



REVIEW OF THE HUMAN RIGHTS

**OF POLICE OFFICERS
AND STAFF**

DECEMBER 2022

CONTENTS

1.	Foreword	2
2.	Executive Summary	3
3.	Introduction	8
4.	PSNI People Strategy	11
5.	Right to Life (Article 2)	13
6.	Prohibition of Ill-Treatment (Article 3)	17
7.	Fair Trial (Article 6)	22
8.	Privacy (Article 8)	28
9.	Freedom of Expression and Association (Article 10)	34
10.	Discrimination (Article 14)	40

1. FOREWORD



I am delighted to present this Report which considers the rights of police officers and staff in the Police Service of Northern Ireland (PSNI), the first of its kind by the Policing Board. In drafting the Report the Human Rights Advisor consulted with representatives of a dozen staff association groups and individuals within the PSNI and examined the following six key areas:

- The Right to Life/Protection from Harm;
- Prohibition of Ill-Treatment;
- Right to Fair Trial, Due Process/Minimise Delay;
- The Right to Privacy;
- Freedom of Expression/Association; and
- Freedom from Discrimination.

This report considers police officers and includes designated staff working in policing who have particular powers and duties conferred on them by the Chief Constable as defined by Section 30 of the [Police \(Northern Ireland\) Act 2003 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2003/30).

Throughout this report, the welfare of officers and staff has been an important element of this analysis and it is crucial that our officers and staff feel supported and recognised for the difficult role they do.

During the drafting of this Report the concerns raised by the public and Policing Board regarding the conduct and professional standards of PSNI were also considered and a separate report, Professional Standards Review: Recommendations for Improvement, setting out the Board's response has been published on the Board's website at www.nipolicingboard.org.uk.

This Report, focussing on officers and staff, sets out nine recommendations with the view of improving PSNI's compliance with international human rights standards regarding those working within policing. I welcome the findings of the report and the recommendations made by the Human Rights Advisor which was approved for publication by the Board in November 2022. I will ensure that the Board and its Committees continue to scrutinise the work of the PSNI so that the recommendations and lessons identified in this report are implemented as PSNI continue to cope with the significant policing challenges.

DEIRDRE TONER

CHAIR | NORTHERN IRELAND POLICING BOARD

2. EXECUTIVE SUMMARY

This Report focuses on the rights of police officers and designated staff within the PSNI. Having a rights-based approach to policing is an important element of securing and building public confidence in the PSNI. It protects the rights of the public and police officers alike and provides a decision-making framework for officers to work within. The Northern Ireland Policing Board (the Board) has a statutory duty under section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 to monitor the performance of the PSNI in complying with the Human Rights Act 1998. It is the role of the Board's Performance Committee to carry out this monitoring work.

The Report sets out nine recommendations with the view of improving PSNI's compliance with international human rights standards regarding the protection of human rights of officers and staff. Throughout this report, the welfare of officers and staff has been an important element of this analysis.

Six key areas of the Human Rights of Officers and Staff are examined. These areas are:

- The Right to Life/Protection from Harm;
- Prohibition of Ill-Treatment;
- Right to Fair Trial, Due Process/Minimise Delay;
- The Right to Privacy;
- Freedom of Expression/Association; and
- Freedom from Discrimination.

The Human Rights Advisor consulted with representatives of a dozen staff association groups and individuals within the PSNI. The groups and individuals consulted included, in no particular order; The Police Federation for Northern Ireland (PFNI), The Police Officer Disability Network, The Northern Ireland Public Service Alliance (NIPSA), The Christian Police Association, The Superintendents Association, Senior Officers, Student Officers, Lesbian, Gay, Bisexual and Transgender (LGBT)+ Staff Association, The Women's Police Association, The Ethnic Minority Police Association and The Catholic Guild of Police Officers. The Police Ombudsman for Northern Ireland was also consulted.

Section 4 considers PSNI's People Strategy and how human rights considerations could be included in that policy.

Section 5, Right to Life, sets out the legal obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual, as determined by the European Court of Human Rights (ECtHR) in the case of *Osman v UK*. The chapter also contains staff associations' concerns regarding the right to protection from harm and PSNI's response.

Section 6, Prohibition of Ill-Treatment, considers the state's responsibility to protect everyone from ill-treatment, including police officers. Officers have a right to protection, as their occupation often puts them in harm's way. In addition, the state has a responsibility to protect people from domestic violence and other abuse, whether that comes from private citizens or other police officers. The chapter furthermore considers that UK police services appear to have failed to protect women from some male officers, including the failure to protect female officers and staff.

Section 7, Right to a Fair Trial, sets out the legal guidelines regarding the right to a fair trial for police officers, including misconduct proceedings. Staff associations raised concerns over delays in PSNI misconduct proceedings and the Police Ombudsman investigations. This chapter explores the need to modernise the misconduct regulations, which may include independent lawyers chairing the misconduct panels and for those hearings to be transparent.

Section 8, Right to Privacy, considers issues relating to officers' restrictions on private messages, recent Police Ombudsman investigations and recommends refresher training for staff and officers on the limitations of privacy that apply to them.

Section 9 explores issues around political activities and notifiable memberships, as police officers' freedom of expression and association are restricted as members of a state body and the requirement of police neutrality. This chapter also considers whistleblowing within the PSNI. Additionally, this chapter discusses issues around the freedom of expression of officers who belong to ethnic minorities.

Section 10 lays out the legal landscape in the UK and Northern Ireland regarding Freedom from Discrimination and how it applies to PSNI officers and staff. The chapter explore issues relating to this right, such as trans police officers undertaking stop and search, and discusses concerns from various staff associations and PSNI's response to it.

RECOMMENDATIONS

The nine recommendations made are set out below. You can read the background to each in the detail of the report as noted.

RECOMMENDATION 1

GO TO PAGE 13

Police officers and staff are often concerned that human rights are discussed only in the context of suspects and defendants. Therefore, PSNI should consider setting out their rights in guidance as part of the PSNI People Strategy.

RECOMMENDATION 2

GO TO PAGE 16

The PSNI should consult the staff associations directly to produce a plan to address the allegations set out regarding officer wellbeing, sectarianism, and racially motivated violence, and provide a copy to the Policing Board by Spring 2023.

RECOMMENDATION 3

GO TO PAGE 18

The Policing Board and the PSNI should encourage the Executive and Assembly to consider whether the current legislation regarding assaults on emergency staff reflects the risks that come with these occupations.

RECOMMENDATION 4

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The PSNI:

- a. consult the staff associations and produce a plan to protect officers from the disproportionate threats of violence from the public and provide that to the Policing Board by February 2023;
- b. take steps to change the culture to ensure that officers and staff in all the diverse and minority groups employed by the PSNI are not subject to any discriminatory actions or treatment by other officers and staff; and
- c. recognise that eliminating misogyny needs to be tackled urgently to protect female officers and staff and to build trust of women and girls in Northern Ireland who needs its help and support.

RECOMMENDATION 5

GO TO PAGE 27

Due to overlap, this Recommendation has lifted the six Recommendations contained within the Policing Board's Professional Standards Report¹, published in November 2022;

- The Board will continue to review the current Code of Ethics to identify potential improvements and modernisation of the current Code of Ethics;
- Mindful of its advocacy role, the Board should write to invite the Department of Justice to review the current Misconduct Regulations in order to identify improvements in the use of existing legislation provision which would enable cases to be progressed expeditiously, mindful of legislation in the rest of the UK, and explore the possibility of making legislative change, including in the following areas:
 - Chairing of Misconduct Hearings;
 - Criminal Proceedings;
 - Misconduct Hearings in Public; and
 - Use of Regulation 13.

Any proposed amendment to the regulations would be subject to the normal consultation process under legislation.

- Mindful of the role of the Criminal Justice Board, the Board should write to the Department of Justice, to invite them to consider what more can be done to address delay in the criminal justice system;
- Following the review of PSNI PSD, the PSNI should report to the Board on the outcome of the review so the issues of process and governance can be assessed;
- The PSNI should review and update its policies in relation to whistleblowing, vetting, sexual misconduct and abuse of position for sexual purposes in order to identify any improvements, ensure sufficient rigour and be mindful of the current and updated policies that exist in England and Wales; and
- The PSNI should ensure that appropriate policies and procedures are in place to communicate expected standards of behaviour for police staff and how behaviour falling short of that standard will be addressed.

RECOMMENDATION 6

GO TO PAGE 33

The PSNI should produce accessible guidance for officers and staff on the limitations of privacy that apply to them and ensure that refresher training is provided to all.

¹ www.nipolicingboard.org.uk/publication/professional-standards-review-recommendations-improvement

RECOMMENDATION 7

GO TO PAGE 37

The PSNI should produce accessible guidance for officers and staff on the limitations of freedom of expression that apply to them and ensure that refresher training is provided to all.

RECOMMENDATION 8

GO TO PAGE 38

The PSNI should consider the concerns from the associations on issues of discrimination and respond to the Policing Board by Spring 2023.

RECOMMENDATION 9

GO TO PAGE 39

Questions about the extent to which officers and staff feel free to raise issues about their colleagues' actions have been raised by the associations and in the media. A more positive and supportive approach to formal and informal whistle-blowers should be developed and action should be taken to end any reprisals against them and to develop a more positive culture seeing their contribution as an important way of improving the work of PSNI.

3. INTRODUCTION

The Policing Board three-year Human Rights Programme of Work, agreed in 2021, sets out the themes to be scrutinised by the independent Human Rights Advisor.² This Review explores the rights of officers and designated staff within PSNI.

Police officers should enjoy the same human rights as other citizens.

*'Police officers have the same right to respect for their human rights and fundamental freedoms and to work in an environment free of harassment or discrimination in any form.'*³

However:

*'Whether on or off duty, police officers shall not behave in a way that is likely to bring discredit upon the Police Service.'*⁴

Restrictions to rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law and in conformity with the European Convention of Human Rights (ECHR).⁵ Police officers subject to an investigation into their behaviour should be treated fairly and the investigation and any subsequent disciplinary action dealt with promptly. A police officer's employment disputes, as agents of the state, are, however, partially excluded from the right to a fair trial and the need for promptness provided by Article 6 of the ECHR.⁶

*'Restrictions on the political activities of police officers, including the right to join political parties, the right of assembly, the right to join a trade union and to strike can be justified under the ECHR on the basis that a politically neutral police force is in the public interest (Rekvenyi v Hungary (1999), Trade Union of the Police in the Slovak Republic v Slovakia (2012), and Junta Rectora Del Ertzainen Nazional Elkartasana v Spain (2015)).'*⁷

2 NI Policing Board, Three-Year Programme of Work, <https://www.nipolicingboard.org.uk/files/nipolicingboard/publications/human-rights-three-year-programme-of-work-2021-2024.pdf>

3 Code of Ethics, Northern Ireland Policing Board (2008), Preamble R, <https://www.nipolicingboard.org.uk/files/nipolicingboard/publications/code-of-ethics.pdf>

4 Code of Ethics, Northern Ireland Policing Board (2008), para 1.10, See also PSNI Off Duty Standards, [Service Instruction SI2617](#).

5 Article 31, European Code of Police Ethics, Council of Europe (2001) <https://polis.osce.org/european-code-police-ethics>

6 *Vilho Eskelinen and Others v Finland*.

7 NI Policing Board, Human Rights Monitoring Framework (September 2021) page 24, <https://www.nipolicingboard.org.uk/files/nipolicingboard/publications/human-rights-monitoring-framework.pdf>

The Human Rights of Police Officers

In taking forward this Review, during March and April 2022, the Policing Board consulted with representatives of a dozen staff association groups and individuals within the PSNI. The groups and individuals consulted included, in no particular order; The Police Federation for Northern Ireland, The Police Officer Disability Network, The Northern Ireland Public Service Alliance, The Christian Police Association, The Superintendents Association, Senior Officers, Student Officers, The LGBT+ Staff Association, The Women's Police Association, The Ethnic Minority Police Association and The Catholic Guild of Police Officers. The Police Ombudsman was also consulted.

The purpose of these consultations was to scrutinise the PSNI's performance in complying with the human rights of the aforementioned diverse groups and individuals. The Policing Board is grateful for the contribution made in writing this Report by the groups. However, this Report is the responsibility of the Policing Board and its Human Rights Advisor.

It is important to note at the beginning of this Report the debt that society owes to officers and staff and to acknowledge the difficult job that they do. During the drafting of the Human Rights Advisor's Report on PSNI's Use of Spit and Bite Guards⁸ in which body worn video of application of the guards was observed, it was stated:

'Police officers should not be subjected to spitting and biting. The Human Rights Advisor and Board officials have viewed some of the body worn video showing police officers being spat at or bitten and have spoken to other officers who have had to put up with this behaviour. Such action is particularly insulting, and officers are obviously anxious about disease transmission regardless of any objective assessment of the risks involved. Society expects officers to be out on the streets in all weathers and 24/7 and to respond to difficult situations involving violent and out of control individuals. Society also expects officers to protect, not just the victims and witnesses, but suspects and the officers themselves deserve protection.'

8 NI Policing Board Human Rights Advisor, A Review of the PSNI's use of Spit and Bite Guards (2022) <https://www.nipolicingboard.org.uk/publication/review-psnis-use-spit-and-bite-guards-ni-policing-boards-human-rights-advisor>

During the pandemic the Policing Board reported:

'It is not obvious that the police service should have been tasked with trying to save us from the worst effects of the virus by reducing transmission or devoting themselves to stopping us going about our usual activities to save lives...

Even without these extra and very considerable tasks the police service needed to do what everyone else was told not to do. They could not stay at home, they had to have hundreds of interactions, some involving close contact, and most of them unwanted, with members of the public. This was an obvious risk to them and, as with most other public servants, at least at the beginning, they had problems with accessing Personal Protection Equipment (PPE).'⁹

9 NI Policing Board, Thematic Review of the Policing Response to COVID-19 (2020) page 4, <https://www.nipolicingboard.org.uk/files/nipolicingboard/publications/report-on-the-thematic-review-of-the-policing-responser-to-covid-19.PDF>

4. PSNI PEOPLE STRATEGY

PSNI's People Strategy: 2020 – 2025 aims to: *'deliver effective policing by attracting and being inclusive of all individuals and types of people from a range of perspectives/ ideas, lived experiences, gender, community and socio-economic background.'* It notes that *'representativeness is a key enabler of legitimacy and public confidence in policing. It is only natural that when people see themselves represented within the Police Service of Northern Ireland they are more likely to feel understood and identify with policing'*. To realise the Strategy's aim, the PSNI has developed supporting Annual People Action Plans striving to implement a number of actions such as producing a Barriers to Recruitment Strategy with a focus on identifying any obstacles, consideration of a volunteer and student placement scheme, a review of the Dignity at Work policy and consideration of a cultural audit aiming to *'inform the delivery of a professional and inclusive working environment'*.

However, despite these aims, some staff associations argue that the PSNI has not achieved its overall stated goal of being, 'representative and inclusive'. The Ethnic Minority Police Association was critical of the PSNI's performance in regards to protecting ethnic minority human rights. It is notable that the People Strategy does not mention Black, Asian and Minority Ethnic (BAME)¹⁰ members of the public, police officers or police applicants, nor does it offer specific actions or measures intended to ensure that ethnic minority human rights are protected. The Ethnic Minority Police Association commended the Police Race Action plan by the National Police Chief's Council and the College of Policing¹¹ and Avon and Somerset Constabulary 'Inclusion and Diversity Strategy 2019 – 2024: Incorporating the Equality Action Plan'¹². This incorporates 'cultural learning and training' which involves a, *'three tiered approach to learning, to embed a better understanding and capability in relation to inclusion and diversity across Avon and Somerset Constabulary'*.

In terms of recruitment, this Strategy states that,

'The Constabulary currently have a small Representative Workforce team who work hard on the attraction, engagement and development of people from our diverse communities to join the police'.

10 Where possible, this report uses facts and figures regarding specific ethnic groups, see 'Why we no longer use the term 'BAME' in government' - Equality Hub Blog, <https://equalities.blog.gov.uk/2022/04/07/why-we-no-longer-use-the-term-bame-in-government/>

11 National Police Chief's Council & College of Policing, 'Police Race Action Plan: Improving Policing for Black People' (2020) <https://assets.college.police.uk/s3fs-public/Police-Race-Action-Plan.pdf>

12 Avon and Somerset Constabulary, 'Inclusion and Diversity Strategy 2019 – 2024: Incorporating the Equality Action Plan' (2020) <https://media.aspolice.net/uploads/production/20200309111649/Inclusion-and-Diversity-and-Equality-Action-Plan-V2.0.pdf>

Finally, in regards to retention and promotion, the Strategy stipulates,

'We recognise that one of the challenges to creating a diverse workforce, is not only attracting applicants from diverse backgrounds, but removing obstacles within our own recruiting processes. This requires ensuring that difference is valued and removing unconscious bias'.

Issues of alleged discrimination and representativeness are matters for the Resources Committee of the Policing Board and the comments from the staff associations will be taken forward in the scrutiny by the Board of the PSNI People Strategy Action Plan.

Additionally, PSNI's Occupational Health and Wellbeing Annual Report is presented to the Policing Board's Resources Committee, setting out the service's commitment to assisting officers with a range of activities such as; their post incident stress management service, an online wellbeing hub and a wellbeing app. The service has placed significant importance on the mental health of officers and staff with a new three-year vision setting out their aims to 2025. The appointment of an Assistant Chief Officer to lead on this work area will help embed and drive this throughout the service.

RECOMMENDATION 1

Police officers and staff are often concerned that human rights are discussed only in the context of suspects and defendants. Therefore, PSNI should consider setting out their rights in guidance as part of the PSNI People Strategy.

5. RIGHT TO LIFE (ARTICLE 2)

Officers are regularly at risk of being injured on duty and often their lives are at risk. They are expected to walk towards trouble rather than away from it and confront violence to protect us. Society, the Policing Board, and the Chief Constable have a particular duty of care towards them. They are also protected by the more general duty – the right to life in Article 2 of the ECHR – set out by the ECtHR in the case of *Osman v UK*. This case imposes a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. However:

‘For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.

In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.’¹³

13 *Osman v UK*, para 116.

In relation to threats that may arise from police officers undercover work or giving evidence against defendants:

*'The Strasbourg Court has accepted that special arrangements may be appropriate in certain cases to protect vulnerable witnesses, for example by withholding their identity or by screening them while they are giving evidence in court. This is of general applicability but may be of specific relevance to certain police officers. However, such measures taken on the ground of expediency cannot be allowed to interfere with the fundamental right of an accused person to a fair trial. The matter is generally considered in terms of the fairness of the admissibility of evidence. Over the course of time, the Court has elaborated its approach. The Court's jurisprudence also highlights the importance placed on the domestic court's assessment of the need for the witness to remain anonymous. A decision to protect the anonymity of a witness had to be justified by reasons which were both relevant and also sufficient in each case to ensure that the interests of a witness properly outweighed those of the accused.'*¹⁴

The consultees to this Report representing the various staff associations raised different issues in relation to the right to life and protection from harm.

Officer wellbeing and personal safety

In respect of wellbeing, the Superintendents Association of Northern Ireland advised the Policing Board that they had,

'...a concern regarding the management structure of PSNI, specifically that staff capacity and resources have been detrimentally impacted by the Covid-19 Pandemic which has made many of their members feel overworked'.

Similarly, the Northern Ireland Police Federation stated that they had a concern,

'...in relation to the structure of the PSNI, specifically that no one person is responsible for officer well-being. Furthermore, a lack of post-incident support was noted for officers who are subjected to attempted attacks and after officers witness graphic scenes and materials as part of their role.'

PSNI have advised the Human Rights Advisor of support available through internal Post Incident Resources, such as those mentioned earlier and including helplines, via email, and referring to internal guidance.

¹⁴ [European Convention on Human Rights and Policing, Council of Europe](#) (December 2013), p 115.

A staff association representative continued in respect of policing during the pandemic,

'...officers are deprived of valuable face-to-face training and instead are subject to e-learning, which predates the Covid-19 Pandemic and denies officers the skills and tools that they require in order to protect themselves.'

PSNI informed the Human Rights Advisor that all Personal Safety Programme (PSP) training is face-to-face. Online modules are available 24/7 for the National Decision Model and Acute Behavioural Disturbance, although these subjects are also covered in face-to-face training.

Hate Crime

Many individuals in Northern Ireland are subject to hate crimes because of the communities/organisations that they are members of or ethnic groups they belong to. Members of the police can also be victims of racially motivated or sectarian violence.

Responses to racial disparities and racially motivated violence

In relation to the right to life, the Ethnic Minority Police Association advised that,

'...ethnic minority officers have their Right to Life/Protection from Harm threatened frequently by racially motivated violence and intimidation from the public. Also, following such instances of hate crime, there is often a lack of support and empathy offered to these officers by the service. Moreover, the Association argued in 2019/20 that ethnic minority officers are a high-risk group in contracting Covid-19 and despite this, the PSNI did not undertake an additional risk assessment for ethnic minority staff or complete an impact assessment of the virus for the benefit of such officers before sending them out on active duty until challenged by the Association, despite knowing and discussing this increased risk at a senior meeting. This inaction and any cognisance of their duty of care left ethnic minority officers highly vulnerable when dealing face-to-face with their colleagues or more so members of the public. In addition there continues to be no assessment of the impact of racial abuse on officers conducting operational duties. This has high potential to impact upon their mental health particularly if sustained. There is evidence of an officer self-harming or worse in the face of such abuse. Cognisance must be given to this, as must an ability to redeploy for a period of time away from front-line duty to recover from such abuse.'

PSNI have informed the Human Rights Advisor that while no specific information was provided to BAME officers during the pandemic, all officers were encouraged to consider any personal characteristics which may have put them at increased risk. Regular briefings from senior officers took place and health and safety information was available on PSNI's internal system throughout the pandemic.

Responses to Sectarianism

The Catholic Guild of Police officers stated during their consultation with the Policing Board that,

'Catholic police officers have their right to life and protection from harm threatened frequently by sectarianism by the public and there is little or no empathy or support offered to victims after such hate crimes.'

PSNI advised that the Service Instruction for Hate Crime was updated three years ago to provide more guidance on hate crimes against officers and staff. PSNI continue to engage with minority staff associations around this issue. Guidance has been issued to the Service, in particular supervisors, setting out their responsibilities. A police officer or staff member who is the victim of a hate crime will be supported in the same manner as any other member of the public. The 9 Point Plan that protects police officers and staff when they are assaulted during the course of their duties, is utilised as a framework of support for officers. If consented to, a referral can be made to the Hate Crime Advocacy Service and Police Service Occupational Health and Wellbeing.

RECOMMENDATION 2

The PSNI should consult the staff associations directly to produce a plan to address the allegations set out above regarding officer wellbeing, sectarianism, and racially motivated violence, and provide a copy to the Policing Board by Spring 2023.

6. PROHIBITION OF ILL-TREATMENT (ARTICLE 3)

Police officers are, unfortunately, subject to assaults by members of the public, out in all weathers, carrying heavy equipment and bulky uniforms and, sometimes, having to work long hours. Police officers are entitled to decent working conditions and:

*'...to be provided with special health and security measures, taking into account the particular character of police work.'*¹⁵

The state has a responsibility to protect everyone from ill-treatment, even where that ill-treatment is from other members of the public. To avoid the risk the state must take practical measures:

*'such preventative operational measures that, judged reasonably, might be expected...'*¹⁶

This will include protecting its own employees.¹⁷

Many of the issues raised are linked to police assaults whilst on duty. The perceived lack of psychological support offered to officers following instances of assault by some of the consulted staff associations is concerning given the frequent occurrence of police assaults from 2017 to 2021 outlined in the table below:

Number of offences of assault on police, 2017 to 2021, Northern Ireland

	2017	2018	2019	2020	2021
Assault with injury on a Constable	662	624	650	761	906
GBH/Wounding with intent, GBH/Wounding ¹	27	26	31	144	107
<i>of which attempted GBH with intent¹</i>	16	19	23	136	88
Assault on police with injury ²	635	598	619	617	799
Assault without injury on a constable	2,007	2,029	2,164	2,224	2,476

¹ *Attempted GBH with intent offences represent the majority of offences of GBH/wounding with intent and GBH/wounding where the victim is a police officer on duty. The higher levels during 2020 and 2021 may be linked to circumstances where an officer is spat on or receives a bite without breaking the skin and the suspect either has Covid or mentions Covid.*

² *Assaults resulting in minor injury are classified to assault on police with injury. In addition to the figures provided in the above table, in the five years 2017 to 2021 there have been 14 offences of attempted murder and 5 offences of causing serious injury by dangerous, careless or inconsiderate driving recorded where the victim is a police officer.*

¹⁵ European Code of Police Ethics, Council of Europe (2001) para 32, <https://polis.osce.org/european-code-police-ethics>

¹⁶ *Mamazhonov v Russia*, para 173. See also *A v UK* (1998), para 22. Note that what is reasonably necessary to protect properly trained and equipped police officers is likely to be different than what is required to protect members of the public.

¹⁷ In *Placi v Italy*, para 5, the Court ruled that the state should have taken action to safeguard a military conscript from psychiatric problems.

Assaults on emergency workers, such as police and NHS staff, are unfortunately commonplace. For example, according to a news report, there were almost 700 attacks on Northern Ireland Ambulance Service staff over a 12-month period.¹⁸ Internal submissions by officers to PSNI's Health and Safety Unit from 1 April 2021 to 31 March 2022 show there were 1339 recorded assaults resulting in injury to the officers and that there were an additional 703 near misses.

There were no specific complaints from the police associations that the PSNI or the criminal justice system was failing to take action to ensure that perpetrators were held to account. Sentences for assaults on police officers are usually heavier than those given to those who have assaulted members of the public. However, there continue to be significant delays in the criminal justice system in Northern Ireland and this is a continuing problem for officers and for others who are victims of crime.

England and Wales introduced a new law on Assaults on Emergency Workers in 2018 and doubled the sentence to up to 12 months in prison in 2020.¹⁹ There is currently no such specific provision regarding assaults on emergency workers in Northern Ireland.

RECOMMENDATION 3

The Policing Board and the PSNI encourage the Executive and Assembly to consider whether the current legislation regarding assaults on emergency staff reflects the risks that come with these occupations.

In addition, the state has a responsibility to protect women and others who are more at risk from domestic violence and other abuse, whether that comes from private citizens or other police officers.²⁰

Domestic abuse is a significant crime in Northern Ireland and affects many. The PSNI statistics for 2021/22 recorded that there were 33,186 domestic abuse incidents in Northern Ireland, an increase of 6.4 per cent on the previous 12 months. The number of domestic abuse crimes also rose to 21,723, an increase of 14.2 per cent on the previous 12 months and the highest 12-month period recorded since the data series began in 2004/05.²¹

18 Belfast Live, Northern Ireland Ambulance Service staff attacked almost 700 times over 12 month period (23 August 2022) <https://www.belfastlive.co.uk/news/northern-ireland/northern-ireland-ambulance-service-staff-24829265>

19 [Assaults on Emergency Workers \(Offences\) Act 2018](#)

20 *Opuz v Turkey*

21 PSNI & NISRA, Domestic Abuse Incidents and Crimes Recorded by the Police in Northern: Update to 31st March 2022, https://www.psnipolice.uk/sites/default/files/2022-08/domestic-abuse-bulletin-mar-22_1.pdf

Moreover, domestic violence is a crime perpetrated by PSNI officers as well as the public. Indeed, the service has recorded that approximately 16% of the 126 Discipline incidents investigated by PSNI Professional Standards Department (PSD) between April 2021 and March 2022 were domestic incidents, the largest investigative incident type during this period, alongside data breaches.²² The Police Ombudsman recorded 40 allegations of sexual assault against officers, accounting for roughly 3% of 1,228 Oppressive Behaviour allegations in 2021/22. Constables (86%) and Sergeants (10%) featured most prominently in the dataset.²³ In addition, a significant number of officers were identified who may be at higher risk of offending having previously come to the attention of PSD.²⁴

This is a particular issue for UK police services who appear to have failed to protect females from some male officers, including the failure to protect female officers and staff.²⁵ The need to demonstrate equality of protection will also extend to LGBT+ officers and staff and other minorities.²⁶ An arguable allegation of ill-treatment of an officer by another officer will need to be investigated independently.²⁷

PSNI recently published a Violence Against Women and Girls Strategy and Action Plan in September 2022. PSNI advised that there has been substantial consultation regarding the Strategy, including workshops with stakeholders. In response to a recent Assembly question, the Board is aware that the issue of the funding and implementation of this Strategy is being considered. However, it may be noted, that there are national benchmark strategies which may be used to inform the PSNI Strategy including the National Police Chief's Council and the College of Policing's joint strategy²⁸ and the review published by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) in relation to police response to the violence.²⁹

22 PSNI Professional Standards' Department Annual Report to Northern Ireland Policing Board 2021/22.

23 The Office of the Police Ombudsman for Northern Ireland, Statistical Bulletin, The Office of the Police Ombudsman for Northern Ireland 2021/22, <https://www.policeombudsman.org/getmedia/8e485933-ef89-4c31-b849-d277b35afb71/Annual-Statistical-Bulletin-202122.pdf>

24 see footnote 21.

25 The Human Rights Advisor is pleased to note that the UK government has very recently ratified the Council of Europe's Istanbul Convention (the Convention on preventing and combating violence against women and domestic violence), which will come into force on November 1, 2022, see [Council of Europe - The UK ratifies the Istanbul Convention](#).

26 Including of course religious groups, see *Members of the Gldanhi Congregation v Georgia*.

27 *Gafgen v Germany*, para 117.

28 National Police Chief's Council & College of Policing (2021) 'Policing Violence against Women and Girls – National framework for delivery: Year 1', <https://www.npcc.police.uk/documents/VAWG/Policing%20VAWG%20national%20framework%20for%20delivery.pdf>

29 HMICFRS (2021) 'Police response to violence against women and girls – Final report' <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/police-response-to-violence-against-women-and-girls-final-inspection-report.pdf>

The Women in Policing Association NI and NIPSA in relation to this right, advised that they had a,

‘...concern over a harmful culture of misogyny within the PSNI which in some cases has been connected to actual violence against women by male police officer in UK forces as in the case of Sarah Everard’.

Recently the Metropolitan Police was criticised after an official investigation by the Independent Office for Police Conduct (IOPC) revealed details of officers exchanging discriminatory and misogynistic messages. There was an informal working culture said to exist within the Metropolitan Police, colloquially known as ‘cop culture’. Researchers described the cop culture as male-dominated, action oriented and valuing extreme loyalty among groups of officers with the unique working conditions of policing contributing to this culture. Researchers maintain that one way to change the culture of police forces is to alter the membership of the organisation itself.³⁰ While pass rates for promotions are generally better for women, senior leadership is still dominated by male officers.³¹

The perpetration of sexual misconduct offences by PSNI officers has also been noted alongside domestic abuse offences. This refers to cases where an officer has abused their position for the purposes of sexual gain; engaging in inappropriate sexual relationships with criminals and victims of crime as well as sexually harassing female colleagues. Indeed, a number of officers have been subject to duty adjustment for sexual misconduct, which is concerning. PSNI officers are entrusted by the public to protect them from and support those following incidents of domestic abuse and sexual misconduct. Despite this, some members of PSNI are accused of the same offences. In response, renewed importance has been placed on the practices and processes in the PSNI Professional Standards Department (PSD) and the Misconduct Regulatory Framework:

- 1. Prevention** – developing a sexual misconduct prevention strategy that encompasses education and awareness of victim stereotyping, predatory and misogynistic behaviour, reporting mechanisms and support networks.
- 2. Performance** – the development of a professional standards performance framework that provides transparency, accountability and oversight in relation to misconduct investigation and proceedings.
- 3. Evidential Standards** – review of working practices with the Public Prosecution Service (PPS) on police perpetrator criminal offences and develop clear evidential standards for sexual misconduct cases which involve abuse of position by a police officer.

30 Fay Sweeting, Peter Arabaci-Hills, Terri Cole, Outcomes of Police Sexual Misconduct in the UK, Policing: A Journal of Policy and Practice, Volume 15, Issue 2, June 2021, Pages 1339–1351, <https://doi.org/10.1093/policing/paaa052>

31 See p. 54 for more details.

A BBC Spotlight programme from May 2022 highlighted the allegations of misogynistic WhatsApp messages that officers in a PSNI district exchanged, including derogatory messages about female superiors, and the failure of PSNI to deal with the issue and actively trying to undermine and damage the reputation of the whistleblowers.³²

These high-profile cases undermine officers' trust in the PSNI to deal with sexual misconduct in an adequate manner. The overwhelming majority of PSNI officers do good work and witnessing and experiencing sexual harassment at work seriously impacts officers' stress levels, mental health, and trust in their place of work.³³ For frontline officers, having to go out on duty when reports of sexual misconduct cases are in the news and interacting with the public as a representative of the police service must be very challenging.

RECOMMENDATION 4

The PSNI:

- a. consult the staff associations and produce a plan to protect officers from the disproportionate threats of violence from the public and provide that to the Policing Board by February 2023;
- b. take steps to change the culture to ensure that officers and staff in all the diverse and minority groups employed by the PSNI are not subject to any discriminatory actions or treatment by other officers and staff; and
- c. recognise that eliminating misogyny needs to be tackled urgently to protect female officers and staff and to build trust of women and girls in Northern Ireland who needs its help and support.

32 BBC One Spotlight (31 May 2022) Police, WhatsApp & Whistleblowers, <https://www.bbc.co.uk/programmes/m0017yyn>

33 UNISON – LSE (2018) Time to stamp out sexual harassment in the police [Microsoft Word - UNISON - LSE report - Time to stamp out sexual harassment in the police.docx](#)

7. FAIR TRIAL (ARTICLE 6)

The right to a fair trial in civil proceedings applies to police officers. However, there are some restrictions that are allowed by the ECHR in relation to disciplinary systems of civil servants and those that exercise the powers of the state. Nevertheless, Article 6 guarantees apply, unless domestic law clearly excludes such proceedings, and the exclusion is ‘justified on objective grounds in the State’s interest’.³⁴

In relation to misconduct proceedings themselves, the protections set out in Article 6 do not apply directly. However, the common law and public law principles of natural justice do apply (rule against bias, fair hearing, natural justice, duty to give reasons etc.). These principles are largely built into the Police Act 1998 and the Regulations.³⁵ These rules have also been tested frequently in judicial review proceedings leading to largely fairer processes.³⁶

Unlike most other occupations police officers have greater protection following allegations of misconduct. For most employees, although employers must treat them fairly, their rights to an independent review of any disciplinary action taken against them, including being dismissed, can only be instituted after their dismissal. For police officers, the misconduct process is set out in the law and includes considerable protections. Other employers also have the option not to engage with the criminal justice system or to await a criminal investigation or a decision from the Public Prosecution Service (PPS). The principled basis for these differences is based on the perceived need to protect officers from complaints from the suspects that they have to deal with and the wish to ensure that the police service must submit any allegations of criminal activity to an independent authority – the PPS.

The rights of victims, including other police officers referenced in this Report, and the transparency of misconduct hearings are less developed in Northern Ireland. A further problem is the issue of delay. Article 6 includes the right to a hearing ‘within a reasonable time’. For those subject to the use of force by officers the right to be protected from ill-treatment is, of course, protected by Article 3.

34 *Vilho Eskelinen and Others v Finland*, para 62.

35 The Police (Conduct) Regulations (Northern Ireland) 2016.

36 For more information about judicial review and fairness, see for example, *Constitutional and Administrative Law*, Bradley, Ewing and Knight, 2022, Pearson. In relation to police misconduct see *Police Misconduct, Complaints and Public Regulation*, Beggs and Davies, 2009, OUP or *Police Misconduct, Legal Remedies*, Cragg and Jacobs, 2022, LAG.

There is, however, no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances etc. unless two conditions are fulfilled:

- domestic law must have expressly excluded access to a court for the post or category of staff in question; and
- the exclusion must be justified on objective grounds in the State's interests.

In relation to misconduct proceedings against police officers there are, however, issues. Misconduct Hearings, which have the power to dismiss an officer, are chaired by an PSNI ACC³⁷ and include another senior officer from PSNI, as well as an independent person.³⁸ Although there is an independent appeals system, administered by the Policing Board, for PSNI officers subject to disciplinary action by a misconduct panel, there is a case for ensuring greater independence of the misconduct panel itself. For example, recent changes in England and Wales (implemented following the Chapman Review³⁹) require such panels to be chaired by a Legally Qualified Person.⁴⁰ There are also open justice and transparency reasons for consideration of such proceedings being held in public, as they now are in England and Wales.

In relation to PSNI misconduct procedures, many of the consulted policing staff associations raised concerns. For example, the Ethnic Minority Police Association argue that,

'...there is a significant delay and lack of due process in investigating grievance cases brought by ethnic minority officers compared to those brought by other officers, rarely resulting in any sort of disciplinary hearing, adequate sanction or in extreme cases conviction/prosecution.'

Similarly, the concerns around significant delay in the misconduct process was a view shared by the Catholic Guild of Police Officers stating that,

'...there is a delay in the human right of due process for police officers, who are held to a higher standard than the rest of society.'

37 See the judgment of the Northern Ireland High Court, in Glasgow [2004] NIQB where Morgan J rejected the submission that Article 6 applies to these police misconduct proceedings.

38 Regulation 27 of the [Police \(Conduct\) Regulations \(Northern Ireland\) 2016](#).

39 Chapman, C. (2014) 'An Independent Review of the Police Disciplinary System in England and Wales' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385911/An_Independent_Review_of_the_Police_Disciplinary_System_-_Report_-_Final....pdf

40 Regulation 28 of the [Police \(Conduct\) Regulations 2020](#).

Moreover, the Women's Police Association NI commented that,

'...delays exist in pursuit of the right to due process. Moreover, in grievance or misconduct proceedings, those standing accused of inappropriate behaviour relating to gender are often better represented and supported by the Police Federation Northern Ireland than the officer victims and that trials, hearing, investigations or processes can often be significantly delayed leading to further distress to the victim. The main issue for women was their need to be believed and their need to be supported.'

NIPSA added that,

'...there is duplication of effort in misconduct proceedings whereby an individual is subjected to the criminal processes of both the Northern Ireland Civil Service and PSNI Professional Standards, resulting in unnecessary delay and stress on the party (ies) involved.'

The same sentiment was felt by the Police Federation Northern Ireland who stated that they take exception,

*'...towards to the significant delay of investigating grievance allegations which detrimentally impacts the mental well-being of those involved, the level of staff capacity and also may incur substantial legal costs.'*⁴¹

Moreover, the recently published 'Annual Report on Police Officer Satisfaction with Services provided by the Police Ombudsman's Office 2021/2022'⁴² provides an insight into how well PSNI Officers feel that their Right to a Fair Trial and freedom from delay is being respected by the Police Ombudsman. This Police Ombudsman report is the product of the Police Officer satisfaction survey conducted between April 2021 and March 2022. The collected data therein includes information from officers who were the subject of a Police Ombudsman investigation which was subsequently closed during 2021/22 as well as comparable data collected in previous years. The PSNI officers subject to Police Ombudsman investigations expressed generally positive opinions towards the Police Ombudsman staff handling their investigations as the below report extract illustrates:

41 For example, the PFNI provided an example of a case, dated 1st June 2004, 'In The Matter Of an Application by David Andrew Glasgow for Judicial Review,' in which there was a three year delay, see [Judgment \[2004\] NIQB 34](#).

42 Police Ombudsman (2022) Annual Report on Police Officer Satisfaction with services provided by the Police Ombudsman's Office 2021/22, <https://www.policeombudsman.org/getmedia/537e80ad-578d-4054-b161-870439d5a43a/Police-Officer-Satisfaction-Report-202122.pdf>

- 88% felt they were treated with respect.
- 77% felt they were treated fairly.
- 88% felt staff were easy to understand.
- 77% thought staff were knowledgeable.⁴³

The report also shows that 54% of surveyed PSNI officers felt that significant delays exist in resolving in their investigations. These findings are consistent with the feedback from the staff associations who expressed concerns around the delays faced by PSNI officers during investigations compared to previous years as the report noted:

*'The percentage of officers satisfied with the overall time taken to resolve their complaint in 2021/22 was similar to last year however this has decreased when compared with four out of the five previous years; 2015/16 to 2018/19.'*⁴⁴

Additionally, 43% of surveyed PSNI officers were critical of the police complaints system, feeling in particular that the process does not make PSNI more accountable (compared to the 57% that do) compared to previous years as the report outlined:

*'The percentage of officers that thought the police complaints system makes police more accountable is similar in 2021/22 when compared with the previous years, apart from 2018/19 when levels were at their highest.'*⁴⁵

Statistics from a Police Federation 2021 Workforce Survey (which include both the internal PSNI misconduct/disciplinary process as well as external investigations conducted by the Police Ombudsman) shed some light on the validity of this common perception. Of those officers that have been subject to a PSNI misconduct/disciplinary investigation:

- 44% reported that their investigation has been on-going for more than 2 years.⁴⁶
- Of those whose investigations that had concluded; 17% reported that their investigation lasted more than 2 years, 22% reported that their proceedings concluded within 1 to 2 years, with 61% concluded within one year, with 31% of those concluded within 6 months.⁴⁷

The Ombudsman has informed the Human Rights Advisor that currently (in the directorate), 42 of the 3,056 (1.4%) of complaints closed had been with the Office longer than two years.

43 Ibid.

44 Ibid. Note this may be as a result of the impact of Covid, see the Police Ombudsman's report for 20/21.

45 Ibid.

46 PFNI 2021 Workforce Survey, p.47, <https://www.policefed-ni.org.uk/media/1513/2021-pfni-workforce-survey-all-respondents-final.pdf>

47 Ibid. Statistics are compiled by independent NISRA statisticians seconded to the Police Ombudsman's Office.

Additionally, information presented to the Policing Board's Performance Committee in June 2021 by the PSNI stated the following in relation to delay:

*'Recent benchmarking has established that the average time taken to complete a misconduct only investigation is 89 days. If the matter is also being investigated criminally, the average is 120 days. PSNI note that there are a small number of criminal investigations which have taken significantly longer than this and the issues identified have both internal and external influences.'*⁴⁸

PSNI have informed the Human Rights Advisor that terms of reference are being finalised for a continuous improvement project for the Professional Standards Department, aimed at improving efficiency, effectiveness, transparency, and perceptions of procedural justice. In addition, a monthly meeting has been set up with the Police Federation to discuss these issues of concern. PSNI noted that there are factors outside of the control of Professional Standards, such as dependency on decisions by the Police Ombudsman's Office and the PPS, and the fact that the regulatory framework has not been updated the way it has been in England and Wales.

Furthermore, it is also important to note that delay is a UK wide concern. This, among other related issues gave rise to the Chapman review⁴⁹ mentioned previously, which led to reform enacted in February 2020, aimed at speeding up complaint handling. After an assessment of the reforms, it was reported 80% of investigations were completed within a year. This figure is an improvement on 68% in 2017.⁵⁰

Key differences include:

- an emphasis on learning and improvement;
- speedier and more informal resolution of less serious cases;
- a requirement to provide an explanation where investigations take longer than 12 months;
- a duty on police officers who are witnesses to co-operate in investigations;
- a wider case management role for Legally Qualified Chairs of misconduct panels, including responsibility for timescales; and
- misconduct hearings can now be held in public.⁵¹

48 NI Policing Board Performance Committee (2021) 'PSNI Professional Standards Annual Report 2020/21 and update on the Code of Ethics and Notifiable Memberships'

49 See footnote 38. Explanation of the new regulations: Explanatory Memorandum, https://www.legislation.gov.uk/ukSI/2020/4/pdfs/ukSIem_20200004_en.pdf

50 Brown, J., (2020), House of Commons Briefing Paper 2056, 'Police Complaints and Discipline: Briefing Paper' <https://researchbriefings.files.parliament.uk/documents/SN02056/SN02056.pdf?msockid=f3a2ffacf7d11ecbf59fb6af0bf0269>

51 See for example the Metropolitan Police website list of upcoming hearings: <https://www.met.police.uk/advice/advice-and-information/mis/met/upcoming-hearings/>

Specific changes in Northern Ireland that might assist in dealing with delays include:

- Some complaints to the Ombudsman are about less serious matters and the possibility of these being resolved without a formal investigation should exist;
- Delays in investigations have also been identified by the Ombudsman as a result of the PSNI not notifying her immediately where it appears that the actions of a police officer have resulted in a death or incidents where they believe a police officer has committed a crime or behaved in a manner which would justify disciplinary proceedings; and
- The Regulations should be amended to allow the Ombudsman to refer matters to the fast-track procedure during and not just at the end of an investigation.

RECOMMENDATION 5

Due to overlap, this Recommendation has lifted the six Recommendations contained within the Policing Board's Professional Standards Report⁵², published in November 2022;

- The Board will continue to review the current Code of Ethics to identify potential improvements and modernisation of the current Code of Ethics;
- Mindful of its advocacy role, the Board should write to invite the Department of Justice to review the current Misconduct Regulations in order to identify improvements in the use of existing legislation provision which would enable cases to be progressed expeditiously, mindful of legislation in the rest of the UK, and explore the possibility of making legislative change, including in the following areas:
 - Chairing of Misconduct Hearings;
 - Criminal Proceedings;
 - Misconduct Hearings in Public; and
 - Use of Regulation 13.

Any proposed amendment to the regulations would be subject to the normal consultation process under legislation.

- Mindful of the role of the Criminal Justice Board, the Board should write to the Department of Justice, to invite them to consider what more can be done to address delay in the criminal justice system;
- Following the review of PSNI PSD, the PSNI should report to the Board on the outcome of the review so the issues of process and governance can be assessed;
- The PSNI should review and update its policies in relation to whistleblowing, vetting, sexual misconduct and abuse of position for sexual purposes in order to identify any improvements, ensure sufficient rigour and be mindful of the current and updated policies that exist in England and Wales; and
- The PSNI should ensure that appropriate policies and procedures are in place to communicate expected standards of behaviour for police staff and how behaviour falling short of that standard will be addressed.

52 www.nipolicingboard.org.uk/publication/professional-standards-review-recommendations-improvement

8. PRIVACY (ARTICLE 8)

In relation to privacy at work the ECHR allows a wide margin to an employer to regulate electronic or other communications of a non-professional nature. The PSNI Code of Ethics also states:

‘Whether on or off duty, police officers shall not behave in a way that is likely to bring discredit upon the Police Service.’⁵³

However, there are limits to this restriction on privacy for police officers. For instance, Assistant Chief Constable Alison Halford of Merseyside Police, who was in dispute with her employers and claiming discrimination in relation to promotion, discovered that her office telephones were subject to surveillance by her employer. The ECtHR decided:

‘In the Court’s view, it is clear from its case-law that telephone calls made from business premises as well as from the home may be covered by the notions of “private life” and “correspondence” within the meaning of Article 8 para. 1.

There is no evidence of any warning having been given to Ms Halford, as a user of the internal telecommunications system operated at the Merseyside police headquarters, that calls made on that system would be liable to interception. She would, the Court considers, have had a reasonable expectation of privacy for such calls.’⁵⁴

Any surveillance must be ‘accompanied by adequate and sufficient safeguards against abuse’ and proportionality and procedural guarantees against arbitrariness are essential in this regard.⁵⁵

‘The Court has set down a detailed list of factors by which compliance with this positive obligation should be assessed: (i) whether the employee has been notified clearly and in advance of the possibility that the employer might monitor correspondence and other communications, and of the implementation of such measures; (ii) the extent of the monitoring by the employer and the degree of intrusion into the employee’s privacy (traffic and content); (iii) whether the employer has provided legitimate reasons to justify monitoring the communications and accessing their actual content; (iv) whether there is a possibility of establishing a monitoring system based on less intrusive methods and measures; (v) the seriousness of the consequences of the monitoring for the employee subjected

53 NI Policing Board Code of Ethics (2008) para 1.10

54 *Halford v UK*, paras 45 & 46.

55 *Bărbulescu v. Romania*, paras 119 & 120.

to it as well as the use made of the results of monitoring; and (vi) whether the employee has been provided with adequate safeguards including, in particular, prior notification of the possibility of accessing the content of communications. Lastly, an employee whose communications have been monitored should have access to a “remedy before a judicial body with jurisdiction to determine, at least in substance, how the criteria outlined above were observed and whether the impugned measures were lawful” (Bărbulescu v. Romania, paras 121-122).⁵⁶

Police officers, as a result, are subject to restrictions on the ‘private’ messages they might make to other officers:

‘A group of police officers in Scotland exchanged off-duty, sexist, degrading, racist, anti-semitic, homophobic and disability-mocking WhatsApp group chat messages, as well posting crime scene photographs of current investigations. No crime was committed. That’s a private matter, isn’t it? No. It isn’t.’⁵⁷

The Court decided that the Chief Constable of the Scottish Police was entitled to use the evidence of these messages in discipline proceedings against the officers. The Court considered that a reasonable person would be entitled to conclude that the messages were sexist and degrading, racist, anti-semitic, homophobic, mocking of disability and included a flagrant disregard for police procedures by posting crime scene photos of current investigations and the officers did not have a ‘reasonable expectation of privacy’. Police officers must accept certain restrictions on their private life and where the nature of the material is ‘blatantly sexist and degrading, racist, anti-semitic, homophobic, mocking of disability and includes a flagrant disregard for police procedures by posting crime scene photos of current investigations’.⁵⁸

Furthermore, a recent investigation into the Metropolitan Police Service amongst allegations of bullying and harassment unearthed a trend of sharing derogatory, homophobic, discriminatory and sexist views about fellow officers and the general public on messaging apps.⁵⁹ Operation Hotton was a series of nine linked independent investigations concerning serving police officers from the Metropolitan Police Service accused of bullying, (sexual) harassment, discrimination and inappropriate conduct. Most officers held the rank of police constable and were predominantly based at Charing Cross Police Station.

56 Guide on Article 8 of the European Convention on Human Rights, ECtHR para 605 (August 2021) https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf

57 UK Police Law Blog, Dijen Basu QC, 14 May 2021, page 1, an analysis of BC v Chief Constable of the Police Service of Scotland Livingstone, https://www.bailii.org/scot/cases/ScotCS/2020/2020_CSIH_61.html. Note the Supreme Court refused the police officers leave to appeal from this judgment on 15th December 2021.

58 [2020] CSIH 61, para 99.

59 Independent Office for Police Conduct, Operation Hotton Learning report (January 2022), <https://www.policeconduct.gov.uk/sites/default/files/Operation%20Hotton%20Learning%20report%20-%20January%202022.pdf>

Many of the inappropriate messages the investigations found during Operation Hotton were exchanged on social media platforms. During the investigation, the IOPC found evidence of teams dominated by ‘macho’ officers using discriminatory, misogynistic, and offensive language. Not all the police officers in the team shared these views. However, the investigation found evidence that police officers were afraid of speaking out. Several spoke of how when people spoke out about this behaviour, they were harassed, humiliated, and excluded.⁶⁰

Issues of privacy in relation to officers also extends to their activity even before they become police officers. Failures to disclose, in an application to be a police officer, material issues, for instance, periods of previous (non-police) employment which resulted in misconduct charges from the employer can result in subsequent misconduct proceedings whilst in the police service.⁶¹

Police Ombudsman Investigations and Privacy

Recently a PSNI officer unsuccessfully challenged the Police Ombudsman’s investigation process in the High Court following a complaint against the officer by a person who was prosecuted for fraud.⁶² The complainant was investigated and charged with three offences of fraud arising out of alleged false claims for overtime pay. As part of the investigation and the prosecution, the police officer made two statements. The complainant was convicted of two of the offences of fraud but acquitted of the third and subsequently alleged that the police officer had lied in his ‘*statements and in court in relation to an investigation of fraud by false representation.*’

The police officer stated that he was not the subject of any criticism by the District Judge who heard the charges against the complainant and that the complainant made no allegation of perjury during the case. The police officer argued that because the allegation of perjury relies solely upon the evidence of the complainant he is not liable to be convicted of any offence of perjury solely upon the evidence of one witness as to the falsity of any statement.

‘Although the Respondent [the Ombudsman] in its letter dated 23 January 2020 stated that a perjury investigation could commence despite the lack of judicial referral, it also recognised that “such an investigation would have very limited chances of success, given the lack of such a referral would infer that the judge did not consider such an investigation necessary.”⁶³

60 Whistleblowing is addressed on p. 45 in this report.

61 *R (Gareth Watson) v PSNI*, NI Queen’s Bench, 26th August 2022.

62 Judicial review by Christopher O’Neill, 22 February 2022.

63 Para 65.

*'Section 54 of the 1998 Act imposes a mandatory duty on the Respondent to investigate all complaints.'*⁶⁴

*'It is the view of this court that Section 54 of the 1998 Act provides a protection to both the complainant and the police officer. Meritorious complaints will lead to recommendations of prosecution and/or disciplinary proceedings. Police officers, subject to complaints, can be confident that the investigation will expose vexatious, malicious and unmeritorious complaints. Unquestionably, the investigation process will cause frustration, concern, anxiety and in some case anger, on the part of the police officers. However, I am influenced by the arguments made by the Respondent that the investigations are conducted in camera and that police officers can have confidence that the matters will be investigated impartially. Also, a key factor in the proportionately exercise is that fact that the investigation is carried out discreetly by police officers and that publication of any alleged defamatory statement will be considerably reduced.'*⁶⁵

The Court therefore dismissed the police officer's application for judicial review and the investigation into the complaint by the Ombudsman will now continue.

In relation to the right of privacy, the staff associations raised issues which were exclusive to them or shared with other staff associations. For example, the Ethnic Minority Police Association argue that,

'...their right to privacy is impacted upon owing to their distinctive physical appearances compared to their white colleagues. EMPA are not aware of any actions or risk assessment in relation to this'

The Catholic Guild of Police Officers during the consultation state that,

'...Catholic officers have to take extra precautions and make significant sacrifices in order to guard their privacy within their communities compared to their non-Catholic colleagues. Moreover, Catholic applicants are not given adequate information and guidance to prepare them for such precautions and sacrifices.'

In response, PSNI advise the Human Rights Advisor that while there is no additional security advice provided to Catholic applicants, all Student Officer candidates receive a comprehensive security briefing as part of the induction process and are encouraged to seek further individual advice from security advisors. Upon offer of appointment, candidates are given the opportunity to express an interest in serving in a specific policing District, and to outline any personal security concerns that they may have regarding serving in a particular area.

64 Para 69.

65 Para 71.

A 2016 report on recruitment by Deloitte, commissioned by PSNI, found that family and community opinion is a key blocker for Catholic applicants, related to security concerns and other perceptions linked to legacy and inclusivity.⁶⁶

The Student Officers, during the consultation, expressed a particular concern for their privacy,

'...in cases where members of the public record officers and post on social media which may have negative implications for an officers' right to a family life'.

By contrast, the Police Federation NI expressed reservations around the PSNI's policy towards social media whereby,

'...the service may monitor the historical private life transactions (text messages, forum chat logs and posts) of both serving officers and those applying to join the PSNI as part of service vetting processes. These matters have led to discipline proceedings and vetting being declined'.

Similarly, concerns around the PSNI's collection of data from social media and privacy, were raised in the Policing Board's Human Rights Annual Report 2020/2021.⁶⁷ Pertinent to this, the Report stated:

'...it was not clear whether the collection and retention of...[social media]...material was only a function for the Communications Branch or was also accessible for surveillance, investigation and criminal justice purposes,'⁶⁸

The Report continues:

'...this obviously raises questions of privacy and data protection. Police officers and staff lawfully access the internet for policing purposes, such as the prevention and detection of crime.'⁶⁹

66 PSNI, Deloitte (2016), Understanding barriers affecting police officer recruitment, p.21, <https://www.psnipolice.uk/globalassets/inside-the-psni/our-departments/human-resources/documents/research-project---final-report-v1-0-15-dec-2016.pdf>. It should be noted that the report also highlighted an increasing disconnect in working-class Protestant communities, a previously supportive community, and overall, less recruitment from those communities.

67 NI Policing Board (2021), Human Rights Annual Report 2020 – 2021, <https://www.nipolicingboard.org.uk/publication/human-rights-annual-report-2020-2021>

68 Ibid. page 38.

69 Ibid.

The service's social media corporate policy/service instruction states that PSNI usage of social media is for:

*'engagement purposes, environmental scanning, enhancing other operational activity...significantly impact[ing]...the achievement of operational or corporate objectives. This means of communication can also improve relationships with staff, stakeholders, customers and the public.'*⁷⁰

As such, the PSNI asserts that the way they use social media is legal, legitimate and for the public good, as opposed to misusing the resource to invade the privacy of applicants and officers. Similarly, in relation to the concern raised by the student officers around officer safety, the PSNI policy referenced above states that the PSNI is not responsible for the public's social media activity and that the policy itself exists to provide officers with training, advice and guidance on how to use social media responsibly and safely.

However, despite the PSNI's objectives when using social media, the Service notes that the existing policy is outdated and no longer comprehensive. In response to the Policing Board's Human Rights Annual Report 2020/2021, the PSNI state that, 'there is currently no Police Service Policy on the use of social media to cover all organisational areas.' However, the PSNI have informed the Human Rights Advisor that a Service Instruction on the use of personal mobile devices on duty is currently being prepared. The PSNI should explain how any approach to horizon scanning and surveillance of communications relating to officers and staff is proportionate and compliant with the ECHR, specifically freedom of expression and the right to a family and private life.

RECOMMENDATION 6

The PSNI should produce accessible guidance for officers and staff on the limitations of privacy that apply to them and ensure that refresher training is provided to all.

70 PSNI SI1017 Corporate Policy Service Instruction: Social Media

9. FREEDOM OF EXPRESSION AND ASSOCIATION (ARTICLE 10)

Police officers also have to accept that their Freedom of Expression and Association are not the same as members of the public.

*'Police officers shall not take any active part in politics.'*⁷¹

*'Police officers shall notify the Chief Constable of their membership of any organisation which might reasonably be regarded as affecting their ability to discharge their duties effectively and impartially in accordance with Police Service policy on registration of notifiable memberships.'*⁷²

This provision is elaborated in the Explanatory Notes to the PSNI Code of Ethics:

'Political Activity

In accordance with statutory regulations and Police Service policy on political activity, Article 1.6 contains an important direction about officers taking part in political activities. It is intended to avoid you placing yourself in a position where your impartiality may be questioned. As a police officer, you are here to serve the whole community without favour and irrespective of political circumstance.

You should refer to Police Service policy on political activity for detailed guidance on restrictions on political activity. In summary:

- *You are permitted to be a member of a political party. Public support of a political party or candidate is not however permitted.*
- *You are permitted to attend public rallies and/or meetings.*

However, attendance must be off duty and no item of uniform or clothing or other article may be worn which is likely to create the impression that the wearer is a police officer.

- *Expressions of support for any political party or cause which promotes or advocates intolerance, hatred or unlawful discrimination will not be tolerated by the Police Service.*
- *Subject to certain restrictions, you are permitted to participate in issues conducted independently of mainstream party politics (cause issues), such as environmental or public safety campaigns.*
- *You are prohibited from being a member of any illegal organisation or any political party or other organisation that may be subject to prohibition as determined by the Secretary of State.'*

71 Code of Ethics, NI Policing Board (2008) paras 1.6 & 1.7.

72 Ibid. para 1.7.

Notifiable Memberships

Article 1.7 of the Code requires officers to register their notifiable memberships with the Chief Constable in accordance with section 51 of the Police (Northern Ireland) Act 2000 and Police Service policy.⁷³

'You have a notifiable membership if you are a member of an organisation which might reasonably be regarded as affecting your ability to discharge your duties effectively and impartially. The test is whether you believe your membership might reasonably be regarded by some members or sections of the public as affecting your ability to discharge your duties effectively and impartially. Police officers who believe that they have no notifiable memberships must notify this belief to the Chief Constable.'

The position in human rights law reflects these restrictions and the expression of political opinions by police officers are not protected if the restrictions are:

*'aimed at ensuring respect for the requirement that police officers should act in an impartial manner when expressing their views so that their reliability and trustworthiness in the eyes of the public be maintained...'*⁷⁴

The following extracts are from the Guide on Article 10 of the ECHR:

*'The Court considers that employees owe to their employer a duty of loyalty, reserve and discretion, which is particularly so in the case of civil servants since the very nature of civil service requires that a civil servant is bound by a duty of loyalty and discretion (Ahmed and Others v. the United Kingdom, § 56; De Diego Nafria v. Spain, § 37).'*⁷⁵

*'In carrying out its review, the Court will bear in mind that whenever civil servants' right to freedom of expression is in issue the "duties and responsibilities" referred to in Article 10 § 2 assume a special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim (Baka v. Hungary [GC], § 162; Vogt v. Germany, § 53; Guja v. Moldova [GC], § 70; Albayrak v. Turkey, § 41).'*⁷⁶

73 The Chief Constable sought the views of the Policing Board and other key stakeholders on the current rules at the end of 2020. See also PSNI 'Off Duty Standards', Service Procedure 6/2013.

74 *Trade Union of the Police in the Slovak Republic and Others v Slovakia*, paras 57, 69 & 70. See also *Ahmed and others v UK* (1998) particularly the dissenting judgments. In another case, *Redfean v UK*, a member of the British National Party was dismissed from his job as a bus driver employed by a contractor which provided services for the local authority and, where the majority of his passengers were Asian in origin. The Court in that case found a violation in relation to the dismissal, partly on the basis that, as the driver had only been employed for one year he could not challenge his dismissal in the employment tribunal.

75 Guide on Article 10 of the European Convention on Human Rights (August 2022) para. 384 https://www.echr.coe.int/documents/guide_art_10_eng.pdf

76 *Ibid.* para. 433.

In March 2022, the PSNI disclosed the following information about membership to the Detail in response to FOI requests.⁷⁷ There were 168 members of Protestant Groups (the Orange Order, the Royal Black Preceptory, the Apprentice Boys of Derry and the Independent Orange Order, two officers of ‘Catholic fraternal organisations’ (the Ancient Order of Hibernians and the Knights of St. Columbanus) and 156 officers who were members of the Freemasons.

Restrictions on political activities:

‘In the present case the obligation imposed on certain categories of public officials including police officers to refrain from political activities is intended to depoliticise the services concerned and thereby to contribute to the consolidation and maintenance of pluralistic democracy in the country... . In the Court’s view, the desire to ensure that the crucial role of the police in society is not compromised through the corrosion of the political neutrality of its officers is one that is compatible with democratic principles...’⁷⁸

Regarding membership and freedom of association the guidance states:

‘280. While the State is bound to respect the freedom of assembly and association of its employees, Article 11 § 2 in fine allows it to impose lawful restrictions on the exercise of these rights by members of its armed forces, police or administration. The Court’s case-law to date has essentially concerned restrictions on the right of public servants to freedom of association rather than freedom of assembly.

292. Members of the public are entitled to expect that in their dealings with the police they are confronted with politically neutral officers who are detached from the political fray. The desire to ensure that the crucial role of the police in society is not compromised through the corrosion of the political neutrality of its officers is one that is compatible with democratic principles. The prohibition on membership of a political party by police officers could thus be justified under Article 11 § 2 (ibid., § 61).

77 Winters, R (31 March 2022), The Detail, *Hundreds of PSNI officers in Protestant fraternal groups and Freemasons*, <https://www.thedetail.tv/articles/hundreds-of-psni-officers-in-protestant-fraternal-groups-and-freemasons>. See also: *Freedom of information request F-2021-02612*, <https://www.psni.police.uk/sites/default/files/2022-10/02612%20Notifiable%20Organisations.pdf>

78 *Rekvenyi v Hungary*, para 41.

293. Given their primordial role in ensuring internal order and security and in fighting crime, duties and responsibilities inherent in the position and role of police officers justify particular arrangements as regards the exercise of their trade-union rights. It is legitimate to require that police officers should act in an impartial manner when expressing their views so that their reliability and trustworthiness in the eyes of the public be maintained. Sanctioning trade union members to achieve this aim corresponds to a 'pressing social need'.⁷⁹

RECOMMENDATION 7

The PSNI should produce accessible guidance for officers and staff on the limitations of Freedom of Expression that apply to them and ensure that refresher training is provided to all.

In relation to the right of Freedom of Expression and Membership, staff associations raised a number of concerns. For example, the Ethnic Minority Police Association expressed a concern that the PSNI has no clear policy in relation to expression of ethnic minority officers, stating that the PSNI does not necessarily understand the importance of allowing ethnic minority officers a time and place for prayer; such as during Ramadan or Muslim officers being permitted time in their working day to break their fast. Similarly, the Catholic Guild of Police Officers notes that the PSNI does not facilitate prayer provision.

The PSNI advise the Human Rights Advisor upon request that this issue has not been raised with the PSNI Equality, Diversity and Inclusion team and there is no record, that the team are aware of, of provision for prayer being denied. The PSNI provide a link to prayer guidance for Muslim officers and staff produced by the National Association of Muslim Police on their internal Diversity pages.

Discrimination also extended to religious denomination/belief according to the Christian Police Association who indicated during their consultation that,

'...they are aware of isolated cases of Christian police officers and staff being subject to ridicule in the workplace by colleagues owing to their religious faith/belief.'

The LGBT+ Network raised concerns around the current PSNI uniform policy, specifically, that the policy does not provide a gender-neutral uniform, specifically with regard to hats, nor does it permit LGBT+ officers to wear an emblem on their uniform for any period of time to denote their support for LGBT+ inclusion in Northern Ireland.

79 See footnote 73.

Current uniform policy permits other symbols of expression such as the poppy and shamrock during set periods of time. Regarding the concern around gender neutral attire, we are aware that the service is in the process of developing a uniform standard which aims to respect ethnic and gender diversity while at the same time being practical and presentable for duty.

The issue of the wearing of emblems on police uniform as a form of expression and to denote membership, police officer hair and face appearance was the subject of a Freedom of Information request. The service's uniform policy revealed that the growth of hair and facial hair is in fact permitted on religious grounds but disallowed in all other circumstances for operational and presentation reasons. Additionally, emblem wear is restricted to shamrock emblems (to commemorate St. Patrick's Day) and poppies (to commemorate Armistice Day/ Remembrance Day or the death of a police officer); no other emblems are permitted.⁸⁰

PSNI have informed the Human Rights Advisor that the uniform is indeed gender neutral, with tops and trousers in one style and during the preparation of this Report the LGBT+ Network publicly stated that:

*'We're proud to say that this week our Police Service changed its policy on uniform items. This means all officers have agency over their gender presentation. Men, women & those with non-binary identities may wear either hat. A small, but meaningful step forward for equality.'*⁸¹

The proposal for wearing the rainbow badge at specific times of the year, similar to the Poppy and the Shamrock, is currently under consideration.

The staff associations have offered advice and guidance to the PSNI as to how these omissions can be rectified and an addition to the existing emblem policy inclusive of the LGBT+ community has been suggested to the Chief Constable's Office by the LGBT+ staff association most recently at the 'Your Voice' forum hosted by the Chief Constable on the 14th February 2022.

RECOMMENDATION 8

The PSNI should consider the concerns from the associations on issues of discrimination and respond to the Policing Board by Spring 2023.

80 Freedom of Information Request 02742 - PSNI Uniform Policy, <https://www.psni.police.uk/globalassets/advice--information/our-publications/disclosure-logs/2021/complaints-and-discipline/crime/finance/human-resources/operational-policing/organisational-informal-and-governance/02742-foi-request---psni-uniform-policy.pdf>

81 Tweet from the group on 27th August 2022, <https://twitter.com/PSNILGBT/status/1563509053124317184>

Whistleblowing Policy

In relation to police whistleblowers:

*'...the Court has recognised that some civil servants, in the course of their work, may become aware of in-house information, including secret information, whose divulgence or publication corresponds to a strong public interest. It thus considers that the signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large. In other words, the Court considers that whistleblowing by an applicant regarding the alleged unlawful conduct of his or her employer requires special protection under Article 10 of the Convention.'*⁸²

The recent Hotton Learning Report by the IOPC, mentioned previously, also identified a general reluctance to challenge inappropriate behaviour and misconduct in the Met, highlighting a trend across police forces:

*'The failure to challenge and report improper behaviour has a huge impact in terms of dealing with bullying, harassment, misogyny sexual harassment and discrimination experienced by other officers. In order to tackle these disturbing behaviours, the failure to report and challenge improper behaviour needs to be recognised as a key part of the cultural issues preventing progress. Without recognising this, these behaviours are likely to remain prevalent. Officers need to feel they are supported when they do come forward.'*⁸³

RECOMMENDATION 9

Questions about the extent to which officers and staff feel free to raise issues about their colleagues' actions have been raised by the associations and in the media. A more positive and supportive approach to formal and informal whistleblowers should be developed and action should be taken to end any reprisals against them and to develop a more positive culture seeing their contribution as an important way of improving the work of PSNI.⁸⁴

82 *Guja v. Moldova* para 386.

83 IOPC (2022) Operation Hotton Learning report, p.14, <https://www.policeconduct.gov.uk/sites/default/files/Operation%20Hotton%20Learning%20report%20-%20January%202022.pdf>

84 The Department of Justice's 'Stocktake of Policing Oversight and Accountability Arrangements' (<http://data.niassembly.gov.uk/HansardXml/committee-25438.pdf>) raises the possibility that the Police Ombudsman could have a role in the future Both the Garda Síochána Ombudsman Commission and the Scottish Public Services Ombudsman (SPSO) have a whistleblowing role. The SPSO in their function as Independent National Whistleblowing Officer have developed a National Whistleblowing Standard.

10. DISCRIMINATION (ARTICLE 14)

Police officers and staff are protected by the equality laws in Northern Ireland, particularly those that deal with employment issues:⁸⁵

- The Northern Ireland Act 1998, sections 75 and 76
- The Employment Equality (Age) Regulations 2006⁸⁶
- The Disability Discrimination Act 1995⁸⁷
- The Equal Pay (NI) Act 1970⁸⁸
- The Sex Discrimination (NI) Order 1976⁸⁹
- The Race Relation (NI) Order 1997⁹⁰
- The Fair Employment & Treatment (NI) Order 1998⁹¹
- Employment Equality (Sexual Orientation) Regulations (NI) 2003⁹²
- Equality Act (Sexual Orientation) Regulations (NI) 2006⁹³

Unfortunately, the wider protections and consolidation of the law in the Equality Act 2010 only applies in England, Scotland and Wales.⁹⁴ However, officers are also protected from both direct and indirect discrimination on wider grounds than in the NI laws by Article 14 of the ECHR, but only when the alleged discrimination relates to one of the other ECHR rights:

*'The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'*⁹⁵

Finally, the UK has ratified three United Nations Treaties that provide extra rights for ethnic minorities,⁹⁶ women,⁹⁷ children and young people,⁹⁸ and people with disabilities.⁹⁹

85 See the Equality Commission for more information <https://www.equalityni.org/Legislation>.

86 [The Employment Equality \(Age\) Regulations 2006](#)

87 [Disability Discrimination Act 1995](#)

88 [Equal Pay Act \(Northern Ireland\) 1970](#)

89 [Sex Discrimination \(Northern Ireland\) Order 1976](#)

90 [The Race Relations \(Northern Ireland\) Order 1997](#)

91 [The Fair Employment and Treatment \(Northern Ireland\) Order 1998](#)

92 [Employment Equality \(Sexual Orientation\) Regulations \(Northern Ireland\) 2003](#)

93 [The Equality Act \(Sexual Orientation\) Regulations \(Northern Ireland\) 2006](#)

94 The NI Equality Commission have made several proposals to strengthen and harmonise NI equality law and close the gap between NI and the UK, see ECNI - Gaps in equality law between GB & NI, <https://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Tabs/Gaps-in-equality-law>

95 Other status includes: age, gender identity, sexual orientation, health, disability, parental and marital status, immigration status, and employment status. See also the Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention, August 2021.

96 [Convention on the Elimination of All Form of Racial Discrimination](#)

97 [Convention on the Elimination of All Forms of Discrimination against Women](#)

98 [Convention on the Rights of the Child](#)

99 [Convention on the Rights of People with Disabilities](#)

Stop and Search

In relation to the right of freedom from discrimination, the staff associations raised issues which were exclusive to them or shared with other staff associations. For example, the Ethnic Minority Police Association expressed,

'...two concerns around the PSNI policy which are of interest and concern to Ethnic Minority Community, e.g., 'Stop and Search'. Firstly, that the Association was not consulted at any point in the process of the policy's development and implementation despite raising this issue on numerous occasions and secondly, the policy positively discriminates against and specifically targets ethnic minority individuals, police officers included.'

Similarly, the LGBT+ Network raised concerns around the PSNI's Search policy, arguing that,

'The policy negatively discriminates against Trans and non-binary individuals who search as part of their role, as the policy compels transgender people to search those of their sex assigned at birth unless they hold a Gender Recognition Certificate (GRC), it can take a minimum of seven years to obtain a GRC during which time a trans officer would be expecting to live full time in their gender. Cis gender people¹⁰⁰ are not required to show their birth certificate to evidence their gender.'

The PSNI Service Instruction regarding Stop and Search states that:

*'Searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search or procedure. A police officer who has been granted a Gender Recognition Certificate will be able to stop and search an individual of the same gender without any reference being made to the fact that their gender identity differs from the sex they were assigned at birth.'*¹⁰¹

This means that in theory, trans police officers may carry out searches on individuals of the same gender, but the above outlined practical hurdles on obtaining a Gender Recognition Certificate means that this is not possible. The current National Police Chiefs' Council (NPCC) guidelines from 2020 are currently being reviewed at a national level in relation to both strip and stop searches.¹⁰²

100 The prefix 'cis' means 'on the same side as'. Cisgender refers to when a person's gender identity corresponds to their sex as assigned at birth, opposed to transgender, which refers to when a person's gender identity does not correspond to their sex assigned at birth.

101 [SI0321 Stop and Search Service Instruction](#)

102 NPCC (2020) Trans Guidance for the Policing Sector, p. 7, <https://lgbt.police.uk/wp-content/uploads/2020/04/TG-Overview.pdf>

PSNI advised that when the Stop and Search Instruction SI0321 was being developed, consultation took place with the following internal stakeholders: Innovation & Standards, PSNI Statistics Branch, Policing Powers Delivery Group and PSNI Legal Services.

The PSNI Statistics Branch publish data on the ethnicity and gender of those subject to PSNI Stop and Search Powers on a quarterly basis; the last publication was posted on May 2022. This most recent data illustrates the number of persons stopped and searched/questioned and subsequently arrested under all legislative powers during April 2021 to March 2022.¹⁰³ According to the ethnic data, during the April to March period, white individuals have been subject to stop and search most frequently (21,483 times) and subsequently arrested (1,191 times). In regards to both the ethnic and gender data, there is an absence of a LGBT+ demographic category. This is of concern given the experience of transgender officers carrying out stop and search.

Recruitment and Promotions

An issue that was raised by the majority of consulted groups and individuals was that of recruitment, promotion and operations. For instance, the Ethnic Minority Police Association contended,

'...in regard to the issue(s) of recruitment, promotion and operation, the Association contend that there is evidence in the past that white individuals are selected over ethnic minority individuals when seeking recruitment, promotion and charge over important tasks/ operations within the PSNI. Part of the reason for this is caused by intrinsic bias and a lack of understanding of diversity and issues that may be of importance to the Ethnic Minority community receiving little credit through a lack of this understanding. For example in a promotion interview and example may be given of how barriers were overcome between police and the Ethnic Minority with respect to engagement etc. If the people on the panel have no cognisance of those barriers they will give little credence to the example and will not score it as high as it may deserve.'

Further, the LGBT+ Network, conveyed the same message as the Catholic Guild of Police Officers in relation to the sexual orientation/gender identity of the senior ranks of police officers. Specifically, stating,

'Furthermore, the LGBT+ Network also raised concerns around the lack of sexual orientation, gender identity and ethnic minority diversity within the senior ranks of the PSNI.'

103 PSNI & NISRA (2022) 'Use of Stop and Search Powers by the Police in Northern Ireland: 1 April 2021 to 31 March 2022', https://www.psnipolice.uk/sites/default/files/2022-09/PSNI%20Stop%20and%20Search%20Report%20Q4%202021_2022v2.pdf

This sentiment is mirrored by Women's Police Association NI;

'In relation to this right, the Association expressed a concern around the lack of gender diversity among the members of the PSNI's senior team in particular of police officers. Moreover, the Association also outlined that overall, a lack of opportunity exists for female police officers and police staff employed by the PSNI to progress to more senior ranks and grades'.

Similarly, NIPSA stated,

'In relation to this right, NIPSA recognised a misogynist culture in the PSNI disregarded by the senior ranks'.

However, PSNI have informed the Human Rights Advisor that available data does not indicate that there is a lack of promotion for LGBT+ officers. PSNI stated that in most police promotion processes, women have had a higher success rate than men:

- Chief Superintendent promotion process 2021 – pass rate 50% for women compared to 30% for men.
- Superintendent promotion process 2021 – pass rate 42.86% for women compared to 20% for men.
- Inspector promotion process 2021 – pass rate 75% for women compared to 54.76% for men.
- Sergeant promotion process 2021 – pass rate 66.9% for women compared to 58.39% for men.

Furthermore, promotion panels are screened by the Equality Monitoring Officer to deliver as diverse a pool of panel members as possible.

Whilst this higher success rate is impressive, it is not clear whether these success figures are, at least, partly since these women have had to overcome challenges that their male colleagues did not face and are, as a result, more successful in promotion processes.

Currently two out of the seven Assistant Chief Constables/Officers are female.¹⁰⁴ Retired Deputy Chief Constable Judith Gillespie became PSNI's first female Assistant Chief Constable in 2004, before she was promoted in 2009 to Deputy Chief Constable. Currently, females represent 31% of police officers and 57% of all PSNI staff.¹⁰⁵

104 [Our Leadership | Police Service of Northern Ireland](#)

105 PSNI Workforce Composition Statistics, <https://www.psni.police.uk/about-us/our-publications-and-reports/our-publication-scheme/who-we-are-and-what-we-do/workforce>

This is an increase from 12% in 2001 and 27% in 2011 as a result of the increased levels of recruitment following the implementation of Gender Action Plans.¹⁰⁶

Gender composition across Northern Ireland's civil service is more equally distributed. In 2022, 50% of all staff across the civil service were female, and 41% of senior staff were female.¹⁰⁷

The Superintendents Association noted,

'...a concern around the occupational composition of promotional boards, arguing that those staffed solely by PSNI members may discriminate against certain officers on the grounds of irrelevant personal information about them'.

Moreover, the Disability Support Network stated,

'In relation to this right, a concern was expressed around a perceived lack of efficient police staff capacity and resources which discriminates against officers with a disability who may not be afforded the reasonable adjustment which they require to carry out their role'.

PSNI has advised that as of 1st July 2022, 4.56% of officers and 6.81% of staff have self-declared that they have a disability. PSNI have resources available internally, which includes guidance for line managers, toolkits for neurodiverse staff, and support from the Disability Support Network, Cancer Support Association and Autism support Network. A new policy on Supporting Staff with Disabilities is also planned. However, the view of the Police Federation is that the recruitment and selection process is robust.

The table below sets out PSNI workforce composition statistics¹⁰⁸ as of 1 August 2022 published by PSNI Statistics Branch:

We aim to have a workforce representative of the community we serve. The table below gives a breakdown of police officers and staff by community background, gender and ethnicity.

106 PSNI (2015) Equality Impact Assessment Workforce Plan, <https://www.psni.police.uk/sites/default/files/2022-09/EQIA-Workforce-Plan-February2015.pdf>

107 NISRA Equality Statistics for the Northern Ireland Civil Service - January 2021, <https://www.nisra.gov.uk/system/files/statistics/2022%20Equality%20Report2.pdf>

108 See footnote 103.

Information is correct as of 01/08/2022.

	Police Officers	Police Staff
% Perceived Protestant	66.31	77.72
% Perceived Roman Catholic	32.34	19.96
% Not Determined	1.35	2.32
% Female	31.27	56.93
% Male	68.73	43.07
% Ethnic Minority	0.61	0.71
Total	6901	2670

Currently statistics for the numbers of disabled police officers/staff or LGBT+ police officers/police staff are, unfortunately, missing. This is despite disability and Heterosexual, Bi-sexual and Gay/Lesbian being demographics recorded on the PSNI Equality Monitoring Form. Transgender people are also not included as a category on the PSNI Equality Monitoring Form.



 028 9040 8500

 information@nipolicingboard.org.uk

 www.nipolicingboard.org.uk

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