

NORTHERN IRELAND POLICING BOARD

MINUTES OF THE HUMAN RIGHTS & PROFESSIONAL STANDARDS COMMITTEE MEETING HELD ON THURSDAY, 11 AUGUST 2011 AT 9:30AM IN WATERSIDE TOWER, BELFAST

PRESENT:

MEMBERS:

Mr Conall McDevitt (Chairperson)
Mr Ryan Feeney (Vice Chairperson)
(1) Mr Ross Hussey
(2) Mr Gerry Kelly
(3) Mr Robin Newton
(3) Mrs Joan O'Hagan
(3) Mr Gearóid Ó hEára
Ms Caitríona Ruane
Ms Deborah Watters

OPONI IN ATTENDANCE:

(4) Mr Al Hutchinson, Police Ombudsman
(4) Mr Pete O'Sullivan, Director of Investigations

PSNI IN ATTENDANCE:

(4) Mr Drew Harris (ACC Crime Operations)
(4) D/Chief Superintendent Tim Hanley, C2
Branch
(4) D/Inspector, Crime Operations

BOARD'S HUMAN RIGHTS ADVISOR IN ATTENDANCE:

(5) Ms Alyson Kilpatrick

OFFICIALS IN ATTENDANCE:

Mr Peter Gilleece, Director of Policy
5 Board Officials

- (1) Part item number 7
- (2) Item number 3.4 to close.
- (3) Item number 1 to part item 7
- (4) Part item number 7
- (5) Item number 5 to close

1. APOLOGIES, ETC

There were no apologies. NOTED.

No conflicts of interest arising from the agenda were declared by Members.

2. MINUTES OF THE HUMAN RIGHTS AND PROFESSIONAL STANDARDS COMMITTEE MEETING HELD ON 23 MARCH 2011

The Committee noted the minutes of the Committee meeting held on 23 March 2011, which had been approved by the Board on 7 April 2011.

3. CHAIRPERSON'S BUSINESS

3.1 November Committee Date

The Chairperson advised that, in order to accommodate a Policing Plan Strategy event, it was proposed to move the November Committee meeting from 10 November to 9 or 11 November 2011. Members were asked to confirm their availability for both dates with the Secretariat, who would arrange the meeting on the date that suited the majority of Members.

3.2 Meeting With Bob Whalley And David Anderson

The Chairperson advised that the Interim Chief Executive, Director of Policy and Human Rights Advisor had met with Bob Whalley and David Anderson in late July 2011.

It was:-

AGREED:

That Mr Whalley and Mr Anderson should be invited to a future Committee meeting.

3.3 Hacking Enquiries

The Vice Chairperson of the Board had written to the Chief Constable on 3 August 2011 to seek confirmation on whether the PSNI would be included in the Review by Sir

Denis O'Connor to consider instances of undue influence, inappropriate contractual arrangements and other abuses of power in police relationships with the media and other parties. The Chairperson of the Committee advised that the PSNI's response would be copied to the Committee upon receipt.

The Vice Chairperson of the Board advised that at present it appeared that there were no implications arising for the PSNI in relation to the allegations. NOTED.

3.4 Reform Of Police Discipline

The Chairperson referred Members to a briefing paper on proposed reforms of police discipline. He advised that it was planned that the Committee would seek an update from the Deputy Chief Constable at the November 2011 meeting. NOTED.

3.5 OPONI / NIPB Research Project– Learning Disability

The Chairperson referred Members to a briefing paper on a joint research project undertaken by the Board and OPONI in relation to learning disability. He reminded Members that the report was scheduled to be launched at Clifton House, Belfast on 24 August 2011 and that all Members had been invited to attend. NOTED.

3.6 Parades

The Chairperson sought the views of Members on a proposal to invite representatives from PSNI and the Parades Commission to a future meeting to discuss issues arising from the policing of the "marching season". The Director of Policy advised that the Chief Constable had been asked to provide a written report to the Board in relation to the policing of parades for the September 2011 meeting.

Member raised concerns about apparent differences in dealing with public disorder in Northern Ireland where PSNI AEPs had been used, and in London, Manchester and other English cities where police has not used AEPs.

Following discussion, it was:-

AGREED:

- That officials should gather further information in relation to the way in which public disorder was policed in Great Britain; and
- A PSNI representative be invited to the September 2011 meeting to give a PSNI perspective on the policing of disorder in Belfast during recent months.

4. APPOINTMENT PROCESS FOR HUMAN RIGHTS ADVISOR

The Committee considered a paper which had been presented to the Board meeting on 16 June 2011 in relation to the provision of human rights advice to the Board. At the Board meeting, it had been agreed that the Committee should consider the process for procuring human rights advice and bring a further paper to the Board for consideration.

The Committee considered the options for securing human rights advice. Following discussion, the unanimous view was that the most appropriate option was for a public appointment process.

The Committee considered an indicative specification for the post. Discussion focused on the need for the successful candidate to be independent, particularly from ongoing or potential conflicts of interest without precluding their opportunities to take on other work. Officials were asked to review the wording of the draft specification to reflect the views expressed by Members.

The Committee discussed the role of the advisor in providing human rights advice to the Board on sensitive issues facing policing, e.g. contentious parades, TASER, Operation Stafford and the advisor's interface with PSNI and the Security Service. Members discussed the vulnerability associated with one individual taking forward this area of sensitive work on behalf of the Board.

The Committee considered the composition of the interview panel for the appointment of a Human Rights Advisor, discussing the qualities required and the need for the appointment process to be transparent.

Members discussed the role of the Special Purposes Committee (SPC) in monitoring PSNI compliance with human rights legislation following the transfer of Operation Stafford. Members discussed a forthcoming trial and the consensus view was that consideration should be given to postponing the meeting of the Special Purposes Committee pending a further briefing from the Director of Policy, following discussions with family representatives.

It was:-

RECOMMENDED:

That the Board should give approval to a public appointment process for the post of NIPB Human Rights Advisor.

It was:-

AGREED:

- That officials should seek legal advice in relation to the assessment of potential conflicts of interest in respect of potential candidates;
- That officials should review the wording of the specification in relation to the demonstration of independence of the appointee and a revised draft be brought to the Committee;
- That officials should obtain job specifications for similar posts internationally;
- That officials should review the proposed interview panel, to reflect the views of the Committee and revised proposals brought to the Committee;
- That officials should provide a paper for the Committee regarding the transfer of Operation Stafford from HET to C2 and background to SPC; and
- That officials should review the date of the next Special Purposes Committee meeting.

5. FIRST DAY BRIEFING ON COMMITTEE ROLE

The Committee considered a paper which set out its statutory roles and a proposed Programme of Work for the period September 2011 to March 2012.

5.1 Lesbian, Gay, Bi-Sexual And Transgender Thematic Review

The Committee considered a paper which provided background on meetings that had been held to date in relation to the Committee's ongoing Thematic Review into policing with and for Lesbian, Gay, Bi-Sexual And Transgender (LGB&T) individuals. Members discussed good practice in meeting with transgender groups. Members also discussed the negative experience of transgender groups and individuals in their dealings with the police and the Board. The consensus view was that in future, meetings with transgender groups should be separate from LGB groupings and at a time convenient for all parties to attend.

Members also discussed the need to harmonise the work of the Human Rights and Professional Standards Committee and Community Engagement Committee in taking forward issues arising from the Thematic Review.

It was:-

AGREED:

- To hold a roundtable meeting to discuss the Board's ongoing LGB&T Thematic Review; and
- That officials should consider separate meetings with representatives from lesbian, gay and bi-sexual groupings and transgender groupings.

5.2 Thematic Review Of Police Powers To Stop, Search And Question

The Committee considered a paper which provided an update of the current status of the Board's Thematic Review of Police Powers to Stop, Search and Question individuals. Officials advised that the report had not yet been published, in view of

ongoing work by the Home Office further to a recent European Court of Human Rights ruling on the exercise of Section 44 Powers of the Terrorism Act 2000. The Board's Human Rights Advisor updated Members on the work being carried out by the Independent Reviewer of Terrorism Legislation (David Anderson) and the Independent Reviewer of the Justice and Security Act (Bob Whalley).

It was:-

AGREED:

- That the Board's draft report should be updated to take account of any amendments in the legislation as a result of the Home Office review.

5.3 Retention And Destruction Of DNA Samples, Profiles And Fingerprints

The Committee considered a paper which set out background information on the statutory framework governing the retention and destruction by the police of DNA samples, profiles and fingerprints.

Officials informed Members about the background to a ruling in May 2011 by the Supreme Court that the ACPO guidelines in relation to DNA samples, profiles and fingerprints were incompatible with Article 8 of the European Convention on Human Rights. The Supreme Court had indicated that it was open to ACPO to reconsider and amend their guidelines pending Government action rather than waiting for a new legislative framework. Equally the PSNI could reconsider and amend its policy on retention and destruction of DNA samples, profiles and fingerprints.

Officials highlighted that amendments to the legislative framework for the retention and destruction of DNA samples, profiles and fingerprints are a devolved matter for the Northern Ireland Assembly and DOJ had launched a 12 week public consultation on the issue in March 2011, to which the former Committee had responded. It was anticipated that the new framework would be included in the Compliance Bill to be introduced in the Assembly before the end of 2011.

It was:-

AGREED:

- To write to ACC Criminal Justice to ask if, in the light of the recent decision of the Supreme Court, the PSNI has reconsidered proactively revising its policy on retention and destruction, and if so, the outcome of this consideration; and
- That the Committee be provided with a copy of the PSNI response to the Department of Justice (DOJ) consultation and to outline any other discussions PSNI has had with the DOJ in respect of the proposed new legislative framework for Northern Ireland with particular reference to timescales and resourcing issues.

5.4 Children And Young People Thematic Review

The Committee considered a paper which provided an overview of the key findings in the Board's Thematic Review of Policing with Children and Young People. Officials highlighted that PSNI had accepted all the recommendations contained in the review, with the exception of one relating to staffing levels.

Members discussed the benefits of PSNI officers being dedicated to take forward anti social behaviour issues and the reticence of PSNI in pursuing the recommendation concerning staffing. The consensus view was that there was merit in the Board pursuing this issue again if the recommendation had not been progressed by the end of autumn.

During discussion, officials advised that it was anticipated that further information would be available from PSNI at the next meeting in relation to progress on youth diversion.

5.5 Thematic Review On Domestic Abuse

The Committee considered a paper which provided an update outlining PSNI progress in implementing recommendations made in the Board's Domestic Abuse Thematic Report. NOTED.

5.6 Human Rights Annual Report 2010

The Committee considered a paper which provided an overview of the key findings in the Board's Human Rights Annual Report 2010. The Committee also considered the PSNI Human Rights Programme of Action 2010 – 2011. NOTED.

5.7 Human Rights And Professional Standards Committee Programme Of Work 2011 – 2012

The Committee considered a proposed Programme of Work for the Committee for the period August 2011 to March 2012.

Due to time constraints, it was:-

AGREED:

That Members consider the Programme, discuss with the Director of Policy as necessary and refer the Programme of Work to the next Committee meeting.

6. POLICE BEAT ARTICLE

The Committee considered a paper which set out issues arising from an article in the February 2011 edition of Police Beat entitled "Board Shoots Itself In The Foot".

Officials advised that the article had contained some inaccuracies and had made a number of derogatory comments about the Board's work and approach to human rights issues. The article was considered at the Board meeting in March 2011, when it was

agreed that representatives from the Federation should be invited to meet with Board Members to discuss the article. The Chairman of PFNI (Police Federation for Northern Ireland) had indicated that he would welcome the opportunity to meet with Members of the newly constituted Board. The Board's Chairperson had subsequently advised the PFNI Chairman that the article would be brought to the August 2011 meeting of the Committee for consideration.

Members discussed whether the Committee should meet with PFNI formally or informally, the need for the Board to ensure a "right to reply" to the article before meeting with PFNI and the content of a letter to PFNI. Members also discussed the absence of comment from the Chief Constable in response to the article and the commitments that all members of PSNI had to human rights under the Code of Ethics.

It was:-

AGREED:

- That the Chairperson and Vice Chairperson of the Committee should write to PFNI to seek a meeting;
- That the Board should seek agreement for a "right of reply" to the article in Police Beat in advance of the meeting.

7. BRIEFING ON RELEASE OF POLICE OMBUDSMAN'S REPORT INTO THE LOUGHINISLAND MURDERS

The Chairperson advised Members that the Police Ombudsman for Northern Ireland had accepted an invitation to meet with the Committee to discuss the wider issues arising from his recent report into the Loughinisland murders. The Chairperson referred Members to a briefing information contained in the papers.

The Chairperson reminded Members that the focus of the Committee was on the human rights implications arising from the report.

The Chairperson welcomed Mr Hutchinson and Mr O'Sullivan to the meeting.

The Police Ombudsman outlined the role of his Office in investigating allegations against the police in connection with the murders at the Heights Bar in Loughinisland on 18 June 1994 and the subsequent police investigation. He outlined his findings and commented on each of a series of failings in the police investigation. He commented on the lack of engagement by the police with the families of the victims. The Ombudsman stated that he had found no evidence of collusion.

Members put a number of questions to the Ombudsman about various aspects of his report, seeking further information and clarification in relation to:-

- His view that the allegation of non-compliance with Article 2 of the European Convention on Human Rights was not a matter for the Ombudsman in this case;
- The definition of "collusion" that had been applied by the Ombudsman in this case;
- The Ombudsman's view on the PSNI decision not to release a ballistics report relating to the case;
- Allegations that the Ombudsman had failed to pursue the role of police agents in the case;
- The Ombudsman's views on the refusal of a former senior investigating officer to co-operate with OPONI investigation;
- The disappointment expressed by the families of the victims about the content of the Ombudsman's report;
- The response of PSNI to the recommendations made in the report;
- The impact of missing records and exhibits on the Police Ombudsman's investigation of the case;
- The competence and professional standards displayed by the police in investigating the murders during the last 17 years;
- The independence of the Ombudsman's office and his confidence in the independence of OPONI.
- The Ombudsman's consideration of whether there had been any acts of deliberate omission; and

- The submission of reports by the Ombudsman in relation to criminal and misconduct matters involving Police Officer 11.

The Chairperson thanked Mr Hutchinson and Mr O'Sullivan for their contribution and they left the meeting.

The Chairperson welcomed Mr Drew Harris, ACC Crime Operations and his colleagues to the meeting. ACC Crime Operations informed Members about the PSNI response to the Ombudsman's recommendation that the Chief Constable should commission a full major crime review of the Loughinisland murder investigation. He advised Members about the processes associated with a serious crime review. The Committee was advised that in a systematic and painstaking way, the review considered good practice, poor practice and omissions.

With regard to the police investigation to date of the Loughinisland murders, Members raised a number of areas with the PSNI representatives:-

- The background to the disposal of a vehicle involved in the incident;
- Missing records and information available on HOLMES;
- How the PSNI were currently liaising with the families of the victims and how the families would be made aware of any new evidence;
- The refusal of the PSNI to release the ballistic history of a weapon used in the attack and the differing requirements of an HET review of a murder and a serious crime review investigation requirements;
- An apparent change in policy by PSNI on releasing ballistics history of weapons – PSNI agreed to advise the Committee of the date when the policy on releasing details of ballistics history was changed;
- The policy in relation to officers facing disciplinary offences and the circumstances whereby no action had been taken against Police Officer 11 - PSNI agreed to clarify the date that Police Officer 11 left the service;
- The PSNI's views on the competence of the initial and subsequent investigations into the murders;
- The current resources and effort being put into the serious crime review and the ongoing investigation;

- The alleged involvement of 2 CHIS (Covert Human Intelligence Sources) in the murders;
- The PSNI policy of neither confirming or denying regarding CHIS;*
- The PSNI's views on the decision of the former senior investigating officer not to co-operate with the OPONI investigation;
- The access of OPONI to intelligence records; and
- The timescale for completion of the serious crime review and the ongoing investigation.
- The lack of engagement between the police and the families of the victims and the impact this had on investigations.

The Chairperson thanked ACC Harris and his colleagues for their contribution and they left the meeting.

**Section 29 of the Regulation of Investigatory Powers Act requires the police to have in place satisfactory arrangements for dealing with CHIS security and welfare. This may justify non-disclosure of information, even in circumstances where disclosure would not necessarily expose the CHIS to danger. This is because welfare is a broader concept than mere protection from danger.*

8. DEPARTMENT OF JUSTICE PROPOSALS TO AMEND INDEFINITE NOTIFICATION REQUIREMENTS FOR SEX OFFENDERS

The Committee considered a paper which provided information on legislative amendments proposed by the Department of Justice (DOJ) in respect of sex offender notification requirements and Violent Offender Orders.

Officials advised that the management of sex offenders is a devolved matter for the Northern Ireland Assembly and that DOJ had recently launched a consultation containing proposals to reform existing legislation.

It was:-

AGREED:

To write to ACC Criminal Justice to ascertain the views of PSNI in respect of the DOJ proposals.

9. INFORMATION PAPERS

The Committee noted information papers circulated separately to Members in Volume 2 of the papers.

10. QUESTIONS FOR THE CHIEF CONSTABLE

There were no matters arising.

11. COMMUNICATION ISSUES

It was:-

AGREED:

That a news release should be issued in respect of the meeting with the Police Ombudsman and ACC Crime Operations concerning the Loughinisland murders.

12. ANY OTHER BUSINESS

12.1 Minutes Of Meetings

A Member sought clarification on the availability of a verbatim record of comments on significant issues made by Members and others attending Board and Committee meetings. Officials outlined the current practice regarding the minuting of Board and Committee meetings.

It was:-

AGREED:

That the format of recording of minutes should be considered by the Corporate Policy, Planning and Performance Committee.

13. DATE OF NEXT MEETING.

The date of the next meeting was arranged for Thursday, 8 September 2011 at Waterside Tower, Belfast.

(Meeting closed 2:20pm).

Secretariat

August 2011

Chairperson