

NEW DEVELOPMENTS IN POLICE LEGISLATION IN ENGLAND AND WALES

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S u m m a r y

This article deals with recent pieces of legislation in that have impacted on policing in England and Wales, and a piece of legislation currently under consideration. The common theme of these laws is that they do not really empower the police, but rather renders them with more responsibilities.

Introduction

New obligations are aimed at restoring public confidence in the police by renewing the emphasis on fairness, integrity and competence in policing in Britain [12; 7; 4]. An area where the British police have suffered with regard to public confidence was firstly the Stephen Lawrence Inquiry. Stephen Lawrence was a black teenager who was murdered in London a number of years ago. The subsequent investigation did lead to the identification of suspects. However, the suspects never went to trial and no one was ever convicted of the Stephen Lawrence murder [6]. Largely due to the persistence of Stephen's parents an investigation into the police investigation in this case ensued. It revealed a very badly run investigation where many mistakes were made from the very start. Issues of police competence were raised.

The „Institutional Racism“

Additionally, the police were accused of being racist: they were alleged to not have put in enough effort and resources into this murder case, because the victim was black. These allegations were, at senior police level, at many places reluctantly accepted: some parts of the British police force were called institutionally racist. Evidence for this included:

- A failure to recruit staff from ethnic minorities;
- A disproportionate use of stop and search measures against ethnic minorities;
- A failure to investigate and prevent racial attacks properly and
- Failures in increasing „race awareness“ in police training or police education.

Institutional Racism is defined in the Stephen Lawrence Inquiry report as: „the collective failure of an organization to provide an adequate and professional service to people because of their color, culture or ethnic origin“. Thus, this is not a case of the odd individual with a questionable attitude: the service as a whole, is not giving ethnic minorities the service they deserve [6; 8].

The correction of police wrongdoing

The second area had to do with the correction of police wrongdoing. Public confidence in the handling of complaints against the police is low; criminal prosecutions against police officers alleged of criminal conduct hardly ever result in a conviction: police officers who do wrong often do seem to „get away with it“ rather easily, at least according to public opinion. A Home Affairs committee concluded in 1998 that:

- fewer than one half of a percent of all recorded complaints lead to a criminal conviction or disciplinary action.
- around two percent of all complaints are substantiated following a formal investigation
- around 33 percent of all complaints resulted in some form of satisfaction for the complainant, either in the form of substantiation of the complaint or by being informally resolved [1].

Research findings by Waters and Brown additionally suggest high levels of public dissatisfaction with key aspects of the complaint process. This includes the time for investigations to complete, the extent to which complainants are being kept informed, and the perceived independence (or lack of it) of the investigation [11].

Public confidence relates closely to the legitimacy of this public body mostly involved with social control and public order. Public confidence is essential. The recent legislation that I shall discuss should in part be viewed in these contexts. It is to a considerable extent aimed at increasing public confidence, by increasing transparency, and quality of service. Other trends include a rise in managerialism, and an increasing performance culture within public bodies in general, to which the police are no exception.

The Crime and Disorder Act 1998 stipulated various responsibilities to the police, and other public bodies. Two important responsibilities related to community consultation, and to policing by partnership. With regard to community consultation, local police forces were required, usually via crime surveys to ask their local community about their priorities with regard to crime and disorder in their community. The results of these surveys are in the public domain, and the police are expected to formulate a response to these results, implement those as policies, and evaluate its subsequent success or of course, lack of it. It can be seen as a formalization of „policing by consent“ and also of „community policing“. Community preferences should be central to local police policy making.

The second part of the act I will mention relates to the role of partnerships. In the act it is recognized that crime control and public order maintenance is not for the police alone to deal with. Local government, private security and other organizations such as organized local shopkeepers or voluntary organizations may have a role to play as well. The police are now encouraged to share information with these bodies, set common targets, and achieve those targets in partnership. In Government speak: „the key to delivering reductions on crime on the ground is through the police and local crime and disorder partnerships“.

Many local initiatives aimed at crime prevention may well be effective. Closed Circuit Television in public spaces has in many towns centers reduced crime, although a displacement effect cannot always be ruled out. On the whole, crime is decreasing in England and Wales, although violent crime is not. Newly formed Youth Offending Teams, which are based on partnership as well, are a good example of the impulses generated by the Crime and Disorder Act agenda.

The second piece of legislation is aimed at local governments but has important implications for every police force in the country. It relates to the practice of „Best Value“. Best Value has been called New Public Management with teeth. Best Value is about optimizing every aspect of public bodies' activities. Again, in the official language: best value is about securing continuous improvements to local services having regard to a combination of economy, efficiency and effectiveness. The new legislation requires every police force to submit annually an efficiency plan; a annual policing plan, and a best value performance plan. Basically, the idea is to give the local population a clear and concise picture of the policing service they have received over the last twelve months; the plans for the next year;

how the performance has varied over time, and compares with others; how the views of local people have been taken into account. Related to this is the increased use of performance indicators, which are on public record as well. There are performance indicators for strategic objectives, such as crime and crime detection figures. There are indicators for service delivery outcomes; other performance indicators look at data about police complaints, delay in delivering service, and public satisfaction. Further indicators relate to corporate health, and include for instance data on sick leave, and information on the maintenance of buildings and equipment. The outcomes will have implications, in the future, on the funding of individual police forces, of which there are 43 in England and Wales.

While in many respects, best value only solidifies already existing practices, the shift towards an evidence based style of policing at every level is very noticeable.

The consulting, planning, evaluation, and working with other organizations all have become much more important. It takes little imagination, however to imagine the level of paperwork required to demonstrate evidence of everything that is required. And while the performance indicators are often highly specific, including very clear counting rules, history teaches us that counting can be performed in various ways and will be performed in the way most favorable to the one who does the counting. Secondly, there is the danger that performance indicator shift the police's attention too much to the indicators, and away from what they are actually about, the performance.

Deputy Chief Constable Neyroud, in his recent book „Policing, Ethics and Human Rights“ (with Beckley) [7] argues that the British police is in transition as well as in crisis. In the new legislation its role has been redefined and specified in a way to hopefully better cope with this situation.

An interesting observation is, that while crime rates have been falling over the last few years, that has not automatically led to more favorable public perceptions with regard to police efficiency, and, perhaps more importantly, police integrity. With that in mind, I will now turn to new developments in police complaints. Dealing with police complaints is a sensitive issue. The traditional situation in England and Wales is, as it is in many countries, that the investigation of police complaints is in the first instance a matter for the police. The Police Complaints Authority oversees these investigations, and there is civilian participation within the Police Complaints Authority. However, essentially, the police still investigate the police. Of course, police wrongdoing is notoriously difficult to deal with. This relates to reasons specific to the policing task, and the police organization and culture, such as a high level of discretion; low managerial visibility; peer group secrecy; managerial secrecy, and association with criminals and other individuals of dubious repute. Police culture is by some argued to be part of the problem as well (but see Waddington, 1999, [10] on a re-evaluation of the role and functions of police sub-culture).

In the proposed new system, a new body, the Independent Police Complaints Commission (IPCC) will be responsible for looking at complaints against the police. Complaints should in the future not only be made to the police, but also at other agencies, such as local governments. There should be the possibility of an appeal against a non-recording of a complaint at the IPCC. Thus, before complaints are to be investigated, the recording of complaints should not be exclusive to the police, and open to appeals.

Minor complaints (which, if proven, would not lead to disciplinary or criminal proceedings) should be dealt with locally. However, if the complainant is not satisfied, there is the option of appeal to the IPCC. The IPCC also monitors the general operation of local resolutions. More serious complaints should be referred to IPCC, and certain other types of incidents as well. These include fatal road traffic accidents including a police vehicle, shooting incidents and alleged racist conduct. Mixed teams consisting of police and non-police members should investigate such cases. They are to be overseen by an independent commissioner. From there on they might lead to disciplinary proceedings against police officers, regardless of rank (which today is not the case). When judged appropriate, cases can be referred to the Crown Prosecution Service for criminal prosecution. The Crown Prosecution will deal with these cases in the same way as it deals with cases it receives from

the police: based on a judgment on the strength of the evidence, and a judgment on the public interest of prosecution, it may decide to prosecute or not.

The actual face of the senior bodies within the IPCC will be key to its success. The real impact of non-police investigators is at present very difficult to predict. The IPCC is likely to rely on the coercive powers trusted to police officers in the investigations. Police officers will still therefore have a strong and often probably crucial role in investigating alleged wrong doings by their colleagues. The proposed new complaint commission may still prove to be a lion with no teeth - time will tell. On the positive side, organizations such as Liberty have spoken positively about the proposed legislation. It is aimed to come into force in 2004.

Future planning

Finally, I should mention that the Police Reform Act received royal assent in April of 2002. It aims to achieve several things and that certainly includes empowering the police to be most effective in dealing with crime and social disorder. The provisions set out in the Act include the following. Firstly, the act stipulates the importance of the so-called National Policing Plan, which sets out national priorities. Additionally, police authorities have been assigned greater powers to remove chief police officers in the interests of efficiency. Another important development is the assignment of coercive powers to individuals and bodies other than the police. These include community support officers and Accredited Community Safety Officers. These would include neighborhood wardens and security staff.

Efforts are also taken to smoothen procedures in serving anti-social behavior disorders and sex offender orders. In particular anti-social behavior orders have been known to have been hopelessly ineffective in the past [3].

Conclusions

In this article, it is too difficult to me discuss other important developments in the regulation of policing in England and Wales. Especially the Impact of the Human Rights Act 1998 has, regrettably, been largely un-discussed.

A final word on policing in Britain: whether in crisis are not, there certainly is a phase of transition. It seems fair to say that the police are perhaps coping, and adapting, rather than actually embracing much of the legislation that has been passed recently. Whether they will come out stronger, remains to be seen.



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Anglijos ir Velso policijos veiklą reglamentuojančių įstatymų sistemos naujovės

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SANTRAUKA

Straipsnyje nagrinėjami galiojantys teisės aktai, reglamentuojantys policijos veiklą Didžiojoje Britanijoje ir Velse, taip pat analizuojami šiuo metu rengiamų policijos veiklą reglamentuojančių teisės aktų projektai. Keliama pagrindinė problema – minėtieji įstatymai nesuteikia policijai tiek įgaliojimų, kiek reikalaujama atsakomybės už jų įgyvendinimą. Ši nuostata skatina skirti dėmesio policijos socialinei paskirčiai, kad būtų atkurtas visuomenės pasitikėjimas policija, siekiant atnaujinti ir apibrėžti sąžiningumo, integralumo ir kompetentingumo principus Didžiosios Britanijos ir Velso policijos veikloje.

Straipsnyje analizuojamos kai kurios visuomenės pasitikėjimo policija mažėjimo priežastys, t. y. teisėtumo pažeidimai kitos rasės žmonių atžvilgiu, piliečių skundų prieš policiją skaičiaus didėjimas ir pan. Visuomenės pasitikėjimas policijos tarnybomis labai priklauso nuo įstatymų, nustatančių policijos kompetenciją viešosios tvarkos apsaugos ir socialinės kontrolės srityje. Čia tobulinami bei keičiami policijos konsultavimosi su visuomene bei policijos bendravimo su visuomene principai. Kita svarbi nuostata, kurią reikėtų tobulinti, yra policijos valdymo principų ir naujai suprantamos policijos misijos įtvirtinimas priimamuose teisės aktuose. Nauji įstatymai reikalauja, kad kiekviena policijos įstaiga kiekvienais metais pateiktų išsamų savo veiklos efektyvumo planą ir plano vykdymo ataskaitą.

Straipsnyje gana plačiai nagrinėjamas 2002 metais priimtas Policijos reformos įstatymas, kuriame įtvirtinami pagrindiniai policijos įgaliojimai, galintys daryti įtaką nusikalstamumui ir socialinei netvarkai. Daroma išvada, kad socialinės krizės pasireiškia daugelyje valstybių, todėl Didžiosios Britanijos bei Velso valstybės privalo perimti ten galiojančią policijos veiklos praktiką ir ją pritaikyti naujai priimamuose įstatymuose.