

NORTHERN IRELAND POLICING BOARD

MINUTES OF MEETING OF THE PERFORMANCE COMMITTEE HELD ON 9 MARCH 2023 AT 9:30am

PRESENT:

- Mr Gerry Kelly, Chair
- Dr Janet Gray, Vice-Chair* (3)
- Mr Les Allamby
- Mr Trevor Clarke
- Ms Joanne Bunting
- Ms Nuala McAllister (4)
- Mr Mark H. Durkan* (2)
- Mr Mike Nesbitt

**EX-OFFICIO MEMBER
IN ATTENDANCE**

Mr Edgar Jardine

**POLICE SERVICE OF
NORTHERN IRELAND IN
ATTENDANCE:**

- (1) ACC Alan Todd
- (1) D/Ch/Supt Ian Saunders
- (1) 3 PSNI Staff

**OFFICIALS IN
ATTENDANCE:**

Mr Adrian McNamee, Director of Performance
John Wadham, Human Rights Advisor
2 Board Officials

- (1) Present for Item 6.1 only
- (2) Present from Item 4.0
- (3) Present to Item 6.1
- (4) Present to Item 6.4

*Attended via video conferencing

1. APOLOGIES

Apologies were received in advance of the meeting from Frank McManus, Liz Kimmins and Peter Osborne.

The Committee agreed the agenda for the meeting.

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

2. CONFLICTS OF INTEREST

No conflicts of interest were declared.

3. MINUTES OF THE PREVIOUS MEETING

The Committee considered the draft minutes of the Performance Committee meeting held on 9 February 2023.

It was **RESOLVED:-**

That Minutes of the Performance Committee meeting on 9 February 2023 were agreed.

4. UPDATE ON ACTION LOG

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

NOTED.

The Director provided an update on AP1 from the meeting held on 19 January 2023 in respect of Crime Outcomes with Officials to follow up with PSNI on to provide statistics on arrests and prosecutions following the introduction of the new

offences on coercive control and stalking. The PSNI response is included at Item 4.1 today.

The Director provided an update on AP2 from the meeting held on 19 January 2023 in respect of Crime Outcomes with Officials to follow up with PSNI to provide a geographical breakdown in relation to the recent increase in crime against children. The PSNI response is provided at Item 4.1 today.

The Director provided an update on AP1 from the meeting held on 9 February 2023 in respect of an update on Firearms and Explosives Branch and the issues raised by BASC. Currently awaiting PSNI response.

The Director provided an update on AP2 from the meeting held on 9 February 2023 that Officials write to DCC Hamilton to request an update on Recommendation 11 of the HRAR 2020/21 regarding publication of Dr Topping's Research and to provide an official response to its findings. The response from DCC Hamilton is provided at Item 4.1 today.

The Director provided an update on AP3 from the meeting held on 9 February 2023 that Officials write to PSNI requesting a geographical breakdown of homophobic / disability hate crime incidents. A letter issued to ACC Mark McEwan on 10th February 2023 requesting this information. We are currently awaiting the PSNI response.

The Human Rights Advisor provided an update on AP4 from the meeting held on 9 February 2023, Officials to write to the PSNI requesting the scenarios and parameters for their referrals to the Home Office in respect of immigration status following interventions with those victims / repeat victims of crime from an ethnic minority background. A letter issued to ACC Mark McEwan on 10th February 2023 requesting this information. Members engaged in a brief discussion in respect of the scenarios and parameters for PSNI referrals to the Home Office in respect of immigration status following interventions with those victims / repeat victims of crime from an ethnic minority background. Members discussed the

absence of policy guidance for PSNI officers in the exercise of their duties. A Member also referred to NGO's who are unable to provide clarity to their clients.

Following discussion it was:-

AGREED

Human Rights Advisor to follow up with ACC Singleton in respect of clarifying PSNI policy in relation to immigration status and the onward reporting to the Home Office. **(AP 1)**

The Director provided an update on AP5 from the meeting held on 9 February 2023 to follow up with the PSNI on their offer to share the Multi-Agency Tasking and Co-Ordination (MATAC) Report on repeat perpetrators of domestic abuse. A letter was issued to ACC Mark McEwan on 10th February 2023 requesting this information. We are currently awaiting the PSNI response.

The Director provided an update on AP6 from the meeting held on 9 February 2023, Officials to write to the PSNI on the Domestic Abuse Disclosure Scheme (DVADS) to request further information on the 'Power to Tell' policy. A letter issued to ACC Mark McEwan on 10th February 2023 requesting this information. We are currently awaiting the PSNI response.

The Director provided an update on AP7 from the meeting held on 9 February 2023, to follow up with ACC Chris Todd on the publication of the Spit and Bite Guard Report (SBG). The Director confirmed that the PSNI's report was published on the website on Monday 6th March 2023.

The Director provided an update on AP8 from the meeting held on 9 February 2023 in respect of the Chair to write to PSNI requesting further information on the number of officers who currently carry CEDs, the supply and training in relation to CEDs, why an extension of the use of CED devices is needed and on the number

of additional officers this extension will involve? The Chair issued a letter to DCC Mark Hamilton on 27th February 2023. The response from the PSNI is provided at Item 4.1 of today's meeting.

4.1 Accompanying Correspondence

Members discussed correspondence received from the PSNI in relation to:

- AP 1 January 2023 – Statistics on arrests and prosecutions following the introduction of the new offences on coercive control and stalking;
- AP 2 January 2023 – The geographical breakdown of crime against children for the period February 2021 – January 2022 and February 2022 to January 2023;
- AP 2 February 2023 – An update from DCC Hamilton in relation to Recommendation 11(a) of the Human Rights Annual Report 2020/21 regarding publication of Dr Topping's Research and its findings;
- AP 8 February 2023 – CEDs, further information on the number of officers who currently carry CEDs, the supply and training in relation to CEDs why an extension of the use of CED devices is needed and on the number of additional officers this extension will involve.

Members engaged in a brief discussion.

Following discussion it was:-

AGREED

The Chair to write to ACC Chris Todd, acknowledging his correspondence, and raising a number of issues on the timeframe and implementation of CEDs to the Close Protection Unit. **(AP 2)**

Officials to follow up with PSNI on the geographical breakdown statistics relating to crime against children in Armagh, Banbridge and Craigavon.

(AP 3)

5. CHAIRPERSON'S BUSINESS

The Chair confirmed that no items of business have been received for discussion.

6. ITEMS FOR COMMITTEE BUSINESS

6.1 PSNI's Presentation on Legacy and Disclosure Branch

The Director of Performance reminded Members that in the Terms of Reference for the Performance Committee, there is a responsibility for the Committee to "Monitor the work of PSNI Legacy & Disclosure Branch". This duty has been fulfilled by arranging for the Legacy & Disclosure Branch to present to Committee on its latest performance and to provide an update on its latest caseload.

Officials, therefore, have arranged for senior officers to present the latest information concerning the Legacy and Disclosure Branch to Members.

Members will be briefed on the Branch's:

- Current priorities;
- Update on the current workload;
- Update on Litigation and disclosure; and
- Emerging Issues.

The Director of Performance highlighted to Members the Stormont House Agreement of 2014 that proposed a series of different procedures and institutions to address issues from the past. The Director of Performance also referred to the May 2022 publication of the Northern Ireland Troubles (Legacy and Reconciliation) Bill which intends to introduce a conditional immunity scheme.

The Chairperson welcomed the PSNI to the meeting.

The Chairperson invited the PSNI to brief Members on the work relating to Legacy and Disclosure Branch.

The PSNI presented information and discussed with Members:

- The structure of Legacy and Disclosure Branch;
- Legacy and Disclosure Branch priorities;

- Cases on Case Sequencing Model (CSM), cases currently in investigation and cases with PPS / Courts;
- Sources of requests to Legacy and Disclosure Branch;
- Legacy Support Unit. Management of discovery and disclosure in support of the delivery of legacy and sensitive inquests, victims pension scheme, civil litigation, and judicial reviews;
- Sensitive Litigation Team. Management of discovery and disclosure in support of sensitive contemporary and legacy civil litigation;
- Sensitive Disclosure Governance Unit. Manage PSNI Information Archive Service (IAS), sensitive trial disclosure and disclosure of information to the Police Ombudsman for Northern Ireland; and
- Risks and emerging issues.

A Member declared a conflict of interest, their spouse is involved in a legacy case.

Members engaged in discussion with PSNI and sought clarity on a number of issues including: -

- Further clarity on the issues surrounding the retention of staff, Article 2 and 3 ECHR compliance, the inclusion of those injured in the LIB remit and the anticipated timeframe to conclude all cases;
- Troubles Permanent Disablement Scheme (TPDS) resourcing and funding;
- Cases with PPS, a Member queried how long have the cases been referred;
- Further detail on VPDS process, ownership and administrative function of the PSNI with regards processing delays;
- Retention of Biometric material in legacy investigations;
- The number of cases that will cease to be investigated if the Northern Ireland Troubles (Legacy and Reconciliation) Bill is enacted;
- Closed Material Procedure (CMP), a Member sought more context and the impact of this;
- The ongoing independent Operation Kenova investigation led by Jon Boutcher, the positive interactions with families and if there are similar learning opportunities for LIB;

- An update on the digitisation of LIB archive; and
- Sources of requests to LIB, what type of information is sought.

The PSNI provided the following responses:-

- Transfers from LIB are currently temporarily embargoed to protect capacity. Concerns regarding the corporate knowledge lost as experienced skilled staff leave through retirement as well as a reduction in recruitment and its impact on future service delivery. The uncertainty surrounding the future of LIB as a consequence of the Northern Ireland Troubles (Legacy and Reconciliation) Bill may also have a detrimental impact on staff recruitment and retention;
- In respect of timescales the PSNI emphasised the complexity of legacy cases and referred to the scale, capacity, capability and resourcing issues. As time progresses the likelihood of a criminal justice outcome diminishes as witnesses become unavailable;
- The PSNI referred to the current LIB model and Article 2 obligations. The new legacy Bill if enacted will extend the remit of the proposed new body to be established in the proposed legislation (ICRIR) to include those injured and if investigations remain with LIB any case clearance timeframes will be dependent on resources available;
- In relation to the VPDS, the PSNI advised Members that this scheme is funded via DOJ / DOF and the process is governed by DOJ. There are several stages in the application process, of which PSNI are one stage. The PSNI role is subject to the Service Level Agreement with DOJ. Processing delays may be due to researching records across the PSNI estate capacity issues or relevant materials being held by other teams in connection with other investigations e.g. Op Kenova, Legacy Inquest and Civil Litigation;
- The PSNI referred to the 5-Year Plan and current inquest caseload, the inquests which may proceed and the possibility of Coroner's accelerating cases by using a new modular approach for case progression;
- CMP are complex cases in which sensitive material for proceedings is redacted;

- The PSNI recalled to Members that Jon Boutcher's Kenova investigation is completely independent from the PSNI and the Chief Constable. There has been positive feedback on relationships between LIB and families and not all in highly sensitive cases;
- There is no PSNI involvement or work undertaken in post Legacy Bill implementation planning. This is to keep the PSNI at arm's length to retain our independence from the government led policy/legislative development, working within the parameters set by legislators and the law;
- Digitisation of the LIB archive has been progressed in a limited way. A new computer system, NIMBUS, is being introduced in 2023, with the aim of providing an efficient document repository tool for sensitive disclosure and redactions. These documents can be retrieved and used in response to further service requests which will enable greater efficiencies; and
- The sources of requests are varied may relate to cases that do not fall within the CSM model as they do not meet the threshold for investigation.

The Chairperson thanked the PSNI for their attendance and briefing and they left.

Following discussion it was:-

AGREED

Officials to follow up with ACC Alan Todd on the 7 stages of the Victim Disability Pension Scheme, the dates that the 18 cases were referred to PPS and types of requests made to LIB by Govt/intelligence. **(AP 4)**

Performance Committee to invite Jon Boutcher to a future meeting. (To be confirmed with Chief Executive) **(AP 5)**

6.2 PSNI Update on the HRAR 2020/21 Recommendations

The Human Rights and Professional Standards (HRPS) Manager referred Members to the PSNI's implementation of recommendations contained in the Human Rights Annual Report 2020/21 along with the Human Rights Advisor's assessment as to whether to close these recommendations.

The HRPS Manager recalled to Members that 4 of the recommendations have been closed, 6 have been superseded by recommendations contained in the Annual Report for 2021/22 or in the Use of Force Report published on 18 January 2023. 10 recommendations are still recorded as Work in Progress and their progression is routinely monitored by Officials.

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

- Recommendation 11(b) in respect of Stop and Search;
- The PSNI Human Rights Awareness Survey outcomes;
- A Member drew attention to Recommendations noted as 'Accepted' by PSNI but suggests that further information is required. The Member queried if future SBG training would be online or in person, the requirement for further information in respect of recommendations 11 and 13 and if a timeframe could be given for recommendations 15 and 16;
- Recommendation 3 and the use of BWV;
- In reference to JSA Stop and Search, the issue of a police officer's perception being used to designate community background, Joanne Bunting and Trevor Clarke recorded their objection to recording PSNI community background by officer perception; and
- Those who choose to identify as 'other' as opposed to a religious denomination was raised by a Member in relation to Stop and Search;

Following discussion it was:-

AGREED

The Chair to write to DCC Hamilton raising a number of issues on the timeframe and publication of the Stop and Search strategy on Recommendation 11b of the Human Rights Annual Report 2020/21.

(AP 6)

6.3 Human Rights Advisor Update Report February 2023

The Human Rights Advisor provided Members with an overview of areas within his current work programme in February 2023 including, scoping and drafting the Privacy and Policing Report; scoping and drafting proposals on reports on children and young people; and drafting and planning the report on the strip searching of children and young people.

The Human Rights Advisor updated Members on a range of meetings he attended in February including; Performance Committee, Board meetings, PSNI officers (for Privacy Report), NGOs (for the Privacy Report), PSNI officers (on strip searches), PSNI officers (on Spit and Bite Guards), Independent Reviewer of Terrorism Legislation, JSA Authorisations Review with the NIO, Service Accountability Panel (PSNI), Deputy Chief Constable, other PSNI officers and various meetings with Board officials.

He provided a brief overview of his attendance at the PSNI Service Accountability Panel as an observer commenting that this Panel is part of the internal management process for PSNI. The Human Rights Advisor also discussed with Members his viewing of Strip Search custody records for 2022 and his intention to provide a Report on this to Committee in May 2023.

He also informed Members of his March work plan including, drafting and finalising the Privacy and Policing Report, drafting the strip search report,

induction two-day Board event, assessing new draft of manual for Independent Custody Visitors (ICVs) and meetings with PSNI officers. The Human Rights Advisor will also attend Board and Performance Committee and assist with preparation of reports.

Following discussion it was:-

NOTED

That Members were content with the Human Rights Advisors Update Report and the remaining schedule of work for March 2023.

6.4 Draft Report Human Rights Review of PSNI Privacy

The Human Rights Advisor recalled to Members that the Board's three-year Human Rights Programme of Work, agreed in 2021, sets out the themes to be scrutinised by the independent Human Rights Advisor, of which this Report considers the issue of privacy rights and policing. To date in 2023, the Human Rights Advisor and Officials have consulted with representatives of PSNI, public bodies and a range of non-governmental organisations.

The Human Rights Advisor informed Members that this Report examines seven key areas:

- Criminal, Intelligence, and other databases;
- Biometric Collection, Searching, and Retention;
- Artificial Intelligence;
- General Surveillance;
- Targeted Surveillance;
- Data Extraction from Digital Devices; and
- Data Protection at PSNI.

The Human Rights Advisor has made a number of formal recommendations where it has been identified that PSNI action is necessary. The Human Rights Advisor asked that Members consider the Draft Report and welcomes any insights or input Members might have regarding recommendations.

A copy of the Report will be sent to PSNI for a detailed factual accuracy check following Members' consideration. A final version of the Report will be brought back to the Committee in May 2023 with the aim to seek Board approval for publication thereafter.

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

- The role of digital technology in policing, public confidence in police use of technology in how it is used and when;
- The role of the Investigatory Powers Tribunal (IPT);
- Seizure of electronic devices and the application of Data Protection law;
- Accountability and oversight;
- A Member asked that it be noted their objection to Real Time Network, Text and Speaker Analytics for Combatting Organised Crime (ROXANNE) Project citing issues raised with human rights concerns, public safety and misuse; and
- Data Ethics.

Following discussion it was:-

AGREED

Officials to email Members requesting that Members to forward comments on the draft Report and its recommendations by Friday 24th March 2023. **(AP 7)**

6.5 DoJ Report – Potential Over Representativeness in the Youth Justice System

The Human Rights Professional Standards Manager (HRPS Manager) outlined to Members that in October 2022 the Department of Justice (DOJ) published a Report on ‘Over-Representation in the Youth Justice System’ carried out by Queen’s University. The HRPS Manager reminded Members that the report was commissioned by the DOJ to understand and respond to some of the issues of over-representation of certain groups in the youth justice sector.

The HRPS Manager referred to over-representation of Catholics in certain populations within the criminal justice system that has been an ongoing issue in Northern Ireland and recommendations regarding community background monitoring by PSNI can be traced back to 2008. Both the Independent Reviewers of the Justice and Security Act and Terrorism Legislation have each repeated this recommendation for PSNI to specifically monitor the community background of persons stopped under the Justice and Security (Northern Ireland) Act 2007.

The HRPS Manager recalled that PSNI advised that limited Section 75 data was available on children they interacted with. The HRPS Manager drew Members’ attention to the key findings on gender, age, religion, and care status in the Report.

The HRPS Manager also referred to the finding that there is a potential relationship between place / geographical area, deprivation levels and the numbers of children from a Roman Catholic background interfacing with the criminal justice system. Previous analyses of youth justice data have identified the prevalence of additional needs, such as speech and language difficulties, mental health problems, low educational attainment, and special educational needs, among children referred to the Youth Justice Agency, and especially among those in custody.

The HRPS Manager recalled to Members that the PSNI has provided a response to the research in relation to how PSNI are going to respond to the research. The PSNI have advised that the Report was discussed at the PSNI Service Accountability Panel (SAP) on 8th November 2022 and a briefing presented by Criminal Justice Branch. The PSNI have agreed to be part of a working group with YJA and other criminal justice partners with the aim of developing action plans in improving the collection and recording of Section 75 data by all Criminal Justice organisations. The outcome of which, will be reported to the Criminal Justice Board.

Members engaged in a brief discussion on the DOJ Report.

6.6 Draft Committee Programme of Work - May to December 2023

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

The Director of Performance referred to the Committee's Terms of Reference that were recently updated and agreed at the Board meeting of 3rd November 2022. The Committee's items of business have focussed on its areas of responsibility as outlined in Section 5 of the Committee's Terms of Reference in relation to:

- PSNI Governance and General Matters;
- Other Police Performance;
- Human Rights;
- Police Professional Standards; and

- National Crime Agency.

The Committee's Draft Programme of Work from April to December 2023 has been drafted to reflect these five areas.

The Director of Performance requested that Members provide feedback on the Draft Programme of Work for May to December 2023 any identify any other areas / thematic approaches to be added to the Draft Programme for this period.

Following discussion it was:-

AGREED.

That Members were content with the draft Programme of Work and Officials should continue to plan on this basis.

7. QUESTIONS FOR THE CHIEF CONSTABLE

7.1 Six questions were identified by Members at the January 2023 Performance Committee meeting. The Chief Constable's response to 4 of these was noted at the February 2023 Committee meeting. The Chief Constable's response to 1 question provided at the 2nd March 2023 Board Meeting was **NOTED**.

7.2 No questions were identified by Members arising out of this meeting to ask the Chief Constable.

8. COMMUNICATION ISSUES

There were no communication issues arising from the meeting.

9. ANY OTHER BUSINESS

There were no items of other business arising from the meeting.

10. DATE OF NEXT MEETING

It was also agreed that the next Performance Committee meeting would take place on **Thursday 11th May 2023** at **9:30am** in James House.

Meeting closed at 1:30pm.

PERFORMANCE DIRECTORATE

9th March 2023

Chairperson