reminder of the procedures.

#### NOTIFICATION OF THE OUTCOME OF A COMPLAINT

9.2 Paragraph 4.12 recommends that certain action should be taken to keep both the complainant, and the member concerned, informed about the progress of investigation of a complaint under Article 5 of the Order. Annex F deals with the presence of the complainant at a disciplinary hearing. The following paragraphs are concerned primarily with notification to the complainant and the member concerned of the outcome of the complaint. It is recommended that a similar procedure should be followed where the Police Authority has received a complaint against a senior officer from a member of the public direct.

##### To the Complainant

9.3 Where disciplinary charges have been brought as a result of a complaint (whether or not after reference to the Commission) it will be for the Chief Constable to notify the complainant accordingly. Where the Commission accepts that disciplinary charges should not be preferred, it will notify the complainant and will send a copy of its notification to the Chief Constable. Regulation 11 of the Complaints Regulations allows the Commission, in sending its notification, to provide the complainant with such information by way of explanation as it considers appropriate.

9.4 There may be additional information, apart from that which the Commission is permitted to send by virtue of the Regulations, which the police consider should be passed to the Commission and which the Commission may take into account in its notification to the complainant. Any information which the Chief Constable considers might be included in the notification (such as details of administrative or other action taken, the correction of factual errors in the complaint, or an expression of regret for the incident which has given rise to the complaint) should be incorporated in his covering memorandum. It is open to him to indicate what parts of the memorandum should or should not be passed on to the complainant. The investigating officer's report will remain confidential.

9.5 Where the Commission has supervised the investigation of a complaint, it will submit a statement to the Chief Constable stating whether the investigation was conducted to its satisfaction or not. The Commission is also required, where it is practicable to do so, to send a copy of that statement to the complainant [and to the member or members concerned].

9.6 Where a complaint has been settled by way of the informal resolution procedure, the complainant will be entitled to a record of the outcome of the procedure provided that he applies within three months of that record being made. The complainant should be informed of this entitlement when he is informed that the procedure has been concluded.

##### To the member concerned

9.7 The Chief Constable is responsible for notifying the member concerned of decisions on disciplinary action whether or not this arises from a complaint. He should endeavour to see that the member is not left in unnecessary suspense and should keep him informed of the progress of the matter. In particular he should inform the member

concerned, as soon as possible, of the outcome after a complaint has been considered by the Commission. In a case where no disciplinary charges are to be preferred, the Commission will normally write to the complainant at the same time as writing to the Chief Constable to notify him of its decision. If, in any particular case, it is felt that embarrassment could be caused by a complainant becoming aware of the Commission's decision before the member (for example where the member is in near daily contact with a complainant and it is proposed to give guidance to him on his conduct), this should be drawn to the Commission's notice when the papers are forwarded for its consideration. In cases of this kind, the Commission will defer notifying its decision to the complainant, to give the Chief Constable time to inform the member concerned, and to take any necessary related action and wherever possible, a copy of the Commission's letter to the complainant should be given to the member concerned.

9.8 Where the Commission has supervised the investigation of a complaint, it will submit a statement to the Chief Constable stating whether the investigation was conducted to its satisfaction or not. The Commission is also required, where it is practicable to do so, to send a copy of that statement to the member concerned.

9.9 Where a complaint has been settled by way of informal resolution procedure and the complainant has requested a record of the outcome (see paragraph 3.14) a copy of the record should be sent to the member concerned at the same time as it is sent to the complainant.

### COPIES OF COMPLAINTS

9.10 In the following paragraphs "the complaint" means the basic document or documents in which a complainant's allegations against a member are brought to the attention of the appropriate authority. A letter which simply states that the writer wishes to complain, but which does not include sufficient details for the purposes of initiating an investigation, does not constitute a complaint in this sense; in such cases the complaint includes the statement which the complainant will then normally make setting out his account of the incident or conduct in question. Where a complaint is made orally, "the complaint" includes the written record of what was said by the complainant in describing the grounds of his complaint. When a copy of a complaint is supplied to the complainant, or to the member concerned, it should not include any subsequent statements made in the course of the investigation.

9.11 The member against whom a complaint has been made may make a written request to the Chief Constable for a copy of the complaint (whether or not it has been withdrawn) under Regulation 12 of the Complaints Regulations. The Chief Constable (subject to paragraph 9.14 below) may then arrange for a copy or a copy of that part which directly concerns the member to be supplied to him. However it is important to bear in mind that Regulation 6 of the Discipline Regulations and Regulation 5 of the Reserve Discipline Regulations provide for the member subject to investigation to be given written notice of the report allegation or complaint **provided that it does not prejudice the investigating officer's investigation or any other investigation of the matter**. These two discipline regulations take priority over Regulation 12 of the Complaints Regulations. In other words where the investigating officer has not revealed the whole of the matter subject to investigation as a result of a complaint because to do so would prejudice his or some other investigation of the matter that position must be protected and the complaint or relevant parts of it withheld from the member concerned. This also applies where a member asks for a copy of a complaint before any work is done on it.

9.12 Where disciplinary charges are to be preferred against a member Regulation 9 of the Discipline Regulations requires that he should be supplied with a copy of the report, allegation or complaint on which the charge is founded, no less than 21 days before the date of the disciplinary hearing.

9.13 Under Regulation 12 of the Complaints Regulations a copy of the complaint should be supplied, on request, to the complainant (subject to sub-paragraphs (2)(a) and (2)(b) of that Regulation - see paragraph 9.14 below).

[<sup>1</sup>9.13A The document or documents of which copies should be supplied to a member under the Regulations are:-  
(a) if the complaint is made in writing, a copy of the letter of complaint or that part of it which relates to that member;  
(b) if the complaint is made orally, a copy of the written record made of the complaint (which may include a copy of a contemporaneous entry eg, in a pocketbook or incident register, and the formal record of the complaint made out later); and

- (c) copies of the relevant parts of any statements which either contain fresh complaints or explain or particularise complaints already made.

It is considered that a letter indicating a wish to complain but not detailing the substance of the complaint does not constitute a complaint for these purposes. In such cases, the Complaint of which a copy shall be provided is the relevant portion of the statement or other written record of the substance of the complaint.]

9.14 The Complaints Regulations also provide, however, for certain cases where it may be considered necessary to withhold a copy of the complaint from either the complainant or (where disciplinary charges are not to be preferred) the member against whom the complaint was made. First, under Regulation 12(2)(a) the Chief Constable may refuse to comply with a request for a copy of a complaint, if he considers that to supply a copy might prejudice any criminal investigation or proceedings then pending. In such a case it will be appropriate for the Chief Constable to consult the Director of Public Prosecutions. Secondly, under Regulation 12(2)(b) he may refuse to comply with such a request, if he considers that it would in some other way be contrary to the public interest to supply a copy of the complaint. In the latter case, however, he must seek the consent of the Secretary of State for refusing the request. The Secretary of State considers that where a request is to be refused, the Chief Constable should make clear whether the refusal comes under Regulation 12(2)(a) or Regulation 12(2)(b).

9.15 Any request for the Secretary of State's consent under Regulation 12(2)(b) should be sent to the *Assistant Secretary, Police Division 1, Northern Ireland Office, Massey House, Stoney Road, Belfast BT4 3SX*, and should include:

- (a) a copy of the request made for a copy of the complaint;
- (b) a copy of the complaint (or so much of it as relates to the officer concerned); and
- (c) the reasons for the Chief Constable's opinion that the request should be refused under the provisions of Regulation 12(2)(b).

#### **CONFIDENTIALITY OF DOCUMENTS PREPARED IN THE COURSE OF INVESTIGATION**

9.16 It is a principle of long standing that investigation reports and any accompanying statements should not be published. Many reports contain information which could not be freely disclosed, such as the names and addresses of witnesses, the criminal records of named persons, or facts disclosed in the course of the investigation which might be prejudicial to named persons. The maintenance of the principle that reports are confidential is in the interests of ensuring that there should be no inhibition, in connection with an investigation, on communication between police officers, between the Chief Constable, the Police Authority and the Secretary of State, and between the Police and the Commission.

9.17 Occasionally, a complainant may institute criminal proceedings against a member who has been the subject of investigation under article 5 of the Order upon learning that the Director of Public Prosecutions does not intend to do so. In such a case, the complainant may request a copy of the investigating officer's report and/ or the accompanying statements with a view to gaining access to evidence which may incriminate the member. Any such request should be declined.

9.18 There may also be circumstances, however, in which it will be proper and necessary to disclose material which has been obtained in the course of a formal investigation. Broadly, the situation where disclosure may be warranted arises where such material may assist someone who faces criminal proceedings, or who is seeking to challenge a conviction, to prove his innocence. If such material comes to light in the course of an investigation it should be brought to the notice of the Director of Public Prosecutions (see paragraph 4.14).

9.19 Similarly, it may at times be proper and appropriate for the Chief Constable to disclose to an accused member in disciplinary proceedings (or his 'friend' or legal representative) material in an investigation report which could assist in demonstrating his innocence of a charge or in mitigating any penalty that might be awarded upon a finding of guilt. [Such material may be found in a case] where a disciplinary charge is preferred, when an investigating officer has recommended none, or has recommended that factors mitigating the accused member's culpability be taken into account before a decision is made to prefer a charge.

## SECTION 10

### ROLES OF HM INSPECTORS OF CONSTABULARY AND POLICE AUTHORITY IN RELATION TO COMPLAINTS

#### GENERAL

10.1 The Police Authority is the disciplinary authority for officers holding a rank above that of chief superintendent and is responsible for dealing with complaints against such officers.

10.2 Article 15 of the Order, however, requires the Police Authority to keep itself informed about the working of the complaints and discipline procedure. This is an aspect of its general duty to secure the maintenance of an adequate and efficient police force and to exercise its powers under the Police Act 1970. The Police Authority is required to keep itself informed about the way in which complaints by members of the public against members of the force are dealt with by the Chief Constable. The Secretary of State regards this responsibility as a supervisory one, to ensure that the statutory procedures for the handling of complaints are being properly observed.

10.3 The precise way in which the Police Authority acts to discharge its function under Article 15 of the Order is likely to be by way of a complaints sub-committee, or panel, which may hold regular meetings with the RUC and may regularly inspect the complaints register. The Chief Constable should make the complaints register available for scrutiny by members of the Authority in such circumstances.

10.4 Section 15(1) of the Police Act 1970 requires the Chief Constable to submit a general report to the Police Authority each year on the policing during that year; that report should include a section concerning complaints and discipline. Section 15(2) of the Police Act 1970 requires the Chief Constable, whenever required to do so by the Authority, to submit a report on such matters as may be specified by the Authority. Clearly, these too may concern complaints and discipline. In addition, the Chief Constable should provide the Police Authority with a statistical return of all complaints from members of the public against members of the force indicating how they have been dealt with, including any reference to the action by the Commission. The attention of the Authority should be drawn expressly to the following categories of cases:-

- (a) those in which an investigating officer has been appointed from another force, under Article 5(3) or 5(5) of the Order;
- (b) those in which the investigation has been supervised by the Commission and in which the Commission has expressed dissatisfaction with the investigation under Article 9(8) of the Order;
- (c) those which have been referred to the Director of Public Prosecutions under Article 10(4) of the Order;
- (d) those where the Commission has directed the bringing of disciplinary charges under Article 13 of the Order;
- (e) those where a Disciplinary Tribunal under Article 14(3) of the Order has been or is to be held.

10.5 The Secretary of State expects that the Chief Constable and the Police Authority will discuss together what can be done to supplement the information provided, with further information which may be of assistance to the Authority in the exercise of its functions of general oversight of the handling of complaints. Particularly in cases which have aroused local concern it may be helpful to the Authority to know something of the background. It will also be useful to the Authority to have any information, beyond that referred to in the preceding paragraph, about the general pattern of complaints. It is recommended that the Chief Constable should, at his discretion (and consistent with the principle that the Authority should not be involved in the handling of individual cases) make such information available when requested by the Authority to do so. (But see paragraph 10.7).

10.6 HM Inspectors will, as part of their annual inspection of the RUC, consider the handling of complaints and discipline within the RUC; and the Chief Constable should make the complaints register available for this purpose. An annual statistical return of all complaints, similar to the returns which are made to the Police Authority, should be made. It is anticipated that details from these returns will form the basis of whatever comments HM Chief Inspector of Constabulary may make on complaints and discipline in his annual report.

#### DISCLOSURE AND CONFIDENTIALITY

10.7 Section 15(3) of the Police Act 1970 states that if it appears to the Chief Constable that a report required by the Police Authority under Section 15(2) of the Act would contain information which in the public interest ought not to be disclosed or which is not needed by the Authority for the proper discharge of its functions, he may request the Authority to refer the requirement to the Secretary of State. The same principle should apply to any request by the Authority to see the completed files, or material from such files, on individual cases. If the Chief Constable considers that disclosure of information concerning a complaint may involve a breach of confidentiality, or that disclosure would in any way be improper, he may request the Authority, under Section 15(3) of the Police Act 1970, to refer its requirement to the Secretary of State.

#### **INFORMATION CONCERNING THE COMMISSION**

10.8 Both HM Inspectors and the Police Authority will be entitled to receive information on the part played by the Commission in the handling of complaints. The normal channel for such information will be the Chief Constable who has the primary responsibility for the handling of complaints and disciplinary matters in the RUC. Accordingly, information on this aspect of the handling of complaints should form a part of the regular return (Annex H) by the Chief Constable to the Police Authority. Similarly, the annual return to HM Inspector (Annex G) includes a section which deals with complaints referred to the Commission. The Police Authority (under Article 17(6) of the Order) will also receive a copy of the Commission's annual report, together with any statistical or other general information which the Commission considers should be brought to the Authority's attention in connection with its functions under Article 15 of the Order; and, as indicated in paragraph 6.13, a copy of any special report made under Article 17(2) of the Order.



## SECTION 11

### DISCIPLINARY ARRANGEMENTS FOR OFFICERS UP TO AND INCLUDING CHIEF SUPERINTENDENT

#### GENERAL

11.1 Those responsible for administering the police discipline system are reminded that this guidance is issued under statutory authority (Article 23 of the Order) and that in discharging their responsibilities they are required to take its provisions fully into account. Whilst it is not necessary to follow its terms exactly in all cases, it should not be departed from without good reason. If, on a disciplinary appeal, an appellant raises an apparent failure by the respondent to follow any of its provisions the respondent will be required to explain and justify this (Article 23(3) explicitly makes such matters admissible on appeal). The weight and significance to be attached to any departure from the guidance will vary from case to case. However, the Secretary of State will wish to be satisfied as to the extent to which that departure was justified and the extent to which, if at all, the departure might have proved detrimental to the accused member's conduct of his defence.

11.2 Much of what follows is addressed to the Chief Constable, in his capacity as disciplinary authority. But much is equally applicable to the functions of officers responsible for the decision to bring discipline charges, the formulation of such charges, and the preparation of the case against accused members. The Secretary of State wishes these officers also to have regard to such of this section and of Annex F as is relevant to the discharge of their responsibilities. He wishes them to have regard in particular (but not solely) to the passages on the formulation and scope of disciplinary charges, the law and procedure relating to legal representation at disciplinary hearings, the admissibility of evidence, the editing of statements, the burden of proof and, generally, measures to ensure fairness to the accused member. Where it is possible to resolve such issues before the hearing takes place, this should be done; but where there is a difference of view on a question such as admissibility, the final decision will rest with the officer presiding at the hearing.

#### DELEGATION OF CERTAIN FUNCTIONS OF CHIEF CONSTABLE

11.3 Regulation 15 of the Discipline Regulations provides for the delegation to an officer not below the rank of assistant chief constable the duty of deciding whether a member of the police force should be charged with a disciplinary offence. In exercise of this duty, the officer concerned should ensure that the officer presiding at the hearing of the charges should have no knowledge of the case prior to the formal hearing.

11.4 Furthermore, the officer responsible for formulating charges must also consider whether, if the facts alleged in the charge are found to be proved, the offence could merit a punishment which the officer or Board, hearing the charge does not have the power to impose; in which case he should direct the charge to be heard by an appropriate officer or Disciplinary Board in accordance with Schedule 4. In reaching his decision, which should normally be made personally, (but see also paragraph 11.6 below), he will wish to have regard to the nature and circumstances of the offence as revealed in the investigating officer's report and to the level of punishments awarded within his force in the past for similar conduct. If during the course of a hearing, evidence is disclosed which would, in the opinion of the officer (or Board) conducting the hearing, suggest that a penalty which it is not within his power to impose might be called for, he should immediately bring the proceedings to a halt and refer the case to a hearing before the appropriate chief officer or Disciplinary Board. The fact that a charge has been remitted to a higher authority in no way fetters the latter's consideration of the appropriate punishment should the charge be proved. In such circumstances, it remains a matter for the higher authority to decide the appropriate form of punishment after considering the full circumstances of the offence, mitigating factors and the member's record of police service.

11.5 Where a member has been dealt with for an offence against discipline, he may appeal to the Chief Constable against the finding and punishment imposed, or punishment only, and on such an appeal, the chief Constable may not impose a punishment greater than that imposed at the original hearing.

#### REFERENCES WHERE OFFICER CONDUCTING HEARING HAS KNOWLEDGE OF CASE

11.6 It is recognised that in certain circumstances the Chief Constable will of necessity have at least some knowledge of a case while it is still under consideration. For example, where the matters raised are **prima facie** serious and would amount to a substantial criticism of the force or where members of higher rank are involved, the Chief Constable should keep himself informed of the progress of the investigation. There may also be other cases where a deputy or assistant chief constable may wish to consider seeking the views of the Chief Constable, for example, where he is considering calling for an investigating officer from another force, or if he is in disagreement with the Commission about the bringing of disciplinary charges, the reference of new material to the Director of Public Prosecutions or the holding of a Tribunal.

11.7 Where the Chief Constable has been involved in a case in any of these circumstances and a disciplinary hearing is thereafter to be held, he should consider availing himself of the provisions of the Discipline Regulations which enable him (where he is not himself a material witness) to refer the case to another chief constable for hearing, for decision on finding and for recommendation as to the punishment where the accused officer is found guilty. In addition, where the Chief Constable is interested in a case otherwise than in his capacity as Chief Constable, or is a material witness, he must refer the case to another chief constable, who will be in every sense the disciplinary authority for that case.

[<sup>1</sup>11.7A Regulation 14(2)(a) of the Discipline Regulations provides for the Chief Constable, where he is interested in the case otherwise than in his capacity as Chief Constable, to remit a case to another chief constable for hearing. In such a case, the officer to whom the case is remitted will impose punishment in the event of a finding of guilt. The Regulations do not define the circumstances that would require remission under this provision. They would, however, typically arise where the Chief Constable has a connection with the accused member or with someone connected with the case which goes so far beyond the purely professional that suspicion of bias might arise. A family or close, out of office, social relationship are examples of such a connection.]

11.8 In the same way, circumstances might arise in which an officer (or a member of a Disciplinary Board) who would normally be expected to hear a discipline charge against a member, has himself had some previous involvement with the case. Where this happens the charge should be heard as otherwise provided in accordance with Regulation 14 and Schedule 4 of the Discipline Regulations.

## **DISCIPLINE CODE**

11.9 For many disciplinary offences (depending on the terms in which they are framed in the discipline code) the mental element necessary for a finding of guilt is less than that for most criminal offences: for example the offence may, in some cases, be made out if the act in question was committed through lack of due care.

### **Discreditable conduct (discipline code, paragraph 1)**

11.10 Proceedings for the offence of discreditable conduct should be brought sparingly. Wherever possible a more specific charge under one of the other paragraphs of the discipline code should be laid, and a charge of discreditable conduct should not be added to a charge under another paragraph unless it is based on facts distinct from those underlying that other charge. This applies with particular force where the member concerned was off duty when the alleged misconduct took place. Those responsible for bringing charges should bear in mind that certain types of conduct might reasonably be said to bring discredit on the police service when committed by a member on duty, but not otherwise. This is not an area in which it is possible to lay down hard and fast rules: each case must be treated on its merits. The Chief Constable should bear in mind also in such cases the advice contained in paragraph 2.21.

11.11 An illicit or irregular sexual relationship between a member and another person is not of itself discreditable conduct within the meaning of the discipline code. Here again it is necessary to examine carefully the particular circumstances of each case in order to decide whether discredit to the police force or police service is likely.

11.12 The offence of discreditable conduct is committed where a member acts in a manner likely to bring discredit on the reputation of the police force or service. If the conduct is known outside the force, it will be necessary to establish only that it is reasonably likely to bring discredit. But the Secretary of State considers that the offence may be proved even if the conduct is **not** known outside the force, provided that it is reasonably likely to become

known at some stage, and that such discredit will result if this occurs. Where it is in practice unlikely that the conduct will become known outside the force, it will be appropriate to bring a charge under this paragraph only where the member has behaved in a disorderly manner or in a manner prejudicial to discipline.

11.13 There may be situations where the alleged misconduct consists of a continuing state of affairs rather than a single action; it might not be serious enough to require a charge if it occurs over a short period, but its continuance may make it serious. In such a case, the Chief Constable should consider whether the member concerned should be given an opportunity to correct the situation rather than be charged immediately with an offence against discipline. Whether this is appropriate in any case will depend on the nature of the conduct and the member's blameworthiness.

#### **Disobedience to orders (discipline code, paragraph 3)**

11.14 Paragraph 3 of the discipline code provides a defence to a charge of disobedience to orders where a member has "good and sufficient cause" not to obey an order. Thus a member does not commit this offence if his reason for failing to carry out an order was that he did not know of it and had a good reason for not knowing of it - for example, because it had not been properly communicated or promulgated.

#### **Wilful or careless falsehood (discipline code, paragraph 5)**

11.15 A disciplinary charge of wilful or careless falsehood should not in general be based on any misstatement contained in a personal explanation made by a member in response to a 'Regulation 6 notice' or any written or oral statement made by the member at an earlier stage of a disciplinary enquiry. But to this rule there are exceptions. Such a charge would be appropriate, for instance, if a falsehood used as a means of covering up was more reprehensible than the original offence - as when a member attempted to implicate an innocent colleague as a means of diverting suspicion from himself. In such a case it is reasonable to see the falsehood as a distinct and separate element in the member's misconduct, deserving separate disciplinary action.

#### **Discriminatory behaviour (discipline code, paragraph 10)**

11.16 A charge of discriminatory behaviour should be brought where there is evidence to show that a member has, on the grounds of a person's colour, race, religious belief, or nationality, either behaved towards that person in a manner which, even without those grounds, amounts to the commission of the disciplinary offence of abuse of authority, or otherwise treated him improperly. In either case, the behaviour in question must have occurred while the member was on duty. Private acts of discrimination committed by a member who is off duty should not be charged as an offence under this paragraph of the discipline code. If the off duty behaviour of a member amounts to a disciplinary offence, the charge should be brought under another paragraph of the code.

11.17 The inclusion of this offence in the discipline code does not imply that no notice may ever be taken of racial, or religious differences. Failure, however, to respond to an emergency call for no reason other than the racial origins or religious belief of the caller would amount to an offence.

#### **Damage to police property (discipline code, paragraph 13)**

11.18 A charge under this paragraph requires a significant element of fault on the member's part: loss or damage caused by a simple mistake does not justify disciplinary proceedings. A member's agreement to pay towards the cost of the property which he has lost or damaged may be relevant to the decision whether to charge him under this paragraph. But an offer of payment should not be used or seen as a way of avoiding formal discipline where this is otherwise justified; nor should a refusal to pay be used as a reason for a discipline charge where this is not otherwise justified; nor should a member be given the impression that the decision whether to charge will depend on his willingness to pay.

#### **Drunkenness or drug taking (discipline code, paragraph 14)**

11.19 When a member is unexpectedly called out for duties (i.e. where it was reasonable that he did not foresee the likelihood of being called out for such duties) he should be able at no discredit to himself to say that he has had too much drink.

### **Alternative charges**

11.20 There will be cases where alternative charges under the same paragraph or sub-paragraph of the discipline code seem equally appropriate. For example, a member may have destroyed or mutilated a police document either 'wilfully and without proper authority' or 'through lack of due care' (paragraph 5(b) of the code), and it may require discipline hearing to determine which. In such a case these alternatives should not be preferred as separate charges; rather, a single charge should be preferred, to the effect that the member 'wilfully and without proper authority or through lack of due care' destroyed the document. Where, however, a charge of this kind is found proved in only one of the alternative aspects (e.g. where, in the example quoted here, the officer conducting the hearing is satisfied that the accused member destroyed the document "through lack of care" rather than "wilfully and without proper authority") he should indicate this when announcing his finding and ensure that the entry in the records accurately reflects that finding.

### **Schedule 2 to the RUC Regulations 1984**

11.21 This schedule places certain restrictions on the private life of members of the police force. In the opinion of the Secretary of State:

- (a) It is not appropriate to charge a member with breach of paragraph 2 of the schedule if he temporarily leaves his home for a time and stays elsewhere. There may or may not be grounds for a charge under another provision of the discipline code, but any such charge will depend on the circumstances of the particular case: for example, the member may be liable to a charge of disobedience to orders for failing to notify the Chief Constable of an address at which he could be contacted.
- (b) Paragraph 2 of the schedule applies only to a member of the police force. Where, therefore, as a result of a posting to a different locality, a member is required to move to other premises in the new locality, it is not within the power of the Chief Constable to require also that the member's spouse and family should live at those other premises.
- (c) A cohabitee is not a lodger within the terms of paragraph 3 of schedule 2, even though he or she may make a contribution to the household expenses.

## **DISCIPLINARY PROCEEDINGS**

### **Responsibility for arranging the hearing**

11.22 The responsibility for arranging for the hearing of any disciplinary charge rests with the Deputy Chief Constable of the RUC. He will consider the question of legal representation, fix the date and time, arrange for accommodation and for the taking of a record of the proceedings, and ensure that the accused member and any witnesses (including the complainant in cases arising from a complaint) are notified. Where the Commission has directed that a Disciplinary Tribunal be held, the Deputy Chief Constable should consult the Commission. It is for the Commission itself to decide which of its members should sit on the Tribunal, subject to the condition that those members must not previously have had any involvement with the case. The costs of such a tribunal, other than the expenses of Commission members, will be a charge on the Police Authority.

11.23 Where a chief officer, other than the accused's own Chief Constable, is to hear a case under Regulation 14 of the Discipline Regulations, whether on his own or as a chairman of a Disciplinary Tribunal, the arrangements will still be made by the RUC but the other chief officer should be consulted.

### **The disciplinary hearing**

11.24 Annex F contains notes on the procedures to be followed before and at the disciplinary hearing, including the rights and facilities to be made available to the member accused at all stages of the process. The advice in Annex F (as in this section) is designed to further the twin aims of being fair to the accused and getting at the truth: the pro-

cedures they describe are intended as means to this end, not (except where they are legal requirements) as ends in themselves. Thus a departure from them will be justified if - but only if - it can be shown that they led to a truer and fairer result than observing them.

11.25 In relation to the provision of facilities to the accused member, the advice in the following paragraphs and in Annex F can be summarised as follows:

- (a) he and his "friend" should be given adequate duty time to prepare his defence;
- (b) he should be given copies of all the evidence at least 21 days before the date of the hearing in accordance with Regulation 9 of the Discipline Regulations;
- (c) he should have the right at all stages to consult, and be represented by, a "friend" (who may be a representative of a police staff association acting in his official capacity as such); to consult a lawyer before the hearing; and not to be liable to the punishments of dismissal, requirement to resign or reduction in rank unless he has been given the opportunity actually to be represented by a lawyer at the hearing;
- (d) hearings should be carried out in accordance with the requirements of natural justice.

[<sup>1</sup>11.25A Regulation 17(12) of the Discipline Regulations permits the officer conducting the hearing to draw such inferences as appear proper from the accused's failure or refusal, while subject to investigation, to mention or account for any fact relied on in his defence at the hearing.]

### Hearing before a Disciplinary Tribunal

11.26 In general, the procedure at a hearing before a Disciplinary Tribunal set up under Article 14 of the Order will be in most respects the same as that for the Chief Constable sitting alone. Except for the punishment, however, decisions at the hearing are for the tribunal as a whole, by a majority if necessary. It is important that those present, in particular the accused and the complainant, should be satisfied that the Commission members have taken a full part in the proceedings. The Chief Constable, as chairman, should ensure that the other two members of the tribunal have the opportunities they need to ask questions of the presenting officer, the accused and any witnesses. So far as the decision on punishment is concerned, the Chief Constable should seek and take full account of the views of the Commission members and ensure that they are aware of any information which he will take into account in determining punishment.

11.27 Regulation 17(9) of the Discipline Regulations provides that no indication should be given to any person of whether the decision reached by a disciplinary tribunal was unanimous or by a majority. Accordingly, where there is any need for deliberation this should take place in private. In the case of most procedural decisions, however, it should normally be possible for the disciplinary tribunal to agree on a course of action without the need to retire.

### STANDARD OF PROOF

11.28 Regulation 22(2)(b) of the Discipline Regulations provides that the required **standard of proof** in disciplinary proceedings is the same as that at a criminal trial. Thus in order for a member to be found guilty at a disciplinary hearing, the offence must be proved beyond reasonable doubt and not, as in civil proceedings, on the balance of probabilities.

### EVIDENCE

11.29 It is not necessary to follow exactly the **procedures** of a criminal trial, and in particular a disciplinary hearing need not be bound by technical rules of evidence. Where documentary evidence (such as copies and plans and transcripts of court proceedings) are accepted by both sides, it is not necessary to prove such evidence formally. However, great care should be taken with hearsay evidence, which is to be defined as unsubstantiated statements offered by witnesses based upon what someone else has said and not upon personal knowledge or observation. Such evidence should be admitted only under the following conditions. First, there should be reasons which make it impracticable for the originator of the evidence (e.g. the person who passed the information to the hearsay witness) to give evidence himself, for example because he has gone overseas for a protracted period. Secondly, the evidence should clearly be relevant to the charge or charges. Thirdly, every effort should be made not only to test the reliability of the evidence, for example by comparing it with the available direct evidence, but also to assess the reliability

of the witness himself insofar as this is possible. Even where these conditions are satisfied, and the evidence is admitted, the presiding officer should treat it with caution and, in his statement of finding and/or punishment, should specify the extent to which he relied on it in reaching his decisions.

11.30 Statements taken from any person which include material not relevant to the disciplinary charge(s) or not capable of proof should, as far as practicable, be edited to remove such material. A copy of the formal notice given to the accused under Regulation 6 of the Discipline Regulations should not be placed before the board if it also includes material not relevant to the disciplinary charge(s) unless, as far as practicable, it has been edited to remove such material. The purpose of this is to avoid prejudicing the disciplinary Authority by the introduction of extraneous matter. It should be borne in mind that blank spaces or over-markings in a copy of a statement or notice can themselves indicate that prejudicial material has been removed or hidden. The editing should therefore be done in such a way as not to reveal that it has taken place, for example by retyping of the full, edited statement, or notice.

#### **REHABILITATION OF OFFENDERS (NORTHERN IRELAND) ORDER 1978**

11.31 Paragraph 3 of Schedule 3 to the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979 disapplies Article 5(1) of the 1978 Order to police disciplinary proceedings; this allows evidence of "spent" convictions to be given in such proceedings, and questions to be asked, the answers to which would reveal such convictions. But the practice in disciplinary proceedings should be in accordance with that followed in the criminal courts in similar circumstances; accordingly if either party at a disciplinary hearing intends to refer to the 'spent' convictions of a witness or to ask questions about such convictions, he should first seek authority to do so, preferably at or before the beginning of the hearing, from the Chief Constable or Disciplinary Tribunal hearing the case. Authority should be given only where it is considered that the interests of justice require the evidence to be admitted. The admission of evidence about spent convictions does not automatically require the withdrawal from the proceedings of any third party, such as the complainant in a complaints case.

#### **PUNISHMENT**

11.32 Regulation 10 of the Discipline Regulations provides that a punishment of dismissal, requirement to resign or reduction in rank may not be imposed at a disciplinary hearing unless the accused has been given the opportunity to elect to be legally represented at the hearing.

11.33 Regulation 23 of the Discipline Regulations requires a separate punishment to be imposed for each offence found proved.

11.34 If the Chief Constable intends to take into account the accused member's annual appraisal reports when deciding punishment, copies of the reports should also be supplied to the accused. Where a written statement of character is prepared for use at the hearing, in the event of a finding of guilt a copy must be given to the accused with the other documents required to be served on him by Regulation 9(1) of the Discipline Regulations.

#### **Punishment in 'remitted' cases**

11.35 In most cases, the officer conducting the hearing will decide finding and impose punishment. However, a chief officer hearing a case remitted to him under Regulation 14 of the Discipline Regulations takes the decision as to finding but may only make a recommendation as to punishment. The accused should be informed at the conclusion of the hearing what charge or charges have been found proved, and the presiding officer is required by Regulation 23(5) to provide, as soon as possible after the hearing, a formal statement of the charge(s) found proved together with his recommendation as to punishment. This should be sent to the Chief Constable of the RUC, with a copy to the accused.

11.36 In a case remitted under Regulation 14, a final decision on punishment cannot be reached until the Chief Constable who is to take the decision receives a copy of the transcript. Nevertheless everything practicable should be done to reduce the delay between a finding of guilt at the hearing and the communication to the accused of the decision on punishment.

## **CRIMINAL CONDUCT: TIMING OF DISCIPLINARY HEARING**

11.37 Where a disciplinary charge of criminal conduct is brought following a criminal conviction (paragraph 17 of the discipline code) the accused member should be afforded reasonable time to prepare a plea in mitigation. If necessary, the member may be suspended pending the disciplinary hearing, so the hearing need not immediately follow the relevant court proceedings; but there may be advantage in an early hearing if an immediate custodial or a suspended sentence has been imposed. The Chief Constable should consider carefully in each case whether it is fair and appropriate to bring or hear a charge of criminal conduct if an appeal is pending against the criminal conviction.<sup>[2]</sup>

[<sup>2</sup>11.37A. Regulation 27 of the Discipline Regulations provides that a finding of guilt in respect of a charge of criminal conduct is automatically set aside if the relevant criminal conviction is itself set aside upon a successful appeal by the member concerned. However, Section 3 of the Criminal Appeal (Northern Ireland) Act 1980 provides for the court, instead of allowing or dismissing an appeal, to substitute a verdict of guilty of an alternative offence. Such a decision would not render the disciplinary conviction invalid, as the criminal conviction would still stand. However, where a conviction of an offence is substituted which is comparatively trivial in relation to the offence for which the member or former member was originally convicted, the Chief Constable may wish to consider whether the punishment in the disciplinary proceedings might no longer be appropriate, and whether, in order to overcome any possible injustice, he might arrange for the member or former member concerned to be advised to lodge an appeal. Provided the Chief Constable has not previously been involved in the case concerned (either by way of adjudication on the original disciplinary charge or in the determination of a consequential appeal) the appeal should initially be determined by him. Otherwise the appeal should be lodged with the Secretary of State. In the circumstances described an appeal will, if necessary, be accepted out of time.]

## **NEW TENANCIES WHILE AWAITING DISCIPLINARY HEARING**

11.38 It will generally be inappropriate to allocate the tenancy to accommodation provided by the Police Authority to a member awaiting a disciplinary hearing on charges which might lead to dismissal or requirement to resign from the force. Similar considerations apply where a member is awaiting trial on a criminal charge.

## **MEDICAL TREATMENT**

11.39 A member's medical condition is a factor which may validly figure in the decision whether to initiate or proceed with disciplinary proceedings. It is, for example, open to the Chief Constable to decide not to initiate proceedings where evidence suggests that a member's medical condition played a major role in the commission of the alleged offence against discipline, and where the nature of the offence is such that it cannot clearly be shown to be in the public interest or in the interests of the force or the member concerned to initiate proceedings. A similar approach may be adopted where it is clear that a member's medical condition is such that the initiation of proceedings might lead to his medical breakdown. Where medical evidence of the kind described above emerges only after charges have been laid against a member, it would be open to the Chief Constable to consider abandoning proceedings before any disciplinary hearing takes place by exercising his power to withdraw charges under Regulation 8(1) of the Discipline Regulations. (Care should be taken to seek the consent of the Commission under article 13(6) of the Order before withdrawing charges which arose from a complaints matter). No similar power to withdraw charges exists where a hearing has already begun. In such a case, a member's medical condition might provide cause for adjourning a hearing and may in any event be considered in mitigation of the penalty to be awarded if the allegations are found to be proved.

11.40 If at any stage of the disciplinary process the accused's medical condition (whether or not it contributed to the alleged offence or might lead to a breakdown if the disciplinary process is pursued) is found to be such that he would normally be granted medical retirement, the disciplinary process should not necessarily prevent or delay retirement. In such a case, it will be for the Chief Constable to consider whether the public interest and the interests of the force and of the member concerned would be better served by medical retirement or by allowing the disciplinary procedures to take their course. [<sup>2</sup>However if the accused is entitled to be legally represented and the Chief Constable has doubts as to his medical condition, every effort should be made to determine the disciplinary charge(s) before any decision is taken as to medical retirement.]

## **INFORMATION TO THE COMMISSION AS TO THE OUTCOME OF DISCIPLINARY PROCEEDINGS**

11.41 Article 11(2) of the Order requires a report to be sent to the Commission of the outcome of any case which is excluded from reference to it only because charges have been preferred and the member has pleaded guilty to them. Particulars should be supplied of the disciplinary charges preferred and of any punishment imposed. If the charges related to conduct which was the subject of a complaint and the investigation was not supervised by the Commission, the Chief Constable should also send the Commission a copy of the complaint (or of the record of the complaint) and a copy of the investigating officer's report. Such action should not be taken until any appeal has been disposed of or the time for entering an appeal has passed. The Commission would not, however, know of the eventual outcome of cases originally referred to them under Article 10 where disciplinary charges (whether or not preferred after reference to the Commission) were denied by the member concerned and the hearing was not before a Disciplinary Tribunal. Therefore, the Chief Constable should supply the Commission with similar details in respect of such cases; a convenient way of doing this would be his sending the Commission a copy of the discipline form when the case is closed.

## **SUSPENDED MEMBERS**

11.42 Under Regulation 26 of the Discipline Regulations and Regulation 23 of the part-time Reserve Discipline Regulations an officer of a rank not below that of Assistant Chief Constable may suspend a member or a part-time member from duty where a report, allegation or complaint is received which indicates that the member or part-time member concerned may have committed a criminal or disciplinary offence. The suspension may take effect any time from the receipt of the report, allegation or complaint and whether or not the matter has been investigated. However where a complaint is received from a third party no action on suspension should be taken except in the most exceptional circumstances, until the complainant himself has been interviewed and/or has made a signed statement.

11.43 The Secretary of State considers that a member or part-time member suspended under the Discipline Regulations remains subject to the discipline code and the Police Regulations during the period of suspension. Therefore he remains liable to disciplinary proceedings for any offence he may commit during the period of suspension. The exercise of powers conferred by the Discipline Regulations results in suspension of the rights and duties flowing from the officer's membership of the force (in other words he is debarred from exercising police powers) but otherwise the consequences of suspension are those stated in those Police regulations in force governing the Conditions of Service of members of the RUC and members of the RUC(R) which in no way affect the position of a suspended officer under the Discipline Regulations (for example a suspended member must seek permission before taking employment or going on leave during the period of suspension).

11.44 Schedule 6 to the RUC Regulations 1984 and Schedule 4 to the RUC Reserve (Full-Time) (Appointments and Conditions of Service) Regulations 1988 deal with financial provisions relating to members suspended from duty, and with the recovery of fines imposed under Discipline Regulations.

## **PROBATIONERS**

11.45 The provision for the Chief Constable to *dispense* with the services of a constable during his period of probation should not be used as an alternative means of dismissing a probationer where he should properly be charged with an offence against discipline. Where disciplinary proceedings are appropriate and justified, they should be brought; where they are not brought, a probationer should not be left with the impression that he has been suspected of an offence and given no chance to defend himself at a disciplinary hearing.

## **RECORDS OF MEMBERS' FINGERPRINTS**

11.46 Regulation 17 of the RUC Regulations 1984 provides for records to be kept of the fingerprints of all serving members. But it should be clearly understood that this provision is made solely for the purpose of eliminating the fingerprints of members at the scenes of crimes: this fingerprint collection is not to be used in order to provide evidence in any disciplinary proceedings brought against a member. In the majority of cases where fingerprint evidence is desirable, it will probably be following a criminal investigation when fingerprints will have been taken during the course of that enquiry and will be available as evidence.



## **INTERNAL APPEALS**

11.47 Where a charge against a member has been found proved and a punishment imposed by an officer other than the Chief Constable, Regulation 25 makes provision for the accused to appeal to the Chief Constable against both finding and punishment or against punishment only. Appellate proceedings may be instituted by the accused giving written notice of appeal to the Chief Constable within 14 days following the day on which he was notified of the punishment. He then has 21 days following the day on which he gave notice of appeal to furnish the Chief Constable with a statement setting out the grounds of his appeal. (The Chief Constable may extend either or both of these periods of time if he is satisfied that it is just and right to do so). The Chief Constable shall consider the appeal or if the Deputy Chief Constable was not the officer who conducted, or was not a member of a board which conducted the hearing out of which the appeal arose, the Chief Constable may direct that the Deputy should consider the appeal in his place. In appellate proceedings, wherever possible the respondent's grounds for rebuttal should be given to the appellant at the same time as they are given to the officer considering the appeal.

## **FUNCTIONS OF THE POLICE ASSOCIATION IN RELATION TO DISCIPLINARY AND APPEALS PROCEEDINGS**

11.48 In line with the recommendation made by Lord Edmund-Davies, each of the police representative bodies comprising the Police Association has been afforded specific representative rights at disciplinary and appeals proceedings. (Article 21 of the Order). This means that at proceedings a member may avail of the services of an official of the representative body appropriate to his rank and acting in an official capacity; but in any such circumstances, the official must nevertheless be a serving member.

## SECTION 12

### COMPLAINTS AND DISCIPLINE ARRANGEMENTS FOR SENIOR OFFICERS (ABOVE THE RANK OF CHIEF SUPERINTENDENT)

#### GENERAL

12.1 Article 6 of the Order assigns to the Police Authority, the task of recording and investigating complaints against senior officers and the duty to take any subsequent disciplinary action; and Part III of the RUC Discipline Regulations allows the Authority to deal with reports, allegations or complaints which indicate that a senior officer may have committed a criminal or disciplinary offence. This section is therefore addressed principally to the Police Authority, in its capacity as the disciplinary authority for senior officers and to any member appointed to investigate a 'complaint' against a senior officer. However, it also has relevance for a tribunal appointed to hear the case against a senior officer, and for the solicitor appointed to present the case.

12.2 The Police Authority is reminded that by virtue of Article 23 of the Order, members of the RUC (and the Commission where appropriate) are required to have regard to this Guidance; and the Secretary of State hopes that others involved in the complaints and discipline process will similarly take account of the Guidance where applicable.

12.3 The discipline code (Schedule 1 to the Discipline Regulations) applies to all members of the RUC; and though it has not been considered necessary to frame a separate discipline code for senior officers, clearly some of the offences, or some parts of the offences listed, will not be applicable to officers of that rank. Care should therefore be taken to ensure that charges which are obviously inappropriate are not brought against a senior officer. Paragraphs 11.9 - 11.21 of Section 11 above contain guidance on many of the charges in the discipline code and should be consulted before any decision is made whether a charge should be brought. Article 22 of the Order, which deals with disciplinary charges against a member who has been convicted or acquitted of a criminal offence, is also relevant.

[<sup>1</sup>12.3A It is the Secretary of State's view that the discharge of its disciplinary functions in relation to senior officers should be regarded by the Police Authority as a judicial function in respect of which legal advice should be sought as appropriate. The procedures adopted by the Authority in this regard should as far as possible reflect that view. They should preserve strict fairness and impartiality to all concerned together with strict regard for the relevant statutory provisions. In particular, it is the view of the Secretary of State that it could be held to be contrary to the requirements of natural justice for an Authority member personally aggrieved by any conduct of a senior officer which has been drawn to the attention of the Authority by way of a complaint made: under the provisions of the 1987 Order or otherwise under the provisions of the RUC (Discipline and Disciplinary Appeals) Regulations 1988 to participate in certain decisions which are required to be taken by the Authority under these statutory provisions. These decisions are: (a) a decision to refer the matter to an investigating officer, (b) a decision that disciplinary proceedings should be taken against the officer following an investigation, (c) any decision as to guilt or punishment upon an officer's admission that he has committed an offence or following the receipt of a report of a tribunal established to hear charges against the officer and (d) a decision to suspend an officer from duty as a result of the allegation made against him. The Police Authority may wish to consider whether the confidentiality and thoroughness which are a concomitant of the judicial approach to discipline matter are not best guaranteed delegating to a sub-committee of the Authority all detailed consideration of the issues required to be examined under the statutory provisions. If this approach is adopted the Authority will wish to have careful regard to the sub-committee's terms of reference to avoid matters becoming subject to re-examination when the sub-committee's conclusions are reported to the whole Authority.

12.3B A decision by the Police Authority to initiate an investigation of a complaint or other allegation against a senior officer must be regarded as a matter of legitimate public interest. In its relations with the media, however, the Police Authority will wish to have regard to the judicial nature of this aspect of its functions and in particular to the danger that the proceedings could be held to be prejudiced by wide public discussion of the matters under investigation and the circumstances surrounding the allegations. (Where, however, the investigation is being conducted under the supervision of the Independent Commission for Police Complaints, inquiries about the progress of the investigation should be referred to the Commission). In other cases, the Police Authority will find it helpful to decide at an early stage who should conduct its relations with the media in the course of the investigation and of subsequent ac-

tion. The member or officer so appointed should normally handle questions about such matters as the decision to investigate the allegations that have been made, the position of the officer under investigation, the progress of the investigation, and, after the investigation report has been received, the actions of the Authority.]

## **ACTION ON RECEIPT OF A COMPLAINT**

12.4 The Police Authority is required, by Article 6(1) of the Order, to record complaints against senior officers. Thereafter it is empowered (by Article 6(2)) to deal with the matter according to its discretion if satisfied that the conduct complained of, even if proved, would not justify a criminal or disciplinary charge. This is the broad equivalent of the informal resolution provision in regard to members of lower ranks, although it will be noted that the consent of the complainant is not required before a case of this kind is handled by informal means. The Secretary of State considers that the Police Authority may take whatever action it considers appropriate in dealing with such cases where formal proceedings are not warranted. Indeed, under both Article 6(2) of the Order and Regulation 29(3) of the Discipline Regulations, the Police Authority may deal with complaints, reports or allegations concerning the conduct of senior officers without recourse to formal investigation; in such cases the Authority might consider it appropriate to investigate the matter informally, e.g. by asking for a brief report or by making informal enquiries to enable the complaint or other matter to be assessed and dealt with. Nevertheless, the Police Authority should maintain a register of *complaints* cases handled in this way, and which should be made available to the Commission for inspection; the records should be kept in a form which will enable the Commission to reach a view as to the appropriateness of the informal procedures. In addition, copies of all complaints handled informally, should be sent to the Commission annually. Article 6(3) provides that in any other case, the Police Authority should appoint a member (of at least the rank of the officer complained of) from the RUC (or from some other force) to investigate the complaint; and if the Chief Constable is asked to provide an investigating officer, for appointment, he is required by Article 6(4) to comply with that request.

12.5 Article 4(4) of the Order makes it clear that the complaints system is not applicable to matters affecting the Chief Constable's direction or control of the RUC. The complaints system is the means of reviewing the **conduct** of members of the RUC, not a device for challenging the (legitimate) way in which they exercise the discretion vested in them. The Police Authority, after consulting the Chief Constable, may wish to reply to complaints about the RUC's policing policy, or to pass such matters to the Chief Constable to deal with; but in such cases the provisions of the Order do not apply.

## **THE INVESTIGATION OF COMPLAINTS AND OTHER MATTERS INVOLVING SENIOR OFFICERS**

12.6 Where the Police Authority decides that a formal investigation is necessary under Article 6(3) of the Order or Regulation 29(3) of the Discipline Regulations in respect of a report, allegation or complaint which indicates that a senior officer may have committed a criminal or disciplinary offence, it is required to appoint an investigating officer and, if the matter arose by way of a complaint, to refer the case to the Commission.

12.7 The Commission is **required** to supervise the investigation of complaints alleging that death or serious injury has been caused by the actions of a member, but it has discretion to supervise the investigation of any other complaint where it considers this appropriate. (It is unlikely that the Commission will wish to become involved in, or to consider the supervision of a complaint which the Police Authority has already decided to treat otherwise than by formal investigation. But if the Commission concludes that an investigation under its supervision is called for, the Police Authority must comply with that judgement). In deciding whether or not to supervise an investigation, the Commission will have regard to its ability to provide reassurance to the public that the investigation has been properly conducted; this will be particularly important in cases involving very senior officers of the force.

12.8 If the Commission supervises the investigation it may choose to exercise its power, under Article 9(5) of the Order, to approve the appointment of the investigating officer or, if the appointment has already been made, to ask for another officer to be appointed.

[<sup>1</sup>12.9 Regulation 30 of the Discipline Regulations requires that the investigating officer shall, as soon as is practicable (without prejudicing his or any other investigation of the matter) in writing inform the senior officer subject to investigation, of the report, allegation or complaint, and give him in writing the appropriate caution/s as set out in Schedule 1A to the Discipline Regulations.]

## **CONDUCT OF INVESTIGATIONS**

12.10 The procedure to be followed in any investigation is entirely a matter for the officer appointed to carry it out, subject to any directions given him by the Commission in the case of investigations under its supervision. General guidance on the conduct of complaints investigations is given in Section 4.

## **REFERENCE OF OTHER MATTERS TO THE COMMISSION (AND RESERVE POWER)**

12.11 Section 5 outlines the rationale and procedures governing the reference of other matters to the Commission under Articles 8(1) and 8(2). Briefly, Article 8(1) gives the Police Authority powers to refer the investigation of a non-complaint matter, involving a senior officer, to the Commission, which may exercise discretion as to its supervision. However Article 8(2) gives the Police Authority, in its own right, a reserve power to refer a non-complaint matter involving any member of the RUC to the Commission (but after full consultation with the Secretary of State and the Chief Constable). The Commission would then be **required** to supervise the investigation; and whether reference to the Commission was made under Article 8(1) or 8(2), all the procedures appropriate to formal complaints investigations would apply.

## **INVESTIGATING OFFICER'S REPORT**

12.12 When the investigating officer has completed the investigation, or has taken it as far as he reasonably can, he should submit a report to the Police Authority (or to the Commission, with a copy to the Police Authority, in the case of a supervised investigation). Where it becomes clear to the investigating officer, in the course of a formal investigation, that the complaint is ill-founded or that the effort in pursuing it would be disproportionate, it is open to him to prepare an early report recommending to the Police Authority (or to the Commission if the case has been supervised) that it is not worth pursuing the matter further. It will be noted that, under the Complaints Regulations, the agreement of the Commission is required before complaints are treated by the Police Authority as anonymous, repetitive or incapable of investigation).

[<sup>1</sup>12.12A The investigating officer's report (including accompanying statements and exhibits), like any other police report, is made in confidence. It must not, either wholly or in part, be made available to persons other than Authority members and staff or members and staff of the Independent Commission for Police Complaints in the case of a supervised investigation. The report must be handled at all times as a confidential document.]

12.13 At the end of an investigation which it has supervised, the Commission is required by Article 9 of the Order, to submit a statement to the Police Authority (and the complainant) where practicable to do so, indicating whether or not the investigation was conducted to its satisfaction; and specifying any respect in which it was not so conducted. No criminal or disciplinary charges may be brought until this statement has been submitted to the Police Authority - except in the case of proposed criminal charges where it appears to the Director of Public Prosecutions that there are exceptional circumstances which make it undesirable to await the submission of the statement. (Articles 9(13) and 9(14) of the Order).

## **ACTION ON RECEIVING INVESTIGATING OFFICER'S REPORT**

12.14 Where it appears to the Police Authority, on receiving the investigating officer's report, that a senior officer may have committed a disciplinary offence, the Authority is required by Regulation 29(1) of the Discipline Regulations to consider whether disciplinary proceedings need to be taken. In the case of a complaint (or other matter the investigation of which was supervised by the Commission under the provisions of Article 8 of the Order) the Police Authority is required by Article 10(1) of the Order to send a copy of the report to the Director of Public Prosecutions unless it is satisfied from the report that no criminal offence has been committed.

[<sup>1</sup>12.15 Regulation 31(2) and (3) of the Discipline Regulations provides that, unless the Police Authority decides that no disciplinary proceedings need to be taken, it should (a) inform the senior officer in writing of the report, allegation or complaint; (b) give him a written notice asking him whether or not he admits that he has committed an offence; and (c) give him in writing the appropriate caution/s as set out in Schedule 1A to the Discipline Regulations.]

12.16 Where the senior officer **admits** that he has committed an offence, the Police Authority, having considered the report of the investigation, may either (a) bring disciplinary charges, or (b) impose a punishment without preferring charges and without a hearing, or (c) if satisfied that the offence, even if proved, would not justify the imposition of a punishment, deal with the matter according to its discretion.

12.17 Where the officer concerned **does not admit** that he has committed an offence, but the Police Authority, after taking into account any statement he may have made under Regulation 31, is not so satisfied, it is required by Regulation 33 to bring disciplinary charges unless it is satisfied that the offence, even if proved, would not justify the imposition of any punishment (in which case it may deal with the matter according to its discretion).

[<sup>1</sup>12.17A Regulation 33 provides for the formulation of charges in a case where the Police Authority determines or is required to bring disciplinary charges in the circumstances described in paragraph 12.16 or 12.17 above. In such a case the Police Authority must instruct an "independent solicitor" to draw up the offence with which the officer is to be charged and enter it on the discipline form prescribed in the Schedule to the Regulations. The offence or offences should be as set out in the Discipline Code (see also paragraph 12.2); it should be accompanied on the same form by such particulars as will leave the officer in no doubt as to the precise offence alleged. The officer concerned will then be charged by being served with a copy of the discipline form.

12.17B This Regulation defines the "independent solicitor" as "a solicitor who is not a member, officer or servant of or associated with the Police Authority or a Crown Servant.". It is the Secretary of State's view that this definition sets the minimum practical limitations on the choice of the independent solicitor. In the interests of demonstrable fairness, the Police Authority may also wish to exclude from appointment under this Regulation any solicitor who has in the recent past had a professional association with the Authority itself, or with the Independent Commission for Police Complaints or with the officer subject of the proceedings.]

## **RIGHTS OF THE ACCUSED OFFICER**

12.18 Where a senior officer is charged with an offence, he must be presented with copies of the evidence and informed of the date of the disciplinary hearing as soon as possible after the decision to proceed with a disciplinary charge. This should be done **at least** 21 days before the date of the hearing. The disciplinary form served upon him should leave him in no doubt as to the precise offence alleged.

12.19 When the above papers are served the accused officer should be reminded that he may consult and be represented at the hearing by a lawyer.

12.20 All reasonable requests by the accused officer for the attendance of witnesses should be acceded to. This provision should apply equally in those cases where by virtue of Regulation 32(1) no disciplinary hearing is to be held and the witnesses are therefore being called only to support the accused's plea of mitigation. Such requests by the accused should normally be made in writing to the Police Authority at least 14 days before the date set for the hearing or the proceedings for imposition of penalty.

## **RESPONSIBILITY FOR ARRANGING THE HEARING**

12.21 The responsibility for arranging the hearing of any disciplinary charge rests with the Police Authority. In consultation with the tribunal members, it will fix the date and time for the hearing; arrange for the taking of a record of the proceedings; and ensure that the accused officer and any witnesses (including the complainant in cases arising from a complaint) are notified.

## **HEARING BY A TRIBUNAL (REGULATION 36)**

12.22 This Regulation provides that the case against a senior officer should be heard by a tribunal consisting of a single person selected and appointed by the Police Authority with the approval of the Secretary of State. The person appointed will be assisted by one or more assessors appointed by the Police Authority, again with the Secretary of State's approval. One of the assessors must be a person engaged or experienced in police administration, but the

Regulation precludes the appointment, as an assessor, of a person who is one of HM Inspectors of Constabulary; the Chief Constable; or a member, officer or servant of the Police Authority or a Crown Servant.

## **PROCEDURE AT HEARING**

12.23 Regulation 37(1) provides that the disciplinary hearing shall be in private. It is suggested that the same degree of privacy is followed in those cases where, by virtue of Regulation 32(1), there are to be no disciplinary proceedings but the Police Authority is to hear evidence in mitigation.

12.24 Statements taken from witnesses or other persons by an investigating officer which are provided to the accused under Regulation 35 should **not** be placed before the tribunal in advance of the hearing. At the hearing the tribunal should be provided only with the discipline form, indicating the charges to be heard. If, during the proceedings, the accused, or his representative, or the solicitor presenting the case against him, wishes to introduce into evidence a written statement from a witness who is called to give evidence he should be allowed to do so. Where the witness is not called to give evidence, any statement from a witness should be considered only if the requirements of Regulation 35 have been fulfilled.

[<sup>1</sup>12.24A Regulation 37(9) of the Discipline Regulations permits the Tribunal to draw such inferences as appear proper from the accused's failure or refusal, while subject to investigation, to mention or account for any fact relied on in his defence at the hearing.]

## **EVIDENCE**

12.25 The Secretary of State considers that it is not necessary to follow exactly the **procedures** of a criminal trial; and in particular, a disciplinary hearing need not be bound by technical rules of evidence. Where documentary evidence (such as copies of plans and transcripts of court proceedings) are accepted by both sides, it is not necessary to prove such evidence formally. Great care should, however, be taken with hearsay evidence, which is to be defined as unsubstantiated statements offered by witnesses based upon what someone else has said and not upon personal knowledge or observation. Such evidence should be admitted only under the following conditions. First, there should be reasons which make it impracticable for the originator of the evidence (i.e. the person who passed the information on to the hearsay witness) to give evidence himself, for example because he has died in the meantime. Secondly, the evidence should clearly be relevant to the charge or charges. Thirdly, every effort should be made not only to test the reliability of the evidence, for example by comparing it with the available direct evidence, but also to assess the reliability of the witness himself insofar as this is possible. Even where these conditions are satisfied and the evidence is admitted, the tribunal should treat it with caution and, in its report to the Police Authority, should specify the extent to which it relied on it in relation to its recommendation on finding and/or punishment.

## **STANDARD OF PROOF**

12.26 Regulation 42(2) of the Discipline Regulations provides that the required standard of proof in a disciplinary case is the same as that at a criminal trial. Thus in order for a senior officer to be found guilty at a disciplinary hearing, the offence must be proved beyond reasonable doubt and not, as in civil proceedings, on the balance of probabilities.

## **ADJOURNMENTS**

12.27 The hearing may be adjourned from time to time as may appear necessary, either briefly or until a later date. If, during the hearing of a case, facts emerge which establish a *prima facie* criminal case, the tribunal should if necessary adjourn the hearing to consider what action is appropriate as a result.

## **CONCLUSION OF HEARING**

12.28 As soon as possible after the conclusion of the hearing the tribunal should submit a report to the Police Authority, together with the transcript of the hearing, giving their recommendation on finding and punishment. The Secretary of State considers that the Police Authority should, as a matter of course, regard the report of the tribunal

as binding on them as to finding but that, where the finding is one of guilt, it is within their discretion to accept or reject the recommendation as to punishment.

12.29 If a punishment is imposed by the Police Authority, the accused should be informed that he has the right of appeal against both finding and punishment to the Secretary of State. If he indicates that he intends to appeal, a copy of the transcript of the hearing should be supplied to him.

## **MEDICAL TREATMENT**

12.30 An officer's medical condition is a factor which may validly figure in the decision whether to initiate or continue with disciplinary procedures. For example, it is open to the Police Authority to decide not to initiate proceedings where evidence suggests that an officer's medical condition played a major role in the commission of the alleged offence against discipline and where the nature of the offence is such that it cannot clearly be shown to be in the public interest or in the interests of the force or the officer concerned to initiate proceedings. A similar approach may be adopted where it is clear that an officer's medical condition is such that the initiation of proceedings might lead to his medical breakdown. Where medical evidence of the kind described above emerges only after charges had been laid against an officer, it would be open to the Police Authority to consider abandoning proceedings before any disciplinary hearing takes place, by exercising its power to withdraw charges under Regulation 34 of the Discipline Regulations. No similar power to withdraw charges exists where a hearing has already begun. In such a case, an officer's medical condition might provide cause for adjourning a hearing and may in any event be considered in mitigation of the penalty to be awarded if the allegations are found to be proved.

12.31 If at any stage of the disciplinary process the accused's medical condition (whether or not it contributed to the alleged offence or might lead to a breakdown if the disciplinary process is pursued) is found to be such that he would normally be granted medical retirement, the disciplinary process should not necessarily prevent or delay retirement. In such a case, it will be for the Police Authority to consider whether the public interest and the interests of the force and of the officer concerned, would be better served by medical retirement or by allowing the disciplinary procedures to take their course.

## **SUSPENSION (REGULATIONS 47 AND 48)**

12.32 These Regulations lay down the criteria which must be satisfied before a decision to suspend a senior officer is taken by the Police Authority and ratified by the Commission. In the great majority of cases the decision to suspend will not have immediate effect. The Regulations provide that once the decision to suspend a senior officer has been taken, the Police Authority will notify the Commission of its decision: the Commission will then be required to notify the Police Authority as soon as practicable of their endorsement (or otherwise) of that decision, but the suspension will not take effect until the Police Authority have received notification of that endorsement.

12.33 There may, however, be rare cases of urgency where it would be wrong to leave the senior officer in post while the Commission reviews the decision under the procedure described at 12.32 (for example, if the officer has been arrested for a serious criminal offence). In such a case, the suspension may take effect immediately, subject to the proviso that the Commission's ratification of the suspension must be received within 24 hours or the suspension will cease to have effect. Whether or not the decision to suspend has been taken by the Police Authority or (in the case of deputy or assistant chief constable) by the Chief Constable, the responsibility for obtaining the Commission's ratification of that decision lies with the Police Authority.

12.34 Once a senior officer's suspension has been approved or ratified by the Commission, that suspension shall remain in effect until the Commission directs that it be lifted; or the Police Authority decides to lift the suspension; or it is decided that the officer shall not be charged with a disciplinary offence; or the officer has been so charged and either all the charges have been dismissed or a punishment has been imposed.

## SECTION 13

### DISCIPLINARY APPEALS

#### GENERAL

13.1 Part IV of the Discipline Regulations makes provision for appeals to the Secretary of State against a decision of the Chief Constable or the Police Authority, and applies to all members of the RUC except those serving in a part-time capacity with the RUC Reserve. The Regulations apply only where Notice of Appeal is received by the Secretary of State on or after 29 February 1988.

#### NOTICE OF APPEAL

13.2 Regulation 50(3) allows an appellant a total period of 60 days in which to submit a fully documented appeal though a Notice of Appeal must be submitted within a period of 22 days (Regulation 50(2)). In such cases the period runs from, and includes, the date on which the appellant was notified in writing of the punishment on the charge in question: or, where the appellant has already exercised a right of appeal to the Chief Constable, the date on which he was notified of the decision on his appeal (Regulation 50(2)).

13.3 Under Regulation 50(4), an appellant must, within the same specified periods, send copies of the notice of appeal and of all the related documents to the Chief Constable; or if the appellant is a senior officer to the Police Authority.

13.4 Under Regulation 50(5) either or both of those periods may be extended by the Secretary of State if he is satisfied on the application of the appellant, that it is just and right to do so. Any such application should make clear the grounds on which it is made.

13.5 Regulation 50(3) provides that if, having submitted a notice of appeal without all the prescribed written statements, an appellant fails to submit those statement within the period of 60 days or such longer period as may have been granted under Regulation 50(5), the Secretary of State will be entitled to regard the appeal as having been withdrawn.

#### NOTIFICATION TO MEMBER CONCERNED OF RIGHT OF APPEAL

13.6 The Secretary of State considers that in all cases, a member dealt with for an offence against discipline should, at the conclusion of the disciplinary proceedings, be informed in writing of his right of appeal to the Secretary of State and the period during which such appeal must be made. Further, that in cases in the category referred to in paragraph 13.14 below, the member should be reminded of the provisions of Regulation 53(1), whereby all such appeals must be referred to a tribunal if the appellant so requests, and be informed that if he would like his case to be remitted to an appeal tribunal he should say so when submitting his appeal.

#### WITHDRAWAL AND AMENDMENT OF NOTICE OF APPEAL

13.7 Regulation 58(1) allows an appellant<sup>1</sup> to apply] to withdraw his appeal. Under Regulation 58(2) (read with Regulation 50(4)) an appellant must send copies of an application to the Chief Constable, and to such other person as is the respondent by virtue of a direction given by the Secretary of State (see paragraph 13.11). Where an appeal has been remitted to an appeal tribunal the appellant must also (unless he is aware that the tribunal's report has been submitted to the Secretary of State) send copies of the application to the chairman of the tribunal.

13.8 Regulations 58(3) and 58(4) provide for the Secretary of State to allow the amendment of a notice of appeal or supporting statement, or of a response or accompanying document. Where an appeal tribunal has been appointed and it has not reported, the discretion to allow such amendment rests instead with the chairman of the tribunal.

#### OPPORTUNITY TO MAKE FURTHER REPRESENTATIONS



13.9 Regulation 52(1) provides that the respondent should send to the Secretary of State (and to the appellant) a written statement indicating whether or not he intends to oppose the appeal, together with such other additional information as the Secretary of State may require. However, Regulation 52(4) provides that the Secretary of State should send the appellant a written notice, giving him 14 days in which to make written representations; and where the appellant does not respond in writing, the appeal procedures will continue.

## **RESPONDENT**

### **Senior Officers**

13.10 Under Regulation 51(1) the respondent, on an appeal by a senior officer, will be the Police Authority.

### **Other Members**

13.11 Under Regulation 51(2) the respondent may be either the Chief Constable, or such other person as the Secretary of State may direct. The Secretary of State may, in either case, direct that the respondent act in consultation with such other person or persons as may be specified. The respondent will normally be the appellant's Chief Constable but the Regulation allows a respondent other than the Chief Constable in order to cover cases where the disciplinary hearing was by a Chief Constable of another force under Regulation 14 of the Discipline Regulations (or by a Tribunal under article 14 of the Order chaired by such an other chief officer).

13.12 In considering his decision on the question of who should be the respondent and whether the respondent should be directed to consult other persons, the Secretary of State intends as a general rule to determine as follows:

- (a) The respondent will, subject to (c) below, be the officer who presided at the disciplinary hearing at which the appellant was found guilty, whether he sat alone or as chairman of a disciplinary tribunal and whether or not he is the Chief Constable. Where, in a case which was remitted under Regulation 14 of the Discipline Regulations, the appeal is against both finding and punishment, the respondent will be directed to act in consultation with the Chief Constable [<sup>1</sup>in those areas where, as officer conducting the original disciplinary hearing, he made a recommendation as to the punishment to be imposed. Where, however, the respondent imposed punishment in a remitted case, no such direction will be given].
- (b) Where the hearing was before a Disciplinary Tribunal and the appeal is against finding and punishment, the respondent (as at (a) above) will be directed to act in consultation with the other members of the tribunal.
- (c) Where, in a case which was remitted under Regulation 14 of the Discipline Regulations, the appeal is against punishment only, the respondent will be the Chief Constable.

[<sup>1</sup>13.12A Where the respondent is directed to act in consultation with the other members of a disciplinary tribunal his response should reflect the collective view of the full tribunal. It is both inappropriate and, in the view of the Secretary of State, inconsistent with the provisions of Regulation 17(9) of the RUC (Discipline and Disciplinary Appeals) Regulations 1988 for a response to contain the separate submission of a single member in any case where the decision subject of the appeal was reached by a majority decision under that Regulation.]

13.13 Paragraph 13.19 describes appropriate arrangements of the contents of a response in the case of an appeal against finding and punishment. It is, of course, open to the Chief Constable to seek legal advice in the preparation of his response (just as it is open to an appellant to seek such advice in the preparation of his appeal). However, attention is drawn to paragraph 3 of Regulation 60 which is of particular importance where the case is one in which Regulation 14 of the Discipline Regulations applies. The Secretary of State considers that in such a case it is desirable that neither the Chief Constable nor the Police Authority should be involved in the arrangements for obtaining legal advice or in the matter of the content of the response, except to the extent that it may be necessary for them to provide strictly factual information or to be advised of the costs likely to be incurred by the respondent.

## **APPEAL TRIBUNALS**

### **Remission of Cases by the Northern Ireland Secretary**

13.14 Regulation 53(1) requires the Secretary of State to appoint a tribunal to consider an appeal where either, it appears to him that the case cannot be properly determined without taking evidence, or the appellant has been punished by way of dismissal, requirement to resign or reduction in rank and the appellant has requested that a tribunal be appointed. This requirement does not however inhibit the Secretary of State from allowing an appeal without referring it to a tribunal if he considers there are sufficient grounds for doing so.

13.15 [Regulation 53(6) makes provision for the Secretary of State to require an appeal tribunal to deal in its report on an appeal with any particular matter he may specify. Regulation 67(1)(d) provides for the tribunal to comply with such a requirement. The appellant and the respondent will normally be notified whenever the Secretary of State makes a requirement of this kind in a particular case.]

### **On Written or Oral Evidence**

13.16 Part IV of the Discipline Regulations provides that an appeal tribunal may deal with a case on written evidence or representations, instead of holding an oral hearing.

[13.17 Regulation 53(8) provides that the appeal tribunal will hold a hearing if the Secretary of State requires this. Regulation 53(9) provides that they will also hold a hearing in all other cases unless it appears to them unnecessary to do so. Before reaching a decision under Regulation 53(9) not to hold a hearing, the tribunal is required by Regulation 53(10) to afford the respondent and the appellant an opportunity to make written or, if either so requests, oral representations in the matter and also to consider those representations. Where, as respects a particular charge, an appeal is against both finding and punishment, a hearing in pursuance of Regulations 53(8) or 53(9) will take the form of a full rehearing of the charge if the Secretary of State so directs; whether to proceed by way of a rehearing of the charge if the Secretary of State does not so direct is at the discretion of the tribunal. When an appeal is against punishment only, any hearing will normally be confined to matters relevant to punishment. When an oral hearing takes place the appellant and the respondent have the right to legal or other representation before the tribunal. This right extends to a hearing of oral representations under Regulation 60.]

### **DOCUMENTATION TO BE SENT TO APPEAL TRIBUNAL**

13.18 Regulation 57(2) applies where an appeal is against both finding and punishment. It provides that the Secretary of State shall withhold from the members of an appeal tribunal so much of the respondent's statement and documents as appear to him to relate to the appellant's character and record of service until after the tribunal has completed its examination of and formed its opinion on the finding and is about to consider the question of punishment. In practice, this is achieved administratively by bundling papers relating to the finding separately from those relating to the punishment and arranging for them to be presented to the members at the appropriate times.]

13.19 Therefore, in the case of an appeal against both finding and punishment, the Chief Constable should compile his response under Regulation 52 and the transcript of the relevant disciplinary proceedings as follows:-

- (a) Two separate statements should be prepared, one statement dealing with the question of the finding and the other statement dealing with the question of punishment.
- (b) The transcript should be prepared in two separate parts, one part covering the hearing up to and including the decision on finding and the other part covering the remainder of the proceedings. Where an appeal has already been made to the Chief Constable, the transcripts of the hearings before both the original discipline body and the appellate body, should be separate in this way.

### **STATEMENTS IN LIEU OF ORAL EVIDENCE**

13.20 The provisions in Regulation 65 concerning the admission of written statements in lieu of oral evidence follow the same lines as those included in other parts of the Discipline Regulations.

### **GIVING OF REASONS**

13.21 The Secretary of State is now required by Regulation 55(1) to provide the appellant and respondent with a written statement of his reasons for his determination of the appeal. In the case of an appeal which has been referred to a tribunal, and where the Secretary of State has accepted the tribunal's recommendations, this requirement will be

met by sending to the appellant and respondent, a copy of the tribunal's report setting out the reason for its recommendations. In all other cases, a separate written statement setting out the reasons for his determination of the appeal will be provided.

### **TAXING OF APPELLANT'S COSTS**

13.22 It is, of course, open to any appellant to take whatever legal advice or assistance he chooses in the preparation and presentation of his appeal; but where those costs are to be met out of the public purse, it is implicit that only such costs as are considered reasonable will be met. [<sup>1</sup>Under Regulation 56(2) the Secretary of State may direct the manner in which any costs related to an appeal shall be taxed. When a request for taxation is received (and it is hoped that such a request would be made only after discussion locally with the appellant's legal representatives has failed to produce agreement on a figure acceptable to both sides) it is the practice to pass the matter to the Taxing Master of the Supreme Court for consideration.]

- 
1. 1990
  2. 1994

## ANNEX A

## NOTES ON THE POLICE (NORTHERN IRELAND) ORDER 1987

## PART I: INTRODUCTORY

**Articles 1 and 2** contain provisions relating to citation, commencement and interpretation. In particular a complaint is defined for the purposes of the Order as any complaint about the conduct of a member of the police force which is submitted by, or on behalf of, a member of the public. Accordingly all members of the Royal Ulster Constabulary including both full-time and part-time members of the RUC Reserve are covered by the Order.

## PART II: POLICE COMPLAINTS

**Article 3** abolishes the Police Complaints Board for Northern Ireland and establishes the Independent Commission for Police Complaints.

**Article 4** imposes on the Chief Constable a duty to take preliminary steps when he receives a complaint.

**Article 5** sets out a procedure to be followed to establish an investigation into a complaint about the conduct of a member of the rank of chief superintendent or below. The Chief Constable is first required to consider whether the complaint is capable of resolution under the informal resolution procedures. Only if it is not or if the informal resolution procedures fail does he have to appoint an officer to investigate the complaint formally. The Article provides that an officer may not be appointed to achieve informal resolution or to investigate the complaint formally unless he is one rank above that of the member complained of, where that member is the rank of superintendent or chief superintendent and 2 ranks above that of the member complained of where that member is of the rank of chief inspector or below.

**Article 6** sets out the procedure to be followed by the Police Authority to deal with complaints against officers of above the rank of chief superintendent. Whilst no provision is made for an informal resolution procedure, it is open to the Police Authority to deal at its discretion with a complaint if they are satisfied that the conduct complained of, even if proved, would justify neither disciplinary nor criminal proceedings against the officer concerned.

**Article 7** requires the Chief Constable or the Police Authority whichever is the appropriate authority to refer to the Commission, all complaints in which the appropriate authority has decided to appoint an investigating officer to investigate it formally.

**Article 8** permits the appropriate authority to refer to the Commission any matter which is not a complaint but which appears to indicate that a member may have committed a criminal offence or an offence against discipline if it appears to the appropriate authority that the matter ought to be referred by reason of its gravity or of any other exceptional circumstances. Power is also given to the Secretary of State and the Police Authority to permit either to refer to the Commission any matter which again is not the subject of a complaint but they consider it is desirable in the public interest that the Commission should supervise the investigation of the matter.

**Article 9** requires the Commission to supervise the investigation of certain serious complaints and those matters referred to it by the Secretary of State or the Police Authority in the public interest; it also permits the Commission to supervise the investigation of any other complaint which it is not required to supervise and of other matters referred to it by the appropriate authority if the Commission considers that it is desirable in the public interest that it should do so. It provides for the Commission to approve the appointment of an investigating officer in cases where it is supervising the investigation and, in accordance with regulations made by the Secretary of State, to impose restrictions or conditions in respect of particular investigations. Where the investigation is supervised by the Commission, the investigating officer must submit his report to the Commission and send a copy to the appropriate authority. The Commission, having received the report, shall submit to the appropriate authority a statement indicating whether the investigation was carried out to its satisfaction and the statement will be copied to the person by, or on behalf of, whom the complaint was made. No disciplinary charges may be brought before that statement has been submitted by the Commission to the appropriate authority. In addition, unless the Director of Public Prosecutions feels that there

## Annex A

are exceptional circumstances attached to the case, the Director may not bring criminal proceedings before the statement has been submitted.

**Article 10** requires the Police Authority to submit to the Director of Public Prosecutions any report drawn up on the conduct of a senior officer unless it is satisfied by the report that no criminal offence has been committed. The Article requires the Chief Constable on receiving a report concerning the conduct of a member of the rank of chief superintendent or below to consider first whether the report indicates that a criminal offence may have been committed by that member and, if so, to consider whether the offence indicated is such that the member ought to be charged with it. If he considers both that an offence has been committed and that the member should be charged with it, the Article requires him to send a copy of the report to the Director of Public Prosecutions. After the Director of Public Prosecutions has dealt with the question of criminal proceedings, the Chief Constable is required to send the Commission a memorandum indicating whether he has preferred disciplinary charges in respect of the conduct which was the subject of the investigation and, if not, his reasons for not doing so. Similarly, if the Chief Constable decides that, although a criminal offence has been committed, the member should not be charged with it he must send the Commission a memorandum indicating whether he proposes to prefer disciplinary charges in respect of the conduct in question and, if not, his reasons for not doing so. Moreover, a similar memorandum must be sent to the Commission where the Chief Constable considers that the report discloses no criminal offence; in such a case he must indicate to the Commission whether he has preferred disciplinary charges in respect of the conduct in question and if not his reasons for not doing so. Where the Chief Constable indicates that he proposes to prefer disciplinary charges or has done so already it will be his duty to prefer them or proceed with them as the case may be. The Article also requires the Chief Constable to send the Commission a copy of the report of the investigation where the investigation was not subject to supervision by the Commission.

**Article 11** provides that no memorandum needs to be sent to the Commission if disciplinary charges have been preferred in respect of the conduct investigated and if the accused has admitted the charges and has not withdrawn his admission. In such a case the outcome of the proceedings must be sent to the Commission (together with a copy of the investigation report).

**Article 12** empowers the Commission to direct the Chief Constable to send to the Director of Public Prosecutions a copy of the report of an investigation where the Chief Constable has already considered that report and determined not to refer the contents to the Director. It imposes a duty on the Chief Constable to comply with any such direction.

**Article 13** empowers the Commission to recommend and subsequently direct that the Chief Constable should prefer disciplinary charges on the basis of the report of an investigation where the Chief Constable has indicated that he either has not preferred or proposes not to prefer such charges. It imposes a duty on the Chief Constable to comply with any such direction. In addition the Article empowers the Commission to give the Chief Constable permission not to prefer charges or not to proceed with charges which have been laid.

**Article 14** provides that where the Commission directs that disciplinary charges shall be preferred against the member or, in any other case where they consider it to be desirable by reason of any exceptional circumstances affecting the case, the hearing will be before a tribunal. The Article also deals with the constitution and manner of working of such tribunals.

**Article 15** provides that the Police Authority, in carrying out its duty in respect to the adequacy and efficiency of the police force, should keep themselves informed of the working of the provisions of Articles 4 to 13 of the Order.

**Article 16** enables the Commission to agree to arrangements for the handling of complaints against constabularies maintained by bodies other than the Police Authority. If such arrangements are not entered into voluntarily, the Secretary of State has the discretion to impose them by order.

**Article 17** requires the Commission to make annual reports to the Secretary of State and to send a copy to the Police Authority, together with any relevant information. In addition, the Secretary of State may call for reports from the Commission on matters relating generally to its functions and the Commission may, of its own initiative report to the Secretary of State on matters coming to its notice. Reports of the latter kind are copied to the Police Authority and the Chief Constable. The Commission is required to keep under review the workings of Articles 4 - 16 which in-

clude the working of the informal resolution procedures and the Police Authority's discretionary role in considering complaints against senior officers.

**Article 18** places restrictions on the disclosure of information by the Commission's staff and members. Any unauthorised disclosure is a criminal offence.

**Article 19** permits the Secretary of State to make regulations as to the procedure to be followed under Part II of the Order and also places upon the Secretary of State the duty to make certain specific regulations. In addition the Article sets out the procedures to be followed in making regulations. In particular both the Police Authority and the Police Association for Northern Ireland must be consulted before any regulations under Part II of the Order are made.

### PART III: GENERAL

**Article 20** amends Section 26 of the Police Act (Northern Ireland) 1970 to make provision for the Discipline Regulations for Royal Ulster Constabulary Reserve members. This allows the complaints and discipline procedures to be applied to all the members of the RUC Reserve.

**Article 21** amends Section 17 of the Police Act (Northern Ireland) 1970 to allow the Police Association to represent a member of the police force at any disciplinary proceedings or on appeal from such proceedings; but that representative must be a serving member of the police force.

### PART IV: MISCELLANEOUS AND SUPPLEMENTARY

**Article 22** safeguards a member who has already been charged and either acquitted or convicted of a criminal offence against being charged with a disciplinary offence which is in substance the same. The Article also provides that no statement made in the course of informal resolution of a complaint may be admissible in subsequent criminal, civil or disciplinary proceedings unless it consists of or includes an admission relating to a matter which does not fall to be resolved informally.

**Article 23** provides for the Secretary of State to issue guidance to the Chief Constable and to other police officers concerning the discharge of their functions under Part II of the Order and otherwise in connection with discipline. It requires police officers to have regard to any such guidance in the discharge of their functions. The guidance may not be issued in relation to the handling of a particular case. Failure on the part of any police officer to have regard to the guidance when determining whether a member has committed an offence against discipline or the punishment which should be awarded for such an offence shall be admissible in evidence in any appeal. The Article also requires the Commission to have regard to any guidance given to them by the Secretary of State on matters affecting the preferring and withdrawing of disciplinary charges.

**Article 24** amends Section 17(4) of the Police Act (Northern Ireland) 1970 to allow the Secretary of State, after consultation with the Police Association to make regulations prescribing the constitution and proceedings of the Police Association and of its 3 constituent parts, (i.e. the Association of Chief Police Officers, the Superintendents' Association and the Police Federation for Northern Ireland); or authorise any one of these sections to make rules concerning matters relating to its constitution and proceedings as may be specified in regulations.

**Article 25** amends Section 23 of the Police Act (Northern Ireland) 1970 so that complaints made against traffic wardens shall be investigated by the Royal Ulster Constabulary and the Police Authority required to keep themselves informed as to the manner in which these complaints are dealt with by the Chief Constable.

**Article 26** amends Section 23(3) of the Police Act (Northern Ireland) 1970 by replacing a reference to Article 7 of the Police (Northern Ireland) Order 1977 (which is repealed) with a reference to Article 14 of this Order.

**Article 27** deals with repeals under the Order.

### SCHEDULES

**Annex A**

**Schedule 1** sets out the Commission's constitution and membership and makes administrative, transitional and other provisions.

**Schedule 2** specifies repeals to be made under Article 27.

•

## ANNEX B

NOTES ON THE ROYAL ULSTER CONSTABULARY (DISCIPLINE AND DISCIPLINARY APPEALS)  
REGULATIONS 1988

## PART I: GENERAL

**Regulation 1** provides for the regulations to come into force on 29 February 1988.

**Regulation 2** revokes the previous discipline regulations except where a member has been charged with a disciplinary offence before 29 February 1988 and except in the case of an appeal, written notice of which was received by the Secretary of State before 29 February 1988. It provides in particular that, where a member has not been charged with an offence but where, in his case, action has already been taken before 29 February 1988 for the purpose of the 1977 regulations then action already taken will have effect on 29 February 1988 and thereafter as if it had been carried out for the purpose of the corresponding provision in the new regulations. It also provides that the 1977 provisions relating to suspension and to punishment shall continue to have effect where a member has been charged with an offence before 29 February 1988.

**Regulation 3** is an interpretive provision. In particular the term "referred matter" takes account of the fact that it is not only a complaint, to which the Order of 1987 applies, which may be referred to the Commission but also, under Article 8 of that Order, certain other matters which appear to indicate that an offence against discipline may have been committed.

**Regulation 4** provides that a member commits a disciplinary offence if he commits one of the offences in the Discipline Code which is set out in Schedule 1 to the regulations.

## PART II: DISCIPLINE AND INTERNAL APPEALS: RANKS OF AND BELOW CHIEF SUPERINTENDENT

**Regulation 5** provides for the investigation of complaints by members of the public and of internal reports or allegations. The Order itself provides for the appointment of investigating officers in the case of complaints. Where an internal report or allegation is received from which it appears that a member may have committed an offence then the Chief Constable may decide in the first instance that no disciplinary proceedings are necessary and need not in such a case appoint an investigating officer. The regulations provide that the investigating officer may be a member of the Royal Ulster Constabulary or, if the chief officer of some other force agrees to provide an investigating officer, a member of that force; he should be of at least two ranks higher than the member subject to investigation where that member is the rank of Chief Inspector or below or at least one rank higher where the member under investigation is a Superintendent or Chief Superintendent. Neither in the case of internal reports or allegations nor in the case of complaints may the investigating officer be the Chief Constable or any member of the police force concerned serving in the same sub-division or branch as the officer subject to investigation.

**Regulation 6** provides for the member who is subject to investigation to be given written notice of the nature of the allegations against him and allows him to make a statement concerning them.

**Regulation 7** deals with the formulation and preferring of disciplinary charges. This duty rests with the Chief Constable (but see Regulation 15) subject to any requirement to refer the report of an investigation into a complaint or other matter to the Independent Commission for Police Complaints (the Commission). A discipline form has to be served on the accused: it is to be in a form set out in Schedule 2 to the regulations.

**Regulation 8** allows for the withdrawal of charges before they are heard.

**Regulation 9** provides for documents to be given to the accused. He should be supplied with a copy of any statement made by him together with witnesses' statements, a copy of the original complaint and also of any statement made by the complainant, even though it may contain complaints or allegations against him which are not the subject of the disciplinary charge and any statement which, in the event of a finding of guilt, will be admitted as character



## Annex B

evidence in relation to the officer concerned to assist the officer conducting the hearing or the Chief Constable to determine the punishment to be imposed or recommended. The regulation provides that these documents will be supplied to the accused at least 21 days before the date set for the hearing of the charges. An exception to this time limit is made where the accused is detained in pursuance of the sentence of a court or has received a suspended sentence of imprisonment and where, having been supplied with the documents in the case, he does not elect to be legally represented at a hearing and where the Chief Constable is satisfied that it would be appropriate for the hearing to take place before the expiry of a period of 21 days from the date on which the member is charged. Paragraph 4 of the regulation permits the officer conducting the hearing, with the consent of the accused, to allow any other document not copied to the accused prior to the hearing to be adduced in evidence.

**Regulation 10** provides that, on the hearing of a disciplinary charge, a member of the rank of chief superintendent or below may not be punished by dismissal, requirement to resign or reduction in rank unless he has been given an opportunity to be legally represented at the hearing. Such representation may be either by counsel or by a solicitor. In any other case, a member may only be represented at the hearing of a disciplinary charge by another member of a police force. It also provides that if a member has been given the opportunity to be legally represented at a hearing the case against him may be presented by counsel or a solicitor whether or not he is actually so represented.

**Regulation 11** provides that the accused shall be invited to state in writing on the discipline form whether he admits or denies the charge, whether he wishes to be legally represented in a case where it is appropriate and whether he proposes to call witnesses and, if he wishes the Chief Constable concerned to take steps to secure the attendance of such witnesses, their names and addresses. The regulation also provides that where any such witness is a member of the RUC he shall be ordered to attend the hearing of the case.

**Regulation 12** provides that the officer responsible for formulating charges against the accused member shall give that member an opportunity to elect to be legally represented at the hearing if he is satisfied that on a finding of guilt, the punishment of dismissal, requirement to resign or reduction in rank should be available to the officer conducting the hearing.

**Regulation 13** provides for the hearing of cases, including those arising from complaint matters, to be heard by disciplinary Boards or officers sitting alone as set out in Schedule 4 to the regulations; except those cases which are remitted to the chief officer of another force or those which are due to be heard by a Disciplinary Tribunal under Article 14 of the Order of 1987.

**Regulation 14** provides a number of detailed instances of cases where the hearing of disciplinary charges should or may be remitted by the Chief Constable to the chief officer of another force.

Paragraphs 1 (a) and 2 of the regulation provide that the Chief Constable, **must** remit the case to the chief officer of another force who has agreed to act in this matter, where the Chief Constable is interested in the case otherwise than in his capacity as such or is a material witness or if, upon his consideration of a case in which the accused member has not been given an opportunity to elect for legal representation, he forms the view that on a finding of guilt, the punishment of dismissal, requirement to resign or reduction in rank should be available to the officer conducting the hearing.

Under paragraph 1(b) and 4 of the regulation, a case may be remitted by the Chief Constable to the chief officer of another force if he thinks it is appropriate.

**Regulation 15** provides for the task of deciding whether a member should be charged with an offence to be delegated to an officer not below the rank of Assistant Chief Constable.

**Regulation 16** applies where a disciplinary tribunal is to be held. Paragraph (2) provides that where the Chief Constable remits the case to another chief officer he is to inform the Commission that he has done so and that the other chief officer will therefore be the chairman of the tribunal. The Commission is required to inform the Chief Constable (and, where appropriate, the chief officer who is to chair the disciplinary tribunal) who the 2 Commission members on the disciplinary tribunal will be.

**Regulation 17** provides for the procedure at a disciplinary hearing. Such a hearing shall be in private. A member may act as presenting officer as may a counsel or a solicitor in appropriate cases. Paragraph 4 of the regulation permits counsel or a solicitor presenting the case and any representatives of the accused member to be assisted by a serving member of a home police force. This will permit the accused member's friend, on the one hand, and the investigating officer on the other to be present to assist the person presenting the case on either side. In addition the officer conducting the hearing may, if the accused or his representative does not object, allow any member of a home police force, members of the Commission or any solicitor to attend the hearing. [The regulation also permits inferences to be drawn from an accused officer's failure or refusal, while subject to investigation, to mention or account for any fact relied on in his defence at the hearing.]

**Regulation 18** makes special provision for the introduction of statements into disciplinary hearings in lieu of oral evidence. It allows the admission in evidence of a written statement without the maker being called as a witness if the evidence in it would have been admissible if given orally. A copy of such a statement must be given to the other side at least 21 days (or an agreed shorter period) before a hearing; unless the other side object within 14 days (or an agreed shorter period) the statement will be admissible. The officer conducting the hearing may nevertheless admit written evidence adduced by one side at the hearing with the agreement of the other side. Where a written statement is adduced, the officer conducting the hearing may nevertheless ask that oral evidence be given by the person who made the statement. If it is not he may then disregard the written evidence.

**Regulation 19** allows for the adjournment of the hearing.

**Regulation 20** allows for hearings in the absence of the accused in certain circumstances.

**Regulation 21** provides that a complainant may be present at a disciplinary hearing while any witness (including the accused) is being examined or cross-examined about the facts relating to the charge; provided that where a complainant is to give evidence he should not be allowed to attend before he gives his evidence. Thus a complainant is not entitled to be present when punishment is being considered or where there are no witnesses or when the accused pleads guilty. Where the accused gives evidence the complainant may ask him questions either through the presiding officer or at the presiding officer's discretion directly. The presiding officer may disallow questions which he considers to be irrelevant or formulated in an undesirable manner.

**Regulation 22** makes it clear that the power to determine finding rests in all cases with the officer conducting the hearing of the charge. Paragraph 2 of the regulation provides that the criminal standard of proof shall apply at discipline hearings.

**Regulation 23** deals with punishment. It sets out the different punishments that may be awarded and provides that in general the punishment shall be imposed by the officer conducting the hearing. There are 2 exceptions: under paragraph 3 where a case has been remitted under Regulation 14 the chief officer hearing the case will make only a recommendation as to punishment and where a disciplinary tribunal is held the chairman (i.e. the Chief Constable) will determine the punishment after consulting the other members of the tribunal. Under paragraph 5 the chief officer to whom a case has been remitted under Regulation 14 must, having heard the case, send the statement of the charge he has found proved together with a statement of the facts in so far as they are relevant to punishment and his recommendation as to punishment to the Chief Constable. The Chief Constable should be provided with a transcript of the hearing and he should decide on and impose a punishment without undue delay. Paragraph 6 makes clear that in imposing punishment regard must be had to the accused member's record of service and may be had to other evidence and that the accused may adduce evidence as to character. Paragraph 9 of the regulation provides that where an internal appeal lies to the Chief Constable the punishment imposed shall not take effect unless and until the period for giving notice of appeal has expired or, where such notice is given, the appeal has been determined.

**Regulation 24** provides that a reduction in rate of pay or a fine may not be imposed for an offence of criminal conduct. It also provides that the punishment of reduction in rate of pay may not be such as would reduce the accused member's pay below the minimum of the scale applicable to his rank and defines a limit on the size of any fine which might be imposed. (A punishment of reduction in rate of pay should not be expressed as a reduction of a certain number of increments or as a reduction to a specified salary (the reason for this is that it might have the effect of preventing the payment of any increment until the period of punishment is over and would also prevent assimilation

## Annex B

to any new scale of pay which might be awarded generally). The punishment of reduction in rate of pay should always be expressed as a reduction by a specified amount).

**Regulation 25** provides that where a hearing has been conducted by an officer other than the Chief Constable and where the charge has been found proved and punishment imposed, the accused member may appeal to the Chief Constable against both the finding and the punishment or against the punishment only. Notice of appeal has to be given within 2 days of the day on which the accused was notified of the punishment. He must furnish the Chief Constable with a statement setting out the grounds of his appeal within 21 days following the day on which either he receives the transcript of the record of proceedings at the original hearing where he has asked to be supplied with such a transcript or where he has made no such request following the day on which he gave notice of appeal. Either the period for giving notice or the period for indicating grounds of appeal may be extended by the Chief Constable if he is satisfied that by reason of the special circumstances of the case it is just and right to do so. The appeal will be considered by the Chief Constable or his deputy appointed by him for the purpose. The regulation provides that the appellant may attend the proceedings and conduct his appeal either in person or by a friend or if appropriate by counsel or solicitor. He or his representative may make oral or written representations in support of the appeal and is allowed to adduce only new evidence which could not have been adduced at the hearing at which the charge was found proved. Witnesses giving oral evidence at an appeal may be cross-examined and the officer considering the appeal may, at his discretion, admit written evidence. The regulation also provides that a verbatim record of appellate proceedings should be taken and a transcription of the record made and supplied to the appellant for the purpose of an appeal to the Secretary of State if the appellant asks for one. Paragraph 16 of the regulation provides that on an internal appeal the officer conducting the appeal may not award any punishment greater than the punishment awarded at the original hearing.

**Regulation 26** provides that the Chief Constable may suspend a member from duty where a report, allegation or complaint is received from which it appears that the member may have committed a disciplinary or criminal offence. The Chief Constable's power to suspend a member may be exercised at any time after the receipt of the report, allegation or complaint up to the time when either it is decided that the member shall not be charged with a disciplinary offence or where charges have been preferred, when all the charges have been dismissed or punishments have been imposed or an appeal has been determined. The regulation provides that suspension shall remain in force until either it is decided that the member shall not be charged, or he has been so charged and has been dealt with or any appeal he may make has been determined, or the Chief Constable decides that the suspension shall be lifted.

**Regulation 27** applies where a member is found guilty of a charge of criminal conduct following a conviction in a court of a criminal charge and subsequently appeals successfully against his conviction. In such a case, this regulation has the effect of setting aside the disciplinary conviction whilst allowing the Chief Constable to charge the member concerned with some other disciplinary offence, having regard to Article 22 of the Order of 1987 which relates to double jeopardy.

**Regulation 28** requires the keeping of a force discipline book.

[**Regulation 37** permits inferences to be drawn from an accused senior officer's failure or refusal, while subject to investigation, to mention or account for any fact relied on in his defence at the hearing.]

### NOTE

**Section 12** of the Guidance deals with disciplinary arrangements for senior officers (Part III of the Discipline Regulations).

**Section 13** of the Guidance deals with appeals to Secretary of State (Part IV of the Discipline Regulations).

## ADDITIONAL NOTES ON

ROYAL ULSTER CONSTABULARY (DISCIPLINE AND DISCIPLINARY APPEALS) REGULATIONS  
1988

## PART I: GENERAL

These regulations replace, with amendments, the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1977 and come into operation on 29th February 1988. They take account of the new provisions made by the Police (Northern Ireland) Order 1987 for complaints by members of the public against police officers, and the creation by Article 3 of the Order of 1987 of the Independent Commission for Police Complaints for Northern Ireland (the Commission) (in place of the Police Complaints Board for Northern Ireland established under the Police (Northern Ireland) Order 1977). The principal changes are described below:

The definition of "referred matter" in regulation 3(1) takes account of the fact that it is not only a complaint (made under the Order of 1987) which may be referred to the Commission but also, under Article 8 of that Order, certain other matters which appear to indicate that an offence against discipline may have been committed.

## PART II: DISCIPLINE AND INTERNAL APPEALS: RANKS OF AND BELOW CHIEF SUPERINTENDENT

**Regulation 9** specifies that the documents required to be supplied to the accused should be served at least 21 days before the hearing (instead of "as soon as possible").

**Regulation 10** gives an accused member the right to be legally represented at a disciplinary hearing where the officer responsible for formulating charges considers that on a finding of guilt there should be available the punishments of dismissal, requirement to resign or reduction in rank. Regulation 14 and paragraph 7 of Schedule 4 provide for the remission of cases where it becomes apparent that these punishments should be available and the accused has not been given the opportunity under Regulation 12 to be legally represented.

**Regulation 13** provides that all disciplinary matters (whether arising from a complaint or otherwise) will be heard under the arrangements as set out under Schedule 4 of these regulations, except those cases which are due to be heard by a Disciplinary Tribunal under Article 14 of the Order of 1987.

**Regulation 17(2)** allows the officer conducting the hearing to admit members of the Independent Commission for Police Complaints and solicitors to the hearing. Provision is made for legal representation at the hearing by paragraphs (4) and (7) of that regulation.

[**Regulation 17(12)** permits inferences to be drawn from an accused officer's failure or refusal, while subject to investigation, to mention or account for any fact relied on in his defence at the hearing.]

**Regulation 22** expressly requires that a charge must (unless it is admitted by the accused) be proved beyond reasonable doubt.

**Regulation 25** provides for internal appeals within the body of the regulations rather than in Schedule 4. There is little change to the earlier provisions except that the officer hearing an internal appeal cannot impose a punishment greater than that imposed at the original hearing; and the appellant must be given the opportunity to be legally represented if he was so entitled at the first hearing.

**Regulation 27** provides that a successful appeal against a criminal conviction automatically quashes a disciplinary conviction for criminal conduct based upon it, but without prejudice to the bringing of any other disciplinary charges.

A number of amendments are made to the Discipline Code (Schedule 1). The offence of abuse of authority (paragraph 9) will now cover all oppressive conduct by an officer towards those with whom he comes into contact in the execution of his duty.

## Annex B

Paragraph 10 creates an offence of discriminatory conduct on the grounds of religious belief, or racial origin. The offence of being an accessory to a disciplinary offence (paragraph 18) will henceforth include inciting such an offence.

Paragraph 6(b) of Schedule 4 allows a senior assistant chief constable sitting alone to conduct the hearing of a charge against a member of the rank of chief inspector or below where the only penalties which may not be imposed under Regulation 23 are dismissal or requirement to resign.

### PART III - DISCIPLINE: SENIOR OFFICERS

Part III of these regulations takes account of the introduction by the Order of 1987 of a formal process for the investigation of complaints against senior officers (that is officers above the rank of chief superintendent).

**Regulation 29** provides for the appointment of an investigating officer where it appears that an offence may have been committed. By Regulation 30 an officer subject to investigation must as soon as practicable be given an opportunity to make a statement about the matter, having been advised of his right to remain silent and warned that such a statement may be used in subsequent disciplinary hearings.

[**Regulation 37(9)** permits inferences to be drawn from an accused senior officer's failure or refusal, while subject to investigation, to mention or account for any fact relied on in his defence at the hearing.]

**Regulation 42(2)** provides that a disciplinary charge must be proved beyond reasonable doubt (unless it is admitted by the accused). Regulation 43(1)(a) expressly permits the Police Authority to record a finding of guilt but to take no further action thereon. Regulation 44(2)(b) allows an officer who has admitted a charge to address the Police Authority in mitigation.

**Regulation 47** requires the approval of the Commission for the suspension of a senior officer in discipline cases; Regulation 48 provides a summary procedure for suspension in urgent cases subject to subsequent approval by the Commission.

### PART IV-APPEALS TO THE SECRETARY OF STATE

Part IV regulates the criteria governing appeals to the Secretary of State (which were previously administrative practice) and makes certain amendments governing the composition scope and functions of appeal tribunals.

**Regulation 49** provides that a member may appeal to the Secretary of State against a decision on a disciplinary charge or against any punishment awarded except where he has the right to appeal to some other person.

**Regulation 53** provides for the composition and scope of an appeal tribunal which the Secretary of State may appoint to inquire into any appeal to him (except an appeal from a decision of the Police Authority).

**Regulation 59** which deals with the form of inquiry omits certain provisions of the 1977 Regulations dealing with the taking of evidence which have been superseded by Regulation 53(8), (9) and (10).

**Regulation 60(2)** provides for the appellant and the respondent to be represented for the purpose of making oral representations prior to any decision of the tribunal as to holding a hearing, in the same way as at the hearing itself.

**Regulation 64(5)** provides for a verbatim record of the evidence at the hearing to be kept for a period of not less than 3 years and a transcription of the record to be made if the Secretary of State or the chairman of the tribunal so requests.

## NOTES ON

**ROYAL ULSTER CONSTABULARY RESERVE (PART-TIME) (DISCIPLINE AND DISCIPLINARY APPEALS) REGULATIONS 1988**

These regulations make separate provisions for the part-time Royal Ulster Constabulary Reserve in relation to discipline and disciplinary appeals.

They take account both of the new provisions made by the Police (Northern Ireland) Order 1987 for complaints by members of the public against police officers, including members of the part-time reserve, and of the creation by Article 3 of the Order of 1987 of the Independent Commission for Police Complaints for Northern Ireland (the Commission). The regulations provide that:-

By virtue of the definition of "referred matter" in Regulation 2 there may be referred to the Commission not only complaints (made under the Order of 1987) but also, under Article 8 of the Order, certain other matters which appear to indicate that an offence against discipline may have been committed.

Under Regulation 8, the accused shall be supplied with all relevant documents at least 21 days before the hearing.

Under Regulation 9 the accused may be represented at a disciplinary hearing by a police officer, other than a member of the part-time RUC Reserve.

By virtue of Regulation 11(1) a charge against a part-time member shall be heard by the Chief Constable or an officer not below the rank of chief superintendent, or by a disciplinary board but Regulation 11(2) provides an exception namely cases which fall to be dealt with by a disciplinary tribunal under Article 14 of the Order of 1987.

By Regulation 15 the officer conducting the hearing may admit members of the Commission and police officers to the hearing. [1 Regulation 15(12) also permits inferences to be drawn from an accused officer's failure or refusal, while subject to investigation, to mention or account for any fact relied on in his defence at the hearing.]

By Regulation 20 the charge, unless it is admitted by the accused, must be proved beyond reasonable doubt.

The punishments which can be imposed are as detailed in Regulation 21.

A part-time member may appeal against a finding of guilt or punishment to an officer not below the rank of senior assistant chief constable, except where the Chief Constable or a disciplinary tribunal has conducted the original hearing (Regulation 22).

By virtue of Regulation 24, a successful appeal against a criminal conviction automatically quashes a disciplinary conviction for criminal conduct based upon it, but without prejudice to the bringing of any other disciplinary charges.

The Discipline Code is detailed in Schedule 1. The Code includes an offence of discriminatory behaviour on the grounds of religious belief or racial origin.

The Discipline Form is as laid out in Schedule 2.

## ANNEX C

**NOTES ON ROYAL ULSTER CONSTABULARY (COMPLAINTS ETC.) REGULATIONS 1988 [AS AMENDED BY THE ROYAL ULSTER CONSTABULARY (COMPLAINTS ETC.) (AMENDMENT) REGULATIONS 1990]**

**Regulation 1** provides for the regulations to come into force on 29 February 1988.

**Regulation 2** is an interpretive provision.

**Regulation 3** means that the Regulations do not apply to any complaint made before 29 February 1988 or to any complaint or non-complaint matter related to conduct which occurred before 28 February 1987.

**Regulation 4** requires the Independent Commission for Police Complaints (the Commission) to forward any complaint they have received to the appropriate authority unless this would be against the complainant's wishes or seems to the Commission to be unnecessary. Paragraph (2) permits the Commission to forward a complaint against the complainant's wishes if they are satisfied that the public interest so requires.

**Regulation 5** provides a time limit of 7 days for the Commission to notify the appropriate authority whether or not they will supervise an investigation. The time limit normally runs from the day on which the Commission receives the complaint or non-complaint matter referred to them but if the Commission requests further information or the investigation is delayed pending the outcome of related criminal proceedings, the time limit runs from the time when the Commission receive the information requested or notification of the trial outcome.

**Regulation 6** obliges the appropriate authority to meet the Commission's reasonable requirements for information and documents relating to complaints or non-complaint matters referred to them for supervision. This applies whether or not the Commission have decided to supervise the investigation.

**Regulation 7** requires the investigating officer to keep the Commission informed of any consultation he proposes to have with the Director of Public Prosecutions about an investigation under the Commission's supervision and of the outcome.

**Regulation 8** gives the Commission certain powers in relation to investigations which they are to supervise. Paragraph 2 gives the Commission power to impose such reasonable requirements as to the conduct of the investigation as appear to them to be necessary. This power is subject to the reservation that the Commission must not make any requirements related to the resources the Chief Constable is to provide for an investigation before consulting him and having regard to any representations he may make.

**Regulation 9** provides that the officer investigating a matter, which is referred to the Commission under Article 8 of the Order of 1987, and is supervised by it, must send a copy of the investigation report to the Secretary of State and to the Chief Constable or the Police Authority (which ever of the latter two have not already received that report in their capacity as the "appropriate authority").

**Regulation 10(1)** allows the Commission in its statement to the appropriate authority after supervising an investigation to explain why it is satisfied with the conduct of the investigation and to mention any matters which it thinks should either be brought to the attention of the appropriate authority, the complainant or the member who was the subject of the investigation, or be dealt with in the public interest. Paragraph 2 requires the Commission to send a copy of its statement following its supervision of a matter referred to it under Article 8(2) of the Order to the Secretary of State and the Police Authority.

**Regulation 11** requires the Commission to deal with a case without undue delay when a memorandum is sent to it under Article 10 of the Order. Paragraph (2) deals with a case in which the Chief Constable has not preferred disciplinary charges or does not propose to prefer such charges and the Commission accepts his decision: in such a case the Commission shall inform the Chief Constable and if this is reasonably practicable, the complainant of their ac-

## Annex C

ceptance of his decision. Paragraph (3) applies where the Chief Constable, with the Commission's leave withdraws a disciplinary charge against a member: in such a case the Commission must inform the complainant and provide him with any appropriate explanation. Paragraph (4) relieves the Commission of the duty to notify the complainant of matters falling under paragraph (2) and (3) where to do so would not be reasonably practicable.

**Regulation 12** provides for copies of complaints to be supplied to a complainant or to the member against whom the complaint was made upon a request made in writing. Paragraph (2) provides for the request to be refused where compliance with it might prejudice any criminal investigation or proceedings pending at the time of the request or where compliance would be contrary to the public interest and the Secretary of State agrees that the request should not be complied with. Where a request for a copy of a complaint is refused, no further request may be made within 6 months of the refusal.

**Regulation 13** provides that where a complaint must be referred to the Commission under Article 7(1) of the Order of 1987, the appropriate authority is required to refer it to the Commission by the end of the day after it becomes clear to the appropriate authority that Article 7(1) of the Order applies.

**Regulation 14** requires the keeping of a force complaints register.

**Regulation 15** permits the Chief Constable to delegate his functions under certain parts of the Order of 1987 and under the Regulations relating to complaints. In no case may delegation be to an officer who has acted as investigating officer in relation to the complaint in question or who has acted in relation to it in any attempt to resolve it informally.

**Regulation 16** provides that the provisions of the Order of 1987 shall not apply where the complainant or his solicitor or some other person acting as his authorised agent gives notification in writing that he withdraws the complaint or does not want any further steps taken in consequence of it. Paragraph (2) requires the appropriate authority to forward to the Commission a copy of any notification given under this regulation if the complaint was forwarded to the appropriate authority by the Commission or has been referred to the Commission under Article 7(1) of the Order of 1987.

[**Regulation 17** provides that where the appropriate authority is of the opinion that a complaint is anonymous or repetitive, or is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, or is incapable of investigation (as defined by paragraphs 2, 3 and 4 of the Schedule respectively), or if the complaint has been made more than 12 months after the incident which gave rise to it, and that either no good reason for the delay has been given, or that injustice would be likely to be caused by the delay, they may request the Commission to dispense with the requirements of the Order of 1987; this may be done at any stage of dealing with the complaint. Paragraph (2) specifies the information that is to be supplied to the Commission when making the request. Paragraph (3) gives the Commission power to make such a dispensation and requires it to consult the appropriate authority before rejecting a request, and paragraph (4) requires the Commission to notify the appropriate authority and, where the Commission agrees to the request, to inform the complainant unless this is not reasonably practicable.]

The Schedule contains definitions for the operation of Regulation 17. Paragraph 1 explains references within the Schedule to "an injured person other than the complainant" and to "action not being reasonably practicable". Paragraphs 2 and 3 define an "anonymous complaint" and a "repetitious complaint" for the purposes of Regulation 3. Paragraph 4 sets out the circumstances in which it may be said to be not "reasonably practicable to complete the investigation of a complaint".

---

1. 1994



## ANNEX D

**TIMING OF INVESTIGATION OF A COMPLAINT WHERE THERE ARE PENDING CRIMINAL PROCEEDINGS****Investigation before Trial**

1. In some instances a complaint and the allegations involved in it are directly or closely associated with criminal proceedings which are pending. Such complaints will generally fall into one of two categories:-

- (i) The allegations involved in the complaint do not relate to the event or events giving rise to any charge against the complainant but nevertheless may affect the proceedings against him e.g. the complaint may allege or imply that a confession of guilt was induced by assault or other improper conduct by police.
- (ii) The allegations involved in the complaint may relate to the same event or events as has given rise or may give rise to criminal proceedings against the complainant e.g. a person charged with disorderly behaviour, assault or obstruction of police may complain that he was assaulted by police.

2. In order to assist his consideration of what criminal proceedings it is appropriate should be initiated continued or discontinued by him the Director of Public Prosecutions requires that complaints referred to in paragraph 1 above should be investigated immediately and that a report be referred to him.

3. The investigation of a complaint usually begins with the complainant being interviewed and questioned as to details of his complaint and a statement taken from him if he is willing to provide one. The officer appointed to investigate any complaint to which this Annex applies will therefore at an early stage but subject to paragraph 6 below seek an interview with the complainant. Where the complainant is legally represented the investigating officer will communicate with the complainant's solicitor. Where the complainant is not legally represented he will communicate with the complainant directly. The investigating officer will state that he has been appointed to investigate the complaint and he will make it clear that his investigation is concerned solely with the complaint and not with any offence alleged to have been committed by the complainant. He will state that his report will be furnished to the Director of Public Prosecutions.

4. If either the complainant or the complainant's solicitor declines to agree to interview of the complainant or requests that such interview be deferred until after the termination of criminal proceedings against the complainant the investigating officer will not proceed with interview and will report the facts to the Director of Public Prosecutions.

5. Where the complainant's solicitor agrees to interview of the complainant then in all cases interview may proceed provided the complainant concurs.

6. Where the complainant is not legally represented the investigation of a complaint which falls under paragraph 1(ii) above will not include interview of the complainant until after the termination of any criminal proceedings against the complainant.

7. If any investigation of a complaint under either paragraph 1 (i) or under paragraph 1 (ii) interview of the complainant is not agreed, and therefore is not proceeded with, there is no objection to the investigating officer enquiring whether the complainant wishes to give particulars of any witness or witnesses whom he wishes the investigating officer to interview or whether there is other evidence (eg medical or forensic evidence) which he wishes the investigating officer to consider in his investigation.

8. If interview is agreed the investigating officer should bear in mind the following matters:-

- (a) The complainant should be approached as a witness and prima facie should be interviewed as such.
- (b) [<sup>1</sup>The Code of Practice for the Detention, Treatment and Questioning of persons by police officers relates to the admissibility of evidence in criminal proceedings. A statement made by a person who is interviewed otherwise than in accordance with the Code of Practice may be excluded from evidence in proceedings against him. However it is not the purpose of a complaint investigation to elicit from a complainant admissions which may be used in criminal proceedings against him. No part of an interview of a complainant by

## Annex D

an officer assigned by Complaints and Discipline Branch to investigate a complaint should be directed towards obtaining proof that the complainant was himself guilty of a criminal offence.

- (c) The investigation of complaints to which paragraph 1(i) applies will not normally involve an investigating officer putting to the complainant questions relating to the offence with which he is charged. There is therefore no requirement under the [Code of Practice for the Detention, Treatment and Questioning of persons by the Police] that the complainant should be cautioned before being questioned in an investigation of this type.

9. If it appears to the investigating officer at any stage that the complainant is about to make a statement which relates to an offence committed by him then, but only then, should the complainant be cautioned. In any case in which a complainant makes a statement to an investigating officer which may amount to an admission of criminal conduct the investigating officer will set out fully in his report the circumstances under which the statement was made, including the stage at which the complainant was cautioned under the [Code of Practice for the Detention, Treatment and Questioning of persons by the Police]. The question of whether or not such a statement will be used in any criminal proceedings against the complainant will be considered by the Director of Public Prosecutions.

### Police investigations in complaints and other matters affecting conviction after trial but before an appeal

10. If a person who has been convicted at a Magistrates' Court appeals to the Crown Court his appeal is heard by way of a rehearing of the case. The considerations set out in the previous paragraphs regarding the investigation of a complaint before trial apply equally where an appeal against conviction has been made to the Crown Court.

11. The same objections do not apply, however, to investigation preceding an appeal either from conviction on indictment to the Court of Criminal Appeal or by way of case stated to the Court of Appeal; because the hearing of such an appeal does not constitute a retrial the appellant rarely appears and fresh evidence is involved in only a very few cases. For the most part the question before the Court of Criminal Appeal is whether there was anything wrong with the conduct of the trial. It is considered desirable that any material relevant to an appeal including any such material which arises in the context of a complaint should be before the Court of Criminal Appeal at the time of the hearing. Where this has not happened it has sometimes been necessary for the case to be referred back to the court by the Secretary of State under Section 19 of the Criminal Appeal (Northern Ireland) Act 1968 for reconsideration in the light of fresh evidence arising from subsequent police investigations.

12. The Secretary of State therefore wishes to commend to the Chief Constable the practice of completing investigations following conviction on indictment but before an appeal may have been heard. It is an essential element in any such practice that the defence should agree in writing to provide access to the defendant and their witnesses for the purpose of the investigation under the Police (NI) Order 1987. Investigations might for instance be appropriate in the following circumstances:-

- (a) at the request of the trial judge or the Court of Criminal Appeal;
- (b) when information about documents in the possession of the police or the examination of exhibits has been requested by the appellant, either direct or through the Registrar of the Court of Criminal Appeal;
- (c) because matters come to the attention of the police which throw doubt on the validity of the conviction.

There may be other cases.

13. It is not suggested that the investigation of a complaint should proceed automatically at this stage but that the Deputy Chief Constable should consider seeking the advice, where necessary, of the Director whether it would be appropriate to proceed with enquiries. Where, after such consultation, there are still doubts about whether it is proper to continue with enquiries before the hearing of an appeal it is suggested that the Deputy Chief Constable should inform the Registrar of the Court of Criminal Appeal what is proposed and why, so that the court may, if they think it appropriate, indicate that they would see objection to enquiries proceeding. It would also help the Court of Criminal Appeal if the Deputy Chief Constable informed the Registrar of any case where enquiries were proceeding before appeal at the beginning of those enquiries, if he considered that the outcome of the investigation might substantially affect the appeal.

14. When it is decided to proceed with an investigation pending appeal the Deputy Chief Constable should keep the Director informed of progress and notify him especially of any developments that may bear upon the conviction under appeal. In cases where it is not possible to assess the authenticity of information coming to light until all enquiries have been completed the Deputy Chief Constable should apprise him of that situation. The Director of

Public Prosecutions will be able to advise whether any new material is relevant and if so how it should be assembled so that it will be admissible in evidence if necessary. He will also arrange for any such evidence to be made available to the Court of Criminal Appeal and in accordance with the usual procedure for copies to be supplied to the defence.

15. There should be no alteration in the normal rule that the report of the investigating officer is a confidential document that should not itself be disclosed.

---

1. 1990

## ANNEX E

**DISCIPLINARY PROCEDURE IN CASES WHERE CRIMINAL PROCEEDINGS ARE TO BE INSTITUTED AGAINST A MEMBER**

1. There are certain special considerations to be borne in mind when a case resulting in criminal proceedings arises out of a complaint by a member of the public. Under the terms of the Order such a case must still be considered from the point of view of discipline, even if the criminal proceedings adequately dispose of the substance of the complaint. The suggested procedure for reference to the Commission in such cases is set out below. (It should be noted that the Commission have no interest in the question of the bringing of a disciplinary charge under paragraph 17 of the discipline code).

2. Where a complaint has been referred to the Director of Public Prosecutions under Article 10(4) or Article 12(2) and the Director has notified his decision on the question of criminal proceedings, the Chief Constable is required by virtue of Article 10(5) of the Order of 1987 to refer the case to the Commission straightaway. There is no exemption from this procedure because criminal proceedings are being brought. It is recognised however that where there are to be criminal proceedings no decision on the disciplinary aspects of the case can in most cases be reached until the outcome of the criminal proceedings is known. An additional complicating factor is that when the criminal proceedings result in a conviction the Chief Constable may wish to bring a charge of criminal conduct under paragraph 17 of the discipline code. (This is not a charge with which the Commission has any concern since it is not a charge arising directly out of the complaint). If however such a charge is brought and subsequently the Commission exercise its powers to recommend or direct the bringing of other disciplinary charges the member may find himself facing a second disciplinary hearing. While it is entirely within the Chief Constable's discretion at what point after the conviction he brings a charge under paragraph 17 it is suggested that where criminal proceedings are pending in a complaints case, the Chief Constable may find it helpful to adopt the procedure set out in the following paragraphs.

3. If the Chief Constable is satisfied that the criminal charge or charges cover the whole matter of the complaint, he will refer the papers to the Commission at once under Article 10(5) giving this as the reason why he has not brought charges and does not propose to bring any disciplinary charges (other than a possible charge under paragraph 17). If the Commission agree, that is the end of the matter: but the Chief Constable will not inform the member and the Commission will not inform the complainant of the decision until the criminal proceedings are completed. The Chief Constable is asked to inform the Commission of the eventual outcome of the criminal proceedings. If the Commission does not agree it will so inform the Chief Constable and he will proceed as if paragraph 4 below had applied.

4. If the Chief Constable is not satisfied that the criminal charge(s) cover the whole matter of the complaint, he will refer the papers to the Commission at once under Article 10(5) giving as his reason for not preferring charges the fact that criminal proceedings are pending and informing them that he will let them have a further report when the outcome is known. The Commission will take no action at this stage except to note the report. Once the criminal proceedings are completed the Chief Constable will consider the disciplinary aspects of the case and follow one of the courses set out in paragraphs 5, 6 and 7 below.

5. If the Chief Constable proposes to bring a charge under paragraph 17 and the member concerned is in prison or has received a suspended sentence, he will bring the paragraph 17 charge and arrange for it to be heard and then inform the Commission of the result.

6. Where the criminal charge leads to a penalty other than imprisonment or a suspended sentence:

- i. If the Chief Constable decides not to bring disciplinary charges other than a paragraph 17 charge he should prefer the latter but should not arrange the hearing until he has reported to the Commission why he is not bringing other disciplinary charges and the Commission have given their decision.
- ii. If the Chief Constable decides to prefer disciplinary charges with or without a paragraph 17 charge he should prefer the charges but should not arrange the hearing until he has reported to the Commission and the Commission have given their decision. (If however the disciplinary charges, other than the paragraph 17 charge, cover all the matters complained of which were not covered by the criminal charge and all the charges are admitted, the hearing can take place and the Commission need only be informed of the outcome under Article 10(7).)

## Annex E

7. If the Chief Constable does not intend to bring a paragraph 17 charge or if the member was acquitted of the criminal offence, he will report to the Commission for their decision whether to recommend or direct that disciplinary charges (or charges additional to those which the Chief Constable himself intends to bring) should be brought.

8. It should be noted that reports to the Commission in the circumstances described in paragraphs 6 and 7 above are not formal references because that will already have been done under paragraph 4 above. But the Chief Constable will have to bring his memorandum up to date by giving the outcome of the criminal proceedings and his reasons for not bringing any disciplinary charges which he could in theory have brought. Where the Chief Constable takes the view that charges are precluded by virtue of the 'no double jeopardy' rule the Commission will need more than a bare statement to that effect. It will normally be helpful to them to have a brief report giving the substance of the criminal case and in particular any further information which might be relevant to any possible disciplinary charges.

9. The fact that the member complained of ceases to serve does not put the complaint outside the purview of the Commission. (See paragraph 8.26.)

10. Where disciplinary charges (other than a paragraph 17 charge) are preferred and denied the case must be submitted to the Commission for their decision whether a tribunal ought to be held.

## ANNEX F

**NOTES ON DISCIPLINARY HEARINGS BEFORE THE CHIEF CONSTABLE AND BEFORE A TRIBUNAL**

The following notes are designed to ensure that disciplinary proceedings are conducted fairly and with uniformity. Some of the notes reproduce provisions of the Regulations but are included here for the sake of completeness. References to Regulations are to the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988.

**TRIBUNAL CASES**

2. Where the Commission have directed that a charge or charges shall be heard by a tribunal, the tribunal as a whole exercises by majority if necessary, the same powers in relation to the hearing (except on punishment) as are normally exercised by the chief officer alone. References in the following paragraphs to the officer conducting the hearing or to the presiding officer should accordingly be taken in appropriate cases as references to the tribunal.

3. Where it has been arranged for related charges to be heard at the same time as charges in respect of which a tribunal is to be held (see Article 14 of the Police (Northern Ireland) Order 1987) all the charges will be heard by the tribunal and the procedure for all of them will be the same as in any other tribunal case.

**LEGAL REPRESENTATION CASES**

4. The following paragraphs describe the procedure for determining whether the accused should be offered the right to elect for legal representation at a disciplinary hearing and for notifying him of this. The subsequent procedures, including procedures at the hearing, should be identical whether the case is presented and defended by a lawyer or by a serving member.

5. [Regulation] 10 of the regulations provides that the punishments of dismissal, requirement to resign or reduction in rank may not be imposed at a disciplinary hearing unless the accused has been given an opportunity to elect to be represented by a lawyer at the hearing. Accordingly, the first question to be considered once the decision has been taken to charge a member is whether or not it should be a "legal representation" case. The decision should be taken by the officer bringing the charge. There are two opposing considerations which officers will have to bear fully in mind when making their decision. On the one hand, powers of punishment will be severely limited unless legal representation has been offered in due form: the officer hearing the case will be unable to impose a penalty more severe than reduction in rate of pay. On the other hand, for a variety of reasons the officer bringing the charge should attempt as far as possible to limit the number of occasions on which the right to elect for legal representation is offered. First, such an offer is in effect a warning to the member that on conviction he is liable to receive one of the most serious punishments; if it is given unnecessarily it may cause the accused considerable needless anxiety. Second, in such a situation the accused may well feel that he ought to retain a lawyer rather than a serving member ('friend') for his defence which could be very expensive for him or his staff association. Third, where he does elect to be represented by a lawyer, the Order provides that the case against him may be presented by a lawyer which also has considerable cost implications.

6. The officer bringing the charges thus has a delicate path to tread and in reaching his decision he should take account of all relevant considerations. In the Secretary of State's view legal representation should be offered if and only if the officer formulating the charge considers that were the charge to be found proved, there would be a genuine prospect of a punishment of dismissal, requirement to resign or reduction in rank being considered appropriate to the case.

7. The procedure for notifying a member that he is to have the right to elect for legal representation is set out in the RUC (Discipline and Disciplinary Appeals) Regulations 1987. These provide that where the officer formulating the charges is of the view that the case is a "legal representation" case, the member concerned will be given an opportunity on the discipline form to indicate whether or not he wishes to be legally represented. The regulations further provide that he should be required to indicate his decision on the matter within 14 days of the date on which the documents in the case (see paragraph 12 below) are served on him. Normally these documents should be served

## Annex F

with the discipline form. Where any one of the documents is served later, the 14 day period starts from the date on which that document was served. Where, however, a document is adduced at a hearing by agreement between the two sides, the introduction of that document shall not of itself justify an adjournment of the hearing to allow the unrepresented member to consider electing to be represented at later sessions of the same hearing. In such a situation however the officer presiding at the hearing should consider granting an adjournment to allow the defendant to reconsider his position if the statement so affects the strength of the case against him (either as to his guilt or as to the likely severity of the punishment to be awarded) that it would be in the interests of justice to grant it. The discipline form will indicate to the member that if he fails to make an election within the 14 day period without reasonable cause, this will be taken to indicate on his part that he does not wish to be legally represented.

8. The right given in the legislation is a right not to receive the most severe punishments at a disciplinary hearing unless the offer has been made of legal representation at the officer's expense. Obviously, if the member gives notice that he does not wish to be so represented or without reasonable cause fails within the time limit to give notification that he does so wish, the punishments of loss of job and rank will be available to the officer conducting the hearing if the charge is found proved.

9. There may be cases in which two members face the same charges but because one of them has rank and the other not, the most severe punishment thought reasonably likely in the latter case is a financial penalty while in the former case it may be considered likely that a reduction in rank would be imposed. If the officer formulating the charges considers that the charges should nonetheless be heard together, the right to elect for legal representation should be offered to both members.

10. In the case of a member who qualifies and elects for legal representation at a hearing under Schedule 4 to the regulations before a Disciplinary Board or an officer other than the Chief Constable, the right to such representation shall continue if the charge is found proved, until an appeal by him has been heard by the Chief Constable.

## PREPARATION

### Rights of the Accused

11. Every effort should be made to assist an accused member, his 'friend' or his legal representative to interview witnesses who might be called for the defence. It is recognised that an investigating officer should ideally be seen by both sides as acting totally neutrally as between an accused member and the authority presenting the case against him. [In many circumstances, therefore, the defence will be content for the Investigating Officer or some other member of the force to be present at such interviews. Cases may arise where the public interest in the protection of classified or otherwise sensitive information might require the presence of a senior member of the force at interviews of this kind. Normally, however, where the accused member, his "friend" or his legal representative raises objections, the Chief Constable should permit the interviews of defence witnesses to take place in the absence of both the Investigating Officer and any other member.]

12. The accused must be presented with copies of the evidence and ordered to appear at the disciplinary hearing as soon as possible after the decision has been taken to proceed with a disciplinary charge and at least 21 days before the date set for the hearing. Regulation 9(1) specifies the documents that he is entitled to receive.

13. When the above papers are served then, if it is not a legal representation case, the accused should be reminded that he may consult and be represented at the hearing by a 'friend' who may be any serving member or a serving member of a home police force irrespective of rank; and that he may consult a lawyer about any aspect of the case, though he may not actually be represented by a lawyer at the hearing.

14. Where two or more members are accused of offences arising from the same incident they may ask that their cases be heard separately. The officer arranging the hearing (or the finding officer) should grant such a request unless he is satisfied that a joint hearing can be held without injustice to either or any of the accused.

### Documents to be made available to Disciplinary Authority

15. Statements taken from witnesses or other persons by an investigating officer which are provided to the accused under Regulation 9(1) should **not** be placed before the disciplinary authority before the hearing. At the hearing the officer presiding should be provided only with the discipline form indicating the charges to be heard. If during the proceedings the presenting officer or the accused, wishes to put in evidence a written statement from a witness who is to be called to give evidence he should be allowed to do so subject to the consent of either side at the hearing. Where the witness is not to be called to give evidence any statement from that witness will be admissible only if the requirements of Regulation 18 have been fulfilled (amongst other matters, this gives both the accused and the presenting officer the effective power to require that written statements shall be admitted as evidence on behalf of the other side only if the maker of the statement is called as a witness and made available for cross-examination).

## GENERAL AND PRELIMINARY

16. Subject to the provisions of Regulations 17(2) and 21 the hearing will be conducted in private (see further paragraphs 25, 41 and 42).

17. The case against the accused will be presented by a serving member [<sup>2</sup>(who may be the investigating officer, except in cases where he may be called as a witness unless there is agreement with the defence for him to so act)] or lawyer as appropriate (see above). His duties include making an opening statement, giving a brief outline of the case, examining the witnesses and helping to bring out the facts both for and against the accused.

18. At the hearing, the accused may conduct his defence in person or be represented by a serving member or a serving member of a home police force irrespective of rank (the 'friend') or in 'legal representation' cases by a solicitor or barrister. The accused should be given every facility for communicating with his 'friend' or lawyer. If he is represented by a 'friend' both he and his 'friend' may cross-examine the witnesses called to support the case against him. The accused's 'friend' may appear at the hearing either in uniform or in plain clothes.

19. The Regulations are so drawn that it is open to the officer conducting the hearing to be assisted by a solicitor or barrister. It is suggested that consideration should be given to obtaining assistance of this kind only in those cases where both the defence and the case against the accused are to be presented by lawyers. The decision should normally be taken by the deputy chief constable in order to prevent the presiding officer from gaining prior knowledge of the case. In reaching his decision the deputy chief constable should attempt to assess whether it is likely that points of law will arise such as will require advice from a lawyer. In reaching his decision there would appear to be no objection to his approaching the lawyers involved in the case to inquire whether such points are likely to be put forward at the hearing. Care should be taken if such an approach is made not to discuss any merits of points which might be put forward nor to apprise the officer who will conduct the hearing of the nature of the issues which will be raised. During the hearing, the lawyer assisting the presiding officer should not be asked to advise on matters of fact. His advice on points of law should be given orally and in the hearing of all parties to the case.

20. Before the case against him is presented the accused may submit that the facts alleged in the charge are not such as to constitute the offence with which he is charged. If the submission is upheld the disciplinary charge to which it relates must be dismissed (Regulation 17(6)). He may also at this stage submit that the correct procedure has not been followed - for example that he has not received all the documents to which he is entitled under Regulation 9(1). If this is upheld, the case should be adjourned. If, following the dismissal of a charge under Regulation 17(6), *an amended charge is preferred, the proceedings may, and if the accused wishes it, shall be adjourned to enable him to consider his defence or to introduce fresh evidence.* In a complaint case, there is no requirement to refer the matter back to the Commission when a charge has been dismissed, whether or not it is amended at the hearing.

## [<sup>1</sup>INFERENCES FROM SILENCE

20A Before the case against the accused is presented, the officer conducting the hearing should remind those present of the provisions of Regulation 17(12) or Regulation 37(9) of the RUC (Discipline and Disciplinary Appeals) (Amendment) Regulations 1989, or Regulation 15(12) of the RUC Reserve (Part-Time) (Discipline and Disciplinary Appeals) (Amendment) Regulation 1989, as the case may be, whereby such inferences as appear proper may be drawn from the accused's failure or refusal, while subject to investigation, to mention or account for any fact to be relied on in his defence at the hearing.]



## PLEA OF GUILTY

21. The accused should be asked at the beginning of the hearing whether he pleads not guilty or guilty to each charge. It is open to him to plead not guilty, even if on the discipline form he has stated that he admits the charge. In addition, the presiding officer should treat a statement in mitigation made by or on behalf of the accused prior to punishment being awarded, as a plea of not guilty (despite an earlier guilty plea) where it appears from the statement that the accused did not understand the nature of his plea or did not intend to plead guilty, or that the facts adduced in the plea, if substantiated, would mean that the requirements of the offence had not been made out. In either case (whether the change of plea is at the instance of the accused or the presiding officer) the presiding officer is required to hear the case as if a plea of not guilty had been entered from the outset and he should grant an adjournment unless satisfied that the case both for and against the accused can be conducted fairly and effectively without an adjournment.

22. When the accused pleads guilty:

- i. The officer conducting the hearing may dispose of the case without hearing witnesses, the facts being outlined by the presenting officer. He should, however hear evidence if he considers it desirable to do so and in particular he should agree to do so and in particular he should agree to any request by the accused or his representative for witnesses to be heard.
- ii. Whether or not witnesses are to be called, the accused should be given full opportunity to make or submit any statement in mitigation of punishment.

## SEQUENCE OF CHARGES AT HEARING

23. When the accused pleads guilty to one or more charges and not guilty to other charges at the same hearing, the officer conducting the hearing should first hear the case concerning the charges to which he has pleaded not guilty and the presenting officer should as far as practicable confine his remarks in his opening statement to matters relevant to these charges.

24. Where the accused pleads not guilty to all charges, the order in which charges are heard is a matter within the discretion of the officer conducting the hearing. In deciding on this he should take account of any request made by the accused.

25. Where a disciplinary charge stems from a complaint made by a member of the public, the complainant may if he wishes be present throughout the proceedings and until a finding is reached; provided that if he is to be called as a witness, he should not be allowed to attend before this point and that the presiding officer may require him to withdraw if evidence is to be given which, in the presiding officer's view, might disclose information which ought not to be disclosed to a member of the public. If the presiding officer considers it appropriate, he may allow the complainant to be accompanied by a friend or relative to whose presence the same rules and restrictions will apply. Apart from giving his evidence, the complainant should be allowed to put questions to the accused officer either on his own behalf or through the presenting officer; but he should take no other part in the proceedings (see Regulation 21 and the notes on it in Annex B).

## ADJOURNMENTS

26. The hearing may be adjourned from time to time as may be necessary, either briefly or until a later date. Except insofar as it might be necessary to discuss administrative arrangements for the adjourned hearing or hearings, it is important that the officer conducting the hearing should not discuss the case itself with any persons whether connected with the case or not. It is only in this way that the impartiality of the hearings can be seen to be properly protected.

27. If during the hearing of a case facts emerge which establish a **prima facie** criminal case, the officer conducting the hearing should, if necessary, adjourn the hearing to consider what action is necessary as a result.

28. At the conclusion of the hearing the presiding officer may adjourn to consider finding(s) and (if appropriate) punishment(s).

## DECISIONS

29. In a tribunal case the decision as to finding will be reached by the 3 members together, if necessary by a majority; the decision as to punishment will be for the Chief Constable alone but he must consult the other members of the tribunal as to their views.

30. Where a chief officer from another force is hearing the case under Regulation 14, where the Chief Constable is an interested party or a material witness the chief officer hearing the case will be responsible for the decisions as to both punishment and finding subject, in tribunal cases, to the tribunal's role.

31. Where the chief officer of another force is hearing the case at the request of the Chief Constable in any other circumstances it is for him alone (except in tribunal cases) to determine the finding but he may only make a recommendation as to punishment. The decision on punishment in such cases is for the Chief Constable, taking into account the recommendation(s) of the presiding officer.

### The Decision on Punishment

32. Regulation 23(6) provides that in considering the question of punishment the officer conducting the hearing must have regard to the accused's record of police service as shown on his personal record; and he must give the accused or his representative the opportunity to make oral or written representations on the question of punishment to present relevant evidence and to request that witnesses be called. It is open to the officer conducting the case to adjourn the hearing to hear further evidence relevant to punishment.

33. The regulation also makes clear that it is open to the officer conducting the hearing to consider any other evidence which in his opinion would assist him in determining the question of the punishment to be imposed or recommended. The officer conducting the hearing should as a matter of course hear evidence by the appropriate senior officer concerning the accused's character and his general performance as a police officer. It is vital that such evidence should be fair and accurate and should cover all relevant matters including those which are to the accused's credit. The officer who is to present it should therefore exercise considerable care in its preparation; in particular to ensure that nothing is included in the evidence which cannot be substantiated. The senior officer concerned should prepare typewritten copies of the evidence he proposes to give and this should be handed to the accused at least 21 days before the hearing. It will only be necessary for the senior officer concerned actually to present the evidence at the hearing if the accused is found guilty and the accused or the officer conducting the hearing gives at least 14 days' notice that his attendance is required at the hearing.

34. *The material to be entered in the accused's personal record following a disciplinary conviction is set out in the Police Regulations and under the relevant Regulation, a punishment so entered may be expunged at the end of the period specified in the Regulation if the member requests this. Punishments which have been expunged in this way should not be referred to when evidence is presented as to a member's character and general record following a subsequent disciplinary conviction; but evidence should be given of any 'unexpunged' disciplinary convictions and of any commendations. Subject to this however the guiding principle in the selection of evidence of character and record should be the relevance of the evidence. Thus details of entries in a divisional discipline book (which by definition fall short of formal disciplinary action) should not be given unless they are relevant to the current charge; but where the member has been found guilty of a serious offence and his continuance in the force or in his existing rank is in question, then all aspects of his performance will be relevant to the question of punishment. Moreover, if for example, he has been found guilty of being late for duty, it will be relevant that his time-keeping had on other occasions been a cause for concern and that he had been warned about this-whether or not this had been sufficiently serious to merit an entry in the divisional discipline book. Relevance should also be the prime consideration when deciding whether any reference should be included to substantiated complaints made against a member during his service.*

35. The disciplinary authority when considering the question of punishment should not have regard to any report or other document which has not been disclosed to the accused.

## Annex F

36. As soon as possible after the hearing the decision of the disciplinary authority should be recorded on the discipline form and notified to the accused in writing. When a punishment is awarded, a form setting out the conditions of appeal to the Secretary of State should be handed to the accused.

### ABSENCE OF ACCUSED

37. If, without [<sup>2</sup>good reason] the accused does not attend the hearing of the case, the hearing may proceed and be concluded in his absence subject to the provisions of Regulation 20. (In such a case, the accused's 'friend' or legal representative may be heard as if the member were present.) By virtue of Regulation 20(1)(a), where the accused is in prison and wishes to make representations in person, the hearing must not be concluded until he has been enabled to do so. Alternatively he might wish to have representations made on his behalf by his 'friend' or lawyer, as appropriate. It should be clearly established before the hearing whether the accused wishes to attend himself or to have representations made on his behalf (see paragraph 11.40 of the guidance for advice on cases where the accused is medically unfit to attend).

[<sup>2</sup>37A. A medical certificate stating merely that the member is suffering from some named illness or disability would not necessarily constitute a 'good reason' precluding the officer from attending the hearing. Much will depend on circumstances, but to constitute a 'good reason', the illness or disability will, in the first place, need to be demonstrated to be of such a nature that the member could not attend the hearing even if special arrangements were made to enable him to do so (e.g. in the case of an orthopaedic injury the hearing might be held at a location convenient to the member), or the hearing were deferred (if the member's health might be expected to improve).

37B. Attendance at a disciplinary hearing is not subject to the same considerations as reporting for duty and the provisions of Regulation 26 (sick leave) of the Royal Ulster Constabulary Regulations 1984, as amended, do not apply. An illness or disability may incapacitate a member from performing the full range of police duties without affecting his ability to appear before a disciplinary tribunal. Where the Chief Constable has doubts as to the inability of the member to attend a hearing, the opinion of the force medical officer should be obtained.

37C. *Should there be a conflict of opinion between the force medical officer and the member's own doctor it is open to the Force Medical Officer to seek a second opinion from a medical practitioner who specialises in the particular field of medicine concerned. Failure on the part of the member to accept such a second opinion consultation can only militate against his claim to be medically unfit to attend the discipline hearing. It is thereafter for the officer holding the hearing to determine, in the light of the medical evidence put before him, whether the condition concerned constitutes a good reason for the member's non-appearance. Nothing in this paragraph should be taken as precluding the member's own doctor from seeking a second opinion or the officer holding the hearing from taking note of that second opinion, if invited to do so, as part of his determination of this issue.*

37D. In considering these issues, a statement that the member will find the hearing distressing or that it might set back his recovery would not alone be a sufficiently good reason for failure to attend a hearing. On the other hand, a good reason would be established if the medical evidence as a whole demonstrated that attending such a hearing would be likely to damage the member's health permanently or that his condition fundamentally impaired his ability to prepare his defence and, where appropriate, to brief his 'friend' or legal advisers.

37E. If the illness or disability is likely to improve sufficiently in the future to enable the member to attend, the hearing may be adjourned to or re-arranged for a date when the member would be able to attend, provided the delay between the commission of the alleged offence and the date of the hearing is not such as to be likely to affect the reliability of any evidence given at the hearing.

37F. Special considerations apply in cases where the disciplinary charges which have been brought against a member entitle him to be legally represented. In such cases, it will not normally be appropriate to proceed with the medical retirement in advance of a disciplinary hearing, unless the reason advanced for the member's inability to attend the disciplinary hearing has been medically certified (on the basis outlined in paragraphs 37A-D above) to the satisfaction of the chief officer concerned. Such a certificate should make it clear that the member's disability will continue to make a hearing impracticable. Where the certificate does not make this clear, if it appears likely that the member's health may improve, the hearing may be deferred or adjourned until the member is more fit to attend (subject to the proviso given above on delay). In other cases, where the likelihood of the member's improvement is unclear, the hearing should go ahead in his absence. The presiding officer at such a hearing will consider, on the basis

of the medical evidence, whether good reason for the member's absence is lacking and, if he concludes that it is, he may proceed to hear the case.]

## MISCELLANEOUS

38. A verbatim record of the proceedings at the hearing will be taken. It is the Secretary of State's view that the record should normally be made by tape recording unless this is impractical, for example, where the electricity supply fails or where a hearing takes place away from a police building in a place where tape facilities cannot be provided. If the accused subsequently gives notice of appeal (whether by way of an internal appeal or by way of appeal to the Secretary of State) then, at his request, a transcript of the record will be made and a copy supplied to him. *The transcript is made available to him for the purposes of his appeal only and must be returned to the disciplinary authority with any copies when all disciplinary proceedings are at an end.* The record and any transcript should be held in the secure conditions applied to any confidential personnel papers. The record should however be made available to the accused if he wishes to compare it with the transcript.

39. For the purpose of reckoning overtime, rest day entitlements and so on, the accused, his 'friend' and any police witnesses who have been engaged in completing statements and attending a disciplinary hearing should be regarded as on duty unless in a particular case this would be inappropriate. In addition, the Chief Constable should allow as duty a reasonable amount of time spent in preparation of a member's defence.

40. Reasonable expenses incurred by civilian witnesses attending a hearing may, at the discretion of the Chief Constable and subject to the concurrence of the Police Authority, be met from the police fund.

41. Apart from the Chief Constable and in tribunal cases, the two Commission members, the only persons who should ordinarily be present during a disciplinary hearing are the presenting officer; and in a legal representation case, a police officer adviser; the shorthand writer; any supporting administrative staff which the presiding officer considers essential to the conduct of the hearing; the member accused; his representative and in a legal representation case the 'friend' he consulted before the hearing; witnesses when they are actually giving evidence; the complainant in a complaint case, together with a friend or relative if appropriate; and any other police officer or civilian admitted in accordance with Regulation 17.

42. It will sometimes be helpful, in the interests of gaining experience, for deputy chief constables, assistant chief constables and prospective presenting officers or 'friends' to attend disciplinary hearings as observers. There is no objection to this, nor to such officers attending a hearing in a force other than their own, provided that in all such cases the chief officer concerned gives his permission and that the accused, or his representative does not object. It must be made clear that such an officer is present simply as an observer and that he will take no part in the proceedings. The Regulations also permit the attendance of a **member** (but not an officer) of the Commission and any solicitor, in each case at the discretion of the presiding officer and with the agreement of the accused or his representative. *In the case of both Commission members and solicitors, attendance should be in the interests of their gaining experience.* It is recommended that a solicitor may be allowed to attend where the Police Federation or Superintendents' Association have indicated that he is likely to be used in the future to represent their members in disciplinary hearings.

- 
1. 1990
  2. 1994

ANNEX G

COMPLAINTS, DISCIPLINE AND COMMENDATIONS - ANNUAL RETURN

Form E

YEAR \_\_\_\_\_ POLICE FORCE \_\_\_\_\_

Before completing this form, please read the notes.

**PART A CASES DURING THE YEAR ARISING FROM COMPLAINTS BY MEMBERS OF THE PUBLIC**

		Status at Year End		
		Case Completed	Pending	Total
1.	Number of cases during the year arising out of complaints received			
	a. this year			
	b. in previous years			
	c. Total			

2. Of the total cases completed in how many was the investigation carried out by an officer from another police force at the Chief Constable's request

3. In how many cases did complainants make formal representation, during the year, of dissatisfaction with an investigation or its outcome

**PART B COMPLAINTS COMPLETED DURING THE YEAR**

4. How many complaints were:

a. Withdrawn or not proceeded with	<input type="text"/>	e. Total.....	<input type="text"/>
b. Investigated - unsubstantiated	<input type="text"/>		
c. Investigated - substantiated	<input type="text"/>	f. For the total at 4e how many complainants were involved	<input type="text"/>
d. Informally resolved	<input type="text"/>		

5. Of these substantiated (4c) how many resulted in court proceedings for:

a. Traffic offences only	<input type="text"/>	6. Of all those proceeded with (4b, 4c and 4d) how many alleged:	Unsubstantiated	Substantiated	Informally resolved
b. Other criminal offences only	<input type="text"/>	a. Incivility	<input type="text"/>	<input type="text"/>	<input type="text"/>
c. Both traffic and other criminal offences	<input type="text"/>	b. Assault	<input type="text"/>	<input type="text"/>	<input type="text"/>
		c. Irregularity in procedure	<input type="text"/>	<input type="text"/>	<input type="text"/>
		d. Traffic irregularity	<input type="text"/>	<input type="text"/>	<input type="text"/>
		e. Neglect of duty	<input type="text"/>	<input type="text"/>	<input type="text"/>
		f. Corrupt practice	<input type="text"/>	<input type="text"/>	<input type="text"/>
		g. Mishandling of property	<input type="text"/>	<input type="text"/>	<input type="text"/>
		h. Irregularity in relation to evidence/perjury	<input type="text"/>	<input type="text"/>	<input type="text"/>
		i. Oppressive conduct or harassment	<input type="text"/>	<input type="text"/>	<input type="text"/>
		j. Religious or racially discriminatory behaviour	<input type="text"/>	<input type="text"/>	<input type="text"/>
		k. Unlawful/unnecessary arrest or detention	<input type="text"/>	<input type="text"/>	<input type="text"/>
		l. Impropriety in connection with the search of premises	<input type="text"/>	<input type="text"/>	<input type="text"/>
		m. Other crime	<input type="text"/>	<input type="text"/>	<input type="text"/>
		n. Other	<input type="text"/>	<input type="text"/>	<input type="text"/>

How many resulted in:

d. Disciplinary proceedings only	<input type="text"/>
e. Both traffic and disciplinary proceedings	<input type="text"/>
f. Both criminal (not traffic) and disciplinary proceedings	<input type="text"/>
g. Traffic, other criminal and disciplinary proceedings	<input type="text"/>
h. None of the above results	<input type="text"/>

**Annex G**

**PART C REFERENCE OF CASES TO THE DIRECTOR OF PUBLIC PROSECUTIONS**

7. How many cases, completed in year, were referred to D.P.P. and in how many of these was prosecution recommended?

	Cases Referred	Prosecution Recommended
Complaint cases -Traffic Offences		
- Other Offences		
Non-complaint cases - Traffic Offences		
-Other Offences		

8. Number of cases involving the alleged commission of a criminal offence by a police officer not referred to the director of Public Prosecutions

Complaint	Non-complaint

9. Number of cases referred on direction by the Commission under Article 12(2) of the Police (NI) Order 1987

Complaint	Non-complaint

**PART D CRIMINAL PROCEEDINGS**

10. Give in the following table:

The number of officers convicted of criminal offences in cases completed during year.  
 The number of these officers sentenced to imprisonment (either immediate or suspended).  
 The total number of charges of which officers were convicted.

INDICTABLE	Offence Group	Number of Officers				Total number of charges of which officers were convicted	
		Convicted		Sentenced to imprisonment		Complaint	Other
		Complaint	Other	Complaint	Other		
a.	Violence against the person						
b.	Sexual offences						
c.	Burglary						
d.	Robbery						
e.	Theft and handling stolen goods						
f.	Fraud and forgery						
g.	Criminal damage						
h.	Perjury						
i.	Corruption						
j.	Other indictable offences						
NON-INDICTABLE							
k.	Assault						
l.	Other offences (not traffic)						
m.	Traffic offences						
	TOTAL						

11. Convicted for traffic offences and:

	Number of officers	
	Complaint	Other
Disqualified from driving		
Off duty at time of offence		

**PART E DISCIPLINARY PROCEEDINGS**

Disciplinary proceedings completed in year:

12. Number of officers

	a arising directly out of complaints only	b in other circumstances only	c of both types a and b	Total
a. involved in charges				
b. found guilty of one or more charges				

13. Number of charges arising:

	Directly out of complaints	In other circumstances
Total		
Proved		

14. Number of charges heard by:

Disciplinary Board or officer other than Chief Constable	
Chief Constable in first instance	
Chief Constable on appeal	

15.

Number of officers offered legal representation	
Number of these who accepted legal representation	

16. How many officers received each of the following punishments?

Dismissal from the force	
Requirement to resign	
Reduction in rank	
Reduction in pay	
Fine	
Reprimand	
Caution	

17. Proceedings under Paragraph 17 of the Discipline Code completed in year

Number of officers: -	Involved	
-	Dismissed or required to resign	
-	Reduced in rank	
-	Cautioned or reprimanded	

**PART F RESIGNATIONS**

18. Number of officers who resigned in the year after criminal charges preferred against them but before proceedings completed	
19. Number of officers (not already counted under 18) who resigned in the year after disciplinary charges preferred against them but before disciplinary hearing completed	
20. Number of officers (not already counted under 18 or 19) who were permitted in year to resign while under suspension	

**PART G COPIES OF COMPLAINTS**

21. Number of officers who requested a copy of the complaint under Regulation 12(1) of the RUC (Complaints etc.) Regulations 1988	
22. Number of officers who were denied a copy:	Under Regulation 12(2)a
	Under Regulation 12(2)b

**PART H CASES REFERRED TO THE COMMISSION AND COMPLETED IN YEAR**

**Annex G**

23. Number of investigations referred to the Commission under the Police (NI) Order 1987

	Referred	Supervised
- Article 7(1)		
- Article 8(1)		
- Article 8(2)		
Total		

24. Number of cases referred under Article 10 of the Police (NI) Order 1987

a. Where disciplinary charges had been brought	
b. Where disciplinary charges were proposed but not yet brought (Article 10(6))	
c. Where no disciplinary charges had been brought	
- Commission recommended charges to be brought	
- Commission directed charges to be brought	
- Commission concurred in Chief Constable's decision	

25. Number of complaints submitted under Regulation 17 of RUC (Complaints etc.) Regulations 1988 (Complaints which are anon etc.) and number in which the Commission agreed to dispense with requirements

	Total	Dispensed with Requirements
a. Anonymous		
b. Repetitious		
c. Incapable of investigation		

26. Number of cases reported under Article 11(2) of the Police (NI) Order 1987 for information on completion of disciplinary proceedings

Total

27. a. Number of cases in which tribunals were required because the Commission directed that disciplinary charges should be brought  
 b. Number of cases in which the Commission directed the holding of a tribunal but had not previously directed the bringing of disciplinary charges

Tribunals held

28. Number of commendations and letters of appreciation

	Commendations	Letters of Appreciation
From Chief Constable		
From Courts		
From members of the public		
From other sources (specify below)		

---



---



---



---

\_\_\_\_\_ 19\_\_\_\_\_ Chief Constable \_\_\_\_\_



## ANNEX G

**FORM E - NOTES FOR GUIDANCE - PLEASE READ CAREFULLY BEFORE COMPLETING THE FORM****GENERAL: Definition of a completed case or complaint**

The following criteria should be followed to determine whether a case or complaint is to be regarded as completed:-

- i Any matter which results in disciplinary proceedings being brought (either arising out of a complaint or otherwise) should be regarded as completed when the disciplinary hearing (including any appeal to the Chief Constable) is over and any punishment has been communicated to the member concerned (no account should be taken for this purpose of an appeal to the Secretary of State).
- ii Where a matter does not lead to disciplinary proceedings it should be regarded as completed when the final decision not to take proceedings has been made i.e. normally when the Commission notifies the Chief Constable of its agreement to his decision.
- iii A 'non-complaint' matter referred to the Director of Public Prosecutions which does not result in either criminal or disciplinary proceedings should be regarded as completed at the point when the final decision not to take either criminal or disciplinary action is made.
- iv A 'non-complaint' matter which leads to criminal proceedings but to no subsequent disciplinary proceedings should be regarded as completed at the point when the final decision not to take disciplinary proceedings is made.

**PART A - THIS SECTION APPLIES TO CASES ONLY**

- i A 'case' for the purposes of this section is a single investigation carried out by an investigating officer into one incident or a group of incidents complained of by one or more persons. Thus, where a person complains that he was assaulted by a member while being arrested and was later subjected to threats at the police station, this would be investigated and counted as one case comprising two complaints. Where a second person also complains about the alleged assault on the first complainant this would still be investigated and counted as one case even though it may consist of more than one complaint and involve two persons.
- ii The starting date for a case (to decide in which year's figures it should be included) will be the date on which it was recorded. Question 1a, reading across, concerns only cases received in the current year. Question 1b refers only to action taken in the current year on cases received in previous years. The figures should include cases subsequently withdrawn or not proceeded with and cases where the Commission agreed to dispense with requirements.
- iii Cases not falling within Article 2(2) of the Police (Northern Ireland) Order 1987 should not be included anywhere in Question 1.
- iv For definition of 'completed' see general note above.
- v The total at 1b should equal the total number of pending cases in the previous year's return.
- vi Question 3 should include all formal representations of dissatisfaction with an investigation or its outcome whether in writing or not received during the year, regardless of the year in which the case was received or completed.

**PART B**

This section applies to complaints completed in the year irrespective of when they were received, i.e. both those completed having been received in the year and those completed in the year having been carried over from previous years should be included. (Question 4f concerns complaints.)

- i A complaint for the purposes of this section is each of the individual matters of complaint in a completed case. Guidance on how many matters of complaint should be recorded where there is doubt is given in paragraph 2.18.
- ii For definition of 'completed' see general note above.

## Annex G

- iii Complaints in respect of which the Commission has granted dispensation under the RUC (Complaints etc.) Regulations 1987 (see Question 25) should be included in the total of complaints not proceeded with at Question 4a.
- iv In Questions 5 and 6 the term "substantiated" applies to any complaint which has led directly to a finding of guilt in criminal or disciplinary proceedings or to the giving of words of advice.
- v For the purposes of Question 4f where the completed complaints include those made by different people about the same matter each complainant should be counted. Where they include those made by one person on separate occasions about the same or different matters the complainant should be counted only once.
- vi In Question 5 "disciplinary proceedings" excludes proceedings under paragraph 17 only of the Discipline Code.
- vii The sum of the answers to Question 5 a - h should equal the total given at 4c.
- viii In Question 6 the sum of the answers in the first column should equal the total of unsubstantiated complaints given at 4b; the sum of the second column should equal the total of substantiated complaints given at 4c; and the sum of the third column should equal the total of informally resolved complaints given at 4d.
- ix In Question 6 categories a - n should be interpreted as follows:-
  - a. Incivility Swearing, abusive or offensive language or behaviour (but not religious, or racial abuse: see j. below); inconsiderate behaviour not amounting to neglect of duty.
  - b. Assault Any unjustified use of force or personal violence (but not technical assaults arising from unlawful arrests); indecent assault; attacks by police dogs.
  - c. Irregularity in procedure Unreasonable refusal to provide access to a solicitor or to permit a detained person to make a telephone call; improper disclosure of information; other procedural irregularities not caused by neglect; breach of the Judges' Rules for the time being in force.
  - d. Traffic irregularity Complaints about the driving or use of vehicles on police business (but not about police conduct in dealing with civilian traffic).
  - e. Neglect of duty Omission, failures or neglect as specified in paragraph 4 of the Discipline Code other than the mishandling of property or money.
  - f. Corrupt practice Any criminal allegation of corruption or any improper practice of the kind defined in paragraph 7 of the Discipline Code.
  - g. Mishandling of property Theft or loss of property (including money); unreasonable retention of property; damage to property in police custody; failure to account for money or property; improper disposal of property.
  - h. Irregularity in relation to evidence/ perjury Perjury; other allegations of falsehood; any allegation that evidence was obtained by irregularity or under duress; failure to conform with the Judges' Rules or associated administrative directions; allegations of conduct of the kind described in paragraph 5 of the Discipline Code; concealment of evidence etc.
  - i. Oppressive conduct or harassment Unnecessary or unjustified use of "stop and search" or analogous powers, harassment; improper requests for driving documents.
  - j. Religious, or racially discriminatory behaviour Any conduct which if shown to have taken place would be a breach of paragraph 10 of the Discipline Code.
  - k. Unlawful/ unnecessary arrest or detention
  - l. Impropriety in connection with the search of premises Damage or theft in the course of entry or search of premises. Unauthorised entry or search. Premises left untidy or insecure.
  - m. Other crime Criminal damage (except in connection with searches of property).
  - n. Other

## PART C - REFERS TO CASES ONLY

- i. For definition of 'completed' see general note above.
- ii. In Question 8 the first column should not include any cases where the complaints were withdrawn or not proceeded with.

## PART D

- i. For definition of 'completed' see general note above.
- ii. In Question 10, in giving the number of members convicted, each member should be counted only once under the principal offence if there is more than one offence.
- iii. Where members have committed offences outside their own force area, these should be recorded in the returns of the force to which the members belong.

## PART E

- i. For definition of 'completed' see general note above, especially i.
- ii. In Questions 12, 13 and 16 disciplinary proceedings for offences under paragraph 17 only of the Discipline Code should be excluded.
- iii. In Questions 12 and 13 'arising directly out of complaints' should include only those charges which are directly related to the subject of the complaint. Charges relating to matters which, although not covered by the original complaint came to light in the course of its investigation, should be included under 'in other circumstances'.
- iv. In Question 16, where a member has been found guilty of more than one disciplinary offence, the entry should record only the most serious punishment.
- v. The total number of members in Question 16 should equal the number given in the total at Question 12b.
- vi. Where a member has been found guilty of a paragraph 17 offence and other disciplinary offences he should be counted in Questions 12, 13 and 16 as well as in Question 17. A footnote should be added at the bottom of the page where this arises.

## PART G

Questions 21 and 22 should give the total number of instances where a copy was requested or withheld in the year rather than the number relating to cases completed in the year.

## PART H

Questions 23, 24, 26 and 27 refer both to complaint and to non-complaint cases.

- i. For definition of 'completed' see general note above.
- ii. In this section 'disciplinary charges' excludes charges under paragraph 17 of the Discipline Code.
- iii. Complaints itemised at Question 24 should not include those itemised in Question 25.

## PART I

The figure required in this section is the actual number of commendations and letters of appreciation received, rather than the number of members to whom these matters relate.

## ANNEX H

## NOTES

Complaint means a complaint by a member of the public recorded under Article 5 or 6 of the Police (NI) Order 1987. The following notes may be helpful in considering the statistical return.

## PART B

A case is treated as 'completed' at the end of any criminal or disciplinary proceedings that may have resulted, or when the decision has been taken, following any necessary reference to the Director of Public Prosecutions or the Commission, not to bring such proceedings. One complaint could result in more than one type of proceedings (criminal, traffic or disciplinary) against more than one member.

**Disciplinary proceedings:**

This heading does not include proceedings for the charge of having been found guilty of a criminal offence.

**Reference to the Commission:**

- i. Under Article 7 of the Order of 1987 all complaints requiring "formal" investigation must be referred to the Commission. The Commission must supervise all cases involving death or serious injury (Article 9(1)(a)) and may at its discretion supervise the investigation of any other complaint (Article 9(3)(a)). Article 8(1) allows non-complaint matters of a grave or exceptional character to be referred to the Commission by the appropriate authority and the Commission may supervise the investigation of such a matter (Article 9(3)(b)); Article 8(2) permits the Secretary of State or the Police Authority to refer a non-complaint matter to the Commission if either considers it in the public interest to do so and the Commission must supervise the investigation of such a matter (Article 9(2)).
- ii. Under Article 10 of the Order of 1987 the Chief Constable must refer to the Commission the reports of the investigation into all complaints by members of the public against members unless:
  - (a) the complaint relates to an officer above the rank of chief superintendent;
  - (b) it is withdrawn; or
  - (c) disciplinary charges have been brought covering all the matters complained of and these have been admitted by the accused.

Where no disciplinary charges have been brought, the Commission has power to direct the bringing of charges. Where disciplinary charges are brought the Commission may direct that they be heard by a tribunal. A tribunal must be held where charges are brought on the direction of the Commission.

- iii. Under Regulation 17 of the RUC (Complaints etc.) Regulations 1988 the Chief Constable may ask the Commission to dispense with further action because the complaint is anonymous, repetitious, or incapable of investigation.

ANNEX H

YEAR \_\_\_\_\_ POLICE FORCE \_\_\_\_\_

**PART A CASES DURING THE PERIOD ARISING FROM COMPLAINTS BY MEMBERS OF THE PUBLIC**

		Status at end of period		
		Case Completed	Pending	Total
1.	Number of cases during the period arising out of complaints received			
	a. this year			
	b. in previous periods			
	Total			

2. Number of cases completed in which the investigation was carried out by an officer from another police force at the Chief Constable's request
3. Number of cases in which complainants made formal representation, during the period, of dissatisfaction with an investigation or its outcome

**PART B COMPLAINTS COMPLETED DURING THE PERIOD**

4. Number of complaints which were:
- |                                    |   |                        |  |
|------------------------------------|---|------------------------|--|
| a. Withdrawn or not proceeded with | <input style="width: 50px; height: 20px;" type="text"/> | d. Informally resolved | <input style="width: 150px; height: 20px;" type="text"/> |
| b. Investigated - unsubstantiated  | <input style="width: 50px; height: 20px;" type="text"/> |                        |  |
| c. Investigated - substantiated    | <input style="width: 50px; height: 20px;" type="text"/> | e. Total.....          | <input style="width: 150px; height: 20px;" type="text"/> |

5. Number of those substantiated which resulted in:		6. Of all those proceeded with (4b, 4c and 4d) number alleging:			Unsubstantiated	Substantiated	Informally resolved
a.	Court proceedings for traffic offences	<input style="width: 50px; height: 20px;" type="text"/>	a.	Incivility	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
b.	Court proceedings for other criminal offences	<input style="width: 50px; height: 20px;" type="text"/>	b.	Assault	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
c.	Disciplinary proceedings	<input style="width: 50px; height: 20px;" type="text"/>	c.	Irregularity in procedure	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
d.	None of the above results	<input style="width: 50px; height: 20px;" type="text"/>	d.	Traffic irregularity	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			e.	Neglect of duty	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			f.	Corrupt practice	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			g.	Mishandling of property	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			h.	Irregularity in relation to evidence/perjury	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			i.	Oppressive conduct or harassment	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			j.	Religious or racially discriminatory behaviour	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			k.	Unlawful/unnecessary arrest or detention	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			l.	Impropriety in connection with the search of premises	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			m.	Other crime	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>
			n.	Other	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>

**PART C REFERENCE OF CASES TO THE DIRECTOR OF PUBLIC PROSECUTIONS**

7. Number of cases, completed in period, referred to D.P.P. and number of these in which prosecution was recommended

	Cases Referred	Prosecution Recommended
Arising out of a complaint - Traffic Offences		
- Other Offences		
Arising in other circumstances - Traffic Offences		
- Other Offences		

	Arising from complaints	Arising in other circumstances
8. a. Number of cases involving the alleged commission of a criminal offence by a police officer not referred to the director of Public Prosecutions		
b. Number of cases referred on direction by the Commission under Article 12(2) of the Order of 1987		

**PART D CRIMINAL PROCEEDINGS**

	Arising from complaints	Arising in other circumstances
9. Number of officers convicted of criminal offences (other than traffic offences) in cases completed during period.		
Number of officers convicted of traffic offences in cases completed during period.		

**PART E CASES REFERRED TO THE COMMISSION AND COMPLETED IN PERIOD**

10. Number of investigations referred to the Commission

	Referred	Supervised
- Article 7(1)		
- Article 8(1)		
- Article 8(2)		
Total		

11. Number of cases referred under Article 10 of the Police (NI) Order 1987

a. Where disciplinary charges had been brought	
b. Where disciplinary charges were proposed but not yet brought (Article 10(6))	
c. Where no disciplinary charges had been brought	
- Commission recommended charges to be brought	
- Commission directed charges to be brought	
- Commission concurred in Chief Constable's decision	

12. Number of complaints submitted under Regulation 17 of RUC (Complaints etc.) Regulations 1988 (Complaints which are anon etc.) and number in which the Commission agreed to dispense with requirements

	Total	Dispensed with Requirements
a. Anonymous		
b. Repetitious		
c. Incapable of investigation		

13. a. Number of cases in which tribunals were required because the

Tribunal held
---------------

**Annex H**

Commission directed that disciplinary charges should be brought  
b. Number of cases in which the Commission directed the holding of a tribunal  
but had not previously directed the bringing of disciplinary charges


**PART F COMMENDATIONS**

14. Number of commendations and letters of appreciation

	Commendations	Letters
From Chief Constable	<input type="text"/>	<input type="text"/>
From Courts	<input type="text"/>	<input type="text"/>
From members of the public	<input type="text"/>	<input type="text"/>
From other sources (specify below)	<input type="text"/>	<input type="text"/>

## [<sup>1</sup>ANNEX J

### DO YOU HAVE A COMPLAINT AGAINST THE POLICE?

#### The Independent Commission for Police Complaints for Northern Ireland

is a statutory body which is entirely independent of the Royal Ulster Constabulary - police officers and ex police officers cannot be members.

The Commission has been created to:

- receive complaints about the conduct of individual police officers
- supervise the investigation of serious complaints
- examine all complaints investigation reports
- recommend and direct disciplinary action
- participate in some disciplinary tribunal hearings
- oversee the informal resolution procedures
- report to the Secretary of State

#### The Complaint

If you feel that a police officer has behaved wrongly or badly you can make a complaint:

- by going to any police station
- by writing to or calling at our offices at:-  
**Chamber of Commerce House, 22 Great Victoria Street, Belfast, BT2 7LP (Tel. Belfast 244821)**  
or the offices of the Police Authority for Northern Ireland at:-  
**River House, 48 High Street, Belfast, BT1 2DR (Tel. Belfast 230111)**
- or you may request a relative or friend or someone else to complain for you
- or you may wish to seek advice from a Citizens' Advice Bureau or Law Centre.
- If you wish to make a complaint in person, you can be accompanied by a friend or adviser.
- If you need help in writing a complaint or you wish to discuss your complaint, the staff of the Commission will be willing to help.
- In any event all complaints will be directed to the Chief Constable who must have them investigated.

#### Informal Resolution

If your complaint is of a minor nature you may be satisfied with an apology or an explanation at an early stage. The Commission will monitor the outcome of such informal resolutions.

If you do not wish the complaint to be dealt with in this way or if the police consider it to be too serious there will be a full investigation into what happened.

#### The Commission's Involvement in the Police Investigation

The Commission must supervise the police investigation of your complaint if it is very serious - if, for example, someone was badly injured. In all other complaints the Commission decides whether or not it should supervise the investigation.

When the Commission decides to supervise an investigation it appoints one of its own members to take charge. That member will guide the investigation led by an Investigating Officer approved by the Commission.

The supervising Commission member will normally meet the Investigating Officer at an early stage and discuss with him the manner in which he intends to pursue his inquiries. The Investigating Officer will wish to speak to you, the police officers involved and any other person who can help with the inquiry. The supervising Commission member may be present when you are interviewed, may decide to visit the place where the incident happened or may ensure that certain procedures are followed or that additional witnesses are interviewed.



## Annex J

At the conclusion of any investigation the supervising Commission member must issue a statement expressing whether or not the investigation has been carried out to the Commission's satisfaction.

### The Assessment

Whether or not the investigation of your complaint has been supervised by the Commission, the full Investigation Report and all related information will be submitted to the Commission, together with the Deputy Chief Constable's views, and will be examined by one or more members who will reach a decision on what is to be done.

### The Outcome

Where no formal disciplinary action is to be taken the Commission will write to you.

If the Deputy Chief Constable or the Commission considers that the police officer may have done something wrong one of two things can happen.

First if it appears that the officer in your case has broken the criminal law, the evidence is sent to the Director of Public Prosecutions, who is completely independent of the police and the Commission. If the Deputy Chief Constable does not do this the Commission can have the case sent to the Director. It is the Director of Public Prosecutions who then decides if there is enough evidence for the officer to stand trial.

Second if the officer has not broken the law he may still have broken the rules of police conduct. In this case the Deputy Chief Constable may recommend that the officer should face disciplinary charges. If not, the Commission (where it disagrees with this decision) may, nonetheless, recommend to the Deputy Chief Constable that the police officer should be charged with a disciplinary offence or, after consultation with the Deputy Chief Constable, may ultimately direct such a disciplinary charge. (In this event, or in cases where there are other special circumstances, the disciplinary charges must be heard by a tribunal on which two Commission members who must have no previous knowledge of the case sit with the Chief Constable).

### Civil Proceedings

Whatever the result of your complaint you still have the right to bring a civil action against the police - you can find out more about this at your Citizens' Advice Bureau. You should bear in mind that if you bring a civil action against a police officer, the official complaint investigation may not be possible because of the delay or may be held up until the civil action has been completed.

### The Rights of an Officer

It is only fair that police officers should also be protected. As you can imagine, some people deliberately make false complaints against them. Like anyone else, police officers have the right to bring civil actions against such people.

### What the Commission cannot do

The investigation of complaints about the general administration, efficiency and procedures of the police force, together with the Chief Constable's deployment and use of manpower and material resources, falls outside the Commission's responsibility. Complaints about such matters should be taken up with the Chief Constable or with the Police Authority for Northern Ireland who can call for a report from the Chief Constable.

The investigation of a complaint against a senior officer, i.e. an officer of any rank above that of Chief Superintendent, is the responsibility of the Police Authority.

The Commission cannot recommend financial compensation. Civil liability is a matter for the Police Authority.

### Reports

As soon as practicable after the end of December each year, the Commission is required to make a report to the Secretary of State on its operation for the previous twelve months.

The Commission must make a report on the working of the legislation to the Secretary of State at least once in every three years.

If it becomes necessary the Commission may make a special report to the Secretary of State at any time.

The Secretary of State must lay before Parliament a copy of every report received by him from the Commission and have every such report published.

The Police (Northern Ireland) Order 1987 gives a full description of the complaints procedures. This leaflet should be used only as a guide to the role of the Independent Commission for Police Complaints.]

---

1. 1990

## ANNEX K

### COMPLAINTS CASES TO BE REFERRED TO COMMISSION BY TELEX/TELEPHONE

1. Any case resulting in death of or serious injury to any person.
2. Cases involving assault causing actual bodily harm, or more serious injury.
3. Cases involving offences under Section 1 of the Prevention of Corruption Act 1906 (i.e. accepting bribes etc.).
4. Cases involving any of the following offences:-
  - (a) treason;
  - (b) murder;
  - (c) manslaughter;
  - (d) rape;
  - (e) kidnapping;
  - (f) incest, or intercourse, with a girl under fourteen years of age;
  - (g) buggery with a boy under sixteen years or any person who has not consented;
  - (h) indecent assault which constitutes an act of gross indecency;
  - (i) causing explosion likely to endanger life or property;
  - (j) possessing firearms with intent to injure, carrying firearms with criminal intent, or using firearms and imitation firearms to resist arrest;
  - (k) causing death by reckless driving;
  - (l) hostage taking; and
  - (m) hijacking.
5. Cases involving any arrestable offence, the commission of which is intended or likely to lead (or has lead) to any of the following consequences:-
  - (a) serious harm to the security of the State or to public order;
  - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
  - (c) the death of any person;
  - (d) serious injury to any persons (injury includes any disease and any impairment of a person's physical or mental condition);
  - (e) substantial financial gain to any person; and
  - (f) serious financial loss to any person (loss being defined as serious if it is serious for the person who suffers it).
6. Cases involving any arrestable offence which consists of making a threat (if carrying out the threat would be likely to lead to any of the consequences specified at 5. above).

## ANNEX K

### COMPLAINTS CASES TO BE REFERRED TO COMMISSION BY TELEX/TELEPHONE

1. Any case resulting in death of or serious injury to any person.
2. Cases involving assault causing actual bodily harm, or more serious injury.
3. Cases involving offences under Section 1 of the Prevention of Corruption Act 1906 (i.e. accepting bribes etc.).
4. Cases involving any of the following offences:-
  - (a) treason;
  - (b) murder;
  - (c) manslaughter;
  - (d) rape;
  - (e) kidnapping;
  - (f) incest, or intercourse, with a girl under fourteen years of age;
  - (g) buggery with a boy under sixteen years or any person who has not consented;
  - (h) indecent assault which constitutes an act of gross indecency;
  - (i) causing explosion likely to endanger life or property;
  - (j) possessing firearms with intent to injure, carrying firearms with criminal intent, or using firearms and imitation firearms to resist arrest;
  - (k) causing death by reckless driving;
  - (l) hostage taking; and
  - (m) hijacking.
5. Cases involving any arrestable offence, the commission of which is intended or likely to lead (or has lead) to any of the following consequences:-
  - (a) serious harm to the security of the State or to public order;
  - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
  - (c) the death of any person;
  - (d) serious injury to any persons (injury includes any disease and any impairment of a person's physical or mental condition);
  - (e) substantial financial gain to any person; and
  - (f) serious financial loss to any person (loss being defined as serious if it is serious for the person who suffers it).
6. Cases involving any arrestable offence which consists of making a threat (if carrying out the threat would be likely to lead to any of the consequences specified at 5. above).

## ANNEX K

### COMPLAINTS CASES TO BE REFERRED TO COMMISSION BY TELEX/TELEPHONE

1. Any case resulting in death of or serious injury to any person.
2. Cases involving assault causing actual bodily harm, or more serious injury.
3. Cases involving offences under Section 1 of the Prevention of Corruption Act 1906 (i.e. accepting bribes etc.).
4. Cases involving any of the following offences:-
  - (a) treason;
  - (b) murder;
  - (c) manslaughter;
  - (d) rape;
  - (e) kidnapping;
  - (f) incest, or intercourse, with a girl under fourteen years of age;
  - (g) buggery with a boy under sixteen years or any person who has not consented;
  - (h) indecent assault which constitutes an act of gross indecency;
  - (i) causing explosion likely to endanger life or property;
  - (j) possessing firearms with intent to injure, carrying firearms with criminal intent, or using firearms and imitation firearms to resist arrest;
  - (k) causing death by reckless driving;
  - (l) hostage taking; and
  - (m) hijacking.
5. Cases involving any arrestable offence, the commission of which is intended or likely to lead (or has lead) to any of the following consequences:-
  - (a) serious harm to the security of the State or to public order;
  - (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
  - (c) the death of any person;
  - (d) serious injury to any persons (injury includes any disease and any impairment of a person's physical or mental condition);
  - (e) substantial financial gain to any person; and
  - (f) serious financial loss to any person (loss being defined as serious if it is serious for the person who suffers it).
6. Cases involving any arrestable offence which consists of making a threat (if carrying out the threat would be likely to lead to any of the consequences specified at 5. above).