

Year  
**5**  
**Human  
Rights**  
Review

SUMMARY REPORT

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\*This report was prepared by the Policing Board’s Human Rights Advisor with the assistance of the Board’s Human Rights and Professional Standards team. It is designed to assess the extent of the PSNI’s compliance with human rights over the last five years. Included as part of this report is the Policing Board’s assessment of the compliance by the PSNI with human rights over the last two years (April 2022 to March 2024). The Policing Board, by consensus, has adopted and published this report but not every member of the Board endorses each and every part of this report.

# Summary

**The PSNI is one of the most ‘human rights aware’ police services in the UK and, perhaps globally. This direction was driven by our experience of the Troubles’, the Good Friday/Belfast Agreement and the Patten Report on policing. The approach to policing has benefitted Northern Ireland and its people and, at least in most areas of policing, has provided an important compass to assist officers in navigating their way through the difficult decisions that they have to make every day. However, there is still a way to go before the PSNI can said to be truly compliant in practice and these issues are set out in more detail in the Full Report.**

The Policing Board has a statutory duty under section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 to monitor the performance of the PSNI in complying with the Human Rights Act 1998. It also has an advocacy role and in relation to Human Rights and the Board is assisted in fulfilling its duties by other oversight bodies which also make significant contributions to the work of the PSNI and its compliance with human rights, ranging from the Criminal Justice Inspectorate of Northern Ireland to the UK Joint Human Rights Committee.<sup>1</sup> Also many NGOs and others who advocate on behalf of their clients or the constituencies they serve are concerned with PSNI compliance and make a significant contribution.

This Five-Year Review sets out the Policing Board’s assessment of the PSNI’s compliance with the Human Rights Act 1998.<sup>2</sup> And what we have found is encouraging. There has been progress made in many areas, such as responding to domestic abuse cases, supporting vulnerable victims, training, and awareness for officers on human rights issues. The PSNI has also taken more robust action to deal with its own officers and staff who have violated the law or the PSNI’s own Code of Ethics.

There is a question about whether the positive desire to celebrate human rights principles that existed at the beginning of the creation of the PSNI is perhaps a little less obvious in 2024. Certainly, at a technical level, knowledge of human rights law is still very high amongst officers, particularly amongst senior officers.

1 A full list is provided in the Full Report.

2 The detailed evidence, authority, references and footnotes for the conclusions and assessments in this Executive Summary Report are provided in detail in the more comprehensive Review and are not repeated in this summary.

Positive responses to human rights challenges from the Policing Board, however, continue to be welcomed by the service and as the new Chief Constable recently wrote as part of the fact check process for this Review:

***“...At the outset I wish to restate my absolute support for, and adherence to, the ECHR and the Human Rights Act both personally and as the Chief Constable of the PSNI. I see both the ECHR and Human Rights Act as ‘friends’ to policy, and not an inhibitor to anything the Police Service is required to do.”<sup>3</sup>***

In relation to the 119 recommendations made over the last five years in the Board's human rights reports, the Human Rights Advisor has assessed that 24 recommendations have been accepted and implemented by the PSNI. 12 recommendations have been superseded and 71 are currently work in progress. 8 recommendations have been rejected by PSNI and 4 are for other government bodies. This is an impressive record although the Board would obviously prefer a higher acceptance rate and the consequential actions delivered more quickly.

Interestingly, more specific and detailed reports such as the Strip Searching of Children and Young People appear to lead to more recommendations being accepted than more wide ranging reports, such as the Privacy and Policing Report, where most of the recommendations were rejected by the PSNI.

However, it is also worth noting that the need to research, draft and publish new reports on important and urgent issues has sometimes prevented the Board and its Human Rights Advisor from pressing harder and more frequently on the delivery of recommendations from previous reports.

Senior officers and managers within PSNI are generally very committed to ensuring human rights compliance. This is both because of their personal commitment but also because it is a duty under the law. Compliance failure is often a subject of criticism by the Board and, sometimes, leads to criticism in the media. The Human Rights Advisor regularly observes the leadership on this issue provided by senior officers and the commitment is very often reflected down the ranks.

Partnership working between the Board and Senior PSNI Officers has led to a number of significant changes over the last five years that has improved PSNI's compliance with Human Rights. For example, the use of force and the need for the use of weapons by PSNI officers has been one of the most difficult issues that has confronted the Board and

3 Letter to the Human Rights Advisor, 5 January 2024.

wider Northern Ireland society in the past few years. This is particularly true of the use of public order weapons like water cannon and baton rounds, although the fact that both of these have been used infrequently and carefully in the last five years is an important success.<sup>4</sup> Use of Conducted Energy Devices, partly through the efforts of the Board, remains restricted to a few specially trained officers and is, largely an important practical alternative to the use of lethal force.

Board reports have led to the reductions in the number of strip searches of children and young people in custody and the greater focus by PSNI on the rules designed to protect them. Perhaps another example of success in promoting compliance would be the pressure from the Board to ensure greater transparency in relation to the use of covert surveillance. This has resulted in some documents, at least in part, being made public (Investigatory Powers Commissioners, annual inspection reports and Covert Human Intelligence Sources guidance). The Board's continuing role in considering such sensitive issues is demonstrated by the recent formal request for a report on the surveillance of journalists and lawyers by PSNI and by the pressure from the Board for greater openness by PSNI on whether and if so, how it uses these powers to investigate its own officers and staff. Such effectiveness must be contrasted with the increasing erosion of privacy, driven by technological developments and systems and the Human Rights Advisor carried out some ground breaking work in this area and produced the report "Human Rights Review of Privacy and Policing". Rapid technological advancements opens up a new 'frontier' of rights protection, in particular privacy rights, and a specific concern of the Policing Board is the apparent absence of consultation by the police, the DOJ, or the NIO on issues of privacy in relation to the governance of new capabilities.

Perhaps, as importantly, video recording by members of the public, CCTV and police officers Body Worn Video (BWV) help to ensure human rights compliance and increase the understanding of the public about the difficult role of officers.<sup>5</sup> The Human Rights Advisor, officials and Board Members acknowledged a shift in their attitudes and, perhaps a more in depth understanding, following the viewing of the BWV of a sample of applications of Spit and Bite Guards<sup>6</sup> and use of CEDs.<sup>7</sup>

There remains, however, work to do across several areas to ensure that policing experienced by individuals throughout Northern Ireland is human rights compliant. This can be seen in the development of policy and guidance as well as the style of policing delivered on the ground. There have been improvements in training officers on handling mental health crises. The Board is particularly concerned about the effects

4 Although, the obvious reduction in serious public disorder remains a key factor.

5 For more information on the use of BWV by PSNI see the Human Rights Annual Report 2019/20, page 33.

6 A Review of PSNI's use of Spit and Bite Guards by the Policing Board, February 2022.

7 [Human Rights Review of PSNI's Use of Force](#), January 2023.

of an overburdened and underfunded health service on policing.<sup>8</sup> In addition, there is still a need for further refinement in policies to ensure that individuals in such vulnerable circumstances are treated with dignity and respect and that their human rights are fully upheld throughout all interactions with the police, for example in relation to strip searching of young people in custody. Moreover, there is ongoing work needed to address issues such as the use of stop and search powers to ensure they are applied in a manner consistent with human rights principles.

This document reviews the progress made by PSNI in implementing the Board's Human Rights recommendations over the past five years. It does find failures by the PSNI to deliver on previous policy recommendations and thus raises questions about its commitment to fully deliver and embed change. This criticism itself is not new, the Human Rights Annual Report by Keir Starmer KC and Jane Gordon as far back as 2005 devoted several pages to the issue of embedding human rights principle and practice into policy.

In the first year of his appointment the current Human Rights Advisor to the Policing Board had a number of meetings with senior officers in the PSNI, including the (then) Chief Constable along with PSNI lawyers, to try to persuade them to take primary ownership of human rights compliance, allowing the Board to act properly as an accountability mechanism. An outsider, looking at human rights and policing in Northern Ireland would be entitled to conclude that human rights expertise is the domain of the Board whereas the practical details of compliance in policing on the ground is exercised hundreds of times a day by hundreds of officers.

Pursuing this approach, in September 2021 the Policing Board published an updated version of its Human Rights Monitoring Framework setting out this new 'direction of travel':

***'As a public authority the Police Service of Northern Ireland (PSNI) has the primary legal responsibility for practical compliance with human rights (section 6 of the Human Rights Act 1998). The legal advice and compliance function lies with and must be embedded within the PSNI itself and the PSNI is required to assess its own policies and operations for their compliance with human rights and make any necessary adjustments.'***

In 2020, in order to press the PSNI to embed human rights, the Board requested the PSNI to ensure that all of its policies and procedures set out clearly any human rights issues that are relevant and to publish those policies and procedures.

<sup>8</sup> [Policing and Mental Health Related Incidents | PSNI](#), [PSNI Calls and Mental Health Related Incidents | PSNI](#)

A recommendation that was repeated the following year as a result of the delay in implementation. It is not clear why these recommendations were not progressed given their importance and given the fact that the Board's approach was based on the belief that PSNI would wish itself to take ownership of human rights compliance.

However, as a result of these recommendations the PSNI produced 'Guidance relating to Human Rights for use in creating Service Policies/Service Instructions within the PSNI' and required authors of new policies to complete a standard template 'Police Service of Northern Ireland Human Rights Assessment – Screening Checklist'. Whilst many of these templates have not been as detailed as they need to be, in other cases they have been excellent. One of the best new Service Instructions (SI) that has benefitted from this new procedure being the Missing Persons Investigations service instruction.<sup>9</sup> In other cases new SI's have not picked up on the obvious human rights issues that would assist officers to carry out their important roles and duties in compliance with human rights<sup>10</sup> and these issues are addressed in more detail in the main report in Chapter 9 Levers of Change.

The main report provides a detailed examination of nine policy areas. The pages below sets out the main findings in each of these areas.

9 SI 0423, July 2023.

10 Including the Policing Board's Human Rights Monitoring Framework.

# Victims of Crime

The police, on behalf of the state, have a responsibility to both *protect* victims from crime and to *investigate* the crimes with a view of the prosecution of the perpetrators.<sup>11</sup> After a criminal offence has been committed, a victim's first contact with the criminal justice system is often with the police. The police response to the report of a criminal offence will therefore have a direct and often decisive impact on a victim's attitude to the criminal justice system and PSNI in particular. It may impact upon a victim's willingness to support a prosecution and to report, and encourage others to report, future criminality. It is critical that the police treat all victims with compassion and respect for their dignity. They must ensure that the victim feels that the offence is being considered properly and is being taken seriously.

In examining this area, Board officials have analysed PSNI's performance in respect of the Policing Plan over the last five years and engaged with key stakeholders to consider how the PSNI identify vulnerability at the first point of contact and assess the risk of harm to victims and the effectiveness of the PSNI response thereafter, particularly in relation to the quality of collaborative support provided with partner agencies. The findings of external reviews conducted by other criminal justice organisations, alongside regular engagement with community groups and victim organisations has been pivotal to this area in the monitoring framework.

The last five years have seen considerable improvements in Northern Ireland, both because of the many legal and technical changes and by the PSNI's shift in emphasis and resources. PSNI have continued to progress recommendations made by the Gillen Review<sup>12</sup> and responded to the recent legislative changes with training.

11 Particularly, to protect life (Article 2), to prevent ill-treatment (Article 3), and to prevent slavery (Article 4) but also to protect private property (Article 1 of Protocol 1). See also the PSNI's duty in section 32 of the Police (Northern Ireland) Act 2000.

12 <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>



## Domestic and Sexual Abuse

Article 2 of the ECHR obliges State Parties to have ‘[e]veryone’s right to life... protected by law’.<sup>13</sup> It implies in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.<sup>14</sup>

On domestic abuse in particular, the ECtHR has developed case law highlighting that domestic abuse is not only a violation of Article 8 (right to a private and family life) but can also potentially be a violation of Article 3 (prohibition of torture). In *Valiulienė v Lithuania* (2013), the court explained that the very act of domestic violence is fundamentally humiliating and debasing for the victim and that the intention of the perpetrator is to belittle the victim’s dignity. Therefore, all domestic abuse cases should be considered under Article 3 as the application under Article 8 alone ‘*would fall short of the real and full meaning of violence in the domestic context and would thus fail to qualify as a gendered understanding of violence.*’<sup>15</sup>

There have been three key pieces of legislation introduced since February 2022 to comply with the state’s positive obligation as set out in the case law of the court:

- 1) Domestic Abuse & Civil Proceedings Act (NI) 2021**
- 2) The Protection from Stalking Act (NI) 2022**
- 3) The Justice (Sexual Offences & Trafficking victims) Act (NI) 2022**

In support of the above legislative changes there has been a commitment in PSNI through the development of online training materials, digital assets, case studies, FAQs and internal guidance for all staff and officers as referenced by the former Chief Constable in his Accountability Report to the Policing Board (April 2023).

Domestic abuse is an ongoing, long-term issue which accounts for a significant and increasing proportion of overall crime<sup>16</sup> across the whole of Northern Ireland. The number of domestic abuse crimes is increasing and the types of crimes are becoming more severe, with approximately a fifth of all sexual offences and a third of all violent offences being domestically motivated.

13 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 2.

14 *Osman v UK* para 115

15 *Valiulienė v Lithuania* Concurring Opinion of Judge Pinto de Albuquerque paras 29-30

16 [Domestic Abuse Incidents and Crime Recorded in Northern Ireland Monthly Update to 31st March 2023 \(psni.police.uk\)](https://psni.police.uk)

In 2022/23, the repeat victimisation<sup>17</sup> rate for domestic abuse was 24%<sup>18</sup>. The trend in domestic abuse incidents has been generally upward, with an overall increase in recorded incidents in the last 10 years of 19%. Domestic abuse crimes have also shown an increasing trend in the last ten years, with the highest level of domestic abuse crimes recorded in 2022/23 of (22,343). The largest volume increase in domestic abuse crimes was seen within violence against the person which rose by 640 (3.7%). This increase should be seen in the context of the new legislation previously mentioned and when PSNI began recording these offences in April 2022.<sup>19</sup> In June 2023 the new non-fatal strangulation offence commenced and PSNI launched a training module to support this which is available to all officers and staff across the organisation. Police continue to work with their criminal justice partners to support the introduction of this new offence and since July 2023, 179 arrests have been made.

HMICFRS' inspection of PSNI (published in October 2023)<sup>20</sup> found that PSNI had a good knowledge of vulnerability and officers/staff are aware of their responsibilities to identify it and the processes for reporting it. The inspection also found that PSNI's outcome rates for victims compare favourably to those in England and Wales.

### Sexual Offences

Sexual offences have shown an upwards trend, representing 3.8% of overall recorded crime in 2022/23 with 4,232 sexual offences recorded, increasing by 4.7% compared to figures for 2021/22. Of more concern is that only 8.3% of rapes are assigned a sanction outcome and 17.3% of other sexual offences have resulted in a charge or summons (data provided by PSNI for 12 months to September 2023). A high attrition rate for rape and sexual crimes has been identified as a key organisational priority and the Policing Board will continue to monitor this area.

According to the PPS 'Annual Statistical Bulletin on Cases Involving Sexual Offences 2021/22', the PPS received a total of 1,509 files involving a sexual offence, an increase of 3.8%. The overall conviction rate was 73.2%. The average number of days for the issue of indictable prosecution decisions (prosecution in the Crown Court) in cases involving sexual offences was 274 calendar days and the average for summary prosecution decisions (prosecution in the Magistrates' or Youth Courts) was 28 days.

It is important that the PSNI provide a victim-focussed service where they can aim to play their part in securing appropriate and effective criminal justice outcomes to maintain and enhance confidence in policing.

17 A repeat victim is a person who has been linked to more than one crime within the past 365 days

18 Figures correct at March 2023

19 [Domestic Abuse Incidents and Crime Recorded in Northern Ireland Monthly Update to 31st March 2023 \(psni.police.uk\)](https://psni.police.uk)

20 [The Police Service of Northern Ireland: An inspection of police effectiveness, efficiency, vetting and standards](https://www.police.uk)

## Repeat Victimization

Many victims, in particular victims of domestic abuse, are subjected to repeated crimes. The repeat victimisation rate more generally, in Northern Ireland for 2022/23 was 17.7% and for women the rate is 19.4%. In September 2021, PSNI started a process to address repeat victimisation to identify and target repeat victims and early indicators show that this has shown an 8.6% decrease in the number of active repeat victims who PSNI are addressing through this process, which is positive. In 2022/23, the repeat victimisation rate for domestic abuse was 24%. Of concern is that PSNI report that 75% of repeat victims have been flagged as having a vulnerability (including physical and mental health, drug and alcohol dependency).

### Recommendation 1

**The collation of baseline data on repeat victimisation and the development of the bespoke toolkits for supporting repeat victims should be progressed as a priority. This should include data in relation to each victim category (domestic abuse, sexual offences, stalking, hate crime, community background etc.)**

## Policing and Mental Health

In July 2023 the Chief Constable reported *'increasingly, there is a requirement for Armed Response Officers to interact with, and to provide support to, members of the public who are experiencing mental health crisis, or who are deemed otherwise vulnerable. During the year officers attended 922 incidents involving an Emotionally or Mentally Distressed (EMD) person or a person otherwise vulnerable. This is an 11.6% increase from 2021/22.'* PSNI has invested in significant training for frontline officers to better equip them to deal with the changing environment they are expected to police. The police service are, all too often, having to take responsibility to protect the human rights of victims of crime when others, particularly, other public services have an important role. The PSNI is increasingly picking up this duty to protect victims because other services have failed or are not available during 'out of office hours'. Some of this is down to resource pressures on public services yet PSNI faces similar pressures. Apart from the fact that this is not a good use of officer's expertise and PSNI's resources, police officers often can only provide a 'policing or criminal justice' response when a different approach is necessary.

### Recommendation 2

**PSNI should explore and research the impact of the increasing requirement of police officers having to deal with people in distress is having upon policing and provide a report to the Department of Justice, the Health Department and the Assembly and others. PSNI should consider in conjunction with healthcare services, introducing the Right Care, Right Person approach to deal with mental health and other vulnerabilities within an agreed timeframe**

## Under-reporting

In some traditionally paramilitary controlled areas in both communities, there remains a prevalent taboo culture of contacting the police due to fear of repercussions from paramilitary organisations or being seen to be bringing the police into the area or ‘informing’ on a perpetrator, especially if that perpetrator is a member or affiliated with a paramilitary organisation. Whilst PSNI continue to work with key stakeholders across the sector who ran workshops online in 2022 to highlight some of the general factors that presented challenges including, understanding the culture, there is, however, little evidence of the work being done to support victims of domestic abuse in paramilitary controlled communities.

### Recommendation 3

**PSNI should report to the Policing Board on what extra can be done to ensure victims of domestic abuse in these communities are better served and protected through their work to support victims of domestic abuse in paramilitary controlled communities. This report should also include data in relation to each victim category (domestic abuse, sexual offences, stalking, hate crime, community background etc.)**

There is also evidence that some people, concerned about their own immigration status and right to remain in Northern Ireland, are less likely to involve the PSNI if they are victims of crime. This reluctance is as a result of the perceived and actual duties on the PSNI to make reports to the Home Office. However, as a result of pressure from the Board and a number of NGOs an improved policy with greater clarity and an emphasis on protecting victims is about to emerge.

## Impact of the criminal justice system on witnesses and victims

Unfortunately, many report that the wider criminal justice system itself is failing victims. Quality police investigations are a key component to a fair criminal justice system and in June 2023, CJINI published their inspection considering file reviews by the PSNI and PPS following the pandemic, following two previous inspections in 2006 and 2015. Progressing files in a timely manner was important in tackling avoidable delay which was not well dealt with in 2015 and there were similar findings in this inspection. The impact of delay in the system can have a detrimental impact on a victim. Following the publication of this inspection report the Commissioner Designate for Victims of Crime in Northern Ireland expressed her concern with the lack of progress stating; *“I am extremely disappointed and concerned that overall the outcomes for victims remains poor and the length of time cases are taking to progress through the system has increased.”*

## Recommendation 4

**The Policing Board supports the recommendation within the CJINI report where it repeats its recommendations from its previous similar 2015 inspection<sup>21</sup>, calling for the establishment of a prosecution team to develop new prosecution protocol, to develop and deliver organisational investigative standards and to provide guidance on disclosure. Overall, the report recommends that PSNI and PPS jointly review the previous recommendations and provide a joint action plan for implementation. It also recommends that DOJ introduce custody time limits to speed up the criminal justice system for victims and defendants alike.**

### Violence against Women and Girls

The Executive Office launched their Strategic Framework for Ending Violence Against Women and Girls in July 2023 and PSNI published their Violence Against Women & Girls (VAWG) Strategy in September 2022 which sets out their action plan to tackle violence against females in Northern Ireland and reported to the Policing Board in October 2023 with an update on the implementation of their own VAWG Strategy.<sup>22</sup>

In the rolling 365 days to the 31st August 2023 there were 25,870 offences recorded which match the criteria of a VAWG offence, accounting for 23.5% of all crime. VAWG victims account for 75.6% of all victims of sexual offences and 48.4% of violence against the person offences which makes for stark reading. There are 3,354 repeat victims of VAWG offences, a repeat victimisation rate of 18.7%. There are 481 repeat VAWG offenders<sup>23</sup>, equating to repeat offending rate of 12.2%.

The PSNI are clearly committed to improving and adapting to the challenges of VAWG. For example, PSNI has recently piloted Project Vigilant by training two Tactical Support Group units to spot the signs that someone is planning or preparing to commit a crime, with a focus on VAWG offences. These units were deployed as part of a small pilot to patrol VAWG hotspots primarily focussing on the night-time economy over the Christmas period as part of a focus on 'Safer Spaces'. The pilot is currently being evaluated and PSNI are considering how this training can be rolled out across the rest of the service.

21 [An inspection of the quality and timeliness of police files incorporating disclosure submitted to the Public Prosecution Service for Northern Ireland. \(cjini.org\)](https://www.cjini.org)

22 [Tackling Violence Against Women and Girls - Action Plan - One Year On \(psni.police.uk\)](https://www.ppsni.police.uk)

23 Repeat offenders are defined as "Offenders who have been linked by an offender detection report to two or more crimes in the last year." These individuals may or may not have been convicted of an offence.

## Recommendation 5

**It is recommended that the inclusion of discussion materials in relation to consent and coercive behaviour for Training Development Unit students within the Train the Trainer course, be developed and introduced.**

### Hate Crime

On hate crime, there is no statutory definition of hate crime in Northern Ireland, as the Public Order Act 1986 introduced in the Westminster Parliament applies only in England and Wales. As a result, the PSNI and the PPS prosecuting the offence, apply the following definition:

**Any incident which constitutes a criminal offence perceived by the victim, or any other person, to be motivated by prejudice or hate towards a person's race, religion, sexual orientation or disability.<sup>24</sup>**

**Article 14 of the ECHR** prohibits discrimination when applied within the ambit of another Convention right. The Court's case law has reinforced the positive duty of law enforcement authorities to conduct an adequate and effective investigation into possible bias motives in criminal cases involving alleged discriminatory violence, regardless of whether the offence was committed by state authorities or by private persons.

In the year ending 2022/23 there were 185 repeat victims of hate crime, an increase of 25 compared to the previous financial year. There was an increase in the number of incidents recorded in three of the six hate crime categories (sectarian, disability and transphobic) when compared to the previous 12 months.

In September 2023, the PSNI reported that 11.1% of reported hate motivated offences have resulted in a charge/summons outcome, which has remained consistent in the last five years, compared to 18.7% of all recorded crime. In September, the PSNI have also noted that 20.9% of hate crimes have been assigned the outcome 'Investigation Complete - no suspect', which has steadily decreased from 31.7% in 2017/18.

In June 2019 the Department of Justice established an independent review "to consider whether existing hate crime legislation represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will or prejudice, including hate crime and abuse which takes place online".

However, the report raised a number of difficult questions which need to be considered and resolved by the Assembly. The Board noted that the failure to protect victims of hate crime is an important human rights issue and that without comprehensive and consistent hate crime laws, the PSNI will be hampered in its duty to respond effectively.

<sup>24</sup> [Hate Crime | Public Prosecution Service for Northern Ireland \(ppsni.gov.uk\)](https://www.ppsni.gov.uk)

The PSNI's approach to race hate has been criticised by a recent BBC Spotlight investigation. The programme suggested that the PSNI approach was based on resolving community tensions rather than protecting the ethnic minority and black communities and robustly investigating crime.<sup>25</sup> However, the new Chief Constable and other senior officers, when questioned by Board Members at the public session two days later appeared to understand the criticism levelled by the programme and were committed to criminal investigation approach.

However, the PSNI are furthermore actively involved in several working groups facilitated by the DOJ to consult on the Independent Review of Hate Crime Legislation in Northern Ireland.

### Recommendation 6

**The PSNI should, in the wake of recent criticisms of their approach to race hate crime in a recent BBC Spotlight programme, report to the Board on the detail of its work in this area and produce an action plan to tackle the issue and reassure communities.**

### Conclusion

The last five years have seen considerable improvements in Northern Ireland in the criminal justice system for victims, both because of the many legal and technical changes and also by the PSNI's shift in emphasis and resources. PSNI have continued to progress recommendations made by the Gillen Review<sup>26</sup>, introduced a strategy dealing with violence against women and girls and have responded to the recent legislative changes with training.

Assessing PSNI's compliance with the Human Rights Act in the context of victim's rights is difficult to do without taking into consideration the significant challenges and deficiencies that remain in the context of the criminal justice system in Northern Ireland. The recent introduction of domestic abuse legislation has certainly improved PSNI's ability to fulfil their positive obligations under the HRA and ECHR in regard to domestic abuse offenses.

A key indicator of how well the criminal justice system treats victims is timeliness – challenges remain with file progression between PSNI and PPS, resulting in detrimental effects on victims and witnesses. A key concern is also the fact that PSNI are seeming to have to pick up the pieces of a failing health service.

25 Transmitted on 5 December 2023.

26 <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>

# Stop and Search

**Stop and search is regarded by PSNI and other police forces as an important tool and, if used properly, can reduce crime, keep people safe and identify offenders. The alternative of arresting a person on the basis of the equivalent reasonable suspicion threshold would be much more intrusive. However, the challenge for PSNI is, given the consistently low outcomes, the damaging impact on community relations, the lack of evidence to suggest stop and search reduces crime, and the human rights issues; why has stop and search not been subject to more fundamental reform?**

The power to stop and search constitutes a deprivation of liberty, albeit in most cases of a very short duration, and as such should be compatible with Article 5 of the European Convention of Human Rights: the right to liberty and security of person. The use of the power must also be compatible with Article 8, respect for privacy, and Article 14, non-discrimination. This means that use of the power must be legal, proportionate, and non-discriminatory. However, it should be noted that stop and search does impact on a person's human rights less significantly than an arrest would and that PACE Code A, paragraph 1.4 states:

***'The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals without exercising their powers of arrest.'***

## Recent statistics:

- In comparison to other forces in England and Wales the PSNI numbers of stop and searches per 1,000 population is 11, the seventh highest, and five times higher than the three lowest forces<sup>27</sup>;
- In comparison with all the forty plus forces in England and Wales the PSNI's arrest rate following a stop an search is the lowest – 7% compared with 21% in some forces like Sussex, Suffolk, North Yorkshire;
- That comparison would be even worse if it included the 1% arrest rate of the Justice and Security Act power;

<sup>27</sup> Note however, that the number of stop and searches in some other force areas, such as Merseyside and Metropolitan Police, are significantly higher, at 37 and 20, respectively.



- The use of the Justice and Security Act powers increased last year (2022/23) by 127% (section 21) and 63% (section 24);
- In Northern Ireland, in the last year (2022/23), the numbers of stops and searches increased by 25%, with 68% conducted under the Misuse of Drugs Act (MDA) with an arrest rate of 5%;
- The evidence points to children and young people being disproportionately targeted for low level drug possession under MDA 1971 - with a low (success) rate;
- 14 people were stopped each year for every 1,000 people in Northern Ireland;
- Some people will be stopped more than once and the chances of being stopped are higher if you are an Irish Traveller, from an ethnic minority or a Catholic (see below for the details); and
- 69 children under 12 were stopped and searched.

The Board has long been concerned about the PSNI's use of stop and search. It has never been disputed that it is an important power, however when misapplied or overused it can be counterproductive. In seeking to protect the rights of the majority, the police at times must interfere with certain individual rights. However, they are only permitted to do so if the infringement is provided by law and necessary to achieve a legitimate aim. In circumstances where there is a victim, the police may have positive obligations to use powers to intervene (clearly justifying the necessity of a lawful interference). However, the use of stop and search is not typically directly victim-led and officers have a very wide discretion to apply these intrusive powers.

Evidence shows that stop and search has a very weak and inconsistent relationship with crime and its effectiveness as a deterrent is not proven.<sup>28</sup> Its effectiveness as an investigatory power can be established by whether the object of the stop and search is connected to the outcome (the arrest rate and 'find rate' - how often the item being searched for is found).<sup>29</sup> A better 'stop-to-outcome' ratio would demonstrate that the exercise of these powers is fair and rational, which could improve public trust over their use. High volume of stops/low outcomes, lack of data and analysis and benefits impact on public confidence.

28 Home Office (2016) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508661/stop-search-operation-blunt-2.pdf#page=3](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508661/stop-search-operation-blunt-2.pdf#page=3)

29 Home Office, 'Best Use of Stop and Search Scheme' [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/346922/Best\\_Use\\_of\\_Stop\\_and\\_Search\\_Scheme\\_v3.0\\_v2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/346922/Best_Use_of_Stop_and_Search_Scheme_v3.0_v2.pdf)

### Recommendation 7

**The PSNI should report to the Board on any progress on the Board's four aims in relation to stop and search powers:**

- 1. To ensure the service remains transparent and accountable;**
- 2. To improve public understanding on how and why the powers are used;**
- 3. To support a more intelligence-led and targeted approach to stop and search and improve the 'stop-to-outcome' ratio.**
- 4. Record and monitor the community background of all those stopped and searched**

Issues of concern remain the disproportionality of stop and searched in relation to Irish Travellers and other ethnic minorities.

### Recommendation 8

**The report, 'An Analysis of Incidents of Stop Searches Conducted on Members of the Irish Traveller Community between 1<sup>st</sup> July 2022 and 30<sup>th</sup> June 2023.' should be published and academic experts and other relevant stakeholders on stop and search should be invited to comment.**

On stop and searching of children, the Board welcomes the work done by PSNI over the last five years to improve outcomes. The Board particularly welcomes the PSNI's Stop and Search Working Group regarding children and young people and its survey in partnership with statutory and voluntary organisations that was commenced in 2022.

There are particular concerns with the continued and extensive use of the exceptional power provided to PSNI officers by the Justice and Security Act, racial disparities and long-term concerns about the failure to collect community background data on those stopped and searched. Sections 21 and 24 of the JSA do not require individual reasonable suspicion. They are very similar in procedure and structure to the previous stop and search provisions in the Terrorism Act 2000, sections 44 and 45. Those provisions were ruled unlawful by the ECtHR in the case of Gillan and Quinton v UK (2010). Hence, their compatibility with ECHR Article 8 is questionable.

The lack of community background monitoring of stop and search – has been a longstanding issue in Northern Ireland. However, some positive developments can be detected. Marie Breen-Smyth, the former Independent Reviewer of the JSA, collaborated with the PSNI and the Northern Ireland Statistics and Research Agency to produce some useful indicative figures. Following work throughout 2022 and 2023, in January 2024 the PSNI told the Board that it will be implementing a pilot scheme to collect community background information, scheduled to commence in March 2024.

It is important to acknowledge that community background monitoring is a significant piece of work requiring coordination across several areas of the organisation.

If the evidence is that a disproportionate number of people from one religion, national or social origin, or national minority political group were subject to disproportionate action by a police service this would be unlawful – unless that difference can be objectively justified, and this justification is a legitimate one. It is the responsibility of the police service to investigate this disproportionality and to justify it, if the service is to avoid the finding of a violation.

At present, the Policing Board cannot reassure members of the public that stop and search activities by the PSNI are always justified. Particularly because the numbers of objects found during a search compared with whether or not the person is arrested is not publicly available, although it is recorded<sup>30</sup>. However, the management figures which have not been validated<sup>31</sup> obtained from PSNI are that 21% of stops and searches resulted in an ‘object’ being found and the object found was ‘linked to the original reason for the stop and search’ 94% of the time. However, it should be recognised that while the 2020 PEEL inspection highlighted areas of improvement in terms of stop and search, HMICFRS generally determined that the PSNI was good at treating the public with fairness and respect, and in a fashion that inspires public confidence. That study found that:

- *Many PSNI officers understood how to use stop and search properly; and that*
- *The use of the powers was generally well supervised.*

### **Exceptional Stop and Search Powers: The Justice and Security (Northern Ireland) Act 2007**

The 2007 Act provides the PSNI with additional stop and search powers. The Act also allows the PSNI to stop and search a person (or a vehicle) or to search premises for any wireless apparatus or munitions without the usual human rights protection – the officer does not need to have reasonable suspicion. The use of the Justice and Security Act powers increased last year by 127% (section 21) and 63% (section 24).

30 At odds with, for example, the Met who do publish this type of data: <https://www.police.uk/your-area/metropolitan-police-service/performance/stop-andsearch/?tc=E05000362#:~:text=Performance%20statistics&text=Total%20number%20of%20stop%20and, April%202023%20and%20July%202023.&text=Of%20the%2025%2C219%20stop%20and, had%20>

31 They are probably accurate but cannot be validated to the high standard required by the statistics authority.

### Recommendation 9 – Stop and Search

**The PSNI should provide a report to the Policing Board setting out the likely reasons for this increase and for the variation of use of the JSA exceptional stop and search powers over the last five years.**

### Recommendation 10

**In England and Wales a trio of independent bodies (HMICFRS, College of Policing and the IOPC) carried out a thorough and detailed investigation into the use of the stop and search provision available in that jurisdiction that also does not require reasonable suspicion. PSNI should ask a group of similar independent experts to carry out a review of the JSA power and the investigation should take a similar approach to establish the facts.**

The report also notes a series of positive steps undertaken by PSNI in relation to stop and search. For example, the development and roll out of Body Worn Video has allowed more transparency to stop and search encounters and more scope for supervisors to give feedback. PSNI produced a very helpful ‘Guidance for Supervisors for reviewing and dip-sampling Body Worn Video Footage’ in February 2023 following recommendations from HMICFRS.<sup>32</sup>

### Conclusion

Stop and search obviously represents one of the most contentious tools available to police in Northern Ireland, which is highlighted by the difference in opinion between the Members of the Policing Board, which also reflects wider debate in Northern Ireland. Progress in relation to community background monitoring has been slow, but has picked up in the past two years, not least due to external pressure. As mentioned, the use of this power must also be compatible with Article 8, respect for privacy, and Article 14, non-discrimination. At present, it is difficult to establish whether the use of stop and search is compatible with Article 8 and Article 14 of the Convention. Crucially, the publication of community background data will be helpful in assessing whether stop and search powers are applied in a legal, proportionate, and non-discriminatory fashion.

<sup>32</sup> His Majesty’s Inspectorate of Constabulary, Fire and Rescue Service, ‘Disproportionate use of Police Powers: A Spotlight on stop and search and the use of force.’

# Arrest and Custody

**When the police arrest and detain a person, they assume responsibility for the protection of both the detainee's rights and welfare. Detention directly engages Article 5 of the ECHR (the right to liberty and security) and police must follow strict procedures and take every reasonable step to uphold the rights and welfare of all detained persons. Detention also potentially engages Articles 3 (prohibition of ill-treatment), 8 (right to privacy) and 14 (right not to be discriminated against). Articles within the PSNI Code of Ethics reflect these provisions and also require police officers to ensure that all detained persons are treated in a humane and dignified manner. It stipulates that arrest and detention must be carried out in accordance with the relevant Police and Criminal Evidence Order 1989 (PACE), the Codes of Practice made under PACE and in compliance with the ECHR. Police have a duty to protect the health and safety of detained persons and take immediate action to secure medical assistance where required.<sup>33</sup>**

There were 21,474 arrests made under PACE Order during 2022/23, 82% of which were males. During 2022/23 there were only 49 persons detained in police custody for more than 24 hours and released without charge. During the same period there were 22 applications to Magistrates Courts for warrants of further detention (for more 36 hours), in relation to 17 individuals.

Inspections on the efficiency, effectiveness and treatment of detained persons in custody in Northern Ireland are conducted by the Criminal Justice Inspection Northern Ireland (CJINI) and the Regulation Quality and Improvement Authority (RQIA), and the Policing Board's Independent Custody Visiting Scheme (ICVs) which are all part of the system of protections included within the UK Government's system for compliance.

During a CJINI Inspection looking at the standard of police custody in Northern Ireland and the experience of detainees in 2020, a number of recommendations were made. They called for a further examination of the reasons for arrest and detention in custody of Irish Travellers and people of Black ethnicities, use of force, improvements to the

<sup>33</sup> More details of the human rights issues in relation to arrest and detention are set out in the Policing Board's Human Rights Monitoring Framework, page 29 onwards.

coverage of audio recording in custody cells, the introduction of IT processes to alert within its system, children on the Child Protection Register ensuring it applies to custody records, and a review of the provision of health care training. In response to the recommendations made by CJINI in their inspection report, the PSNI developed a Strategic Action Plan and identified key areas for development and learning. This action plan enabled the PSNI to analyse existing practices and to work towards implementing the recommendations. The Office of the Police Ombudsman for Northern Ireland (OPONI) has also made several recommendations regarding custody over the past five years.

### **Human Rights Review Children and Young People: Strip Searching in Police Custody**

The issue of strip searches of children and young people has been the subject of considerable concern over the last two years across the UK. In Northern Ireland, the issue of strip searching of children in custody was raised by organisations in the children's sector at a PSNI Youth Champions Forum meeting in May 2022 and the Board reviewed the practice in the Human Rights Review of Children and Young People: Strip Searching in Police Custody.<sup>34</sup>

A series of recommendations were made in the Report, including updating guidance and re-evaluating governance frameworks and recommendations regarding the amendment of PACE legislation and Codes. The Report also considered the role of the Appropriate Adult in some detail and the alarming fact that in the majority of cases, an Appropriate Adult was not present. Apart from the obvious issues of the dignity and the likely humiliation of children and young people having to remove their clothes in police stations in front of strangers and, the questions about whether PSNI are complying with the law and regulations, there are a number specific human rights issues involved, in particular Articles 3 and 8. It appears that as a result of the recommendations there are fewer strip searches and virtually none in the absence of an appropriate adult.

#### **TACT arrests**

An issue remains with PSNI's policy of using TACT powers of arrest rather than PACE for arrests of those suspected of terrorism. This was first raised by Jonathan Hall KC, the current Independent Reviewer of Terrorism Legislation in his Annual Report for 2020 (published in April 2022), and subsequently considered in Policing Board's Human Rights Annual Report for 2020/21. Jonathan Hall KC and the Board's Human Rights Advisor met with the PSNI's Terrorism Investigation Unit to discuss this issue in June 2023. In this meeting officers helpfully set out some of the reasons that they considered justified the near automatic use of TACT section 41 arrest powers in terrorist cases.

<sup>34</sup> [Human Rights Review Children and Young People: Strip Searching in Police Custody](#)

It was, however, noted that an exception was usually made for juveniles and vulnerable people who were usually arrested under PACE. A request for greater clarity concerning the detail of PSNI's policy on this was sought and received.

### **Independent Custody Visitors (ICVs)**

The Board is responsible for the ICVs to make and keep under review, arrangements for designated places of detention to be visited by Independent Custody Visitors (ICVs). They are impartial volunteers from the community who are unconnected with the police or the criminal justice system. They make unannounced visits to police custody suites to check the conditions, treatment and welfare of persons detained, by inspecting the facilities, checking custody records and, with consent, speaking to detainees. Where reasons for concern are identified during these visits, they are raised by ICVs with PSNI who must advise the Board within 28 days of the action taken to remedy the concern.

The Human Rights Advisor has highlighted issues around confidentiality and ICVs with PSNI. The first issue concerns confidentiality and the importance of ICVs' private conversations with detained persons, which is a requirement set out by the United Nations Optional Protocol to the Convention Against Torture (OPCAT).<sup>35</sup> This has been translated in the practice of officers and Custody Detention Officers remaining within sight but out of hearing when the ICVs introduce themselves to detainees and start discussion. The Human Rights Advisor asked PSNI to ensure that, within custody suites, everyone complies with these arrangements (subject, of course, to any exceptional risks that particular detainees may pose). The second point regarding confidentiality is the PSNI's (relatively) new CCTV and recording system within custody suites, which cannot be switched off at this time, but which will pick up conversations held at the cell door.

A third issue is that of ICVs viewing interviews. Currently custody visitors only have access to live TACT interviews. It is difficult to understand the logic of allowing live TACT interviews but not recordings or not allowing PACE interviews to be watched at all (or for the recording of the PACE interview to be viewed by the visitor).

### **Discrimination and Community Background/Religion**

During the last few years statistics have been published which raise some questions about fairness in policing the two main communities of Northern Ireland (see section in Stop and Search chapter). In December 2021, the Detail obtained Freedom of Information responses from the PSNI which suggested that over the previous five years, twice as many people who self-identify as coming from the Catholic community as come from the Protestant community were arrested and twice as many Catholics were subsequently charged after arrest.

35 This is the international treaty, ratified by the UK Government, and which provided the basis for the designation with the United Nations of the ICVs scheme in Northern Ireland.

What is surprising, however, is that, despite these statistics being collected by PSNI for the last few years, they were never published and the Policing Board was apparently not aware of them. It is also surprising that the PSNI took no action to investigate the basis of these statistics and whether this possible disproportionality constituted discrimination.<sup>36</sup> It is understood that the PSNI's Police Powers Development Group in March 2022 was asked to investigate this issue. It is now nearly two years on from the publication of these figures although PSNI now has plans in place to review the issue.

### Recommendation 11 – Arrest and Custody

**The PSNI should report to the Board on progress on the changed approach to data collection in relation to community background, the data that has resulted and any proposed substantive action it intends to take and publish the data in due course.**

### Conclusion

Several substantive issues remain regarding the PSNI's full compliance with human rights law in this area. While no doubt a particular challenging line of policing work, the police are responsible for the protection of both the detainee's rights and welfare once they are arrested.

Similar to stop and search, the figures on community background in relation to arrest and detention raise questions about fairness in policing of the two main communities of Northern Ireland. The inspection framework provided by RQIA, CJINI and ICVs is therefore vitally important. Additionally, it is important for the Board to continue in its advocacy role and continue tracking progress in relation to the implementation of previous recommendations, in particular regarding the rights of children and young people in detention.

<sup>36</sup> Raising questions about compliance with section 75 of the Northern Ireland Act 1998.



# Public Order

**Public order policing inevitably engages a number of rights enshrined in ECHR. In the context of public processions and protest such articles include the right to freedom of thought, conscience and religion (Article 9), the right to freedom of expression (Article 10), the right to freedom of peaceful assembly and freedom of association with others (Article 11) and the right to respect for private and family life (Article 8). Where there is potential for disorder, the right to life (Article 2) and the right not to be subjected to torture, or inhuman or degrading treatment or punishment (Article 3) are also engaged. Finally, it includes a provision in Article 14 to try to ensure that public bodies do not discriminate in relation to exercise of those other rights.**

The PSNI's duty to balance those often-competing rights calls for careful consideration of a number of complex issues. The PSNI operates within an environment in which it is not responsible solely for the management of parades and protests. Parades and associated protest meetings are considered by the Parades Commission which decides whether to issue a determination and/or impose conditions under the Public Processions (Northern Ireland) Act 1998. Of course, as a public authority the Parades Commission must itself take into account the ECHR rights of all involved before reaching a decision. However, it clearly is the responsibility of the PSNI to *police* parades, protests and other public assemblies and to deal with any outbreaks of disorder.

The exercise of police public order powers and the duties to protect life and property, to preserve order, to prevent the commission of offences and, where an offence has been committed, to take measures to bring the offender to justice must comply with the Human Rights Act 1998.

The PSNI, in responding to large scale public order incidents in which unlawful acts have been, or are likely to be, carried out and where community tensions are running high, are faced with an enormous challenge. The PSNI's decision making process must be well documented and must stand up to scrutiny. Importantly, the PSNI must also be prepared to account for any decisions made. Generally speaking, the PSNI has repeatedly demonstrated its willingness to do so. However, recently, the PSNI used the ancient common law offence of Unlawful Assembly in dealing with a public order event.

The use of this vague provision (abolished in England and Wales many years ago) raises some human rights issues that need proper consideration by the courts.

The last five years included new public order challenges for the PSNI, including different protests during the pandemic in 2020, and more recently anti-abortion protests in conjunction with new legislation. The Black Lives Matter protest in Northern Ireland following the killing by police officers of George Floyd in the United States was not dealt with very well by PSNI. Perhaps even more problematic was the comparison with the lack of activity by PSNI in investigation following the ‘Protect our Monuments’ protest exactly a week after the Black Lives Matter protest.

Annually, in regard to public order events in July, the Human Rights Advisor, in addition to occasionally attending some live operations over the last five years, is briefed by PSNI on its public order strategy, its planning of public order events and the operational decisions that are taken. This has always occurred in advance of the events on 11th and 12th July.

A continuing issue in Northern Ireland, particularly over the summer, is the display of flags and other emblems. Also of concern is placing flags, emblems, political posters and pictures and effigies of politicians on bonfires. The PSNI’s position on flags has been consistent for some time. While the Board understands the PSNI’s reluctance to get into a politically sensitive area, this position can no longer be justified.<sup>37</sup> The justified but general concern to avoid disorder does not allow the PSNI to take no action. CAJ have cogently argued that:

***‘The general duties of the PSNI are set out in section 32 of the Police (NI) Act 2000 and go beyond bringing offenders to justice to encompass a duty to prevent the commission of criminal offences.***

***Therefore, the PSNI has both a permissive power and positive duties to intervene to remove hate expression from public space, when that expression constitutes a criminal offence. Not to do so permits the commission of a criminal offence to continue.’***

The reluctance to enforce the law by PSNI has, in the past, resulted in litigation, requiring the Supreme Court to set out the PSNI’s duty.<sup>38</sup> Hate crime in Northern Ireland remains a real issue and, unfortunately, recent research found that between 2017 and 2022, hate crimes in Northern Ireland had a lower charge rate than any other serious offenses including historically undercharged sex crimes.

<sup>37</sup> For instance, there appears to have been no change in the position despite detailed and authoritative critiques, including ‘*Dealing with hate expression in public space in Northern Ireland Public authorities’ duties and practice towards removing racist, sectarian, homophobic, and other hate expression from public space*’, CAJ, May 2022.

<sup>38</sup> In *DB’s Application*, 2017.

## Conclusion

Public order policing presents very complex challenges to policing in Northern Ireland as it goes to the heart of some of the existing community tensions. The last five years included new public order challenges for the PSNI, including different protests during the pandemic in 2020, which were not always handled proportionally and more recently anti-abortion protests.

The issue of policing flags and emblems remains contentious, including at the Policing Board itself. Following PSNI's consultation with several stakeholders in 2023 to inform policy development it remains to be seen if the PSNI will update its policy on removing flags, effigies or emblems if they amount to hate expression.

### Recommendation 12

**Hate crime in Northern Ireland remains a real issue and, unfortunately, recent research found that between 2017 and 2022, hate crimes in Northern Ireland had a lower charge rate than any other serious offenses including historically undercharged sex crimes. PSNI should report to the Board on how it is going to tackle this issue.**

# Use of Force

**The use of force by police officers is one of their most significant and symbolic powers and engages Article 2 Right to Life, Article 3 Prohibition of torture and inhuman or degrading treatment or punishment and Article 14 prohibition of discrimination. Police Officers have the authority to use force in order to defend themselves or others, to effect arrest, to secure and preserve evidence or to uphold the peace.**

The legal basis for the use of force comes from several areas of law including, Common law, Section 3 Criminal Law Act (NI) 1967, Article 88 Police and Criminal Evidence (NI) Order 1989, Public Order (Northern Ireland) Order 1987 and the Human Rights Act 1998. The PSNI have developed policies and procedures in relation to the type of force, when and how it should be used. Any use of force must not be greater than was reasonable in the circumstances and, where lethal force is used, no more than absolutely necessary. Each use of force must be justified on every occasion, therefore the greater the effect on the victim, the greater the justification for its use. The Board has held the PSNI to account in relation to use of force and several thematic reports have been published. These include the Human Rights Review of PSNI's Use of Force 2023 and the Review of the use of Spit and Bite Guards 2022. These reports provide recommendations on how and when various use of force should be used, if at all.

The PSNI has a range of weapons and types of force at its disposal. The Use of Force options range from lethal, (firearms) to less lethal (Unarmed Physical Tactics). All 12 of these types of force have been discussed throughout the chapter of the main report and highlight policy, medical evidence and statistical information showing trends over the past five years. Statistical information has demonstrated how often they are used, where they are used and on which members of the community. The Board has pushed for greater transparency in relation to statistical information being published by the PSNI and although positive steps have been taken including the gender, age and ethnic minority of those involved in incidents there are areas that could be improved especially in relation to community background.

Very often the use of force by officers against a member occurs on the street, often without independent witnesses, and is not always recorded by Body Worn Video or CCTV systems. Police officers in Northern Ireland are tasked with preventing assaults and protecting the public and many of them put themselves in harm's way nearly every day. There has been an increase in the number of assaults on police officers on duty recently, this has increased from 2,714 in 2018/19 to 2,823 to 2019/20 and then again to 3,020 reported assaults against officers in 2020/21. Between April 2022 and February 2023, there were 923 assaults resulting in injury. In February 2023, a number of masked men attempted to murder to Detective Chief Inspector John Caldwell and he was shot and seriously injured as he was packing away football equipment into the boot of his car at his local football club.

In general, most encounters with the police are resolved without resorting to weapons, by using unarmed physical tactics (58% in 22/23) and handcuffs or limb restraints (31% in 22/23). The use of force by police officers is one of their most significant and symbolic powers. The use of force by one person against another is ordinarily both a crime and a tort (a civil wrong) and, when used by law enforcement officials without justification, violation of the prohibition against ill-treatment in international human rights law (and therefore the Human Rights Act). The use of the powers given to police officers to use force and the inevitable vulnerability of those arrested or in custody necessitates that any use of force must be justified by the particular circumstances. Once a person is in custody and/or restrained and is not able to escape, using force is very rarely likely to be justified unless officers continued to be threatened and cannot move away to a safe distance.

Throughout the past five years, the Board has worked with PSNI to try to make the use of force statistics produced by the PSNI and the Northern Ireland Statistics and Research Agency more comprehensive and transparent, such as publishing statistics on use of force by gender, age and ethnic minority. Since 2017/18, PSNI also publishes statistics on how often officers use limb restraints or unarmed physical tactics.

### De-escalation

The Board has highlighted the importance of the use of de-escalation techniques, which seek to minimise harm and avoid violence as an alternative to more lethal use of force. This view is shared by the Independent Office for Police Conduct (England and Wales). Further information on de-escalation is provided in the Human Rights Advisor's Review of PSNI's Use of Spit and Bite Guards<sup>39</sup> and this is particularly important because according to the PSNI's own EQIA consultation document showing that 81% of uses of Spit and Bite Guards had been on people with a disability and included people with mental health disabilities and incidents where drugs and/or alcohol were a factor.

39 [A Review of PSNI's Use of Spit and Bite Guards by the NI Policing Board's Human Rights Advisor](#) pages 56-58

## Training

During 2019-2023 the Board's Human Rights Advisor has observed a range of public order training across PSNI and engaged regularly with the PSNI Human Rights Trainer. Since the publication of Dr Richard Martin's research, which specifically relates to Public Order Command Courses delivered by Combined Operational Training, the PSNI reviewed and amended the Human Rights and Use of Force lessons in both the Bronze and Silver Command Courses. The Board will consider any research which may be conducted by the Home Office and the University of Maynooth and University of Central Lancaster on behalf of the PSNI into de-escalation and firearms usage. This will provide further insight into the need for officers to retain Personal Protection Firearms.

## Firearms

In Northern Ireland, the Chief Constable has given standing authority for all officers, subject to successful training, to be issued with a personal issue handgun which may be carried when officers are both on and off duty. In the rest of the UK, only specially trained Authorised Firearms Officers (AFO) carry firearms. In the Human Rights Review of PSNI's Use of Force, following the Northern Ireland threat level from NIRT being adjusted to 'substantial' for a brief period in 2022/23, the question was raised about what the criteria should be for issuing firearms to all officers rather than, as in the rest of the UK and the Republic of Ireland, only to those special trained in their use. The Board recommended that the PSNI should consider this issue as part of its longer-term plans. PSNI replied that,

***'This is now built into the annual APSTRA process (Armed Policing Strategic Threat and Risk Assessment) and therefore features in our long-term plans in a structured fashion.'***

***The Strategic Management Board agrees that the question of arming / disarming officers is important and it remains under review. Although there is a low use of firearms (PPWs) it does not undermine the importance of being armed. The PSNI is an armed police force, given the indigenous threat from terrorists and the threat from organised crime gangs, PSNI will remain armed. It is believed that the removal of PPWs would impact in confidence in policing internally and externally.'***

## Conducted Energy Devices

The Board has, in the Human Rights Review on the Use of Force, looked specifically at the use of Continued Energy Devices (CED), also known as Tasers. While it is clear that CED are obviously 'safer' than firearms, as they are less lethal, in England and Wales and elsewhere there is no clear evidence that the number of deaths as a result of the use of firearms by police officers has been reduced. Secondly, and perhaps more importantly, officers in England and Wales tend to use them in response to lower levels of threat – when lethal force is *not* justified. Use of Force statistics from England and Wales 2021/22 show that in 43% of cases where CED was fired, the person was unarmed. The use of CED by PSNI is restricted to the officers in ARUs, officers in SOB and to CTSFO and this is a very sensible restriction, reducing the likelihood of them being used, in practice, outside 'less-lethal' situations.

### Recommendation 13 – Use of Force

**The PSNI should provide the Policing Board with a detailed paper setting out the advantages and risks associated with the new weapon Taser10® and this should include the results of any independent assessments of its capacity and dangers before any commitments to purchase.**

### Recommendation 14 – Use of Force

**A recent report on the potential causes of racial and ethnic disparities in the use of Taser in England and Wales has been published by a number of universities. A similar initiative, but extended to both the use of all weapons by PSNI officers and to include community background, should be taken in Northern Ireland.<sup>40</sup>**

## Spite and Bite Guards

The Board has had concerns regarding the introduction of Spit and Bite Guards since 2015 when their possible future use was first brought to its attention. They are devices which are intended to cover the mouth, face and on occasion the head of the person. Recommendations were made in the 2016/17 Human Rights Annual Report to ensure oversight by the Performance Committee if they were introduced. In March 2020, the (then) Chief Constable confirmed his intention to introduce them to custody suites based on the risks of Covid. This was expanded to any public-facing officer who had undertaken training from June 2023. The thematic report published in 2022 outlined the Board's concerns and made numerous recommendations regarding their use being lawful especially in relation to children and vulnerable people.

40 Keele University, 13 December 2023.

A constant factor in all the cases reviewed for the report was that the person in question appeared to be disconnected from reality and did not act in their own best interests (let alone treated the officers properly). Expert help from medical personnel might, if they had been available, have made a significant difference but the application of de-escalation measures would have equally helped. The Service Accountability Panel now regularly considers the use of Spit and Bite Guards and data is collected and analysed regarding Section 75 categories and regularly reviewed by the Board. The Equality Impact Assessment conducted by PSNI in 2021 had, previously, raised a few questions about disproportionality.

### Conclusion

Through its thematic reports, the Board has highlighted the concerns of the Use of Force that are currently being considered by the PSNI and recommendations have been made to ensure that they are used proportionally and are justified. CEDs and Spit and Bite Guards have consistently been raised as issues over the past five years with and by the Board and many recommendations have been made in relation to these both by the Board and the Police Ombudsman. Progress has been made in both areas and the PSNI regularly report to the Board on their use. Over the past five years the PSNI have improved their training into the use of de-escalation techniques which in many circumstances, especially where mental health issues are involved, reduce the risk of escalation and provide a better outcome for all involved. This is welcomed by the Board, particularly given the apparent increase in subjects who present with mental health or serious vulnerability issues.<sup>41</sup>

<sup>41</sup> For a more comprehensive overview of policing, use of force and mental health, see [Human Rights Review of PSNI's Use Of Force](#)



# Legacy

**The Legacy and Disclosure Branch is the part of PSNI's which investigates legacy issues. Its role was primarily to investigate homicide and security forces related deaths arising from the Northern Ireland 'Troubles' between 1969 and 2004. The Branch were also responsible for investigating unsolved 'non-troubles' related deaths between 1969 and 2004. In December 2014, when the Historical Enquiries Team (HET) closed, their caseload was passed to the Legacy and Disclosure Branch.**

There are 1,114 cases relating to 1,400 deaths on the Case Sequencing Model, 21 cases currently under investigation and 13 cases are awaiting decisions from the Public Prosecution Service. The PSNI have assessed that 200 or so of these cases will not be within the remit of the proposed ICRIR (see below).

PSNI's Legacy Support Unit (LSU) has a multidisciplinary workforce with a wealth of experience and expertise with many of the staff are highly qualified academics and professionals. The legacy legal work conducted by LSU is varied and includes legacy inquests arising from the Lady Chief Justice's five-year legacy inquest plan, of which in March there were 37 inquests being worked on or being heard. The Legacy and Disclosure Branch currently had carriage of over 1,000 civil litigation cases including approximately 200 civil actions relating to legacy inquests and around 100 non-legacy contemporary sensitive litigation cases.

LSU also have carriage of 23 judicial reviews. These relate to allegations of delay in providing Article 2 (ECHR) compliance investigations and inquests, alleged failure to investigate and cases involving other state agencies awaiting settlement.<sup>42</sup> In a recent legacy inquest case there was an allegation that PSNI might be not delivering the support necessary as quickly as it should and Mr Justice McAlinden made it clear that there should be no "downing of tools" by the state over the Loughgall inquest, in light of legal challenges and a UK election before a key part of the new Act comes into force on 1st May 2024.<sup>43</sup>

<sup>42</sup> As of March 2023.

<sup>43</sup> BBC, 27 October 2023.

## Immunity and the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

In September 2023 the government's Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 obtained Royal Assent which will introduce a conditional immunity scheme. Those who cooperate with the proposed Independent Commission for Reconciliation and Information Recovery will receive immunity from prosecution for offences connected with Troubles-related deaths and serious injuries. This measure will also end any further civil actions, prosecutions and inquests relating to the Troubles. In February 2024, the High Court declared that part of this legislation did not comply with articles 2 (right to life), 3 (freedom from torture, inhuman and degrading treatment) and 6 (right to a fair trial following a number of applications for judicial review challenging the lawfulness of the way the Act will shut down prosecutions, investigations, inquests and civil actions.<sup>44</sup> The judgment is being appealed. At the time of writing the government of the Republic of Ireland has also initiated an 'inter-state' case against the UK in the ECtHR to challenge compliance with human rights. The PSNI have recently set up a Legacy Programme Board to monitor the progress to the changes imposed by the Act and to co-ordinate its activities as necessary.

The Supreme Court gave judgment in the McQuillan and others case in December 2021.<sup>45</sup> The details of the factual basis of the cases and the consequences were set out in the Human Rights Annual Report for 2021/22.

Operation Kenova was launched to investigate allegations of murder, kidnap and torture dating back to the 1970s:

***'The focus of this investigation is to ascertain whether there is evidence of the commission of criminal offences by the alleged agent including, but not limited to, murders, attempted murders or unlawful imprisonments attributed to the Provisional IRA. It will also look at whether there is evidence of criminal offences having been committed by members of the British Army, the Security Services or other government personnel.'***<sup>46</sup>

Mr Jon Boutcher<sup>47</sup>, previously Chief Constable of Bedfordshire Police until 2019, has taken on further investigations from PSNI. This has provided a process which avoids any conflicts of interest for PSNI officers and complies with Article 2. In November 2023 he became the Chief Constable of the PSNI and his role in Kenova was taken over by Sir Iain Livingstone (the previous Chief Constable of the Scottish Police). The investigation report was passed to the PSNI in Autumn of 2023 and was published by PSNI on 8th March 2024.

44 Troubles legacy: Controversial bill facing more legal challenges, BBC, 19 September 2023. Judgment 28th February.

45 In the matter of an application by Margaret McQuillan for Judicial Review (Northern Ireland) No 1, 15th December 2021.

46 <https://www.opkenova.co.uk>.

47 Jon Boutcher took up role as Chief Constable of PSNI on 7 November 2023

## Conclusion

The PSNI inherited an impossible task when it took over these cases in 2014 and had some inevitable conflicts of interest which also raised serious questions about its independence and compliance with the investigatory principles set out by the ECtHR in its interpretation of Article 2. The volume of cases has also meant it could not deliver the investigations in a timely manner. These problems have also resulted in a considerable number of civil actions and judicial reviews, many of which resulted in findings of breaches of law by the PSNI and significant payments of costs and damages. One solution would have been the creation of the independent Historical Investigations Unit a recommendation contained in the Stormont House Agreement of 2014.

# National Security and Policing

**The Board has a statutory duty under the Police (Northern Ireland) Act 2000 to maintain and secure an efficient and effective police service. The Board must make arrangements for obtaining the co-operation of the public with the police in the prevention of crime. In discharging those duties, the Board has retained oversight of and held the Chief Constable to account in respect of all aspects of police work, including that which relates to National Security. However, the Board has no remit over the Security Service (MI5); although the Chief Constable remains responsible for and accountable to the Board in respect of all PSNI officers and staff including those working alongside the Security Service.**

The Intelligence and Security Committee of Parliament assesses the need for MI5 to continue its work in Northern Ireland. Effort on Northern Ireland Related Terrorism (NIRT) accounted for approximately 20% of MI5's operational and investigative resources as of 2018. A strategic focus is put on diverting individuals away from becoming involved with terrorist groups, alongside steady suppression of the existing threat by degrading the capabilities of Dissident Republican groups and disrupting their activities. However, MI5 does not view total suppression as realistic, they,

***“do not proceed with an assumption that we can continue to drive [NIRT attacks] down to zero. That looks to us to be an undeliverable goal, albeit one we should always strive towards.”***

Unfortunately, given the nature of covert and national security policing, there are limitations in respect of the amount of information that can be provided to Members of the Policing Board or to the public. However, there is close liaison between MI5 staff and PSNI officers with MI5 providing substantial intelligence to PSNI which helps to identify criminal activities. MI5 has other objectives, however and does not have a duty to investigate crime or to ensure suspects are taken through the criminal justice process. However, it would be a mistake to exaggerate this difference – MI5 has stated that criminal justice outcomes are its ‘preferred course of action whenever achievable’.

Inevitably there is tension given the difference in primary objectives but the Human Rights Advisor has been reassured by PSNI that this tension is dealt with productively and those PSNI officers liaising with MI5 have the support, where necessary, of the Assistant Chief Constable responsible for crime. Those PSNI officers are also content that they have visibility of MI5 operations in NI (including the use of CHIS) and that the regular joint tasking meetings allow any differences to be quickly resolved.

Despite the fact that MI5 are not accountable to the Policing Board, in the course of the Human Rights Advisor's engagement he was able to examine and probe how PSNI works with MI5 and was shown material setting out the roles and working together processes and also discussed the use and procedures for authorising CHIS (and CCAs) to conduct collaborative counter terrorism investigations in NI and made several positive observations.

In all circumstances, including where national security is an issue, it is the PSNI which mounts and is responsible for executive policing operations. Therefore, oversight through, for example, the Board is important, but complex. To clarify the oversight arrangements, Annex E to the St. Andrews Agreement was intended to provide a clear line of oversight and accountability following transfer of primacy. The UK Government confirmed that it accepted five key principles. Adherence to those principles is crucial to the effective operation of national security arrangements.

Jonathan Hall KC, in his report for 2021 assesses the position as follows:

***'9.7. In 2021 the threat level in Northern Ireland from Northern Ireland-related terrorism remained at "severe" (meaning that an attack is highly likely), although it was to be reduced to an unprecedented level of "substantial" in March 2022. The threat posed specifically by Northern Ireland-related terrorism to Great Britain, as opposed to other forms of terrorism, is no longer published separately.'***

What follows is an extract from the main findings from the report by Professor Marie Breen Smyth, the then Independent Reviewer of National Security Arrangements in Northern Ireland, covering the period from 1 January 2022 to 31 December 2022:

***"My contact with MI5 and the PSNI was largely conducted in person. I was given a clear insight of both the current direction..."***

***Although the threat assessment for Northern Ireland was lowered in 2022 from Severe to Substantial, in their Fifth Report the Independent Reporting Commission pointed out that paramilitarism remains a clear and present danger. The threat from Dissident Republican (DR) groups remains a concern for law enforcement.***

***The two main loyalist groups, the Ulster Defence Association (UDA) and the Ulster Volunteer Force (UVF) continue to operate, and sections of both groups, largely in the Belfast area, are involved in intimidation, criminality and violence.***<sup>348</sup>

The Policing Board's Human Rights Advisor has discussed the national security assessment and the role of MI5 and PSNI with Professor Breen-Smyth who has said that she has no reason to believe that MI5 has put pressure on the PSNI to act in violation of human rights. The Human Rights Advisor has been permitted to read the full version of her report which raises no human rights issues.

Recommendation 17 of the Human Rights Annual Report 2020/21 called for a wider debate of the asymmetry in intelligence gathering and law enforcement functions in Northern Ireland involving the PSNI and the Policing Board. In response to this recommendation, PSNI replied detailing that they provide a detailed quarterly performance report related to Serious and Organised Crime to the Policing Board and this includes reporting against the crime types linked to paramilitary organised criminality. They noted the existing joint working practices where national security and paramilitary related criminality are jointly assessed to allow for tasking and prioritisation around deployment of covert policing resources. They equally recognised that there could/should be enhanced levels of joint working across both the Northern Ireland Related Terrorism and Tackling Paramilitarism Programme service areas and that this has led to the establishment of the 'Gearbox' concept where these discussions are taking place. The Paramilitary Crime Task Force (PCTF) works closely with Crime Operations Department to ensure that intelligence development and covert deployments are considered across the service and tasking decisions made based upon a collective assessment of threat, harm, and risk.

## Conclusion

There remain individuals and groups in Northern Ireland who, not only do not accept the current constitutional and political arrangements but, are prepared to use violence to assert their views. The consequence of this is that 'state officials' are individual targets of this violence as was demonstrated last year by the attempt to kill Detective Chief Inspector John Caldwell. It also results in the continued additional role of MI5 in Northern Ireland and the fact that PSNI officers continue to carry personal protection firearms.

48 The threat level was raised to severe in March 2023 and lowered again in March 2024.

# Privacy

**More and more of our private life is online and individuals can be tracked and monitored in ever greater detail. As a result, the police can access, collect, and retain a mass of data about our private lives. Therefore, we need greater transparency, tighter controls, and a detailed discussion of what is or is not justified. The most relevant ECHR article that protects privacy rights is Article 8, the right to privacy. Article 8 covers four areas, namely: private life, family life, home and correspondence. Some matters, of course, span more than one interest. The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority.**

The Policing Board's report 'Human Rights Review of Privacy and Policing' was published in July 2023 and was the first assessment of privacy and policing in Northern Ireland, in general. The report set out concerns with what appears to be an absence of consultation by the police, the DOJ, or the NIO on issues of privacy. The driver for new facial recognition systems, biometric data retention, CCTV and ANPR is the Home Office and the College of Policing, whose policies and guidance are often adopted in Northern Ireland without any public consultation.

Transparency in policing is difficult when techniques of targeted surveillance are concerned. Nevertheless, what techniques are actually used by PSNI in secret is often exaggerated and distorted. However, it is precisely these factors which continue to undermine confidence in PSNI, especially in some communities. A service which would wish the public to believe that it is solidly built based on 'policing by consent' must continue to strive to become more transparent as these techniques have greater and greater impacts on privacy.

The report also considered general public surveillance, in particular the use of public space CCTV and Automated Numberplate Recognition (ANPR), Body Worn Video, and the role of the Biometrics and Surveillance Camera Commissioner. Most CCTV cameras present throughout Northern Ireland and Great Britain are not operated by the police, but rather by the private sector and public authorities, such as councils and transport authorities, and PSNI rely on these CCTV networks when investigating crimes.

Since its publication a UK Home Office Minister has stated that he intends to integrate the semi-automated facial search capability within the UK Police National Database (PND) with the UK Passport Office database containing images of 45 million UK passport holders. He also intends to allow Home Office forces to use facial recognition to compare CCTV images of suspects from volume crime scenes such as shoplifting against the UK passport database. The Scottish Biometrics Commissioner stated in response that:

***“I view this egregious proposal as unethical and potential unlawful. I also wish to align myself with those who have condemned this proposal as a gross violation of British privacy principles.”***

According to investigations by Liberty and The Telegraph, facial recognition searches using the UK’s database of passports have been conducted since 2019. The UK government has recently introduced a provision in the UK Parliament which would allow the police service to run facial recognition systems against the photographs in the driving licence data base - some 50 million license holders. As noted in the Review on Privacy and Policing, Northern Ireland does not have its own Commissioner to assess whether the PSNI should be included in these plans. In the absence of any legislative basis for using and controlling the use of facial recognition technology, it is therefore even more important for the Board and the PSNI to develop a Data Ethics and AI strategy.

Since the report was published there has been very considerable data breach by the PSNI in the summer of 2023. This involved the disclosure of the details of nearly ten thousand officers and staff. The data concerned their surnames and initials alongside their location and the department where they work. The breach resulted from information included in error in response to a Freedom of Information Request. The disclosure was investigated by an independent team jointly set up by the Policing Board and PSNI and its findings and recommendations were published in December 2023.<sup>49</sup> The report made 37 recommendations for improving information security within the PSNI, including organisational and governance changes.

A second data protection violation occurred when the PSNI shared the personal data of 174 people with a law enforcement agency in the United States. The Information Commissioner’s Office investigated this breach and found the infringements occurred between 2018 and late 2020. There are obvious issues of the human rights of police officers and staff, especially interference with Article 8 rights (the right to privacy), that the Board will need to consider.

<sup>49</sup> [A review commissioned by the Police Service of Northern Ireland \(PSNI\) and the Northern Ireland Policing Board \(NIPB\), into the PSNI data breach of 8th August 2023](#), 11 December 2023



The Five-Year Report itself discusses the most recent IPT case involving the PSNI, concerning journalists Barry McCaffrey and Trevor Birney who produced the documentary ‘No Stone Unturned’ concerning the murder of six people on 18 June 1994 in a public house in Loughinisland and the subsequent investigation by the then Police Ombudsman. In September 2023, the Board requested a formal report on the subject from PSNI and also wrote to the Investigatory Powers Commissioner requesting any information that his office held on the PSNI’s approach to the surveillance of journalists in the past and requesting an enhanced scrutiny when the PSNI was next inspected by his Office. IPCO replied stating that today’s legal framework governing the acquisition of communications data relating to journalists includes significantly enhanced safeguards. This should mean that the risk of PSNI inappropriately obtaining journalists’ communications data today is lower. This is also, in part, due to IPCO’s programme of regular inspections. Furthermore, it is already part of IPCO’s inspection methodology to focus on the surveillance of journalists.

### IPCO Inspection 2023

For the first time in April 2023 the Human Rights Advisor was allowed to attend the end of inspection oral report by the IPCO inspection team. The report was both detailed and comprehensive. A few weeks later the Advisor was able to read the written report and the following extracts provide a true reflection (although the report itself is nearly twenty pages long):

***‘Overall, the levels of compliance with the relevant Acts and Codes of practice shown by PSNI are of a high standard. Staff involved in the end to end process were found to be diligent, conscientious, and strive to deliver a successful and legally compliant outcome.’***

### Recommendation 15 – Privacy and Surveillance

**As reported in recent Human Rights Annual Reports, the PSNI continue to hold biometric data (fingerprints, photographs, and DNA profiles) on hundreds of thousands of people in Northern Ireland unlawfully and has been doing so since 2008. This is despite the fact that the Assembly drafted legislation to deal with this issue a few years ago (although never implemented). The PSNI, supported by the Policing Board, should request that the assembly legislate urgently on this issue.**

The inspection has demonstrated that PSNI has once again attained high levels of compliance with the legislative requirements.

CJINI,<sup>50</sup> in November 2023, published a follow up review into how the Criminal Justice System deals with cybercrime in Northern Ireland. In 2017, seven recommendations were made. Three have been achieved, three not achieved and one has been partially achieved. CJINI commented on the positive introduction of Cyber Support Units who work in conjunction with Cyber Crime Centres and analyse digital forensics, servicing mobile phones and CCTV. CJINI inspectors noted that the PSNI have made considerable investment into technology and training in this area. There is still however, as use of mobile technology increases, a backlog in digital forensic examination.

During the last year the Human Rights Advisor came across information that suggested that some police forces were using covert surveillance when investigating allegations of misconduct officers and staff and that this did not require the usual statutory protections.

### Recommendation 16 – Privacy and Surveillance

**The PSNI should provide a report to the Policing Board on the rules and procedure on how the covert surveillance of officers and staff is used when individuals are being investigated for misconduct (rather than crime).**

### Conclusion

While various inspection reports over the past few years have shown that PSNI are generally compliant with legislative requirements in relation to privacy, the August 2023 data breach represented a significant violation of Article 8 rights and put officers and staff in danger.

It remains to be seen how the recommendations contained in the December 2023 review will be implemented. In the Human Rights Review of Privacy and Policing, the Board recommended that there should be an open and public debate about data driven technology in policing including developments in and use of Artificial Intelligence and Algorithms, Biometrics, Digital Forensics, Surveillance, and Investigatory Powers. PSNI should aim to become an organisation driven by effective and efficient use of data in an ethical way. The report also set out particular concerns with what appears to be an absence of consultation by the police, the DOJ, or the NIO on issues of privacy. A particular concern is the absence of a Biometrics Commissioner in Northern Ireland. Rapid technological developments and new capabilities mean that privacy rights will need to be fiercely protected. The Policing Board is committed to working together with the PSNI to ensure that going forward, privacy rights of officers, staff, and the rights of anyone coming into contact with the police are protected.

50 [CJINI - Criminal Justice Inspection Northern Ireland - Cyber crime Follow-Up Review](#)

# Levers of Change

**This chapter is new to the Policing Board’s Human Rights Annual Reports. It is designed to be a more reflective attempt to try to understand and outline the institutions, processes and procedures that can and do promote compliance by the PSNI with Human Rights. The Chapter also seeks to assess the extent to which the operations of the PSNI comply with Human Rights and we look to the compliance of PSNI with the human rights recommendations made over the last five years as a guage for success. We also examine the tools of training and policy that PSNI use to embed a culture of Human Rights compliance with its officers and make two recommendations in these areas.**

The PSNI Human Rights Training Advisor’s role is to ensure that human rights processes and compliance outcomes are identified and delivered in an understandable way both to new recruits and as part of continuous development of all Officers. The Advisor would audit new training courses to ensure Human Rights obligations are being met. Therefore, the Board recommends that:

## **Recommendation 17 - Training**

**The post of the Human Rights Training Advisor should be filled at the earliest opportunity.**

PSNI policy is contained within the Service Policy documents and Service Instructions which are designed to inform the Officer in making the decisions when on the front line. They are a way of measuring and assessing performance and are explored in full in the main report. In this chapter the Board recommends that:

## **Recommendation 18 - Policy**

**The PSNI need to provide the resources to deliver human rights content for policy materials and it is suggested that responsibility for delivering this should be given to the PSNI’s Human Rights Legal Advisor who should be provided with the necessary additional resources to ensure that this happens. The above guidance should also be updated to include more information linking policing practices and human rights principles and more up to date sources of information. In the event of any delay in producing a new version the current version should be published by July 2024.**

# Recommendations<sup>51</sup>

## Recommendation 1 – Vulnerable Victims

The collation of baseline data on repeat victimisation and the development of the bespoke toolkits for supporting repeat victims should be progressed as a priority. This should include data in relation to each victim category (domestic abuse, sexual offences, stalking, hate crime, community background etc.)

## Recommendation 2 - Vulnerable Victims

PSNI should explore and research the impact of the increasing requirement of police officers having to deal with people in distress is having upon policing and provide a report to the Department of Justice, the Health Department and the Assembly and others. PSNI should consider in conjunction with healthcare services, introducing the Right Care, Right Person approach to deal with mental health and other vulnerabilities within an agreed timeframe

## Recommendation 3 – Vulnerable Victims

PSNI should report to the Policing Board on what extra can be done to ensure victims of domestic abuse in these communities are better served and protected through their work to support victims of domestic abuse in paramilitary controlled communities. This report should also include data in relation to each victim category (domestic abuse, sexual offences, stalking, hate crime, community background etc.)

## Recommendation 4 – Vulnerable Victims

The Policing Board supports the recommendation within the CJINI report where it repeats its recommendations from its previous similar 2015 inspection<sup>52</sup>, calling for the establishment of a prosecution team to develop new prosecution protocol, to develop and deliver organisational investigative standards and to provide guidance on disclosure. Overall, the report recommends that PSNI and PPS jointly review the previous recommendations and provide a joint action plan for implementation. It also recommends that DOJ introduce custody time limits to speed up the criminal justice system for victims and defendants alike.

51 The basis of these recommendations is set out in the Full Report.

52 [An inspection of the quality and timeliness of police files incorporating disclosure submitted to the Public Prosecution Service for Northern Ireland. \(cjini.org\)](#)

### Recommendation 5 – Vulnerable Victims

It is recommended that the inclusion of discussion materials in relation to consent and coercive behaviour for Training Development Unit students within the Train the Trainer course, be developed and introduced.

### Recommendation 6 – Vulnerable Victims

The PSNI should, in the wake of recent criticisms of their approach to race hate crime in a recent BBC Spotlight programme, report to the Board on the detail of its work in this area and produce an action plan to tackle the issue and reassure communities.

### Recommendation 7 – Stop and Search

The PSNI should report to the Board on any progress on the Board's four aims in relation to stop and search powers:

1. To ensure the service remains transparent and accountable;
2. To improve public understanding on how and why the powers are used;
3. To support a more intelligence-led and targeted approach to stop and search and improve the 'stop-to-outcome' ratio.
4. Record and monitor the community background of all those stopped and searched

### Recommendation 8 – Stop and Search

The report, 'An Analysis of Incidents of Stop Searches Conducted on Members of the Irish Traveller Community between 1<sup>st</sup> July 2022 and 30<sup>th</sup> June 2023.' should be published and academic experts and other relevant stakeholders on stop and search should be invited to comment.

### Recommendation 9 – Stop and Search

The PSNI should provide a report to the Policing Board setting out the likely reasons for this increase and for the variation of use of the JSA exceptional stop and search powers over the last five years.

### Recommendation 10 – Stop and Search

In England and Wales a trio of independent bodies (HMICFRS, College of Policing and the IOPC) carried out a thorough and detailed investigation into the use of the stop and search provision available in that jurisdiction that also does not require reasonable suspicion. PSNI should ask a group of similar independent experts to carry out a review of the JSA power and the investigation should take a similar approach to establish the facts.

### Recommendation 11 – Arrest and Custody

The PSNI should report to the Board on progress on the changed approach to data collection in relation to community background, the data that has resulted, and any proposed substantive action it intends to take and publish the data in due course.

### Recommendation 12 – Public Order

Hate crime in Northern Ireland remains a real issue and, unfortunately, recent research found that between 2017 and 2022, hate crimes in Northern Ireland had a lower charge rate than any other serious offenses including historically undercharged sex crimes. PSNI should report to the Board on how it is going to tackle this issue.

### Recommendation 13 – Use of Force

The PSNI should provide the Policing Board with a detailed paper setting out the advantages and risks associated with the new weapon Taser10® and this should include the results of any independent assessments of its capacity and dangers before any commitments to purchase.

### Recommendation 14 – Use of Force

A recent report on the potential causes of racial and ethnic disparities in the use of Taser in England and Wales has been published by a number of universities. A similar initiative, but extended to both the use of all weapons by PSNI officers and to include community background, should be taken in Northern Ireland.<sup>53</sup>

### Recommendation 15 – Privacy and Surveillance

As reported in recent Human Rights Annual Reports, the PSNI continue to hold biometric data (fingerprints, photographs, and DNA profiles) on hundreds of thousands of people in Northern Ireland unlawfully and has been doing so since 2008. This is despite the fact that the Assembly drafted legislation to deal with this issue a few years ago (although never implemented). The PSNI, supported by the Policing Board, should request that the assembly legislate urgently on this issue.

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### DOCUMENT TITLE

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**Northern Ireland Policing Board  
5 Year Human Rights Review**  
Summary

### ONLINE FORMAT

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