

March 6, 2004

The Secretary to the Steering Group
Room 4.25, Block B
Castle Buildings
Stormont
Belfast BT4 3SG

Re: Response to Patten Report Recommendations 69 and 70 Relating to Public Order Equipment Report— Fourth Report

Dear Steering Group,

Thank you for sending me a copy of the January 2004 Fourth Report of the Steering Group as well as inviting me to the 5 February 2004 session of the International Law Enforcement Conference. In what follows I want to make various points of commentary on both, though in the main I will refer to the content of the latest report.

I would preface these fairly specific comments by saying that while I welcome the consolidation process the Steering Group initiated, I remain disappointed with the quality of the consolidation. From what I know of the submissions made by others to the Steering Group and my own commentary, it is not clear how, if at all, the consolidation process has taken account of the views expressed. Certainly it appears to me that those independent of policing-related organisations have occupied a marginal role in the process. Tied to this, I remain sceptical of the continuing claims about the transparency and openness of this review process (see below).

CS Sprays

Certainly much of my scepticism derives from the characterisations made of the British CS sprays in all the reports to date. In my estimation, the section entitled 'The Introduction of CS sprays to the Police Service of Northern Ireland' in the Fourth Report amounts to little more than a public relations blurb, perhaps what one would expect of a manufacturer's marketing brochure but not at all fitting as an official assessment. While members of the Steering Group may know of my doubts about the appropriateness of the sprays and the way they were justified to the police and the public, let me suggest a few of the many failings of the account given in the latest report:

Partial: Reference is made a number of studies, but in a distinctly one-sided manner. So on pg. 65 it is noted that a recently published report by the Police Ombudsman (A study of complaints involving the use of batons by the Police in Northern Ireland) stated that with the introduction of CS sprays in England and Wales there has been a diminution in baton use. What is not noted is that there was a corresponding and compensating rise in the police use of CS sprays and complaints made with their introduction (see the 2000 PCA report). Second, on pg. 66 some of the findings of the 1999 COT report are mentioned, but what is not is the failure as of yet to produce the follow-up study on those sprayed it recommended. Would it be possible for the Steering Group to explain why there has been a failure to produce this study or why it has not been released to the public? Third, it is reported that the French Gendarmerie used the CS spray since 1984 without any long term injuries. As far as I am aware the Gendarmerie did not keep any such records and as suggested in an earlier report by

the Steering Group the French police no longer deploys CS spray. Wouldn't either of these points be prudent to mention? I trust as well whoever wrote this section is familiar with Parneix-Spake, A., Theisen, A., Roujeau, J.C., & Revuz, J. (1993) but deemed it not relevant. I wonder why. If I am mistaken about any of these facts please do inform me.

The failure to cite conflicting evidence: By citing some of the findings the 2000 PCA report, the suggestion is forwarded that the introduction of CS sprays in England and Wales has decreased assaults on police officers. The PCA, however, readily acknowledged the limitations of the statistics and inferences it made as part of that report. A much more solid basis for evidence about the impact of the introduction of the sprays on assaults was given in the trial review conducted by the Police Research Group (1996). By splitting up forces in England and Wales between those that did and did not carry the sprays, this trial provided the most comprehensive and rigorous testing done of whether the introduction of the sprays prevented assaults. That review found that while CS spray carrying police officers perceived a marked reduction in the number of police assaults against them, force data did not suggest the possession of the sprays lead to any noticeable reduction in actual assaults (in fact the rate of assaults was slightly higher in those forces that carried the sprays). This inconvenient finding has failed to receive any attention in the subsequent promotional Home Office accounts about the sprays. The Fourth Report has also failed to cite or note any of the concerns about cross-contamination to police and injuries to members of the public (see Rappert, B. 2003. "Health and Safety in Policing" *Social Science & Medicine* 56(6) March: 1269-1278).

Misleading: By failing to note any points of criticism and by selectively citing claims that suggest positive appraisals of the sprays, a highly misleading account has been presented. Consider another issue. The report states 'The guidelines for the use of CS spray by the Police Service of Northern Ireland will be keeping with the guidance given by the Association of Chief Police Officer (ACPO) and used by forces in England, Wales and Scotland'. I take this sentence as indicating no guidelines have yet been agreed. This rather contrasts though with a press release statement given by Northern Ireland Policing Board Press Office on 6 February 2003 wherein Professor Rea from the Board stated 'The Board has sought assurances that stringent guidelines are in place for the use of CS Incapacitant Spray and that officers will be thoroughly trained in its use.' In early 2003 when the approval of the sprays in Northern Ireland was being debated various other claims were made that, indeed, strict guidelines had been formulated. I was personally assured of this by an ACC. I have since heard rather conflicting accounts of whether guidelines for Northern Ireland had been written prior to February 2003 and whether they differed from the Guidance in place in England and Wales. Whatever the truth, I find it rather difficult to reconcile the statements made about the existence of guidelines. In addition, as far as the CS Spray Guidance is concerned, it could hardly be said to be 'strict' – the stipulations set out are explicitly recognised as aids in decision making. The Fourth Report is clinical in the way it cuts away any suggestion that the introduction of the sprays has been anything other than a rational and transparent process.

Need I go on?

I fear this sort of inappropriate presentation of the issues has informed policing policy. In 2003, I had the opportunity to make two presentations for the Northern Ireland Human Rights Commission and attend the IQPC conference about less-lethal weapons where I met a number of key individuals from the PSNI, the NIO, the Policing Board, the Police Ombudsman for Northern Ireland, and the Police Federation. I was somewhat disturbed by

the lack of knowledge about the cons associated with CS sprays. While I would have expected the Home Office to make a strong case for the benefits of the sprays, those I spoke with seemed completely unaware of any risks. Instead I was told the usual sort of things: the sprays have been tested to a level of that required of a drug; they proved highly effective; they significantly reduced officers' injuries; there were strict guidelines in place, etc. Key officials seemed to have a completely one-sided impression; similar I think to what someone unformed about the topic might get from reading the material presented in the Fourth Steering Group report. I cannot see how this could set the groundwork for 'best practice'. Nor can I see how the general lack of awareness of the range of issues of concern enabled those in Northern Ireland to make policy decisions about how to allocate time and resources between the introduction of CS sprays and other use of force measures that might have been taken (e.g., the improvement of conflict resolution skills).

In my private conversations with various Home Office officials, police officers, and others, I often find individuals readily admit the introduction of CS sprays was not handled well and various mistakes were made. No one has raised any major points of doubt with my critical analyses. While it might be difficult for relevant agencies to openly acknowledge past faults, they would do well to temper the optimistic claims made today. When I read the account given in the Fourth Report, I really do have to ask myself how and why these fairy book stories can continue to be told.

Tasers

I welcome the publication of the ACPO policy documents for the Taser trials. I do have doubts though about whether publishing them nine months into a twelve month initial trial that will almost assuredly transform into something else provides a high degree of transparency. For instance, the April 2003 ACPO Operational Guidelines state 'The availability or deployment of the taser should not be considered as a replacement for conventional firearms.' This is interesting because on 17 April 2003 during the fanfare associated with the start of the trial Paul Acres said on the BBC News that 'If [Tasers] are used as they will be, in very tightly controlled circumstances, as an alternative to conventional firearms, it will provide us with another option which will enable our officers to resolve dangerous situations without resort to lethal force'. At the time, if the Operational Guidelines were public it would have been possible to query statements such as those given by Paul Acres.

The Forth Report states that the trial is being 'independently evaluated' by PricewaterhouseCoopers. These days, however, it should be readily apparent that of vital importance to the import of reviews is not just who performs them but what sort of remit they work to. Along these lines, preliminary findings of the trial review stated that 'In the majority of cases, production of the Taser was enough to ensure compliance by the subject – particularly when the red dot sight is applied'. I gather that this finding is based on an analysis of 'Taser Deployment Reports' as given in Appendix H. However, reading this form, I see that quite a limited space exists for officers to describe an incident. I would imagine most give a short account of the final outcome that does not go into much detail about the actual sequence of events. The potential problem with this is that it becomes very difficult to properly assess why particular outcomes resulted. It may well be the case that in many instances Tasers were produced and the incidents were resolved without further escalation. However, substantiating that such outcomes were the result of the Taser is more problematic. The production of any sort of weapon or even (further) verbal warning might have had the same result. So, will PricewaterhouseCoopers, for instance, compare the rate at which the

production of firearms versus the production of Tasers ensured compliance during the trial? Also, that the application of the red dot was especially powerful raises the question of whether the use of such laser sighting as part of firearms or even separate from them might have the same effect. At least as far back as 1996, for instance, manufactures in the US sought to develop laser sightings for police pistols so as to gain compliance (see Houde-Walter, W. 1996. 'Violence reduction and assailant control with integral laser-sighted police pistols' Presentation at SPIE conference 'Security Systems and Nonlethal Technologies for Law Enforcement' 19-21 November Boston, MA.)

There are similar points I could offer about just what information is being used to support what arguments. However detailed these comments, they are not minor technical points but rather speak to the basic robustness of the evaluation and what benefits derive from the Tasers. I hope the basis for justification of the PricewaterhouseCoopers conclusions will be made available.

Reporting of Medical Evaluations

As with previous reports I find the summary statements made regarding medical reviews inadequate. I have been informed by members of the PSDB and DOMILL and I read in the Fourth report that much more comprehensive research reports will be forthcoming. I look forward to these with great expectation, but at this time this point of criticism remains.

Other Issues

* There is still a failure to identify who has conducted reviews from organisations such as the PSDB, DSAC, DOMILL, and Dstl. Although at the International Law Enforcement Conference I had a chance to meet some of the researchers and civil servants associated with various studies and have been assured of the independence and competence of those involved, this is not a sufficient basis for public transparency.

* In my Phase 2 and 3 responses I suggested that the Steering Group make the meaning of the policy criteria as widely known as possible. So, for instance, there was a past failure to elaborate the meaning given to the Himsworth Committee's recommendation that chemical agents should be regarded more akin to drugs than weapons for the purpose of making approval decisions. The failure has not been rectified. I note further that Himsworth was not mentioned in the latest report despite the discussion of CS sprays and the DIP. I wonder if the recommendations coming out of this Committee are still considered pertinent to the evaluation of chemical irritant equipment (as well as what they mean in practice) since they have not been adhered to in the past?

* As well in my Phase 2 and 3 comments I suggested that the Group devote time to detailing the post-approval procedures prudent to assess policing equipment. Besides a few relatively minor points, there is still a lack of consideration of these issues. This is a real deficiency, as I gather from discussions with Peter Boatman that in the case of Tasers he is insisting those forces trialling it adopt the Northamptonshire system for monitoring police use of force incidents. Introducing such a system would no doubt be of benefit and details of it would help substantiate positive evaluations of force policies.

* I notice on p. 18 of the report that the acceptability audit framework from the Phase 2 report gets a mention in relation to the search for an alternative to the PBR. While I have seen the questions set out as part of the framework, I have not seen answers to them. Can these be provided or a further elaboration be given of the how the audit framework figured into the research programme.

* Again, I thank the NIO and members of the Steering Group for organising the International

Law Enforcement Conference and inviting those outside of the police and various government agencies. What I would suggest is that in the future if another such event should be organised that both those from the police and non-governmental organizations share in giving presentations in order to foster greater understanding and debate. Also, I felt much of the conference was framed in terms of the police use of less-lethal weapons as a substitute for conventional firearms. While this is obviously an important area, it does not exhaust the range of situation in which the equipment currently being evaluated will be used. I await future policy announcements about the Taser, for instance...

Yours sincerely,

Dr. Brian Rappert
University of Exeter