

HUMAN RIGHTS ANNUAL REPORT

2012

Monitoring the compliance of the
Police Service of Northern Ireland
with the Human Rights Act 1998

FOREWORD



I am pleased to present this eighth Human Rights Annual Report, published by the Northern Ireland Policing Board (the Policing Board).

The Policing Board is required by section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the Human Rights Act 1998. In order to assist it with fulfilling this duty, the Policing Board appointed Human Rights Advisors in 2003 to devise a framework which sets out in detail the standards against which the performance of the police in complying with the Human Rights Act 1998 is monitored by the Policing Board and identifies key areas to be examined. The Policing Board's Human Rights and Professional Standards Committee (the Committee), with the assistance of the Human Rights Advisor, is responsible for implementing the monitoring framework.¹

Every year since 2005 the Human Rights Advisor has presented the Committee with a Human Rights Annual Report. The Annual Report contains an overview of the monitoring work carried out during the year by the Committee and the Human Rights Advisor, highlighting both good police practice and areas in which practice could be improved. Formal recommendations are made where it is believed that PSNI action is necessary. Since 2005 the PSNI has implemented 192 recommendations contained within the Annual Reports. That is testament to PSNI's commitment to ensuring that a positive human rights culture and awareness exists within the organisation.

¹ The Human Rights and Professional Standards Committee consists of 4 Members of the Legislative Assembly (MLAs) and 4 independent Members: Conall McDevitt MLA (Committee Chair), Ryan Feeney (Committee Vice Chair), Professor Brice Dickson, Gerry Kelly MLA, David McIlveen MLA, Joan O'Hagan, Caitriona Ruane MLA and Deborah Watters.

Another way in which the Committee and the Human Rights Advisor monitor the performance of the PSNI in complying with the Human Rights Act is by way of a thematic review. This mechanism enables a more in-depth and dynamic examination of specific areas of policing from a human rights perspective. A key feature of this approach is use of the community's experience of policing to assist with informing the evidence base against which police policy and practice is evaluated.

To date, the Committee has undertaken four human rights thematic reviews, three of which have been published:

- The first, examining the policing of domestic abuse, was published in March 2009 and made 14 recommendations for PSNI to implement. A further report recording the progress of the PSNI in implementing the 14 recommendations was published in May 2011.
- The second review, examining policing with children and young people, was published in January 2011 and made 30 recommendations for PSNI to implement. An update report on PSNI progress in implementing the 30 recommendations will be published during 2013.
- The third thematic review considered the way in which PSNI engages with lesbian, gay, bisexual and transgender individuals across a range of circumstances. It was published in March 2012 and made 18 recommendations for PSNI to implement. An update report on PSNI progress in implementing the 18 recommendations will be published in due course.
- The fourth thematic review, examining the use of police powers to stop, search and question individuals under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007, is due to be published during 2013.

Publication of a thematic review signals the beginning of a process of monitoring and review. The Committee and the Human Rights Advisor continue to engage with PSNI on the issues and monitor the implementation of the thematic recommendations. They continue to meet with stakeholders to discuss how the review has affected their experience of policing.

Given this in-depth thematic work, the Human Rights Annual Report represents only an overview of the monitoring work carried out by the Committee during 2012. Findings and recommendations made in thematic reviews are equally as important, and carry as much weight as, recommendations made in Human Rights Annual Reports.

The Human Rights Annual Report 2012 makes 11 new recommendations for the PSNI to implement and it records that 1 recommendation from last year remains outstanding. The Committee, with the assistance of the Human Rights Advisor, will oversee PSNI's implementation of these recommendations and will report further next year.

On behalf of the Policing Board I would like to thank the Human Rights Advisor, Alyson Kilpatrick BL, for producing this Report, for her commitment to the human rights monitoring work and for the continued expert advice and guidance she provides throughout the year.

Brian Rea MBE JP

Chair

Northern Ireland Policing Board

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INTRODUCTION

With the coming into force of the Human Rights Act 1998 all public authorities, including the police, are under a duty to act in a way which is compatible with the individual rights and freedoms contained within the European Convention on Human Rights (the ECHR).¹ That requires not only that police officers avoid infringing human rights but that they take proactive steps to secure individuals' rights. Human rights derive from the inherent dignity and worth of the human person: they are universal and indivisible. Their protection is fundamental to democracy, peace and the rule of law. To ensure human rights compliance there must first be a clear and overt commitment to democratic policing based on accountability to the community and adherence to human rights standards. Human rights are a set of shared principles and values that define the relationship between the police and the community. The police fight crime, they maintain public order but they do so in association with the community and for the benefit of the community. As Lord Scarman pointed out, back in 1981, the police "enforce the law on behalf of the community; indeed they cannot effectively enforce it without the support of the community".²

Importantly, the Human Rights Act protects members of the public and police officers and provides a framework within which the police may operate. The rights enshrined in the ECHR go to the heart of crime prevention and policing – the application of human rights principles has been shown to turn ineffective policing into effective policing. Violation of human rights never contributes to the maintenance of public order and security – it only exacerbates their deterioration. The Parliamentary Human Rights Joint Committee recorded, in March 2009, "a lesson to be drawn from Northern Ireland was that: You do not have to choose between strong, effective policing or the human rights approach. You can marry the two."³ It is essential that message is promoted.

¹ By virtue of section 6 of the Human Rights Act 1998.

² *The Brixton Disorders 10 – 12 April 1981*, Report of an Inquiry by the Rt. Hon. The Lord Scarman OBE, November 1981.

³ *Demonstrating Respect for Rights? A Human Rights Approach to Policing Protest*, Human Rights Joint Committee, March 2009.

The extent to which the police service is accountable to the community it serves, including those who have broken the law, has often been described as the measure of a society's freedom. That means the administrative and legal structures that guarantee accountability must be robust. Usually, it is when an abuse of police power is alleged that the structures of accountability appear prominent. That is important but it is also important that more routine encounters between the police and the community (whether as victim, witness, suspect or a member of the public) are open to scrutiny. Police accountability requires those who hold intrusive and coercive powers to explain their actions and the consequences of their actions. That enables police action to be measured against agreed standards. Accountability mechanisms may also reduce the potential for discrimination and help to develop a greater respect for human rights in policing. Hence, the continued need for scrutiny and monitoring of police actions.

In that vein, the Policing Board maintains a close interest in the progress of the PSNI's Policing with the Community Strategy, which it considers to be the only really effective model when underpinned by a human rights based approach to policing. It also has the greatest potential for ensuring peace, democracy and the rule of law. Community style policing emphasises the importance of democracy as it depends upon the police service reflecting the demographic and social characteristics of the community. The Policing Board continues to monitor the extent to which that is true of the PSNI.

When police powers are used arbitrarily or unlawfully, or in ways that discriminate against any social, ethnic, racial, cultural or religious group, or without the consent of, or accountability to, the community, the legitimacy of the police and the democratic state itself is threatened. Accountability is integral to the Policing with the Community Strategy and provides a basis for police legitimacy. It is the essence of democracy and community policing that police powers can only be justified to the extent that they are lawful, necessary, proportionate, accountable and fair.

The Policing Board is under a statutory duty to secure the maintenance of the police in Northern Ireland; to ensure that the police are effective and efficient; and to hold the Chief Constable to account. In carrying out those functions, the Policing Board is

under a further duty to monitor the performance of the police in complying with the Human Rights Act 1998.⁴ It does this in accordance with the human rights monitoring framework which was drawn up by the Policing Board's Human Rights Advisors in 2003 and agreed with PSNI. The process of monitoring human rights compliance is based upon three broad principles: that it is the PSNI's performance as a whole (the success as well as any failure) that is monitored; that the process should be dynamic and one in which there is a dialogue between the PSNI and the Policing Board, which recognises and addresses problems as they arise; and, that the process should not be retrospective.

The Policing Board also monitors compliance with the Human Rights Act 1998 according to the standards set out in the PSNI Code of Ethics. The Code is intended to provide an ethical framework for the decisions and actions of police officers in Northern Ireland. It is also intended to make police officers aware of the rights and obligations arising under the Human Rights Act 1998. Both the Code of Ethics and the human rights monitoring framework are grounded in the jurisprudence of the European Court of Human Rights, which underpins the Human Rights Act 1998. Other human rights instruments are used to supplement that jurisprudence where there are gaps or ambiguities.

Using the mechanism of the Human Rights Annual Report, the Human Rights and Professional Standards Committee on behalf of the Policing Board, reports on the PSNI's work in 14 areas of policing and measures the PSNI's progress in implementing recommendations made by previous Human Rights Annual Reports. In addition to monitoring PSNI compliance in, for example, policy, training, investigations and operations, the Policing Board through the Committee assesses the impact of a human-rights-based approach to decision-making on the ground. The Committee continues to pay particular attention to those areas of concern to the community including: the use of powers to stop and search or question; covert policing; the policing of hate crime; the police response to domestic abuse; retention of DNA material and profiles; policing with children and young people; the use of force; and, the policing of disorder. They are examined in detail with

⁴ By sections 3(1), (2) & (3)(b)(ii) of the Police (Northern Ireland) Act 1998.

recommendations made where it is considered that further work is required. This qualitative assessment is enhanced further by a thematic approach to monitoring compliance in which areas of concern are identified and subjected to in-depth scrutiny.

The thematic approach provides an opportunity for the community to engage with the Policing Board and assist it by contributing to the evidence base against which the performance and behaviour of the PSNI can be judged and assessed. To date, the Committee has published three thematic reviews: domestic abuse; policing with children and young people; and, policing with and for lesbian, gay, bisexual and transgender people. A fourth review of police powers to stop, search and question is underway and is due to be published in the coming months. The Committee is also about to commence a dedicated review of public order policing. Given the in-depth nature of the thematic work, this Human Rights Annual Report represents an overview of the monitoring work carried out by the Committee during 2012. Findings and recommendations made in thematic reviews carry as much weight as recommendations made in Human Rights Annual Reports.

The Policing Board is, rightly, to be credited for the important work it has undertaken to date. That work has had a significant impact on policing locally and internationally. For example, the thematic review of policing with children and young people has been adopted as guidance for police services and other agencies by the Equality and Human Rights Commission for England and Wales and the PSNI Code of Ethics has been cited by police services in England, Wales and Scotland as inspiration for their new Codes of Ethics. The Policing Board has been leading the field in this area of work and is reassured that others both nationally and internationally are recognising the value of a focused and robust approach to monitoring human rights compliance. In particular, that police performance (or day to day policing as some might call it) is enhanced by human rights monitoring. Indeed this point has been recognised by the Deputy Chief Constable who has expressed the view that the Human Rights Act was “one of the best things that could have happened to policing here” because it provided a clear framework for decisions.⁵ The Policing Board’s

⁵ *Human Rights Act does not hinder PSNI*, Newsletter, 5 November 2011

commitment will not wane but will be strengthened with the assistance of the community it serves.

In the 2011 Human Rights Annual Report, 16 new recommendations were made. The PSNI has implemented 15 of those recommendations in full with 1 recommendation recorded as outstanding. The PSNI has implemented 192 recommendations contained within Human Rights Annual Reports since 2005 and it has accepted 61 recommendations contained within human rights thematic reports. That is a significant achievement and demonstrates a continuing commitment both to the development of a human rights culture within the PSNI and to the accountability mechanism itself.

In this Human Rights Annual Report (the eighth published to date), 11 new recommendations have been made concerning: training, policy, stop and search, covert policing, complaints and discipline and the treatment of suspects. As in previous years, I have been afforded access to documentation, have observed operational policing and training and have had the benefit of speaking with police officers of all ranks. Assistant Chief Constable George Hamilton and Chief Superintendent Mark Hamilton (both of the Service Improvement Department) have been extremely helpful in the production of this report and throughout the monitoring work undertaken in the relevant period. They have both provided the Human Rights Advisor and the Committee with comprehensive and considered briefings throughout the year, for which we are all grateful. The Policing Board looks forward to receiving the PSNI's programme of action on how it proposes to respond to the recommendations in this report and to a positive working relationship in which both organisations achieve the shared objective of improved policing for all of the people of Northern Ireland.

In conclusion, I would like to extend a personal thank you to those Policing Board Officials and Members who have provided me with support, advice and assistance in the preparation of this year's Human Rights Annual Report and thematic reviews. In particular, I owe a debt of gratitude to the following individuals. Dr Peter Gilleece, Director of Policy, has driven continuous improvement in the work of the Policing Board in a changing and challenging environment. Siobhan Fisher, Policy and

Monitoring Manager, is the person to whom many of us turn for her professional expertise. Gillian Robinson, Human Rights Assistant, has been instrumental in producing this Human Rights Annual Report and thematic reports.

ALYSON KILPATRICK BL

HUMAN RIGHTS ADVISOR TO THE POLICING BOARD

1. PSNI HUMAN RIGHTS PROGRAMME OF ACTION

A central proposition of the Report of the Independent Commission on Policing for Northern Ireland 1999 (the Patten report), was that the fundamental purpose of policing should be, in the words of the Belfast Agreement 1998, “the protection and vindication of the human rights of all.” It concluded that “There should be no conflict between human rights and policing. Policing means protecting human rights.”⁶

Recommendation 1 of the Patten report required that there should be a “comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach.”⁷ 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 officers aware of their obligations under the Human Rights Act 1998; and the incorporation of human rights principles into all aspects of 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. That response would be monitored by the Policing Board’s Human Rights and Professional Standards Committee (the Committee). PSNI agreed with this proposal and has published a Human Rights Programme of Action each year since 2005.

⁶ *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, page 18, paragraph 4.1.

⁷ *Ibid*, page 20, paragraph 4.6.

The Policing Board's Human Rights Annual Report 2011, published on 3 February 2012, made 16 new recommendations for the PSNI to implement. On 19 June 2012, PSNI published its Human Rights Programme of Action 2011 – 2012.⁸ The Programme of Action outlined PSNI's acceptance of all 16 recommendations and in his introductory comments Assistant Chief Constable George Hamilton welcomed the Human Rights Annual Report, describing it as a "vital element in ensuring that the police service is unrelenting in its adherence to both the principles and laws of Human Rights practice. The PSNI welcomes and supports the 2011 Report and is determined to make speedy progress to address all 16 recommendations."

The PSNI response to each of the 16 recommendations is outlined in the relevant chapters of this Human Rights Annual Report. On the whole, PSNI engagement with the Committee throughout the year has been constructive and the Committee welcomes the positive manner with which the recommendations have been embraced.

The Policing Board's Human Rights Advisor continues to have unrestricted access to 'Overview' which is an internal police computer system containing information such as action plans and updates against recommendations made by various organisations, including the Policing Board. This enables the Human Rights Advisor to check progress, as and when necessary, throughout the year and has proven to be an extremely useful resource. However, access to Overview does not negate the need for PSNI to continue to produce and publish its annual Human Rights Programme of Action, nor can it act as a substitute for PSNI continuing to meet with the Committee and the Human Rights Advisor to discuss the detail of recommendations and other relevant human rights issues.

The Committee therefore looks forward to receiving a copy of the PSNI Human Rights Programme of Action 2012 - 2013 within 3 months of the publication of this Human Rights Annual Report. Thereafter, the Committee will work closely with PSNI to ensure timely receipt of information about on-going developments.

⁸ The *PSNI Programme of Action 2011 – 2012* is available to download through the PSNI website: www.psnipolice.uk

2. TRAINING

Effective training in human rights principles and practice is fundamental to any public authority which is committed to compliance with the Human Rights Act 1998. Training should instil a human rights based approach to policing both in new recruits and in experienced police officers and staff. With training, police officers are taught the fundamental principles and standards of human rights law and the practical implications for policing. They are taught the complex way in which competing rights interact, how rights can be balanced, protected and respected when carrying out operational duties and the circumstances in which individual rights can be limited lawfully. The stated aspiration of the PSNI is to ensure that relevant human rights principles are integrated into police training in a practical and effective way, from the foundation training course at Police College through to District training.⁹

Training must be delivered to all police officers and staff with a particular focus on identifying and delivering training which is tailored to fit the needs of officers and staff as they progress through their careers, according to their duties. It must therefore be refreshed regularly. Training must comprise basic training and continuous in-service training through a training programme which is integrated into the on-going career assessment of officers and staff. Moreover, within the training programme officers and staff should be trained to mentor others. This is particularly relevant given the importance of supervision to newly appointed officers. An important measure of training is the importance given to human rights during training and the effectiveness of that training in encouraging officers and staff not only to develop a knowledge base but to embrace the values that underpin human rights and translate those values into practice.

It is the responsibility of the PSNI to ensure that human rights principles are applied instinctively in every aspect of policing. The Policing Board's Human Rights and Professional Standards Committee (the Committee) has a duty to monitor PSNI

⁹ The Patten report recognised that "training was one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel" and specifically recommended training in the "fundamental principles and standards of human rights and the practical implications for policing" (Recommendation 4 of *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland (the Patten report), September 1999).

human rights compliance and discharges that duty proactively.¹⁰ Since 2005, the Committee has made a number of recommendations (in Human Rights Annual Reports and in human rights thematic reviews) directed specifically at training, all of which have been accepted by PSNI. That is welcomed by the Committee, whose Members appreciate the efforts made by the PSNI to date.

PSNI affords the Policing Board's Human Rights Advisor access to training materials, the classroom and to scenario based training. That has continued this year. She has attended training on, for example, stop and search and question; control and restraint techniques; public order; counter-terrorism powers; the Personal Safety Programme (PSP); policing with children and young people; and human rights awareness for police Information and Communication Services staff. The Human Rights Advisor has worked closely with the PSNI Human Rights Training Advisor during the year to discuss a range of training issues, a number of which are referred to below.

The PSNI Human Rights Training Advisor has specialised human rights knowledge. She is responsible for reviewing training at Police College and at District level and assists in the production of training materials, delivers training to trainers and engages with stakeholders to ensure that concerns that may relate to training are addressed. The PSNI Human Rights Training Advisor is a key participant in PSNI education and development plans and she has contributed an enormous amount to the ongoing training of police officers. She has focused on contextualising human rights considerations in operational policing scenarios to make training effective in practice. The PSNI Human Rights Training Advisor maintains close contact with the Policing Board's Human Rights Advisor to identify priorities for human rights training. The Committee is grateful to the PSNI Human Rights Training Advisor for her efforts and is confident that her continued input will ensure that high quality training is delivered to police officers and police staff. This dedicated role is crucial to ensuring

¹⁰ Note that the Policing Board's Human Resources Committee is tasked with securing, promoting and monitoring the implementation of PSNI's training strategy in the broad sense. The Human Rights and Professional Standards Committee has an oversight role in terms of the extent to which police training adequately incorporates relevant human rights principles.

that the integration of human rights principles into all aspects of training remains a priority within the PSNI.

Police staff (civilians)

In 1999, the Report of the Independent Commission on Policing for Northern Ireland (the Patten report) recommended that all members of the police service should receive instruction on the implications for policing of the Human Rights Act 1998 and the wider context of the European Convention on Human Rights and the Universal Declaration of Human Rights.¹¹ That recommendation remains as relevant today. All police officers who join the PSNI receive human rights training at Police College. Human rights principles must however be integrated into all training received throughout an officer's career. That is achieved through District training and refresher courses at Police College. It is less clear, however, that police staff have been trained on the implications for policing of the Human Rights Act 1998. As more policing roles become 'civilianised', for example, in respect of call handling, custody and investigation, it is critical that such staff are equipped to understand and apply a human rights based approach to their work. Less attention has been given to that area of training but the Committee understands that the PSNI Human Rights Training Advisor is considering that point and developing a training plan for police staff. The Committee encourages the PSNI to pursue that rigorously and will support the PSNI in its efforts.

It should be noted that staff, including those who are not engaged directly with the public or involved in operational policing roles, have an important part to play in supporting police officers to carry out their functions and to comply with the Human Rights Act 1998. The PSNI Human Rights Training Advisor has commenced an intensive review of the training delivered to police staff. For example, during 2012 she developed and delivered a half day human rights awareness-raising session for police staff working in Information and Communication Services (ICS) and she has contributed to training courses for Station Enquiry Assistants and Call Handlers. She is also carrying out a training needs analysis (from a human rights perspective) of

¹¹ Recommendation 142 of *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999.

Human Resource Managers. Clearly, therefore, considerable work is already underway and that is welcomed. With police staff playing an increasing role in operational policing it is more important than ever that police staff are brought within the human rights training plan.

Recommendation 1

The PSNI should provide the Human Rights and Professional Standards Committee with a written review of the training plan for police staff, with a particular focus on identifying the human rights training needs of police staff and how PSNI proposes to meet those needs and within what time frame. That review should be provided to the Human Rights and Professional Standards Committee within 6 months of the publication of this Human Rights Annual Report.

District training

The Police Learning Advisory Council (PLAC) District Training Sub Group held, for the third year running, a District Training Presentation Day in 2012.¹² Trainers from each of the 8 PSNI Districts and staff from the Police College attended. The PSNI Human Rights Training Advisor and the Policing Board's Human Rights Advisor both observed the presentations. Each District presented an example of a training intervention which had a positive impact on operational performance and initiatives or partnerships with which they had been involved during the year. Each presentation was followed by a round of questions from the Sub Group and those attending. The event provided an important opportunity for Districts to highlight how training had impacted on operational policing and provided a showcase for them to share good practice with others.¹³ The event was well attended and participants

¹² The PLAC is an external advisory group made up of representatives from business, professional and community leaders and police staff. PSNI involvement with PLAC was reported upon positively in a 2010 inspection by the Criminal Justice Inspection Northern Ireland (CJINI) of the PSNI Training Strategy. Inspectors recommended that PSNI continue to support the PLAC as an important element of engaging communities in the formulation and development of the Training Strategy.

¹³ Note that District trainers report that they actively look at other training initiatives being delivered in other Districts and keep in regular contact with other District training teams. The Heads of training in each District meet on a quarterly basis with the Police College. Ultimately it is District Commanders who are responsible for identifying training needs within their District, save where a direction has come from PSNI HQ that certain training is mandatory, for example, during 2011/12 training on stop and search was made mandatory for all frontline officers as was training on stalking and harassment.

were enthusiastic and engaged with their subjects. It was clear that trainers had given considerable thought to how effective the training had been and how it could be improved. Throughout the event trainers highlighted the positive impact of the application of human rights principles into training.

Of particular note was a presentation by 'A' District (North and West Belfast) trainers on a child protection training course that they had developed. There is no formal requirement that front line police officers receive specific child protection training despite their daily contact with children and young people. 'A' District trainers, believing that child protection training was a useful and important element of training, developed a bespoke package which could be rolled out across all Districts. 'A' District trainers have already delivered this training to a number of local community groups. It is understood that PSNI intends to deliver the training package across all Districts in due course.

The Committee is strongly of the view that such training should be delivered across the PSNI. Children are amongst the most vulnerable members of society who are more likely to be the victim rather than the perpetrator of a crime. The initiative shown by the 'A' District trainers in developing this training package should be commended and the Committee wishes to support their efforts. The Committee is keen to ensure that the training *is* rolled out.

Recommendation 2

The PSNI should deliver the child protection training as developed by 'A' District trainers to all front line police officers.

Community input into police training

As emphasised throughout this Human Rights Annual Report, policing in a democratic society depends upon the support and co-operation of the public for whose benefit the police serve. That is enhanced by a service ethic which respects and promotes human rights and the rule of law and which ensures transparency and accountability to the public. Human rights are universal, which means not only that

they must be applied without discrimination but also that they must reflect the particular needs of various minority or vulnerable groups.

The success of the PSNI in this respect can be measured against, for example, the regularity of meetings with consultative groups, the degree of formal and informal partnerships developed, the extent and effectiveness of engagement with marginalised or hard-to-reach groups and the specific initiatives targeted at marginalised or hard-to-reach groups. In the specific context of training this requires an analysis of the profile given to community awareness training, the extent of engagement between the police and external stakeholders during training, the incidence of joint training initiatives and the approach of the police towards stakeholders. All of that can be supported and enhanced through training which has the input of stakeholders and which encourages openness to external expertise. That will enable the PSNI to receive feedback on how the community perceive police behaviour and actions and will demonstrate that the PSNI is willing and able to receive such feedback.

A recurrent theme in the Policing Board's Human Rights Annual Reports and thematic reviews is that the PSNI should make better use of external experts in police training. The Human Rights and Professional Standards Committee believes that stakeholders, particularly those working with minority or vulnerable groups, should be invited to participate in the development of specialist training. That does not envisage the appointment of external training consultants, but that the police should embrace partnership working with those groups which have been marginalised or under-represented. This should include consultation of stakeholders in the design of training packages. For example, it is envisaged that PSNI Independent Advisory Groups are one source that can be utilised for this purpose.

Recommendation 1 of the Human Rights Annual Report 2011 required PSNI to consider how to better utilise the experience and expertise within the community for the development and delivery of specialist training packages.¹⁴ In response to that recommendation, the PSNI Human Rights Training Advisor carried out an analysis of

¹⁴ Recommendation 1 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

the organisations with which police trainers have contact. Foundation training at Police College provided a real opportunity for engagement with community organisations, but since 2011 foundation training has been suspended. Nonetheless, the PSNI Human Rights Training Advisor identified a number of training partnerships which had endured. By way of example:

- At District level community input varied, with a number of Districts having contact with organisations such as Women’s Aid, Victim Support, NSPCC, the Police Ombudsman’s Office (regarding complaints reduction) and the Coroner’s Office (regarding road traffic incidents, family liaison and organ transplants). Districts also reported having contact with local universities and various other organisations, for example, organisations working with young people; organisations representing groups such as lesbian, gay, bisexual and transgender people; community restorative justice schemes; other local community groups; and organisations involved in awareness raising, such as autism awareness, mental health, human trafficking etc.
- At Police College, the foundation and probationer training courses include community input in respect of diversity, sectarianism, victims, domestic abuse, road trauma and young people. There is also community input into the ‘Safetalk’ Suicide awareness training delivered as part of custody training provided to all custody staff. Crime training uses community consultants to provide feedback on critical incident training. They use expert speakers on issues such as Honour Based Violence and to provide insights into victims’ responses to sexual assault. Leadership training has engaged expertise from the business and political sectors to speak about ‘executive skills’ and to train on issues ranging from communications, marketing and branding, to efficiency, value for money and political analysis of context.

The PSNI Human Rights Training Advisor has reported that Combined Operational Training (COT) and Specialist Operations Branch (SOB) training have the fewest number of community participants in the delivery of training due to the nature of the training. However, they have frequent visitors and observers both from Northern

Ireland and beyond. Crime training department has a programme with the Council for Catholic Maintained Schools to introduce interested young people to police work and engage them positively with policing more generally. Openness to, and receiving feedback from, visitors ensures not only transparency of police training but also that invaluable guidance and expertise is shared with the police. Moreover, it enables links to be made with community groups and enhances PSNI's policing with the community approach.¹⁵

Another way in which PSNI form partnerships through training is by the delivery of training to other agencies and organisations. For example, 'A' District (North and West Belfast) trainers have worked in partnership with Belfast Health and Social Care Trust, the Public Health Agency and local 'protect life' groups. They have delivered ASIST suicide intervention training to a number of local community groups, the Northern Ireland Prison Service and the Ambulance Service. 'A' District trainers have also delivered child protection training (referenced above) to a number of local community groups.

Across all Districts, police officers engage with young people and schools through the Citizenship and Safety Education (CASE) programme in which they talk to young people about a range of issues from fireworks through to drugs, alcohol and farm safety. A number of Districts also deliver 'A Better Understanding' to schools and community groups in which interactive scenarios are incorporated in order that the community has a better understanding of the roles and responsibilities of police officers.

Clearly there are many examples of positive partnership working between police and the community in the development and delivery of police training. However, the evidence of stakeholders appears to be that this type of engagement, while very welcome and effective, can be piecemeal. As demonstrated at the PLAC District Training Presentation Day 2012 (referred to above), which required each District training team to present partnership initiatives from the preceding year, PSNI

¹⁵ Policing with the community is discussed at Chapter 11 of this Human Rights Annual Report.

encourages trainers to identify and share with their colleagues the benefits that partnership working can bring. The Committee hopes this will be encouraged further.

Recommendation 1 of the Human Rights Annual Report 2011 has therefore been implemented.

Children and young people

During 2012, the PSNI Human Rights Training Advisor developed and delivered a half day training session on a human rights based approach to policing with children and young people. The training was delivered to PSNI trainers to equip them with the necessary knowledge and skills to incorporate key learning points into their existing lesson plans and contextualise youth specific issues into operational policing scenarios. If police trainers are expert in their respective fields they will impart that expertise to those being trained. The delivery of that training was intended to implement Recommendation 24 of the Policing Board's thematic review on policing with children and young people.¹⁶ It is hoped therefore that the training will continue to be delivered over the longer term and that it will be developed so as to reach a wider range of police officers. The Policing Board's Human Rights Advisor will continue to liaise with the PSNI Human Rights Training Advisor to discuss the continuance of this training.

In response to Recommendation 12 of the Policing Board's Human Rights Annual Report 2009,¹⁷ the PSNI Human Rights Training Advisor and the PSNI Human Rights Legal Advisor worked together during 2010 and 2011 to conduct an audit of PSNI training on the use of force in relation to children and young people.¹⁸ Where aspects of training were identified that could better highlight the needs of vulnerable

¹⁶ Recommendation 24 of the *Human Rights Thematic Review: Children and Young People*, Northern Ireland Policing Board, January 2011, required PSNI to develop and deliver bespoke youth training at Police College in the first instance and thereafter by refresher training within Districts. It required that all officers within Neighbourhood Policing Teams, Response Teams and Tactical Support Groups all received the training.

¹⁷ Recommendation 12 of the *Human Rights Annual Report 2009*, Northern Ireland Policing Board, January 2010, recommended that the PSNI work with the Human Rights Advisor to the Policing Board to conduct a review of training manuals and lesson plans and address specifically the interests of the child in any operation which may involve the use of force.

¹⁸ Discussed further at pages 67-68 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

groups, including children, the lessons were revised accordingly. The PSNI Human Rights Training Advisor is continuing to work with trainers to evaluate and improve training as it relates to issues concerning children and young people, including public order training. This is welcomed by the Committee and will be kept under review. Recommendation 12 of the Human Rights Annual Report 2009 has therefore been implemented.

3. POLICY

Police policy governs the conduct of all police officers and staff, sets out police powers and duties and provides guidance on relevant legislation and practice. It remains of fundamental importance that PSNI policy should set the framework within which decisions may be made and against which police practice can be monitored and measured. Police policy must be capable of dictating that decision-making and practice comply with the Human Rights Act 1998. If policy is itself human rights compliant it is much more likely that police decision-making and practice will also be human rights compliant. In other words, policy is the first (and most basic) measure to ensuring that human rights standards are applied in practice. Policy must therefore be contextual in order that officers and staff can fully appreciate the standards to be applied to individual decisions. Furthermore, policy provides the starting point for PSNI trainers who seek to incorporate human rights principles into lessons.

An analysis of policy is helpful in measuring the consistency of positive human rights messages within the Service. It plays a crucial role in influencing a positive culture and minimises legal risk. Policy must therefore be accessible to police officers and staff and demonstrate how human rights are relevant to their roles and responsibilities. All policy must be clearly identified to officers and must be kept under regular review and up-dated where necessary. Any policy amendments that are required must be brought to the attention of those concerned with implementation of them and a mechanism established for ensuring that officers and staff have read and understood policy.

PSNI policy is primarily contained within a number of Policy Directives and Service Procedures. Policy Directives contain overarching policies. Service Procedures are subsidiary documents that expand upon the principles and standards laid out in the Policy Directives and provide clear instructions and guidance on particular aspects of the implementation of the policy. Police policy documents may for example relate to operational aspects of policing, to health and safety considerations, to human resourcing issues or to corporate governance matters.

Police policy is available to all officers and staff through Policenet (the police intranet). Where a new policy has been issued or an existing policy revised, a message appears on screen upon login to Policenet to advise officers of the latest addition or revision to the policy library. Given that this is a means by which police officers access policy, it is critical that all officers have access to Policenet. The Policing Board's Human Rights Advisor has access to Policenet and can thus view all policies. It has been noted in previous Human Rights Annual Reports that the police policy library was often complicated, confusing and inaccessible, with old policies remaining on the intranet following replacement. The search engine was also sometimes unreliable. A number of recommendations have been to address these faults. The PSNI has undertaken a comprehensive review of Policenet and is undertaking a streamlining review of all policy to ensure that it can assist officers in a practical way to discharge their duties in compliance with the Human Rights Act 1998. The outcome of that streamlining review will be reported to the Committee upon completion.

During the drafting stage of all new or revised policy PSNI should ensure that it consults with relevant stakeholders and that it screens those policies as per its obligations under section 75 of the Northern Ireland Act 1998. Where required, a full Equality Impact Assessment should be completed.

Policy (given its impact upon the public) must also be accessible to the public, save where this is genuinely not possible because the document contains matters of a confidential nature. As noted elsewhere in this report, ultimately it is the public interest which should dictate whether policy is published rather than police interest. Policing in a democratic society requires police to be willing to account for their actions based on the principles of legality, necessity and proportionality. To act legally, the police are required to have a clear and public legal authority to act. The publication of police policy is extremely important in demonstrating that authority. The Information Commissioner also expects police services throughout the United Kingdom to publish their current, written protocols, policies and procedures unless

publication is likely to adversely impact upon operational activity or the information is classified.¹⁹

Until recently, a large number of policies were available for public viewing via the PSNI website. However due to the streamlining work referred to above that resource is suspended. The Committee expects that the publication of policy will resume as soon as that work has been completed. This will be kept under review. Whilst PSNI may not have completed its streamlining exercise, it should publish on its website without delay those policies that have been finalised.

Recommendation 3

The PSNI should forthwith publish, on its publicly accessible website, those policies that have been finalised.

NEW POLICY DEVELOPMENTS

A number of important new policies have been issued by PSNI during 2012 including a series of new professional standards policies;²⁰ a policy on stalking and harassment;²¹ and a policy on critical incident management and community impact assessments.²² A new policy outlining PSNI's 'prevent and deter' strategy, which is a strategy aimed at early intervention for young people showing signs of anti-social or criminal behaviour, is currently under development and is expected to be published in late 2013.

¹⁹ The Information Commissioner's Office has produced guidance for police services on the types of information that they should publish:

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

²⁰ (i) *Professional Standards in the PSNI*, PSNI Policy Directive 01/2012; (ii) *Gifts, Gratuities and Hospitality*, PSNI Service Procedure 7/12; (iii) *Service Confidence Procedure*, PSNI Service Procedure 8/12; (iv) *Misconduct Procedures for Police Officers*, PSNI Service Procedure 9/12; and (v) *Off Duty Activities* (pending publication).

²¹ *Police Response to Stalking and Harassment*, PSNI Service Procedure 1/12.

²² *Critical Incident Management and Community Impact Assessments*, PSNI Service Procedure 10/12.

Criminal Justice Bill

The Criminal Justice Bill is progressing through the Northern Ireland Assembly. During the Committee stage, the Committee for Justice sought input from stakeholders, including the Policing Board, on the legislative proposals set out in the Bill. The Bill contains three main strands which purport to: change the law on sex offender notification provisions; introduce new human trafficking offences; and establish a new framework for the retention and destruction of fingerprints and DNA samples and profiles.

Given the policing implications of the Bill the Policing Board welcomed the opportunity to consider and comment on the contents of it. The Policing Board recognised the need for the Northern Ireland Assembly to introduce legislation in respect of each of the three key strands contained within the Bill, not least because they provided a response to a Supreme Court judgment, an EU Directive and a European Court of Human Rights judgment.

Sex offender notification

Section 82 of the Sexual Offences Act 2003 extends to Northern Ireland. It prescribes the periods during which a person convicted of a sexual offence must comply with notification requirements. A person who is sentenced to imprisonment for a term of 30 months or longer is subject to notification requirements for an indefinite period. In 2010, the United Kingdom Supreme Court held that section 82 of the Sexual Offences Act 2003 was incompatible with Article 8 of the European Convention on Human Rights (the ECHR), the right to respect for private and family life.²³ In response to that judgment, the Criminal Justice Bill proposes to introduce a review mechanism for offenders who are subject to indefinite notification requirements. Under the proposals, application for review of indefinite notification requirements will be made to, and determined by, the Chief Constable with a statutory right of appeal to the Crown Court.

²³ *R (F and Thompson) v Secretary of State for the Home Department* [2010] UKSC 17.

The Policing Board's Human Rights and Professional Standards Committee engaged with the PSNI on the proposals. PSNI considered that the proposal for dealing with reviews would create additional duties for police officers involved in Public Protection but that the proposed review mechanism was the most suitable way of ensuring that the Supreme Court ruling was complied with. The review mechanism is not, in itself, an answer to the issue: each and every time the Chief Constable is required to determine a review application, human rights principles will be relevant to that determination. The Chief Constable will be required to strike the correct balance between upholding individual rights (of both perpetrators and victims) and the rights of the wider public to be protected from harm.

A number of safeguards have therefore been proposed within the Criminal Justice Bill, which include:

- a requirement upon the Chief Constable to discharge the notification requirements unless he or she is satisfied that the offender poses a risk of sexual harm and that the risk is such as to justify the notification requirements continuing in the interests of the prevention or investigation of crime or the protection of the public;
- a check-list of factors which the Chief Constable *must* take into account when reaching a decision;
- a prohibition on the Chief Constable from delegating his or her functions to a police officer below the rank of Superintendent;
- a requirement upon the Chief Constable, where he or she decides not to discharge the notification requirements, to provide written reasons in the decision notice;
- a provision for a right of appeal of the decision to the Crown Court;
- a provision to enable a further application by the offender for review after 8 years of a decision not to discharge the notification requirements (or after 4 years in the case of an offender who was aged under 18 at the time of the relevant offence giving rise to the notification requirements);
- a requirement that the Department of Justice issues guidance to offenders and to the Chief Constable on the procedure and principles to be followed on review.

The Human Rights and Professional Standards Committee will continue to engage with PSNI on this issue.

Human trafficking offences

In April 2011, the European Union issued a Directive on preventing and combating trafficking in human beings and protecting its victims (the EU Directive).²⁴ To comply with the EU Directive, Northern Ireland must supplement existing trafficking offences as contained within the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. Therefore, the Criminal Justice Bill provides as follows.

It is already an offence to traffick a person into, within or out of the United Kingdom for sexual exploitation purposes. If implemented, the Criminal Justice Bill will make it an offence for anyone to intentionally arrange or facilitate for a person to be trafficked into, within or out of a country other than the United Kingdom for the purpose of sexual exploitation.

It is an offence to traffick a person into or out of the United Kingdom for other exploitation purposes such as slavery and forced labour. It is also an offence to traffick a person within the United Kingdom for such purposes if the trafficker believes that the victim had previously been trafficked into the United Kingdom. If implemented, the Criminal Justice Bill will make it an offence for a person to intentionally arrange or facilitate for a person to be trafficked into, within or out of a country other than the United Kingdom for these types of exploitation purposes. The Bill will also make it an offence to traffick someone within the United Kingdom for exploitation purposes. In other words, it will remove that element of the offence which requires it to be proved that the trafficker believed that the victim had previously been trafficked into the United Kingdom.

The Human Rights and Professional Standards Committee welcomes the proposed new offences for human trafficking.

²⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

Retention and destruction of DNA samples, profiles and fingerprints

Under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the PSNI may retain indefinitely fingerprints, DNA samples and DNA profiles after the purpose for which they have been obtained has been fulfilled. Police policy and practice to date has been to retain indefinitely all such material. The regime applies equally to people who are not charged with any offence and to those who are convicted subsequently of an offence. It does not make any distinction between adults and children. The only limitation is as to the use to be made of the material, which must be for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution. Whilst a person whose fingerprints, material or profile has been retained may apply to have it destroyed, the application of the criteria for destruction as set out in guidance issued by the Association of Chief Police Officers (ACPO) and adopted by PSNI, is designated as an operational decision for the Chief Constable to consider in the circumstances of each case. The ACPO guidance states that removal from the database should be limited and reserved for exceptional cases.²⁵

The Grand Chamber of the European Court of Human Rights (ECtHR) ruled in December 2008 that the blanket policy in England and Wales, which is mirrored in Northern Ireland, of retaining indefinitely the DNA samples, profiles and fingerprints 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.²⁶

Amendment to the legislative framework for the retention and destruction of DNA samples, profiles and fingerprints is a matter which has been devolved to the Northern Ireland Assembly. In March 2011 the Department of Justice launched a consultation on proposals, intended to give effect to the ECtHR judgment, to create a new statutory retention and destruction framework. The legislative framework put forward in the Criminal Justice Bill is broadly the same as that included in the consultation document. The framework, if introduced, will mean that DNA samples, profiles and fingerprints must be destroyed by the police in certain circumstances

²⁵ *Retention Guidelines for Nominal Records on the Police National Computer*, ACPO, 2006.

²⁶ *S and Marper v UK* (App Nos. 30562/04 and 30566/04).

and may only be retained if certain conditions are met. There is dispute amongst legal commentators as to whether the proposed framework will satisfy the requirements of Article 8 ECHR. However, it does make some distinction between the seriousness of offences, between adults and children and provides for the appointment of an independent Biometric Commissioner. It will operate retrospectively in that it will apply to all fingerprints, DNA profiles and samples whether retained before or after the new law's enactment. The Human Rights and Professional Standards Committee will keep this matter under review and will in particular consider the legal issues as to compliance with the Human Rights Act 1998.

It merits restatement that PSNI is not obliged at law to retain DNA material, profiles and fingerprints but is entitled to do so under PACE, as was made clear by the United Kingdom Supreme Court in May 2011 when it held that the ACPO guidelines requiring retention were unlawful because they were incompatible with Article 8 ECHR. The Supreme Court reiterated that Parliament had conferred *discretion* on police services to retain data but that it was open to them to reconsider and amend guidelines pending government action rather than awaiting for a new (compliant) legislative framework to be enacted.²⁷

Since the ECtHR judgment was delivered in 2008, the Human Rights and Professional Standards Committee has engaged with PSNI on this issue and a number of recommendations have been made in consecutive Human Rights Annual Reports. Recommendation 3 in the Human Rights Annual Report 2011 was aimed at encouraging PSNI to take proactive steps to review its policy rather than await the introduction of legislation. It required PSNI to provide the Committee with an explanation for any decision to continue storing information or material relating to the DNA profiles, samples or fingerprints of a person who was arrested but not charged with an offence which was not violent or sexual. The rationale behind the recommendation was that, whilst legislation had not yet been introduced, it was evident that any legislative framework must, as a minimum, ensure that DNA

²⁷ *R (C) v Commissioner of Police for the Metropolis*, [2011] UKSC 21.

profiles, samples or fingerprints obtained in such circumstances would not be retained by the police.

In response to Recommendation 3, PSNI accepted that it was highly probable that the new legislative framework would preclude the retention of material taken from a person arrested but not charged with an offence (excluding some specific serious offences). However, in the absence of legislative amendment, PSNI was reluctant to commence destruction of the material. The Committee understood that rationale - destruction may result in the loss of material which the new provisions may allow and which may have evidential or investigative value. However, the Committee did encourage the PSNI to pursue its review of policy at an early stage. PSNI has now begun its review to amend its systems and processes in anticipation of the introduction of the new legislative framework. Recommendation 3 of the Human Rights Annual Report 2011 has therefore been implemented but the Committee awaits further feedback from the PSNI on the completion of the review.

Recommendation 2 of the Human Rights Annual Report 2011 required PSNI to provide the Human Rights and Professional Standards Committee with an analysis of all new decisions (over a 3 month period from February 2012) upon application by an individual to have profiles, samples and/or fingerprints destroyed. It also required PSNI to advise the Committee of any decision taken to review or amend the policy where an application for destruction is made. In response to Recommendation 2, PSNI provided that analysis. Recommendation 2 of the Human Rights Annual Report 2011 is therefore implemented. PSNI advised that only one application was made over the relevant 3 month period. The analysis applied by PSNI to that application was in accordance with the ACPO guidance, which had been criticised by the UK Supreme Court. The Committee therefore is keen to see further progress on this matter given the time that has already passed since the ECtHR judgment in *Marper* (over 4 years). It is appreciated that there will be a financial and administrative burden,²⁸ but compliance with the decision of the UK Supreme Court is a legal

²⁸ Once the new legislative framework is in force, it will require PSNI to determine whether to continue to retain, and if not to destroy, existing fingerprints and DNA material. According to the Explanatory and Financial Memorandum to the Criminal Justice Bill, this will cost the PSNI in the region of £2.5 million and will be sought from within existing resources for the 2013/14 financial year.

requirement which must be completed as soon as possible. The Committee will continue to monitor PSNI response to developments in this area.

Retention of photographs

Where photographs are taken of a person upon arrest, PSNI policy is to retain the photographs as part of the custody record. Custody records are kept for a minimum period of seven years (regardless of whether or not a person is charged or convicted and regardless of whether the person arrested is an adult or a child). The seven year period can be extended indefinitely. The Human Rights and Professional Standards Committee is concerned that the retention of photographs raises human rights issues which require further consideration. Recommendation 4 of the Human Rights Annual Report 2011 therefore required PSNI to report to the Committee on the structures and policy in place to ensure that the retention of photographs by police is lawful, proportionate and necessary.

In response to Recommendation 4 PSNI advised that the photographs, which are obtained and retained pursuant to PACE, are kept on a secure and audited system (known as 'Niche'). Access to that system is limited to those who have a legitimate and lawful reason to access it. The photographs are kept for as long as the Niche custody record is kept. PSNI advise that the rationale for the taking and retention of photographs is the prevention and detection of disorder or crime and the protection of the rights and freedoms of others. PSNI advise that it is satisfied that the current procedure is in full compliance with legal requirements and principles. Recommendation 4 of the Human Rights Annual Report 2011 has therefore been implemented. However, whether the system is lawful, proportionate and necessary will require further monitoring. The Committee will keep this under review and report further in due course.

The Department of Justice sought views on the issue of photograph retention in its March 2011 consultation on DNA and fingerprint retention. Further to that consultation, the Department indicated that photographs could not be treated in the same manner as DNA and fingerprints. The Department concluded that photographs should not form part of the proposed new legislative framework for DNA and

fingerprint retention unless and until there was an authoritative judicial ruling to the contrary. However, in a subsequent English High Court case, decided in 2012, the court held that the Metropolitan Police Service's (MPS) retention of photographs, which had been taken upon arrest and retained subsequent to release without charge, was an unjustified interference with the claimants' right to respect for their private life protected by Article 8 ECHR.²⁹ The court rejected the MPS argument that the retention of photographs was necessary for preventing crime and disorder. The court went on to suggest that the unlawful policy should be revised, within months rather than years. While that decision is not binding, in the technical sense, on the courts in Northern Ireland, it is certainly persuasive. Furthermore, the Northern Ireland High Court has already considered the issue and found there to be "substantial force in the view that the retention of photographic images by the Police Service [PSNI] for a minimum period of seven years, which may be extended indefinitely, unconnected in any concrete or rational way with any of the statutory purposes, interferes with the right to respect for private and family life guaranteed by Article 8(1)."³⁰

In responding to the Committee for Justice's consultation on the Criminal Justice Bill, the Policing Board highlighted this and suggested that the Department of Justice should now give consideration to introducing a legislative framework for the retention of photographs by the PSNI. This is an issue that the Human Rights & Professional Standards Committee will keep under review.

²⁹ *R (RMC and FJ) v Commissioner of Police of the Metropolis*, [2012] EWHC 1681 (Admin).

³⁰ *JR 27's Application* [2010] NIQB 143 at para. 55 of the written judgment.

4. OPERATIONS

The monitoring of police operations is critical to the Policing Board's overall assessment of PSNI compliance with the Human Rights Act 1998. It is through the planning and conduct of police operations that policy is put into practice, that the effectiveness of training becomes apparent and that community confidence can be strengthened or diminished. The Chief Constable, on behalf of the PSNI, bears responsibility for operational decisions. The Policing Board does not seek to interfere with that decision making process, however, the Policing Board is required by statute to hold the Chief Constable to account for decisions of the PSNI. It therefore monitors operations and in particular the way they impact upon the efficiency and effectiveness of an impartial, human rights compliant police service that secures the confidence of the whole community in Northern Ireland. That monitoring work is assisted greatly by the views of stakeholder groups and individuals for whose benefit the PSNI provides its service. That means the views of victims and potential victims of crime, witnesses, suspects, defendants and the wider community.

Operations that the Policing Board pays particular attention to, although by no means exclusively, are operations which impact upon marginalised or vulnerable people or groups such as members of the LGB&T and minority ethnic communities, operations involving children and young people (discussed in Chapter 14 and in the Policing Board's children and young people thematic review),³¹ public order operations (discussed in Chapter 6), counter-terrorism operations (discussed in this chapter and in Chapter 9), and operations to target organised crime and those involved in human trafficking.³²

All such operations engage a range of fundamental human rights considerations. By way of example, in a stop and search operation the person being stopped and searched has his or her right to respect for private and family life guaranteed by Article 8 of the European Convention on Human Rights (ECHR) undoubtedly

³¹ The children and young people thematic review is available to download through the Policing Board website: www.nipolicingboard.org.uk. Recommendation 2 of that review required PSNI to involve youth advisors in the planning of operations involving children and young people

³² The Policing Board sits on the Organised Crime Task Force's Stakeholder Group. The Policing Board's Minority Ethnic, Women's and LGB&T Reference Groups have also recently established a human trafficking sub-group.

interfered with. However, the interference with that right may be justified if it is in the interests of national security, public safety, for the prevention of disorder or crime or for the protection of the rights and freedoms of others. Specifically, the rationale for the operation may be to protect the right to life (Article 2 ECHR) of others. Clearly, therefore the balance of rights must be considered. Importantly, the manner of the search may also engage the right not to be subjected to torture, inhuman or degrading treatment (Article 3 ECHR). Article 3 ECHR is an absolute right which means an infringement can never be justified. Moreover, every person has the right to freedom of thought, conscience and religion (Article 9 ECHR). If a search is carried out because, for example, a person is of one religion or holds a particular political opinion that may amount to discrimination contrary to Article 14 ECHR which requires that ECHR rights and freedoms must be secured without discrimination on any ground, including religion and political or other opinion.

Clearly, there are important rights in competition during such an operation. Community confidence may also be undermined by the police adopting an approach which is not human rights compliant. A police operation impacts directly and manifestly upon the public or members of the public and often within a confrontational setting. While some degree of confrontation may be inevitable during certain police operations it is incumbent upon the Police Service and police officers and staff to minimise the adverse impact of the operation. It is apparent to the Human Rights and Professional Standards Committee (the Committee) that a rights based approach to an operation is the best to minimise adverse impact on community confidence, not least because it is a legal requirement. The Committee is conscious that a rights-based approach can be viewed by some commentators as an ineffective means of tackling crime but is persuaded that such views can be dealt with by a more effective communication strategy which explains police decision-making.

COUNTER-TERRORISM OPERATIONS

Current threat level

The current threat level in Northern Ireland from an attack by terrorist groups linked to Northern Ireland is graded at 'severe'. A PSNI statistical report published in May 2012 records that "Generally the security situation in Northern Ireland has improved significantly over the last ten years with fewer security related deaths, shootings, bombings and paramilitary style shootings and assaults recorded in 2011/12 than nine years ago in 2002/03. However, a significant threat still remains as evidenced by the one security related death in 2011/12 and the numerous shooting and bombing incidents as well as with the continued use of paramilitary style shootings and assaults."³³ The statistics reveal that during 2011/2012, there was one security related death, 67 recorded shooting incidents and 56 recorded bombing incidents linked to the security situation. There were 33 casualties as a result of paramilitary-style shooting and 46 casualties as a result of paramilitary-style assaults. There were 176 firearms and 43.8kg of explosives recovered during the year. A total of 159 people were arrested under section 41 of the Terrorism Act 2000 and 39 were subsequently charged.³⁴

Counter-terrorism powers

The PSNI's counter-terrorism powers are largely contained within two pieces of legislation: the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007.

Terrorism Act 2000 (TACT) powers

The powers available to the PSNI, and all police services in the United Kingdom, under TACT include 'cordoned' areas; arrest without warrant; extended detention; search of premises and persons; stop and search in designated areas; restrictions on parking; and port and border controls. Use of the controversial power under

³³ *Police recorded security situation statistics, 1 April 2011 to 31 March 2012*, PSNI, May 2012, page 2.

³⁴ *Ibid.*

section 44 TACT, which allowed a police officer to stop and search a person in a designated area without having a suspicion that the person was a terrorist or had committed a relevant offence, was suspended by the Home Office in July 2010. That was in response to the ruling of the European Court of Human Rights in the case of *Gillan & Quinton* which held that the use of the section 44 TACT power was an unlawful interference with Article 8 ECHR (the right to respect for family and private life).³⁵

The Home Office reconsidered the use of section 44 TACT as part of its counter-terrorism review published in January 2011. It concluded that the power to stop and search without reasonable suspicion under section 44 would be replaced with a more tightly defined power to search without suspicion. A replacement power took effect on 18 March 2011 under temporary legislation. Permanent provision has since been made by the Protection of Freedoms Act 2012.³⁶ The main changes effected by the new provisions, now found in section 47A TACT, include the way in which an authorisation for use of the power is given. An authorisation can be given only by an officer of the rank Assistant Chief Constable or above. Moreover, the authorising officer must reasonably suspect that an act of terrorism will take place and must be satisfied that the use of the powers is necessary to prevent such an act. Under section 44 TACT, prior to its amendment, an authorisation could be given if the senior officer considered it expedient for the prevention of acts of terrorism. The time period for which an authorisation may endure and the geographic area for which it may apply have also been limited: an authorisation under section 47A must last for no longer and cover no greater an area than is necessary to prevent an act of terrorism. The Secretary of State must, as before, confirm an authorisation if it is to last longer than 48 hours. An authorisation may not now extend beyond 14 days. However, an authorisation may be renewed at the end of each 14 day period. Each renewal must comply with the same strict provisions of section 47A and must be considered on its merits. It is never appropriate to simply renew indefinitely authorisations unless all of the relevant criteria are satisfied.

³⁵ *Gillan and Quinton v United Kingdom* (Application No. 4158/05).

³⁶ This received Royal Assent on 1 May 2012 and the provisions relating to stop and search under TACT came into force on 10 July 2012.

An authorisation properly made under section 47A TACT confers powers on police officers to search pedestrians, anything carried by a pedestrian, a vehicle, its driver, passengers and anything in or on the vehicle, for evidence that any of the individuals are terrorists or, in the case of a vehicle, for evidence that the vehicle is being used for the purposes of terrorism. The powers may be exercised whether or not the police officer has reasonable suspicion that there is such evidence. Anything discovered during the course of a search which the police officer reasonably suspects may constitute such evidence may be seized and retained. In both authorising and using the powers, officers must have regard to a new statutory Code of Practice which further defines and constrains the use of the powers.³⁷

Justice and Security (Northern Ireland) Act 2007 (JSA) powers

The JSA provides the PSNI with additional powers of entry, search and seizure that are not available to other police services in the United Kingdom either under the common law or by statutory provision. It is therefore an 'extraordinary' power which is meant to address the specific security threat in Northern Ireland. The JSA contains the specific power to stop and search a person for the purposes of ascertaining whether he or she has munitions or wireless apparatus unlawfully with him or her: section 24 JSA. There is no requirement that a police officer exercising the section 24 power reasonably suspects that the person has such items and, until July 2012, no prior authorisation was required before the power was exercised.

Following publication of the Home Office counter-terrorism review, the Secretary of State for Northern Ireland announced his intention to amend section 24 JSA to bring it in line with the more tightly circumscribed section 47A TACT power. Those changes were brought in by the Protection of Freedoms Act 2012 from July 2012. Therefore, PSNI must now have in place an internal authorisation regime which contains geographic and temporal boundaries. The authorisation may only be given by an officer of the rank Assistant Chief Constable or above.³⁸

³⁷ *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.

³⁸ The power to stop and search a person under section 24 JSA may still be exercised without an authorisation but in such a scenario the police officer conducting the search must reasonably suspect that the person to be searched has munitions or wireless apparatus unlawfully with him/her.

Monitoring the use of counter-terrorism powers

The counter-terrorism work carried out by PSNI has been kept under regular review by the Human Rights and Professional Standards Committee (the Committee) and by the Policing Board. The use of specific counter-terrorism powers is considered more closely by the Committee, which receives briefings from senior officers. The Human Rights Advisor to the Policing Board also considers separately those issues of a confidential nature. However, it is important to reflect that such monitoring does not concern individual uses of the power. Rather, the Committee, the Board and the Human Rights Advisor have reviewed the policy framework and the safeguards in place. The Human Rights Advisor also carries out a more detailed dip-sampling exercise of relevant documents. The Committee is in the process of carrying out a thematic review which will provide a more detailed snapshot analysis of the use of the powers. That review will be made available publicly in 2013. Monitoring is not and cannot be a substitute for active and on-going consideration by the Police Service of the use of the powers and in particular the potential for the use of the powers to infringe ECHR rights.

During 2012, the Committee and the Policing Board's Human Rights Advisor met with the government appointed independent reviewers of terrorism legislation, David Anderson QC and Robert Whalley CB, to discuss issues relating to the PSNI's use of counter-terrorism powers. David Anderson QC was appointed in 2011 as the Independent Reviewer of Terrorism Legislation.³⁹ Each year he produces a report on his review of the operation of TACT and Part 1 of the Terrorism Act 2006. That review covers the whole of the United Kingdom. His most recent report was published in June 2012.⁴⁰ David Anderson QC has also reported separately on the use of control orders under the Prevention of Terrorism Act 2005⁴¹ and on the operation of the Terrorist Asset-Freezing Act 2010.

³⁹ Replacing Lord Carlile of Berriew QC CBE who had been in post since 2001. Whilst he is no longer the Independent Reviewer of Terrorism Legislation, Lord Carlile has continued in his role as the government appointed reviewer of arrangements for national security in Northern Ireland.

⁴⁰ *The Terrorism Acts in 2011. Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, David Anderson QC, June 2012.

⁴¹ Control Orders have now been replaced by Terrorism Prevention and Investigation Measures (TPIMs). In future years David Anderson will produce reports on the operation of TPIMs.

Part VII of TACT, which applied only to Northern Ireland, has been repealed, however, powers in relation to the police and the armed forces were effectively continued in Northern Ireland by the Justice and Security (Northern Ireland) Act 2007 (JSA). Robert Whalley CB was appointed in May 2008 as the Independent Reviewer of the JSA. His most recent report was published in November 2012.⁴² His role is to review the operation of the powers contained in sections 21 to 32 JSA, and to review the procedures adopted by the Army's General Officer Commanding Northern Ireland for receiving, investigating and responding to complaints.

During 2012, the Committee held meetings with community workers and representatives in Derry/Londonderry, Armagh and Belfast to discuss issues relating to policing. Some of the discussion centred on the police use of powers to stop and search persons and vehicles and to enter and search premises, with a particular emphasis on the impact that such operations may have on community confidence in policing. It became apparent during those meetings that some members of the public experienced an enhanced confidence in the police by the use of powers. For many others, the use of the powers had undermined community confidence and in particular their view of the 'normalisation of policing.' The view was expressed that the increased use of extraordinary powers served to recruit some, particularly young people, to support residual terror groups. The PSNI has recognised just that possibility and that it must be rigorous to ensure that the use of such powers is not abused.

During the Committee's discussions with the independent reviewers of terrorism legislation, the Committee raised the issue of the community impact of use of counter-terrorism powers and whether there remained an operational need for all of the counter-terrorism powers. Those issues are considered regularly by the independent reviewers in their respective annual reports. Robert Whalley CB, in his report on the review of the operation of JSA powers in 2011-2012 records that the view of senior police officers is that use of JSA powers "has continued to have a significant preventative and disruptive effect on residual terrorist groups and contributed to their overall strategy to protect the public, confirming the view which

⁴² *Report of the Independent Reviewer: Justice and Security (Northern Ireland) Act 2007. Fifth Report, 2011-2012*, Robert Whalley CB, November 2012.

they took last year.”⁴³ Mr Whalley notes that the Police Service “see a continuing need for the powers in the Justice and Security Act throughout the current year. That is also the view of the President of the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO)...”⁴⁴

Robert Whalley CB acknowledges that opinion on the use of JSA powers varies and each year he considers a wide range of views from not only police and politicians, but also from independent bodies, groups and individuals. In his most recent report he notes, “Some people have said to me, in terms which I respect, that the existence of these powers has a potentially radicalising effect lending credence to the long-held narrative about the intrusive, arbitrary and discriminatory nature of police activity in Northern Ireland which, to the extent that it was ever reformed, is now sliding back to its default mode of a paramilitary force. There is limited evidence to reinforce these assertions, powerful though they are. Perceptions are important, but they lack weight in the absence of specific information. Equally powerful are the views of those who believe that nothing should be done to limit police effectiveness at a time of severe threat. My conclusion is that the greater danger, for the policing project as a whole, lies less in how these powers are perceived in the abstract than in their direct impact in everyday situations. Hence the focus in much of this report on their operational effectiveness and the safeguards governing their use.”⁴⁵ Mr Whalley concludes that the “operational indicators clearly point towards the continuation of the JSA powers for a further year.”⁴⁶

David Anderson QC, in his review of the operation of the TACT powers in 2010/2011, recorded that “a high proportion of terrorist activity, especially in Northern Ireland, is dealt with under the normal criminal law. That is as it should be: terrorism is crime, and should be prosecuted as such wherever possible. Special procedures and offences for dealing with terrorism may be justified when there is an operational need for them, when their use is confined to cases of need and when it is

⁴³ *Ibid.* para. 346.

⁴⁴ *Ibid.* para. 348.

⁴⁵ *Ibid.* paras. 626 – 629.

⁴⁶ *Ibid.* para. 634.

proportionate to their impact on individual liberties.”⁴⁷ In his report on the operation of the powers in 2011/2012, he notes that “While most counter-terrorism powers seem set to persist for some time, it remains the position that these are extreme measures which are therefore deserving of searching inquiry and review. The values of a liberal democracy deserve support from laws against terrorism, but the same values require that those laws be subject to strict scrutiny.”⁴⁸

The Committee agrees. With such extensive powers comes a commensurate level of scrutiny and accountability. The Committee will continue to monitor the use of the powers and consider how best to achieve the balance of rights.

Stop, search and question powers

The Code of Practice on the authorisation and exercise of TACT stop and search powers, under the heading of ‘Oversight and Community Engagement’, states that the “appropriate use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board.”⁴⁹ Similar wording will be reflected in a Code of Practice to be issued by the Northern Ireland Office on the authorisation and exercise of JSA stop, search and question powers.⁵⁰

The Human Rights and Professional Standards Committee considers statistics on a quarterly basis of police use of a number of stop, search and question powers. The powers that are subject to statistical scrutiny are summarised below.

Article 3 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE)

Pursuant to article 3 a police officer may, in a public place or place accessible to the

⁴⁷ *Report on the Operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2011, page 5.

⁴⁸ *The Terrorism Acts in 2011. Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, David Anderson QC, June 2012, para. 11.7.

⁴⁹ *Code of Practice (Northern Ireland) for the authorisation and exercise of stop and search powers relating to sections 43, 43A and 47A of the Terrorism Act 2000*, Northern Ireland Office, August 2012, para 13.1.

⁵⁰ A draft Code of Practice for the exercise of JSA powers was issued for consultation by the Northern Ireland Office in December 2012. It should be noted that the Policing Board is not responsible for overseeing individual uses of the TACT or JSA powers save where such use is evidence of the wider application of the powers. The Police Ombudsman is responsible for dealing with complaints from members of the public against individual officers exercising the powers.

public that is not a private dwelling, search any person or vehicle for stolen or prohibited articles, such as offensive weapons and drugs, provided the officer has reasonable grounds for suspecting that he/she will find stolen or prohibited articles. Where a stolen or prohibited article is found during the course of the search, the officer may seize the article.

Section 43 TACT Pursuant to section 43 a police officer may stop and search a person whom he/she reasonably suspects to be a terrorist to discover whether he/she has in his/her possession anything which may constitute evidence that he/she is a terrorist. If in exercising this power the officer stops a vehicle, that vehicle can also be searched. An officer may seize and retain anything he/she finds in the course of such a search if he/she reasonably suspects it may constitute evidence that the person is a terrorist. Any person arrested under suspicion of being a terrorist may also be searched.

Section 21 JSA Pursuant to section 21 a police officer may stop a person for so long as is necessary to question him/her to ascertain his/her identity and movements. The power to stop a person includes the power to stop a vehicle. There is no requirement that reasonable grounds for suspicion exist before this power is exercised.

Section 24 and Schedule 3 JSA Pursuant to section 24, which gives effect to the powers set out in Schedule 3, a police officer may stop and search an individual within an area or place which is specified in an authorisation (the authorisation process is referred to above at page 28). Importantly, the power conferred by an authorisation can only be exercised for the purpose of ascertaining whether a person is carrying unlawfully munitions or wireless apparatus. A police officer, however, also has the power in the absence of an authorisation, to search a person for unlawfully held munitions or wireless apparatus if the officer reasonably suspects such items are being carried. Therefore, the 'without reasonable suspicion' element of the power requires an authorisation to be in place. A police officer may seize, retain and, if necessary, destroy any unlawfully held munitions and may seize and retain any wireless apparatus found during the course of a search of a person.

Schedule 3 JSA contains an additional power which permits a police officer 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 police officer 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 officer need not have a reasonable suspicion that munitions or wireless apparatus are on the premises. If a police officer 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 officer 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. A police officer may seize, retain and, if necessary, destroy any unlawfully held munitions and may seize and retain any wireless apparatus found during the course of a search of premises.

Section 43A TACT Pursuant to section 43A a police officer may, if he/she reasonably suspects that a vehicle is being used for the purposes of terrorism, stop and search the vehicle, the driver of the vehicle, any passenger in the vehicle and anything in or on the vehicle or carried by the driver or a passenger for the purposes of discovering whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism. The police officer may seize and retain anything which he/she discovers in the course of the search which he/she reasonably suspects may constitute evidence that the vehicle is being so used.

Section 47A TACT Pursuant to section 47A a senior police officer (i.e. an officer of rank Assistant Chief Constable and above) may authorise a specified area or place if he/she reasonably suspects that an act of terrorism will take place and he/she reasonably considers that the authorisation is necessary to prevent such an act, the specified area or place is no greater than is necessary to prevent such an act and the duration of the authorisation is no longer than is necessary to prevent such an act. Any authorisation which is given orally pursuant to section 47A must be

confirmed in writing as soon as reasonably practicable.⁵¹ Once such an authorisation is in place a police officer may stop a vehicle within the specified area or place and search the vehicle, the driver of the vehicle, any passenger in the vehicle and anything in or on the vehicle or carried by the driver or a passenger. A police officer may also within an authorised area or place stop and search a pedestrian and anything carried by the pedestrian. Importantly, the power may only be used for the purpose of discovering whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism or that the person concerned has been concerned in the commission, preparation or instigation of acts of terrorism.

This power may be exercised whether or not the officer reasonably suspects that there is such evidence. The officer may seize and retain anything which he/she discovers in the course of the search that he/she reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or that the person has been concerned in the commission, preparation or instigation of acts of terrorism.

Schedule 6B TACT By schedule 6B, a police officer may not require a person who is searched under section 47A TACT to remove any clothing in public save for headgear, footwear, an outer coat, jacket or gloves. The officer may detain a person or vehicle only for such time as is reasonably required to permit the search to be carried out. That detention should be at or near to the place where the person or vehicle is stopped. If a person or vehicle is stopped and the person applies for a written statement that he/she or the vehicle was stopped, the police must provide that written statement confirming that the stop was pursuant to an authorisation given under section 47A.

It can be noted that there were no reported uses by PSNI of section 43A TACT, which came into force on 10 July 2012 with the Protection of Freedoms Act 2012, up to 30 September 2012. To ensure that the new power is monitored adequately the

⁵¹ By Schedule 6B to TACT.

PSNI should ensure that statistics are collected and amend its quarterly statistical reports to include the power contained at section 43A TACT.

Recommendation 4

The PSNI should forthwith collect statistics on the use of the powers contained at section 43A of the Terrorism Act 2000 and amend its quarterly statistical reports to include the statistics collected.

As noted above, section 24 JSA confers a wide range of powers some of which require an authorisation, some of which do not. Some powers require reasonable suspicion but some do not. Some powers relate to people and some relate to premises, vehicles and dwellings. It is difficult to assess from the quarterly statistical reports the extent of the use of the range of section 24 powers as the statistics relate only to searches of persons and all such searches are recorded collectively. Therefore, the PSNI should collect and thereafter disaggregate its statistics according to the range of section 24 powers. The Human Rights Advisor has been advised by PSNI that the process of disaggregation has already been considered and will be actioned in the coming months. For completeness, the Committee recommends that the statistics should forthwith be collected in respect of vehicles and premises (in addition to those for persons) and thereafter the disaggregated statistics should be included in the quarterly statistical reports provided to the Committee.

Recommendation 5

The PSNI should forthwith collect and disaggregate its statistics on the use of all powers contained within section 24 of and Schedule 3 to the Justice and Security (Northern Ireland) Act 2007. In particular, the statistics should identify the powers used according to whether the stop and search was pursuant to an authorisation, was undertaken with reasonable suspicion or without and whether it was exercised in relation to a person, vehicle or premises.

Statistical reports

Table 1 below shows the number of people stopped, searched and/or questioned under PACE, section 43, section 44 and section 47A TACT and section 21 and section 24 JSA between 1 April 2010 and 30 September 2012. The figures in Table 1 demonstrate that the total number of people against whom the powers were used during the financial year 2011/2012 decreased by 22% compared to the previous financial year.

Table 1: People stopped, searched and/or questioned under PACE, s.43 and s.44 TACT and s.21 and s.24 JSA, 1 April 2010 to 30 September 2012⁵²

	<u>2010/2011</u>				<u>2011/2012</u>				<u>2012/2013</u>	
	Q.1	Q.2	Q.3	Q.4	Q.1	Q.2	Q.3	Q.4	Q.1	Q.2
<u>TOTAL</u>	15,130	9,413	11,217	9,634	9,618	7,641	9,481	8,528	7,692	7,547
	<u>Total: 45,394</u>				<u>Total: 35,268</u>				<u>Total: 15,239</u>	

Table 1 shows the number of people against whom powers were used but Table 2 below shows the frequency of the use of each legislative power across all PSNI Districts between 1 April 2010 and 30 September 2012. The total number of times the powers were used is higher than the number of people against whom they were used as multiple legislative powers can be exercised against the same individual, for example, a person may be stopped and questioned under section 21 JSA and then searched under section 43 TACT.

⁵² PSNI Stop and Search Statistics, Quarter 4 2011/12 report, incorporating figures for financial year 2011/12 (1 April 2011 – 31 March 2012) and PSNI Stop and Search Statistics, Quarter 2 2012/2013 report (1 April 2012 – 30 September 2012).

Table 2: Frequency of use of each legislative power across all PSNI Districts, 1 April 2010 to 30 September 2012⁵³

	<u>2010/2011</u>				<u>2011/2012</u>				<u>2012/2013</u>	
	Q.1	Q.2	Q.3	Q.4	Q.1	Q.2	Q.3	Q.4	Q.1	Q.2
PACE	5,997	5,691	5,566	5,531	4,899	4,527	5,832	5,488	4,906	5,711
TACT 43	33	170	93	79	115	48	40	51	50	38
TACT 44	8,841	314	1	-	-	-	-	-	-	-
TACT 47A	-	-	-	-	-	-	-	-	-	-
JSA 21	1,962	921	1,424	1,048	962	829	873	847	868	543
JSA 24	175	2,925	5,067	3,554	4,197	2,762	3,206	2,534	2,288	1,474
TOTAL	<u>17,008</u>	<u>10,021</u>	<u>12,151</u>	<u>10,212</u>	<u>10,173</u>	<u>8,166</u>	<u>9,951</u>	<u>8,920</u>	<u>8,112</u>	<u>7,826</u>
	<u>Total: 49,392</u>				<u>Total: 37,210</u>				<u>Total: 15,938</u>	

Prior to the second quarter of 2010/2011, section 24 JSA was used relatively sparingly by PSNI. Following suspension of the use of the section 44 TACT power in July 2010, the use of section 24 JSA increased significantly. There has not, however, been a full scale displacement of section 44 TACT by section 24 JSA. The power under section 24 JSA was exercised on significantly fewer occasions.⁵⁴ Quarters 3 and 4 of 2010/2011 and Quarter 1 of 2011/2012 saw the largest spike in the use of the section 24 JSA power, but there has since been a decrease in the use of the power. Up to 30 September 2012, section 47A of TACT had not been used by the PSNI.

In his most recent report, Robert Whalley CB, the Independent Reviewer of JSA, comments on the decreasing trend in the use of the JSA powers during his reporting year (August 2011 – July 2012) compared to his previous year. He queried with PSNI why this was the case in spite of the operational requirement staying at a high level. He notes “They attribute this in part to the major training programme for all

⁵³ *Ibid.*

⁵⁴For example, the number of uses of section 44 TACT for the year 2009/2010 was: Quarter 1, 3,571; Quarter 2, 11,136; Quarter 3, 5,786; and Quarter 4, 8,277. Stop and search statistics for previous years are available on the PSNI website (www.psni.police.uk) and have been reported upon in previous years Human Rights Annual Reports which are available on the Policing Board’s website (www.nipolicingboard.org.uk).

PSNI officers likely to use these powers. That has been done partly in response to the need to refresh officers' knowledge and skills following the changes brought about by the Protection of Freedoms Act and partly in response to the recognition of the value of ensuring that officers have the greatest possible familiarity with the range of powers available to them, and their most appropriate sequencing, when individual officers are in contact with the public. It also reflects greater use of the powers in planned operations in response to available intelligence. That factor will be significant in the present year if the police continue to seek authorisations under the new regime described at length above, given the enhanced role which intelligence will play in such operations. Intelligence is a vital tool for the protection of the public and it will continue to be important to maintain a strong link between intelligence collection and analysis and police operations."⁵⁵

Table 3 below shows the number of persons stopped, searched and/or questioned under PACE, TACT and JSA broken down according to policing Area and District between 1 April 2010 and 31 March 2012. During the 2011/2012 financial year, the Areas in which the most people were stopped, searched and/or questioned were Lisburn (2,766), South Belfast (2,659), Craigavon (2,490), West Belfast (2,253) and Newry and Mourne (2,138). The Areas in which the fewest people were stopped, searched and/or questioned during 2011/2012 were Moyle (110), Larne (120) and Ballymoney (165), all of which are within 'H' District. Across all Districts and within most Areas, the total number of persons stopped, searched and/or questioned during 2011/2012 decreased from the previous financial year.

⁵⁵ *Report of the Independent Reviewer: Justice and Security (Northern Ireland) Act 2007. Fifth Report, 2011-2012*, Robert Whalley CB, November 2012, paras. 342 – 343.

Table 3: Number of persons stopped, searched and/or questioned under PACE, TACT and JSA by Area and District, 1 April 2010 – 31 March 2012⁵⁶

Policing District / Area	2010/2011	2011/2012
North Belfast	2,389	1,511
West Belfast	3,532	2,253
'A' District	5,921	3,764
East Belfast	2,064	1,253
South Belfast	3,933	2,659
'B' District	5,997	3,912
Ards	708	812
Castlereagh	842	1,272
Down	2,148	1,565
North Down	1,231	1,082
'C' District	4,929	4,731
Antrim	1,183	1,190
Carrickfergus	576	386
Lisburn	3,299	2,766
Newtownabbey	2,503	1,365
'D' District	7,561	5,707
Armagh	1,416	1,212
Banbridge	497	376
Craigavon	2,779	2,490
Newry&Mourne	2,446	2,138
'E' District	7,138	6,216
Cookstown	1,783	1,208
Dungannon & S.Tyrone	1,154	958
Fermanagh	1,140	1,010
Omagh	983	1,179
'F' District	5,060	4,355
Foyle	2,431	1,650
Limavady	1,050	551
Magherafelt	747	525
Strabane	1,177	1,456
'G' District	5,405	4,182
Ballymena	1,376	1,173
Ballymoney	244	165
Coleraine	1,326	833
Larne	241	120
Moyle	196	110
'H' District	3,383	2,401
N. Ireland	45,394	35,268

⁵⁶ PSNI Stop and Search Statistics 2010/11, 1 April 2010 – 31 March 2011 and PSNI Stop and Search Statistics, Quarter 4 2011/12 report, incorporating figures for financial year 2011/12 (1 April 2011 – 31 March 2012).

A recommendation was made in the Policing Board’s thematic review of policing with children and young people that PSNI should include the approximate age of persons stopped, searched and questioned in its statistical reporting.⁵⁷ PSNI accepted that recommendation and has commenced the process of including age information in the quarterly statistical reports provided to the Policing Board.⁵⁸ Table 4 below shows the number of persons stopped, searched and/or questioned under PACE, TACT and JSA across all PSNI Districts broken down according to approximate age between 1 April 2011 and 31 March 2012.

Table 4: Number of persons stopped, searched and/or questioned under PACE, TACT and JSA across all PSNI Districts by age breakdown, 1 April 2011 – 31 March 2012⁵⁹

<u>Age band</u>	<u>persons</u>
10 and under	12
11 – 14	998
15 – 17	3,996
18 – 25	13,261
26 – 35	7,042
36 – 45	4,489
46 – 55	2,670
56 – 65	845
Over 65	568
unknown	1,387
<u>TOTAL</u>	<u>35,268</u>

As demonstrated in Table 4, age was recorded for 33,881 persons. Where age was recorded, more than half of the persons who were stopped, searched and/or

⁵⁷ Recommendation 20 of the *Human Rights Thematic Review: Children and Young People*, Northern Ireland Policing Board, January 2011.

⁵⁸ An officer will record the age either provided by the person stopped (although there is no obligation to provide age information) or based upon the officer’s assessment of age.

⁵⁹ *PSNI Stop and Search Statistics 2010/11, 1 April 2010 – 31 March 2011 and PSNI Stop and Search Statistics, Quarter 4 2011/12 report, incorporating figures for financial year 2011/12 (1 April 2011 – 31 March 2012) – Restricted version.*

questioned during 2011/2012 were under 26 years (18,267, 54%). A total of 5,006 (15%) were under 18 years. 13,261 (39%) were aged between 18 and 25 years.

The PSNI has produced a stop and search information card for young people who are stopped, searched and/or questioned. That card was produced with considerable input from the Children's Law Centre, the Northern Ireland Commissioner for Children and Young People (NICCY) and Include Youth. The card provides an overview of the powers, the right to be told the reason for the exercise of the power, the extent of information to be provided by a police officer and how the stop and search should be carried out. The card is to be used by all police officers. Each police officer will complete relevant details on the front of the card to include, for example, the date, the police officer's station and the unique reference number. The card is then provided to the young person.

The Committee welcomes this positive initiative and commends the PSNI and those stakeholders who contributed to the production of the card. The Committee believes this initiative demonstrates a strong partnership between PSNI and stakeholders which has produced real results which will ultimately enhance the protection of the rights of young people who are stopped, searched and/or questioned. The Committee believes there is significant benefit for the Police Service as well, both in terms of the community engagement exercise and in the protection of police officers who can be assured that they are doing all they can to respect and protect the rights of young people.

Given the mutual benefit to be derived from such an exercise and the on-going community confidence issues concerning the use of powers to stop, search and question, the Committee believes this initiative should be considered for the production of a card for all persons subject to stop, search and question whether under PACE, TACT or JSA.

Recommendation 6

The PSNI should consider whether the same, or a similar card, to that developed for young people should be handed out to all persons who are the subject of a stop, search and/or question under PACE, TACT or JSA.

Table 5 below shows the gender of persons who were stopped, searched and/or questioned under PACE, TACT and JSA across all PSNI Districts between 1 April 2011 and 31 March 2012. Over 90% of persons against whom PSNI used each of the stop, search and question powers during 2011/2012 were male. Some people were the subject of the exercise of more than one power.

Table 5: Gender of persons stopped, searched and/or questioned under PACE, TACT and JSA across all PSNI Districts, 1 April 2011 – 31 March 2012⁶⁰

	<u>Male</u>	<u>Female</u>	<u>Unknown /Other</u>	<u>Total</u>
PACE	18,912	1,834	-	20,746
TACT 43	240	14	-	254
TACT 44	-	-	-	-
JSA 21	3,173	338		3,511
JSA 24	11,663	1,034	2	12,699
<u>TOTAL</u>	<u>33,988</u>	<u>3,220</u>	<u>2</u>	<u>37,210</u>

Table 6 below shows the ethnicity of persons stopped, searched and/or questioned under PACE, TACT and JSA across all PSNI Districts between 1 April 2011 and 31 March 2012. Again, some people were the subject of the exercise of more than one power.

⁶⁰ *PSNI Stop and Search Statistics, Quarter 4 2011/12 report, incorporating figures for financial year 2011/12 (1 April 2011 – 31 March 2012)*. Note that Table 5 records the gender of persons against whom each power was used (and thus the figures correlate with Table 2). It does not reflect the total number of different persons stopped, searched and/or questioned as multiple legislative powers can be exercised on the same occasion against the same individual. The same person may also be stopped, searched and/or questioned on different occasions.

Table 6: Ethnicity of persons stopped, searched and/or questioned under PACE, TACT and JSA across all PSNI Districts, 1 April 2011 – 31 March 2012⁶¹

	<u>White</u>	<u>Irish Traveller</u>	<u>Mixed</u>	<u>Indian</u>	<u>Pakistani</u>	<u>Banlade shi</u>	<u>Other Asian</u>	<u>Black Carrib.</u>	<u>Black African</u>	<u>Black Other</u>	<u>Chinese</u>	<u>Others</u>	<u>Missing Ethnicity</u>	<u>Total</u>
PACE	19,839	441	59	21	8	15	22	6	64	65	36	132	38	20,746
TACT 43	250	3	-	-	1	-	-	-	-	-	-	-	-	254
TACT 44	-	-	-	-	-	-	-	-	-	-	-	-	-	-
JSA 21	3,429	28	4	6	3	-	7	4	5	2	5	16	2	3,511
JSA 24	12,479	113	13	10	5	-	8	2	10	7	13	21	18	12,699
TOTAL	35,997	585	76	37	17	15	37	12	79	74	54	169	58	37,210

⁶¹ *PSNI Stop and Search Statistics, Quarter 4 2011/12 report, incorporating figures for financial year 2011/12 (1 April 2011 – 31 March 2012).* Note that Table 6 records the ethnicity of persons against whom each power was used (and thus the figures correlate with Table 2). It does not reflect the total number of different persons stopped, searched and/or questioned as multiple legislative powers can be exercised on the same occasion against the same individual. The same person may also be stopped, searched and/or questioned on different occasions.

Table 7 below shows arrests made following use of each power to stop, search and/or question under PACE, TACT and JSA across all PSNI Districts between 1 April 2010 and 31 March 2012.

Table 7: Arrests following use of stop, search and/or question powers under PACE, TACT and JSA across all PSNI Districts, 1 April 2010 to 31 March 2012⁶²

	<u>2010/2011</u>	<u>arrests</u>	<u>% leading to arrest</u>	<u>2011/2012</u>	<u>arrests</u>	<u>% leading to arrest</u>
PACE	22,785	1,549	6.80%	20,746	1,570	7.57%
TACT 43	375	5	1.33%	254	12	4.72%
TACT 44	9,156	52	0.57%	-	-	-
JSA 21	5,355	26	0.49%	3,511	42	1.20%
JSA 24	11,721	95	0.81%	12,699	110	0.87%
<u>TOTAL</u>	<u>49,392</u>	<u>1,727</u>	<u>3.50%</u>	<u>37,210</u>	<u>1,734</u>	<u>4.66%</u>

The rate of arrest following the use of stop, search and question powers increased during 2011/2012 compared to the previous year. However, the rate of arrest following use of the powers remains low. Of 37,210 uses of powers to stop, search and/or question under PACE, TACT and JSA during 2011/2012, only 1,734 occasions (4.66%) resulted in arrest. As evidenced by Table 7, the rate of arrest following use of the PACE power and the section 43 TACT power is significantly

⁶² The information for 2010/2011 was provided by PSNI Central Statistics branch. The information for 2011/2012 is taken from *PSNI Stop and Search Statistics, Quarter 4 2011/12 report, incorporating figures for financial year 2011/12 (1 April 2011 – 31 March 2012)*. Note that Table 7 does not reflect the total number of persons stopped, searched and/or questioned (of which there were 45,394 during 2010/2011 and 35,268 during 2011/2012) as multiple legislative powers can be exercised on the same occasion against the same individual, for example, a person may be stopped and questioned under s.21 JSA and also searched under s.43 TACT. The same person may also be stopped, searched and/or questioned on different occasions.

higher than the rate of arrest following the use of the powers under sections 21 and 24 JSA. That is unsurprising given the requirement for reasonable suspicion in PACE and section 43 TACT.

The fact that arrest rates following use of the ‘without suspicion’ stop, search and question powers contained within section 21 and 24 JSA are low does not of itself mean that the powers are being used incorrectly or ineffectively. Furthermore, the deterrent or preventative effect that use of such powers may have is incapable of measure. However, arrest rates may be one indicator of the effectiveness of the use of the powers.⁶³ The use of such powers is clearly an interference with an individual’s Article 8 ECHR rights and as such, each and every use of the power must be lawful, proportionate and necessary.

Recent judicial guidance has assisted in identifying those factors that are relevant to the lawfulness of any interference with the Article 8 ECHR right when the powers under sections 21 or 24 of the JSA are used.⁶⁴ In an interesting case heard by the Northern Ireland High Court it was held that the PSNI’s use of sections 21 and 24 was in accordance with the law and did not constitute an infringement of Article 8 ECHR for a number of reasons including:

- the on-going, undisputed and manifestly high threat to life and security;
- that the powers are “vital tools” to reduce the level of threat to police personnel and the public;
- that the powers are directed to the discharge of PSNI obligations pursuant to Article 2 ECHR (the right to life) which requires that reasonable operational steps are taken to avert a real and immediate risk to life;
- that the powers are not used on a random basis but are intelligence led on the basis of threat;
- the presence of a number of procedural safeguards such as the Terrorism and Security Powers User Group, the Security and Serious Harm Programme Board and the Service Executive Board of the PSNI;

⁶³ Arrest and detention in respect of terrorism detainees is considered in more detail in Chapter 10 of this Human Rights Annual Report.

⁶⁴ *In the matter of an application by Marvin Canning for judicial review and in the matter of an application by Bernard Fox & Christine McNulty for judicial review*, [2012] NIQB 49.

- the fact that the use of the powers is subject to regular review by the independent reviewer, a person aggrieved may judicially review the use of the power, and there is the availability of damages for a wrongful use of the power in an individual case;
- the Court was satisfied, in the absence of any evidence of abuse, that the totality of safeguards had been demonstrated to constitute a real curb on the powers afforded to the PSNI.

It can be noted that the court was taking into account procedural safeguards which were introduced by the PSNI but which were not required by the legislation itself. It is essential that the safeguards set out above remain in place. In particular, as highlighted routinely by the Committee, the court stressed the importance of the powers being intelligence led.⁶⁵ In the earlier House of Lords case of *Gillan & Quinton*, Lord Hope emphasised the need for the use of the old section 44 TACT (without suspicion power) to be “precisely targeted, even if in the end it is based more on a hunch than on something that can be precisely articulated or identified.”⁶⁶

The Human Rights and Professional Standards Committee will continue to monitor PSNI’s use of the PACE, TACT and JSA powers to stop, search and question and will continue to discuss any concerns arising from such use with the PSNI, local community groups and all other interested groups or individuals. A dedicated thematic review on police powers to stop, search and question is to be published by the Committee during 2013.

⁶⁵ *Ibid.*, Treacy J. at para. 123 of the written judgment.

⁶⁶ *R (on the application of Gillan (FC) and another (FC)) v Commissioner of Police for the Metropolis and another*, [2006] UKHL 12, Lord Hope of Craighead at para. 46 of the written judgment.

5. COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS

A human rights culture is demonstrated by the quality of the interactions between the police and the public. As noted by the Oversight Commissioner in his final report of 2007, such interactions are best measured by an assessment of the formal police complaints process, internal disciplinary mechanisms and also the daily, routine contacts between the police and the public.⁶⁷ The Policing Board has a statutory duty to keep itself informed as to the workings of PSNI complaints and disciplinary proceedings and to monitor any trends and patterns emerging.⁶⁸ That work is undertaken by the Human Rights and Professional Standards Committee (the Committee) which is also responsible for monitoring the performance of the PSNI in complying with the Human Rights Act 1998.⁶⁹ As the comment by the Oversight Commissioner recognises, those two monitoring functions complement each other.

The Office of the Police Ombudsman for Northern Ireland (OPONI) was established under Part VII of the Police (Northern Ireland) Act 1998, which requires an independent and impartial police complaints system. The Committee meets formally with the Police Ombudsman and/or senior officials from his/her Office at least twice a year. The Committee also considers individual investigation reports produced by OPONI⁷⁰ and it considers Regulation 20 reports as and when they are published.⁷¹

During 2012, the Committee discussed a range of issues with OPONI including trends and patterns in complaints against police officers and the resolution of those complaints. The Committee discussed, as a result of findings in its thematic review of policing with children and young people, the way in which OPONI handles complaints made by young people under the age of 18. OPONI advised that its policy on recording complaints from young people has, to date, been a matter of

⁶⁷ *Report 19*, Office of the Oversight Commissioner, May 2007, page 26.

⁶⁸ Section 3(3)(c)(i) of the Police (Northern Ireland) Act 2000.

⁶⁹ Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000.

⁷⁰ Under section 62 of the Police (Northern Ireland) Act 1998 the Police Ombudsman may publish reports 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.

⁷¹ A Regulation 20 report is produced by the Police Ombudsman following an investigation into a specific matter 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.

custom and practice, but that it is now in the process of drafting a formalised written policy. The Committee also responded to the Department of Justice consultation on proposals for the future operation of OPONI.⁷² The consultation document incorporated the Police Ombudsman's statutory five year review report on the working of Part VII of the Police (Northern Ireland) Act 1998. The Committee considered PSNI's response to that five year review.

The Committee monitors PSNI internal disciplinary procedures to ensure that lessons are learned and that best practice is promoted across the Police Service for all officers of whatever rank. During 2012, the Committee met with officers from PSNI Service Improvement Department (formerly known as Professional Standards Department) to discuss complaints and misconduct issues. The Service Improvement Department acts as the 'gatekeeper of integrity' for the organisation.⁷³ 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 also deals with misconduct matters and decides on disciplinary recommendations arising from OPONI investigations into complaints, delegating each recommendation to the appropriate District or Department (as the case may be) to progress or referring the matter to a formal misconduct hearing.

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 Code⁷⁴ and the extent to which individual officers (and the Police Service as a whole) are respecting human rights principles.

⁷² *Future Operation of the Office of the Police Ombudsman for Northern Ireland*, Department of Justice, March 2012.

⁷³ *Professional Standards in the Police Service of Northern Ireland*, PSNI Policy Directive 01/2012, section 4(1).

⁷⁴ As per the Policing Board's statutory duty under section 3(1)(d)(iv) of the Police (Northern Ireland) Act 2000.

To provide 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, a Professional Standards Advisor was appointed by the Policing Board. In 2011, he devised a Professional Standards Monitoring Framework to enable the Committee to better identify trends and patterns in complaints and misconduct cases and to hold the PSNI to account in addressing those trends. It is anticipated that the Professional Standards Monitoring Framework will improve both the monitoring function and, ultimately, the effectiveness and consistency of the police approach to misconduct.

COMPLAINTS

Number of complaints

The OPONI Annual Report 2012 provides statistics on the number and pattern of complaints made by members of the public against police officers between 1 April 2011 and 31 March 2012.⁷⁵ That report is available to download through the Police Ombudsman's website.⁷⁶ OPONI has also developed a new section on its website through which members of the public can view details by year of complaints and allegations made according to policing area.⁷⁷ In addition to improving public accessibility to information, this is a useful resource for Policing and Community Safety Partnerships (PCSPs) and a tool which will assist them in holding their local police to account. OPONI also aims to provide six monthly reports detailing complaints and allegations by policing District so that PCSPs will have access to the most current statistical information. To date (January 2013), reports for 'A' District and 'H' District have been published.

In 2011/2012, OPONI received 3,336 complaints, which is approximately the same number as was received the previous year (3,334). The number of allegations,

⁷⁵ *Annual Report and Accounts for the year ended 31 March 2012*, Office of the Police Ombudsman for Northern Ireland, July 2012.

⁷⁶ www.policeombudsman.org

⁷⁷ http://www.policeombudsman.org/modules/new_statistics/

however, decreased by 7%, from 6,326 in 2010/2011 to 5,896 in 2011/2012.⁷⁸ This downward trend in the number of allegations appears to have followed the introduction by PSNI of a Complaints Reduction Strategy in October 2010. That strategy included measurable targets to reduce the number of complaints and allegations made against officers and to reduce the number of officers attracting multiple complaints.⁷⁹ For the first year after the Strategy was rolled out (1 October 2010 to 30 September 2011), the number of officers attracting three or more complaints (277 officers) showed a significant reduction (13%) from the previous year (318 officers). A further decrease (235 officers) was recorded in the second year (1 October 2011 to 30 September 2012).⁸⁰ The Committee met with PSNI Service Improvement Department during 2012 to discuss the progression of the Complaints Reduction Strategy. The Committee welcomes the renewed focus of the PSNI on reducing complaints and commends the PSNI for the success of the strategy to date. The momentum must be maintained.

A key factor in reducing the number of complaints appears to be a better understanding of the nature of the allegations made. This is the approach now favoured by the Committee and it is dependent upon an analysis by OPONI. Further to a report by OPONI which found that ‘incivility’ accounted for 14% of all allegations received between November 2000 and March 2009,⁸¹ a target was also set in the Policing Plan to reduce the number of allegations of incivility made against police by 5%. PSNI also focused on incivility allegations within the Complaints Reduction Strategy. As a result, incivility allegations decreased by 19% from 845 allegations during 2009/2010 to 685 allegations during 2010/2011.⁸² This was followed by a further decrease of 10% to 614 allegations during 2011/2012.⁸³ That continued

⁷⁸ *Annual Report and Accounts for the year ended 31 March 2011*, Office of the Police Ombudsman for Northern Ireland, July 2011, page 18.

⁷⁹ The Complaints Reduction Strategy was discussed in more detail in the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

⁸⁰ Information provided by OPONI to the Human Rights and Professional Standards Committee further to the Committee’s Professional Standards Monitoring Framework.

⁸¹ *2010 Analysis of Incivility Complaints*, Office of the Police Ombudsman for Northern Ireland, June 2010.

⁸² *Annual Report and Accounts for the year ended 31 March 2010*, Office of the Police Ombudsman for Northern Ireland, July 2010, page 34 and *Annual Report and Accounts for the year ended 31 March 2011*, Office of the Police Ombudsman for Northern Ireland, July 2011, page 21.

⁸³ *Annual Report and Accounts for the year ended 31 March 2012*, Office of the Police Ombudsman for Northern Ireland, July 2012, page 19.

reduction is extremely encouraging and demonstrates the success of putting in place a Complaints Reduction Strategy.

The most common type of allegation made against police officers in recent years has been a 'failure in duty'. Failure in duty includes, for example, the conduct of a police investigation, a failure to investigate, a failure in communication, issues associated with detention and the treatment and questioning of suspects. During 2011/2012, failure in duty allegations (2,091) represented 35% of all allegations made. This was closely followed by allegations of 'oppressive behaviour' (1,944) which represented 33% of all allegations made.⁸⁴ In November 2012, OPONI published a report dedicated to examining oppressive behaviour allegations received between November 2000 and March 2012.⁸⁵ In that report it is recorded that the majority of oppressive behaviour allegations were classified within the sub-types of 'Oppressive Conduct and Harassment' and 'Other Assaults' where the complainant alleges unjustified or excessive use of force or violent conduct on the part of the police officer. It is further recorded that such allegations were more likely to be made by men and young men in particular.⁸⁶ Persons who identified as being from a Catholic background were over-represented. Moreover, the officers against whom the complaints were made were more likely to be in public facing roles, with younger officers and/or officers with fewer than 5 years' service being over-represented. During 2013, the Committee intends to pursue constructive dialogue with OPONI and will encourage the PSNI to adopt a similar approach to reducing oppressive behaviour allegations as it did to reducing complaints of incivility.

Recommendation 7

The PSNI should consider the findings of the OPONI report on allegations of oppressive behaviour and present to the Human Rights and Professional Standards Committee the PSNI analysis of the findings together with its proposed means of reducing allegations of oppressive behaviour. That

⁸⁴ *Ibid.* page 19.

⁸⁵ *Analysis of Oppressive Behaviour Allegations Received by the Office of the Police Ombudsman for Northern Ireland, 2000 – 2012*, Office of the Police Ombudsman for Northern Ireland, November 2012.

⁸⁶ In general, young men are the group most likely to complain to OPONI about the police. See *Equality Monitoring Report 2006-2011*, Office of the Police Ombudsman for Northern Ireland, November 2012.

presentation should be made to the Human Rights and Professional Standards Committee within 6 months of the publication of this Human Rights Annual Report.

Complaint outcomes

When a complaint is made, it is dealt with by OPONI in accordance with its governing statute. If the complaint is within the statutory remit of OPONI and the complaint has not been withdrawn or closed due to non-cooperation of the complainant, OPONI will either refer the complaint to PSNI to be dealt with by informal or local resolution (as to which see below) or OPONI will investigate the complaint formally.

If, on investigation, it is indicated that a criminal offence may have been committed by a police officer, OPONI is obliged to notify the Public Prosecution Service for Northern Ireland (PPS). During 2011/2012, OPONI recommended 9 criminal charges to the PPS. Those 9 charges concerned 6 police officers. The recommended charges related to alleged offences of: intent to pervert the course of justice (3 charges); common assault (2 charges); misconduct in a public office (2 charges); careless driving (1 charge); and fabrication of false evidence (1 charge).⁸⁷

Informal resolution

Less serious complaints can be dealt with by way of informal resolution but only if the complainant has agreed to that course. The informal resolution process involves the Service Improvement Department appointing an officer of the rank Inspector or above to speak to the complainant and the officer who is the subject of the complaint with a view to reaching a satisfactory resolution. During 2011/2012, there were 300 complainants who agreed to engage in the informal resolution process.⁸⁸ In the same year, a total of 200 complaints were successfully resolved. That number includes a number of complaints recorded during previous reporting periods. Informal resolution

⁸⁷ *Annual Report and Accounts for the year ended 31 March 2012*, Office of the Police Ombudsman for Northern Ireland, July 2012, page 25.

⁸⁸ *Ibid.* page 26.

failed in respect of 64 complaints and those matters were referred for formal investigation by OPONI. Five complaints were withdrawn during the informal resolution process.⁸⁹

Local resolution

Local resolution was piloted in 'D' District (Antrim, Carrickfergus, Lisburn and Newtownabbey) between June 2010 and November 2010. Through the local resolution process responsibility for resolving less serious complaints is returned to Local Resolution Officers, that is, appointed Inspectors and Sergeants in the unit in which the complaint arose. Local resolution depends upon the consent of the complainant to having their complaint dealt with in this manner. The success of local resolution in turn depends upon the willing co-operation and involvement of the complainant. Unlike informal resolution, local resolution does not involve the PSNI Service Improvement Department.

Since its initiation the Human Rights and Professional Standards Committee has been actively engaging with OPONI and the PSNI in respect of local resolution. In particular, the Committee has been concerned that learning points arising from the pilot were taken into account. OPONI provided a report to the Committee on the results of the pilot which indicated that, on the whole, the pilot was a success. During the relevant 6 month period (June 2010 to November 2010), OPONI received 225 complaints relating to incidents occurring in 'D' District. Of those, 63 were deemed suitable for local resolution and of those 63 complaints, 32 were resolved locally. The average time taken to resolve a complaint locally in 'D' District between June 2010 and November 2010 was 30 days, which is more than 3 times faster than informal resolution, which took an average of 104 days in 'D' District between June 2009 and November 2009. A small number of complainants returned satisfaction questionnaires and most of those expressed high levels of satisfaction with both the process and the Local Resolution Officers involved.

⁸⁹ *Ibid.* page 27.

Following the success of the pilot in 'D' District, OPONI and PSNI agreed to continue with local resolution in 'D' District. During 2011/2012, there were 448 complaints received by 'D' District of which 44 were deemed suitable for local resolution. As at July 2012, 29 of the 44 cases were reported to have been successfully resolved locally.⁹⁰ OPONI and PSNI are keen that local resolution is rolled out across all police Districts. The Committee has sought the views of OPONI with respect to the conditions that would have to be met by PSNI prior to any roll-out of local resolution. OPONI has indicated that strong leadership, community engagement, clear policies, procedures and guidelines, appropriate structures and robust reporting will be critical to the successful roll-out. The Committee agrees however that to enable the framework to be put in place, legislative provision is required. Currently, legislation permits only the OPONI to deal with public complaints, save for those public complaints that are suitable for informal resolution.⁹¹

In the OPONI five year review, it was recommended that the legislation should be amended to allow for less serious complaints to be subject to local resolution without reference to OPONI in the first instance. A guardianship function was noted as being required to ensure public confidence in the complaints system.⁹² The Committee endorses that approach and considers oversight by OPONI to be essential. PSNI and OPONI have established a working group to consider further the roll-out of local resolution. The Committee will continue to monitor progress made in respect of local resolution and will report further in due course.

Formal investigation by the Police Ombudsman

If a complaint is not to be dealt with by informal or local resolution and it has not otherwise been closed (for example due to the complainant failing to cooperate or withdrawing the complaint), OPONI will investigate formally. OPONI determined in 72% of investigations completed and closed during 2011/2012 that the complaint

⁹⁰ *Ibid.* page 28.

⁹¹ As per sections 52 and 53 of the Police (Northern Ireland) Act 1998.

⁹² Recommendations 11, 12 and 13 of the Police Ombudsman's statutory five year review report on the workings of Part VII of the Police (Northern Ireland) Act 1998.

was not substantiated due to insufficient evidence.⁹³ As the Committee has emphasised, that should not result in complacency on the part of PSNI. Indeed, PSNI has confirmed that the making of an allegation whether substantiated or not is taken seriously and is an indication of the police relationship with the public it serves.

If a complaint is substantiated, OPONI sends to the Chief Constable (or the Policing Board in the case of a complaint against an officer of the rank of Assistant Chief Constable or above) a memorandum containing the Police Ombudsman's recommendation(s) as to whether or not disciplinary action should be taken. During 2011/2012, the Police Ombudsman made 493 recommendations to the Chief Constable relating to individual police officers, of which 62% were for advice and guidance, 23% for a Superintendent's Written Warning, 10% for management discussion and 4% for formal disciplinary proceedings.⁹⁴

The Police Ombudsman also has power to make recommendations to the Chief Constable, directed at improving police policy and practice. During 2011/2012, the Police Ombudsman made 62 policy and practice recommendations to the Chief Constable covering issues such as supervision of detainees who have been subject to a Taser discharge, police interview tapes, procedures within custody suites, domestic abuse investigations and evidence gathering by Tactical Support Groups.⁹⁵

Complaints against senior officers

A complaint made by, or on behalf of, a member of the public about a senior officer (an officer of the rank of Assistant Chief Constable or above) will be investigated by OPONI. If the complaint is suitable for informal resolution, OPONI will refer it to the Policing Board to resolve rather than to the PSNI. If, following a formal investigation by OPONI, there are recommendations for disciplinary proceedings, those will be referred to the Policing Board as the appropriate disciplinary authority for senior officers. During 2011/2012, there were no recommendations for disciplinary proceedings received by the Policing Board from OPONI in respect of senior officers.

⁹³ *Annual Report and Accounts for the year ended 31 March 2012*, Office of the Police Ombudsman for Northern Ireland, July 2012, page 24.

⁹⁴ *Ibid.* page 26.

⁹⁵ *Ibid.* pages 28-29.

Direction and control complaints

Direction and control complaints relate to the delivery of police services and concern PSNI policy or operational matters rather than allegations of misconduct against specific police officers. Where such a complaint is made, the relevant District or Department will contact the complainant, either in person or by letter, and provide an explanation for PSNI action and, where appropriate, offer an apology, make reparation and/or explain the action that PSNI has taken to remedy a problem identified by the complaint. PSNI Service Improvement Department oversees the handling of direction and control complaints and provides the Policing Board with a summary of all new complaints made, together with a summary of all complaints finalised, on a 6-monthly basis.⁹⁶ Those summaries are detailed and contain sensitive or confidential information but are reviewed by the Policing Board's Human Rights Advisor.

Between 1 April 2011 and 31 March 2012, PSNI received 136 direction and control complaints, all but 2 of which had been finalised as at 30 September 2012. The complaints related to issues such as roads policing, recovery of vehicles, arrest and detention, police records and police response times.

DISCIPLINE AND THE CODE OF ETHICS

If an allegation of misconduct has been made, the standards against which police officers are measured are those contained within the PSNI Code of Ethics 2008. The purpose of the Code of Ethics⁹⁷ is to lay down standards of conduct and practice for police officers and to make police officers aware of the rights and obligations arising out of the European Convention on Human Rights.

The Code of Ethics is more than a disciplinary tool. It is a comprehensive human rights document. Where there are breaches of the Code of Ethics, PSNI must investigate and address the cause of the breach. It is not sufficient for breaches to be dealt with solely by the imposition of sanctions to individual officers. PSNI should

⁹⁶ As required by Recommendation 27(h) of the Policing Board's Human Rights Annual Report 2005.

⁹⁷ As per section 52(1) of the Police (Northern Ireland) Act 2000.

also ensure that the officer understands how the Code was breached. There should be some consideration of whether, and if so what, action is needed to prevent other officers from breaching the Code in the same manner. PSNI therefore correlates its statistics on disciplinary matters against specific Articles of the Code of Ethics and tracks and trends those Articles most commonly alleged to have been breached. That information is shared with the Committee.

The number of alleged breaches of the Code of Ethics had been increasing steadily each year until 2008/2009 when there were 612 alleged breaches. In 2009/2010 the number of alleged breaches reduced by 4% to 585, and in 2010/2011 the number reduced further by 25% to 440. There was a slight increase in 2011/2012 to 456 alleged breaches however that number is still significantly below the number recorded at the peak in 2008/2009. Of the 456 alleged breaches recorded during 2011/2012, 50% arose out of complaints which were handled by OPONI and then referred to PSNI as the relevant disciplinary authority.⁹⁸

Over the seven year period 2005/2006 to 2011/2012, the three sub-Articles of the Code of Ethics most commonly alleged to have been breached were:

<u>Sub-Articles of the Code of Ethics most commonly alleged to have been breached, 2005/2006 – 2011/2012</u>		
1.	<p><u>Sub-Article 2.1</u> <i>Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime. They shall be conducted in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law.</i></p>	<p>Sub-Article 2.1 misconduct allegations typically involve a neglect of duty such as a failure to investigate an incident or a failure to keep a victim updated as to progress. In 2011/2012, Service Improvement Department recorded 116 alleged breaches of sub-Article 2.1 (25% of all alleged breaches of the Code of Ethics during that year). 87% of alleged breaches of sub-Article 2.1 came from OPONI referrals. Sub-Article 2.1 was also the most frequently breached sub-Article during 2011/2012 to result in a Superintendent's Written Warning.⁹⁹</p>

⁹⁸ Examination of the Articles of the Code of Ethics that are breached most frequently, PSNI, April 2012.

⁹⁹ PSNI provides the Policing Board with six-monthly figures on breaches of the Code of Ethics leading to a Superintendent's Written Warning being administered. During 2011/2012 there were 124

2.	<p><u>Sub-Article 7.2</u> <i>Police officers shall, at all times, respect and obey the law and maintain the standards stated in the Code. They shall, to the best of their ability, respect and support their colleagues in the execution of their lawful duties.</i></p>	<p>Sub-Article 7.2 misconduct allegations typically relate to police officers who have been referred to the Public Prosecution Service for criminal offences such as assault or traffic related offences and may arise from either on or off-duty conduct. In 2011/2012, Service Improvement Department recorded 112 alleged breaches of sub-Article 7.2 (25% of all alleged breaches of the Code of Ethics during the year). 93% of those alleged breaches originated from internal PSNI investigations.</p>
3.	<p><u>Sub-Article 1.10</u> <i>Whether on or off duty, police officers shall not behave in such a way that is likely to bring discredit upon the Police Service.</i></p>	<p>Sub-Article 1.10 misconduct allegations typically include allegations such as domestic abuse, threatening behaviour, neglect of duty, incivility, traffic offences and abuse of position and may arise from either on or off-duty conduct. In 2011/2012, Service Improvement Department recorded 38 alleged breaches of sub-Article 1.10 (8% of all alleged breaches of the Code of Ethics during that year). Almost three quarters of those alleged breaches (74%) originated from internal PSNI investigations.</p>

In the Human Rights Annual Report 2011 it was noted that there had been a general decrease in the number of alleged breaches of most sub-Articles of the Code of Ethics but that alleged breaches of sub-Article 1.10 recorded during 2010/2011 (93) were at their highest level in 6 years.¹⁰⁰ As outlined in the above table, sub-Article 1.10 requires officers, whether on or off duty, to refrain from behaving in such a way that is likely to bring discredit upon the Police Service. Recommendation 5 of the Human Rights Annual Report 2011, which has been implemented, required PSNI to analyse the behaviour and/or conduct that was alleged to have resulted in sub-

Superintendents Written Warnings issued, of which 55 were for breach of sub-Article 2.1 of the Code of Ethics.

¹⁰⁰ The number of alleged breaches of sub-Article 1.10 recorded by PSNI over the previous 6 years was: 2005/2006, 24; 2006/2007, 39; 2007/2008, 79; 2008/2009, 73; 2009/2010, 51; and 2010/2011, 93.

Article 1.10 breaches with a view to identifying any trends or patterns that emerged.¹⁰¹

Statistical information provided by PSNI to the Committee on alleged breaches of the Code of Ethics records one sub-Article against each misconduct incident. However, each misconduct incident may amount to a breach of a number of sub-Articles of the Code. Where this is so, the case file reflects all breaches of the Code but for statistical purposes only the main sub-Article in question is recorded. Upon reviewing the statistical information provided to the Committee, which showed the high number of alleged breaches of sub-Article 1.10 in 2010/2011, PSNI Service Improvement Department found that there were a number of cases which, whilst technically involving a breach of sub-Article 1.10, should more appropriately have been classed as a breach of another sub-Article. Deciding upon the main sub-Article allegedly breached is a subjective decision. Many of the sub-Articles are written rather broadly and may overlap with others, which can give rise to different interpretations. By way of example, in one case an altercation between 2 officers whilst on duty was assigned to sub-Article 1.10 but could equally have been deemed to be an alleged breach of sub-Article 6.1 (police officers shall act with fairness, self-control, tolerance and impartiality when carrying out their duties); sub-Article 7.1 (police officers shall act with integrity towards members of the public and their colleagues); or sub-Article 7.2 (police officers shall at all times respect and obey the law and maintain the standards stated in the Code of Ethics). Having reviewed all 93 of the alleged breaches of sub-Article 1.10 recorded in 2010/2011, which was also overseen by the Policing Board's Human Rights Advisor, PSNI Service Improvement Department re-categorised 55 of them as alleged breaches of other sub-Articles. It appears right to have done so.

Sanctions for breach of the Code of Ethics

All alleged breaches of the Code of Ethics which relate to misconduct are dealt with through the PSNI disciplinary structure either at a local level or by PSNI Service Improvement Department. Allocation depends upon the seriousness of the alleged

¹⁰¹ Recommendation 5 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

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 PSNI Service Improvement Department misconduct panel)	Local misconduct sanction (imposed at local level)
Dismissal from the PSNI	Superintendent's Written Warning
A requirement to resign	
A reduction in rank or pay	Advice and Guidance
A fine	
A reprimand	Management Discussion
A caution	

PSNI provides the Policing Board's Human Rights Advisor, on a 6-monthly basis, with summary details of all cases that resulted in formal disciplinary hearings; details of Superintendent's Written Warnings; information on the number of officers convicted of criminal offences and the disciplinary action taken by PSNI against those officers; and, information on officers who are currently suspended or who have been repositioned pending an investigation into alleged criminality or a gross misconduct matter. That information enables the Human Rights Advisor to monitor how PSNI Service Improvement Department deals with the most serious allegations of a breach of the Code of Ethics and the sanction(s) imposed for allegations that are substantiated. While it is not appropriate to provide further details of individual cases here, the Policing Board's Human Rights Advisor has reviewed all of the information provided.

Formal disciplinary hearings are conducted by a PSNI misconduct panel. In accordance with the Royal Ulster Constabulary (Appeals) Regulations 2000, the Policing Board must make arrangements for a Police Appeals Tribunal (PAT) to hear appeals from the PSNI misconduct panel.¹⁰² Since 2006, there have been approximately 30 appeals heard by the PAT. During this time, there have been 8 appeals in which the PAT overturned the sanction imposed by the misconduct panel. The Committee has recently commissioned its Professional Standards Advisor to undertake a review to examine those PAT decisions that overturned a decision of the

¹⁰² Before a case goes to the PAT, it will be subject to a Chief Constable's review.

misconduct panel. The Committee is seeking to acquire a better understanding of those decisions. On completion of the review, the Committee will determine whether any remedial action is required.

Suspended officers

Regulation 5(1) of the Royal Ulster Constabulary (Conduct) Regulations 2000 provides the Chief Constable with authority to suspend an officer if there is a report, allegation or complaint indicating that the conduct of the officer did not meet the standards set out in the Code of Ethics. The Chief Constable has delegated that authority to the Deputy Chief Constable.¹⁰³ PSNI has advised that 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. Suspension is not a sanction but a pre-emptive measure to protect the integrity of the PSNI pending resolution of the matter. It is right that a police officer accused of a discipline offence is presumed innocent until proven otherwise.

The Human Rights and Professional Standards Committee monitors the levels of suspended and repositioned police officers. During 2011/2012, there were 32 new suspensions, which is higher than in 2010/2011 when there were 20 new cases.¹⁰⁴ PSNI has advised that the increase is partly attributable to a number of incidents involving multiple officers, as opposed to an increase in the overall number of incidents.

Under regulation 6 of the Royal Ulster Constabulary (Conduct) Regulations 2000, if criminal proceedings are initiated against a police officer in respect of alleged misconduct, any disciplinary proceedings must await the conclusion of the criminal case unless the Chief Constable believes that in the exceptional circumstances of the case it would be appropriate for disciplinary proceedings to proceed. The conclusion of the criminal case will include any subsequent appeal. Thus a police officer may remain suspended on full pay for a long period of time. This has been an

¹⁰³ Regulation 5(5) of the Royal Ulster Constabulary (Conduct) Regulations 2000 permits the Chief Constable to delegate this power to another senior officer.

¹⁰⁴ Information provided by PSNI to the Human Rights and Professional Standards Committee.

issue of concern to the Committee for some time, not least because it is an issue of community confidence.

The following table shows the number of officers suspended as at 1 January 2012.¹⁰⁵

Number of officers	Date suspension initiated
1 officer	October 2004
1 officer	July 2008
1 officer	May 2009
1 officer	August 2009
1 officer	April 2010
1 officer	August 2010
1 officer	October 2010
1 officer	December 2010
1 officer	January 2011
1 officer	March 2011
1 officer	May 2011
2 officers	June 2011
2 officers	July 2011
2 officers	September 2011
2 officers	October 2011
2 officers	November 2011
3 officers	December 2011

The reason for delay in the majority of the above-listed cases was that disciplinary proceedings were on hold pending the outcome of criminal proceedings.

Over the past number of years PSNI has worked closely with the Department of Justice on legislative reform to the police discipline and unsatisfactory performance procedures in Northern Ireland. That work is still on-going. It is anticipated that the changes will include an amendment to regulation 6 of the Royal Ulster Constabulary (Conduct) Regulations 2000 to bring it more into line with the position in England and Wales, which permits misconduct and criminal proceedings to take place in tandem.¹⁰⁶

¹⁰⁵ PSNI response to freedom of information request F-2012-00077.

¹⁰⁶ Reforms to the disciplinary and unsatisfactory performance procedures in England and Wales took effect in 2008 further to recommendations arising from the *Review of Police Disciplinary Arrangements Report* (the 'Taylor Review'), W. Taylor, Home Office, January 2005.

PSNI presented a paper to the Committee which compared the number and duration of PSNI suspensions over a three year period (2009/2010 to 2011/2012) to 6 other similar forces across the United Kingdom: Northumbria; Greater Manchester; Merseyside; West Yorkshire; West Midlands; and Strathclyde. The paper demonstrated that PSNI had the highest proportion of officers suspended in 2011/2012 with 4.12 officers suspended per 1,000 officers compared to the next highest (Merseyside) which had 2.51 officers suspended per 1,000 officers. Interestingly, however, there was not a significant difference between the average length of suspension in PSNI during 2011/2012 (303 days) compared to similar forces in England and Wales. This may be attributable in part to the fact that England and Wales are still dealing with cases which pre-dated the legislative amendments,¹⁰⁷ but the Committee will explore this further.

There has been a downward trend in the PSNI over the past 4 years; the average length of suspensions has decreased from 465 days in 2008/2009 to 303 days in 2011/2012.

Officers leaving PSNI whilst under investigation

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

A concern expressed by many Policing Board Members and stakeholders has been the perception that an officer may be permitted to resign or retire for the purpose of avoiding misconduct proceedings. As a result of that concern the Committee has continued to monitor the number of officers leaving the PSNI with misconduct proceedings pending. During 2011/2012, a total of 8 police officers left PSNI whilst under investigation for alleged misconduct. Of those, 5 police officers were

¹⁰⁷ See footnote above.

suspended at the time they left. Police officers who are suspended cannot resign or retire from the PSNI without the consent of the Chief Constable. In that context, it should be noted that the likely outcome of a misconduct hearing, should the suspended officer be found to have committed a serious disciplinary offence, is to dismiss that officer or require him or her to resign. In other words, the outcome is likely to be the same. PSNI contends that the community's interests are best served by the prompt removal from policing of an officer who fails to live up to a high standard. To require an officer to remain within the PSNI simply to require him or her to face a misconduct panel (with the ultimate sanction being dismissal) is argued to make neither operational nor economic sense.

A more specific concern, however, that has been raised by some Policing Board Members and stakeholders is in respect of historic cases dealt with by OPONI. If a person who no longer serves with the PSNI has evidence which may assist an investigation he or she may cooperate voluntarily but the Police Ombudsman has no power to compel him or her to do so. The PSNI has stated unequivocally that it expects all former officers to cooperate with OPONI but that it has no power to require them to do so. It was recommended in the Police Ombudsman's five year review on the workings of Part VII of the Police (Northern Ireland) Act 1998 that "the Police Ombudsman be given a power to compel retired or former police officers to submit to witness interview, and provide all relevant documentation to him, which is within their possession, custody, power or control, when he is conducting investigations involving grave or exceptional matters."¹⁰⁸

In responding to the consultation on that review, the Committee repeated its view that police officers, whether retired or not, should provide whatever information is available to them to assist investigations conducted by OPONI. PSNI agreed with the recommendation in principle, although it suggested that the recommendation should perhaps go further and apply to all members of the public, not just retired or former officers. This is a matter that the Committee will continue to pursue with all relevant persons.

¹⁰⁸ Recommendation 17 of the Police Ombudsman's five year review report on the workings of Part VII of the Police (Northern Ireland) Act 1998.

Integrity tests

Integrity tests (which are designed to test covertly an officer or group of officers' integrity where there may be intelligence to suggest integrity may be an issue) are one of a number of options available to PSNI investigating allegations of criminal misconduct by an officer. The tests are only carried out in operationally appropriate cases where reliable information about an identified officer has been received. In other words, they are intelligence led. Between 1 April 2011 and 31 March 2012, no integrity tests were carried out. That does not suggest PSNI has failed to investigate fully or appropriately: it means that integrity testing was not required or was not appropriate for those allegations being investigated during 2011/2012.

Regulation 20 reports

OPONI has statutory responsibility for the investigation of certain matters referred by the Policing Board, the Department of Justice, the Secretary of State, the Public Prosecution Service and the Chief Constable.¹⁰⁹ The Police Ombudsman also has power to investigate certain matters of his or her own volition. At the conclusion of an investigation a report, known as a Regulation 20 report, is sent to the Secretary of State, the Policing Board and the Chief Constable. Progress on implementing the recommendations is logged onto 'Overview' (the internal police computer system to which the Policing Board's Human Rights Advisor has access).

Between 1 April 2011 and 31 March 2012, there were 35 Regulation 20 reports issued by OPONI.¹¹⁰ As each incident requires thorough investigation, there is commonly a time lag between the date of the incident and publication of the Regulation 20 report. The reports issued in the relevant year related to investigations of the following allegations:

- Discharge of Taser x 11
- Discharge of AEP x 6

¹⁰⁹ Section 55 of the Police (Northern Ireland) Act 1998.

¹¹⁰ *Annual Report and Accounts for the year ended 31 March 2012*, Police Ombudsman for Northern Ireland, July 2012, page 17.

- Attempt to pervert the course of justice x 5
- Failure in duty x 4
- Assault x 2
- Discharge of CS Spray x 1
- Fatal road traffic collision x 1
- Missing person x 1
- Death following contact with police x 1
- Traffic offence x 1
- Oppressive behaviour x 1
- Discharge of firearm x 1

The Committee has considered the findings of OPONI in each of the aforementioned reports. No issues requiring the Committee's further attention arose in those reports.¹¹¹ Not all Regulation 20 reports are published, as some contain confidential information; however, summaries of many of the reports can be obtained through the OPONI website.¹¹²

Non-police personnel

The PSNI workforce comprises over 10,000 individuals of which, as of 15 August 2012, 7,085 were full-time police officers, 564 were part-time police officers, 2,501 were police staff and 381 were associate (temporary) staff.¹¹³ The PSNI Code of Ethics only applies to police officers (whether full or part-time) and to police staff who have been designated¹¹⁴ as an investigating officer, a detention officer or an escort officer.¹¹⁵ Complaints against police officers and designated staff are dealt with by OPONI.¹¹⁶ The Code of Ethics does not apply to non-designated police staff and

¹¹¹ Note, a number of public statements (as opposed to Regulation 20 reports), for example, in respect of the death of Stephen Colwell, were discussed in depth by the Committee with PSNI and other interested parties.

¹¹² www.policeombudsman.org

¹¹³ PSNI response to freedom of information request F-2012-03213.

¹¹⁴ Under section 30 of the Police (Northern Ireland) Act 2003.

¹¹⁵ The Code of Ethics was made applicable to designated staff by the Police Powers for Designated Staff (Code of Ethics) Order (Northern Ireland) 2008.

¹¹⁶ The Police Ombudsman's power to deal with complaints was extended to designated staff under the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008.

associate staff. OPONI has no remit to deal with a complaint made in respect of such personnel.

In 2009, the Human Rights and Professional Standards Committee raised its concern with PSNI that the public rightly expect that those working within the Police Service are held to a high ethical standard, which should be the same as for police officers. Although police staff and associate staff are subject to a Police Staff Handbook, which is based upon the Northern Ireland Civil Service Staff Handbook but amended to take account of the police context, misconduct matters are not aligned to breaches of that Handbook in the same way. Information on police staff misconduct is not held centrally, but is held by Human Resources Managers in each District/Department, meaning it is difficult for PSNI to track and trend misconduct issues arising in respect of police staff. Furthermore, it means the Committee cannot carry out an effective monitoring role.

In the OPONI five year review, a recommendation was made that any 'civilian staff' operating directly in conjunction with police officers in the course of their policing functions should be brought within the remit of the OPONI for the purposes of complaints against those personnel.¹¹⁷ In responding to the consultation on that review, the Committee endorsed that recommendation. The Committee believes that OPONI should be able to deal with complaints against all persons working for PSNI, including police staff and associate staff.

CIVIL CLAIMS AND JUDICIAL REVIEWS

The PSNI provides the Policing Board with details of civil claims brought against it on a monthly basis, including details of compensation paid to plaintiffs either by court order or by way of an out-of-court settlement. Information is collated and considered by the Committee on an annual basis as part of its Professional Standards Monitoring Framework.

¹¹⁷ Recommendation 4 of the Police Ombudsman's statutory five year review report on the working of Part VII of the Police (Northern Ireland) Act 1998.

In respect of judicial reviews,¹¹⁸ the Policing Board's Human Rights Advisor has agreed a mechanism with PSNI Legal Services Branch whereby an annual schedule is provided by PSNI of all new, on-going and recently concluded judicial review applications. The Policing Board's Human Rights Advisor thereafter requests further information on any given case, as required.

During 2012, there were a number of judicial review proceedings initiated, concluded and on-going that involved PSNI. Those of particular interest to the Committee related to:

- *Justice and Security (Northern Ireland) Act 2007* In 2011 the High Court in Belfast heard an application for judicial review of PSNI use of sections 21 and 24 of the Justice and Security (Northern Ireland) Act 2007 on the grounds that the powers to stop, search and question (without reasonable suspicion) conferred a wide discretion on police officers to interfere with the privacy of individuals, the exercise of which violated the right to respect for private and family life guaranteed by Article 8 of the European Convention on Human Rights (ECHR). It was further contended that the powers were incompatible with the right to liberty guaranteed by Article 5 ECHR. Judgment was delivered in July 2012.¹¹⁹ The court held that PSNI use of the powers did not violate Article 8 ECHR. This is discussed in more detail in Chapter 4 of this Human Rights Annual Report.
- *Release of images: Operation Exposure* In the summer of 2010 PSNI in Foyle produced leaflets containing images of children and young people whom they wished to speak to in connection with sectarian interface violence. The leaflets were distributed amongst local households requesting the public to assist with identification. PSNI also released images to local newspapers. In September 2010, leave to judicially review the operation, known as Operation Exposure, was granted. The ground on which leave was granted was that the operation arguably breached Article 8 ECHR. The substantive hearing of the judicial review took place in September 2011. As was reported in last year's Human Rights Annual Report, judgment was reserved. Surprisingly, that judgment is still awaited.

¹¹⁸ Judicial review is a public law remedy by which a person with a sufficient interest can challenge the lawfulness of a policy, decision, action or failure to act, alleged against a public authority.

¹¹⁹ *In the matter of an application by Marvin Canning for judicial review and in the matter of an application by Bernard Fox & Christine McNulty for judicial review*, [2012] NIQB 49.

6. PUBLIC ORDER

Public order policing inevitably engages, in a very direct way, a number of Articles of the European Convention on Human Rights (ECHR). This is particularly apparent in the context of public processions and protest meetings. For example the following rights will almost always be engaged during a public order operation: the right to respect for private and family life, the home and correspondence (Article 8 ECHR); the right to freedom of thought, conscience and religion (Article 9 ECHR); the right to freedom of expression (Article 10 ECHR); and the right to freedom of peaceful assembly and freedom of association with others (Article 11 ECHR). Those who wish to participate in a procession, public meeting or protest have the right to do so. That includes the right to participate in a sit-down protest on a public road even if there may be some attendant disruption to traffic.¹²⁰ Article 11 ECHR has been described as an important right which must not be interfered with unless there are convincing and compelling reasons to do so.¹²¹ A person participating in a procession or protest has the right to expect the police, in clearly defined circumstances, to protect the exercise of that right. There is no right, however, to participate in violent protest.

A requirement of prior notice or authorisation for a *peaceful* procession, march, public meeting or protest is not necessarily a breach of Article 11 ECHR so long as the purpose of the notification is not to frustrate the event. The banning of peaceful assemblies is likely to be justified only where there is a real danger of disorder that cannot be prevented by other less extreme measures.

In respect of those who may be in the vicinity of a public order event such as passers-by or those residing nearby, the right to respect for private and family life (Article 8 ECHR) is also engaged. The mere fact that a procession, public meeting or protest may offend others does not mean it may be restricted: placing restrictions on such a procession or protest will usually only be justified if there is a real threat of disorder that cannot be prevented by other reasonable measures.¹²² Where disorder breaks out, the right to life (Article 2 ECHR) and the right not to be subject to torture,

¹²⁰ See, for example, *G v Germany* App. No. 13079/87, 60 DR 256.

¹²¹ *Makhmudov v Russia* App. No. 33082/04, 26 July 2007.

¹²² See, for example, *Christians Against Racism and Fascism* (1980) 21 DR 138.

inhuman or degrading treatment (Article 3 ECHR) are clearly engaged for all involved. The police are under an obligation to take preventative operational measures to protect those whose lives are at a real and immediate risk from the criminal acts of others.

Balancing the often competing rights is often challenging but is seldom the sole responsibility of the police. For example, it is for the Parades Commission to determine whether to impose restrictions or conditions upon any proposed procession or protest meeting. The Parades Commission was established on 27 March 1997 on a non-statutory basis. It acquired statutory functions when the relevant provisions of the Public Processions (Northern Ireland) Act 1998 came into force on 16 February 1998. The statutory framework was amended on 14 May 2005 when the Public Processions (Amendment) (Northern Ireland) Order 2005 came into force. The Parades Commission's obligations under the 1998 Act are to: (i) promote greater understanding by the general public of issues concerning public processions; (ii) promote and facilitate mediation as a means of resolving disputes concerning public processions; (iii) keep itself informed of the conduct of public processions and protest meetings; and (iv) keep under review the operation of the Act and make such recommendations as it thinks fit to the Secretary of State for Northern Ireland. The Commission may also issue determinations in respect of particular public processions and protest meetings where appropriate.

The Parades Commission is thus responsible for making determinations that will affect the human rights of those wishing to partake in a public procession or a protest and those living in, visiting or working in the local area. The Parades Commission is a public authority and is therefore bound to take into account and comply with the ECHR. The PSNI is responsible for policing any determination made by the Parades Commission. In doing so, the PSNI must act within legal parameters including those set by the Human Rights Act 1998. It is therefore essential that the policing of public order events, including public processions and protest meetings, are carefully planned and carefully executed operations. That is particularly so if there is likely to be any recourse to the use of force. It must be stressed that the human rights of police officers are engaged during public order situations and must therefore also be taken into account.

The PSNI has a robust written policy on the application of the Public Processions (Northern Ireland) Act 1998 and the Parades Commission.¹²³ That policy is very important for setting the framework within which the PSNI operate. It will also provide the strategic planning and implementation framework for public order events. Furthermore, the PSNI has a robust policy on the use of force in public order situations, which sets out in clear terms the human rights standards that apply to any use of force.¹²⁴ In addition to policy, PSNI delivers a range of public order training to police officers, including refresher training on human rights in public order situations. The Policing Board's Human Rights Advisor has observed PSNI training both in the classroom and in real scenarios. That training is of a high standard. The Human Rights and Professional Standards Committee will ensure that good quality training will continue to be delivered to all relevant officers as and when they need it.

MONITORING THE POLICING OF PUBLIC ORDER EVENTS

In monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board, through the Human Rights and Professional Standards Committee (the Committee) and the Policing Board's Human Rights Advisor, monitors the policing of public order situations. To assist the Committee in fulfilling this oversight function, the Committee receives public order briefings from PSNI throughout the year. During those briefings, the Committee and the PSNI discuss, for example, the steps taken by the police to engage with local communities and statutory agencies in advance of processions, public meetings and protests. In particular, the Committee has raised the issue of policing tactics, the use of force, resource implications and the criminal justice strategy. While the operational planning and implementation of those plans is an operational matter for the Chief Constable, the Committee is obliged to consider human rights implications of public order policing and community confidence issues. Therefore, the Committee cannot and does not direct the PSNI as to its operational activity but it is determined to

¹²³ *Public Processions (Northern Ireland) Act 1998 and the Parades Commission*, PSNI Service Procedure 14/08.

¹²⁴ *Public Order and the Use of Force (Including CS Incapacitant Spray, Batons, Handcuffs and Vehicle Mounted Water Cannon)*, PSNI Policy Directive, 07/07. PSNI also has separate policies on use of firearms and use of Taser: *Police Use of Firearms*, PSNI Policy Directive 12/08; and *Guidelines on the Operational Use of Taser*, PSNI Service Procedure 06/08.

continue to hold the Chief Constable to account for the performance of the PSNI in this critical area of policing.

To enable that monitoring to be effective the relevant District Commander is required to submit to the Policing Board, as soon as reasonably possible after a 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.¹²⁵ Those records are considered by the Committee. The 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 7 of this Human Rights Annual Report, provide details of any correlation between high incidents of use of force by the police and public disorder incidents.

During 2012, the Policing Board's Human Rights Advisor attended a number of meetings which considered the strategy and operational tactics to be used for public order events. Furthermore, she reviewed the public order strategy and observed the policing of some public order events. In particular, the Human Rights Advisor was present, in 'A' District Silver Command, throughout the public order operations on 12 July 2012, 28 September 2012 and 29 September 2012. That enabled the Human Rights Advisor to observe directly operational decision-making. The Human Rights Advisor has reported to the Committee that the events were well-planned, that human rights standards were effectively applied and that the decision-making process was within a strict framework which itself complied with the Human Rights Act 1998.

The Committee has instructed the Policing Board's Human Rights Advisor to undertake a piece of work dedicated to public order issues, which will include more in-depth analysis of and reporting on the wide range of public order situations. That review will commence in February 2013.

¹²⁵ Requirement for early reporting to the Policing Board following discharge of Attenuating Energy Projectiles (impact rounds) (form PB1) and incidents of public disorder (form PB2), PSNI General Order 50/02.

Use of force statistics

The use of force by the PSNI during processions and parades raises significant human rights concerns. The Committee monitors the use of force by the police and receives 6-monthly statistical reports on all recorded uses of force. In the Human Rights Annual Report 2009, it was recommended that when supplying the Committee with this statistical report, the PSNI should also provide details of any correlation between high incidents of usage of force by the police and public disorder events.¹²⁶ PSNI accepted that was an on-going recommendation and has committed to continue supplying the information in all future use of force statistical reports.¹²⁷ That has continued in 2012. Use of Force is considered separately at Chapter 7.

Public order, July 2012 - September 2012

Between July 2012 and September 2012, there were a number of public order incidents. They are summarised below.

July 2012

During serious public disorder in Ardoyne on 12 and 13 July 2012, police came under sustained attack from crowds of between 200 and 250 persons using fireworks, masonry, petrol bombs and burning vehicles. Three hoax blast bombs were thrown at police lines and a number of rifle shots were fired. Water cannon were deployed and used. Attenuating Energy Projectiles (AEP) were deployed and 6 rounds were discharged, with a total of 4 hits recorded. The injuries recorded were to 2 members of the public and 23 police officers. There was damage recorded to 4 vehicles. Since then, over 30 individuals have been arrested and the majority have been charged.

On 11 and 12 July 2012, a number of other incidents of disorder occurred. For example, a bus was hijacked and set alight in Craigavon and 10 petrol bombs were thrown at police in Portadown (with one police officer sustaining an injury). Despite

¹²⁶ Recommendation 11 of the *Human Rights Annual Report 2009*, Northern Ireland Policing Board, January 2009.

¹²⁷ *Human Rights Programme of Action 2009-2010*, PSNI, page 8.

that, the PSNI reported a reduction in the incidents of disorder, which can be attributed to the extensive community engagement and consultation which continued throughout the year.

September 2012

There was serious disorder in North Belfast over a period of 3 days in September 2012. On 2 September 2012, serious disorder broke out in the Carlisle Circus area. Police came under sustained attack from petrol bombs, fireworks and masonry. More than 50 police officers sustained injuries. On 3 September 2012, police were subjected to attack with petrol bombs, fireworks, masonry and a vehicle being used against officers. 15 police officers sustained injuries. Water cannon were deployed and used. AEP were deployed with 6 rounds discharged. 2 hits were recorded. On 4 September 2012, police again came under attack from a large crowd which used fireworks, masonry and laser pens against police officers. 3 police officers sustained injuries.

Ulster covenant commemoration

On 29 September 2012, a large event took place which involved approximately 30,000 participants across Northern Ireland. That event passed off without any major incident of disorder. There were, however, reports of breaches of Parades Commission determinations which are under investigation by PSNI. The Committee has been briefed by PSNI in respect of the criminal justice strategy adopted.

PSNI REVIEW OF PUBLIC ORDER POLICING

Following the widespread disorder during the summer of 2011, in which there was a significant increase in the number of AEPs used by the PSNI compared to previous years,¹²⁸ the Human Rights Annual Report 2011 recommended that the PSNI should complete a review of public order policing and provide the Human Rights and Professional Standards Committee with a report setting out the findings of the review

¹²⁸ During serious public order incidents occurring between 20 June 2011 and 16 July 2011, a total of 350 AEP rounds were discharged by police officers. This was substantially higher than the combined number of AEPs discharged in the previous 2 year period: between 1 April 2009 and 31 March 2010, 33 AEP rounds were discharged; and between 1 April 2010 and 31 March 2011, 181 AEP rounds were discharged.

and all steps taken or to be taken as a result of that review. The recommendation also required the PSNI to consider the use of AEP rounds.¹²⁹

PSNI accepted that recommendation and in June 2012 provided the Committee with a report. That report was the culmination of analysis, discussion and consultation with police officers, police staff and a range of external partners. The report contained a number of important findings and recommendations in respect of intelligence and information, planning, tactics, police use of force and resources. In particular, PSNI reviewed its use of force during 2011 with a particular focus on the use of AEP and water cannon. That included consideration of potential alternatives to AEP and how the PSNI's use of force was managed within the available tactical options. To build on that review, the PSNI commissioned an external piece of research to be undertaken jointly by the University of Ulster and the Institute of Conflict Research. That research will address issues of the community experience of public order policing.

In the Human Rights Annual Report 2011, Recommendation 7 required PSNI to develop a programme of annual briefing sessions to consider lessons learned from the previous year's public order operations in which particular consideration should be given to the human rights involved in the planning and execution of public order operations.¹³⁰ PSNI accepted that recommendation and has since developed a programme of briefing sessions in which PSNI will review public order operations to ensure that future operations are informed by the lessons learned during the reviews. PSNI has advised the Committee that it will continue to conduct briefing sessions on an annual basis thus giving effect to Recommendation 7 of the Human Rights Annual Report 2011. Therefore Recommendation 7 of the Human Rights Annual Report 2011 has been implemented.

¹²⁹ Recommendation 6 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

¹³⁰ Recommendation 7 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

It is worth noting that whilst there was serious public disorder requiring police intervention during 2012 substantially fewer AEP rounds were discharged compared to 2011.¹³¹

In the Human Rights Annual Report 2009, it was recommended that PSNI should conduct an audit of PSNI training on use of force in relation to children and young people.¹³² In response to that recommendation the PSNI Human Rights Training Advisor and the PSNI Human Rights Legal Advisor worked together during 2010 and 2011 to conduct that audit.¹³³ As a result, aspects of training were identified which required the needs of vulnerable groups, including children, to be highlighted. The PSNI Human Rights Training Advisor is continuing to work with trainers to evaluate and improve the training as it relates to issues concerning children and young people, including public order training. That is welcomed by the Committee. Recommendation 12 of the 2009 Human Rights Annual Report has therefore been implemented; however the Committee wishes to encourage a continued focus on training and the rights of vulnerable persons including children and young people.¹³⁴

COUNTER-TERRORISM POWERS AND POLICING PUBLIC ORDER

A number of stakeholders raised concern that counter-terrorism powers may be used to police public processions or protests. In particular, that the powers available to the police to stop and search or question may be used against a person travelling to or from a peaceful procession or protest: that powers to stop and search under the Terrorism Acts or the Justice and Security (Northern Ireland) Act 2007 may effectively be used as a public order tactic. The Board has raised this with the PSNI, which is clear that such powers are not and should not be used as a public order tactic. The Committee has found no evidence of such use but given the concerns

¹³¹ During summer 2012 a total of 12 AEP rounds were discharged (6 AEP rounds at Ardoyne on 12 July 2012, 4 of which were reported as hits; and 6 AEP rounds at Carlisle Circus on 3 September 2012, 2 of which were reported as hits). This compares to 350 rounds between 20 June 2011 and 16 July 2011.

¹³² Recommendation 12 of the *Human Rights Annual Report 2009*, Northern Ireland Policing Board, January 2010.

¹³³ Discussed further at pages 67-68 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

¹³⁴ The Policing Board has also published a dedicated thematic review of policing with children and young people in 2011, which can be accessed at www.nipolicingboard.org.uk

raised and the fundamental importance of the issue it will monitor this closely. As referred to in Chapter 4 of this Human Rights Annual Report, the Committee will be publishing a thematic review of the use of the powers to stop, search and question during 2013.

7. USE OF FORCE

Police officers have a range of powers, which includes the authority to use force in specified circumstances. The use of force engages in a direct and fundamental way the rights protected by the European Convention on Human Rights (ECHR) such as Article 2 (the right to life); Article 3 (the right not to be subject to torture, inhuman or degrading treatment or punishment) and Article 8 (the right to respect for private and family life).¹³⁵ Police officers have the right to defend themselves from unlawful violence and the duty to protect others from harm. A clear and accessible policy, which contains comprehensive guidance to officers, followed by training which is refreshed regularly and which has throughout it a practical human rights focused approach is critical to ensuring that each use of force is lawful. Training should be designed so as to ensure that the use of force by all officers will comply with human rights standards

Article 2 of the ECHR is one of the most fundamental human rights of all - the right to life. It provides that “Everyone’s right to life shall be protected by law.” This places a duty upon police not only to refrain from taking human life, but also a duty to take steps to protect life. However, deprivation of life shall not be regarded as inflicted in contravention of Article 2 ECHR if it results from the use of force which is no more than absolutely necessary in defence of any person from unlawful violence. The test of absolute necessity is very strict.

It is difficult to justify the use of lethal force where less life-threatening equipment may be available. For example, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which is often used by the European Court of Human Rights to interpret Article 2 ECHR, records that intentional lethal force may be used only when strictly unavoidable in order to protect life. Article 2 ECHR also applies to the use of potentially lethal force. As the use of any type of force is potentially lethal, police officers must only ever use the minimum force required in

¹³⁵ Which can encompass the physical, moral and psychological integrity of a person: *Botta v Italy* (Application No. 21439/93).

any given situation. PSNI's policy on the use of force contains comprehensive guidance for officers.¹³⁶

There are many types of force which police officers use including firearms, Taser, Attenuating Energy Projectiles, water cannon and batons. Any consideration of the use of force should not be limited to the use of weapons but must also include hands-on restraint techniques. Consideration should always be given to a viable alternative to the use of force. Article 4 of the PSNI Code of Ethics, which draws upon the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states "Police officers, in carrying out their duties, shall as far as possible apply non-violent methods before resorting to any use of force. Any use of force shall be the minimum appropriate in the circumstances and shall reflect a graduated and flexible response to the threat. Police officers may use force only if other means remain ineffective or have no realistic chance of achieving the intended result."

Before lethal or potentially lethal force is used a police officer should identify him or herself and give a clear warning of 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. If 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. Thereafter, there must be an adequate mechanism for auditing the use of force across the Police Service.

¹³⁶ *Public Order and the Use of Force (Including CS Incapacitant Spray, Batons, Handcuffs and Vehicle Mounted Water Cannon)*, PSNI Policy Directive, 07/07; *Police Use of Firearms*, PSNI Policy Directive 12/08; and *Guidelines on the Operational Use of Taser*, PSNI Service Procedure 06/08.

	<u>Test for use</u>
Taser	Taser may be used by a police officer who genuinely, honestly and reasonably believes it is necessary in order to prevent a risk of death or serious injury. The test for the use of Taser is set at a slightly lower threshold than that for use of a firearm or AEP. It is intended to cover a situation where an officer honestly believes that a situation is in immediate danger of escalating to a point where the use of AEP or firearms will be required. Taser use is linked to the prevention of recourse to lethal technology.
AEP	The Attenuating Energy Projectile may only be used if a police officer genuinely, honestly and reasonably believes it is absolutely necessary to do so to reduce a serious risk of loss of life or serious injury. Thus the test that must be met before AEP can be used is the same as for conventional firearms. As it is considered a less lethal option, however, it is preferred as an alternative to conventional firearms if it is available, the circumstances are appropriate and the test of absolute necessity has been met.
Firearms	A firearm may only be discharged where a police officer genuinely, honestly and reasonably believes it is absolutely necessary to do so in order to save life or prevent serious injury subject only to the exceptions that the discharge is for training purposes or for the lawful destruction of an animal.

Monitoring police use of force

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 a Police Ombudsman investigation regardless of whether or not a complaint has been made. Where a firearm, an AEP or a Taser have been discharged, the Police Ombudsman will investigate the incident. Where Taser has been drawn or aimed at a subject, but not discharged, the Police Ombudsman must be notified, but will usually only

investigate if a complaint is made. At the conclusion of the Police Ombudsman's investigation, a Regulation 20 report is prepared.¹³⁷ The Policing Board receives a copy of all Regulation 20 reports and considers any findings or recommendations contained within them. If a Taser is used (whether drawn or discharged) a Taser evaluation form must be completed and sent to the Association of Chief Police Officers (ACPO). If an AEP is discharged, the relevant District Commander must submit a Form PB1 to the Policing Board.¹³⁸ Moreover, after every public disorder incident the relevant District Commander must submit to the Policing Board a 'Form PB2', which provides an overview and relevant details of the use of force during that incident.¹³⁹ Those forms are considered by the Policing Board and the Human Rights and Professional Standards Committee (the Committee).

Each police officer is ultimately responsible for his or her own decision to use force. If it appears to the PSNI or to the Police Ombudsman 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 had a reasonable opportunity to refuse to obey it. Responsibility additionally lies with the supervisor who issued the unlawful order. As discussed in more detail in Chapter 5 of this Human Rights Annual Report, the Human Rights and Professional Standards Committee (the Committee) monitors both criminal and disciplinary investigations relating to the use of force. 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.

¹³⁷ Under section 55 of the Police (Northern Ireland) Act 1998, the Police Ombudsman must investigate certain matters referred by the Policing Board, the Department of Justice, the Secretary of State, the Public Prosecution Service and the Chief Constable. The Police Ombudsman also has power to investigate certain matters of his or her own volition. At the conclusion of an investigation a report, known as a Regulation 20 report, is sent to the Secretary of State, the Policing Board and the Chief Constable.

¹³⁸ Form PB1, *Requirement for early reporting to the NI Policing Board Discharge of Attenuating Energy Projectiles (impact rounds)*.

¹³⁹ Form PB2, *Requirement for early reporting to the NI Policing Board Incidents of Public Disorder*.

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

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

PSNI collates the data captured on the electronic use of force monitoring forms, including any trend information, into a six-monthly report which is considered by the Human Rights and Professional Standards Committee. That report is restricted. Recommendation 8 of the Human Rights Annual Report 2011 recommended that PSNI should also prepare the statistical report in an unrestricted format and publish it on the PSNI website.¹⁴⁰ PSNI accepted that recommendation and published statistics for the year 1 April 2011 – 31 March 2012.¹⁴¹ PSNI has committed to continue publishing the statistics on the website on a six-monthly basis. Therefore, Recommendation 8 of the Human Rights Annual Report has been implemented. This is welcomed by the Committee as the publication of statistics by the police enhances participation by stakeholders and demonstrates the PSNI's commitment to human rights accountability. As one report has noted, "Statistical indicators are a powerful tool in the struggle for human rights. They make it possible for people and organizations—from grassroots activists and civil society to governments and the United Nations—to identify important actors and hold them accountable for their actions."¹⁴²

While a statistical report does not in itself measure PSNI human rights compliance when using force, the six-monthly reports do provide the Committee (and now the

¹⁴⁰ Recommendation 8 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

¹⁴¹ Available through the statistics section of the PSNI website: www.psnipolice.uk

¹⁴² *Human Development Report 2000. Human Rights and Human Development*, United Nations Development Programme (UNDP), 2000, page 89.

community served by the PSNI) with an overview of use of force. Through the statistical reports issues can be identified, which permits greater scrutiny and accountability. For example, the use of force report for 1 April 2011 – 30 September 2011 identified that a total of 350 AEP rounds were discharged by police during that six month period. The Committee therefore recommended in the Human Rights Annual Report 2011 that PSNI should, in its report to the Committee on its review of public order (discussed in more detail in Chapter 6 of this Human Rights Annual Report), identify and consider the issues that arise in relation to the use of AEP rounds.¹⁴³ The PSNI accepted that recommendation.

The Committee met with PSNI in March 2012 to discuss, amongst other things, the use of AEP by PSNI. Members discussed whether there were any alternatives to AEP, the high level of use of AEP during the summer of 2011 and the strike-rate of AEPs. The Committee also raised the community confidence issues and in particular the perception of some members of the community that AEP had been used as a means of crowd control. In respect of that issue, PSNI stressed that whilst AEP can be used *during* public order situations it can only ever be used against identified individual targets and must never be used as a means of crowd control. Additionally, the PSNI confirmed that AEP is only deployed by a limited number of trained officers. Those officers must first have received a bespoke training package which includes instruction not only on how to use the equipment, but on the circumstances in which it can be used lawfully.

The bespoke training includes the human rights principles relevant to the use of the AEP system and is both technical and practical. Officers trained to use AEP must reclassify for use of the AEP system twice per year. Further to the public order review noted in Chapter 6 of this Human Rights Annual Report, PSNI introduced a judgemental element into the reclassification for use of the AEP system. This element is focused on environmentally realistic scenarios during which an officer is required to make real-time decisions. The scenarios vary and may include targets at a distance, targets moving towards the officer, the officer coming under attack from debris and low light conditions that simulate street lighting. The scenario training is

¹⁴³ Recommendation 6 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

then followed by a de-brief in which the officer must explain his or her decision-making process, in particular the application of the law and the necessity and proportionality of the decision. The officer is assessed according to strict criteria.

In June 2012, in response to Recommendation 6 of the Human Rights Annual Report 2011, PSNI presented the Committee with a report on its review of public order. The use of force was examined during the review, with a particular emphasis on the use of AEP and water cannon. Potential alternatives were considered as was the police approach to managing public disorder. PSNI briefed the Committee on that review. The Committee raised a number of issues which will be kept under review and reported upon in the coming months. Recommendation 6 of the Human Rights Annual Report 2011 has therefore been implemented.

Investigation of death or serious injury

Article 2 ECHR requires an effective and efficient official investigation following death or serious injury. If the death or serious injury has been caused by a police officer using force the investigation must be prompt, thorough, independent and capable of determining illegality and holding an officer to account for an unlawful use of force. That investigation must involve an assessment of the organisation and planning of the operation which led to the use of force. In reaching that assessment, the training delivered to police officers, the instructions given and the communications of those who used the force and those who directed the operation must be considered. To ensure such an investigation can take place, all relevant evidence must be secured as soon as possible. There must also be a degree of public scrutiny and the involvement of the family of the deceased in the process to the extent necessary to safeguard their legitimate interests. The Police Ombudsman will, in every case where death has occurred following contact with the police, investigate the death.

Police use of force between 1 April 2012 and 30 September 2012

The table below provides an overview of the use of force by the PSNI between 1 April 2012 and 30 September 2012. This information derives from the six-monthly use of force reports provided by PSNI to the Policing Board.¹⁴⁴

Attenuating Energy Projectile (AEP)

AEP is considered as an option during serious public disorder for use by a limited number of specifically trained officers where an individual aggressor or aggressors can be identified and targeted. The AEP is also considered as an option in a stand-alone incident for use by a small number of specifically trained firearms officers as a less lethal option where use of a firearm would also be justified. The AEP 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 and targeted. Officers are required to report all incidents where an AEP has been pointed, even if it has not been fired.

Police officers reported using AEPs on 14 occasions during the 6 month period. 11 involved the AEP being pointed but not fired, while 3 resulted in an officer discharging at least 1 AEP. All 3 occasions where AEPs were fired were during serious public disorder in North Belfast, twice on 12 July 2012 and once on 3 September 2012, resulting in a total of 12 AEP rounds being discharged. The main reason given for officers using AEP was to protect themselves and other police officers. Males aged 18-29 were the group against whom AEP was used.

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

¹⁴⁴ PSNI Use of Force Statistics, 1 April 2012 – 30 September 2012, PSNI, December 2012.

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) have anticipated a threat of force being used against them. If a supervisory officer gives a direction to other officers to draw their batons only the 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.

Batons were reported to have been either drawn or drawn and used on 422 occasions during the 6 month period. They were drawn without being used on 266 occasions. Batons were used on 156 occasions. The main reason given by officers for using batons was to protect themselves. Batons were drawn and used most frequently in North Belfast (45 uses). Males aged 18-29 were the group against whom batons were used most frequently.

CS Spray

CS spray is issued only to officers trained in the Personal Safety Programme and is carried as part of an officer's patrol equipment. CS spray is designated as 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.

There were 242 occasions when CS spray was reported to have been either drawn or drawn and sprayed during the 6 month period. On 109 of these occasions it resulted in the spray being drawn but not sprayed, while spray was drawn and sprayed on 133 occasions. The main reason officers gave for using CS spray was to protect themselves. Males aged 18-29 were the group against whom CS spray was used most frequently. The use of CS spray was greatest in Foyle where it was sprayed on 19 occasions and drawn on a further 14 occasions.

Firearms

The Chief Constable has issued standing authority for all officers, subject to completing training, to be issued with a personal issue firearm. That standing authority is kept under regular review. Officers are required to report any instance when they have occasion to draw or point their personal issue firearm even if it is not discharged.

Firearms were reported to have been drawn on 151 occasions during the 6 month period; there were no occasions on which a firearm was discharged. The main reason officers gave for drawing firearms was to protect themselves. Firearms were drawn most frequently in Craigavon (22) and Foyle (21).

Police Dog

Most police dogs are now attached to Tactical Support Groups (TSGs). They are considered as an option in a variety of scenarios including public disorder. Use of force, however, accounts for only a very small proportion of the work that police dogs are used for.

Officers reported the use of a police dog on 21 occasions during the 6 month period (of which 5 were during public order situations). There were 26 persons against whom a police dog was used. Of these people, 2 were bitten by the dog. The use of the police dog was most frequent in Lisburn (7 uses) and South Belfast (6 uses). The main reason officers gave using police dogs was to effect arrest. Males aged 18-29 were the group against whom police dogs were used most frequently.

Taser

Taser are issued to specialist firearms officers and to authorised firearms officers attached to Armed Response Vehicles. If Taser is drawn and/or aimed (at which stage a red dot appears on the subject indicating where the Taser would hit), Taser use must be reported, even if it is not subsequently fired.

There were 64 occasions when Taser was reported to have been drawn during the 6 month period, of which 3 resulted in the Taser being fired. The main reason officers gave for using Taser was to protect themselves and others. The use of Taser was greatest in South Belfast where it was drawn (although never fired) on 11 occasions.

Water Cannon

PSNI has 6 water cannon available. Water cannon are deployed and used only when authorised by appropriate officers in accordance with police policy.

There were 4 reported uses of water cannon during the 6 month period. Two of these were reported on 12 July 2012 and 2 on 3 September 2012 at serious public order incidents occurring in North Belfast. Water cannon were also deployed on 53 other occasions during the 6 month period without being used.

8. COVERT POLICING

The interception of communications, surveillance and the use of Covert Human Intelligence Sources (CHIS) by the police raise serious human rights issues and present real challenges for a police service in terms of compliance with the Human Rights Act 1998. It is essential that oversight and accountability is robust and as transparent as permitted within legitimate boundaries. The framework adopted by Parliament was the Regulation of Investigatory Powers Act 2000 (RIPA), which extends to Northern Ireland. That Act has very specific rules and accompanying Codes of Practice relating to the authorisation of such policing methods which are intended to fulfil the requirements of the European Convention on Human Rights (ECHR), in particular, Article 8 ECHR (the right to respect for private and family life). Only certain persons are entitled to grant authorisations and, save in urgent cases, any police authorisation of intrusive surveillance must be approved by a Surveillance Commissioner.

Scrutiny of the interception of communications, surveillance and the use of CHIS is provided for in Part IV of RIPA. This puts in place an Interception of Communications Commissioner; an Intelligence Services Commissioner; and a Chief Surveillance Commissioner. It is the role of the Chief Surveillance Commissioner to review the use of surveillance, Covert Human Intelligence Sources (CHIS) and encryption. Each Commissioner has specific duties to report to the Prime Minister and there are provisions for such reports to be laid before Parliament. However, if it appears to the Prime Minister that the publication of any matter might be contrary to the public interest or prejudicial to the prevention or detection of serious crime or the continued discharge of the functions of any public authority whose activities include activities that are subject to review by a Commissioner, that matter can be excluded from publication.

Part IV of RIPA also establishes a Tribunal for dealing with complaints arising from the interception of communications, surveillance and the use of CHIS. The Tribunal is the designated forum in which individuals can raise a complaint that their rights under the ECHR have been breached. The Tribunal can hear, consider and investigate complaints and has a power to award compensation and to quash an

interception warrant or an authorisation for surveillance or the use of CHIS. However, once the Tribunal has determined a complaint, the only information it is authorised to provide to the complainant is a statement either that a determination has been made in his/her favour or a statement that no determination has been made in his/her favour.

It is not the intention of the Policing Board to duplicate the work of the various Commissioners or to examine any of the individual complaints determined by the Tribunal. However, in monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board, through its Human Rights Advisor, keeps under review the mechanisms in place for ensuring that all PSNI officers comply with the requirements of RIPA and the Human Rights Act in relation to covert policing. Since 2002 the Human Rights Advisor has monitored the annual inspection reports of the Chief Surveillance Commissioner in respect of PSNI. The inspections are carried out by a team of Commissioners and specialist investigators. The inspection team has access to all relevant officers, materials, policies and records and routinely carries out random checks on case-files and records.

The Policing Board's Human Rights Advisor was provided access to the April 2012 report of the Chief Surveillance Commissioner and the PSNI response to that report. The contents of that report together with the PSNI response contain sensitive information which cannot be set out or summarised in this report. However, the Human Rights Advisor has been able to confirm that the recommendations made by the Surveillance Commissioner in his 2011 report were implemented in full and that the PSNI was reported to have "achieved an extremely high level of legislative compliance" with the "tenacity and commitment" of police officers once again highlighted. The management of paperwork for authorisations under RIPA was described as "exemplary" and applications for authorisations were noted to be of a high standard with detailed intelligence included to support the applications. It was further recorded that the proportionality of each application was "argued cogently" and that cancellations were conducted promptly. The management and oversight of CHIS, both in national security and crime, were maintained to a high standard. In the 2012 report only one recommendation is made which is directed at fine tuning and

the provision of clarity in respect of one matter. The PSNI accepted that recommendation and has already taken steps to implement it.

A recommendation was made in the Human Rights Annual Report 2011 that PSNI should complete its review of all intelligence policies, procedures and protocols, complete its overarching policy on the management of intelligence and report to the Policing Board on this work.¹⁴⁵ In response, PSNI advised the Policing Board that it had completed its review and overarching policy. PSNI provided the Policing Board with a copy of the overarching policy.¹⁴⁶ Therefore Recommendation 9 of the Human Rights Annual Report 2011 has been implemented.

The policy contains an overview of key policy statements in respect of police gathering, processing and disseminating any information that is deemed as having use for 'intelligence purposes', from its first receipt by the organisation until its destruction by the organisation. More detailed guidance is contained within the relevant RIPA Codes of Practice and also other police procedural documents. There is a Memorandum of Understanding between the PSNI and the Security Service together with relevant protocols and service level agreements. Those documents have not been published. They were, however, subject to 'human rights proofing' by previous Human Rights Advisors to the Policing Board and were considered satisfactory. PSNI is undertaking a review of those documents, which has yet to be finalised. The PSNI has committed to providing drafts of those documents to the Human Rights Advisor who will review them for compliance purposes and report further in the coming months. The Committee expects the PSNI to make those documents, at least in summary form, accessible for public scrutiny.

Recommendation 8

On completion of its review of the Memorandum of Understanding, the relevant protocols and service level agreements between the PSNI and the Security Service, the PSNI will subject them to human rights proofing by the Policing Board's Human Rights Advisor and thereafter publish those

¹⁴⁵ Recommendation 9 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

¹⁴⁶ *The Management of Intelligence*, PSNI Policy Directive PD 01/11, 9 June 2011.

documents to the greatest extent possible. In the event that PSNI decides not to publish any document or to publish all or any in a redacted form it should provide to the Human Rights and Professional Standards Committee the written reasons for so deciding.

One further issue calls for a recommendation in this Human Rights Annual Report. The PSNI should forthwith put in place a *formal* training plan to ensure that all officers who are or may be involved in any application of RIPA receive all necessary training as and when required. It is recognised that training is already included in a number of lessons however the Committee wishes to see that formalised and mandatory.

Recommendation 9

The PSNI should forthwith put in place a formal training plan to ensure that all officers who are or may be involved in the application of the Regulation of Investigatory Powers Act 2000 receive all necessary training as and when required. The provision of training should be kept under review and provided as and when required.

National security

Responsibility for national security intelligence work was transferred from the PSNI to the Security Services in 2007. However, in all circumstances, including where national security issues are involved, it is the role of the PSNI to mount executive policing operations, make arrests and refer cases to the Public Prosecution Service for Northern Ireland. Annex E to the St. Andrew's Agreement¹⁴⁷ includes a paper by the British Government on future national security arrangements in Northern Ireland. It was drafted in anticipation of the transfer of responsibility in 2007. In the paper, the Government confirmed that it accepted and would ensure that effect was given to five key principles which the Chief Constable of the PSNI identified at the time as being crucial to the effective operation of the new national security arrangements:

¹⁴⁷ The St. Andrew's Agreement was reached on 13 October 2006 following negotiations between the British and Irish Governments and the Northern Ireland political parties.

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 or the Policing Board's ability to monitor said compliance.

To that end, the Government stated that it believed that the Policing Board's Human Rights Advisors "should have a role in human rights proofing the relevant protocols that will underpin the Chief Constable's five key principles, and also in confirming that satisfactory arrangements are in place to implement the principles."¹⁴⁸ As referenced above, the Policing Board's Human Rights Advisor is about to undertake a review of revisions to relevant protocols and service level agreements.

During 2012, the Policing Board's Human Rights Advisor has met on a number of occasions with David Anderson QC (the Independent Reviewer of the Terrorism Act), Robert Whalley CB (the Independent Reviewer of the Justice and Security Act 2007) and Lord Carlile of Berriew QC CBE in respect of his residual role in the oversight of national security arrangements. The Committee has also met with the Independent Reviewers and with Lord Carlile. The Committee is extremely grateful to them for the time they have given to the Human Rights Advisor and to the Committee and for the thoughtful, transparent and comprehensive presentations they delivered.

¹⁴⁸ Annex E to the St. Andrew's Agreement is available to view through the National Archives website: www.nationalarchives.gov.uk

PSNI officers who interface with the Security Service

A number of PSNI officers work alongside Security Service personnel in a variety of roles for the purpose of ensuring that intelligence is shared and properly directed within the PSNI. Annex E to the St. Andrew's Agreement states that "Integration of personnel in this way is an essential protection against concerns that some intelligence would not be visible to the PSNI." Those arrangements are kept under review by David Anderson QC, Robert Whalley CB and Lord Carlile QC CBE and are reviewed to a more limited extent by the Policing Board's Human Rights Advisor. It remains of utmost importance that police officers working alongside the Security Service are accountable to the Chief Constable, the Police Ombudsman and the Policing Board in respect of all that they do and that there is an appropriate degree of transparency in respect of such arrangements.

It was reported in the Human Rights Annual Report 2011 that a number of stakeholders had expressed concern that the oversight mechanism was not sufficiently transparent in respect of PSNI officers who work in areas where there is overlap with the Security Service. The Report stated that the Human Rights and Professional Standards Committee would undertake a review of the arrangements in place and will consider the extent to which those arrangements can be better explained and reported upon.¹⁴⁹ That is currently being considered together with the Independent Reviewers, Her Majesty's Inspectorate of Constabulary (HMIC) and the PSNI. The Policing Board and the Committee will actively progress this during the coming months and report publicly in due course.

Crime and Courts Bill

The Crime and Courts Bill was published on 11 May 2012 and is currently making its way through Parliament.¹⁵⁰ If enacted, the Bill will establish a new National Crime Agency (NCA) to take over the organised crime work currently carried out by the Serious Organised Crime Agency (SOCA), the UK Border Agency (UKBA) and the

¹⁴⁹ *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012, page 79.

¹⁵⁰ Progress on the Bill can be monitored through the UK Parliament website: <http://services.parliament.uk/bills/2012-13/crimeandcourts.html>

Child Exploitation and Online Protection Centre (CEOP). The NCA will set the national operational agenda across the United Kingdom for fighting serious and complex crime and organised criminality.

The Department of Justice (DOJ) invited the Policing Board to make initial observations on the Bill in May 2012. In response, the Policing Board highlighted a number of issues. For example, the Bill provides that NCA officers will operate under the direction and control of an operationally independent Director General who will be directly accountable to the Home Secretary and ultimately Parliament rather than the local accountability structures. The Bill sets out a process by which NCA officers will be able to exercise the operational powers of a constable, as well as immigration and customs powers. Although the Police Ombudsman for Northern Ireland will oversee complaints in respect of NCA officers exercising powers of a constable in Northern Ireland, where operational issues or more general community concerns arise, the Policing Board will not be able to hold the NCA to account. The Policing Board therefore sought assurances from the DOJ that regard would be given to the bespoke accountability arrangements for the oversight of policing in Northern Ireland when the role and powers of the Director General are finalised.

The Bill provides that an intelligence hub will inform the operational activity of the NCA by gathering, analysing and disseminating operational intelligence. If enacted, the Bill will place a duty on police services across the United Kingdom to routinely notify and share information that is relevant to the NCA's functions. There will be a reciprocal duty for the NCA to notify police services of information that is relevant to them. The Policing Board suggested to the DOJ that the five key principles as set out in Annex E of the St. Andrews Agreement should apply in so far as they relate to the sharing of intelligence. However, while the Policing Board has oversight of the PSNI as to compliance with the five key principles, the NCA will not be accountable to the Policing Board. The Policing Board therefore suggested that information sharing protocols should be put in place between the police and the NCA and that these protocols should be shared with the DOJ and the Policing Board.

Another issue the Policing Board raised with the DOJ was the fact that the Bill, as introduced, contained a 'future proofing' order-making power which would have

enabled the Home Secretary to change the functions of the NCA to include counter-terrorism functions. Should such an order have been made in the future, the Bill provided that the NCA would have to get the prior agreement of the Chief Constable of the PSNI before it could undertake counter-terrorism activities in Northern Ireland. In 2007, when responsibility for national security transferred from PSNI to the Security Services, there were and remain major community confidence issues. The Policing Board stated in its response to the DOJ that it is resolute that the PSNI should continue to have primacy over the NCA in matters where there is an interface between national security and serious/organised crime and that in this regard the PSNI should continue to be guided by the five key principles as identified in Annex E of the St. Andrews Agreement.

The clause containing the 'future proofing' order-making power has since been removed from the Bill by the House of Lords. However, the Policing Board will continue to monitor any subsequent amendments to the Bill as it completes its Parliamentary passage and will continue to liaise with the DOJ as the plans for the new NCA progress.

Operation Ballast

The Statement by the Police Ombudsman for Northern Ireland on the investigation into the circumstances surrounding the murder of Raymond McCord Junior and related matters (the Operation Ballast Report) was published on 22 January 2007. It contained 20 recommendations, 17 of which were directed to the PSNI. Recommendation 20 of the Operation Ballast Report required the Policing Board to establish a mechanism to review the PSNI response to the recommendations. The Policing Board accepted that responsibility and since 2007 the Policing Board's Human Rights Advisors have examined, validated and reported on the implementation of the Ballast recommendations.

In December 2009, the Chief Constable announced his intention to transfer the investigation of those deaths highlighted by the Operation Ballast Report (now known as the Operation Stafford investigation) from the Historical Enquiries Team (HET) to PSNI Crime Operations. Following the announcement, the Policing Board's

Human Rights Advisor considered whether the new arrangements complied with the right to life under Article 2 of the ECHR, in particular the requirement that the investigation be independent, publicly accountable and such that the relatives of the deceased are kept informed in so far as required to protect their legitimate interests.¹⁵¹ While operational decisions are for the Chief Constable, including the decision to transfer Operation Ballast to Crime Operations, the Human Rights and Professional Standards Committee on behalf of the Policing Board is legally obliged to monitor the legality and implications of the decision in complying with the Human Rights Act 1998.

The Operation Stafford investigation is a sensitive operational matter. Information and intelligence must be protected. A balance must be struck between the interests of the investigation and the interests of relatives of the deceased. Accordingly, discussions took place to agree a protocol for the exchange of information and for the meaningful briefing of the relatives in a forum which did not compromise the integrity of the investigation. Members of the Policing Board met with the Chief Constable to discuss the new structural arrangements for the Operation Stafford investigation. Members also met with senior officials from the Police Ombudsman's office and with the families of victims affected by Operation Stafford to discuss issues arising from the Chief Constable's decision.

The Policing Board initially established a special committee which was dedicated to overseeing the compliance of the Operation Stafford investigation with Article 2 ECHR. That special committee was constituted to receive confidential briefings from PSNI and others on the progress of the investigation. In May 2011 the Policing Board's membership was reconstituted. Subsequently, at a meeting in February 2012, it was agreed that PSNI should in future brief the Human Rights and Professional Standards Committee, rather than the special committee, on the Operation Stafford investigation. The Human Rights and Professional Standards Committee received briefings from PSNI on the Operation Stafford investigation in May 2012 and October 2012. During those meetings the Committee discussed a range of issues including ongoing investigations and the use of the assisting offender

¹⁵¹ The police have a positive obligation under Article 2 of the European Convention on Human Rights (ECHR) to carry out an effective investigation into a death.

provisions under the Serious Organised Crime and Police Act 2005. The Policing Board's Human Rights Advisor has also been given access to documents and has been briefed on the progress of the investigation. As the investigation is a live investigation, it is not appropriate to comment any further at this stage. PSNI has put in place a mechanism by which an independent panel comprising two persons receive confidential briefings on a regular basis on the Operation Stafford investigation. The independent panel in turn briefs the families of victims. In January 2013, the Committee met with the two panel members, Baroness Nuala O'Loan and Mr Richard Harvey, to discuss their role and engagement to date with families, the PSNI and the Police Ombudsman.

9. VICTIMS

Article 1 of the European Convention on Human Rights (ECHR) requires States to secure the ECHR rights and freedoms for everyone in their jurisdiction. By Article 14 ECHR those rights must be secured without discrimination on any of the relevant grounds.¹⁵² What is required is the proactive protection and promotion of rights. The concept of securing and promoting human rights therefore lies at the heart of the ECHR. In order to act compatibly with the Human Rights Act 1998, the PSNI must uphold and protect the ECHR rights of all members of the community and provide an equal service to all. Furthermore, the Police (Northern Ireland) Act 2000 confers upon police officers the duty 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. All victims of crime are entitled to the protection of the police and to a proper investigation, which keeps the victim informed throughout the process. Therefore, the protection of the rights of victims of crime is integral to the operation of the ECHR.

After a criminal offence has been committed, the victim's first contact with the criminal justice system is normally with the police. That contact will likely continue throughout the judicial process. The police response to the report of a criminal offence will therefore have a direct and often decisive impact on the victim's attitude to the criminal justice system. It is critical that the police treat all victims with compassion and respect for their dignity. They must ensure that the victim feels that the offence is being considered properly and is being taken seriously. Victims often feel a sense of frustration, fear and insecurity but police officers can make a real difference to a victim's experience as they progress through the system and can act as a gateway to appropriate support services.

In December 2011, the Criminal Justice Inspection Northern Ireland (CJINI) published an inspection report on the care and treatment of victims and witnesses in

¹⁵² I.e. on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The category "other status" allows the court to extend Article 14 protection to other grounds not specifically mentioned such as has been done in respect of a person's sexual orientation or gender identity.

the criminal justice system in Northern Ireland.¹⁵³ The report highlighted concerns in respect of all of the agencies who deal with victims, with the Chief Inspector noting in his foreword, “From the Police Officer who investigates a crime and prepares a file, to the evidence and public interest tests of the Public Prosecution Service (PPS), through to the effective administration of justice within the courts and the implementation of the rule of law, the needs of the victim can often appear tangential and secondary to the needs of the justice system and the requirement that justice is delivered for offenders. It was a common concern that victims felt they were on the periphery of the system.”¹⁵⁴

As regards the police specifically, the CJINI report stated, “As the main organisation in contact with victims and witnesses, Inspectors felt that the PSNI focus on victims and witnesses (and on customer relations) was too often left to the determination of individuals and thus to significant variations. The findings of Inspectors provided a picture of inconsistency, both in terms of service delivery and the monitoring of that service. Inspectors considered that a change in culture with more emphasis on customer care and interpersonal skills was needed to further improve the position of victims and witnesses. Much good work is undertaken by Police Officers on a daily basis and the aim must be to ensure that this is consistent across the Service.”¹⁵⁵

The CJINI report made a number of recommendations aimed at improving the criminal justice system’s service to victims and witnesses, including the establishment of Witness Care Units jointly by the PSNI and PPS in order to help achieve consistency, co-ordination, a single point of contact and an overall improved experience for victims and witnesses.¹⁵⁶ The Policing Board’s Corporate Policy, Planning and Performance Committee met with the CJINI Chief Inspector in January 2012 to discuss the inspection findings and PSNI’s proposed action in response to the recommendations. In November 2012, the Corporate Policy, Planning and Performance Committee considered the Department of Justice’s proposed five year

¹⁵³ *Care and Treatment of Victims and Witnesses in the Criminal Justice System in Northern Ireland*, Criminal Justice Inspection Northern Ireland (CJINI), December 2011.

¹⁵⁴ *Ibid*, page v.

¹⁵⁵ *Ibid*, page viii.

¹⁵⁶ *Ibid*, page 79.

strategy for improving services for victims and witnesses of crime.¹⁵⁷ The overarching aim of the strategy is to “provide better quality services, responsive to the needs of victims and witnesses, and secure a more positive experience for those who engage with the criminal justice system.” The strategy contains five broad themes,¹⁵⁸ incorporating 50 actions, which will be delivered over five years. This includes: (i) making the entitlements of victims and witnesses clearer and better reflected in the corporate business plans of criminal justice organisations; (ii) developing a Victims’ Charter and a Witnesses’ Charter which will set out the minimum standards to be applied across all criminal justice organisations and (iii) adopting measures to improve communication across the justice system with victims and witnesses, including by establishing Witness Care Units in all court regions by December 2013.

The Policing Board will continue to engage with CJINI, the Department of Justice, the PSNI, other criminal justice agencies and relevant stakeholders as the five year strategy and the actions arising therein are taken forward.

Communication with victims and victims’ families

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.

Jurisprudence from the European Court of Human Rights has established that Article 2 ECHR (the right to life) carries a procedural obligation whereby States must carry out an effective official investigation when individuals have been killed as a result of

¹⁵⁷ *Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime. A Five Year Strategy*, Department of Justice for Northern Ireland, October 2012.

¹⁵⁸ Status and treatment of victims and witnesses; communication and information provision; support provisions and special measures; participation and improved understanding; and collation of information and research on the experiences of victims and witnesses.

the use of force by a State body or agent (or by any other person).¹⁵⁹ Included within this is a requirement to keep next of kin involved to whatever extent is necessary to protect their legitimate interest in the investigation.¹⁶⁰ Failure to treat relatives in a humane and compassionate way may amount to a breach of Article 3 ECHR (prohibition of inhuman or degrading treatment).¹⁶¹

Thus in monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Human Rights and Professional Standards Committee (the Committee) considers the adequacy of communication between police and victims and victims' families. For example, following the announcement in December 2009 that PSNI was to transfer the Operation Ballast investigation¹⁶² from the Historical Enquiries Team (HET)¹⁶³ to PSNI Crime Operations, the Policing Board considered advice from its Human Rights Advisor. In that advice the Human Rights Advisor considered whether the new arrangements complied with the right to life under Article 2 ECHR, in particular the requirement that the investigation be independent, publically accountable and such that the relatives of the deceased were kept informed in so far as required to protect their legitimate interests. PSNI subsequently put in place a mechanism by which an independent panel comprising two persons receive confidential briefings on a regular basis on the Operation Stafford investigation. The independent panel in turn briefs the families of victims. The Committee met with the panel members in January 2013 to discuss their role and engagement to date with families, the PSNI and the Police Ombudsman.

¹⁵⁹ See for example, *McCann and Others v. the United Kingdom*, ECHR (1995).

¹⁶⁰ See for example, *Isayeva v Russia*, ECHR (2005) which states at paragraph 214 "there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests."

¹⁶¹ See for example, *Janowiec and Others v. Russia*, ECHR (2012).

¹⁶² The Operation Ballast investigation by the Police Ombudsman, which became the Operation Stafford investigation when it became a live investigation and was transferred to PSNI Crime Operations, is discussed in Chapter 8 of this Human Rights Annual Report.

¹⁶³ The Historical Enquiries Team (HET) was established by the Secretary of State for Northern Ireland in April 2005 as a result of an initiative by the then Chief Constable, Sir Hugh Orde, to provide a bespoke unit that would re-examine all deaths attributable to the security situation in Northern Ireland between 1968 and the signing of the Good Friday Agreement in 1998. This involves examining 3,268 deaths occurring within 2,540 'Category A' cases i.e. a murder of high public interest. The HET is independent of the PSNI, but accountable to the Chief Constable.

The Committee has also received regular briefings from both PSNI and the HET in respect of progress in examining the 3,268 deaths within the remit of the HET. During 2012, the Committee met with the Committee for the Administration of Justice (CAJ) to discuss their submission to the Committee of Ministers of the Council of Europe in February 2012, which raised issues relating to the structure, practice and oversight of the HET;¹⁶⁴ and with a University of Ulster researcher, Dr Patricia Lundy, to discuss her assessment of the HET review processes and procedures in Royal Military Police (RMP) investigation cases.¹⁶⁵ The findings of Dr Lundy in respect of RMP cases were subsequently discussed by the full Policing Board and with PSNI. Further to this, the Policing Board recommended that Her Majesty's Inspectorate of Constabulary (HMIC) should carry out a review. Subsequently, the Chief Constable invited the HMIC to undertake a review of the procedures and approach of the HET in respect of RMP cases. The Policing Board required that the review should include interviews with families and their representatives. HMIC has confirmed that the review, which will focus on HET policies and procedures, will include a consideration of families' experiences. It is anticipated that the HMIC review will be completed during 2013. The Policing Board will follow up with PSNI on any findings arising from it.

DOMESTIC ABUSE

Domestic abuse is widespread throughout Northern Ireland, with the PSNI responding to, on average, a domestic incident every 21 minutes of every day. It is defined by the Northern Ireland Regional Steering Group on Domestic Violence as being "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." That definition applies regardless of whether the victim is an adult or a child and it encompasses not just physical violence, but other forms of coercive and controlling behaviour, such as psychological and emotional abuse.

¹⁶⁴ *Submission to the Committee of Ministers from the Committee on the Administration of Justice (CAJ) & the Pat Finucane Centre (PFC) in relation to the supervision of cases concerning the action of the security forces in Northern Ireland*, February 2012.

¹⁶⁵ See the University of Ulster Press Release: <http://news.ulster.ac.uk/releases/2012/6309.html>.

PSNI has adopted the Regional Steering Group's definition and deals with all incidents falling within its scope as a domestic incident and/or crime. It has a detailed policy containing guidance for officers responding to and investigating domestic abuse¹⁶⁶ and it has separate guidance documents dealing with issues such as stalking and harassment, domestic incidents involving police officers and staff, honour based violence and forced marriage. Given the widespread and serious nature of domestic abuse, PSNI has domestic abuse officers located within Public Protection Units (PPUs) who are dedicated to dealing with domestic abuse cases. Domestic abuse officers are investigative, concentrating for example on the more serious offences, high risk victims and repeat alleged perpetrators of domestic abuse. In late 2012 a full time team of experienced individuals from within PSNI was established to review the PPU's with a view to improving their efficiency and effectiveness in enhancing public safety. That work is due to conclude in 2013 and the Committee will follow up with PSNI on any proposed actions arising from it.

Domestic abuse during 2011/2012

During 2011/2012 (1 April 2011 to 31 March 2012) the PSNI recorded 25,196 domestic abuse incidents and 10,387 crimes with a known domestic abuse motivation.¹⁶⁷ Of the victims of those crimes for whom PSNI recorded a gender, 72% were female and 28% were males.¹⁶⁸ A total of 4,274 crimes with a domestic abuse motivation were detected ('cleared up') by PSNI during the year. Where PSNI recorded a gender for the offenders, 89% were male and 11% were female.¹⁶⁹ A

¹⁶⁶ The overarching policy, *Police Response to Domestic Incidents*, details specific considerations and sensitivities officers must have when dealing with victims, for example, where the victim is in a same-sex relationship with the perpetrator. The policy has recently been amended (but has not yet been reissued) to include within it an overview of issues that may be faced by victims of domestic abuse who are transgender and guidance on how officers should treat transgender victims. The amendment was made pursuant to Recommendation 14 of the Policing Board's *Human Rights Thematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgender Individuals*, March 2012.

¹⁶⁷ *Trends in Domestic Abuse Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2011/12*, PSNI, July 2012, Table 1.1.

¹⁶⁸ Information provided by the PSNI to the Policing Board further to Recommendation 1 of the Policing Board's domestic abuse thematic review, published March 2009. Of the 10,387 recorded crimes, there were 2,665 male victims; 6,724 female victims; 16 victims whose gender was unknown from the recording forms; and 982 cases which involved a state based offence, mostly breach of a non-molestation order.

¹⁶⁹ Of the 4,274 recorded crimes detected during 2011/2012, there were 4,288 offenders. Of these, 3,742 were male and 441 were female. Gender was not known from the recording forms in respect of 105 offenders.

'DASH checklist'¹⁷⁰ must be completed in respect of each victim with any identified as high risk being referred to and discussed at a Multi-Agency Risk Assessment Conference (MARAC). MARAC is considered in more detail below. Of the 3,971 high risk victims who were discussed at a MARAC between January 2010 and September 2012, a total of 3,792 (95.5%) were female and 179 (4.5%) were male.¹⁷¹

In the context of overall crime recorded by PSNI, it can be seen that there was a known domestic abuse motivation for 10% of *all* crime recorded by the PSNI during 2011/2012. Specifically, there was a known domestic abuse motivation for 23.1% of all recorded violence against the person offences; and 14.7% of the most serious sexual crime, including 19.2% of all recorded offences of rape. There were 5 homicides recorded with a known domestic abuse motivation during the year.¹⁷² The number of recorded crimes with a known domestic abuse motivation during 2011/2012 (10,387) was greater than the number of robbery offences (1,221), burglaries in dwellings (6,650), offences against vehicles (6,017), fraud and forgery offences (2,750), and drug offences (3,780) recorded by PSNI during the same time period.¹⁷³ It is manifestly clear to the Committee that domestic abuse must therefore be a priority for the police and for all statutory agencies.

Domestic abuse thematic review

Given the importance and scale of the issue, the Human Rights and Professional Standards Committee undertook a human rights thematic review examining how effectively the PSNI tackles domestic abuse. The thematic review was published in March 2009 and made 14 recommendations, all of which were subsequently accepted by PSNI. In May 2011, the Committee published an update report which charted PSNI progress in implementing the 14 thematic recommendations. Since then, the Committee has continued to engage with PSNI in respect of the recommendations and other emerging issues. One such issue is the use of Body

¹⁷⁰ The purpose of the Domestic Abuse, Stalking and Harassment (DASH) checklist DASH is to provide a consistent and practical tool for practitioners working with victims of domestic abuse to help them identify, assess and manage the risks.

¹⁷¹ Information provided to the Policing Board by the PSNI, September 2012. PSNI is required by the Policing Plan to report to the Policing Board twice a year on its contribution to MARAC.

¹⁷² *Trends in Domestic Abuse Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2011/12*, PSNI, July 2012, Table 2.2.

¹⁷³ *Ibid.*

Worn Digital Recording Systems, commonly referred to as 'head cameras', by officers responding to domestic incidents.

Guidance from the Association of Chief Police Officers (ACPO) on the investigation of domestic abuse states that "Photographic evidence should be gathered and proactively used throughout a domestic abuse investigation and prosecution... Body-worn video can be used to collect evidence in domestic abuse cases and would normally be used when officers are first deployed."¹⁷⁴ Such photographic evidence is *additional* to photographic evidence taken by a Crime Scene Investigator and can help to bolster evidence in a prosecution case.

At the time of the Committee's thematic review in 2009, the taking of photographic evidence by response officers at the scene of a domestic abuse incident did not happen as a matter of routine and not all officers had access to a camera. The thematic review referred to a positive evaluation of a PSNI pilot in 2008 during which head cameras were issued to all first response officers within the Carrickfergus Area. The thematic review recommended that the PSNI should consider rolling out head cameras across all Districts for use in domestic abuse incidents or, that at the very least, all first response officers and domestic abuse officers should have access to camera equipment which is always taken to the scene.

During 2012, the Committee pursued this with the PSNI. PSNI advised that head cameras were available for use in 5 out of 8 police Districts, but that further development of the equipment had been put on hold pending the outcome of a National Policing Improvement Agency (NPIA) review examining the use of digital evidence across the Criminal Justice System. PSNI advised that in those Districts where head cameras are available, they are deployed as an overt recording medium and can be used across a wide range of policing operations, including domestic incidents, and that the use of such equipment is based on the user and supervisor's professional judgement with regard to the appropriateness of recording. Whilst the Committee is grateful to PSNI for its engagement on this issue and appreciates that there will be no further development of head camera technology until the NPIA

¹⁷⁴ *Guidance on Investigating Domestic Abuse*, National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO), 2008, page 47.

review is complete, it has urged PSNI to ensure that where head cameras are available, they are used as a matter of routine by officers responding to domestic incidents. The nature of domestic abuse means that capturing evidence at the earliest opportunity, which permits a prosecution to proceed without a victim's evidence, is critical to ensuring that perpetrators are prosecuted effectively and victims are protected.

Since April 2012 all response and neighbourhood officers have been equipped with a Blackberry mobile phone. Upon completing relevant training, officers are able to use a camera application on the blackberry device. PSNI has advised that photographs are being taken by officers attending domestic incidents. That is welcomed by the Committee but is not in itself a substitute for body worn digital recording equipment. The Committee hopes that greater availability of photographic evidence taken at the scene will assist in the prosecution of perpetrators. The Committee will continue to liaise with PSNI on this issue.

Multi-Agency Risk Assessment Conferences (MARACs)

A key development since publication of the thematic review has been the roll out of Multi-Agency Risk Assessment Conferences (MARACs) across Northern Ireland.¹⁷⁵ At a MARAC, local agencies meet to discuss high risk victims within their area. Information is shared about the risks faced and the actions needed to ensure victims' safety together with the resources available locally. A safety plan is developed for each victim. The MARAC also links with other forums to safeguard children and manage the behaviour of the perpetrator. The MARAC certainly appears to achieve more successful outcomes in high risk domestic abuse cases than would be achieved by individual agencies working with their own limited information.

A DASH checklist is used by all agencies engaging in the MARAC process. Where a victim is identified by the checklist as being high risk, he or she is referred to the MARAC process. The purpose of the DASH checklist is to provide a consistent and

¹⁷⁵ MARAC was initially introduced as a pilot in the Antrim area and, following its success, the Northern Ireland Office (now the Department of Justice), the Department of Health, Social Services and Public Safety for Northern Ireland (DHSSPS) and the PSNI agreed to fund a regional roll out. The roll out of MARAC across Northern Ireland commenced in December 2009.

practical tool for practitioners working with victims of domestic abuse to help them identify, assess and manage the risks. The checklist was produced taking into account the known risk factors, which themselves were drawn from extensive research and analysis of leading academics in the field of domestic homicides, 'near misses' and lower level incidents. PSNI policy requires that the DASH checklist is completed by all response officers (or domestic abuse officers if the case is passed immediately to the specialist officer) when attending the scene of all domestic abuse crimes, incidents and breaches of non-molestation and occupation orders.¹⁷⁶ Response officers and domestic abuse officers have received training on the completion of the DASH checklist. Domestic abuse officers have responsibility for ensuring the checklist has been completed properly. While some officers expressed initial dissatisfaction at the perceived bureaucracy involved in completion of the checklist, the relevant PSNI trainers and supervisors have insisted that the checklist is filled in thoughtfully and comprehensively in each case. It must be restated that the checklist has been proven to save lives and therefore protect the fundamental Article 2 ECHR right to life. That message must continue to be reinforced.

Since January 2010, a total of 3,971 high risk cases involving 3,792 (95.5%) female victims and 179 (4.5%) male victims of domestic abuse have been discussed at MARAC meetings. 64 cases (1.6%) involved victims with a disability; 206 cases (5.2%) concerned victims from the Black and Minority Ethnic communities; and 18 cases (0.45%) involved victims who were lesbian, gay, bisexual and/or transgender. PSNI referred 76.5% of the cases dealt with during 2010; 76.9% of the cases dealt with during 2011; and 77% of the cases dealt with during 2012 (up to 30 September 2012). Referrals from Health and Social Care made up 3%, 4.1% and 6.6% of referrals in those respective years. Other partner agencies have made referrals but in smaller number.¹⁷⁷

PSNI's commitment to the MARAC process is commendable, but it is not the only public authority with a statutory responsibility to protect the Article 2 ECHR right to

¹⁷⁶ *Risk Identification, Assessment and Management in relation to Domestic Abuse, Stalking and Harassment and Honour Based Violence (HBV) (DASH)*, PSNI Service Procedure 15/2011, July 2011.

¹⁷⁷ Statistical information on MARAC provided to the Policing Board by the PSNI, September 2012. PSNI is required by the Policing Plan to report to the Policing Board twice a year on its contribution to MARAC.

life of victims of domestic abuse. While the police are usually the first point of contact in the Criminal Justice System, they are not always the first agency that a victim of domestic abuse will come into contact with, for example, a victim may seek medical attention for injuries received but will not necessarily report the assault to the police. The Committee hopes that other agencies remain committed to the MARAC process and that, with the help of their police colleagues, an even greater number of victims are the subject of a referral.

HATE CRIME

Hate crime aims to instil fear. It can take many forms but the most common forms of hate crime known to the police are assaults, intimidation, harassment and criminal damage. Hate crime is particularly hurtful to victims as they are targeted because of their personal identity, racial or ethnic origin, sexual orientation, gender identity or disability.¹⁷⁸ The impact of the crime may also resonate throughout the wider community.

The PSNI has a clear obligation to assist and support the victims and witnesses of hate crime whilst taking effective action against perpetrators. In doing so, they are required to abide by the Code of Ethics, Article 6.1 of which requires that “Police officers shall act with fairness, self-control, tolerance and impartiality when carrying out their duties. They shall use appropriate language and behaviour in their dealings with members of the public, groups from within the public and their colleagues. They shall give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.” This is particularly important when dealing with victims of hate incidents and crimes as they have already suffered ‘primary victimisation’ at the hands of a perpetrator. If that victim then experiences indifference or rejection from the police or any other organisation, he or she will commonly suffer what is known as ‘secondary victimisation’.

¹⁷⁸ For research into the impact of hate crime on victims, see *Equality groups perceptions and experiences of crime*, S. Botcherby, F. Glenn, P. Iganski, K. Jochelsen and S. Lagou for the Equality and Human Rights Commission and University of Lancaster, 2011, which considers findings from the British Crime Survey, including the emotional reaction to crime of victims who perceived the crime to have been an identity based crime.

When an incident or crime has been reported to the police by the victim or any other person as being motivated by prejudice or hate, it must always be recorded and investigated as a hate incident or crime in accordance with the PSNI Service Procedure *Police Response to Hate Incidents*.¹⁷⁹ The Service Procedure defines a hate incident as “any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.”¹⁸⁰ The policy defines a hate crime as “any hate incident, which constitutes a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate.”¹⁸¹ Importantly, ‘any other person’ includes a police officer. Accordingly, even if the victim does not recognise the crime as motivated by hate but the police officer believes it to be so, the police officer must record it as a hate incident or crime. This takes the onus off the victim, who may be traumatised, lacking in confidence in dealing with the police, or unaware of the hate crime Service Procedure.

The PSNI records and publishes data on hate incidents and hate crimes where the motivation for the prejudice or hate is perceived to be based upon race or ethnicity; faith or religion (non-sectarian); faith or religion or political opinion (sectarian¹⁸²); disability; sexual orientation (homophobic incidents/crimes); or gender identity (transphobic incidents/crimes). Table 1 below shows the number of hate incidents and crimes recorded by the police during 2011/2012 together with detection rates.¹⁸³ Comparisons to levels in previous financial years can be found in the PSNI’s 2011/2012 annual statistical report which contains annual figures for each year dating back to 2004/2005.¹⁸⁴

¹⁷⁹ *Police Response to Hate Incidents*, PSNI Service Procedure 16/2012, December 2012.

¹⁸⁰ *Ibid.* section 1(1)(a).

¹⁸¹ *Ibid.* section 1(1)(a).

¹⁸² As per the explanation provided in PSNI’s statistical reports on hate crime, “A sectarian incident is defined as any incident which is perceived to be sectarian by the victim or any other person. The term ‘sectarian’, whilst not clearly defined, is a term almost exclusively used in Northern Ireland to describe incidents of bigoted dislike or hatred of members of a different religious or political group. It is broadly accepted that within the Northern Ireland context an individual or group must be perceived to be Catholic or Protestant, Nationalist or Unionist, or Loyalist or Republican.”

¹⁸³ ‘Detected crime’ is a term that describes offences which have been ‘cleared up’ by the police. A more detailed explanation of the way in which police record a crime as being detected is available through PSNI’s *User Guide to Police Recorded Crime Statistics in Northern Ireland*, August 2012.

¹⁸⁴ *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2011/12*, PSNI, July 2012.

Table 1: Number of hate incidents and hate crimes recorded by PSNI and detection rate, by type of hate motivation, 1 April 2011 to 31 March 2012¹⁸⁵

Type of hate crime	Incidents recorded	Crimes recorded	Crimes detected¹⁸⁶	Detection rate (%)
Racist	696	458	77	16.8
Homophobic	200	120	18	15.0
Sectarian	1,344	885	149	16.8
Faith/Religion	8	6	1	16.7
Disability	33	15	6	40.0
Transphobic	4	3	0	0.0

Hate crime has remained a high priority item on the agenda of the Human Rights and Professional Standards Committee (the Committee) during 2012. A number of questions have been raised with PSNI during the year in respect of the PSNI response to hate crime and the culture and practice within the PSNI when dealing with hate crime reports. For example, Members have questioned PSNI over the effectiveness of legislation designed to enhance the sentences of those convicted of a crime motivated by hate¹⁸⁷ and have queried why detections for hate crime are significantly fewer than for other crime. During 2011/2012, PSNI's detection rate for hate crime was 16.9% whereas its detection rate for overall crime during the same period was 26.3%.¹⁸⁸ Members have raised with PSNI, in April 2012, the suspension of 4 PSNI officers following allegation of racist and sectarian text messages. They also met with a victim (a plaintiff to a civil claim) to discuss the issues that arose in his civil case that was settled in June 2012. That case involved a claim that PSNI had failed to adequately investigate homophobic attacks carried out over a sustained period of time. The Committee found this meeting extremely useful in identifying some of the issues and the impact of such crime (and police inaction) upon victims of

¹⁸⁵ *Ibid.*

¹⁸⁶ 'Detected crime' is a term that describes offences which have been 'cleared up' by the police. A more detailed explanation of the way in which police record a crime as being detected is available through PSNI's *User Guide to Police Recorded Crime Statistics in Northern Ireland*, August 2012.

¹⁸⁷ The Criminal Justice (No.2) (Northern Ireland) Order 2004. News reports in October 2012 (<http://www.bbc.co.uk/news/uk-northern-ireland-19935758>) indicated that the enhanced sentencing provisions of the Order had only been used successfully 12 times over the past 5 years. This is also discussed at pages 46 – 49 of the *Human Rights Thematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgender Individuals*, Northern Ireland Policing Board, March 2012.

¹⁸⁸ *Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2011/12*, PSNI, July 2012 and *Trends in Police Recorded Crime in Northern Ireland 1998/99 to 2011/12*, PSNI, July 2012.

homophobic hate crime. The Police Ombudsman had also investigated that case and recommended that 8 officers be disciplined.¹⁸⁹

Recommendation 10 of the Human Rights Annual Report 2011 recommended that PSNI develop a hate crime strategy, in consultation with its Independent Advisory Groups, which considers the reasons for the under-reporting of hate crime, the procedures in place for reassuring and protecting victims of hate crime and a robust response to hate crime.¹⁹⁰ In response to that recommendation, which was accepted, PSNI advised that a Hate and Signal Crime working group has been established to examine the issues of reporting and detecting hate crime. The group is working on 3 separate areas: (1) access and communication; (2) investigation and procedures; and (3) training. Stakeholders from minority groups are represented on the working group. The Policing Board's Human Rights Advisor has discussed the work of this group with PSNI and intends to attend meetings of the group. The Committee will follow up in 2013 on progress made by the group and will report further in next year's Human Rights Annual Report. Furthermore, PSNI Service Procedure *Police Response to Hate Incidents* was issued on 27 December 2012.¹⁹¹ Therefore Recommendation 10 of the Human Rights Annual Report 2011 has been implemented but the Committee will keep the strategy and the work of the PSNI under review in this important area.

Thematic review of policing with the LGB and Transgender community

In March 2012, the Committee published a thematic review on policing with and for Lesbian, Gay, Bisexual (LGB) and Transgender individuals.¹⁹² Included within the thematic review was a consideration of the PSNI approach to tackling homophobia and transphobia. A total of 18 recommendations were made. While the focus of the review was specifically on issues affecting LGB and Transgender people, there were some recommendations made that relate to hate crime more generally. For example, there were a number of recommendations made requiring PSNI to review the role of

¹⁸⁹ See <http://www.bbc.co.uk/news/uk-northern-ireland-18498588>.

¹⁹⁰ Recommendation 10 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

¹⁹¹ *Police Response to Hate Incidents*, PSNI Service Procedure 16/2012, December 2012.

¹⁹² *Human Rights Thematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgender Individuals*, Northern Ireland Policing Board, March 2012.

specialist hate crime officers, known as Hate Incident Minority Liaison Officers (HIMLOs)¹⁹³ and requiring PSNI to review its hate crime policy.¹⁹⁴ PSNI accepted all of those recommendations. The Policing Board's Human Rights Advisor is considering the PSNI's response to all 18 of the thematic recommendations. PSNI progress in implementing the recommendations will be reported upon by way of an update report in due course.

Learning disability

Mencap¹⁹⁵ has reported that as many as 9 out of 10 persons with a learning disability have been a victim of hate crime and bullying. To address that, Mencap has launched the 'Stand by me' campaign which calls on police services to do more to tackle disability hate crime. The *stand by me promise* calls on the police to focus their efforts in a number of areas: to improve the way hate crime is recorded; to improve support provided to victims; and, to develop the way services respond to disability hate crime. The recommendations were issued to all police services in the United Kingdom. More than 30 have signed up to the campaign, pledging to work to:

1. Make sure that information is available and presented in a suitable form.
2. Get better evidence and increase convictions by allowing more time for interviews, particularly if the victim has difficulty in communicating.
3. Understand how to identify if someone has a learning disability.
4. Listen to, respect and involve families, carers and support staff of disabled people.
5. Challenge discriminatory attitudes and language among fellow officers.
6. Ensure that victims are kept up to date with the progress of the case once they have reported a crime.
7. Recognise that disability hate crime is as harmful as other types of hate crime.

¹⁹³ *Ibid.* Recommendations 3, 9 and 13.

¹⁹⁴ *Ibid.* Recommendation 10. PSNI issued a new hate crime Service Procedure in place of its former hate crime policy in December 2012: *Police Response to Hate Incidents*, Service Procedure 16/2012.

¹⁹⁵ Mencap is a charity that works in partnership with people with a learning disability and which provides services to support people to live life as they choose. For more information see: www.mencap.org.uk

8. Avoid labelling disability hate crime as anti-social behaviour – identify the crime and deal with it.
9. Hold regular beat meetings and ensure they are open to disabled people.
10. Display the Stand by me promises where everyone can see them.

PSNI is supportive of the 'Stand by me' campaign and, in June 2012, held an event in conjunction with Mencap to raise awareness of the campaign with other agencies.

The experience of persons with a learning disability when dealing with the police was considered in a joint research report published in 2011 by the Policing Board and the Office of the Police Ombudsman. The report found that people with a learning disability often fail to report crimes such as harassment and that there is a degree of acceptance by society of such abuse.¹⁹⁶ The report recommended that greater efforts should be made by all within the criminal justice system, including the police, to bring the issues to the attention of the public and to those who are victims of crime. The majority of the recommendations made in the report have been implemented by the PSNI working alongside community, statutory and voluntary agencies representing persons with learning disability. For example, one of the recommendations suggested the use of a common alert card for those people with learning disability who wished to use it. The PSNI has sponsored 5000 such cards which have been widely distributed by partner agencies. A number of awareness raising and training initiatives are planned for the incoming year which will further raise the profile of issues facing learning disabled persons when coming into contact with the PSNI. It is hoped that a number of road shows will be held to bring together those who can assist people with learning disability in how and when they should make contact with the police. The various community, statutory and voluntary agencies who have worked alongside the PSNI to implement this report have commented on the positive shift in the PSNI approach since the publication of the joint Policing Board/Police Ombudsman report in September 2011. This is welcomed by the Committee.

¹⁹⁶ *Views and experiences of people with a learning disability in relation to policing arrangements in Northern Ireland*, Northern Ireland Policing Board and the Police Ombudsman for Northern Ireland, 2011.

A recommendation was made in the Human Rights Annual Report 2011 that PSNI should consider how best to ensure that officers and staff are able to recognise learning disability and therefore to respond appropriately.¹⁹⁷ PSNI accepted the recommendation and has advised the Committee that it has developed an e-learning programme entitled 'Police and Disability'. That programme deals with attitudes and responses to disability and includes specific reference to learning disability. Completion of the programme is mandatory for all officers. Therefore, Recommendation 12 of the Human Rights Annual Report 2011 has been implemented. However, the Committee will wish to monitor the training and its effectiveness in achieving practical outcomes. This will be reported upon further.

Awareness raising training in respect of learning disability was also a recommendation of the joint Policing Board/Police Ombudsman report, with the recommendation aimed not just at police officers but also at other professionals involved in the criminal justice process, for example, solicitors and appropriate adults.¹⁹⁸ Moreover, it was recommended in the Human Rights Annual Report 2011 that PSNI should disaggregate the statistics it collates under the heading of disability hate crime to include a separate category for learning disability.¹⁹⁹ PSNI accepted that recommendation and agreed to further disaggregate its statistics to identify those instances which can be directly attributable to learning disability. In its most recent annual hate crime statistical report, PSNI recorded that of the 15 disability hate crimes recorded by the police during 2011/2012, six victims were identified as having a learning disability.²⁰⁰ Recommendation 11 of the Human Rights Annual Report has therefore been implemented. The Committee hopes that PSNI will continue to include this information in its statistical reports.

¹⁹⁷ Recommendation 12 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

¹⁹⁸ *Views and experiences of people with a learning disability in relation to policing arrangements in Northern Ireland*, Northern Ireland Policing Board and the Police Ombudsman for Northern Ireland, 2011, page 17.

¹⁹⁹ Recommendation 11 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

²⁰⁰ *Trends in Hate Motivated Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2011/12*, PSNI, July 2012, page 52.

PARAMILITARY ATTACKS

The issue of paramilitary attacks often referred to (wrongly in the Committee's view) as 'punishment' attacks and the low level of detections, was discussed in the Human Rights Annual Report 2011. A recommendation was made that the PSNI should review the data and consider what steps should be taken to increase the detection rate of such attacks. In particular, the PSNI was required to consider what further measures were required to protect persons from violence within their communities. Thereafter, the PSNI was required to report to the Committee with the results of its review.²⁰¹

PSNI accepted that recommendation and has since launched an initiative to tackle paramilitary attacks. In addition to a public campaign to raise awareness and to encourage reporting, PSNI analysed available data and reviewed police tactics and the quality of its investigations. The Policing Board and the Committee have received briefings from the PSNI on the strategy and will continue to receive regular updates on progress. Whilst the Committee was disappointed at the initial delay in bringing forward a strategy, now that the work has commenced under the leadership of ACC Hamilton and ACC Harris, the Committee is encouraged by the fulsome and considered analysis they has given to this and their enthusiasm to tackle the complex issues. Recommendation 16 of the Human Rights Annual Report 2011 has therefore been implemented. However, this work is at a very early stage. The Committee will keep this matter under review, will reconsider the substance and effectiveness of the implementation of the strategy and will report publicly in due course.

Recent figures demonstrate that paramilitary attacks remain prevalent across Northern Ireland, with 33 casualties of paramilitary style shootings and 46 casualties of paramilitary style assaults recorded by the police during 2011/2012.²⁰² Between 1 April 2012 and 30 November 2012, there were a further 19 casualties of paramilitary style shootings and 22 casualties of paramilitary style assaults recorded by the

²⁰¹ Recommendation 16 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

²⁰² *Police recorded security situation statistics, 1 April 2011 to 31 March 2012*, PSNI, May 2012, page 5.

police.²⁰³ Stakeholders have advised the Committee that the recorded figures for attacks do not reflect accurately the extent of the problem. They advise that the majority of victims are unlikely to report to the PSNI as a result of the genuine fear of retribution and a belief that the police are powerless to do anything. The Committee wishes to encourage victims, especially young people, to engage with the PSNI and to report attacks. The Committee expects the PSNI to take all available measures to ensure that the victim's safety is protected and the perpetrator is dealt with through the criminal justice system. The Committee recognises that a multi-agency approach is required and will seek to persuade all relevant agencies to play their part.

²⁰³ *Police recorded security situation statistics, 1 April 2012 to 30 November 2012*, PSNI, December 2012, page 3.

10. TREATMENT OF SUSPECTS

The treatment of suspects by the police inevitably raises human rights issues. Indeed, most criminal investigations will interfere with a person's privacy protected by Article 8 of the European Convention on Human Rights (ECHR) and must therefore always be prescribed by law, legitimate, necessary and proportionate. For example, during an investigation the police may retain information, data and other samples taken from a suspect. Such retention must also be lawful, necessary and proportionate. During an investigation all use of CCTV cameras, even in public places, has the potential to infringe the right to privacy and must therefore be closely circumscribed. A criminal investigation must also be objective, fair and adaptable to the needs of vulnerable persons. All covert surveillance must comply with the provisions of the Regulation of Investigatory Powers Act 2000 and its Codes of Practice.

When the police remove a person's liberty and place him or her in detention, the police assume a responsibility for protecting that person's human rights. Such rights include the right to life (Article 2 ECHR), which requires the police not only to refrain from taking life, but also to safeguard detainees from self-harm or harm from others; the right not to be subjected to torture, inhuman and/or degrading treatment (Article 3 ECHR); the right to a fair trial, to be presumed innocent until proven guilty and, if charged, to have access to a solicitor and to be told in a language the detainee understands of the charges against them (Article 6 ECHR); and the right to respect for private and family life (Article 8 ECHR). The detention itself engages the right to liberty and security (Article 5 ECHR) and can only be justified if one of the specific criteria set out in Article 5 ECHR has been met. 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. Both before and after charge the police must periodically determine whether continued detention is necessary or whether, for example, full release or release on bail would be more appropriate.²⁰⁴

²⁰⁴ 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.

INDEPENDENT CUSTODY VISITING SCHEME

The Policing Board is obliged, by virtue of section 73 of the Police (Northern Ireland) Act 2000, to make and keep under review arrangements for designated places of detention to be visited by lay visitors.²⁰⁵ That function is discharged through the Policing Board's Independent Custody Visiting Scheme. Custody Visitors are volunteers from across the community who are unconnected with the police or the criminal justice system. They are sub-divided into four Custody Visiting Teams operating across Northern Ireland: Belfast/Antrim (visits carried out by this team include visits to Antrim Serious Crime Suite); North-West; Tyrone/Fermanagh; and, Down/Armagh.

Custody Visitors make unannounced visits to designated police custody suites where they inspect the facilities, speak to detainees and check custody records. They also view, on remote camera, live interviews with detainees held in Antrim Serious Crime Suite under terrorism legislation (provided the detainees consent). 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. The Policing Board's Human Rights and Professional Standards Committee (the Committee) receives a quarterly report on the work of the Scheme. The report highlights any issues raised and the remedial actions taken to address them. The report covers three distinct areas: the rights of the detainee; the health & well-being of the detainee; and the conditions of detention.

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

²⁰⁵ Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 requires the Chief Constable to designate the police stations which are to be used for the purpose of detaining arrested persons.

Kingdom's National Preventive Mechanism (NPM).²⁰⁶ In determining which bodies should be included in the United Kingdom's NPM, the Government's overriding criterion was that "bodies should possess the independence, capability and professional knowledge to carry out the requirements set out in Article 18 of the Optional Protocol to the Convention against Torture." It is a credit to all of the Custody Visitors who have volunteered over the years that the Policing Board's Independent Custody Visiting Scheme met the Government's criteria.

The Policing Board publishes quarterly statistics and an annual report on the work of Custody Visitors, all of which are made available for public viewing through the Policing Board's website.²⁰⁷

Work of the Custody Visiting Teams during 2011/2012²⁰⁸

Each year the Policing Board sets a guideline number of visits to be completed by each Custody Visiting Team. During 2011/2012, the guideline number of visits was set at 1,014. The Custody Visiting Scheme carried out a total of 1,037 visits therefore exceeding the required number of visits. Of the 1,037 visits, 1,009 were deemed to be valid visits. The other 28 visits could not be completed due to the custody suite being too busy (15), the custody suites being closed (9) and, given that visits are always carried out in pairs, the unavailability of a second Custody Visitor (3).

The visits took place over each of the 7 days of the week and were conducted at all times of the day and night, with 111 (11%) being carried out on a Saturday, 104 (10%) being carried out on a Sunday and 125 (12%) being carried out between 9pm and 9am. The average length of a Custody Visitor visit was 29 minutes. Custody Visitors record details of delays in gaining access to custody suites. During 2011/2012 there were 42 occasions when there were delays of more than 10 minutes, generally due to the custody staff being busy (39). While the Committee

²⁰⁶ The National Preventative Mechanism (NPM) represents a major break-through for the implementation of the Optional Protocol to the 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.

²⁰⁷ www.nipolicingboard.org.uk

²⁰⁸ The 2011/2012 statistics referenced in this section refer to the period 1 April 2011 – 31 March 2012 and are sourced from *Annual Custody Visitors' Statistics, 2011/2012*, Northern Ireland Policing Board, May 2012.

recognises there may be occasions when the custody staff are extremely busy, custody visitors should not be delayed access save where it is unavoidable.

Detainees seen by Custody Visitors during 2011/2012

Custody Visitors must be allowed immediate access to any person detained at the police station, save where a delay is necessary and reasonable. However, detainees may only be spoken to with their consent. Of the 1,696 detainees held during visits in 2011/2012, 7% (127) refused to be seen by a Custody Visitor. 41% (696) were not seen for other reasons, for example, 18% (301) were sleeping and 12% (206) were being interviewed at the time of the visit. That means that Custody Visitors saw 51% (873) of all detainees held in 2011/2012. That is higher than the previous year, 2010/2011, where only 47% of detainees held during visits were seen by Custody Visitors. The reason for the increase in the percentage of detainees seen during 2011/2012 is largely attributable to an increase in the number of detainees consenting to be seen by a custody visitor.

Where consent to a visit is sought from a detainee (i.e. they are not sleeping, being interviewed or otherwise indisposed), the rate at which they consent has improved since the self-introduction system was adopted in October 2010. Before then, the escorting police officer established whether a detainee wished to speak to the Custody Visitors. The overall consent rate for 2010/2011 was 82%, a marked improvement on the rate of consent of 72% in 2009/2010. In the first full year in which self-introduction operated, 2011/12, the rate at which consent was given had increased further to 93%. Given the importance of the role Custody Visitors play in ensuring the protection of the human rights of detained suspects, that is an extremely welcome development. The Committee is therefore convinced that self-introduction has been a success and should be retained permanently. The Committee wishes to restate its enormous gratitude to the Custody Visitors for their dedication and professionalism.

Custody records

A custody record must be opened as soon as practicable for every person who is brought to a police station to be detained. Custody Visitors are trained to check the custody records of any detainee who has consented to that inspection. If it is not

possible to obtain consent, for example, because the detainee is asleep at the time of the visit, intoxicated or on drugs, Custody Visitors must be granted access to the custody record unless the detainee has refused consent. If access to the custody record is denied by custody staff, that is noted by the Custody Visitor and reported to the Policing Board. Checking the custody record is an essential element of protection and enables Custody Visitors to ensure:

- That detainees (arrested under PACE) have been afforded their rights and entitlements (to have someone informed of their arrest, to consult with a solicitor, and to consult the PACE Codes of Practice);
- That medication, injuries, medical examinations, meals/diet are recorded and treated;
- That procedures to assess special risks/vulnerable detainees have been properly recorded and implemented;
- The rules concerning the timing and frequency of cell inspections of all detainees, particularly inebriated or otherwise vulnerable detainees (detainees at risk should be checked every 15 minutes) have been complied with; and
- That reviews of the continuing requirement for detention have been conducted.

The number of custody records inspected has continued to increase: in 2008/2009 49% were checked; in 2009/2010 60% were checked; in 2010/2011 67% were checked; and in 2011/2012 76% were checked. Given the central importance of checking custody records, it is hoped that this trend will continue.

Satisfactory/unsatisfactory visits

During 2011/2012, 86% of visits were deemed to be entirely satisfactory. That is an increase from 2010/2011 when 82% of visits were deemed as satisfactory and 2009/2010 when 77% of visits were deemed satisfactory. A total of 160 reasons for concern were noted by Custody Visitors during 2011/2012 which represents a decrease from 2010/2011 (227) and 2009/2010 (268).

Of the 160 reasons for concern noted during 2011/2012:

- Custody Visitors noted 130 concerns regarding the conditions of detention including: faulty equipment (38); sanitation (37); safety/security hazards (30); and cleanliness (13).
- Custody Visitors noted 10 concerns in relation to treatment/rights of detainees: insufficient checks (4); review of detention (3); detainees not being advised of their rights (2); and legal advice (1).
- Custody Visitors noted 20 concerns in respect of the health and well-being of detainees: oxygen checks (14);²⁰⁹ bedding (4).²¹⁰ That represents a decrease from 49 concerns in respect of the health and well-being of detainees noted during 2010/2011, of which 34 concerned oxygen checks and 11 related to bedding.

In the Human Rights Annual Report 2011, the number of concerns relating to health and well-being were considered significant. It was therefore recommended that PSNI should analyse the reason(s) for the number of concerns noted by Custody Visitors in respect of the health and well-being of detainees and consider what steps may be required to remedy those concerns.²¹¹ In response to that recommendation, the Committee was advised by PSNI of a protocol in place regarding the management of bedding and of the checks on oxygen equipment that are carried out by trained personnel in the custody suites. PSNI advised that it will continue to review and address all concerns raised by Custody Visitors and will report to the Policing Board on any steps taken to address such concerns. The Committee welcomes the reduction in 2011/2012 of health and well-being concerns, particularly those concerns relating to oxygen checks. Recommendation 13 of the Human Rights Annual Report 2011 has been implemented.

Non-designated custody suites

The Chief Constable designates police stations which are to be used for the purpose of detaining arrested persons and he has power to designate a station which was not

²⁰⁹ In respect of oxygen, checks are carried out by Custody Visitors on the masks and cylinders in each custody suite and maintenance records are also checked.

²¹⁰ Adequate bedding concerns tend to relate to deficiencies in mattresses, blankets, pillows etc.

²¹¹ Recommendation 13 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

previously designated or to direct that a designation of a station previously made, shall cease to operate.²¹² Stations which have not been designated by the Chief Constable are not currently included within the remit of the Policing Board's Independent Custody Visiting Scheme. It is only in strictly limited circumstances that a person may be detained in a station that has not been designated, and it is unlikely to be for more than 6 hours.²¹³

The Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) requires that a person arrested elsewhere than at a police station must be taken to a police station as soon as practicable after arrest. The police station must be a designated police station unless (i) it appears that it will be necessary to hold the person for less than six hours and the locality in which the constable is working is covered by a police station that is not designated; (ii) the arresting constable has no assistance and it appears to the constable that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the constable or some other person; or (iii) the constable has taken a person into custody from a person other than a constable without the assistance of any other constable and no other constable is available to assist and it appears to the constable that he will be unable to take the arrested person to a designated police station without exposing the arrested person or himself to unacceptable risk of injury.

If the first station to which the arrested person is taken is not a designated station, he or she must be taken to a designated station within 6 hours unless the arrest was made by a police constable and the continued detention at the first police station is authorised by an officer not below the rank of Superintendent. Continued detention may only be authorised if the officer is satisfied on reasonable grounds that it would expose the person and those accompanying him/her to unacceptable risk of injury if he/she were taken from the first police station.

A person must be taken quickly to a place of detention: he or she may not be 'held' outside of such a place because, for example, the station is busy and must never be held outside of a place of detention so as to delay the detention clock from

²¹² Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE).

²¹³ Article 32 of PACE.

commencing to run. It can be noted that detention commences the moment an arrested person arrives at the first police station to which they are taken after arrest. Even if the police are required to hold an arrested person in a police vehicle on station grounds due to the check-in area inside the station being busy, the detention clock will have started.²¹⁴ It is therefore essential that PSNI ensure that stations are adequately resourced to allow for the timely checking in of detainees.

There are currently 17 designated police stations, thus rendering all other police stations non-designated. As Custody Visitors do not visit non-designated stations they cannot monitor the treatment of detainees held there or the conditions of their detention. PSNI provides the Policing Board with statistics on PACE detention on an annual basis, including details of the number of persons held in non-designated stations. PSNI reported that during 2011/2012 there were a total of 39 persons detained in non-designated police stations. That is a significant reduction compared to 268 persons held in non-designated police stations in 2010/2011, 287 in 2009/2010 and 174 in 2008/2009. The Committee welcomes that reduction.

In the Human Rights Annual Report 2011 it was recommended that PSNI should report to the Human Rights and Professional Standards Committee annually on the number of detainees held in non-designated police stations for more than 6 hours together with the reason for that further detention.²¹⁵ PSNI accepted that recommendation and has committed to inform the Committee should an occasion arise where a detainee is kept beyond 6 hours. However, PSNI advises that such a scenario is exceptional and has not happened in recent times, with no persons being detained for more than 6 hours in a non-designated police station during 2011/2012. Recommendation 14 was intended to be a continuing obligation, which PSNI accepts. In those circumstances, Recommendation 14 has been implemented.

²¹⁴ For the purposes of Article 42 of PACE.

²¹⁵ Recommendation 14 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

Vulnerable persons in custody

When the police remove a person's liberty and place him or her in detention, they assume a responsibility for protecting that person's human rights. Many people entering police detention are particularly vulnerable. A high percentage of detainees suffer from mental ill-health, have drug and alcohol dependency and/or are of low emotional intelligence with poor communication skills. Police detention presents a significant risk because often little information is known about the detainee due to the sudden nature of the detention. It is important that the law is known and applied, boundaries are clear and the framework of principles to be applied is understood by all officers.

PSNI's approach to the detention of vulnerable persons in police custody is based upon ACPO Guidance on the Safer Detention and Handling of Persons in Police Custody.²¹⁶ This detailed guidance, which was revised and reissued in 2012, sets out practical steps the police should take to ensure the highest standards of custodial care for detainees. The guidance details specific welfare and safety considerations for each stage of the custodial process, from the decision to arrest to the transportation of the detainee and his or her arrival at the police station. In respect of the decision to arrest, the guidance emphasises that "When the police approach a member of the public for any reason, they should first consider how their presence, attitude and demeanour may influence how a person will react. This reaction will have an impact on subsequent risks to officers, suspects and the public."²¹⁷

The ACPO guidance provides instruction on control, restraint and search techniques and details specific considerations to be taken into account in respect of the detention of children and young people, persons with mental ill-health and learning disabilities, persons under the influence of drink and drugs and violent detainees. The guidance includes a detailed section on the risk assessments that must be carried out on an on-going basis for the duration of the detention, including how to

²¹⁶ *Guidance on the Safer Detention and Handling of Persons in Police Custody*, National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO), second edition, 2012.

²¹⁷ *Ibid.* page 20.

assess and monitor the detainee for signs of, for example, head injuries, suicide or self-harm, claustrophobia, heart attacks, asthma etc. The guidance sets out the circumstances in which a detainee should be transported directly to hospital.

The ACPO guidance recognises that police custody often provides the 'gateway' to healthcare services for vulnerable people. It states "Many people who come into custody or police contact do so with physical or mental vulnerabilities or both. There are also problems of alcohol or drug-related abuse or misuse. The police service often provides the gateway to healthcare services. A police station is not the most appropriate place for diagnostic assessment or healthcare treatment. The guidance therefore strongly promotes and advises engaging the right healthcare professional at the right time and in the right place."²¹⁸

PSNI is currently carrying out a review of healthcare provision for detainees in police custody. Until recently, the PACE Codes of Practice restricted healthcare for detained persons in police custody to that provided by Forensic Medical Officers (FMOs). A FMO is a General Practitioner who provides the service on an 'on call' basis. Given that the needs of detained persons are often complex, with a significant number of detained persons presenting with addiction issues and/or psychiatric issues, amendments to the PACE Codes of Practice were initiated by the Department of Justice, in consultation with PSNI, to allow for a wider range of professionals to provide healthcare to detainees.²¹⁹ The amendments to the PACE Codes of Practice mean that healthcare professionals trained in specialist roles are now permitted to treat detainees. For example, it would now be possible for a permanent nursing provision to be established within larger custody suites. Such provision would offer a much greater level of professional judgement in the risk assessment.

More generally, PSNI expects the recent changes to the PACE Codes will permit the greater involvement and earlier intervention by healthcare professionals from a nursing and psychiatric background. That would, it is hoped, provide a lead on

²¹⁸ *Ibid.* page 12.

²¹⁹ Legislation has been put in place and took effect on 22 November 2012: Police and Criminal Evidence (Northern Ireland) Order 1989 (Codes of Practice) (Revision of Codes C, E, F and H) Order 2012.

referrals to appropriate services. PSNI envisages a holistic approach would offer better outcomes in terms of the health and well-being of detainees, which may in turn assist with reducing re-offending. It is also likely to be a cost saving benefit to the organisation.²²⁰

The Policing Board responded to the Department of Justice's consultation on the changes to the PACE Codes of Practice.²²¹ The Policing Board noted that if the PSNI review of healthcare resulted in an improvement in the availability of specialist healthcare (which must be the primary consideration) and also represented a reduction in costs it would be supported. The Policing Board drew the Department's attention to comments of the Independent Reviewer of Terrorism Legislation, Mr David Anderson QC, in his June 2012 report in respect of the specific medical demands of terrorist suspects.²²² David Anderson QC highlights:

- The unusually long time for which they can be detained in solitary confinement (up to 14 days prior to charge), which may be particularly difficult for detainees who are children and thus vulnerable;
- The underlying mental conditions from which some terrorist suspects may suffer;
- The ability of a small minority of terrorist suspects to mimic the symptoms of psychological distress consistent with those caused by a confinement syndrome, and thus to deceive doctors into believing that they are not fit to be interviewed; and
- The degree of authority that a medical practitioner needs, in a highly pressurised and time-sensitive terrorist investigation, to stand up for a patient – for example, by informing the Senior Investigating Officer that a subject is not fit to be interviewed for a period of time.²²³

²²⁰ The cost of the existing FMO service currently runs at over £3million per annum. It is believed that by altering the existing arrangements to allow for a broader range of healthcare professionals to attend to detainees, a cost saving of approximately 10% can be delivered whilst at the same time enhancing the service delivered to detainees.

²²¹ *Consultation on revised draft PACE Codes of Practice*, Department of Justice, December 2011.

²²² *The Terrorism Acts in 2011. Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, David Anderson QC, June 2012.

²²³ *Ibid.* para. 7.41.

David Anderson QC highlights the importance of healthcare professionals attending terrorism detainees being both ‘experienced and independent’ and he comments that the forensic medical examiners used by the Metropolitan Police Service in terrorist detentions are “fully trained in mental health evaluations, and have a breadth of knowledge and expertise that is not matched by custody nurses.”²²⁴ David Anderson QC therefore recommended that “Medical examination of terrorist suspects should be conducted by professionals who are fully trained in mental health evaluations and in the care of TA [Terrorism Act] 2000 detainees, who are qualified in forensic medical medicine and whose independence is guaranteed by the fact that they are not employed by the police.”²²⁵ The Committee respectively agrees. It is the responsibility of the PSNI to ensure that healthcare is administered by an appropriately qualified person depending on the individual circumstances.

The Policing Plan enables the Policing Board to monitor PSNI’s progress in reviewing custody provision generally.²²⁶ However, the anticipated completion date for PSNI’s overarching review of custody provision is March 2015. In the interim, the Committee wishes to consider a report on the review of healthcare provision in police custody suites, including any specific considerations it has given to ensuring that all healthcare professionals are sufficiently experienced and independent from the police, particularly in respect of terrorism detainees.

Recommendation 10

The PSNI should provide to the Human Rights and Professional Standards Committee, within 6 months of the publication of this Human Rights Annual Report, a report on its review of healthcare provision in police custody suites. That report should include any specific consideration given to ensuring that all healthcare professionals are sufficiently experienced and independent from the police, particularly in respect of terrorism detainees.

Recommendation 5 of the Human Rights Annual Report 2010 recommended that PSNI consider requiring all custody officers to attend SafeTALK training. SafeTALK

²²⁴ *Ibid.* para. 7.43.

²²⁵ *Ibid.* para. 7.79.

²²⁶ In accordance with the Policing Plan 2012 – 2015, the PSNI has committed to a review of custody provision, including healthcare, as a continuous improvement initiative.

training is a half day awareness training session on suicide alertness. PSNI accepted that recommendation. In the Human Rights Annual Report 2011 it was recorded that Recommendation 5 remained outstanding. Since then, PSNI has confirmed that all custody officers have now been trained in SafeTALK thereby discharging Recommendation 5 of the Human Rights Annual Report 2010.

IMMIGRATION DETAINEES

Until early 2006, the practice in Northern Ireland, alone in the United Kingdom, was to hold immigration detainees in prisons rather than in Immigration Removal Centres (Immigration Centres). Immigration Centres are not prisons and those detained there have not been charged with a criminal offence. Nor have they been detained through the normal judicial process. Immigration Centres are designed to provide “secure and humane detention under a relaxed regime”²²⁷ to reflect the circumstances in which immigration detainees have been deprived of their liberty.

Since January 2006, immigration detainees and some asylum seekers are routinely transferred from Northern Ireland to detention facilities in Scotland and England, with the majority transported to Dungavel Immigration Removal Centre in Scotland. Many of these individuals have been held, in the first instance, at police custody suites. A Memorandum of Understanding exists between the PSNI and the UK Border Agency (UKBA)²²⁸ stipulating that “[immigration] detainees should preferably only spend one night in police cells, with a normal maximum of two nights. In exceptional cases, a detainee may spend up to five nights continuously in a police cell... if, for instance, he is awaiting transfer to more suitable... accommodation.”

It was noted in the Policing Board’s Human Rights Annual Report 2009 that immigration detainees were being held in police custody for periods of up to 5 days. Although PSNI did not create the circumstances for such detention it was recommended that the PSNI should report to the Policing Board on a 6-monthly basis on the number of immigration detainees held in police custody and the duration

²²⁷ The Detention Centre Rules 2001, SI 2001238, Rule 3(1).

²²⁸ Protocol for the use of PSNI custody facilities by HM Customs and Excise and protocol for the use of PSNI custody facilities by the UK Immigration Service.

of each stay. The PSNI accepted that recommendation and now provides the Policing Board with raw data on persons arrested for immigration offences. That data is then collated by the Policing Board's statistics and research branch. A summary of the main findings for the period 1 April 2011 to 31 March 2012 is as follows:

- 228 persons were detained in police custody for immigration offences between 1 April 2011 and 31 March 2012.
- The main reason for arrest was 'Detained on Immigration Authority' (40.8%).
- 173 males (75.9%) were detained for immigration offences.
- Over half (55.7%) of immigration detainees were aged 25-40.
- Almost one third (32.9%) of immigration detainees were held in Musgrave Street police station, Belfast.
- Two thirds (66.7%) of immigration detainees were held for up to 24 hours.
- 21 immigration detainees were held for over 3 days (over 72 hours).
- 4 immigration detainees were held between 109 (almost 5 days) and 166 hours (almost one week).
- The nationality of the greatest number immigration detainees was Chinese (51 detainees, 22.4%).

Larne custody suite was converted by UKBA into a short term holding facility, known as Larne House, for immigration detainees and has been in use as such since July 2011. Whilst the number of immigration detainees held in police custody during 2011/2012 decreased compared to the previous year (from 333 detainees in 2010/2011 to 228 detainees in 2011/2012), there were still 146 detainees held in police custody between 1 July 2011 and 31 March 2012. Those 146 detainees were booked into police custody suites across Northern Ireland and at all times of the day and night. 30% were held for 0 – 12 hours, 49% were held for 12 – 24 hours, 12% were held for 25 – 36 hours and the remaining 9% were held for between 37 hours and 5 days. Given that Larne House was open during that period it is not clear to the Committee why UKBA are continuing to rely on the use of police custody for immigration detainees.

Recommendation 11

The PSNI should provide an explanation to the Human Rights and Professional Standards Committee within one month of the publication of this Human Rights Annual Report for the continued detention of immigration detainees in police custody. That report should address specifically the reason for those detainees not being transferred to Larne House.

A further issue that came to the Human Rights and Professional Standards Committee's attention during 2012 in respect of the short term holding facility at Larne House was the lack of arrangements in place to ensure that the facility was visited on a routine basis by lay visitors. In the same way that the routine visits made by the Policing Board's Custody Visitors were designed to protect and uphold the rights of persons held in police custody, lay visits to persons held in immigration facilities are required to ensure that they too are held in appropriate conditions and are afforded their rights.

Over a four month period between November 2011 and March 2012, under a pilot project, Custody Visitors from the Policing Board's Independent Custody Visiting Scheme made 7 unannounced visits to Larne House, during which they spoke to a total of 23 detainees. No issues were raised by Custody Visitors in relation to the treatment of detainees or the conditions of detention. However, the Committee agreed that making this arrangement permanent would not be appropriate (primarily as the Board has no statutory basis for carrying out such visits). Her Majesty's Chief Inspector of Prisons (HMIP) is required to inspect short term holding facilities²²⁹ and, under draft Short Term Holding Facility Rules, there is provision for more routine visits to such facilities to be conducted by visiting committees (known as Independent Monitoring Boards). It is the responsibility of UKBA and the Home Office to ensure that such provision is made.

The Committee raised that issue with UKBA, the Home Office, the Justice Minister for Northern Ireland, the Assembly's Justice Committee and the Assembly's All Party

²²⁹ HMIP's first inspection took place in November 2011. The inspection report, *Report on an unannounced inspection of the short-term holding facility at Larne House 1-2 November 2011*, is available through the HMIP website: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/short-term-holding-facility-reports/larne-house-2011.pdf>

Working Group on Ethnic Minority Communities and expressed its concern that provision for lay visits to Larne House must be made as a matter of urgency. UKBA has since advised that arrangements have now been put in place for routine visits to be made to Larne House by an Independent Monitoring Board. Those visits were due to commence in November 2012. The Committee has requested a meeting with the Independent Monitoring Board to discuss its work. That meeting is due to take place in the near future.

TERRORISM DETAINEES

The treatment, detention, questioning etc. of terrorism detainees is governed by Part 1 of Schedule 8 to the Terrorism Act 2000 (TACT) and Code H to the Police and Criminal Evidence (Northern Ireland) Order 1989. The Custody Visiting Scheme, analysed above, covers detention of persons arrested under section 41 TACT. Section 41 TACT empowers a police officer to arrest without warrant a person whom he reasonably suspects to be a terrorist. That is a very wide power as the officer is not required to have a reasonable suspicion of a specific offence having been committed: the suspicion must be that the person is or has been concerned in the commission, preparation or instigation of acts of terrorism. The relevant acts need not have been identified at the time of arrest. The arrest power may be used in respect of certain terrorist offences such as membership and support of a proscribed organisation. A person arrested under section 41 may be detained for a period of up to 48 hours without the intervention of a court. Importantly, however, that power to detain remains subject to the common law principle that where a police officer concludes that prima facie proof of guilt is unlikely to be uncovered, he or she must release the detained person without condition. Detention can be extended for up to 14 days on judicial authority.²³⁰ There is no power to release that person on police bail.²³¹

In his July 2011 report, the Independent Reviewer of Terrorism Legislation, David Anderson QC, reported that in 2009/2010 in Northern Ireland 167 people were

²³⁰ Between July 2006 and 25 January 2011 detention could be extended on judicial authority by up to 28 days, but since 25 January 2011, following the Home Office's review of counter-terrorism powers, the maximum period of extended detention has reduced to 14 days.

²³¹ Paragraph 1.6 of PACE Code H.

detained under section 41: more than twice the total for Great Britain (78). Of those 167 people, 36 (22%) were charged and the remainder released. 8 of those detained persons (5%) were charged under the Terrorism Act 2000.²³² Comparing the trends in section 41 arrests and detention in Northern Ireland to Great Britain, David Anderson QC said “it appears that section 41 arrests are sparingly used in Great Britain, but are more likely to result in lengthy periods of detention and charges for terrorist offences. In Northern Ireland, by contrast, the section 41 arrest power is frequently used but lengthy periods of detention, and charges for terrorist offences, are relatively rare.”²³³ He stated that he was struck “by the very low proportion of those arrested under section 41 [in Northern Ireland] who are subsequently charged under the Terrorism Acts: less than 5% (a total of 8 people) in 2009-10”²³⁴ and that it had occurred to him “to wonder whether the earlier involvement of the PPS in Northern Ireland might assist in reducing the number of section 41 arrests in cases which are eventually charged under provisions other than the terrorism legislation.”²³⁵

These comments were noted in the Policing Board’s Human Rights Annual Report 2011 and a recommendation was made that “PSNI should review its policy and practice in respect of arrests under section 41 of the Terrorism Act 2000 to ensure that police officers do not revert to section 41 in cases where it is anticipated that the suspect is more likely to be charged under non-terrorism legislation. The PSNI should thereafter provide reassurance to the Human Rights and Professional Standards Committee that relevant safeguards have been put in place.”²³⁶ That recommendation was accepted and PSNI committed to carry out a review to ensure that section 41 arrests are being carried out in appropriate circumstances. The PSNI has only recently (January 2013) provided the Committee with a summary of the findings of its review therefore the Committee has not yet had the opportunity to consider whether this summary is sufficient to discharge last year’s recommendation. The recommendation has therefore been recorded as outstanding for the purposes

²³² *Report on the Operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2011.

²³³ *Ibid.* para. 7.33.

²³⁴ *Ibid.* para. 7.45.

²³⁵ *Ibid.* para. 7.35.

²³⁶ Recommendation 15 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

of this Human Rights Annual Report but the Committee will consider the findings and report further next year.

David Anderson QC returned to consider the issue in his most recent report, published in June 2012. He stated “The PSNI do not consider that there is a problem here. Thus: (a) They have emphasised to me the practical difficulty in identifying whether terrorist charges are likely to be brought in circumstances where political motivation for a crime is thought to be present, but may be difficult to prove. (b) They point out that many of those arrested under section 41 are charged with offences under the explosives and firearms legislation, “which are capable of constituting terrorist offences.” (c) They have pointed to what they consider to be some advantages of section 41 arrest over PACE arrest from the suspect’s point of view: for example, the practice in Northern Ireland of providing a medical inspection before each interview. (d) They told me that in practice, co-operation with the PPS often does begin well before arrest, and that while it is the police who take the charging decision, it is difficult for them to do so without the full knowledge and co-operation of the PPS. The new Director of Public Prosecutions for Northern Ireland, Barra McGrory QC, also told me that he is broadly content with the current working relationship between PPS and police, pointing to the resource implications that would flow from earlier PPS involvement and to the importance of prosecutors retaining their reputation for impartiality.”²³⁷

Comparing figures for 2010/11, David Anderson QC noted that whilst there remained a disparity, the figures revealed a narrowing in the gap between charging practice in Great Britain and Northern Ireland:²³⁸

<u>2010/11</u>	<u>Great Britain</u>	<u>Northern Ireland</u>
Detained under section 41	50	195
Of which charged	22 (44%)	41 (21%)
Charged under Terrorism Acts	≤13 (26%)	19 (10%)

²³⁷ *The Terrorism Acts in 2011. Report of the Independent Reviewer on the operation of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, June 2012, 7.58.

²³⁸ *Ibid.* para. 7.59.

David Anderson QC stated that he endorsed the recommendation in the Policing Board's Human Rights Annual Report 2011 and that he looked forward to seeing the PSNI's response in relation to the safeguards that the Committee had requested.²³⁹ The Committee met with David Anderson QC, in August 2012, and intends to meet with him again in early 2013 to discuss, amongst other matters, the findings of the PSNI review in respect of section 41 arrests.

²³⁹ *Ibid.* para. 7.61.

11. POLICING WITH THE COMMUNITY

The function of a police service is to protect and uphold the human rights of all members of the community without discrimination. A rights based approach to policing has been shown to enhance public confidence and integrate the police into the community. With the co-operation of, and knowledge of, the community which it serves, police are better equipped to fulfil their core statutory duties of protecting life and property, preserving order, preventing the commission of offences and, where an offence has been committed, taking measures to bring the offender to justice.²⁴⁰

The notion of policing by consent, that the police owe their duty to the public, not to the state, was developed in the early 19th Century with the establishment of the Metropolitan Police Service.²⁴¹ Almost two centuries later, and central to the vision of police reform for the Independent Commission on Policing for Northern Ireland (the Patten Commission), this approach to policing now known as ‘policing with the community’ has been fully endorsed.²⁴² The Patten Commission believed that an effective partnership between police and community meant a more effective police service and enhanced community safety. It recorded that a police service not engaged with its community would find it difficult to act effectively against crime and disorder because it would not know the community or gain its co-operation.

The Patten Commission anticipated that policing with the community would be a core function of the police service and every police station. That was enshrined in legislation by the Police (Northern Ireland) Act 2000 which requires the police to carry out their duties with the aim (a) of securing the support of the local community,

²⁴⁰ Section 32 of the Police (Northern Ireland) Act 2000.

²⁴¹ The ‘Nine Principles of Good Policing’, which have historically been attributed to Robert Peel at the time of his ‘Bill for Improving the Police in and near the Metropolis’, 1829, state that police should “maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence” (Principle 7). The principles also state that “the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect” (Principle 2).

²⁴² *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing (the Patten Commission), September 1999, Recommendation 44.

and (b) of acting in co-operation with the local community.²⁴³ The Policing Board is required to monitor the performance of the police in carrying out those duties.²⁴⁴

POLICING WITH THE COMMUNITY 2020 STRATEGY

PSNI has affirmed policing with the community as its preferred style of policing. The Policing with the Community 2020 Strategy, which was published in March 2011, makes an unequivocal statement of the PSNI's commitment to further developing its policing with the community model. Monitoring the implementation of that Strategy is a key priority for the Policing Board and is carried out by the Policing Board's Community Engagement Committee. The Policing Board's Human Rights and Professional Standards Committee also maintains a very keen interest in and oversight of the Strategy as a successful Strategy will undoubtedly contribute to, and be evidence of, human rights compliance.

During 2012, the Criminal Justice Inspection Northern Ireland (CJINI) carried out a review of policing with the community. In September 2012 CJINI published a report on its findings.²⁴⁵ In that report, CJINI welcomed the progress made by PSNI in embedding the community policing ethos across the organisation but commented that "to maintain the improvements into the future will require fortitude and an imaginative use of resources that places PWC [policing with the community] at the core of service delivery."²⁴⁶ Having considered the report the Community Engagement Committee met with CJINI to discuss the issues arising from the report, and agreed to facilitate a workshop involving CJINI, the Board and police to discuss and progress the issues identified. The Community Engagement Committee will continue to work with PSNI to secure, support and monitor the implementation of policing with the community as a core function of the PSNI. Furthermore, it is anticipated that the Policing and Community Safety Partnerships (PCSPs), which were created on 1 April 2012, will have a central role in this regard.²⁴⁷

²⁴³ Section 31(A)(1) of the Police (Northern Ireland) Act 2000.

²⁴⁴ Section 3(3)(b)(i) of the Police (Northern Ireland) Act 2000.

²⁴⁵ *Policing with the Community: a follow up review of inspection recommendations*, Criminal Justice Inspection Northern Ireland (CJINI), September 2012.

²⁴⁶ *Ibid.* page v.

²⁴⁷ Policing and Community Safety Partnerships (PCSPs) are statutory bodies established under the Justice Act (Northern Ireland) 2011. They bring together, in one partnership, the functions and

HUMAN RIGHTS COMMITTEE ROUNDTABLE MEETINGS

In monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board's Human Rights and Professional Standards Committee (the Committee) considers the extent to which PSNI engages with and secures the support of the whole community in Northern Ireland. PSNI's interaction with the community, to whom it is ultimately accountable, is an indication of the extent to which a human rights culture has been embedded throughout the organisation.

During 2012, the Committee held roundtable meetings with community workers and representatives in Armagh, Belfast and Derry/Londonderry. The purpose of the meetings was to assist the Committee with determining the focus of its work. Discussion focused on those policing issues which were of greatest concern to communities. Perhaps one of the most striking points to emerge from the discussions was that while some cultural, religious and political divides remained amongst communities, they shared many common concerns in terms of policing. For example, concern was repeatedly raised that the actions and attitudes of some police officers within Response Teams and Tactical Support Groups (TSGs) were undermining very positive relationships developed with Neighbourhood Policing Teams (NPTs). Stakeholders reported that constructive and mutually respectful relationships had been built with NPTs but that more was required to achieve that with Response Teams and TSGs.

A further theme which emerged was the impact of the security situation on community style policing. In particular, the use of counter-terrorism powers such as stop and search. Some reported a concern that the use of the powers was having the effect of alienating the police from the public. Many stakeholders accepted that such powers may be required but emphasised the importance of the communication strategy used by PSNI to explain the use of the powers to the public. It was clear that

responsibilities of District Policing Partnerships (DPPs) and Community Safety Partnerships (CSPs) with the intention of building on the most useful and effective aspects of each, while operating in a more streamlined and joined up way. PCSPs are funded jointly by the Department of Justice and the Policing Board. The Policing Board is responsible for the appointment of PCSP Independent Members. Political Members are nominated by the District Council. Further information on PCSPs is available through the Policing Board website: www.nipolicingboard.org.uk

stakeholders wished to support the police and felt that more engagement, which was aimed at a meaningful exchange of information, would be of great assistance.

The issue of policing within the context of Northern Ireland's security profile was considered in 1999 by the Patten Commission. The Commission recognised that "despite the continuing menace of paramilitary capability, the situation has changed sufficiently in many parts of Northern Ireland to allow changes to the way in which policing services are delivered in those areas."²⁴⁸ Whilst recognising that change would take time and could be difficult to achieve in certain areas, the Patten Commission believed that change could be aided with the co-operation and support of local communities.

By virtue of the Justice and Security (Northern Ireland) Act 2007 (the JSA), PSNI officers have more extensive counter-terrorism powers than police services in Great Britain.²⁴⁹ Therefore, there is required a higher degree of scrutiny and community engagement. The Independent Reviewer of the JSA, Mr Robert Whalley CB, has considered the community confidence issues that the continued use of counter-terrorism powers has given rise to in Northern Ireland. He has balanced that against the operational need for the continued existence of the powers. He stated, in his 2011 report, "...these powers are inevitably intrusive and have the potential to cause resentment to some individuals and to some communities where there is long-standing alienation from the police. These concerns remain, and some people have expressed them to me more strongly this year, fearing an unwelcome 'resecuritisation' of the police in Northern Ireland. In their view, the continuance of the Justice and Security Act powers is not compatible with a 'normal' security strategy. The statistics do not however bear out fears that the police are increasing their security-related stop activity – in fact, there has been a decrease this year."

He goes on to record that "While the views of those opposed to these powers deserve respect and are held with a genuine concern that the long-hoped for normality should not be jeopardised, it is an unavoidable fact that systematic

²⁴⁸ *A New beginning: Policing in Northern Ireland (the Patten Report)*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, para. 8.2.

²⁴⁹ The range of stop and search powers and other powers available to the PSNI under counter-terrorism legislation is discussed in this Human Rights Annual Report at Chapter 4.

attempts are being made to murder police officers by terrorist groups, even if those groups are described as ‘residual’. That is in my [Robert Whalley’s] judgment not compatible with an objective concept of normality. There is unfortunately some way to go before the security position in Northern Ireland can be thought of as “normal”. That is not to deny that enormous improvements have been made in public safety and security in recent years.”²⁵⁰

It is clear to the Committee, from the roundtable discussions that it held during 2012, that every single interaction between a police officer and a member of the public has the potential to impact upon wider community confidence. That impact may be positive or negative. Negative perceptions of the police can undoubtedly undermine any attempt to progress PSNI’s Policing with the Community Strategy. The Committee is aware that there exist many positive examples of engagement between the police and local community and wishes to encourage PSNI to maintain and build upon those relationships. It was reported this year that PSNI now has over 100,000 followers on social media, meaning that PSNI has at its disposal a direct means of communication with a much wider audience.²⁵¹ With that comes responsibility, and PSNI must ensure that it sends out a consistent message, through all forms of communication, that demonstrates PSNI’s commitment to protecting, respecting and promoting the human rights of all members of the community which it serves.

²⁵⁰ *Report of the Independent Reviewer: Justice and Security (Northern Ireland) Act 2007. Fourth Report, 2010-2011*, Robert Whalley CB, November 2011, paras. 235 – 236.

²⁵¹ *PSNI has 100,000-plus followers on social media*, Belfast Telegraph, 28 September 2012.

12. HUMAN RIGHTS AWARENESS IN THE PSNI

The culture and ethos of an organisation is demonstrated both by the way in which it views and manages itself and the way it sees and interacts with external partners and stakeholders. The promotion of a positive human rights culture and awareness within the Police Service is vital to facilitate the on-going compliance with the Human Rights Act 1998. That culture must have tangible outcomes for the community served by the PSNI.

In monitoring the PSNI's performance in complying with the Human Rights Act 1998, the Policing Board, through the Human Rights and Professional Standards Committee (the Committee) keeps under review the extent to which human rights culture and awareness exist throughout the organisation, from Chief Constable to Constable and all police staff.²⁵² Although human rights awareness can be difficult to measure, the extent to which it exists throughout an organisation can be evidenced by its policy writing, the training delivered to all officers and staff, the decisions made and actions taken. The most effective gauge of how successfully a culture has been embedded can be obtained by feedback from the community. Monitoring community feedback includes the monitoring of complaints. Obtaining good feedback however can also present a challenge. The Committee appreciates that surveys and customer satisfaction reports are only one indication. Marginalised and hard to reach members of the community are unlikely to respond to surveys or customer satisfaction reviews but are often the very people who may be adversely affected by policing decision or actions. The Committee will continue to reach out to those groups and to develop a more effective mechanism for measuring the development of a human rights culture.

ACCOUNTABILITY

Police powers are wide ranging, for example, within clearly defined circumstances police officers can arrest and detain persons, they can use force, they have access to weapons, they can stop, search and question persons, they can enter and search

²⁵² As regards police staff, Recommendation 1 of this Human Rights Annual Report has made a recommendation that PSNI provides the Human Rights and Professional Standards Committee with an explanation of the human rights training delivered to police staff (i.e. to non-police officers).

premises, they can carry out surveillance and they can gather intelligence. The rationale for police having such powers is that they are necessary in order that police can carry out their duties in a way that protects the human rights of all members of the community and the rights of police officers. The fact that police officers have such powers sets them apart from members of the general public. Therefore, in order to operate with the consent of the community, and thus maintain legitimacy, the Police Service must be held to account and give an account for its actions.

The Policing Board provides a mechanism through which the police are held accountable to the community. However, accountability depends on more than mechanisms or structures; it is a state of mind. Not only is accountability necessary to secure the confidence and co-operation of the community, it is essential for ensuring that the protection of human rights is practical and effective and it demonstrates PSNI's overall commitment to a human rights culture within the organisation. It requires police not only to give an account when specifically required to, but to be forthcoming, transparent and frank when providing information. This has been the case on very many challenging issues, for example, PSNI has openly engaged in a positive dialogue with the Committee in respect of the new police initiative to tackle paramilitary style 'punishment' attacks.²⁵³ However, there have been a small number of other matters during the relevant period on which the PSNI has been less forthcoming, which is of concern to the Committee and will be addressed robustly.

²⁵³ Paramilitary style 'punishment' attacks are discussed in more detail at Chapter 9 of this Human Rights Annual Report.

13. PRIVACY, DATA PROTECTION AND FREEDOM OF INFORMATION

By virtue of the Human Rights Act 1998, it is unlawful for the police to act incompatibly with the European Convention on Human Rights (ECHR). Article 8 ECHR guarantees that everyone has the right to respect for their private and family life, their home and their correspondence. There can be no interference by a public authority with the exercise of that right except such as in accordance with the law and is necessary in a democratic society in the interests of national security; in the interests of public safety; in the interests of 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.

The Human Rights and Professional Standards Committee (the Committee) monitors PSNI compliance with Article 8 ECHR and considers and reports upon privacy issues as they arise in a variety of contexts. The Committee also specifically considers PSNI compliance with the Data Protection Act 1998 and the Freedom of Information Act 2000 given the clear link between that legislation and Article 8 ECHR. The manner in which information is gathered and retained by PSNI is strictly circumscribed.

Compliance with the Data Protection Act and the Freedom of Information Act

PSNI policy sets out the framework and contains guidance for officers and staff on data protection,²⁵⁴ freedom of information,²⁵⁵ and records management.²⁵⁶

The Data Protection Act 1998 provides individuals with an entitlement, subject to specified exemptions, to find out what personal information is 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

²⁵⁴ *PSNI Data Protection Policy*, PSNI Policy Directive 06/08.

²⁵⁵ *Freedom of Information Policy*, PSNI Policy Directive 03/04.

²⁵⁶ *Records Management*, PSNI Service Procedure 03/12.

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.

Given the vast amounts of personal information the police store or have access to,²⁵⁷ a failure to comply with the Data Protection Act or the Freedom of Information Act could have an adverse impact on an individual's enjoyment of their Article 8 ECHR right. Moreover, depending on the sensitivity of the personal information concerned, inappropriate handling of police information concerning an individual could put that individual at risk of serious harm, and possible death, contrary to their rights under Articles 2 and 3 ECHR.

All police officers and staff receive data protection training upon appointment. Where the Data Protection Act is breached, the police officer or staff member who acts in breach of the legislation may have committed a criminal offence in doing so. They may also be investigated by PSNI's Service Improvement Department and internal misconduct proceedings may be initiated. Article 3(1) of the PSNI Code of Ethics states "Police officers shall gather, retain, use and disclose information or data only in accordance with Article 8 of the ECHR and shall comply with all relevant legislation and Police Service policy and procedure governing the gathering, retention, use and disclosure of information and data." Furthermore at Article 3(3) the Code states "Information or data of a personal or confidential nature in the possession or control of police officers shall be kept confidential, unless the performance of duty, compliance with legislation or the needs of justice require otherwise."

In order to ensure compliance with the Data Protection Act, the PSNI Data Protection Office conducts random daily audits electronically of PSNI information systems and

²⁵⁷ A press article in August 2012 reported that over 50 million intelligence reports have been gathered routinely by United Kingdom police forces and made available on the Police National Database (the Police National Database is used by law enforcement agencies across the United Kingdom, including the PSNI, although only authorised and appropriately vetted users can access it). According to the press article, the intelligence files on the Database include information about protestors who have attended demonstrations, un-convicted 'persons of interest', associates of criminals, allegations of crimes and details of victims of sexual or domestic abuse. The article states that the Database contains at least 317.2 million records. Source: *Police share more than 50m records about members of the public*, The Guardian, 21 August 2012: <http://www.guardian.co.uk/uk/2012/aug/21/police-share-50m-records-public>

staff are required to complete a return. Audits carried out between 1 April 2011 and 30 September 2012 found no breaches of the Data Protection Act.

There were, however, 6 complaints made directly to PSNI between 1 April 2011 and 30 September 2012 in respect of data protection, 3 of which required no further action and 3 of which resulted in remedial action being taken. A further 12 data protection complaints were made to the Information Commissioner's Office (ICO). The ICO decided that no further action was required in respect of 11 out of 12 complaints. A decision in respect of the remaining complaint is awaited. In this context, it is worth noting that PSNI processed a total of 5,424 subject access requests during this 18 month period.

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.

The Freedom of Information Act 2000 provides individuals with the right to request information held by public authorities. Provided the information requested doesn't fall within an exempt category of information, the public authority must confirm whether they hold the information and they must normally provide it to the applicant within 20 working days.

During the 18 month period April 2011 to September 2012, PSNI received and processed 1,000 requests made under the Freedom of Information Act. During the same period, ICO issued 11 decision notices in respect of complaints made against PSNI regarding the Freedom of Information Act. Of those, there were 2 decision notices which found PSNI had erred in applying certain exemptions when responding to information requests.²⁵⁸ The same complainant was associated with both decision notices and was the victim of a number of incidents which were investigated by various police forces including the PSNI. The complainant was of the view that these

²⁵⁸ ICO Decision Notice reference numbers FS50379540, 21 November 2011 and FS50387372, 8 November 2011.

incidents had not been properly investigated and had made several requests for information relating to the investigations. The complainant requested (i) guidance on what information can be given to the victims of crime and (ii) information relating to a police investigation. PSNI refused to comply with the request, arguing that it was vexatious under section 14(1) of the Freedom of Information Act. The ICO found that the PSNI wrongly assessed the complainant's request as vexatious and required PSNI to respond to the request, either by providing the requested information or by issuing a refusal notice as provided for by section 17 of the Freedom of Information Act.

The other 9 decision notices issued by the ICO upheld the PSNI's application of exemptions and refusal to provide information. Out of those 9, there were 2 decision notices which identified procedural breaches of the Freedom of Information Act (i.e. 1 decision identified that PSNI had not included adequate information within the refusal notice and both decisions identified that the refusal notices were issued outside the statutory timeframe for compliance).²⁵⁹ The ICO did not require PSNI to take any further action in respect of either failing. In the remaining 7 decision notices the ICO found no procedural breaches.²⁶⁰

²⁵⁹ ICO Decision Notice reference numbers FS50315818, 21 June 2011 and FS50393213, 31 January 2012.

²⁶⁰ ICO Decision Notice reference numbers FS50373733, 16 November 2011; FS50407932, 28 February 2012; FS50394912, 15 May 2012; FS50425383, 31 July 2012; FS50430305, 31 July 2012; FS50430642, 26 July 2012; and FS50433759, 31 July 2012.

14. CHILDREN AND YOUNG PEOPLE

Children and young people are rights holders under the European Convention on Human Rights (ECHR). In addition, the rights of the child are considered to be significant enough to merit special treatment by the United Nations and other international treaties. The United Nations Convention on the Rights of the Child (UNCRC) contains a comprehensive framework of children's rights including: the right to survival; the right to develop to the fullest; the right to protection from harmful influences, abuse and exploitation; the right to participate fully in family, cultural and social life; the right not to be discriminated against; and the right to be heard and to have their opinions taken into account. The UNCRC has not been incorporated into domestic law, so may not be sued upon directly. However, the UNCRC is regularly relied upon by the European Court of Human Rights (the ECtHR) to interpret the ECHR.

The UNCRC enunciates the principle that 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. The United Kingdom Supreme Court has also held that the best interests of the child (Article 3 of the UNCRC) must be a primary consideration in assessing, for example, the Article 8 ECHR rights of a child.²⁶¹ That does not mean that the best interests of the child displace all other rights but it is clear that they must be considered first and given great weight.

That principle is partly reflected in the Justice (Northern Ireland) Act 2002, which requires all persons and bodies exercising functions in relation to the youth justice system to have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.²⁶² Article 3 UNCRC has also been reflected in the Borders, Citizenship and Immigration Act 2009, which extends to Northern Ireland and which requires the United Kingdom Border Agency in the discharge of its

²⁶¹ *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4.

²⁶² Section 53(3) of the Justice (Northern Ireland) Act 2002.

functions to have regard to the need to safeguard and promote the welfare of children. It can be seen therefore that the UNCRC, the ECtHR and the UK Parliament attach significant weight to the need for children to have special assistance and protection due to their vulnerability. In other words, given a child's special need for care and assistance arising from his or her status as a child, the interpretation and application of the child's rights must be realised in accordance with the best interests of the child taking account of the child's personal circumstances and particular needs.

Monitoring policing with children and young people

In all aspects of its work, the Policing Board, as a public authority, should take cognisance of and give effect to the UNCRC. The Policing Board must, for example, take steps to ensure that children are heard and that their opinions on policing are taken into account. The Policing Board has a Youth Advisory Panel, which is a forum consisting of key stakeholders and chaired by Policing Board Member, Deborah Watters. With the assistance of the Panel, the Policing Board's Community Engagement Committee has organised a number of youth consultation events through which the views of children and young people on policing are sought. The Human Rights and Professional Standards Committee (the Committee) also maintains a keen interest in and oversight of policing with children and young people, which the Committee believes is both a legal imperative and a moral requirement. The Committee is convinced that children and young people are central to the advancement of a more effective policing with the community strategy. The Committee is conscious that public authorities often analyse and pay regard to the rights of adults but less often consider actively the rights of children and young people.

Thematic review

The Committee routinely considers the way in which police officers interact with children and young people and the extent to which they give effect to the UNCRC. A dedicated human rights thematic review on policing with children and young people was undertaken by the Committee during 2010 and published in January 2011.

The terms of reference for the Committee's thematic review of policing with children and young people were necessarily confined to the most pressing issues but included:

- The policing of anti-social behaviour, including anti-social behaviour orders (ASBOs) and a consideration of 'naming and shaming';²⁶³
- Police practice regarding the dispersal of young people, public order and crowd control, stop and search and other powers to control the activities of children and young people; and
- Alternative proposals such as diversionary disposals and community restorative justice.

A number of key issues arose during the thematic review process and are dealt with comprehensively in the thematic review report, a copy of which can be accessed via the Policing Board's website.²⁶⁴ A total of 30 recommendations were made. PSNI accepted all but one of the recommendations. Since publication of the thematic review, the Committee has received periodic updates from PSNI on progress made in implementing the recommendations. The Policing Board's Human Rights Advisor has met with PSNI on a number of occasions to discuss in detail the action taken or proposed to be taken in respect of each recommendation. In November 2012, the Human Rights Advisor presented the Policing Board's Youth Advisory Panel with a draft update report on the thematic review. Stakeholders on the Panel provided feedback to the Human Rights Advisor on PSNI progress. Emerging issues were also discussed. The update report was also presented to the Committee in November 2012.

The update report details the steps taken to date in respect of each of the thematic recommendations and commends PSNI for the substantial amount of work that has undertaken thus far. The update report also contains commentary on other issues concerning the policing of children and young people, for example, it discusses a

²⁶³ It is important to make plain that the Committee chose to include anti-social behaviour in the thematic review not because it is perpetrated by children and young people but because society assumes falsely that young people are the main protagonists of anti-social behaviour: the Committee sought to address that misconception through the thematic review.

²⁶⁴ www.nipolicingboard.org.uk

test-purchasing of alcohol scheme, 'Speedy Justice' measures, the disclosure of criminal records and the introduction of Reducing Offending Units (ROUs) across all 8 police Districts. The update report considers the issue of paramilitary attacks and the fact that a substantial proportion of such attacks are carried out against young people. Paramilitary attacks are considered in more detail in Chapter 9 of this Human Rights Annual Report.

The Committee agreed that the update report should be published and made available to download through the Policing Board's website on completion of stakeholders' feedback. The update report will be published during 2013.

Policing with children and young people is and will remain a key area of work for the Policing Board and the PSNI. The Policing Plan 2012 – 2015 provides that PSNI will work towards improving its service to vulnerable groups, including children and young people and in particular males aged 16 to 24 and children in care. To achieve that, the Policing Plan cites implementation of the thematic review recommendations as a priority initiative.

APPENDIX 1: 2012 RECOMMENDATIONS

TRAINING	
1.	The PSNI should provide the Human Rights and Professional Standards Committee with a written review of the training plan for police staff, with a particular focus on identifying the human rights training needs of police staff and how PSNI proposes to meet those needs and within what time frame. That review should be provided to the Human Rights and Professional Standards Committee within 6 months of the publication of this Human Rights Annual Report.
2.	The PSNI should deliver the child protection training as developed by 'A' District trainers to all front line police officers.
POLICY	
3.	The PSNI should forthwith publish, on its publicly accessible website, those policies that have been finalised.
OPERATIONS	
4.	The PSNI should forthwith collect statistics on the use of the powers contained at section 43A of the Terrorism Act 2000 and amend its quarterly statistical reports to include the statistics collected.
5.	The PSNI should forthwith collect and disaggregate its statistics on the use of all powers contained within section 24 of and Schedule 3 to the Justice and Security (Northern Ireland) Act 2007. In particular, the statistics should identify the powers used according to whether the stop and search was pursuant to an authorisation, was undertaken with reasonable suspicion or without and whether it was exercised in relation to a person, vehicle or premises.
6.	The PSNI should consider whether the same, or a similar card, to that developed for young people should be handed out to all persons who are the subject of a stop, search and/or question under PACE, TACT or JSA.
COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS	
7.	The PSNI should consider the findings of the OPONI report on allegations of oppressive behaviour and present to the Human Rights and Professional Standards Committee the PSNI analysis of the findings together with its proposed means of reducing allegations of oppressive behaviour. That presentation should be made to the Human Rights and Professional Standards Committee within 6 months of the publication of this Human Rights Annual Report.

COVERT POLICING

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| 8. | On completion of its review of the Memorandum of Understanding, the relevant protocols and service level agreements between the PSNI and the Security Service, the PSNI will subject them to human rights proofing by the Policing Board's Human Rights Advisor and thereafter publish those documents to the greatest extent possible. In the event that PSNI decides not to publish any document or to publish all or any in a redacted form it should provide to the Human Rights and Professional Standards Committee the written reasons for so deciding. |
| 9. | The PSNI should forthwith put in place a formal training plan to ensure that all officers who are or may be involved in the application of the Regulation of Investigatory Powers Act 2000 receive all necessary training as and when required. The provision of training should be kept under review and provided as and when required. |

TREATMENT OF SUSPECTS

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| 10. | The PSNI should provide to the Human Rights and Professional Standards Committee, within 6 months of the publication of this Human Rights Annual Report, a report on its review of healthcare provision in police custody suites. That report should include any specific consideration given to ensuring that all healthcare professionals are sufficiently experienced and independent from the police, particularly in respect of terrorism detainees. |
| 11. | The PSNI should provide an explanation to the Human Rights and Professional Standards Committee within one month of the publication of this Human Rights Annual Report for the continued detention of immigration detainees in police custody. That report should address specifically the reason for those detainees not being transferred to Larne House. |

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

		Implementation status
TRAINING: 2011 RECOMMENDATION		
1.	PSNI should consider how to better utilise the experience and expertise available within the community for the development and delivery of specialist training packages.	Implemented
POLICY: 2011 RECOMMENDATIONS		
2.	The PSNI should, within 3 months of the publication of this Human Rights Annual Report, provide to the Human Rights and Professional Standards Committee an analysis of all new ²⁶⁵ decisions taken upon application by an individual to have DNA profiles and samples and fingerprints destroyed together with any decisions taken to review or amend the policy to be adopted on any such an application being made.	Implemented
3.	PSNI should provide to the Human Rights and Professional Standards Committee an explanation (together with reasons) for any decision to continue to store such information or material. That explanation should be provided within six weeks of the publication of this Human Rights Annual Report.	Implemented
4.	PSNI should report to the Human Rights and Professional Standards Committee, within 3 months of the publication of this Human Rights Annual Report, on the structures and policy in place to ensure that the retention of photographs by police of all persons arrested is lawful, proportionate and necessary.	Implemented
COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS: 2011 RECOMMENDATION		
5.	The PSNI should analyse the behaviour and/or conduct that was alleged to have resulted in sub-Article 1.10 breaches with a view to identifying any trends or patterns that emerge and thereafter report to the Human Rights and Professional Standards Committee with the results of that analysis within 6 months of the publication of this Human Rights Annual Report.	Implemented

²⁶⁵ In other words, all decisions taken after the date of publication of the Human Rights Annual Report 2011.

PUBLIC ORDER: 2011 RECOMMENDATIONS		
6.	The PSNI should, within 3 months of the conclusion of its review of public order policing and the use of force, provide to the Human Rights and Professional Standards Committee a report setting out the findings of the review and all steps taken or to be taken as a result of that review. In particular, the PSNI should consider any issues that arise in relation to the use of AEP rounds.	Implemented
7.	The PSNI should develop annual briefing sessions which consider lessons learned from the previous year's public order operations and which consider in particular the human rights issues involved in the planning and execution of public order operations.	Implemented
USE OF FORCE: 2011 RECOMMENDATION		
8.	PSNI should publish its use of force statistics on the PSNI website on a 6-monthly basis.	Implemented
COVERT POLICING: 2011 RECOMMENDATION		
9.	PSNI should forthwith complete its review of all intelligence policies, procedures and protocols and complete the overarching policy on the management of intelligence and report to the Policing Board within 4 weeks of the publication of this Human Rights Annual Report.	Implemented
VICTIMS: 2011 RECOMMENDATIONS		
10.	The PSNI should develop a hate crime strategy, in consultation with its Independent Advisory Groups, which considers the reasons for the underreporting of hate crime, the procedures in place for reassuring and protecting victims of hate crime and a robust response to hate crime. That strategy should be provided to the Human Rights and Professional Standards Committee within 12 months of the publication of this Human Rights Annual Report.	Implemented
11.	PSNI should disaggregate the statistics it collates under the heading of disability hate crime to include a separate category for learning disability.	Implemented
12.	The PSNI should consider how best to ensure that officers and staff are able to recognise learning disability and therefore to respond appropriately. The PSNI should report to the Human Rights and Professional Standards Committee within 12 months of the publication of this Human Rights Annual Report on its proposals.	Implemented

TREATMENT OF SUSPECTS: 2011 RECOMMENDATIONS		
13.	The PSNI should analyse the reason(s) for the increased number of concerns noted by Custody Visitors in respect of the health and well-being of detainees and consider what steps may be required to remedy those concerns. The analysis should pay particular regard to the rights guaranteed by the European Convention on Human Rights. The PSNI should report on its analysis to the Human Rights and Professional Standards Committee within 3 months of the publication of this Human Rights Annual Report.	Implemented
14.	PSNI should report to the Human Rights and Professional Standards Committee annually on the number of detainees held in non-designated police stations for more than six hours together with the reason for that further detention.	Implemented
15	The PSNI should review its policy and practice in respect of arrests under section 41 of the Terrorism Act 2000 to ensure that police officers do not revert to section 41 in cases where it is anticipated that the suspect is more likely to be charged under non-terrorism legislation. The PSNI should thereafter provide reassurance to the Human Rights and Professional Standards Committee that relevant safeguards have been put in place.	Outstanding ²⁶⁶
TREATMENT OF SUSPECTS: 2010 RECOMMENDATION		
5.	The PSNI should consider requiring all custody officers to attend SafeTALK training and report to the Human Rights and Professional Standards Committee within six weeks of the publication of this Human Rights Annual Report as to whether, and if so when, the training will commence.	Implemented
CHILDREN AND YOUNG PEOPLE: 2011 RECOMMENDATION		
16.	The PSNI should review the available data and policy framework relevant to punishment attacks and consider what further measures are required to protect persons from such attacks. In particular, the PSNI should consider the particular vulnerability of children and young people and develop a strategy for addressing attacks on children and young people. The PSNI should report to the Human Rights and Professional Standards Committee within 3 months of the publication of this Human Rights Annual Report on the progress made and thereafter within 12 months of the publication of this report on the final strategy.	Implemented

²⁶⁶ See page 135.

APPENDIX 3: HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS 2005 - 2011

Summary Implementation Record

	Implemented in full	Withdrawn	Outstanding	Totals
2011 recs.	15	0	1	16
2010 recs.	4	1	0	5
2009 recs.	17	3	0	20
2008 recs.	20	10	0	30
2007 recs.	38	6	0	44
2006 recs.	42	3	0	45
2005 recs.	56	4	0	60
Totals	192	27	1	220

Alyson Kilpatrick BL



Alyson Kilpatrick studied law at Queens University Belfast, the Inns of Court School of Law in London and the College of Europe in Bruges, where she studied advanced European law. She was called to the Bar of England and Wales (Middle Temple) in 1992 and was a founding member of Arden Chambers. From 1993, she practiced from Chambers in London and Manchester until her return to the Bar of Northern Ireland in 2008. Alyson has extensive experience of litigation in the higher courts, representing a wide variety of clients including public authorities, the voluntary sector, charities and private individuals, where she concentrated on public law and human rights cases with a particular emphasis on cases concerning the protection of individuals' rights. For example, she represented the objectors at the Westminster ('Homes for Votes') Audit Inquiry, which investigated gerrymandering and malfeasance in public office, resulting in the surcharge of council members and officials. Between 2005 and 2007, she was junior counsel to the Robert Hamill inquiry. She sits on the Pro Bono Committee of the Bar of Northern Ireland, is a member of *Justice* and of *Liberty*, and was a member of the Steering Group for the Preventing Possession Initiative.

Throughout her practice, Alyson has published extensively including legal textbooks, law reports series and encyclopedia of law and practice. For example, she was an author on *The Human Rights Act 1998: A Practitioner's Guide* (Sweet and Maxwell) and the author of *Discrimination Law* (Lemos & Crane). She has provided training to public authorities on, for example, the implementation of the Human Rights Act., the law on homelessness and anti-social behaviour (ASBO) legislation. Due to her specialist interest in the latter, she contributed to the Panorama Special Investigation

ASBOs on Trial. She is regularly invited to speak at conferences on legal practice and procedure involving human rights, the rights of Irish Travellers, policing and criminal justice and the rights of the homeless. In 2009, Alyson was invited to be a member of the Irish Government's delegation to Timor Leste on United Nations Security Council Resolution 1325 (women, peace and security), where she presented a paper on behalf of the delegation on policing and security. Alyson was a Commissioner on the Independent Commission on the Future of Housing in Northern Ireland, which reported on the strategic vision for the future of housing. She is Vice-Chair of the Board of the Simon Community Northern Ireland. In January 2009, she was appointed independent Human Rights Advisor to the Policing Board and has since authored four thematic reviews and four Human Rights Annual Reports. She has recently become a Fellow of the RSA.

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