

Conduct unbecoming?

John Cartwright explains the history and operation of The Police Complaints Authority.

During the weekend of 10-12 April the British people watched with horror and incredulity an instant audio visual presentation on their television sets of scenes of violence and disorder in their capital city, the like of which had not previously been seen in this century in Britain.

In the centre of Brixton, a few hundred young people - most, but not all of them, black - attacked the police on the streets with stones, bricks, iron bars and petrol bombs, demonstrating to millions of their fellow citizens the fragile basis of the Queen's peace.

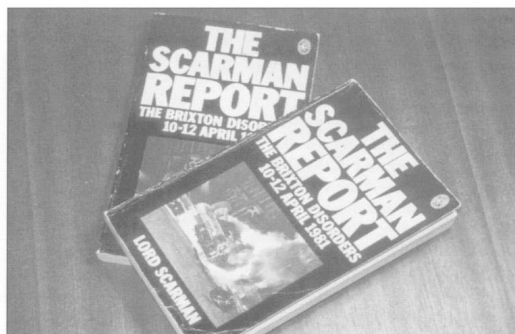
Those were the opening sentences of Lord Scarman's report on the 1981 Brixton disorders. Among the factors leading to the violence Lord Scarman highlighted was "the widespread and dangerous lack of confidence in the existing system for handling complaints against the police."

Background

It was to deal with that problem that the 1984 Police and Criminal Evidence Act set up the Police Complaints Authority with substantially stronger powers than its predecessor, the Police Complaints Board.

The Authority currently has twelve members all appointed by the Home Secretary apart from the Chairman whose appointment is made by Her Majesty. Members come from a wide variety of backgrounds but, by law, must never

'...a substantial and growing influence for the good of our police system'. Lord Scarman, 1995.



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have been police officers. All serve full time for three year terms. The Nolan Rules permit only one three year reappointment. The Authority also has a staff of almost sixty civil servants, loaned for fixed periods from a variety of Government departments.

Authority powers and roles

The Act gives the Authority three main powers. First, it supervises the investigation of the most serious complaints made against police officers. These are mainly allegations that an officer has caused death or serious injury, has committed assault or is guilty of any other serious arrestable offence. Second, the Authority supervises inquiries into issues voluntarily referred by a police force which have not generated a complaint but which involve a high level of public interest and concern. This power is used to supervise investigations into issues such as death in police care or custody, serious corruption, death involving police vehicles and the operational discharge of police firearms. Third, and most important, the Authority reviews all completed complaint investigations, both supervised and unsupervised, to determine whether a police officer should be charged with a disciplinary offence.

The system is a typical British compromise. Investigations are carried out by police officers - usually from complaints and discipline departments who do nothing else but internal investigations. But all the material must be reviewed by the independent oversight body. An Authority member supervising a serious inquiry has statutory power to approve the appointment of the investigating officer

and to impose requirements for the conduct of the inquiry. The investigation is not complete until the supervising member issues a statutory certificate of satisfaction. Members do not take this duty lightly and investigations are not signed off unless and until the supervisor is satisfied that all the relevant issues have been thoroughly and impartially pursued.

Supervising members are on call at night and throughout weekends. In particular sensitive cases they are rapidly at the scene of the incident. They will have regular conferences with the investigating team and will see all the evidence as it is produced. Although all the practical work is done by the police team, final responsibility for the conduct of the inquiry rests with the supervising members.

In both supervised and unsupervised cases the completed file goes to the Crown Prosecution Service. If they decide that a criminal prosecution is not justified, the deputy chief constable of the force sends the Authority the investigating officer's report together with all the supporting evidence. He also indicates whether or not he plans to take disciplinary action.

If the Authority is not satisfied, it can require more work to be done. When it disagrees with the deputy chief constable's view it can recommend or, if necessary, direct that an officer be charged with a disciplinary offence.

Complaints and investigations

The Authority considers about 10,000 cases a year involving almost 20,000 individual complaints. Supervised investigations account for some 10 per cent of this total. About half of the cases are not fully investigated because the

complainant decides not to pursue the matter or fails to co-operate with the inquiry. During the year ended 31 March 1997 the Authority considered the evidence in 5,005 fully investigated cases. These resulted in 235 formal disciplinary charges and 1,018 less formal disciplinary actions. These included verbal admonishments, advice and guidance. In addition, 16 officers were charged with criminal offences as a result of public complaints. But the Authority does not wish to be judged simply by the number of police officers disciplined as a result of its activities. A key part of its role is to help raise the standard of service the public receives from the police.

Quality of police service

Forces are therefore encouraged to use complaints positively and there are many examples of changes to policies, procedures or training programmes resulting directly from a public complaint. We have also cooperated in major studies of police firearms incidents, deaths in custody and police vehicle pursuits. The aim has been to ensure that the lessons learnt from our investigations are made available throughout the police service. The current complaints system is far from perfect. The Authority has throughout its life been pressing for changes to improve both its independence and the openness of the process. We also want to see a much less rigid, formal and legalistic police discipline procedure which is far closer to what happens in civil employment.

But perhaps the last word should go to Lord Scarman whose 1981 report paved the way for the establishment of the PCA. Writing in 1995 he noted that the Authority had "suffered the slings and arrows of outraged politicians and media" who had expected it to correct all the perceived wrongs and weaknesses of policing. However, Lord Scarman's assessment was that the Authority had emerged "not as a cure for all ills but as a substantial and growing influence for the good of our police system." That is the role which the Authority is determined to fulfil.

John Cartwright is Deputy Chairman of the Police Complaints Authority.

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The evidence in the three recent cases in which the DPP's decisions not to prosecute police officers were quashed evoked disturbing images of police violence and racism.

- Shiji Lapite: two police officers arrest a black man who, they claim, struggles so violently that they have to kick him in the head and apply a neckhold with so much force that his larynx is fractured and he dies. Yet his alleged violence leaves no significant mark on either officer.
- Richard O'Brien: officers called to a disturbance subject a

couldn't breathe.

The reasons why the DPP's decisions were quashed shed an equally disturbing light on the way decisions whether to prosecute officers are taken on the basis of investigations conducted by the police themselves.

Police investigations

In the Lapite case the police officer in charge of the investigation accepted, and persuaded the CPS and the Police Complaints Authority, that the officers had a plausible explanation for how Mr Lapite could have been accidentally asphyxiated by his clothing during a struggle. The family's solicitor consulted the pathologist who conducted a post-mortem and he reported that this theory was untenable. In the light of this the DPP and PCA both conceded that their decisions should be quashed. In the O'Brien case it was the CPS official reviewing the papers who took it on himself to concoct an unlikely and offensive explanation for the numerous injuries to Mr O'Brien which the police could not account for. He suggested that Mr O'Brien might have been accidentally kicked by his 14-year old son during a scuffle with a police officer in the van. When the lawyer concerned swore an affidavit to explain his reasoning to the Divisional Court he omitted to mention these speculations, which came to light only when the family obtained discovery of internal CPS documents. In the Treadaway case the Divisional Court criticised the DPP for assessing the credibility of the witnesses without taking sufficient account of the findings of the judge who, having heard their evidence, had been satisfied that the police were lying.

The inquest: rhetoric and reality

When a suspicious death occurs and no-one is prosecuted it is to the inquest that the family must turn to try and discover the truth. What families expect is a full and thorough inquiry which will find out exactly what happened. They expect an acknowledgement of responsibility if someone is to blame, and action to prevent such a tragedy happening again. The reality is very different, and it exacts a heavy emotional toll from the bereaved.

The inquest will take place months, in some cases years, after the death. At no point will the evidence compiled in the investigation have been disclosed to the

Deaths, police and prosecutions

Deborah Coles, Helen Shaw and Tony Ward highlight the disturbing implications of some recent cases.

bystander to anti Irish abuse; hold him face down on the ground with their knees on his back; ignore his pleas that he cannot breathe and drag him - dying or already dead - into the back of a police van. His wife and son are taken to the police station in the same van and are forced to clamber over his body when they arrive.

- Derek Treadaway: forced to confess to robbery by what a High Court judge later describes as torture, handcuffed to a chair with a plastic bag over his head so he

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family. The Police have the discretion to disclose this evidence but almost never do so. A rare exception was the inquest on Richard O'Brien where the Metropolitan Police Complaints Investigation Bureau did accede to the coroner's request to let the family's solicitor see the statements they had gathered. She came across crucial forensic evidence which the police had not seen fit to draw to the coroner's attention.

The absence of legal aid for representation at an inquest puts the family in an appalling position of disadvantage compared to the Police. They will be confronted at the inquest by a team of lawyers representing the police, paid for from unlimited public funds and by the Police Federation all of whom will have an intimate knowledge of the available evidence. It is very rare for a coroner to conduct the same searching questioning that occurs when the family is effectively represented. Witnesses whose evidence conflicts with that of police officers will typically face cross examination by at least two lawyers acting for the police one for the chief officer of the force concerned and one for the individual officers.

Like the CPS and PCA, the Coroner's inquiry depends on the investigation carried out by the Police, which forms the basis for the selection of witnesses. The coroner has wide discretion to determine the scope of questioning, and the coroner alone sums up the evidence and decides which verdicts the jury can consider. Juries are no longer allowed to add riders to their verdict and are effectively prevented from making comments about the evidence heard. Even if, despite these obstacles, a jury returns a verdict of unlawful killing - which it may only do if satisfied beyond reasonable doubt that murder or manslaughter has been committed - this only adds

insult to injury if no action is taken against those responsible, and no explanation is provided for the failure to prosecute.

A call for reform

INQUEST has documented a pattern of cases involving police brutality or negligence that raise fundamental questions about use of excessive force and inadequate treatment and care. Our experience leaves us angry and frustrated at the lack of effective investigation, the failure to bring those responsible to justice and the rarity of any decisive action to prevent more such deaths occurring. The Home Secretary should initiate an inquiry into the way in which deaths in custody are treated at every stage of the criminal justice system. Without this, public confidence in the police cannot be restored.

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Julie Grogan

Lee Jasper speaking on Black Deaths in Custody at ISTD's conference in July.

In defence of the prosecutor

Bryan Gibson speaks up for the Crown Prosecution Service.

At the risk of plagiarising Lewis Carroll, I should explain that in the present context the case for the prosecutor is the case *against* the prosecutor, and that the case for the defence is the opposite of what it appears to be. The indictment can be reduced to just two counts: (1) occasionally, a good deal of public money is spent on what, with hindsight, was a fruitless prosecution and (2) the conviction rate in *contested cases* is just 75 per cent before magistrates, and only 60 per cent before a jury.

Case for the defence

Success cannot be measured by conviction rates alone, if at all - and certainly not by cost. It is a basic tenet of CPS decision-making that cost is *never* a consideration. This is strong in CPS culture. There may be the rare exception: a prosecutor might hesitate at bringing a witness from Australia to prove a minor summary matter. This is as it should be. Justice cannot be bought. 'Value for money' is sought on other fronts: negotiating sensible fee structures with counsel or expert witnesses; introducing cost effective systems. As to conviction rates, it should be noted that the overall rate is 98 per cent in magistrates' courts and 91 per cent in the Crown Court - and last year saw a ten per cent improvement in the latter court concerning contested matters.

Some critics seem to be unaware that well-developed rules, principles and ethics affect decision-making. The *Code for Crown Prosecutors* lays down two central tests for case work decision-making: the evidential (or evidential sufficiency test) and the public interest test. The former involves a



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of consistency and fairness as between similar cases and across the country. There have been wide-ranging reviews by the National Audit Office and the Prime Minister's Scrutiny Team, neither of which criticised these aspects of CPS work. Another review led by Sir Ian Glidewell, is looking at the structure of the CPS (recently revised into 42 areas to coincide with police force boundaries) and the *Code for Crown Prosecutors*.

Summing up

When I was preparing this article, the CPS agreed to field one of its senior policy-makers for 'cross-examination'. It is very clear that the CPS is not complacent and have a strong commitment to improving quality. Yes, mistakes do occur, but they are not those latched onto by the media (including several situations where even the quality papers have wrongly pointed the finger when the CPS had no responsibility or role in events). Rather, any mistakes are isolated cases - and unlikely to have reached the public gaze. The CPS does not receive bouquets when it secures a conviction in difficult circumstances - as it regularly does - such as when there is a major crime, or the case is highly complex (such as a terrorist matter). It is not congratulated for fast-

tracking child abuse cases, or for taking other initiatives to reduce delay or in relation to pre-trial issues. Neither, perhaps, do detractors understand what is involved in processing 1.3 million cases a year whilst achieving a range of quality targets.

Partnership and accountability

Lewis Carroll would probably have said that the only cure for a bad (or indifferent) press is to chop off the editors' heads, a course not open to us in modern-day Britain. People within the criminal justice process understand that somebody has to prosecute. As a community, we should be supportive of those people charged with making difficult decisions on our behalf - and credit them with acting correctly. Within the criminal process itself, an aim of 'partnership', in the non-collusive sense, should be to ensure that all agencies function at their optimum. The CPS is strongly committed to the partnership approach.

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decision of whether there is 'a realistic prospect of conviction' (paragraph 5 of the *Code*). This is not about trying to 'second guess' magistrates, judges or juries. A main purpose seems to be to eliminate cases which should clearly not go to court. Once a court does come to deal with a matter - including in many instances, actually hearing the evidence, seeing the witnesses live and learning of all the circumstances - it may well take a different view. There is nothing wrong in this - and it is critically important to recognise this difference in function, role and overall situation.

Cases can often turn on the credibility of a single witness. Rape and mugging - two situations where the CPS would be roundly censured if it did not adopt a robust approach - are notoriously difficult in terms of assessing whether a witness will come up to proof, or whether a jury would convict. But credibility is ultimately a *judicial* not a *prosecutorial* function - something to be tested *in court* - except where the prospects are entirely hopeless.

The public interest test represents a safeguard against automatic prosecution, and ensures balanced

decision-making and fair treatment. The test is dealt with at length in paragraph 6 of the *Code* and involves such items as the vulnerability of the victim, whether the accused was the ringleader, or whether a weapon was used.

There is a continuing duty to review cases and, in practice, certain 'milestones' for taking complete stock, say if a not guilty plea is entered or at committal proceedings. In the day-to-day cut and thrust of decision-making - within which 65 per cent of new cases are reviewed and 77 per cent of advance disclosure is made inside five days - there remains a continuing duty to review cases. This whole process is overseen by team leaders, then by branch Crown Prosecutors and finally by an Inspectorate - all looking at cases at random, so that every decision risks wholesale scrutiny.

The CPS's own quality standard for decision-making is met in 98 per cent of advice cases and 97 per cent of prosecution cases. In fact, all but one target was met last year - to reduce the percentage of cases dismissed by magistrates on a submission of no case to answer - and that was missed only by 0.4 per cent. Further aims include that

REVIEW OF DELAY IN THE CRIMINAL JUSTICE SYSTEM

On 27th February 1997 Michael Howard published a report (The Narey Report) containing thirty three detailed proposals to speed up the process of justice. These proposals would also have the effect of saving some £55 million.

Main proposals included:

- the withdrawal of the automatic right to jury trial in some cases
- the termination of the CPS's right to discontinue cases on public interest grounds because they consider the offence is not serious
- the involvement of non-lawyers in reviewing files and presenting uncontested cases in Magistrates' courts
- extension of the role and powers of Justices' Clerks
- offenders aged 17 to be dealt with by Adult rather than Youth courts
- Stipendiary Magistrates to be able to sit alone in Youth Courts and to specialise in the management of complex cases.