

**NORTHERN IRELAND POLICING BOARD****MINUTES OF A MEETING OF THE PERFORMANCE COMMITTEE HELD ON  
11 FEBRUARY 2021 AT 9.30AM VIA VIDEO CONFERENCING FACILITY****PRESENT:**

Mr Mervyn Storey, Chair

Ms Carmel McKinney, Vice-Chair

Mr Edgar Jardine

**(1)** Ms Deirdre Toner

Ms Joanne Bunting

Mr Trevor Clarke

Mrs Dolores Kelly

Mr Gerry Kelly

Ms Liz Kimmins

**(2)** Mr Mike Nesbitt

**POLICE SERVICE OF (2) Deputy Chief Constable Mark Hamilton**  
**NORTHERN IRELAND IN (2) Chief Superintendent Philip Knox**  
**ATTENDANCE (2) PSNI staff member**

**OFFICIALS IN  
ATTENDANCE:**

Amanda Stewart, Chief Executive

Mr Adrian McNamee, Director of Performance  
Six Board Officials**HUMAN RIGHTS ADVISOR:** Mr John Wadham**(1) Missed part of Item Number: 6.2****(2) Item number: 6.2 only**

## 1. APOLOGIES

No apologies were received.

The Committee agreed the agenda for the meeting.

The Chair asked Members to advise of any issues they wished to raise at Item 9 under "Any Other Business". No issues were declared.

## 2. CONFLICTS OF INTEREST

The Chair declared a conflict of interest for Agenda Item 6.2 PSNI Code of Ethics, Notifiable Membership and Professional Standards as a member of the Apprentice Boys of Derry and the Independent Orange Order.

## 3. DRAFT MINUTES OF MEETING OF THE PERFORMANCE COMMITTEE

The Committee considered the minutes of the meeting held on the 14 January 2021 and agreed the minutes.

It was therefore:-

### **RESOLVED:-**

That the draft minutes of the Performance Committee meetings held on the 14 January 2021 were agreed.

## 4.0 UPDATE ON ACTION LOG

The Director of Performance provided an update on the actions listed on the Action Log. Members noted the remaining current open actions and expected timeframes for these matters to be brought back to the Performance Committee. **NOTED.**

#### **4.1 SUMMARY OF ACTION LOG AND ACCOMPANYING CORRESPONDENCE/DOCUMENTATION**

The Director of Performance informed Members that eleven actions raised at previous Committee meetings held in November 2020, December 2020 and January 2021 had been addressed through correspondence provided by PSNI and information provided by Board Officials.

##### **Spit and Bite Guards - Members Questions.**

**(Featuring AP2 12 November 2020, AP6 14 January 2021 and AP7 14 January 2021).**

The Director of Performance updated Members with information provided by Officials in respect of numbers of “cared for” children that had been involved in spitting incidents; detailed scrutiny on the statistical analysis provided and information regarding spit and bite guard usage in other blue light services.

Members considered the information provided and indicated that they were content with the answers provided.

**To write to the Chief Constable in relation to the Members concerns in respect of stop and search and request how PSNI will propose to resolve these issues (AP7 12 November 2020); and**

**When the Chief Constable’s stop and search response is received and discussed by Members that a Senior Officer should attend a future Committee meeting to present their proposals (AP8 12 November 2020).**

The Director of Performance provided to Members with the detailed response from T/ACC Jonathan Roberts regarding the key strategic issues raised at the November’s meeting.

Member’s requested some information on the Young Person’s Independent Advisory Group and an Official advised that the Board was represented on the group and this

involved key youth organisations including the Children's Commissioner and the Children's Law Centre. Through the Terms of Reference the group works with PSNI to deliver a youth survey for their stop and search experiences and views to identify improvements for PSNI's policy.

Members further discussed the following issues:-

- PSNI still to provide effective outcomes;
- The lack of complaints in respect of stop and search is not necessarily a positive result;
- The justification of other forms of outcomes is not an appropriate reporting mechanism; and
- What powers are the police using to stop and search

Following discussion it was:-

**AGREED:-**

That Officials would be given time to complete further analysis of the information provided by T/ACC Roberts and table a paper to a future Performance Committee on stop and search including information on the Young People Independent Advisory Group and stop and search outcomes. **(AP1)**

**To write to the Chief Constable to request a copy of the Gold Strategy used for the procession; an update of how PSNI have implemented Police Scotland's recommendations; and to reconfirm Members concerns for the lack of a review for the treatment of Children and Young People during this operation (AP1 10 December 2020).**

Members were provided with correspondence from Chief Superintendent Bobby Singleton in respect of the action point that included the Gold Strategy for Parades, Protests, Bonfires, Commemorations, Re-enactments, Funerals and Related Activity for 2020.

Members indicated they were satisfied with the information provided by PSNI and following discussion it was:-

**AGREED:-**

To write to PSNI to request the Gold Strategy for Parades, Protests, Bonfires, Commemorations, Re-enactments, Funerals and Related Activity for 2021. **(AP2)**

**To write to PSNI to gain further information on the introduction of Mental Health Courts in 2020 as outlined through 2019/20 PSNI reporting, whereby those who came before the court would be able to have sentencing deferred to allow offenders to engage with mental health services for treatment.**

- **An update on the initiative, including the status of the Mental Health Courts; and**
- **Further information on deferring sentencing for those repeat offenders identified as having a mental health issue (AP5 10 December 2020).**

The Director of Performance updated the Committee on the response provided by ACC Mark McEwan and Members were content with the answer provided.

**To request PSNI provide their own guidance in relation to the enactment of the CHIS Bill and that any policy is subject to a full EQIA (AP6 10 December 2020).**

The Director of Performance updated Members with the Chief Constable's response and offer that ACC Barbara Gray could attend a future meeting to discuss the matter further.

The Board's Human Rights Advisor provided a further update in respect of the enactment and that it was expected that it may be finalised and receive Royal Assent by the end of February 2021.

Members discussed that similar covert intelligence items had been considered by the Board during the tenure of other Chief Constables.

Following discussion it was:-

**AGREED:-**

That Officials would provide information of previous Board/Committee discussions in relation to covert intelligence/QUOTAS. **(AP3)**

It was also:-

**AGREED:-**

To write a response to the Chief Constable to confirm that the Performance Committee would like to engage with PSNI in relation to the Covert Human Intelligence Sources (Criminal Conduct) Bill. **(AP4)**

**That Officials would engage with other UK police forces to determine whether they have adopted the PANEL approach to human rights (AP8 14 January 2021).**

Officials provided the required information that there was currently no evidence of PANEL being used by any UK or Ireland police forces and Members were content with the answer provided.

**Officials will seek further information from the PSNI in respect of the additional wording in the Police Recorded Security Situation Statistics bulletin advising *“Figures in this publication include only those arrests that are linked to the security situation in Northern Ireland; persons who have been arrested under Section 41 of the Terrorism Act for other reasons are excluded.”* (AP11 14 January 2021)**

Members were reminded of the issues they raised and were updated with clarification from the Report's statistician and Members were content with the answer provided.

## **5.0 CHAIRPERSON'S BUSINESS**

The Chair confirmed that he had no items of business for discussion.

## **6.0 ITEMS FOR COMMITTEE BUSINESS**

### **6.1 PERFORMANCE PLAN: MEASURE 1.2.1 EFFECTIVE CRIME OUTCOMES**

As a result of the additional special item dealt with at Performance Committee it was agreed that this item would now be tabled at the next Performance Committee on 11 March 2021. **NOTED**

### **6.2 UPDATE ON THE CODE OF ETHICS, NOTIFIABLE MEMBERSHIPS AND THE PSNI PROFESSIONAL STANDARDS REPORT**

The Director of Performance provided Members with a paper containing background information on each of the areas to be updated by PSNI at the meeting. Members were asked to note the information provided to inform their discussion with Deputy Chief Constable Mark Hamilton and Chief Superintendent Philip Knox on the progress of the Review of the Code of Ethics, Notifiable Memberships and the PSNI Professional Standards Report 2019/20.

The Chair welcomed DCC Mark Hamilton and Chief Superintendent Philip Knox and invited them to brief Members on the Review of the Code of Ethics, Notifiable Memberships and the PSNI Professional Standards Report.

## Professional Standards Report

PSNI updated Members with the level of complaints received during the financial year to date highlighting that they had dropped from the previous financial year mainly due to COVID, especially evidenced during the tighter restrictions in spring 2020. In summary general complaints were down 6% and allegations down 13% from the previous financial year. Additionally, due to COVID, PSNI stated that they have not received a report on the current level of complaints from the Office of the Police Ombudsman for Northern Ireland since October 2020.

An update on formal investigations carried out by Professional Standards and Discipline branch raised concerns in respect of domestic incidents which account for around 24% of the total. PSNI reported that a considerable amount of work into the investigations and internal messaging to officers is undertaken.

COVID again has caused some difficulties resulting in alternative larger premises sourced during the year to accommodate hearings, leaving ten hearings still outstanding. The outcome of hearings are that on average two thirds are required to resign.

An overview of current duty adjustment, suspensions and repositioning within the service was provided with 24 officers suspended and 36 officers repositioned this financial year. During the same period twenty two Anti-Corruption investigations have commenced concentrating on the following strategic priorities:-

- Abuse of Power for Sexual Purpose;
- Organised Crime – Threat of Corruption from Infiltration;
- Theft and Fraud;
- Unauthorised Disclosure;
- Drug Use and Supply; and
- Inappropriate and Notifiable Associations

The Business Plan for 2021/22 is expected to see an overhaul of the current system with:-

- New governance and performance reporting framework;
- Misconduct process structural review commenced;



- Review and restructuring of Anti-Corruption intelligence handling processes;
- Demand capacity review of Service Vetting Unit; and
- Research and Scoping

PSNI proposed that they could return to brief Members later in the year when their Professional Standards Report for 2020/21 would be completed.

### Review of the Code of Ethics

PSNI informed Members that work on the Review of the Code of Ethics started in 2017 and had previously been before the Committee for consideration. PSNI were proposing a new approach to the one previously tabled and had provided a draft version adapted by analysing of officer misconduct. PSNI were seeking Members input on the principles of how the Code is written and whether it is worthwhile progressing along these lines.

PSNI believe that this should be an aspirational code that will support the ethical ethos of the organisation. The current Code of Ethics from 2008 is considered by many as a code of conduct and the majority interacting with it are involved with investigative conduct. It is anticipated that the new code should have ethical values relatable to all officers.

PSNI consider that such a Revised Code of Ethics will require compliance with any PSNI service instruction, guidance and policies providing more accountability for officers including greater latitude for those disciplined or engaged in misconduct hearings. Additionally, this would bring it up-to-date and shift emphasise to more relevant current discipline issues rather than some issues dealt with under the 2008 Code that are infrequent now.

### Notifiable Memberships

PSNI reported that this was the fourth review of Notifiable Memberships and that they were consulting with their obligated statutory organisations including the Board, Department of Justice and Northern Ireland Human Rights Commission. In addition, they had engaged in consultation with 76 further organisations with a total of ten responding.

PSNI engaged with stakeholders to get views on:-

- Are the current three criteria used as a basis to define and create a notifiable membership list of organisations still relevant?
- Is the current list of organisations appropriate and relevant?
- Should the Chief Constable continue to produce a specified 'list of organisations' within a Notifiable Memberships policy?

Following PSNI's presentation Members engaged in discussion with DCC Hamilton and Chief Superintendent Knox seeking clarification and raising their concerns on issues covered by PSNI. This included the following issues:-

#### Professional Standards Report

- Members queried the complaints against the use of spit and bite guards and DCC Hamilton confirmed that evidence including body worn video is provided to the Ombudsman for investigation with or without complaint. He was not aware of any complaints from the public to date and that the Ombudsman had identified two incidents of spit and bite guard use for investigation;
- A further breakdown of the 'Other's' category for Anti-Corruption investigations was discussed and this should be available when the Annual Report is completed;
- A summary of a breakdown in the duration and the longest suspensions were discussed included reasons for why some suspensions were still ongoing;
- Is there a consistency of approach for charges against officers and are there any repeat offenders and the circumstances that would allow this to happen;
- What determines repositioning; and
- Discussion on whether the Professional Standards and Discipline Branch dealt with Whistleblowing and how it was governed by the organisation.

#### Review of the Code of Ethics

- Ethical Standard 3.6 may cause concern for officers with a faith background having personal intolerances of pro-abortion groups;
- Does 'aspirational' give the wrong message and should the Code of Ethics be inspirational;

- That the version previously tabled with the Board which included Members proposed amendments should not be ignored;
- Need for any new Code of Ethics to be robust and not weakened through generalisation of a revised code;
- Requirement for consistency in policy for political causes as well as organisations as support for one cause may voice opposition to others;
- A member indicated that they welcomed the document as they believed that a high level code of ethics and a code of conduct promotes ethical standards at the top and makes the organisation much stronger; and
- Discussion around ethical standards and whether they were policy or conduct rather than ethics.

#### Notifiable Memberships

- Some Members expressed that it was good to have a prescribed list as they would have no faith in self-declaration;
- If using a prescribed list, it requires to be complete and include all organisations;
- Some political parties have submitted responses to consultation confirming no support for lists as they considered that membership of legal organisations should not be notifiable;
- DCC stated that in his experience Notifiable Membership had not affected organisational decisions such as operational matters or promotions. He gave an example of when a conflict of interest may arise in circumstances such as a procurement process when a challenge could be raised if an officer was to give a contract to a friend in at their local golf club;
- 56 declarations were made by officers against 'other organisations' to which it was people being over cautious about membership to sport, military or church organisations; and
- What happens if a conflict/notifiable membership not declared;

The Chair thanked PSNI for their attendance and they left the meeting.

Following discussion it was:-

**AGREED:-**

To write to PSNI to provide a follow-up report into complaints made about the use of spit and bite guards. **(AP5)**

It was also:-

**AGREED:-**

For the Board's Human Rights Advisor to provide a future paper to Members in relation to the Human Rights aspect of Notifiable Membership lists. **(AP6)**

And it was:-

**AGREED:-**

To request PSNI's policy on 'Whistleblowing', how it is operated and whether there are any statistics available. **(AP7)**

### **6.3 PULSE – THE PERFORMANCE FRAMEWORK FOR THE PSNI**

As a result of the additional special item dealt with a Performance Committee it was agreed that this item would now be tabled at a future Performance Committee. **NOTED**

### **6.4 HUMAN RIGHTS ADVISOR UPDATE REPORT FOR JANUARY 2021**

Members were provided with a paper to update them of the work that the Board's Human Rights Advisor, John Wadham had completed during January 2021 that included:-

- Taking forward the recommendations of the COVID report;
- Use of Spit and Bite Guards;
- Work on the Human Rights Monitoring Framework;

- Monitoring the Covert Human Intelligence Sources (Criminal Conduct) Bill; and
- Provision of brief notes on the Review of the Human Rights Act and the progress of biometric retention for Members consideration.

Mr Wadham informed Members that his future work included:-

- Human Rights Monitoring Framework review;
- The Human Rights Annual Report and COVID-19 Report responses from PSNI;
- Attending the Gold Command meetings in relation to the Murder Archive in PSNI's Seapark operation;
- Performance Committee (14 February) and Board Meeting (4 March);
- Monitoring authorisations for stop and search under the Justice and Security Act;
- Monitoring the Covert Human Intelligence Sources (Criminal Conduct) Bill; and
- Meetings with PSNI lawyers and other officers.

Mr Wadham engaged in discussion with Members in relation to biometric retention including an update on the Department of Justice consultation and proposals to be included in the Justice Bill which is likely to be introduced to the Assembly in early 2021, with the expectations that provisions may not commence until late 2022.

It was:-

**AGREED:-**

To consider a future briefing from the PSNI to the Committee on Biometric Retention provisions. **(AP8)**

Additional discussions followed regarding the Review of the Human Rights Act and the possibilities that PSNI may respond to the call of evidence before the end of the 3 March 2021 deadline.

Following discussion it was:-

**AGREED:-**

The Human Rights Advisor would engage with PSNI to identify if they participated in the call of evidence. **(AP9)**

**6.5 NIO CONSULTATION ON NON-JURY TRIAL PROVISIONS 2020/21**

The Director of Performance provided Members with an update regarding the Northern Ireland Office launch of a public consultation on the non-jury trial provisions in the Justice and Security (Northern Ireland) Act 2007.

Members were reminded that this was previously tabled at the Board meeting on 4 February 2021 and they were asked to note the consultation letter and discuss and agree a draft response to the consultation.

The Board's Human Rights Advisor informed Members he had completed some initial research regarding the Human Rights issues and perhaps consideration could be given to some of recommendations from David Seymour CB, Independent Review of JSA.

Members acknowledged that there would be a difference of opinion on this issue of non-jury trials and that political parties have the opportunity to provide their own responses to the public consultation.

No draft response was agreed. **NOTED.**

## 7. QUESTIONS FOR THE CHIEF CONSTABLE

Members **noted** that responses from the Chief Constable in relation to their question on the HMIC recommendation and progress the improvements of the recording system for use of force and improving the quality and accuracy of the data.

Members **agreed** that they had no questions arising out of the meeting for the Chief Constable.

## 8. COMMUNICATION ISSUES

Members were asked to consider if there were any communications issues arising from the meeting. No communications issued were raised.

## 9. ANY OTHER BUSINESS

A Member requested that it be put on record their gratitude for the volume of work completed by Officials within a short space of time to inform Members and make arrangements with PSNI to address difficult and contentious issues.

## 10. DATE OF NEXT MEETING

It was agreed that the next meeting would take place on Thursday 11 March 2021 at 9.30am and Officials would contact Members in advance with arrangements.

The meeting closed at 2.40pm.