

NORTHERN IRELAND POLICING BOARD

**MINUTES OF MEETING OF PARTNERSHIP COMMITTEE HELD ON THURSDAY
27 July 2023 AT 15.00PM AT NIPB CONFERENCE ROOM**

PRESENT:

- Mr John Blair MLA (Chair)
- Mrs Linda Dillon MLA
- Mrs Joanne Bunting MLA
- Mr Les Allamby
- Mr Peter Osborne
- Mr Gerry Kelly MLA
- Mr Maurice Bradley MLA
- Mr Mark Durkan MLA (Zoom)

EX OFFICIO MEMBERS IN ATTENDANCE:

- (1) Mr Joe Kennedy BL
- (2) Mrs Dolores Rooney, CSO

OFFICIALS IN ATTENDANCE:

Ms Jenny Passmore, Director of Partnership
Four Board Officials

(1) Left at 16.05pm
(2) Left at 16.05pm

The Partnership Committee Chair welcomed all Members to the Partnership Committee meeting in James House and noted the meeting's single item agenda.

1. APOLOGIES

Apologies were received from Dr Janet Gray, Mr Mukesh Sharma and Dr Kate Lavery.

The Committee agreed the agenda for the meeting.

2. CONFLICTS OF INTEREST

The Chair asked Members to declare any conflicts of interests arising from the agenda. No conflicts of interest were declared.

3. Item for Committee Business

3.1 Board Approach to PCSP Appointment Process

The Chair provided an overview of the aim of the meeting which was to gain clarification from the Board's legal counsel and decide on how the Board moves forward with the PCSP Appointment Process. The Chair summarised that Joe Kennedy BL now supports the DOJ legal position in that it is unlawful to use community background within the appointment process.

Joe Kennedy BL & Dolores Rooney, Crown Solicitor Office (CSO) were invited to join the meeting at 3.10pm. The Chair welcomed both to the meeting and reiterated the updated legal position provided which now supports the DOJ position. He advised that this is disappointing for the Board in terms of their ability to meet the requirements of the Justice Act.

Joe Kennedy BL advised that he conducted another review of the existing case law, namely *Re Duffy (2007)* & *Re White (2000)* where he concluded that in the case of *Re Duffy (2007)*, commentary provided would not provide sufficient legal comfort for the Board. As the *Re White (2000)* case related to a gender issue, it could also not be relied on in relation to the use of community background. Therefore, he felt the cases do not provide strong enough legal basis for the use of community background within the PCSP Appointment Process.

Joe Kennedy BL also confirmed that looking to the exceptions within the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) does not provide any coverage due to PCSP's being set up in 2011 which is after the

FETO legislation was enacted. The Board itself can rely on FETO for its own appointment processes as it existed prior to the 1998 FETO legislation.

In concluding, he advised that whilst the use of community background could be argued, there remained too much of a grey area and that it would be more likely that the DOJ proposed position would likely be more defensible.

Following the update members discussed and made the following comments:

- Whether community background could be considered if every other factor is the same for two candidates.
- Whether gender, age & geographical spread pose the same issue.
- Whilst the Board want to have the best individuals appointed, there is a significant reputational risk for both the PCSPs and the Board if PCSPs are unbalanced.
- Whether the Justice Act needs to be reviewed.
- There seems to be an over-reliance on FETO legislation when there is nothing definitive to say PCSPs fall under FETO. Important to remember this is an appointment process not a recruitment process.
- The case law is old, and it would not be wise for the Board to fall back on it, however there should be a basis to look at gender or geographical location where two candidates are identical in scores and experience.
- Broad engagement cannot be the sole factor in achieving representativeness. Elected members are already representative (D'Hondt). If merit is the only factor, representative PCSPs may not be achieved.
- Important that some responsibility is put onto PCSPs themselves to reach out to underrepresented groups to encourage a diversity of candidates.
- The change to legal advice previously provided in 2020 & 2022 was unfortunate.
- The suggested approach would appear to be subjective, as panel members may rate one skill over the other.

- There is a need to review the entire appointment approach for the next competition which could include a more generalised scoring matrix.

Counsel addressed Members issues outlining the following:

- It wouldn't be advisable to use community background where two candidates are the same in every other way, however, it may be defensible if there is nothing left to aid a decision.
- Using protected characteristics presents risks and does not have a legal basis, however geographical information is not protected and therefore is less of a grey area.
- The Justice Act potentially requires a review as there exists a grey area in relation to how representativeness can be achieved.
- The safest route is to attempt and attract the widest pool of candidates at the beginning of the appointment process through wide engagement.
- Existing case law does not show the full extent of how far the legislation could be pushed as neither Re White nor Re Duffy cases had community background as their main issue.
- FETO legislation cannot be used in the case of PCSP Appointment Process due to the fact PCSPs were set up post FETO.
- On review of previous advice it was determined that case law opinion changed on how strongly these supported the argument in the use of community background.
- In a scenario where a more generalised scoring system was to be used, care would still need to be taken but again decisions made would need to be based on skills and experience not equality information.

The Chair thanked Counsel for their time.

Joe Kennedy BL & Dolores Rooney, CSO left the meeting at 4.05pm.

The Chair noted that members were now required to agree the approach for Stage 3 of the process going forward.

The Director of Partnership discussed both the current process and the suggested approach going forward. Currently Board Panel Members would receive a candidate summary of skills & experience along with all Section 75 Equality Information. DOJ will be amending the Code of Practice (CoP) to remove the use of all Section 75 equality information following the ¹CPANI audit on Probation Board appointments in 2019 which all public bodies are required to adhere to.

The suggested approach going forward would be to provide a candidate summary of skills & experience alongside the current elected members of each PCSP's District Electoral Area (DEA) and the candidates DEA. Information will also be provided if a candidate has a disability to assist with positive discrimination.

Members noted the update and discussed the following points:

- The proposed suggested approach seems as close as the Board can get to balance merit and representativeness. If merit is the principal factor, a compelling objective reason would be required to depart from it..
- The possibility to co-opt someone in, if representativeness is not achieved.
- The high risk of significantly unbalanced PCSPs/DPCSPs.
- A potential review of the Reconstitution Process in general in the future that would see a much more pro-active approach from the PCSPs in targeting underrepresented groups.

¹The Department must ensure that equal opportunities monitoring information provided by candidates is processed in line with equality law and public law, the General Data Protection Regulations and using best practice for sensitive personal information. Candidate monitoring information must be stored anonymously and must not feature during the shortlisting of candidates or the decision-making stage. (May 2019 CPANI)

- The need for a review of the Justice Act to ensure that the Board are not left exposed.
- The scope to proceed given a Permanent Secretary was taking the decision to update the Code and not a Minister.
- Concern around continuing with the current approach is that it would be going against the Code of Practice and the Board's latest legal advice.
- Members concluded that they feel they have no choice but to follow DOJ advice but expressed their discontent with the position it will leave NIPB in, as the system currently in place worked best.

Board officials confirmed the following in response:

- The change to the CoP was based of the impartial assessor from the previous PCSP appointment process review of PBNi by CPANI.
- Confirmation that no complaints have ever been received from previous Reconstitution Process in 2019.
- The Equality Commission are aware of this issue and previously raised concerns around the use of community background in the process.
- Current Independent PCSP Members are being used to provide short films on their experience and what skills they bring to PCSPs.
- Confirmation that the Board itself cannot use a co-opt process as any gaps in resource would have to go through the reserve list. PCSP's themselves could co-opt to bring in a specialist to assist with a specific area of work.

It was **agreed**:

Members agreed that they feel they have no choice but to follow DOJ advice and remove the use of community background but expressed their discontent with the position it will leave NIPB in. A letter highlighting this discontent to be submitted to DOJ **(AP 1)**

4. ANY OTHER BUSINESS

Update on PSNI Problem Solving Awards

The Partnership Manager summarised feedback from a meeting that had taken place earlier in the day between Board Officials and PSNI in relation to the Problem-Solving Awards.

Board Officials fed back key points raised at the previous Partnership Committee Meeting, i.e., not using the police estate as the venue and having a separate category for PCSPs rather than diluting an existing category.

PSNI have advised the potential use of the Harbour Commissioners Building as the venue as this can be secured free of charge, the venue will also suit having stalls within the venue to enable community groups to talk about the benefits of Neighbourhood Policing.

Planned date for the awards will be 22nd February 2024 with the launch to start in September 2023 with judging in November 2023.

As there will still be a level of costs, including catering, AV requirements and awards, Members were advised that PSNI have asked for a contribution of approximately £2,000 which the Partnership Manager advised could be made available due to savings made in relation to another event.

Members **agreed** to both the venue and the provision of £2,000 towards the event.

5. DATE OF NEXT MEETING

The next meeting is scheduled for **Thursday 21st September 2023** in James House. Members were reminded that Partnership Committee has moved to morning meetings therefore the meeting will commence at 9.30am.

The meeting ended at 4.55pm

CHAIR

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PARTNERSHIP DIRECTORATE

JULY 2023