Northern Ireland Policing Board

NORTHERN IRELAND POLICING BOARD

HUMAN RIGHTS ANNUAL REPORT 2016-17

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1 INTRODUCTION

This Human Rights Annual Report was prepared by the Board's former Human Rights Advisor Alyson Kilpatrick BL for the reporting period 2016-17.

As the Board was not legally constituted from 27 February 2017 – 30 November 2018, it was not possible to publish the report or its recommendations at that time.

Given the importance that is placed on this area of work, following reconstitution of the Board on 1 December 2018, the Board agreed that the report prepared should be progressed for publication.

The report records the work undertaken by the Advisor during 2016-17 and the recommendations made have now been progressed with the PSNI.

Its publication ensures there is continuity in the oversight reports produced in respect of assessing how the PSNI are meeting their human rights responsibilities.

2 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."[1] Those words were echoed in 2012 when the then Justice Minister for Northern Ireland was setting long-term Policing Objectives, with Objective 1 being, "that policing is delivered in a way that protects and vindicates the human rights of all and preserves the fundamental responsibility of the police to serve all parts of the community." Likewise the Policing Board's approach to fulfilling its statutory human rights monitoring function[2] has been taken forward since 2003 on the basis that a commitment to indiscriminately safeguarding human rights, the substantive and visible protection of those rights and the exposure of violations of rights if they do occur are the best means of building public confidence in policing and ensuring an effective and efficient police service which can police with the consent of the community.

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 introduction of a new police oath of office reflecting a commitment to human rights; publication of a Code of Ethics setting down the standards of conduct and practice expected of police officers and intended to make

[1] *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 4.1.
[2] The Policing Board is required by section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 to monitor the performance of the PSNI in complying with the Human Rights Act 1998.
[3] *A New Beginning: Policing in Northern Ireland*, paragraph 4.6.

officers aware of their obligations under the Human Rights Act 1998, the European Convention on Human Rights and other relevant human rights instruments;[4] and the incorporation of human rights principles into all aspects of police training.

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 the long-term focus on human rights was for PSNI to draw up a Human Rights Programme of Action annually in which the police would respond with specificity to the recommendations contained within the Policing Board's Human Rights Annual Reports. PSNI agreed with this proposal and has published a Human Rights Programme of Action each year since 2005.

The Board's Human Rights Annual Report 2015, published on 31 March 2016, made 14 new recommendations for PSNI to implement relating to issues such as human rights training, policy and guidance in relation to Domestic Violence Protection Notices, the operation of the Youth Diversion Scheme, the deployment of Small Unmanned Aircraft, the service of non-molestation orders and police detention. One recommendation remained outstanding from the Human Rights Annual Report 2014 which related to the publication of all Policy Directives and Service Procedures on the PSNI website.

In May 2016, PSNI published its Human Rights Programme of Action 2015/16.[5] The Programme of Action confirmed PSNI's acceptance of all 14 recommendations and outlined the steps taken, or proposed, to give effect to them and the outstanding recommendation from 2014. Since then the Performance Committee has received various reports from PSNI on its implementation of the recommendations and the Policing Board's Human Rights Advisor has met with many of the officers and staff responsible for taking forward the work. Progress is reported upon in the relevant chapters of this Human Rights Annual Report and in Appendix 2.

[4] Including the United Nations Code of Conduct for Law Enforcement Officials; the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and the European Police Code of Ethics.

[5] The *PSNI Programme of Action 2015/2016* is available to download through the PSNI website: https://www.psni.police.uk/inside-psni/our-policies-and-procedures/human-rights/

In his introductory comments to the 2015/16 Human Rights Programme of Action, Assistant Chief Constable Mark Hamilton comments that PSNI embraces the challenge brought by the Policing Board through its human rights monitoring work and acknowledges that while implementation of the recommendations demands time and resource, it leads to improvements in policing. The Performance Committee welcomes ACC Hamilton's comments.

This Human Rights Annual Report covers the period to September 2017.

3 TRAINING

Effective training in human rights principles and practice is fundamental to any organisation committed to compliance with the Human Rights Act 1998. That was recognised in the Patten Report where it was observed, "training will be one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel".[6] For that reason, it was recommended that, as a matter of priority, all members of the PSNI should be instructed in the implications for policing of the Human Rights Act 1998, and the wider context of the European Convention on Human Rights (ECHR).[7] It was also recommended that, "all police officers, and police civilians, should be trained (and updated as required) in the fundamental principles and standards of human rights and the practical implications for policing".[8] To reflect the ever changing environment in which police officers and staff operate, the emerging jurisprudence of the courts and the development of new international treaties and instruments, for example the United Nations Convention on the Rights of Persons with Disabilities,[9] training must be continually reviewed and up-dated.

The PSNI has striven to give full effect to the Patten recommendation and subsequent recommendations made by consecutive Human Rights Annual Reports. The PSNI recognises that training is essential to ensuring that police officers and staff are aware of the technicalities of protecting, respecting and fulfilling human rights law and that effective training is critical to providing a better and more instinctive understanding of the complex rights engaged and how those rights must be balanced. Human rights are no longer taught solely in a stand-alone lesson (although there is a dedicated introduction to human rights lesson for new recruits which is important and effective) but are integrated into all training in a meaningful and practical way. In particular, the PSNI accepted that the most effective training is interactive and delivered in operational scenarios.

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[6] *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 4.9.
[7] *Ibid.* Recommendation 142.
[8] *Ibid.* Recommendation 4.
[9] A copy of the Convention can be accessed at:www.un.org/disabilities/convention/conventionfull.shtml

During 2016/17 however it became clear that, in respect of Police College, Garnerville, there had been a reversal of the significant progress made until then. A review carried out by Police Scotland uncovered a number of issues in relation to culture and ethos within Police College, which required urgent and fundamental reform. That is discussed below. The review caused the Policing Board serious concern not least because culture and ethos is instilled at the outset and can influence student officers in their approach to policing when they leave Police College. The review did not suggest that the educational content of lessons was anything other than good quality but it found that the focus of training did not reflect sufficiently the Chief Constable's strategic objectives.

The Policing Board's Human Rights Advisor continued to review District Training, which is separate from the Police College, throughout 2016/17. She found the District Training to be thoughtful, well-structured and based upon the enduring principles of human rights and policing with the community.

Human Rights Training Advisor

For a number of years, the PSNI employed a dedicated Human Rights Training Advisor with specialist human rights knowledge and experience in delivering training. She was responsible for reviewing all training delivered at the Police College and within police districts and assisted in the production of training materials. The Human Rights Training Advisor's contribution, in the view of the Performance Committee, undoubtedly improved the training delivered to police officers and civilian staff and ensured that human rights were contextualised into operational policing scenarios. In particular, she worked closely with police trainers responsible for delivering training to, and thus influencing, the wider organisation. The Human Rights Training Advisor also had an important role in engaging with stakeholders to ensure that concerns, which could be addressed by training, were addressed.

It was reported in the Human Rights Annual Report 2015 that the Human Rights Training Advisor had left her post which was then vacant. A recommendation was made requiring PSNI, without delay, to recruit a Human Rights Training Advisor with sufficient

expertise and experience to ensure that the highest level of human rights training is delivered within the PSNI.[10] The Committee was assisted greatly by the PSNI Training Advisor who provided regular updates to the Committee through the Human Rights Advisor. In her absence a layer of internal oversight and scrutiny was lost, as was a valuable connection with the Committee. In response, PSNI advised that the recommendation would be considered as part of a wider corporate review of staffing across the organisation, including within the Police College, as part of its response to the impact of the Voluntary Exit Scheme. After considerable delay, over which the Committee continued to express frustration, the PSNI advised that it was trying to fill the position internally. In January 2017, an email was circulated amongst all police staff seeking expressions of interest from suitably qualified persons. As the post was considered an organisational priority, Districts and Departments were told they may not refuse to allow staff to apply and, should anyone be suitable, he or she must be made available for immediate release.

The PSNI has since recruited a new Human Rights Training Advisor. While the Committee expressed initial concern at the process, in particular whether an internal recruitment could secure a sufficiently experienced person who would have credibility with external stakeholders, the new Human Rights Training Advisor appears to be a person of considerable experience, expertise and independence of approach to ensure that human rights training will, once again, receive due attention. The Committee believes that the absence of a Human Rights Training Advisor contributed at least in part to the issues identified by Police Scotland.

The Board's Human Rights Advisor has met with the PSNI Human Rights Training Advisor to discuss the remit of his role and whether he will receive sufficient support and autonomy within the PSNI to achieve the programme of reform required. He explained his strategy, his priorities and how he intends to measure the success of human rights training. The arrangements for filling the post appear to be adequate and the Police College management team have indicated to the Board's Human Rights Advisor that

[10] Recommendation 1, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

they are committed to taking forward recommendations arising from previous reports and forthcoming reviews which will be carried out by the new Training Advisor.

As the Committee has reiterated, a police officer's ability to carry out his or her duties depends on excellent training which must aim to produce officers with a genuine understanding and commitment to respecting and fulfilling the human rights of public and colleagues alike. A positive human rights culture is integral to that. The Committee's concern about a change in culture and practice was borne out by a review of the Student Officer Training Programme conducted by Police Scotland.

Review of Student Officer Training Programme: Police College

In September 2016, following concerns about the examination process,[11] Police Scotland were commissioned by the Chief Constable PSNI to carry out a review of the Police College (Garnerville).[12] On 26 October 2016, a report was produced which contained findings and made 34 recommendations.[13] The recommendations were sub-divided into those for which an immediate, short term, medium term or long term response was required.[14] The review focused upon: content of the Student Officer training Programme (SOTP); culture within Garnerville; verification of examinations and assessments; accreditation and the relationship with the Ulster University; and the leadership and governance of Garnerville. The review concluded that Garnerville is "rightly demanding" but placed too great a strain on students and staff. The most critical aspects of the review related to discipline, described as "overly militaristic" and focused on punitive measures. Ultimately, this was seen as undermining of equality, fairness and respect with a likely negative impact on public confidence. The content of the training course did prepare officers to serve their communities with an effective range of

[11] The report was initially commissioned when it was discovered, in June 2016, that some student officers breached the confidentiality agreement linked to the examination process. The confidentiality agreement is a signed contract between a student officer and the PSNI not to disclose details of the content of examinations, without proper authority. Student officers are also subject to the Student Officer Code of Ethics.
[12] Garnerville delivers all foundation training, some District training and coordinates training priorities across the PSNI.
[13] *Police College Review September 2016*, Police Scotland, 26th October 2016.
[14] Short term meant by 30 November 2016. Medium term meant by end of March 2017. Long term meant by a date to be agreed.

training methods employed but lacked sufficient opportunities to equip officers with experience and confidence. In so far as the review is particularly pertinent to this Human Rights Annual Report it can be summarised as follows.

Culture within Garnerville

The review was positive in that it recorded a key driver was the upholding of high standards of behaviour, skill and knowledge. It was also found that Foundation Training was clearly focused on ensuring officers met the high standards demanded and trainers were clearly committed to their role. However, it was also found that the drive to meet behavioural standards had inadvertently affected the overall learning environment with some officers and trainers reporting a culture that was not conducive to a "safe learning environment"[15] and disconnect between the training delivered and the Policing with the Community (PWC) ethos of the PSNI. Furthermore, there was evidence of inconsistency in standards, for example in dress, discipline and terms of address, between students and those exhibited by trainers and other visitors to the training environment.

In respect of discipline management, a punitive culture more closely associated with "a pseudo-militaristic" training environment had re-emerged.[16] Of particular note, was the 'all for one' ethos engendered by the discipline management that was more likely to undermine individual accountability and an ethos of 'delivering for the common good'.[17] Students also reported that the issue of 'keeping yourself right' was to the fore with some trainers also being over-bearing. The latter was understood by students as preparation for dealing with "antagonistic behaviour from members of the public."[18] Students were required to work very long hours which undermined the building of healthy work/personal balance.

[15] Recommendation 1 is directed to that finding.
[16] Examples given were of press-ups in uniform on the first day of the residential course, running distances in business attire, show parades used as punishment for entire courses in response to individual failure of standards. Furthermore, students were required to march around Garnerville with Drill being over emphasised.
[17] Two recommendations (1&2) relate to that finding.
[18] Recommendation 6 is directed at that finding.

The style and decor of Garnerville was out of step with a modern and progressive learning facility however it was recognised that under-investment in the physical estate was influenced by the intention to move premises.[19] In the short term however the available opportunity was not taken to use imagery and messaging to reinforce the PWC ethos. The imagery around Garnerville was more balanced towards the past than the present and future.[20] Ultimately, the culture within Garnerville was not considered to be conducive to a positive learning environment founded on mutual respect. This contrasted to the organisational style elsewhere within the PSNI, which was a developmental style.

It was also found that training was not sufficiently evolved to equip officers with skills in problem solving and collaborative decision-making. Students were focused on learning technical information rather than developing their application of learning to operational scenarios. The training did not incorporate sufficient external engagement and awareness to contextualise it and lacked strategic clarity.[21]

Student Officer Training Programme (SOTP)

The SOTP is a 22 week training course, which restarted in June 2014.[22] When a student is attested he or she commences front line policing within a Local Policing Team (LPT) and thereafter receives an additional two weeks post-foundation training. For the first two years of an officer's career, he or she remains on 'probation'.[23]

The course content was found to be "fit for purpose" and "producing functional officers with core policing skills" but a gap was identified by the insufficient emphasis on identifying and dealing with vulnerability. While a good deal of work had already been

[19] Desertcreat was expected to have been available at an earlier stage.
[20] Recommendation 4 is directed at that finding.
[21] Recommendation 5 is directed at that finding.
[22] Following a suspension of recruitment. By the date of the report there had been 21 intakes comprising 649 students.
[23] The probationary period lasts two years during which time there is further training and examination.

undertaken to heighten the focus on vulnerability,[24] more focus was considered necessary.[25] Garnerville did not take proper advantage of peer review, or student feedback and had little in the way of a formal process to identify longer term themes.[26]

Garnerville did not utilise to the greatest extent desirable practical exercises or simulated learning.[27] There was an over-emphasis on paper-based learning and pre-reading which was undermined by the over-emphasis on for example Drill, uniform and physical education. The intensity of the 22 week course had an adverse impact on the welfare and personal lives of some students, which required further attention.[28] This was compounded by the limited focus on broader personal development "necessary to equip officers with more than core policing knowledge and skills. Whilst not exhaustive this may include emotional intelligence, presentation skills, self-reflection, project management, collaborative working, problem-solving, personal resilience, negotiation skills and bespoke learning styles."[29] The Personal Resilience session[30] assists students to, amongst other things: understand the importance of resilience; assess their level of resilience and identify areas of stress; identify the cause of problems; apply tools and techniques; and it equips them with communication, suicide awareness, work/life balance.

On a positive note, it was recorded that PWC and the National Decision Model (NDM) were incorporated well within the entire programme with students reporting a high level of knowledge. What were less well incorporated (as also referenced above) were collaborative decision-making, partnership working and accountability. In particular, student officers had little if any interaction with members of the public during their

[24] For example, more training had been delivered on domestic abuse, sexual offences, child protection, hate crime, missing persons and adult safeguarding.
[25] Recommendation 12 is directed at that finding.
[26] Recommendations 8&9 are directed at this finding.
[27] Recommendations 6&7 are directed at this finding.
[28] Recommendation 13 is directed at that finding.
[29] Recommendation 10 is directed at that finding.
[30] Delivered by the Police Rehabilitation and Retraining Trust and funded by the Police Federation for Northern Ireland.

training and some had never been inside a police station. Therefore, it was found that greater opportunities must be developed to enable students to apply PWC in practice.[31] The examination process is to be refreshed to provide a greater focus on students' skills in these areas.[32]

Leadership and governance

SOTP recommenced in April 2014 with students and trainers taking up their positions simultaneously. As a result trainers did not have the benefit of an induction period during which they could develop their skills and understanding of their responsibilities. Between May 2014 and August 2016, the leadership of Garnerville changed considerably with "key posts... suppressed or not filled".[33] Ultimately, the issue appears to be one largely of resourcing with under-staffing and inappropriate role-filling identified as elements of that. The Policing Board has a role to ensure appropriate oversight mechanisms are in place.[34]

PSNI response to the Police College Review

On receipt of the review report the PSNI accepted the recommendations and formed an implementation team. In February 2017, the implementation team provided to the Policing Board an update on the progress made against each immediate, short or medium term recommendation.[35] A brief overview of the PSNI's response to recommendations, where relevant, appears below.

It was recommended that terminology routinely in use within the training environment should be amended to better reflect a modern police training environment, for example squad, drill and show parade. The terminology has been revised within all documents and on *PoliceNet.*[36] The revised terminology has been circulated to College staff and

[31] Recommendation 6 is directed at that finding.
[32] Recommendations 13, 15 & 16 are directed at this finding.
[33] Recommendation 26 is directed at that finding.
[34] Recommendations 27-34 inclusive are directed at these findings.
[35] *Police College Review Implementation: Status Update Report,* PSNI, February 2017.
[36] The PSNI internal police intranet.

the Service Executive Team including by pages on *PoliceNet* and through the Implementation Project Newsletter known as the Police College News. By way of example, in November 2016 the Police College News advised of the change to terminology. It stated "This will have an impact not only within the Police College but across the entire organisation. The language that we use on a daily basis is really important; it sets a standard for us as a Service and helps embed our Policing with the Community culture."[37] The revision period continued until end January 2017 and extended slightly beyond those terms specified in the recommendation. For example, squad is now course, drill is now attestation preparation, show parade is now uniform inspection/room inspection, recruit is now student officer and civilian is now police staff.

The use of this revised terminology will be monitored until it is embedded within police culture. Internal and external partners, who have a direct input into SOTP, were engaged with to inform the revisions. A further recommendation was to cease the practice of students marching to and from classes. The practice of marching to and from classes ceased from October 2016 because, as it was explained to all College staff, the cessation of marching around the external environs of the Garnerville site is important in setting the tone and style of the training environment. Trainers were reminded that should not be confused with a reduction in appropriate and relevant standards.

It was recommended that in managing standards the approach should move from a negative and punitive style to a positive and developmental focus to reinforce PSNI's Policing with the Community ethos and service delivery. New Conduct and Performance Standards and Procedures, Code of Conduct and revised Standing Orders have been produced, which are given to all students during induction and are posted on *PoliceNet*. All Garnerville Staff have been provided with guidance and all interactions[38] are now audited and subject to regular review. These are also discussed at the newly formed Student Support and Development Panels.[39] Students are also provided with a revised handbook, which incorporates the new Student/Trainer Charter and Code of Ethics.[40]

[37] *Police College News* Edition 2, Foreword from Chief Inspector Shields, 25 November 2016.
[38] I.e. any management meeting or other engagement for a student's behaviour
[39] Established in response to recommendation 11.
[40] The Charter was introduced to meet recommendation 1f.

SOTP Conduct Procedures, SOTP Performance Below Standard Procedure, Student Officer Attendance Management Procedures, Student Officer Handbook and management forms have been developed. The Student Officer Handbook contains a Principal Statement "The aim of the SOTP is to develop and inspire resourceful and flexible police officers who consistently demonstrate policing with the community behaviours. Officers who will be accountable, keeping people safe by preventing harm, protecting the vulnerable and detecting offenders whilst upholding fundamental human rights and treating all with fairness, courtesy and respect. Officers who are collaborative, dynamic and responsive to meet the changing needs of the communities in Northern Ireland."

There is also a Policy Statement which states "The aim of the Charter is to support and enhance the partnership that exists between student officers and [SOTP] staff. The College is committed to work collaboratively with all students to provide the best training to equip you with the knowledge, understanding, skills, behaviours and abilities in preparation for operational service in the community."

In respect of the content of the SOTP a restructure was recommended to focus on the values, ethos and unique service oriented elements of policing to include the development of a bespoke critical thinking element to challenge officers' social and cultural awareness of the context of policing in Northern Ireland. The SOTP has been extended to 23 weeks with the first week dedicated to setting priorities such as: PWC; accountability; fairness, courtesy and respect; collaborative decision-making ; problems solving; National Decision Model (NDM); vulnerability; visit to operational district; meeting local community groups; and practical assessment. The style and tone of the intake day has been revised fundamentally. Copies of: SOTP week 1 breakdown; sample lesson plans; sample timetable for induction day; and a visit timetable have been provided.

The compulsory residential requirement of the course has been removed. Free accommodation continues to be available. A new Accommodation Procedure has been developed and produced which advises students that it is to "ensure that student

officers can best decide how to balance their personal and work commitments during training." Each student is provided with (but not required to occupy) a room for the first week. Thereafter, he or she determines whether to apply for accommodation for 4 or 23 weeks.[41] The physical environment of the Police College has also been changed to reflect a modern police service where the vision, values and ethos are front and centre. Imagery now better reflects the PSNI's PWC ethos. Garnerville has been refurbished and 'reimaged' but some modernising and refreshing is ongoing. A project for the redesign and rebuild of the Police College is underway.

Furthermore, a strategic objective which informs all material and displays available in Garnerville has been developed and is kept under review. The strategic objective, which merits repeating, states "To develop and inspire resourceful and flexible police officers who consistently demonstrate policing with the community behaviours. Officers who will be accountable, keeping people safe by preventing harm, protecting the vulnerable and detecting offenders whilst upholding fundamental human rights and treating all with fairness, courtesy and respect. Officers who are collaborative, dynamic and responsive to meet the changing needs of the communities in Northern Ireland." The strategic objective further commits, "Training shall be challenging but fair, delivered in a developmental learning style which is both accountable and supportive, aiming to maximise the potential of every student; All training delivered shall be operationally aligned and relevant, providing student officers with the necessary understanding, knowledge and operational skills required to fulfil their potential as an effective Constable; Development of confident, competent, capable police officers who are decision makers, able to problem solve and are confident in building and sustaining partnership working when necessary to achieve optimal outcomes; Practitioner leadership skills, both individual and operational, will be developed and reinforced within the training environment. When appropriate we will identify those who demonstrate the talent and potential to progress as future leaders; the programme shall incorporate effective quality assessment throughout to ensure that high standards are maintained with an ethos of continual improvement embedded within the training culture."[42]

[41] Not all students can live in – there is limited availability for rooms between weeks 5 to 23.
[42] Police College: Student Officer Training – Strategic Training Objective 2017.

The PWC element of the programme has also been revised with a renewed emphasis on embedding that ethos in all training to ensure that student officers understand the centrality of partnerships, collaborative decision making and accountability. Because the SOTP is now 23 weeks long, there is available an additional week to dedicate to embedding those core values. There has been established Content Coaching Panels which oversee course content with a particular focus on the core values and principles of PWC. The panels have reviewed some material and lessons. Copies of lesson plans in use pre-January 2017 and post-January 2017 were provided to the Board for comparison. They demonstrate a greater focus on aims and objectives, importance of a PWC ethos and challenge perceptions. To ensure that is 'made real' and carried into practice students are now informed during induction of their allocated district placement which is followed by a one day familiarisation visit to that station. During that visit they meet with a local community group.

A Blended Learning Design Working Group has been established to bring together a number of groups and individuals to jointly develop/design a protocol for learning. In other words the group will assess and thereafter develop the best method for delivering learning: whether online, in the classroom or a mixture of both. The Performance Committee reiterates its belief that online training (e-learning) may be appropriate for providing technical knowledge and lends itself to some aspects of the course, but human rights training cannot be delivered effectively 'at a distance'. The same can be said for any training which engages an emotional or intuitive element. Students need to be able to ask questions, explore their preconceptions, have their attitude challenged and encouraged to embrace the principles in all that they do. That requires face to face training. The Policing Board's Human Rights Advisor has previously commended the ability of police trainers to engage positively with students, but observed that some trainers appeared unprepared (having been given a script to read from) or overly constrained by time to really explore the issues. That was being addressed by the previous PSNI Human Rights Training Advisor in a programme she called 'Training the Trainers'. That was achieving real results. It is hoped that the new Human Rights

Training Advisor resumes this work and carries out an assessment of training needs both of students and trainers.

Recommendation 1

The PSNI Human Rights Training Advisor should assess the capacity of police trainers to deliver the renewed Student Officer Training Programme with an emphasis on human rights and policing with the community. That assessment should include a consideration of whether trainers are themselves sufficiently knowledgeable about their subject, skilled in the delivery of training and given sufficient time to engage with students during lessons. Thereafter, that assessment should be included in the PSNI's sequence of briefings to the Policing Board on the implementation of the Police Scotland recommendations.

Student officers now benefit from an Insights Personal Discovery and Team Effectiveness Programme and receive, from an external provider, a session on stress management and resilience. The Ulster University delivers two sessions (delivered outside of PSNI premises) on PWC. Students also receive enhanced assistance on research and referencing to complete the Work Based Assignment. Staff from the University visit Garnerville for one to one tutorial support and time is now allowed in the schedule for self-study sessions. Furthermore, the first five weeks are now developmental focus with no formal pass/fail assessment. All practical scenarios are undertaken using body worn video which is used as a basis for reflective practice. Assessed pass/fail practical tests have been reduced from 27 to 17 in favour of developmental practical learning. Written examinations have also been reduced from eight to six. Two hydra simulated learning practical tests have been added and a new full day roads policing practical test has been developed. The evidential packaging practical test now incorporates greater variation and requires students use problem solving and decision making skills. The Personal Safety Programme assessment has also been refocused to include key elements on decision making and the rationale for

use of force and other techniques. The Operational Competency Assessment has been revised to emphasise problem solving. This is subject to ongoing review. Copies of draft practical assessments and the Insights Personal Discovery and Team Effectiveness programme were provided to the Board.

Using the new quality assurance arrangements a formal model for feedback and course evaluation has been established, which incorporates student evaluation at regular intervals and feedback from the Student Consultation Panel. There are two assessments of individual trainer performance. During the probationary period there are regular evaluations by the probationer, their line management and District Commander. District Commanders also provide feedback on the District Familiarisation Visit. A thematic analysis of all student feedback over the past five courses was undertaken to provide a baseline for future analysis of SOTP. There is also a monthly College Senior Management Meeting which considers course content. These meetings are chaired by the Chief Superintendent, Head of Training and Development and attended by the Superintendent and Chief Inspector leads from across Garnerville.

Vulnerability is now identified as a core policing concept within SOTP. One session in week one is dedicated to vulnerability, which is continuously reinforced throughout the remainder of the programme. The aim of the lesson is to "provide student officers with an understanding of the term vulnerability, and how this fits within the policing context and in particular the organisation's [PWC] ethos."[43] It is a combination of power point presentation, interactive training, case studies and group discussion. It includes early identification and prevention, the responsibilities of a police officer dealing with vulnerable persons, empathy and collaboration and partnership working. Course content is subject to ongoing improvement through the Content Coaching Panels. One Sergeant Trainer has been allocated lead for vulnerability with one Constable Trainer allocated dedicated support. Both received training.[44] The Sergeant lead attends PSNI Silver Vulnerability Group.

[43] SOTP Lesson – PWC Vulnerability Lesson Plan and Power Point Slides.
[44] At the 'Vulnerability – New Approaches, Better Outcomes' Annual Conference 2016 organised by the College Of Policing.

Networks of Departmental Subject Matter Experts (DSMEs) have been re-established which is to ensure developments and service wide best practice are understood. Thematic and topic leads have been identified with roles and responsibilities having been developed to ensure consistency. This will be supervised by Foundation Inspectors. A Quality Assurance Governance Board is being established under new senior management team (SMT) governance structures. A Quality Assurance Framework has been developed and incorporated into a Quality Assurance Manual. There is also a new Performance, Audit and Assessment Unit with a revised single function, removed from Foundation Training. A Senior Occupational Psychologist has been appointed as Head of Unit.[45]

A Superintendent was appointed as Head of Foundation Training in October 2016 and a new Chief Superintendent was appointed as Head of Garnerville on 3rd January 2017. A senior member of police staff was appointed as Head of Learning Support. Benchmarking of SMT structures across 29 Police Forces in the UK and Ireland has informed an options paper that will be provided to ACC Operational Support Department. The 2017/2018 training strategy will provide for redesign of course content and format. There is a series of meetings during which training needs are presented to the Head of Garnerville to identify priorities.

Monthly SMT meetings, chaired by the Head of Garnerville and attended by Heads of Branch, have been established to look at strategic focus and oversight. In addition there are weekly management meetings. The monthly meeting agenda will cover for example: finance; human resources (continuous professional development (CPD), attendance, vacancies, engagement and well-being); performance and quality assurance (including assurance, audit, risk, performance); function (including leadership, foundation and probationer, technology, support, national/international training); and health and safety. A number of additional training posts have been established plus four additional quality assurance posts. It is anticipated that Sergeants will enhance the supervisory and supportive role. Furthermore, the Continuous Professional Development Framework contains specific training and development for Sergeants and first line managers for

[45] The requirement for additional staffing was identified under Recommendation 30 (Resourcing Review).

example supervision master classes, quality assurance and oversight training. Advanced Coaching, Mentoring and Leadership inputs will also be available.

There has not been completed an independent assessment of progress. In terms of the ability of the renewed training programme to equip officers with the necessary skills and knowledge to be human rights compliant, that will be assessed and reported to the Board as per Recommendation 1 of this Human Rights Annual Report. A new management team was appointed to Garnerville and that team has been dedicated to achieving radical reform. The Board's Human Rights Advisor has met with relevant personnel and discussed in detail the implementation plan. The PSNI has embraced the challenging review and recommendations and devoted significant time, effort and resources to dealing with the issues uncovered. That response is more than purely technical; it demonstrates that the PSNI is willing to accept challenging recommendations and address them head on. The Committee is confident that Garnerville is 'back on track' to producing quality officers who are well equipped to deliver a human rights compliant service in the true ethos of Policing With the Community.

It has previously been reported that District Training, whether delivered in Police College or within District, can be haphazard and too reliant on District Commanders deciding on local priorities. While local needs are very important and District Commanders should have considerable input into determining what training is delivered to their officers there was little control centrally of what was delivered, when, to whom and why. There must be some central control of training so that the Chief Constable's objectives and priorities for training are delivered across the service. That increases the consistency of service delivery and enables training needs to be easily monitored. The Committee understands that is now happening, so a recommendation is not made but the success of the reform of police training both within Police College and within districts will receive closer scrutiny in the aftermath of the Police Scotland review.

4 POLICY

PSNI policy governs the conduct of police officers and police staff and sets out the framework within which decisions may be made. It contains guidance on legislation and police powers and duties. It provides the measure by which police practice can be monitored and assessed. Policies must inform how, and dictate that decision-making and practice comply with the Human Rights Act 1998, interpretation of which is informed by other relevant international treaties and instruments. If policy is itself human rights compliant it is much more likely that police training, decision-making and practice will be human rights compliant. In other words, good policy is the first and most basic step to ensure that human rights standards are applied in practice. It is tempting to view policy as a technical or even bureaucratic process but it is the foundation of everything the PSNI does.

Policy informs every police officer or member of police staff what principles they must embrace, what procedure must be followed, and what standards are expected of them. That means that someone who has served for 20 years and someone who has served for 2 months have equal understanding of PSNI policy. Through policy officers and staff are also kept up to date with developments. Training is also dependent upon policy; that is where every lesson starts. A well-crafted comprehensive policy equips trainers to deliver training and it ensures consistency across the service. Furthermore, written policy which is shared with the public informs the public what they might expect of a police officer or member of staff and what is expected of the public. It demonstrates transparency, is a fundamental part of legitimacy and treats the public with respect.

All police services across the United Kingdom are expected to publish their written policies, protocols and procedures.[46] It is accepted that some documents should not be published, for example, if publication is likely to impact adversely upon operational activity or if the information is classified. However even if a policy document contains classified information which cannot be published, a summary of the policy with the

[46] The Information Commissioner's Office has produced guidance for police services on the types of information that they should publish:
https://ico.org.uk/media/for-organisations/documents/1280/definition_document_for_police_forces.pdf

restricted information redacted from it can, and should, be published. These documents should be published in formats that enable persons with disabilities equal access to the information.[47]

PSNI policy is primarily contained within Service Policy documents (previously known as Policy Directives). PSNI describes Service Policy documents as being "principles to govern the organisation, reflecting the Chief Constable's vision of Keeping People Safe". Sitting alongside Service Policies are Service Instruction documents (previously known as Service Procedures). Service Instruction documents are, "practical instructions for service delivery to inform decision making in line with Service Policy."

For police action to be human rights compliant, it must amongst other things have a lawful basis which includes a requirement that it is sufficiently accessible and foreseeable by those against whom the police may act. An ongoing issue that has been reported upon in previous Human Rights Annual Reports has been PSNI's approach to publishing policies. It was first reported in the Human Rights Annual Report 2012 that PSNI had removed all of its policies (then Policy Directives and Service Procedures) from its website on the basis that all were subject to review. In 2014 a policy section was reinstated on the PSNI website with a number of policies published, but there remained a considerable backlog of Policy Directives and Service Procedures that had not been published on the grounds that they were "pending review". In 2015, PSNI advised the Performance Committee that it was undertaking a Corporate Policy Review and that all Policy Directives and Service Procedures would be subject to this review, after which they would be renamed Service Policy documents and Service Instruction documents and published.

The Committee has consistently advocated for the publication of PSNI policy to the greatest extent possible and has made a number of recommendations, including a recommendation in the Human Rights Annual Report 2014 requiring PSNI to publish all Policy Directives and Service Procedures that were currently in force on its website

[47] As required by for example the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), articles 2, 9 and 21 and the PSNI Equality, Diversity and Good Relations Strategy 2012-2017.

(subject to redaction of classified information). If any Policy Directive or Service Procedure was undergoing a review, it was accepted that should be noted on the website but the document itself should not be removed until such time as it was cancelled or an updated version issued.[48] It was recorded in the Human Rights Annual Report 2015 that this recommendation had not been implemented and that despite the initiation of the Corporate Policy Review PSNI was not making adequate progress as regards the publication of policy.

Since then the team established within PSNI to take forward the Corporate Policy Review have prioritised the publication of policy. The "Corporate Policy" section of the PSNI website is now more visible than previously, and at the time of writing it contains 69 Policy/Service documents. PSNI has assured the Board's Human Rights Advisor that as new documents are finalised they will be uploaded to the website to the greatest extent possible and without delay. While the Committee is satisfied that the recommendation from the 2014 Human Rights Annual Report can now be regarded as discharged, PSNI is reminded that the recommendation represents an ongoing commitment to publish all current Policy and Service documents, and to keep them published for so long as they remain in force. Importantly, the PSNI has also published its Conflict Management Manual, which is a comprehensive document explaining many areas of policing such as: use of force; public order; training and accountability. This is of great interest to many members of the public.

With regard to the Corporate Policy Review itself, the rationale was to update existing policies in line with a reformatted template to make them more relevant to operational officers and staff and more easily understood. Governance arrangements, such as review cycles, have been put in place and responsibility for maintenance and review of the policies assigned to relevant individuals. Where relevant PSNI has liaised and provided links to the College of Policing Authorised Professional Practice (APP),[49] although PSNI Service Policy and Service Instruction documents remain the primary

[48] Recommendation 2, *Human Rights Annual Report 2014*, Northern Ireland Policing Board, February 2015.
[49] APP is authorised by the College of Policing as "an official source of professional police practice which sets out standards and a policy framework across a range of disciplines".

corporate policy document set. That is important as it reflects the unique environment within which police officers operate and takes account of learning derived from experience.

Working Together Project (quality and timeliness of case files)

The Performance Committee recognises that in order to protect victims, the successful prosecution of offenders is critical. It was therefore disappointed, in November 2015, to note the findings of the Criminal Justice Inspection Northern Ireland (CJINI) in its inspection of the quality and timeliness of police files submitted to the Public Prosecution Service for Northern Ireland (PPS).[50] If a file is incomplete or is not coherent in either presentation or content, it has to be returned by the PPS to the PSNI for further enquiry. The case will inevitable be either delayed or discontinued. During the CJINI inspection, 67% of files were assessed as either satisfactory or good but approximately 33% were assessed as either unsatisfactory or poor. CJINI also found failings in relation to the criminal disclosure process,[51] with disclosure deemed to have been dealt with satisfactorily in only 23% of the Crown Court cases reviewed.

CJINI called for greater collaboration between the PSNI and the PPS to address significant failings in the preparation of case files and in the standards applied around disclosure. Six strategic recommendations were made, one of which was for the PSNI and PPS to immediately establish a Joint Prosecution Team to address poor practice and deliver change in areas such as investigative standards, bail management and forensic strategy, case management and disclosure. As CJINI highlighted, such an approach ought to clarify for police officers what information and evidence should be included in a case file and help set clear standards around file quality. It also ought to assist prosecutors to develop a consistent, proportionate approach around the level of

[50] *An Inspection of the Quality and Timeliness of Police Files (Incorporating Disclosure) Submitted to the Public Prosecution Service for Northern Ireland*, CJINI, 26 November 2015.

[51] Disclosure refers to the statutory duty placed on both the police and the PPS to disclose material to the defendant which may be of assistance to his or her defence. It is an essential element of the prosecutorial process governed by law and an inseparable part of a fair trial. Consideration of disclosure issues should be an integral part of a good investigation and therefore also part of the case papers. It is not something that exists separately.

detail required to decide whether or not a case should be taken forward for prosecution. In response, PSNI and the PPS agreed to take forward a joint project based upon the CJINI findings and recommendations. That project is called the 'Working Together Project'.

Recommendations were made in the Human Rights Annual Report 2015 requiring PSNI to firstly report to the Performance Committee by 30 September 2017 on progress in implementing the CJINI recommendations,[52] to thereafter complete the Working Together Project and implement the CJINI recommendations by 31 December 2017 and provide the Committee with a written briefing on the outcomes of the Project and steps taken or to be taken.[53] The Board's Human Rights Advisor met with representatives from the Working Together Project team during 2016/17 to discuss progress. Written updates were provided to her and also to the Committee. In October 2016 and January 2017 for example the PSNI reported to the Committee on progress against the CJINI recommendations. That can be summarised as follows:

CJINI Strategic Recommendation 1

CJINI recommended that the PSNI and the PPS should immediately establish a 'Prosecution Team' which will work collaboratively to deliver a Joint Transformation Programme to deal with investigative standards, bail management and forensic strategy, case management and disclosure. Governance and accountability should rest with an Assistant Chief Constable together with a Senior PPS Director.

PSNI, in January 2017,[54] reported that the Working Together Project had been established, which involved both PSNI and PPS who agreed three objectives that they believed were sustainable for the future: (1) Improved Quality: encompassing evidential standards on prosecution files; file standards; and adherence to criminal disclosure obligations; (2) Improved Effectiveness: encompassing decision making at suspect disposal stage; and the correct identification of anticipated pleas and contested cases;

[52] Recommendation 11, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.
[53] Recommendation 2, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.
[54] *Continuous Improvement Interim Update: Working Together Project*, PSNI, 6 January 2017.

and (3) Reduced Delay: from the point of suspect identification to the point of disposal. Since then a number of initiatives have been progressed. Those are outlined below in relation to each of the remaining CJINI recommendations. PSNI and PPS are exploring the potential to extend the remit of the project to include other partners, such as the Court Service. The Committee strongly encourages the involvement of key partners. There has also been established a Working Together Project Board which is chaired jointly by an Assistant Chief Constable and a Senior PPS Director. The Board monitors progress against the recommendations.

CJINI Strategic Recommendation 2

CJINI recommended that the Prosecution Team should scope and deliver, by December 2016, new protocols on: early prosecutorial advice (PSNI requests/PPS responses); PSNI decision-making and PPS pre-charge advice; and proportionate case-file building based on agreed evidential, technical and presentational standards.

The PSNI has, in response to that recommendation, considered protocols for making 'no prosecution decisions.' There are two options being explored for the most effective means of speeding up outcomes for victims and reducing demand. The two options are: PPS direct 'no prosecution' in a specified range of cases after submission of an abbreviated case file consisting of a structured outline of case and statement of complaint; and 'no prosecution' clinics where officers and prosecutors discuss files with a 'no prosecution' recommendation. If a 'no prosecution' decision is directed at the clinic, an abbreviated file is submitted to the PPS for the attention of the relevant prosecutor.

Protocols for PSNI decision making have also been developed to ensure effective and consistent decision making, and reduce divergence between PSNI recommendations and PPS directions to 'get it right first time'. Dedicated Police Decision Makers (PDMs) review all cases prior to disposal against agreed evidential standards and make effective use of investigative bail to progress investigations where appropriate. PDMs assess whether a case is anticipated to be a guilty or not guilty plea and provide disposal advice.

The PSNI and PPS have developed: agreed evidential standards, which include an outline of points to prove for each offence type and key evidence required to prove offences; and agreed file build specifications, outlining the documents required for each file submission type. The file build specifications aim to reduce unnecessary bureaucracy and provide a proportionate amount of information. It incorporates a Proportionate Forensic Reporting approach for the provision of forensic reports. The Policing Board's Human Rights Advisor met with the current team and reviewed the various draft protocols and standards.

CJINI Strategic Recommendation 3

CJINI recommended that the PSNI, under the governance of the Prosecution Team, should develop and deliver organisational investigative standards, investigative bail management rules and an effective forensic strategy. This should be delivered by December 2016.

As outlined above in relation to CJINI recommendation 2, PSNI and PPS have developed joint protocols for PSNI decision making and have agreed evidential standards. Dedicated Police Decision Makers (PDMs) review all cases prior to disposal against the agreed evidential standards and make effective use of investigative bail to progress investigations where appropriate. Training was delivered in January 2017 for Police Decision Makers, Prosecutors, Investigating Officers and Supervisors.

CJINI Strategic Recommendation 4

CJINI recommended that the Prosecution Team should scope and deliver an Information Communications Technology action plan for both organisations that will focus on the preparation, presentation and timely submission of proportionate and quality PSNI case files.

The Working Together Project Team has explored a number of technical changes to the preparation, presentation and submission of quality case files including an updated Structured Outline of Case (SOC) and Prosecutor Information Form. These agreed

forms have been developed to assist with easier completion while providing the required information. The SOC forms the basis of information required by Police Decision Makers and PPS prosecutors and is served upon the defence at an early stage to assist with securing early guilty pleas. There has been initiated a new Direction for Information Request (DIR) form to assist with completion and understanding of issues. It should more closely align DIRs with performance management and highlight areas where standards have not been met. The ordering of statements within the case file has also been considered to assist prosecutors to read case files more quickly and clearly in a structured manner. File shares work flows have also been developed to assist with timely submission of newly identified file standards.

CJINI Strategic Recommendation 5:

CJINI recommended that the PPS should provide the PSNI with guidance on Disclosure. The PSNI will scope and deliver a new central Disclosure Unit and enhance the skills of operational Police Officers on the subject of disclosure. A timetable for the delivery of the central Disclosure Unit should be provided to CJI within one month of the publication of this report.

A model for the Central Disclosure Unit had been consulted upon and agreed with CJINI and the PPS however, following extensive internal consultation, PSNI and PPS have identified an alternative model which may involve considerably less cost and fewer resources. The alternative model is under consideration by PSNI at its Service First Board.

CJINI Strategic Recommendation 6

CJINI recommended that the Prosecution Team, at an early stage of project management, should develop a Joint Performance Framework to govern and measure the effectiveness of new protocols and procedures. This should include the setting of performance indicators and outcomes on file quality and disclosure.

A performance framework has been established to evaluate the proposed new protocols during a proof of concept exercise. This includes defined outcomes and specified performance indicators measuring file quality and timeliness.

Recommendation 11 of the Human Rights Annual Report 2015, requiring an update on the implementation of the CJINI recommendations, has therefore been discharged. Recommendation 2, requiring the Working Together Project to have been completed and the CJINI recommendations implemented, remains ongoing as the work is not complete. The Committee is satisfied given the breadth of issues with the timeframe but will continue to seek update reports in line with Recommendation 2 of the 2015 Annual Report until such time as the work is complete.

Domestic Violence Protection Notices and Domestic Violence Protection Orders

Schedule 7 to the Justice Act (Northern Ireland) 2015 makes provision for Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs). DVPOs are a civil order that fill a gap in providing protection to victims by enabling the police and magistrates' courts to put in place protective measures in the immediate aftermath of a domestic violence incident where there is insufficient evidence to charge a perpetrator and provide protection to a victim via bail conditions. A DVPN is an emergency non-molestation and eviction notice which can be issued to a perpetrator by the police when attending a domestic abuse incident. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require in such a situation. Within 48 hours of the DVPN being served on the perpetrator, an application by police to a magistrates' court for a DVPO must be heard. A DVPO can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. This allows the victim a degree of breathing space to consider their options with the help of a support agency.

There are a number of human rights considerations which apply to the victim, the perpetrator and any children in the family, and the 2015 Act contains some provisions which attempt to strike a balance in that regard, for example, before issuing a DVPN or

DVPO the police and court must consider the welfare of any children who might be affected. However such provisions require further explanation in order to provide police officers with practical direction on the operation of the powers. Clear guidance and a comprehensive policy document is therefore required and police officers must be confident in their understanding and application of that policy. Recommendation 3 of last year's Human Rights Annual Report required PSNI to provide the Committee with its draft written policy and guidance on the use of its powers to issue DVPNs and apply for DVPOs, and the proposed training plan for officers.[55] The Annual Report emphasised that training must take place *before* the roll out of the powers.

PSNI has accepted that recommendation and has committed to provide the Committee with draft policy, guidance and training plans as they become available. However at present (September 2017) the guidance, which is being developed by the Department of Justice (DOJ) in collaboration with other agencies including the PSNI, remains a work in progress as does the development of police policy and training plans.[56] The content of police policy and training will to an extent be dependent on the content of the DOJ guidance. Plans for the delivery of training depend on the DOJ's intentions, which are not yet known, as to the timeframes and method for rolling out DVPNs and DVPOs, for example, if they are rolled out on a phased basis, priority for training would be within those areas where the Notices/Orders are to become operationally available. Therefore while Recommendation 3 of the Human Rights Annual Report 2015 remains outstanding the Committee appreciates that this is for reasons outside PSNI's control and that the police are working closely with partner agencies and the Department of Justice to give effect to the relevant provisions of the 2015 Act. The Committee looks forward to receipt of the draft policy, guidance and training plans in due course. In the interim the Committee reiterates that appropriate guidance, policy and training should be in place *before* any roll out of DVPNs and DVPOs.

[55] Recommendation 3, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.
[56] The 2015 Act empowers the Department of Justice to develop guidance relating to the exercise of police powers.

5 OPERATIONS

Monitoring the strategy, planning and execution of operations is critical to any overall assessment of the PSNI's compliance with the Human Rights Act 1998. The majority of police operations raise human rights issues. For example Articles 2 (the right to life) and 3 (the right not to be ill-treated) of the ECHR are engaged in any operation requiring the use of force. Article 8 (the right to a private and family life) is engaged in operations involving the use of surveillance. Operational effectiveness is also a consideration for the Board when monitoring the PSNI's performance in carrying out its general duties to protect life and property, to preserve order, to prevent the commission of offences and, where an offence has been committed, to take measures to bring the offender to justice.[57] The Board must also monitor the extent to which the police have secured the support of the local community when carrying out operations and the extent to which they have acted in co-operation with the local community.[58]

The Chief Constable is responsible for making operational decisions. The Board has no power to direct him on how to conduct an operation. However the Board can, and must, hold the Chief Constable to account for operational decisions of the PSNI after they have been taken. Throughout this Human Rights Annual Report there are examples of operational areas that have been kept under review by the Performance Committee during 2016, such as counter-terrorism operations (this Chapter), public order operations (this Chapter), the use of force (Chapter 6), covert tactics which may be used during operations (Chapter 7), the use of operational equipment such as Small Unmanned Aircraft (SUA) (Chapter 7), the use of Body Worn Video (Chapter 8) and tackling child sexual exploitation (Chapter 8).

[57] Section 3(3)(b)(i) of the Police (Northern Ireland) Act 2000 requires the Policing Board to monitor the performance of the police in carrying out their general duties under section 32 of the Act (i.e. to protect life, preserve order etc.).

[58] 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).

SECURITY SITUATION

The Security Service (MI5) has assessed the threat level in Northern Ireland from Northern Ireland related terrorism to be 'severe', meaning that a terrorist attack is highly likely. The threat level in Great Britain from Northern Ireland related terrorism is assessed as 'substantial', meaning an attack is a strong possibility. In respect of international terrorism, the threat level across the United Kingdom is 'severe'.[59]

The PSNI security situation statistical report covering 2016/17 (1 April 2016 – 31 March 2017) records that, "Security related deaths, shooting and bombing incidents were at relatively high levels in the early 1990s and then after the first ceasefire in 1994, dropped to their lowest levels in 1995/96. They increased again in the early 2000s, albeit at levels well below those pre-ceasefire. After 2002/03 the levels of security related incidents decreased again and have remained relatively consistent over the last 10 years (see Annex 1 for historical figures). However, they still pose a significant threat as evidenced by the number of deaths and multiple shooting and bombing incidents that still occur each year."[60]

During 2016/17, PSNI recorded: 5 security related deaths, 4 of which occurred in the Belfast City policing district; 61 shooting incidents and 29 bombing incidents; 66 casualties as a result of paramilitary style assaults and 28 casualties resulting from paramilitary style shootings; 45 firearms, 75.1kg of explosives and 2,635 rounds of ammunition were seized by the PSNI.

STOP AND SEARCH

A specific area for the close consideration of the Performance Committee continues to be the PSNI's use of powers to stop and search persons and vehicles, to search premises and to stop and question. PSNI provides the Board with quarterly and year end statistical reports which show PSNI's use of powers under: Misuse of Drugs Act

[59] https://www.gov.uk/terrorism-national-emergency/terrorism-threat-levels . The threat levels cited in this paragraph are correct as at 1 September 2017.
[60] *Police recorded security situation statistics, 1 April 2016 to 31 March 2017* PSNI, May 2017.

1971; Firearms (Northern Ireland) Order 2004; Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE); Justice and Security (Northern Ireland) Act 2007 (JSA); and Terrorism Act 2000 (TACT).[61] The statistical reports demonstrate the use of powers broken down according to geographic area, gender, ethnicity, age, power used and subsequent arrest.

The counter-terrorism and security work carried out by the PSNI is discussed regularly at the Performance Committee and at the full Policing Board. The statutory Codes of Practice for the use of TACT and JSA powers state that the "appropriate use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board".[62] The Performance Committee is responsible for providing that oversight with the assistance of the Board's Human Rights Advisor who reviews all stop and search authorisations on a quarterly basis.

The Human Rights Advisor has reported to the Committee that she views all material relevant to the authorisations (including closed material) and has been provided with access to all material she wished to view. She also reported, in the same terms as the previous year, that the assistance given by PSNI officers in accessing and explaining material and responding to any queries raised has been exceptional. The Policing Board's Human Rights Advisor has for another year paid particular attention to the geographical and temporal extent of authorisations in light of the requirement that they extend over no greater area and for no longer than is necessary. While the authorisations have, as a matter of fact, extended over the whole of Northern Ireland and have been renewed continuously ever since the powers were introduced, the Human Rights Advisor reported that she was satisfied that the extent and duration of authorisations was justified, necessary and proportionate given the nature and extent of

[61] The Misuse of Drugs Act, Firearms Order and PACE provides police officers with a range of powers to stop and search persons, vehicles and premises for drugs, firearms, and, in respect of PACE, stolen articles, articles with a blade or point, prohibited articles and fireworks. The powers in TACT provide police across the United Kingdom with search powers specifically relating to the investigation of terrorist activity. The JSA applies only to Northern Ireland and provides PSNI officers with additional powers to search for unlawful munitions or wireless apparatus.

[62] *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; and *Code of Practice for the Exercise of Powers in the Justice and Security (Northern Ireland) Act 2007*, Northern Ireland Office, May 2013.

the security threat in Northern Ireland. That, however, does not mean that it should be taken for granted. Every time an authorisation is given, geographic and temporal extent must be considered expressly. The relevant Assistant Chief Constable must sign the form to show that he or she has considered and agrees with the need and the rationale. District Commanders are also consulted on the extent of the authorisation to their districts and areas within districts.

The Committee receives detailed quarterly statistics from PSNI on the use of stop and search powers and receives briefings from PSNI on a range of connected issues. Furthermore, every year the Committee meets with the Independent Reviewer of Terrorism Legislation and the Independent Reviewer of the Justice and Security Act. During those briefings the Committee discusses legality, oversight, proportionality and human rights compliance.

Frequency of use

Comparing 2015/16 financial year figures to those from 2014/15, there was a 25% increase in PSNI's overall use of powers to stop and search and stop and question persons under all legislation, from 28,399 in 2014/15 to 35,384 in 2015/16. This marked the highest level of PSNI use of the powers since 2011/12. In 2016/17 this level decreased by 8% to 32,416, but this figure still remains considerably higher than the level of usage two years previous. As evidenced by Table 1 below the increase over the past two years is partly due to an increase in PACE/ Misuse of Drugs / Firearms Order searches. As regards counter-terrorism/security searches, there has been a notable increase in use of the section 24 JSA power to stop and search of persons. Use of section 24 increased by 79%, from 3,906 in 2014/15 to 6,980 in 2015/16; and it increased by a further 14% to 7,935 in 2016/17.

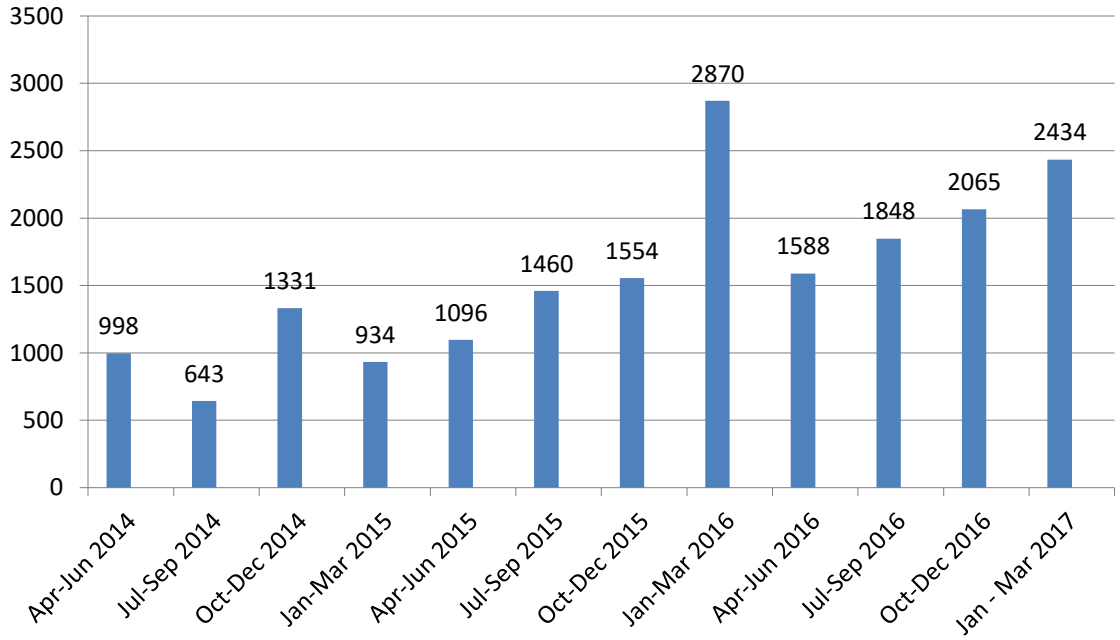
Table 1: Frequency of use of powers to stop and search / question across all Districts, 1 April 2014 – 31 March 2017[63]

	2014/15				2015/16				2016/17			
	Q1	**Q2**	**Q3**	**Q4**	**Q1**	**Q2**	**Q3**	**Q4**	**Q1**	**Q2**	**Q3**	**Q4**
PACE	1,574	1,552	1,715	1,569	1,499	1,674	2,227	1,563	1,115	1,204	1,543	1,192
Misuse of Drugs Act	3,855	3,462	3,891	4,452	3,926	4,258	4,862	4,943	3,477	4,196	4,695	4,280
Firearms Order	23	24	47	25	64	41	41	53	56	44	31	43
TACT s43	33	26	34	50	37	61	66	57	68	49	32	36
TACT s43A	8	8	5	28	18	23	38	44	45	15	11	9
TACT s47A	0	0	0	0	0	0	0	0	0	0	0	0
JSA s21	300	349	825	448	488	485	557	1,282	456	513	569	662
JSA s24	998	643	1,331	934	1,096	1,460	1,554	2,870	1,588	1,848	2,065	2,434
Other powers	91	33	43	23	26	26	28	17	14	31	72	23
Total	**6,882**	**6,097**	**7,891**	**7,529**	**7,154**	**8,028**	**9,373**	**10,829**	**6,819**	**7,900**	**9,018**	**8,679**
Annual Total	**28,399**				**35,384**				**32,416**			

[63] *Stop and Search Statistics, Financial Year 2015/16*, PSNI, May 2016 and *Stop and Search Statistics, Financial Year 2016/17*, PSNI, May 2017. 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.psni.police.uk

Over the past three years the most commonly used power has been the Misuse of Drugs Act. This has been followed by section 24 JSA and then by PACE. Use of section 24 JSA increased dramatically during 2015/16 and continued to increase in 2016/17 as evidenced by the graph below.

Use of Section 24 JSA to stop and search people



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.[64] 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 section 24 JSA stops and searches of persons, between 95% and 97%, are

[64] 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.

pursuant to a senior officer authorisation *i.e.* they have not required individual reasonable suspicion.

In addition to the power to search persons for munitions or wireless apparatus, police officers also have the power to enter and search any premises for the purposes of ascertaining whether there are any munitions or wireless apparatus unlawfully on the premises. 'Premises' includes vehicles, tents and moveable structures. Where the search is of a vehicle the constable may remove the vehicle to a place for the purpose of carrying out the search if such removal is necessary or expedient. With the exception of the search of dwellings, no authorisation is required and the constable need not have a reasonable suspicion that munitions or wireless apparatus are on the premises. If a constable intends to search a dwelling, which is defined as a building or part of a building used as a dwelling and a vehicle which is habitually stationary and which is used as a dwelling, the search must have been authorised by a senior officer and the constable must have a reasonable suspicion that the dwelling contains unlawful munitions or wireless apparatus. The distinction is therefore drawn between premises which can be regarded as a person's home and those which are not.

As evidenced by Table 2 below, the upward trend in the use of section 24 JSA over the past two years compared to 2014/15 has been not only in respect of searches of people, but also searches of dwellings, other premises and vehicles. Of particular note is the 152% increase in searches of vehicles, from 10,061 in 2014/15 to 25,336 in 2015/16. While the number of vehicle searches decreased in 2016/17 to 20,597, this still remains more than twice the number of vehicle searches carried out two years previously.

Table 2: Number of dwellings, other premises, vehicles and persons searched under section 24 JSA, 1 April 2014 – 31 March 2017[65]

	2014/15					2015/16					2016/17				
	Q1	**Q2**	**Q3**	**Q4**	**Total**	**Q1**	**Q2**	**Q3**	**Q4**	**Total**	**Q1**	**Q2**	**Q3**	**Q4**	**Total**
Dwellings & other premises	46	11	42	6	**105**	41	65	32	32	**170**	45	66	20	21	**152**
Vehicles	1,965	1,278	4,724	2,094	**10,061**	3,087	4,390	5,967	11,892	**25,336**	3,889	4,533	5,532	6,643	**20,597**
Persons	998	643	1,331	934	**3,906**	1,096	1,460	1,554	2,870	**6,980**	1,588	1,848	2,065	2,434	**7,935**

[65] *Stop and Search Statistics, Financial Year 2014/15*, PSNI, May 2015, *Stop and Search Statistics, Financial Year 2015/16*, PSNI, May 2016 and *Stop and Search Statistics, Financial Year 2016/17*, PSNI, May 2017. 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.psni.police.uk

The upward trend in the use of section 24 JSA over the past two years follows a downward trend between 2009/10 and 2014/15. The Independent Reviewer of the JSA, David Seymour CB, attributes the reasons for this change as being potentially due to PSNI concluding in 2015 that the downward trend in use of the powers was due to a lack of officer confidence in use of the powers, complacency and concern about a lack of support if a complaint was made following a search. To address this PSNI rolled out a programme of training to increase awareness of the powers and how they should be used. Furthermore the reorganisation of PSNI in April 2015 provided the PSNI with the opportunity to co-ordinate the use of JSA powers between the police Districts. There was also concern about an increased risk of terrorist activity in the run up to the centenary of the Easter Rising in Dublin in 1916. Fortunately, there were no incidents but the figures show that the heaviest use of the powers was in the weeks immediately before Easter 2016. Finally Mr Seymour noted that there has been an increase in loyalist violence which has required the PSNI to use these powers more frequently in that community.

Mr Seymour comments, in his March 2017 report, "The increased use of these exceptional powers is likely to come under renewed scrutiny and reinforces the need for greater transparency about the way they are used."[66]

Arrests

The low arrest rate following use of stop and search powers under TACT and JSA has previously been discussed by the Committee. In particular, the arrest rate following the use of the 'without suspicion' stop and search power under section 24 JSA has typically remained at 2% or less.[67] The reasons for the low arrest rate has been commented upon by the Independent Reviewers of TACT and JSA in successive reports, for example David Seymour CB commented in his March 2017 report that "It is clear that the exercise of JSA powers has prevented the use of munitions which would have

[66] *Report of the Independent Reviewer Justice and Security Act, Justice and Security (Northern Ireland) Act 2007*, *Ninth Report 1 August 2015 – 31 July* 2016, David Seymour CB, March 2017, para. 6.6.
[67] The arrest rate for section 24 JSA was 2.0% in 2014/15, 1.0% in 2015/16 and 1.0% in 2016/17.

endangered lives. The police are often in possession of information which indicates that individuals (named or unnamed) are involved in activity which may cause harm to members of the public or security forces through the use of munitions and wireless telegraphy apparatus. The nature of this information may not be specific enough to establish the "how, where and when" which would justify a stop and search on the basis of reasonable suspicion. Moreover, it is sometimes overlooked in this context that the police have an overriding obligation under Article 2 of the ECHR to keep people safe. The issue is whether, in order to achieve that objective, the powers have to be exercised on the scale and in the manner in which they are currently used. A clear, sustained and persuasive narrative needs to be maintained to demonstrate that the PSNI practice is pitched correctly not only in terms of the volume of searches but also in terms of the factors which trigger their use… Getting this right, ensuring consistency of approach and explaining this to a sceptical public is key to a better understanding of PSNI practice in relation to stop and search. The target audience would not just be the "hard to reach" sections of the public but also those who are not hard to reach but who have yet to be persuaded."[68]

Age of persons stopped and searched

Of the 31,274 persons stopped and searched or stopped and questioned during 2016/17, age was recorded in 30,609 (98%) cases. The most commonly stopped age group was 18 to 25 year olds, accounting for 40% (12,219) of persons; followed by 26 - 35 year olds, accounting for 25% (7,659) of persons; followed by people aged 17 and under, accounting for 12% (3,656) of persons. The most commonly used power in respect of the 3,656 persons aged 17 and under was the Misuse of Drugs Act (accounting for 63% of the stop and searches).[69]

[68] *Report of the Independent Reviewer Justice and Security Act, Justice and Security (Northern Ireland) Act 2007*, *Ninth Report 1 August 2015 – 31 July* 2016, David Seymour CB, March 2017, para. 6.14.
[69] *Stop and Search Statistics, Financial Year 2016/17*, PSNI, May 2017.

Port and border controls: TACT

Schedule 7 TACT empowers port officers, who in Northern Ireland are PSNI officers,[70] to question and detain travellers at ports for the purpose of determining whether they appear to be concerned in the commission, preparation or instigation of acts of terrorism. The powers were examined in detail by the former Independent Reviewer of Terrorism Legislation, David Anderson QC, during his time in post with a number of recommendations made. While use of the power has declined over the past 6 years, David Anderson commented in his December 2016 report that it "continues to be productive" in measurable terms (e.g. arrests, seizures and evidence usable in courts), in yielding intelligence about the terrorist threat, in disruption and deterrence, and in the recruitment of informants.[71]

In his report David Anderson QC notes that of the 34,500 Schedule 7 examinations at ports across the United Kingdom in 2014/15, more than 10% (3,496) were in Northern Ireland. Anyone questioned for more than one hour under the Schedule 7 powers is deemed 'detained'. Of the 34,500 persons examined in 2014/15 across the United Kingdom, there were 1,821 persons detained but none of the detentions were in Northern Ireland ports. Likewise, in 2013/14 nobody was detained in Northern Ireland. David Anderson comments that this is 'remarkable' and while he has in the past reviewed Schedule 7 operations in Northern Ireland, he believes it worth investigating further with port officers.[72] In response to these comments PSNI has advised the Performance Committee that PSNI ports officers do not encounter the same level of difficulties as at some other UK ports regarding language barriers due to the lack of international carriers. Therefore most examinations of persons at ports are completed within one hour, negating the requirement for a detention. PSNI highlighted that while none of the 3,496 persons examined under Schedule 7 in 2014/15 were detained beyond an hour, this did not mean that all 3,496 were released within the hour as some

[70] PSNI ports officers undergo specific training and must pass an examination every two years to remain accredited. While personnel from other organisations such as the Border Force may also operate at ports, only the PSNI ports officers are permitted to use the Schedule 7 TACT powers in Northern Ireland.
[71] *The Terrorism Acts in 2015. Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, David Anderson QC, December 2016, para. 7.15.
[72] *Ibid*. paras. 7.19 – 7.13.

were wanted or of interest to other enforcement agencies such as HMRC or Immigration. Where this occurred, as soon as it transpired that they were wanted or of interest to the other agency, use of the schedule 7 powers by PSNI immediately ceased and the person would have been handed over to the other agency involved.

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 PSNI has implemented all of the recommendations save for that relating to community background monitoring. Of particular note is PSNI's response to recommendation 6 of the thematic review, further to which a quarterly review of the use of TACT and JSA powers is carried out by a senior officer to ensure that the powers are being used proportionately and in accordance with the law across the Police Service.

A recommendation (Recommendation 7) that was neither been accepted nor rejected, 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 commenced a pilot scheme and has since provided a number of briefings to the Committee in respect of progress and results. In brief, the pilot involved persons stopped and searched or questioned being issued with a paper receipt containing questions directed at recovering monitoring data. The receipt is accompanied by a stamped addressed envelope. Those receipts are then returned to the PSNI. Outcomes from the pilot have been disappointing, with a nil return recorded during the relevant period.

While this raises real issues about the feasibility of continuing the project the Board and PSNI are keen to explore alternative methods for gathering the information. For example, the PSNI commissioned an academic to advise on alternative methods. In March 2017, an interim report was provided which the PSNI is taking into account and will discuss with the Committee in due course. The PSNI has indicated to the Committee that they remain "absolutely committed to finding a way forward."[73] The Committee accepts that the PSNI are acting in good faith and actively seeking a solution. It may be however at some stage the Committee will have to reconsider the recommendation.

PUBLIC ORDER

Public order policing inevitably engages a number of rights enshrined in the 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 *dis*order, 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.

The PSNI's duty to balance those often competing rights calls for careful consideration of a number of complex issues. The PSNI operates within an environment in which it is not responsible solely for the management of parades and protests. 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. However, it clearly is the sole responsibility of the PSNI to *police* parades, protests and other public assemblies and to deal with any outbreaks of disorder.

[73] Correspondence from PSNI dated May 2017.

In doing so, the PSNI must comply with the Human Rights Act 1998. The exercise of police public order powers[74] and the duties to protect life and property, to preserve order, to prevent the commission of offences and, where an offence has been committed, to take measures to bring the offender to justice[75] 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 is set out in the Human Rights Annual Report 2013.[76] In summary, where there is the possibility of violence and disorder 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. Article 11 ECHR (the right to peaceful assembly) does not require the police to facilitate the assembly if doing so would 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 police are required, bearing in mind their experience of managing disorder and their access to intelligence, to exercise judgment to balance the competing rights and obligations. Within that the police may decide not to apprehend and arrest perpetrators of violence and disorder who had a means of retreat and instead concentrate on dealing with the disorder as it arises. The police are obliged, by section 32 of the Police (Northern Ireland) Act 2000 to prevent crime but that does not impose a requirement on them to intervene on every occasion when an offence is in the course of commission: the police have a wide area of discretionary judgment as to the appropriate response.

The PSNI, in responding to large scale public order incidents in which unlawful acts have been, or are likely to be, carried out and where community tensions are running

[74] Primarily contained within the Public Order (NI) Order 1987, although there are also relevant powers contained within the Police (NI) Act 1998, the Roads (NI) Order 1983, the Road Traffic (NI) Order 1995, the Protection from Harassment (NI) Order 1997 and a power of arrest contained within the Police and Criminal Evidence (NI) Order 1989.
[75] By Section 32(1) of the Police (NI) Act 2000.
[76] Pages 68 – 75 of the *Human Rights Annual Report 2014*, Northern Ireland Policing Board, March 2014.

high, are faced with an enormous challenge. They have demonstrated, with their many years of experience and the intelligence available to them, that they are capable of and do respond so as to protect and respect the rights of all involved while managing disorder in a lawful and proportionate manner. The PSNI's decision making process must be well documented and must stand up to scrutiny. Importantly, the PSNI must also be prepared to account for any decisions made.[77] PSNI has repeatedly demonstrated its willingness to do so. 2016/17 was no different. The Policing Board's Human Rights Advisor reported to the Committee that PSNI senior command once again afforded her unlimited access to public order planning, strategy, live operations and de-briefs.

Monitoring the policing of public order events

The Policing Board regularly meets to consider public order issues that do or may arise. That includes training, policing tactics, the public order strategy, the use of force, the criminal justice strategy (arrests, prosecution etc.), the management of parade notifications, the welfare of officers, mutual aid, engagement between the police and communities and resource implications (financial and personnel). Furthermore, the Policing Board's Human Rights Advisor, in addition to attending some live operations, is briefed regularly by PSNI on its public order strategy, its planning of public order events and the operational decisions that are taken.

Throughout 2016/17 the Board's Human Rights Advisor attended some planning meetings and operational briefings and observed the operation from within the operational command room (Silver Command). As in previous years, she has recorded her complete satisfaction with the policing of all operations observed. Each operation was planned with an acute attention to detail with protection of the various ECHR rights providing a central component of all decisions made. During the operations senior command, officers on the ground, call management, tasking, tactical advisors, information and intelligence personnel etc. were clearly cognisant of the operational

[77] In *DB's Application* [2014] NICA 56 for example 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.

relevance of human rights standards and the policing with the community ethos adopted by the PSNI. Those standards are so deeply embedded now within public order policing that decisions were instinctive and at times permitted a creative response aimed at keeping people safe while also protecting fundamental rights. One of the operations involved a number of distinct groups, including some from English 'far right' groups with opposing messages and tactics to challenge the police. The PSNI, drawing on experience from a Silver Commander with experience of policing demonstrations by such groups in Great Britain, demonstrated a sophisticated and well developed strategy and operational application of principles that enabled the various parades, protest and demonstrations to pass off without any major incident. A few incidents did occur which required an immediate police response but those were dealt with in accordance with the conflict management model and were deescalated quickly without the use of force.

The Performance Committee also 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 6 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.[78] Those records are considered by the Performance Committee.

[78] 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.).

6 COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS

The Policing Board has a statutory duty to keep informed of complaints and disciplinary proceedings brought in respect of police officers and to monitor any trends and patterns emerging.[79] 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 1998[80] and for monitoring the effectiveness of the Code of Ethics.[81] Those monitoring functions complement each other as a human rights culture is in part 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 alleged 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 of Ethics.

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 OPONI investigates complaints about police officers and 'designated civilians'[82] within the PSNI, police officers within the Northern Ireland Airport Constabulary and Belfast Harbour Police. Since 16 March 2015, the OPONI investigates complaints about officials within the UK Border Force. Since 20 May 2015, the OPONI investigates complaints about officers from the National Crime Agency. The Committee meets formally with the Police Ombudsman and/or senior officials from the OPONI at least twice a year to discuss a range of issues, including trends and patterns in complaints against police officers and

[79] Section 3(3)(c)(i) of the Police (Northern Ireland) Act 2000.
[80] Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000.
[81] 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.
[82] 'Designated civilians' are those members of police support staff designated as an officer by the Chief Constable pursuant to section 30 of the Police (Northern Ireland) Act 2003 i.e. investigating officers, detention officers and escort officers.

the resolution of those complaints. The Committee also considers individual investigation reports produced by OPONI[83] and it considers Regulation 20 reports.[84]

The Committee is 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 has met formally with officers from PSNI Legacy and Justice Department (which incorporates Discipline Branch) at least twice a year to discuss professional standards issues.[85]

To discharge its monitoring duty effectively the 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 the PSNI to challenge the organisation's performance and to seek further information from the police or OPONI on any areas of concern.

Professional Standards Monitoring Framework

The PSNI and OPONI provide the Committee with the following information on an annual basis: Trends and patterns in complaints and allegations made to OPONI by

[83] 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.
[84] 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.
[85] Discipline Branch within Legacy and Justice Department (formerly 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. Discipline Branch can also initiate its own criminal or misconduct investigations.

members of the public; self-referrals from PSNI to OPONI;[86] PSNI Anti-Corruption & Vetting Branch and Discipline Branch Annual Report, which provides an overview of police misconduct matters and breaches of the Code of Ethics; details of statute barred cases;[87]details of compensation claims received and concluded by PSNI; and a Policy Evaluation Group Annual Report, which sets out learning identified from OPONI policy recommendations. The Committee also receives six monthly reports on complaints and allegations and statute barred cases. The Professional Standards Monitoring Framework reports are considered by the Performance Committee. The key findings are summarised in the remainder of this chapter.

COMPLAINTS & ALLEGATIONS[88]

Complaints

In 2015/16, OPONI received 3,042 complaints and matters referred for independent investigations, which represented approximately a 10% reduction from 2014/15 and the lowest total in the last five years. The reduction in the number of complaints occurred across every PSNI District except for Derry City & Strabane which only had a very small increase of 1 complaint. In 2016/17, OPONI received 2,797 complaints and matters referred for independent investigations,[89] which represents approximately a further 8% reduction.[90] This is the lowest number of complaints received since 2007/08. 98% of all complaints related to the PSNI (2,744). No complaints related to the National Crime Agency.

[86] In accordance with section 55 of the Police (Northern Ireland) Act 1998 the Chief Constable must refer any incident where a death has occurred following contact with the police, and he/she may refer any incident which indicates possible criminality or misconduct and which the Chief Constable believes it is in the public interest for the Ombudsman to investigate. The Chief Constable must also notify the Police Ombudsman of all discharges of firearms, AEP or Taser.

[87] Statute Barred Cases are cases where a prosecution could not proceed due to the police file not being submitted to the Public Prosecution Service within the statutory timescale for the relevant offence.

[88] *Annual Statistical Bulletin of the Police Ombudsman for Northern Ireland, 2016/17*, OPONI, June 2017. OPONI publishes quarterly and annual statistical reports on its website which provide detail on trends and patterns in complaints and allegations received during the relevant period: www.policeombudsman.org

[89] 98% were complaints by members of the public. The remainder were: matters referred to the OPONI from the PSNI, from another organisation (PPS, NIPB DOJ) or matters in which the Ombudsman exercised his power to initiate an investigation; or call-in/call-outs (0.6%) where the OPONI is notified of an incident and determines at an early stage that there is no requirement for a further investigation.

[90] The reduction in complaints has continued since 2013/14, when the OPINI received the highest number of complaints since it opened.

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 2015/16 OPONI received 4,863 allegations; this was a reduction by 13.6% compared to the previous year. That was the lowest total number of complaints 2012/13. The number of allegations received was lower in every PSNI District when compared to 2014/15. In particular, Causeway Coast & Glens Districts witnessed a 23.8% reduction in complaints and a 26.8% reduction in allegations. Armagh City, Banbridge & Craigavon had a 19.5% reduction in complaints and 24.6% reduction in allegations. In 2016/17 OPONI received 4,725 allegations; this was a reduction by 2.8% from the previous year.

In 2016/17 Belfast City District received the highest number of complaints (739) at 26% of all complaints. However, that represents a 19% decrease in the number of complaints received in the District compared to 2015/16, which is also the largest annual decrease across all Districts. No other District received more than 240 complaints in total. While comparisons between Districts must attract a degree of caution, it can be recorded that complaints in 7 out of 11 Districts have decreased in 2016/17 compared to 2015/16.[91] In 4 Districts complaints increased: in Mid Ulster (F District) complaints increased by 12% in 2016/17; in Causeway Coast & Glens (J District) complaints increased by 5%; in Mid and East Antrim (K District) complaints increased by 17%; and in Ards & North Down (C District) complaints increased by 2.2%.

Allegations

Allegations are categorised by OPONI into allegation type. Each year the three most common types of allegation are Failure in Duty,[92] Oppressive Behaviour[93] and

[91] Belfast City (A District); Lisburn and Castlereagh (B District); Newry, Mourne and Down (D District); Armagh City, Banbridge & Craigavon (E District); Fermanagh & Omagh (G District); Antrim & Newtownabbey (L District); and Derry City and Strabane (H District).

[92] Failure in Duty sub-types include the Conduct of Police Investigations/incident response (includes allegations were the complainant has alleged that the unsatisfactory conduct of either ongoing or completed police investigations, including the inappropriate disclosure of information. Also included would be allegations that the police failed to carry out any investigation into an incident, or were excessively slow to respond to an incident); Conduct in custody suites (which includes incidents where the

Incivility.[94] There has been focus on reducing these allegation types through the Human Rights Annual Report, the Policing Plan and at Performance Committee meetings with PSNI and OPONI. The Policing Plan 2016/17 contained a target under the strategic outcome heading 'Increasing trust and confidence in policing' for PSNI to report to the Board on its complaints reduction strategy, showing reductions in the most frequent types of allegations.

Failure in duty allegations

In 2015/16 there were 2,117 allegations of Failure in Duty, which was a decrease from the total of 2,405 received in 2014/15; a reduction of 12%. During 2016/17 however there were 2,207 allegations, which is an increase of 4% from 2015/16. More than half of those allegations in 2016/17 (1,197, 54%) related to the conduct of police investigations or police response to an incident. Other common factors included failures in contact (310, 14%) and failure in record management (171, 8%).

Oppressive behaviour allegations

In 2015/16 there were 1,230 allegations of Oppressive Behaviour, which is a decrease from the total of 1,450 received in 2014/15; a reduction of 15%. In 2016/17, there were 1,073 allegations, which is a 13% decrease from 2015/16. Fewer allegations were received than in any of the previous four years. The most common factors behind the allegations were oppressive conduct not involving assault (504, 47%), other assault (420, 39%) and harassment (112, 11%).

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complainant was denied access to legal advice or medical attention while they were detained in custody. In addition it covers instances where it is alleged the officer did not inform the detained person of their rights and entitlements, or the officer did not keep accurate custody records); Failures in contact (which includes incidents where the complainant has alleged a police officer; failed to keep arranged appointments, return telephone calls, or reply to correspondence. It also includes incidents when an officer failed to keep the complainant updated with progress of an investigation or police enquiries); Failure in record management (which includes a failure of police to keep accurate, complete or up to date police records. It also includes the failure of officers to provide information or documentation relating to the complainant or a third party); Failure to act impartially (where the complainant allegations an officer failed to adopt an independent approach and/or failed to act in a fair and impartial manner)

[93] This allegation type includes situations where the complainant alleged that the officer has behaved in an oppressive manner. They can include allegations of oppressive conduct, harassment, and assault, including sexual assault.

[94] This refers to allegations such as the police officer being rude, showing a lack of respect, being abrupt or displaying a general lack of sensitivity.

Incivility allegations

In 2015/16 there were 383 allegations of Incivility, which is a decrease from the total of 423 received in 2014/15; a reduction of 9%. In 2016/17, there were 282 allegations of incivility, which is a 26% decrease from 2015/16 and is the lowest number received in the last five years. 30% (86) of all allegations of occurred at a domestic residence, 22% (63) on the telephone and 11% (31) at a police station.

The Policing Plan 2017/18 requires PSNI to reduce oppressive behaviour, failure in duty and incivility allegations by 6.6% compared to the number recorded for 2016/17. Progress in relation to this target will be reported to the Performance Committee in due course through the Policing Plan monitoring reports.

Other allegations

In 2016/17, allegations relating to searches (240 allegations), arrest/detention (202 allegations), handling of property (95 allegations) and discrimination (53 allegations) all decreased to their lowest levels in the last five years. Meanwhile allegations relating to malpractice increased from 57 in 2015/16 to 71 in 2016/17, traffic allegations increased from 43 to 61 and allegations relating to 'The Troubles' increased from 73 to 75.

Factors underlying complaints

Where sufficient information is available, OPONI records the main factor underlying each complaint received, or the main situation giving rise to the complaint. Criminal investigations tend to be the most common factor underlying complaints accounting for 25% (770) of complaints in 2015/16 and 30% (848) in 2016/17. In 2015/16 complaints relating to arrest accounted for 19% (565) of complaints but this decreased in 2016/17 to 15% (411) of complaints. These complaints have reduced each year since 2013/14 and are now at their lowest level in the last five years. In 2015/16 complaints relating to police searches accounted for 244 (8%) of complaints but these have decreased for the third year in a row to 224 (8%) of complaints. Complaints arising from incidents during parades or demonstrations have decreased to the lowest level in the last five years with 21 complaints made during 2016/17.

Complaints arising from domestic violence incidents

The Human Rights Annual Report 2015 highlighted the number of complaints arising from a situation which OPONI categorised as 'Domestic Incident' (213 in 2014/15, 152 in 2015/16, 157 in 2016/17). The Human Rights Annual Report expressed concern that this may indicate a problem with the handling of domestic abuse incidents. As a result a recommendation was made requiring the PSNI, in co-operation with OPONI, to identify those complaints which relate specifically to the police response to reports of domestic abuse (within the more general complaint heading of 'Domestic Incident') and disaggregate those complaints in the presentation of its six-monthly reports.[95] Discussion between PSNI Discipline Branch, OPONI and the Policing Board's Human Rights Advisor has clarified that the use of 'Domestic Incident' relates to an occurrence at or near a home, and mainly refers to neighbour disputes rather than a domestic abuse incident. The Police Ombudsman's Office has a separate complaint factor for 'Domestic Violence' and the figures for the last five years are as follows:

2012/13	2013/14	2014/15	2015/16	2016/17
17	14	26	27	54

To shed more light on complaints of this nature, PSNI and OPONI established a baseline for 12 months from 1 April 2016 for complaints which arose out of the police response to and investigation of domestic violence, including the service of non-molestation orders.[96] OPONI analysed the complaints to identify whether there were any recurring themes which may identify training or awareness issues for officers. During 2016/17 the OPONI has broken down domestic violence incidents according to those made by the victim and those made by some other person such as perpetrators or witnesses. Of the 54 complaints, 36 were made by victims and 18 by other parties.

[95] Recommendation 4, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.
[96] Peripheral complaints were excluded e.g. complaints made following an arrest for domestic abuse that handcuffs were too tight.

A more detailed analysis was undertaken of the 33 complaints concerning domestic violence made in the six months 1 April 2016 – 30 September 2016. Slightly more complaints were made by victims of domestic abuse than from other parties although the difference between the groups was small (4 complaints). Females made twice as many complaints of this nature than males. The complainants made a total of 50 allegations, with the most common allegations relating to the 'conduct of the police investigation' and, particularly arising from victim complaints, a 'failure to investigate'. The majority of complaints had been closed by OPONI, none of which had been substantiated although in one case a complaint was resolved following Informal Resolution, with the complainant being satisfied as to the outcome. No particular recurring themes or training issues were identified through the analysis, although the information was shared with PSNI's Head of Public Protection and the individual responsible for PSNI's domestic abuse policy. PSNI have committed to conduct analysis on an ongoing basis to identify any recurring themes which may identify training or awareness issues for officers.

Recommendation 4 of the Human Rights Annual Report 2015 is therefore discharged; and it appears that the number of formal complaints to OPONI relating to domestic abuse incidents is not as high as was first feared. The Committee is however conscious that not all complaints regarding the manner in which a domestic abuse incident has been handled will be made formally to OPONI. The victim's experience of the police response is a particular concern for the Committee, which will continue to seek feedback of that experience from various sources rather than focusing *solely* on OPONI complaint statistics.

Referrals made to OPONI by the Chief Constable

During 2015/16 OPONI received 51 referrals from the Chief Constable and 3 from the Director of Public Prosecutions (DPP) - an increase of six from 2014/15. The Police Ombudsman also exercised his power to investigate matters which had not been subject of a complaint or referral from the Chief Constable or other organisations. In 2015/16 the Ombudsman invoked this power on 16 occasions. During 2016/17, OPONI

received 22 referrals from the Chief Constable and 1 from the Director of Public Prosecutions - a decrease from 2015/16. The Police Ombudsman exercised his power to investigate matters which had not been subject of a complaint or referral on 11 occasions in 2016/17.

INTERNAL DISCIPLINE

Police misconduct is dealt with by PSNI[97] through the PSNI disciplinary structure either at a local level or by PSNI's Discipline Branch. 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.

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	

The PSNI provides the Policing Board's Human Rights Advisor annually 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

[97] 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.

Improvement Department deals with the most serious misconduct allegations and the sanction(s) imposed for allegations that are substantiated.

In addition, an Annual Report on the work of PSNI's Anti-Corruption & Vetting Branch and Discipline Branch is provided to the Performance Committee as part of the Professional Standards Monitoring Framework. This provides the Committee with an overview of police misconduct matters. When an allegation of misconduct is made, the standards by which officers are measured are those contained within the PSNI Code of Ethics 2008. 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. By monitoring PSNI internal disciplinary proceedings and breaches of the Code of Ethics, the Committee can assess the effectiveness of the Code[98] and the extent to which individual officers (and the Police Service as a whole) are respecting human rights principles.

Anti-Corruption & Vetting Branch and Discipline Branch is part of Legacy and Justice Department.[99] Whilst they are two distinct Branches, there is a significant degree of collaborative working between the two Branches. The joint purpose is: "To engender pride and trust in the integrity of the Police Service of Northern Ireland through the prevention and detection of corruption, dishonesty or unethical behaviour." According to the Anti-Corruption & Vetting Branch and Discipline Branch annual report, there were a total of 393 breaches of the Code of Ethics in 2016/17, an increase from the 376 breaches recorded for the 2015/16 year. The most common breaches of the Code of Ethics related to Article 7 Integrity (30.5%) which is an increase from 27.9% in 2015/16 and involved officers being dealt with for criminal offences such as assault, motoring offences, domestic offences or theft/fraud offences. The next most commonly breached Articles of the Code of Ethics was Article 2 Police Investigation (26.2%) which is an increase from 23.7% in 2015/16 and involved officers being dealt with for issues such as failure to investigate, failure to update, failure to supervise and making

[98] As per the Policing Board's statutory duty under section 3(1)(d)(iv) of the Police (Northern Ireland) Act 2000.
[99] Prior to this they were part of the Service Improvement Department which was replaced by Legacy and Justice Department in April 2016.

unprofessional comments. That was followed by Article 1 Professional Duty (24.4%) which is a decrease from (26.3%) in 2015/16 and most commonly relates to failures in maintaining records, negligent discharge and procedural failures. In 2016/17, there were a total of 314 on-duty breaches compared to 308 in 2015/16 and 79 off-duty breaches compared to 68 in 2015/16.

Where a matter requires a formal investigation, it may be by means of a criminal investigation and/or misconduct investigation. During 2016/17 PSNI initiated 48 criminal investigations and 12 misconduct only investigations compared to 70 and 24 respectively in 2015/16. A total of 21 misconduct hearings were held during 2016/17, with an additional 3 officers who resigned prior to hearing. The 21 hearings resulted in 1 dismissal, 3 requirements to resign, 9 reductions in pay (including one with a reprimand, one with a fine and one with restitution), 6 fines, 1 reprimand and 1 stay in proceedings. Where there is a criminal or misconduct allegation made against an officer, the Chief Constable has the authority (delegated to the Deputy Chief Constable) to suspend the officer in order to protect the integrity of the PSNI pending resolution of the matter. A decision to suspend an officer is only taken if all other options, including repositioning the officer to undertake other duties, are deemed inappropriate because of the nature of the allegation. Repositioning is an alternative to suspension and involves a temporary change in role or location pending the outcome of criminal/misconduct investigations.

In order to reduce the number of complaints and allegations made against officers and to reduce the number of officers attracting multiple complaints, PSNI has in place a Complaints Reduction Strategy. Since the Strategy was introduced in 2010 the number of officers who have attracted three or more complaints has decreased year on year and that trend continued in 2016/17 with a total of 44 officers attracting 3 or more complaints compared to 73 in 2014/15 and 60 in 2015/16.

STATUTE BARRED CASES

There are a number of reasons why a file may become statute barred, for example it could be due to a failure to progress investigations in a timely way, or it could be due to

circumstances that don't indicate failure on the part of the officer involved. It is also important to note that the quoted number of statute barred cases do not give a complete picture, for example, of the 163 statute barred cases in 2015/16, prosecutions did take place in 44 of the cases for more serious offences such as Rape, Burglary and Supply of Drugs however each file also contained a more minor offence which could not be prosecuted due to the statutory time limit for the minor offence having passed.

The Performance Committee has paid close attention to the number of statute barred cases and has pressed PSNI as to how the number of incidents can be reduced. Consequently PSNI has put in place a number of steps including technical changes to the computer system, awareness raising amongst officers, training of supervisors, weekly checks of case files close to being statute barred and monthly reports to each District and Department detailing every statute barred case for local review and action as necessary.

In 2016/17 there were 134 statute barred cases which represents an 18% reduction from 2015/16 (136) The highest number of statute barred cases occurred in Armagh, Banbridge and Craigavon (25) followed by Belfast (18) and Derry & Strabane and Antrim & Newtownabbey who each had 14. PSNI advised that a significant number of these statute barred cases were reported for more serious indictable offences however officers were regrettably unaware or overlooked the need to protect the summary offences related to the more serious offences, highlighting that these figures are not truly reflective of cases 'lost' through being statute barred.

COMPENSATION CLAIMS

In 2016/17 there were 1,606 new claims issued. In the same year, 1,925 claims were concluded. The highest number of compensation claims received and concluded was for Hearing Loss, with 527 new claims being received and a total of 1,001 concluded. This was followed by claims for wrongful acts/negligence (e.g. assault by police, unlawful arrest, unlawful detention, etc.) with 366 new claims and 401 concluded, and Industrial Tribunals with 503 new claims and 232 concluded.

POLICY EVALUATION GROUP ANNUAL REPORT

The Police Ombudsman may, following an investigation into a complaint or a referred matter, make policy recommendations to PSNI as well as disciplinary recommendations. Once the Police Ombudsman's Office makes a policy recommendation, they will assign it as either 'strategic', 'operational', or 'area for minor improvement'. Given that these recommendations can sometimes relate to the manner in which PSNI respond to critical incidents, 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 the Human Rights Annual Report 2013 that PSNI develop a system which identifies trends and patterns in OPONI policy recommendations and that where recurring recommendations are made, the system should highlight these and require PSNI to take further action. PSNI has given effect to that recommendation through the work of its Policy Evaluation Group (PEG) which was established specifically for the purpose of considering OPONI policy recommendations. The PEG comprises representation from OPONI, PSNI, the Criminal Justice Inspection Northern Ireland and the Policing Board.

An annual report is produced through the PEG which sets out learning identified through OPONI recommendations. The PEG annual report is submitted to the Performance Committee in June each year alongside the Professional Standards Monitoring Framework information. In 2016/17 there were 47 Policy recommendations. This represents a downward trend with 57 policy recommendations received in 2015/16 and 70 policy recommendations received in 2014/15. Of the 47 recommendations received, 40 were operational. During 2016/17 the number of investigations resulting in policy recommendations (24) represented a decrease from the previous year (39). There were 2 strategic recommendations arising from 2 cases: establishment of a Dedicated Missing Person Unit to offer specialist/dedicated assistance to Districts; and PSNI to

develop and agree a Memorandum of Understanding with the ambulance service. The areas most frequently attracting recommendations have been Major Investigation & Public Protection (88), Detention & Custody (76), Investigations (73), and Operations (63).

PSNI Discipline Branch has developed a database of all policy recommendations made by OPONI. Within this, key words are tagged for each recommendation which enables the extraction of recommendations relating to different topics. This can then be utilised to inform policy writers on previously identified issues. Furthermore, the *Independent Police Complaints Commission (IPCC) Learning the Lessons* Bulletin is circulated by Discipline Branch to relevant individuals within PSNI to help inform their policies and practices.[100] For example, in July 2016 PSNI conducted a self-assessment by responding to the key questions raised in an IPCC Learning the Lessons Bulletin relating to custody.

REGULATION 20 REPORTS

The Police Ombudsman may investigate non-complaint matters *i.e.* matters about which no complaint has been made by a member of the public.[101] Non-complaint matters can be investigated by the Police Ombudsman of his 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 also be referred. At the conclusion of an OPONI investigation into non-complaint matters a report, known as a

[100] The Independent Police Complaints Commission (IPCC) oversees the police complaints system in England and Wales. Since 2007 the IPCC has published a regular Learning the Lessons Bulletin to help police services learn lessons from completed investigations into police complaints and conduct matters undertaken by the IPCC or by the police service locally. The Bulletin challenges police services to ask, "Could it happen here?"

[101] By section 55 of the Police (Northern Ireland) Act 1998.

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 2016/17, there were a number of Regulation 20 reports issued by OPONI which related to matters such as: the discharge of a firearm; deployment or discharge of Taser; and discharge of CS Spray.[102] In all cases in respect of AEP, Taser and CS Spray the Police Ombudsman found the use to be lawful, necessary and proportionate. In respect of the discharge of a firearm there was one recommendation for training, one for a discipline sanction and in the third the use was found to have been lawful, necessary and proportionate. The Police Ombudsman also considered a number of matters relating to potential failures in investigation or investigative processes. The Ombudsman made a number of recommendations including in one case referral to the Public Prosecution Service.[103] Other matters included: alleged data protection breaches;[104] prisoner handling;[105] death following police contact;[106] custody;[107] cautioning and diversion;[108] and contempt of court.[109]

If the Police Ombudsman considers it in the public interest he may publish a press statement setting out his findings. A Regulation 20 report is not published as a matter of course 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 receives an annual report from PSNI which sets out learning identified through OPONI recommendations, which may be made in relation to both complaint and non-complaint matters.

[102] Although the reports were published in 2016/17 some relate to incidents which occurred in previous years.
[103] That resulted in a conviction for perverting the course of justice.
[104] Which resulted in referrals to the PPS.
[105] The Ombudsman was satisfied that there was no inappropriate conduct.
[106] Which resulted in a recommended misconduct sanction and policy recommendations.
[107] There was both a finding of no misconduct in one case and recommended misconduct sanctions in the others.
[108] A complaint was upheld but no further recommendation was necessary.
[109] There followed a misconduct hearing which resulted in one person being dismissed.

INFORMAL RESOLUTION PROCESS

Following on from a Mediation Pilot Project in 2008 and 2009, OPONI launched a pilot project in 'D' District on 'Local Resolution' between June 2010 and November 2010 which aimed to increase complainant satisfaction, speed up resolution and reduce bureaucracy with respect to 'quality of service' type complaints[110]. Only those complaints where no criminal or disciplinary proceedings would be taken against the officer subject of the complaint, even if the matter complained of was proven, were deemed suitable for Local Resolution.

Although the Local Resolution pilot was seen to be a success, legislative change to the Police (Northern Ireland) Act 1998 was required before it could be rolled out across all PSNI Districts. In January 2015 the then Justice Minister advised the Policing Board that since the Executive had not agreed to a wider package of reforms he could not proceed with the necessary changes to the legislation.

Nevertheless, PSNI and OPONI met to discuss what aspects of Local Resolution could be rolled out in the PSNI in the absence of legislation. Subsequently PSNI and OPONI agreed to make changes to an existing process for resolving less serious complaints at a local level. That existing process is known as 'Informal Resolution' and unlike Local Resolution, it does have a statutory basis i.e. section 53 of the Police (Northern Ireland) Act 1998.

One of the main differences between the non-statutory Local Resolution and the statutory Informal Resolution was that suitable complaints in the former were referred directly by OPONI to Local Resolution Officers in the relevant District, whereas the process for Informal Resolution required the involvement of PSNI Discipline Branch in the first instance, prior to the complaint being delegated to District. Given this and a number of other procedural differences, the average time taken to resolve a complaint locally was 3 times shorter than Informal Resolution, achieving resolution completion on

[110] Quality of service issues can, for example, include complaints relating to 'failure in duty', 'oppressive behaviour' or 'incivility'. They may also relate to issues such as the quality of files or other customer service type issues.

average within 30 days. The average completion time frame for Informal Resolution was 104 days. The Performance Committee suggested, as reported in the Human Rights Annual Report 2014, that in the absence of legislation permitting the roll out of Local Resolution across the PSNI, the Informal Resolution process could perhaps be adapted to permit OPONI to refer appropriate complaints to District directly rather than to Discipline Branch, albeit with Discipline Branch having a continuing role in quality assuring the handling of complaints.

Following discussion between PSNI and OPONI, and having briefed the Performance Committee in relation to the proposals, a number of changes to Informal Resolution were agreed and introduced. Sergeants are now able to resolve complaints through Informal Resolution – previously it was limited to Inspectors. This means that Sergeants are made better aware and at an earlier stage of any issues existing within their teams. Where a complaint from a member of the public is being recorded by PSNI, a supervisor will discuss with the complainant the possibility of the complaint being resolved through Informal Resolution if the supervisor believes it to be an appropriate case. If the complainant agrees to this, the supervisor will then refer it to OPONI for approval to proceed with the Informal Resolution. Previously the complaint was referred immediately to OPONI and it was for OPONI to decide on whether it was suitable for Informal Resolution. Only then was the prospect of it being dealt with by Informal Resolution broached with the complainant. Administrative processes have been streamlined, with OPONI sending complaints suitable for Informal Resolution directly to District rather than via Discipline Branch (although Discipline Branch still has an advisory and quality assurance role).

In 2016/17 a total of 174 complaints were successfully resolved through Informal Resolution representing a 6% increase on the 165 complaints resolved through Informal Resolution in 2015/16.[111] OPONI and PSNI will seek to build upon this increase in the coming years.

[111] *Annual Statistical Bulletin of the Police Ombudsman for Northern Ireland 2016/17,* OPONI, June 2017.

CIVILIAN PERSONNEL

The legislation which provides the Police Ombudsman with power to investigate complaints and which applies the PSNI Code of Ethics to police conduct came into force in 1998 and 2000 respectively.[112] 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).[113] More civilian staff perform roles for example as station enquiry assistants and call handlers that were previously carried out by police officers. Those roles involve interaction with the public and a high level of responsibility. Civilian staff play an increasingly important role in ensuring that PSNI complies with the Human Rights Act.

As discussed in previous Human Rights Annual Reports, civilian staff are subject to a different code of conduct and a different complaints system than police officers.[114] If a complaint is made against a member of civilian staff, the matter is dealt with by PSNI internally to determine whether it warrants investigation as a disciplinary matter.[115] As records of civilian staff misconduct proceedings were not previously held centrally, this made it difficult for PSNI (and by extension the Performance Committee) to monitor trends and patterns in civilian staff complaints and misconduct matters. However since 2014 a system has been in place to record, monitor and report on all aspects of police staff discipline.[116] A recommendation was made in the 2015 Human Rights Annual Report requiring PSNI to include within the Professional Standards Monitoring

[112] The Police (Northern Ireland) Act 1998 and the Police (Northern Ireland) Act 2000.
[113] *A New Beginning: Policing in Northern Ireland, Report of the Independent Commission on Policing for Northern Ireland*, September 1999, paragraphs 10.22 – 10.24.
[114] 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 as per the Police Powers for Designated Staff (Code of Ethics) Order (Northern Ireland) 2008; and the Police Ombudsman has remit to investigate complaints made against them as per the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008.
[115] *Ibid.* (i.e. unless they have been designated under the 2003 Act).
[116] As required by recommendation 6, *Human Rights Annual Report 2013*, Northern Ireland Policing Board, March 2014.

Framework (PSMF) report to the Performance Committee information on trends and patterns identified in civilian staff complaints and misconduct matters.[117]

That information has now been provided therefore Recommendation 5 of the 2015 Human Rights Annual Report has been discharged although PSNI should continue to provide the information to the Committee annually.

There are 2,110 members of police staff working within PSNI. In 2016/17 a total of 14 disciplinary matters involving police staff were recorded by PSNI. Half of the cases involved misuse of computer systems. The most common outcome involved 'no further action' or 'advice and guidance.' A formal warning was given in one case involving intoxication and drugs.

JUDICIAL REVIEWS AND OTHER CLAIMS

Informed Warnings: *D's Application*

A summary was provided in the Human Rights Annual Report 2015 of the decision in *D's Application* whereby the Divisional Court in Belfast quashed a decision of the PSNI to administer an Informed Warning to an 11 year old boy without referring him to the possibility of seeking legal advice beforehand.[118] In the case an Informed Warning was administered by a PSNI Youth Diversion Officer ("YDO") in the presence of the child's father and social worker. The YDO explained the nature of the procedure, confirmed that it was an alternative to going to court and that, if accepted, it would appear on the child's police record. The child said that he understood and agreed to that disposal. The YDO then read the Informed Warning and confirmed that the child admitted the offence and consented to the Informed Warning. Subsequently, the child made an application for judicial review of the decision to administer the Informed Warning without providing him with legal representation during the process.

[117] Recommendation 5, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.
[118] *D's Application* [2015] NIQB 78.

In its judgment the Court commented that PSNI's Youth Diversion Scheme[119] represented praiseworthy attempts on the part of the PPS and PSNI to recognise and manage the risk posed to young people of acquiring a criminal record which has the potential to adversely affect them long into the future. The Court accepted that the police officers concerned conscientiously sought to comply with the policy on the Youth Diversion Scheme in administering the Informed Warning. However, given the fact that the child was not referred to the possibility of seeking legal advice prior to accepting the Informed Warning, the Court held that his consent could not be regarded as sufficiently or properly informed and that, consequently, the administration of the Informed Warning was not in accordance with law and should be quashed and that the Warning should be removed from the child's record.

A recommendation was also made in last year's Human Rights Annual Report requiring PSNI to amend its Youth Diversion Scheme to include clear guidance that a child must always be referred to the possibility of seeking legal advice when an Informed Warning is to be administered. Thereafter the PSNI was to confirm to the Performance Committee that the Scheme has been amended and that officers have received appropriate advice on the amendment.[120] PSNI accepted this recommendation and reported in May 2016 that the necessary policy change to ensure that appropriate advice regarding the availability of legal advice is given to children subject to a Caution or Informed Warning had been implemented. Forms 63/1: Certificate of Caution and 63/2: Certificate of Informed Warning were reissued to include the declaration that legal advice had been offered and this was circulated to all officers by email. The need to ensure that legal advice is offered has been stressed to YDOs who administer all Cautions and Informed Warnings to children.

Delays in investigation: Patricia Bell's Application

[119] The purpose of the Youth Diversion Scheme is to provide a framework within which the PSNI responds to all children and young people below the age of 18 years who come into contact with the police for non-offence behaviour or who have offended or are potentially at risk of offending or becoming involved in anti-social behaviour. The scheme takes account of the philosophy and principles of restorative justice. It includes a range of out of court diversionary disposals, including Informed Warnings.
[120] Recommendation 6, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

On 24 March 2017, Maguire J. delivered judgment on an application for judicial review of the Police Ombudsman (PO) and the Department of Justice (DOJ), which alleged that the PO had failed to carry out an investigation within a reasonable time under section 56 of the Police (Northern Ireland) Act 1998 and that the DOJ, by failing to fund the PO, had effectively disabled it from discharging its statutory duty in respect of a complaint brought by the family of Patrick Murphy, murdered in 1982.[121] The PO conceded (and the DOJ did not dispute) that the challenge was made out as against the PO; the complaint was made in 2009 but will not be completed before 2025. The judicial review proceeded to consider whether the DOJ had unlawfully failed to provide sufficient funding for the operation of the PO's office.[122] Maguire J. summarised the statutory provisions[123] and emphasised the statutory duty of the PO to investigate complaints within a reasonable time, breach of which was no less unlawful by virtue of the fact that he does not have the funds to investigate. He emphasised that Parliament has established a developed system for dealing with complaints to the PO, which the provisions of the 1998 Act reflect. These impose mandatory obligations and if Parliament had intended that the provisions of the Act should be directory only or should be capable of being set aside it could have provided so expressly.

Mr Justice Maguire observed "it would surely have been expected that sufficient funding would at the very least be provided to ensure that the core statutory duties of the PO may lawfully be performed". Applying that to the circumstances of this application he found there to be systemic and persistent underfunding which is disabling the PO, in a range of cases and over a period now of years. He went on "the court fails to see how a rational funder could underfund a statutory body performing key public obligations to the

[121] *Bell's Application* [2017] NIQB 38. The application was brought by the daughter of Patrick Murphy who was murdered on 16 November 1982 by an unknown gunman at his shop at Mount Merrion Avenue, Belfast. No one has been convicted of any offence arising out of the murder (though at one stage three men were charged with conspiracy to murder). No paramilitary organisation claimed responsibility for the murder but the court noted there was reason to believe that the murder was sectarian and may have been associated with the UVF. The murder was reviewed by the Historical Inquiries Team, which published to the family a Review Summary Report in November 2009. The complaint to the PO disclosed concerns as to "crucial flaws and missed opportunities in the course of the original [police] investigation...[and] missing records and a lack of records in relation to the arrest and detention of suspects."

[122] In *Re Martin's Application* [2012] NIQB 89, Treacy J. held that there had been a similar failure by the PO but that failure had occurred by reason of chronic underfunding at the material time which "disabled" the PO from discharging his statutory duty.

[123] Contained at Part VII of the Police (NI) Act 1998.

extent of requiring it to act unlawfully without forfeiting his, her or its ability to be viewed as acting reasonably". Maguire J. therefore held that the DOJ acted unlawfully by failing to provide a sufficient level of funding to the PO to enable him to carry out his statutory obligation to investigate the applicant's complaint within a reasonable period of time.

Discovery of documents in legacy cases: *Flynn v Chief Constable*

On 21 July 2017, Mr Justice Stephens gave judgment in relation to an application by the PSNI to extend time for discovery by way of a list of documents ordered previously by the High Court.[124] The background to the application is a claim brought against the PSNI (defendant) for damages. Mr Flynn (plaintiff) alleges that on 12 March 1992 a person now known by the cypher Informant 1 tried to murder him by aiming a gun at him which failed to discharge. He also alleges that Informant 1 attacked him physically before running off. He contends that Informant 1 was a Covert Human Intelligence Source (CHIS) for the PSNI and also an employee of the PSNI. He further alleges that on 6 May 1997 Informant 1 or persons acting on his behalf placed an improvised explosive device under his car, which failed to explode.

Mr Justice Stephens summarised the background to a report (Ballast) by the OPONI which considered a complaint alleging collusion, "the Ballast report concluded that police officers colluded with Informant 1 in the full knowledge that he was a UVF terrorist with an extensive criminal record and with an ongoing involvement in murders, attempted murders and other serious criminal activities. The report further concluded that rather than investigate the crimes committed against the plaintiff, police officers, in effect, protected Informant 1, paid him money and shielded him from prosecution. The report also refers to the fact that records were destroyed or lost, that misleading records were compiled and that records were withheld from the DPP and the courts. It is the conclusion of the report that Informant 1 was not brought to justice despite his criminal activities being known to the defendant. In essence, his criminal conduct, including paramilitary activity and involvement in serious crime including murder, was allowed to continue during the relevant period."

[124] *John Flynn v Chief Constable PSNI* Neutral Citation No: [2017] NIQB 72.

The PSNI's application for extra time to provide the list of documents was based on the proposition that the PSNI "despite requesting financial resources, does not have sufficient resources to comply" by the date stipulated. The PSNI suggested that it would take approximately two years to reach the point, following completion of the entire process, including all of the Public Interest Immunity (PII) stages, at which it might be possible to serve a list of documents. An issue arose as to whether the PSNI would have to start from scratch in identifying all the relevant documents in a vast archive of historic documents or as to whether those documents had already been identified as they had been provided by the PSNI to the OPONI for the purposes of the Operation Ballast investigation which concluded in January 2007. In the latter case there was an issue as to whether either the OPONI or the PSNI had a list of those documents provided to OPONI. A number of affidavits were filed by the PSNI.

Stephens J. considered the history to the case and the fact that PSNI had not complied with orders for discovery dating back to 2011. He commented that "there has been a failure over many years by the defendant to provide discovery and to comply with court orders." He reflected on the PSNI's assertion that they would have to start from scratch because there was no list or inventory of the documents that had been made available by the PSNI to the OPONI and that the PSNI had not kept a list of documents that it made available, nor did it have a list of the documents that it had received back from the OPONI. Stephens J. directed that this factual assertion should be placed on affidavit. However the new affidavit provided further to this "did not condescend to any detail as to the enquiries made as to whether there was any such lists nor did it set out any of the sources of the deponents information and belief." He comments "on the basis of that affidavit I was not persuaded that the defendant did have to start from scratch in relation to discovery."

A further affidavit was then sworn by the PSNI which did condescend to details as to the enquiries that were made but it did not say when the enquiries were made. The affidavit referred to two folders which were *recently* located and to a folder being located which was collated by a detective constable identified by the cipher Constable A without

stating when these two folders were located or when the folder collated by Constable A was located. Mr Justice Stephens added “none of the receipts signed by constable A for the return of documents have been exhibited in order to enable the court to form its own independent assessment as to whether they would enable ready identification of relevant documents. The same point applies in relation to the OPONI inventory. Only now is it stated that the vast majority of documents were returned by OPONI in April/May 2017. This is not only new information but also no indication is given as to how long after the order of 8 March 2017 these documents were requested, why they were not requested when the court of appeal gave judgment on 24 February 2017 and why they were not requested years ago.”

He continued “I accept that the discovery process for the defendant is complex and I accept that there is a resource implication though not to the extent suggested. However, years have passed without compliance and there is no clear acceptable plan for future compliance. Furthermore, the application for an extension of time is to be seen in the context that there is no evidence of any attempt by the defendant to comply with its initial obligation under the rules to serve a list of documents or to comply with all the orders made by the Master over many years. I am not persuaded that the identification of relevant documents presents the difficulties suggested by the defendant and in any event inherent in the proposition that the defendant has now to start from scratch is the unacceptable inference that the defendant has done nothing or nothing useful about discovery over many years.”

Mr Justice Stephens made an order that unless the list of documents is served on or before noon on 1 October 2017 the PSNI’s defence is struck out with judgment being entered for the plaintiff on the basis of all the allegations contained in the statement of claim and with damages to be assessed on the same basis.

Article 2 ECHR obligation: Historical Enquiries Team thematic report and the Glenanne Gang

A case concerning the extent of the Article 2 ECHR obligation to investigate was considered by Mr Justice Treacy who handed down his judgment on 28 July 2017.[125] He found that the families of the victims of the Hillcrest pub bombing had a legitimate expectation that the Historical Enquiries Team ("HET") would publish an overarching thematic report regarding the case and its linkage to other murders and offences carried out by the Glenanne Gang. He also found that the Chief Constable's decision to transfer the work of the HET into a branch of the PSNI was fundamentally inconsistent with Article 2 and frustrated any possibility that there would be an effective investigation in the Glenanne cases.

The application was brought by Edward Barnard the older brother of Patrick Barnard who was murdered (aged 13) by a bomb placed by the UVF outside the Hillcrest Bar in Dungannon on 17 March 1976. James Francis McCaughey, Andrew Joseph Small and Joseph Kelly were also killed in the attack. The HET considered that the bombing was part of the "Glenanne series" of cases. Mr Barnard sought relief arising from a failure/refusal on the part of the HET to conduct a lawful, effective and independent investigation into the murder of his brother, particularly the failure/refusal of the HET to complete and publish an overarching thematic report regarding the linked Glennane Gang cases.

On 8 December 1980, Garnet James Busby was arrested for the bombing. During interview he admitted to his involvement in the Hillcrest Bar bombing and to his membership of the UVF. During his interviews, he also admitted his involvement in the murders of Peter and Jane McKearney on 23 October 1975, the placing of a car bomb outside O'Neill's bar, Dungannon on 16 August 1973 and the placing of a car bomb at Quinn's public house, Dungannon on 12 November 1973. On 23 October 1981, Busby was convicted of a total of 14 offences including the Hillcrest bar bombing. He was sentenced to life imprisonment for the murders and concurrent sentences for other offences. He was released on life licence in February 1997.

[125] *Barnard's Application for judicial review of the decision by the Chief Constable of the PSNI* [2017] NIQB 82.

The HET was established in 2005 as part of a 'package of measures' responding to the judgments of the European Court of Human Rights in a series of cases known as the McKerr cases. It was initially part of the PSNI's Serious Crimes Review Team but quickly evolved into an independent unit of the PSNI which reported directly to the Chief Constable. Originally, the HET was to have two teams, one staffed by officers seconded from police forces outside NI which would deal exclusively with cases in which independence from the PSNI was seen as a pre-requisite. The second team was staffed by a mix of police officers and civilian staff recruited from both the PSNI and externally. In 2006, the Director of the HET indicated that a third team ("the White Team") was being established. He said it would be based in England to reinforce independence and would be "largely analytically driven and examine the collusion issues". He said the HET was "not set up to deal with Glenanne but to meet the families. Glenanne has come into the process and we are devising a structure by which we hope to be able to deal with it". In materials provided to the Committee of Ministers of the Council of Europe (CM) it was also stated that the type of cases being handled by the White Team would be referred to the Police Ombudsman for Northern Ireland ("OPONI") who would conduct a parallel investigation into allegations of police misconduct.

In 2010, the practices of the HET underwent a fundamental change. This occurred because of a recommendation by the OPONI that the PSNI should re-investigate a series of serious crimes identified by Operation Ballast (later renamed Operation Stafford). The then Chief Constable, Sir Hugh Orde, referred these cases to the HET. The HET was unable to properly resource these investigations alongside its other work and in 2014, the new Chief Constable, Mr Matt Baggott, announced that the Operation Stafford investigation would transfer back into the PSNI. He further decided that "all cases with potential evidential opportunities" would be transferred to the PSNI for further investigation instead of being investigated "in-house" by the HET. The Chief Constable later told the Policing Board in 2014 that it was his intention to draw together all the legacy operations of the PSNI (including those previously conducted by the White Team in England) under one single command known as the Legacy Investigations Branch

(LIB). New terms of reference for the LIB, which took over from the HET, stated that the role of the LIB was to refer to OPONI any matter arising from its work which raises a concern of possible police criminality or serious misconduct and that the LIB "cannot undertake wide ranging reviews into the broader context of 'the Troubles' in Northern Ireland."

Mr Barnard referred to a number of HET reports to the families of those killed in the Hillcrest pub bombing which stated that it had found no evidence to suggest there was any collusion between the security forces and loyalist paramilitary organisations in the murders. The reports additionally stated that "the HET will continue to review a number of cases, collectively referred to as the Glenanne series, to further examine allegations of collusion. This case is regarded as part of the overall series because of links to suspects such as Busby. Any further developments in this regard will be notified to the family". It was noted that the HET White Team was examining 89 incidents that occurred between July 1972 and June 1978 as part of its Glenanne Inquiry and this included 46 murder cases (involving a total of 80 deaths). In its reports to the family of Joseph Kelly, the HET stated that it intended to produce an over-arching report on a number of these linked cases in the near future. Other reports to families whose members were thought to have been murdered by the "Glenanne Gang" also referred to a specific "Glenanne" Inquiry.

On 11 March 2014, Mr Barnard's legal representatives wrote to the Chief Constable and to the HET on its understanding that an overarching thematic report was due to be prepared by the HET under the auspices of the PSNI. The letter asked who took the decision not to produce an overarching thematic report, when was that decision taken, and whether it was taken by the HET on a standalone basis or whether the decision was made pursuant to engagement with PSNI and/or any other agencies. The legal representatives further noted that the HET report into the killing of Patrick Barnard did not include any reference to a series of linked cases carried out by the Glenanne Gang and asked for confirmation that his case had been linked to the others and for access to the investigative end product.

On 12 June 2014, the relevant Assistant Chief Constable replied saying that the HET was committed to the preparation of bespoke family reports but the preparation of "an overarching report would not provide any evidential opportunities not currently being considered during the Review process. The HET does not intend to prepare an overarching thematic report into those cases referred to as the "Glenanne Gang linked cases". To prepare such a report would divert HET resources from their central role of conducting a review and preparing a report for families specific to the death of their loved ones". Mr Barnard sought an order quashing this decision and compelling the conduct of a lawful investigation and publication of an overarching thematic report. This was on the grounds that the decision was in breach of Article 2 ECHR as the murders and activities of the Glenanne Gang could be considered to be part of "state practice" and the HET had failed to conduct an effective, independent investigation into the murder of Patrick Barnard. He further contended the decision was irrational as it failed to take into account that the HET had completed approximately 80% of the overarching report by May 2010 and had access to a database which provided them with unique ability to establish links between the interrelated Glenanne Gang cases.

The Chief Constable made a number of points including that the HET no longer exists and it is now obviously impossible for it to complete the work. It was contended that Mr Barnard had not raised an issue about the preparation of the report until March 2014 by which stage the author had ceased employment with the HET. Mr Justice Treacy heard that the draft overarching report prepared by the HET had been disclosed to Mr Barnard for the purpose of the proceedings and did not include or seek to include the Hillcrest bar bombing. The PSNI contended that his Article 2 argument was based on the false premise that the HET was the State's means of discharging the Article 2 investigative obligations and said that, at most, the HET could only contribute to the discharge of the obligations as it was involved in review and not investigation.

Mr Justice Treacy however made it clear that, on the material before him, there were always intended to be two main strands to the work of the HET: the "individual strand" which involved interacting directly and personally with the families of each separate victim of the Troubles killed between 1968 and 1998. The purpose was to "bring a

measure of resolution" to those families and to "identify and address issues and questions that are unresolved from the families' perspective"; and the "collective strand" which was reflected in Objectives 2 and 3 of the HET namely to "re-examine [the] deaths … and to ensure that ALL investigative and evidential opportunities are subject to a thorough, professional examination in a manner that satisfied the PSNI's obligation of an "effective investigation" in conformity with the PSNI Code of Ethics as far as possible". There was also an undertaking to do so in a way that commands the confidence of the community. Treacy J. said it was less clear how this collective function might be discharged because in 2007 it was not clear where the evidence to facilitate the "collective" aspect of the review might come from or what it might consist of: "However it was understood that effective discharge of the collective strand and discharge of the general duty to conduct these inquiries in a manner that commanded the confidence of the wider community requires something more than the simple re-examination of individual past crimes".

It was originally agreed that an analytical team would be set up to gather the materials that might facilitate this work and that there would be a general commitment to undertaking this work which would underpin the entire mechanism and be a main pillar of the rationale for the existence of the entire mechanism. The work was understood to be cumulative and evolving in its nature. Therefore, as the re-examination of each death progressed the details of each case were to be stored in an evolving database; that the whole process was underpinned by a developing analytical database which contains details relevant to each case and which can be used to identify both links between cases (intelligence or forensic/ballistic), gaps in intelligence or any other trends/evidential opportunities. Treacy J. found that the development of this element of the HET process appears to be the UK's proposal for addressing the systemic nature of some of the failings identified in the McKerr cases.

It was said that the White Team would look for evidence of offences which might be characterised as "collusion" and examine any links between cases. Those cases would also be referred to the PONI and where there is sufficient evidence of offences it would be submitted to the PPS for consideration and a decision on prosecution. Mr Justice

Treacy described this as a system in which HET teams staffed by officers from outside Northern Ireland investigated the available materials specifically looking for evidence of collusion and this investigation would also examine any links which would likely be facilitated by the developing analytical database. He went on "So the system proposed by the UK for dealing with potential 'collusion' cases involved two elements. First, there would be an investigation of each case conducted in-house by the HET's White Team and Complex Inquiry Team both of which were based in England and comprised investigators recruited from outside NI and who had no prior link with the RUC and/or the PSNI. Those investigators were to conduct their enquiries with the specific purpose of looking for evidence of offences which might be characterised as 'collusion'. In addition to the in-house HET re-investigation of these cases they would also be referred to the OPONI who would conduct a parallel investigation focussed on the conduct of any police officers potentially linked to the offence".

On the understanding that the UK would handle such cases by the mechanisms described in its Package of Measures, the CM closed its examination into the investigation of historical cases on 19 March 2009 "as the HET has the structure and capacities to finalise its work". Mr Justice Treacy considered that the Chief Constable's decisions in 2010 - that the operation of the HET and all cases with potential evidential opportunities be transferred to the PSNI - began "the process of dismantling the UK's Package of Measures which the CM had signed off in 2009". Another important change occurred in 2014 when the Chief Constable said the PSNI was drawing together its legacy operations into the LIB, which was part of the Crime Operations Department, due to severe budgetary pressures. He said these were the decisions which gave rise to the present proceedings.

Treacy J. said it was clear from the terms of reference of the LIB that it was specifically prohibiting itself from any active investigation of linkages between individual historical crimes and from the active pursuit of new evidential leads/unused opportunities for investigation which might have arisen due to the compartmentalisation of the earlier investigations into individual crimes which might form part of a linked series. He said the LIB is further limiting itself strictly to a review and referral role and is expressly

excluding any element of investigation from its work. The judge considered this differed significantly from the role and objectives of the HET which were originally approved by the CM and which included a role to investigate the possibility of linkages/new evidential leads arising from its re-examination of individual and linked historic cases and if any such link was uncovered then the files were to be forwarded to the PPS and/or the OPONI. He said the new terms of reference agreed for the LIB specifically eschewed the role of active investigation of potential evidential leads arising out of reviews of linked cases.

He also considered that the other change to the operation of the HET which underlies the proceedings is the decision not to prepare an overriding thematic report into cases referred to as the "Glenanne Gang linked cases": "The changes in the structure and process introduced after 2009 makes it clear that the structure and process now in place lacks most, if not all, of the essential safeguards which the UK Government agreed with the CM to put in place for future investigations of cases of this nature in order to comply with the decision of the ECHR in the McKerr series of cases. These changes came about apparently as a result of the decisions of the Chief Constable and the Assistant Chief Constable."

He continued that the ability of the LIB to continue the work of the HET is undermined by the fact that it has fewer resources, significantly reduced scope and is not independent in the manner required by Article 2 and the Package of Measures. He observed that the LIB lacks structural and operational independence as well as functional reach and meaningful output. He concluded that the changes introduced by the Chief Constable are "fundamentally inconsistent with Article 2 and the package of measures" and that the current LIB cannot comply with even the required minimum elements. During the hearing Treacy J. heard that the HET had considered that in at least three of the 89 Glenanne cases there was direct evidence of collusion and the remaining cases were linked by suspects, ballistics or intelligence. Mr Justice Treacy said there was credible suspicion of collusion in respect of the remaining cases which revives the Article 2 duty.

He noted that the HET had repeatedly acknowledged that its overarching thematic report was a key process by which it may be possible to unearth opportunities that were not capable of discovery by looking at cases in isolation. He said "Given that an Article 2 duty arose in respect of Patrick Barnard (and all other victims in the Glenanne series) there was a requirement on the State to carry out an effective investigation into his death. The duty of the HET in that context included seeking out credible evidential opportunities which would form the basis of such an effective investigation. In relation to Patrick Barnard (and the others) the HET recognised that its regular, non-White Team practice was insufficient to find evidential opportunities in collusion cases and put in place the analysis driven White Team to parse the evidence arising from a joined-up consideration of linked cases to meet its remit. The Chief Constable in halting that process which had been openly promised and which was acknowledged to be essential to the HET's purpose has turned his back on a potentially rich source of evidential opportunities. This decision frustrates any possibility of an effective investigation which would fulfil the Article 2 duty which now arises and has foreclosed any possibility that the Article 2 duty will be fulfilled."

In conclusion Mr Justice Treacy held that: the HET had made repeated representations to the families of the Hillcrest victims and to the Pat Finucane Centre to the effect that the Glenanne series would be separately analysed and that a report would be completed; the HET made representations to the Republic of Ireland's Joint Committee that individual reviews were not sufficient to identify evidence of collusion and instead that those issues would be specifically analysed by the White Team that would then issue a report; and the UK Government made representations to the CM wherein it indicated that the White Team would investigate allegations of collusion in linked cases and would identify links regardless of whether or not there was family involvement. He found there to have been clear and repeated promises to families of the Hillcrest victims through the HET review reports, the meetings with the Pat Finucane Centre, the information provided to the Committee of Ministers and the comments made by the Director of the HET to the Republic of Ireland's Joint Committee on the Barron report to provide an overarching report. That amounted to a representation giving rise to a legitimate expectation.

Finally, he considered whether the change of policy amounted to an abuse of power. Treacy J. considered relevant case law which categorises abuse of power as "conspicuous unfairness" and that the more extreme the unfairness, the more likely it is to be characterised as an abuse of power. In this case, Treacy J. found the unfairness to be "extreme". The frustration of the HET commitment completely undermined the primary aim of the HET to address as far as possible, all the unresolved concerns that families have. He considered that it had completely undermined the confidence of the families whose concerns are not only unresolved but compounded by the effects of the decisions taken by the then Chief Constable. He observed that it is a matter of very grave concern that almost two decades after the McKerr series of judgments decisions were taken apparently by the Chief Constable to dismantle and abandon the principles adopted and put forward to the CM to achieve Article 2 compliance.

That means there is a real risk that this will fuel in the minds of the families the fear that the state has resiled from its public commitments because it is not genuinely committed to addressing the unresolved concerns that the families have of state involvement. In the context of the Glennane series he observed that the principal unresolved concern of the families is to have identified and addressed the issues and questions regarding the nature, scope and extent of any collusion on the part of state actors in this series of atrocities including whether they could be regarded, as the applicant argued, as part of a 'state practice'. Ultimately he found the PSNI's frustration of the legitimate expectation was inconsistent with Article 2 ECHR, the principles underpinning the McKerr cases and the package of measures.

The Performance Committee has dedicated significant time and effort to considering the many and complex issues involved in legacy cases. In particular, the Committee has been concerned at the continuing delay and lack of progress in the PSNI's completion of the disclosure process. The Committee is deeply concerned by the findings summarised above and the various issues that present from many judgments delivered this year. The Committee will be raising issues directly with the PSNI and will continue to keep this under close scrutiny.

Closed proceedings: *Eilish Morley v MOD & Peter Keeley & PSNI*

On 24 January 2017, Stephens J. delivered his judgment on an application made by the Ministry of Defence (MOD) and the Chief Constable of the Police Service of Northern Ireland (PSNI) under the Justice and Security Act 2013, in the course of a claim brought by Eilish Morley, to have the proceedings 'closed'.[126] The reason for the application, in essence, was that to disclose sensitive information, which had to be considered by the court to determine the claim, to Ms Morley or her legal team would be damaging to National Security. Stephens J. delivered an open judgment of his reasons for making a declaration that part of the proceedings would be closed.[127] This judgment is important in two respects: for the factual allegations made; and, for the analysis of how sensitive information will be handled by courts.

The applications by the PSNI and the MOD were made pursuant to a relatively new and highly controversial power under the Justice and Security Act 2013, by which a court can make a declaration that proceedings or part of proceedings are to be heard in the absence of the plaintiff and her chosen legal team.[128] The proceedings are known as Closed Material Proceedings. In such applications the plaintiff and her legal team attend the hearing of the application by the defendants and argue that the proceedings should not be closed. They do not however have access to any closed statement of reasons for their exclusion or to that part of the application which considers the closed statements. If the court declares that the proceedings or part should thereafter be closed, the plaintiff and her legal team are excluded completely from that part of the proceedings. Instead, a Special Advocate is appointed to represent the interests of the plaintiff in the closed proceedings. The Special Advocate however cannot share with the plaintiff the information received during the closed proceedings other than the 'gist' of the information. The extent of the information contained in the gist will vary in each case.

[126] *Eilish Morley v MOD & Peter Keeley & PSNI* **[2017] NIQB 8.**
[127] It is open to the court, if certain criteria are satisfied, to deliver a closed judgment on the application. The plaintiff therefore will not know of the court's reasons for granting a declaration.
[128] Section 6 of the Justice and Security Act 2013 and Order 126 Rule 21 of the Rules of the Court of Judicature (Northern Ireland) 1980. The proceedings are known as Closed Material Proceedings.

To have proceedings closed, an applicant must establish that two conditions are met and then that the court should exercise discretion to close the proceedings. The first condition,[129] which must be satisfied on the balance of probabilities, is either that a party to the proceedings would be required to disclose sensitive material in the course of the proceedings to another person (whether or not another party to the proceedings) or, as far as the case is concerned that a party to the proceedings would be required to make such a disclosure were it not for the possibility of a claim for public interest immunity in relation to the material. The second condition[130] is that it is in the interest of the fair and effective administration of justice in the proceedings to make a declaration that the proceedings should be closed. The fairness of the defendants' decision not to make a PII application is a factor to be taken into account under the second condition.[131] The rationale is that a court in closed session can be provided with more information about the content of a defence and the court can require, either prior to or as a condition of granting a declaration, that a responsible officer on behalf of the defendants provides a statement of truth.

The proceedings in question were a claim by Ms Morley that on 19 April 1990 Peter Keeley (also a defendant to the claim), whilst an agent of the Forces Research Unit (FRU) of the Ministry of Defence (MOD), murdered her son Eoin Morley in Newry. Ms Morley alleges that the MOD caused or permitted or instructed Peter Keeley to murder her son or with knowledge or means of acquiring knowledge that he intended to murder or seriously injure him and that the MOD failed to take any or adequate or timely steps to prevent the murder. Her claim also alleges that the MOD failed to warn her son that his life was in danger, failed to carry out any adequate assessment of Peter Keeley's suitability as an employee, colluded with terrorists and failed to devise a system for monitoring its agents. She alleges further that the Royal Ulster Constabulary (RUC)[132] failed to carry out a proper Article 2 ECHR[133] compliant investigation into the murder

[129] Which is set out in section 6(4) of the 2013 Act.
[130] Which is set out in section 6(5) of the 2013 Act.
[131] The principles are set out in detail in the judgment in *McCafferty v Secretary of State for Northern Ireland* [2016] NIQB 47.
[132] The Defendant to those claims is the PSNI who succeeded as a matter of law to the liabilities of the RUC.
[133] Article 2 ECHR requires in the context of this case the State to investigate independently any death in which the state might be implicated.

and that the Special Branch of the RUC withheld from CID Officers intelligence which would have been of use in the prevention and detection of crime (including protecting Mr Keeley from a proper criminal investigation and potential prosecution).

Ms Morley further alleged that the MOD was guilty of assault, battery, trespass to the person, conspiring to perform an unlawful act, conspiracy to injure the deceased and misfeasance in public office. Ms Morley relied in part on the information contained in the book authored by Kevin Fulton[134] in which he described in detail his participation in the murder of Mr Morley including a debrief with his handlers in the aftermath of which they welcomed the news of the murder and expressed the view "let's hope they carry on killing their own." Mr Fulton also described his recruitment for Army intelligence and his insertion into the Provisional IRA in order to work for Army Intelligence. Ms Morley relied on an affidavit sworn by Ms Claire McKeegan that there is compelling evidence that Kevin Fulton and Peter Keeley are one and the same person and in that respect she referred to the Police Ombudsman's investigation into the Omagh bomb, the report of Judge Cory, the report of and the evidence given to the Smithwick Tribunal and various media reports.

The applications by the MOD and the Chief Constable for Closed Material Proceedings in the Morley case were grounded on both open statements and closed statements of reasons for part of the proceedings to be heard without the presence of Ms Morley or her legal representatives. The Attorney General for Northern Ireland appointed Special Advocates[135] to represent the interests of Ms Morley in that part of the application from which the plaintiff and her legal representatives were to be excluded.[136] Because the material of the defence was contained in closed statements, other than the mere denials of the claims contained in the open statements, it is impossible to discern the nature of the defences.

[134] *Unsung Hero*, Kevin Fulton, 2008.
[135] Pursuant to section 9 of the 2013 Act.
[136] If the court determines that proceedings should be closed the Special Advocates alone represent the plaintiff.

Ms Morley's own legal team, during the open part of the application, submitted that revealing obsolete historical operational methods could not damage National Security and that the court should be astute to distinguish between contemporary and obsolete historical methods. They contended that the methods used by the FRU, which is no longer in existence, are all historical and obsolete. Stephens J. considered that the court should be astute when considering the closed material for all aspects of damage to National Security and to bear in mind the distinction between contemporary and obsolete historical methods. He went on "it may be that even if certain operational methods are obsolete that there are other aspects of the same material which would be damaging to the interests of National Security" but that careful consideration should be given to whether the material is sensitive.

Ms Morley accepted through her own team that if certain aspects of the material which were asserted to be sensitive did concern contemporary operational methods that consideration should be given to "ring fence any sensitivity attaching to (irrelevant) contemporary operational methods through the making of a PII application." Stephens J. noted that in establishing the way in which the MOD ran Peter Keeley contemporary methods of handling agents, including modern day techniques and training, might inform as to whether the MOD was negligent. The question as to what is and is not irrelevant contemporary material might, he said, require a degree of analysis in the course of a closed material procedure. Mrs Morley further submitted that the identity status and handling of Mr Keeley, as an agent of the MOD is already widely in the public domain and amenable to open pleading without damaging National Security. She added that the MOD's defence appeared to positively deny that he was a state agent and that stance constituted a waiver of the Neither Confirm Nor Deny policy (NCND).

It has been the policy of successive governments to neither confirm nor deny speculation, allegations and assertions in relation to intelligence matters. In particular, the government will neither confirm nor deny whether an individual is, or ever has been, an agent of the Security Service or the Secret Intelligence Service. The government argues however that the application of the NCND policy often deprives it or others of the ability to plead a positive case in response to claims: the central allegation which

underpins most claims, namely that a person is a former agent living under the protection of the Security Service, cannot be addressed without confirming or denying his alleged status. It contends that the more that is publicly known about the operational work of the Agencies, the greater the risk that their operational effectiveness will be impaired. The principle of NCND developed, it is said, in order to protect those objectives. The underlying rationale for NCND is to protect national security or, specifically, to protect information which, if it were to be disclosed, would risk causing damage to national security. It is also argued that the duty to protect agents which is paramount would be undermined and that damage would be caused to the operational effectiveness of the Security Service in particular its ability to recruit and retain agents should there be any departure from NCND.[137]

Stephens J. accepted that whether the status of the individual was already widely known might be relevant to the exercise of discretion to close the proceedings but determination of that issue should be heard in closed proceedings. He considered, in the instant case, the closed material which he found to be sensitive and accepted that its disclosure would be required in the course of the proceedings were it not for the possibility of a PII claim. Therefore, he found the first condition to be met. He then went on to consider the second condition and held that it is only if the closed material is considered in the course of closed proceedings that the court will be able to conclude whether the allegations are correct. He accepted that the details contained in the sensitive material are essential to an evaluation of the substantive issues. Having weighed in the balance the public interests in play and also the difficulties faced by the Special Advocates, Stephens J. considered the fairness of the decision not to make a PII application.[138] On the basis of the information he considered that there was no practical alternative to closed proceedings if the claim is to be fairly tried and therefore

[137] See for example *McGartland v Secretary of State for the Home Department* [2015] EWCA Civ 686.

[138] The different effects of a PII certificate and a closed material procedure are as follows: If a PII certificate is upheld, then the evidence in question is wholly excluded from the proceedings. No party may rely on it and neither may the court. That is not the position in relation to closed material under which procedure the defendant may continue to use and to rely on closed material even though the plaintiff and his legal representatives are unable to see that material. It has been suggested that to allow the defendant to choose between the route of PII and a closed material procedure is unfair because it enables the defendant to determine whether the evidence will either be totally excluded under PII or used under the closed material procedure.

that the second condition was met. Finally, he turned to the exercise of discretion and exercised discretion in favour of making a declaration in the interests of the fair and effective administration of justice in the claim that the proceedings are proceedings in which a closed material application may be made. That decision will, however, remain subject to review and oversight by the court which may reconsider whether the proceedings should be closed.

Public interest immunity and closed proceedings in the county court: *Cunningham v Chief Constable*

In December 2016, the Court of Appeal in Northern Ireland gave judgment in a case arising from a claim for damages alleging that Mr Cunningham's arrest and detention under section 41 of the Terrorism Act 2000 (TACT) was unlawful.[139] The case concerned largely technical issues concerning the jurisdiction of the County Court and the High Court but clarifies the procedure relevant to a PII and application for closed material proceedings. It is illustrative, perhaps, of a growing trend of applications for PII and the closed material procedure, which will include claims brought in county courts.

The PSNI contended that Mr Cunningham had been arrested and detained on reasonable suspicion and that the suspicion was based upon intelligence information received by police. There was an application for discovery (disclosure) of documents some of which were redacted. A PII certificate was issued by the Parliamentary Under-Secretary of State for Northern Ireland on the basis that the redactions were concerned with intelligence gathering and disclosure would be contrary to the public interest.

The court considered PII and compared applications to those made in closed material proceedings.[140] The court observed that "These new arrangements do not replace public interest immunity. Part 2 of the 2013 Act recognises the continuing presence of public interest immunity. The Secretary of State must consider a public interest immunity claim before the making of a closed material application." The requirement is

[139] *Ciaran Cunningham v Chief Constable PSNI* [2016] NICA 58.
[140] See *Morley & Keeley* above.

that a PII certificate has been considered, not that an application has first been made and refused. Furthermore, the court held that the PII procedure could be pursued in a county court civil claim for damages.

Report by Coroner to DPP: officers giving evidence at inquest into the death of Pearse Jordan[141]

Mr Justice Horner, in a previous judgment into the death of Pearse Jordan concluded that one or both police officers had edited the original logbook by removing all entries and not been truthful when they told the Coroner that "they had no idea that there was a real possibility the driver of the Orion was DP2." [142].Thereafter, in this case,[143] he had to consider the extent of his duty, if any, to refer those officers to the Director of Public Prosecutions (DPP).[144] Horner J. noted that there was "a basis for concluding that the two officers may have committed offences, namely that they sought to pervert the course of justice and/or that they committed perjury. Mr Jordan's family argued that he was compelled to refer the officers; the PSNI, the officers and the Coroner disputed that.

It was agreed by all that there is a statutory *obligation* on a number of different public authorities to disclose information to the DPP in certain circumstances and any one of the participants in the inquest, including the legal advisors to the next of kin, *could* refer any of the findings which were made in the course of the inquest to the DPP on the basis that those findings may be indicative of criminal wrongdoing. Horner J. held that if a Coroner concludes that an offence arises in relation to the circumstances of the death he must make a report to the DPP and that "circumstances" should be generously construed. However the requirement to report is confined to offences arising in relation to circumstances of the death, not potential criminal wrongdoing uncovered in the course of the inquest. Having held that he was not obliged to report the officers he did

[141] Matters arising from the inquest and other court proceedings have been reported upon in previous Policing Board Human Rights Annual Reports.
[142] *In the matter of an inquest into the death of Patrick Pearse Jordan* [2016] NI Coroner 1.
[143] *In the Matter of an Inquest into the Death of Patrick Pearse Jordan* Neutral Citation: [2016] NI Coroner 3.
[144] Under Section 35(3) of the Justice (NI) Act 2002.

exercise his discretion to report the officers "because I consider that their behaviour sought to conceal the role played by DP2 in the events of 25 November 1992. This attempted concealment could have seriously impacted on this hearing."

Intelligence gathering: *Sheridan v Chief Constable PSNI*

The High Court in Belfast considered an application by Mr Brian Sheridan challenging both the manner and policy of the PSNI in approaching members of the public to attempt to recruit them as Covert Human Intelligence Sources (CHIS) and the Police Ombudsman's decision to reject a complaint arising from a number of approaches to Mr Sheridan in breach of his rights under the Human Rights Act 1998.[145] The case provides a helpful review of the framework within which such activity must be conducted, how it may be challenged and the powers of the Ombudsman to deal with related complaints. The case is important in that it clarifies the requirement that such approaches must be authorised under the Regulation of Investigatory Powers Act 2000 (RIPA), that the rights enshrined in the ECHR are engaged in such approaches and that the appropriate jurisdiction in which (at least at first instance) any complaint about such approaches is the Investigatory Powers Tribunal. The application in so far as it criticised the Chief Constable was dismissed.[146] The application against the Police Ombudsman was stayed pending a complaint being made to the Tribunal.

The facts of the case are outlined in the judgment of Maguire J. delivered on 3 February 2017. Mr Sheridan requested leave to apply for judicial review of: (i) a decision of the Police Ombudsman, in February 2016, to reject his complaint on the grounds that the investigation revealed no improper conduct by police officers; and (ii) the policy of the Chief Constable regarding approaches to members of the public by officers seeking intelligence. In the circumstances alleged officers purporting to be undercover PSNI officers approached Mr Sheridan while on holiday in Norway and on his return to

[145] *In the Matter of an application by Brian Sheridan for Leave to Apply for Judicial Review; And in the Matter of a Decision by the Police Ombudsman for Northern Ireland; And in the Matter of a Challenge to the Policy of the Chief Constable of Northern Ireland as Regards Approaches by Police Officers to Members of the Public, in which Officers Seek Intelligence from Members of the Public* [2017] NIQB 16.
[146] The application was dismissed against the Chief Constable on the single basis that the PSNI was regulated contrary to Mr Sheridan's complaint that there was no transparency surrounding or regulation of the alleged activity.

Armagh (in a public place). Mr Sheridan did not want to have contact with law enforcement, felt under threat from the officers, at risk of retaliation if thought to be a 'tout' and fearful for his family. He consulted a solicitor who telephoned the number provided to Mr Sheridan (by card handed to him at the side of the road) to request that he stop approaching Mr Sheridan but the officer said that if he wanted to speak with him he would get him again and terminated the conversation.

Mr Sheridan complained to the Police Ombudsman stating "I would like clarity as to whether or not he is in fact a police officer and secondly I would like to complain about the misuse of a road checkpoint which I feel was deliberately set up to facilitate a further approach by this individual in an attempt to recruit me as a covert human intelligence source". In particular he alleged that the approach on a main road in Newry "deliberately puts my life at risk" was "a direct attack on my privacy and right to private life" and that "these individuals are completely unaccountable and unregulated and fear that they will continue to approach me and try to contact me". Furthermore, he complained "I am very concerned by the fact that both approaches have been pre-planned. In the first instance these individuals took a deliberate decision to travel to Norway deliberately with the intention of approaching me, which they did on two occasions, and on the second occasion I was approached very early in the morning (6.00 am) to which was again a significant element of pre-planning given the fact that the PSNI had used an illegal checkpoint to facilitate such an approach". He categorised the behaviour of the officer "breaches of Article 2[147], Article 3[148] and Article 5[149] and Article 8[150] of the ECHR".

The Police Ombudsman rejected the complaint stating "Police officers in carrying out their duties to prevent and detect serious crime regularly seek the assistance of members of the public who they believe may be in a position to help them. Police officers when dealing with members of the public are bound by the standards set in the Police Code of Ethics. There has been no evidence obtained to suggest that when you

[147] The right to life.
[148] The right not to be subjected to torture or inhuman or degrading treatment.
[149] The right to liberty and security.
[150] The right to private and family life, home and correspondence.

were approached in February 2015 and October 2015 the behaviour of the officers fell below that standard... As there is insufficient evidence to support the allegations that you made, this case has now been closed. I can assure that the matter has been investigated and an objective assessment has been made of the evidence available. The Police Ombudsman will retain a record of your complaint on file."

Mr Sheridan requested a review and thereafter issued pre-action correspondence to which the Police Ombudsman responded, "I have tried to provide as much detail as I can but given the sensitivities involved in such cases there are some matters I cannot elaborate on… the Regulation of Investigatory Powers Act (RIPA) does not specifically cover an approach made to an individual. However, PSNI Best Practice Guidance advocates that all approaches are planned, fully documented and signed off by a senior authorising officer. In the course of our investigation we carefully examined the interaction PSNI officers had with your client, how that was conducted, where it was conducted and was sufficient consideration given to protect your client's rights under ECHR and RIPA legislation. Having reviewed that material we are satisfied that on these occasions the action of the officers were proportionate, necessary and conducted within the relevant legal framework. I also note in your correspondence that you are very concerned that the approaches were pre-planned. To protect an individual's rights I would expect that such matters to be planned. In addition the Road Traffic (Northern Ireland) Order, this allows a constable in uniform to stop any person driving a mechanically propelled vehicle on a road or other public place. The Police Ombudsman's Office has examined the matter of the VCP [Vehicle Check Point] and is satisfied it was lawful and permissible within the standards set out in the Police Code of Ethics and Force Guidelines. Unfortunately I am not in a position to answer if the officer's approaches has caused your client to feel distress and anxious as no supporting medical evidence was submitted by you or your client."

Mr Sheridan issued an application for leave to apply for judicial review of that decision and of the PSNI's use of such approaches by officers and the regulation of their conduct. He relied on alleged breach of Articles 2, 3 and 8 ECHR.

Maguire J. noted that "the main obligations of the PO [Police Ombudsman] in a standard case appear to be to set up an investigation and to enable his investigator to report to him. Once the report is received the PO will consider the report and decide whether it indicates that a criminal offence has been committed or, alternatively, whether he should recommend disciplinary proceedings. How the PO goes about his task is predominately a matter for him. There must in this context be operational discretion". He also recorded that all police documentation had been examined by the Ombudsman's investigator but that no police officer was interviewed. In respect of the Ombudsman's response to the pre-action correspondence Maguire J, said "It refers to the 'sensitivities involved'. There is reference to 'some matters I cannot elaborate on'. It advocates that all approaches of the sort involved in this case should be planned, fully documented and signed off by a senior authorising officer. This is language of the Regulation of Investigatory Powers Act 2000 ("RIPA"), though the letter refers to the Act as not covering an approach made to an individual. Ultimately, the letter provides a clean bill of health to the officers".

The main case made against the Ombudsman was that he has failed to provide adequate reasoning to support his conclusion and that he is under a duty to provide reasons for what he does, which he failed to do in this instance. Maguire J. accepted as arguable, that the Ombudsman had a duty to provide reasons for any conclusions reached[151] and that the letters failed to explain sufficiently the process by which his conclusions were reached. He went on "The problem, in short - presumably because of the constraints the PO considered he was under about what might be said – is that the reasoning provided is either absent or opaque". As regards the issue of human rights while the conclusion reached was that there had been compliance by police officers with human rights standards, Maguire J. noted that nothing specific was said about how that conclusion was reached.

Mr Justice Maguire went on "Notwithstanding this, the ground of judicial review put forward by the applicant is that it is the PO who has breached the applicant's human rights by the way he has dealt with his investigation. In the court's opinion, while it can

[151] Citing the cases of *R (Dennis) v The Independent Police Commission* [2008] EW8C 1158 (Admin) and *In an Application by Officer O for Judicial Review* [2008] NIQB 52.

appreciate that there may be an argument about whether the applicant's treatment at the hands of the police breached his human rights, it is difficult to discern an arguable case that the PO has done so. In any event, if the court is wrong about this, it is evident that the applicant has available to him the ability to pursue civil action in this regard against the PO... While the court has accepted that it is arguable that there may have been a failure to provide the reasons for this conclusion, this in itself does not mean that the outcome of the investigation was unreasonable".

Ultimately, Maguire J. found that the complaint should have been addressed to the Investigatory Powers Tribunal (see below) so despite the arguably unlawful conclusion reached by the Ombudsman Mr Sheridan would be refused permission to proceed further (at this stage) in the High Court. The application was stayed against the Ombudsman with the possibility of it returning after the Tribunal considered the issues.[152]

The main case against the Chief Constable was that the 'policy' is (a) inadequate and (b) unlawful contrary to the rule of law which requires a transparent statement of the circumstances in which "broad statutory discretion" will be exercised, that it is contrary to section 6 of the Human Rights Act 1998 on the basis that it is not adequately accessible and/or foreseeable and did not provide legal protection against arbitrariness. Furthermore, that it does not indicate with sufficient clarity the scope of the discretion conferred on police officers in the manner of its exercise. In its response to the pre-action correspondence the PSNI noted that such a complaint can be made to the Investigatory Powers Tribunal given that RIPA[153] and the associated Code of Practice regulates matters relating to the recruitment, authorisation and conduct of surveillance and covert human intelligent sources. Under RIPA a person is a Covert Human Intelligent Source (CHIS) if he or she "establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c)"[154]

[152] Note, the case against the Chief Constable was not stayed but dismissed.
[153] The Regulation of Investigatory Powers Act 2000 Part II seeks to regulate, *inter alia*, the conduct and use of covert human intelligence sources, section 26(1)(c).
[154] Sub-section 26(8) of RIPA.

As per section 26(9) RIPA a relationship is used covertly and information obtained is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question. According to the relevant Code of practice "The use of a CHIS involves any action on behalf of a police authority to induce, ask or assist a person to engage in the conduct of a CHIS or to obtain information by means of the conduct of a CHIS. In general, therefore, an authorisation for use of a CHIS will be necessary to authorise steps taken by a public authority in relation to a CHIS".[155] The conduct or use of a CHIS includes anything that "is incidental to anything falling within that...In other words, an authorisation for conduct will authorise steps taken by the CHIS on behalf, or at the request, of a public authority".[156] Furthermore, it is provided that "Determining the status of an individual or organisation is a matter of judgement by the public authority. Public authorities should avoid inducing individuals to engage in the conduct of a CHIS either expressly or implicitly without obtaining a CHIS authorisation."[157]

Maguire J. was satisfied that the activities about which Mr Sheridan complained fall within the conduct and use of CHIS as set out in RIPA and the Code of Practice. In particular, he was satisfied that inducing, asking or assisting a person to engage as a CHIS requires authorisation under the RIPA scheme. Therefore, he found that the Ombudsman was wrong to say that RIPA did not specifically cover an approach made to an individual. He was further satisfied that "PSNI officers were engaged in a process of seeking to persuade the applicant to become a CHIS", which he said had "significant repercussions for the applicant's case against the police". That meant that the contentions of Mr Sheridan concerning the failure to regulate the actions of the police were misconceived. In other words, while the Ombudsman was wrong to find that RIPA did not apply the police are in fact regulated by RIPA and a Code of Practice. That being the case, Maguire J. concluded that the complaints should have been addressed to the Investigatory Powers Tribunal, which he said was "a specialist tribunal which is

[155] *Covert Human Intelligence Sources Code of Practice*, Home Office, December 2014, paragraph 2.6
[156] *Ibid.* paragraph 2.7.
[157] *Ibid.* paragraph 2.24.

designed to enable matters relating to intelligence and the regulation of CHIS to be dealt with in a forum designed for this purpose."[158] He also found that the Tribunal was the appropriate forum within which the alleged breach of human rights could be dealt with. On that basis he dismissed the application for judicial review against the Chief Constable as misdirected.

The finding - that the attempt to recruit a CHIS should be authorised - is uncontroversial given the provisions in RIPA and its associated Code of Practice as is the related finding that the Ombudsman was wrong to conclude otherwise. Also clear on a plain reading of RIPA is the appropriate jurisdiction for determining complaints. What was not resolved however, at least not expressly, is the degree of transparency to which an applicant such as Mr Sheridan or any other member of the public is entitled. In other words, is the PSNI required to have and thereafter publish a policy on its attempt to recruit CHIS? One can assume from the judgment that publication of a policy is not required and that the relevant policy should be confined to that contained within RIPA and the Code. Maguire J. did not consider, because he did not have to, whether the PSNI in the circumstances alleged acted lawfully. That will be a matter for the Tribunal, if Mr Sheridan takes his complaint there.

It is unlikely however that the complaint will provide such transparency given the nature of the procedure before the Tribunal, which is as follows. The Tribunal has power to make any such award of compensation or other order as they think fit; and may (in so far as relevant) make an order quashing or cancelling any warrant or authorisation; an order requiring the destruction of any records of information which has been obtained in exercise of any power conferred by a warrant or authorisation; or is held by any public authority in relation to any person. Except to such extent as the Secretary of State may by order otherwise provide, determinations, awards, orders and other decisions of the Tribunal are not subject to appeal or be liable to be questioned in any court. Where the Tribunal determine any proceedings, complaint or reference brought before or made to them, they must give notice to the complainant which (subject to any rules made under RIPA) shall be confined, as the case may be, to either a statement that they have made

[158] The Tribunal, established under section 65 of RIPA, is "the only appropriate Tribunal for the purposes of section 7 of the Human Rights Act 1998".

a determination in his favour; or a statement that no determination has been made in his favour.

Where the Tribunal make a determination in favour of any person by whom any proceedings have been brought before the Tribunal or by whom any complaint or reference has been made to the Tribunal, and the determination relates to any act or omission by or on behalf of the Secretary of State or to conduct for which any warrant, authorisation or permission was issued, granted or given by the Secretary of State, they shall make a report of their findings to the Prime Minister. In other words, Mr Sheridan will be told simply whether his complaint has succeeded or not.

Procedure for search warrants under TACT: *McVeigh's Application (No.2)*

In an application for Judicial Review concerning the request and issue of a search warrant in relation to the Applicant's home under the Terrorism Act 2000, the court commented that while finding the request and issue to have been lawful the hearing of the application "brought into focus certain matters of concern in relation to the issue of search warrants by Lay Magistrates, namely the procedures for applications for search warrants"[159] The court observed that the case reiterates the need for a review of the procedures by the police and court service and commented "In order to give effect to this process it is apparent that changes are required to the administration of applications for search warrants. In the first place it would be desirable that applications for search warrants be conducted in the court building, in the absence of an emergency. Secondly, the form of written Information produced by the police should include the information that provides the basis of the application for the search warrant. Thirdly, any additional information provided to the Lay Magistrate should be noted on the Information. Fourthly, the Lay Magistrate's notes of the application should be retained with the Information, if not also recorded on the Information. This material should then be held together whether by the police and/or at the office of the Magistrates' Court. An application for disclosure will involve the police in determining whether any part of the material requires to be redacted on public interest grounds."

[159] *An Application by Sean McVeigh for Judicial Review (No. 2)* [2017] NIQB 61.

Public order flags protest: *DB v PSNI*

On 1 February 2017, the UK Supreme Court[160] reversed the decision of the Court of Appeal in Belfast concerning the policing of the 'flags protests' between late 2012 and early 2013 and made a declaration that, in their handling of the protest, the PSNI misconstrued their legal powers to stop parades passing through or adjacent to the Short Strand area.[161] It is important to bear in mind from the outset that the appeal did not determine whether the tactical decisions taken were or were not the correct decisions. In its press release the Supreme Court reiterated that this case is not about the sincerity and authenticity of police efforts, it is about whether, corporately, the police were sufficiently aware of the full range and scope of the powers available to them when reaching decisions. The question whether the PSNI was sufficiently aware of the full range and scope of the powers available to them was the principal issue in this appeal. In essence, that means this case will not necessarily circumscribe the tactical decisions the PSNI will make in the future but it should ensure that the decisions are taken in full knowledge and understanding of the extent of powers available, which may or may result in different tactical decisions being taken.

The Supreme Court found there to be no reasonable suggestion that the police failed to treat the control of parades and demonstrations with sufficient seriousness and that "they were obviously exercised at an early stage, and throughout the period when the parades and the disorder took place, to seek to control the marches and to minimise the disorder to which they gave rise. It is also clear that police were constantly concerned about the risk of greater disorder occurring with the consequent risk to life which might accrue if they tried to prevent the parades from taking place altogether, rather than policing and controlling them as best they could. This case is not about the sincerity and authenticity of the efforts made by police to control the parades. It is about their conception and understanding of the powers available to them to do so" (at para 2).

[160] Lord Neuberger (President), Lord Kerr, Lord Reed, Lord Hughes and Lord Dyson. The Supreme Court Justices were unanimous.
[161] *DB (Appellant) v Chief Constable of Police Service of Northern Ireland (Respondent) (Northern Ireland)* [2017] UKSC 7.

The legal framework particularly relevant is the Public Processions (Northern Ireland) Act 1998 (the 1998 Act). It can be summarised as follows. Section 8 provides the Parades Commission with the function of controlling processions (or parades) by means of conditions regulating their conduct, imposed on those who organised them. These may include conditions as to the route of the procession and prohibiting it from entering any place. Section 8 does not permit the Parades Commission to *prohibit* a procession. Section 9 of the Act gives the Secretary of State power to review a determination of the Parades Commission by revoking or amending it. By section 11 the Secretary of State has power to prohibit a procession. Furthermore, the Secretary of State has power, pursuant to article 5(1) of the Public Order (Northern Ireland) Order 1987, to prohibit an open air public meeting. A person proposing to organise a procession must, by subsection 6(1) of the 1998 Act, give advance notice of that intention to the PSNI. Failure to notify or thereafter to take part in an unnotified procession is a criminal offence (subsection 6(7)). Furthermore, failure to comply with conditions imposed by the Parades Commission is a criminal offence. None of the processions which became known as the 'flags protest' were notified in accordance with the 1998 Act.

The police powers derive from two sources, common law and statute. At common law, the police have a general duty to prevent the commission of offences and a specific statutory duty, under section 32 of the Police Act (Northern Ireland) Act 2000, to prevent the commission of offences. Therefore, the police have both at common law and by statute the power to prevent a procession taking place if it is likely to result in public order offences.

In considering the PSNI's application of those powers to the flags protest the Supreme Court Justices took account of the factual setting. The court drew attention to the following: the parades were occurring at least weekly; those attending a protest at the City Hall marched there from a meeting point in East Belfast; the route of that march was through the Short Strand in which the majority of residents were nationalist (the marchers being loyalist); those marchers were then joined at the City Hall by others who had arrived by other means and other routes; some of those additional protesters then

joined the return march back to East Belfast via the Sort Strand; there were considerable numbers involved in the march; and there was substantial violence and disorder as the march passed through the Short Strand.

The Supreme Court noted that at an early stage (4 December 2012) the PSNI prevented people entering the city centre to attend a planned protest at the City Hall to prevent disorder and maintain normal life in the city centre. However, between 6 and 8 December 2012 the PSNI reconsidered that decision and recorded that there was "a need to try and facilitate some form of protest at Belfast City Hall to allow for some venting of anger and [relief of] community tension on this issue" (at para 14). In his affidavit ACC Kerr explained that rationale as "risks associated with doing so were too great. The intelligence at the time informed us that had we stopped the protests from going into the city centre that the risk to life posed by the resultant disorder and violence posed too great an article 2 risk" (at para 20). Because of that change of approach the flags parades were permitted from 8 December 2012 and thereafter on a weekly basis. The parades were permitted to continue until March 2013. In December, the decision to facilitate the parades but manage them was set out as part of *Operation Dulcet*.

The Supreme Court took some time analysing the evidence of ACC Kerr. In particular, it drew attention to his evidence that the PSNI had "no specific power to ban a procession... in the absence of either a Parades Commission determination or prohibition from the Secretary of State, PSNI can only have recourse to general public order policing powers" (at para 16). In particular, ACC Kerr averred that in the absence of a notification upon which the Parades Commission could deliberate and make determinations, the PSNI had no statutory power available to them to police the parades. Rather, he said, the police used their common law powers taking into account the rights contained within the European Convention on Human Rights (articles 2, 8, 9-11).[162] The court attached some weight to another statement of ACC Kerr in which he referred to the fact that where a public procession is not notified under the Public Processions Act, those organising the parade committed an offence under the Act but (as the Supreme Court put it) "Tellingly, however, he continued, "The role of PSNI in

[162] In other words, the police balanced the competing rights: (in short) to life(2), privacy, respect for the home and family life(8) and the right to assemble etc. (9-11).

such situations is to collect evidence of such offences and refer them to the prosecuting authorities while also employing public order and common law powers to keep the peace" (at para 18) and that "PSNI had "consistently held the view that parades can be stopped but not solely because they are unnotified" (at para 19).

On 17 February 2013, ACC Kerr explained within policy logs why the decision changed again – this time to prevent the parades. He averred "The considerations resulting in the decision to stop the unnotified parade included the fact that protests were continuing although with lower numbers, the views of the CNR [Catholic/Nationalist/Republican] community that the protests should be stopped, the wider attitude in the PUL [Protestant/Unionist/Loyalist] community that the protests had run their course and the likely reaction from Loyalists would not be extreme as had been the case in or around the 6th of December. In addition, the wish to have a break in time between the protests and the main marching season, the lack of any proper structure in the protests groups whereby an agreed cessation could be settled, the resource considerations in terms of our ability to manage and contain any problems associated with stopping the protests and the impact upon the residents of the Short Strand of the ongoing protests" (at para 19).

The Supreme Court did not accept a submission made on behalf of the PSNI that ACC Kerr *did* understand the police power to stop an unnotified parade or procession, but instead found that ACC Kerr and the PSNI were labouring under the mistaken belief that the legislation was weak and contained gaps which the police could not unilaterally fill. The Supreme Court drew attention to a newspaper interview given by ACC Kerr in February 2013 in which he explained that the difficulty with the 1998 Act was that it was "predicated at least in part that everybody will consent to being regulated by that means … [and] if some people decide that they don't want to be regulated by those means it leaves a gap and that gap at the minute is defaulting to policing and we don't find that acceptable... [there was] no such thing as an illegal parade under the Public Processions Act, it doesn't exist." He also said that the police had "no power to stop an illegal parade under the Public Processions Act, the offence is taking part in an un-

notified parade" and that the police could only make a decision to stop a parade "based on a risk or threat to life" (at paras 28-30).

The Supreme Court was critical of the PSNI in that in the many affidavits and documents exhibited for the judicial review, "no reference was made to the fact that, by reason of the illegality of the parades under the 1998 Act, the police could resort to common law powers and the statutory duty arising under section 32 of the Police (Northern Ireland) Act 2000 to stop them from taking place. The emphasis was, as before, on the maintenance of order" (at para 32).

The Supreme Court Justices summarised both the High Court and Court of Appeal judgments but favoured the reasoning and conclusion of Treacy J in the High Court. The Supreme Court noted "because ACC Kerr had not adverted to the provision in the 1998 Act which made it illegal to organise or participate in an unnotified parade (section 6(7)), and had failed to recognise that this provided police with the power (and, indeed, the duty under section 32 of the 2000 Act) to prevent this particular species of criminal activity, the option of stopping the parade for that reason was not considered. Contrary to what the Lord Chief Justice said, the police *did* have power to stop an unnotified parade precisely because participating in such a parade was a criminal offence. Police have common law powers to prevent crime, quite apart from their duty to do so under section 32" (at para 42).

The Supreme Court also found that "Although article 4(1) of the [Public Order (Northern Ireland) Order] 1987 Order was repealed by the 1998 Act, the recommendation that had been made in the North report that police should retain the power to intervene on public order grounds if the determination of the Parades Commission was defied, was not implemented. This does not mean, of course, that the police could not have recourse to common law powers to stop a parade in order to prevent disorder and to the duty under section 32 of the 2000 Act in order to avert the criminal offence of participating in an unnotified parade contrary to section 6(7) of the 1998 Act" (at para 55).

Furthermore, that when “the correct legal position is understood, namely that the police have power to stop parades to prevent disorder and to pre-empt breach of section 6(7) of the 1998 Act, the police strategy and tactics in exercising those powers would have been similar, if not identical, to those which they would deploy to prevent a parade from proceeding in a manner which did not comply with a determination of the Parades Commission. Neither situation called on the police to form a judgment as to whether a parade *should* take place. What was required of them in both instances was a decision as to whether the parade was taking place legally. If it was not, either because it did not comply with a determination of the commission or because it had not been notified, their powers were, to all intents and purposes, the same. And the operational decisions should not have been any different, or, at least, certainly not on account of the fact that each parade contravened the law in different ways or that the source of the power of the police to stop the parade arose from different sections of the 1998 Act” (at para 57).

The Supreme Court also addressed directly ACC Kerr’s understanding of the ECHR right to assemble. ACC Kerr had said “The European Convention makes it very clear that there is a right to peaceful assembly under article 11 of the European Convention and the reasons it gets slightly confusing sometimes is that the European Convention is explicitly clear the Police Service has a responsibility to facilitate peaceful protests even if it is technically unlawful and that’s where it takes us in to the space of confusing rights.” The court rejected that as a correct interpretation of the law. Rather, the court found “ACC Kerr’s belief that PSNI was obliged by article 11 of ECHR to facilitate peaceful protests even if they were “technically illegal” was therefore misplaced. ECHR has made it clear that, in general, a requirement to notify an intention to hold a parade and a decision to disperse a parade or protest which has not been notified will not infringe article 11. There was no warrant for allowing Article 11 considerations to determine how these parades should be policed. The 1998 Act is the considered response of Parliament to the intractable problem of parades in Northern Ireland. Fundamental to its successful operation is the requirement that there be notification of parades, especially those which are likely to be contentious or to provoke disorder. The parades in this case were far from peaceful. The police had no obligation to facilitate them. To the contrary, they had an inescapable duty to prevent, where possible, what

were plainly illegal parades from taking place and to protect those whose rights under Article 8 of ECHR were in peril of being infringed" (at paras 61-62).

The Supreme Court recognised that meeting those obligations had to be tempered by operational constraints and that stopping the parades without taking account of what further violence that might provoke was not an option. But, importantly, the operational difficulties were required to be assessed in the correct legal context. PSNI had to have a clear-sighted appreciation of their available powers and an equally percipient understanding of the fact that the Parades Commission had no power to intervene. That is where the PSNI went wrong. They were making tactical decisions within the wrong legal framework.

The Supreme Court went on to stress the importance of the police upholding the 1998 Act. A failure to notify a proposed parade "strikes at the heart of the effective functioning of the Parades Commission and therefore at the successful implementation of the 1998 Act... A premium had to be placed on preserving the integrity of that requirement" (at para 63). However, "ACC Kerr and his colleagues failed to recognise this central truth" (at para 64). The judgment is very clear: "The police did not have power to ban the parades but they had ample legal power to stop them. Contrary to ACC Kerr's stated position, they could indeed be stopped solely because they were unnotified. There certainly was such a thing as an illegal parade under the Public Processions Act" (para 65). The Supreme Court accepted that "The view of ACC Kerr and his colleagues on what were perceived to be shortcomings of the Act and their lack of powers to stop the parades were the result of misapprehension of the true legal position rather than a wilful disregard for it" (at para 66) and the Act had not been undermined. In essence, the judgment distils to, in the words of Lord Kerr, one central proposition "did the police approach the difficult decision of whether to stop the parades with a proper understanding of their legal powers. If they wrongly considered that there were limits on their powers to do so, this would inevitably cloud their judgment on that critical question" (at para 69). Given the finding that police laboured under a misapprehension as to the extent of their powers, the appeal was successful, on that ground alone.

It is also clear that the Supreme Court did not determine whether the policing decisions taken in the context of the flags protests were lawful in the round. The court did not for example consider proportionality. Rather, the court held that the question did not arise on the appeal because the more basic point – the police understanding of the range of powers within which they made their tactical decisions – was flawed. The Supreme Court commented "What might be considered proportionate if the police view of the limits on their powers was correct might be considered not to be so if they had recognised the full panoply of controls that were in fact available. Discussion of what might have been proportionate in those circumstances is unlikely to be helpful. So too is speculation about what the police ought to have done if they had a proper understanding of the powers available to them" (at para 74). In other words, the court was not in a position to 'second-guess' the operational decisions of the police in this particular case but if the fundamental basis upon which those decisions were being made (the legal powers available) was flawed the decisions were not properly reached. That is very different from finding that the consequences of the decisions (or the tactics deployed) were unlawful. If the police had fully understood their powers, they may well have acted in the same way but, crucially, they may well have stopped the parades at an earlier stage.

The court characterised the failings of the police as including "the misunderstanding by PSNI of the powers available to them; their failure (at least in the early stages) to appreciate that the Parades Commission was powerless to intervene; a lack of insight into the central importance of ensuring that unnotified parades were not permitted to take place; the placing of too great an emphasis on the possible article 11 rights of protesters; and that the matter of controlling unnotified parades was legally complicated" (at para 77). On this point the court concluded "A definite area of discretionary judgment must be allowed the police. And a judgment on what is proportionate should not be informed by hindsight. Difficulties in making policing decisions should not be underestimated, especially since these frequently require to be made in fraught circumstances. Beyond these generalities, I do not consider it useful to go" (at para 76).

Public order pre-emptive arrest and detention: *Hicks v Commissioner of Police for the Metropolis*

On 15 February 2017, the UK Supreme Court[163] gave judgment in another important case concerning the power of police officers managing public order events.[164] It adds to the analysis contained in *DB v Chief Constable PSNI.* The factual context of this case was the royal wedding in April 2011. On 26 March 2011, a day of action organised by the TUC had been disrupted by outsiders who used the event to commit various offences of violence. There had been similar violent disruption of student protests in November and December 2010, including an attack on the Prince of Wales's car. In the build up to the wedding, the police received intelligence that activities aimed at disrupting the event were being planned. The threat level from international terrorism at the time was assessed as severe. Thousands of police officers were deployed across London with the stated strategic aims "to provide a lawful and proportionate policing response to protest, balancing the needs and rights of protesters with those impacted by the protest" and to "maintain public order".

Four people (the appellants in this appeal) were arrested by officers who believed it necessary "to prevent an imminent breach of the peace". The power of the police to arrest to prevent an imminent breach of the peace stems from the common law. Safeguards have been built upon by case law to prevent breach of the peace powers from becoming "a recipe for officious and unjustified intervention in other people's affairs."[165] The power to arrest to prevent a breach of the peace which has not yet occurred is confined to a situation in which the person making the arrest reasonably believes that a breach of the peace is likely to occur in the near future *and* it is a necessary and proportionate response to the risk.[166] While a number of issues were raised in the lower courts, the Supreme Court was concerned solely with the issue of alleged breach of Article 5 of ECHR.

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[163] Lords Mance, Carnwarth, Reed, Toulson, Dyson.
[164] *R (on the application of Hicks and others) (Appellants) v Commissioner of Police for the Metropolis (Respondent)* [2017] UKSC 9.
[165] *Albert v Lavin* [1982] AC 546 and *R (Laporte)v Chief Constable of Gloucestershire Constabulary* [2007] 2 AC 105.
[166] *Ibid*.

The Supreme Court reviewed the authorities from the domestic courts and the European Court of Human Rights and emphasised the following, “Article 5 cannot be interpreted in such a way as to make it impracticable for the police to fulfil their duties of maintaining order and protecting the public - provided that they comply with the underlying principle of article 5, which is to protect the individual from arbitrariness.”[167] The Supreme Court continued “the fundamental principle underlying article 5 is the need to protect the individual from arbitrary detention, and an essential part of that protection is timely judicial control, but at the same time Article 5 must not be interpreted in such a way as would make it impracticable for the police to perform their duty to maintain public order and protect the lives and property of others. These twin requirements are not contradictory but complementary... In balancing these twin considerations it is necessary to keep a grasp of reality and the practical implications. Indeed, this is central to the principle of proportionality, which is not only embedded in Article 5 but is part of the common law relating to arrest for breach of the peace.”

Furthermore, the Supreme Court reiterated the need for a pragmatic approach to be taken which takes full account of all the circumstances. There is no reference in Article 5 to the interests of public safety or the protection of public order as one of the cases in which a person may be deprived of his liberty but the importance to be attached in the context of Article 5 to measures taken in the interests of public safety is indicated by Article 2 of the Convention, as the lives of persons affected by crowd violence may be at risk if measures of crowd control cannot be adopted by the police. Ultimately, the police must reach a fair balance to reconcile competing fundamental rights. The ambit that is given to Article 5 as to measures of crowd control must take account of the rights of the individual as well as the interests of the community so any steps that are taken must be resorted to in good faith and must be proportionate to the situation which has made the measures necessary.

In this case, the Supreme Court held that there was nothing arbitrary about the decisions to arrest, detain and release the appellants. They were taken in good faith

[167] *Austin v UK* (2012) 32 BHRC 618 at para 56.

and were proportionate to the situation - if the police cannot lawfully arrest and detain a person for a relatively short time (too short for it to be practical to take the person before a court) in circumstances where this is reasonably considered to be necessary for the purpose of preventing imminent violence, the practical consequence would be to hamper severely their ability to maintain public order and safety at public events. Specifically, Article 5.1(c)[168] is capable of applying in a case of detention for preventive purposes followed by early release (that is, before the person could practicably be brought before a court). Article 5.1(c) therefore covers three types of case, one of which is when the arrest or detention of a person is reasonably considered necessary to prevent his committing an offence. The Supreme Court held that it is enough for guaranteeing the rights inherent in Article 5 if the lawfulness of the detention can subsequently be challenged and decided by a court. Of particular relevance was the fear that too narrow a construction of Article 5 would leave the police effectively powerless to step in for the protection of the public.

This case makes it clear that in the circumstances surrounding the flag protests in Northern Ireland not only did the PSNI have power to stop the parades (as decided in *DB*), the PSNI had power (and was not in breach of Article 5 ECHR) to arrest and detain individuals for short periods of time if it was reasonably believed to be necessary to do so to prevent the commission of an offence such as violence or a breach of the peace.

[168] Article 5.1(c) provides that a person may be deprived of their liberty if it is in accordance with a procedure prescribed by law and it amounts to the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

7 USE OF FORCE

The use of force by police officers engages in a direct and fundamental way the rights protected by the 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).[169] Police officers have the authority to use force in order to defend themselves or another person, 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.

Furthermore, 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 National Police Chiefs Council (NPCC), 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 action and review what happened. 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.

[169] Which can encompass the physical, moral and psychological integrity of a person: *Botta v Italy* 26 EHRR 241.

The PSNI has a number of technologies at its disposal including CS Spray, PAVA irritant 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 that of absolute necessity. 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. Before using any of the above, a police officer should identify him/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.

Mechanisms are in place, both internally and externally, to ensure that PSNI is held to account for all uses of force by its officers. Any incident that involves the use of force by a police officer is recorded in the police officer's notebook and reported to the relevant supervisor. Any such incident may be the subject of an OPONI investigation regardless of whether or not a complaint has been made. The OPONI will, in every case where death has occurred following contact with the police, investigate the death. Where a firearm, an AEP or a Taser has been discharged, the OPONI will investigate the incident. Where Taser has been drawn or aimed at a subject, but not discharged, the OPONI must be notified, but will usually investigate only if a complaint is made. At the conclusion of the OPONI investigation, a Regulation 20 report is completed.[170] The Policing Board receives a copy of all Regulation 20 reports and considers any findings or recommendations contained within them.

[170] A Regulation 20 report is produced by the OPONI 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.

Every police officer is responsible personally for his or her decision to use force. If it appears to the PSNI or to the OPONI that force may have been used unlawfully, the police officer involved will be subject to a criminal investigation and may be prosecuted. Obedience to the orders of a supervisor is no defence for unlawful use of force if that police officer knew that the order to use force was unlawful and the officer had a reasonable opportunity to refuse to obey it. Responsibility lies, additionally, with the officer's supervisor who issued the unlawful order.

The use of force by police officers is reviewed regularly by PSNI. Any issues that arise are addressed by ACC Operational Support with whom the Policing Board has a direct line of communication. Ultimately, the Chief Constable is accountable to the Policing Board for all uses of force by the PSNI. It is an important element of oversight and accountability that officers using force record the use on an electronic use of force monitoring form. The following uses of force must be recorded on the electronic monitoring form and thereafter submitted in a report to the Committee for consideration: AEP; Baton; CS Irritant Spray; PAVA Irritant Spray; Personal Firearms; Police Dog; Taser; and Water Cannon.

PSNI collates the data captured on the electronic use of force monitoring forms and produces a six-monthly use of force report which is considered by the Performance Committee.[171] The reports contain information such as frequency of use of each type of force, the date and location of use, the gender and age of person on whom the force was used and trend information. 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. Any issues identified are raised directly with PSNI's senior command team.

Table 1 below provides an overview of the use of force by the PSNI between 1 April 2011 and 31 March 2017.

[171] The statistical reports provided to the Committee are classified as 'Official – Sensitive' as they contain information that cannot be published due to statistical reporting rules, however, a less detailed version of the report is published through the PSNI website on a six monthly basis.

Table 1: Police use of force between 1 April 2011 and 31 March 2017[172]

Use of Force	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
AEP Pointed	20	32	38	39	41	37
AEP Discharged	96[173]	20[174]	34[175]	3[176]	4[177]	0
AEP Total	**116**	**52**	**72**	**42**	**45**	**37**
Baton Drawn Only	537	588	485	353	375	376
Baton Used	284	333	352	165	183	162
Baton Total	**821**	**921**	**837**	**518**	**558**	**538**
CS Drawn Only	187	200	154	170	176	166
CS Sprayed	330	262	274	212	209	187
CS Total	**517**	**462**	**428**	**382**	**385**	**353**
PAVA Drawn Only	-	-	-	-	0	0
PAVA Sprayed	-	-	-	-	0	3
PAVA Total[178]	-	-	-	-	0	**3**
Firearm Drawn/Pointed	360	364	419	265	358	431
Firearm Discharged	0	1	0	0	1	1
Firearm Total	**360**	**365**	**419**	**265**	**359**	**432**
Police Dog Used	**33**	**45**	**49**	**51**	**116**	**75**
Taser Drawn	126	171	223	104	177	246
Taser Fired	9	11	16	22	14	13
Taser Total	**135**	**182**	**239**	**126**	**191**	**259**
W/Cannon Deployed	31	158	130	45	26	15
W/Cannon Used	14	17	12	0	4	0
W/Cannon Total	**45**	**175**	**142**	**45**	**30**	**15**

Attenuating Energy Projectile (AEP)

AEP are issued only to and may be used only by specially trained officers who are authorised to use AEP. It may be used during serious public disorder but only where an

[172] *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; *PSNI Use of Force Statistics, 1 April 2014 – 31 March 2015*, PSNI, June 2015; *PSNI Use of Force Statistics, 1 April 2015 – 31 March 2016*, PSNI, June 2016; and *PSNI Use of Force Statistics, 1 April 2016 – 31 March 2017,* PSNI, June 2017.
1 April 2015 – 30 September 2015, December 2015.
[173] 350 AEPs were fired by 96 officers.
[174] 34 AEPs were fired by 20 officers.
[175] 99 AEPs were fired by 34 officers.
[176] 3 AEPs fired by 3 officers.
[177] 8 AEPs fired by 4 officers.
[178] PSNI began using PAVA irritant spray on a pilot basis from 1 January 2016, hence why no use is recorded prior to 2016.

individual aggressor or aggressors can be identified and targeted. That is a critical limit to the use of AEP. It can never be used as a crowd control measure and must never be discharged randomly or into a crowd where an individual aggressor or aggressors cannot be identified. The AEP may also be used during a stand-alone incident as a less lethal option where the use of a firearm would also be justified. AEP officers are required to record all incidents where an AEP has been pointed, even if it has not been discharged.

AEP use has been discussed in detail in previous year's Human Rights Annual Reports, with specific recommendations made requiring PSNI to review their use following high levels of use during the summers of 2010 and 2011. There was public disorder during those summer months on a much wider scale than there has been in recent years, with most AEP being used during such incidents. Since then PSNI's use of AEP has greatly decreased and it was not discharged at all between 1 April 2016 and 31 March 2017. This was the first time in eight years when records commenced where AEP was not discharged either as a less lethal option or during serious public disorder. This is a reflection of the relatively peaceful months in July and August 2016. During 2016/17 the 37 occasions on which AEP was pointed but not discharged related to situations in which it was being used as a less-lethal alternative to firearms, rather than in a public disorder context.

Baton

Police officers must report any use of a baton to their immediate supervisors as soon as practicable, submit an electronic use of force form and make the baton available for inspection. In addition, in circumstances where a baton was drawn but not used, the officer must submit a report where it is reasonable to expect that a person (or persons) anticipated a threat of force being used against them. If a supervisory officer gives a direction to other officers to draw their batons only that supervisory officer is required to complete the electronic use of force monitoring form. However, if any officer strikes an individual(s) that officer must submit an electronic use of force monitoring form to indicate that a baton was used.

As evidenced by Table 1, baton use has remained on a similar level over the past three years (2014 – 2017) and remains considerably lower than the three years previous to that (2011 – 2014). Baton is most commonly used on a roadway (56% of occasions in 2016/17) and the main reason officers give for using baton is to protect themselves (86% in 2016/17), protect another officer (67% in 2016/17) and/or to prevent an offence (58% in 2016/17). Most use tends to be by Response or Sector policing teams (69% in 2016/17) followed by Tactical Support Group (TSG) (16% in 2016/17). Males aged 19 – 29 are the group against whom baton is most likely to be used (58% in 2016/17).

CS Irritant Spray

CS irritant spray is issued only to officers trained in the Personal Safety Programme. Those officers will carry CS Spray as part of their patrol equipment. CS spray is designated personal protection equipment. Police policy states that it is not to be used during serious public order situations as a crowd dispersal tactic. An officer who draws the CS Spray device and points it at any individual or group must report that use and any warning given even if it is not sprayed.

As evidenced by Table 1, the level of use of CS Spray in 2016/17 was slightly less compared to the previous year. CS was sprayed on 187 occasions in 2016/17 against 215 persons. CS spray is used most commonly on a roadway (46% of occasions in 2016/17) and the main reason officers give for using CS Spray is to protect themselves (88% in 2016/17), protect another officer (74% in 2016/17) and/or to prevent an offence (58% in 2016/17). The vast majority of use tends to be by Response or Sector policing teams (90% in 2016/17). Males aged 19 – 29 are the group against whom CS spray is most likely to be used (51% in 2016/17).

PAVA Irritant Spray

On 1 January 2016 PSNI commenced a pilot using PAVA irritant spray as an alternative to CS irritant spray. Like CS spray, PAVA is designed to reduce the capacity of most individuals to offer resistance or violence to officers, without unnecessarily prolonging discomfort. PAVA spray received Home Office approval in 2004 but up until 2016 had not been used by PSNI. Concerns were raised in 2011 by the Independent Police

Complaints Commission for England and Wales regarding the flammability of CS spray, which effectively excluded the deployment of Taser in circumstances where CS spray had been used and meant that officers equipped with Taser were not authorised to carry CS spray. Officers on duty at airports are also not authorised to carry CS spray due to Airport Regulations. In light of this PSNI is piloting the use of PAVA, which is not flammable, for use by specialist firearms officers and officers performing duties at airports. The pilot was initially due to run for six months from 1 January 2016 but has been extended. During 2016/17 PAVA was drawn and sprayed on three occasions. PSNI has committed to keep the Performance Committee updated as to developments and the outcome of the pilot.

Firearms

The Chief Constable has issued standing authority for all officers, so long as he or she has completed the necessary training, to be issued with a personal issue firearm. That standing authority is kept under regular review.[179] Officers are required to report any instance when a personal firearm has been drawn or pointed even if it is not discharged. There are also a number of specifically trained firearms officers to deal with pre-planned and spontaneous firearms incidents. These officers are deployed with Heckler & Koch weapons and the 'Glock' personal issue handgun, but they also have other less lethal options available (i.e. Taser and AEP).

As evidenced by Table 1, the number of times where firearms were drawn or pointed (but not fired) increased by 35% from 265 occasions in 2014/15 to 358 occasions in 2015/16. The increase has continued in 2016/17 with 431 occasions (a further 20% increase) on which a firearm was drawn or pointed. The increase does not appear to be attributable to any particular month or to any particular events.

[179] Recommendation 65 of *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999 (the Patten Report) stated that "the question of moving towards the desired objective of a routinely unarmed Police Service should be periodically reviewed in the light of developments in the security environment". PSNI regularly assesses the need for continued carriage of firearms by PSNI officers in the context of the current security situation and reports to the Policing Board in writing on the outcome of its deliberations on an annual basis.

Firearms are most commonly drawn or pointed during firearms incidents at a dwelling (57% of occasions in 2016/17) or on a roadway (27% of occasions in 2016/17). The main reasons officers give for drawing or pointing firearms is to protect themselves (98% in 2016/17), protect other officers (94% in 2016/17), to protect the public (80% in 2016/17) and/or to prevent an offence (78% in 2016/17). The Armed Response Vehicle team deal with the majority of incidents involving the use of firearms (67% in 2016/17), although a significant number are also dealt with by Response or Sector policing teams (21% in 2016/17) and Specialist Firearms Officers (9% in 2016/17).

Police Dog

All police dogs are under the control of Operational Support Department and they may be used as a tactical option in a variety of scenarios. Use of force, however, accounts for only a very small proportion of the work that police dogs are used for. Force is recorded in respect of a dog in the following scenarios: When the dog is deployed to achieve control of an immediate threat to the handler, other officers, innocent persons or the dog itself, whether or not the dog bites or causes injury; When the dog is deployed to apprehend a fleeing offender/subject, whether or not it bites or causes injury; When the dog bites at the direction of the handler and there is no injury; and When the dog bites not at the direction of the handler and there is no injury.

As evidenced by Table 1, in 2015/16 there was a significant rise in the number of occasions where there was a use of force involving a police dog, from 51 occasions in 2014/15 to 116 in 2015/16 (a 127% increase). The 116 occasions involved 129 members of the public, 5 of whom were bitten. While dog was only used on 51 occasions the previous year, the incidents involved 55 members of the public, 12 of whom were bitten. In 2016/17, the 75 occasions where a police dog was used involved 87 members of the public, 11 of whom were bitten by the dog. Thus although there was a sharp rise in the level of usage of police dogs in 2015/16, the number of people actually bitten was lower than other years.

Males aged 18-29 are the age group against which police dog is most frequently used (61% in 2016/17). The main reason given by officers in 2016/17 for using a dog was to protect themselves (72%), to prevent an offence (64%) and/or to effect an arrest (56%).

Taser

The Conductive Energy Device, or Taser as it is more commonly known, is a single shot weapon designed to temporarily incapacitate a subject through the use of an electric current, which temporarily interferes with the body's neuromuscular system. Tasers are issued to specialist firearms officers and to authorised firearms officers attached to Armed Response Vehicles. They are one of a range of tactical options available where there is violence or a threat of violence which may escalate to the point where the use of lethal force would be justified. If a Taser is drawn, aimed and/or red-dotted (at which stage a red dot appears on the subject indicating where the Taser would hit) that must be reported, even if it is not subsequently discharged.

As evidenced by Table 1, use of Taser increased from 126 uses in 2014/15 to 191 uses in 2015/16 to 259 uses in 2016/17. As can be seen in Table 1, the increase is attributable to the number of times Taser was drawn, aimed and/or red-dotted, not to the number of times it was discharged; there has in fact been a decrease in the number of discharges, from 22 occasions in 2014/15 to 14 occasions in 2015/16 to 13 occasions in 2016/17. Taser is most commonly used at a dwelling (68% of occasions in 2016/17) and during firearms incidents (84% of occasions in 2016/17). The main reason officers give for using Taser is to protect themselves (97% in 2016/17), to protect another officer (96% in 2016/17) and/or to prevent harm to the subject (87% in 2016/17). The 13 occasions in 2016/17 in which Taser was discharged involved 11 males, 5 of whom were aged 18-29, 4 aged 30-39 and 2 aged 50-59, and 2 females aged 40 to 49.

Water Cannon

PSNI has 6 water cannon available which are kept at different locations across Northern Ireland. Water cannon are deployed and used only when authorised by appropriate officers in accordance with police policy. Water cannon were deployed on 15 occasions in 2016/17 but were not used on any of these occasions.

8 COVERT POLICING

Covert policing raises significant issues in which various rights enshrined in the ECHR and Fundamental Freedoms must be considered. As technology advances and the temptation builds for police to use every means at their disposal to combat crime and keep people safe so does the potential for interference with those rights. Increasingly, officers are required to explain to courts their rationale for the intrusion, to demonstrate how they applied the relevant human rights principles and demonstrate that they followed assiduously the practical steps involved in the application of the principles. If the PSNI do not have robust policies and procedures which guide the practical application of human rights principles the police are likely to fall foul of the courts. The great effort expended in obtaining evidence from the use of covert techniques will be wasted.

The prevalent ECHR right (but by no means the only one) concerned in covert policing is Article 8 commonly referred to as the right to privacy.[180] Article 8 however extends beyond a mere right to privacy. It protects four distinct interests: private life, family life, the home and correspondence albeit with a degree of overlap between them. In the context of this chapter there is little doubt that Article 8 is engaged in, for example, every interception of communications, every covert surveillance operation whether involving technology or otherwise, every intelligence gathering operation and the capture and retention of material. Article 8 is a qualified right which means that interferences that engage Article 8 may be permitted, but only if they are in accordance with the law, pursue a legitimate aim and are necessary in a democratic society.

Even if no use is made of material or information gathered, the very act of storing it will almost always engage Article 8 if the material relates to some aspect of private life. The concept of 'private life' has been described as illusory but it certainly covers the physical and physiological integrity of a person and includes multiple aspects of a person's

[180] Article 8 ECHR provides "1) Everyone has the right to respect for his private and family life, his home and correspondence; 2) There shall be no interference by a public authority with the exercise of this right except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing 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".

physical and social identity (including the right to a person's image). Importantly, in this context, Article 8 also protects a person's right to personal development and the right to establish and maintain relationships. 'Family life' tends to be relevant more in the context of considerations of proportionality and collateral intrusion. For example, private information should be taken to include a person's relationships. The protection of the 'home' will often be central to any property interference or intrusion into the home whether by listening device or otherwise. Importantly, the scope of 'home' extends to business premises and relationships in certain circumstances.[181] 'Correspondence' extends beyond traditional means of communication, such as letter and includes all forms of communication such as emails, text messages, telephone calls, video calls, instant messaging and communication through social networking sites.

Article 8 as a means of protecting a person from interference or intrusion is well known but there is also a positive obligation on the State: to ensure that the rights protected are effective and meaningful; to prevent interference by others; or require those others to provide access to information acquired by the interference. In every covert operation a police officer must establish whether Article 8 is engaged, whether it has been interfered with (it almost always will be in a covert policing operation), whether the interference is in accordance with the law and, whether the interference is necessary in a democratic society. It is the last part of the sequence which presents the most challenge to police officers. 'Necessary' is not defined but the ECHR has made clear that it may be less than indispensable but must be more than reasonable, useful or desirable. Necessity itself is further broken down into two parts: whether there is a pressing social need for the interference in all of the circumstances and if so, whether that interference is proportionate.

Proportionality is not expressed within the ECHR itself but derives from and is a defining characteristic of the courts' interpretation of ECHR as a whole. Proportionality has been imported into PSNI vocabulary to such an extent that its articulation is present in all considerations of the use of policing powers. That has been the great success in Northern Ireland of approaching policing from a human rights perspective and

[181] For example, in *Niemietz v Germany* (1992) 16 EHRR 97 and *R v Broadcasting Standards Commission, ex parte the BBC* (2000) 3 WLR 1327.

incorporating human rights at the centre of decision making. There is always a risk however that proportionality is approached in a formulaic manner so that all proposed action can be justified *because* it will likely result in useful intelligence or evidence. In other words, there is a risk that the articulation of human rights (proportionality in particular), becomes a substitute for the proper consideration of the principles. Even if the interference with the right has an obvious legitimate purpose police must still consider whether the proposed interference goes no further than what is strictly necessary for achieving that purpose.[182]

In every operation less intrusive measures should always be considered before a decision is made even though in this context there is no requirement to have first tried other measures which have failed. The question is not whether the right can be balanced against the interference (a mistake commonly made) but whether the nature and extent of the interference is balanced against the reasons for interfering. In other words, a blanket policy which dictates when a measure is proportionate will likely offend against the principle of proportionality.[183] It is precisely because police officers are motivated to combat crime and keep people safe that there is always a risk of 'overstepping the mark'. That is why oversight both internal and external is so important, accepting that the fact of oversight in itself does not equate with human rights compliance.

Human rights and proportionality are not simple concepts particularly for an officer having to decide what he or she may do when confronted with a potential interference, for example, with the Article 2 right to life. The law recognises that the right to respect for private life and correspondence can be overridden (where it is necessary and proportionate to do so) in the interests of national security, public safety and the prevention of disorder or crime but officers charged with determining when and how that right may be overridden are presented with an almost insurmountable challenge, not

[182] For example, in *Digital Rights Ireland Limited v Minister for Communications* C-293/12, 8 April 2014 the Court of Justice of the European Union held that the utility of the Data Retention Directive in the fight against serious crime was not enough to render it necessary, in the absence of adequate safeguards.
[183] In *Campbell v UK* (1993) 15 EHRR 137 for example it was held by the ECtHR that opening all prisoners' mail for the purposes of determining whether there were prohibited articles was in breach of Article 8 because the decision-making was not informed and it was only justifiable where there was a reasonable suspicion that the mail may have contained prohibited material.

assisted by the impenetrability of the domestic regulatory regime. The Performance Committee is mindful of the challenge faced by police officers and civilian staff but is sure that continued transparency, scrutiny and public accountability lessens their burden.

It is essential that officers have expert knowledge of the domestic legal framework, an in-depth and instinctive understanding of the Human Rights Act 1998 and access to excellent local knowledge and intelligence. The Human Rights Act provides a framework of principles that help guide that officer to improve his or her decision-making. It is in this aspect of policing that the Human Rights Act has perhaps had its greatest impact. In this area, perhaps more than any other, comprehensive written policy which incorporates human rights combined with effective training, including refresher training, is essential to equip officers to respond to fast-moving and stressful situations.

Regulatory Regime

The following is a very brief overview of the regulatory regime. It does not cover every piece of legislation or Code of Practice. There are a number of other pieces of legislation that apply (not always consistently) in respect of the interception of communications[184] which are not considered here but compliance with which is considered by others including the Policing Board's Human Rights Advisor.

Regulation of Investigatory Powers Act 2000

In 2000, the Government introduced the Regulation of Investigatory Powers Act 2000 (RIPA),[185] which had the stated intention to better regulate and make human rights

[184] For example the Telecommunications Act 1984, the Wireless Telegraphy Act 2006 and Schedule 7 of the Terrorism Act 2007

[185] RIPA is supplemented by additional provisions contained in for example the Regulation of Investigatory Powers (Source Records) Regulations 2000 S.I. 2000 No. 2735 and the Criminal Procedure and Investigations Act 1996. Furthermore, The Home Office has issued a number of Codes of Practice: Code of Practice for Covert Surveillance; Code of Practice for Covert Human Intelligence Sources; Code of Practice for Interception of Communications; and Code of Practice for the investigation of Electronic

compliant rules on covert activity. RIPA must be interpreted and applied where possible so as to comply with the ECHR. Therefore, even with a regulatory regime which contains a number of safeguards, the requirement to consider the various elements such as proportionality, remains; slavish attention to the technical aspects of RIPA does not guarantee human rights compliance.

The police powers governed by RIPA are: the Interception of Communications (in the course of its transmission by means of a public postal service or public communication system); intrusive surveillance on residential premises and in private vehicles; covert (directed) surveillance; the use of Covert Human Intelligence Sources (commonly referred to as police informants, agents and undercover officers); the acquisition of communications data (for example itemised telephone billing and telephone subscriber details); and, the investigation of electronic data protected by encryption. 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.[186]

RIPA requires the Secretary of State to publish guidance concerning the use and exercise of RIPA powers which include the Interception of Communications, Covert Surveillance and Covert Human Intelligence Sources Codes of Practice, the new Acquisition Code and the Retention of Communications Data Code of Practice.

Surveillance Commissioners

The Office of Surveillance Commissioners (OSC) was established to oversee covert surveillance and property interference. It is led by the Chief Surveillance Commissioner who reports directly to the Prime Minister and is supported by surveillance

Data protected by Encryption. ACPO produced Manuals of Standards for covert techniques and guidance is also under development by the College of Policing.

[186] 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.

commissioners, assistant surveillance commissioners, inspectors and a secretariat based in London and Belfast. The Commissioners are appointed under part 3 of The Police Act 1997 and parts 2 and 3 of RIPA to oversee operations carried out under those Acts. The OSC is responsible for: considering notifications of authorisations for property interference; giving or withholding approval for authorisations for certain operations under Police Act 1997 and RIPA 2000; and, oversight of the use of powers conferred by the Acts relating to encryption keys. OSC inspectors conduct annual inspections of PSNI and make recommendations. Each year the Policing Board's Human Rights Advisor reviews the OSC inspection report and the PSNI's response to it. Those documents contain sensitive confidential material which cannot be reproduced but the Human Rights Advisor advised the Committee that the 2016 report noted the excellence of PSNI practice and procedure but made recommendations of a technical nature. None of those recommendations in the view of the Human Rights Advisor raise issues of human rights compliance.

Investigatory Powers Act 2016

The Investigatory Powers Act 2016 provides an updated framework for the use by the security and intelligence agencies, law enforcement and other public authorities of investigatory powers to obtain communications and communications data. These powers cover the interception of communications, the retention and acquisition of communications data, and equipment interference for obtaining communications and other data. It is not lawful to exercise such powers other than as provided for by the Act. The Act also makes provision relating to the security and intelligence agencies' retention and examination of bulk personal datasets. The Act governs the powers available to the state to obtain communications and communications data. It provides consistent statutory safeguards and clarifies which powers different public authorities can use and for what purposes. It sets out the statutory tests that must be met before a power may be used and the authorisation regime for each investigative tool, including a new requirement for Judicial Commissioners to approve the issuing of warrants for the most sensitive and intrusive powers. The Act also creates a new Commissioner to oversee the use of these powers. Finally, the Act provides a new power for the

Secretary of State to require, by notice, communications services providers to retain internet connection records.

NATIONAL SECURITY

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 executive policing operations. Therefore oversight through for example the Policing Board is increasingly important but complex. To clarify the oversight arrangements, Annex E to the St. Andrews Agreement was intended to provide a clear line of oversight and accountability following transfer of primacy. It 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 UK Government confirmed that it accepted five key principles. Adherence to those principles is crucial to the effective operation of national security arrangements. Those principles are:

1. All Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI;
2. PSNI will be informed of all Security Service counter-terrorist investigations and operations relating to Northern Ireland;
3. Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy, and using police procedures;
4. The great majority of national security CHIS in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols;
5. 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.

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). The Policing Board also takes account of the work carried out by other relevant oversight authorities.[187] 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 Justice and Security (Northern Ireland) Act 2007 (JSA).

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

[187] 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.

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".

Given the nature of covert and national security policing, there are limitations in respect of the amount of information that can be provided to Members of the Policing Board.[188] 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 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.[189]

Oversight of national security arrangements

On 12 May 2016, the Independent Reviewer of National Security Arrangements in Northern Ireland, Lord Carlile of Berriew C.B.E QC, briefed the Westminster Parliament on national security arrangements between 1 January 2015 and 31 January 2016.[190] He reported that he had been briefed extensively on the state of threat in Northern Ireland

[188] 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.
[189] Section 59 of the 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.
[190] Report by Lord Carlile of Berriew C.B.E., Q.C. on the National Security Arrangements in Northern Ireland: Written statement - HLWS705.

and found the context in which national security activities are performed in Northern Ireland to remain challenging. He noted, as in the previous year, that there had been successes against dissident republicans (DRs), with significant attrition but attacks still occurring. He reported good cooperation with the Irish authorities which, he observed, had quickened the pace of activity against DRs. He regarded the calendar year 2015 as a year of continuing success in thwarting and detecting terrorism and "the ability of these terrorists to carry out attacks has suppressed over the years by successful attrition and arrests. This is undoubtedly the result of excellent joint activity by MI5 and PSNI. Given that the total exclusion of paramilitary activity is unlikely to be achieved in the measurable future, MI5, the PSNI and others involved have maintained good progress." He reported 16 national security attacks during 2015 with no serious injuries.

In respect of principle 2 of Annex E to the St. Andrews Agreement – that PSNI will be informed of all Security Service counter terrorist investigations and operations relating to Northern Ireland – he was satisfied with compliance Furthermore, on principle 1 – that all Security Service intelligence relating to terrorism in Northern Ireland must be visible to the PSNI – Lord Carlile was satisfied with compliance and noted arrangements in place to deal with any suspected malfeasance by a PSNI or MI5 officer.

He went on "Dissident republican groupings are resilient and capable; a number of attacks in 2015 were unsuccessful by narrow margins. Current and released prisoners continue to present a challenge. I was reminded of the diverse and enduring nature of the threat. Dissident republicans remain interested in and involved in criminality, organised crime and money laundering. They also retain a political purpose, some with more determination than others. Loyalist paramilitaries also have political imperatives, though the motivation of many is the making of money through extortion and other organised crime."

In terms of his engagement during the year he included PSNI and MI5 and examined the relationship between them and the Police Ombudsman and the Policing Board. He also met some of the NI political parties. During 2015 he referred to meeting with the Policing Board and its Independent Human Rights Advisor. He believed the Board could

"feel assured that the Human Rights Advisor is well able to discharge her duties in respect of national security." Lord Carlile also met with the Police Ombudsman. He was satisfied that the periodic briefings provided to him have been "full and not selective." Lord Carlile also reported a detailed meeting with the Committee on the Administration of Justice (CAJ) who provided him with "a robustly critical narrative of the current security situation." The CAJ expressed the view that "deprivation caused by austerity is leading to recruitment into paramilitary groups" and Lord Carlile commented that, "these views found resonance with some interlocutors."

In respect of the arrangements for Covert Human Intelligence Sources (CHIS) he found the overall use of CHIS to have been effective. He reported that "CHIS operations are run with a clear investigative strategy. Participation of CHIS in crime is subject to strict control and protocols. There are frequent meetings between PSNI and MI5 at a senior level to discuss CHIS policy and operations." Measuring this against the principle enshrined by Annex E[191] he found "The majority of CHIS are run by the PSNI. Protocols have not stood still. A review of existing protocols and the development of up to date replacements should always be work in progress and clearly accountable." In respect of principle 3 of Annex E – that Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy, and using police procedures - he reported that there was compliance with the dissemination policy having been developed since the new arrangements came into force.

Lord Carlile also reported that "across all my conversations in the past year I have found confusion and concern about how historic issues are to be dealt with and addressed. Much optimism is being placed in the proposed Historical Investigations Unit (HIU). I am sure the Secretary of State and NI Executive Ministers will ensure proportionate funding, and the level of documentary and other evidential disclosure necessary for the fulfilment of its proper objectives."

In respect of terrorism prosecutions he continued to have concerns about the length of sentences in Northern Ireland for terrorism related offences, and that delays in cases

[191] Which provides that the great majority of national security CHIS in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols.

coming to trial were resulting in defendants being released on bail. He acknowledged the reform of committal proceedings contained in the Justice Act (Northern Ireland) 2015 and discussed more active case management and plea bargaining as means to save court time. Despite the active and concerned involvement of senior judges throughout the criminal justice system however concerns remained about the disclosure system in which public interest immunity and related disclosure issues were not dealt with by the trial judge, as they are in Great Britain. Lord Carlile remained of the view that the "residual serious and lethal threat of terrorism justifies the continuation of the non-jury trial arrangements provided under the Justice and Security (Northern Ireland) Act 2007." He continued, "I have enquired again about the use of intercept evidence. I remain satisfied that there is solid scrutiny and review of interception, in an environment in which communications technology is developing quickly. Continued vigilance and the maintenance of counter-terrorism resourcing are essential. However, once again I have drawn comfort from the successful joint operations between MI5 and the PSNI, and their high level of co-operation with their counterparts in the Republic of Ireland. Normality is a genuine and mostly realisable ambition, rather than merely an aspiration."

In respect of principle 5 of Annex E to the St. Andrews Agreement – that there will 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 – he observed "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."

On 17 July 2017, the new Independent Reviewer made his first statement, covering the period from June 2016 to 31 December 2016, to the Westminster Parliament.[192] He reported that his "visits to various PSNI establishments and to MI5 left an impression of deep commitment and professionalism. Strong cross-border links continue with An Garda Siochana, resulting in effective co-operation and impressive disruption. The aim of a more stable society, where the effect of local terrorism has a decreasing impact, seemed to have made some progress through 2016 despite a picture of continuing terrorist threat. It is clear, however, that police and prison officers face high risks both on

[192] Report by His Honour Brian Barker QC, National Security Arrangements: Northern Ireland, 17 July 2017, House of Commons Hansard, Volume 627.

and off duty. The context in which national security activities are performed have been described in the past as challenging, and continue to be so."

On the current threat level, he reported the number of shooting incidents related to the security situation for the 12 month period was 49, almost identical to that in 2015, while the number of bombing incidents, 27, was half that recorded in 2015. There were six security/paramilitary related deaths in the period to December 31 2016. This was three times the number of the previous year. "As in recent years there have been successes and considerable effort devoted to containing and disrupting dissident groups. Nevertheless, planning and targeting continues and attacks occur. The threat from those released from custodial sentences and those given bail continue to present a challenge. Dissident republican groupings remain interested and involved in criminality, organised crime, and money laundering. They express political purpose, either with conviction or because it is necessary so as to obscure criminality. Loyalist paramilitaries claim political allegiance, although the motivation of many is crime and control through intimidation and violence."

His Honour Brian Barker recorded his engagements throughout the period and noted in particular the concerns of the Committee on Administration of Justice (CAJ) about the use, control and reporting of CHIS and whether, for example, any CHIS were working without PSNI knowledge. He intends to review this in the coming year. In light of the new Investigatory Powers Act 2016. He observed "My meeting with the NIPB's Independent Human Rights Advisor, Alyson Kilpatrick, fortified my predecessor's high regard for her, and the important role she plays" and that the Director of Public Prosecutions, Barra McGrory QC, had briefed him on some operational problems inherent in the prosecution of alleged terrorists. He observed "the deficiencies in the administration of criminal justice and the limited progress in case management are all too obvious. Applications for disclosure in major terrorism trials and the need for appropriate balance, continue to present problems. Tightening the criminal justice system by streamlining criminal justice processes and faster committal proceedings would increase public confidence." His Honour Brian Barker noted that a topic raised by several politicians was the extent of the activities, as well as the remit, of the National

Crime Agency (NCA) but recorded his satisfaction that all statutory constraints (for example concurrence of PSNI and no national security function) were adhered to.

Like his predecessor he referred to progress on "the past" which is still at an early stage "while expectations for the proper and balanced understanding of the history in relation to the legacy inquests remain high. Funding is a continuing issue." He also noted that the Assistant Chief Constable responsible for policing the marching season had reported an overall sense of reduced tension compared to the previous year with the 12 July 2016 parades passing off without serious incident. He was impressed by "the standards and commitment of senior members of MI5 and the PSNI who provided unstinting time and access. My thanks are also due to the NIO for its support."

The Policing Board's Human Rights Advisor met both with Lord Carlile CBE QC and His Honour Brian Barker QC to discuss any issues arising. She reiterated to the Committee the importance of that engagement and access to documents, which she explained was critical to any meaningful assessment of compliance with the Human Rights Act 1998.

MANAGEMENT AND HANDLING OF CHIS

CHIS may only be authorised for use in accordance with the RIPA. Under RIPA a person is a CHIS if they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within: the covert use of a relationship to obtain information or to provide access to any information to another person; or the covert disclosure of information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.[193]

A relationship is established or maintained for a covert purpose if and only if it is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.[194] A relationship is used covertly, and information obtained is disclosed covertly, if and only if the relationship is used or the

[193] Section 26 of RIPA.
[194] *Ibid.*

information is disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.[195]

It is fundamentally important that a CHIS is clear on what is and is not authorised at any given time and that all the CHIS's activities are properly risk assessed. The use or conduct of CHIS is a particularly intrusive and high-risk covert technique, requiring dedicated and sufficient resources, oversight and management. For example all use or conduct must be necessary and proportionate to the intelligence that it seeks to achieve and in compliance with relevant Articles of the ECHR.

Article 8 ECHR includes the right to establish and develop relationships. Any manipulation of a relationship by a public authority therefore will engage Article 8, regardless of whether or not the public authority intends to acquire private information. Importantly, not all persons providing information will be CHIS: a member of the public who volunteers information or a professional person who discloses information out of professional or statutory duty will not be a CHIS, without more. Critically, if it is known or suspected that an individual may be vulnerable (including by reason of age), that person should only be authorised to act as a CHIS in the most exceptional circumstances.

CHIS may also infringe on the Article 8 rights of others. The interference with the private and family life of persons who are not the intended subjects of the CHIS activity is called collateral intrusion. Measures are required wherever practicable, to avoid or minimize interference with the private and family life of those who are not the intended subjects of the CHIS activity. Where collateral intrusion is unavoidable, the activities may still be authorised providing the collateral intrusion is considered proportionate to the aims of the intended intrusion. Any collateral intrusion should be kept to the minimum necessary to achieve the objective of the operation. Applications for authorisations will therefore include an assessment of the risk of any collateral intrusion, and details of any measures taken to limit this, to enable the authorising officer fully to consider the proportionality of the proposed use or conduct of CHIS.

[195] *Ibid.*

That also means that if the nature or extent of intrusion into the private or family life of any person becomes greater than anticipated in the original authorisation, the authorising officer should immediately review the authorisation and reconsider the proportionality of the operation. Furthermore, authorising officers need to be aware of particular sensitivities in the local community where CHIS are being used and of similar activities being undertaken by other public authorities which could have an impact on the deployment of the CHIS. Consideration should also be given to any adverse impact on community confidence or safety that may result from the use or conduct of CHIS. Confidential information obtained by the use of CHIS is regulated and if the confidential material includes material that is legally privileged a higher threshold again must be met.

Special safeguards apply to the use or conduct of CHIS who are under 18 years. For example, the use or conduct of CHIS less than 16 years of age can never be authorised to give information against their parents or any person who has parental responsibility for them. In other cases, authorisations should not be granted unless special provisions are complied with.[196] Authorisations for children are also shorter in duration than for adults.

To ensure proper oversight and management of CHIS, individual officers are appointed as handlers and controllers. When deploying a CHIS the police must always take into account the safety and welfare of the CHIS and the foreseeable consequences to others before authorising their use or conduct. Therefore, a risk assessment will be carried out to determine the risk to the CHIS of any tasking and the likely consequences should the role of the CHIS become known. The ongoing security and welfare of the CHIS, after the cancellation of the authorisation, should also be considered at the outset. Consideration should be given to the management of any requirement to disclose information tending to reveal the existence or identity of a CHIS. In practice, a CHIS handler will be responsible for bringing to the attention of the CHIS controller any concerns about the personal circumstances of the CHIS, insofar as they might affect:

[196] See for example the Regulation of Investigatory Powers (Juveniles) Order 2000.

the validity of the risk assessment; the conduct of the CHIS; and the safety and welfare of the CHIS. Authorisations are kept under regular review.

The authorisation process for both intrusive and directed surveillance has been reviewed by the Policing Board's Human Rights Advisor and by the OSC. RIPA provides a framework for the review of surveillance activities by the OSC and the Intelligence Services Commissioner. A complainant may bring a complaint to the Commissioners or to the Investigatory Powers Tribunal (and may in limited circumstances have a claim which can be brought before a domestic court) but it can be noted that the right to a remedy for breach of an infringement depends upon the person affected by it knowing of the infringement. By the very nature of covert surveillance that is rarely the case.

The ECHR has reiterated that "subsequent notification of surveillance measures is inextricably linked to the effectiveness of remedies and hence to the existence of effective safeguards against the abuse of monitoring powers, since there is in principle little scope for recourse to the courts by the individual concerned unless the latter is advised of the measures taken without his or her knowledge and thus able to challenge their legality retrospectively."[197]

In 2017, PSNI revised and reissued its manual on the management of CHIS. The PSNI also follows, for example, the NPCC guidance. The PSNI manual was provided to the Board's Human Rights Advisor who was also provided with accompanying guidance, protocols and Service level Agreements. Additionally, she was briefed by officers on the operation of the same. While the Human Rights Advisor is unable to share secret information or disclose beyond the Board confidential information she was able to brief the Committee about the arrangements and mechanisms in place to ensure compliance with the Human Rights Act 1998. The PSNI recognise not just the legal parameters but also the necessity to be ethical in all decision making and actions.

[197] *Weber & Saravia v Germany* (2008) 46 EHRR.

The manual is a comprehensive document, which covers, amongst other things: ethics, human rights standards, policing with the community ethos, training as well as the more technical aspects of CHIS management. Risk assessment and procedures for ensuring the management of risk are detailed and carefully considered. The combination of the above documents training and oversight including that permitted to the Human Rights Advisor has created an environment and operational framework which will, so far as it is possible, secure compliance with human rights standards and the general principles set out above. The Human Rights Advisor noted that her assessment accorded with that of the Surveillance Commissioner.

SMALL UNMANNED AIRCRAFT (SUA)

In June 2013, PSNI purchased a number of small unmanned aircraft (SUAs), commonly referred to as drones.[198] They were first used during the G8 Summit in June 2013 and since then the primary use of SUAs has been to provide overt support to policing. As a condition of the Policing Board's approval for the expenditure on SUAs and further to a recommendation in the Human Rights Annual Report 2013, PSNI carried out a post implementation review of SUA and reported to the Performance Committee on its findings in February 2015. The post implementation review considered the regulatory framework within which SUA is deployed, the way in which information gathered is stored and retained, the frequency and manner of use to date and the benefits derived from use of the technology. PSNI indicated that they intended to continue using SUA and would seek to maximise its potential for use.

The legal framework governing the use of SUA both overtly and covertly was set out at length in the Human Rights Annual Report 2015. Covert use is governed by the strict rules contained within RIPA, while overt use is deemed to be similar to the use of CCTV and thus is subject to the same rules and regulations as CCTV use. In England and Wales overt use of CCTV and similar devices is governed by the statutory Surveillance Camera Code of Practice.[199] Furthermore, the Information Commissioner's Office (ICO),

[198] The PSNI currently own and operate 6 SUA systems.
[199] *Surveillance Camera Code of Practice*, Home Office, June 2013. The Code was introduced further to legislative provision within the Protection of Freedoms Act 2012 which also established the role of a

whose remit extends to Northern Ireland, has issued a Code of Practice to provide good practice advice for those involved in operating CCTV and other surveillance camera devices that view or record individuals.[200]

Although the PSNI is not legally obligated to follow either the Surveillance Camera Code of Practice (as it does not extend to Northern Ireland) or the ICO Code of Practice (as it is non-statutory) when operating SUA overtly, PSNI is legally required to comply with the Data Protection Act 1998 and the Human Rights Act 1998, Article 8 of which requires the police to protect and respect privacy rights. Given that both Codes of Practice are intended to assist authorities in complying with their obligations under both Acts, it makes practical sense that PSNI adheres to them. It was reported in last year's Human Rights Annual Report that while the guidance contained within the Codes had not yet been formally adopted within PSNI policy, the Board's Human Rights Advisor had provided the Performance Committee with assurance that PSNI did in practice comply with the standards contained within the Codes when operating SUA overtly. Recommendation 7 of the Annual Report required PSNI, in the absence of its own dedicated policy or guidance, to formally adopt the Surveillance Camera Code of Practice and the ICO Code of Practice.[201] PSNI accepted the recommendation and has circulated the Codes of Practice to all SUA operators. Recommendation 7 has therefore been discharged but the Committee will continue to maintain an interest in changes to the legal and policy framework affecting the use of SUA and, where changes are made, will seek assurance from PSNI that its use of SUA remains compliant.

Given the intention to continue using SUA, and as per Recommendation 8 of the Human Rights Annual Report 2015, PSNI is required to report to the Performance Committee in writing every six months on the nature and extent of SUA use.[202] PSNI accepted the recommendation and reported to the Committee and Board in September 2016 and March 2017.

Surveillance Camera Commissioner. Neither the Code of Practice nor the remit of the Commissioner extend to Northern Ireland.

[200] *In the picture: A Data Protection Code of Practice for Surveillance Cameras and Personal Information*, Information Commissioner's Office, May 2015.

[201] Recommendation 7, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

[202] Recommendation 8, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

PSNI provided a brief overview of the frequency and types of use of SUA during the previous six months, for example during a missing person search and to cover vulnerable points during the Belfast Marathon. PSNI also provided an update on procurement and resourcing issues. Over and above its own use of SUA, or 'drones' as they are commonly known, PSNI advised that given the increase in public use of such technology it would provide to the public advice and guidance in relation to drone safety. This was accompanied by a service wide education campaign to help police officers responding to drone incidents. The PSNI provided via its publicly accessible website guidance for the public and links to the Civil Aviation Authority's Drone Code. A public safety video developed by PSNI in conjunction with the private sector is due to be released during 2017.

Between 1 April 2016 and 31 March 2017, SUAs were deployed 102 times in overt operations. By way of example: to search for a missing person; to accompany high risk search operations; as site security for VIP Visits; and cover of vulnerable points during e.g. the Belfast Marathon. Recommendation 8 of the Human Rights Annual Report 2015 has been discharged however it places an ongoing obligation on PSNI to provide the Committee with six monthly reports on SUA use until such time as the Committee decides the reports are no longer required.

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.[203] 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 often with the police. The police response to the report of a criminal offence will therefore have a direct and often decisive impact on a victim's attitude to the criminal justice system. 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.[204] They must ensure that the victim feels that the offence is being considered properly and is being taken seriously.

The Committee was delighted to note the report, in March 2015, of the Criminal Justice Inspection Northern Ireland (CJINI) which commended the very good progress made by local criminal justice agencies in meeting the needs of victims and witnesses following its review of progress on the implementation of recommendations from two reviews of the care and treatment of victims and witnesses and the use of special measures.[205] In the 2015 report, Inspectors found that considerable progress had been made with 27 of the 28 recommendations implemented either in full or in part. The report, however, also recognised that "sizeable proportions of victims remain dissatisfied with the criminal justice system" and highlighted that delay remains a significant concern.

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[203] By section 6(1) of the Human Rights Act 1998.

[204] 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.

[205] *The Care and Treatment of Victims and Witnesses, Incorporating the Use of Special Measures,* CJINI, March 2015. This was a follow up to two reviews conducted by CJINI in 2011 and 2012 respectively.

DOMESTIC ABUSE

PSNI publishes quarterly statistics on domestic abuse incidents and crimes on its website. There were 29,166 domestic abuse incidents and 13,933 domestic abuse crimes recorded by PSNI in 2016/17.[206] This meant that PSNI responded, on average, to a domestic abuse incident every 18 minutes. There were 15 domestic abuse incidents per 1,000 population recorded by PSNI in 2016/17, and 8 domestic abuse crimes per 1,000 population in the same period. The incident level is an increase on the number of incidents recorded the previous year (28,392) and represents the highest number of domestic abuse incidents recorded by PSNI in any one year since recording began in 2004/05. The number of crimes recorded fell by 1% compared to the previous year, with the 2015/16 level of crimes (14,073) representing the highest number of domestic abuse crimes recorded by PSNI in any one year since recording began in 2004/05 and the 2016/17 level of crimes (13,933) the second highest.

In addition to the quarterly statistics PSNI also publishes a more detailed statistical bulletin on an annual basis which includes trend information on domestic abuse incidents and crimes since 2004/05 including detail on crime type. Further to a recommendation made by the Board in 2009 in its Human Rights Thematic Review on Domestic Abuse, the bulletin also provides some information on victim and perpetrator characteristics. The annual statistical bulletin, covering the period 2004/05 – 2015/16, was published on 14 October 2016.[207] The bulletin incorporating the financial year 2016/17 was not yet published at the time of drafting this Human Rights Annual Report.

As per the 2004/05 – 2015/16 statistical bulletin, crimes with a domestic abuse motivation accounted for 13 % of all crimes recorded by PSNI in 2015/16. Table 1 below illustrates the percentage of domestic abuse crimes by crime type.

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[206] *Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland, Quarterly Update to 31 March 2017 (providing final figures for 1 April 2016 to 31 March 2017)*, PSNI, May 2017.
[207] *Trends in Domestic Abuse Incidents and Crimes Recorded by the PSNI 2004/05 – 2015/16*, PSNI, October 2016.

Table 1: Domestic abuse motivated crimes by crime type and as a percentage of all crime recorded by PSNI, 1 April 2015 – 31 March 2016

Crime type	No. of domestic abuse crimes of this type 2015/16	Domestic abuse crimes as a percentage of all crimes 2015/16
Theft and criminal damage	2,310	4%
Sexual Offences	528	17%
Violence against the person	10,083	28%
Breach of Non-Molestation Order	916	94%
All other offences	236	3%

Since recording began in 2004/05, violence against the person offences with a domestic abuse motivation have represented between 21% and 28% of all violence against the person offences recorded by the police each year. In 2015/16 domestic abuse motivated crimes accounted for 28% of all violence against the person crimes recorded during the year. Amongst the 10,083 offences of this type, there were 230 assaults with intent to cause serious harm, 3,685 assaults with injury and 31 attempted murders with a domestic abuse motivation. There was one murder. This brings the total number of homicides with a domestic abuse motivation over the twelve year period between 2004/2005 and 2015/16 to 78.

There has been a year on year increase in terms of the number of domestic abuse motivated crimes recorded across all crime types. The increase as regards violence with injury crimes has been marginal, whereas the increase for violence without injury offences has been more dramatic, from 3,208 recorded in 2004/05 to 6,134 recorded in 2015/16 (a 91% increase). Perhaps however one of the starkest increases across the twelve year period since recording began has been the increase in the number of sexual offences recorded with a domestic abuse motivation from 56 sexual offences, including 26 offences of rape, in 2004/05 to 528 sexual offences, including 212 offences of rape in 2015/16: that is a 843% increase in terms of the number of sexual offences

and a 715% increase in the number of rape offences which have been attributed a domestic abuse motivation.

Notably, there have been sharp increases over the past twelve years in relation to violence without injury and sexual offences as within these are crime categories which may not fit the traditional notion of domestic abuse - where one spouse/partner is physically violent towards the other. It is now more widely understood that domestic abuse also encompasses psychological, emotional and sexual abuse, and so this wider understanding would encompass sexual offences and violence without injury offences such as threats to kill and harassment.[208]

With regard to victim characteristics, 69% of victims of domestic abuse crimes recorded during 2015/16 were female and 31% were male. Under-18s accounted for 17% of the victims. Where ethnicity was known, 98% of victims were white and within this category, 88% had a UK or Ireland nationality. Of all domestic abuse offenders who were dealt with by the police in 2015/16 which resulted in an outcome, 86% were male and 12% were female.[209] The majority (93%) of offenders were over 18. Where ethnicity was known, 98% were white and within this category, 93% had a UK or Ireland nationality. Where relationship was known, 31% were current spouses, partners, boyfriends or girlfriends, 30% were ex-spouses, partners, boyfriends or girlfriends, 26% were parent and child, and 9% were siblings.

[208] When dealing with an incident or crime, and when determining whether to categorise the initial report as having a domestic abuse motivation, PSNI apply the following definition: "'any incident of threatening behaviour, violence or abuse (psychological, physical, verbal, sexual, financial or emotional) inflicted on one person by another where they are or have been intimate partners or family members, irrespective of gender or sexual orientation, where 'Incident' means an incident anywhere and not confined to the home of one of the partners/family members; 'Intimate partners' means there must have been a relationship with a degree of continuity and stability. The relationship must also have had (or reasonably supposed to have had) a sexual aspect, such as in the relationship between husband and wife or between others generally recognised as a couple including same sex couples; and 'Family members' include mother, father, son, daughter, brother, sister, grandparents, whether directly or indirectly related, in-laws or stepfamily."

[209] Gender information wasn't available for the remaining 2%.

Domestic abuse outcome rates

Of the 14,073 domestic abuse crimes recorded during 2015/16, 4,415 received an outcome which gives an outcome rate of 31.4%. In comparison the outcome rate in 2014/15 was 31.3%. The outcome rate of 31.4% for domestic abuse motivated crime is higher than the outcome rate for all crime recorded by PSNI in 2015/16 which was 28.7%. This is due to the nature of domestic abuse crimes as the offender will already be known to the victim and can therefore be more easily identified than for crime in general. This is particularly noticeable in relation to theft and criminal damage offences where the outcome rate for all such offences with a domestic abuse motivation in 2015/16 was 41.7%, compared with 19.4% for all such offences recorded by the police. However the outcome rate for sexual offences, violence against the person and other offences with a domestic abuse motivation were lower compared to the overall outcome rate for these categories as evidenced by Table 2 below.

Table 2: Outcome rates according to crime type for domestic abuse motivated crimes and for all crime recorded by PSNI, 1 April 2015 – 31 March 2016

	Outcome rates 2015/16	
Crime type	**Domestic Abuse motivated Crimes**	**All crime**
All crimes	31%	29%
Theft and criminal damage	42%	19%
Sexual Offences	14%	15%
Violence against the person	27%	31%
All other offences	56%	70%

The Performance Committee's concern about the lower outcome rate for domestic abuse motivated sexual offences and violence against the person offences has been recorded in previous Human Rights Annual Reports. The Committee recognises that the underlying reason(s) for a low outcome rate can be many and varied, with the victim's

withdrawal of support from the process often recorded as a key factor. However the Committee is keen to better understand why so many cases do not have a criminal justice outcome; whether that reflects an assessment of what is in the best interests of the victim (as has anecdotally been suggested), and if there is a formal outcome, what that outcome tends to be. As a starting point a recommendation was made in the Human Rights Annual Report 2015 (Recommendation 9) requiring PSNI to disaggregate for a period of 12 months the statistics on outcome rates for domestic motivated crime according to each disposal type, including conviction, in a form which can be easily accessed and understood. At the end of the 12 month period PSNI was to report to the Performance Committee with the empirical evidence distilled from the statistics.[210]

In response to that recommendation PSNI advised that it provides a detailed breakdown in its annual statistical reports on disposal types. For example, of the 10,083 violence against the person offences involving domestic abuse recorded by the police during 2015/16, PSNI claimed 2,723 outcomes (an outcome rate of 27%). The outcomes claimed are further broken down in the annual statistical report as: 2,362 charge/summons: 204 cautions; 156 discretionary disposals; and in one case it is recorded that the offender died before proceedings (which is an 'outcome' for recording purposes).[211] However, the annual statistical reports do not provide data as to the proportion of 2,362 cases, in which there was a charge or summons, which resulted in a conviction.

The Board's Human Rights Advisor was advised that PSNI statisticians could not, for technical reasons, fulfil that part of Recommendation 9. Upon further exploration it became clear that the Department of Justice publishes various statistical reports on prosecutions and convictions.[212] While that information relates to all crime and doesn't disaggregate the data according to factors such as domestic abuse, the Human Rights Advisor has been advised that this would be possible but would be resource intensive and would require a business case to be developed. Furthermore, the PSNI will rely on

[210] Recommendation 9, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.
[211] *Trends in Domestic Abuse Incidents and Crimes Recorded by the PSNI*, PSNI, October 2016.
[212] https://www.justice-ni.gov.uk/articles/prosecutions-and-convictions

other agencies for example the Department of Justice to 'marry up' the outcome and conviction data to provide a reliable picture of the number of domestic abuse cases recorded by the police that ultimately result in a criminal conviction.

Collaboration with the Department of Justice to produce the requested statistical information should be explored by PSNI. Alternatively, should PSNI implement the recommendation in the Board's race hate crime thematic review requiring PSNI to liaise with the court service and the Public Prosecution Service to consider a 'case flow through system' mechanism for tracking hate crime prosecutions,[213] the mechanism devised may also lend itself to tracking the prosecution of domestic abuse cases and thus it would fulfil Recommendation 9 of the 2015 Annual Report. Either way, and until such a solution is achieved, the Committee records that Recommendation 9 of the Human Rights Annual Report 2015 remains outstanding.

HMIC inspection – domestic abuse

The HMIC inspection of Effectiveness, conducted out in February 2016, assessed how well the PSNI protected vulnerable people from harm and how effective it was at supporting victims.[214] HMIC found that PSNI has made the protection of vulnerable people a clear priority and that police officers and staff understand and share that commitment. The PSNI has also invested in those parts of the organisation that support vulnerable people, for example, by creating the dedicated Public Protection Branch. However HMIC's overall assessment in relation to domestic abuse was that the PSNI response was 'not consistently good'. For example, HMIC identified the following:

- There is no overarching policy which sets out the responsibilities of officers and staff receiving and responding to calls from the public, dealing with offenders and safeguarding victims (although HMIC noted that the PSNI has recognised this

[213] Recommendation 1, *Thematic Review of Policing Race Hate Crime,* Northern Ireland Policing Board, March 2017.
[214] *PEEL: Police Effectiveness (Vulnerability). An inspection of the PSNI 1 – 5 February 2016*, HMIC, August 2016.

and officers in its public protection branch were in the process of developing a new Service Procedure).

- The Central Referral Unit (CRU) monitors all incidents that involve domestic abuse and since it was created there has been a notable increase in the number and quality of domestic abuse risk assessments. While HMIC noted this as positive and that high risk cases were being reviewed without delay, the CRU did not have appropriate systems and staffing in place to ensure that all medium and standard risk domestic abuse cases were reviewed and appropriate safeguarding referrals completed in a timely fashion. In this context it is of note that in October 2016 the Performance Committee considered concerns raised by a stakeholder that the CRU had not been processing all referrals to domestic abuse support services. The Committee raised this with PSNI who provided an assurance that it had remedied the error and had put in place a process of supervisory reviews. However the Committee is keen to ensure that no victims were left vulnerable as a result and that this does not occur again. Therefore, with the assistance of the Board's Human Rights Advisor this is a matter that will be closely monitored in the coming months.
- Dedicated Domestic Abuse Officers take responsibility for high risk victims. PSNI needs to provide officers with clear guidance on who has safeguarding responsibilities for medium and standard-risk victims, what those responsibilities are and when they start and finish.
- In practice the safeguarding referrals to children's services and to voluntary agencies for support to victims, made by frontline officers, mitigated the risks from the delays in the CRU. If frontline officers are to continue to make referrals, the service should examine the role of the CRU to ensure responsibilities for making referrals are clear and prevent duplication. Instructions were circulated service wide in July 2017 to clarify that it is the attending officer's responsibility to establish details of any children within the household and to ensure that a notification is sent to the Local Health and Social Services Trust.
- Call takers (who are contracted staff) can follow the process of recording and grading calls but were less clear about the concept of vulnerability including the role they may play in initial safeguarding and evidence gathering. For example, in

a number of cases the call taker arranged for officers to attend the scene of a domestic report but did not remain on the line to advise the victim how to stay safe. That occurred even in cases where an ongoing disturbance could be overheard by the call taker[215].

- It is not clear if the Multi-Agency Risk Assessment Conferences (MARAC) process is effective in keeping safe those persons at highest risk from domestic abuse. The two conferences observed by HMIC did not have a clear, robust and comprehensive approach to victim safeguarding. The PSNI and partner agencies did not always have the information they needed to consistently understand why cases were referred to the MARAC, or identify the level of risk posed to the victim and the most appropriate safeguarding measures. In a number of cases the only action raised was a follow-up call to the victim by the police. There is no multi-agency review or evaluation of any police or partner interventions.
- Unlike police services in England and Wales the PSNI does not benefit from independent domestic violence advisors (IDVAs) to provide a tailored support service to high-risk victims of domestic abuse. This gap in provision is most noticeable during MARACs, where IDVAs, who are an integral part of the multi-agency response in England and Wales, can update the conference on the effectiveness of the actions it has raised in meeting victims' support and safeguarding needs.

The theme running throughout the HMIC inspection is that the PSNI needs to improve the extent to which all of its officers and staff consistently identify and assess vulnerability. The HMIC identified a number of Areas for Improvement. These included that PSNI should improve its initial assessment of risk and response to vulnerable people by ensuring all its staff in the contact management centres and who work at front counters of police stations are appropriately trained to: identify the full range of vulnerability; advise callers on initial safeguarding measures; and record why an incident is given a particular grade of response, based upon information provided by callers and held on police systems.

[215] THRIVE was fully implemented in June 2017 in control rooms and provides a structured way of assessing the threat, harm, risk and investigation opportunities associated with a call, the vulnerability of the victim and the engagement level required to resolve the issues.

In relation to domestic abuse specifically, HMIC identified the following Areas for Improvement: finalising its Service Procedure, clearly setting out the roles and responsibilities of police officers and police staff, particularly in relation to medium and standard risk victims of domestic abuse; improving the understanding of police officers attending domestic abuse incidents of the full range of safeguarding measures available to safeguard victims; and working with partners to improve the safety of repeat and high risk victims of domestic abuse.

The Performance Committee has considered the Chief Constable's Action Plan to address all of the Areas for Improvement identified in the HMIC Effectiveness inspection.[216] In respect of staff in the contact management centres who work at front counters of police stations, PSNI is taking a number of actions, including developing a training course on the theme of Vulnerability. A Directive has been issued to all staff in the Contact Management Centres outlining their responsibility to stay on the line with callers identified as vulnerable and to maintain contact until the arrival of police. With regard to the Areas for Improvement in relation to domestic abuse specifically, the Action Plan outlines a range of partnership work. Service Level Agreements with partner agencies such as the PPS and Court Service have been, or are being, reviewed. Work on the new Service Procedure is underway and will take cognisance of the issues raised in the HMIC inspection. A document has been compiled outlining actions for consideration by uniform personnel in responding to medium and standard risk victims of domestic abuse. The Action Plan also outlines training that has taken place or is due to take place for frontline officers. In the coming year PSNI will continue to implement the Action Plan and the Board will continue to monitor progress.

[216] The Action Plan has been published on the Policing Board's website: https://www.nipolicingboard.org.uk/sites/nipb/files/Northern%20Ireland%20Policing%20Board%20Response%20to%20the%20HMIC%20Effectiveness%20and%20Efficiency%20Inspection%202015%2016%20-%20website%20publication.pdf

Domestic Abuse Independent Advisory Group

During 2016/17 the PSNI Independent Advisory Group (IAG) on Domestic Abuse (which was formed in 2015 in compliance with a measure in the Policing Plan 2015-16) agreed the following points of action: to continue the Independent Advisory Group on Domestic Abuse; to develop guidance for the application of Discretionary Disposals as an 'outcome' in domestic abuse cases; to develop guidance for police personnel in the implementation of Schedule 7 of the Justice Act (NI) 2015, relating to Domestic Violence Protection Notices and Orders; to provide enhanced Domestic Abuse Officer training for select first responder personnel; and to commence multi-agency research into the prevalence of Honour Based Violence, Female Genital Mutilation and Forced Marriage for the purposes of informing the local situation and improving police response to these crimes. Work in relation to all of these action points has been progressed through the IAG, on which a Board official sits in an observer capacity. Its 2016/17 year-end update on progress will be provided to the Board in the coming months.

Non-molestation orders

The service of ex-parte non-molestation orders has been an issue of concern to the Performance Committee for a number of years. The Committee learned, in 2014, that of approximately 4,000 orders served by PSNI, only one third were served within 24 hours, one third within 72 hours and the remaining one third served up to three months later. Although PSNI explained that the delay was often due to difficulties in locating respondents, the Performance Committee believed that more needed to be done to ensure that the orders were served expeditiously. In particular, the Committee wished to see oversight mechanisms put in place to alert police supervisors to any undue delays in the service of orders. To address these concerns PSNI carried out an internal review which put in place better processes to ensure that orders are received and prioritised, that a consistent approach is taken across all Districts and that there is a system of checks and balances in place.

As outlined in the Human Rights Annual Report 2015, a post-implementation evaluation of the new processes which was put in place following an internal review found that in the majority of cases non-molestation orders were being served within 72 hours (89% of cases sampled during the post-implementation evaluation). The new administrative processes for liaison between the PSNI and the Court Service appeared to be working well, oversight arrangements were in place and partner organisations had fed back anecdotally that they had noticed a general improvement in PSNI's service of the orders. PSNI acknowledged that there were still some improvements to be made, for example, a dip sample showed that a record had been made on NICHE[217] in only 27% of cases that the victim had been notified that the order had been served – this was not to say that the victims in the other 73% of cases hadn't been notified, but if they had been this had not been recorded on NICHE. PSNI therefore acknowledged that further work was required to reinforce the procedures for updating victims and making a record of this on NICHE.

Given the potential risk to the victims of domestic abuse from the failure to serve the orders the Performance Committee has kept the matter under review. A recommendation was made in the Human Rights Annual Report 2015 which required PSNI to continue to monitor the service of non-molestation orders and provide to the Committee, by 31 March 2017, an analysis of the length of time taken to serve orders, an analysis of the checks and balances put in place to oversee the service of orders and the extent to which applicants and their legal representatives are kept informed of the service of orders.[218] PSNI accepted that recommendation and provided the Committee with a report on its analysis of non-molestation orders served in 2016/17. The analysis revealed that of orders served, 54% were served within 24 hours and a further 24% between 24 hours and 72 hours. While this represents a continued improvement on the speed within which orders are served compared to a number of years ago, the proportion of 78% served within 72 hours is a decrease on the 89% of orders served within 72 hours in the cases sampled during the post-implementation review. This is something that PSNI has committed to continue to monitor and it has

[217] NICHE is a computer based police records management system.
[218] Recommendation 10, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

been raised through District Policing Command to improve this statistic. A dip sample of the non-molestation orders served during 2016/17 revealed that efforts to contact the victim and/or their Solicitor had been recorded on the police computer system (NICHE) on only 25% of occasions following service. As noted above, this is not to say that the victims in the other 75% of cases hadn't been notified, but if they had been this had not been recorded on NICHE. This has been raised through District Policing Command and a service wide reminder was issued of the process for updating the victim and recording this on NICHE.

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 racial or ethnic origin, faith or religion, sexual orientation, gender identity or because they have a disability. The impact of the crime varies from 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. 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 the Hate Crime Service Instruction.[219]

Collecting data on hate crime is essential for tracking patterns in and therefore increasing understanding of hate crime which in turn assists in monitoring if and why police attempts to combat hate crime may be unsuccessful. PSNI records and publishes

[219] *Hate Crime*, PSNI Service Instruction SI2117, May 2017. PSNI 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."

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. Comparisons to levels in previous financial years can be found in the PSNI's annual statistical report which contains annual figures for each year dating back to 2004/2005.[220]

[220] PSNI statistical reports are available through the statistics section of the PSNI website: www.psni.police.uk

Table 3: Number of hate incidents and hate crimes recorded by PSNI and outcome rate, by type of hate motivation, 1 April 2013 to 31 March 2017[221]

Hate crime	Incidents recorded				Crimes recorded				Crime outcomes			
	13/14	14/15	15/16	16/17	13/14	14/15	15/16	16/17	13/14	14/15	15/16	16/17
Racist	982	1,356	1,221	1,054	691	921	853	660	119 (17%)	130 (14%)	161 (19%)	119 (18%)
Homophobic	280	334	343	278	179	209	210	162	31 (17%)	44 (21%)	55 (26%)	35 (22%)
Sectarian	1,284	1,517	1,352	995	961	1,043	1,001	694	148 (15%)	151 (15%)	146 (15%)	90 (13%)
Faith/Religion	24	53	39	44	13	27	19	26	3 (23%)	3 (11%)	1 (5%)	2 (8%)
Disability	107	138	134	112	70	76	74	60	3 (4%)	9 (12%)	4 (5%)	7 (12%)
Transphobic	23	21	19	20	8	8	12	12	2 (25%)	1 (13%)	0 (0%)	3 (25%)

[221] *Incidents and Crime with a Hate Motivation Recorded by the Police in Northern Ireland, Quarterly Update to 31 March 2017 (providing final figures for 1 April 2016 to 31 March 2017)*, PSNI, May 2017; *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 2014/15*, PSNI, July 2015; and *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2015/16*, PSNI, August 2016.

As illustrated by Table 3 above, the number of recorded incidents and crimes with a hate motivation decreased in 2016/17 across most categories compared to the previous year. Hate crime is known to be under-reported so it is difficult to accurately assess whether increases or decreases mean there is more offending or whether it means there is a greater proportion of victims reporting the crimes.

One message that will undoubtedly encourage victims to report is that perpetrators are brought to justice. The outcome rate for hate crime across all categories is lower than the outcome rate for overall crime. In 2016/17, the outcome rate for all crime recorded by PSNI during the year was 28%. As regards hate crime, the outcome rate for faith/religion, disability and transphobic hate crime improved while the outcome rate for racist, homophobic and sectarian hate crime decreased by 0.8%, 4.6% and 1.6% respectively.

Outcome rates have previously been the focus of recommendations and targets made by the Policing Board in the Human Rights Annual Report and Policing Plans respectively. Outcome rates were also considered in the recently published human rights thematic review of policing race hate crime, with the observation made that the outcome rates for racist hate crime varied from District to District, for example, the outcome rate in 2015/16 for racist crimes in Antrim and Newtownabbey was 5% compared to Derry City and Strabane which was 31%. The report commented that, “Inconsistency across Northern Ireland has been identified in numerous reports by the Policing Board and must be addressed.”[222] Referring to recent structural, governance and policy changes to the PSNI response to hate crime (detailed in the thematic report), the report states, “The [Performance] Committee hopes that the greater sharing of experience and practice enabled by the regular meetings of hate and signal crime officers and the timely use of the advocacy service will improve consistency but suggests that the PSNI consider actively the approach taken by Derry City and Strabane to uncover any initiatives that can be shared with other districts.”[223]

[222] *Thematic Review of Policing Race Hate Crime,* Northern Ireland Policing Board, March 2017, page 23.
[223] *Ibid.* page 24.

Another issue raised in the thematic review of policing race hate crime was the fact that it is not currently possible in Northern Ireland to carry out meaningful analysis of case flow through the criminal justice system, i.e., considering figures for various categories of offence from first report to ultimate case disposal, be it a conviction, an out of court disposal or the prosecution case dropped. The thematic review noted that the success of the police response is difficult to gauge as a result of the lack of complete understanding of the criminal justice response. The thematic review recommends that PSNI liaise with the court service and the Public Prosecution Service to consider a 'case flow through system' mechanism for tracking hate crime prosecutions.[224]

Human rights thematic review: Policing Race Hate Crime

During 2016/17 the Board's Human Rights Advisor on behalf of the Performance Committee carried out a human rights thematic review of the police response to race hate crime. The review considered and analysed PSNI's approach to:

- Identifying, recording and encouraging the reporting of race hate crimes;
- Supporting victims of race hate crime;
- Investigating race hate crimes and arresting and prosecuting the perpetrators;
- Effectiveness of the police use of powers to bring offenders before the court;
- Strategies to combat race hate crime;
- Supporting police officers and staff from minority ethnic communities; and
- Engaging with external partners and stakeholders.

Throughout the review process the Committee, through its Human Rights Advisor, engaged with relevant PSNI personnel and a wide range of stakeholders. The work culminated in a thematic report which outlines the key findings of the review and makes 14 recommendations for PSNI. The recommendations were as follows:

1. The PSNI should liaise with the Department of Justice to consider a 'case flow through system' mechanism for tracking hate crime prosecutions.

[224] *Ibid.* Recommendation 1.

2. The PSNI should consider how it engages with the Northern Ireland Housing Executive to enable early intervention on behalf of victims of hate crime for whom the advice is to move from the home. Thereafter, the PSNI should report to the Performance Committee within 6 months of the publication of this thematic review.
3. The PSNI should forthwith review the understanding of officers with regard to the perception test for hate incidents and crimes. Thereafter, the PSNI should take all necessary steps to ensure that officers accept without question the perception of the victim or any other relevant person that the incident or crime was aggravated by hostility.
4. The PSNI should include within Service Procedure 01/16 an obligation on relevant officers to contact victims of hate crime regularly and in any event on the happening of prescribed events so as to ensure compliance with the EU Victims' Directive and Northern Ireland Victim Charter.
5. While addressing the technology gap identified by HMIC in the data capture of risk assessment forms for domestic abuse the PSNI should include risk assessment forms for hate crime.
6. As part of the Working Together project the PSNI should include the recording and flagging of hate crime on case files.
7. In PSNI Service Procedure 01/16 and thereafter in all training delivered on hate crime, the range of special measures available for vulnerable and intimidated victims of and witnesses to hate crime should be explained. The importance of the early identification of appropriate measures, which should be communicated to the PPS at the earliest opportunity, should be emphasised.
8. As soon as practically possible the PSNI should ensure that officers receive training in the use of Community Resolution for hate crimes.
9. The PSNI should analyse hate incidents and crimes recorded over the period 1 April 2016 to 31 March 2017 to identify any trends and patterns emerging of perpetrators and thereafter consider whether its strategy of communication and prevention is sufficiently targeted.
10. The PSNI should explore with partners how to better engage with victims and potential victims of hate crime so that they are better informed of the services

they are entitled to receive from the police and other agencies. The Policing Board can facilitate those discussions but in any event the PSNI should report to the Performance Committee within 12 months of the publication of this thematic review on the outcome of those discussions.

11. The PSNI should develop and maintain a problem profile for hate crime across Northern Ireland which should be reviewed and monitored within local areas by local commanders. That problem profile should include key dates and events which may indicate the potential for signal incidents and should be developed in partnership with local communities.
12. Face to face hate crime training should be developed with partners, which enables in-depth consideration of the many complex issues surrounding hate crime and permits exploration and debate.
13. The PSNI should review the hate crime training delivered in 2016 and assess the effectiveness of that training including whether the lessons were delivered to the right officers in sufficient detail. The PSNI should satisfy itself that the training has delivered the outcomes intended and thereafter report to the Performance Committee on its findings.
14. Hate crime training should continue to include specifically cultural diversity training, but that aspect of the training should be refreshed with the assistance of external experts to address cultural sensitivities and should include racism awareness.

The PSNI accepted all recommendations and has provided an initial response which is being further developed. An update on the action taken by PSNI to implement the recommendations will be reported upon by the Board in due course.

OLDER PEOPLE

The Policing Board's Human Rights Advisor met with Age NI to discuss policing with older people including older victims of crime. A number of interesting issues were discussed. In respect of engagement with older people both individually and collectively it was suggested that more consideration needs to be given to the means of

communication with older people. For example, while social media can be an effective channel of communication it does not always reach older people and that any media campaign addressed at older people should include a more traditional method of communication. The Human Rights Advisor attended a PSNI training event for Operation Repeat, which is specifically targeted at older victims of 'door-step' crime. It included initiatives for awareness-raising among older people to better protect them from this form of criminality. The training was self-reflective and developed because the PSNI recognised that more needed to be done to protect against this category of risk. Officers, who were accompanied by colleagues from other agencies such as Trading Standards, were obviously committed and enthusiastic to enhance protection and support offered within the community and to prepare older people to protect themselves.

A guide entitled *Feel Safe: Information and Advice for Older People in Northern Ireland* has been produced. The guide was developed by Age Sector Platform and was supported by PSNI, the Policing Board and the Department of Justice. The guide contains advice on a range of issues including general crime prevention, services and support rogue traders, bogus callers, burglary, elder abuse and inter-generational relationships.

PSNI has adopted a number of policy and guidance documents such as the National Police Chiefs Council (NPCC) guidance *Safeguarding and Investigating the Abuse of Vulnerable Adults 2012*; *Safeguarding Vulnerable Adults (Regional Adult Protection Policy and Procedural Guidance) 2006* and, the *Joint Investigation of Alleged and Suspected Cases of Abuse of Vulnerable Adults' 2009.* PSNI's Public Protection Branch (PPB) is responsible for triaging reports under Joint Protocol arrangements and if a case is passed to another branch of PSNI, the PPB retains oversight and ensures ongoing engagement and communication with other partners under the Joint Protocol. All of that is welcomed however it would appear that there remains some confusion among stakeholders about the role of the police in safeguarding vulnerable adults particularly within nursing homes. While it would appear there is joint working between PSNI and social care which is improving, with better information sharing and safeguarding protocols in place, there is still little coordination of the PSNI's

engagement with the third sector. The PSNI recognises the need for relationships to be strengthened and is addressing that through Operation Repeat. The Committee will monitor this.

Recommendation 2

The PSNI should consider whether its engagement with older people is effective and, assuming that more could be done, its strategy for engagement with the objective of enhancing the protection of older vulnerable people. The PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report with its analysis.

Age NI also highlighted the lack of intergenerational work across Northern Ireland which may have a significant impact on how older people view young people who may associate in groups near their homes. As previously reported in the Committee's thematic review of policing with children and young people[225] fear of crime (and the fear of young people) has a negative impact on people's feelings of safety and confidence in the police. The fear is often misplaced and can be influenced by stereotyping and demonising of young people. However, if older people had more opportunity to meet young people many of the misconceptions may well be displaced – on both sides. The PSNI work within a number of schools and that engagement could usefully discuss intergenerational relationships; help young people understand the dynamic of groups and the potential fear of older people. The *Feel Safe* guide, which as mentioned above was supported by PSNI, states "Bringing young and older people together to address community safety issues builds trust between generations, promotes positive perceptions of young people and helps to reduce fear of crime."[226]

[225] *Human Rights Thematic Review: Policing with Children and Young People,* Northern Ireland Policing Board, January 2011.
[226] *Feel Safe: Information and Advice for Older People in Northern Ireland.*, Age Sector Platform, February 2015.

BODY WORN VIDEO

The Performance Committee was and remains convinced that the use of Body Worn Video will contribute to an increase in the outcome rate for domestic motivated crime. It was reported in the Policing Board's Human Rights Thematic Review of Domestic Abuse, published in 2009, that the use of Body Worn Video by police officers responding to domestic abuse incidents appeared to contribute to an increase in the positive outcome rate for domestic abuse crimes with the video evidence captured at the scene assisting in the successful prosecution of offenders. Video evidence provides a compelling account of activities of suspects and enables the raw emotion and action from a scene to be replayed in the courts in a manner that could never be captured in a witness statement. The recommendation in the thematic - that such technology should be used by all officers responding to domestic incidents - was echoed by the Criminal Justice Inspection Northern Ireland (CJINI) in its 2010 inspection on the criminal justice response to domestic abuse.[227] Further to those recommendations and repeated calls from the Performance Committee for the equipment to be introduced for that purpose, the PSNI initiated a nine month pilot of Body Worn Video in 2014. Use of the cameras during the pilot was not limited solely to domestic abuse call outs but was used in a range of settings including during public order incidents and during stop and search operations. The findings from the pilot were largely positive:

- There were high rates of confidence in the equipment by both external stakeholders and officers;
- High compliance rates in use amongst officers were recorded (94.2 – 97.9%);
- Officers had confidence in Body Worn Video and understood the benefits this technology brings to operational policing, in particular evidence gathering;
- Results indicate that a higher percentage of cases of domestic abuse proceeded to court by way of charge when Body Worn Video evidence had been recorded and was available; and
- The average time between incident and court result was lower when cameras were used to record evidence, the inference being that when a crime or incident

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

is captured by Body Worn Video and there is ready access to this evidence, the footage is a significant factor in the defendant's attitude to charges when entering a plea at court.

PSNI was satisfied that the case for the rolling out of Body Worn Video across all police Districts was strong and would improve police accountability and transparency, provide better evidence in prosecution cases, assist the Police Ombudsman with the investigation of complaints and contribute to the digitisation of the criminal justice system. On that basis, funding was secured to purchase Body Worn Video technology for officers across the PSNI. Body Worn Video was introduced in Derry City and Strabane District in June 2015, with Belfast following suit in November 2016. It is anticipated that it will be rolled out across all Districts by March 2018 for use by all front-line police officers. Training has been delivered to all officers using the technology. The Board's Human Rights Advisor attended the training which covered all aspects of use and addressed for example Article 8 ECHR (the right to respect for the home and private life) and data protection issues. The policy in place takes cognisance and is drafted so as to comply with:

- European Convention on Human Rights;
- Data Protection Act 1998;
- Protection of Freedoms Act 2012 and the Surveillance Camera Code of Practice;
- Criminal Procedure and Investigations Act 1996;
- Freedom of Information Act 2000;
- Police and Criminal Evidence (Northern Ireland) Order 1989;
- ACPO Guidance on the Management of Police Information (MOPI 2006) and Codes of Practice on the Management of Police Information (2005), Police use of Digital Images (2007) and Digital Imaging Procedure (2002 & 2007); and
- College of Policing guidance on Body-Worn Video (2014).

The Performance Committee has been briefed on the evaluation of the pilot scheme and the proposals for the roll out. The Committee supports PSNI's efforts although is cognisant, in the words of the Independent Reviewer of the Justice and Security Act

(David Seymour CB), that the use of Body Worn Video "should not be seen as a panacea".[228] Mr Seymour reports that "PSNI recognise that the use of this technology worldwide is new and it will be important to monitor trends, consider emerging issues and adjust procedures and practice, if necessary, in the light of experience not only in Northern Ireland but in other jurisdictions where the police are rolling out this technology to their officers."[229] To that end PSNI are conducting a further evaluation of its use of Body Worn Video and the Performance Committee will seek to ensure that the evaluation addresses, amongst other matters, a number of issues outlined by Mr Seymour and arising from other studies on Body Worn Video use. [230]

COMMUNITY RESOLUTION

Discretionary Disposals were introduced by PSNI in 2010 as a means of dealing with low level offending out of court and in a restorative manner that provided a proportionate but speedier outcome. Discretionary Disposals were re-named and re-launched in 2016 as Community Resolutions, with the revised disposals taking account of operational learning obtained through use of Discretionary Disposals and also taking into account feedback and recommendations made by external bodies, in particular an evaluation conducted by the Criminal Justice Inspectorate for Northern Ireland (CJINI).[231]

The main objectives of Community Resolution are as follows:

- To improve the involvement and quality of service provided to victims by taking account of their views where reasonable and proportionate in the resolution;

[228] *Report of the Independent Reviewer, Justice and Security (Northern Ireland) Act 2007, Ninth Report: 1 August 2015 – 31 July 2016*, David Seymour CB, March 2017, para. 6.31.
[229] *Ibid.*
[230] These issues are cited at paragraph 6.31 of Mr Seymour's report, *ibid.* They include, for example, challenges in ensuring that the technical infrastructure can cope with the amount of material generated and the need for strict compliance with the Data Protection Act 1998 and subject access requests made under that Act. Mr Seymour also cites research that has shown assaults against police officers are *higher* where Body Worn Video is used, with the research suggesting that the technology makes officers less assertive and therefore more vulnerable to assault.
[231] *Police Use of Discretion Incorporating Penalty Notices*, CJINI, January 2015.

- To increase victim satisfaction in policing and criminal justice by providing a comparatively prompt and tailored resolution;
- To provide a proportionate justice disposal for offenders with little or no previous offending history, to reduce the impact on their lives compared to other non-court disposals and encourage them to change their behaviour and not re-offend; and
- To provide officers with a proportionate disposal for offences that are comparatively less serious.

Operational Guidance is in place outlining how and when officers may use Community Resolution. It is available as a disposal within custody or as an 'on the street' disposal. It may only be used if an officer reasonably believes an offender has committed the offence and that it can be proved. The Guidance stresses that Community Resolution is not an alternative to an effective investigation. The investigating officer must first and foremost complete an effective and proportionate investigation pursuing lines of enquiry whether they point towards or away from the suspect. A Community Resolution can only be considered if the offender has made a clear and reliable admission of guilt and the investigating officer must be satisfied that the offender is eligible i.e. they must:

- Not have received a Community Resolution or a Penalty Notice for Disorder for a similar offence within the last 12 months;
- Not have received an informed warning or caution for a similar offence within the last 2 years;
- Not have been convicted of any criminal offence within the last 2 years;
- Not have any similar offence(s) pending;
- Not have breached a Non-Molestation Order for a relevant offence;
- Not have breached a licence or police / court bail; or
- Not be the subject of an ASBO.

If the offender is under the age of 18 he or she cannot be the subject of a Community Resolution unless a Youth Diversion Officer (YDO) has given approval. The YDO makes the final decision regarding how the Community Resolution should be delivered and by whom.

The offence itself must fall within a list of specified offences in order to eligible for a Community Resolution. The offences within the list are designated as either being Green, meaning the Community Resolution can proceed on the investigating officer's own authority; or Amber, meaning the Community Resolution can proceed only on a supervisor's authority. Green offences include, for example, common assault, drunk in a public place, criminal damage up to £100 and theft up to £100. Amber offences include, for example, possession of drugs (personal use quantities), criminal damage £100 - £300 and theft £100 - £300. Where specified aggravating factors exist, then authority must always be given by a supervisor before proceeding, even if the offence itself is on the green list. The aggravating factors are:

- The case involves vulnerable or repeat victim(s) (same offender);
- The case involves more than one offence. In such a case it may only proceed by way of Community Resolution on a supervisor's authority provided all the offences are part of a single 'incident' and all offences can be dealt with by Community Resolution (no mix & match);
- There is a community confidence risk;
- The offence is a District or neighbourhood priority;
- The offence has a domestic motivation. Note that Community Resolution will not be suitable if: parties are or have ever been in an intimate relationship; the Domestic Abuse, Stalking and Harassment (DASH) risk assessment is high; there are child protection issues;
- The offence has a hate motivation provided. Note that Community Resolution will not be suitable if the Vulnerability Risk Assessment Matrix (VRAM) is medium or high and there is *evidence* of hostility (i.e. over and above the perception of the victim or any other person);
- Where its known the offender is an employee of the PSNI or PPS; in a position of trust or authority and the offence(s) involve an abuse of that trust or authority; or a Covert Human Intelligence Source (CHIS).

Any offences not listed under the Green or Amber lists are not suitable for Community Resolution in any circumstance.

Once the investigating officer has satisfied himself or herself that the offender has made a clear and reliable admission of guilt and that the offender and the offence are both eligible, they must then ask themselves “is Community Resolution the most appropriate outcome?” In reaching a decision the investigating officer must consider the demeanour, attitude and remorse of the offender. They must take account of the risks, vulnerabilities and views of the victim. Although the officer requires only the offender’s consent to proceed and is not bound to follow the wishes of the victim, if a victim actively resists agreeing it may render the Community Resolution impractical e.g. a victim cannot be forced to allow an offender to apologise to them, nor can they be required to allow an offender access to their property to repair damage caused by the offender. Therefore officers must take reasonable steps to explain the process and rationale to the victim and try and secure their support.

If the investigating officer reaches the conclusion that Community Resolution is the most appropriate outcome, the offender consents to proceed on this basis and any authority from supervisors or Youth Diversion Officers (for under 18s) has been obtained, the officer will complete a Community Resolution Notice (CRN). The CRN requires the officer to confirm that he or she has investigated the case appropriately and applied all the appropriate checks and balances. The investigating officer must then read a statement on the CRN to the offender which outlines the offender’s rights and makes clear that while the Resolution is not a criminal conviction and therefore not routinely disclosed, the police will hold a record of it and that record may be available for disclosure or information sharing purposes where relevant and appropriate, such as in the course of an enhanced criminal record check. The statement advises that while the offender may seek legal advice, the investigating officer is not obliged to delay the Community Resolution process in order for that to take place. The investigating officer selects the appropriate Resolution and invites the offender to sign the declaration on the CRN.

PSNI guidance makes it clear that the Resolution should, where practical, contain a "restorative" element where the offender is made aware of the impact of the offence and a "reparative" element that seeks to make good the harm caused. The investigating officer must ensure the Resolution is proportionate to the harm, loss or damage caused and that the offender appears to have the intention, the means and the ability to fulfil it within an agreed timeframe (usually within 28 days from the date the Resolution is agreed).

If the offender subsequently completes the Community Resolution the CRN is updated accordingly, copied to a supervisor and kept for record purposes. If the offender fails to complete the Community Resolution the investigating officer must consider an alternative disposal and should update the CRN accordingly.

PSNI has committed to reviewing its guidance document on Community Resolution on an annual basis. There is also a bi-annual corporate assurance review of the use of Community Resolution and that is presented to the PSNI Tactical Tasking and Co-ordination Group. This meeting is attended by representatives of each District and Department and provides a forum to review any variance in the volume and type of use of Community Resolution across different geographic areas. There are a number of other layers of checks put in place, including weekly quality assurance checks to assess any non-compliance with the guidance.

As noted above, Community Resolution is available as a disposal in domestic motivated crime cases and cases involving hate crime provided it is authorised by a supervisor. Prior to permitting it to be used in such cases, PSNI consulted with stakeholders in order to agree the parameters for use. For domestic cases those parameters include that it can only be used if the parties are not and never have been in an intimate relationship; the Domestic Abuse Stalking and Harassment Risk Assessment (DASH) is not high; and, that there are no child protection issues. With regard to hate crime concerns have been raised by stakeholders that as a Community Resolution does not require the offender to admit the hate motivation of his or her offending, the hate element will not be addressed. That is why PSNI has written a requirement into its

guidance whereby if there is any evidence of the hate motivation other than perception alone, then Community Resolution is not available – in other words, PSNI must always make full use of any actual evidence of hate motivation to progress the case formally as a hate crime. Another requirement if it is proposed to use Community Resolution for a hate crime is that the victim Vulnerability Risk Assessment Matrix (VRAM) is low. The Board made a recommendation in its human rights thematic review of policing race hate crime, published in March 2017, that as soon as practically possible the PSNI should ensure that officers receive training in the use of Community Resolution for hate crimes.[232]

PSNI has committed to monitor closely the use of Community Resolution for domestic cases and hate crime and it is something that the Committee will keep under review.

PARAMILITARY STYLE ATTACKS

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 (the 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).

Investigations into paramilitary style attacks are led by District CID with specialist investigative support provided by Serious Crime Branch. In 2014, PSNI advised that it was undertaking a review of all punishment attacks since 2009 to ensure that all investigative and forensic opportunities had been taken. The PSNI also advised that it proactively pursues 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. PSNI interrogated the statistics between April 1998 and June 2015 which showed that in the relevant period there were 2,732 casualties as a

[232] Recommendation 8, *Thematic Review of Policing Race Hate Crime,* Northern Ireland Policing Board, March 2017.

result of paramilitary style attacks. Of those, 89 were suffered by children aged 16 years or under; 1,297 were suffered by young people aged between 16 and 24 years, 1,346 were against adults aged over 24 years.[233] The current PSNI crime recording system came into operation in April 2008. But from that date, it can be seen that of the 590 incidents which have occurred between 1 April 2008 and 30 June 2015 a total of 20 resulted in prosecution[234] with 5 resulting in a successful conviction. Furthermore, between April 1998 and 2015 the Chief Constable issued 1,262 certificates in respect of persons intimidated from their own homes.[235]

Paramilitary style attacks "are usually carried out by Loyalist or Republican groups on members of their own community as a so-called punishment" and tend to be in the form of either paramilitary style shootings or paramilitary style assaults. The attribution of each paramilitary style attack as Loyalist or Republican is based on the investigating officer's perception.[236] The number of casualties as a result of paramilitary-style attacks has decreased significantly over the last ten years with 795 casualties between 2007/08 and 2016/17 compared to 2,288 casualties between 1997/98 and 2006/07. During 2016/17, there were 94 casualties compared to 72 in the preceding year. 66 of the 94 casualties were the result of assaults and 28 the result of shootings. The figures for 2016/17 are further broken down: 56 (85%) assaults were attributed to Loyalist groups and 10 (15%) by Republican groups; 3 (11%) shootings were attributed to Loyalist groups and 25 (89%) to Republican groups. Almost two thirds (17; 61%) of the paramilitary style shootings were carried out in Belfast. Of the remaining eleven, six were carried out in Derry City and Strabane Policing District, three in Causeway Coast and Glens Policing District, one in Mid and East Antrim Policing District and one in Mid Ulster Policing District.

Outcome rates remain low. PSNI has advised the Committee that outcome rates remain low for a variety of reasons including the limited cooperation of victims and witnesses

[233] Answer to Freedom of Information Act Request 2015/02350. The age of victims of paramilitary style attacks is considered further below in Chapter 12 of this Human Rights Annual Report.
[234] This does not include those who may have been dealt with via other methods such as prosecutorial warnings, caution etc.
[235] That does not include persons renting their accommodation.
[236] *Police Recorded Security Situation Statistics: Annual Report covering the period 1 April 2016 to 31 March 2017*, PSNI, May 2017.

and limited opportunities for intervention, intelligence gathering and evidence collection. For a number of years the Policing Board has raised concerns with PSNI about the number of incidences of paramilitary style attacks and the fact that only a very small proportion of perpetrators are brought to justice. For example, 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.[237] PSNI accepted that recommendation and subsequently reported to the Board. In 2012, PSNI launched a geographically and demographically targeted Facebook campaign *Not the Face of Justice*, which appealed for public information about paramilitary style attacks, particularly from young people.

The PSNI continues to work on this, in particular with a view to increasing outcome rates. PSNI continually reviews the its strategy to tackle paramilitary style attacks, with the strategy containing five key strands: investigations including a review of forensics potential; victims including initial response and information/intelligence gathering; research looking at what works elsewhere; engagement; and, media messaging. Given the ongoing level of incidents of such attacks and wider developments in relation to tackling paramilitarism arising out of the Fresh Start Agreement,[238] this is an area of police work that the Policing Board will continue to monitor closely.

'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 the PSNI. That is particularly the case (although it is by no means confined to those cases) where it is alleged that state actors have been involved. Jurisprudence from the European Court of Human Rights has established that the right to life guaranteed by Article 2 ECHR includes a procedural obligation to investigate the

[237] Recommendation 16 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.
[238] *The Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland*, Lord Alderdice, John McBurney, Prof. Monica McWilliams, May 2016.

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.[239] The State's discharge of its procedural obligation has received attention and criticism from many commentators including the Courts and the Senior Coroner. The Policing Board has paid particular attention to the role of the PSNI in this regard and in last year's Human Rights Annual Report the Board's understanding of the legal standards against which the State, encompassing PSNI, must be judged was set out at length. A number of cases demonstrating the scale of the issue have been summarised above in Chapter 5.

A specific area in which the Board, through the Performance Committee, has carried out a substantial amount of oversight work is in relation to the role of the PSNI in carrying out its duties in supporting the Coroner as per section 8 of the Coroners Act (Northern Ireland) 1959.[240] This is a contentious area of police work, with numerous concerns being raised by a number of stakeholders, including NGOs and legal firms representing victims' families, the former Senior Coroner, and by the Courts, particularly with regard to delays in the disclosure process; the classification of relevant material; resourcing of PSNI Legacy Support Unit (LSU); the response of the Chief Constable to requests for assistance over and above section 8 responsibilities; and, the use of agency staff within the LSU.

In light of such concerns and after prolonged discussions between the Board, the Chief Constable and the Minister of Justice, the Minister commissioned the Criminal Justice Inspection Northern Ireland (CJINI,) in December 2015, to undertake a wider inspection of the response of the criminal justice system to include how the PSNI responds to legacy inquests. The draft terms of reference for the inspection were considered by both the Performance Committee and the full Board, with the Board emphasising its position

[239] See for example, *McCann and Others v UK* ECHR (1995).

[240] Section 8 Coroners Act (NI) 1959: Whenever a dead body is found, or an unexpected or unexplained death, or a death attended by suspicious circumstances, occurs, the district inspector (now Superintendent or Chief Superintendent) within whose district the body is found, or the death occurs, shall give or cause to be given immediate notice in writing thereof to the coroner within whose district the body is found or the death occurs, together with such information also in writing as he is able to obtain concerning the finding of the body or concerning the death. In *McCaughey* the House of Lords held that section 8 imposed a continuing obligation to make disclosure.

to the Justice Minister that the inspection should include engagement with those families and legal representatives directly affected by the disclosure process, as well as an assessment of whether the PSNI processes are adequate to deliver and comply with statutory and legal obligations, particularly with regard to assisting the Coroner in discharging his Article 2 ECHR obligations.

CJINI sought to complement a review undertaken by Lord Justice Weir,[241] in January 2016, to provide a fuller understanding of the issues involved and highlight how delays in the process could be avoided. While not reviewing individual legacy cases, the inspection reviewed the effectiveness and efficiency of the arrangements by: assessing current PSNI policy, practice and procedures with regard to disclosure of information in support of the Coroner in undertaking legacy inquests; examining the statutory obligations of the PSNI in disclosing information in support of the Coroner; evaluating whether current arrangements for managing and disclosing information are effective and efficient while fulfilling statutory obligations; and providing comparative analysis with current, relevant best practice models.

The inspection focused on assessing the performance of the PSNI through the LSU and the adequacy of any relevant policies in providing support to the Coroner in undertaking legacy inquests in compliance with Article 2 ECHR. In particular Inspectors would highlight any factors found to impact upon the performance of the LSU and propose recommendations to ensure the implementation of best practice. The inspection report was published on 8 December 2016.[242] CJINI found that while the PSNI was fulfilling its statutory responsibility to disclose material to the Coroners Service to support legacy inquests, a number of factors were causing delays around case progression. The inspectors were critical of disclosure performance, especially in the Crown Court where of 17 Crown Court cases considered only 4 were viewed as ones in which disclosure had been satisfactorily dealt with. The report refers to the case of Marvin Canning as a

[241] The Lord Chief Justice was appointed President of the Coroners Court on 1 November 2015. The Lord Chief Justice thereafter asked Lord Justice Weir to review the state of readiness of 56 legacy inquests and this was completed in January 2016.
[242] *Coronial Processes. An inspection of the arrangements in place in the PSNI to manage and disclose information in support of the Coronial process in Northern Ireland*, CJINI, December 2016.

case which “highlighted what can go wrong when disclosure is not applied correctly”.[243] The inspection report makes 7 recommendations, 5 of which are for PSNI to implement. The Performance Committee met with the Chief Inspector of CJINI and the inspection team in December 2016 to discuss their findings. The Committee received a copy of PSNI’s response to the inspection which outlines how the police intend to implement the recommendations. The Committee will continue to liaise with CJINI and PSNI in order to monitor progress.

Legacy cases (including inquests, civil claims and judicial reviews) have continued to occupy the courts in Northern Ireland throughout 2015/16 and 2016/17. The issue of disclosure has been discussed at length in previous Human Rights Annual Reports and within the Policing Board. In 2016/17 a number of court decisions ordered the disclosure of documents relating to a number of legacy cases according to a strict timetable. In each case the court was cognisant of the procedural duty to investigate suspicious deaths promptly. Clearly, the obligation of promptness has long since been breached but the Committee hopes that the case management of legacy cases will provide a renewed impetus for cases. The Committee is mindful that, ultimately, compliance with Article 2 ECHR is a matter for the courts but the Committee did express concerns about the ability of the LIB to conduct compliant investigations. The Committee will keep itself informed of progress on cases and any further decisions or judgments issued.

Work of Legacy Investigation Branch

The Committee set out in the Human Rights Annual Report 2015 its understanding of the legal standards against which the State must be judged in respect of Article 2 investigations which will not be repeated in this report. In 2016 the Committee also engaged closely with the PSNI on arrangements within Legacy Investigation Branch (LIB) and considered the revised Manual of Guidance.

The LIB was established in January 2015. Under the LIB, a number of officers and staff were bought together to review and investigate ‘historic cases’. An historic case is

[243] Although the CJINI does not and cannot investigate individual cases: Canning’s (Marvin) Application (Judicial Review) [2016] NIQB 73.

defined by the LIB as any case which occurred before 1 March 2004. Those cases include: all homicides between 1 January 1969 and 10 April 1998 (the material dates) which "related to the security situation in Northern Ireland which remain incomplete following closure[244] of the HET"; all homicides between the material dates attributable to military personnel; homicides between the material dates not relating to the security situation which were previously the responsibility of the Serious Crime Review Team (SCRT) and Retrospective Murder Investigative Team (ReMit); serious crime cases between the material dates which were previously the responsibility of the SCRT and ReMit, which remained incomplete on 1 January 2015; homicides (both relating to the "security situation and non-terrorist domestic cases") between 10 April 1998 and 1 March 2004[245] which remained incomplete on 1 January 2015; homicides which were referred by HET to C2 Serious Crime Branch for investigative action except those in which a C2 investigation was already underway on 1 January 2015 and where transference of the case was likely to impact on the effective and timely completion of the case; ongoing work as a result of the Saville Inquiry;[246] serious crime cases directed by Assistant Chief Constable Legacy and Justice Department, which currently includes the actions of the Military Reaction Force (MRF) and issues identified by the De Silva review;[247] and, any other case referred to it by the Assistant Chief Constable Legacy and Justice Department. No cases involving crimes committed before 1 January 1969 or after 1 March 2004 are included.

The LIB's remit in respect of legacy cases transferred from the HET is (i) to *review* those cases not concluded by the Historic Enquiries Team (HET)[248] and (ii) to *investigate* those cases in which evidential opportunities are presented. It will not reopen any case either reviewed or investigated to completion by the HET unless it becomes clear by some other means that there is a real likelihood of developing evidential opportunities. The LIB will also engage with families of the deceased and report to them on progress. Since 2015, the LIB has also assumed responsibility for

[244] On 31 December 2014.
[245] The date on which Crime Operations Department was established.
[246] I.e. the Bloody Sunday Inquiry.
[247] De Silva considered the death of Patrick Finucane.
[248] Over 900 cases were not concluded by the HET and were transferred into the LIB.

reviewing those individuals who were included within the 'on-the-run' scheme.[249] Importantly, however, it also "responds to fresh taskings from the Assistant Chief Constable."[250] It would appear that the LIB has since assumed responsibility for the production of material for legacy inquests, judicial reviews and civil litigation. The Committee is therefore understandably concerned at the sheer quantity of work dealt with by LIB and its capacity to manage that work.

The sequencing (or prioritising) of cases is in accordance with the Case Sequencing Model (CSM) contained within the Manual of Guidance. The stated priority, within the Manual, is those cases "which contain offenders who continue to pose a risk to the public today, and those cases which appear to offer the best potential to bring offenders to justice". However, those assessments must by necessity be superficial; in the absence of a proper review it is likely to be very difficult to assess the criteria particularly in respect of the second criterion. Furthermore, it does not appear to take account of the obligation to deal with cases as expeditiously as possible. While it will not always be the case, older incidents are less likely to contain offenders operating today and will therefore remain at the back of the queue. It also leaves out of account (at least expressly) the requirements of Article 2 ECHR for enhanced investigations where state forces may be implicated.

Once a case is allocated, the process is as follows. The review teams firstly review the original investigations to determine if there are any opportunities provided by the evidence "to bring offenders to justice". If such opportunities are identified the case is passed to an investigation team which will investigate the case further. The order in which cases are investigated also follows the CSM. The CSM is managed by the Tactical Tasking and Co-ordination Process (TTCG). The review and investigative teams and the TTCG are supported by staff known as Support Staff. Support Staff are sub-divided into three groups: Analysis and Performance Team;[251] Review and

[249] Known as Operation Redfield, which was established following the review by Lady Justice Hallett.
[250] Legacy and Justice Department, currently ACC Hamilton. ACC Hamilton is the official head of the LIB to whom the LIB is accountable.
[251] The Analysis and Performance Team implements and reviews the CSM, is responsible for analytical products, tactical assessment, performance measuring and manages risk.

Investigation Team;[252] and Major Crime Forensic Advisor.[253] The review and investigative teams also task the C3 Retrospective Research Desk (RRD) to provide incident and person reports. Finally, there is a Departmental Reviewing Officer who reviews and quality assures intelligence. The Board's Human Rights Advisor reviewed the Manual of Guidance and highlighted a number of areas in which the Committee may require assurance such as the independence of such reviews. The Human Rights Advisor explored the nature of intelligence gathering, collection and analysis and noted some potential areas for improvement which were shared with the PSNI. The PSNI have been receptive to such input and are actively considering and reviewing the Manual.

There is a dedicated section on independence with an accompanying policy statement, conflict of interest policy and operating procedure. There is a copy of a conflict of interest declaration form for staff and for a manager. Those are the means by which the PSNI "safeguards the independence of its work". In particular, it states "LIB deals with the complicated concept of independence through staff declaration of conflicts of interest." In other words, independence is secured by means of *self*-declaration. Any declaration is recorded on a conflicts of interest register. Thereafter, "senior managers within LIB are able to conduct checks on the self-declarations through accessing other PSNI records." Importantly, however, there is no automatic checking either at the start or end of the review. In its opening narrative the Manual refers "In the case of *Brecknell v UK*, November 27, 2007, in the European Court of Human Rights it was stated that 'the PSNI was institutionally distinct from its predecessor [RUC] even if, necessarily, it inherited officers and resources.'" That, however, the Committee believes, is a partial summary of *Brecknell*, which has now been confirmed by the judgment of Maguire J. in *McQuillan.*[254] This has been raised with the PSNI.

[252] The Review and Investigation Team provides scientific support; collects, collates and monitors forensic documents and exhibits; and prepares case papers.
[253] The Major Crime Forensic Advisor provides specialist advice; develops forensic strategies; explores forensic potential and evidential opportunities; and reviews forensics.
[254] McQuillan's Application [2017] NIQB 28. On 3 March 2017, Mr Justice Maguire delivered judgment in the judicial review brought by Margaret McQuillan, which alleged that the Police Service of Northern Ireland ("PSNI") is not capable of carrying out an investigation into the death of her sister (Jean Smyth), which complies with Article 2 of the European Convention on Human Rights and Fundamental Freedoms ("ECHR"). He held that the proposed investigation by the Legacy Investigation Branch ("LIB") of Ms

The Manual explains that a potential conflict of interest "may arise when a member of staff is allocated or is engaged in a review where a person who died, their family, suspect or significant witness is (or was) known to them, *and*, that relationship would or could affect their judgement, impartiality or objectivity. A conflict may also arise if a member of staff was *involved* [emphasis added] in an investigation being reviewed." The accompanying Conflict of Interest Standard Operating Procedure makes clear that it applies to both reviews and investigations and sets out guidance for officers. The summary of the legal obligation of independence is more comprehensive but contrasts with the overarching policy and may mislead. The Human Rights Advisor suggested that the definition required some further work and that it should include expressly the perception of bias.

Importantly, the LIB must and the Manual provides that the LIB will refer all deaths attributable to police officers and any apparent criminality or serious misconduct to the OPONI. That should include criminality or serious misconduct in the investigative process under review.

Family Reports (formerly known as Review Summary Reports) are prepared for relevant family members following, largely, the template used by HET. However, there are some material differences. Most can be categorised as quality assurance measures and formatting but the new reports will not now contain speculative comment; they will be limited to factual or informative narrative. There is a Family Report Guidance Document for reports.

Much of the work that went into the Manual is extremely positive in respect of governance but the Committee has raised its concerns about Article 2 compliance and will continue to discuss those with the PSNI.

The Chief Constable has established two external investigations (i) relating to the fatal shooting of Michael Tighe in Lurgan in 1982 (Operation Klina) which is led by Police

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Smyth's death conflicts with the requirements of Article 2 ECHR as the LIB lacks the requisite independence required to perform an Article 2 compliant investigation.

Scotland and (ii) pursuant to requests for information into the activities of the alleged agent referred to as Stakeknife (Operation Kenova), which is led by the Chief Constable of Bedfordshire Police. In February 2017 the Policing Board tasked the Board's Human Rights Advisor with reviewing Operation Kenova's policies and procedures for human rights compliance. This work is summarised below.

Operation Kenova

The background to the establishment of Operation Kenova, which is set out comprehensively on a dedicated website,[255] can be summarised as follows.

As a result of preliminary investigations into Brian Nelson, Sir John Stevens became aware of the activities of an alleged British Army agent, known as Stakeknife. There followed discussions about a Terms of Reference to expand the Stevens Investigation until March 2006 when the matter was passed to the PSNI Historical Enquiries Team. Thereafter, the Criminal Cases Review Commission referred a group of people to the Court of Appeal in respect of convictions relating to the kidnapping of a Mr Alexander Lynch. Those convictions were quashed and the then Director of Public Prosecution, Sir Alasdair Fraser QC, issued a direction[256] requesting information from the Chief Constable in relation to potential criminal conduct of police and military personnel. A second referral was made by the current DPP in January 2013, following the quashing of a number of other convictions.

In June 2015, the OPONI indicated that they had completed a review of Stakeknife papers referred to them by the Historical Enquiries Team. There followed a third referral by the DPP seeking information on the affairs of an alleged agent known as Stakeknife. A fourth referral was issued in October 2015 regarding the possible commission of criminal offences in respect of allegations of perjury connected to the alleged agent. Following a Historical Enquiries Team review of the 1993 murder of Mr Joseph Mulhern, the PSNI Serious Crime Branch reopened the investigation into his death.

[255] www.opkenova.co.uk
[256] Pursuant to Section 35(5) of the Justice (Northern Ireland) Act 2002.

PSNI Chief Constable of the Police Service of Northern Ireland requested the assistance of Chief Constable Jon Boutcher of Bedfordshire Police, to lead an external investigation team to carry out a full investigation in response to the referrals and the Mulhern investigation. In June 2016, the PSNI Chief Constable announced the launch of Operation Kenova with the following statement, “After taking a number of issues into consideration, I have decided that a team resourced with external officers and staff funded by the PSNI is the most appropriate way forward, given the size, scale and complexity of the investigation...I believe this option contributes towards community confidence and reduces the impact on the PSNI’s ability to provide a policing service today.” Chief Constable Boucher said “My principle aim in taking responsibility for this investigation is to bring those responsible for these awful crimes, in whatever capacity they were involved, to justice... I am committed to doing all I can to find the truth for the victims and their families. It is they who we should be thinking of throughout. It must be extremely hard to have listened to various commentaries within the community and the media about how and why their loved ones died. I hope this investigation ultimately addresses the uncertainties and rumours. All I can promise is an absolute commitment to pursuing the truth.”[257]

Within Operation Kenova there is a large number of detectives under an experienced Senior Investigating Officer. Chief Constable Boutcher has the full delegated authority of the PSNI Chief Constable to direct the investigation.

The investigation is conducted under the Police Act 1996 which gives investigators the necessary powers and privileges of PSNI officers. The team is based in Great Britain but carries out enquiries in Northern Ireland as necessary. The investigation team has gathered together officers from a number of UK law enforcement services but excludes expressly any personnel “who are serving in or have previously served in the Royal Ulster Constabulary, Police Service of Northern Ireland, Ministry of Defence or Security Services”

The initial investigative remit was to establish: whether there is evidence of the

[257] Press Release 10 June 2016.

commission of criminal offences by the alleged agent known as Stakeknife, including but not limited to, murders, attempted murders or unlawful imprisonments; whether there is evidence of criminal offences having been committed by members of the British Army, the Security Services or other Government agencies, in respect of the cases connected to the alleged agent known as Stakeknife; whether there is evidence of criminal offences having been committed by any other individual, in respect of the cases connected to the alleged agent; and whether there is evidence of the commission of criminal offences by any persons in respect of allegations of perjury connected to the alleged agent. If the investigation team identifies matters which indicate that former or current police officers may have committed criminal or misconduct offences, they will be formally and expeditiously referred to the Deputy Chief Constable of the PSNI who is obliged to refer the matter to OPONI. If there are any additional matters, falling outside those parameters, they are brought to the attention of the PSNI Chief Constable.

OPONI have commenced investigations into a number of complaints, relating to murders committed by members of the PIRA Internal Security Team. The Police Ombudsman investigation is ongoing. The Operation Kenova investigation team have access to the information held by the OPONI that relates to their criminal investigation through a Memorandum of Understanding between Chief Constable Boutcher and the Police Ombudsman. There is regular liaison between the Operation Kenova investigation team and the Police Ombudsman. The PSNI Chief Constable is updated as to the progress of the investigation but does not direct or control, or in any way interfere with the investigation. The PSNI is responsible for financial support to all elements of the investigation and the PSNI might supply additional operational support, if needed and as requested by Chief Constable Boutcher. The PSNI Chief Constable is accountable to the Policing Board for the conduct of Operation Kenova. Chief Constable Boutcher has briefed the Board. There is in place written agreement regarding the PSNI providing access to all information requested by the investigation team. That is overseen and enforced by the Assistant Chief Constable LIB.

From the outset Operation Kenova, through its publicly accessible website, committed to securing full compliance with Article 2 ECHR. Part of that involves the team

examining all aspects of the original investigation(s) and seeking to identify opportunities which were missed by the original investigators or were not available to them at that point in time. Clear mechanisms are in place to secure independence and avoid any real or perceived conflicts of interest. Furthermore, any legal advice that is required is sought from independent legal advisers and is provided to Chief Constable Boucher. Chief Constable Boutcher has also established an International Victims Focus Panel to guide the investigation team regarding the support and information to be provided to the families of victims. That group receives strategic investigative documents as part of a consultation and feedback process and challenge decision-making and progress of the investigation. There is an Independent Steering Group comprising highly experienced and world renowned individuals who are briefed on a number of matters including investigative strategy.[258]

The Policing Board's Human Rights Advisor has visited the investigation team and also met representatives in Northern Ireland. Chief Constable Boucher and Op Kenova's Senior Investigating Officer have briefed her and provided copies of relevant documents to enable an assessment of human rights compliance to be made. The Human Rights Advisor has reported to the Committee her satisfaction with the Operation's structure, process, procedures and guiding principles. She was particularly impressed at the considerable efforts to ensure independence and the delivery of a comprehensive investigation which is set up, as far as is humanly possible, to deliver on the statements of Chief Constable Boucher and Chief Constable George Hamilton. The Human Rights Advisor advised the Committee that she had been granted access to everything that she wished to view for the purposes of providing an assessment but reminded the Committee that the nature of the investigation particularly the fact that it is an ongoing criminal investigation means that no further information can be shared without prejudicing the investigation.

[258] The ISG is comprised of experts in the field and includes: John Miller Deputy Commissioner of Intelligence & Counter-terrorism of the NYPD; Michael Downing Deputy Chief Los Angeles Police Department; Kathleen O'Toole Chief of the Seattle Police Department; Iain Livingstone Deputy Chief Constable Police Scotland; Nick Kaldas Chief of Investigations for the Joint Investigative Mechanism'; Baroness Nuala O'Loan Member of the House of Lords and former OPONI. CVs are provided on the Op Kenova website.

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 includes the requirement that a person under investigation is entitled to the presumption of innocence (until guilt is proved) and, if charged, 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 Article 5 ECHR (the right to liberty and security) and can only be justified if at least one of the Article 5 criteria has been met.[259] 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.[260] 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 Practice[261] 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 to protect the health and safety of detained persons and take immediate action to secure medical assistance where required.

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[259] 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.

[260] 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.

[261] 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.

Detainees within police custody are increasingly diverse and many have complex needs such as addictions, mental health issues and suicidal ideation. Custody Detention Officers, who have to make decisions about the level of observation a detainee should be placed under during their time in custody, must assess the risk factors that are presented. It is essential that Custody Detention Officers have the support they need of medical professionals whenever such assessments involve detainees with medical issues (whether physical or mental). The Committee is concerned that there is not adequate provision within custody suites for detainees with mental health issues and addictions, which is being addressed, but needs to be dealt with as a matter of urgency.[262]

POLICE DETAINEES

In 2016/17 the PSNI detained 21,939 persons (under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) within 12 custody suites.[263] A further 137 persons were detained in the Serious Crime Suites under the Terrorism Act 2000.[264]

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 places of detention to be visited by lay visitors. That function is discharged by the Policing Board's Independent Custody Visiting (ICV) Scheme.[265] Custody Visitors are volunteers from across the community who are unconnected with the police or the criminal justice system.[266] They make unannounced visits to designated police custody suites where they inspect the facilities,

[262] This is considered further below regarding the PSNI review of healthcare.
[263] *Police and Criminal Evidence (PACE) Order Statistics 1 April 2016 – 31 March 2017,* PSNI, May 2017.
[264] *Northern Ireland Terrorism Legislation: Annual Statistics 2016/17*, Northern Ireland Office, November 2017. See further below.
[265] Custody visiting in the UK came about as a result of Lord Scarman's inquiry into the Brixton disorder in 1981. The Northern Ireland Independent Custody Visiting Scheme was first established in 1991 and was made statutory in 2001 under Section 73 of the Police (NI) Act 2000.
[266] At 31 March 2017, there were 46 Custody Visitors.

check custody records and, with consent, speak to detainees.[267] They can also view, with consent, live interviews with detainees held under terrorism legislation by remote video link. 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.[268] Reports on visits to terrorism detainees are also provided to the Independent Reviewer of Terrorism Legislation.

The Policing Board's Performance Committee receives quarterly reports on the work of the Scheme which highlight any issues raised and the remedial actions taken by PSNI to address them. The reports enable the Committee to monitor the treatment of detainees, the conditions of their detention and to raise any specific concerns with PSNI.

The ICV Scheme discharges a critical function in ensuring the protection of the human rights of detained suspects and it forms part of the United Kingdom's National Preventive Mechanism (NPM).[269] The Policing Board is indebted to the volunteers who carry out the custody visits at all hours of the day and night, 7 days a week, as without their tireless work and dedication, the Scheme would not function.

Work of the ICV Scheme 1 April 2016 – 31 March 2017[270]

Between 1 April 2016 and 31 March 2017 Custody Visitors carried out 633 visits. A total of 1,180 detainees were held during these visits, of which visitors saw 517. There were

[267] Custody Visitors are divided into three Custody Visiting Teams (i) North-West - responsible for Coleraine, Strand Road and Strabane; (ii) South-West – responsible for Musgrave, Musgrave Serious Crime Suite, Antrim, Bangor, Banbridge, Lurgan and Armagh; and (iii) Tyrone/Fermanagh - responsible for Dungannon, Enniskillen and Omagh.
[268] The Policing Board publishes quarterly statistics and an annual statistical 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
[269] The National Preventive Mechanism (NPM) is responsible 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.
[270] Reports on the work of the ICV Scheme are available through the Policing Board website: https://www.nipolicingboard.org.uk/custody-visiting

a range of reasons as to why detainees were not seen, including that 319 were asleep at the time of the visit, 121 were being interviewed and 68 refused to be seen.

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 inspect the custody record of any detainee who has consented to the inspection. In doing so Custody Visitors are required to check: that detainees 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; that medication, injuries, medical examinations, meals and diet are recorded and if treatment was required whether it was given; that the procedures to assess special risks or vulnerabilities have been properly recorded and implemented; that rules concerning the timing and frequency of cell inspections, particularly inebriated or otherwise vulnerable detainees,[271] have been complied with; and that reviews of the continuing requirement for detention have been conducted.

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. In 2016/17 831 (70%) custody records were checked. This compares to 73% checked in 2015/16 and 68% checked in 2014/15 and continues the improvement in recent years in the number of custody records checked, with only 49% of records checked seven years ago in 2008/09. 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 further that number.

Where reasons for concern are identified during visits, they are raised by Custody Visitors 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. If no response is received within 7 days, the matter is elevated to an Assistant Chief

[271] Detainees at risk should be checked every 15 minutes.

Constable, although it is rare that the Policing Board has had to resort to this as PSNI is generally very quick to respond to Custody Visitor concerns and to advise the Board accordingly.

During 2016/17 the majority of visits carried out were deemed satisfactory (87%). Of the unsatisfactory visits, there were 89 issues of concern which related to conditions of detention such as sanitation (26 concerns noted), safety/security hazards (25 concerns noted) and faulty equipment (22 concerns noted) amongst others. There were 7 concerns identified in relation to the health and well-being of detainees, 6 of which related to food and drink and the other concerning medical attention.

In 2015/16 Custody Visitors raised a concern in one detention suite in relation to a cell buzzer which had been switched off. A buzzer is a device in the cell which allows detainees to alert custody staff. While it was explained by the relevant Custody Sergeant that when the buzzer is switched off, the detainee was monitored via CCTV, it was recognised by the Board's Performance Committee that the ability of a detainee to alert custody staff to potential difficulties is critical and that if a detainee is unable to do so and is not continuously monitored by CCTV, there is a clear and obvious risk that they could suffer harm undetected. The Policing Board's Human Rights Annual Report 2015 recommended that the PSNI report to the Performance Committee outlining the number of times and the reasons for a buzzer in a cell having been switched off between 1 January 2014 and 1 January 2016. The report was to reference specific policy covering this issue and the alternative arrangements that were or should be made to ensure the safety of the detainee.[272]

In response PSNI advised that turning off a cell buzzer is not a common practice. PSNI was unable to advise of the specific number of occasions during the period January 2014 – January 2016 where the buzzer was switched off as to do so would require a manual trawl through all custody records. PSNI did however report to the Committee that during the two year period there were two complaints made in relation to buzzers being switched off but no further action was taken further to investigation by PSNI

[272] Recommendation 12, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

Discipline Branch. PSNI has advised that where a buzzer has been switched off, it is usually because it is being abused by the detainee repeatedly and unnecessarily pressing it. This can distract staff from their duties, which include ensuring all detainees are safe. PSNI has advised that where a detainee is abusing the buzzer system, they will be warned a number of times that if they persist their button will be turned off. If the Custody Sergeant subsequently decides to disable the cell buzzer, for the entire duration of time that it is disabled the detainee is viewed through the CCTV system or in certain cases a Custody Detention Officer or police officer will be placed at the cell door or in the cell for constant observation to prevent self-harm and to talk to the person regarding their behaviour.

The system override means that a disabled buzzer automatically becomes active again after 10 minutes. In a busy custody suite, the health and safety of all detainees is paramount and any action undertaken will be captured in NICHE log. This action is in line with College of Policing national guidance which provides that, "Where a detainee has persistently used the cell call system to gain attention with no genuine need, the custody officer responsible for that detainee may decide to switch off the call system for that cell for a short and limited time. When this course of action is taken, the custody officer must mitigate the increased risk by implementing control measures. These may include moving the detainee to a cell with CCTV where they can be continuously monitored or increasing the level at which they are being monitored. Officers must record all such actions and justifications for them in the custody record."[273] Recommendation 12 of last year's Human Rights Annual Report has therefore been implemented.

Another issue raised by Custody Visitors was that in one suite, exercise facilities were out of order on a number of occasions. The Human Rights Annual Report 2015 recommended that PSNI provide the Performance Committee with a report detailing the period during which exercise facilities were or are unavailable for use by detainees. The recommendation also made clear that if exercise facilities are unavailable to detainees

[273] *Detention and Custody*, Authorised Professional Practice, College of Policing, January 2017, section 3.1.

held for extended periods, consideration should be given to moving that detainee to an alternative station.[274]

PSNI accepted that recommendation and PSNI's Custody Branch undertook to review the availability and use of exercise facilities in custody suites.

PSNI advised that there are 4 PSNI custody suites with exercise yards within the existing custody estate: Musgrave, Bangor, Omagh and Enniskillen. The exercise yards are designed and constructed in line with Home Office guidance which requires that the yards:

1. Allow natural ventilation/fresh air and light.
2. Are secure – they have high solid and smooth walls and floors, mesh over the top, doors are locked and are not operable by the detainee.
3. Minimise risk – potential risks are minimised but the detainee should not be left unsupervised.
4. Provide good lighting and camera coverage (minimum of 2 cameras) and can be used when light levels are low/dark.
5. Are over a minimum size - 10sqm. PSNI designs exceed this area.
6. Provide partial shelter – part of the yards are covered to provide shelter against the elements.
7. Allow communication – there is a call button to speak to custody staff and also via the hatch.
8. Be used for exercise, assembly/onward movement in the event of a fire and as a route for fire access.

PSNI advised that the exercise yard in Bangor custody suite is out of order and requires further works on potential ligature points therefore it is not considered fit for use at this time. Further expenditure on corrective works is currently under review as part of considerations under the Custody Reform Project.[275] PSNI advised that there was no

[274] Recommendation 13, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

[275] PSNI's Custody Reform Project aims to rationalise police custody by concentrating resources to a smaller number of better equipped custody sites in line with the principles of affordability, safer detention, safe working, early intervention and reducing offending.

time during the twelve month period August 2015 – August 2016 that the remaining three suites were unavailable.

College of Policing guidance states that, “Detainees are entitled to brief, daily outdoor exercise where practicable. Exercise should be provided individually and be adequately supervised. Officers should thoroughly search exercise areas for any potential hazards prior to use. Constant supervision may be necessary depending on the design of the exercise area, the nature of the exercise and the detainee’s risk assessment. Officers should give consideration to the appropriate arrangements necessary to meet the needs of men, women and children, for example, by providing adequate clothing.”[276] The guidance also states, “Forces should provide an external exercise yard in all custody suites. The yard should be as free as possible from ligature points and any other features that might permit self-harm. The custody officer must carry out a risk assessment before a detainee is allowed to use the exercise yard. This is to determine if the detainee may safely be left in the yard unsupervised for a designated period of time, and/or to determine an appropriate level of supervision and monitoring.”[277]

The Home Office requires all new build custody suites to have exercise facilities, however it is acknowledged that existing suites may not have such facilities. That said, this does not preclude detainees being held within suites with no exercise facilities for an extended period (over 24 hours) from being accompanied elsewhere for exercise. The lengthiest time a person may be detained in police custody is for up to 14 days under terrorism legislation. All such detainees are held in Musgrave Street where there are exercise facilities. Detainees held under PACE may be detained for up to 4 days and the detention may be in any designated police custody suite, including those without exercise suites. During 2016/17 there were 46 persons who were detained in police custody under PACE for more than 24 hours and released without charge.[278]

[276] *Detention and Custody*, Authorised Professional Practice, College of Policing, January 2017, section 4.1.
[277] *Ibid.* section 1.6.
[278] *Police and Criminal Evidence (PACE) Order Statistics, 1 April 2016 – 31 March 2017,* PSNI, May 2017.

PSNI has advised that there have been no instances where a detainee has been transferred between suites to allow the detainee to avail of an exercise yard. This means that anyone detained outside of Musgrave, Omagh or Enniskillen custody suites will not have been able to avail of exercise facilities.

Non-designated stations

During 2016/17 the remit of the ICV Scheme has been extended by the Justice Act (Northern Ireland) 2016 to include all stations in which people may be detained by the police, not just designated stations.[279] This change, which came into effect from 13 May 2016, was made further to a recommendation by the UK's National Preventive Mechanism to the Minister of Justice for Northern Ireland. Detention in a non-designated station is only permissible under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) in limited circumstances. In the past non-designated stations have been used by PSNI, for example, when a designated station is closed for essential maintenance.

This has been discussed in previous Human Rights Annual Reports and while use of the non-designated stations was within the confines permitted by PACE, concerns were raised regarding the fact that Custody Visitors had no remit to inspect the facilities.[280] PSNI have however moved away from this practice in recent years, with the ongoing Custody Reform Project (referred to above) ensuring that a number of custody suites, although not in active use, remain designated in order that they can be used as a designated place of detention should a need arise due to overflow or other custody suites being closed. An arrangement has been made with PSNI to ensure that the Board is notified in the unlikely event that a non-designated station is used. The Board will then arrange for that station to be visited by Custody Visitors. No non-designated stations were used to detain persons during the whole of 2016/17

Children in police custody

[279] Article 36 of the Police and Criminal Evidence (NI) Order 1989 requires the Chief Constable to designate the police stations which are to be used for the purpose of detaining arrested persons.
[280] See the Policing Board's Human Rights Annual Reports from 2008 – 2013.

In March 2016 a CJINI and RQIA inspection report on police custody highlighted concerns raised by a range of agencies and within reports such as the Youth Justice Review about the detention of children in police custody. The inspection report records that 2,438 children (aged 17 years or less) were detained in police custody in 2014/15, representing 10% of all detainees. It was noted that the Woodlands Juvenile Justice Centre was also frequently used for overnight PACE admissions, with 233 PACE admissions in 2014/15. The report states that, "the Juvenile Justice Centre is not considered a suitable alternative to police custody, given the long travel distances to Woodlands from much of Northern Ireland having negative effects on the detainee being transported as well as disruption to the young people held in the Juvenile Justice Centre already."[281]

CJINI and RQIA noted that during fieldwork for the inspection, "police custody staff did not appear to appreciate that children who were charged could, or indeed should, be held anywhere except a police cell or Woodlands Juvenile Justice Centre. However a review of custody records for juveniles showed that Custody Officers, in many cases, did make efforts to engage social workers in seeking alternative accommodation for children as well as utilising Woodlands where it was possible. In none of the records reviewed however did Social Services provide a placement for a child denied bail, with one social worker commenting that there was no place for the child in the 'whole of Northern Ireland'… what the review of the data, plus information and data collected for other CJINI reports strongly suggests is that, because of the lack of alternative accommodation provided by statutory agencies for children and their inability to seek their own accommodation in the way that adults do, children and young people are more likely to be held in police cells than adults are once bail is denied"[282]

CJINI and RQIA recommended that the Department of Justice should (i) bring forward a Bail Act to implement the recommendations of the Law Commission[283] in respect of the

[281] *Police Custody: the detention of persons in police custody in Northern Ireland*, CJINI and RQIA, March 2016, page 28.
[282] *Ibid.* pages 28 – 29 and Strategic Recommendation 2.
[283] In its 2012 report *Bail in Criminal Proceedings,* the Northern Ireland Law Commission made a number of recommendations regarding the rights of young people to bail, which included recommendations that

right to bail for children and young people to the Assembly at the first available opportunity in the new Assembly mandate; and (ii) bring forward changes to PACE which make provisions for alternative accommodation for children who are charged with an offence which clarify the legislative position about the detention of children and young people for Custody Detention Officers.

While CJINI and RQIA made recommendations for the Department of Justice which will require legislative change, the Committee believes that PSNI should conduct its own analysis of the use of police custody for children. The analysis should involve a dip sample of cases from 2016/17 and should consider whether there were alternative options for dealing with children that would not have involved detention in police custody. The review should consider whether these alternative options were fully utilised and, if not, the review should outline what the barriers were for example lack of custody staff awareness and/or Social Services unable or unwilling to provide alternative accommodation.

Recommendation 3

PSNI should analyse its use in 2016/17 of police detention for children. That analysis should consider a random sample of cases (not less than 20%) in which children were detained. The analysis should include in particular whether alternative options were considered. If alternatives were considered but unavailable the PSNI should identify the reason(s). PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report.

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the right to bail for children and young people be strengthened and that detention could only be justified on the grounds of specified factors, including a requirement that detention pending trial must be used only as a measure of last resort and for the shortest possible period of time; and a recommendation that bail legislation should prohibit the detention of children and young people solely on the grounds of a lack of suitable accommodation.

DETAINEES UNDER THE TERRORISM ACT 2000 (TACT)

'Terrorism' is defined[284] as the use or threat of action if "(i) 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; (ii) 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 (iii) The use or threat of use is for the purpose of advancing a political, religious, racial or ideological cause." All three 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 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 as a person who has committed specified terrorist offences or a person who "is or has been concerned in the commission, preparation 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 may be detained without charge for up to 48 hours without judicial intervention. If detention is to extend beyond 48 hours it must be extended by a Judge. The extension may be for up to but no more than a *total* of 14 days. Section 41 is different from other arrest powers, in particular because it permits arrest without suspicion of a particular offence and a person may be detained without the possibility of bail, for periods in excess of four days.[285]

[284] By section 1 of Terrorism Act 2000 (TACT).
[285] 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.

Section 41 arrests

An issue which has been considered for a number of years through the Policing Board's Human Rights Annual Report has been charges and convictions following arrests under section 41 TACT. A relatively small proportion of persons arrested under section 41 in Northern Ireland are subsequently charged and even fewer are charged with an offence under TACT. For example, of 137 persons detained under section 41 during 2016/17, 19 (14%) were charged and the remainder released. The 19 people were charged with 41 offences including four offences of murder, eight offences of attempted murder, four explosives offences and eight firearms offences. Of those charged, five (26%) were charged with nine offences under the Terrorism Act 2000, including four offences of membership, and four (21%) were charged with four offences of preparation of terrorist acts under the Terrorism Act 2006. There were five people convicted under the Terrorism Act 2000, the Terrorism Act 2006 or the Counter-Terrorism Act 2008 during 2016/17. As of 20 June 2017, one of the 19 persons detained under section 41 and subsequently charged in 2016/17 had been convicted of terrorist related offences.[286]

A recommendation was made in the Human Rights Annual Report 2014 which required PSNI to review its policy and practice in respect of section 41 arrests to ensure that police officers had not reverted to using the arrest power in cases in which it was anticipated that the suspect is more likely to be charged under other legislation. As reported in the Human Rights Annual Report 2015, "The PSNI carried out a comprehensive and searching review of 168 section 41 arrests and analysed the reason(s) for those arrests. The analysis was recorded and presented to the Board's Human Rights Advisor. In summary, the PSNI assessed that in all 168 cases the arrests arose from terrorism investigations with 74 arrests being made by Terrorist Investigation Unit, 58 by Major Investigation Team and 36 by District. Of the 32 persons charged, 14 were charged under TACT. Of the remaining 18 persons who were charged under PACE, they were charged with a range of terrorism related offences such as murder, possession of firearms, making an explosion and possession of explosives."[287]

[286] *Northern Ireland Terrorism Legislation: Annual Statistics 2016/17*, Northern Ireland Office, November 2017.
[287] *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016, page 207.

David Anderson QC, in his final report as the Independent Reviewer of Terrorism Legislation, published in December 2016, commented, "The very low charge rate in Northern Ireland is disappointing. I have previously and repeatedly emphasised the need for reasonable suspicion in relation to each person arrested under s41, and suggested that the low charge rate may be an indicator that the arrest power is overused in Northern Ireland."[288] He welcomed the review carried out by PSNI further to the recommendation in the Human Rights Annual Report and noted that in the cases reviewed, while the officers did anticipate charging under TACT at the time of arrest, the intelligence indicating the TACT charge was often not converted into evidence sufficient to charge. He commented, "the conversion of intelligence into evidence is a challenge in many terrorism-related investigations but appears to be particularly difficult in Northern Ireland. Factors are sometimes said to include suspects who can operate locally, leaving little online trace; the need to protect sources of intelligence; and fear of retaliation on the part of witnesses (a feature of small tight-knit communities). Those factors may also explain some failures to proceed post charge."[289] The Performance Committee discussed this with PSNI during a briefing in November 2016 on the section 41 review. The PSNI is also actively exploring this issue with the new Independent Reviewer of Terrorism Legislation, Max Hill QC. This is an area the Committee will continue to monitor and report upon.

CUSTODY HEALTHCARE

Healthcare provision within police custody has been undergoing review for a number of years and it is one of the four key work streams within PSNI's Custody Reform Project.[290] Given the growing complexities of offenders in terms of drug and alcohol addictions, mental health issues, self-harming, suicide attempts etc. and the ever

[288] *The Terrorism Acts in 2015. Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, David Anderson QC, December 2016, para. 8.16.
[289] *Ibid*. para. 8.20.
[290] PSNI's Custody Reform Project aims to rationalise police custody by concentrating resources to a smaller number of better equipped custody sites in line with the principles of affordability, safer detention, safe working, early intervention and reducing offending. The Project is a Continuous Improvement Project within the Policing Plan 2016 – 2017 and update reports on this project are provided to the Board on a six monthly basis. The Project has 4 key work streams: (i) Police Custody Estate; (ii) Healthcare Commissioning; (iii) Governance; and (iv) Operational Effectiveness.

increasing 'revolving door' phenomena, PSNI recognise that custody is key to reducing offending. This has also been recognised by the Board, with the Board's annual Independent Custody Visitor conference in September 2016 themed on 'Vulnerable People in Custody, Mental Health and Complex Needs'. The Performance Committee has been briefed a number of times in relation to PSNI's work in this area and the issue has been discussed in consecutive Human Rights Annual Reports.

One of the main areas of focus for the Custody Healthcare review team has been to work in partnership with other agencies, particularly the Department of Health, to explore and secure a new custody healthcare model which will improve upon information sharing protocols and make greater use of referrals to appropriate partners. A Health Needs Assessment has recently been completed in collaboration with the Public Health Agency and this will provide the evidence base for informing the specification for the new custody healthcare model.[291] The findings of the Assessment illustrate the complex nature of health problems experienced by detained persons, particularly mental health issues, with 18.6% of individuals detained by PSNI in 2015 having a 'self-harm' warning on their custody record and 6.2% having a 'suicidal' warning. The levels of self-harm, suicidal ideation and mental health problems were higher than those observed in police custody Health Needs Assessments undertaken in various locations in England. The findings of the PSNI's Health Needs Assessment emphasises the importance of ensuring the complex health needs, associated risks and need for clear referral pathways are taken into account when developing a new healthcare model for custody suites in Northern Ireland.

Healthcare in custody is currently provided by Forensic Medical Officers (FMOs). A two year Direct Award Contract (1 April 2015 to 31 March 2017) was put in place to enable PSNI to regularise expenditure and to maintain required forensic healthcare services by engaging the services of 60 FMOs. This is a short term solution whilst PSNI works in partnership with the Department of Health and others to explore and secure the new custody healthcare model. A March 2016 inspection report on police custody by the CJINI and the RQIA noted that clinical governance needs to be strengthened for the

[291] *Police Service of Northern Ireland, Custody Health Needs Assessment*, Public Health Agency, 2016.

FMO service as variations in practice across Northern Ireland were observed.[292] PSNI has advised the Committee that the improvements in clinical governance are linked directly to the delivery of the new healthcare model. However in the interim PSNI has strengthened its governance arrangements for the FMOs, for example, FMOs are subject to appraisals, which PSNI are involved in, and each FMO is accountable to a Responsible Officer who makes recommendations to the General Medical Council regarding their revalidation.

PSNI is trying to secure the greater involvement of a broad range of healthcare professionals, such as psychiatric nurses, within custody and this is being explored in conjunction with Health partners. Specialist secondments are being arranged, including a Commissioning Lead who will focus on the development of the custody healthcare specification and a seconded Pharmacist who will develop medication management and clinical governance in line with clinical standards and recommendations made by CJINI and RQIA.[293]

An update report provided to the Policing Board in June 2016 outlines a range of other work that PSNI has been undertaking as part of the Custody Healthcare review. For example, PSNI sits on a Criminal Justice Healthcare Forum and is inputting to the development of the 'Improving Healthcare in Criminal Justice' strategy. The update report outlines other partnership work, such as the development of a draft protocol in conjunction with the Belfast and Northern Trust to manage people suspected of internally concealing illegal drugs; and the delivery of Immediate Life Support training by the Northern Ireland Ambulance Service to Forensic Medical Officers (FMOs). There have been technological developments, for example, specialist technology has now been installed in order to enable an Emergency Care Record (ECR) to be accessed from all custody suites. The ECR accesses information held by Health on medication prescribed to individuals and known allergies. A training needs assessment has been

[292] *Police Custody: the detention of persons in police custody in Northern Ireland*, CJINI and RQIA, March 2016. It is recommended in the inspection report that *"clinical governance arrangements need to be standardised and strengthened for the FMO service across Northern Ireland."*

[293] CJINI and RQIA recommended in their March 2016 inspection report on police custody that *"PSNI should urgently review its policies and procedures for the safe selection, procurement, prescription, supply, dispensing, storage, administration and disposal of medications. There should be a clear audit trail in place for the management of medications."*

conducted and a review of Custody Sergeant refresher training during 2016 has resulted in the inclusion of a mental health module. This is in addition to the existing modules on health and safety and FMO input on the health and wellbeing of detainees. The additional mental health module will be introduced into the Custody Detention Officer refresher training to enhance the understanding and responsiveness of CDOs in managing detainees in police custody.[294]

PSNI has continued to advocate for the development of a dedicated 'place of safety'. The lack of suitable 'places of safety' in Northern Ireland and the fact that this may result in mentally ill people being detained in police custody is something that the Performance Committee has previously raised with the Department of Health and the Department of Justice. Although PSNI's policy dictates that police custody is only to be used as a place of safety in extreme circumstances, the Committee has been previously advised that police officers often found a lack of co-operation on the part of hospitals left them with no option but to use police custody facilities.

The Board's Human Rights Annual Report 2015 commended PSNI for the vast amount of work that has been carried out to date in relation to the reform of custody healthcare. However the Report noted that the Performance Committee "is concerned that progress on securing appropriate support from healthcare partners is not proceeding as quickly as necessary. The Committee therefore encourages partners to pursue with the PSNI the implementation of the review without delay."[295] The March 2016 inspection report on Police Custody carried out by CJINI and RQIA noted that "the delivery of healthcare in custody remained the biggest challenge and area of risk for the PSNI" and recommended that "there is a firm timescale developed for the completion of, and the subsequent delivery of, a more effective alternative custody healthcare model for police custody suites."[296] The Performance Committee was briefed by PSNI in December 2016 in relation to its Custody Healthcare work and was once again impressed at PSNI's

[294] Recommendation 14 of the Policing Board's Human Rights Annual Report 2015 required PSNI to carry out a training needs analysis for all Custody Staff and ensure that all staff receive sufficient training on the identification of and appropriate response to: detainees presenting with physical or mental health issues and/or addictions; and on child protection issues. Recommendation 14 has therefore been discharged.
[295] *Human Rights Annual Report 2015,* Northern Ireland Policing Board, March 2016, page 210.
[296] *Police Custody: the detention of persons in police custody in Northern Ireland*, CJINI and RQIA, March 2016, page 8 and Strategic Recommendation 3.

efforts and leadership in progressing this multi-departmental issue. With regard to timescales, the Committee was advised that PSNI was due to meet with the Chief Medical Officer in early 2017 after which an agreed delivery plan and timetable for the new healthcare model will be developed. The Committee will continue to receive updates from PSNI and will follow progress during 2017.

REDUCING OFFENDING IN PARTNERSHIP

Reducing Offending in Partnership (ROP) is a partnership between the Probation Board for Northern Ireland, the Police Service of Northern Ireland, the Northern Ireland Prison Service and the Youth Justice Agency which aims to tackle prolific offenders who commit crime such as robberies, burglaries or thefts and whose impact is felt within the community. There are three strands to Reducing Offending Partnership: Prevent and Deter; Catch and Control; and Rehabilitate and Resettle. Prevent and Deter is aimed at reducing crime and antisocial behaviour involving young people through early identification and effective intervention strategies. While the Committee appreciates the importance of early intervention it warns against stereotyping and demonising young people. This has been the subject of recommendations in the Committee's previous thematic review of policing with children and young people.[297] It does also accept however that early intervention so long as it is accompanied by a multi-agency response and support services can protect children and young people. It should also, if properly monitored, enable vulnerable children (for example children who may be exploited) to be identified given the known links between child sexual exploitation and other patterns of offending including anti-social behaviour.

Catch and Control encompasses a pro-active approach by police and partner agencies against those individuals who persist in offending behaviour and who are then closely monitored using tactics ranging from disruption visits, surveillance, intelligence gathering, stop and search, vehicle stops and prison intervention. Rigorous enforcement of bail and Anti-Social Behaviour Orders (ASBO) conditions also form part of the regime. The Rehabilitate and Resettle strand is a joint approach by all agencies to

[297] *Human Rights Thematic Review: Policing with Children and Young People,* Northern Ireland Policing Board, January 2011.

provide a gateway for offenders out of crime. When ROP was first introduced as a pilot scheme in 2008 it resulted in a reduction (of 68%) of Priority Offenders in Ballymena/Coleraine.

ROP has over 58 stakeholders, both statutory and non-statutory and nine ROP units dealing with approximately 400 offenders. ROP units have made over 2,000 arrests year on year. What it also does, however, is offer offenders the opportunity to stop offending and enter into rehabilitation both in Prison and within the community. It recognises that by identifying the often complex needs of detainees (e.g. drug/alcohol addiction and mental health issues, etc.) and making an appropriate intervention, future offending may be prevented and potential victims protected. The Performance Committee continues to support this approach.

During 2016/17 ROP has continued and grown. It has led to important new partnerships and opportunities for community engagement. For example, the Irish Football Association (IFA) is now working directly with ROP agencies including the police. The PSNI will benefit, as will local communities, from this new partnership. The IFA already has an established outreach project team that works with football clubs, youth clubs, community groups and schools right across Northern Ireland providing an established structure that engages regularly with a diverse range of age groups and individuals. The IFA has developed a bespoke programme of activity that ROP teams working across Northern Ireland are able to access. Through the programme people can learn new skills and have the opportunity to work with people in sport. The Performance Committee sees this as an important opportunity for police officers to engage with young people in a positive environment.

RETENTION AND DELETION 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,*[298] that the blanket policy in England and Wales, which is mirrored in Northern Ireland, of retaining indefinitely the DNA samples, profiles and fingerprints

[298] *S & Marper v UK* [2008] ECHR 1581.

(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 ECHR (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. There has been a delay in the new framework coming into operation but as an interim measure PSNI established a Biometric Retention/Disposal Ratification Committee which meets regularly to discuss applications for individuals requesting that their biometric materials be destroyed and relevant records and databases amended to reflect this. PSNI invites the Board's Human Rights Advisor to attend the Committee meetings in an observer capacity. The Committee makes decisions insofar as possible within the spirit of the forthcoming framework under the 2013 Act. Up to May 2017 the Committee had reviewed 96 requests for deletion with 74 findings in favour of the applicant.

Custody images were not addressed in the *Marper* judgment nor are they included in the biometric retention/disposal framework provided by the 2013 Act, however in 2012 the High Court in England ruled that the retention of images from persons who were not convicted under the Metropolitan Police Service's policy for the retention of custody images, which followed the Code of Practice on the Management of Police Information and accompanying guidance ('MoPI'), was not proportionate in its retention rules and as such was unlawful.[299] The court considered that the policy drew no adequate distinction between the convicted and those who are either not charged or are charged but acquitted, and so did not take adequate account of the risk of stigmatisation of those entitled to the presumption of innocence, or the perception that they are not being treated as innocent. The court added that retaining images in such cases for minors would be especially harmful.

[299] *RMC and FJ v Commissioner of Police for the Metropolis and Secretary of State for the Home Department* [2012] EWHC 1681 (Admin).

In response to this judgment the Home Office carried out a review of the use and retention of custody images by police in England and Wales.[300] The review's findings were published in February 2017 and made a number of recommendations for the review, retention and deletion of custody images. PSNI however had already agreed in 2014 that it would apply the provisions of the 2013 Act to custody images. When the new framework takes effect this will essentially mean that if under the provisions of the 2013 Act PSNI cannot lawfully retain a person's DNA and fingerprints, then they will also destroy any associated custody images. This goes further than the recommendations made by the Home Office review. Pending the implementation of the new framework, PSNI's Biometric Retention/Disposal Ratification Committee considers removing custody photographs from police records when reviewing applications for the destruction of biometrics.

SPIT GUARDS

It has been widely reported that the Police Federation has called for spit guards, also known as spit guards, to be introduced to PSNI. The Committee understands that no decision has been made but that it is under consideration. Spit guards are controversial and have attracted serious concern about their use in Great Britain. That being the case, the Committee has considered the issues and legal framework within which any decision to introduce and thereafter to deploy spit guards should be taken and noted that further work must be completed before any decision to introduce them is taken.

Although there are variations in the type of spit guard available, the most common is made of mesh which is applied to completely cover the head and neck (i.e. down to the shoulders) with an area (sometimes plastic) around the mouth to collect saliva or blood. They are designed for use on persons otherwise restrained for example by handcuffs. They are used to prevent a person from spitting or biting. The stated purpose is to prevent the spread of Hepatitis C and HIV. Medical evidence, however, has cast doubt on the risk of such spread, which is only by blood.[301] The National Police Chiefs' Council (NPCC) position is that "the risk of transfer of blood borne viruses through

[300] *Review of the use and retention of custody images*, Home Office, February 2017.
[301] Hepatitis C Trust for example has published guidance dispelling the evidential basis of the police case.

spitting or biting is very low however the impact of infection would be extremely high".[302] The NPCC has asked for an assessment of the safety of the use of spit guards and the risk of transferable disease.[303] Some indication of the incidence can be reported. The PSNI recorded 11 instances of spitting in the first two months of 2017.

As at 12 November 2016, spit guards had been used at least 2,486 times since 2011 by 17 police services in Great Britain of which 635 uses were on people with suspected mental health issues and 91 on children.[304] Almost all recorded uses were in the course of arrest in public, in custody suites and during transfer of detained persons. One complaint, reported in Sussex, involved the restraint by handcuffs, leg straps and a spit guard of an 11 year old girl with neurological disability. She was held in police custody for 60 hours.[305] Sussex Police were also ordered to pay £25,000 in compensation following a civil claim brought by a man who was hooded after PAVA irritant spray was used which caused him to choke. The IPCC are also investigating a complaint of use by London Transport Police on a young black man hooded while on the ground. The guards have been used widely in the USA with a number of reported deaths linked to their use. The cause of death in each case was asphyxiation, when the fabric became saturated with blood, mucus or vomit. In one case, irritant spray could not dissipate once the guard was applied which caused injury to the detainee.

Clearly, there is a real issue of public confidence in the police if people, particularly children or vulnerable adults, are seen with guards over their faces. The Metropolitan Police Service indicated that it intends limiting their use to custody suites and banned their use on the streets because of the concerns over the potential impact on race relations. There is no specific guidance, no analysis of the risks associated with their use and as yet no evidence presented of a capability gap. There has however been some medical review of spit guards which recommended constant supervision of those

[302] NPCC Update on the Use of Spit Guard 16 March 2017.
[303] That assessment has not been completed.
[304] *'Cruel' Spit Hoods used by Third of UK Police* Forces, BBC News, 12 November 2016. Note the figure of 2,486 quoted is not the total figure as not all police services have reported on their use.
[305] An investigation by the IPCC found 11 officers had misconduct cases to answer.

placed in a guard and their prohibition on persons who are bleeding from the face or vomiting.[306]

The use of a guard would itself be a use of force but the application of the guard to an agitated detainee would almost certainly involve an enhanced use of force by the officer. There is serious concern among mental health practitioners that the application of a guard to a person with a mental health condition or personality disorder will exacerbate the distress experienced by that person and result in for example hyperventilation, extreme behaviour and panic attacks. Furthermore, by obscuring a detainee's face officers are prevented from identifying quickly whether the detainee has laboured breathing, is choking or has suffered a facial or head injury. Conversely, the alternative to the use of a guard if police officers are to be protected from spitting or biting is to restrain the head which, it is argued by the National Police Chiefs Council, likely to involve a greater use of force.

The use of force by police officers in Northern Ireland is governed by the Criminal Law (Northern Ireland) Act 1967, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the common law and the Human Rights Act 1998, incorporating the European Convention on Human Rights and Fundamental Freedoms (ECHR). The ECHR applies directly because s. 6(1) of the Human Rights Act requires the PSNI, as a public authority, to act compatibly with the ECHR.[307] The 1967 Act, PACE and the common law apply to all uses of force by the PSNI and require that it should be "reasonable" in the circumstances. Reasonable in this context (given the engagement of Articles 2 and 3 ECHR[308]) should probably be interpreted as meaning "strictly necessary" in the execution of police duties.

All PSNI decision making, including the decision to use force, is taken in accordance with the National Police Chiefs' Council (NPCC, formerly ACPO) National Decision

[306] Professor James M Ryan (then chair Independent Medical Science Advisory Panel) in 2006 and Professor Hugh Montgomery (current chair IMSAP) in 2016.
[307] Save in the limited circumstances permitted by s.6 (2) Human Rights Act 1998, which are not relevant in this context.
[308] The right to life and the right not to be subject to torture, inhuman or degrading treatment or punishment respectively, considered further below.

Model (NDM) and the College of Policing Guidance. The NDM is an established approach to managing conflict which 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 action and review what happened. 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. Human rights standards and the principle of proportionality require that any form of physical restraint should be a last resort. Officers and detention staff should therefore be equipped with a range of skills to deal with and de-escalate potentially violent situations, as well as a range of restraint techniques that will allow for use of the minimum level of force possible. Restraint in detention or in the course of arrest should be a rare event, and should never be used as a matter of routine. Neither the NPCC nor the College of Policing has issued guidance for the use of spit guards.

Because spit guards have not been assessed for their potential to cause death it is impossible to categorise their use but the evidence of deaths in custody linked to spit guard use in the USA makes their categorisation as potentially lethal less than fanciful. More likely however their use would engage Articles 3 and 8 of the ECHR. It should be noted that spit guards have been listed under “Goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment” in EU law, requiring strict control of their use and trade.[309]

[309] Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment - Art 5/Annex III.

Article 3 ECHR provides “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.[310] Article 3 has been described as “one of the fundamental values of democratic societies and constitutes an absolute prohibition... irrespective of how reprehensibly the applicant may have behaved.”[311] The prohibition applies directly to all public authorities and is actionable in domestic courts. Importantly, the prohibition of treatment that would come within the definition is absolute and unqualified; no express or implied derogation is permitted. Neither can breach be justified by a lack of resources or the need to fight crime, even terrorism.[312] In short, treatment is prohibited if it is used to deliberately cause serious and cruel suffering; if it causes intense physical or mental suffering; if it is punishment which humiliates and debases a person beyond that which is usual from punishment. The threshold is high. Examples of inhuman treatment include the unreasonable handcuffing of a terminally ill prisoner while in hospital,[313] punishing detainees for refusing to wear uniforms by limiting them to one meal a day in cell,[314] systematic use of strip searches in prison; riot police bursting into schools used as shelters by G8 protestors and meting out punishment with riot sticks;[315] police officers threatening the applicant imminent pain for the purpose of extracting information;[316] deprivation of spectacles;[317]and unreasonable handcuffing in public which results in physical or mental suffering.[318]

Article 3 ECHR also prohibits degrading treatment. Degrading treatment is that which grossly humiliates or debases, which is such “as to arouse in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing them”.[319] The person’s age, gender, health etc. are relevant in that the question is whether a person of normal sensibilities in the same circumstances as that person would consider the treatment to be degrading. If a person is particularly vulnerable (for example when in police custody or due to age or condition) the threshold for action to amount to ill-treatment is likely to

[310] The same words are used in the EU Commission Charter of Fundamental Rights.
[311] *N v Secretary of State for the Home Department* [2005] 2 AC 296 in the English Court of Appeal.
[312] For example *Higgs v Minister of National Security* [2000] 2 AC 288 in the English Court of Appeal.
[313] *R (Graham) v Secretary of State for the Home Department* [2007] EWHC 2940.
[314] *R v Governor of HMP Frankland, ex parte Russell* [2000] HRLR 512.
[315] *Cesaro v Italy* (7 April 2015).
[316] *Gäfgen v. Germany* App. No. 22978/05 (1 June 2010) the Grand Chamber.
[317] *Slyusarev v Russia* App. No. 60333/00 (20 April 2010).
[318] *Raninen v Finland* (1997) 26 EHRR 563.
[319] *Ilascu v Moldova & Russia* (2004) 40 EHRR 1030.

be lower. The same treatment may be both inhuman and degrading, but not all degrading treatment is necessarily inhuman.

In *Keenan v UK*, the European Court of Human Rights (ECtHR) set down the general principle that "… in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3."[320] It must also be remembered that the threshold is only likely to reduce. As the ECtHR noted in a case concerning alleged torture that "the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies" and concluded that cases which had held that certain treatment did not amount to breach of Article 3 may well be decided differently today.[321]

Article 8 ECHR, which protects the right to physical integrity, requires that action that interferes with physical integrity should be in accordance with established law and guidelines, that it should be for a legitimate purpose, and that it should be necessary for and proportionate to that purpose. For a physical intervention to be considered proportionate, it must be the least intrusive measure possible in the circumstances. Proportionality therefore requires both that any form of restraint should be a last resort only; and that where there must be recourse to restraint it is the minimum necessary and applied for the shortest time necessary, to ensure safety. Furthermore, given the potential for disproportionate use, Article 14 ECHR, which requires that there must be no discrimination in the protection of ECHR rights, makes the principle of equality central to the use of restraint against detained persons. Where any of the ECHR rights are engaged, a difference in treatment which cannot be objectively and reasonably justified in the circumstances will breach Article 14.

The Chief Constable must also ensure a safe system at work for his officers and refrain from infringing their ECHR rights.[322] It is arguable that failing to provide protection from

[320] *Keenan v United Kingdom* (2001) 33 EHRR 38.
[321] *Selmouni v France* (2000) EHRR 403.
[322] Under the Health and Safety at Work (Northern Ireland) Order 1978.

a foreseeable risk of contamination from spitting is a breach of the health and safety at work provisions but that depends on the strength of the medical evidence and the incidence of spitting. The review commissioned by the NPCC (referred to above) might provide the necessary evidence but unless and until such a review does so conclude the case is unlikely to be made out. Ultimately, the deployment and use of spit guards *per se* is unlikely to be unlawful but if used improperly, unreasonably, disproportionately or accompanied by the unreasonable use of force their use is likely to be unlawful. If the judicial review mentioned above proceeds it is likely to provide guidance on the parameters of lawful (if found to be lawful) use of spit guards.

The introduction of spit guards is primarily an operational decision for the Chief Constable subject to oversight by the Policing Board. If spit guards are to be introduced in Northern Ireland it will be an essential prerequisite for the PSNI to ensure that there is: comprehensive research on the potential for death or injury; a tactical and medical needs assessment to assess necessity; an equality impact assessment; comprehensive policy guidance; training (including refresher training) for all officers and civilian detention officers; monitoring of the use of guards; and, a mechanism for reporting on the use of guards to the Policing Board by the electronic use of force monitoring form.

Recommendation 4

In the event that the PSNI considers introducing spit guards or guards for use by officers it should first report to the Performance Committee outlining the need and the capability gap to be filled; whether there is potential for death or injury; a tactical and medical needs assessment; and an equality impact assessment.

Recommendation 5

In the event that the PSNI intends to issue spit guards or guards to officers it should report to the Performance Committee on the policy guidance in place; training developed (for all officers and civilian detention officers); the monitoring

framework for the use of guards; and, the commitment to report the use of guards to the Policing Board by the electronic use of force monitoring form.

11 POLICING WITH THE COMMUNITY & HUMAN RIGHTS AWARENESS

Police officers are required not only to comply with the Human Rights Act 1998 when carrying out their duties,[323] they must also aim (i) to secure the support of the local community; and (ii) act in co-operation with the local community.[324] 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 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 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.

As the Chief Constable has put it "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." The Performance Committee agrees.

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[323] As per section 32 of the Police (NI) 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.

[324] Section 31(A)(1) of the Police (NI) Act 2000.

PSNI have a dedicated Policing with the Community (PWC) Branch based within PSNI Headquarters. It has responsibility amongst other things for developing policy in conjunction with districts and departments in respect of quality of service, behavioural standards, section 75 equality proofing and vulnerability, community planning and crime prevention. The Branch acts as a point of contact for the PSNI with many external agencies such as the Department of Justice Community Safety Unit, the Equality Commission, the Children's Commissioner and the Older Persons' Commissioner.

In respect of behavioural standards, PSNI promotes a style of policing which aims to demonstrate collaborative decision making, accountability and courtesy, fairness and respect on a daily basis in everyday interactions with colleagues and the public, be they a victim, offender, suspect, witness or bystander. This is considered when developing policies and procedures which reflect behavioural standards and by assessing compliance against those standards. The PSNI, also through PWC Branch, identifies vulnerability and addresses need when developing new policies and procedures. PWC Branch also provides advice and guidance on: community planning and strategic engagement for districts and departments; outreach to improve the percentage of persons from under-represented groups working in and across PSNI; and District Crime Prevention officers on crime prevention campaigns and crime prevention design advice.

Everything the PSNI does and everything monitored by the Policing Board will impact either positively or negatively upon the relationship between the police and the public and either makes the ultimate aim of policing by consent with the active participation and support of the community a reality or unhelpful rhetoric. 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,[325] publication of a Code of Ethics[326] 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.

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.[327] Broadly speaking, there appear to be 3 key factors that influence the public's experience of policing:

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[325] 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."

[326] 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.

[327] The Policing Board has published five 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 and race hate crime. As discussed in Chapter 12 of this Human Rights Annual Report, the Performance Committee has carried out a human rights thematic review examining child sexual exploitation.

- *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, 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; and
- *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.

Those three factors have remained the same throughout the Committee's work in 2016/17. It is clear that each is enhanced by the continued promotion of a human rights culture in which decisions are 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 continued and public commitment of the Chief Constable to build upon the PSNI's human rights based approach.

Throughout its work however the Committee has identified some occasional dissonance with practice not always reflecting policy or the stated commitment of the Chief Constable. The recommendations throughout the Human Rights Annual Reports and in thematic review reports are aimed at addressing that dissonance.

12 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 civilian 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.[328]

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.[329] All police officers and members of the 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.

[328] As set out in *Threats to Life*, PSNI Service Instruction SI2317.

[329] 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, is proportionate 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.

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.

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 civilian staff on data protection, freedom of information and records management.

Compliance with the Data Protection and Freedom of Information Acts

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.

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.[330]

All police officers and civilian staff are required to undertake training in data protection, freedom of information, government protective markings and information security. The training is delivered by an e-learning module and staff are prompted to refresh their training every three years.

Where it comes to PSNI's attention that there may have been a misuse of police information, it may be taken forward as a misconduct matter and depending on the nature of the allegation, it may also be progressed by way of a criminal investigation. During 1 April 2016 – 31 March 2017 PSNI recorded 37 alleged breaches of the Code of Ethics which related to matters involving the 'Acceptable Use' policy, Data Protection Act, privacy and confidentiality. Furthermore a total of 6 criminal investigations were initiated by Discipline Branch in relation to breaches of the Data Protection Act.

Where an individual does not believe that a subject access request or freedom of information request has been dealt with appropriately, or where they have other concerns regarding an organisation's information rights practices, they may complain to

[330] 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: https://www.psni.police.uk/advice_information/freedom-of-information/publications-scheme/

the organisation itself and/or to the Information Commissioner's Office (ICO).[331] Between 1 January 2016 and 1 January 2017, PSNI received and processed 1815 subject access requests under the Data Protection Act[332] and 1462 requests made under the Freedom of Information Act 2000. During the same period the ICO investigated three complaints made under section 50 of the Freedom of Information Act. It also investigated three cases involving subject access requests made under 'request for assessment' under section 42 of the DPA 1998.

[331] 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.

[332] The Data Protection Act 1998 provides individuals with the right, upon request, to receive a copy of information held about them by an organisation. This is known as a 'subject access request'.

13 CHILDREN AND YOUNG PEOPLE

Policing with children and young people is a key issue for the Policing Board, with a dedicated human rights thematic review on the issue published in January 2011, an update published in February 2014 and a human rights thematic review on Child Sexual Exploitation due to be published in 2018. While issues affecting children and young people are referenced throughout this Human Rights Annual Report, a dedicated chapter remains to highlight the importance both the Board and PSNI place on adopting the best approach to safeguard children and to protect, uphold and respect their human rights.

As evidenced throughout this Human Rights Annual Report, the Performance Committee regularly considers specific training, policy and operational matters insofar as they affect children and young people. 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.

In April 2016, the Policing Board published the Strategic Outcomes for Policing 2016-2020 which set out the longer term vision of what the Board wants the Chief Constable to achieve by 2020. It is supported by an annual Policing Plan which will deliver a continuous improvement approach to achieve the 2020 outcomes. To achieve the Strategic Outcome of 'increasing trust and confidence in policing in Northern Ireland' a measure has been set in the Policing Plan 2017/18 for PSNI to increase young people's confidence in policing in areas where it has been identified as being lower.[333] To achieve the Strategic Outcome of 'reducing harm caused by crime and anti-social

[333] This builds upon the work carried out in response to the Policing Plan 2016/17 requiring PSNI to work in partnership with a range of bodies to conduct qualitative research and to use this as the basis for identifying solutions to address confidence issues, including young people's confidence. The research carried out included focus groups, interviews and micro-polls in the selected district electoral areas of:- Oldpark (Belfast Council Area); Titanic (Belfast Council Area); Lurgan (Mid ulster Council Area); Torrent (Mid Ulster Council Area); The Moor (Derry and Strabane Council Area) and Macedon (Antrim and Newtownabbey Council area).

behaviour with a focus on protecting the most vulnerable' measures have been set in the 2017/18 Policing Plan for PSNI to improve service to the most vulnerable (including young people) across policing districts through the implementation of Support Hubs in collaboration with PCSPs and other partners; and to demonstrate an effective contribution to protecting young people by implementing initiatives and interventions to improve outcomes in collaboration with partners in relation to child sexual exploitation and abuse and children who go missing. The Plan also requires PSNI to demonstrate a contribution to reducing the number of children and young people killed or seriously injured in road traffic collisions.

The 2017/18 Policing Plan includes a performance monitoring framework to provide clarity on the indicators which will form the basis of the information reported to the Board throughout the course of the year, and will be used to assess performance against the measures included within the Policing Plan. PSNI progress in achieving those indicators will be reported by the Board in due course.

In December 2016 the Northern Ireland Executive published for consultation a draft Children and Young People's Strategy 2017-2027.[334] The Strategy is designed to improve the well-being of all children and young people living in Northern Ireland. Once finalised, it will provide direction for government departments and a range of public authorities in the delivery of improved services for children and young people in areas including health, family and education. The Strategy contains eight outcomes, one of which is that all children and young people will live in safety and stability. The Strategy states, "stakeholders told us that there is a range of issues that lead to children and young people experiencing insecurity or instability. These can include being subject to bullying (including cyber-bullying); family breakdown; experiencing violence in the home; and the reality of being homeless. In addition, children and young people commented on a perceived increase in the number of young people being intimidated or threatened by paramilitary groupings and the emerging issue of child sexual exploitation or trafficking. Children and young people who feel unsafe in their homes are more likely

[334] *Children and Young People's Strategy, 2017-2027. Consultation Document,* Northern Ireland Executive, December 2016.

to experience poor mental health, not achieve as expected in education, and a number of their fundamental rights will be eroded."[335]

In June 2016, the United Nations Committee on the Rights of the Child highlighted many of the same issues in respect of children and young people throughout the United Kingdom, commenting in particular on the additional inequalities, bullying, violence and discrimination often experienced by children and young people on the grounds of disability, racial, ethnic or religious background, sexual orientation or gender identity.[336] The United Nations Committee reported that the number of children with mental health needs is increasing across the United Kingdom, and that in Northern Ireland the number of child suicides has been steadily increasing; that the rate of child poverty remains high and affects children in Wales and Northern Ireland the most; and there are many inequalities in educational attainment. PSNI figures reveal that in 2016/17 11% of victims of crime were below the age of 18 years old. When looking at crime types during that year this percentage increases to 14% of victims of violence with injury, 19% of victims of violence without injury, and 60% of victims of sexual offences all being below the age of 18.[337]

The United Nations Committee found that children's views are not systematically heard in policy-making on issues that affect them and recommended that children are not only heard but also listened to and their views given due weight by all professionals working with them. Amongst the many other issues raised by the United Nations Committee was concern that "in Northern Ireland children face violence, including shootings, carried out by non-State actors involved in paramilitary-style attacks, as well as recruitment by such non-State actors."[338] The Committee recommended that immediate and effective measures are taken to protect children from violence and recruitment by non-State actors, including measures relating to transitional and criminal justice.

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[335] *Ibid*. para. 6.7.6.
[336] *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, United Nations Committee on the Rights of the Child, June 2016.
[337] *PSNI recorded crime statistics, 1998/99 – 2015/16 (victim and gender excel spreadsheet)*, PSNI, December 2016.
[338] United Nations Committee, June 2016, para 47.

The numbers of victims of paramilitary style attacks recorded by the police over the past ten years has ranged between 52 and 127 as illustrated by the table below.

Casualties as a result of paramilitary-style attacks 2007/08 – 2016/17[339]

Financial Year	Shootings	Assaults	Total Casualties (Shooting and Assaults)
2007/08	7	45	52
2008/09	20	41	61
2009/10	46	81	127
2010/11	33	50	83
2011/12	33	46	79
2012/13	27	36	63
2013/14	28	42	70
2014/15	36	58	94
2015/16	14	58	72
2016/17	28[340]	66	94
Total	**272**	**523**	**795**

There have been 795 casualties of paramilitary style attacks recorded by the police over the past ten years, a figure that does not include incidents that have gone unreported due to the fear created by those carrying out the attacks and the stronghold they may have in communities. PSNI includes within its statistical reports information on the number of shootings and assaults attributable to Loyalist groups and to Republican groups and a breakdown of the policing districts that the attacks are carried out in. Over the ten year period 2007/08 to 2016/17 the majority of paramilitary style shootings have been carried out by Republican groups and the majority of paramilitary style attacks have been carried out by Loyalist groups. 61% of the shootings and 52% of the assaults

[339] *Police Recorded Security Situation Statistics, 1 April 2016 – 31 March 2017,* PSNI, May 2017.
[340] In addition to the 28 casualties as a result of paramilitary style shootings in 2016/17 there was also one fatality as a result of a paramilitary style shooting. This is recorded separately in PSNI statistics under 'security related deaths'.

recorded in 2016/17 occurred in Belfast. PSNI does not publish the age breakdown of victims within its statistical reports, although that information is available and has been provided to various organisations including the Policing Board in the past.[341]

Recommendation 6

PSNI should include an age breakdown of the victims of paramilitary style shootings and assaults within its year end statistical report.

The Policing Board has raised concerns with PSNI for a number of years regarding the number of paramilitary style attacks and the fact that only a small number of perpetrators are brought to justice. PSNI has reported to the Board on a number of occasions regarding action and initiatives undertaken to address the problem and recommendations have been made and reported upon in previous Human Rights Annual Reports. The Board has a key role to play in working with the Northern Ireland Executive, PSNI, Department of Justice and PCSPs in order to give effect to the recommendations in the 'Fresh Start' report.[342] 'Tackling Paramilitarism' is a Strategic Outcome for the Board and the Policing Plan 2017/18 requires PSNI to demonstrate an effective contribution to eliminating it in collaboration with partner agencies, local communities and PSCPs through co-design of programmes and interventions. Through the 2017/18 Plan PSNI is required to report to the Board on specific initiatives it has undertaken to address paramilitary activity.

The influence that paramilitary groups can have on young people, particularly those living in the most disadvantaged areas, was addressed in the 'Fresh Start' report, with a number of recommendations made for the Northern Ireland Executive regarding interventions and educational initiatives targeted at young people who may be drawn into involving themselves, or continuing to involve themselves, with criminal activity

[341] For example, a PSNI response to a Freedom of Information request (2015/02350) revealed that of victims of paramilitary style attacks during the period April 1998 – June 2015, 3% of victims were aged 16 and under, 47% were aged 16-24 and 49% were aged 24 and over.

[342] *The Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland*, published in May 2016, contains recommendations to give effect to the NI Executive's November 2015 *Fresh Start Agreement* which included commitments to help bring about an end to paramilitary activity.

orchestrated by paramilitary groups. To this end the importance of the police continuing to build trust and confidence in policing amongst young people cannot be understated. Recommendations requiring PSNI to proactively create opportunities in which to have positive engagements with at risk young people have been made in previous thematic and Human Rights Annual Reports and this will continue to be monitored by the Board.

A final point worth highlighting in relation to paramilitary style attacks is that these attacks are quite simply criminal attacks and, where committed against young people, child abuse. As per the 'Fresh Start' report, "the labels of Loyalist or Republican paramilitary groups are often used as a 'badge of convenience' but the activities tend to be purely criminal and not linked to any broader political objective. Referring to 'paramilitary activity' gives the misleading impression that the criminal activity referred to is in some way part of a concerted militaristic campaign or in pursuit of political objectives. It also has the effect of aggrandising the capacity of those responsible for criminal acts. We believe, with the exception of any ongoing terrorist activity, the focus should now be on criminality."[343] That report recommends that "the strategies and activity of the PSNI and other law enforcement agencies should be updated to reflect this shift in focus from 'paramilitary activity' to criminality."[344]

In its June 2016 report the United Nations Committee commented on the use of stop and search powers against children and young people, recommending that the statutory use of the stop and search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory; and that data is regularly collected and analysed relating to the use of stop and search on children, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.

As outlined in Chapter 4 of this Human Rights Annual Report, PSNI already records data on the gender, age and ethnicity of persons stopped and searched under a range of stop and search powers and the Police Area in which the search took place. The statistical reports published by PSNI show the age of persons stopped and searched

[343] *The Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland*, Lord Alderdice, John McBurney, Prof. Monica McWilliams, May 2016, para. 4.44.
[344] *Ibid.* para. 4.44.

under all the powers collectively and the Police Area in which the searches took place. During 2016/17 of the 31,274 persons stopped and searched or stopped and questioned under all powers, 12% (3,656 persons) were aged 17 and under (where age is known, which is in approximately 98% of cases). Of those 3,656 persons aged 17 and under, 63% stopped and searched were under the Misuse of Drugs Act.[345]

Searches of young people under counter-terrorism and security powers are less frequent, but nonetheless concern has been raised by the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007, David Seymour CB, where such powers are being used near schools or when children are present. Mr Seymour highlighted in his March 2017 report the damage that a bad encounter with the police at a young age can have upon a person and that the police should act in the best interests of the child. He also recognised that there are situations where the stop has been engineered or exploited to obtain adverse publicity for the police, for example, the individual to be searched has not stopped his vehicle and has driven for some distance before stopping outside school gates. He advised that whenever there is a stop and search involving children or near a school, the officer involved should report this to their supervising officer. Mr Seymour made a recommendation for PSNI that consideration should be given to keeping an internal written record of what triggered any decision to stop and search in all cases involving a stop and search near a school or when the individual is accompanied by a child or young person at the time he is stopped. He recommended that those records should be made available to the Independent Reviewer. [346]

A further concern identified by the United Nations Committee was Taser, and in Northern Ireland Attenuating Energy Projectiles (AEP), being used against children by the police. The UN Committee recommended that the use of electrical discharge weapons such as Taser and AEP and any other harmful devices should be prohibited against children and that age disaggregated data on the use of such weapons should be collected and published in order to monitor the implementation of such a prohibition.

[345] *Stop and Search Statistics, 1 April 2016 – 31 March 2017*, PSNI, May 2017.
[346] *Report of the Independent Reviewer Justice and Security Act, Justice and Security (Northern Ireland) Act 2007*, *Ninth Report 1 August 2015 – 31 July* 2016, David Seymour CB, March 2017.

The legal test for the use of Taser and AEP has been discussed and set out at length in previous Human Rights Annual Reports. Both weapons may only be issued to and used by specially trained officers. AEP may only be used in situations where use of a firearm would also be justified, and Taser may only be used where there is violence or a threat of violence which may escalate to the point where the use of lethal force would be justified. Any discharge of AEP or Taser must be referred to the Police Ombudsman. Where either weapon is used, even if pointed but not fired, the use must be recorded and is included in PSNI statistics on police use of force. During 2016/17 AEP was not discharged against any person, while Taser was discharged on 13 occasions but on no occasions was the discharge against a person under the age of 17.[347] Use of AEP or Taser against under 18s is uncommon, but it does occur.

The Northern Ireland Executive's draft Children and Young People's Strategy recognises that a core element in achieving the outcome that all children live in safety and stability is to ensure the well-being of children and young people who come into contact with the youth justice system. The Department of Justice has been carrying out a scoping study on children in the justice system which will be an end-to-end examination of how the youth justice system operates for the children in it. This study will inform any future changes with the intention to improve outcomes for children, families, victims and communities involved. Proposals are currently being brought forward which are aimed at keeping children out of the system altogether by providing early intervention and support, developing community alternatives, maximising exit points and diversionary disposals and increased use of restorative disposals.

Police officers come into contact on a daily basis not only with children who have committed crimes, but with vulnerable children who are often victims and who are at the greatest risk of becoming involved in crime in the future. The PSNI are therefore a key player in the delivery of a successful Children and Young People Strategy and will have a specific role to play in any initiatives emanating from the Department of Justice; and the Policing Board will have a key role to play in monitoring and holding PSNI to

[347] *PSNI Use of Force Statistics, 1 April 2016 – 31 March 2017,* PSNI, June 2017.

account for its protection of and engagement with young people and for its co-operation with other agencies to improve the well-being of children and young people in Northern Ireland.[348]

The right of a child to anonymity pre-charge and the extent of Article 8 ECHR using UN Convention on the Rights of the Child (UNCRC) and Beijing Rules

In an interesting case in December 2016 Colton J. considered the right to privacy pre-charge of a 15 year old child suffering from Asperger's Syndrome.[349] The child had been arrested and interviewed by the PSNI as a suspect in an alleged cyber-crime involving the "hacking" of customer details. The story including the arrest and interview attracted significant media coverage. Several national media outlets published both online and in print details about the story which variously named the applicant and the town in which he lived, and published details about his social interest in online pursuits. A photograph of the applicant was also published. In civil proceedings against those who published the information the child complained that the publication constituted an abuse of private information and a breach of his Article 8 rights under the ECHR. He also issued an application for judicial review of the Department of Justice's failure to take adequate steps to protect his rights as a child who was publicly identified in the manner described.

Essentially, the child complained of the Department's failure to enact legislation to provide for reporting restrictions in relation to children who have been arrested but not charged with any criminal offence in contrast with the restrictions in relation to children who are actually charged with offences.[350] The respondent failed, it was argued, to comply with its positive obligations in respect of the child under Article 8 ECHR.[351]

[348] As is now a statutory requirement as per the Children's Services Co-operation Act (Northern Ireland) 2015.
[349] *JKL's Application* [2016] NIQB 99.
[350] Article 22 of the Criminal Justice (Children) (Northern Ireland) Order 1998 provides statutory protection of a child's identity by way of reporting restrictions.
[351] And therefore was in breach of Section 6 of the Human Rights Act 1998.

Colton J. referred to Parliament's consideration of the issue; section 44 of the Youth and Criminal Evidence Act 1999 contains pre-charge reporting restriction provisions prohibiting the disclosure of material which "is likely to lead members of the public to identify" a person who is the subject of criminal investigation. That provision however has not been commenced.[352] Post devolution the power to commence section 44 passed to the Northern Ireland Assembly. Since then, no active consideration was given to enacting section 44 or any other legislation to the same effect.

In considering the law relevant to the case Colton J. observed "it is legitimate to consider the international legal framework... [including] the UNCRC
."[353]

Article 4 UNCRC provides "The right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which re-enforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society". Article 3(1) UNCRC provides "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Article 40 UNCRC expressly requires that the state shall "in particular" ensure that the child has "his or her privacy fully respected at all stages of the proceedings." The Committee on the Rights of the Child in its general comment on interpretation of the right was considered as was the juvenile's right to privacy as expressed in the Beijing Rules.

[352] The government had taken part in discussions with the broadcast and print media and it was decided that the media's own regulatory arrangements could be strengthened in order to protect vulnerable children and that the aims of the reporting restriction provisions could be achieved by other means. It was also stated that the case for implementation would be kept under review but that the provisions would not be implemented without further debate in both houses. After further debate the government decided that section 44 could best be achieved through other non-legislative means and the relatively new regime of independent press self-regulations.
[353] In particular Articles 3(1), 4 and 40.

Importantly, Colton J. found there to be “ample support in international law for the requirements to protect individuals such as the applicant and a well-founded basis for the requirement of such protection. In interpreting rights guaranteed by the European Convention the court is entitled and should take these into account in the interpretation and application of those rights in our national law.”

He went on to consider Article 8 ECHR (the right to respect for private and family life, home and correspondence) and the positive duties imposed on the state by Article 8 to act to protect the right. The application focused on the failure to enact legislation and a particular failure to implement section 44. In this respect Colton J. held that a human rights challenge may not be brought on the grounds of a failure to legislate because the Human Rights Act expressly preserves Parliamentary sovereignty. Having dismissed that first point however Colton J. went on to consider a claim for declaratory relief by reason of the Department of Justice’s failure to put in place any effective means to secure the protection of the applicant’s Article 8 rights. The Department contended that the non-legislative approach - the press regulation together with the right of access to the court in a civil claim - provides sufficient safeguards to protect the anonymity of minors who are the subject of criminal investigations.

Colton J. observed “When considering the matter the court is mindful of the wide margin of appreciation that is afforded to states in adopting any measures to give effect to Convention rights. This doctrine is applied at its widest when considering the positive obligations imposed... the European Court has given considerable latitude to member states in implementing the positive Article 8 duties and considers that the state authorities are in a better position to judge how the balance should be set in a domestic context”. He held “Given the wide margin of appreciation available to the state there is no basis for a finding that the measures in place amount to a breach of any positive obligation imposed under Article 8” but went on to provide the following comment “A good case can be made for reform in this area either by way of legislation short of Section 44 or by way of further amendment to the Editor’s Code of Practice supervised and enforced by IPSO [the Independent Press Standards Organisation]. This matter has now come to the attention of the respondent and it remains to be seen whether or

not the applicant's case signifies a trend. This application has raised important public issues and it is hoped that this matter will be kept under review by the respondent."

Mr Justice Colton's summary and analysis is helpful in defining the parameters but also the legitimacy of relying on international treaty obligations when considering directly enforceable (ECHR) rights. In answer to a number of complaints public authorities have argued that such treaties are not directly enforceable because they have not been enacted into domestic legislation (as opposed to the ECHR) and should therefore not be taken into account in determining the extent of rights. This case makes it plain that UNCRC rights should be considered and can, in essence, be enforced through their application to the interpretation of ECHR rights. The PSNI refers to the UNCRC within policy and procedure and acknowledges its relevance but has in some cases argued that it is not relevant to determination of issues between parties. Mr Justice Colton's judgment demonstrates how public authorities should not only reference the UNCRC but should give real practical consideration to it.

Child Sexual Exploitation

The issue of Child Sexual Exploitation (CSE) has been the focus of intense discussion and intervention over recent years. There have been a number of high profile cases of CSE (primarily in Great Britain) which have received attention, followed by a series of inquiries and reports.[354] In Northern Ireland, the issue has been reported upon over the years but has not, until relatively recently, received similar media or public attention. For a number of years specialists working in the field have identified and published research into CSE in Northern Ireland, which merited but perhaps did not receive close enough attention. By 2013 however significant concern resurfaced following an announcement by the PSNI of an investigation into CSE (known as Operation Owl).[355] Operation Owl

[354] For example, Professor Alexis Jay published, in 2014, a review of child sexual exploitation in Rotherham. It found that organised child sexual exploitation had been happening on a massive scale over many years with local agencies dismissing concerns or putting in place inadequate responses.

[355] In September 2013 the PSNI announced that it 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 may be at risk of further abuse.

was instigated following an internal review by PSNI of its public protection arrangements. During that review the PSNI identified that a number of children, who had been reported as having gone missing on several occasions, had suffered or were at risk of CSE.

The Performance Committee of the Policing Board reviewed previous research and heard from stakeholders working with children in Northern Ireland. It determined that all that could be done was not being done to tackle this devastating criminality against society's most vulnerable members. It therefore decided to conduct a thematic review, using a human rights and child-centred approach. The draft thematic review was conducted by the Board's Human Rights Advisor.

The Committee wishes, at this stage, to reinforce some key messages. Firstly, CSE can occur in all communities, amongst all social groups and affects both girls and boys. It must be accepted by all working with children that it is almost certainly happening in their area and that constant vigilance is required. Secondly, CSE is never the victim's fault, even if there is some form of exchange - all children and young people have the right to be safe, protected from harm and in the event that they are exploited to receive the support they require (as well as offenders being brought to justice). Thirdly, CSE requires a multi-agency approach which works in practice as well as in theory. Fourthly, the approach by all relevant agencies and individuals must be based on a human rights approach which is child-centred. Fifthly, CSE is a manifestation of child sexual abuse and must be viewed within that context.

The thematic review benefitted greatly from, and hopes to build upon, the important work already carried out by others, including the PSNI.[356] The Committee hopes this review will contribute to raising awareness of CSE, gather together examples of good practice, put into the public domain information to inform the debate and make some

[356] Such as: *Not A World Away: The sexual exploitation of children and young people in Northern Ireland,* Dr Helen Beckett, Barnardo's, October 2011; *Working with Children and Young People who Experience Running Away and Child Sexual Exploitation: An Evidence-based Guide for Practitioners,* Emilie Smeaton, Barnardo's NI, July 2013; *Sexual Exploitation in Northern Ireland: Report of the Independent Inquiry*, Kathleen Marshall, November 2014; and *Getting Focused and Staying Focused 'Looked After Children', Going Missing and Child Sexual Exploitation A Thematic Review,* Professor John Pinkerton, Dr Lisa Bunting, Dr David Hayes, Dr Anne Lazenbatt, August 2015;

helpful recommendations. The review however is only a starting point; the Committee recognises that it raises more questions than it answers. Those questions must be addressed by child protection experts particularly those already working in the field of CSE in close association with the police and safeguarding agencies. This is a complex and highly specialised area which requires both a strategic and practical focus to bring the various strands and agencies together. There remains a great deal to be done to join those strands together and produce comprehensive guidance and training which is accessible to professionals and the public. All policy, procedure and any strategy subsequently developed must be informed by and accessible to children.

During the course of the thematic review noted above more was learned about PSNI engagement with children and young people and children and young people's views of the police. In summary, the following merits some attention in this report.

A great deal of research and reflection has been undertaken to address negative perceptions of the police among children and young people. This is also addressed in specialist policy for child protection. During the thematic review process it was clear that specialist officers understood how building effective relationships with young people was key to ensuring effective risk management. Each child at risk identified has a named officer appointed who seeks to establish a relationship with the child in order to build confidence, encourage mutual respect and increase the likelihood of important information being shared. This was described as vitally important considering the unique challenges of CSE and how it impacts on young people, particularly where they do not see the exploitative nature of the abuse they are suffering. This relationship building creates a situation where the young person feels they have a degree of stability and limits the amount of professionals involved in their lives.

Guidance is provided to officers which is thoughtful and positive to ensure that officers treat children with respect and also that children are dealt with sensitively, safely, appropriate to their individual needs and without any behaviour or processes that will further distress a child. Police officers work closely with the voluntary sector including Barnardo's *Safe Choices* programme. This is integral to the policing response to CSE

and assists in building relationships with young people. PSNI were included in a recent study by VOYPIC in respect of young people's perception of police and their quality of interactions. PSNI are studying the findings with a view to revisiting practices and tailoring them where necessary. That is positive and encouraged by the Committee.

The PSNI keeps under review its children and young people engagement strategy and explores new ways of engaging positively but the Committee believes that more can and should be done to engage with children in general and with children at risk in particular. Furthermore, in developing its engagement strategy the PSNI must actively seek the meaningful inclusion of children and young people with learning disabilities, children from BME communities, lesbian, gay and bisexual children and transgender children to ensure their views inform practice and policy development, implementation and evaluation.

During the thematic review a number of stakeholders noted an apparent 'disengagement' at local level; the reduction in the number of neighbourhood officers and the high turnover of officers locally combined with the pressure of work means that stakeholders are unable to maintain the same degree of personal relationships and did not feel they had the same connection with the service. The Committee has made similar observations and raised them with the PSNI in meetings and through previous recommendations. The PSNI is aware of the issue and is seeking to address it. This is an ongoing process but the Committee needs to see more progress. No additional recommendation is necessary at this stage but it will be kept under review.

ALYSON KILPATRICK BL
HUMAN RIGHTS ADVISOR TO THE NI POLICING BOARD

APPENDIX 1

RECOMMENDATIONS 2016/17

Recommendation 1

The PSNI Human Rights Training Advisor should assess the capacity of police trainers to deliver the renewed Student Officer Training Programme with an emphasis on human rights and policing with the community. That assessment should include a consideration of whether trainers are themselves sufficiently knowledgeable about their subject, skilled in the delivery of training and given sufficient time to engage with students during lessons. Thereafter, that assessment should be included in the PSNI's sequence of briefings to the Policing Board on the implementation of the Police Scotland recommendations.

Recommendation 2

The PSNI should consider whether its engagement with older people is effective and, assuming that more could be done, its strategy for engagement with the objective of enhancing the protection of older vulnerable people. The PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report with its analysis.

Recommendation 3

PSNI should analyse its use in 2016/17 of police detention for children. That analysis should consider a random sample of cases (not less than 20%) in which children were detained. The analysis should include in particular whether alternative options were considered. If alternatives were considered but unavailable the PSNI should identify the reason(s). PSNI should report to the Performance Committee within 6 months of the publication of this Human Rights Annual Report.

Recommendation 4

In the event that the PSNI considers introducing spit guards for use by officers it should first report to the Performance Committee outlining the need and capability gap to be filled; whether there is potential for death or injury; a tactical and medical needs assessment; and an equality impact assessment.

Recommendation 5

In the event that the PSNI intends to issue spit guards to officers it should report to the Performance Committee on the policy guidance in place; training developed (for all officers and civilian detention officers); the monitoring framework for the use of guards; and, the commitment to report the use of guards to the Policing Board by the electronic use of force monitoring form.

Recommendation 6

PSNI should include an age breakdown of the victims of paramilitary style shootings and assaults within its year end statistical report.

APPENDIX 2

IMPLEMENTATION OF RECOMMENDATIONS FROM THE HUMAN RIGHTS ANNUAL REPORT 2015[357]

Recommendation 1

The PSNI should, without delay, recruit a Human Rights Training Advisor with sufficient expertise and experience to ensure that the highest level of human rights training is delivered within the PSNI. Progress in relation to that recruitment should be reported to the Performance Committee within 1 month of the publication of this Human Rights Annual Report.

Status: Implemented

Recommendation 2 (Human Rights Annual Report 2014)

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.

Status: Implemented

Recommendation 2

The PSNI should complete its Working Together project on case file preparation and implement the recommendations and findings contained within the Criminal Justice

[357] And Recommendation 2 of the Human Rights Annual Report 2014 which was recorded in the 2015 Report as not having yet been fully implemented.

Inspection Northern Ireland Report[358] within 9 months of the publication of this Human Rights Annual Report. Thereafter, the PSNI should provide to the Performance Committee a written briefing on the outcomes of the project and on the steps taken or to be taken. That written briefing should be provided within 12 months of the publication of this Human Rights Annual Report.

Status: Work ongoing but not yet fully implemented

Recommendation 3

In the likely event that the PSNI will obtain the power to issue Domestic Violence Protection Notices and apply for Domestic Violence Protection Orders within the next 12 months it should provide to the Committee its draft written policy and guidance on the use of the powers and the proposed training plan for officers. In any event, training must be delivered prior to the introduction of the powers.

Status: Work ongoing but not yet fully implemented

Recommendation 4

The PSNI, in co-operation with OPONI, should identify those complaints which relate specifically to the police response to reports of domestic abuse (within the more general complaint heading of domestic incident) and disaggregate those complaints in the presentation of its six-monthly reports.

Status: Implemented

[358] *An Inspection of the Quality and Timeliness of Police Files (Incorporating Disclosure) Submitted to the Public Prosecution Service for Northern Ireland*, CJINI, 26 November 2015.

Recommendation 5

The PSNI should include as part of the information provided for the Professional Standards Monitoring Framework trends and patterns identified in complaints and misconduct matters arising in respect of police civilian staff who are not designated officers within the remit of the Office of the Police Ombudsman.

Status: Implemented

Recommendation 6

The PSNI should forthwith amend its Youth Diversion Scheme to include clear guidance that a child must always be referred to the possibility of seeking legal advice when an Informed Warning is to be administered. Thereafter the PSNI should confirm in writing to the Performance Committee that the Scheme has been amended and that officers have received appropriate advice on the amendment.

Status: Implemented

Recommendation 7

The PSNI should in respect of its use of SUAs overtly, while awaiting dedicated policy guidance, adopt formally and issue to officers the Surveillance Camera Code of Practice (June 2013) and the Information Commissioner's Code of Practice (May 2015).

Status: Implemented

Recommendation 8

To enable the Performance Committee of the Policing Board to monitor effectively the use of SUAs the PSNI should provide to the Committee every 6 months a report on the nature and extent of Small Unmanned Aircraft use.

Status: Implemented

Recommendation 9

The PSNI should forthwith and for a period of 12 months disaggregate further the statistics on outcome rates for domestic motivated crime according to each disposal type including conviction in a form which can be easily accessed and understood. The PSNI should at the end of the 12 months period report to the Performance Committee with the empirical evidence distilled from the statistics.

Status: Work ongoing but not yet fully implemented

Recommendation 10

The PSNI should continue to monitor the service of non-molestation orders and provide the Performance Committee, within 12 months of the publication of this Human Rights Annual Report, with an analysis of the length of time taken to serve orders, an analysis of the checks and balances put in place to oversee the service of orders and the extent to which applicants and their legal representatives are kept informed of the service of orders.

Status: Implemented

Recommendation 11

The PSNI should, within six months of the publication of this Human Rights Annual Report, report to the Performance Committee on progress made against the recommendations contained within the CJINI report, *An Inspection of the Quality and Timeliness of Police Files (Incorporating Disclosure) Submitted to the Public Prosecution Service for Northern* Ireland, 26 November 2015.

Status: Implemented

Recommendation 12

The PSNI should forthwith provide to the Performance Committee a report on the number of times and the reason(s) for a buzzer in a cell having been switched off between 1 January 2014 and 1 January 2016. The report should include reference to

the relevant PSNI policy and the alternative arrangements that were or should be made to ensure the safety of the detainee.

Status: Implemented

Recommendation 13

The PSNI should provide to the Performance Committee forthwith a report detailing the period during which exercise facilities were or are unavailable for use by detainees. If exercise facilities are unavailable to detainees held for extended periods, consideration should be given to moving that detainee to an alternative station.

Status: Implemented

Recommendation 14

The PSNI should carry out a training needs analysis for all Custody Staff and ensure that all staff receive sufficient training on the identification of and appropriate response to: detainees presenting with physical or mental health issues and/or addictions; and on child protection issues. The PSNI should present its findings to the Performance Committee within 6 months of the publication of this Human Rights Annual Report.

Status: Implemented

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