

NORTHERN IRELAND POLICING BOARD

**MINUTES OF MEETING OF THE PERFORMANCE COMMITTEE HELD ON
23 June 2022 AT 12:30pm**

PRESENT:

Mr Gerry Kelly, Chair
Dr Janet Gray, Vice-Chair
Ms Deirdre Toner
Ms Sinéad McLaughlin
Mr Trevor Clarke
Ms Liz Kimmins*
Mr Mike Nesbitt (1)
Ms Joanne Bunting
Ms Nuala McAllister

**OFFICIALS IN
ATTENDANCE**

Ms Sinead Simpson, Chief Executive
Mr Adrian McNamee, Director of Performance
4 Board Officials

(1) Present to Item 6.3

*Attended via video conferencing

1. APOLOGIES

Apologies were received in advance of the meeting from Edgar Jardine.

The Chair welcomed new Board Members Sinéad McLaughlin and Nuala McAllister to the Committee. The Chair also welcomed the Committee's new Vice-Chair Dr Janet Gray.

The Committee agreed the agenda for the meeting.

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

2. CONFLICTS OF INTEREST

Nuala McAllister declared, in relation to correspondence or engagements with external agencies, that her partner is employed by the Children's Law Centre.

3. MINUTES OF THE PREVIOUS MEETING

The Committee noted the minutes of the Performance Committee meeting held on 10 March 2022 that were approved by the Board on 24 March 2022.

4. UPDATE ON ACTION LOG

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

NOTED.

The Director of Performance provided an update on AP3 from the meeting held on 11 November 2021 in respect of Policing Plan Measure 1.2.2 requesting further information on prosecution data for OCG's. The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director of Performance provided an update on AP4 also from the meeting held on 11 November 2021 in respect of Policing Plan Measure 1.2.2 requesting an update on the PSNI progress on implementing the 6 Recommendations of the CJINI Report in respect of modern slavery and human trafficking. The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director of Performance provided an update on AP1 from the meeting held on 9 December 2021 in respect of Fixed Penalty Notices and the processes and procedures for the deletion of data; who gives authority to delete and what systems are in place to prevent inadvertent data deletion from PSNI computer systems. The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director provided an update on AP2 also from the meeting held on 10 February 2022. Officials were asked to write to PSNI to address Member concerns on the escalation of reported incidents to the PSNI Senior Executive Team and subsequent reporting to the Board. The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director provided an update on AP3 also from the meeting held on 10 February 2022. Officials contacted DCC Hamilton to seek further analysis and information regarding the 80% of non-crime related calls. The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director provided an update on AP4 also from the meeting held on 10 February 2022. A Member had requested Officials to write to PSNI and request a breakdown of Domestic Violence incidents / crimes as recorded by PSNI Districts. The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director provided an update on AP6 also from the meeting held on 10 February 2022. In response to the presentation of the Terrorism Investigation Unit Members requested that Officials contact PSNI to seek an update to the allegations made in the media by a former senior officer. The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director provided an update on AP1 also from the meeting held on 10 March 2022. A Member requested further information from the PSNI on the issue of Looked After Children (LAC). The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director provided an update on AP2 also from the meeting held on 10 March 2022. Members requested that Officials arrange a visit to the PSNI's Child Sexual Abuse and Exploitation Team (CSAE). The response from the PSNI was provided at Item 4.1 and Members were content with the correspondence.

The Director provided an update on AP6 also from the meeting held on 10 March 2022. Members requested that Officials follow up with ACC Todd to establish the PSNI's response to address the issue of arrests and community background and to include this as a future item of business on the Committee's agenda. The Human Rights Advisor and officials met with ACC Chris Todd to discuss arrest rates and community background in May 2022. He explained that he was taking over responsibility for the Police Powers Development Group [PPDG] and he intended that this issue would be considered and taken forward by that Group. However, as set out by the Chief Constable's letter of 10th June 2022 concerning Spit and Bite Guards (at Item 6.5 on today's agenda), 'the development of an agreed and consistent means of recording religious and community background data' will now be taken forward by the Performance Accountability Framework, the proposed replacement working group for the PPDG, informed by the External Reference Group and the Independent Scrutiny Panels.

4.1 Accompanying Correspondence

Members engaged in a brief discussion on a number of issues including:-

- Unexplained Wealth Orders and seizures made by the PSNI;
- OCG's and the proactive investigations as reported by the PSNI;
- The effectiveness of relationships between the PSNI and Health Trusts in relation to (LAC); and
- The PSNI monitoring of children put at risk in a family setting.

Following discussion it was:-

AGREED

Officials to contact the PSNI to seek further clarification on the identity and affiliation of the '64 OCG groupings' as noted by PSNI. **(AP1)**

5. CHAIRPERSON'S BUSINESS

The Chair confirmed that there had been one item of business received by the Chairperson for discussion consisting of two letters in respect of Operation Skieppe.

The Director of Performance informed Members that a letter was received from the PSNI dated 12 May 2022 that refers to correspondence of January 2022 and this had not been received by the Board. The PSNI letter dated 6 January 2022 was subsequently provided on request and is provided for Members.

The Director of Performance provided a brief overview of Operation Skieppe that was established following the potential data breach identified within the PSNI, specifically information shared and exchanged inappropriately with the

United States of America's Homeland Security Department. The Police Ombudsman for Northern Ireland investigated the matter and concluded that no further action would be taken against individual officers or member of staff as the issues identified are systematic as opposed to individual error. A number of individuals have been contacted by the PSNI regarding the processing of their personal data and their rights as data subjects.

Following discussion it was:-

AGREED;

Officials to request further update from C/Supt Donaldson to establish if the data breach issue has any further consequences. **(AP 2)**

6. ITEMS FOR COMMITTEE BUSINESS

6.1 Review of the Committee's Terms of Reference.

The Director of Performance informed Members that the Board requested all Committee's on 9 June 2022 to reconsider and review the current Terms of Reference to determine if it is still relevant and fit for purpose.

The Director of Performance also outlined to Members that over the past twelve months the Committee's items of business have focussed on its areas of responsibility as outlined in Section 5 in relation to:

- PSNI Governance and General Matters;
- Other Police Performance;
- Human Rights;
- Police Professional Standards; and
- National Crime Agency.

The Director of Performance drew Members attention to the Committee's Terms of Reference 2022 that has been drafted in order to reflect the work undertaken in these five areas. The Programme of Work is constantly

evolving and including issues that emerge from the work of the PSNI. The Director of Performance advised that it is, therefore, prudent to revisit the Committee's Terms of Reference so that it can be updated with emerging issues for the Committee.

Following discussion it was:-

NOTED;

That Members were content with the Review of the Committee's Terms of Reference.

6.2 Draft Programme of Work August to December 2022

The Director of Performance presented a paper providing Members with a Draft Programme of Work for the Performance Committee. This has been developed based on the Committee's Terms of Reference in order to guide the Committee's work over the next six months. The Director advised Member's that this programme will allow for officials to plan the business of the Committee and invite the appropriate PSNI officers to attend meetings. However, this also allows for scope to tackle emerging issues as they arise throughout the year.

The Director of Performance informed Member's that the Draft Programme of Work from June to December 2022 has been drafted in order to reflect the five areas of responsibility. These are PSNI Governance and General Matters, Other Police Performance, Human Rights, Police Professional Standards and National Crime Agency.

The Director referred Members to the current Action Log which has identified a further two areas for inclusion in the work programme: Misogyny and Hate Crime; and Arrests and Community Background. The Director also informed

Members that consideration will also have to be given to NCA reports, Legacy and draft documents on the Human Rights of Police Officers and Use of Force Report to be considered by the Committee. Engagements with OPONI and the Independent Reviewers of JSA and TACT also have to be scheduled.

Members engaged in a brief discussion on a number of issues including:-

- A Member queried if research into intimate searches of under 18's would be undertaken by the Committee and if so, where would this fit into the Programme of Work and if investigations have been started by the Police Ombudsman into such searches of those aged under 18;
- A Member sought clarification that the NCA six monthly Report published in April 2022 will be available to Members;
- A Member queried if an update review of Garnerville would be undertaken;
- A Member queried if the PSNI's Professional Standards and Discipline branch and the Police Ombudsman for Northern Ireland could both be scheduled to appear at Committee on the same day.

Following a brief discussion it was:-

AGREED;

Officials to re-draft the Draft Programme of Work to accommodate emerging issues as identified at the June Committee meeting. **(AP 3)**

Officials to seek further information from PSNI on the criteria, training and authorisation to perform a strip search. Officials to clarify if OPONI have initiated an investigation into strip searches of those persons aged under 18. Officials to further clarify with OPONI the '90 Day' rule in respect of Custody Suite CCTV retention and if this footage can be retained. **(AP 4)**

6.3 Human Rights Advisor Update Report for March to June 2022.

The Human Rights Advisor provided Members with an overview of areas within his current work programme including, drafting the Human Rights Report of Human Rights of Police Officers which includes engagement with PSNI minority associations, the Human Rights Annual Report 2021/22 and the Use of Force Report.

The Human Rights Advisor updated Members on meetings he has attended including; the NIO Working Group on non-jury trials, JSA Reviewer, NIHRC, PSNI officers, PSNI Training College, Deputy Chief Constable, PSNI lawyers and various meetings with Board Officials including discussing custody visiting.

He also informed Members of his future workplan including; continuing the drafting of the Reports, meeting with the Independent Custody Visitors (ICVs), attending the policing of 11/12 July parades, meeting with ACC Todd regarding arrest/community background and PSNI's permanent introduction of spit and bite guards.

The Human Rights Advisor referred to Biometric Retention and reported that he had suggested to the PSNI that they may be able to consider the retention issues without waiting for the Assembly to legislate. The Human Rights Advisor had queried the approach taken by the PSNI in relation to the discretion on retention provided for by article 64(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989, given that this legislation does not require retention, and instead merely states material 'may be retained' this would allow greater compliance with the decisions in *S and Marper v UK* and *Gaughran v UK* pending the Assembly legislating.

The Human Rights Advisor referred Members to 'A Bill to Reform the Law Relating to Human Rights' known as the 'Bill of Rights' that was introduced to parliament on 22 June 2022. This Bill seeks to clarify and rebalance the relationship between courts in the UK and the European Court of Human

Rights. The Human Rights Advisor informed Members that he would continue to review this Bill's passage through parliament and will consider any implications for the PSNI.

Following discussion it was:-

NOTED.

That Members were content with the Human Rights Advisors Update Report and schedule of work.

6.4 Human Rights Monitoring Programme Review

The Human Rights & Professional Standards Manager (HRPS Manager) presented a paper providing Members with information on the agreed Human Rights Monitoring Framework and the supporting Programme of work and provide an opportunity to consider its content and advise of any amendments or additions.

The HRPS Manager recalled to Members that the Board has a legislative requirement to monitor the performance of the police in complying with the Human Rights Act and to include an assessment of their performance in the Board's Annual Report. To assist the Board in carrying out this function, a Human Rights Monitoring Framework was developed in 2005, and reviewed and agreed by the Board in June 2021. In November 2021, the Board approved a three year work programme for Human Rights.

The HRPS Manager recalled to Members that in line with the Framework two Reports have been published in the last year including the Human Rights Advisor's Report on PSNI's Use of Spit and Bite Guards and the Human Rights Annual Report 2021/22. The HRPS Manager also drew Members attention to a number of Reports that are currently being drafted by officials and will be brought to Committee for Members consideration during

September – December 2022 including Human Rights of Police Officers and Staff, Human Rights Review of PSNI's Use of Force and the Human Rights Annual Report 2021/22.

The HRPS Manager referred to the number of themes/areas for consideration within the programme for 2022/23 and 2023/24 which Board Officials would welcome Members' consideration.

Following discussion it was:-

NOTED;

That Members were content with the Human Rights Monitoring Programme and that this will continue to be considered.

6.5 Spit and Bite Guards Update and the PSNI Response

The Human Rights & Professional Standards Manager (HRPS Manager) presented a paper providing Members with an update on the PSNI's position in relation to Spit and Bite Guards. The Board approved the publication of the Human Rights Advisor's Review of Spit and Bite Guards in February 2022. This paper provides Members with the Chief Constable Response to the Board.

The HRPS Manager recalled to Members that as part of the response to the COVID-19 pandemic, the Chief Constable introduced the use of Spit and Bite Guards in March 2020. This measure was temporary in nature, however, it has been in place now for over two years.

The HRPS Manager recalled to Members that the Human Rights Advisor's Review on the PSNI's use of Spit and Bite Guards reviews all the current evidence, safeguards and protections and makes 21 recommendations in relation to training and guidance, children, mental health and governance.

The Board approved the publication of the Review in February 2022 and in doing so accepted the continued use of Spit and Bite Guards by the PSNI subject to the agreement of governance framework that it will review on a regular basis. Specifically, the Board requested that the Chief Constable take into consideration, the Review and its Recommendations

The HRPS Manager referred Members to the reply from the Chief Constable dated 10 June 2022 that states that the permanent introduction of Spit and Bite Guards will 'go live' on Monday 13 June 2022. It is unclear from the correspondence if the Chief Constable accepts the request to agree a governance framework with the Board. The Chief Constable sets out plans to change the current scrutiny arrangements in PSNI in respect of use of police powers and specifically use of force by proposing a new Performance Accountability Framework [PAF]. This PAF, it is understood, is a replacement for the PSNI's Police Powers Development Group. The Chief Constable's letter also provides detail on PSNI's intention to better collect data, including in relation to community background data.

The HRSP Manager referred to the fact that Members have not had the opportunity to discuss this permanent introduction with the PSNI in advance of their decision and it is unclear if they accept the Recommendations contained within the Human Rights Advisor Review. The HRSP Manager informed Members that the Board has had numerous discussions with key stakeholders, to inform the drafting of the Review, some of whom are opposed to the use of Spit and Bite Guards. It is important for the Board to engage with PSNI to ascertain their plans in respect of deployment and how, if at all, the PSNI will implement the Recommendations.

The Human Rights Advisor advised Members that he had received from the PSNI, in the early hours of 23 June 2022, a thirty five page document dated 13 April 2022 that contains a more positive response to the Board's Review and Recommendations in contrast to the Chief Constable's 10 June 2022

letter. However, due to the 'Sensitive PSNI' marking of this document the Human Rights Advisor could not divulge the contents to Members.

Members engaged in discussion on a number of issues including:-

- A number of Members referred to the unacceptable and unprofessional manner in which information has been shared by the PSNI preventing the Board from robustly scrutinising their decision making;
- A Member referred to the sensitive material contained within documents received from the PSNI and asked if a general 'gisting' could be provided to them or alternatively if the sensitive material could be redacted allowing Members to view;
- A Member queried if a senior PSNI officer could be invited to a future Committee meeting to provide Members with clarity on the PSNI's position in relation to a governance framework for Spit and Bite Guards.

Following discussion it was:-

AGREED;

Officials to write to the Chief Constable in relation to the Spit and Bite Guard response to the Human Rights Advisor's Spit and Bite Guard Report and invite ACC Chris Todd to Committee to discuss the PSNI's permanent introduction.

(AP5)

7. QUESTIONS FOR THE CHIEF CONSTABLE

- 7.1** One question was identified by Members at the 10 March 2022 Performance Committee meeting. The Chief Constable's response was **NOTED**.
- 7.2** Identify any questions arising out of this meeting which Members wish to raise with the Chief Constable at the next Board Meeting.

A Member identified one question to ask the Chief Constable:

To ask the Chief Constable why his decision to make Spit and Bite Guards permanent was published in the media on 13 June 2022 prior to providing Members with any response to the Board's Report on "A Review of the PSNI's use of Spit and Bite Guards" that was published in February 2022.

8. COMMUNICATION ISSUES

There were no communication issues arising from the meeting.

9. ANY OTHER BUSINESS

A Member requested that an update be provided to the Board in respect of the ongoing Noah Donohoe investigation.

Following discussion it was:-

AGREED;

Officials to write to write to the PSNI to request an update/timeframe for resolution on issues surrounding Noah Donohue case. **(AP 7)**

10. DATE OF NEXT MEETING

It was also agreed that the following meeting would take place on **Thursday 8th September 2022** at **09.30am**

Meeting closed at 2:30pm.

PERFORMANCE DIRECTORATE

23 June 2022

Chairperson