FREEDOM OF INFORMATION REQUEST

Please note the text of this request has been reproduced exactly as received.

FOI Reference number: FOI 56/2023

Date: 7 February 2024

Request:

May I please be provided with a copy of the "paper" referred to at a meeting of the Resources Committee on the 30th July 2020 titled

"Implications of the McKee & Others v The Charity Commission for Northern Ireland".

Answer:

Please find attached a copy of the document requested. Where redactions have been made this is because the following exemptions apply.

- **Section 36 Prejudice to effective conduct of public affairs.**

  The specific sub sections being relied on are Section 36 (2) (b) (i) and (ii), and Section 36 (2) (c) of the Freedom of Information Act 2000.

  Section 36 (2) (b) states:

  Information to which this section applies is exempt information if in the reasonable opinion of a qualified person disclosure of the information under this Act –

  Would, or would be likely to inhibit –
  (i) The free and frank provision of advice, or
  (ii) The free and frank exchange of views for the purposes of deliberation.

  Section 36 (2) (c) states:

  Information to which this section applies is exempt information if in the reasonable opinion of a qualified person disclosure of the information under this Act –
  'would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'

  The information, within the scope of your request, has been shown to the 'Qualified Person' who for the Board is the Acting Chief Executive. The 'Qualified Person's' opinion is that the exemptions at Section 36 (2) (b) (i) and (ii) and Section 36 (2) (c) are engaged.

As this exemption is a qualified exemption the Board has gone on to carry out a public interest test to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Having conducted the public interest test it is felt that the public interest in engaging the exemption to withhold the information does outweigh the arguments towards disclosure at this point in time. A copy of the public interest test is attached at Annex A.

- **Section 40 (2) Third Party Personal Information**

  This personal information is exempt from disclosure to you under section 40(2) by virtue of section 40(3)(a)(i) of the FOIA.

  Section 40(2) allows a public authority to withhold information from a response to a request for information under the FOIA when the information requested is personal information relating to someone other than the requester and its disclosure would contravene one of the data protection principles.

  The first data protection principle requires personal data to be processed fairly and lawfully. This personal data is exempt from disclosure under section 40(2) of the FOIA as, in our view, it would be unfair to provide it to you, and therefore disclosure would be in contravention of the first principle of the UK General Data Protection Regulation. This is an absolute exemption and there is no requirement to conduct a public interest test.

If you have queries about this request or the decision, please contact the Board quoting the reference number above. If you are unhappy with the service you have received and wish to make a complaint or request a review you should contact the Board's Chief Executive -

Via Email: foi@nipolicingboard.org.uk

Or in writing at the following address:

Northern Ireland Policing Board
James House
Block D
2 – 4 Cromac Avenue
The Gasworks
Belfast
BT7 2JA

You should contact the Board within 40 working days of this response.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner. Generally, the Information Commissioner's Office cannot investigate or make a decision on a case unless you have exhausted the complaints procedure provided by the Board. The Information Commissioner can be contacted at the following web link –

www.ico.org.uk/foicomplaints

or in writing at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone: - 0303 1231114
Email: - ni@ico.org.uk

Please be advised that Policing Board replies under Freedom of Information may be released into the public domain via our website @ www.nipolicingboard.org.uk.

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

FOI 56/2023 Section 36 Exemption "Effective Conduct of Public Affairs"

Public Interest Test

The above exemption is a qualified exemption, and a Public Interest Test must be carried out to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Information requested by the applicant

To receive a full copy of the "paper" referred to at a meeting of the Resources Committee on the 30th July 2020 titled

"Implications of the McKee & Others v The Charity Commission for Northern Ireland".

Arguments in favour of disclosure of the requested information

1. Disclosure of the requested information would be in line with a public authority being open and transparent in how it transacts its business, and would help in promoting accountability.

2. Disclosure would also be within the overall spirit of the Freedom of Information legislation in asking public bodies to be open and transparent.

3. Work undertaken by the Board in respect of the Injury on Duty Award process has generated debate amongst interested parties in the past and, therefore, it could be argued that there is a public interest in releasing the requested information.

4. The level of communication received by the Board from individuals, political representatives and stakeholder organisations highlights that the topic is of interest to sections of the community.

Arguments in favour of engaging the exemption and withholding the requested information

1. Withholding disclosure would safeguard openness in all communications internally between Board members as well as between the Board and relevant third parties. This will ensure a full and frank exchange, which in turn is fundamental to the administration of justice.

2. The issues arising from *the McKee & Others v The Charity Commission for Northern Ireland* judgement are 'live' and are still being actively pursued and considered internally at the Board and by relevant third parties.

3. Release of the requested information at this time would adversely impact upon the current operation of the Board's Police Pension & Injury Benefits Branch. It is believed that full release of this information would generate an unsustainable increase in the volume of requests for information which would impact on the Board's ability to focus on the review, and other business.

4. Release of the information at this time could hinder and restrict the ability of officials to have the necessary 'free thinking space' to fully consider the issues surrounding the *McKee & Others v The Charity Commission for Northern Ireland* judgement.

5. Release of all information into the wider public arena at this time *could* lead to interested parties amongst the general public and amongst elected representatives to 'lobby' the Board on individual cases, which could also hinder the discussions currently on-going and lead to misrepresentation of issues.

6. The release of this information is of interest to the requestors, and may be of interest to other individuals who have a direct involvement with the Injury on Duty process. However this is not the same as being of interest to the public at large which is what releasing this information under the FOIA is intended to be.

Result

Taking into account all of the deliberations above, it is felt that the public interest in engaging the exemption to withhold the information outweighs the arguments towards disclosure.

As a result, the requested information should not be provided.

NORTHERN IRELAND POLICING BOARD RESOURCES COMMITTEE	
Meeting Date: 30 July 2020	
Paper Title:	Implications of *McKee & Others v The Charity Commission for Northern Ireland*
Agenda Ref No:	3
Lead Official:	Aislinn McGuckin, T/Director of Police Administration
Purpose of Paper:	To brief Members on the implications of the Court of Appeal judgment and outline impact on Board business and proposed next steps.
Considerations:	**(i) Resources:** within existing staffing complement and skills. Financial implications to PSNI budget for payment of all IHR & IOD awards. **(ii) Equality:** None. **(iii) Publication Status of paper:** This paper is likely to be disclosable under Freedom of Information. **(iv) Related Corporate Plan/Business Plan measure:** Corporate Plan, Objective D: To deliver independent, fair and transparent processes for former and serving officers in line with Police Pension, Injury Benefit and Appeal legislation.
Action Required by the Board / Committee:	• The Committee **should consider if its Terms of Reference should now be amended** to reflect the judgment and this fundamental change in process. • The Committee should consider if it is **content to approve the revised process** relating to initial

SMP appointments only.

- The Committee should consider if **this process should also be replicated for initial IMR appointments**.
- The Committee **should consider and provide a final decision** in relation to all cases outlined in ANNEX C. *Annex C withheld under Section 40(2) of the Freedom of Information Act 2000.*
- [redacted] at ANNEX B. *Withheld under Section 36 of the Freedom of Information Act 2000.*
- [redacted]. *Withheld under Section 36 of the Freedom of Information Act 2000.*
- Finally, the Committee is asked for **any input it would like to make into the Communications Strategy** in respect of this change of process and in light of the issues outlined within this paper, [redacted] *Withheld under Section 36 of the Freedom of Information Act 2000.*

1. BACKGROUND

1.1 The Northern Ireland Policing Board (the **Board**) has various statutory responsibilities and obligations in light of a specific suite of police pension and injury on duty regulations (the **Regulations**).[1]

1.2 Members will be aware, from its Terms of Reference, that the Resources Committee has responsibility for ensuring compliance with the Regulations.

1.3 Members should further note the Board's role as 'Scheme Manager' as outlined within the Regulations. The role of 'Scheme Manager' confers a vast range of responsibilities on the Board, most of which are currently undertaken by Board Officials within the Board's Police Administration Branch (**PAB**).

1.4 For ease of reference Board Officials have included at **ANNEX A** the relevant excerpt from the Committee's Terms of Reference pertaining to this work. Board Officials would draw specific attention to the footnote contained within the Terms of Reference which reads:

> "*Management of the day to day workload and casework in accordance with the suite of Regulations* ***is delegated*** *to Police Administration Branch which provides quarterly reports and metrics* ***for the Committee's information.***"

1.5 The purpose of this paper is to inform Members about the Court of Appeal judgment of *McKee & Hughes v The Charity Commission for Northern Ireland [2020] NICA 13* (https://www.bailii.org/nie/cases/NICA/2020/13.html). This judgment was delivered on 19 February 2020 and it upheld the earlier High Court judgment delivered by Madam Justice McBride on 16 May 2019.

1.6 The Court of Appeal upheld the High Court's earlier decision that the Charity Commission of Northern Ireland (**CCNI**) could not discharge of its decision making functions to a member of staff. Rather, it was held that CCNI as a "*body corporate*" must make all decisions required to fulfil its statutory powers, obligations and functions as outlined in legislation.

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[1] *Royal Ulster Constabulary Pensions Regulations 1988, Police Pension (Northern Ireland) Regulations 2009, Police Pension Regulations (Northern Ireland) 2015* and *PSNI and PSNI Reserve (Injury Benefit) Regulations 2006.*

[redacted]

1.8 [redacted]. *Withheld under Section 36 of the Freedom of Information Act 2000.*

2. SUMMARY OF COURT OF APPEAL JUDGMENT

2.1 Briefly by way of context, CCNI was established in 2009 as the independent regulator of charities in Northern Ireland. Mirroring the Board, CCNI is also a non-departmental public body, sponsored by (in this instance) the Department for Communities.

2.2 Another similarity to the Board is CCNI's founding primary legislation (being the *Charities Act (Northern Ireland) 2008*) (the **Charity Act**) which sets out CCNI's extensive powers. This is much like the *Police (Northern Ireland) Act 2000* (the **Police Act**) which sets out the Board's own powers and responsibilities.

2.3 The subject legal case dealt with three appeals from the Charity Tribunal, all of which centred on the same issues of law being;

2.3.1 the statutory interpretation of the Charity Act;

2.3.2 the statutory interpretation of the *Interpretation Act (Northern Ireland) 1954* (the **Interpretation Act**);

2.3.3 whether the Charity Act & Interpretation Act read together, provided for the functions of CCNI to be lawfully discharged by CCNI staff acting alone.

2.4 Madam Justice McBride considered the provision for CCNI to "***regulate***" *its own procedure and business*" pursuant to Section 19 of the Interpretation Act. However, she held that the power to "*regulate*" ***did not give CCNI the express power to "delegate***" its functions to staff. Further, Madam Justice McBride stated that if the provisions of the 1954 Act were interpreted in the manner submitted by CCNI then a situation would arise whereby a "*blank cheque*" would be made for CCNI to delegate all functions and therefore

"*abdicate all decision making responsibilities.*" Madam Justice McBride concluded that such a broad interpretation would not align with the legislature's intent.

2.5 CCNI and the Department for Communities submitted that, should the court find that there was no express provision for delegation of functions to staff, then the court should find that there was implied delegation. However, Madam Justice McBride considered that a strict approach to implied delegation should be taken and found that there was ***no such implied power to delegate***.

2.6 CCNI appealed the decision however, as indicated above, the Court of Appeal upheld Madam Justice McBride's earlier decision.

2.7 The Court of Appeal noted that CCNI only have authority to make decisions when it meets as a complete body. Further, Lord Justice McCloskey made the distinction that the role of CCNI staff was that of "*research, briefing and making recommendations.*" He confirmed that it is for CCNI as a body corporate to make all decisions in the discharge of its powers.

2.8 The importance of the function of CCNI in overseeing charities in Northern Ireland was also emphasised within the judgment owing to the correlation between public confidence in charities and in their regulation.

[redacted]

3.1 [redacted]

[redacted]

4.4 [redacted]

[redacted] *Withheld under Section 36 of the Freedom of Information Act 2000.*

[redacted]

[redacted] *Withheld under section 36 of the Freedom of Information Act 2000.*

5.2 By way of assistance, Board Officials have prepared a draft submission in relation to **initial SMP applications only**. This is attached at **ANNEX C** for the Committee's review and approval.

5.3 This document contains an overview of initial SMP assessments only, which have taken place between 23 June 2020[2] and 24 July 2020[3]. The document contains a precis of key information in respect of each of the applications during this time period to include;

Anonymised case code
Date of assessment
Application type
Applicable Regulations
SMP Decision
SMP Comments

5.4 For the avoidance of doubt, this document does not account for either medical appeals to the IMR and/or reassessments and reconsiderations. IMR assessments have not yet recommenced following the initial Covid-19 emergency period. It is proposed that the document contained at ANNEX C would be replicated for initial IMR applications once these recommence and brought to the Committee in the same manner.

[2]The date on which SMP assessments recommenced following the initial Covid-19 emergency period.
[3] The last date on which this paper could be submitted in advance of Resources Committee on 30 July 2020.

5.5 [redacted]

[redacted]

[redacted] *Withheld under Section 36 of the Freedom of Information Act 2000.*

7. DECISION

7.1 The Committee **should consider if its Terms of Reference should now be amended** to reflect the judgment and this fundamental change in process.

7.2 The Committee should consider if it is **content to approve the revised process** relating to initial SMP appointments only.

7.3 The Committee should consider **if this process should also be replicated for initial IMR appointments.**

7.4 The Committee **should consider and provide a final decision** in relation to all cases outlined in ANNEX C. *Annex C withheld under Section 40(2) of the Freedom of Information Act 2000.*

7.5 [redacted] at ANNEX B. *Annex B withheld under section 36 of the Freedom of Information Act 2000.*

7.6 [redacted]. *Withheld under section 36 of the Freedom of Information Act 2000.*

7.7 Finally the Committee is asked for **any input it would like to make into the communications plan** in respect of this change of process and in light of the

issues outlined within this paper, [redacted]. *Withheld under Section 36 of the Freedom of Information Act 2000.*

POLICE ADMINISTRATION DIRECTORATE

JULY 2020

ANNEX A

RESOURCES COMMITTEE TERMS OF REFERENCE (EXCERPT)	
Para 1.1	*The NI Policing Board (the Board) has established a Resources Committee (the Committee) to support it in its responsibilities for all issues related to Finance, Human Resources (including Pensions and Injury on Duty Awards), Land and Property, Information Technology and Equality in the PSNI, and particularly those at Section 5.1 and 5.2.*
Para 5.2	*The Committee will undertake the Board's responsibilities under Police and Police Pension Regulations and make recommendations to the Board in respect of pension forfeiture cases.*
Footnote to Para 5.2	*Management of the day to day workload and casework in accordance with the suite of Regulations is delegated to Police Administration Branch which provides quarterly reports and metrics for the Committee's information*