



MEDIATION AND PRINCIPLES FOR ACCOUNTABLE POLICING

– A Report from Senior Fellow, Fraser Sampson (UK)

“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.”¹
– European Code of Police Ethics

This powerful excerpt sits at the heart of accountable policing. It also sits at the heart of my Fellowship work. The concept of accountability in public services covers a range of democratic responsibilities and good governance, such as legal compliance, regulatory standards, transparency of decision-making and fiscal probity. The nature of policing, including the powers and privileges it endows upon its agents and the extent to which it impacts the lives, liberties and livelihoods of the communities in which it takes place, makes accountability for police more elemental than for other public bodies. Accountability is an essential, delineating feature of policing, the limits of which validate and license the police themselves. Sensitive and complex areas such as addressing misconduct, the position of the sworn officer and the constant tension between upholding the rights of citizens with proportionality, openness and restraint are all connected to the notion of policing accountability – and all lend themselves to mediation.

Evolving from a series of workshops held in Glasgow in 2016, and with support from funding by the Scottish Universities Insight Institute, the Principles for Accountable Policing were compiled by experts from policing, accountability bodies and academia across the United Kingdom and the Republic of Ireland. As a member of the program team, I was able to research and shape the Principles and write the Explanatory Guide, both of which will be formally signed off and shared with law enforcement bodies in early 2020.

The principles have global application

The Principles for Accountable Policing have global application. Taking the UN Universal Declaration of Human Rights as their starting point, the Principles recognize the genesis of legal frameworks that have set the standards for international police accountability within all signatory States. Article 29 provides that *everyone has duties to the community in which alone the free and full development of their personality is possible*, underscoring a key element of the policing model within the UK and Ireland, namely the mutuality of accountability.

The accountability of the police to their communities is specifically underscored by the UN Code of Conduct for Law Enforcement Officials² while, in the European Union, the Code of Police Ethics³ goes further still, setting out features that should exist in any *ethical policing service*, for example, the training of officers, the conduct of suspect interviews, and the provision of assistance to victims of crime.

While these instruments and national laws can be deployed to attain legal remedies, the shortcomings of litigation (naming,

blaming and claiming) apply equally to disputes between the citizen and their law enforcement agencies (LEA). The advantages of alternative approaches to litigation (informality, flexibility, creativity) also apply.

The bottom line is that LEA accountability bodies must ultimately be able to effect change. As one congressman summarized it in the context of policing of Northern Ireland, there must be *“something that tolerates the calling of where the system falls short.”*⁴ This is not necessarily the same as simply being responsible in law. Yes, there are clear examples of how formal intervention of the courts can drive and oversee policing improvements, such as the Consent Decree between the US Government and the Los Angeles Police Dept.⁵, but such measures involve enforcement and supervision – in the case of the LAPD Decree the court’s supervision remained in place for over a decade. By contrast there are opportunities for righting wrongs, promptly and practicably, at less systemic levels, through mediation and alternative resolution. The Principles take all available measures into account.



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A. General Principles

- Principle 1:** Universality – all policing must be accountable
- Principle 2:** Independence
- Principle 3:** Compellability
- Principle 4:** Enforceability and redress
- Principle 5:** Legality

B. Conduct

- Principle 6:** Constructiveness
- Principle 7:** Clarity
- Principle 8:** Transparency

C. Participation

- Principle 9:** Pluralism and multi-level participation
- Principle 10:** ‘Recognition’ and ‘Reason’

D. Implementation and evaluation

- Principle 11:** Commit to Robust Evidence and Independent Evaluation
- Principle 12:** Be a Learning Organization

Role for Mediation/ADR

The Principles of Independence, Clarity, Multi-level Participation most clearly accommodate the mediation approach, and the general ethos of practicality and utility that mediation can offer runs throughout. A counter-argument to LEA accountability is the perennial “public interest” position, the desire for punitive action, and the risk of a “behind-closed-doors” settlement being seen as depriving the process of public transparency. As Hensler⁶ puts it so wonderfully

“...the visible presence of institutionalized and legitimized conflict, channeled productively, teaches citizens that it is not always better to compromise... sometimes great gains are to be had by peaceful contest.”

The key here is *balance* and the Principles provide for all viewpoints. True, the resolution of grievances *in camera* may operate against Hensler’s “public spectacle of civil litigation.” However, an agreed public statement and a sworn commitment to learning and improvement are often essential remedies for true resolution and closure between citizens and their LEAs, remedies unavailable in the amphitheatre of gladiatorial litigation.

A commitment to independent evaluation of actions, policies and practices and the subsequent learning that is encouraged by mediation can contribute uniquely to a “cycle of enlightenment” in which leaders learn how stakeholders make sense of their situation and then use this knowledge to “teach,” to modify and grow. Adopting the ethos of mediation/ADR into policing governance can achieve forward momentum, particularly for the resolution of community grievances by

which the continuation or restoration of positive relationships is more likely to be achieved than by litigation.

The Principles for Accountable Policing offer a blueprint for democratic policing anywhere in the world. Running through them is a seam of meditative philosophy that I have espoused since applying to become a Weinstein Fellow in 2009. I am keen to work with other Fellows interested in embedding them throughout our global community.

By Fraser Sampson, Senior Fellow – United Kingdom, Weinstein International Foundation



Senior Fellow Fraser Sampson has 40 years’ experience working in the criminal justice system. He has practiced, written, and taught at local, national and international levels in the areas of policing law, dispute mediation and governance. In 2018, he was awarded an honorary professorship at Sheffield Hallam University in 2018 and is currently working within the University’s Centre for Excellence in Terrorism, Resilience, Intelligence & Organized Crime Research (CENTRIC).

¹European Code of Police Ethics at p.18

²General Assembly resolution 34/169 of 17 December 1979

³Adopted by the European Council in September 2001

⁴Congressman Kucinich Open Meeting before the House of Representatives sub committee on international operations and human rights Friday 24 Sept 1999 Serial No. 106-103, p.33

⁵United States vs City of Los Angeles and Ors 2001, US District Court for the Central District of California

⁶Hensler, D. R., (2003) “Our Courts, Ourselves: How the Alternative Dispute Resolution Movement is Reshaping Our Legal System” 108 Penn. St. L. Rev. 165