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# PRINCIPLES FOR ACCOUNTABLE POLICING

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THE  
POLICE  
FOUNDATION

The UK's policing think tank

This report is dedicated to the memory of  
Dr Vicky Conway (1980-2022)  
Associate Professor at Dublin City University  
and member of the  
Principles for Accountable Policing Expert Group.

# Principles for accountable policing

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# Introduction

The following Principles for Accountable Policing (hereafter ‘The Principles’) are intended to provide a practical baseline which will inform the practice and structure of accountable policing. The Principles apply to the police and oversight bodies. The Principles have been drafted primarily with public bodies in mind but are applicable to all forms of policing.

The first section sets out the 12 Principles. They are divided into four parts. Part A describes general principles that underpin all accountability. Part B discusses the conduct of accountability and how it can be carried out. Part C examines participation in accountability. Part D focuses on implementation and evaluation.

The second section expands upon each principle, detailing the relevant evidential base. Reflecting the focus of the workshops, most examples are drawn from the various police forces across England and Wales, Scotland, Northern Ireland and the Republic of Ireland.

The third section provides a reference guide which can be used to check how accountable the police are. It is organised as a simple checklist.

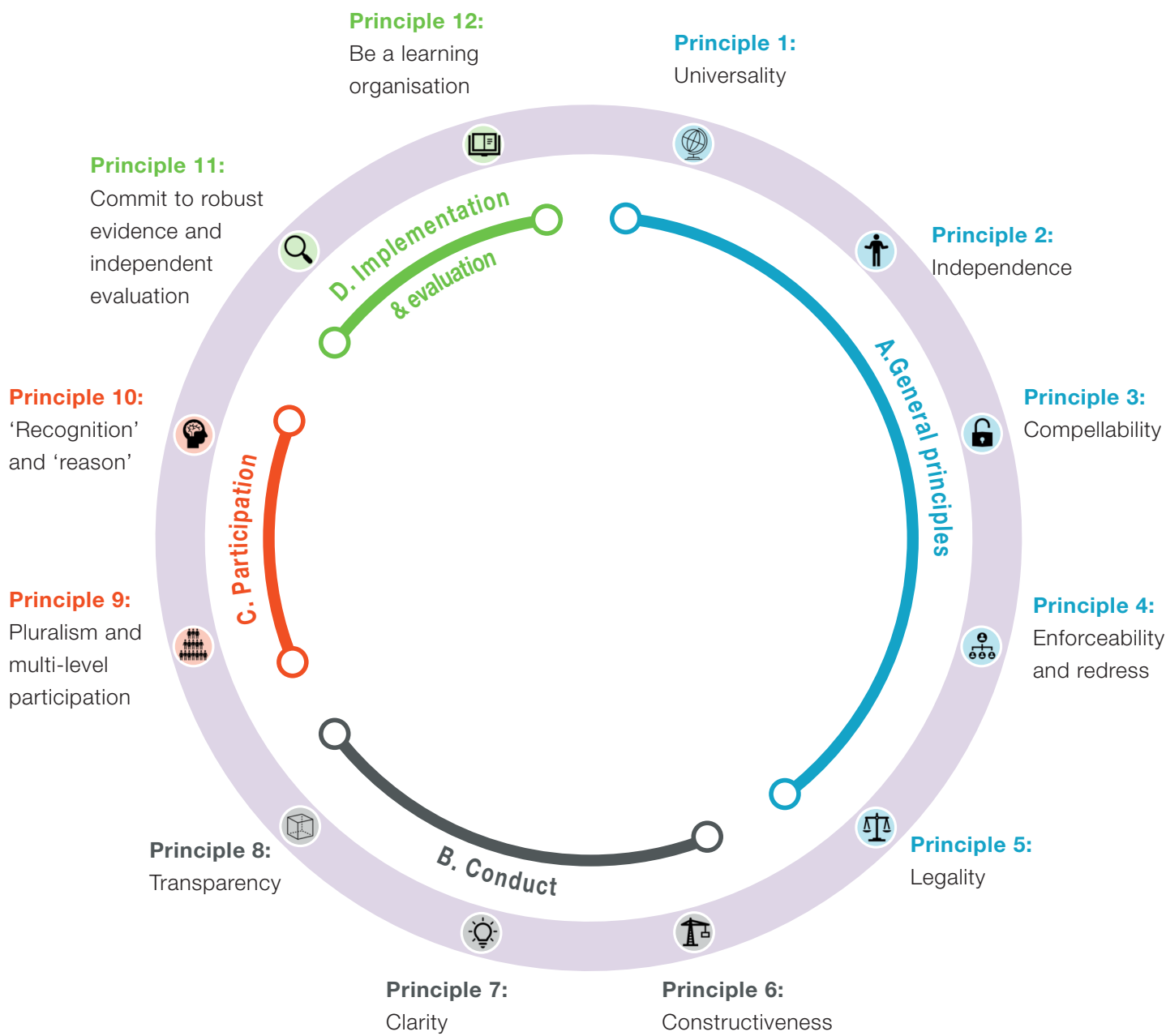
## Expert group composition

The Principles for Accountable Policing evolved from a series of workshops held in Glasgow in 2016. Supported by the Scottish University Insight Institute, these workshops brought together leading policing experts from the police, police accountability bodies and academia. Participants from the police and oversight bodies were purposively selected to ensure a geographic representation from across Great Britain, Northern Ireland, the Republic of Ireland and a range of oversight bodies.

- Miranda Alcock – Steering Group. Former Policy Lead for Justice in Audit Scotland; Scottish Institute for Policing Research Associate
- Alice Belcher – Professor of Law, University of Dundee
- Vicky Conway – Lecturer in Law, Dublin City University; Irish Policing Authority
- Siobhan Fisher – Northern Ireland Policing Board
- Alistair Henry – Senior Lecturer in Criminology, University of Edinburgh
- Trevor Jones – Speaker. Professor, Cardiff University
- Ciarán Kearney – Research student, University of Ulster
- John Keegan – Superintendent, An Garda Síochána
- Alyson Kilpatrick – Human Rights Advisor to the Northern Ireland Policing Board
- Peter Langmead-Jones – Head of Research & Development, HMIC
- John McNeill – Steering Group. First Police Investigations & Review Commissioner Scotland
- Lindsey McNeill – Director of Governance and Assurance, Scottish Policing Authority
- John McSparran – Police Investigations & Review Commissioner Scotland
- Ali Malik – Research student, University of Northumbria
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- Lawrence Marzell – Speaker. Combined Effect Lead, SERCO
- John Mitchell – Director of Investigations, Police Investigations & Review Commissioner Scotland
- Gareth Morgan – Speaker. Emeritus Professor of Charity Studies, Sheffield Hallam University
- Christian Mouhanna – Université Versailles Saint-Quentin-Université Paris Saclay/Université de Cergy Pontoise
- Rick Muir – Speaker. Director, The Police Foundation
- Chris Noble – Chief Superintendent, District Commander/Area Co-ordinator, Police Service of Northern Ireland
- Franklin Ngwu – Speaker. Lecturer in Finance and Financial Services, Glasgow Caledonian University
- Paul Nolan – Northern Ireland Policing Board
- Megan O’Neill – Senior Lecturer, School of Social Sciences, University of Dundee
- Derek Penman – (former) HM Inspector of Constabulary in Scotland
- Fraser Sampson – Steering Group. Chief Executive, Police & Crime Commissioner for West Yorkshire
- Bill Skelly – Speaker. Deputy Chief Constable, Devon and Cornwall Police
- David Steel – Speaker. Senior Research Fellow, University of Aberdeen; former Chief Executive, NHS Quality Improvement Scotland
- Amanda Stewart – Northern Ireland Policing Board
- Paddy Tomkins – Steering Group. Director, DROMAN Ltd.
- Debbie Watters – Vice Chair, Northern Ireland Policing Board

# SUMMARY OF THE PRINCIPLES FOR ACCOUNTABLE POLICING

These Principles for Accountable Policing are intended to provide a practical baseline which will inform the practice and structure of accountable policing. The Principles apply to the police and oversight bodies. The Principles have been drafted primarily with public bodies in mind but are applicable to all forms of policing.



## A. General principles

These principles underpin all accountability.

## B. Conduct

These principles describe the conduct of accountability, how it's to be done.

## C. Participation

These principles consider how participation in accountability is to be achieved.

## D. Implementation and evaluation

These principles set out how to implement effective accountability and evaluate it



### Principle 1:

#### Universality

While the forms of accountability may differ, all policing must be accountable. Oversight bodies must provide holistic accountability that is inter-operable and considers the entire system (ie criminal justice system and public, private and third sector bodies).



### Principle 2:

#### Independence

Those conducting accountability must be functionally independent from those whose actions are being held to account. An oversight body should not be dependent on the police for resources, whether personnel or financial, nor to initiate its investigations.



### Principle 3:

#### Compellability

Oversight bodies must be able to compel the police to provide both witnesses and information. The power to compel will vary depending on the oversight body and may be subject to limitations in addition to the usual criterion of relevance.



### Principle 4:

#### Enforceability and redress

Accountability bodies must have the means to enforce their recommendations and monitor police progress towards implementation. It is appropriate that different oversight bodies have different powers in this respect and that one oversight body may enforce the recommendations of another.



### Principle 5:

#### Legality

The police must be accountable to the law. Accountability must be exercised in accordance with the law. Accountability structures should be governed by formal rules with major lines of accountability defined by law.



### Principle 6:

#### Constructiveness

Accountability should be responsive, enabling and non-confrontational. It should be a dialogic process between those performing accountability functions and the police. It should form a feedback loop where lessons are learned, not just identified.



### Principle 7:

#### Clarity

Police and oversight bodies must ensure clarity of oversight, clarity of expectations, clarity of expression and clarity of data.



### Principle 8:

#### Transparency

Accountability is a means to transparency and must itself be conducted in a transparent manner. In addition, the police must be transparent by providing accurate, relevant and timely information. The default position for the police must be to routinely publish data on police performance.



### Principle 9:

#### Pluralism and multi-level participation

Participation in oversight requires a pluralistic approach and should be achieved through a combination of democratic processes, epistocratic bodies and consultative forums at national and local levels.



### Principle 10:

#### 'Recognition' and 'reason'

(Public) recognition requires routine democratic deliberation among all those affected by its decisions about security problems. The principle of reason demands that claims made in public deliberation are questioned, scrutinised, defended and revised in ways which align with the idea of security as a public good.



### Principle 11:

#### Commit to robust evidence and independent evaluation

The deliberations of oversight bodies need to be informed by robust evidence and rigorous, independent evaluation of policing. Following Sherman, police should use the results of rigorous evaluations of policing tactics and strategies to guide decision-making and generate and apply analytical knowledge derived from police data.



### Principle 12:

#### Be a Learning Organisation

Oversight bodies and the police need to be learning organisations that are skilled in creating, acquiring and transferring knowledge, and modifying their behaviour to reflect new knowledge and insights.

# Section 1: The Principles for Accountable Policing

This section outlines the general principles that underpin all policing accountability.

## Part A: General principles

### Principle 1: Universality

While the forms of accountability may differ, all policing must be accountable. This includes:

1. Individual officers within the police
2. Public police
3. Transnational police (whether convened on a permanent or temporary basis)
4. Private police
5. Mixed public/private police
6. Oversight bodies

It is appropriate that there are layers of accountability and different powers among the accountability bodies. There must not be two-tiered policing where some police are subject to accountability and others are not.

The growth of public and private policing agencies with overlapping remits can create challenges in relation to their own accountability structures, particularly regarding democratic accountability, and for police organisations who collaborate with them. The rise of transnational crime and, consequentially, transnational policing creates similar difficulties. There is a risk that there will be gaps in accountability, or that lines of accountability will be blurred or confused.

Many police operate within complex systems. Oversight bodies must avoid replicating silos and provide holistic accountability that considers the entire system. By system, we mean not only the criminal justice system but a wider system of public, private and third sector bodies. Effective accountability may help foster a shared ownership of risk. Such accountability should be inter-operable; that is, that the processes and outcomes of the accountability bodies are comprehensible to all the bodies involved and not just the body which is specifically being held to account.

**Case-study:** *The UK's National Crime Agency (NCA) is a non-ministerial government department that was created in 2013, replacing the Serious Organised Crime Agency. It is responsible for serious and organised crime, fraud, cybercrime, border security and sexual offences against and exploitation of children. Its officers have the powers of police constables in the various UK jurisdictions. Its direct accountability is to the Home Secretary. Unlike other UK public police forces it does not answer to a dedicated civilian oversight body, although it does come under scrutiny of organisations such as His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and the Independent Office for Police Conduct (IOPC) as well as national regulators relating to interception and surveillance powers.*

The Northern Irish Assembly initially blocked the NCA's operation in Northern Ireland due to concerns that it would not be accountable to the Northern Irish Policing Board. The NCA agreed to a number of changes, including an explicit role for the Northern Irish Policing Board and the requirement that NCA officers had to successfully complete ethics training before exercising the functions of a constable in Northern Ireland. The Assembly then passed the legislative consent motion enabling the NCA to operate.

This example of the NCA's operation in Northern Ireland highlights some of the challenges facing policing agencies that operate in addition to, and in collaboration with, local police. It applies to transnational police as much as national ones. Such policing bodies must ensure accountability in relation to their own organisation and organisations they collaborate with, giving particular attention to democratic accountability. As discussed further in relation to Principle 9, democratic accountability requires there be some local accountability over all policing that occurs in that locale (be it a region, state, country etc.).

Oversight body/bodies should ensure there are procedures in place to avoid an accountability gap. This may occur

1. If officers are not subject to the oversight body in the area where the actions took place and also unaccountable to their 'home' oversight body as the actions took place elsewhere.
2. If information cannot be shared between the oversight body or force in the other locale with the 'home' oversight body or vice versa.



3. If the ‘home’ oversight body cannot compel the police from the other locale to provide information, personally or through data, or vice versa.

## Principle 2: Independence

Those conducting accountability must be independent from those whose actions are being held to account. The police should not police themselves. Of course, internal accountability through force based professional standards departments is an appropriate and necessary form of oversight but it cannot be the only form of accountability. Those persons and institutions who perform accountability functions must be functionally independent from those they are holding to account. In the case of internal accountability, the person whose conduct is being held to account must not be involved in the processes for conducting accountability, directly or indirectly.

An oversight body should not be dependent on the police for resources, whether personnel or financial. (See further Principle 9). Nor should it depend on the police to initiate its investigations.

**Case-study:** *The English and Welsh Police Complaints Board was established by the Police Act 1976. It was the first time the police did not investigate complaints against themselves. However, it had no independent powers of investigation, being restricted to scrutinising the police investigation. It was criticised for its lack of independence by the Scarman Report and replaced in 1985 by Police Complaints Authority.*

## Principle 3: Compellability

The police can control oversight by controlling information. If oversight bodies are only privy to part of the information they cannot exercise informed control. It is therefore imperative that oversight bodies may compel the police to provide information, whether in person or through the provision of other evidence. This is in addition to *Principles of transparency*, below, under which the police should ensure that relevant information is routinely published.

In common with a number of the other Principles, it is not appropriate that all oversight bodies may compel witnesses or information. In addition to the usual criterion of relevance, it may be appropriate for some limitations to be imposed in relation to information that may be compelled. The courts’ ability to compel evidence is, for example, subject to some exceptions, such as, in the UK, the doctrine of public interest immunity or, in the USA, the state secrets doctrine.

**Case study:** *In 2015 the Interception of Communications Commissioner’s Office held that Police Scotland had breached the Regulation of Investigatory Powers (Scotland) Act 2000 when intercepting communications sent to journalists. When the Scottish Parliament’s Justice Committee investigated the matter in January 2016 Police Scotland refused the Committee’s request to send four officers. The Committee have the power to compel witnesses but chose not to exercise it. In January 2017 Police Scotland were held to have acted unlawfully.<sup>5</sup>*

This case study highlights the, sometimes complex, practicalities of compelling information from the police, as well as how different layers of accountability can interact. Often oversight bodies prefer to use ‘soft power’, often hoping that simply publicising an invitation will cajole or embarrass the invitee to attend without requiring the body to formally compel their attendance. An oversight body may choose not to exercise the power to compel a witness in order to preserve the long-term relationship between it and the police, particularly if the actions under question will be addressed by another oversight body. (Which is not to suggest this was the motivation of the Justice Committee in this case).

Some oversight organisations have powers to conduct search and seizure and arrest police. The officers of the Office of Police Ombudsman of Northern Ireland have powers of a constable in relation to its investigations. Powers to compel must be clearly set out in a legal framework which identifies the situations in which they can be used and the sanctions, should the police fail to follow the directions.

## Principle 4: Enforceability and redress

Accountability bodies must be able to effect change. As with the *Principle of compellability*, it is appropriate that different oversight bodies have different powers in this respect. Courts may impose criminal and/or civil sanctions. Providing a public account of particular conduct may be appropriate and sufficient redress for other oversight bodies.

It may be appropriate that the conclusions of one oversight body are enforced by another. For example, a local oversight body, comprised of civilians, may uncover evidence of unlawful activity. Appropriate redress in such circumstances would be obtained

<sup>5</sup> Investigatory Powers Tribunal 31 Jan 2017 (IPT/15/586/CH; IPT/16/448/CH). Note the Chief Constable of Cleveland Police was the respondent. This was one of the eight police forces that merged in April 2013 to form Police Scotland.

through the courts. Or, an oversight body may compel answerability (ie an obligation to report) without any power to sanction. Rather than analysing each oversight body individually, the imperative is to ensure that within the system there are effective mechanisms for enforceability and redress.

Oversight bodies must have the means to enforce their recommendations and monitor police progress towards implementation.

There are various levers that may be used to effect change. Publicising findings may prompt a response from the police body in order to avoid or repair reputational damage.

**Case study:** In 2014 findings from a PhD study detailed how Scottish rates of stop and search were around four times higher than in England and Wales, with a disproportionate impact on children and a heavy reliance on nominally 'consensual' searches, which do not require reasonable suspicion.<sup>6</sup> There was significant initial resistance from the police and Justice Minister regarding reform. Following media focus on the story,<sup>7</sup> further research briefings and a report by Her Majesty's Inspectorate of Constabulary in Scotland (HMICS),<sup>8</sup> an Independent Advisory Group was established in 2015 which advocated legislative change to prohibit 'consensual searches' and instituted a Code of Practice.<sup>9</sup> Rates of stop and search dropped precipitously.

## Principle 5: Legality

There are three elements to this Principle:

1. The police are accountable to the law
2. Accountability must be exercised in accordance with the law
3. Accountability structures should be governed by formal rules with major lines of accountability defined by law

The *Principle of legality* touches on a number of fundamental policing doctrines. Ultimately, police are accountable to the law. They are empowered and bound by the law. This is why police cannot be ordered to

enforce the law in a particular way and why they are required to not follow illegal orders.<sup>10</sup>

It follows that the public policing bodies must be established by law. All policing powers, for private and public forces, must be established by law. There must be a clear, legal framework governing joint operations and secondment. These are necessary prerequisites for accountability. The police cannot be held to account unless their powers are clearly delineated.

**Case-study:** *The Association of Chief Police Officers (ACPO) was established in 1948 through the merger of the Chief Constables' Club and the Chief Constables' Association of England and Wales. It was funded by central government from 1990 and became a limited company in 1997. It styled itself as a 'strategic body' whose main functions were to coordinate strategic responses among the chief constables.*

*It became increasingly involved in determining best practice and developing policies which, while not legally binding, were highly influential. It also had corporate functions.*

*Issues arose from it not being established by statute. For example, it was not initially subject to the Freedom of Information Act 2000 as it was not a public authority.<sup>11</sup> Thus one of the major policing bodies – which was one of the best known police 'brands' – avoided an important aspect of public accountability due to its informal structures. It was criticised for its lack of transparency and the obscurity of its accountability processes in 2013.<sup>12</sup> It was replaced by the National Police Chiefs' Council in 2015 which is subject to a clearer structure, set out in statute, and improved accountability.*

Ethical policing is built upon the rule of law. It is at the heart of accountability also. Accountability should be bound by clear, accessible rules and be proportionate. Major oversight bodies should be established by law, with the major lines of responsibility set out in law. This ensures that key characteristics, such as independence, are guarded. It reduces the risk of policy churn and constantly shifting landscapes of accountability. It helps to ensure that relationships between police and oversight bodies are not solely reliant on personal relationships.

6 K. Murray (2014) *Stop and Search in Scotland: an evaluation of Police Practice* (SCCJR Research Report 1/2014); K Murray (2015) *Stop and Search in Scotland: A Post Reform Overview – Scrutiny and Accountability* (SCCJR Research Report 6/2015).

7 See, e.g., L. Adams 'Police questioned on search tactics' (The Herald, 18 Jan 2014).

8 HMICS (2015) *Audit and assurance review of stop and search: phase 1*. HMICS.

9 Criminal Justice (Scotland) Act 2016.

10 See, e.g. Council of Europe (2002) *The European Code of Police Ethics*.

11 It became subject to the Act in 2011 under the Freedom of Information (Designation as Public Authorities) Order 2011/2598.

12 Parker (2013) *Independent Review of ACPO*.

## Part B: Conduct

### Principle 6: Constructiveness

Accountability should be responsive, enabling and non-confrontational. It should be a dialogic process between those performing accountability functions and the police. It should form a feedback loop where lessons are learned, not just identified.

In relation to accountability, responsiveness requires the police be receptive to the oversight bodies (including the public) and vice versa. This does not mean the police can 'edit' the oversight bodies' conclusions to ensure a more favourable light is cast upon their actions. It means that the oversight bodies listen to the police response regarding the context and feasibility of proposed changes. Responsiveness neither requires nor implies that the two parties will always agree. The oversight bodies must also be responsive to the concerns and needs of those who are subject to policing.

**Case-study:** In 2013 Her Majesty's Inspectorate of Constabulary (HMIC) published its report on the use of stop and search powers by English and Welsh police forces.<sup>13</sup> It was broadly critical, concluding that the powers were not being used effectively, that recording requirements were not being followed, and that almost a third of recorded stops failed to provide an adequate justification for the exercise of the power. A majority of the Police and Crime Commissioners responded to the report. In 2014 the HMIC revisited the issue, publishing a follow-up report which tracked the progression towards their original 10 recommendations.<sup>14</sup> It also investigated two new areas of stop and search. A number of Police and Crime Commissioners responded to the new report. HMIC then published a report into forces' compliance with the Best Use of Stop and Search (BUSS) scheme, finding that only 11 of the 43 forces were in compliance.

HMIC conducted a further follow-up investigations of non-compliant forces through 2015 and 2016.<sup>15</sup>

By 2017 HMIC determined that 41 of 42 forces were now compliant.<sup>16</sup>

Related to responsiveness, it is imperative that oversight bodies enable the police to improve their accountability. Recommendations and requirements

<sup>13</sup> HMIC (2013) *Stop and search powers: Are the police using them effectively and fairly?*

<sup>14</sup> HMIC (2015) *Stop and search powers 2: Are the Police Using them Effectively and Fairly?*

<sup>15</sup> See HMIC (2015) *PEEL: Police legitimacy 2015* HMIC (2016) *Best Use of Stop and Search (BUSS) Scheme*.

<sup>16</sup> HMIC (2017) *Best Use of Stop and Search (BUSS) Scheme*.

should be realistic and achievable. Accountability must aim towards developing positive behaviours and culture rather than simply focusing on particular decisions. In this way decision making and broader cultures can be positively influenced. While accountability must involve independent oversight bodies, the process of accountability should aim to embed best practice within policing. This requires the police be involved in and engaged with the process, rather than feeling like – or being – inert actors on whom accountability is done.

### Principle 7: Clarity

Police and oversight bodies must ensure:

- Clarity of oversight
- Clarity of expectations
- Clarity of expression
- Clarity of data

Clarity of oversight: It is appropriate that there are some overlapping responsibilities in relation to oversight. For example, local accountability over cross-jurisdictional policing (see case-study for Principle 1). Care must be taken to ensure clarity regarding each bodies' role and their interactions with each other and with the police. A lack of clarity regarding their respective roles can undermine their relationships.

The oversight landscape can become complex if not cluttered, especially in relation to multiple policing bodies. Unnecessary replication

- wastes police and oversight bodies' resources
- creates unneeded complexities which obfuscate the objectives of accountability and undermine the *Principle of transparency*, and
- may cause accountability fatigue.

A fine balance is required. Policing is an exceptionally complex activity which operates with a system of systems. Complexity of itself is not something to be avoided. Oversight bodies must resist the temptation to move towards a silo-mentality in the name of simplicity, thereby overlooking the interactions of multiple agencies (both police and other private and public bodies). A pluralist approach also helps to minimise the limitations inevitable in each paradigm of accountability. Ensuring that lines of oversight are clearly set out and understood by all parties will help the police and oversight bodies to ensure a constructive pluralist approach rather than redundant duplication.

**Clarity of expectations:** Effective accountability requires clarity regarding the powers and duties of the oversight bodies and the police. There must be clear expectations as to what the oversight body can and should do. There must be clarity regarding the roles of the individuals on that body. There may, for example, be the impression of different, even competing, mandates from elected persons on a mixed oversight body compared with experts or lay people.

There must be clarity regarding the outcomes and consequences of oversight bodies' decisions. Is their role to provide an account by publicising an accurate record of events? Is it to mandate that specific changes occur? Clarity of expectations will help ensure collaborative and effective working relationships between the police and oversight bodies.

Clarity of expression is closely linked with clarity of expectation. It applies to the interactions of the police and oversight bodies with each other and with the public. Reports and submissions for example should be written in a clear and accessible style, with technical terms used only when necessary. Oversight bodies' communications must be accessible to the public with consideration given to the target audience.

**Clarity of data:** 'clarity' here encompasses quality and quantity. Informed decisions cannot be made on the basis of unreliable data. Data must be of a requisite quality and, where there are multiple policing bodies, standardised to permit comparison. Data must not be used as a means of concealment; the quantity must be appropriate for the objectives and sufficient to permit methodologically sound analysis.

As discussed in relation to the Principle of Transparency, the default position should be to publish data. It must be provided in an accessible and useful format (e.g. analysable datasets) which is appropriate for the target audience. As discussed further in Principle 9, it is vital that there is requisite expertise on the oversight bodies to understand and analyse the information given and assess its quality.

**Case-study:** In 2002 two 10-year-old girls were murdered by Ian Huntley. It emerged after his conviction that he had been the subject of eight allegations of sexual offences in a different police force area. None of these were discovered when he was vetted for his job at the school the two girls attended. The subsequent 'Bichard Inquiry' concluded that poor data quality, and flawed intelligence systems, contributed to the police failing to identify Huntley's pattern of behaviour in relation to the allegations of sexual offences.<sup>17</sup>

<sup>17</sup> Lord Michael Bichard (2004) *The Bichard Inquiry*. HC653. HMSO.

The police force conducting the vetting incorrectly entered Huntley's date of birth and failed to check against all aliases.

## Principle 8: Transparency

Accountability is a means to transparency and must itself be conducted in a transparent manner. There can be no accountability without transparency. Information is the lifeblood of accountability. Without accurate, relevant and timely information, oversight bodies cannot function.

Oversight bodies must make their findings and workings public. Without transparency regarding their process and conclusions, the oversight bodies cannot hope to garner confidence from the public or the police.

While it is appropriate that, at least some, oversight bodies may compel the police to provide information, it is imperative that the default position for the police is to routinely publish data on police performance (including the exercise of coercive powers). The 'Race and the Criminal Justice System' statistics, for example, have been published since 1992. While there are limitations to the data, it provides an important overview of the experiences of Black and Minority Ethnic groups with the criminal justice system in England and Wales, permitting trends to be accessed over decades. Such publications enable people and institutions outside the formal oversight structures to participate in the accountability process. Key groups include the media, academia and community groups, in addition to the general public. These groups provide additional oversight, helping in particular to identify issues that have fallen outside the normal remit of formal accountability structures, or have been deliberately covered up.

**Case-study:** In 2011 two Guardian journalists revealed how undercover police officers working within the Metropolitan Police Service's National Public Order Intelligence Unit infiltrated a number of activist movements.<sup>18</sup> Some of the officers had long-term intimate relationships with activists under their assumed identities. Some fathered children. Following the media revelations, a number of legal cases were brought against the police service and a public inquiry undertaken.<sup>19</sup>

<sup>18</sup> See Lewis, P. and Evans, R. (2013) *Undercover: The true story of Britain's secret police*. Guardian Faber. the Guardian blog: <https://www.theguardian.com/uk/undercover-with-paul-lewis-and-rob-evans>.

<sup>19</sup> Inquiry into undercover policing [ucpi.org.uk](http://ucpi.org.uk).



## Part C: Participation

### Principle 9: Pluralism and multi-level participation

Participation in oversight requires a pluralistic approach and should be achieved through a combination of democratic processes, epistocratic bodies and consultative fora at national and local levels.

Quis custodiet ipsos custodios? or 'Who guards the guardians?' brings into focus the question of who should participate in the accountability of policing. Oversight bodies need a degree of democratic legitimacy so participation may be achieved through electoral processes. However, it is a mistake to equate voting with democracy and while free and fair elections to oversight bodies might be necessary, this is not a sufficient condition for democratic accountability of policing. Tying participation in police accountability arrangements to an electoral process poses a danger to vulnerable minorities who may be subject to the tyranny of the majority; and also creates a risk of plutocracy as a result of unequal resources to affect the political process. There might also be concerns that those elected on to oversight bodies might not have adequate expertise to offer robust scrutiny of policing policies and practice or to provide appropriate guidance around strategic priorities.

To address this potential weakness, a complementary approach to processes of participation in police accountability is rooted in epistocracy (the 'rule of the knowers') with people are appointed to oversight bodies on the basis of pre-determined skills and competencies. The justification of an epistocratic arrangement of police governance is that drawing on expert knowledge will result in better policies and create confidence in the decision-making process.<sup>20</sup> Epistocratic arrangements are not without their challenges. Critics argue they risk being elitist and exclusionary and there must therefore be a level of responsiveness to the public (vertical responsiveness) and to a range of other institutions and organisations (horizontal responsiveness).<sup>21</sup>

Consultative fora play an important role in the local oversight of policing, providing opportunities for a range of individuals and groups to express their views directly to local police commanders. However, such forums raise important questions about the representativeness of the participants of the wider community and the mandate

<sup>20</sup> Malik, 2016.

<sup>21</sup> Aitchison and Blaustein, 2013.

they have to speak on behalf of different sections of the local population. To be effective, consultative fora must also engage with local police commanders who have sufficient organisational autonomy to be able to respond to requests of the participants.

Whether participants in oversight bodies are elected or selected, it is important that, in accordance with Principle 2, that they are independent of police organisations if they are to command the trust and confidence of citizens.

### Principle 10: 'Recognition' and 'reason'

Underpinning the importance of participation are two related principles that are key to the democratic oversight of policing: 'recognition' and 'reason'.<sup>22</sup> Recognition is based on the notion that the state should foster routine democratic deliberation among all those affected by its decisions about security problems so there need to be participatory spaces for public conversations in which different voices can express themselves and be heard which will bring benefits of both legitimacy (by ensuring different constituencies are listened to) and effectiveness (by improving the knowledge base on which decisions are taken).

The principle of reason (or more specifically public reason) is closely allied to that of recognition. It demands that claims made in public deliberation are questioned, scrutinised, defended and revised in ways which align with the idea of security as a public good. The aim is to ensure that unreasoned claims lacking a base in evidence for particular levels of policing provision are not treated as immutable facts of political life but are subject to democratic scrutiny.<sup>23</sup>

**Case study:** *As a result of the restructuring of police governance in England and Wales and the mergers of Scotland's eight regional police forces to create a national police service, very different forms of police accountability have been established. In England and Wales, the 2011 Police Reform and Social Responsibility Act introduced directly elected Police and Crime Commissioners with the power to set objectives and budgets and hire and fire chief constables. In Scotland, following the 2012 Police and Fire Reform (Scotland) Act a new national body, the Scottish Police Authority (SPA), was established with a selected rather*

<sup>22</sup> Loader and Walker, 2017.

<sup>23</sup> Loader and Walker, 2017 p.229. As Loader and Walker observe, 'Such practices of inclusive and reflexive public reasoning and justification at least maximise the prospect of political communities thinking about security ... in ways which foster greater acknowledgement of mutual vulnerabilities and social connectedness that exist among their members'. (230-231).

than elected membership appointed on the basis of possessing skills and expertise relevant to the functions of the SPA. At a local authority level there are local scrutiny and engagement groups made up of local councillors which have no formal powers but liaise with the local commander around the preparation of the local policing plan.

was exemplified by the VRU's Community Initiative to Reduce Violence (CIRV) which focused on the diversion of young people away from gang activity by deploying evidence-based interventions relating to parenting, health, careers and social behaviour. Independent evaluation of VRU and CIRV has highlighted its contribution to reduced levels of knife crime in Glasgow and led to the adoption of some of its initiatives in the UK and internationally.

## Part D: Evidence and evaluation

### Principle 11: Commit to robust evidence and independent evaluation

The deliberations of oversight bodies need to be informed by robust evidence and rigorous, independent evaluation of policing. Following Sherman, police organisations should use the results of rigorous evaluations of policing tactics and strategies to guide decision-making; second, they should generate and apply analytical knowledge derived from police data on a range of issues, from crime problems to trust and public confidence.<sup>24</sup>

Both the practices of policing and the Principles for Accountable Policing set out in this document should be considered as 'testable hypotheses'. Their assessment should not be based on 'hunches' or 'gut feelings' but subject to independent evaluation of 'what works' and 'what doesn't work'. Evaluation will allow assessment of the extent to which individual principles have been implemented and whether this has led to expected or unanticipated outcomes. It will also allow assessment of the influence of context on the effectiveness of The Principles, for example, in relation to the impact of pre-existing institutional structures, norms, values and relationships.

**Case study:** The Violence Reduction Unit (VRU) was established in 2005 by Strathclyde Police to target all forms of violent behaviour but with a particular focus on gang violence and knife crime in Glasgow. Informed by research evidence, the approach of the VRU marked a significant departure from a traditional law enforcement centred strategy and instead adopted a public health approach with the police working with multiple agencies in health, education and social work. This

### Principle 12: Be a learning organisation

Oversight bodies and the police need to be learning organisations. This means that they are skilled in creating, acquiring and transferring knowledge, and modifying their behaviour to reflect new knowledge and insights. There is active management of the knowledge process and that subsequent learning translates into new ways of operating.<sup>25</sup>

Evaluation can thus contribute to a 'cycle of enlightenment' with regard to the Principles in which those with responsibility for evaluation learn how stakeholders make sense of their situation and then use this knowledge to 'teach' stakeholders how accountability is working or not working and then modify structures, processes and behaviours to address this. This focus on being a learning organisation therefore complements and reinforces Principle 6 regarding the need for constructive engagement and a process in which lessons are learned and acted upon rather than simply identified and then subsequently ignored.

**Case study:** The What Works Centre for Crime Reduction (WWCCR) was established in 2013 and is based in the UK College of Policing. The WWCCR has been supported by a consortium of eight UK universities who have carried out systematic reviews of crime reduction topics, developed an online toolkit to improve police practitioner access to and understanding of research on the impacts of different interventions to reduce crime, and the design and delivery of a training programme for police officers on how to use the toolkit to inform their decision-making. The toolkit encourages police practitioners to engage with research evidence, apply the knowledge gained about the effectiveness of different interventions, and then undertake an evaluation of the local impact of crime reduction initiatives. The crime reduction toolkit is available on the College of Policing website.<sup>26</sup>

24 Sherman, L. (1998) *Evidence-based Policing*. Police Foundation: Washington DC.

25 Garvin, D. (1993) Building a Learning Organisation, Harvard Business Review, 71 (4), pp. 78-91.

26 See <<https://whatworks.college.police.uk/toolkit/Pages/Welcome.aspx>>.

# Section 2: Explanatory guidance on Principles for Accountable Policing

The nature of policing, the powers and privileges it endows upon its agents and the extent to which it impacts on the lives, liberties and livelihoods of the communities in which it takes place, makes accountability more elemental than some qualitative performance measures or governance processes for other public bodies. Accountability is an essential, delineating feature of policing the limits which validate and license the police themselves. In other words, the accountability of the police is central to their legitimacy within their communities. The concept of accountable policing therefore apprehends a range of features of democratic public service incorporating staples of good governance such as legal compliance, regulatory standards, transparency of decision-making and fiscal probity, together with more sensitive and complex areas such as the appropriate machinery for addressing misconduct, the position of the sworn constable and common law and the constant tension between upholding the law and rights of citizens with proportionality, openness and restraint and the necessary activities that involves. All are connected in one way or another to the notion of policing accountability. One of the challenges in collating a set of principles has been that very interrelatedness. What follows is the product of the workshops and input of the Group; it is necessarily selective and inevitably subjective in parts, but the Group has drawn upon its significant collective experience in order to distill a set of guiding principles to help assess and adjust the extent to which their police are truly accountable.

## Introduction to accountable policing

When considering the accountability of critical public services – and more particularly, that of their key decision makers – there can be a tendency to do so solely from the vantage point of governance and therefore of the governors. The approach adopted by the Group was at times to invert this top-down approach and to review the concept of accountability and its component parts from the perspective of the user, the citizenry who are the intended beneficiaries of policing services. Arguably accountability in any elemental service on which a democratic society depends can only

meaningfully be judged from the perspective of those in whose name any holding to account is done, a fortiori where that service incorporates coercive powers and legitimises the use of force against citizens. However, it is important to clarify at the outset the subtleties of definition: we are concerned here with more than the police-as law-enforcement approach; we are concerned with accountable policing, a descriptor that applies to services that include, but also extend beyond, the enforcement of the law.

There are many definitions of, and more approaches to, accountability in policing than there is room for here. The literature on the accountability of the police generally, and that of UK police forces and mechanisms in particular, forms a rich and deep seam albeit often found running through sociological, criminological, historical and jurisprudential strata (Reith, 1952; Stenning, 1995; Simey, 1988; Uglow, 1988; Reiner, 1992, 2000; Goldsmith, 1991; Waddington 1993,1999; Morgan, 1989a, 1989b; Oliver, 1997; Loader, 2000, 2016; Bovens, 2005; Walker and Archbold, 2014; Lister and Rowe, 2016). Traditional approaches combine – and sometimes conflate – functions of governance, regulation and oversight making the identification of principles as opposed to ‘rules’ more practicable. Nevertheless, differentiated approaches notwithstanding, the police and policing are – irrespective of jurisdictional differences, subject to a framework of laws, international and domestic, which can be enforced by citizens against the relevant body, the relevant State and/or the relevant individual.

Throughout the principles that follow is the accountability paradox that policing brings: the fact that preventing harm and enforcing the law will sometimes require the use of coercive power and covert practice which conflicts with individual rights and freedoms of the citizen (Kleinig, 1996; Bowling, 2007). Policing accountability – which goes far wider than what one commentator calls their monopoly on legitimate violence (Loader, 2000) – is concerned with ensuring the appropriate balance in the equation and that unnecessary or unacceptable harm is effectively, lawfully and transparently addressed. Failure to achieve demonstrable accountability, to the law and to the populace, can lead to the undermining of public

confidence and the erosion of legitimacy (Stanko and Bradford, 2009; Jackson et al, 2011)

Among the voluminous literature that has grown up around policing accountability are numerous reports and official publications evincing the evolution of democratic policing. Among them is one report that offers a reliable and pragmatic structure for approaching the subject across the jurisdictions represented on the Group. The Report of the Independent Commission on Policing for Northern Ireland (the Patten Commission) published in September 1999 not only tackles some of the intrinsic challenges of accountable policing in the context of Northern Ireland, but also lends itself to far wider application and has been described as providing “a blueprint for democratic policing anywhere in the world” (Ellison, 2007). In approaching its task the Commission adopted two broad senses of policing accountability:

1. The “subordinate or obedient” sense – incorporating the applicability of the law and the jurisdiction of higher authorities.
2. The “explanatory and cooperative” sense – being answerable for what they do/fail to do and cooperating with the processes of inquiry (Marshall 1978)

This approach is apparent throughout the principles set out here.

Citing the Agreement of 10th April 1998 (the so-called Good Friday Agreement) the Commission stated:<sup>27</sup> –

*“[The parties] believe it essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and cooperative criminal justice system, which conforms with human rights norms. [...] these structures and arrangements must be capable of maintaining law and order including responding effectively to crime and to any terrorist threat and to public order problems. A police service which cannot do so will fail to win public confidence and acceptance. [...] any such structures and arrangements should be capable of delivering a policing service, in constructive and inclusive partnerships with the community at all levels, and with the maximum delegation of authority and responsibility, consistent with the foregoing principles. These arrangements should be based on principles of protection of human rights and professional integrity and should be unambiguously accepted and actively supported by the entire community”*

<sup>27</sup> Para 1.9.

It is difficult to think of a more complete and compelling introduction to the subject of accountable policing.

## International framework

The starting point for the Principles is the international framework by which participating States have undertaken to uphold the fundamental rights and freedoms of their citizens, to set out the minimum standards for their policing bodies and to provide effective remedies and redress when they fall short of those standards. The major international legal instruments that create rights for citizens and policing obligations on their parent States are considered below.

While this framework and the standards it inculcates are drafted to address the activities of ‘law enforcement officers’ (LEO) the individual actions of whom are, of course, critical to aspects of accountability (see e.g. Reiner 1992; Holdaway, 1984) the framework sits above both the individual actions of all officials carrying out policing functions (originally more about ‘peacekeeping than law enforcement – Banton 1964) and the more discursive proliferation of obligations and undertakings engaged by policing in collaborations and partnerships. The European Code of Police Ethics<sup>28</sup> expressly recognises<sup>29</sup> that “most European police organisations – in addition to upholding the law – are performing social as well as service functions in society” while a College of Policing study published in 2015 indicated that non-crime related incidents account for 83 per cent of all recorded incidents dealt with by the police in England and Wales. To this extent, categorising policing as “law enforcement” is like describing fire and rescue services as “fire extinguishers”.

## Universal Declaration of Human Rights

Adopted by the United Nations General Assembly on 10th December 1948, the Declaration is in many ways the genesis of the international and domestic frameworks that have subsequently set the standards for policing accountability within the local jurisdictions of signatory States.

<sup>28</sup> European Code of Police Ethics Adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers’ Deputies, Council of Europe Publishing F-67075 Strasbourg Cedex March 2002.

<sup>29</sup> At p.5.



## Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Paragraph 1 underscores a key element of the policing model within the UK and Ireland, namely the generic duties of citizens to their communities, a mutuality of accountability that is reflected in the so-called Peelian principles of policing (see Loader 2016).<sup>30</sup> Article 28 enshrines a right for people to be provided with social and international order in which to enjoy their broader fundamental rights, a further elemental entitlement sitting at the centre of accountable policing.

## United Nations Code of Conduct for Law Enforcement Officials

The Code of Conduct for LEO was adopted by the general Assembly of the UN in 1979,<sup>31</sup> Article 1 of which states that:

*“Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession”.*

The commentary to Article 1 defines ‘law enforcement officials’ as including all officers of the law who exercise police powers, especially the powers of arrest or detention and the subsequent guidelines provide that “The definition of law enforcement officials shall be given the widest possible interpretation”.<sup>32</sup> The developing role of non-sworn staff in delivering policing outcomes means that the concept of an LEO is too narrow a focus for true accountability and, even with the expansive wording of the guidance, the Code itself requires teleological amendment in national instruments. The Code nevertheless underscores both the nature of law

enforcement activities (which here include any such activity by the State’s armed forces) and the importance of conspicuously regulating the interface between those activities and the rights of citizens.

Article 2 expressly identifies an overarching obligation on law enforcement officials to respect and protect human dignity and maintain and uphold those human rights of all persons in the performance of their duty, while the commentary goes on to identify and incorporate some particular rights enshrined within international instruments that LEO are under a duty to respect and protect. These are:

- The Universal Declaration of Human Rights<sup>33</sup>
- The International Covenant on Civil and Political Rights<sup>34</sup>
- The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>35</sup>
- The Declaration on the Elimination of All Forms of Racial Discrimination<sup>36</sup>
- The International Convention on the Suppression and Punishment of the Crime of Apartheid<sup>37</sup>
- The Convention on the Prevention and Punishment of the Crime of Genocide<sup>38</sup>
- The Standard Minimum Rules for the Treatment of Prisoners<sup>39</sup>
- The Vienna Convention on Consular Relations<sup>40</sup>

33 <<https://www.un.org/en/universal-declaration-human-rights/index.html>>.

34 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49 <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>>.

35 Adopted by General Assembly resolution 3452 (XXX) of 9 December 1975 <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/DeclarationTorture.aspx>>.

36 Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19 <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>>.

37 G.A. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force July 18, 1976.

38 Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951 in accordance with article XIII <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx>>.

39 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

40 Vienna on 24 April 1963. Entered into force on 19 March 1967. United Nations, Treaty Series, vo1. 596, p. 261 <[http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf)>.

30 And one that is corroborated by the common law duty for citizens to come to the assistance of a constable in England and Wales.

31 General Assembly resolution 34/169 of 17 December 1979.

32 Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN resolution 1989/61, May 24.

# The European Convention on Human Rights

The Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up within the Council of Europe in 1950<sup>41</sup> is probably the most well-known instrument in the international framework. Often referred to as the European Convention on Human Rights, this seminal post-second world war undertaking by signatory States has been at the heart of some of the most important legal decisions and judgments around policing accountability in recent years. Rehearsing and reinforcing many of the rights and freedoms set out elsewhere in the framework supra, the Convention has provided an avenue of challenge and redress in a whole spectrum of policing activity from the use of lethal force, arrest and detention, the use of torture and inhumane treatment and the retention of DNA samples.<sup>42</sup> The provisions of the Convention are directly relevant to the Principles.

## European Code of Police Ethics

This Code was adopted by the European Council in September 2001 and sets out in some detail a series of elements and features that should exist in an ethical policing service, for example the training of officers, the conduct of suspect interviews and the provision of assistance to victims of crime. The Code is highly relevant to several of the Principles and of particular relevance is Paragraph 4 which provides:

12. The police shall be organised with a view to earning public respect as professional upholders of the law and providers of services to the public.
15. The police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable.
16. Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.
17. The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately

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41 signed on 4 November 1950.

42 Ireland v UK [1978] ECHR 5310/71; McCann & Ors v UK [1995] ECHR 18984/91; S & Marper v. United Kingdom [2008] ECHR 1581.

responsible for the acts or omissions of police personnel.

18. The police shall be organised in a way that promotes good police/public relations and, where appropriate, effective cooperation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups.
19. Police organisations shall be ready to give objective information on their activities to the public, without disclosing confidential information. Professional guidelines for media contacts shall be established.
20. The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular to guarantee respect for individuals' fundamental rights and freedoms as enshrined, notably, in the European Convention on Human Rights.
21. Effective measures to prevent and combat police corruption shall be established in the police organisation at all levels.

The Code takes account of a significant amount of prior work on accountability including that of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the principles within the European Social Charter with regard to the social and economic rights of police personnel, the European Commission against Racism and Intolerance, the European Commission for Democracy through Law (Venice Commission) and the Declaration on the Police.<sup>43</sup> These are reflected in the Principles.

## National frameworks

The European Code of Police Ethics and the various individual rights nested within it are given further effect by a range of national instruments enacted by the relevant legislatures of the sovereign party States.<sup>44</sup> These domestic regulations in the jurisdictions represented on the Group cover a very wide range of policing activities, from the use of force against people and their property, processing of citizens' biometric and other personal data to the management of covert human intelligence sources and the disclosure of material in advance of prosecution. These detailed measures in primary and secondary legislation are supported by

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43 Resolution 690 (1979) adopted by the Parliamentary Assembly of the Council of Europe in 1979.

44 The Human Rights Act 1998 being a good example.

codes of ethics and conduct in each of the jurisdictions considered by the Group<sup>45</sup> along with statutory and professional guidance emanating from such bodies as the National Police Chiefs' Council and the College of Policing.

In each of the police services within the Group's jurisdiction police officers are required to attest or make a solemn declaration, the wording of which expressly binds them to upholding the rights of citizens, and to observing the standards of professional behaviour set out in some of the legislative instruments.

The existence and composition of these standards support the notion of the police using rather than merely enforcing the law (Waddington, 1999 p.94). The development of the legal frameworks, their application within communities and their interpretation by the courts has followed a sort of 'constitutional titration' by the legislative, executive and judicial arms of the State, an incremental process of trial and error in an effort to achieve an acceptable balance between the democratic answerability of policing and the independent application of professional discretion. The efficacy and impact of that process is well and richly documented in a vast volume of literature only a very small part of which can be rehearsed here. The Principles are set against the context of the framework and accompanied by some key references which are included to highlight the specific issues considered by the Group.

## Governance, regulation and oversight

Viewed from the vantage points of governance mechanisms, regulators and oversight bodies (Stenning 2009) policing accountability can become an unwieldy and amorphous concept.<sup>46</sup> Using its best endeavours the Group created the Principles in a way that took account of these overlapping aspects. In doing so the Group heard from a number of invited experts in these three forms of accountability, beginning with Rick Muir who noted that police accountability can be grouped under three broad governance paradigms (Muir, 2016):

- Bureaucracy
- Markets
- Democracy

The Group considered Muir's input on how some of the complexities around implementing the various mechanisms of police accountability are highlighted by the following tensions and need to be resolved through a 'balancing' approach:

- Silos vs complexity: Complex problems require negotiated order; different agencies need to work together to produce common solutions.
- Experts vs people: Public priorities often relate to very local issues affecting different communities not necessarily reflecting issues of wider importance such as hate crime, human trafficking etc.
- Trust vs deference: There is a trend towards risk aversion. There is a need to manage public expectations and adopt a realistic approach to tolerating risk – bad things may and can happen.
- Accountability vs innovation: Too much accountability has a tendency to stifle progress and originality in processes.
- Measurement vs obscurity: The management aphorism "what gets measured gets done" demands a more holistic approach to what is measured.
- Policy vs practice: Policy is being made daily; through implementation it can change and affect practice. Sometimes it can be difficult to identify whether there is a relevant policy in action and, if so, who bears responsibility for that policy.

Next the Group considered accountability from the perspective of regulation, looking at lessons from the financial and charitable sectors. In this context Franklin Ngwu presented the three basic forms of regulatory accountability:

- Systemic: Top down using hierarchical sets of rules.
- Prudential: Bottom-up supervision of the sector
- Conduct of business: Regulation of how institutions conduct their business.

The Group heard how proper mechanisms of regulation can increase confidence in the sector and its institutions, that there is a need to ensure regulators themselves understand what they are supposed to do and that they have proper training to carry out their duties. There is also a need for an all-inclusive, robust regulation mechanism as a proliferation of light touch

45 <<https://www.garda.ie/en/about-us/publications/policy-documents/code-of-ethics-2020.pdf>> (Garda code of ethics). <<https://www.nipolicingboard.org.uk/psni-code-ethics>> (PSNI code ethics). <<https://www.college.police.uk/ethics/code-of-ethics>> (Police college code ethics) accessed 20 February 2023.

46 A recent report that helpfully separates some of these component parts is The Future of Policing in Ireland September 2018 <<http://www.policereform.ie/en/polref/pages/pb18000006>>.

**Table 1: Principles of police accountability**

Paradigm	Descriptor	Pros	Cons
Bureaucracy	Top-down hierarchical governance setting structures	Produces standardised solutions Works for simple problems	Can be too rigid and unresponsive for complex challenges = demoralising for lower tier staff Strategic decision makers too distant from issues/realities and vice versa
Market-based	Seeks to contract – out certain aspects of policing	Creates a ‘reputational’ competition to drive efficiency Transfers risk associated with overhead and responsibility for maintaining stable resource base	Too much focus on market – based targets can affect public trust Relies on assumption that people make rationally informed choices Funding arrangements can cause disconnect between local and national policing and blur lines of responsibility/ accountability Contracts can be too rigid and costly to refine during life of agreement Who manages the contract can blur lines of operational irresponsibility/accountability – chief constable or local elected policing body? Affluent areas can pay for additional constables bringing role of the public police into question
Democratic	Elected representatives on governance body	Offers direct accountability through e.g. complaints or indirectly via electoral process, surgeries etc. Opportunities to unify other emergency services e.g. Fire and Rescue Service	Appointed boards too far removed from public – directly elected commissioners might provide a necessary balance of power and encourage collective participation but risk of crude majoritarianism and politicisation <sup>47</sup> Electoral cycle too long e.g. four years between Police and Crime Commissioner elections

regulatory models can have an adverse effect on the overall effectiveness.

The limitations of regulation were noted including:

- The government ‘safety net’ particularly if organisations are considered too big or too important to fail.
- Political considerations make regulation complex.
- ‘Agency capture’ whereby those regulating who come from the same background as those who are being regulated tend to take a sympathetic approach.

The Group also heard from Emeritus Professor Gareth Morgan of Sheffield Hallam University on the regulatory issues within the charitable sector (Morgan, 2016). They noted how the relationship between regulated and regulatory needs to be clearly explained and how, paradoxically, too much regulation can affect reputation and public confidence. Professor Morgan indicated

the many layers of governance and accountability and opined that charities’ regulation is an over-populated field.

It was agreed that clearly defined targets for regulation are needed, selectively based on what is worthy of having a target. It was noted how ministers’ priorities can often lead to reluctance in the implementation of regulatory policies and how a constitutional purpose for the public police may aid in accountability in the same way as the ‘charity model’ where the accountability is focused on whether the bodies are serving their purpose. The Group noted how, in certain regulatory sectors, those who are regulated make financial contributions to a regulatory authority such as the Financial Conduct Authority or health and social care; this has the tendency to change the dynamic between a regulatory authority and a regulated body.

<sup>47</sup> see e.g Sampson (2012); Neyroud (2013).

The Group were clear that purpose should not be just about 'straplines' as these are open to interpretation; the question would be how all styles of policing could be justified in relation to community wellbeing and the accountability focus should include cost-effective ways of achieving the purpose, part of which would involve delivering best value and thus require partnership working between different agencies.

The Group accepted the inherent difficulty of defining a single role/purpose of the police who are the first and last resort in most circumstances that require an immediate response. It accepted that inevitably the purpose of the public police would remain broad, postulating that an ideal situation might be that emergency services are restructured in such a way that when a member of the public makes a call, the nearest service responds. Ultimately, however, policing needs to be accessible and transparent.

Finally, the Group considered accountability and governance in health and social care, noting the following features:

- Healthcare is the responsibility of Westminster and devolved administrations (not local government).
- It is a highly complex and closely regulated environment similar to policing.
- The medical profession also has a political influence and can affect discourses (for instance junior doctors' strikes).
- Social care is the responsibility of the local government and is funded by both the public and private sectors.
- Accountability generally means answerability to external organisations both horizontally and vertically. Governance is more about internal processes and procedures but also includes internal accountability (Wakefield and Fleming, 2009) for things such as financial probity and administrative regularity.

One central feature in the comparative context of health and social care was the important role for lay people and it was noted that patients have a right to be involved in discussions affecting clinical care. For example, the Scottish Medicines Consortium includes lay people who serve on their committees. While the police engage with communities often it is not for the purposes of operational decision-making and the group

were clear that this needed to change, accepting as it did that lay people are well equipped to ask questions about operational decision making just as they are about medical treatment and intervention. The Group queried but remained undecided as to whether true accountability is possible without sanctions.

They were clear however that ombudsmen should come from a lay, non-professional background with access to expert advice to focus on the substance decisions.

Other cross-sectoral similarities were seen in staffing matters such as low morale owing to austerity and capacity, the evidence-based correlation between public satisfaction and job satisfaction and the need for significant steps to be taken to increase the involvement of staff in partnerships.

Lines of accountability – vertical and horizontal – were considered thus:

- Electoral: Ministers and councillors are accountable through the electorate.
- Scrutiny: Health and Care Scrutiny Committees, public scrutiny in parliament, local authorities, audit bodies, ombudsmen, user bodies and community health wards.
- Managerial: Performance management and key performance indicators.
- Contractual: Commissioning and monitoring between public bodies and the independent sector.
- Regulation: Standards-based inspections with or without powers of enforcement.

The Group stressed the importance of highlighting examples of successful intervention and acknowledged the tests of these accountability mechanisms to be:

- What are the processes of external-internal and horizontal-vertical accountability?
- What role should the non-executives play? What is the proper role for lay people?
- Is the focus on improvement?

At the same time, expectations should be defined in advance and linked to outcomes. Close staff engagement helps to promote effectiveness and sustainability and avoid perverse, defensive behaviour, while oversight should be manifestly constructive.



# The Principles

## A. General principles

### **Principle 1: Universality – all policing must be accountable**

The Group began the compilation of the Principles by agreeing the need for universality. For policing to be truly accountable the Principles ought to be evident across the whole spectrum of policing activity including statutory undertakers having national policing functions (such as British Transport Police and the Civil Nuclear Constabulary), national agencies like the National Crime Agency and also the regulators and auditors of those bodies such as His Majesty's Inspectorate of Constabulary and Fire & Rescue Services. It was thought that these different agencies are competing with each other in various jurisdictions and there are no clear lines of accountability between what Loader calls Policing Above Government, Below Government and Beyond Government (Loader, 2000). It was recognised that the mechanisms for accountability – particularly local accountability – would be more complex than those envisaged for conventional geographically-defined police services. However, the importance of clarity in articulation of policy, particularly in terms of the nature and scope of national agencies, was critical if complete accountability of policing was to be achieved.

The distinction between the lines and levers of accountability as between the police and their governance bodies (police authorities, board, elected commissioners etc.) and those operated by independent police complaints bodies (IPCB) such as ombudsmen or complaints commissioners was noted. For example, in the latter the requirements for other principles such as independence (infra) are more acute. However, the Principle of universality provides that all relevant manifestations of policing should be potentially within the jurisdictional reach of the relevant IPCB. This Principle is needed if the others are not to be circumvented by off-shoring policing functions and putting the decision makers and actors beyond the ordinary levers of accountability. Universality therefore extends the Principles' applicability to those carrying out policing activities under contract. This element is entirely consistent with the development of legislation, for example, around the law in England and Wales needed to bring the conduct of non-police employees such as private custody staff under the jurisdiction of the Independent Police Complaints Commission (now the Independent Office for Police Conduct);<sup>48</sup> it also reflects the

<sup>48</sup> The Independent Police Complaints Commission (2015) *Complaints and Misconduct* (Contractors) Regulations (SI 41/22015).

approach of the Human Rights Act 1988 which extends the justiciability of protected rights and freedoms to the private delivery of some public services<sup>49</sup> and which is, the group believed, particularly important as policing treads a seemingly 'inexorable path' (Dupont, 2003: 43) towards 'privatisation' (Jones and Newburn, 1998; Mulone, 2016).

In inculcating this Principle, the positive benefits of scrutiny and oversight need to be highlighted. Asymmetries in accountability of national level security and enforcement bodies and the police means there is a governance and accountability gap and the Group believed that comprehensive principles for accountability can help establish a common ethos that is currently absent.

The Principle also extends to technical developments such as the use of security drones, body worn cameras and the consequences of decisions to deploy them as they bring new interfaces of accountability (Doyle, 2003).

### **Principle 2: Independence**

The Principle of independence raises questions of governance, oversight and operational discretion. Independence of the police from other State agencies and from political interference is a recurrent theme throughout the international legal framework. The Group were clear that those bodies responsible for holding the police to account must be sufficiently distinct from policing to enhance public trust and confidence in them. Independence is also a key feature of some of the other Principles, particularly those relating to the regulation of conduct and also the legal safeguards around operational discretion.

The Group agreed that governance and accountability should not be reliant solely on mutual trust and confidence, believing that formal mechanisms should be strong enough to withstand over-reliance on relationships and personalities (particularly relevant in models such as the police and crime commissioners in England and Wales where the elected body and the chief constable are corporations sole.<sup>50</sup> Where police complaints and misconduct matters are engaged the existence of an Independent Police Complaints Body (IPCB)<sup>51</sup> was felt to be essential.

<sup>49</sup> s.6 which extends the Act's provisions to persons 'certain of whose functions are of a public nature' – see *Yarls Wood Immigration Ltd. & Ors v Bedfordshire Police Authority* [2009] EWCA Civ 1110.

<sup>50</sup> Police Reform and Social Responsibility Act 2011, s.1 and sched 2.

<sup>51</sup> The definition used in the Opinion of the European Human Rights Commissioner Concerning Independent and Effective Determination of Complaints Against the Police 12 March 2009 Comm DH (2009)4.

In terms of governance arrangements, the Group saw tension arising in relation to the appointments of board members and queried the extent to which these ought to be ministerial or parliamentary appointments. It was noted how, in Northern Ireland, the Republic of Ireland and Scotland board members on police authorities are appointed by ministers while the chair is also likely to have their own preferences ‘rubber stamped’ by the Minister. While this element of sign-off is a necessary consequence of wider Responsible, Accountable, Consulted and Informed<sup>52</sup> models applicable within public bodies generally, there are questions on the effect that this link with the executive administration may have on the public perception of independence. Moreover, where the accountability is exercised by an IPCB, the recommended model is for each police ombudsman or complaints commissioner to be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services.<sup>53</sup> More specifically, if a board member has a specialist background, there is a risk of generating tensions between the board and the executive, particularly if the board members become intrusive in the day-to-day functioning of the executive; people bringing their own perspectives can skew the governance and oversight. Further, in terms of board composition, it was agreed that members with political knowledge or ex-police officers may be justified in certain cases where they complement the knowledge requirements of a given area but whether it is reasonable – or even possible – to expect people who are inherently partial or partisan to act impartially while serving on a board was left undetermined.

Insofar as democratic governance arrangements are concerned, the Group noted that they can offer direct accountability through, for example, elected police and crime commissioners through the electoral process although there is a risk of partisan politicisation (see Table 1). It is important to note the distinction between democratic accountability and simple electoral accountability and the Group noted the fact that, while in the initial police and crime commissioner (PCC) elections in England and Wales in 2012 the second preference<sup>54</sup> vote mostly went to independent

candidates not representing a particular political persuasion, these were all but wiped out in the second election cycle some three years later.<sup>55</sup>

Although the Police Reform and Social Responsibility Act 2011 and secondary legislation<sup>56</sup> expressly provides for the locally elected policing bodies and their constabularies to be separate legal entities with distinct areas of responsibility, the local bodies rely on their police forces for functional staples such as ICT systems, HR and payroll with many sharing offices in the police headquarters. The Group noted how such dependencies in an IPCB would offend fatally against this Principle but, even after considering cross-sectoral accountability, did not go so far as some in suggesting a model oversight agency to ensure accountability across all public services by use of investigative, executive and prosecutorial powers (Prenzler and Faulkner, 2010: 259).

### Principle 3: Compellability

It is axiomatic that, if an accountability body is to discharge its functions effectively it will need access to the relevant information, datasets, individuals and other sources of evidence; it will also need to have some original (as opposed to derivative) legal authority to act. The Group agreed that uncontested policing can lead to insufficient governance and accountability and increase the likelihood of scandal.

Therefore, any governance and accountability regime must have the capacity, capability, authority and opportunity to interrupt, interrogate and, if necessary, compel. Such a participative approach raised further questions as to the composition of the participants, their backgrounds and skills but the Group were clear that there needs to be an element of compellability in any effective oversight arrangements.

While there are practical arrangements in place for governance bodies such as police authorities and PCCs to require access to policing information these will necessarily be subject to wider considerations of public interest, operational sensitivity and the legitimate expectations of those providing the original data. There are also clear powers available to oversight bodies such as the Independent Office for Police Conduct (IOPC), the Police Investigations and Review Commissioner (PIRC) and the Office of the Police Ombudsman for Northern Ireland by which to obtain – if necessary by

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52 An accepted model whereby roles are identified within a decision-making process as being Responsible, Accountable, Consulted, Informed.

53 Opinion of the Human Rights Commissioner loc cit.

54 The elections used a preferential voting system.

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55 The electoral response to mainstream parties post Brexit will be interesting in May 2020 when the PCCs are elected for a third time.

56 See the Policing Protocol Order 2011 (SI 2011/2744).

compulsion – relevant information from the police. However, compellability ought to be a measure of last resort, the need for which arises in inverse proportion to the existence of transparency – one of the hallmarks of true accountability (Principle 8).

#### Principle 4: Enforceability and redress

Accountability bodies must be able to effect change which means they require powers of redress. This element of accountability was neatly described by Congressman Kucinich in the context of the Patten Commission's report as "something that tolerates the calling of where the system falls short".<sup>57</sup>

Given the different types of policing accountability that might arise – local and central (see Godfrey, 2007) – together with the different types of body exercising the relevant functions, the Group believed that it was appropriate for different oversight bodies to have different powers. For example, a PCC in England and Wales has statutory powers to suspend the chief constable and even to require them to retire or resign in the interests of efficiency and effectiveness. Such powers are consistent with the function of quasi-employer that sits with these local elected policing bodies and they are subject both to the professional opinion of HMICFRS and the supervision of the High Court which has been prepared to intervene in cases where the elected official has acted unlawfully.<sup>58</sup> There are also powers to bring the relevant chief officer before a misconduct hearing and to implement any sanctions determined by the panel. These are very different from the investigative powers of IPCBs which are enacted in the various jurisdictions under consideration in order to meet the requirements of the international legal framework and, in particular, those elements that are essential components of 'effective investigation' (see Conduct).

The Group saw this Principle as bringing with it a correlative need for capacity and autonomy, partly on the basis of independence as set out supra, but also as a result of pragmatism. In order to be equipped to pursue enforcement and redress, the relevant accountability body must have adequate training to enhance its capability, supported by sufficient capacity to undertake its functions; it must also offer procedural

justice (see Sunshine and Tyler, 2003). The Group believed that current arrangements tend towards too great a focus on national strategy and not enough attention on training and capacity of local bodies and observed that there is very limited resource deployment locally under this heading.

#### Principle 5: Legality

Much of the foregoing addresses this fundamental Principle. The policing organisations considered here are creatures of the law and must operate within the legal frameworks discussed in the introduction. The European Code of Police Ethics identifies how this principle flows in two directions:<sup>59</sup>

*"The police objective of upholding the rule of law encompasses two distinct but interrelated duties: the duty of upholding the properly enacted and constituted law of the state, including securing a general condition of public tranquillity, and the related duty of keeping strictly within prescribed powers, abstaining from arbitrary action and respecting the individual rights and freedoms of members of the public."*

Overlapping with and underpinning many of the other Principles, this first aspect of the legality principle is focused partly on performance, effectiveness and efficiency. As such it is more allied with what has previously been discussed as governance-type accountability. In actions against the relevant policing bodies – including the governance bodies if appropriate – there may be a range of legal redress options available under the international framework and its domestic enactments under this principle – common topical examples would include alleged cases of unlawful interference with a citizen's right to private life by the police misusing CCTV, collating and retaining surveillance data, accessing and processing social media files etc.

The Code goes on to identify the second aspect of legality:

*"Above all, the rule of law requires that those who make, adjudicate and apply the law should be subject to that same law. In other words, the police should be subject to the self-same law that they apply and uphold. It is the mark of the police in a fully-fledged and mature democracy that they bind and subject themselves to the very law that they are pledged to uphold."*

This part is concerned primarily with the areas engaged by oversight and regulation, those falling within the jurisdiction of IPCB and the Principles under Conduct

57 Open Meeting before the House of Representatives subcommittee on international operations and human rights Friday 24 Sept 1999 Serial No. 106-103, p.33.

58 R (on the application of Rhodes) v Police and Crime Commissioner for Lincolnshire [2013] EWHC 1009 (Admin); R (on the application of Crompton) v Police and Crime Commissioner for South Yorkshire [2017] EWHC 1349 (Admin).

59 See <<https://polis.osce.org>> p.18.



(infra). It is important to note that there is, within the jurisdictions considered by the Group, no equivalent of ‘Law Enforcement Officers’ Bills of Rights’ such as exist in a number of States in the USA (Keenan and Walker, 2005) and the law applies to police personnel in the same way as it does to anyone else. In short this Principle apprehends the levels of accountability (democratic, personal and criminal) identified by the House of Representatives subcommittee on international operations and human rights in 1999<sup>60</sup> which leads neatly into the next Section.

## B. Conduct

*“The police role in upholding and safeguarding the rule of law is so important that the condition of a democracy can often be determined just by examining the conduct of its police.”<sup>61</sup>*

This is a powerful excerpt. The conduct of the police – and the extent to which that conduct is overseen, investigated and its actors answerable – is probably the touchstone of accountability in the mind of the citizen. It was the experience of the Group that people do not complain if they are insufficiently aware of what merits a legitimate complaint or if they believe that to make such a complaint is futile. To this end the international legal framework identifies five principles of effective investigation of complaints against the police<sup>62</sup> (see Smith, 2010):

1. Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence.
2. Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible.
3. Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law.
4. Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability.

5. Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

### Principle 6: Constructiveness

Conduct is often the first point of reference for internal and external audiences when considering principles for policing accountability, with the focus invariably fixing on the complaints, powers-and-sanctions end of the continuum. The Group, however, believed that the pre-eminent feature of an effective accountability arrangement would be its constructiveness. All levels of accountability need to be constructive and there needs to be clarity of expectation on all sides (see Principle 7). The Group believed that this constructiveness needed to take account of the lessons from other regulated sectors, for example making it apparent why people should complain, why the time and effort were worth it and assigning sufficient resources to complaints (Morgan, 2016). It was felt that the Principles should help enhance confidence in policing, increasing engagement with the criminal justice system and encouraging people to participate on the basis of trust, trust that someone will listen, that something will be done and that something will change. The Group queried whether the responsibility for conduct matters should therefore sit within the same functional area that deals with compliments and recognition. In any event it was clear that policing accountability should be enabling rather than disabling.

This approach is reflective of the European Police Oversight Principles<sup>63</sup> drafted after the European Partners Against Corruption Annual Conference in Budapest, Hungary in 2006 by a working group to develop minimum standards for organisations involved in the independent oversight of policing. While the European principles’ primary frame of reference is of that element of accountability concerned with effective mechanisms for addressing cases of alleged misconduct, they seek generally to promote the highest standards in policing and bring about:<sup>64</sup>

- greater public confidence in policing.

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60 loc cit.

61 European Code of Police Ethics see <<https://polis.osce.org>> p.18.

62 Human Rights Commissioner’s opinion concerning independent and effective determination of complaints against the police 2009.

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63 The European Police Oversight Principles <<https://igp.gouvernement.lu/dam-assets/service/attributions/police-oversight-principles.pdf>>.

64 Para 1.1.2.

- effective redress for those who are victims of police misconduct.
- greater openness and understanding of policing by citizens.
- greater respect for the law, policing and, as a consequence, reductions in criminality and disorder.

## Principle 7: Clarity

For accountability to be effective the Group believed it required clarity about many things, starting with whose demands are being addressed i.e., the public, media, victims, families, politicians, etc., and addressing the question “accountable to whom?” (Adams, 2010: 234). The Group also believed that accountability systems and structures needed to be sufficiently comprehensive to address and balance different levels of demands from different stakeholders.

As has already been seen, accountability means different things to different people in different settings. The Group noted “a conflation of confusion between performance management and accountability”. Whether described as governance, oversight or regulation, the facets of accountability and the extent to which they constructively balance democratic answerability against the necessary direction-and-control freedoms of chief officers (Waddington, 1999) need to be clear – to everyone.

More specifically, there is a need for clarity in the notion of police ‘operational independence’ and the remit of accountability bodies. Recently the High Court in England and Wales has made it clear that, not only are locally elected policing bodies permitted to hold their chief officers to account over operational policing matters on behalf of their constituencies, they are obliged to do so.<sup>65</sup> Debates about the legal parameters of operational independence are unlikely to provide the clarity required for accountability purposes and it seems much more practicable to adopt the approach of the Patten Commission<sup>66</sup> by focusing on operational responsibility and to explode once and for all the myth that the police are accountable solely to the courts which has its roots more in folklore than common law (see Stenning, 2011).

From a regulatory perspective the difference between a self-regulatory framework and a statutory regulatory framework needs to be defined clearly and the Principles should help create a shared clarity of understanding between public services about what accountability means.

Reflecting on the experience of other sectors the Group recognised that the growing emphasis on wellbeing and security within policing can detract from the core responsibilities and that clarity in identifying the respective roles and responsibilities of all the different stakeholders was a critical aspect of accountability.

## Principle 8: Transparency

A cornerstone of responsive and responsible public service in democratic societies, this Principle was regarded by the Group as a *sine qua non* for accountable policing. Transparency includes the availability and ready accessibility of relevant information and datasets. In some ways it is the corollary of Principle 3 (Compellability). A good example of these two Principles in action can be seen in the report setting out a future for An Garda Síochána.<sup>67</sup> That report highlights how the Minister for Justice and Equality receives a large number of Parliamentary Questions about the police, often seeking substantial amounts of detailed information. The report notes that, “while it is right and proper that the Minister is questioned in the Oireachtas [Legislature] on matters relevant to the Department’s direct responsibilities”, the use of this mechanism to elicit routine information needed for holding the police to account is inefficient and unnecessary and that such information should be readily available directly from the police without resort to parliamentary procedures.<sup>68</sup>

In describing this Principle the Group believed that there had been a discernible “declining faith in experts, shifting trends in the politics of crime coupled with a growing cynicism about politicians and elites”. This had led to low and unrepresentative attendance at police-public consultation forums (see Participation) but also a generally low level of available information. In contradistinction to their counterparts in the USA, policing bodies in the UK have been reluctant to share datasets such as street level crime mapping (Sampson and Kinnear, 2010) and have an unedifying history

65 R (OTAO) Crompton loc cit.

66 Patten, C. (2000) *Report of The Independent Commission on Policing for Northern Ireland* loc cit. para 6.19-6.20.

67 *The Future of Policing in Ireland* September 2018 loc cit.

68 pp 40-41 <<http://www.policereform.ie>>.

in relation to data processing.<sup>69</sup> While there is some evidence of this trend being incrementally reversed, this has been partly in response to legislation expressly requiring publication of governance data such as expenditure, contracts and personal interests and partly as a result of litigation by citizens.

Plainly there are aspects of policing where confidentiality is required, so too are there similar situations in the areas of health, education and social care and it was thought that there ought to be a presumption (rebuttable) in favour of disclosure. The Group also noted how disclosure can lead to a series of events and changes within policing such as stop and search practice (see e.g. Murray, 2014) that can aid governance and accountability.

It was recognised that performance data are acutely context dependent and simply being transparent about data without more interpretation would often not meet the rationale of this Principle. Changing the context can modify the criteria for interpreting and utilising datasets, for example management information, and there are many dependent variables when dealing with data that straddle the criminal justice system.

Information solely based around for example crime statistics is dominated by the idiosyncrasies of governmental 'counting rules' and does not always account for or reflect 'actual crime rates' or take account of subtleties such as the differential impact of certain types of crime (e.g. vehicle theft) in rural and urban settings. The Group affirmed that holding accountability meetings in public and making reports available was not enough; transparency requires a clear understanding of what is being scrutinised. The absence of global transparency in this way can lead to the perception of 'smoke and mirrors' sleight of hand by the police (Coliandris, Rogers and Gravelle, 2011:204) which undermines public confidence and participation.

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69 See S. & Marper v. United Kingdom [2008] ECHR 1581 (police retention of DNA samples of individuals arrested but later acquitted); R (on the application of GC & C) v. The Commissioner of Police of the Metropolis [2011] UKSC 21 (successful challenge of policy indefinite retention of biometric samples); *Caught red handed: Why we can't count on police recorded crime statistics Report of the Public Administration Select Committee 13th session 2013/14 HC 760*, The Stationery Office, London; *Report of HM Inspector of Constabulary into the reliability of crime recording data created and maintained by the police forces of England and Wales May 2014* <<http://www.justiceinspectorates.gov.uk/hmic/programmes/crime-data-integrity/>>; See also <<http://www.telegraph.co.uk/news/uknews/crime/11117598/Criminals-could-appeal-after-Home-Office-admits-potentially-misleading-DNA-evidence-presented-to-juries.html>>.

## C. Participation

In terms of governance bodies, it is difficult to achieve the right balance between experts and democratically elected representatives with the perennial challenge that it is always the 'usual suspects' with similar experiences, age and membership who are elected or appointed. Similarly, in a regulatory or oversight sense, there is a risk of 'agency capture' where those regulating come from the same background as those who are being regulated, producing a tendency to take a sympathetic approach (Ngwu, 2016).

This homogeneity does nothing to reflect pluralism and diversity, can reinforce 'groupthink' (Janis, 1982) and undermines public confidence. Mirroring Principle 2, the Principles that follow endeavour to take account of these tensions and challenges.

### Principle 9: Pluralism and multi-level participation

If police accountability is for the public good, then the public has to be engaged throughout the accountability processes. This truism was put at the heart of the following Principles by the Group; it is reinforced by the wider utilitarian observation within the European Code of Police Ethics: that policing is largely carried out in close cooperation with the public and police efficiency is dependent on public support.<sup>70</sup> This indivisibility between the police and their citizens is, of course, a quintessential ingredient of the policing models in the jurisdictions considered by the Group (Lustgarten, 1986; Uglow, 1988; Morgan, 1989a; Reiner, 1993; Oliver, 1997; Mawby, 1999; Loader, 2016)

There was recognition however that a degree of expertise was needed, supported by a skills matrix that highlights the most important skills and expertise; the institutional design of the relevant accountability body should reflect this.

Having regard to other sectors the Group considered how medicines consortia included lay people who serve on their committees. While noting that the police frequently engage with communities, the Group recognised that this was not for the purposes of operational decision-making and were clear that this needed to change, accepting as they did that lay people are well equipped to ask fundamental questions about operational decision making just as they are about medical treatment and intervention.

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70 p23.

Conventional public participation through surveys and local civil society infrastructure was found to be limited and not representative, either of the prevailing concerns within communities or of the people living with them, falling a long way short of the powerful concept of “Citizen Oversight” (Walker, 2000).

It was agreed that public consultation could be significantly improved through deliberative approaches, and through the use of digital and social media, although it was acknowledged that some barriers to public participation in policing policy were probably permanent. The difficulties in involving marginalised groups (Jones and Newburn, 2001) and those who have come to the UK and Ireland from jurisdictions where the relationship with the police is fundamentally different were identified.

The Group also identified a mismatch between the rhetoric of wanting local people to be ‘involved in’ decision making while, in reality, highly centralised processes and bodies were dominant concluding that, if local input is being promised, local people need to be listened to and recognising the ‘catharsis of co – production’ and its power in generating a community voice. However, the Group accepted that public participation and consultation needs to yield concrete results, and that too often the police priorities remain the same even after consultation. Police officers and staff engaged in public consultation also need to be trained on how to hold a meeting, conduct consultation and give confidence to the public rather than dominating the agenda. That agenda, so approached, should evolve into the identification of community needs rather than priorities and true consultation can empower local citizens and allow local communities to take more ownership of their policing.

### **Principle 10: ‘Recognition’ and ‘reason’**

Building on elements in Principles 2 (Independence) 3 (Compellability) and 4 (Transparency) and the Group’s determination that uncontested policing is unaccountable policing, this Principle aims to facilitate ‘participatory space’ and inculcate authentic public scrutiny (per Loader and Walker<sup>71</sup>). As such it raised further questions as to the composition of the participants, their backgrounds and skills. The strong element of “agency capture” (supra) in current police governance arrangements was noted. In particular the fact that PIRC and HMICS both consist of experienced

ex-police officers. The Scottish Police Authority is the only truly ‘civilian’ body but it too has ex-police officers serving on its board. It was noted that the scrutiny reviews carried out by HMICS carried more weight and influence in comparison to the reviews carried out by the SPA. While the Police Investigations and Review Commissioner (PIRC) were undergoing a process to train people with a non-policing background to undertake investigations, it was accepted that this was a gradual process. It was also accepted that, to a certain extent, the efficacy of the regulatory or oversight arrangements required the ‘spine’ to be provided by those with policing knowledge and expertise as most investigations involve an understanding of the standard operating procedures (SOPs) and internal policies and regulations. The relevant legislation allows for a secondment of serving police officers to PIRC which it was noted can cause a potential conflict of interest and perception of bias, offending against Principle 2. The role of the Lord Advocate’s Office as having complete oversight of prosecutions and investigations was recognised as adding an important extra dimension to policing oversight. By contrast the arrangements for the Police Service of Northern Ireland (PSNI) offer independent oversight through a combination of political and independent members and at the time of writing consideration was being given to recruiting former police officers from other countries to bring in policing expertise. The Group noted how agency capture also carries a risk of an oversight/regulatory body replicating police culture.

Nevertheless, the Group were of the view that agency capture can work if the process of investigation and oversight is transparent and that correct procedures are followed. In the health sector there is an element of lay involvement and at least two members of the public are involved at every stage of an inspection or investigation. However there needs to be a balance between experts and lay people and frameworks should be developed following consultation.

Another facet of this Principle is responsiveness; service delivery needs to reflect the views of the public thus:

- The Principles need to be contextual and need to be adapted and applied in different contexts to reflect the dynamic nature of policing.
- How people react to inspection and reports needs to be reviewed.
- Regulators need to be properly trained. Mere disclosure of information to fulfil a legal obligation

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71 loc cit.



is not sufficient – the regulators need to be able to understand the information that is being presented.

- At the moment the different agencies within the criminal justice system seem to be working in silos; there needs to be an integrated approach as that is what the taxpayers are concerned with. Boundaries lead to gaps between problem identification and problem resolution. In Northern Ireland, the Criminal Justice System Inspection provides that holistic oversight.
- There needs to be proactive regulation and clear rules of engagement between the police and the regulatory body with complete transparency.

## D. Implementation and evaluation

The Group concluded that deliberations of oversight bodies need to be informed by robust evidence and rigorous, independent evaluation of policing – in what is really an extension of evidence-based policing (Sherman, 1998) and that policing must show that it proactively seeks learning opportunities in order to improve.

### Principle 11: Commit to robust evidence and independent evaluation

The Group believed that, for it to be effective and reliable, any evaluation needs to be an independent analysis of ‘what works’ and ‘what doesn’t’. This allows an assessment of the extent to which policies, practices and these Principles themselves have been implemented and whether this has led to expected or unanticipated outcomes. It will also allow assessment of the influence of context on the effectiveness of the Principles, for example, in relation to the impact of pre-existing institutional structures, norms, values and relationships. An example would be an evaluation of the effect of these Principles on public confidence (Goldsmith, 1991; Reiner, 1991) and on the answerability and responsiveness of complaints outcomes (Maguire, 1991).

The Group identified that this Principle encouraged greater emphasis on insight and learning rather than competition and performance, recognising that there was an urgent need to de-conflate performance management from accountability generally but

particularly under this head. While performance review is about choosing what to do with resources, accountability review is about explaining and justifying those choices. It was also consonant with the wider view that this required review not inspection and that all accountability reports should be shorn of adjectival biases, being based solely on evidenced fact.

In taking forward this Principle the political risk of an evidence-driven approach and the barriers to independent evaluation in public bodies generally should be noted (Rutter, 2012), such barriers include:

- Timeliness of research.
- Suitability of issues to rigorous testing and policies often not being designed in a way that allows proper evaluation.
- Lack of usable data.

But the most stubborn areas of resistance might be the ‘demand barriers’ (Rutter, 2012<sup>72</sup>) emanating from both incentives and culture among senior decision-makers.

### Principle 12: Be a learning organisation

If a ‘cycle of enlightenment’ with regard to the Principles is to be attained then both oversight/regulatory bodies and the police themselves need to develop the skills to create, acquire and transfer knowledge, not just inter se but across and between partnerships and collaborations. The relevant organisations also need to be prepared to modify their behaviour in response to the relevant feedback, to reflect what has become known in light of the new evidence and to use these assets of new knowledge and insight to improve outcomes. This Principle requires embedded formal systems to ensure that lessons are learnt from incidents and errors systematically rather than from ad hoc reviews of single instances that attract critical attention.

The Group noted that being a learning organisation complements and reinforces Principle 6 and the corollary – being a closed and uninquiring organisation – would damage public confidence. The Group also took account of the different approaches in other public services, particularly Defence in which ‘lessons’ are sub-divided into stimulation, identification and implementation (see Lloyd, 2005).

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72 *ibid.*

# Section 3: How accountable are your police? A self-audit template

How accountable are your police? A self-audit template rather than offering a recipe book of ‘ingredients of accountability’, the Principles provide a methodology by which policing bodies can self-audit, testing their current arrangements against a set of descriptors allowing external assessment. Taking the UN Universal Declaration of Human Rights as their point of reference the Principles recognise the legal instruments that have set the standards for international police accountability and set out the criteria against which any policing body aspiring to true accountability can audit itself. The

Principles therefore provide a basis for identifying and evidencing accountability, providing reputational and substantive benefits to all governance bodies whatever form they take.

The self-audit template provided below is organised around the 12 Principles. For each Principle it includes a set of orientating questions, a section for a self-assessment narrative and grading (Red – not achieving the Principle; Amber – partially achieving the Principle; Green – fully achieving the Principle), and then a section for an independent reviewer to offer their feedback and grading.

<b>Principle 1: Universality</b>			
Orientating questions: Are all police accountable for all their actions? Consider especially domestic police acting outwith the jurisdiction and police operating domestically from outwith the jurisdiction, e.g. seconded or from bodies such as the National Crime Agency. Is there a clear understanding of the interaction of the police with other public bodies; the private sector; and third sector organisations? What are the accountability bodies for these interlinked public, private and third sector bodies? What processes ensure mutual sharing of relevant accountability findings?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
<b>Principle 2: Independence</b>			
Orientating questions: Is the oversight body functionally independent? (Does it control its own resources e.g. time, finance)? Can it initiate investigations? For internal accountability, are the persons responsible for accountability entirely separate from the person being held to account?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
<b>Principle 3: Compellability</b>			
Orientating questions: May the oversight body compel the police to provide information, whether witnesses and/or evidence? If not, does another element in the accountability ecosystem provide relevant compellability? If not, is this exception in line with best practice and relevant laws?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
<b>Principle 4: Enforceability and redress</b>			
Orientating questions: In what ways can the oversight body enforce its recommendations? Can another body in the accountability ecosystem enforce the recommendations? How? Consider the appropriateness of the type of enforceability in relation to the body's structure and standing.			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G

<b>Principle 5: Legality</b>			
Orientating questions: Is the oversight body and its place in the accountability ecosystem established by law, with major responsibilities clearly defined? Are there clear, legal frameworks governing police actions, in relation to police powers and joint operations/secondments to other forces or bodies?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
<b>Principle 6: Constructiveness</b>			
Orientating questions: What processes ensure the accountability process is a dialogue between police and oversight bodies? What processes help ensure that recommendations/requirements are precise and achievable? What processes ensure that recommendations/requirements focus on improving culture rather than on individual decisions?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
<b>Principle 7: Clarity</b>			
Orientating questions: Is there clarity regarding the roles of all oversight bodies in the ecosystem? Justify any repetition. Is there clarity regarding the powers and duties of the oversight bodies? Is there clarity of expression in reports? Is the data upon which recommendations/requirements are based of appropriate quality?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
<b>Principle 8: Transparency</b>			
Orientating questions: Are the oversight bodies' findings and workings public? Are there clear, public justifications for any closed processes? Are there procedures to such proceedings that occur only when necessary? Is the default position of the police to routinely publish full, usable data on their performance?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
<b>Principle 9: Pluralism and multi-level participation</b>			
Orientating questions: How does the oversight body ensure democratic legitimacy? (E.g. public consultations; meetings etc.) What processes ensure participation from vulnerable/excluded groups? How are local and national views balanced? How does the oversight body ensure participation from experts? What processes ensure a balance between responsiveness to the public and other institutions?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
<b>Principle 10: 'Recognition' and 'reason'</b>			
Orientating questions: What processes foster routine democratic deliberation among those affected by policing actions and security problems? Can these be triggered by the relevant populations? What processes ensure that claims are challenged, scrutinised with reference to evidence, defended and/or revised?			
Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G

**Principle 11: Commit to robust evidence and independent evaluation**

Orientating question: Do rigorous, independent evaluations form the basis of decision-making? How are decisions and practices evaluated? How are the evaluations fed back into the accountability process?

Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
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**Principle 12: Be a learning organisation**

Orientating question: How does the organisation ensure that evaluations are part of a continuous cycle of knowledge production and learning? Consider internal skills/training, processes for adopting and adapting to new knowledge and how this knowledge is shared with other institutions and the public.

Narrative self-assessment	Self – Assessment R-A-G	Reviewer Feedback	Reviewer Assessment R-A-G
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