

FOREWORD



I am pleased to present the Northern Ireland Policing Board's (the Policing Board's) 10th Human Rights Annual Report.

The Policing Board is required by section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the Human Rights Act 1998. In order to assist it with fulfilling this duty, the Policing Board appointed Human Rights Advisors in 2003 to devise a framework detailing the standards against which the performance of the police in complying with the Human Rights Act 1998 would be monitored. The Policing Board's Performance Committee (the Committee), with the assistance of the Human Rights Advisor, is responsible for implementing the monitoring framework. This work has been reported upon by way of a Human Rights Annual Report every year since 2005.

This year marks the 10th Anniversary of the Human Rights Annual Report. The Annual Report has served an important function in both holding PSNI to account, and also in giving an account to the public of PSNI performance and the Policing Board's monitoring work. PSNI has implemented over 200 recommendations made in the 10 Annual Reports relating to issues such as domestic abuse, hate crime, children and young people, public order, use of force, stop and search, covert policing, complaints and discipline and many more.

Since 2009 the Human Rights Annual Report has been supplemented by thematic reviews through which a more detailed examination of specific areas of policing can be carried out from a human rights perspective. A key feature of the thematic review is use of the community's experience of policing to assist with informing the evidence

base against which police policy and practice on the ground is evaluated. Four human rights thematic reviews have been published to date and have made a combined total of 73 recommendations. The thematic reviews examined the police response to domestic abuse; children and young people; policing with and for lesbian, gay and bisexual individuals and transgender individuals; and police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007. The Performance Committee has agreed that the next thematic review to be carried out will focus on the police response to race hate crime, the findings of which are expected to be published during 2015.¹

PSNI's acceptance and implementation of the recommendations made in Human Rights Annual Reports and thematic reviews is indicative of the organisation's commitment to a human rights based approach to policing. This approach has been identified as good practice in other parts of the United Kingdom and internationally, as has the Policing Board's human rights monitoring work. I welcome the new Chief Constable's commitment to maintaining such an approach and his willingness to be held to account and to provide an account to both the Policing Board and the community in that regard. The Policing Board, through the work of its Human Rights Advisor and Performance Committee, will continue to monitor and report upon PSNI's performance in doing so.

The Human Rights Annual Report 2014 makes 9 new recommendations for the PSNI to consider relating to training; policy; complaints; child sexual exploitation; the service of non-molestation orders and occupation orders; disability hate crime; terrorism detainees; healthcare within custody; and Youth Engagement Clinics. The Report also records that 14 recommendations from previous years have been implemented during 2014. In implementing these recommendations, PSNI reported to the Performance Committee throughout 2014 on a range of issues including training on youth issues, training for civilian staff, a test purchasing of alcohol

¹ The four published thematic reviews and the terms of reference for the race hate crime thematic review are available to download through the publications section of the Policing Board's website: www.nipolicingboard.org.uk

scheme, oppressive behaviour complaints, the Regulation of Investigatory Powers Act (RIPA) and healthcare in police custody.

This is the 6th Human Rights Annual Report produced on behalf of the Committee by the Policing Board's Human Rights Advisor, Alyson Kilpatrick BL. Alyson was also responsible for producing all four of the human rights thematic reviews published to date. The advice and guidance she has provided to the Policing Board on human rights issues over the years has been invaluable and has given us greater confidence in our ability to effectively hold the PSNI to account. On behalf of the Policing Board, I would like to thank Alyson for her continued support and contribution.

Anne Connolly

Chair

Northern Ireland Policing Board

HUMAN RIGHTS ANNUAL REPORT 2014

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1. PSNI HUMAN RIGHTS PROGRAMME OF ACTION

A central proposition of the Report of the Independent Commission on Policing for Northern Ireland 1999 (the Patten report) was that the fundamental purpose of policing should be, in the words of the Belfast Agreement 1998, “the protection and vindication of the human rights of all... There should be no conflict between human rights and policing... policing means protecting human rights.”²

Recommendation 1 of the Patten report required that there be a “comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach.”³ In response to that recommendation, PSNI published a Human Rights Programme of Action on 10 September 2004. The Programme of Action was indicative of PSNI’s willingness at an organisational level to embrace human rights not only as a core value in all police processes, but also as a guide to behaviour. It set out in detail the steps that had been taken to ensure that the policing focus in Northern Ireland remained on human rights. For example, the PSNI introduced a new police oath of office reflecting a commitment to human rights and it published a Code of Ethics setting down the standards of conduct and practice expected of police officers, underpinned by the European Convention on Human Rights and Fundamental Freedoms (the ECHR) and other relevant international treaties. The Code also, importantly, was intended to provide a human rights toolkit so that officers would be aware of their obligations and rights. Thereafter the PSNI strove to incorporate human rights principles into all aspects of police training so that those principles would be implemented at an operational level.

PSNI indicated that it regarded Patten Recommendation 1 as an obligation to put in place and maintain an overall framework for human rights compliance. The Policing Board suggested that the best way of ensuring a long-term focus on human rights was for PSNI to compile and publish annually a Human Rights Programme of Action in which the police would respond with specificity to the recommendations contained

² *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 4.1.

³ *Ibid.* paragraph 4.6.

within the Policing Board's Human Rights Annual Reports. PSNI agreed and has published a Human Rights Programme of Action each year since 2005.

The Policing Board's Human Rights Annual Report 2013, published on 25 March 2014, made 8 new recommendations for the PSNI to consider. In June 2014, PSNI published its Human Rights Programme of Action 2013/2014.⁴ The Programme of Action confirmed PSNI's acceptance of all 8 recommendations and outlined the steps that had been taken, or were proposed, to implement them. The Policing Board's Human Rights Advisor has since met with many of the officers and staff responsible for implementing those recommendations. Progress is reported upon in the relevant chapters of this Human Rights Annual Report and in Appendix 2.

As before, the PSNI Human Rights Programme of Action 2014/2015 should be published within 3 months of the publication of this Human Rights Annual Report providing a response to the 9 Recommendations contained herein. Thereafter, the Performance Committee of the Policing Board and the Policing Board's Human Rights Advisor will work closely with PSNI to ensure timely receipt of information about ongoing developments.

Since his appointment as Chief Constable, George Hamilton has taken every opportunity presented to him at public events and internally within the PSNI to reiterate his and his colleagues' commitment to protecting and fulfilling the human rights of every member of the community. With his leadership and obvious demonstration of the values enshrined in human rights law the Board expects those values to be translated into practice but will continue to monitor the practical outcomes.

⁴ The *PSNI Programme of Action 2013/2014* is available to download through the PSNI website: www.psnipolice.uk

2. TRAINING

Through training, police officers are taught human rights law, the complex rights engaged in all police action and how those rights must be balanced, protected and respected when carrying out operational duties and the circumstances in which individual rights may be limited lawfully. With the adoption of a human rights-based approach to policing and the introduction of an ethical and disciplinary code for police officers which is aligned to human rights standards,⁵ it follows that human rights standards should be integrated into all aspects of police training.⁶ PSNI recognised that human rights should not be taught in a discrete stand-alone lesson and are taking steps to further integrate relevant human rights principles in to all aspects of training, from the foundation course at Police College through to District training. By doing so, the PSNI aims to ensure that a human rights based approach is applied instinctively by police officers in all operational scenarios.

In monitoring PSNI performance in complying with the Human Rights Act 1998 the Performance Committee with the assistance of its Human Rights Advisor pays close attention to training, in particular whether the training is effective and encourages police officers to develop a knowledge base of human rights law, to embrace the values that underpin human rights and to translate those values into practice. The Committee recognises that budget cuts are very likely to impact upon policing, including training, but is strongly of the view that a continued investment in training is critical to ensuring human rights compliance. It will clearly influence how police respond to crime and how they interact with members of the public. The skill and experience of in-house police trainers, coupled with the willingness of community and voluntary based organisations to assist with training, means that PSNI has resources to deliver the necessary training and is strongly encouraged to do so.

⁵ The PSNI Code of Ethics 2008.

⁶ The Patten report recognised that “training was one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel” and specifically recommended training in the “fundamental principles and standards of human rights and the practical implications for policing”; Recommendation 4, *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland (the Patten report), September 1999.

During 2014 the Human Rights Advisor met on a number of occasions with the Head of Training and Development to discuss a range of training issues including training for policing with children and young people and human rights training to be delivered to police civilian staff, both of which are discussed in more detail below. The Human Rights Advisor found those meetings to be constructive and welcomes the proactive manner in which the Head of Training has engaged with the Policing Board.

The Human Rights Advisor also meets regularly with the PSNI Human Rights Training Advisor. The Human Rights Training Advisor has specialist human rights knowledge and considerable experience which she applies to her review of training delivered at Police College and within Districts. She assists in the production of training materials, delivers training to trainers and engages with stakeholders to ensure that any concerns they may have in relation to policing operations which can be improved by training may be addressed. The PSNI Human Rights Training Advisor is a key participant in the production of PSNI education and development plans and has contributed an enormous amount to the ongoing training of police officers and civilian staff. She has focused on contextualising human rights considerations in operational policing scenarios to make training more effective in practice. The Performance Committee believes that this dedicated role is crucial to ensuring that the integration of human rights principles into all aspects of training remains a priority within the PSNI.

Student officer training

PSNI affords the Policing Board's Human Rights Advisor with the access she requires to assess training materials, lessons delivered in the classroom and scenario based training. She is briefed regularly on the training programme delivered to student officers. That training programme consists of an introductory period of e-learning followed by 22 weeks of intensive classroom based training. It includes a wide range of core topics which are subject to ongoing assessment. Training in human rights for student officers is delivered firstly by an e-learning package which is tested before the student may progress to the next stage. The purpose of the e-learning package is that students will begin their classroom training with a basic

knowledge of human rights legislation and how it applies in practice. The Committee accepts that e-learning can be a useful means of providing the more technical information to enable trainees to engage meaningfully in the classroom and in operational training. However, e-learning is not an acceptable substitute for interactive training which permits a more in-depth discussion of the issues during which questions can be asked and answered. Training should involve more than the delivery of technical knowledge. That is particularly the case with human rights training which, by its very nature, seeks to impart the skills to officers to enable them to make an assessment of what is required to balance often competing rights.

PSNI student officer training was reviewed by the PSNI Human Rights training Advisor with that in mind. The Committee is satisfied that the combination of e-learning as an introduction to the technical aspects of human rights law, which is followed by classroom based training delivered by skilled PSNI trainers, all of whom have received refresher training in human rights from the PSNI Human Rights Training Advisor, will ensure that students are left in no doubt that human rights protection is the fundamental basis upon which all police practice will be judged. However, more work could be done to ensure that human rights really are embedded seamlessly within all operational scenario-based training. The PSNI Human Rights Training Advisor is focused on that aspect of training, with the assistance of operational officers, and is conscious of the need to update operational training regularly.

The PSNI Human Rights Training Advisor intends to carry out a further review of the human rights training for student officers in the coming year and will update the Policing Board's Human Rights Advisor and thereafter the Committee once the review is complete. As mentioned above, it is important not to deliver human rights training in stand-alone lessons but to view such protection as a core function of the police service. The unambiguous commitment of the Chief Constable to that effect reassured the Committee that training will be delivered so as to produce officers with the knowledge and skill to implement human rights in practice.

District training

There is no set curriculum for District training as it is the responsibility of each District Commander to determine training needs within his or her own District and to set the training schedule accordingly. However, District training schedules must incorporate that training which is mandated centrally and will include a number of priority courses identified each year. The Policing Board's Human Rights Advisor is provided with details of the forthcoming scheduled training for each District and can attend and observe any of the lessons. During 2014 lessons observed included domestic abuse, Youth Engagement Clinics and hate crime.

In October 2014, the Human Rights Advisor attended a Presentation Day on District Training to the Police Learning Advisory Council (PLAC) District Training Sub Group. The PLAC is an external advisory group made up of representatives from business, professional and community leaders and police staff.⁷ Trainers from each of the 8 PSNI Districts and staff from the Police College attended the Presentation Day. The event began with a short presentation on District training delivered during 2014 which was common to all Districts. That included training on Victim and Witness Care Units, ASIST,⁸ Automatic Number Plate Recognition (ANPR) cameras, domestic abuse, child protection, hate crime, Youth Engagement Clinics, the Justice and Security (Northern Ireland) Act 2007, human tissue retention and a new DNA profiling system (DNA 17).

Each District then provided a presentation on the specific training initiatives within each District which was demonstrated to have had a positive impact upon operational policing. Each presentation was followed by a number of searching questions from a panel comprising the Chair of the PLAC District Training Sub Group and the Policing Board's Human Rights Advisor. The Human Rights Advisor was extremely impressed by the range of training delivered in every District and the

⁷ PSNI involvement with the PLAC was reported upon positively in a 2010 inspection by the Criminal Justice Inspection Northern Ireland (CJINI) of the PSNI Training Strategy. Inspectors recommended that PSNI continue to support the PLAC as an important element of engaging communities in the formulation and development of the Training Strategy.

⁸ Applied Suicide Intervention Skills Training.

improvements in service delivery that were demonstrated to have followed the delivery of the training. For example, in H District (Ballymena, Ballymoney, Coleraine, Larne and Moyle) following training on domestic abuse and the completion of DASH forms,⁹ the submission rate for completed forms increased from 50% to 88%. In particular, the training equipped officers to manage risk effectively. Completion of a DASH checklist can undoubtedly save lives thus the positive impact that this training intervention has had upon the protection of high risk victims of domestic abuse cannot be overstated.

The District Trainers went on to highlight the effective partnerships that had been forged with community organisations and other agencies to develop and, in some cases, deliver training. For example, in C District (Ards, Castlereagh, Down and North Down) training was delivered to over 60 police officers from neighbourhood teams by a learning disability advocacy group. The opportunity afforded to officers and the community to meet and learn about each other's experience appears to have given those officers greater confidence and a better understanding of disability. The PSNI trainers also benefitted from the engagement and have since incorporated the lessons learned from the engagement into their hate crime training package.

Other very positive examples of partnership working in the delivery of training include the delivery of child protection training in A District (North and West Belfast)¹⁰ to community groups (discussed below) and the delivery of suicide awareness training which is delivered by a number of Districts to community groups. In B District (East and South Belfast)¹¹ trainers were made aware of feedback from people bereaved by suicide that the police investigation that followed the suicide could be distressing and confusing. B District trainers responded by developing training on investigating death by suicide which had a particular focus on the bereaved. The training was delivered

⁹ The DASH checklist is used by all agencies engaging in the Multi-Agency Risk Assessment Conference (MARAC) process. Where a victim is identified by the checklist as being "high risk", they will be referred to the MARAC process. The purpose of the DASH checklist is to provide a consistent and practical tool for practitioners working with victims of domestic abuse to help them identify risks, assess the risks, and manage the risks. It must be completed by all officers when attending the scene of all domestic abuse crimes, incidents and breaches of non-molestation and occupation orders.

¹⁰ On 20 October 2014 A District (North and West Belfast) and B District (East and South Belfast) merged to become Belfast City Policing District.

¹¹ As above.

to groups from the local community with the aim of providing more information on police procedures to mitigate any unnecessary confusion for bereaved relatives and friends. The police trainers also benefitted from the delivery of the training as they improved their understanding of the issues facing both investigators and the bereaved. That learning was incorporated into future training.

The presentations demonstrated tangible outcomes for service delivery and community relations. While District Trainers already review and take account of training initiatives being delivered in other Districts, the PLAC presentation day provides an opportunity for them to discuss their work and share ideas across Districts thereby leading to greater consistency. A report on the Presentation Day is produced and shared with all District Commanders, the Head of Training and PLAC members. While that report will undoubtedly be of interest to those who were unable to attend the presentation day, the Performance Committee believes that the presentation day is an extremely important opportunity for the sharing of information and the improvement of training more generally within the PSNI. It also informs future priorities and will ensure that training is delivered where it is needed when it is needed. The Committee therefore considers that senior police personnel could benefit from participation in the presentation day.

Recommendation 1

PSNI should continue to participate in an annual District Training Presentation Day to the Police Learning Advisory Council (PLAC) District Training Sub Group. That presentation day should be attended by senior police personnel with responsibility for setting strategic priorities and for ensuring the delivery of effective training across the PSNI.

Civilian staff

If the Policing Board is to monitor the performance of the Police Service as a whole in complying with the Human Rights Act, it must have an effective mechanism for assessing the performance of civilian staff. Given the increasing number of civilian personnel assuming conventional police roles, that mechanism must be developed

as a matter of some urgency. To illustrate the point, civilian staff are now employed as, for example, Investigating Officers, Detention Officers, Station Enquiry Assistants and Call Handlers. They are as integral to the compliance of the PSNI with the Human Rights Act and to the delivery of a policing service as a police officer. That means that civilian staff must be trained to the same high standard as police officers.

In the Policing Board's Human Rights Annual Report 2012 it was recommended that PSNI carry out and thereafter provide the Committee with a written review of its training plan for civilians, with a particular focus on identifying the human rights training needs of staff and PSNI's proposals to meet those needs within a specified timeframe.¹² PSNI accepted that recommendation and initiated the review by identifying those civilian staff who, by virtue of their role, needed human rights training as a matter of priority. During 2014, the Policing Board's Human Rights Advisor met with the Head of Training and Development to discuss progress in relation to that recommendation and to consider the proposed training plan.

A written report prepared by the PSNI Human Rights Training Advisor was submitted to the Performance Committee in November 2014. As outlined in that report, PSNI identified staff requiring human rights training, with priority given to those staff in public facing roles. Thus far, training has been delivered to over 400 civilian staff including Call Handlers, Civilian Detention Officers, Station Enquiry Assistants, Assistant Investigators, Crime Scene Investigators and Property staff. There remains a number of CSI staff and Firearms Enquiry Officers still to receive the training but that is being pursued as a matter of priority. PSNI has committed to keeping the training plan for civilian staff under review and has suggested that the new system for tracking complaints and misconduct matters in respect of civilians (discussed in Chapter 5 of this Human Rights Annual Report) will assist with identifying training needs. The Committee agrees. Recommendation 1 of the Human Rights Annual Report 2012 is therefore discharged. The Policing Board's Human Rights Advisor will continue to liaise with the Head of Training and Development and the PSNI's Human

¹² Recommendation 1 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

Rights Training Advisor in order to ensure that the training plan is maintained and refreshed as necessary.

Children and young people training

As reported in the Human Rights Annual Report 2013, the Performance Committee believed that youth training should be a priority for the PSNI. Two recommendations were made:

- (i) PSNI should, during 2014, deliver bespoke youth training to student officers at Police College, develop youth training to be delivered to police officers and civilian staff and re-commence the delivery of its training course to police trainers on children, young people and human rights.¹³

- (ii) PSNI should report to the Performance Committee on the training delivered to police officers and civilian staff in respect of children and young people. That report should detail the nature of the training delivered and to whom the training was delivered by role, rank and District. That report should also specify the training planned for the upcoming year including the nature of the training and the persons to whom the training is to be delivered by role, rank and District.¹⁴

PSNI accepted both recommendations. Progress on their implementation has been discussed by the Policing Board's Human Rights Advisor during meetings with the Head of Training and Development and with the PSNI Human Rights Training Advisor. In November 2014, PSNI provided a written report to the Performance Committee on the progress made. That report can be summarised as follows.

In the Student Officer Training Programme, the law (including, where relevant, international treaty obligations) relating to children and young people is incorporated

¹³ Recommendation 1 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014.

¹⁴ Recommendation 2 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014.

throughout lessons on subjects as diverse as traffic safety, missing persons and domestic abuse. In addition 80 student officers participated in a pilot programme at PSNI Police College during 2014 in which they gained experience of the work with young people from disadvantaged areas undertaken by the Ulster University Sports Outreach Department. PSNI has advised that the programme was enjoyed by student officers and they were motivated by it.

In respect of the District training programme, PSNI has provided the Committee with a schedule of courses delivered between April 2013 and August 2014 which were themed on, or included a particular focus on, children and young people. The training varied from District to District but the majority of courses focused on circumstances in which children may be victims and/or may be particularly vulnerable. For example the following was delivered: suicide awareness (A and D District), Victim and Witness care (B, D, E and F District), Vulnerability Awareness (B District), Child Sexual Exploitation (C District), Special Measures/Achieving Best Evidence (D District), Human Rights (D District), Domestic Abuse (G District) and Family Liaison (F and G District). Child protection training was delivered in all Districts (see below) and training on Youth Engagement Clinics is due to be delivered in all Districts by the end of 2015.

At PSNI Police College, training is delivered to specialist Child Abuse Investigators with an emphasis on the rights of the child at each stage of the investigative process from the initial contact, interviewing to progressing a case to court. Police College training to investigators on domestic abuse also focuses on how children and young people living with the abuse are affected by it and what steps must be taken to protect the child.

It is critically important that PSNI trainers have the requisite specialist knowledge and skill required to deliver effective training. To ensure that is the case, PSNI has indicated that it will recommence its delivery of the excellent training course on children and young people for trainers which included the particular human rights considerations that apply. The course that was delivered previously and which the Policing Board's Human Rights Advisor observed was designed by the PSNI Human

Rights Training Advisor. It was delivered to a number of PSNI trainers during 2012 as a means of refreshing trainers' knowledge of children's rights and to encourage them to include more child-specific examples and discussions in lessons. Key stakeholders working in the children's sector have provided data, policy work and examples of practice arising from their work which has fed into the key messages of the course. The Human Rights Training Advisor intends to recommence delivery of the course in 2015 and will at first prioritise newly appointed trainers on the Student Officer Training Programme.

PSNI has indicated that, as a result of uncertainty about future resources, it is difficult to confirm what training will take place during the coming year. PSNI has however indicated that its key priorities will be (i) an assessment of training on Youth Engagement Clinics delivered to student officers at Police College; (ii) delivery to trainers by the Human Rights Training Advisor of the course for trainers on children, young people and human rights; and (iii) an audit by the Human Rights Training Advisor of stop and search training, with an emphasis on the importance of professionalism, respect and courtesy to children and young people during the conduct of searches.

Recommendations 1 and 2 of the Human Rights Annual Report 2013 have therefore been discharged. The Performance Committee will continue to monitor the training and will seek the views of stakeholders on the type and extent of training delivered across PSNI.

Child protection training

In the last two consecutive Human Rights Annual Reports recommendations were made in relation to child protection training. The training which was designed by trainers in A District (North and West Belfast) was considered to be particularly effective. Therefore, it was recommended that: (i) the training should be rolled out across the PSNI and delivered to all front line police officers;¹⁵ and (ii) that each

¹⁵ Recommendation 2 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

District Commander should include child protection training as a priority within his or her District training plan for delivery in 2014.¹⁶ PSNI has confirmed that child protection training has been incorporated into each District training plan and that by April 2014 the training was delivered in all 8 Districts. PSNI has advised that it will keep under review whether there is any requirement for further child protection training. The Committee will also monitor whether all new officers assuming front line duties receive the training when required. In addition to the training delivered within Districts, the Police College has developed a new child protection lesson for Foundation Training which will be delivered to all student officers.

¹⁶ Recommendation 3 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014.

3. POLICY

PSNI policy sets out the framework within which decisions may be made by police officers and staff and against which practice can be monitored and measured. Policies must dictate that decision-making and practice comply with the Human Rights Act 1998. If policy is itself human rights compliant it is much more likely that police decision-making and practice will be human rights compliant. In other words, policy is the first (and most basic) measure to ensuring that human rights standards are applied in practice.

PSNI policy is primarily contained within a number of Policy Directives and Service Procedures. Policy Directives contain overarching policies. Service Procedures are subsidiary documents that expand upon the principles and standards laid out in Policy Directives and provide clear instructions and guidance on particular aspects of the implementation of the policy. These documents are available to all police officers and staff through Policenet (the police intranet). When a new Policy Directive or Service Procedure is issued or an existing Directive/Procedure is revised, a message appears on the log in screen to advise users of the latest addition to, or revision of, the policy library. The Policing Board's Human Rights Advisor has access to Policenet and can view directly all policies.

During 2014 there were no new or revised Policy Directives issued but there were 3 new and 14 revised Service Procedures covering a wide range of matters including child protection procedures, operating guidelines for investigating sexual crime, threats to life, substance misuse, critical incident management and community impact assessments.

All police services across the United Kingdom are expected to publish their current written policies, protocols and procedures.¹⁷ It is accepted that some documents need not be published if publication is likely to impact adversely upon operational activity or if the information is classified. However even if a policy document contains

¹⁷ The Information Commissioner's Office has produced guidance for police services on the types of information that they should publish:

http://www.ico.gov.uk/for_organisations/freedom_of_information/definition_documents.aspx

classified information, which cannot be published, a summary of the policy with the restricted information redacted from it can, and should, be published.

In the Policing Board's Human Rights Annual Report 2012, it was recorded that PSNI had removed all Policy Directives and Service Procedures from its website thereby depriving the public of access to those documents. PSNI explained that removal of the policies was intended to be a temporary measure pending the review and streamlining of policy. The Committee did not accept that the streamlining review merited the complete removal of all policy. It certainly did not justify the absence of new policies from the public domain for which the review was complete. It was therefore recommended that PSNI should publish forthwith, on its publicly accessible website, those policies that had been finalised.¹⁸ That recommendation was recorded as not having been discharged in the Human Rights Annual Report 2013. Since then, PSNI has reinstated the section of its website through which Policy Directives and Service Procedures can be viewed by the public.¹⁹ PSNI also appointed a policy manager, in December 2013, to oversee and coordinate the publication of police policy. The Policing Board has been advised that all finalised Policy Directives and Service Procedures that can be published, have been published and that as further Policy Directives and Service Procedures are finalised, they too will be published on the website.

Recommendation 3 of the 2012 Annual Report has therefore been discharged as finalised policies are available on the PSNI website. However, there remains a backlog of Policy Directives and Service Procedures that are pending review and which have not been made available to the public. There are 21 'active' Policy Directives available to officers and staff through Policenet but only 2 have been published on the PSNI website.²⁰ There are 89 'active' Service Procedures available to officers and staff through Policenet but only 13 have been published on the PSNI website.²¹

¹⁸ Recommendation 3 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

¹⁹ This can be found through the PSNI website www.psni.police.uk under About Us - Freedom of Information – Publications by Category – Policies and Service Procedures.

²⁰ As at 5 November 2014.

²¹ As at 5 November 2014.

Even if a Policy Directive or Service Procedure is pending review, the existing policy clearly remains applicable and in force until such time as the revised version is issued. All Policy Directives and Service Procedures are reviewed routinely (approximately every 1 – 3 years depending on the particular subject matter), and while some reviews can be completed quickly others will necessarily take a longer period of time. For example, the Policy Directive dealing with the Police Response to Domestic Incidents has been under review for the past 2 years and will not be finalised until such time as an ongoing review of Public Protection is completed. While the time needed to complete a wholesale review of policy involving complex and sensitive issues is understandable, to withhold current policy from publication simply because it *will be* revised is not. Until the new version has been issued current policy remains in force. Otherwise, there would be a complete policy gap and officers would be operating without any central policy guidance. Furthermore, if Policy Directives and Service Procedures are taken down from the PSNI website each and every time they are due for review, the policy library available to the public will be continually under-representative of the policies that are actually in force.

Recommendation 2

PSNI should publish all Policy Directives and Service Procedures that are currently in force on its website (subject to redaction of classified information). If any Policy Directive or Service Procedure is undergoing a review, this should be noted but the document should not be removed from the website until such time as it has been cancelled or an updated version issued. PSNI should provide the Performance Committee with a progress report in relation to the implementation of this recommendation within 3 months of the publication of this Human Rights Annual Report.

POLICY DEVELOPMENTS

The Performance Committee keeps itself informed of developments in the criminal justice system and, where appropriate, responds to consultations on issues that fall within the Policing Board's statutory remit of securing an efficient and effective Police Service that complies with the Human Rights Act 1998. A summary of some of the

developments considered by the Performance Committee during 2014 is set out below.

Justice Bill

The Justice Bill was introduced to the Northern Ireland Assembly on 16 June 2014 and passed its second stage on 24 June 2014. At the core of the Bill are three aims: to improve services for victims and witnesses; to speed up the justice system; and to improve the efficiency and effectiveness of key aspects of the system.

Services and facilities for victims and witnesses will be improved by creating new statutory Victim and Witness Charters; by the introduction of a legal entitlement to be afforded the opportunity to make a victim statement (to be known as a 'victim personal statement'); and by extending the power to use video links between courts and a number of new locations.

The Bill is intended to tackle delay and speed up the justice system. Prosecutorial Fines will be introduced to reduce the number of cases proceeding to court unnecessarily. New arrangements to encourage guilty pleas at an earlier stage will be introduced and judges will be given new case management powers and responsibilities. Committal proceedings²² will be streamlined and prosecutors will be given the ability to issue summonses directly without having to get them signed off by a lay magistrate.

The Bill will also introduce a series of standalone reforms intended to improve the effectiveness, efficiency and fairness of the criminal justice system. This includes modernisation of the criminal record disclosure service; the introduction of a single territorial jurisdiction for the county courts and magistrates' courts; the expansion of

²² Committal is a procedure used to determine whether there is sufficient evidence to justify putting a person on trial in the Crown Court. Proceedings can be in the form of oral evidence, where witnesses can be cross-examined, or as a paper exercise, carried out based on written statements and evidence. The practice of hearing oral evidence, particularly cross-examination, can have a significant impact on victims and witnesses, who may have to give (sometimes traumatic) evidence more than once.

eligibility for jury service; and the creation of new civil orders, known as Violent Offences Prevention Orders, to manage the risks posed by violent offenders.

The Performance Committee responded to the Justice Committee's consultation on the Bill and made a number of observations and suggestions in relation to the parts of the Bill dealing with prosecutorial fines, victims and witnesses, criminal records, Violent Offences Prevention Orders and avoiding delay. The Bill will remain with the Justice Committee for consideration until 27 March 2015. The Performance Committee will continue to monitor developments.

Proposals for a Mental Capacity Bill²³

In May 2014 the Department of Health, Social Services and Public Safety (DHSSPS) issued for consultation the civil provisions of a draft Mental Capacity Bill. The Department of Justice (DOJ) took the opportunity to consult further on its proposal for extending the Bill to the criminal justice system to provide that a person above the age of 16 years has capacity to refuse an intervention in relation to his or her care, treatment, or personal welfare. Any such decision would have to be respected by all relevant criminal justice organisations.

If extended to the criminal justice system, the effect of the proposals on the PSNI will be that while any person over the age of 16 is in the custody of police, proposed interventions in relation to the person's health care (physical or mental) or personal welfare will be governed by a capacity based approach and a statutory framework. If the person *has capacity* to refuse an intervention in relation to his or her care, treatment, or personal welfare, that decision must be respected. Interventions in relation to persons *lacking* capacity will be made in accordance with the Bill's procedures, principles and requirements and will attract various safeguards contained in the Bill. The principle of capacity to consent to treatment does not extend to the decision to be detained in custody; detention may be imposed regardless of capacity.

²³ This is also discussed at page 121 below.

The DOJ proposes to retain the existing power exercisable by the PSNI to remove a person (of any age) from a public place to a 'place of safety' in appropriate circumstances. The current definition of a place of safety, which includes hospitals and police stations, is to be preserved with a provision stating that a police station should only be used if no other suitable place is available.

The Performance Committee responded to the DHSSPS/DOJ consultation. In particular, it stressed the importance of sufficient resources being made available so that police officers can receive adequate support and advice from healthcare practitioners when making decisions regarding capacity. Furthermore, it warned against placing any requirement on police officers to conduct a complex assessment of capacity. The Committee queried the suitability of police stations as 'places of safety'. That is particularly important given the conclusion of a 2010 inspection concerning mental health and the criminal justice system by the Criminal Justice Inspection Northern Ireland (CJINI). CJINI found that PSNI was "struggling to deal with mentally disordered persons, with often inadequate support from the Health Service. On occasion it finds hospitals uncooperative and having to return people into the community with every expectation that they will be back into the criminal justice system within a short time."²⁴

In its response to the DHSSPS/DOJ consultation the Committee encouraged further consideration of this issue by both departments. For example, the Committee suggested that an analysis could be undertaken of a recent development in England where an assessment suite, based in the Royal Bolton Hospital's mental health unit, is a designated place of safety for vulnerable adults detained by the police. Post implementation assessments of the use of such units in Nottingham appear to demonstrate that assessments are carried out with greater expedition, are less intimidating for the detainee and reduce the incidence of the use of restraint such as handcuffs.²⁵

²⁴ *Not a Marginal Issue – Mental Health and the Criminal Justice System* Criminal Justice Inspection Northern Ireland, March 2010, page viii.

²⁵ See for example the report of the Care Quality Commission, 22 October 2014.

The DHSSPS civil provisions of the Mental Capacity Bill do not include children below the age of 16 years. The DOJ has acknowledged certain challenges that would be presented should the age limitations of the Bill be applied to the criminal justice system: the age of criminal responsibility is 10, the Youth Court can deal with young people up to the age of 17 and the Juvenile Justice Centre has a population that spans above and below the age of 16. However, the DOJ agrees with the strategic approach being adopted by the DHSSPS and its position would appear to be that the capacity based framework for interventions by the criminal justice system in relation to care/treatment/personal welfare will only apply when dealing with persons aged 16 years and over.

While the Committee appreciates the complexity of the legislation it remains concerned that the statutory safeguards to be afforded to persons over the age of 16 will not be applicable to those under the age of 16. The Committee is also concerned that the legislative landscape will become unnecessarily complex for operational officers working with a range of often competing legislative provisions. The Committee will continue to follow developments.²⁶

Test purchasing of alcohol

By article 67 of the Criminal Justice (Northern Ireland) Order 2008, a police officer has the power to identify and test the unlawful sale of alcohol to minors by using minors to purchase alcohol from licensed premises. Specifically, it permits a person under the age of 18 years to enter licensed premises to seek to purchase alcohol under the direction of a police officer acting in the course of his or her duty. PSNI announced, in November 2011, that it was preparing to roll out the use of its test-purchasing power across Northern Ireland. However, following the intervention by a number of stakeholders PSNI suspended the test purchasing rollout to enable a consultation exercise to be undertaken. PSNI subsequently carried out an Equality Impact Assessment (EQIA) on the procedure for exercising test purchasing powers and issued, in November 2012, a draft EQIA report for consideration. PSNI indicated in its considered view that the test purchasing procedure for operations was

²⁶ See also page 119 et seq below.

sufficiently robust. PSNI believes the procedure and its safeguards will protect the children who participate in the scheme while also protecting children in wider society by reducing the ready availability of alcohol to those who are under age.²⁷

The proposal to use test purchasing powers was criticised by some stakeholders representing the interests of children. To respond to those criticisms PSNI organised a number of meetings during 2014 with representatives from the children's sector, the trade sector and the Policing Board. PSNI has reiterated that its aim is to reduce the harm caused to children through consuming alcohol and to make those involved in the sale of alcohol to children accountable. Within each policing District there is a range of initiatives including for example the targeting of 'hotspots', visiting off licences in the run up to holiday periods to remind them of their responsibilities and engaging with schools and youth groups to educate young people about the dangers and consequences of consuming alcohol. PSNI has advised further that the power will only be exercised if there is an identified risk to young people and other tactics have been tried and failed. Authorisation to use the powers will be given by an Assistant Chief Constable. PSNI has also confirmed that it will carry out a post-incident review of the use of the power.

The Performance Committee wishes to stress that the welfare and safety of those children who volunteer to assist with the scheme should be the paramount consideration. PSNI agrees and has provided an assurance to the Committee that the safety and welfare of the young people involved will be paramount.

The safeguards that have been built into the procedure for the exercise of the powers include, for example, a requirement that a young person may only be involved with the informed consent of the young person and his or her parent, guardian or carer.²⁸ In addition, PSNI will consider each application to participate separately and will contact the young person and his or her parent, guardian or carer. A home visit will be undertaken and there will be an assessment of the young person's health and suitability through his or her doctor. Thereafter, if a young

²⁷ *Alcohol Test Purchasing Procedures EQIA Final Decision Report*, PSNI, June 2013.

²⁸ Young people must apply to participate and will not be approached by PSNI and asked to participate.

person is eligible he or she is recorded as a potential candidate. If it is intended that a young person will actually be used there will be a detailed pre-brief and de-brief. The police will also carry out a follow-up visit within 2 weeks of the operation. The young person can stop the operation at any time and will always be accompanied by a police officer in plain clothes who is of the same gender. If evidence obtained by the use of that young person is to be relied upon in any court proceedings, the police officer involved in the operation will give the evidence rather than the young person. PSNI recognises and accepts, but the Committee wishes to emphasise, that the anonymity of the young person and his or her family must be protected and a young person must not participate in any locality where he or she is likely to be recognised. The powers may only be used if an officer of at least the rank of Assistant Chief Constable has considered and authorised the proposed use.

In the Human Rights Annual Report 2013, it was recommended that in the event that PSNI introduced a test purchase of alcohol scheme it should notify the Performance Committee of that decision and, in advance of the introduction of the scheme, provide to the Committee a detailed briefing on the operation of the scheme with a particular emphasis on those measures intended to protect the welfare and safety of children.²⁹ PSNI accepted that recommendation and briefed the Committee on 15 January 2015 on the safeguards built in to the scheme. During the briefing, the Committee expressed its concerns about a number of issues, in particular the welfare and rights of the children involved and the resource implications of the use of the powers. The Committee emphasised the importance of considering alternative measures available to reduce the harm caused by the illegal sale of alcohol. The Committee was advised that before the test purchasing powers are used the PSNI will consult further with the Committee and the Policing Board's Human Rights Advisor. The Committee will monitor any use of the powers closely in the coming months. Furthermore, PSNI will provide the Policing Board's Human Rights Advisor with statistics on the use of the power together with an after the event analysis of operations. PSNI will review its test purchasing procedures annually in consultation

²⁹ Recommendation 4 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014.

with the Policing Board and members of the PSNI's Youth Champions' Forum, on which a number of relevant stakeholders are represented.

Retention and destruction of DNA samples, profiles and fingerprints

The Grand Chamber of the European Court of Human Rights decided, in the case of *S and Marper v UK*,³⁰ that the blanket policy in England and Wales, which is mirrored in Northern Ireland, of retaining indefinitely the DNA samples, profiles and fingerprints (frequently referred to collectively as 'biometric material') of all people who have been arrested but not convicted of an offence, does not comply with Article 8 of the European Convention on Human Rights – the right to respect for private and family life. This case and the subsequent implications for the PSNI have been discussed at length in previous Policing Board Human Rights Annual Reports.

In response to the *Marper* judgment, the Northern Ireland Assembly introduced a new legislative framework for the retention and destruction of biometric material through the Criminal Justice Act (Northern Ireland) 2013. Once the new framework is in operation,³¹ DNA samples, profiles and fingerprints must be destroyed by the police in certain circumstances and may only be retained on the DNA database if certain criteria are satisfied. The new framework makes some distinction between the seriousness of offences, between adults and children and it provides for the appointment of an independent Commissioner for the Retention of Biometric Material. The new framework will operate retrospectively in that it will apply to all fingerprints, DNA profiles and samples whether retained before or after the new law's enactment.

In 2013 the Policing Board's Human Rights Advisor was invited to attend, as an observer, the Northern Ireland DNA Database Governance Board. The Governance Board, which was established in 2011, comprises representatives from the

³⁰ *S and Marper v UK* (App nos. 30562/04 and 30566/04).

³¹ The provisions of the Criminal Justice Act (Northern Ireland) 2013 that relate to biometric material (i.e. section 9 and schedules 2 and 3) will only come into force by way of an order to be made by the Department of Justice. Some technical amendment is required to the 2013 Act before the orders giving effect to the new biometric framework can be brought into force. Therefore it is likely to be the latter half of 2015 at the earliest before the new framework is in force.

Department of Justice, the PSNI, the Public Prosecution Service, Forensic Science Northern Ireland, the Information Commissioner's Office, Queen's University Belfast and the Ulster University. The Governance Board keeps under review the arrangements for the control, management and operation of the Northern Ireland DNA database and it will continue to assess the performance of the database once the new biometrics legislative framework comes into effect.³²

The Policing Board's Human Rights Advisor was also invited during 2013 to attend, as an observer, a number of meetings of the PSNI Biometric Retention/Disposal Ratification Committee. That Committee represents the final stage of the retention/disposal process. In other words, it sits to decide whether an instruction will be given to destroy biometric materials. That Committee assesses, in an individual application for removal, whether the criteria have been satisfied for retention. The Committee will be required to apply the new criteria to each individual application once the legislation is in force. The PSNI will continue to invite the Policing Board's Human Rights Advisor to attend and observe the meetings.

³² The role of the DNA Database Governance Board is to: (i) Assess arrangements for the control, management and operation of the local DNA database and criminal DNA profiling, assessing compliance with relevant legislation, and that practice and procedures are developed in line with national obligations; (ii) Consider applications for the release of data from the database for use in research. Release of such data will only be authorised after taking advice from the Home Office's National DNA Database Ethics Group; (iii) Assess the performance of the database practices and procedures; (iv) Define and regularly review the level of security and the arrangements for storage and access to samples, and the level of security (physical and technical) required for the data held on the database and by suppliers; and (v) Report annually to the Minister of Justice, and provide responses to questions from Ministers, the Assembly and its Committees, and to media enquiries.

4. OPERATIONS

All police operations must comply with the Human Rights Act 1998 from the planning to the execution stage. Whilst the Chief Constable bears ultimate responsibility for making operational decisions, the Policing Board is required to hold the Chief Constable to account for those decisions and to monitor not only human rights compliance, but also the extent to which the police have secured the support of the local community in carrying out the operation and the extent to which they have acted in co-operation with the local community.³³ Operational issues considered by the Policing Board through its Performance Committee during 2014 are detailed within the context of relevant chapters of this Human Rights Annual Report. For example, public order operations are discussed in Chapter 6 (Public Order), tactical planning required for the use of weapons is discussed in Chapter 7 (Use of Force), covert tactics which may be used during operations are discussed in Chapter 8 (Covert Policing), issues relating to suspects identified as a result of counter-terrorism operations for example arrest, detention and prosecution are dealt with at Chapter 10 (Treatment of Suspects) and child sexual exploitation is discussed in Chapter 14 (Children and Young People). Other operations may be monitored and reported upon in the next Human Rights Annual Report but this year this chapter concentrates on counter-terrorism operations.

COUNTER-TERRORISM OPERATIONS

The Security Service has assessed the threat level in Northern Ireland from Northern Ireland related terrorism to be severe. “Severe” means that a terrorist attack is highly likely.³⁴ The threat level in Great Britain from Northern Ireland related terrorism is assessed as “moderate”, meaning an attack is possible but not likely. In respect of international terrorism, developments in Syria and Iraq resulted in the threat level across the United Kingdom being upgraded, in August 2014, from “substantial”,

³³ Section 31(A)(1) of the Police (Northern Ireland) Act 2000 requires police officers to carry out their functions with the aim of (a) securing the support of the local community; and (b) acting in co-operation with the local community. Section 3(3)(b)(ia) of that Act requires the Policing Board to monitor the performance of the PSNI in complying with section 31(A)(1).

³⁴ That is second highest in the potential threat levels. For further information see the Home Office website: <https://www.gov.uk/terrorism-national-emergency/terrorism-threat-levels>.

meaning an attack is a strong possibility, to “severe” meaning an attack is highly likely.³⁵

The PSNI security situation statistical report for 2013/2014 records that, “The security situation in Northern Ireland has notably improved over the last decade. There have been fewer security related deaths in 2013/14 than ten years ago in 2004/05 and the number of shooting incidents and casualties as a result of paramilitary style attacks in 2013/14 is approximately a third of the number recorded in 2004/05. However, a significant level of threat remains as evidenced by the one security related death in 2013/14, an increase in the number of bombing incidents in 2013/14 compared with 2004/05 and the continued use of paramilitary style shootings and assaults.”³⁶

During 2013/2014 PSNI recorded:

- One security related death;
- 54 shooting incidents and 69 bombing incidents;
- 28 casualties resulting from paramilitary style shootings. Of the 28 casualties resulting from paramilitary style shootings recorded in 2013/14, 19 were attributed to Republicans and 9 were attributed to Loyalists;
- 42 casualties as a result of paramilitary style assaults in 2013/14. Of the 42 recorded in 2013/14, 37 were attributed to Loyalists and 5 were attributed to Republicans;
- 101 firearms were seized by the PSNI; and
- 23.1kg of explosives was seized.

The Secretary of State, in her statement to Parliament on 14 October 2014 in respect of Northern Ireland, said “Northern Ireland continues to face a terrorist threat from a small minority of groups who hold democracy in contempt. They are violent and reckless and offer nothing positive to their communities. Not surprisingly, they have almost no popular support. They do, however, retain both lethal intent and

³⁵ <https://www.gov.uk/government/news/threat-level-from-international-terrorism-increased>. The threat levels cited in this paragraph are correct as at 10 November 2014.

³⁶ *Police recorded security situation statistics, 1 April 2013 to 31 March 2014*, PSNI, May 2014.

capability... the sterling work of the PSNI and MI5, who co-operate closely with An Garda Síochána and others, has undoubtedly saved lives and helped to tackle the threat... As a direct result of their efforts there have been major disruptions, arrests and convictions in recent months as well as seizures of arms and IED components, both north and south of the border, that have impeded violent dissident republican activity.”³⁷

The counter-terrorism work carried out by the PSNI is discussed regularly at the Performance Committee and at the full Policing Board. In accordance with the Policing Plan 2014-2017, PSNI must provide an update to the Performance Committee every 6 months in respect of its Counter Terrorism Strategy. Furthermore, the Performance Committee meets at least annually with the Independent Reviewer of Terrorism Legislation, David Anderson QC³⁸ to discuss a range of issues. For example, the Committee has considered and discussed arrests, detention, charges, prosecutions, proscription, stop and search powers and the community impact of the use of counter-terrorism powers. Similarly, the Committee meets annually with the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 (JSA), David Seymour CB, to discuss the operation of the JSA and its impact on policing in Northern Ireland.³⁹ The Committee has enjoyed a positive relationship with both Independent Reviewers and looks forward to building further upon that relationship in the coming months.

Stop and search powers

A specific area for the consideration of the Performance Committee continues to be the PSNI's use of powers to stop and search and stop and question under the

³⁷ <https://www.gov.uk/government/speeches/northern-ireland-security-situation--2>

³⁸ Prior to David Anderson's appointment the Committee met with his predecessor Lord Alex Carlile QC CBE. The remit of the Independent Reviewer of Terrorism Legislation is to review annually the operation of the Terrorism Act 2000 (TACT) and Part 1 of the Terrorism Act 2006. The work of the Independent Reviewer is accessible at <https://terrorismlegislationreviewer.independent.gov.uk/>.

³⁹ Prior to David Seymour's appointment the Committee met with his predecessor Robert Whalley CB. The role of the Independent Reviewer of the JSA is to review the operation of the powers contained in sections 21 to 32 JSA, and to review the procedures adopted by the General Officer Commanding Northern Ireland for receiving, investigating and responding to complaints. The reports of the Independent Reviewer can be obtained through the Northern Ireland Office website: <https://www.gov.uk/government/organisations/northern-ireland-office>

Terrorism Act 2000 (TACT) and the Justice and Security (Northern Ireland) Act 2007 (JSA). The Committee is provided with quarterly statistics which show PSNI's use of these powers, together with use of other powers to stop and search such as those contained within the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Misuse of Drugs Act 1971 and the Firearms (Northern Ireland) Order 2004. The statistical reports show the use of stop, search and question powers according to geographic area, gender, ethnicity, age, power used and subsequent arrest. Quarterly statistical reports are also available on the PSNI website, albeit the published reports contain slightly less information than the reports provided to the Committee as a result of statistical reporting rules.⁴⁰

⁴⁰ Versions of statistical reports (which are not protectively marked) are published in the statistics section of the PSNI website: www.psni.police.uk

Frequency of use of powers to stop and search / stop and question across all Districts, 1 April 2013 – 30 September 2014⁴¹

Persons stopped under:	2013/2014					2014/2015	
	Apr 13–Jun 13	Jul 13–Sept 13	Oct 13–Dec 13	Jan 14–Mar 14	Apr 14–Jun 14	Jul 14–Sept 14	
PACE	2,068	1,494	2,102	1,637	1,568	1,545	
Misuse of Drugs Act	3,932	3,926	4,761	4,381	3,850	3,441	
Firearms Order	33	26	35	33	23	24	
TACT s.43	57	36	21	12	33	24	
TACT s.43A	25	12	7	3	8	8	
TACT s.47A	70	0	0	0	0	0	
JSA s.21	803	414	676	457	297	347	
JSA s.24	2,082	1,180	1,685	1,292	995	641	
Other	83	113	119	102	91	33	
Total	9,153	7,201	9,406	7,917	6,865	6,063	

⁴¹ *Stop and Search Statistics, Quarter 2 2014/15*, PSNI, November 2014. This table reflects the total number of legislative powers used and not the total number of persons stopped and searched/questioned. As more than one legislative power can be used to stop and search/question a person, the total number of powers used will be greater than the number of persons stopped and searched/questioned. Statistical reports are published by PSNI on a quarterly basis and are available in the statistics section of the PSNI website: www.psnl.police.uk

As shown in the table above, PSNI uses the special counter-terrorism powers and the security powers provided by TACT and JSA respectively on a frequent basis. The power to stop and search individuals under section 24 JSA is used most frequently. Section 24 JSA empowers a police officer to stop and search a person for munitions/wireless apparatus if prior authorisation to do so has been given by a senior officer.⁴² There is no requirement that the police officer conducting the search reasonably suspects that the person being searched is carrying such items, provided that an authorisation is in place. If no authorisation is in place, a police officer may only exercise the section 24 power to stop and search if he or she *reasonably suspects* a person to have munitions or wireless apparatus unlawfully with him or her. The vast majority of stops and searches of persons carried out under section 24 JSA are pursuant to a senior officer authorisation *i.e.* they do not require individual reasonable suspicion.

During 2013/2014, of 6,239 persons stopped and searched under section 24 JSA, 95.5% were pursuant to an authorisation with the remaining 4.5% carried out without an authorisation where a police officer had reasonable suspicion that munitions or wireless apparatus were being carried.⁴³ In addition to the power to search persons for munitions or wireless apparatus, section 24 JSA empowers police officers to enter and search any premises, including dwellings and vehicles, for munitions/wireless apparatus. During the year 1 April 2013 – 31 March 2014, PSNI used section 24 JSA to search 172 dwellings, 50 other premises and 10,819 vehicles.⁴⁴

While section 24 JSA accounts for the greatest number of stops and searches carried out under counter-terrorism legislation, the greatest proportion of all types of

⁴² An authorisation may be given by a senior officer of the PSNI (*i.e.* at least the rank of Assistant Chief Constable) if he or she reasonably suspects that the safety of any person might be endangered by the use of munitions or wireless apparatus. The authorisation can be given only if the senior police officer reasonably considers that it is necessary to prevent that danger and the area or place specified in the authorisation is no greater than is necessary and the duration of the authorisation is not longer than is necessary. The Secretary of State is required to confirm authorisations intended to last for more than 48 hours. Individual authorisations can remain for a maximum of 14 days.

⁴³ *Stop and Search Statistics, Financial Year 2013/14*, PSNI, June 2014 (RESTRICTED version provided to Performance Committee).

⁴⁴ *Stop and Search Statistics, Financial Year 2013/14*, PSNI, June 2014 (RESTRICTED version provided to Performance Committee) and *Stop and Search Statistics, Quarter 2 2014/15*, PSNI, November 2014 (RESTRICTED version provided to Performance Committee)

stop and search is under the Misuse of Drugs Act (searches for drugs) followed by PACE (searches for stolen articles, articles with a blade or point, prohibited articles and fireworks).

In 2012 PSNI developed a stop and search information card for young people who are stopped, searched and/or questioned.⁴⁵ The card provided an overview of the powers, the right to be told the reason for the exercise of the power, the extent of information to be provided by a police officer and how the stop and search should be carried out. The card was intended to be used by all police officers. Each police officer was to complete relevant details on the front of the card to include, for example, the date, the police officer's station and the unique reference number allocated to the stop, search and/or question. The card was then to be provided to the young person.

The Policing Board welcomed that initiative but also recognised that the vast majority of adults would be as unfamiliar with the powers. The age group against whom the various stop and search powers are used most frequently is young adults aged 18 to 25 years.⁴⁶ It was therefore recommended, in the Human Rights Annual Report 2012, that the PSNI should consider issuing the same or a similar card to *all* persons who were stopped, searched or questioned.⁴⁷ PSNI accepted that recommendation and agreed that the card will be handed out to both adults and young people. Some delay in the use of the cards was recorded in the Human Rights Annual Report 2013. PSNI has explained that the delay was due to amendments required to take account of legislative changes. That amended card was issued to Districts and is (since December 2014) being issued by officers. The Performance Committee through the Policing Board's Human Rights Advisor will monitor whether officers are given

⁴⁵ That card was produced with considerable input from the Children's Law Centre, the Northern Ireland Commissioner for Children and Young People (NICCY) and Include Youth.

⁴⁶ Between 1 April 2013 and 31 March 2014, of 32,590 persons stopped and searched by PSNI under all legislative powers, 41% were aged 18 – 25 (where age information was available). This was followed by people aged 26 – 35 (22%) and then by young people aged 17 and under (17%). Age information is provided in PSNI's year-end statistical reports, the most recent one of which is *Stop and Search Statistics, Financial Year 2013/14*, PSNI, June 2014.

⁴⁷ Recommendation 6 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

appropriate instructions and guidance on the use of the cards and whether the cards are in fact being issued on each occasion.

Stop and search thematic review

In October 2013, the Policing Board published a dedicated human rights thematic review of police powers to stop and search and stop and question under TACT and JSA. The thematic report, which was prepared by the Board's Human Rights Advisor on behalf of the Performance Committee, provided in-depth scrutiny of the use of the powers and made 11 recommendations for the PSNI to consider. PSNI has accepted 10 of the 11 recommendations. The recommendation that has neither been accepted nor rejected, recommendation 7, required PSNI to consider how to include within its recording form the community background of persons stopped and searched under TACT and JSA. PSNI has established a small working group to consult and consider this recommendation and is considering a number of options. The Performance Committee was briefed by PSNI on the outcome of those deliberations. The PSNI has indicated that it intends to commence a pilot scheme. The Committee welcomes that development and encourages the PSNI to introduce the pilot without further delay.

Recommendation 6 of the thematic review, which has been accepted, requires PSNI to conduct a review at least annually of the ambit and usage during the previous 12 months of the TACT and JSA powers to stop and search and stop and question to ensure that they are being used in accordance with law and not disproportionately. Thereafter the Chief Officer responsible for the powers should provide a briefing to the Performance Committee. The Committee has agreed with PSNI that the first annual review as per recommendation 6 will be completed in May 2015 to take account of the period 1 April 2014 to 31 March 2015.

Recommendation 9 requires each District Commander to devise a strategy for improved consultation, communication and community engagement in respect of its use of TACT and JSA stop and search powers, with the strategy to be developed in consultation with Policing and Community Safety Partnerships (PCSPs), the

Performance Committee and other stakeholders. PSNI has established a small working group to explore this recommendation although any proposed strategy for formal engagement is likely to be implemented after April 2015 once the 11 new council areas come into effect, new PCSPs established, and the PSNI Districts are realigned to take account of this change.

Recommendation 11 requires PSNI to produce a stand-alone policy document which sets out the framework for stop and search and stop and question under TACT and JSA. Whilst this has been accepted by PSNI, the formulation of this overarching policy will be dependent upon the completion of a number of other recommendations.⁴⁸ Although work has commenced on implementing the other recommendations, they will complete at different speeds. The Committee has therefore agreed with PSNI a target date for completion of the policy by 31 March 2015. PSNI envisages that the completed policy will, insofar as possible, be an outward facing document that explains to the public why such powers are considered necessary by PSNI in discharge of their Article 2 ECHR duties to keep the public safe.

In order to ensure that the Board can fulfil its duty to oversee and monitor the authorisation regime, PSNI invited the Board, through its Human Rights Advisor, to conduct regular reviews of all stop and search authorisations made under TACT and JSA.⁴⁹ Since then the Human Rights Advisor has reviewed authorisations and will continue to do so. The Human Rights Advisor has been granted access to every

⁴⁸ As once work has completed on these recommendations, they will influence the text of the new policy. Thus the new policy will include clear instruction that the power to stop and question under JSA must not be used to require a person to confirm identity where identity is already known or to require them to produce identification for the purpose of confirming identity (recommendation 2); a requirement that District Commanders be consulted before an authorisation is given, with the Commander being given the opportunity to influence the authorisation (recommendation 3); guidance on the range of cultural and religious issues that may arise during a search and guidance on what to do when presented with language barriers or sensory impairment (recommendation 5); and guidance on stopping and searching children (recommendation 8).

⁴⁹ In this context it should be noted that the statutory Code of Practice on the authorisation and exercise of TACT stop and search powers states that the “appropriate use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board.” Similar wording is reflected in the statutory Code of Practice on the authorisation and exercise of JSA stop, search and question powers.

document she requested to see and has had regular contact with relevant police officers who provide any additional information required.

5. COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS

The Policing Board has a statutory duty to keep itself informed of complaints and disciplinary proceedings brought in respect of police officers and to monitor any trends and patterns emerging.⁵⁰ That work is undertaken by the Performance Committee which is also responsible for monitoring the performance of the PSNI in complying with the Human Rights Act 1998⁵¹ and for monitoring the effectiveness of the Code of Ethics.⁵² Those monitoring functions complement each other; a human rights culture can be demonstrated by the quality of interactions between the police and the public. Such interactions can be measured by an assessment of the formal police complaints process and also the daily, routine contacts between the police and the public. By monitoring PSNI internal disciplinary proceedings and breaches of the Code of Ethics, the Committee can assess the effectiveness of the Code and the extent to which individual officers (and the Police Service as a whole) are respecting the human rights principles that underpin the Code.

The Office of the Police Ombudsman for Northern Ireland (OPONI) was established under Part VII of the Police (Northern Ireland) Act 1998, which requires an independent and impartial police complaints system. The Committee meets formally with the Police Ombudsman and/or senior officials from his/her Office at least twice a year to discuss a range of issues, including trends and patterns in complaints against police officers and the resolution of those complaints. The Committee also considers individual investigation reports produced by OPONI⁵³ and it considers Regulation 20 reports as and when they are published.⁵⁴

⁵⁰ Section 3(3)(c)(i) of the Police (Northern Ireland) Act 2000.

⁵¹ Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000.

⁵² Section 3(3)(d)(iv) of the Police (Northern Ireland) Act 2000. The Code of Ethics lays down standards of conduct and practice for police officers and is intended to make police officers aware of their rights and obligations under the Human Rights Act 1998.

⁵³ Under section 62 of the Police (Northern Ireland) Act 1998 the Police Ombudsman may make public statements following major investigations. Decisions as to when to publish such reports and what material to include in them are taken at the discretion of the Police Ombudsman.

⁵⁴ A Regulation 20 report is produced by the Police Ombudsman following an investigation into a specific matter instigated by the Ombudsman of his/her own volition or referred to him/her under section 55 of the Police (Northern Ireland) Act 1998 by the Policing Board, the Department of Justice, the Secretary of State, the Director of Public Prosecutions or the Chief Constable.

The Committee is also required to monitor PSNI internal disciplinary procedures to ensure that lessons are learned and that best practice is promoted across the organisation for all officers. The Committee meets formally with officers from PSNI Service Improvement Department at least twice a year to discuss professional standards issues.⁵⁵

To discharge its monitoring duty effectively the Performance Committee relies upon PSNI and OPONI sharing information with it. A Professional Standards Monitoring Framework, devised by the Committee's Professional Standards Advisor, provides the Committee with a formal structure to undertake its monitoring function and to address broader concerns, such as quality of service, accountability and evidence of learning. In accordance with the Framework PSNI and OPONI provide the Committee with complaints and disciplinary information on a periodical basis. The information is used by the Committee at meetings with PSNI to challenge the organisation's performance and to seek further information from the police or OPONI on any areas of concern. During 2014 the Committee agreed revisions to the Monitoring Framework with PSNI and OPONI. Under the new Framework the Committee will receive six monthly information on complaints received by OPONI; self-referrals by PSNI to OPONI; updates on Policing Plan targets to reduce incidences of oppressive behaviour and incivility; and the number of statute barred cases.⁵⁶ In addition to this, annual information will be provided in relation to misconduct matters; performance against recognised risks, including threats from corruption; and evidence of learning from complaints, OPONI investigations and civil litigation. Some of the key issues considered by the Performance Committee in relation to complaints and discipline during 2014 are set out in the remainder of this Chapter.

⁵⁵ The Service Improvement Department acts as the 'gatekeeper of integrity' for the organisation. It is responsible for providing guidance to Districts and Departments in respect of disciplinary matters and must ensure that consistent standards are applied. The Department decides on disciplinary recommendations arising from OPONI investigations into complaints, delegating each recommendation to the appropriate District or Department to progress or referring the matter to a formal misconduct hearing. The Department can also initiate its own misconduct investigations.

⁵⁶ A statute barred case is a summary case (tried in the magistrates court) which cannot proceed to prosecution because a statutorily imposed time limit has expired.

COMPLAINTS

Number of complaints

OPONI produces quarterly and annual statistical reports which provide detail on trends and patterns in complaints and allegations received during the relevant period. OPONI also reports upon trends in equality monitoring, public attitudes to the Police Ombudsman, complainant satisfaction and police officer satisfaction. The reports are available to download through the OPONI website which has recently been re-launched with a new design, improved presentation of complaints statistics, case studies, social media sharing features, better search facilities and a new section especially for young people explaining what the Office does via a short video and a Frequently Asked Questions section.⁵⁷

With regard to complaint statistics, OPONI received 3,734 complaints in 2013/2014.⁵⁸ This was the highest number of complaints since the Office opened in November 2000. This followed a 4 year period when the level of complaints had been falling year on year and represents a 14% increase compared to the 3,272 complaints received in the previous financial year. It is of note that complaints forwarded from PSNI to OPONI almost doubled, from 351 complaints in 2012/2013 to 663 complaints in 2013/2014. A change in custody suite practice in recording complaints has been identified as contributing to this rise. This change appears to have commenced after one custody sergeant was investigated in July 2013 for failing to record a complaint from a detained person. This may have contributed to excessively risk averse behaviour in relation to complaint recording therefore guidance has been agreed with OPONI in relation to recording complaints from persons in custody. The guidance has been circulated to all custody staff. The number of complaints relating to arrest reduced from 476 in the April to September

⁵⁷ www.policeombudsman.org

⁵⁸ *Trends in Complaints and Allegations Received by the Police Ombudsman for Northern Ireland 2013/14, Annual Statistical Report*, OPONI, June 2014. The number of complaints received by OPONI includes complaints made by members of the public; matters that have been referred to OPONI by the PSNI, the Public Prosecution Service, the Policing Board or the Department of Justice; and any matter which the Police Ombudsman has decided is in the public interest for him to investigate.

2013 period to 342 in the same 6 month period in 2014, thus it would appear that the guidance has been effective. The overall number of complaints received by OPONI in the first half of 2014/2015 (April to September 2014) has also been on a downward trend of 4% compared to the same 6 month period the previous year.⁵⁹ That said the number of complaints received in the first half of 2014/2015 still remains higher than for the same period in 2012/2013 and the 3 years prior.

Where sufficient information is available, OPONI records the main factor underlying each complaint received, or the main situation giving rise to the complaint. Criminal Investigation has been the most common factor underlying complaints over the past 5 years (20 - 25%), followed by Arrest (15 – 20%), with the exception of 2013/2014 in which it accounted for 24% overtaking Criminal Investigation as the most common factor in that year. As outlined above, the rise in complaints regarding arrest may be attributable to risk averse behaviour in relation to the recording of complaints of detained persons, with the number of complaints of this nature reducing in the first half of 2014/2015. Search, Traffic Enquiries, Police Enquiries, Domestic Incident, Parade/Demonstration and Historic Investigation are also common factors behind complaints as demonstrated by the table below.

Main factor underlying complaints received by OPONI, 2009/2010 – 2013/2014⁶⁰

Main factor	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014
Arrest	595	578	661	617	885
Criminal Invest.	741	790	762	720	806
Search	320	330	339	317	361
Traffic Incident	472	360	313	251	264
Domestic Incident	175	182	168	164	236
Police Enquiries	518	310	237	184	235
Parade/Demo	36	41	20	170	132
Historic	9	7	34	73	67
Other	520	643	681	662	648
Unknown	156	94	129	114	100
Total	3,542	3,335	3,344	3,272	3,734

⁵⁹ *Complaints and Allegations Received by the Police Ombudsman for Northern Ireland, Quarterly Statistical Update to 30th September 2014*, OPONI, October 2014.

⁶⁰ *Trends in Complaints and Allegations, 2013/14 (Pivot Tables)*, OPONI, June 2014.

There was a peak in Parade/Demonstration complaints between December 2012 and March 2014 when OPONI received 280 complaints of this nature. Around half of these complaints were attributable to the ‘flag protest’ street demonstrations that took place across Northern Ireland following the Belfast City Council decision to fly the Union Flag on designated days only.

There has been a notable 44% increase in the number of complaints regarding domestic incidents, from 164 in 2012/2013 to 236 in 2013/2014. This trend appears set to continue in 2014/2015 with the number of Domestic Incident complaints increasing by 23% in the first six months of 2014/2015 compared to the first 6 months in 2013/2014. The Board’s Human Rights Advisor was provided with details of those 2014/2015 complaints. It became apparent that the category ‘domestic incident’ includes complaints relating to police conduct at the complainant’s property, complaints involving neighbourhood disputes and complaints relating to telephone calls. In other words, ‘domestic incident’ does not refer solely to cases involving domestic abuse. The Policing Board’s Human Rights Advisor and the Committee will look at this closely in the coming months to monitor the real increase or decrease in complaints involving police conduct in domestic abuse cases.

Types of allegation

Each complaint received by OPONI consists of one or more allegations, for example, a complaint from a person stating that a police officer was rude to them *and* had pushed them would be counted as one complaint with two allegations. In line with the increase in the number of complaints received by OPONI in 2013/2014, there was also an increase in the number of allegations received: there were 6,089 allegations received in 2013/2014, an increase of 15% compared with the 5,284 allegations received in 2012/2013.⁶¹

Allegations are categorised into 11 different types. Since 2009/2010, failure in duty allegations accounted for the greatest proportion of allegations, followed by

⁶¹ *Trends in Complaints and Allegations Received by the Police Ombudsman for Northern Ireland 2013/14, Annual Statistical Report*, OPONI, June 2014.

oppressive behaviour and incivility. Numbers of most allegation types increased in 2013/14 given the increase in the overall number of allegations, but the sharpest increase was in the number of oppressive behaviour allegations. In 2013/2014 OPONI received 29% more oppressive behaviour allegations than in 2012/2013.

Oppressive behaviour allegations typically relate to allegations of physical aggression such as being pushed, grabbed, struck by a baton, handcuffs too tight or twisted etc.; non-physical conduct which is seen as being aggressive or threatening; and harassment (allegations of this type frequently relate to stop and search). A recommendation was made in the Human Rights Annual Report 2012 that PSNI should consider the findings of an OPONI report on allegations of Oppressive Behaviour⁶² and present to the Performance Committee the PSNI analysis of the findings together with its proposed means of reducing allegations of Oppressive Behaviour.⁶³ During 2013 PSNI developed a control strategy to reduce Oppressive Behaviour allegations. When it was identified that the number of allegations of this type were on an upward trend in 2013/2014, further analysis was completed by PSNI and a report was provided to the Performance Committee which analysed the nature of the Oppressive Behaviour allegations and set out action taken to reduce them.⁶⁴ The Policing Plan 2014 – 2017 set a target to reduce the number of Oppressive Behaviour allegations by 10%. Six-monthly figures for the April – September 2014 period show a 27% reduction compared to the same period in 2013.⁶⁵

Reducing Incivility allegations has also been an area of focus for the Performance Committee and the PSNI over the past number of years. Between 2009/2010 and 2012/2013 the number of Incivility allegations reduced by 41% and a target in the Policing Plan 2011 – 2014 to reduce the number of this type of allegation by 5% was achieved. In order to maintain focus on reducing this type of allegation, the Policing

⁶² *Analysis of Oppressive Behaviour Allegations Received by the Office of the Police Ombudsman for Northern Ireland, 2000 – 2012*, OPONI, November 2012.

⁶³ Recommendation 7 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

⁶⁴ *Understanding the Rise in Complaints and Allegations Against PSNI Officers 2013/2014*, PSNI, January 2014. Recommendation 7 of the Human Rights Annual Report 2012 has therefore been implemented.

⁶⁵ *Complaints and Allegations Received by the Police Ombudsman for Northern Ireland, Quarterly Statistical Update to 30 September 2014*, OPONI, October 2014.

Plan 2014 – 2017 contains a target to further reduce the number of Incivility allegations by 1%. Six monthly figures for the April – September 2014 period show a reduction of 11% compared to the same period in 2013.⁶⁶

Counter-allegations

During 2014 the Committee raised an issue with the PSNI and OPONI concerning the procedure applied when a police officer, during an investigation by OPONI, makes a counter-allegation of criminality against the person whose complaint gave rise to the OPONI investigation but the officer has not previously reported that allegation to PSNI. A police officer is after all bound, by section 5 of the Criminal Law Act (Northern Ireland) 1967, to report crime. In particular, the Committee was concerned that such a counter-allegation would not be capable of being substantiated, investigated or countered by the complainant⁶⁷ and may be made for the sole improper purpose of undermining the credibility of the complainant. For the avoidance of doubt, the Committee is not referring to counter-allegations that the complainant's version of events is untrue. The Committee's concern is with allegations of criminality raised for the first time in the course of an OPONI investigation. In an effort to address that the Committee considers that the relevant Service Procedure should be amended.

Recommendation 3

PSNI should amend Service Procedure 4/2013 (Handling Public Complaints and the Role of the Police Ombudsman) to include a policy on counter-allegations. The Service Procedure should remind officers of their duty to report criminality and that if an allegation of criminality is raised for the first time as a counter-allegation it may be treated as a failure of duty. Prior to

⁶⁶ *Complaints and Allegations Received by the Police Ombudsman for Northern Ireland, Quarterly Statistical Update to 30 September 2014*, OPONI, October 2014.

⁶⁷ OPONI has advised that section 63 of the Police (NI) Act 1998 places strict conditions on how it may deal with information received in connection with an investigation and that while OPONI investigators will seek to clarify points with complainants, there is no automatic entitlement for a complainant to be advised of all counter-allegations made against him or her. Furthermore, if the counter-allegation is that the complainant has committed an offence, OPONI is not required to report such allegations to PSNI or for those counter-allegations to be investigated.

making any amendment to Service Procedure 4/2013 PSNI should first liaise with the Office of the Police Ombudsman.

Complaint outcomes

When a complaint is made, it is dealt with by OPONI in accordance with Part VII of the Police (Northern Ireland) Act 1998. During 2013/2014 there were 3,452 complaints (involving 5,536 allegations) closed by OPONI. A total of 7,330 recommendations for closure were made as illustrated in the table below.

Recommendation types arising from allegations closed by OPONI 1 April 2013-31 March 2014⁶⁸

Recommendation Type	%
Not substantiated	35
Non cooperation by complainant	29
Outside OPONI remit	8
To PPS no criminal charges recommended	7
Informal/local resolution	5
Withdrawn by complainant	5
Complaint ill founded	4
Recommended action	4
Substantiated with no action recommended	1
Other recommendations	2
Total	100 (7,330)

As can be seen from the table above, only 4% of recommendations for closure required PSNI to take some form of action. However, any form of complaint whether substantiated or not does give some indication of the relationship between the police and the public, which should be taken seriously. Furthermore, non-cooperation by the complainant (29%) is an increase from previous years (ranging from 18% to 22% between 2009/2010 and 2012/2013). The Committee intends to monitor this in the coming months. In particular, the Committee will consider whether the greater use of informal or local resolution could have an impact, positive or negative, on the level of cooperation.

⁶⁸ *Trends in Complaints and Allegations Received by the Police Ombudsman for Northern Ireland 2013/14 Annual Statistical Report*, OPONI, June 2014.

If OPONI believes that a criminal offence may have been committed by a police officer, a file is sent to the Director of Public Prosecutions together with the recommendations OPONI considers appropriate. This file will contain a recommendation as to whether, based on the evidence, OPONI believes the officer should be prosecuted. During 2013/2014, OPONI recommended 11 criminal charges to the PPS. The recommended charges related to alleged: common assault (5 charges); assault occasioning actual bodily harm (2 charges); careless driving (1 charge); dangerous driving (1 charge); intent to pervert the course of justice (1 charge); and misconduct in a public office (1 charge).⁶⁹

If OPONI considers that internal action is required in respect of an individual officer's conduct, it will send to the Chief Constable (or the Policing Board in the case of a complaint against an officer of the rank of Assistant Chief Constable or above) a memorandum containing OPONI's recommendations as to disciplinary action that should be taken. During 2013/2014 OPONI made 250 recommendations to the Chief Constable relating to police officers' conduct, of which 163 (65%) were for advice and guidance, 41 (16%) for a Superintendent's Written Warning, 35 (14%) for management discussion or training and 11 (4%) for formal disciplinary proceedings.⁷⁰

In addition to making recommendations for disciplining individual officers, OPONI has power to make recommendations to the Chief Constable which may be aimed at improving police policy and practice. Given that these recommendations can sometimes relate to the manner in which PSNI respond to critical incidents (e.g. missing persons), it is in the public interest and PSNI's own interest to ensure that the recommendations are fully implemented and that the lessons learned from the OPONI investigations are communicated throughout the Police Service. If OPONI makes policy recommendations of a similar nature on a recurring basis that may be an indication that further work is required in respect of that specific issue. A recommendation was made in last year's Human Rights Annual Report that PSNI develop a system which identifies trends and patterns in OPONI policy

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

recommendations and that where recurring recommendations are made, the system should highlight these and require PSNI to take further action.⁷¹

PSNI accepted that recommendation and has suggested that this work will be progressed through a Policy Evaluation Group (PEG) which was established in May 2013 for the purpose of considering OPONI policy recommendations. The PEG now comprises representation from OPONI, PSNI, the Criminal Justice Inspection Northern Ireland and the Policing Board. According to the terms of reference for the PEG, it is designed to “give priority to reviewing recommendations made which are of a strategic and/or service improvement nature, as well as those recommendations not accepted by the PSNI. When and where appropriate the PEG will consider the evaluation of the effectiveness of policy recommendations. Responsibilities, purpose and terms of reference for any evaluation exercise will be decided by the group on a case by case basis.” An annual report will be produced through the PEG which will set out learning identified through OPONI recommendations. PSNI will also produce bench marking reports against themes identified by PSNI and agreed with the Policing Board. The PEG annual report and the bench marking reports will be submitted to the Committee in June each year alongside the Professional Standards Monitoring Framework information.

Recommendation 5 the Human Rights Annual Report 2013 is therefore in the process of implementation. That recommendation will be considered further once the Performance Committee has had an opportunity to assess the reports in June 2015. The evaluation of OPONI policy recommendations and evidence of learning is a matter which the Committee will continue to monitor. The Committee is particularly interested in the extent to which PSNI accept and implement OPONI disciplinary recommendations and policy recommendations, and the consistency with which disciplinary sanctions are administered.

⁷¹ Recommendation 5 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014. This echoed a Criminal Justice Inspection Northern Ireland (CJINI) recommendation that PSNI should develop and implement systems for monitoring the implementation and the effectiveness of policy recommendations: *The Relationship Between PSNI and the Office of the Police Ombudsman for Northern Ireland*, CJINI, December 2013.

Informal resolution and local resolution⁷²

Less serious complaints can be dealt with by way of informal resolution but only if the complainant has agreed to that course. The informal resolution process is provided for by the Police (Northern Ireland) Act 1998. With informal resolution OPONI refers appropriate complaints to PSNI Service Improvement Department which then appoints an officer of the rank of Inspector or above to speak to the complainant and the officer who is the subject of the complaint with a view to reaching a satisfactory resolution. During 2013/2014 there were 476 complaints deemed suitable for informal resolution, which is slightly more than in 2012/2013 when 461 were deemed suitable but significantly fewer than in previous years.⁷³ The overall decrease in the number of complaints deemed suitable for informal resolution can be explained partly as a result of a decrease in Incivility type allegations in recent years (one of the types of allegation which are considered to be most suitable for informal resolution) and partly because complaints which would have been considered for informal resolution in D District have instead been referred to the local resolution pilot in D District.⁷⁴

The proportion of complainants agreeing to participate in the informal resolution process has ranged from 58% to 62% over the past 4 years. Between 75% and 80% of all complaints referred for informal resolution are deemed to have had a successful outcome. The Committee agrees with the PSNI's analysis of a successful informal resolution; where a complaint is of a less serious nature and the officer about whom the complaint has been made is spoken to by a supervisor and has appreciated the nature of the complaint and the complainant has had a speedy resolution of the issue, confident that it has been taken into account by the individual officer and the PSNI

⁷² Figures for informal resolution are derived from *Trends in Complaints and Allegations, 2013/14 (Pivot Tables)*, OPONI, June 2014.

⁷³ There were 858 complaints deemed suitable for informal resolution in 2009/2010; 619 in 2010/2011; 502 in 2011/2012; 461 in 2012/2013; and 476 in 2013/2014.

⁷⁴ As to which see below.

Local resolution was piloted in D District (Antrim, Carrickfergus, Lisburn and Newtownabbey) between June 2010 and November 2010. Through the local resolution process responsibility for resolving less serious complaints is returned to Local Resolution Officers, that is, appointed Inspectors and Sergeants in the unit in which the complaint arose. Local resolution depends upon the consent of the complainant. The success or otherwise of local resolution depends upon the willing co-operation and involvement of both the complainant and the police officer about whom the complaint has been made. Local resolution is similar to informal resolution in that the same type of complaints may be dealt with and both are monitored by OPONI. However, local resolution is not underpinned by statute and unlike informal resolution, local resolution does not involve PSNI Service Improvement Department. OPONI refers complaints for local resolution to D District Local Resolution Officers directly.

During the D District pilot, the average time taken to resolve a complaint locally was 3 times shorter than informal resolution, achieving resolution completion on average within 30 days. The average completion time frame for informal resolution was 104 days. Most of the complainants returning satisfaction questionnaires expressed high levels of satisfaction with both the process and the Local Resolution Officers involved. Given this success of the pilot, OPONI and PSNI agreed to continue with local resolution in D District. During 2013/2014 33 complaints (containing 46 allegations) were resolved locally in D District.⁷⁵

As stated above, the statutory provision from which OPONI derives its authority to deal with complaints⁷⁶ provides for informal resolution but does not provide for local resolution. Therefore, the local resolution pilot has been operating on the basis of an agreement with the Department of Justice. The Committee has asked PSNI to consider whether the local resolution pilot could and should be extended to all Districts by agreement with the Department of Justice in the absence of legislative provision. The Committee also encourages PSNI to consider whether informal resolution could and should be extended to permit OPONI to refer appropriate

⁷⁵ Information provided by OPONI to the Performance Committee further to the Committee's Professional Standards Monitoring Framework.

⁷⁶ Part VII of the Police (Northern Ireland) Act 1998.

complaints to District directly rather than to Service Improvement Department. That may speed up the process of informal resolution. The Committee believes that should complaints be referred directly, Service Improvement Department should have a continuing role in quality assuring the handling of complaints. This will be considered further during 2015.

Complaints against senior officers

A complaint made by, or on behalf of, a member of the public about a senior officer (an officer of the rank of Assistant Chief Constable or above) must be considered by OPONI. If, following a formal investigation by OPONI, there is a recommendation for disciplinary proceedings, the recommendation will be referred to the Policing Board as the appropriate disciplinary authority for senior officers. If the complaint is suitable for informal resolution, OPONI will refer it to the Policing Board to resolve. During 2013/2014, there were no recommendations for disciplinary proceedings and no cases referred to the Policing Board for informal resolution.

Direction and control complaints

Direction and control complaints relate to the delivery of the policing service and concern, typically, PSNI policy or operational matters. When a direction and control complaint is made, the relevant District or Department contacts the complainant, either in person or by letter and provides an explanation for the action about which the complaint has been made. If appropriate, an apology may be offered or reparation made. PSNI Service Improvement Department oversees all direction and control complaints and provides the Policing Board with a summary of all new complaints, together with a summary of all complaints finalised.⁷⁷ Those summaries contain sensitive and confidential information which cannot be published in this Annual Report but they are reviewed by the Policing Board's Human Rights Advisor. Any area of concern is reported by her to the Performance Committee.

⁷⁷ As required by Recommendation 27(h) of the Policing Board's Human Rights Annual Report 2005.

Between 1 April 2013 and 31 March 2014, PSNI received 198 direction and control complaints. This is an increase on the 181 direction and control complaints received in 2012/2013 which in itself was an increase on the 136 such complaints received in 2011/2012. The reason for the increase in the number of direction and control complaints received during 2012/2013 has been attributed by PSNI to the increased number of parades and protests that have required police intervention. Recurring complaints related to the manner in which police dealt with road blocks and included allegations that the police response was either too lenient or too heavy handed. A similarly high number of direction and control complaints received during 2013/2014 (approximately one third of all such complaints) also related to parades and protests.

Parades and protests are considered in more detail in Chapter 6 of this Human Rights Annual Report. The remainder of the direction and control complaints related to a broad range of issues such as the time taken to respond to a call out, the conduct of investigations, roads policing, search procedures and low flying police helicopters. The majority of direction and control complaints were resolved by a police officer speaking to or writing to the complainant with an explanation for the police action.

Regulation 20 reports

By virtue of section 55 of the Police (Northern Ireland) Act 1998 the Police Ombudsman can investigate non-complaint matters. Such matters can be investigated by the Police Ombudsman of his or her own volition (often referred to as 'call-ins') or as a result of a referral by the Policing Board, the Department of Justice, the Secretary of State, the Director of Public Prosecutions or the Chief Constable of any matter indicating criminality or misconduct by a police officer. The Chief Constable must refer all discharges of a firearm, an Attenuating Energy Projectile (AEP) or Taser to the Police Ombudsman for investigation. Any incident in which a person dies either in police custody or shortly following police contact (regardless of whether it is suspected that there was any wrongdoing on the part of the police) must

be referred. In 2013/2014 the Chief Constable made 37 referrals. There were 10 call-ins.⁷⁸ No referrals were made by the Policing Board.

At the conclusion of an OPONI investigation into non-complaint matters a report, known as a Regulation 20 report, is sent to the Department of Justice, the Policing Board and the Chief Constable. The report outlines the background to the incident under investigation, OPONI's findings and, where appropriate, recommendations for the Chief Constable. During 2013/2014 there were 26 Regulation 20 reports issued by OPONI relating to matters such as the discharge of firearms, Taser, AEP, deaths following contact with the police and alleged failures in police investigations.⁷⁹

If the Police Ombudsman considers it in the public interest he may publish a press statement setting out his findings. The Regulation 20 report is not usually published however the Performance Committee receives confidential copies of Regulation 20 reports and monitors any adverse findings. As noted above, under its revised Professional Standards Monitoring Framework, the Performance Committee will be receiving an annual report from PSNI which will set out learning identified through OPONI recommendations, which may be made in relation to both complaint and non-complaint matters.

INTERNAL DISCIPLINE

Police misconduct is dealt with by PSNI⁸⁰ through the PSNI disciplinary structure either at a local level or by PSNI's Discipline Branch.⁸¹ Allocation depends upon the seriousness of the alleged breach. If the allegation is substantiated the sanction(s) may vary from a formal sanction, to a local misconduct sanction, to no further action.

⁷⁸ *Trends in Complaints and Allegations Received by the Police Ombudsman for Northern Ireland 2013/14, Annual Statistical Report*, OPONI, June 2014.

⁷⁹ *Annual Report and Accounts for the year ended 31 March 2014*, Police Ombudsman for Northern Ireland, 2014, page 12.

⁸⁰ Unless the misconduct relates to a police officer of rank Assistant Chief Constable or above, in which case the Policing Board is the relevant disciplinary authority.

⁸¹ The Discipline Branch works closely alongside PSNI's Anti-Corruption and Vetting Branch, with both branches sitting within PSNI's Service Improvement Department.

Formal sanction (imposed following a formal disciplinary hearing conducted by a misconduct panel)	Local misconduct sanction (imposed at local level)
Dismissal from the PSNI	Superintendent's Written Warning
A requirement to resign	
A reduction in rank or pay	Advice and Guidance
A fine	
A reprimand	Management Discussion
A caution	

PSNI provides the Policing Board's Human Rights Advisor, on a six-monthly basis,⁸² with summary details of all cases that resulted in formal disciplinary hearings; details of Superintendent's Written Warnings; information on the number of officers convicted of criminal offences and the disciplinary action taken by PSNI against those officers; and, information on officers who are currently suspended or who have been repositioned pending an investigation into alleged criminality or a gross misconduct matter. That information enables the Human Rights Advisor to monitor how PSNI Service Improvement Department deals with the most serious misconduct allegations and the sanction(s) imposed for allegations that are substantiated.

PSNI Discipline Branch prepares an annual report for the PSNI Audit and Risk Committee which provides an overview of strategic priorities and work carried out during the previous financial year in relation to discipline, anti-corruption and vetting. The report provides summary information on the most commonly breached articles of the Code of Ethics in the previous financial year.⁸³ Attributing misconduct according to the relevant article of the Code of Ethics is a useful albeit subjective exercise however it does not provide an accurate picture of the *types* of conduct giving rise to the disciplinary proceedings. The report to the Audit and Risk Committee therefore contains the additional high level information as follows:

⁸² It has been agreed between the Policing Board's Human Rights Advisor and PSNI that this information will be provided from 2014/2015 onwards on an annual basis.

⁸³ The purpose of the Code of Ethics is to lay down standards of conduct and practice for police officers and to make police officers aware of the rights and obligations arising out of the European Convention on Human Rights. During 2013/2014 there were 362 recorded breaches of the Code of Ethics, the most common of which were Article 7, Integrity (31.2% of breaches), followed by Article 2, Police Investigation (26.8% of breaches), followed by Article 1, Professional Duty (26.5% of breaches). As has been reported in previous Human Rights Annual reports, these are the three Articles which each year are most commonly breached.

- The number and type of misconduct files opened and being investigated by Discipline Branch (these files will relate to serious misconduct allegations as less serious cases will be dealt with by supervisors at a local level);
- The number and type of criminal investigation files opened and being investigated by Discipline Branch;
- The number and type of criminal investigation files opened during the year which have been passed to Districts to investigate;⁸⁴
- The number of officers who are currently suspended whilst under investigation, the nature of the allegations against them, their gender and rank, and the total number of days lost through police officer suspension each year; and
- The number and type of complaints made to OPONI, together with a summary of strategies to reduce certain types of complaint.

PSNI will provide the Performance Committee with a copy of that audit and risk report annually together with the information which is already provided as part of the Professional Standards Monitoring Framework. The Committee welcomes this. The information will be monitored and discussed in detail with Senior Officers and OPONI during Committee meetings.

Reform to police misconduct and unsatisfactory performance procedures

In 2008 new misconduct and unsatisfactory performance procedures were introduced in England and Wales.⁸⁵ Those new procedures were introduced following a review commissioned by the Home Office in 2004 (known as the Taylor Review) into the effectiveness of police misconduct and unsatisfactory performance procedures.⁸⁶ The reforms did not extend to Northern Ireland but many of the key findings of the Taylor Review are relevant to Northern Ireland. For example, the

⁸⁴ All criminal investigations being taken forward by a District will remain under the supervision of a Discipline Branch investigator. Once criminal proceedings are completed, the Discipline Branch investigator will follow up on any misconduct issues arising.

⁸⁵ The following regulations came into force in England and Wales on 1 December 2008: the Police (Performance) Regulations 2008; the Police (Conduct) Regulations 2008; the Police (Complaints and Misconduct) (Amendment) Regulations 2008; the Police Appeals Tribunals Rules 2008; and the Police Amendment Regulations 2008.

⁸⁶ *Review of Police Disciplinary Arrangements Report (the Taylor Review)*, January 2005.

Taylor Review emphasised the need to shift the emphasis and culture in police misconduct and unsatisfactory performance matters from blame and punishment towards a focus on development and improvement; the need for supervisory officers to have greater responsibility for addressing conduct and performance issues at a local level; and the need for the police service to be able to deal swiftly with misconduct matters, even in cases where criminal proceedings are pending.

PSNI has worked closely with the Department of Justice for a number of years on legislative reform to the misconduct and unsatisfactory performance procedures, including the rules for Police Appeals Tribunals (PATs). The Policing Board has followed developments closely and has been represented by an official on a Taylor Working Group. In September 2013 the Performance Committee responded to a Department of Justice consultation on 3 sets of draft subordinate legislation. Having considered the consultation responses and held further meetings and targeted consultations with relevant organisations, including the Policing Board, the Department of Justice has now prepared the following final drafts of the legislation which are due to be brought into force shortly:

- **The Police (Performance and Attendance) Regulations (Northern Ireland) 2015** establish procedures for proceedings in respect of unsatisfactory performance or attendance of police officers of the rank of Chief Superintendent or below (excluding probationers).
- **The Police (Conduct) Regulations 2015** will apply where an allegation comes to the attention of the appropriate authority (i.e. the Chief Constable for officers of rank Chief Superintendent and below; and the Policing Board for officers of rank Assistant Chief Constable and above) which indicates that the conduct of a police officer may amount to misconduct or gross misconduct. The Regulations establish procedures for proceedings in respect of alleged misconduct or gross misconduct. That includes an allegation contained within a complaint dealt with by the Police Ombudsman. The Police Ombudsman's role and remit in dealing with complaints is not affected by the Regulations.

Under regulation 6 of the Royal Ulster Constabulary (Conduct) Regulations 2000, if criminal proceedings are initiated against a police officer in respect of alleged misconduct, any misconduct proceedings must await the conclusion of the criminal case unless the Chief Constable believes that in the exceptional circumstances of the case it would be appropriate for disciplinary proceedings to proceed. The conclusion of the criminal case will include any subsequent appeal. Thus a police officer who has been suspended⁸⁷ pending the outcome of disciplinary proceedings may remain suspended on full pay for a long period of time. This has been an issue of concern to the Policing Board for some time and has been discussed at length in previous Human Rights Annual Reports. The new Conduct Regulations will supersede the 2000 Regulations and will provide that misconduct proceedings *should proceed* notwithstanding any criminal proceedings unless the Chief Constable (or in the case of a senior officer, the Policing Board) considers that they would prejudice such criminal proceedings.

During 2013/2014 a total of 8,346 working days were lost as a consequence of police officer suspension.⁸⁸ Although the ability to conduct misconduct proceedings whilst criminal proceedings are ongoing will not eradicate days lost to suspension, the Committee hopes that there will be a notable reduction.

- **The Police Appeals Tribunals Rules (Northern Ireland) 2015** set out the circumstances in which a police officer may appeal to a Police Appeals Tribunal (PAT) against the findings and specific outcomes arising from both the Conduct and Performance Regulations. A key change will be the fact that the intermediary stage between a misconduct hearing and a PAT, known as a Chief Constable's Review, will be abolished and instead where appeals against findings and decisions of misconduct hearings are permissible, they will be made directly to a

⁸⁷ The Chief Constable has authority to suspend an officer if there is a report, allegation or complaint indicating misconduct, as does the Policing Board in respect of a senior officer. A decision to suspend will only be taken if all other options, including repositioning the officer to undertake other duties, are deemed inappropriate because of the nature of the allegation. Suspension is not a sanction but a pre-emptive measure to protect the integrity of the PSNI pending resolution of the matter.

⁸⁸ Information on the number of officers currently on suspension and the number of working days lost through suspension is included in the annual report that PSNI's Discipline Branch provides to PSNI Audit and Risk Committee. This report is protectively marked so is not published. However as noted earlier in this Chapter, the Performance Committee will receive a copy of the Audit and Risk report each year in accordance with its Professional Standards Monitoring Framework.

PAT. Furthermore, appeals may currently only be made to a PAT where an officer has been dismissed, required to resign or reduced in rank. Under the new Rules, appeals may be made where a wider range of sanctions have been imposed (e.g. warnings issued, redeployment to alternative duties). The Policing Board will remain responsible for administering and appointing the PATs.

Officers leaving PSNI before investigation and/or proceedings concluded

If a police officer has left the PSNI, whether by retirement, resignation or dismissal, he or she cannot be investigated by OPONI in relation to misconduct alleged during service. The Police Ombudsman has no power to compel that officer to attend interview as a witness or to give evidence.⁸⁹ However, if the officer is alleged to have committed a criminal offence clearly he or she can, and should, be investigated and referred to the Public Prosecution Service.

A concern expressed by many Policing Board Members and stakeholders is that an officer may be permitted to resign or retire for the purpose of avoiding a misconduct investigation or subsequent proceedings. Because of that concern the Committee has continued to monitor the number of officers leaving the PSNI in those circumstances. During 2013/2014, a total of 9 police officers left PSNI pending the conclusion of an investigation and/or proceedings. Of those, 6 police officers were suspended at the time they left. That is a decrease on the previous year. Of 17 police officers who left PSNI during 2012/2013 whilst under investigation for alleged misconduct, 13 were suspended at the material time.

Police officers who are suspended may not resign or retire from the PSNI without the consent of the Chief Constable. PSNI contends that the community's interests are

⁸⁹ During 2012 the Department of Justice consulted upon proposed reforms to the Office of the Police Ombudsman (*Future Operation of the Office of the Police Ombudsman for Northern Ireland*, Department of Justice, March 2012). Amongst other consultation questions, the Department asked whether or not the Police Ombudsman, when conducting investigations involving grave or exceptional matters, should be given a power to compel retired or former police officers to submit to witness interview and to require that they provide all relevant documentation to the Police Ombudsman which is within the officers' possession, custody, power or control. Mixed consultation responses were received in relation to this. No agreement as to how to progress the issue has been reached by the Northern Ireland Executive.

best served by the prompt removal from policing of an officer who fails to live up to a high standard and that to require an officer to remain within the PSNI simply to require him or her to face a misconduct panel (with the ultimate sanction being dismissal) makes neither operational nor economic sense. While the Committee sees some merit in that argument there remain a number of issues to be resolved and it will continue to consider those issues and report further in due course.

Intelligence led integrity tests

Integrity tests are designed to test covertly an officer or group of officers' integrity where there is intelligence to justify it. They are one of a number of options available to PSNI investigating allegations of criminality. The tests are only carried out in operationally appropriate cases where reliable information about an identified officer has been received. Between 1 April 2013 and 31 March 2014, no integrity tests were carried out. That does not suggest necessarily that PSNI has failed to investigate fully or appropriately: it may indicate that there was no intelligence to justify an integrity test. The matter is kept under review and the Policing Board's Human Rights Advisor has access to relevant officers to discuss any issues that may emerge. No issues have emerged in the relevant period.

CIVILIAN PERSONNEL

The legislation which provides the Police Ombudsman with power to investigate and which applies the PSNI Code of Ethics to police conduct came into force in 1998 and 2000 respectively.⁹⁰ At that time almost all policing functions were carried out by police officers. However, since then a programme of civilianisation has been initiated in accordance with the Report of the Independent Commission on Policing for Northern Ireland (the Patten report).⁹¹ More civilian staff are now performing roles, for example, station enquiry assistants and call handlers, that were previously carried out by police officers. Those roles involve interaction with the public and a

⁹⁰ The Police (Northern Ireland) Act 1998 and the Police (Northern Ireland) Act 2000.

⁹¹ *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraphs 10.22 – 10.24.

high level of responsibility. Civilian staff play an increasingly important role in ensuring that PSNI complies with the Human Rights Act.

However, the majority of civilian staff are not subject to the PSNI Code of Ethics⁹² and are instead subject to a Police Staff Handbook and the Northern Ireland Civil Service (NICS) Code of Ethics and Code of Conduct.⁹³ Furthermore, the Office of the Police Ombudsman (OPONI) does not have remit to deal with complaints made against the majority of civilian staff.⁹⁴ It was reported, in last year's Human Rights Annual Report, that there was no formal procedure for dealing with complaints received by a member of the public in respect of such civilian staff. If a complaint was made, it was considered internally by PSNI to determine whether it warranted investigation as a disciplinary matter. If so the disciplinary matter was dealt with in accordance with the procedures contained within the Staff Handbook. Records of civilian staff misconduct proceedings were not, however, held centrally. They were retained by Human Resources Managers in each District or Department. That meant that it was difficult for PSNI (and by extension the Performance Committee) to monitor trends and patterns in civilian staff misconduct matters. PSNI advised that it was aware of the concern and that it was developing a system to address it. A recommendation was subsequently made in the Human Rights Annual Report 2013 which required PSNI to report to the Performance Committee on the processes it had in place to monitor trends and patterns in complaints and misconduct matters arising in respect of civilian staff.⁹⁵

In September 2014, PSNI's Human Resources Department reported that the system to electronically record, monitor and report on all aspects of police staff discipline

⁹² Unless they have been designated under sections 30, 30A or 31 of the Police (Northern Ireland) Act 2003 as an Investigating Officer, a Detention Officer or an Escort Officer in which case they will be subject to the Code of Ethics insofar as they are carrying out their designated functions. The Code of Ethics was made applicable to designated staff by the Police Powers for Designated Staff (Code of Ethics) Order (Northern Ireland) 2008.

⁹³ As regards civilian staff recruited through an agency on a temporary basis, PSNI has agreed a Protocol with the agency which deals with discipline matters.

⁹⁴ Unless they have been designated under sections 30, 30A or 31 of the Police (Northern Ireland) Act 2003 as an Investigating Officer, a Detention Officer or an Escort Officer. The Police Ombudsman's remit was extended to include designated staff by the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008.

⁹⁵ Recommendation 6 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014.

was in place. All cases from April 2014 onwards were recorded on the new system. The recommendation from last year's Human Rights Annual Report is therefore discharged. The Policing Board's Human Rights Advisor intends to liaise with the Human Resources Department during 2015 to consider how the information on trends and patterns can be reported to and monitored by the Performance Committee.

CIVIL CLAIMS AND JUDICIAL REVIEWS

Civil claims

The PSNI provides the Policing Board with details of civil claims brought against it on a monthly basis, including details of compensation paid either by court order or by out-of-court settlement. Information demonstrating the frequency, cost and outcome of civil claims is considered by the Policing Board's Resources Committee on a quarterly basis and by the Performance Committee on an annual basis, the latter as part of its Professional Standards Monitoring Framework.

Judicial reviews

The Performance Committee also maintains an interest in judicial review proceedings, particularly those which challenge PSNI human rights compliance.⁹⁶ Of particular interest to the Committee during 2014 were the following.

Public Order PSNI's policing of public order was scrutinised by the High Court and Court of Appeal in a judicial review. The applicant challenged the PSNI in respect of the policing of specific 'flag protests'. In April 2014, the High Court held that PSNI had facilitated illegal and sometimes violent parades with the effect, for a period of time at least, of undermining the Public Processions (Northern Ireland) Act 1998 in

⁹⁶ Judicial review is a public law remedy by which a person with a sufficient interest can challenge the lawfulness of a policy, decision, action or failure to act, alleged against a public authority.

breach of their duties under section 32 of the Police (Northern Ireland) Act 2000,⁹⁷ and in breach of the applicant's Article 8 ECHR right to respect for private and family life.⁹⁸ In July 2014, that finding was overturned on appeal.⁹⁹ Having considered all of the evidence the Court of Appeal was satisfied that the tactic of the PSNI to manage the disruption caused by the flag protests and associated processions and to pursue a criminal justice charging policy (as opposed to breaking up the protests and processions and making on-the-spot arrests) was well within the ambit of police discretion. The Court of Appeal found that the police were entitled to exercise discretion and judgment as they did in the circumstances. The Court was satisfied that the police had taken proportionate steps to protect the Article 8 rights of residents living close to the processions and protests. This is discussed further in Chapter 6 of this Human Rights Annual Report.

Stop and search The High Court gave judgment, in May 2014, in two separate cases concerning stop and search powers under the Justice and Security (Northern Ireland) Act 2007 (JSA).

In the first case, a judicial review challenge of the legality of the stop and search powers under section 24 and Schedule 3 JSA was dismissed.¹⁰⁰ The context to this case was a finding of the Court of Appeal, in 2013, that in the absence of a Code of Practice, the JSA powers were not sufficiently clear and precise in order to comply with Article 8 ECHR (the right to respect for private and family life).¹⁰¹ The Northern Ireland Office published a Code of Practice very soon thereafter. In this subsequent case, the High Court concluded that the Code of Practice had satisfied the defect identified by the Court of Appeal and that the new authorisation regime offered additional safeguards including oversight by the Secretary of State, the Independent Reviewer of the JSA and scrutiny by the Policing Board.

⁹⁷ Under section 32 police officers must protect life and property, preserve order, prevent the commission of offences and, where an offence has been committed, take measures to bring the offender to justice.

⁹⁸ *DB's Application* [2014] NIQB 55.

⁹⁹ *DB's Application* [2014] NICA 56.

¹⁰⁰ *Ramsey's (Steven) Application* [2014] NIQB 59.

¹⁰¹ *In the matter of an application by Fox and McNulty for judicial review and in the matter of an application by Canning for judicial review* [2013] NICA 19.

In the second judicial review challenge, the High Court held that the Secretary of State had failed in her duty to consult in respect of changes made to the draft Code of Practice on the operation of stop and powers under the JSA prior to the document being finalised and published.¹⁰² To address that, the Northern Ireland Office issued an amended Code for consultation.¹⁰³

Release of images: Operation Exposure In November 2014 the Supreme Court heard an appeal from the judgment of the Northern Ireland Divisional Court.¹⁰⁴ The case challenged the PSNI decision to release a photograph of the applicant to local newspapers in Derry/Londonderry as part of its 'Operation Exposure'. Numerous images of young people were released through newspapers and leaflet drops accompanied by a request that the public assist the police to identify the young people who were wanted for questioning by the police in connection with sectarian interface violence. The applicant complained that the release of his image breached his Article 8 ECHR right to respect for private and family life. The Divisional Court gave judgment in March 2013 and dismissed the application on the ground that publication was necessary for the administration of justice. The Court dismissed the applicant's contention that the policy was in fact a "name and shame" policy rather than a legitimate attempt to locate the young people.

The UK Supreme Court heard the appeal in November 2014. Judgment is expected shortly. The question before the Supreme Court is "Whether the publication of CCTV images by the police to identify a child or young person suspected of being involved in the offences of riotous behaviour and attempted criminal damage can ever be a necessary and proportionate interference with that person's Article 8 rights."¹⁰⁵

¹⁰² *McAreavy's (Emmet) Application* [2014] NIQB 62

¹⁰³ *Consultation paper, paragraph 8.78 of the Justice and Security (NI) Act 2007, Code of Practice*, Northern Ireland Office, November 2014.

¹⁰⁴ *Re JR 38's Application*, [2013] NIQB 44.

¹⁰⁵ *The matter of an application by JR38 for judicial review*, UKSC 2013/0181

6. PUBLIC ORDER

Public order policing inevitably engages a number of rights enshrined in the European Convention on Human Rights and Fundamental Freedoms (ECHR). In the context of public processions and protest meetings a number of articles of the ECHR are engaged such as the right to freedom of thought, conscience and religion (Article 9 ECHR), the right to freedom of expression (Article 10 ECHR), the right to freedom of peaceful assembly and freedom of association with others (Article 11 ECHR) and the right to respect for private and family life (Article 8 ECHR). Where there is potential for *disorder*, the right to life (Article 2 ECHR) and the right not to be subjected to torture, or inhuman or degrading treatment or punishment (Article 3) are clearly engaged.

Balancing those often competing rights can be extremely challenging. The PSNI operates within an environment in which it is not responsible solely for the management of parades and protests. For example, 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. As a public authority the Parades Commission must take into account the ECHR rights of all involved before reaching a decision.

Having said that, it is the sole responsibility of the PSNI to *police* parades, protests and other public assemblies and to deal with any outbreaks of disorder. In its planning and operational decision-making the police must operate compatibly with the Human Rights Act 1998. The exercise of police public order powers¹⁰⁶ 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 justice¹⁰⁷ must be informed by and comply with the Human Rights Act 1998. A detailed account of the legal framework within which the police must operate

¹⁰⁶ Primarily contained within the Public Order (Northern Ireland) Order 1987, although there are also relevant powers contained within the Police (Northern Ireland) Act 1998, the Roads (Northern Ireland) Order 1983, the Road Traffic (Northern Ireland) Order 1995, the Protection from Harassment (Northern Ireland) Order 1997 and a power of arrest contained within the Police and Criminal Evidence (Northern Ireland) Order 1989.

¹⁰⁷ By Section 32(1) of the Police (Northern Ireland) Act 2000.

is set out in the Human Rights Annual Report 2013.¹⁰⁸ It is unnecessary to repeat that here.

PSNI's approach to public order was scrutinised by the courts during 2014 in a judicial review challenge to PSNI's policing of certain processions (the 'flag protests'), in December 2012 and January 2013, which had not been notified to the Parades Commission in accordance with the Public Processions (Northern Ireland) Act 1998: *DB's Application*. In April 2014, the High Court allowed the judicial review challenge and held that PSNI had facilitated illegal and sometimes violent parades with the effect, for a period of time at least, of undermining the Public Processions (Northern Ireland) Act 1998 in breach of section 32 of the Police (Northern Ireland) Act 2000¹⁰⁹ and in breach of the applicant's Article 8 ECHR rights.¹¹⁰ That decision was however overturned on appeal, in July 2014, by the Court of Appeal.¹¹¹

The Court of Appeal followed the House of Lords in *E v The Chief Constable of the RUC*¹¹² which was the leading authority on the approach of police faced with public order where there is the possibility of violence and disorder. In such a situation the police are required to respond so as to protect the Article 2 ECHR rights of those in the immediate vicinity of the disorder and those of the wider community. In *E v the Chief Constable* the House of Lords considered the application of Article 11 ECHR (the right to peaceful assembly) and in particular the balancing of that right against the Article 2 ECHR rights. The House of Lords held that Article 11 did not require the

¹⁰⁸ Pages 68 – 75 of the *Human Rights Annual Report 2014*, Northern Ireland Policing Board, March 2014.

¹⁰⁹ Under section 32 police officers must protect life and property, preserve order, prevent the commission of offences and, where an offence has been committed, take measures to bring the offender to justice.

¹¹⁰ *DB's Application* [2014] NIQB 55.

¹¹¹ *DB's Application* [2014] NICA 56.

¹¹² *E v Chief Constable* [2008] UKHL 66. This case was a judicial review application brought against the PSNI by a mother who argued the police had failed to take sufficient action to protect her and her daughter from loyalist protests on their route to Holy Cross primary school in North Belfast in 2001. The Applicant argued that the police should have taken more robust action to quell the protest and protect the children by forcing the protesters back and making numerous arrests. The House of Lords dismissed the case on the basis that the Applicant had not proved the police's actions were unreasonable. It was held that the police had acted appropriately, having regard to concerns that a more robust approach could inflame the situation and lead to more widespread violence. The case eventually went to the European Court of Human Rights - *PF and EF v UK* (Application No. 28326/09) – but was dismissed, with the Court ruling that the police must be afforded a degree of discretion in taking operational decisions, and that in this case the police took all reasonable steps to protect the applicants.

police to facilitate the protest and thereby expose the community to a real risk of serious violence.

Police are obliged to take all steps that are reasonable in the circumstances to avoid a real and immediate risk to life once they have or ought to have knowledge of the existence of the risk. The standard of reasonableness brings into consideration the circumstances of the case, the ease or difficulty of taking preventative measures and the resources available. The House of Lords in *E* recognised the many practical difficulties for the police in the circumstances and the serious danger that violence would spread and escalate. The House of Lords commented that police officers in Northern Ireland were uniquely placed as a result of their experience of managing disorder and the intelligence available to them at the material time to exercise judgment to balance the competing rights and obligations. The House of Lords recognised the difficulty of apprehending and arresting perpetrators of violence and disorder who had a means of retreat.¹¹³

Returning to *In DB's Application*, PSNI argued that its tactical and operational decisions were informed by a strategic approach to the prevention of public disorder and violence. PSNI also stressed that throughout the relevant period it attempted to secure the best evidence in respect of the worst offenders for the most serious offences to make the best use of available resources and technology. The Court of Appeal was provided with all strategic documents and the Events Policy Book containing details of decisions made. It was noted that not all of the information put before the Court of Appeal was made available to the High Court Judge.

The Court of Appeal considered the obligation of the police, in section 32 of the 2000 Act, to prevent crime but held that it did not impose a requirement on the police to intervene on every occasion when an offence was in the course of commission and that the police had a wide area of discretionary judgment as to the appropriate response. The Court of Appeal was satisfied ultimately that the decision of the PSNI to manage the disorder and to pursue a criminal justice charging policy (as opposed

¹¹³ As per footnote 112 above, the European Court of Human Rights affirmed the approach of the House of Lords by holding the application by *E* and her daughter to be manifestly ill-founded and therefore inadmissible: *PF and EF v The UK* App No. 28326/09, decision of 23 November 2010.

to breaking up the protests and processions and making on-the-spot arrests) was well within the area of discretionary policing judgement. The Court was satisfied that the police had taken proportionate steps to protect the Article 8 ECHR rights of local residents.

The *DB* case demonstrates the difficult task faced by police 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. The many years of experience that the PSNI have in dealing with such situations and the intelligence available to them can assist when exercising 'discretionary policing judgement' as to the best course of action to take. The decision making process must however be well documented and must stand up to scrutiny.¹¹⁴ PSNI must be prepared to account for any decisions made and to be held to account for those decisions by the community, by the Policing Board and, ultimately, by the courts.

MONITORING THE POLICING OF PUBLIC ORDER EVENTS

The Policing Board regularly discusses public order issues with the Chief Constable and senior officers. Issues that are discussed include policing tactics, the criminal justice strategy (arrests, prosecution etc.), parade notifications, welfare of officers, engagement between the police and local communities and resource implications (financial and personnel).

The Policing Board's Human Rights Advisor is briefed regularly by PSNI on its public order strategy, its planning of particular public order events and the operational decisions that are taken throughout such events. For example, prior to the 12th July 2014 parades (and associated protests) in Belfast, the Human Rights Advisor, on behalf of the Performance Committee, attended a number of planning meetings and operational briefings and observed the operation from within the operational command room (Silver Command). The Human Rights Advisor was able to report to the Committee that the PSNI operation was planned with an acute attention to detail

¹¹⁴ In *DB's Application* [2014] NICA 56 the Court of Appeal was assisted in reaching its decision through a consideration of PSNI's Criminal Justice Strategy documents and revisions, the relevant operational strategy and the decisions recorded within the Events Policy Book.

with protection of the various ECHR rights providing a central component of all decisions made.

The Performance Committee receives and considers, on a six-monthly basis, use of force reports prepared by PSNI. Those reports, which are considered in more detail in Chapter 7 of this Human Rights Annual Report, provide details of any correlation between high incidents of use of force by the police and public disorder incidents. In addition, the relevant District Commander is required to submit to the Policing Board, as soon as reasonably possible after a major public disorder incident, a written record containing details of the nature of the disorder, any force used, any injuries sustained by police officers or members of the public and any damage caused to property.¹¹⁵ Those records are considered by the Performance Committee.

In previous Human Rights Annual Reports, a number of recommendations have been made that relate to public order policing. In the Human Rights Annual Report 2011 a recommendation required PSNI to develop and deliver annual debriefing sessions to consider lessons learned from the previous year's public order operations with a particular focus on the human rights issues involved in the planning and execution of the operations.¹¹⁶ The Annual Report suggested that PSNI should include those who were involved in the organisation of parades and protests (within the police and the community) to enhance their knowledge and understanding of the issues.

PSNI accepted that recommendation and holds an annual internal debrief which follows and is informed by informal consultation with some external stakeholders, including the Policing Board and some members of the community.¹¹⁷ The Policing Board's Human Rights Advisor is invited to and has attended previous debriefs. The

¹¹⁵ *Requirement for early reporting to the Policing Board following discharge of Attenuating Energy Projectiles (impact rounds) and other public order incidents*, Appendix J to the Manual of Policy, Procedure and Guidance on Conflict Management, PSNI, 2013. The report to the Board must be made where (i) an AEP is discharged; (ii) the incident involves 200 persons; or (iii) where the incident is of such intensity there is likely to give rise to widespread media reporting or public interest (e.g. a person has died/been seriously injured as a result, there has been significant damage to property, there have been prominent arrests etc.).

¹¹⁶ Recommendation 7 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

¹¹⁷ The Performance Committee would encourage greater involvement of members of the community.

debrief is held over the course of 2 days and includes a wide range of people who played a part in the policing of public order. The debrief is organised to ensure that all issues are addressed, both positive and negative. It is an extremely impressive event. Following the annual debrief for 2013, PSNI attended the Performance Committee, in March 2014, to provide an update to Members. PSNI reported that while 2013 was a unique year with many positive public order events, such as the G8 Summit and the World Police and Fire Games, there were other more challenging public order situations. PSNI reported that the disorder in 2013, particularly the flags protests and disorder associated with the parades and protests over the summer months, raised a number of issues which called for further analysis. PSNI had reviewed the tactics used and considered them to be "fit for purpose."

The key findings and recommendations that emerged from a report commissioned by PSNI and produced by the Ulster University and the Institute of Conflict Research in 2013, *Community Perspectives on Public Order Policing in Northern Ireland*, was discussed during the 2013 debrief referred to above. The report highlighted and PSNI accepted the importance of continued engagement with communities and the benefits of a 'no surprises' approach to policing public events.

It is evident to the Committee that the annual debrief for officers involved in the planning and execution of public order events, which allows for input from those in the community involved in the organisation of parades and protests and which also feeds back to those individuals, is of benefit to all involved. The Committee therefore hopes that PSNI's annual debrief continues.

7. USE OF FORCE

The use of force by police officers engages in a direct and fundamental way the rights protected by the European Convention on Human Rights and Fundamental Freedoms (ECHR) such as Article 2 (the right to life); Article 3 (the right not to be subjected to torture, inhuman or degrading treatment or punishment) and Article 8 (the right to respect for private and family life).¹¹⁸ Police officers have the authority to use force in order to defend themselves or another, to effect an arrest, to secure and preserve evidence or to uphold the peace, but any such use must be justified on each and every occasion. Consideration must always be given to whether there is a viable alternative to the use of force. Article 4 of the PSNI Code of Ethics, which draws upon the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states:

Police officers, in carrying out their duties, shall as far as possible apply non-violent methods before resorting to any use of force. Any use of force shall be the minimum appropriate in the circumstances and shall reflect a graduated and flexible response to the threat. Police officers may use force only if other means remain ineffective or have no realistic chance of achieving the intended result.

All PSNI decision making, including the decision to use force, is taken in accordance with the Association of Chief Police Officers (ACPO) National Decision Model (NDM). The NDM is an established approach to managing conflict and it can be applied to spontaneous incidents or planned operations, by an individual or a team of people. The NDM has a central statement of mission and values which recognises the need to protect and respect the human rights of all, surrounded by 5 key steps which should be continually assessed as a situation develops: (i) gather information and intelligence; (ii) assess threat and risk and develop a working strategy; (iii) consider powers and policy; (iv) identify options and contingencies; and (iv) take

¹¹⁸ Which can encompass the physical, moral and psychological integrity of a person: *Botta v Italy* (Application No. 21439/93).

action and review what happened. PSNI policy¹¹⁹ recognises that in a fast-moving incident it may not always be possible to segregate thinking or a response according to each of the 6 component parts of the model. The policy dictates that in such cases the main priority of the decision maker is the overarching mission and to ensure the safety of themselves, their colleagues and the public. Any tactical option chosen must be proportionate to the threat faced in any set of circumstances, which includes any decision to use force, be it through use of hands-on restraint techniques or use of a weapon.

Since its inception in 2001, PSNI has sought to introduce less lethal weapons as an alternative to conventional firearms. PSNI has at its disposal CS Spray, Water Cannon, Taser and Attenuating Energy Projectiles (AEPs). Use of such weapons is not incompatible with the ECHR provided strict guidelines are applied for use. In recognition of the very serious and potentially lethal effects of AEP, the threshold that must be met before AEP are used is the same as for conventional firearms. The test for use of Taser is set just below the threshold that must be met for use of AEP or conventional firearms. The test for the use of Taser in Northern Ireland is set at a higher threshold than in Great Britain and that demonstrates PSNI's determination to limit the use of such weapons other than where absolutely necessary to protect life.

Test for use

Taser: Taser may be used by a police officer who genuinely, honestly and reasonably believes it is necessary in order to prevent a risk of death or serious injury. The test for the use of Taser is set at a slightly lower threshold than that for the use of a firearm or AEP. It is intended to provide for a situation where an officer honestly believes that a situation is in immediate danger of escalating to a point where the use of AEP or firearms will be required. Taser use is therefore closely aligned to the prevention of recourse to lethal technology.

AEP: The Attenuating Energy Projectile may only be used if a police officer genuinely, honestly and reasonably believes it is absolutely necessary to do so

¹¹⁹ Manual of Policy, Procedure and Guidance on Conflict Management, PSNI, 2013.

to reduce a serious risk of loss of life or serious injury. Thus the test that must be met before AEP can be used is the same as for conventional firearms. As it is considered a less lethal option, it is preferred as an alternative to conventional firearms if it is available, the circumstances are appropriate and the test of absolute necessity has been met.

Firearm: A firearm may only be discharged where a police officer genuinely, honestly and reasonably believes it is absolutely necessary to do so in order to save life or prevent serious injury subject only to the exceptions that the discharge is for training purposes or for the lawful destruction of an animal.

Before using any of the above, a police officer should identify himself or herself and give a clear warning of the intent to use force affording sufficient time for the warning to be observed unless affording time would put the officer or another person at risk of death or serious harm. Even where the use of lethal or potentially lethal force is unavoidable the police must continue to exercise restraint in the use of that force, minimise damage and injury caused, render assistance and medical aid at the earliest opportunity and notify relatives or other persons if a person has been injured or killed.

As detailed in previous year's Human Rights Annual Reports, mechanisms are in place, both internally and externally, to ensure that PSNI is held to account for all uses of force by its officers.¹²⁰ That includes the submission of an electronic use of force monitoring form, in some instances a Police Ombudsman investigation,¹²¹ and scrutiny by the Policing Board.¹²² In order to further increase transparency as

¹²⁰ See pages 84 – 86 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014.

¹²¹ The Police Ombudsman will investigate all instances where death occurs following contact with police. The Ombudsman must also be notified of all incidents where a firearm, AEP or Taser has been discharged.

¹²² PSNI must notify the Policing Board every time an AEP is discharged and also of any force used where there are public order incidents which either involve 200 people or more or where the incident is of such an intensity there is likely to be wide scale media reporting or public interest in it. PSNI also provides the Policing Board with six monthly statistical reports on police use of force. The Policing Board is provided a copy of all Police Ombudsman Regulation 20 reports which are produced following an investigation into certain incidents where force has been used. If any issues or concerns arise through any of these reporting mechanisms, the Policing Board can raise these directly with the PSNI senior command team.

regards police use of force, a recommendation was made in the Human Rights Annual Report 2013 that PSNI should publish its Manual of Policy, Procedure and Guidance on Conflict Management with redactions made only to those parts of the policy that could not be published due to the information being of a confidential nature.¹²³ PSNI accepted that recommendation and the Manual is now available to the public through the PSNI website, with only a limited amount of very sensitive operational information redacted.¹²⁴ Recommendation 7 of the Human Rights Annual Report 2013 is therefore discharged. PSNI are to be commended for implementing that recommendation and embracing the requirement that policy should be readily accessible and transparent to the public. However, as noted above at pages 14-16 above, the same cannot be said in respect of all policy and practice, much of which has still not been published.

Use of Force Statistics

Officers using the following types of force must record the use on an electronic use of force monitoring form:

- Attenuating Energy Projectile (AEP);
- Baton;
- CS Spray;
- Firearms;
- Police Dog;
- Taser;
- Water Cannon.

Recording the use of force is an important element of oversight and accountability. PSNI collates the data captured on the electronic use of force monitoring forms and

¹²³ Recommendation 7 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014. The Manual of Policy, Procedure and Guidance on Conflict Management was published by PSNI in 2013 to streamline and consolidate guidance on the NDM with other existing policies on police use of force. The Manual provides detailed guidance on the legal basis upon which force may be used, information on the weapons available and their correct use, information on reporting structures and instructions as to post-incident procedures.

¹²⁴ The Manual can be found through the PSNI website www.psnipolice.uk under About Us – Freedom of Information – Publications by Category – Policies and Service Procedures.

includes it in a six monthly statistical report that is provided to the Performance Committee.¹²⁵ While a statistical report does not in itself measure PSNI human rights compliance when using force, the six monthly reports do provide the Committee with a broad overview of the use of force and any issues identified through the reports can be raised directly with PSNI's senior command team. The table below provides an overview of the use of force by the PSNI between 1 April 2011 and 30 September 2014.

Police use of force between 1 April 2011 and 30 September 2014¹²⁶

Use of Force	1/4/11-31/3/12	1/4/12-31/3/13	1/4/13-31/3/14	1/4/14-30/9/14 (6 Months)
AEP Pointed	20	32	38	18
AEP Discharged	96 ¹²⁷	20 ¹²⁸	34 ¹²⁹	1 ¹³⁰
AEP Total	116	52	72	19
Baton Drawn Only	537	588	485	202
Baton Used	284	333	352	91
Baton Total	821	921	837	293
CS Drawn Only	187	200	154	86
CS Sprayed	330	262	274	111
CS Total	517	462	428	197
Firearm Drawn/Pointed	360	364	419	106
Firearm Discharged	0	1	0	0
Firearm Total	360	365	419	106
Police Dog Used	33	45	49	25
Taser Drawn	126	171	223	50
Taser Fired	9	11	16	9
Taser Total	135	182	239	59
Water Cannon Deployed	31	158	130	45
Water Cannon Used	14	17	12	0
Water Cannon Total	45	175	142	45

¹²⁵ Versions of the use of force statistical reports which are not protectively marked are published on the PSNI website: www.psni.police.uk

¹²⁶ *PSNI Use of Force Statistics, 1 April 2012 – 31 March 2013*, PSNI, June 2013; *PSNI Use of Force Statistics, 1 April 2013 – 31 March 2014*, PSNI, June 2014; and *PSNI Use of Force Statistics, 1 April 2014 – 30 September 2014*, PSNI, December 2014.

¹²⁷ 350 AEPs were fired by 96 officers.

¹²⁸ 34 AEPs were fired by 20 officers.

¹²⁹ 99 AEPs were fired by 34 officers.

¹³⁰ 1 AEP was fired by 1 officer.

While AEP can be used as a less lethal option during stand-alone incidents, it has only very rarely been discharged in those situations but instead has been *pointed* (but not discharged) more frequently. As demonstrated by the table below, the vast majority of discharges of AEP have been made during public disorder situations, mostly during the summer months.

AEP discharges between 1 April 2008 and 30 September 2013¹³¹

Month	No. of occasions AEP discharged	Rounds fired
November 2008	3 ¹³²	3
July 2009	13	24
August 2009	1	6
February 2010	1	3
July 2010	50	180
January 2011	1	1
June 2011	29	130
July 2011	67	220
July 2012	2	6
September 2012	1	6
December 2012	2	3
January 2013	15	19
July 2013	20	59
August 2013	13 ¹³³	39
March 2014	1 ¹³⁴	1
April 2014	1 ¹³⁵	1

With the exception of an incident in November 2008, two in August 2013, one in March 2014 and one in April 2014, all of the AEP use reflected in the above table occurred during public disorder situations. Males aged between 18 and 29 years are the group against whom AEP (and all other types of force excluding firearms) has been most frequently used each year. The high number of AEP rounds fired during

¹³¹ *PSNI Use of Force Statistics, 1 April 2013 – 31 March 2014*, PSNI, June 2014; and *PSNI Use of Force Statistics, 1 April 2014 – 30 September 2014*, PSNI, December 2014.

¹³² All three discharges of AEP in November 2008 related to a single firearms incident where AEP was used as a less lethal alternative (i.e. it wasn't used during a public disorder situation).

¹³³ Two of the occasions where AEP was discharged in August 2013 related to a stand-alone situation (rather than a public disorder situation) where AEP was used as a less lethal option.

¹³⁴ On this occasion in March 2014 where AEP was discharged, it related to a stand-alone situation (rather than a public disorder situation) where AEP was used as a less lethal option.

¹³⁵ On this occasion in April 2014 where AEP was discharged, it related to a stand-alone situation (rather than a public disorder situation) where AEP was used as a less lethal option.

the summer of 2010 and 2011 has been reported upon in previous Human Rights Annual Reports (and recommendations in relation to this were made) and the Policing Board discussed it at the time with PSNI. While the level of AEP usage has since dropped, with there being no AEPs discharged during summer 2014, it is something that the Performance Committee has kept, and will continue to keep, under close scrutiny.

Water Cannon is used during large scale and sustained public disorder, so its use has also mostly been confined to the summer months. The other types of force reflected in the statistics – Baton, CS Spray, Firearms, Police Dog and Taser – tend to be used relatively consistently throughout the year and for a variety of reasons, although there tends to be a peak in Baton use during the summer months which is directly linked to the increase in public disorder incidents during such time.

Alternative Technologies

PSNI keeps under review the range of weaponry at its disposal and actively considers less lethal alternatives through participation on the Home Office led United Kingdom Less Lethal Technology and Systems Strategic Board. This Strategic Board considers technological developments, both within the United Kingdom and internationally, and it also provides a forum through which various operational issues with existing technology can be discussed by law enforcement agencies with key partners such as the Association of Chief Police Officers (ACPO), the Centre for Applied Science and Technology (CAST), the Scientific Advisory Committee on the Medical Implications of Less Lethal Weapons (SACMILL), the Defence Science and Technology Laboratory (DSTL) and others.

The International Law Enforcement Forum (ILEF) was established in 2001 to develop the capabilities of the international law enforcement community in relation to minimal force options and less lethal technology. While the original focus of the ILEF was on the selection, development and testing of less lethal technologies, it quickly developed to examining, on an international basis, the circumstances in which police use force. The ILEF has met every one to two years in various countries, with

representatives over the years coming from more than a dozen countries and spanning four continents. These meetings have provided a valuable forum for the exchange of good practice and guidance and they have also achieved a number of specific improvements. The ILEF meeting in September 2014 was for the first time held in Northern Ireland and it was hosted by the PSNI and supported by the Policing Board. The theme for the 3 day event was 'Managing Potentially Violent Encounters and Policing with the Community'.

Over the course of the 3 days a combination of presentations and workshops provided delegates with the opportunity to discuss and consider current and developing less lethal technologies, policing potentially violent encounters using a human rights based approach, and armed operations and the impact on community relations, public confidence and trust. The operational challenges in policing major events was the topic of a presentation delivered by PSNI. It was highlighted during this presentation that human rights and Policing with the Community is at the heart of all of PSNI's operational planning. The importance of understanding the community impact of any tactics to be used and before any recourse is made to the use of force was emphasised, and the oversight provided by the Policing Board was welcomed. The presentation was well received by all in attendance and formed the basis of discussion in workshops that followed. Making the closing remarks at the end of the conference Anne Connolly, Chair of the Policing Board, said "Through this conference it has been possible for local, national and international delegates to examine the tactics police officers use in day to day policing and the impact such actions can have on trust in the service provided. Discussions have undoubtedly highlighted the importance of accountability in policing and the programme of policing change in Northern Ireland shows how independent oversight contributes to confidence building in the service."

8. COVERT POLICING

The interception of communications, surveillance and the use of Covert Human Intelligence Sources (CHIS) by the police raises significant issues in which various rights enshrined in the European Convention on Human Rights and Fundamental Freedoms (ECHR), for example Article 2 ECHR (the right to life) and Article 8 ECHR (the right to respect for private life, the home, the family and correspondence), must be balanced. In an attempt to better regulate covert operations and provide a framework within which such operations could be conducted in compliance with the Human Rights Act 1998 the Government introduced the Regulation of Investigatory Powers Act 2000 (RIPA). RIPA extends to Northern Ireland and contains very specific rules relating to the authorisation of covert policing methods. One of the safeguards provided by RIPA is the requirement that covert operations must be subject to an authorisation regime. Only a distinct category of person is entitled to grant authorisations and, save in urgent cases, any police authorisation of *intrusive* surveillance must be approved by a Surveillance Commissioner.¹³⁶

Not all covert policing operations will involve a national security element, but national security policing is one area in which covert techniques are frequently deployed. Primacy for national security intelligence was transferred from the PSNI to the Security Services in 2007. However, in all circumstances, including where national security is in issue, it is the PSNI which mounts and is responsible for all executive policing operations. It is the police who will make arrests, charge and refer cases to the Public Prosecution Service for Northern Ireland.

Annex E to the St. Andrews Agreement includes a commitment by the British Government in relation to future national security arrangements in Northern Ireland. It was drafted in anticipation of the transfer of responsibility to the Security Services. The Government confirmed that it accepted and would ensure that effect was given

¹³⁶ Intrusive surveillance is defined by section 26(3) of RIPA as covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle and that involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device. An application for authority to use intrusive surveillance may be made by a limited number of public authorities, which includes the police but excludes local authorities.

to five key principles which the Chief Constable of the PSNI identified at the time as being crucial to the effective operation of the new national security arrangements. Those principles are:

- All Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI;
- PSNI will be informed of all Security Service counter-terrorist investigations and operations relating to Northern Ireland;
- Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy, and using police procedures;
- The great majority of national security CHIS in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols;
- There will be no diminution of the PSNI's ability to comply with the Human Rights Act 1998 or the Policing Board's ability to monitor that compliance.

Oversight by the Policing Board

The Policing Board has a statutory duty under the Police (Northern Ireland) Act 2000 to maintain and secure an efficient and effective police service. Amongst other things, the Policing Board must monitor the performance of the police in carrying out their general duties (to protect life and property, to prevent the commission of offences etc.) and in doing so must monitor police compliance with the Human Rights Act 1998. The Policing Board must also monitor the performance of the police in carrying out their functions with the aim of (a) securing the support of the local community; and (b) acting in co-operation with the local community. The Policing 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 Policing 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. The Policing Board has no remit in respect of the Security Service however the Chief Constable of PSNI remains responsible for and

accountable to the Policing Board in respect of all PSNI officers and staff including those working alongside the Security Service.

Annex E to the St. Andrews Agreement states:

There will be no diminution in police accountability. The role and responsibilities of the Policing Board and the Police Ombudsman *vis-a-vis* the Police will not change... The Policing Board will, as now, have the power to require the Chief Constable to report on any issue pertaining to his functions or those of the police service. All aspects of policing will continue to be subject to the same scrutiny as now. To ensure the Chief Constable can be fully accountable for the PSNI's policing operations, the Security Service will participate in briefings to closed sessions of the Policing Board to provide appropriate intelligence background about national security related policing operations. On policing that touches on national security the Chief Constable's main accountability will be to the Secretary of State, as it is now.

An executive summary of the fifth report of the Independent Reviewer of National Security Arrangements in Northern Ireland, Lord Alexander Carlile of Berriew CBE QC, was published by the Secretary of State in March 2014. The report contains Lord Carlile's assessment of the arrangements in 2013 against the St. Andrews Agreement's five key principles. In respect of the fifth principle- that there shall be no diminution of the PSNI's responsibility to comply with the Human Rights Act or the Policing Board's ability to monitor said compliance - Lord Carlile states that, "The PSNI must continue to comply. The Policing Board, with the advice of their Human Rights Advisor as a key component, will continue the role of monitoring compliance."¹³⁷

The Policing Board's Human Rights Advisor meets with Lord Carlile to discuss any issues arising from his reports (and generally). She is provided, by PSNI, with an unredacted copy of his report. She has emphasised to the Committee the

¹³⁷ Written Statement by the Secretary of State for Northern Ireland (Ms Theresa Villiers MP) on National Security Arrangements in Northern Ireland (Lord Carlile's Report), 6 March 2014.

importance of that engagement and access to documents, which she explained as critical to any meaningful assessment of compliance with the Human Rights Act 1998. Lord Carlile also attends, when invited, meetings of the Performance Committee during which he provides a comprehensive briefing to the Committee. The Committee is grateful to Lord Carlile for his assistance and in particular his willingness to discuss challenging aspects of national security policing.

Given the ongoing threat from terrorism and the number of terrorist attacks, roadside incidents, pipe bombs, hoax devices etc. and the significant human rights issues raised by the use of intrusive covert methods, the counter-terrorism work carried out by the PSNI is discussed regularly at Policing Board and Committee meetings. Furthermore, the Policing Plan 2014-2017 requires the PSNI to provide an update to the Performance Committee every 6 months on its Counter Terrorism Strategy.

In respect of the exercise of specific counter-terrorism powers and security powers, the Performance Committee considers quarterly PSNI statistics on police use of stop and search and stop and question powers (as discussed in Chapter 4 of this Human Rights Annual Report). Those powers are not covert powers however they are also referenced within this Chapter for completeness as they *may* relate to the use of covert powers and may be exercised as part of the counter-terrorism strategy.

In the Code of Practice on the authorisation and exercise of Terrorism Act 2000 (TACT) stop and search powers, under the heading of 'Oversight and Community Engagement', it is provided that the *"appropriate use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board."*¹³⁸ Similar wording is reflected in the Code of Practice issued by the Northern Ireland Office on the authorisation and exercise of stop, search and question powers under the Justice and Security (Northern Ireland) Act 2007 (JSA).¹³⁹

¹³⁸ *Code of Practice (Northern Ireland) for the authorisation and exercise of stop and search powers relating to sections 43, 43A and 47A of the Terrorism Act 2000*, Northern Ireland Office, August 2012, para. 13.1.

¹³⁹ *Code of Practice for the Exercise of Powers in the Justice and Security (Northern Ireland) Act 2007*, Northern Ireland Office, May 2013, para. 5.14.

In October 2013, the Policing Board published a thematic review on police powers to stop and search and stop and question under TACT and JSA. The Performance Committee considered the PSNI response to the 11 recommendations made in the thematic review in March 2014 and is continuing to monitor their implementation. To ensure that the Policing Board is in a position to oversee and monitor the authorisation regime the Policing Board's Human Rights Advisor conducts quarterly reviews of all stop and search authorisations made under TACT and JSA. Thereafter, any issues arising can be reported to the Committee in confidential sessions.

The Policing Board also takes account of the work carried out by other relevant oversight authorities.¹⁴⁰ In addition to meeting with the Independent Reviewer of National Security Arrangements in Northern Ireland, the Performance Committee meets regularly with the Independent Reviewer of Terrorism Legislation and the Independent Reviewer of the JSA. The Office of Surveillance Commissioners (OSC) produces an annual inspection report on the PSNI. That report is not published due to the sensitive information it contains however PSNI provides an unredacted copy of that report and the PSNI response to that report to the Policing Board's Human Rights Advisor and a redacted copy of the report to Members of the Policing Board. PSNI attends the Board to brief Members on the contents of the reports. The redactions are limited to highly sensitive information.

Given the nature of covert and national security policing, there are limitations in respect of the amount of information that can be provided to the Policing Board.¹⁴¹ Section 33A(1) of the Police (Northern Ireland) Act 2000 requires the Chief Constable to provide the Board with such documents and information that it requires for the purposes of, or in connection with, the exercise of any of its functions. Section 33A(2) qualifies that obligation and permits the Chief Constable to refuse to provide any information that falls within specified categories; the Chief Constable may refuse to provide information if it is not in the interests of national security to disclose the

¹⁴⁰ An overview of the main oversight authorities for ensuring PSNI accountability in respect of RIPA and national security was provided in the Human Rights Annual Report 2013 at pages 92 – 97.

¹⁴¹ However the Policing Board's Human Rights Advisor who is vetted so as to enable her to access secret material has not been denied access to any document which she wished to inspect.

information to the Board or disclosure of the information would likely put an individual in danger. The Chief Constable is not *prohibited* from providing the Board with such information; but neither is he *obliged* to provide it. In the event of any dispute about whether the information is properly withheld there is a mechanism (both statutory and by an agreed protocol) for that dispute to be resolved.¹⁴²

Role of the Policing Board's Human Rights Advisor

Annex E to the St. Andrews agreement stated that the Human Rights Advisor(s) “should have a role in human rights proofing the relevant protocols that will underpin the Chief Constable’s five key principles, and also in confirming that satisfactory arrangements are in place to implement the principles.” Accordingly, Human Rights Advisors have since 2003, ‘human-rights-proofed’ the relevant memoranda, protocols and service level agreements and have met with the Director of the Security Services in Northern Ireland, senior officers in PSNI Crime Operations Department, the Independent Reviewer of National Security Arrangements in Northern Ireland, the Independent Reviewer of Terrorism Legislation and the Independent Reviewer of the JSA.

In the Human Rights Annual Report 2012 it was recorded that the Memorandum of Understanding and relevant service level agreements between PSNI and the Security Service were being reviewed by PSNI and the Security Service. A recommendation was made that upon completion of that review PSNI should subject them to human rights proofing by the Policing Board’s Human Rights Advisor and thereafter publish the documents to the greatest extent possible. The recommendation required PSNI to provide a written explanation to the Performance Committee in the event that it decided not to publish any document or to publish all or any in a redacted form.¹⁴³ PSNI accepted that recommendation. The Policing Board’s Human Rights Advisor has now reviewed the Memorandum and service level agreements and discussed their contents and the application of the relevant

¹⁴² Police (NI) Act 2000. The Policing Board agreed, in December 2012, a formal protocol for requiring the Chief Constable to submit a report under section 59 of the 2000 Act.

¹⁴³ Recommendation 8 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

principles with relevant PSNI and Security Service personnel. The Human Rights Advisor has reported that the documents reflect the five key principles, are underpinned throughout by reference to the Human Rights Act 1998 and other relevant obligations and contain sufficient safeguards to ensure that if followed the PSNI will comply with the requirements of the Human Rights Act.

In November 2014, the PSNI published on its publically accessible website a redacted version of the Memorandum of Understanding between the PSNI and the Security Service to which is appended further information including Annex E of the St. Andrews Agreement. On 18 December 2014, PSNI provided a comprehensive briefing to the Performance Committee, which included the reasons for the non-publication of the service level agreements. All service level agreements have however been made available to the Policing Board's Human Rights Advisor (as they were to her predecessors) in unredacted form. She has reviewed the agreements for human rights compliance and has reported to the Committee that she is satisfied that they do comply. Those agreements contain extremely detailed and sensitive technical information therefore the Committee accepted the reasons given by PSNI for their non-publication. Accordingly, recommendation 8 of the Human Rights Annual Report 2012 has been implemented.

With regard to covert policing techniques, the Policing Board's Human Rights Advisor keeps under review the mechanisms in place for ensuring that all PSNI officers comply with the requirements of RIPA and the Human Rights Act. The Human Rights Advisor monitors the annual inspection reports of the Office of Surveillance Commissioners (OSC) in respect of PSNI and the PSNI response. She has confirmed that the 2014 report recorded very high levels of satisfaction and raised no issues of non-compliance.

In the Human Rights Annual Report 2012 a recommendation was made which required PSNI to put in place a formal training plan to ensure that all officers who are or may be involved in the application of RIPA receive all necessary training as and

when required.¹⁴⁴ PSNI accepted that recommendation and carried out a review of RIPA training, from which a RIPA training plan has been developed and shared with the Police College. The RIPA training plan seeks to ensure the appropriate delivery of RIPA training to officers and staff at all ranks and grades and PSNI advises that it will be subject to annual review. The plan has been shared and discussed with the Policing Board's Human Rights Advisor. In December 2014 PSNI provided a briefing to the Performance Committee on RIPA training. Therefore, Recommendation 9 of the Human Rights Annual Report 2012 has been implemented.

Unmanned Aerial Systems (UAS)

In March 2013, PSNI advised the Policing Board that it was intending to purchase a number of Unmanned Aerial Systems (UAS) for use during the G8 Summit in June 2013. PSNI assured Members that the primary use of the UAS was to provide overt support to policing but that should a request be made to assist with the investigation of crime then, as with existing aircraft, authority would be requested under RIPA. In April 2013, the Policing Board approved PSNI's proposal to purchase UAS. That approval was subject to a full review of UAS being carried out after one year to assess the technical operation of the systems and their effectiveness; value for money; legal compliance in deployment and oversight by the Chief Surveillance Commissioner. A recommendation was also made in the 2013 Human Rights Annual Report that in carrying out the post-implementation review the PSNI should identify and explain the extent to which the UAS had been used for surveillance purposes together with a detailed explanation of the framework within which PSNI used UAS for overt surveillance and for surveillance which did not relate to a specific operation or investigation.¹⁴⁵ PSNI has accepted that recommendation and will report to the Policing Board in early 2015 following completion of the post-implementation review

¹⁴⁴ Recommendation 9 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

¹⁴⁵ Recommendation 8 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014. If surveillance is overt, RIPA is not the applicable framework as it only relates to covert surveillance. If surveillance is carried out in a public place but it is not being carried out in relation to a specific operation or investigation, then it does not come within the scope of RIPA.

which commenced in November 2014.¹⁴⁶ Recommendation 8 of the Human Rights Annual Report 2013 therefore remains outstanding. This will be reported upon in due course once the report has been received and considered by the Board.

¹⁴⁶ Recommendation 8 of the Human Rights Annual Report 2013 remains outstanding until such time as the Policing Board or the Committee has received the report on the post-implementation review and had the opportunity to consider whether it meets the requirements of the recommendation.

9. VICTIMS

Article 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) requires every Member State to secure the ECHR rights and freedoms for every individual within the State's jurisdiction. It is unlawful for a public authority (which includes the police) to act in a way which is incompatible with an ECHR right.¹⁴⁷ In certain circumstances, the police may have a positive obligation to intervene to protect an individual's rights. That is most relevant when the police are dealing with victims of criminality.

After a criminal offence has been committed, a victim's first contact with the criminal justice system is usually with the police. That contact will likely continue throughout any ensuing judicial process. 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. It may impact upon his or her 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.¹⁴⁸ They must ensure that the victim feels that the offence is being considered properly and is being taken seriously.

During 2014, there have been a number of developments at a Governmental level which are aimed at protecting victims of crime and improving the service and support received from statutory agencies. For example, the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill completed its passage through the Northern Ireland Assembly in December 2014. The Bill makes provision for the specific offences of human trafficking and exploitation, measures to prevent and combat human trafficking and slavery and support for human trafficking victims. Another example is the Justice Bill (discussed in Chapter 3 of this Human Rights

¹⁴⁷ By section 6(1) of the Human Rights Act 1998.

¹⁴⁸ Article 2.3 of the PSNI Code of Ethics includes a duty to "treat all victims of crime and disorder with sensitivity and respect their dignity" and requires police officers to consider the special needs, vulnerabilities and concerns victims have. It requires police officers to keep victims updated on the progress of any relevant investigations. 'Victims' is defined in Article 2.3 of the Code as including within its meaning the relatives of a deceased person where the circumstances of the death are being investigated by the police.

Annual Report) which was introduced to the Assembly in June 2014. The Bill contains provisions aimed at improving services and facilities for victims by creating a new statutory Victim Charter, by introducing a legal entitlement to make a victim statement (to be known as a 'victim personal statement') and by extending the power to use video link between courts and a number of new locations.

The Department of Justice has also, in conjunction with the Department of Health, Social Services and Public Safety, developed a draft Adult Safeguarding Policy. The Policy was issued for consultation in November 2014 with the stated intention:

To improve safeguarding arrangements for adults who are at risk of harm from abuse, exploitation or neglect, thereby reducing the prevalence of harm and providing adults at risk of harm with effective support and, where necessary, protective responses, including access to justice. It aims to raise awareness of harm to adults at risk, defines harm, illustrates how harm manifests itself and identifies who can assist to combat it and how that can be done. The draft promotes zero-tolerance of harm to adults and emphasises that everyone can play a role to prevent it. It identifies the need for safer communities and safer organisations across all sectors, and sets out clear and proportionate safeguarding expectations across the full range of relevant organisations. The draft policy ends with some general considerations such as information sharing, consent and access to justice.¹⁴⁹

The Committee has been particularly concerned that children have not been safeguarded adequately and has considered the many issues involved. In late September 2013, following an announcement by PSNI of an investigation into Child Sexual Exploitation (known as Operation Owl),¹⁵⁰ the Health Minister directed the Safeguarding Board for Northern Ireland (SBNI) to undertake a thematic review of

¹⁴⁹ <http://www.dhsspsni.gov.uk/showconsultations?txtid=74705>

¹⁵⁰ In September 2013 the PSNI announced they had undertaken a major investigation into the sexual exploitation of children and young people who have gone missing in care in Northern Ireland. This followed on from an earlier internal review of public protection arrangements. The investigation, known as 'Operation Owl', identified twenty-two young people aged between 13 – 18 who had gone missing a total of 437 times from care homes in the preceding eighteen months and who may be at risk of further abuse.

those cases that had triggered the Operation Owl investigation in order to identify lessons that may be learned from the management of those cases to inform and improve future practice. The Minister also initiated an inquiry into child sexual exploitation in Northern Ireland, the terms of reference for which included establishing the nature and extent of exploitation and examining the effectiveness of safeguarding and protection measures. Kathleen Marshall conducted the inquiry and published her report in November 2014.¹⁵¹ The report makes 17 key recommendations and a number of supporting recommendations to a range of statutory agencies. In respect of PSNI specifically, there was 1 key recommendation and 5 supporting recommendations. The key recommendation encourages PSNI to pursue its commitment to strengthening relationships with communities and with young people as a priority, particularly in the context of the climate of austerity.¹⁵² The strengthening of relationships with communities, particularly young people, has been a focus of the Policing Board in all of its work and the Committee offers its support to the PSNI in implementing the recommendation. PSNI has advised that an action plan has been prepared in respect of the recommendations. The Committee looks forward to receiving a copy of that action plan.

Recommendation 4

The PSNI should within 3 months of the publication of this Human Rights Annual Report provide to the Performance Committee a report on progress made to implement the recommendations directed at the PSNI in the Report of the Independent Inquiry into Child Sexual Exploitation in Northern Ireland. That report should include the lessons learned by the PSNI from its own internal review of Operation Owl.

PSNI is currently undertaking a review of its Public Protection Units (PPUs). At present there is a PPU located in each of the 8 police Districts. Specialist officers within the PPU work closely with partner agencies such as Health and Social Care

¹⁵¹ *Child Sexual Exploitation in Northern Ireland, Report of the Independent Inquiry*, Kathleen Marshall, November 2014. The Inquiry did not focus on the circumstances and responses to the 22 children who were part of Operation Owl, which will be the focus of a separate Thematic Review being undertaken by the Safeguarding Board Northern Ireland.

¹⁵² Key recommendation 2 *Child Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry*, Kathleen Marshall, November 2014.

Trusts and the Probation Board on cases involving domestic abuse, child abuse, missing persons and vulnerable adults. PSNI is considering reducing the number of PPU's to 5 and realigning them according to the Health and Social Care Trust boundaries. PPU's will thereafter come under the command of a Chief Superintendent. Each of the 5 PPU's will be headed by a Chief Inspector. Each Chief Inspector will have responsibility as the service lead for the PPU core areas i.e. domestic abuse, child abuse, missing persons and vulnerable adults. PSNI hopes that through this work it will enable closer partnership working with other agencies and greater consistency across Northern Ireland.

The remainder of this Chapter sets out some of the specific issues concerning victims that have been considered by the Policing Board during 2014.

DOMESTIC ABUSE

Between 1 April 2013 and 31 March 2014 PSNI responded to 27,628 domestic abuse incidents, an average of one incident every 19 minutes.¹⁵³ During that period PSNI recorded 12,720 domestic abuse crimes which is the highest number recorded over the past 10 years. These crimes accounted for 18% of all sexual offences (394 out of a total of 2,234) and 26% of rape offences (141 out of a total of 550) recorded by PSNI during 2013/2014. 28% of all violence against the person offences (8,965 out of a total of 32,403) recorded by PSNI during that period had a domestic motivation. That included 8 homicides with a known domestic motivation, which accounts for 38% of all homicides recorded by PSNI during 2013/2014. There have been 70 victims of homicide as a consequence of domestic abuse in Northern Ireland over the past ten years.¹⁵⁴

¹⁵³ Nearly twice as many calls were made to the 24 Hour Domestic & Sexual Violence Helpline during the same period – as per Women's Aid Annual Report 2013/2014, a total of 55,029 calls were managed by the Helpline during 2013/2014. The 24 hour Domestic & Sexual Violence Helpline is open to all women and men affected by domestic and sexual violence and abuse - Freephone **0808 802 1414**. In an emergency call **999**.

¹⁵⁴ *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2013/14*, PSNI, July 2014. This report, and accompanying spreadsheets containing more detailed data, are available through the statistics section of the PSNI website: www.psni.police.uk

In responding to domestic incidents, dedicated and highly skilled police officers have undoubtedly saved and improved lives. Together with partner agencies they have brought thousands of adults and children within the protective scope of a Multi-Agency Risk Assessment Conference (MARAC). They have brought offenders to justice and they have contributed to the public protection arrangements through which violent offenders are managed. PSNI is a key agency on the Northern Ireland Regional Strategy Group on Domestic Violence and has assisted with the development of the Department of Health, Social Services and Public Safety (DHSSPS) and the Department of Justice's draft Domestic and Sexual Violence and Abuse Strategy 2013-2020 which was issued for consultation during 2014.

There is however significant work to be done. In its human rights thematic review of domestic abuse, published in May 2009, the Policing Board made 14 recommendations for PSNI and raised many issues for further consideration such as the recording of statistics, training, taking initial reports, arrest, supervision, the availability and resourcing of specialist officers, evidence gathering, the use of Body Worn Video, victim support, offender management, and the identification and flagging of risk. The findings of the thematic review were subsequently endorsed in a Criminal Justice Inspection Northern Ireland (CJINI) inspection of domestic abuse published in December 2010 which made a further 7 recommendations for PSNI.¹⁵⁵

CJINI published a follow up review in October 2013 in which it was critical of progress made by PSNI.¹⁵⁶ The Performance Committee met with the Chief Inspector of CJINI in November 2013 to discuss CJINI's findings. The Committee shared the Chief Inspector's concerns and called upon the Chief Constable to provide greater strategic focus at a senior management level to improve the police response to domestic abuse incidents and ensure consistency in approach across all police Districts. The Committee also considered and brought to PSNI's attention an inspection report on domestic abuse published by Her Majesty's Inspector of

¹⁵⁵ *Domestic Violence and Abuse*, Criminal Justice Inspection Northern Ireland (CJINI), December 2010.

¹⁵⁶ *Domestic Violence and Abuse: A follow-up review of inspection recommendations*, CJINI, October 2013.

Constabulary (HMIC).¹⁵⁷ Although HMIC inspected police services in England and Wales, the Committee noted that many of the issues identified by HMIC had also been previously identified by the Policing Board in respect of PSNI.

The Chief Constable assured the Committee that PSNI is committed to tackling domestic abuse in conjunction with criminal justice and partner agencies and that it is a strategic priority for PSNI. The Chief Constable outlined work that is ongoing in order to progress the thematic review and CJINI recommendations and more generally. Informing all of that work is the review of Public Protection Units referred to above. The Performance Committee sought an update on that review, in August 2014, and was advised of a number of ongoing areas of work, including the following:

- There have been a number of training developments, including the development and roll out of a bespoke domestic abuse training package to District Trainers which will then be cascaded down to response and neighbourhood officers.¹⁵⁸ Call handler refresher training is also being developed.
- As part of the Public Protection Unit review, new role profiles are being developed for all Public Protection officers (specialist domestic abuse officers fall within this category) and they will then receive a bespoke training package to deliver the skills required.
- Liaison work has taken place with the Public Prosecution Service (PPS) to examine the outcome rate in domestic abuse cases. This revealed that in over 50% of cases where a 'no prosecution' decision was issued, the most commonly cited reason for the decision was 'lack of evidence' (55%) followed by 'unwilling to make a complaint' (18%), followed by 'statement of withdrawal' (16%). PSNI intends to continue its discussions with the PPS with the purpose of better understanding why cases haven't proceeded due to 'lack of evidence'.

¹⁵⁷ *Everyone's business: Improving the police response to domestic abuse*, HMIC, March 2014.

¹⁵⁸ The Board's Human Rights Advisor attended one of the initial training sessions which was delivered to Trainers in E District (Armagh, Banbridge, Craigavon Newry and Mourne).

- Criminal Justice Support Workers are embedded within Public Protection units in some but not all Districts. Funding arrangements for the posts vary from District to District. PSNI acknowledge the substantial support these workers provide to victims of domestic abuse and they are exploring funding options as part of the Public Protection Unit review.
- The Public Protection Arrangements Northern Ireland (PPANI) was established to manage sex offenders and violent offenders. Approximately 80% of the violent offenders managed by PPANI are perpetrators of domestic abuse. While legislation empowers criminal justice agencies to manage sex offenders by requiring them to notify police of change of address, foreign travel etc. such conditions may not be imposed upon violent offenders once they have completed their probation or licence period. This means they may move accommodation without reporting this to the police, and the police must then try and locate them. It is hoped that the introduction of Violent Offences Prevention Orders (VOPOs) would address this. A VOPO can contain such prohibitions or requirements as the court making the order considers necessary in order to protect the public (or any particular member of the public) from the risk of serious violent harm caused by the offender. Persons subject to a VOPO will also be subject to notification requirements and must advise the police of any changes to their personal information, home address etc. Proposals to introduce VOPOs have been included in the Justice Bill which is currently progressing through the Northern Ireland Assembly (discussed in Chapter 3 of this Human Rights Annual Report). In responding to the Justice Committee's consultation on the Bill, the Performance Committee indicated its support for the introduction of VOPOs, particularly as they may assist the police in risk managing serial domestic abusers and those who move from partner to partner and commit violent crimes. The Committee hopes that PSNI will thereafter be more proactive in situations where the victim is too fearful to apply to court for a Non-Molestation Order: a VOPO will not require the victim's cooperation.

A specific issue of concern to the Performance Committee is the failure to serve ex-parte non-molestation orders and occupation orders in a number of cases. Concerns were raised with the Committee during 2014 by a local solicitors' firm, and have been

raised in the past by Women's Aid, in relation to delays in the service of orders. The Committee was concerned to learn that of approximately 4,000 orders served by PSNI in 2012, only one third were served within 24 hours, one third within 72 hours and the remaining one third served up to three months later. PSNI has explained that delay may be due to difficulties in locating respondents but the Performance Committee believes that more could and should be done, by all agencies, to ensure that orders are served expeditiously. For example, there should be oversight mechanisms in place to alert police supervisors to any delay in the service of an order. Furthermore, victims should be informed promptly and regularly of any progress or delay in the service of orders. PSNI advised the Committee that an internal review had been carried out, during 2014, to ensure that orders are received and prioritised, that a consistent approach is taken across all police districts and that there is a system of checks and balances in place. The Committee will consider the findings of that review and whether further recommendations should be made.

Recommendation 5

PSNI should provide the Performance Committee, within 6 months of the publication of this Human Rights Annual Report, with an evaluation of its internal review on the service of ex-parte non-molestation orders and occupation orders. That evaluation should consider whether there has been any improvement in the length of time taken to serve orders, whether checks and balances put in place to oversee service of orders have been effective, and how the PSNI will ensure that victims are kept informed as to progress or delay in serving the orders.

The Performance Committee intends to keep domestic abuse as a key item on its agenda and will continue to seek updates from PSNI. The Policing Plan 2014-2017 requires PSNI to provide a report to the Performance Committee twice yearly on the measures it has in place to improve the quality of engagement and service delivery to victims of domestic abuse and how it encourages reports from victims. PSNI are also required to improve the outcome rates¹⁵⁹ for domestic abuse motivated crimes

¹⁵⁹ The following disposals are counted by PSNI as an 'outcome': charge/summons, cautions (adult and juvenile), discretionary disposals, penalty notices for disorder, offences taken into consideration

by 7 percentage points. The outcome rate for all domestic motivated crime recorded during the 2013/2014 (32%) was higher than the outcome rate for overall crime (27%) but represented a 5 percentage point reduction in the outcome rate for domestic motivated crimes in the previous year (37%). That follows a decreasing trend in outcome rates which began in 2011/2012.¹⁶⁰

The Performance Committee is convinced that the use of Body Worn Video will contribute to an increase in the outcome rate for domestic motivated crime. The Policing Board made a recommendation to that effect in its human rights thematic review of domestic abuse of 2009. In 2010, CJINI echoed that recommendation and recorded that the use of photographic evidence had been proven to assist greatly in the prosecution of perpetrators. PSNI commenced a pilot of Body Worn Video in G District (Foyle, Limavady, Magherafelt and Strabane) in May 2014. The pilot will assess whether the technology is of benefit in the following areas:

- Domestic abuse (supporting evidence to assist with prosecutions);
- Oppressive Behaviour (by police officers);
- Officer confidence and protection; and
- Impact on officer visibility (i.e. keeping police on the street by allowing more efficient capture of 'evidence').

PSNI has advised that NICHE (the PSNI's data system) will gather data for domestic abuse outcomes. The Committee encourages the PSNI to also carry out a victim satisfaction survey to ensure that victims have a say on how the equipment is used. It is hoped that through the pilot, issues around the use, admissibility and storing of evidence can be addressed and that it will also help progress the discussion around the digitisation of the Criminal Justice System. PSNI advised the Committee, mid-way through the pilot, that there had already been tangible results with 2 early guilty pleas being secured where Body Worn Video evidence was shown to the defendant.

and indictable only offences where no action was taken against the offender (died before proceedings or PPS did not prosecute).

¹⁶⁰ *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2013/14*, PSNI, July 2014. The outcome rate for domestic abuse motivated crimes peaked at 47% in 2010/2011, but fell to 43% in 2011/2012, 37% in 2012/2013 and 32% in 2013/2014.

While the Performance Committee will discuss the outcome of the pilot with PSNI in due course, the Committee is already encouraged by the aforementioned early guilty pleas and by the findings of a review published by the College of Policing in October 2014 which examined the impact of Body Worn Video on criminal justice outcomes in domestic abuse cases in Essex.¹⁶¹ Although there was not sufficient data for the College of Policing to assess the impact of Body Worn Video on guilty pleas and sentencing in particular, the trial did demonstrate that Body Worn Video resulted in an increase in the number of people charged with an offence compared with other sanctions such as a penalty or community resolution. The College of Policing found that when officers wore the video equipment 81% of the sanctions issued were charges compared to 72% when officers did not wear the equipment. Officers who participated in the trial noted the benefits of capturing the context, comments, emotions and injuries when attending domestic abuse incidents. Body Worn Video can be used to accurately record the layout of a scene or damage that was caused during the incident. The trial, however, also revealed some practical difficulties for example that the cameras could be difficult to turn on and off; did not work well in poor lighting; got caught in seatbelts and that the setting of the angle of the camera could mean that it failed to record the scene. When officers were surveyed 50% said the cameras increased their confidence to secure a conviction because they captured more detail than a written statement. Officers also reported that the cameras increased accountability, which made them more mindful of their behaviour.

HATE CRIME

Hate crime can take many forms but the most common are assaults, intimidation, harassment and criminal damage. Hate crime is particularly hurtful to victims as they are targeted because of their faith, racial or ethnic origin, sexual orientation, gender identity or because they have a disability.¹⁶² The impact of the crime varies from

¹⁶¹ *The Essex Body Worn Video Trial. The impact of Body Worn Video on criminal justice outcomes of domestic abuse incidents*, C. Owens, D. Mann and R. McKenna, College of Policing, October 2014.

¹⁶² For research into the impact of hate crime on victims, see *Equality groups perceptions and experiences of crime*, S. Botcherby, F. Glenn, P. Iganski, K. Jochelsen and S. Lagou for the Equality and Human Rights Commission and University of Lancaster, 2011, which considers findings from the British Crime Survey, including the emotional reaction to crime of victims who perceived the crime to have been an identity based crime.

victim to victim but it leaves many feeling permanently unsafe and anxious. As well as having a physical impact on victims, hate crime has been reported to impact negatively on mental health and can result in an increased risk of suicide.¹⁶³ The impact of the crime is also likely to resonate throughout the wider community.

If an incident or crime is perceived by the victim or any other person as being motivated by prejudice or hate on grounds of race or ethnicity; faith or religion (non-sectarian); faith or religion or political opinion (sectarian); disability; sexual orientation (homophobic incidents/crimes); or gender identity (transphobic incidents/crimes), PSNI must record the incident or crime as a hate incident or crime and must respond to it in accordance with PSNI Service Procedure *Police Response to Hate Incidents*.¹⁶⁴ PSNI records and publishes data on hate incidents and hate crimes on a quarterly basis. The table below shows the number of hate incidents and crimes recorded over a 3 year period together with outcome rates.¹⁶⁵ Comparisons to levels in previous financial years can be found in the PSNI's 2013/2014 annual statistical report which contains annual figures for each year dating back to 2004/2005.¹⁶⁶

¹⁶³ For example in 2007 in Leicester, Fiona Pilkington made repeated reports of anti-social behaviour and hate crime which were not responded to appropriately. Tragically, she took her own life and that of her daughter. The IPCC published a highly critical report which identified police failure to identify her vulnerability and a failure to identify the incidents as hate crimes which thereafter led to a failure to provide a cohesive and effective response: *IPCC Report into the Contact Between Fiona Pilkington and Leicestershire Constabulary 2004-2007*, Independent Investigation Final Report, IPCC Reference: 2009/016872.

¹⁶⁴ *Police Response to Hate Incidents*, PSNI Service Procedure 16/2012, December 2012 (updated in June 2013). The Service Procedure defines a hate incident as "any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate." A hate crime is defined as "any hate incident, which constitutes a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate."

¹⁶⁵ 'Outcome' is defined in footnote 159 above.

¹⁶⁶ PSNI statistical reports are available through the statistics section of the PSNI website: www.psnipolice.uk

Number of hate incidents and hate crimes recorded by PSNI and outcome rate, by type of hate motivation, 1 April 2011 to 31 March 2014¹⁶⁷

Hate crime	Incidents recorded			Crimes recorded			Crime outcomes		
	11/12	12/13	13/14	11/12	12/13	13/14	11/12	12/13	13/14
Racist	696	750	982	458	470	691	88 (19%)	89 (19%)	119 (17%)
Homophobic	200	246	280	120	149	179	18 (15%)	30 (20%)	31 (17%)
Sectarian	1,344	1,372	1,284	885	889	961	157 (18%)	146 (16%)	148 (15%)
Faith/Religion	8	22	24	6	14	13	1 (17%)	2 (14%)	3 (23%)
Disability	33	74	107	15	35	70	7 (47%)	5 (14%)	3 (4%)
Transphobic	4	15	23	3	6	8	0 (0%)	0 (0%)	2 (25%)

As illustrated by the table above, the number of recorded incidents and crimes with a hate motivation increased in 2013/2014 across most categories compared to previous years.¹⁶⁸ Hate crime is known to be under-reported so the fact that more reports are being made does not necessarily mean that more hate incidents/crime are occurring. It may mean that more victims are reporting incidents/crimes to the police. It should however alert police that continued consideration must be given to tackling hate crime. The increase in the number of reported race hate incidents and crimes persuaded the Policing Board to establish a Race Hate Crime Group and initiate a dedicated thematic review on the issue, details of which are provided below. The low level of outcome rates across all categories of hate crime when compared to the outcome rate for overall crime during 2013/2014 (27%) is a cause for concern and steps must be taken to address it. The Policing Plan 2014 – 2017 included targets for PSNI to increase the outcome rates for sectarian hate crime by 3%, homophobic hate crime by 5% and racist hate crime by 1%.

¹⁶⁷ *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2013/14*, PSNI, July 2014, *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2012/13*, PSNI, July 2013 and *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2011/12*, PSNI, July 2012.

¹⁶⁸ The PSNI quarterly bulletin covering the period up to 30 September 2014 indicates that the number of incidents and crimes reported is continuing to increase.

Of particular note to the Performance Committee is the fact that the number of disability hate crimes recorded by PSNI doubled between 2012/2013 and 2013/2014 from 35 to 70. That increase may represent ongoing efforts by voluntary sector disability organisations to raise awareness of disability hate crime, for example, through Leonard Cheshire's *Be Safe Stay Safe* project over 2,000 disabled people and their carers across Northern Ireland have to date received disability hate crime awareness training.¹⁶⁹ Progress on such work is discussed with other agencies, including the PSNI and the Policing Board, through a Disability Hate Crime Steering Group which was established by the voluntary sector in 2013. Furthermore, PSNI now funds a disability advocate whose efforts are focused on victim support, reporting of hate and signal crime and incident monitoring. Victims can self-refer to the advocate, or may be referred by PSNI or third parties. Victim Support coordinates the advocacy service and a referral pathway has been developed to ensure that all victims of disability hate crime are fully informed of the advocacy and support services available. The disability advocate has been involved in the training of police officers, including new recruits to the organisation, and has been involved in the *Be Safe Stay Safe* briefings. Those initiatives are very positive and all involved should be commended for their efforts.

However, while the number of recorded disability hate crimes doubled between 2012/2013 and 2013/2014, the outcome rate decreased with an outcome being claimed in respect of only 3 crimes in 2013/2014 (4%). The Performance Committee is satisfied that there must be an urgent review by PSNI.

Recommendation 6

PSNI should review its training, policy and practices for responding to disability hate crime with a particular focus on the outcome rate for disability hate crime. PSNI should report to the Performance Committee on the outcome of that review within 3 months of the publication of this Human Rights Annual Report.

¹⁶⁹ See www.besafestaysafe.org for more information.

An update was provided in the Human Rights Annual Report 2013 on PSNI's review of hate crime, which was initiated in 2012 to address recommendations made by the Policing Board and others.¹⁷⁰ The review considered the reporting and detection of hate crime, with a particular focus on (i) access to services and communication; (ii) investigation and procedures; and (iii) training. While that work undoubtedly created a clearer structure for the roles and responsibilities of police officers and staff, PSNI must ensure that it is translated into practice on the ground. A new Hate Crime policy document has been issued and dedicated training has been rolled out across the service. PSNI should keep under review the impact that these changes have had upon victims' experiences of the police and actively identify areas in which service could be improved.

The Committee appreciates that PSNI cannot tackle all of the issues alone and that it works alongside partner agencies to consider the overall criminal justice approach to tackling hate crime. A number of those agencies are also considering and refreshing their approach. The Policing Board, through its Performance Committee and Partnership Committee, will continue to monitor and liaise with interested parties in relation to the police response to hate crime. The Policing Board is represented on various forums on which police and other agencies/stakeholders sit, including the Department of Justice Hate Crime Delivery Group, a Disability Hate Crime Steering Group, a Trans Forum, a LGB&T Consultative Forum and a PSNI/Policing Board Strategic Consultation Group.¹⁷¹

¹⁷⁰ Recommendation 10 of the Board's *Human Rights Annual Report 2011* (published February 2012) required PSNI to develop a hate crime strategy, in consultation with its Independent Advisory Groups, which considers the reasons for the underreporting of hate crime, the procedures in place for reassuring and protecting victims of hate crime and a robust response to hate crime. A number of recommendations were also made in the Board's *Human Rights Thematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgender Individuals* (published March 2012) which related to the police approach to hate crime generally: Recommendation 2 required PSNI to consider developing a hate crime partnership for each District; Recommendations 3, 9 and 12 requires PSNI to review Hate Incident Minority Liaison Officer duties; Recommendation 5 requires PSNI to remind officers that they should accept without challenge the view of a victim or any other person that a crime was motivated by hate; Recommendation 6 requires PSNI to review the effectiveness of the online reporting initiative; and Recommendation 10 requires PSNI to review its hate crime policy.

¹⁷¹ The Policing Board / PSNI Strategic Consultation Group consists of representatives from the disability, youth, older persons, Lesbian Gay Bisexual, Transgender, minority ethnic and women's sectors. The Group was established in 2013 to assist the Policing Board and the police in achieving a better policing experience for all, including by identifying and providing advice and expertise at a strategic level on cross cutting issues of interest to the diverse communities the various members represent.

The Performance Committee will conduct a human rights thematic review on the police response to race hate crime during 2015, details of which are set out below. That will be carried out in consultation with stakeholders, including the Race Hate Crime Group which was established by the Policing Board during 2014. The thematic will take into account recommendations for PSNI made in other reviews.¹⁷² Furthermore, update reports on PSNI implementation of the recommendations in the 2012 human rights thematic review on policing with and for Lesbian, Gay and Bisexual individuals and Transgender individuals will be published during 2015.¹⁷³

Human Rights Thematic Review of Policing Race Hate Crime: Terms of Reference

In recognising that discrimination and abuse based on race is an issue of grave concern within Northern Ireland that must be addressed with some urgency, the Policing Board through its Performance Committee, is commencing a thematic review to examine policing with and for all members of the community who may be identified as being within a minority racial group.¹⁷⁴ This thematic review will consider specifically race hate crime. The Committee will use the definition recommended by the Stephen Lawrence enquiry and adopted by PSNI, namely “any incident which is perceived to be racist by the victim or any other person.” A racial group is defined as being a group of persons defined by reference to race, colour, nationality or ethnic or national origin and references to a person’s racial group refer to any racial group into which he or she falls. Racial group includes Irish Travellers.

The thematic review will consider the PSNI approach to policing with and for those individuals and in particular its compliance with the Human Rights Act 1998 in, but not limited to:

¹⁷² For example, *Aggravated by Racial Hostility. Human Rights and the Criminal Justice System in Northern Ireland*, Northern Ireland Human Rights Commission, October 2013.

¹⁷³ There will be two separate update reports: one on policing with and for Transgender individuals, and one on policing with and for Lesbian, Gay and Bisexual individuals.

¹⁷⁴ PSNI records 6 different categories of hate crime: racist; homophobic; transphobic; disability; faith/religion (non-Sectarian); and Sectarian. The thematic review will consider racist hate crime.

- Identifying, recording and encouraging the reporting of race hate crimes, including offences of incitement to racial hatred;
- Supporting victims of race hate crime;
- Investigating race hate crimes and arresting and prosecuting the perpetrators;
- Effectiveness of the police use of statutory powers to prosecute race hate crime;
- Strategies to combat race hate crime;
- Supporting police officers and staff from minority ethnic communities; and
- Engaging with external partners and stakeholders.

The thematic will include a review of PSNI policy, operational effectiveness, training, staffing and the quality of service received by victims of race hate crime. It is anticipated that a report on the thematic review will be published during 2015.

PARAMILITARY STYLE ATTACKS

For a number of years the Policing Board has raised concerns with PSNI with regard to the number of incidences of paramilitary style attacks and the fact that only a very small proportion of perpetrators are brought to justice. The Policing Board has challenged PSNI as to how it can build trust within the most affected and vulnerable communities to increase reporting and the provision of evidence. Between 1 April 2013 and 31 March 2014, there were 70 casualties of paramilitary style attacks reported to PSNI. That comprised 42 casualties of assault and 28 casualties of assault involving shooting.¹⁷⁵ Between 1 April 2009 and 31 August 2014, of 457 paramilitary style assaults and shootings, there were only 16 cases which resulted in a charge or summons.

¹⁷⁵ *Police Recorded Security Situation Statistics, 1 April 2013 – 31 March 2014*, PSNI, May 2014. These statistics are available to download through the PSNI website: http://www.psni.police.uk/index/updates/updates_statistics.htm

Number of paramilitary style assaults and shootings and charges/summons, 1 April 2009 – 31 August 2014¹⁷⁶

Year	No. of paramilitary style assaults and shootings	No. of charges/summons
2009/2010	127	9
2010/2011	83	1
2011/2012	79	3
2012/2013	63	1
2013/2014	70	2
2014/2015 to 31 August	35	0
TOTAL	457	16

The outcome of those 16 cases was as follows (note that some cases involve more than one defendant):

Outcome in cases in which charges were brought 1 April 2009 – 31 August 2014¹⁷⁷

Convicted	7
Not Guilty	4
No Case to Answer	2
Youth Conference	2
No Prosecution Directed	26

Since 2009 there have been only 7 convictions for paramilitary style assaults and shootings. PSNI has advised that outcomes remain low for a variety of reasons including the limited cooperation of victims and witnesses and limited opportunities for intervention, intelligence gathering and evidence collection.

Many stakeholders are deeply concerned at the continued prevalence of paramilitary style attacks, the low outcome rate and the number of young victims involved. Of the 70 casualties in 2013/2014, 30 were below the age of 25. The Performance Committee met with Public Achievement and young people from Public Achievement's WIMPS (Where Is My Public Servant?) project to discuss their concerns. In a written submission by Public Achievement and WIMPS to the

¹⁷⁶ This information was provided by PSNI in a written response to a question at the 2 October 2014 Policing Board meeting. Written answers to questions are available through the Policing Board's website: <http://www.nipolicingboard.org.uk/index/meetings/submitting-a-question.htm>

¹⁷⁷ This information was provided by PSNI in a written response to a question at the 6 November 2014 Policing Board meeting.

Performance Committee in April 2014 it was noted that “the statistics kept by PSNI... may not show the full extent of the problem as hospital statistics suggest that the incidents may be under-reported to the authorities.”¹⁷⁸ Public Achievement and WIMPs highlighted the fact that “assault” “often hides the sheer brutality of the attacks... weapons used in recent attacks varies from hammers and iron bars to baseball bats studded with nails, samurai swords, and kerb stones. These assaults can often lead to grievous wounds much more time-consuming and costly to treat and with much longer recovery times than the flesh wounds often incurred during shootings.”

Paramilitary style attacks infringe, amongst other things, a victim’s Article 3 ECHR right not to be subjected to torture or inhuman or degrading treatment or punishment and the Article 2 ECHR right to life. The fear that is created within communities can have wider implications for the enjoyment of rights, for example, enjoyment of the Article 11 ECHR right to freedom of assembly and association, the Article 10 right to freedom of expression and the Article 8 ECHR right to respect for private and family life. As regards the impact of the attacks on children and young people, Public Achievement and WIMPs stated in their written submission to the Performance Committee, “we believe (as stated by the Deputy Chief Constable at a public meeting of the Policing Board) that attacks on children are child abuse. We believe that the perpetrators should be prosecuted as child abusers and put on the child protection register for life. This could act as a significant deterrent to people who wish to style themselves as guardians of the community.”

A recommendation was made in the Policing Board’s Human Rights Annual Report 2011 that the PSNI should review the data and consider what steps should be taken to reduce the incidence of paramilitary style attacks and increase their outcome rates.¹⁷⁹ PSNI accepted that recommendation and subsequently launched a geographically and demographically targeted Facebook campaign entitled ‘Not the Face of Justice’, which appealed for public information about paramilitary style

¹⁷⁸ Public Achievement / WIMPs cited the following authority: “Trends in admission to hospital for assault in Northern Ireland, 1996/97 – 2008/09” *Journal of Public Health*, S. Lee, pages 439 - 444.

¹⁷⁹ Recommendation 16 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

attacks, particularly from young people. A planned evaluation of the project suffered from a number of delays owing to technical issues and pressing operational commitments during the flag protests and the G8 summit. While a PSNI Facebook User Survey was carried out, no evaluation of the campaign has been carried out. PSNI advised the Policing Board that it plans to either rerun the 'Not the Face of Justice' campaign or a similar initiative in the future. However, no immediate plans have been put in place to do so.

Investigations into paramilitary style attacks are led by District CID with specialist investigative support provided by Serious Crime Branch. PSNI has advised recently that it is conducting a review of all paramilitary attacks since 2009 to ensure that all investigative and forensic opportunities have been taken. By November 2014, a total of 256 reviews had been undertaken including revisiting victims of paramilitary style attacks where appropriate. PSNI has also advised that it pursues proactively evidence to bring charges for associated offences (e.g. possession of a firearm, membership of a proscribed organisation etc.) where evidence may not be available for the assault itself. For example, 4 men were arrested and charged, in June 2014, with a range of offences¹⁸⁰ connected to paramilitary attacks in North Belfast.¹⁸¹

The Performance Committee intends to subject this issue to close scrutiny. The Committee will consider 6 monthly reports, required by the Policing Plan 2014 – 2017, on actions taken to reduce the incidence of attacks.¹⁸² The first report, in September 2014, provided a brief snapshot of some youth engagement work that had taken place however the Committee expects the second report to contain more detailed information on PSNI's investigative work and the outcome of that work.

¹⁸⁰ Such as directing terrorism, membership of a proscribed organisation, possession of firearms with intent, false imprisonment, collecting information likely to be of use to terrorists and conspiracy to commit grievous bodily harm.

¹⁸¹ Chief Constable's written response to a Policing Board Question, 6 November 2014, available at www.nipolicingboard.org.uk

¹⁸² The Committee is keen to understand the true incidence of attacks and threats and has written to PSNI to seek information on the number of persons displaced from their homes due to paramilitary intimidation.

‘LEGACY’ CASES

In Northern Ireland the ‘legacy of the past’, with 3,268 deaths attributable to the security situation in Northern Ireland between 1968 and 1998, has had a profound impact on community confidence in PSNI. That is particularly the case (although by no means confined to those cases) where unresolved murders or suspicious deaths allege the involvement of state actors.

Jurisprudence from the European Court of Human Rights has established that the right to life guaranteed by Article 2 ECHR includes a procedural obligation which requires that an investigation must follow a suspicious death. If it is alleged or suspected that a state agent may bear some responsibility for the death, whether directly or indirectly, the State must carry out an effective official investigation.¹⁸³ The minimum requirements for such an investigation are that the relevant authorities must act of their own motion and not wait for the matter to be referred; the investigators must be institutionally, hierarchically and practically independent of those who may be implicated;¹⁸⁴ the investigation must be effective; it must be reasonably prompt; there must be sufficient public scrutiny of the investigation; and, the relatives of the deceased must be involved to whatever extent is necessary to protect their legitimate interest in the investigation. Furthermore, a failure to treat relatives in a humane and compassionate way may amount to a breach of Article 3 ECHR (prohibition of inhuman or degrading treatment).¹⁸⁵

PSNI has a key role in giving effect to the state’s obligations under Article 2 ECHR. In a series of judgments delivered between 2000 and 2003, the European Court of Human Rights (ECtHR) found that the United Kingdom had violated Article 2 ECHR in respect of various failings in the investigative procedures concerning the death of

¹⁸³ See for example, *McCann and Others v. the United Kingdom*, ECHR (1995).

¹⁸⁴ *Jordan v United Kingdom* (2003) 37 EHRR; *Ali Zaki Mousa and others v the Secretary of State for Defence* [2011] EWCA Civ 133; *Ali Zaki Mousa and others v The Secretary of State (No.2)* [2013] EWHC 1412 Admin, Divisional Court

¹⁸⁵ See for example, *Janowiec and Others v. Russia*, ECHR (2012).

the applicants' relatives.¹⁸⁶ The UK government subsequently presented the Committee of Ministers of the Council of Europe with a 'package of measures', which the government argued ensured Article 2 compliance.¹⁸⁷

Included within the package of measures was the Historical Enquiries Team (HET), established in September 2005 to examine 3,268 deaths arising from 2,555 separate incidents attributable to the security situation in Northern Ireland between 1968 and the Belfast Agreement in 1998. The Secretariat of the Committee of Ministers published a memorandum on 19 November 2008 which outlined their final assessment of HET based on submissions from the United Kingdom Government, PSNI, the Irish Government and several non-governmental organisations (NGOs).¹⁸⁸ It reiterated their view that HET does not carry out Article 2 compliant investigations in historical cases as it only sought to identify if further evidentiary opportunities exist. Despite this, the Secretariat considered HET to be a useful model for bringing a 'measure of resolution' to families and next-of-kin in such cases. Therefore it could play an important role as one element in a package of measures designed to satisfy the State's obligations to conduct effective investigations in alleged violations of Article 2 of the ECHR.

In addition to its obligations under the ECHR, PSNI is required by the Police (Northern Ireland) Act 2000 to bring perpetrators of crime to justice. PSNI also has obligations under other domestic statutes to assist and provide relevant documentation to coronial inquests¹⁸⁹ and public inquiries. While those duties and obligations appear straightforward, in relation to legacy investigations and historical enquiries, they are not without controversy. Several human rights organisations and NGOs representing victims of the 'Troubles' have articulated their lack of confidence in PSNI's ability to undertake reviews or investigations of events which involved the

¹⁸⁶ *McKerr v United Kingdom (UK)* (2002) 34 EHRR 20, *Jordan v UK* (2003) 37 EHRR 2, *Kelly and Others v UK* (2000) 30 EHRR CD223, *Shanaghan v UK* (2000) 30 EHRR CD370, *McShane v UK* (2002) 35 EHRR 23, and *Finucane v UK* (2003) 37 EHRR 29).

¹⁸⁷ Importantly, within this context, it is the Police Ombudsman who investigates alleged *police* misconduct and criminality.

¹⁸⁸ *Cases concerning the action of security forces in Northern Ireland*, Memorandum CM/Inf/DH(2008)2revised of the Secretariat of the Committee of Ministers of the Council of Europe.

¹⁸⁹ Under the Coroners Act 1959.

Royal Ulster Constabulary.¹⁹⁰ The potential impact on community confidence in the PSNI remains severe.

In January 2014, the Policing Board commissioned the Ulster University to conduct research into public confidence in policing, including exploring the influence that politicians, community leaders and the media have in shaping confidence in PSNI.¹⁹¹ That was the first empirical study of its kind to be produced in Northern Ireland. It sought to identify the influences and dynamics underpinning confidence from these differing civic perspectives. The research consisted of 20 semi-structured interviews with representatives from the political parties, community representatives from a range of community backgrounds, and media stakeholders representing both print and broadcast outlets. With specific reference to 'legacy issues', interviewees agreed that the sheer weight of public debate generated in the media about 'the past', particularly the role of the police, resulted in a historical construct through which consideration and understanding of 'everyday' policing was inevitably understood. Interviewees expressed a view that it had a negative impact on public confidence in PSNI.¹⁹²

Historical Enquiries Team

PSNI has been subject to substantial public criticism in response to an unfavourable inspection carried out by Her Majesty's Inspectorate of Constabulary (HMIC) on the Historical Enquiries Team (HET) in 2013.

Largely based on the findings of 2 reports, from 2010 and 2012, by Professor Patricia Lundy of the Ulster University, which highlighted inconsistencies in the approach in cases involving the military compared to cases involving non-state or

¹⁹⁰ Submissions to that effect were made by various people to the Policing Board's HET Working Group (discussed further below in this Chapter).

¹⁹¹ *The influence that politicians, community leaders and the media have on confidence in the police in Northern Ireland*, J. Byrne (University of Ulster), J. Topping (University of Ulster) and R. Martin (Oxford University), May 2014.

¹⁹² It must however be acknowledged that the survey was conducted with a small number of respondents and that public confidence in the PSNI, according to the Omnibus survey, has not decreased. What is clear is that there is real potential for legacy issues to have an adverse impact on public confidence in the police.

paramilitary suspects, the Policing Board recommended that HMIC should carry out a review of the procedures and approach of the HET, especially in respect of Royal Military Police (RMP) cases. After being commissioned to undertake the inspection by the Department of Justice, HMIC drew up terms of reference for the review in consultation with the Chief Constable and the Policing Board. Between November 2012 and May 2013 HMIC interviewed over 180 people and examined material relating to 31 cases that the HET had reviewed. HMIC published a report on its inspection on 3 July 2013 which made a total of 20 recommendations.¹⁹³

Following a meeting with HMIC to discuss the inspection findings the Policing Board agreed, at a meeting on 4 July 2013, that a dedicated working group should be established to take forward and oversee the implementation of the HMIC recommendations. A key priority for the Working Group was to undertake a programme of consultation with stakeholders. That engagement contributed significantly to the evidence base upon which concluding observations and recommendations were made.

The HET Working Group completed its deliberations at its final meeting on 28 April 2014 however consensus was not reached. Thereafter, progression of the issues was delegated to the Board's Performance Committee whose Members have continued to consult closely with the Chief Constable. Members agreed that it was imperative that the Justice Minister commission HMIC to undertake a follow-up review of the HET in order to reassure the Board and the public that PSNI had fully implemented all the recommendations contained in the HMIC report. The Board wrote to the Justice Minister on 28 April 2014 to ask him to commission that follow-up inspection as soon as practically possible. The Justice Minister agreed to do so and the follow-up inspection commenced in September 2014. The report to the Policing Board of the HET Working Group containing observations and recommendations has since been published on the Policing Board's website.¹⁹⁴

¹⁹³ *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, Her Majesty's Inspectorate of Constabulary (HMIC), July 2013.

¹⁹⁴ http://www.nipolicingboard.org.uk/het_position_paper.pdf

Recommendation 10 of HMIC's inspection report recommended that an oversight panel should be established to oversee and scrutinise all aspects of the future work undertaken by the HET. Members considered a number of options with regard to the powers, composition and independence of an oversight panel in order to build community confidence in the HET. There is no consensus however on the establishment of such a panel.

The Chief Constable met with the Performance Committee on 18 September 2014 and advised that due to financial pressures, PSNI intended to deal with its legacy operations under a single command, provisionally referred to as the 'Legacy Branch.' Legacy Branch is to be fully integrated into Crime Operations Department and accountable to the Chief Constable through the relevant Assistant Chief Constable. The Chief Constable outlined his belief that it would prove impossible to reengineer public confidence in the HET and that a new approach was necessary. He emphasised that the work of the Legacy Branch would be underpinned by the full implementation of HMIC's recommendations and that he believed the independence of the Legacy Branch should be scrutinised by an oversight panel appointed by the Board. Members of the Performance Committee have expressed diverging views on the establishment of a Legacy Branch, particularly as to whether such arrangements would comply with the Article 2 ECHR requirements for institutional, hierarchical and practical independence.

Coronial Inquests

Through the Performance Committee, the Board has sought to hold PSNI to account in respect of delays in disclosing material to a number of coronial inquests, primarily those referred to as the Stalker/Sampson inquests.¹⁹⁵ The inquests were officially opened in 2007. There was some delay to the inquests to permit legal proceedings concerning the duty to and extent of disclosure to be heard. Those legal proceedings

¹⁹⁵ The Stalker Sampson reports relate to alleged shoot-to-kill cases involving the security forces in Lurgan and Armagh in 1982. The six victims involved were Gervais McKerr, Eugene Toman, Sean Burns, Michael Tighe, Seamus Grew and Roddy Carroll. The Coroner will also examine the deaths of three Royal Ulster Constabulary officers who died in a bomb blast weeks earlier to the first killings - Sergeant John McQuinn; Constable Alan McCloy; Constable Paul Hamilton.

concluded in 2010. The PSNI is now involved in a disclosure process to make material available subject to the redaction of sensitive information.¹⁹⁶ The Performance Committee has sought further information on a number of issues of concern relating to the inquests, specifically with regard to the employment of former RUC Special Branch and Intelligence officers in the disclosure process, the failure to meet disclosure submission dates and public criticism from the Senior Coroner and senior judges in judicial review proceedings.¹⁹⁷

PSNI provided the Performance Committee with copies of its disclosure and redaction Policy Documents, which suggested that Article 8 ECHR *required* documents to be redacted if any person named in them had a reasonable expectation of privacy when the document was created. The Board's Human Rights Advisor provided advice to the Board querying the extent to which Article 8 ECHR required such redactions in the context of an Article 2 compliant investigation into a death.¹⁹⁸ The Committee has also queried whether the scrutiny of such proposed redactions has caused further unnecessary delay.

PSNI stated that it would have disclosed all material relevant to the Stalker/Sampson inquests to the Senior Coroner by the end of 2014 but that time frame has not been met. Furthermore, PSNI has indicated that it will not meet the previously imposed deadline of March 2015 for the disclosure of material to the inquest into the death of Sean Brown.¹⁹⁹ The Performance Committee has in both private and public meetings expressed its concern at the continued delays and the impact that has had on the commencement of inquests. The Committee is particularly concerned at impact of delay upon the families of the deceased. The Committee meets regularly with the

¹⁹⁶ The Senior Coroner is provided with all material in an unredacted form.

¹⁹⁷ See for example Justice Stephens judgment in relation to the Pearse Jordan inquest in which he stated "There has been delay. The Article 2 requirement of promptness and reasonable expedition has not been met. The question is whether one or other or both of the notice parties is responsible." Justice Stephens exonerated the Coroner but made an adverse finding against the PSNI as regards delay. He stated, "I am content that the PSNI have both created obstacles and difficulties which have prevented progress in the inquest and have also not reacted appropriately to other obstacles and difficulties" *Jordan's Applications (13/002996/1), (13/002223/1) (13/037869/1)* [2014] NIQB 11. Note, that judgment is currently awaiting a hearing by the Court of Appeal.

¹⁹⁸ It is accepted that Article 8 ECHR may be engaged and therefore should be considered but whether it requires, without more, a routine redaction is questioned.

¹⁹⁹ Sean Brown was an official of the Gaelic Athletic Association (GAA) who was abducted and murdered in 1997.

Chief Constable and continues to stress the importance in all inquests of providing disclosure expeditiously.

10. TREATMENT OF SUSPECTS

The treatment of suspects by the police inevitably engages a number of rights under the European Convention on Human Rights and Fundamental Freedoms (ECHR). For example, most criminal investigations engage a suspect's Article 8 ECHR right to privacy. The conduct of the investigation will always engage Article 6 ECHR (the right to a fair trial). That also means that a person under investigation is entitled to the presumption of innocence (until guilt is proved) and, if charged, he or she has the right to consult with a solicitor and to be told, in a language the suspect understands, the charges. Article 3 ECHR (the right not to be subjected to torture, inhuman or degrading treatment) will apply to the conditions of detention. Any conditions attached to the grant of bail will engage Article 11 ECHR (the right to freedom of assembly and association).

When the police detain a person they assume responsibility for the protection of the detainee's ECHR rights. Detention engages the Article 5 ECHR right to liberty and security and can only be justified if at least one of the Article 5 criteria has been met.²⁰⁰ Both before and after charge the police must determine periodically whether continued detention is necessary or whether, for example, release with or without bail conditions is more appropriate.²⁰¹ Articles of the PSNI Code of Ethics, for example article 5, require police officers to ensure that all detained persons for whom they have responsibility are treated in a humane and dignified manner. It stipulates that arrest and detention must be carried out in accordance with relevant Codes of Practice²⁰² and in compliance with the ECHR. The Code of Ethics also requires police officers in their dealings with detainees to apply non-violent methods insofar as possible before resorting to any use of force, with any use of force being the minimum required in the circumstances. Police must take every reasonable step

²⁰⁰ For example, the detention must be in accordance with a procedure prescribed by law and for the purpose of bringing the detainee before a court on reasonable suspicion of having committed an offence.

²⁰¹ Article 41 of the Police and Criminal Evidence (Northern Ireland) Order (PACE) 1989 sets out the requirements for reviews of detention. Further guidance is contained within Code C of the PACE Codes of Practice.

²⁰² Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) Code of Practice C governs the detention, treatment and questioning of persons by the police and Code of Practice H governs the same in respect of terrorism suspects.

to protect the health and safety of detained persons and take immediate action to secure medical assistance where required.

During 2013/2014 a total of 24,648 arrests were made under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE).²⁰³ A further 168 arrests were made under the Terrorism Act 2000 (terrorism detainees are discussed later in this chapter). In October 2014, it was announced that PSNI intended to close a number of custody suites, reducing from 17 to 9 by the end of 2015. Although the process has been escalated in light of recent budget cuts, PSNI advised that it had always intended to reduce the number of custody suites as part of its new approach to custody. A significant element of that is the merger of Custody Healthcare and Reducing Offending in Partnership into one portfolio, with recognition that by identifying the often complex needs of detainees (e.g. drug/alcohol addiction and mental ill health etc.) and making an appropriate intervention, future offending may be prevented. Custody healthcare is discussed in more detail below.

Another significant element of the reform of custody provision is an attempt to rationalise and modernise the custody estate. PSNI contend that fewer custody suites will mean that resources can be concentrated on the reduced number of suites, resulting in greater accountability and an improvement in consistency across suites. The impact of the reduction in the number of custody suites will almost certainly have an impact upon the treatment of suspects, which may be positive or negative. The Performance Committee intends to keep the treatment of detainees under close review in the coming months and arrangements will be made within the Policing Board's Custody Visiting Scheme to ensure that regular unannounced visits will continue to be made to detained persons.

INDEPENDENT CUSTODY VISITING SCHEME

The Policing Board is obliged, by virtue of section 73 of the Police (Northern Ireland) Act 2000, to make and keep under review arrangements for designated places of

²⁰³ *Police and Criminal Evidence (PACE) Order Statistics 1 April 2013 – 31 March 2014*, PSNI, June 2014.

detention to be visited by lay visitors.²⁰⁴ That function is discharged by the Policing Board's Independent Custody Visiting Scheme. Custody Visitors are volunteers from across the community who are unconnected with the police or the criminal justice system. They are sub-divided into 4 Custody Visiting Teams operating across Northern Ireland: Belfast/Antrim; North-West; Tyrone/Fermanagh; and, Down/Armagh.

Custody Visitors make unannounced visits to designated police custody suites where they inspect the facilities, speak to detainees and check custody records. They can also view, on remote camera, live interviews with detainees held in Antrim Serious Crime Suite under terrorism legislation (provided the detainee consents). Custody Visitors report to the Policing Board and the PSNI on the welfare and treatment of persons detained in custody and the adequacy of facilities.²⁰⁵ Reports on visits to Antrim Serious Crime Suite,²⁰⁶ which are carried out by the Belfast/Antrim team, are also provided to the Independent Reviewer of Terrorism Legislation.²⁰⁷ The Policing Board's Performance Committee receives reports on the work of the Scheme which highlight any issues raised and the remedial actions taken by PSNI to address them. The reports cover 3 distinct areas: the rights of the detainee; the health and well-being of the detainee; and the conditions of detention.

Custody Visitors discharge a critical function in ensuring the protection of the human rights of detained suspects and, through their reports, enable the Committee to monitor the treatment of detainees and the conditions of their detention. Any specific concerns identified by Custody Visitors are raised with PSNI. There is a process in place between the Policing Board and the PSNI to ensure that action is taken in respect of those concerns. The Scheme also forms part of the United Kingdom's

²⁰⁴ Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 requires the Chief Constable to designate the police stations which are to be used for the purpose of detaining arrested persons.

²⁰⁵ The Policing Board publishes quarterly statistics and an annual report on the work of Custody Visitors, all of which are made available for public viewing through the Policing Board's website: www.nipolicingboard.org.uk

²⁰⁶ Where persons suspected of involvement in terrorism are held.

²⁰⁷ In England and Wales, reports of custody visits to terrorism detainees are provided to the Independent Reviewer on a statutory basis. In Northern Ireland no statutory provision has yet been made to require the Policing Board to provide the reports to the Reviewer - the reports are instead provided to the Reviewer on a voluntary basis pending legislative amendments to make this arrangement statutory.

National Preventive Mechanism (NPM).²⁰⁸ In determining which bodies should be included in the United Kingdom's NPM, the Government's overriding criterion was that "bodies should possess the independence, capability and professional knowledge to carry out the requirements set out in Article 18 of the Optional Protocol to the Convention against Torture." It is a credit to all of the Custody Visitors who have volunteered over the years that the Policing Board's Independent Custody Visiting Scheme continues to meet those criteria but the scheme must ensure that it continues to carry out regular, unannounced visits despite financial pressures. The reduction in the number of custody suites will inevitably require a reconsideration of the Scheme's operating arrangements.

In February 2013, the NPM annual report made a formal recommendation to the Minister of Justice for Northern Ireland to bring by way of legislative provision, non-designated police cells in Northern Ireland within the remit of the Policing Board's Independent Custody Visiting Scheme.²⁰⁹ While it is only in limited circumstances that a person may be detained in a station that has not been designated and it is unlikely to be for any more than 6 hours,²¹⁰ it remains the case that Custody Visitors cannot visit any non-designated station and cannot monitor the treatment of detainees held there or the condition of their detention. The NPM recommendation mirrors concerns of the Performance Committee of the Policing Board in a number of Human Rights Annual Reports in which PSNI were encouraged to make arrangements (by permitting Custody Visitors to visit non-designated suites) in advance of legislative provision. The NPM recommendation is therefore endorsed by

²⁰⁸ The National Preventative Mechanism (NPM) represents a major break-through for the implementation of the Optional Protocol to the UN's Convention against Torture (OPCAT) in the United Kingdom, with the bodies that form it carrying out a system of regular visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

²⁰⁹ Recommendation 7 of *Monitoring Places of Detention. Third Annual Report of the United Kingdom's National Preventive Mechanism, 2011 – 2012*, National Preventive Mechanism, February 2013. The statutory remit of the Policing Board's Independent Custody Visiting Scheme extends only to custody suites which have been designated by the Chief Constable under Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 for the purpose of detaining arrested persons.

²¹⁰ Article 32 of PACE. Detention in a non-designated station can only extend beyond 6 hours if it is authorised by an officer not below the rank of Superintendent and only if that officer is satisfied on reasonable grounds that it would expose the detainee and those accompanying him/her to unacceptable risk of injury if he/she were taken from the first police station and moved to a designated station.

the Performance Committee. The Department of Justice has indicated that it will consider implementing the necessary legislative amendment required during 2015.

Work of the Custody Visiting Teams between 1 April 2013 and 31 March 2014²¹¹

Each year the Policing Board sets a guideline number of visits to be completed by Custody Visiting Teams. During 2013/2014, the guideline number of visits was set at 864. The actual number of visits carried out was 857 which is 14% higher than the number of visits carried out in 2012/2013 (753). Of the 857 visits, 836 were deemed to be valid visits. The other 21 visits could not be completed due, for example, to the custody suite being closed (9), the custody suite being too busy (4) and, given that visits are always carried out in pairs, the unavailability of a second Custody Visitor (2).

It is imperative that PSNI inform the relevant personnel within the Policing Board when a suite is closed in order that Custody Visitors may be informed. In previous Human Rights Annual Reports a recommendation was made (and accepted) and subsequently monitored as to the extent to which PSNI was notifying the Policing Board of the closure of suites. It is therefore disappointing that Custody Visitors are still attending closed suites without prior notification. That is a wasteful use of the precious time of Custody Visitors and means fewer valid visits are carried out. PSNI must ensure that as soon as a suite is closed the Custody Visiting Scheme is advised and, even more importantly, as soon as a suite is reopened the Scheme must also be advised so that visits may resume. There is already a recommendation in place so it is unnecessary to make another however the Performance Committee will monitor closely the continuing implementation of the recommendation and report further.

During 2013/2014 visits took place on all 7 days of the week and were conducted at all times of the day and night, with 82 (10%) being carried out on a Saturday, 84

²¹¹ The 2013/2014 statistics referenced in this section refer to the period 1 April 2013 – 31 March 2014 and are sourced from *Annual Custody Visitors' Statistics, 2013/2014*, Northern Ireland Policing Board, May 2014.

(10%) being carried out on a Sunday and 99 (12%) being carried out between 9pm and 9am.

The average length of a visit was 23 minutes. Custody Visitors record details of delays in gaining access to custody suites. During 2013/2014 there were 27 occasions when there were delays of more than 10 minutes, generally due to the custody staff being busy. While the Committee recognises that there may be occasions when custody staff are extremely busy, Custody Visitors must not be delayed access save where it is genuinely unavoidable and for proper reasons.

Detainees seen by Custody Visitors during 2013/2014

Custody Visitors must be allowed immediate access to any person detained at the police station, save where a delay is necessary and reasonable. However, detainees may only be spoken to with their consent. Of the 1,224 detainees held during visits in 2013/2014, Custody Visitors saw 613 (50%). Only 61 (5%) refused to be seen by a Custody Visitor. The other 550 (45%) were not seen for other reasons, for example, 202 were sleeping and 170 were being interviewed at the time of the visit. Custody Visitors should continue to make enquiries as to the length of time the detainee is likely to be asleep or being interviewed and, where appropriate, remain at the suite until access can be obtained.

Custody records

A custody record must be opened as soon as practicable for every person who is brought to a police station to be detained. Custody Visitors are trained to check the custody records of any detainee who has consented to that inspection. If it is not possible to obtain consent, for example, because the detainee is asleep at the time of the visit, intoxicated or on drugs, Custody Visitors must be granted access to the custody record unless the detainee has previously refused consent. If access to the custody record is denied by custody staff, that is noted by the Custody Visitor and reported to the Policing Board. Checking the custody record is an essential element of protection and enables Custody Visitors to ensure that:

- Detainees arrested under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) have been afforded their rights and entitlements (to have someone informed of their arrest, to consult with a solicitor, and to consult the PACE Codes of Practice).
- Medication, injuries, medical examinations, meals/diet are recorded and treated.
- Procedures to assess special risks/vulnerable detainees have been properly recorded and implemented.
- Rules concerning the timing and frequency of cell inspections of all detainees, particularly inebriated or otherwise vulnerable detainees have been complied with. Detainees at risk should be checked every 15 minutes.
- Reviews of the continuing requirement for detention have been conducted.

In 2008/2009 49% of custody records were checked; in 2009/2010 60% were checked; in 2010/2011 67% were checked; in 2011/2012 76% were checked; in 2012/2013 70% were checked; and in 2013/2014 68% were checked. Given the central importance of checking custody records, it is hoped that the Custody Visitors will be able to maintain a high percentage of records that are checked and to increase that number. The Committee suggests that in future PSNI custody staff could and should ask a detainee, on check-in, whether in the event that he or she is asleep or being interviewed when the Custody Visitors attend, they consent to their custody record being inspected. Currently, Custody Visitors are granted access automatically if the detainee is asleep or being interviewed. The reason for the records not being inspected will be monitored and if it appears that consent is not requested by custody staff a formal recommendation will be made to address that.

Satisfactory/unsatisfactory visits

During 2013/2014, 95% of visits were deemed to be satisfactory. That is a significant increase on the 87% of visits deemed satisfactory in 2012/2013; 86% in 2011/2012; 82% in 2010/2011; 77% in 2009/2010; and 69% in 2008/2009. A total of 47 reasons for concern were noted by Custody Visitors during 2013/2014 which is considerably

fewer than the 104 reasons for concern noted the previous year.²¹² The reasons for concern in 2013/2014 related to faulty equipment (21), lighting (10), sanitation (7), safety/security hazard (5), heating (2), cleanliness (1) and oxygen equipment (1). Where reasons for concern are identified, they are raised with PSNI who must advise the Policing Board within 28 days of the action taken to remedy the concern. If the Policing Board is not advised within 28 days, the matter is referred for the urgent attention of the relevant District Commander.

TERRORISM DETAINEES

'Terrorism' is defined by section 1 of Terrorism Act 2000 (TACT) as the use or threat of action if:

- The action involves serious violence against a person; serious damage to property; endangers a person's life, other than that of the person committing the action; creates a serious risk to the health or safety of the public or a section of the public; or is designed seriously to interfere with or seriously to disrupt an electronic system;
- The use or threat of action is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public; and
- The use or threat of use is for the purpose of advancing a political, religious, racial or ideological cause.

All 3 criteria must be satisfied unless the use or threat of action involves the use of firearms or explosives in which case the second criterion need not be satisfied.

Section 41 of the Terrorism Act 2000 (TACT) empowers a police officer to arrest without warrant a person whom he or she reasonably suspects to be a terrorist. A 'terrorist' is defined by TACT as a person who has committed specified terrorist offences or a person who "is or has been concerned in the commission, preparation

²¹² Of the 104 unsatisfactory visits in 2012/2013, 82 related to the conditions of detention including; 15 to the health and well-being of detainees; and 7 to the treatment of detainees. Therefore there are fewer concerns noted in 2014 that relate to the health and well-being of detainees which is welcomed.

or instigation of acts of terrorism”. Therefore, suspicion of the commission of relevant acts of terrorism need not be demonstrated at the time a section 41 arrest is made. Rather, what is required is a reasonable suspicion that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism.

A person arrested under section 41 TACT may be detained without charge for up to 48 hours without the intervention of a court. If detention is to be continued beyond 48 hours it may be extended by a court for up to a total of 14 days. Section 41 is therefore different from other arrest powers, in particular for the ability that it affords to arrest without suspicion of a particular offence, and the potential for detaining persons arrested under it, without the possibility of bail, for periods greatly in excess of 4 days.²¹³

During 2013/2014, there were 168 persons detained by PSNI following an arrest under section 41. Of those, 159 (95%) were held for 48 hours or fewer. Of the 9 held for more than 48 hours, 8 were subsequently charged. There were 59 requests to have someone informed of detention, 52 of which were granted immediately. In 6 cases the delay was for fewer than 12 hours and in 1 case the delay was 24 to 36 hours. There were 168 requests for access to a solicitor, all of which were granted immediately.²¹⁴

A relatively small proportion of persons arrested under section 41 in Northern Ireland are subsequently charged and even fewer are charged of a terrorist offence. For 2 years there was an upward trend in the proportion of section 41 detainees charged – increasing from 21% in 2010/2011 to 25% in 2011/2012 to 32% in 2012/2013. That upward trend has been reversed in 2013/2014. In 2013/2014 there were 168 persons arrested under Section 41 TACT and of those 32 (19%) were subsequently charged.²¹⁵ It represents the fewest number of persons charged subsequent to a

²¹³ If a person has been arrested pursuant to a power under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) the maximum detention period of detention may never be extended beyond 96 hours.

²¹⁴ *Northern Ireland Terrorism Legislation: Annual Statistics 2013/2014*, Northern Ireland Office, October 2014.

²¹⁵ *Police recorded security situation statistics, 1 April 2013 to 31 March 2014*, PSNI, May 2014. Note that persons can be charged under legislation other than TACT. Persons may also be charged in a

section 41 arrest in the last 10 years. The Independent Reviewer of Terrorism Legislation, David Anderson QC, commented in his annual report, “The low charging rate during 2013/14 is, on the face of it, disappointing. I have previously emphasised the need for reasonable suspicion in relation to each person arrested under section 41.”²¹⁶ David Anderson QC recorded previously that of 22 people put on trial in Northern Ireland during 2012 for terrorism-related offences, only 3 (13%) were convicted with the remaining 19 being acquitted. In Great Britain 84% (26 out of 31) of those put on trial in 2012 for a terrorism-related offence were convicted. In 2013 in Great Britain 96% (22 out of 23) were convicted.²¹⁷

Further to a recommendation in the Human Rights Annual Report 2011, PSNI carried out a review to ensure that section 41 arrests were being carried out in appropriate circumstances.²¹⁸ The Assistant Chief Constable Crime Operations wrote to the Human Rights and Professional Standards Committee, in January 2013, to outline the findings of that review and to seek to assure the Committee that police officers did not use the TACT power of arrest in cases where it was reasonably anticipated that the suspect was more likely to be charged under non-terrorism legislation. Given the disappointing reversal in the number of persons charged following a section 41 arrest the Committee believes a further review would be timely.

Recommendation 7

PSNI should review its policy and practice in respect of arrests under section 41 of the Terrorism Act 2000 to ensure that police officers have not reverted to using section 41 Terrorism Act 2000 in cases in which it is anticipated that the suspect is more likely to be charged under other legislation. The review should be completed within 6 months of the publication of this Human Rights Annual

different financial year from which they were arrested e.g. those persons detained at the end of March and charged in April.

²¹⁶ *The Terrorism Acts in 2013. Report of the Independent Reviewer on the operation of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2014, para. 8.12.

²¹⁷ *The Terrorism Acts in 2012. Report of the Independent Reviewer on the operation of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2013. 11.12 and 11.26 – 11.27.

²¹⁸ Recommendation 15 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012. This recommendation has been implemented.

Report. Within 1 month of the conclusion of the review PSNI should report to the Performance Committee on the findings of the review and if required the steps PSNI proposes to take.

CUSTODY HEALTHCARE

Persons held in police custody often have very complex health needs, many are deemed at risk of suicide and self-harm and many exhibit signs of drug and/or alcohol addiction. Article 5 of the PSNI Code of Ethics requires police officers to “ensure that all detained persons for whom they have responsibility are treated in a humane and dignified manner” and to “take every reasonable step to protect the health and safety of detained persons.” The way in which the police treat a detained person with health issues, particularly mental ill health, can be vital to that person’s well-being and future recovery/treatment, with the Association of Chief Police Officers (ACPO) Guidance on the Safer Detention and Handling of Persons in Police Custody recognising that police custody often provides the ‘gateway’ to healthcare services for vulnerable people.²¹⁹

In April 2014, the Performance Committee was briefed by PSNI on the outcome of an internal review carried out of healthcare provision in police custody suites.²²⁰ PSNI recognised, in its review, that custody healthcare should not focus solely on safer detention (in the sense of only keeping detained people safe). Instead, a more sophisticated approach which seeks to identify and address complex needs is more likely to both protect the detainee and break the cycle of offending, which in turn will result in safer communities. As a result, PSNI is trying to secure the greater involvement of a broad range of healthcare professionals, such as psychiatric nurses, within custody. PSNI has also sought to ensure, through improvements in technology, that medical professionals are provided with access to medical records in the course of attending to detainees. The Committee is very supportive of that

²¹⁹ *Guidance on the Safer Detention and Handling of Persons in Police Custody*, National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO), 2012.

²²⁰ The briefing was followed up with a written report to the Committee. Recommendation 10 of the Human Rights Annual Report 2012, which required PSNI to report to the Committee on the healthcare review, has therefore been implemented.

approach. It is evident that the complex needs of detainees will not be addressed adequately by the police alone. To ensure that momentum is not lost the Committee wishes to see what progress has been made and what further steps must be taken.

Recommendation 8

PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report on the progress or otherwise of its review of healthcare within custody suites including the extent to which it has secured the necessary input of healthcare professionals.

A specific issue of concern for the Performance Committee is the inadequacy of suitable places in which to temporarily detain persons on grounds of mental health. Under article 130 of the Mental Health (Northern Ireland) Order 1986, persons who appear to be suffering from a mental disorder and are in immediate need of care or control may be removed by a police officer to a 'place of safety'. A place of safety includes hospitals and police stations. That issue was considered in 2010 by the Criminal Justice Inspection Northern Ireland (CJINI) during its inspection on mental health and the criminal justice system. CJINI reported that PSNI "is struggling to deal with mentally disordered persons, with often inadequate support from the Health Service. On occasion it finds hospitals uncooperative and having to return people into the community with every expectation that they will be back into the criminal justice system within a short time."²²¹ PSNI Head of Custody Healthcare and Reducing Offending has issued a reminder to all custody suites that police custody should only be used as a place of safety in the most extreme cases and in each case a report must be submitted to the Head of Custody Healthcare. That is a welcome and positive commitment, the application of which will be monitored by the Committee and reported upon in due course.

In December 2014, the UK Government published its proposals to reform mental health laws in England and Wales.²²² Amongst the proposals are recommendations

²²¹ *Not a Marginal Issue – Mental Health and the Criminal Justice System*, Criminal Justice Inspection Northern Ireland (CJI), March 2010, page viii.

²²² *Review of the Operation of sections 135 and 136 of the Mental Health Act 1983*, the Department of Health and Home Office, December 2014.

that police cells should never be used as a place of safety to detain mentally ill young people and that they should only be used as a place of safety to detain adults when their behaviour is so extreme they cannot be managed elsewhere. If implemented, the recommendations will not extend to Northern Ireland as responsibility for such matters rests with the Northern Ireland Assembly.

In the Mental Capacity Bill, developed by the Department of Health, Social Services and Public Safety and the Department of Justice, it is proposed that the current definition of a place of safety, which includes police stations, will be preserved with provision that a police station should only be used if no other suitable place is available. In responding to the consultation on the Bill, the Performance Committee has emphasised its concerns and stated that it would welcome further consideration of this issue by both Departments.²²³

The main purpose of the aforementioned Mental Capacity Bill is to provide a statutory framework to allow for interventions to be made for those aged 16 years and above who lack capacity to make a specific decision regarding health, wealth or finance. The Bill is grounded on a number of principles which include, and build upon, the existing common law presumption of capacity and the common law principle of best interests. The Bill will place greater emphasis on the need to support people to exercise their capacity to make decisions if they can. If, on the other hand, it is established that a person lacks capacity to make a specific decision at a particular time, the Bill will provide an alternative decision making mechanism.²²⁴ The Department of Justice proposes extending the Bill to the Criminal Justice System. For PSNI that means that while any person over the age of 16 years is in the custody of the police, proposed interventions in relation to that person's health care (physical or mental) or personal welfare will be governed by the capacity based authorisation provisions of the Bill. The principle of capacity to consent to such treatment does not extend to the underpinning decision to be detained in custody for breaking the

²²³ The Performance Committee's response to the consultation is also discussed in Chapter 3 of this Human Rights Annual Report.

²²⁴ A person may lack capacity to make a decision for a number of reasons. It may be because of, for example, a stroke, an acquired brain injury, a learning disability or a mental illness and so the Bill has the potential to impact upon many people.

criminal law; detention may be imposed regardless of capacity. In responding to the consultation on the proposals, the Performance Committee emphasised to the Department of Justice the importance of ensuring that resources are in place so that police officers can avail of support and advice from healthcare practitioners when making decisions regarding capacity and that they are not required to conduct complex assessments of capacity.

11. POLICING WITH THE COMMUNITY

Police officers are required not only to comply with the Human Rights Act 1998 when carrying out their duties,²²⁵ they must also aim (i) to secure the support of the local community; and (ii) act in co-operation with the local community.²²⁶ Those functions complement each other. A human rights based approach to policing has been shown to enhance public confidence and integrate the police into the community. With the co-operation and knowledge of the community which it serves, the police are better equipped to protect the rights of all members of society, including the most vulnerable.

The Chief Constable agrees. Speaking publically in 2014 at an event on children's rights he said, "Policing with the community is based on an understanding that it is not just what we do that matters; but how we do it. For PSNI, keeping people safe is what we do; Policing with the Community is how we do it. I believe that human rights are a core element of Policing with the Community and act as an enabler for the delivery of effective policing and community confidence. Human rights are prioritised throughout the organisation. When considering use of force, or when deliberating over budget cuts, our organisation will always first look to our obligation and commitment to uphold the fundamental rights of the individuals and communities which we serve."²²⁷

The Policing with the Community 2020 Strategy, published in March 2011, makes an unequivocal statement of PSNI's commitment to implementing a policing with the community model. Monitoring the implementation of the 2020 Strategy is a key priority for the Policing Board and is carried out through the Partnership Committee. Following his appointment in June 2014, the Chief Constable reaffirmed his commitment to a policing with the community approach and he commissioned a

²²⁵ As per section 32 of the Police (Northern Ireland) Act 2000, PSNI's main duties are to protect life and property, preserve order, prevent the commission of offences and, where an offence has been committed, take measures to bring the offender to justice. In carrying out these duties, they must comply with the Human Rights Act 1998.

²²⁶ Section 31(A)(1) of the Police (Northern Ireland) Act 2000.

²²⁷ Chief Constable's speech from Children's Law Centre and Save the Children NI event, November 2014.

review and refresh of the 2020 Strategy. The Chief Constable believes that his vision of a 'Confident, Safe and Peaceful society' must be part of, and can only be achieved within, an all-encompassing policing with the community framework. Through the review work PSNI intends to consider how the 2020 Strategy could better reflect community needs and concerns and how it can more effectively shape behaviour and culture across every area of the Police Service. The initial stage of the review was internal to PSNI²²⁸ but PSNI briefed the Partnership Committee of the Policing Board and has agreed to consult externally with Policing and Community Safety Partnerships (PCSPs) and other key stakeholders.

²²⁸ The terms of reference for the review were drawn up internally by PSNI as opposed to being agreed through the Partnership Committee.

12. HUMAN RIGHTS AWARENESS IN THE PSNI

The culture and ethos of an organisation includes the way in which it sees itself and manages itself internally and the way in which it sees and interacts with others outside the organisation. A human rights culture depends upon a number of factors, most prominent of which are the promotion of human rights awareness throughout the organisation and an ongoing commitment to human-rights-based policing. Since it was established in 2001, PSNI has embraced the protection of human rights as a core function of policing. It has set out in detail the steps that have been taken to ensure that the policing focus in Northern Ireland remains on human rights, for example, by the introduction of a new police oath of office,²²⁹ publication of a Code of Ethics²³⁰ and the incorporation of human rights principles into all aspects of police policy, training and practice. The realisation of a positive human rights culture requires continuous attention and direction from PSNI leadership.

Although there is no simple empirical method of measuring a human rights culture, all of the monitoring carried out by the Policing Board does cumulatively demonstrate the existence or otherwise of a positive culture. The Performance Committee believes that it is demonstrated through the policies that the Police Service has in place, the training it delivers, the operational decisions it makes and the manner in which officers and staff interact with the community. While negative attitudes and behaviours of officers and staff can be gauged through monitoring the PSNI complaints and disciplinary processes there may be thousands of positive daily encounters that police have with the public which are not reflected. To get a more accurate sense of the extent to which police officers and staff are respecting and protecting the rights of all people in Northern Ireland, an analysis of feedback from the community on their experiences of policing is required.

²²⁹ The PSNI attestation for police officers states “I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all individuals and their traditions and beliefs; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof according to law.”

²³⁰ First published in 2003, and most recently revised and reissued in 2008, the PSNI Code of Ethics lays down standards of conduct and practice for police officers and is intended to make police officers aware of their rights and obligations under the Human Rights Act 1998.

The Policing Board seeks the views of the community through various public events, through the engagement work carried out by its Partnership Committee and through the human rights monitoring work carried out by the Performance Committee, in particular by the thematic review process.²³¹ Broadly speaking, there appear to be 3 key factors that influence the public's experience of policing:

- *Attitude* - treating people with respect, courtesy and compassion;
- *Equality* - treating people equally regardless of race, disability, religion, political opinion, age, gender, gender identity, sexual orientation, socio-economic status etc. While certain police actions may give rise to a perception of inequality, for example based on grounds of political opinion, if that perception is in fact misconstrued it may be addressed if the police explain why they took the action that they did, i.e. if they are willing to be accountable;
- *Accountability* – explaining to the individual (or the wider public depending on the circumstances) why the police are taking/took a particular course of action, for example, why a person has been stopped and searched; why a road has been closed; why there has been a delay in responding to a call out.

All 3 are enhanced by the continued promotion of a human rights culture. Human rights do not bend to political will or to the demands of the majority; instead decisions will be objective, accountable and aimed at protecting and upholding the fundamental rights of all members of the community and all police officers and staff who serve the community. A Police Service which is judged to be impartial and which has the protection of human rights as its core value will secure the respect, support and help of local communities and thus will more effectively be able to tackle crime and keep people safe. The Performance Committee therefore welcomes the newly appointed Chief Constable's commitment to building upon the PSNI's human rights based approach.

²³¹ The Policing Board has published four human rights thematic reviews which considered policing issues pertaining to domestic abuse; children and young people; Lesbian, Gay, Bisexual individuals and Transgender individuals; and stop and search and stop and question powers under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007. As discussed in Chapter 9 of this Human Rights Annual Report, the Performance Committee has commenced a human rights thematic review examining the policing of race hate crime.

13. PRIVACY, DATA PROTECTION AND FREEDOM OF INFORMATION

The PSNI holds a vast amount of personal data on individuals. Some of that information will have been provided to the police by the individuals themselves, some will have been obtained from partner organisations, some will have been obtained from other information sources during the course of investigations and some will have been gathered as intelligence through the use of covert policing techniques. All police officers and staff must exercise a great deal of care when obtaining, recording, using and disclosing any information that relates to a person's private life, regardless of whether it is secret or more routinely available information. Confidentiality of information will not always be guaranteed however as it may be subjected to onward disclosure in the performance of police duty, in compliance with data protection, freedom of information or other legislation or in connection with investigations or legal proceedings. If any police officer or member of the civilian staff receives information which suggests there may be a threat to life, the matter must be referred to a line manager immediately who will then deal with the threat in accordance with established protocols.²³²

A failure to handle personal data correctly constitutes misconduct and, in the case of police *officers*, a breach of Article 3 of the Code of Ethics.²³³ All police officers and members of the police civilian staff are subject to the Data Protection Act 1998 which creates a number of criminal offences for the mishandling of personal data. Furthermore, inappropriate handling of information may put an individual's life in danger contrary to Article 2 ECHR (the right to life). Misuse of information may also infringe Article 8 ECHR (the right to respect for private and family life, the home and correspondence). Mishandling of information also has the capacity to damage public confidence in the police. There is clearly therefore a number of important rights to be considered and balanced in respect of the handling of personal data.

²³² As set out in *Threat to Life*, PSNI Service Procedure 15/2012.

²³³ Article 3 of the Code of Ethics relates to privacy and confidentiality. Sub-Article 3.1 states, "Police officers shall gather, retain, use and disclose information or data in accordance with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights and shall comply with all relevant legislation and Police Service policy and procedure governing the gathering, retention, use and disclosure of information or data."

PSNI's obligations, whether under the Data Protection Act 1998 or Article 8 ECHR, extend beyond the manner in which personal data is managed. For example, Article 8 ECHR will be engaged when police exercise powers such as stop and search, arrest, detention, surveillance, the taking and retaining of biometric materials and photographs and so on. Tactical decisions may engage the Article 8 rights, for example, of residents during outbreaks of public disorder in their locality. Article 8 is not however an absolute right; there may be a lawful interference with it provided that it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others and is proportionate.

If, for example, reliable intelligence suggests that a person is planning to commit an offence that puts a life or lives at risk, PSNI will not only be justified in interfering with the Article 8 right of the suspect and, in such circumstances, the Article 5 right to liberty through the use of powers to arrest and detain, they will be obliged by Article 2 ECHR to take proactive steps to intervene to protect life and may in doing so interfere with the suspect's Article 8 and Article 5 rights. Importantly, however, the suspect does not lose and has not relinquished those rights. Every proposed interference with Article 8 or Article 5 must be capable of justification on grounds that the interference was in accordance with the law, in pursuit of a legitimate aim and necessary in a democratic society for one of the prescribed reasons.

A recently concluded judicial review is useful in illustrating this point.²³⁴ The applicant in the case was suspected of processing/collecting information likely to be of use to terrorists. During the course of a search of the applicant's house, police took possession of a letter sent to the applicant by his solicitor. Despite objections from the applicant's solicitor that the letter was legally privileged and thus could not be read by the police, the police opened and read the letter. PSNI said they took this action as they were concerned that the letter might contain details of police officers against whom there was a potential Article 2 risk. PSNI argued in court that the interference with the applicant's Article 8 right was justified because it was performed

²³⁴ *Kyle Jones's Application* [2014] NIQB 136.

for the legitimate aim of protecting the Article 2 rights of the police officers. The High Court judge however rejected this argument and found that PSNI had breached Article 8 by opening and reading the letter. The judge held that the decision to open the letter flowed from “a bare and untested suspicion” and that there was no statute, statutory scheme or policy underpinning the decision which was “clearly flawed as not being in accordance with the law.” The judge commented, “If a mere suspicion was sufficient to override an individual’s Article 8 rights, Article 8 would be largely devoid of content.” The judge also found that PSNI’s refusal to give an undertaking that further communications between the applicant and his solicitor would not be opened was in breach of Article 8.

Compliance with the Data Protection and Freedom of Information Acts

The Performance Committee monitors PSNI compliance with the Data Protection Act 1998 and the Freedom of Information Act 2000. PSNI policy sets out the framework and contains guidance for officers and staff on data protection, freedom of information and records management.²³⁵

The Data Protection Act 1998 provides individuals with an entitlement, subject to specified exemptions, to access personal information held about them by businesses and organisations in the private and public sectors. It also requires that personal information is fairly and lawfully processed, processed for specified and lawful purposes, adequate, relevant and not excessive, accurate and up to date, not kept for longer than is necessary, processed in accordance with the rights of the data subject, secure, and not transferred to other countries without adequate protection.

All police officers and staff receive data protection training upon appointment. In order to ensure compliance PSNI Data Protection Office conducts daily electronic audits of PSNI information systems and staff are required to complete a return. Where information comes to PSNI’s attention that there may have been a data protection breach, PSNI’s Discipline Branch opens a criminal investigation file.

²³⁵ *PSNI Data Protection Policy*, PSNI Policy Directive 06/08; *Freedom of Information*, PSNI Service Procedure, 07/2013; and *Records Management*, PSNI Service Procedure 03/2012.

During 2012/2013 Discipline Branch opened 9 criminal investigation files in respect of police officer data protection breaches. In 2013/2014 there were 5 criminal investigation files opened.

There were 2 complaints made directly to PSNI between 1 April 2013 and 31 March 2014 in respect of data protection. One was resolved by PSNI, while in the other case a formal complaint was made to the Information Commissioner's Office (ICO).²³⁶ A further 5 data protection complaints were made to the ICO in which the ICO decided further information ought to have been disclosed by PSNI. In this context, it is worth noting that PSNI processed a total of 4,973 subject access requests during this one year period.

The Freedom of Information Act 2000 provides individuals with the right to request information held by public authorities. Provided the information requested does not fall within an exempt category, the public authority must confirm whether it holds the information and it must normally provide it to the applicant within 20 working days. The Freedom of Information Act also requires public authorities to have in place a publication scheme which requires the authority to make certain kinds of information routinely available.²³⁷

Between 1 April 2013 and 31 March 2014, PSNI received and processed 1,000 requests made under the Freedom of Information Act. During the same period, ICO issued 3 decision notices in respect of complaints made against PSNI regarding the Freedom of Information Act. In 2 of the cases the complaint was not substantiated and the ICO upheld the PSNI's refusal to provide the information.²³⁸ In the other case the ICO upheld a complaint that PSNI had failed to respond to the complainant within the statutory timeframe of 20 working days. There was no adverse finding in

²³⁶ The purpose of the ICO is to uphold information rights in the public interest throughout the United Kingdom. It does this by promoting good practice, ruling on complaints, providing information to individuals and organisations and taking appropriate action when the law is broken. In addition to considering data protection complaints, the ICO also considers freedom of information complaints.

²³⁷ PSNI has a publication scheme which sets out categories of published material that is available to the public. Details of the publication scheme can be accessed through the PSNI website: http://www.psnipolice.uk/index/about-us/publications/publication_scheme.htm

²³⁸ ICO Decision Notice reference numbers FS50511571, 11 February 2014; and FS50499821, 17 December 2013.

the case however the ICO did find that there was delay in PSNI's response.²³⁹ During the first 6 months of the 2014/2015 financial year to date (i.e. 1 April 2014 to 30 September 2014), the ICO has issued 4 decision notices in respect of complaints made against PSNI regarding the Freedom of Information Act. In 2 of those cases the complaint was not substantiated²⁴⁰ and in 1 case the ICO found that PSNI was correct to apply an exemption but had failed to respond to the complainant within 20 working days.²⁴¹ In the other case the ICO found that PSNI held requested information which had not been provided to the complainant and which had not been refused in reliance on any of the exemptions contained within the Freedom of Information Act.²⁴² The ICO therefore required the PSNI to undertake a fresh search for the information requested by the complainant, ensuring that all relevant departments and individuals were consulted to identify any relevant information. Having done so, the PSNI was required to provide the complainant with the requested information to the extent that it was held and was not exempt.

²³⁹ ICO Decision Notice reference number FS50509573, 10 December 2013.

²⁴⁰ ICO Decision Notice reference numbers FS50534762, 7 August 2014; and FS50536801, 28 August 2014.

²⁴¹ ICO Decision Notice reference number FS50529928, 14 April 2014.

²⁴² ICO Decision Notice reference number FS50497628, 29 May 2014.

14. CHILDREN AND YOUNG PEOPLE

Policing with children and young people is a key issue for the Policing Board, with a human rights thematic review on the issue published in January 2011 and an update on the thematic published in February 2014. As evidenced throughout this Human Rights Annual Report, the Performance Committee regularly considers specific training, policy and operational matters insofar as they affect young people, for example, children and young people are specifically referenced in the following chapters of this Report:

- Chapter 2, Training – in this Chapter an update is provided in respect of last year's Human Rights Annual Report recommendations regarding children and young people training;
- Chapter 3, Policy – an update is provided on PSNI's proposals to introduce a test purchase of alcohol scheme involving young people aged 16 – 17. Concerns that proposed new mental capacity legislation will not extend to those under 16 years are also recorded in this Chapter;
- Chapter 5 – an update is provided on a judicial review heard by the UK Supreme Court concerning PSNI's 'Operation Exposure' in which images of children were released in the media;
- Chapter 9, Victims – the recent Independent Inquiry into Child Sexual Exploitation in Northern Ireland is highlighted. Also within this Chapter an age profile of victims of paramilitary style attacks is provided together with a consideration that the impact of such an attack can have on young victims;

A range of statistical information which is provided to the Committee is broken down according to age profiles, including the age of persons against whom various types of force is used, the age of persons against whom stop and search powers are used, the age of people who have made complaints to the Police Ombudsman's Office, and the age of victims of crime, including victims of domestic abuse. During 2013/2014, 9% (6,497) of victims of all types of crime recorded by the police were below the age of 18 years old. As regards specific offence type, 14% (1,793) of victims of violent offences involving injury and 61% (1,342) of victims of sexual

offences were below the age of 18. Adopting a broader definition of a 'young person', to include not just those legally defined as a child but all persons below the age of 25, this group (aged 0 – 24) accounted for 28% (20,171) of victims of all types of crime recorded by the police during 2013/2014. As regards specific offence type, 43% (5,661) of victims of violent offences involving injury and 73% (1,602) of victims of sexual offences were below the age of 25.²⁴³ Thus while the term 'policing with children and young people' frequently leads to discussion on important issues such as how the police deal with children who are in conflict with the law, the Performance Committee is mindful that children are more likely to be a victim of a crime than an offender, and that often child offenders have also been victims. This is a trend that PSNI has noticed through its review of healthcare in custody (discussed in Chapter 10 of this Human Rights Annual Report) and which it hopes to address by providing a more sophisticated approach to detention which focuses not only on traditional safer detention, but which also seeks to identify and address more complex needs. Likewise, the Youth Engagement process (detailed below) is intended to provide a more holistic approach to addressing youth offending.

Through briefings received from PSNI and other statutory agencies, and through trends and patterns identified in statistics, specific issues or concerns regarding children and young people can be identified by the Policing Board and raised through the appropriate channels. However the Board relies heavily on the valuable input and feedback provided by those organisations who work directly with young people and who can provide evidence, based on experience, of the impact that specific police action has had on young people or the impact that police policy or proposed action is likely to have. Their insight and expert knowledge often prompts the Policing Board to consider issues from a different perspective. For example, the Policing Board is currently considering how to develop a mechanism to routinely measure confidence levels of young people in the police. That is further to a target in the Policing Plan 2014-2017 which was included further to youth organisations challenging the Policing Board as to the fact that views on policing collected through the Omnibus survey every year only include people over 16 years old. Work to give

²⁴³ *Police Recorded Crime Statistics in Northern Ireland 1998/99 to 2013/14 - accompanying pivot tables relating to victim age and victim gender*, PSNI, July 2014.

effect to the target is being taken forward by the Policing Board in discussion with stakeholders. Through this work it is hoped that young people will be provided with the opportunity to express their views directly to the Policing Board and the PSNI and to have those views listened to and acted upon. A recently published study on police legitimacy amongst young people is considered in the next section of this Chapter. The remainder of the Chapter provides detail on two other key issues not discussed elsewhere in this Human Rights Annual Report: Youth Engagement Clinics and Disclosure of Criminal Records.

POLICE LEGITIMACY AMONG YOUNG PEOPLE

A study recently published by Queen's University Belfast suggests that young people's views on the PSNI are driven by feelings of social inclusion and exclusion rather than traditional, sectarian loyalties.²⁴⁴ Over 800 teenagers aged 14-16 from a range of geographical areas, economic, community and ethnic backgrounds were surveyed as part of the study which set out to examine the causal dynamics underpinning young people's relationships, and views of, the police. Most young people strongly agreed (14%), agreed (38%), or neither agreed or disagreed (33%) that police do a good job as a whole, but a small minority disagreed (11%) or strongly disagreed (4%).

Most respondents (80%) had previously had some form of interaction with the police. Most of these respondents reported that the encounters they had had were positive but there were also some negative experiences reported. Such negative experiences occurred most frequently where the interaction involved the police asking the young people to 'move on' or in situations where the young person was in trouble, as opposed to interactions where, for example, the police were providing a talk at a school or youth club. While this may not be a particularly surprising finding, it does emphasise the need for PSNI to continue to ensure that it creates opportunities for police officers to interact with young people in non-confrontational scenarios and in neutral environments. A recommendation to that effect was made by the Policing

²⁴⁴ *The Dynamics of Police Legitimacy Among Young People*, L. Devaney, S.Pehrson, D. Bryan and D.Blalock, December 2014. This research was carried out by academics from Queen's University Belfast and was funded by the Office of the First Minister and Deputy First Minister.

Board in 2011 in its children and young people human rights thematic review²⁴⁵ and a recommendation was also made by the Policing Board's Youth Advisory Panel in 2013 that consideration should be given as to how visits to schools and youth groups could incorporate TSG and Response officers.²⁴⁶ The Performance Committee will therefore make no further recommendation in relation to opportunities for young people to meet with police officers; however the Committee does expect the PSNI to treat the recommendations in the thematic review and Youth Advisory Panel report as ongoing commitments.

An interesting finding in the Queen's University study was the fact that around one quarter of respondents viewed the police as unaccountable. That is despite the fact that, as recognised by the researchers, "Northern Ireland has perhaps one of the most comprehensive systems of police oversight and accountability in the world."²⁴⁷ Most respondents had not heard of the Police Ombudsman (66%) or the Policing Board (58%) and a similar number did not know whether or not both organisations were part of the PSNI or were independent. The report emphasised the importance of young people understanding the accountability mechanisms in place so that "young people learn that the police are accountable to the public rather than a force unto themselves."²⁴⁸

The report suggests that improvements could be achieved by police visiting schools and/or by citizenship education programmes in schools. Initiatives such as the stop and search information card, referred to in Chapter 4 of this Human Rights Annual Report, should also assist with making young people better aware of their rights and the existence of the independent complaints mechanism provided by the Police Ombudsman's Office. Both the Police Ombudsman's Office and the Policing Board have in recent years increased and improved their social media presence. However

²⁴⁵ Recommendation 29, *Human Rights Thematic Review: Policing with Children and Young People*, Northern Ireland Policing Board, January 2011.

²⁴⁶ Recommendation 4, *Research of PSNI Officer's Perception of Young People in North Belfast*, Northern Ireland Policing Board, June 2013.

²⁴⁷ *The Dynamics of Police Legitimacy Among Young People*, L. Devaney, S.Pehrson, D. Bryan and D. Blaylock, December 2014, page 30.

²⁴⁸ *Ibid.*

there clearly is scope for increasing young people's knowledge of police accountability, how it works and why it is important.

The Queen's University report not only described attitudes and experiences, but also assessed the causal dynamics of police legitimacy. The researchers pointed to the central role of identification with society, that is, the sense of commitment, pride and importance that young people feel in relation to their belonging to wider society. It said:

Across time, identification with wider society emerged as the most important antecedent of both police legitimacy and the perception that they serve people like oneself, which in turn predicted participants' self-reported likelihood of cooperating with the police and avoiding crime and antisocial behaviour. Thus, those who lacked such a sense of investment were more likely to see the police as oppositional to their interests, to lack a sense of obligation to them, and hence more likely to say they would engage in crime and antisocial behaviour. The model strongly supports a relational account of compliance with the law (whereby the police are seen to be 'on the same team', embodying the norms of a wider social order) rather than an instrumental one (whereby people comply in order to avoid punishment). Crucially, individuals lacking such identification were not limited to a particular demographic. Across the range of social and economic backgrounds represented in our study, there are those who feel strongly identified with wider society and those who do not.²⁴⁹

The report also pointed to the fact that the public frequently expect the police to move young people on when they are not necessarily doing anything wrong:

While such requests may be motivated by genuine fears of crime and antisocial behaviour, it is crucial to appreciate that these problems are unlikely to be tackled by excluding young people from public space. On the contrary, it requires the active support of young people themselves, and such support

²⁴⁹ *Ibid* page 31.

risks being undermined by routinely treating them as suspicious. We therefore suggest that the manner of engagement with the adult population is important if the public are to appreciate what is and what is not a reasonable expectation of how the police use their authority. A desire to engage with the public should therefore not discourage the police from affirming principles of fairness in dealing with young people, even when this is not the most popular course of action.²⁵⁰

That is a sentiment which is endorsed by the Performance Committee. The Policing Board's Youth Advisory Panel has found through its research that a large amount of police time is spent responding to complaints from the public about groups of young people congregating in a public space.²⁵¹ Young people are entitled to freedom of movement and peaceful assembly²⁵² and those rights cannot be interfered with simply because another member of the public has an unfounded fear that they are 'up to no good'.

YOUTH ENGAGEMENT CLINICS

Youth Engagement Clinics were initiated by the Department of Justice in 2012 in response to a recommendation of the *Youth Justice Review* and in conjunction with partner agencies as a means of tackling the causes of delay in youth cases and reducing re-offending by young people. The Clinics were piloted in A District (North and West Belfast), B District (East and South Belfast) and in part of D District (Carrickfergus and Newtownabbey).

Youth Engagement requires the PSNI, in conjunction with the PPS and Youth Justice Agency (YJA), to ensure that youth cases suitable for non-court diversionary

²⁵⁰ *Ibid* pages 31 – 32.

²⁵¹ Recommendation 8, *Research of PSNI Officer's Perception of Young People in North Belfast*, Northern Ireland Policing Board, June 2013 recommends that, "PCSPs should be encouraged to develop an awareness campaign about the right of children and young people who are not involved in any criminal activity to congregate. This could also include intergenerational work as there appears to be a misunderstanding on the part of communities that young people congregating is a crime, when this is not the case. Local youth workers may also be able to assist the police in speaking to those who have complained."

²⁵² As per Article 11 of the ECHR and Article 15 of the United Nations Convention on the Rights of the Child.

disposal are identified and progressed as such at an initial stage rather than at the prosecution stage which seems to be happening in a large number of cases at present. The scheme involves young people, whose cases have been identified by the police and the PPS as being suitable for a diversionary disposal, attending a Youth Engagement Clinic whereby they will meet with a police Youth Diversion Officer and a YJA practitioner to discuss their options. Whilst a young person may be referred to a Clinic even if they have not admitted guilt, the diversionary disposal itself can only be delivered once the young person has admitted guilt. Diversionary disposals available following attendance at a Youth Engagement Clinic include an informed warning, restorative caution or a youth conference. If the case is to be contested in court, the case will be listed for an early hearing at the youth court.

The aim of the Youth Engagement initiative is to further divert young people who have committed low-level offences away from court and into a reparative process, with the option of support or intervention at an earlier stage. The average processing time for Clinic cases during the pilot was 39 days, which is 14 days faster than other non-Clinic diversionary disposals. It is also hoped the initiative will improve processing times for youth cases that are unsuitable for diversionary action.

Youth Engagement Clinics were subject to an Equality Impact Assessment (EQIA) which was issued for consultation by the Department of Justice in November 2013. The purpose of the consultation was to check that the Department had correctly analysed the equality impacts of the Youth Engagement approach. In responding to the EQIA consultation the Policing Board highlighted that monitoring mechanisms should be put in place to ensure that referrals to the Clinics and the manner in which they are operated is consistent across all police Districts. The EQIA identified that external factors, such as the flag protests, may have impacted upon the number of referrals police made to the Clinics during the pilot period. This is concerning. If a child commits an offence and is eligible and willing to participate in Youth Engagement, then a referral should be made. It should not be the case that just because the child happens to have committed the offence during an operationally busy period that they are instead referred to the PPS to be processed in the usual manner and are not provided with the opportunity to avail of Youth Engagement.

Clearly some Districts will be more affected by external factors than others. The Policing Board therefore suggested in its response to the consultation that there needed to be measures put in place to ensure that regardless of other operational demands on Districts, there are sufficient resources in place to ensure that the smooth running of the Youth Engagement scheme is not affected.

Further to the EQIA consultation, the Department of Justice indicated in April 2014 that a decision had been taken to roll the Clinics out across Northern Ireland. The Chair and Vice Chair of the Policing Board's Partnership Committee met with PSNI, the Youth Justice Agency and the Department of Justice in May 2014 to discuss this decision. PSNI has developed a training course for Response and Neighbourhood officers which will be delivered in each District prior to roll-out of the Clinics in that area. Youth Diversion Officers have also been trained. As at 31 December 2014, the Clinics have been rolled out and are operating across the whole of Belfast, in most of D District (Antrim, Carrickfergus and Newtownabbey) and all of H District (Ballymena, Ballymoney, Coleraine, Larne and Moyle). The Clinics should be operational across the remaining Districts early in 2015.

Recommendation 9

PSNI should provide a report to the Performance Committee in September 2015 in which the operation of Youth Engagement Clinics is evaluated. That report should include detail on the number and nature of referrals made in each District. The report should also explain the monitoring mechanisms that are in place to ensure that practice is consistent across all police Districts. It should set out the measures that are in place to ensure that there are sufficient resources to ensure the Youth Engagement scheme is not affected by seasonal priorities.

DISCLOSURE OF CRIMINAL RECORDS AND OTHER POLICE INFORMATION

An issue which the Performance Committee has considered in some detail during 2014 is the disclosure of criminal records and other police information which relates to offending or alleged offending by a young person. The use of criminal records and

other information for vetting a person's suitability for employment or volunteering is a well-established practice. Such vetting is compulsory where the position involves working with children and vulnerable adults and it is clearly important that any relevant information which suggests a potential employee or volunteer may pose a threat to the well-being of any person is considered properly before that person is engaged.²⁵³ Employers may obtain criminal record information on potential employees and volunteers through *AccessNI*. There are 3 different types of vetting illustrated by the table below. PSNI are only involved in applications for enhanced disclosure; they do not deal with basic or standard checks.

Types of AccessNI criminal record check²⁵⁴

Type	What for	What's checked
Basic Criminal Conviction Certificate	-Government employment -Working in airports -Public Service Vehicle licensing, -Employment not working with vulnerable groups.	All unspent criminal convictions held on the NI criminal history database and Police National Computer (PNC). Information about offences spent under the Rehabilitation of Offenders (NI) Order is not provided.
Standard Criminal Record Certificate	-Security industry licence, -Professional employment (solicitor, accountant etc)	All convictions held on the NI criminal history database and all convictions, cautions, reprimands and warnings recorded on the PNC. Information about spent convictions is provided.
Enhanced Enhanced Criminal Record Certificate	-Working with children & vulnerable adults -Taxi driving licences	A standard check plus any check of local police information that might be relevant to the post being considered and information from Independent Safeguarding Authority's children and adults barred list and similar lists in Scotland.

²⁵³ As per the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

²⁵⁴ This table of information was obtained from: *A Managed Approach. A Review of the Criminal Records Regime in Northern Ireland*, Sunita Mason (commissioned by the Department of Justice), 2011.

Concern has been expressed by some stakeholders that through the disclosure of information relating to low level offending, young people's futures may be unfairly jeopardised by misbehaviour while growing up. That is a view echoed by a recent independent parliamentary inquiry into the operation and effectiveness of the youth court in England and Wales, which was chaired by Lord Alexander Carlile of Berriew CBE QC.²⁵⁵ The inquiry recommended that children who committed non-serious and non-violent offences who have stopped offending should have their criminal record expunged when they reach 18 years.

The Review of the Youth Justice System in Northern Ireland, the 'Youth Justice Review', which was commissioned by the Department of Justice, reported in 2011. It recommended that out of court diversionary disposals should not be subject to employer disclosure. However, the Justice Minister did not accept that recommendation but accepted the findings of another review which recommended that diversionary disposals should be disclosed but if it involved a young person, the information should be disclosed only if the offence was recent.²⁵⁶ A filtering scheme came into operation in April 2014 whereby certain old and minor convictions and other disposals, such as diversionary disposals, are filtered out of Standard and Enhanced certificates after a certain period of time has passed. Thus the current position as regards the disclosure of diversionary disposals is as follows:

- Diversionary disposals (not including discretion) are recorded on a young person's criminal record for 12 months in the case of an informed warning and for 30 months in all other cases. While they remain 'live', they may be disclosed where the matter is subject to a standard disclosure check (but not a basic check). There is a possibility that information about the disposal could be disclosed as police information during an enhanced criminal record check even after the record expires, but only if the disclosure is considered by a

²⁵⁵ *Independent Parliamentary Inquiry into the Operation and Effectiveness of the Youth Court*, chaired by Lord Carlile of Berriew CBE QC, June 2014.

²⁵⁶ *A Managed Approach. A Review of the Criminal Records Regime in Northern Ireland*, Sunita Mason (commissioned by the Department of Justice), 2011. The Justice Minister's decision was reported upon in *Youth Justice Review Implementation Plan*, Department of Justice, January 2014.

PSNI Assistant Chief Constable to be relevant and proportionate to the position applied for.

- Discretionary disposals do not constitute a 'criminal record' thus they are not routinely disclosed through basic or standard checks. However, a record is kept of the disposal on police systems and may be disclosed where the matter is subject to an enhanced disclosure check but only if the disclosure is considered by a PSNI Assistant Chief Constable to be relevant and proportionate to the position applied for.
- Other police information may be disclosed as part of an enhanced check, including pending proceedings, unsuccessful prosecutions, intelligence and any other information that may have a bearing on a vulnerable group. It will only be disclosed once PSNI has assessed the veracity of the information, its relevance and the proportionality of the disclosure. Any decision to release the information is taken by a PSNI Assistant Chief Constable.

The governing framework for the disclosure of criminal records and related information to employers is ultimately a matter for the legislature. The rules are for the Northern Ireland Assembly to determine, not the PSNI. As noted above, the recommendation that out of court diversionary disposals should not be subject to employer disclosure has been rejected and a filtering system introduced whereby diversionary disposals will be disclosed for a fixed period of time.²⁵⁷ Even where that time period has passed, the diversionary disposal along with any other information held by the police may be disclosed as police information as part of an enhanced disclosure check, but only where that information is relevant and proportionate to the position applied for.

Some amendments to the criminal records framework have been proposed by the Department of Justice at Part 5 of the Justice Bill which was introduced to the Northern Ireland Assembly on 16 June 2014. Part 5 modernises arrangements for the disclosure of criminal records and allows for (amongst other things):

²⁵⁷ With the exception of a discretionary disposal for which a criminal record is not created, thus it will not be disclosed through a standard or enhanced check, although it may be disclosed as police information as part of an enhanced disclosure check, but only where that information is relevant and proportionate to the position applied for.

- Portable disclosures - currently, an individual has to apply for a new certificate for each job or volunteering opportunity for which a certificate is required as the information on it is only valid when issued. Updating arrangements will allow an individual to use their certificate for a variety of positions (i.e. to make it portable), and an online facility will be available to enable employers to establish whether the information on the existing certificate remains valid and up to date or whether a new certificate should be requested.
- Additional safeguards for enhanced criminal record certificates, for example:
 - When police information is sought as part of an enhanced disclosure application, the application must be sent to the “relevant chief officer” (currently it is just the “relevant police service” that the application must be sent to);
 - The chief officer determining whether information should be included in the certificate must “reasonably believe the information to be relevant” (currently they must just be satisfied that the information “might be relevant”);
 - Chief officers must have regard to a statutory Code of Practice;
 - A person may apply to the Independent Monitor to determine whether information provided by the police is relevant or ought to be included on an enhanced certificate.

The Department of Justice has proposed to add a clause to the Justice Bill which will introduce a review mechanism for criminal record certificates where convictions or disposals have not been filtered and which will require the Department to introduce guidance setting out how it will operate. The Department intends to carry out a targeted consultation with key stakeholder on the draft guidance.

Responding to the Justice Committee’s consultation on the Justice Bill, the Performance Committee made a number of comments in respect of Part 5. The Committee welcomed the proposed guidance on the new filtering rules and the proposed review mechanism. It appears to the Performance Committee that there is a lack of public knowledge as to the extent of information that might be disclosed during a criminal record check, in particular the disclosure of non-conviction

information such as diversionary disposals, therefore it would be important that the guidance is publically accessible and easily understood. The Performance Committee suggested in its consultation response that there should be targeted publicity of the guidance aimed for example at the legal profession and community/youth workers.

As the new filtering arrangements do not apply to the disclosure of police information on an enhanced certificate, the police are instead required to exercise professional judgement when determining what information to disclose. That judgement should be exercised within clearly defined parameters. Although the Justice Bill does propose to tighten up the relevancy test by making it a statutory requirement that the senior authorising officer “reasonably believes the information to be relevant” before authorising its release, the Performance Committee suggested that the wording could go further to expressly require that any disclosure must be in pursuit of a legitimate aim (as set out in Article 8(2) ECHR), necessary and proportionate. The Performance Committee supports the introduction of a Code of Practice for police officers which will hopefully provide more detailed guidance for the senior officer required to make such judgement calls. The Committee has asked that the Department of Justice consults with PSNI and the Policing Board when developing this Code.

ALYSON KILPATRICK BL
HUMAN RIGHTS ADVISOR TO THE POLICING BOARD
ON BEHALF OF THE PERFORMANCE COMMITTEE

APPENDIX 1: 2014 RECOMMENDATIONS

TRAINING	
1.	PSNI should continue to participate in an annual District Training Presentation Day to the Police Learning Advisory Council (PLAC) District Training Sub Group. That presentation day should be attended by senior police personnel with responsibility for setting strategic priorities and for ensuring the delivery of effective training across the PSNI.
POLICY	
2.	PSNI should publish all Policy Directives and Service Procedures that are currently in force on its website (subject to redaction of classified information). If any Policy Directive or Service Procedure is undergoing a review, this should be noted but the document should not be removed from the website until such time as it has been cancelled or an updated version issued. PSNI should provide the Performance Committee with a progress report in relation to the implementation of this recommendation within 3 months of the publication of this Human Rights Annual Report.
COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS	
3.	PSNI should amend Service Procedure 4/2013 (Handling Public Complaints and the Role of the Police Ombudsman) to include a policy on counter-allegations. The Service Procedure should remind officers of their duty to report criminality and that if an allegation of criminality is raised for the first time as a counter-allegation it may be treated as a failure of duty. Prior to making any amendment to Service Procedure 4/2013 PSNI should first liaise with the Office of the Police Ombudsman.
VICTIMS	
4.	The PSNI should within 3 months of the publication of this Human Rights Annual Report provide to the Performance Committee a report on progress made to implement the recommendations directed at the PSNI in the Report

	of the Independent Inquiry into Child Sexual Exploitation in Northern Ireland. That report should include the lessons learned by the PSNI from its own internal review of Operation Owl.
5.	PSNI should provide the Performance Committee, within 6 months of the publication of this Human Rights Annual Report, with an evaluation of its internal review on the service of ex-parte non-molestation orders and occupation orders. That evaluation should consider whether there has been any improvement in the length of time taken to serve orders, whether checks and balances put in place to oversee service of orders have been effective, and how the PSNI will ensure that victims are kept informed as to progress or delay in serving the orders.
6.	PSNI should review its training, policy and practices for responding to disability hate crime with a particular focus on the outcome rate for disability hate crime. PSNI should report to the Performance Committee on the outcome of that review within 3 months of the publication of this Human Rights Annual Report.
TREATMENT OF SUSPECTS	
7.	PSNI should review its policy and practice in respect of arrests under section 41 of the Terrorism Act 2000 to ensure that police officers have not reverted to using section 41 Terrorism Act 2000 in cases in which it is anticipated that the suspect is more likely to be charged under other legislation. The review should be completed within 6 months of the publication of this Human Rights Annual Report. Within 1 month of the conclusion of the review PSNI should report to the Performance Committee on the findings of the review and if required the steps PSNI proposes to take.
8.	PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report on the progress or otherwise of its review of healthcare within custody suites including the

	<p>extent to which it has secured the necessary input of health care professionals.</p>
<p>CHILDREN AND YOUNG PEOPLE</p>	
<p>9.</p>	<p>PSNI should provide a report to the Performance Committee in September 2015 in which the operation of Youth Engagement Clinics is evaluated. That report should include detail on the number and nature of referrals made in each District. The report should also explain the monitoring mechanisms that are in place to ensure that practice is consistent across all police Districts. It should set out the measures that are in place to ensure that there are sufficient resources to ensure the Youth Engagement scheme is not affected by seasonal priorities.</p>

**APPENDIX 2: IMPLEMENTATION STATUS OF OUTSTANDING
RECOMMENDATIONS FROM PREVIOUS YEARS**

		Implementation status
TRAINING: 2013 RECOMMENDATIONS		
1.	PSNI should, during 2014, deliver bespoke youth training to student officers at Police College, develop youth training to be delivered to police officers and civilian staff and recommence the delivery of its training course to police trainers on children, young people and human rights.	Implemented
2.	PSNI should report to the Performance Committee within 3 months of the publication of this Human Rights Annual Report on the training delivered to police officers and civilian staff in respect of children and young people. That report should detail the nature of the training delivered and to whom the training was delivered by role, rank and District. That report should also specify the training planned for the upcoming year including the nature of the training and the persons to whom the training is to be delivered by role, rank and District.	Implemented
3.	Each District Commander should include child protection training as a priority within his or her District training plan for delivery in 2014.	Implemented
TRAINING: 2012 RECOMMENDATIONS		
1.	The PSNI should provide the Human Rights and Professional Standards Committee with a written review of the training plan for police staff, with a particular focus on identifying the human rights training needs of police staff and how PSNI proposes to meet those needs and within	Implemented

	what time frame. That review should be provided to the Human Rights and Professional Standards Committee within 6 months of the publication of this Human Rights Annual Report.	
2.	The PSNI should deliver the child protection training as developed by A District trainers to all front line police officers.	Implemented
POLICY: 2013 RECOMMENDATION		
4.	In the event that PSNI decides to introduce a test purchase of alcohol scheme it should notify the Performance Committee of that decision and, in advance of any introduction of the scheme, provide to the Committee a detailed briefing on the operation of the scheme with a particular emphasis on those measures intended to protect the welfare and safety of children.	Implemented
POLICY: 2012 RECOMMENDATION		
3.	The PSNI should forthwith publish, on its publicly accessible website, those policies that have been finalised.	Implemented
OPERATIONS: 2012 RECOMMENDATION		
6.	The PSNI should consider whether the same, or a similar card, to that developed for young people should be handed out to all persons who are the subject of a stop, search and/or question under PACE, TACT or JSA.	Implemented

COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS:**2013 RECOMMENDATIONS**

5.	PSNI should put in place a system which identifies trends and patterns in OPONI policy recommendations. If recurring recommendations are made, the system should highlight these and require PSNI to take further action. That system should be put in place within 6 months of the publication of this Human Rights Annual Report. PSNI should thereafter provide the Performance Committee with an annual report highlighting trends and patterns in OPONI policy recommendations and any recurring recommendations. The report should also outline how lessons learned from the OPONI investigations have been communicated throughout the Police Service and how they have resulted in organisational change.	Outstanding
6.	PSNI should report to the Performance Committee, within 6 months of the publication of this Human Rights Annual Report, on the processes it has in place to monitor trends and patterns in complaints and misconduct matters arising in respect of civilian staff.	Implemented

COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS:**2012 RECOMMENDATION**

7.	The PSNI should consider the findings of the OPONI report on allegations of oppressive behaviour and present to the Human Rights and Professional Standards Committee the PSNI analysis of the findings together with its proposed means of reducing allegations of oppressive behaviour. That presentation should be made to the Human Rights and Professional Standards Committee within 6 months of the publication of this Human Rights Annual Report.	Implemented
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USE OF FORCE: 2013 RECOMMENDATION		
7.	PSNI should publish forthwith its Manual of Policy, Procedure and Guidance on Conflict Management. Only those parts of the policy that cannot be published due to the information being of a confidential nature should be redacted.	Implemented
COVERT POLICING: 2013 RECOMMENDATION		
8.	In the course of the post-implementation review of UAS to be provided to the Policing Board PSNI should identify and explain the extent to which UAS has been used for surveillance purposes together with a detailed explanation of the framework within which PSNI uses UAS for overt surveillance and for surveillance which does not relate to a specific operation or investigation.	Outstanding
COVERT POLICING: 2012 RECOMMENDATIONS		
8.	On completion of its review of the Memorandum of Understanding, the relevant protocols and service level agreements between the PSNI and the Security Service, the PSNI will subject them to human rights proofing by the Policing Board's Human Rights Advisor and thereafter publish those documents to the greatest extent possible. In the event that PSNI decides not to publish any document or to publish all or any in a redacted form it should provide to the Human Rights and Professional Standards Committee the written reasons for so deciding.	Implemented
9.	The PSNI should forthwith put in place a formal training plan to ensure that all officers who are or may be involved in the application of the Regulation of Investigatory Powers Act 2000 receive all necessary training as and when	Implemented

	required. The provision of training should be kept under review and provided as and when required.	
TREATMENT OF SUSPECTS: 2012 RECOMMENDATION		
10.	The PSNI should provide to the Human Rights and Professional Standards Committee, within 6 months of the publication of this Human Rights Annual Report, a report on its review of healthcare provision in police custody suites. That report should include any specific consideration given to ensuring that all healthcare professionals are sufficiently experienced and independent from the police, particularly in respect of terrorism detainees.	Implemented

APPENDIX 3: HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS

2005 - 2013

Summary Implementation Record

	Implemented in full	Outstanding
2013 recs.	6	2
2012 recs.	11	0
2011 recs.	16	0
2010 recs.	4	0
2009 recs.	17	0
2008 recs.	20	0
2007 recs.	38	0
2006 recs.	42	0
2005 recs.	56	0
Totals	210	2

