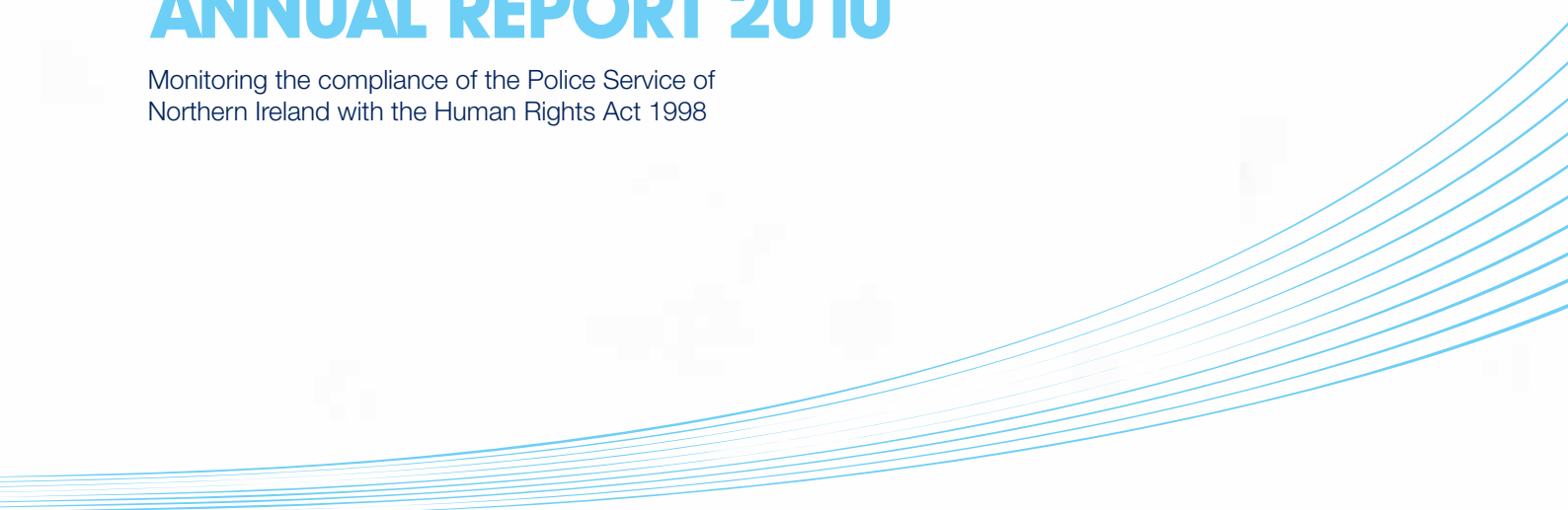




HUMAN RIGHTS

ANNUAL REPORT 2010

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



FOREWORD



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

The Policing Board has a statutory duty through the Police (Northern Ireland) Act 2000 to monitor the performance of the PSNI in complying with the Human Rights Act 1998. In order to fulfil this statutory duty the Policing Board appointed Human Rights Advisors in 2003 to develop a Human Rights Monitoring Framework setting out the key areas of police work to be examined. The PSNI is monitored in each of these key areas throughout the year by the Human Rights and Professional Standards Committee (the Committee) who, assisted by the Policing Board's Human Rights Advisor, reports on its findings annually in the Human Rights Annual Report. Since 2005, the PSNI has implemented 170 recommendations contained within the Human Rights Annual Reports in full. This implementation record is impressive and demonstrates PSNI's commitment to ensuring a human rights culture exists within the organisation.

This Human Rights Annual Report makes 5 new recommendations for the PSNI to implement, and it records that 3 recommendations from previous years remain outstanding. The Committee, with the assistance of the Policing Board's Human Rights Advisor, will oversee PSNI implementation of these recommendations.

The Policing Board is aware that embedding a human rights culture within the PSNI is an ongoing process and in recent years the Policing Board has

strengthened its Human Rights Monitoring Framework with the introduction of the human rights thematic review. The thematic reviews have been led by the Human Rights and Professional Standards Committee, with the assistance of the Policing Board's Human Rights Advisor. The reviews are intended to provide focused scrutiny on a specific area of police work from a human rights perspective. The first thematic review examined the PSNI approach to policing domestic abuse and a report outlining the key findings from this review was published in March 2009.¹ Most recently the Committee completed thematic reviews into policing with children and young people and into police powers to stop, search and question individuals.² The Committee is also currently undertaking a thematic review into policing with and for lesbian, gay, bisexual and transgender individuals.³ The process of the thematic review has provided the Committee with an opportunity for greater engagement with a wide range of stakeholders on human rights issues. It has enabled issues of concern to the community to be identified and it has resulted in closer working between the Committee and the PSNI to improve service delivery.

Thematic reviews have become an integral part of the Policing Board's human rights monitoring work. Findings from the reviews, and any recommendations made therein, are as equally important as, and carry as much weight as, findings and recommendations made in the Human Rights Annual Reports. The decreased number of recommendations made in this year's Human Rights Annual Report compared to previous years is reflective of the fact that a significant number of recommendations have been made in the thematic reviews.

¹ The thematic review is available to download at www.nipolicingboard.org.uk, or a hard copy can be obtained from the Policing Board upon request.

² The children and young people thematic review was published in January 2011 and is available to download at www.nipolicingboard.org.uk, or a hard copy can be obtained from the Policing Board upon request. The stop and search thematic review will be published in February 2011.

³ The terms of reference for the thematic review on policing with and for members of the community who are lesbian, gay, bisexual and transgendered are available to download at www.nipolicingboard.org.uk.

This Human Rights Annual Report should therefore be read not as a comprehensive text outlining all of the human rights monitoring work carried out by the Policing Board during 2010, but it is intended to provide a summary of the monitoring work the Policing Board has carried out in key areas of policing as outlined in the current Human Rights Monitoring Framework. The Committee has agreed that in the coming months it will review the current Monitoring Framework to ensure the most critical areas of police work are included and therefore overseen by the Policing Board.

I would like to thank the Policing Board's Human Rights Advisor, Alyson Kilpatrick BL, for producing this report and for her continued advice and guidance on human rights issues throughout the year.

Brian Rea

Acting Chairman

Northern Ireland Policing Board

HUMAN RIGHTS ANNUAL REPORT 2010

CONTENTS

Introduction	i
1. The PSNI Programme of Action	1
2. Training	2
3. Policy	14
4. Operations	19
5. Complaints, Discipline and the Code of Ethics	25
6. Public Order	50
7. Use of Force	56
8. Covert Policing	67
9. Victims	73
10. Treatment of Suspects	86
11. Human Rights Awareness in the PSNI	103
12. Policing with the Community	105
13. Privacy and Data Protection	108
14. Children and Young People	111
Appendix 1: 2010 Recommendations	115
Appendix 2: 2009 Recommendations: Implementation Record	116
Appendix 3: 2005 – 2009 Recommendations: Summary Implementation Record	121

INTRODUCTION

In the sixth Human Rights Annual Report I continue to monitor, on behalf of the Human Rights and Professional Standards Committee of the Northern Ireland Policing Board, the human rights compliance of the PSNI according to the previously agreed Human Rights Monitoring Framework. I examine the PSNI's work in 14 areas of policing and measure the PSNI's progress in implementing the recommendations made by previous Human Rights Annual Reports. This year, the Human Rights Annual Report continues to be the tool by which the Policing Board audits the procedural mechanics of PSNI's human rights compliance, for example, by scrutinising PSNI processes and procedures, training, policy writing and implementation, professional standards and the management, retention and disclosure of personal data. As well as monitoring the PSNI's response to recommendations made in previous Human Rights Annual Reports, there is a focused approach to issues of concern that arose over the course of the year. It is this refined approach which has enabled the Policing Board to undertake an increasing number of detailed thematic reviews of particular areas of policing.

The 2010 Human Rights Annual Report formally covers the period from 1 April 2009 to 31 March 2010 but references more recent developments where that has been possible. The Policing Board's approach to its human rights monitoring function by the increasing use of thematic reviews, highlights areas of policing which most concern the community and analyses the issues with a greater focus on qualitative assessment. The thematic approach has provided an opportunity for the community to assist the Policing Board, by providing the evidence base against which the performance and behaviour of the PSNI can be judged and assessed. I have been able to meet with and discuss the PSNI's work with those people most affected by it; members of the community who are policed by the PSNI and whom the PSNI serve.

As stakeholders have reminded us, it is the *implementation* of policy and the adherence to human rights principles in practical scenarios which is the true measure of human rights compliance. To date, I have completed three

thematic reviews: domestic abuse; police powers to stop and search and stop and question; and, policing with children and young people. Those reviews contained a total of 52 recommendations. I am currently working on a review of policing with and for members of the community who are lesbian, gay, bisexual or transgendered. That report will be published in 2011.¹

While the PSNI has maintained and built upon progress made in previous years, there remains work to be done. In particular, the thematic reviews conducted thus far have shown a disparity in some areas between the written policy and practice on the ground. Therefore, the Policing Board is persuaded that the more detailed scrutiny of police practice afforded by the thematic process should be enhanced. Ultimately, human rights compliance must be practical and effective. The Policing Board will continue to work with the PSNI to ensure that is the case. Furthermore, the number of complaints made by members of the public remain high, particularly complaints of incivility. The Policing Board is working with the PSNI to implement a complaint reduction strategy to improve the quality of encounters between police officers and members of the community. It is essential if the PSNI is to have an effective policing with the community strategy that all interactions are positive and officers not only respect members of the community but display that respect at all times.

As with previous years, I have been afforded access to all documentation I wished to review, have observed operational policing and training and have had the benefit of speaking with police officers, from the Senior Command Team to police constables delivering the service on the ground. I wish to thank the PSNI for its continued co-operation and for its commitment to addressing difficult issues with transparency and professionalism. For the process to work, it is incumbent on the PSNI to continue to provide the Policing Board with all the information required to perform its oversight

¹ The thematic reports on domestic abuse and policing with children and young people and the terms of reference for the thematic review on policing with and for members of the community who are lesbian, gay, bisexual and transgendered are available to download at www.nipolicingboard.org.uk. The thematic review on the police use of powers to stop and search and stop and question will be released shortly.

function. There has, at times, been delay in the provision of information to the Policing Board, which must be addressed. There has also been identified an occasional failure to communicate both with the Policing Board and with the community. The PSNI is aware, through its meetings at the Policing Board, of those concerns but should ensure that the service improves upon its communication strategy for the purpose of achieving community consent and co-operation.

In the 2009 Human Rights Annual Report, I made 20 new recommendations. The PSNI has implemented 15 of those recommendations in full and 3 recommendations in part, which were outstanding from the 2008 and 2009 Human Rights Annual Reports. Following feedback from the PSNI, 3 recommendations were withdrawn. Only 3 recommendations remain outstanding from the 2009 Human Rights Annual Report. That indicates a continuing commitment by PSNI to work with the Policing Board and other stakeholders to ensure that human rights principles are enshrined in everything the police service does. While there has no doubt been significant progress, the Policing Board is conscious that there is still a way to go and is committed to maintaining its level of scrutiny.

In this Human Rights Annual Report I make 5 new recommendations. The decreased number of recommendations compared to previous years reflects the real progress which the PSNI has made and continues to make. It also, however, reflects the fact that some areas of policing have been, or will be, dealt with separately by way of thematic review. Thematic reviews also contain recommendations which are integral to and as important as the recommendations made annually.

Ten years after the coming into force of the Human Rights Act, it is timely to reconsider the relationship of human rights compliance and policing and the purpose of scrutiny. The Northern Ireland Policing Board is under a duty to secure the maintenance of the police in Northern Ireland; to ensure that the police are effective and efficient; and to hold the Chief Constable to account. In carrying out those functions, the Policing Board is under a further duty to

monitor the performance of the police service in complying with the Human Rights Act 1998.² The Human Rights Act requires all public authorities, including the police, to act in a way which is compatible with the individual rights and freedoms contained within the European Convention on Human Rights.³ Respect for and protection of human rights should be a core function of policing.

As well as monitoring PSNI compliance in policy, training, investigations and operations, the Policing Board assesses the impact of a human-rights-based approach to decision-making on the ground. Human rights compliance is a continuing legal obligation. It requires regular monitoring, assessment, adjustment and reinvigoration. The creation of a human rights culture is not something which is achieved once and then endures without further attention. It is a continuous process which is an ongoing responsibility of the PSNI, the Policing Board and government.⁴ That is perhaps of even greater importance when resources are stretched and the security environment is challenging.

Respect for human rights by the PSNI is, in addition to being a moral, legal and ethical imperative, a practical requirement. A rights-based approach to policing has been shown to enhance public confidence and co-operation, integrate the police into the community and ensure the proper administration of justice and therefore more effectively hold offenders to account. Police officers are law enforcement officers and, as such, must know, respect and apply the law in all that they do. That must include the law of human rights.

The Human Rights Act has been criticised as a “villains’ charter” which puts the rights of criminals above the rights of the law-abiding. That is a misconception of the purpose and effect of the Act. The Human Rights Act does not value individual rights at the *expense* of the community; it provides a model for a functioning community within which certain rights can be limited. Some rights are treated as absolute such as the right not to be tortured or

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

³ By virtue of section 6 of the Human Rights Act 1998

⁴ *Report 19*, Office of the Oversight Commissioner, 19 May 2007.

subject to inhuman or degrading treatment and the right not to be enslaved. The rights of the individual are, *more often*, balanced against the rights of the community. However, importantly, any limit on the exercise of the rights must be lawful, necessary and proportionate. The Human Rights Act requires rights to be balanced. Human rights are derived from the inherent dignity and worth of the human person and they are universal, inalienable and equal. This means that they cannot be withdrawn from or surrendered by any person. The Convention provides a minimum standard of protection, a floor not a ceiling. Human rights exist to protect everyone from abuse of power, disrespect and neglect. The principles reflect that everyone is entitled to certain fundamental rights to enable them to flourish.

Every person has human rights in the same measure regardless of race, colour, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status. It is a fundamental principle that human rights are for all - not just for the virtuous. Neither does the Human Rights Act prioritise the rights of the community above the rights of police officers. Rather, human rights are a set of shared principles and values that define the relationship between the police and the community. Police officers are beneficiaries under the Act every bit as much as are members of the community. Human rights protect police in the line of duty and as citizens as they go about their non-police business. The profession of police officer is an honourable one that is central to the functioning of a democratic society. The application of human rights principles does not impede law enforcement or undermine the work of a police officer. It represents the very essence of what a police service is there to do. If, however, there is a common belief that the rights of the community or the rights of certain individuals within the community (including police officers) are not valued to the same extent that is a concern which must be addressed.

It has also been argued that the adoption of a human rights framework is not democratic because it deprives the state from implementing policy which the majority may want. While that may sometimes be the result, it is a fundamental principle that the majority should not dictate policy regardless of

its impact on a minority group. Instead, the Convention views a democratic society as one which is characterised by pluralism, tolerance and broad-mindedness: democracy values everyone equally even if the majority does not. The PSNI appear to recognise the fundamental importance of human rights compliance and the Policing Board will continue to work with them to ensure that a human rights culture not only develops further but embeds itself within all policy and practice and across all ranks and all departments of the police service. Based on this year's monitoring work, I am satisfied the PSNI is demonstrating its continuing commitment to achieve that. Despite significant progress, however, the work is not yet complete. Indeed, it is unlikely that human rights compliance is ever 'done'. While this Human Rights Annual Report has been refined and contains fewer recommendations it does not signal any reduction of the Policing Board's oversight. The Policing Board, through its Human Rights and Professional Standards Committee, will continue to tackle the difficult issues and to challenge the PSNI for any failings.

I would like to thank those Policing Board officials and Members who have provided me with support, advice and assistance in the preparation of this year's Human Rights Annual Report. I also wish to thank Dr. Peter Gilleece and Gillian Edge who have been invaluable to the compilation of this report and to the work carried out throughout the year. I am particularly grateful to them both for their expertise, judgment and good humour.

ALYSON KILPATRICK BL

1. THE PSNI PROGRAMME OF ACTION

It is an ongoing recommendation that the PSNI produces an annual Human Rights Programme of Action within three months of the publication of the Policing Board's Human Rights Annual Report.¹ The Human Rights Programme of Action details the PSNI response to the recommendations contained in the Human Rights Annual Report and provides an update on the progress PSNI has made in implementing any outstanding recommendations from previous years.

In complying with that ongoing recommendation PSNI produced a Human Rights Programme of Action 2009-2010 in response to the Policing Board's 2009 Human Rights Annual Report. As with the Programme of Action from previous years, the 2009-2010 Programme has been uploaded onto the PSNI website.

This year PSNI has also provided me with quarterly updates on the progress it has made in implementing outstanding Human Rights Annual Report recommendations. I am grateful to PSNI for these updates which I have found extremely helpful. I look forward to receiving the Human Rights Programme of Action 2010-2011 in response to this Human Rights Annual Report in due course.

¹ *Human Rights Annual Report*, Northern Ireland Policing Board, 2005, 2006, 2007 and 2008, Recommendation 1. Rather than make the same recommendation again in the 2009 Human Rights Annual Report, it was emphasised that the recommendation places an ongoing obligation on the PSNI to produce a Human Rights Programme of Action annually.

2. TRAINING

Effective training in human rights principles and practice is fundamental to any police service committed to compliance with the Human Rights Act 1998. All police officers and police staff should be trained, and updated as required, in the fundamental principles and standards of human rights and the practical implications for policing. The human rights dimension should be integrated into every module of police training.¹ To that end, PSNI has mechanisms in place to ensure that all training courses delivered by the PSNI, both at the Police College and in Districts, integrate relevant human rights standards and principles. The Human Rights and Professional Standards Committee (the Committee) has performed a robust oversight function in respect of training with 28 training recommendations having been made in the Human Rights Annual Reports between 2005 and 2009. PSNI has, generally, embraced those recommendations and has worked closely with the Policing Board's Human Rights Advisors over the years.

Whilst scrutiny of the detail of *individual* training sessions and lesson plans from a human rights perspective should not be diluted, it is now appropriate that primary responsibility for the development and delivery of training should return to the PSNI, with the Committee maintaining an oversight function through the process of thematic reviews. Mindful of the continuing obligation of the PSNI to review and refresh training where necessary the Committee has and will continue to address training issues in each thematic review which is undertaken. The Committee will also monitor the PSNI's implementation of recommendations made by other stakeholders, in particular whether lessons are learned and thereafter put into practice. The Committee is confident that the PSNI is well placed to deliver human rights training and has, through the appointment of a skilled and experienced Human Rights Training Adviser, displayed its ongoing commitment to ensuring that training is as good as it can be and that it enshrines human rights principles in all areas of policing.

¹ *A New Beginning: Policing in Northern Ireland (the Patten Report)*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, Recommendation 4.

PSNI HUMAN RIGHTS TRAINING ADVISER

The PSNI appointed the current Human Rights Training Adviser in July 2009. The Human Rights Training Adviser has specialised human rights knowledge and is responsible for auditing and contributing to training, education and development within the PSNI in relation to human rights. The Human Rights Training Adviser has taken on responsibility for implementing a number of the recommendations that were made in the 2009 Human Rights Annual Report. I have met with her on a number of occasions throughout the year to discuss training issues. PSNI has engaged proactively with the Committee on training issues and has demonstrated an impressive dedication to achieving excellence.

Already, the Human Rights Training Adviser has undertaken a vast amount of work. She has reviewed a significant amount of course documentation and observed many lessons that have been delivered throughout PSNI Districts, Departments and the Police College, offering feedback to the Trainers on their integration of human rights principles into lessons. She reported to the Committee, as per Recommendation 2 and Recommendation 5 of the 2009 Human Rights Annual Report, providing an in-depth analysis of PSNI training materials and the extent to which they integrate human rights principles.² She has developed and delivered a human rights training course to new recruits and refresher courses to Trainers and Training Design Specialists. She has, in conjunction with the PSNI Human Rights Legal Adviser, commenced an audit of PSNI use of force policy and training in relation to children and young people.³ She maintains regular contact with internal and external stakeholders in order to identify priorities for human rights in police training and operations. Over the course of the next 12 months she intends to review and update the

² *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 2 and Recommendation 5, both of which are considered to now be implemented. The PSNI Human Rights Training Adviser's report to the Committee also implements Recommendation 3 of the *Human Rights Annual Report*, Northern Ireland Policing Board, 2008.

³ In response to Recommendation 12 of the *Human Rights Annual Report*, Northern Ireland Policing Board, 2009.

human rights material available on the PSNI intranet.⁴ That reflects the purpose and intent of recommendations made in successive Human Rights Annual Reports and the continuing recommendation of the Independent Commission on the Future of Policing (the Patten Commission) at Recommendation 4.⁵

In the 2009 Human Rights Annual Report I noted, with regret, that PSNI no longer had a Human Rights Trainer in position. That post was complementary to the role of the Human Rights Training Adviser and was filled previously by a committed and effective Trainer who brought considerable operational experience to the post. It was therefore recommended that the PSNI should appoint a PSNI Human Rights Trainer to work within the Police College and in partnership with the Human Rights Training Adviser. In the event that the PSNI did not appoint a PSNI Trainer, PSNI was asked to provide the Committee with its alternative proposal for ensuring operational input into training and for the provision of support to the Human Rights Training Adviser.⁶

In response to that recommendation PSNI has advised that police and staff restructuring mean that it is not possible to appoint a Human Rights Trainer. However, PSNI has advised that a structure has been put in place to ensure operational input and support for the Human Rights Training Adviser. This involves the Human Rights Training Adviser attending quarterly meetings with Department Heads during which training strategy and priorities are determined. She also attends regular meetings with Training Design Specialists and District Trainers. During those meetings any training issues identified by the Human Rights Training Adviser, or highlighted as a result of external reports, for example by the Policing Board or the Office of the Police Ombudsman, are discussed and addressed. The meetings also provide a forum for Trainers to raise any operational issues that they may have. I have attended a number of those meetings and I have spoken to the Human Rights

⁴ An internal police information source known as 'Policenet'.

⁵ Footnote 1 of this chapter refers.

⁶ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 1.

Training Adviser about the operational input and support she is provided with. Provided PSNI continues to involve the Human Rights Training Adviser in training meetings I am satisfied that Recommendation 1 of the 2009 Human Rights Annual Report has been implemented.

I commented in the 2009 Human Rights Annual Report that the appointment of the current Human Rights Training Adviser was a positive development and that it was important she was provided with the resources, authority and support required to carry out her functions, which are of central importance to PSNI's delivery of appropriate human rights training and thereafter the delivery of a human rights compliant service. Having worked closely with the Human Rights Training Adviser over the course of this year that message remains true. I am grateful to her for the transparency and willingness with which she has engaged with me during the year. I am confident that she is well placed to continue driving forward human rights training within the PSNI.

Audit of training materials

A recurring theme over the past number of years, referenced in the past three Human Rights Annual Reports, has been the failure by PSNI to provide the Policing Board with sufficient evidence that it has adopted and implemented the recommendations made in a review carried out in 2007 by PSNI's then Human Rights Training Adviser.⁷ That is not to say that the recommendations were not implemented but simply that, if they had been, the Policing Board had received no evidence of it. It was therefore recommended in the 2008 Human Rights Annual Report that PSNI provide that evidence to the Committee.⁸ It was further recommended in the 2009 Human Rights Annual Report that the Human Rights Training Adviser should report to the Committee with her analysis of the training materials and advise the

⁷ In response to a number of concerns raised in the 2007 Human Rights Annual Report, the then PSNI Human Rights Training Adviser carried out a review of training and made ten recommendations to remedy deficiencies she had identified in training materials. Trainers were instructed to make the amendments and submit their revised materials to the Police College Quality Assurance Unit for a final review. That review was completed in late 2007.

⁸ *Human Rights Annual Report*, Northern Ireland Policing Board, 2008, Recommendation 3.

Committee whether she is satisfied that existing training materials are audited on a regular basis and that all new courses have human rights principles adequately integrated within them.⁹

In accepting both the 2008 recommendation and the 2009 recommendation, the PSNI Human Rights Training Adviser has carried out a review of training materials. She has also attended a significant number of lessons to observe how the lessons are delivered. She has now provided the Committee with an analysis report in which she has outlined a number of basic structures that are in place to monitor training. These structures include paper-based monitoring systems, face-to-face observations and feedback, training and advice for Trainers, frequent checks with external stakeholders, and internal structured conversations to set priorities and strategies. I therefore consider Recommendation 3 of the 2008 Human Rights Annual Report and Recommendation 2 of the 2009 Human Rights Annual Report to have been implemented.

THE CODE OF ETHICS AS A TRAINING TOOL

It has come to my attention that many officers within the PSNI, including Trainers, view the Code of Ethics as little more than a disciplinary code. Whilst the Code of Ethics does prescribe standards of conduct and practice for police officers, against which they are measured and held to account, the Code is also intended to make police officers aware of the rights and obligations arising from the European Convention on Human Rights.¹⁰ The Code of Ethics is examined and explained in more detail in chapter 5 of this Human Rights Annual Report.

In terms of training, the PSNI should ensure that Trainers consistently incorporate the relevant Articles of the Code into lesson plans in order that Trainers can incorporate it into lesson delivery. Trainers should have an in-

⁹ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 2.

¹⁰ Section 52 (1) Police (Northern Ireland) Act 2000.

depth understanding of the Code and appreciate it is not just a disciplinary tool but that it is also an important human rights document. I therefore make the recommendation that PSNI provides the Committee with an assurance that all persons tasked with training responsibilities have read and understand the Code of Ethics and its incorporation of human rights principles since it was revised in 2008. Thereafter, Trainers should ensure that relevant Articles of the Code are incorporated into training materials and training delivery.

Recommendation 1

PSNI should provide the Human Rights and Professional Standards Committee with an assurance, within six months of the publication of this Human Rights Annual Report, that all persons tasked with training responsibilities have read and understand the Code of Ethics 2008 and its incorporation of relevant human rights principles. Thereafter, PSNI Trainers should ensure that the relevant articles of the Code of Ethics are incorporated into lessons.

It is not anticipated that this recommendation will be onerous or increase the time spent in delivering lessons: it is intended to ensure that all Trainers are aware that the Code of Ethics is a useful tool available to them when preparing lessons and, more importantly, by incorporating the Code into lessons it should ensure that relevant human rights principles are integrated within lessons.

One way the recommendation could be implemented would be for PSNI to circulate a copy of the Code of Ethics 2008 amongst relevant persons together with an accompanying memorandum as to the purposes of the Code and the utility it can have when delivering training. The relevant persons should then confirm they have read and understood the Code and the explanatory memorandum. However, presuming PSNI accept the recommendation, the method by which it is implemented is a decision for the PSNI.

Training is a skill: it is necessarily interactive. Therefore, it is not suggested that course materials are to be read out to trainees. Trainers create their own presentation notes targeted for their trainees, which are based upon the practical considerations of policing in practice. It is not possible to assess whether training is delivering practical results without also assessing the outcomes. The effect of training is analysed by the Policing Board through its monitoring framework, which is reported upon throughout the Human Rights Annual Report. Additionally, however, I have also observed a number of training sessions. What I observed, for the most part, was extremely impressive. Trainers responded to questions informed by operational experience with a real understanding not only of the relevant Articles of the European Convention on Human Rights (ECHR) but their practical application. If training is to produce the desired impact on behaviour and professional performance, it must be clearly supported by, and linked to, PSNI policy and the Code of Ethics. PSNI policy and the Code of Ethics both reflect human rights imperatives, which must also be taught in the classroom.

Training, however, cannot be judged simply by reading training materials. Every effort must be made to ensure that material presented to trainees is relevant to their work, and that such relevance is made clear where it is not self-evident. What I observed during the relevant period was training which was built upon and developed beyond the materials themselves. Practical scenarios were used to make the lessons real and immediate. The message that compliance with human rights principles is not only mandatory under the law but that it improved operational policing, was conveyed by many Trainers.¹¹

Human rights compliance requires more than an academic knowledge of the ECHR and other international human rights instruments (although that knowledge is required by Trainers). Police officers must understand what human rights compliance means *in practice*. They must understand that their very existence is for the promotion and protection of the human rights of all

¹¹ The Committee proposes to address that issue further.

members of the community – it is the essence of what the police do. To be effective, training should be aimed at improving knowledge, skills *and* attitudes in order to contribute to appropriate professional behaviour. Police officers should understand that they also have rights when on duty. An instinctive understanding of how those rights are balanced during policing operations is essential. The review of training by the Human Rights Training Adviser, together with the work undertaken by police Trainers and the PSNI Human Rights Legal Adviser, is directed at achieving that.

DISTRICT TRAINING

District Commanders are responsible for identifying training needs within their District and, where a need is identified, must ensure that the relevant officers receive the appropriate training. Over the years it has been difficult for the Committee to audit the adequacy of such training against human rights standards as the training courses delivered differ from District to District, as do the training materials, even where the same course is being taught. Recommendation 3 of the 2009 Human Rights Annual Report therefore stated that the PSNI should provide me with a schedule of all new District training courses devised since April 2008, together with course outlines and materials.¹² That recommendation effectively restated Recommendation 5 of the 2008 Human Rights Annual Report.¹³

I have since met with the PSNI Human Rights Training Adviser to discuss those recommendations. We agreed that it would be unnecessary to assemble all of the material required by the recommendations as it involves vast quantities of information that neither I, the Human Rights and Professional Standards Committee nor the Policing Board would be able to review effectively. An alternative process was agreed whereby I requested, and was provided with, samples of specific training materials from across all Districts. I am grateful to the Human Rights Training Adviser and her PSNI

¹² *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 3.

¹³ *Human Rights Annual Report*, Northern Ireland Policing Board, 2008, Recommendation 5.

colleagues for coordinating that process and for providing me with the materials. I have reviewed a selection of training materials (and will continue to do so) which appear to be comprehensive, practical and relevant. They each have been screened for integration of human rights principles and are kept up to date with any amendments to the law or new practice guidance.

District Trainers have access to a site on the PSNI intranet which contains Police College lesson plans and materials, thus they may draw information from those documents when planning and preparing for lessons. A Professional Development Unit (PDU) exists within each PSNI District to provide a co-ordinated approach to professional development. PDU Managers in each District meet regularly with the Police College. That provides an important link that ensures District lesson plans maintain consistency with content, procedures and standards established in the Police College. The PSNI Human Rights Training Adviser attends the meetings with the Police College and PDU Managers and she has invited me to attend a number of meetings. She maintains regular contact with the PDU Managers, District Trainers and Training Design Specialists. The Human Rights Training Adviser has attended a large number of District training sessions as an observer and has reviewed course documentation.

As it is the Human Rights Training Adviser's role to audit and contribute to training, education and development throughout the PSNI, including at District level, I do not intend in the upcoming year to carry out the audit of all District training materials. I therefore withdraw Recommendation 3 of the 2009 Human Rights Annual Report and Recommendation 5 of the 2008 Human Rights Annual Report. Instead, I will continue to carry out a dip-sampling exercise of District training material, attend training sessions and training meetings and work with PSNI on an on-going basis to ensure that human rights training continues to be delivered in a way which guarantees (as best it can) that police practice complies with the Human Rights Act 1998.

HUMAN RIGHTS TRAINING FOR TRAINERS

The appointment of the Human Rights Training Adviser was demonstrative of PSNI's commitment to improving human rights awareness within the PSNI. By working with Trainers to ensure that they can confidently and competently integrate relevant human rights principles into their lessons, the work of the Human Rights Training Adviser has had a ripple effect throughout the police service. Until the appointment of the current Human Rights Training Adviser, human rights refresher training for Trainers had not been delivered for some time. This was rectified during 2010 when the Human Rights Training Adviser designed and delivered two bespoke human rights training sessions:

- Refresher human rights training for Trainers

This course aimed to refresh key messages about human rights and policing, including: human rights in an international context; human rights in police training since the Patten Report; human rights and professional policing; and human rights and policing with the community.

- Human rights in training design

This Course aimed: to consider the knowledge, skills and attitudes needed for effective human rights training; identify key principles for integrating human rights into lesson design so there is greater consistency across police training; identify the ways in which the theme of human rights is related to the other core themes for training;¹⁴ consider a process for integrating practical human rights principles that are relevant to the police activity being trained; identify key resources; and address some patterns that the Human Rights Training Adviser identified when reviewing course documentation.

¹⁴ PSNI requires that four core themes are incorporated into all police training: human rights; equality and diversity; health and safety; and policing with the community.

The sessions were open to all Training Design Specialists and Police College or District Trainers who wished to attend. The training was also available for training managers and external consultants.

During 2010 I attended sessions on human rights in training design and refresher human rights training. The content and delivery of both lessons was excellent. It seems to me that all Trainers and Training Design Specialists could benefit from attending and I therefore recommend that the Human Rights Training Adviser continues to deliver bespoke human rights refresher training and human rights in training design on an annual basis. Both courses should continue to be made available to all officers involved in delivering or designing training.

Recommendation 2

The PSNI Human Rights Training Adviser should continue to deliver bespoke human rights refresher training and human rights in training design on an annual basis. Both courses should continue to be made available to all officers involved in delivering or designing training.

PERSONAL SAFETY PROGRAMMES

It was recommended in the 2009 Human Rights Annual Report that the PSNI internal evaluation team should evaluate the integration of human rights principles in the practical aspects of PSNI personal safety training courses.¹⁵ That internal evaluation has not yet been carried out. I am satisfied that the reason for this is not PSNI reluctance to carry out the evaluation but is due to practical impediments. I have spoken to the PSNI Human Rights Legal Adviser and Human Rights Training Adviser who have advised me that it was not possible with the resources available in the relevant period to carry out the evaluation and I intend in the upcoming year to consider further the

¹⁵ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 4.

practicality and benefit of conducting internal evaluations.¹⁶ In the meantime, I consider Recommendation 4 of the 2009 Human Rights Annual Report to remain outstanding. It should be noted that an internal Personal Safety Programme Practitioner's Forum exists. It may be that this is a sufficient mechanism for monitoring and standardising all aspects of the personal safety training courses, including the way in which human rights principles are integrated into the practical aspects of the courses. I will report further next year.

FIREARMS TRAINING

It is a continuing obligation that the PSNI develop and revise firearm's refresher training.¹⁷ Training sessions observed during 2010 were current, comprehensive and appropriately reflective of human rights principles. The training is practical and relevant and is aimed at ensuring all officers are aware of the relevant standards and their practical implication. PSNI firearms' policy and practice are considered in detail in chapter 7 of this Human Rights Annual Report.

¹⁶ This will also address part implemented Recommendation 10 of the 2008 Human Rights Annual Report which required the internal evaluation team to conduct no less than 45 internal evaluations of police training within a 12 month period.

¹⁷ *Human Rights Annual Report*, Northern Ireland Policing Board, 2008, Recommendation 7.

3. POLICY

PSNI policy is contained within a number of Policy Directives¹ and Service Procedures². Those documents set out the legal framework and boundaries within which the police must carry out their duties. Policy provides all police officers and staff with a direction for decision-making thus, provided the policy is put into practice, ensuring the achievement of minimum standards throughout the organisation.

Ultimately police officers are bound by the law, not policy. However, policy is often the touchstone for frontline police officers in understanding what their obligations under the law are. Policy does not simply tell police officers what they ought not to do, it is a positive statement of what officers can do within the confines of the law and sets out how they can uphold and vindicate the human rights of all persons, including their own human rights and those of their colleagues. As such, policy should instil confidence in officers when carrying out their duties and exercising their powers.

Along with the PSNI Code of Ethics, policy should be the first point of reference for Trainers tasked with designing or delivering training. Where policy is published, it makes an unambiguous public statement of the high standards PSNI expects its officers to adhere to in relation to specific areas of police work.³ PSNI already has a catalogue of Policy Directives and Service Procedures that are detailed and informative. PSNI should maintain and build upon these. Policy should not be diminished. The practical application of policy is as important as the content of policy documents. As stated previously, the Committee will continue to monitor whether and to what extent policy is reflected in practice.

¹ PSNI Policy Directives are the primary corporate format for the dissemination of PSNI policy. A Policy Directive is a formal strategic document that provides a framework for procedure and guidance.

² PSNI Service Procedures are the secondary corporate format for the dissemination of PSNI policy. They expand on the principles and standards laid out in Policy Directives, providing clear instructions on particular aspects of the implementation of the policy.

³ The PSNI Publication Scheme requires policy to be routinely published where possible.

PSNI REVIEW OF POLICY

PSNI adopts a risk-based approach to determine when a policy should be reviewed. That approach considers the impact of the policy on human rights, public confidence and the reputation of the organisation. Those with a high human rights impact, for example concerning the use of force, should be reviewed annually whilst those concerning internal or administrative matters may be reviewed every 2 to 3 years. In any event, PSNI policy requires those responsible for reviewing policy to ensure that the maximum period between reviews is no more than 3 years. Furthermore, PSNI policy requires that where legislation, legal action or an oversight recommendation highlights a discrepancy in policy before the time specified for review, the review date must be brought forward.⁴ The PSNI has confirmed that recommendations made by the Policing Board may also require a review of policy to be brought forward.

All Policy Directives and Service Procedures that are overdue for review by more than one year are monitored by the PSNI Overview system. A report on Overview which flags up any priority items is considered by the PSNI Organisational and Improvement Committee on a quarterly basis. The Organisational and Improvement Committee can therefore hold Heads of Department to account for the non-completion of policy reviews.

In the 2009 Human Rights Annual Report it was recommended that PSNI should provide the Policing Board with details of all Policy Directives and Service Procedures that are overdue for review by more than one year and include within that briefing the reason for the delay and the date by which the review is to be completed.⁵ The intention behind that recommendation was to

⁴ *Policy Directives and Service Procedures*, PSNI Service Procedure SP 32/2009, most recently issued 16 October 2009. This Service Procedure provides a corporate approach and guidance for those involved in developing and reviewing Policy Directives and Service Procedures. PSNI is in the process of conducting a review of it. The overarching purpose of the review is to streamline and improve the process for development of policy within the PSNI.

⁵ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 6.

enable the Policing Board to monitor the effectiveness of the Overview system in respect of ensuring Policy Directives and Service Procedures are regularly reviewed. The recommendation was subsequently rejected by the PSNI on the grounds that "policies that are overdue by one year or more are already reported to [the Policing Board's] Resource & Improvement Committee on a regular basis as part of the 'Overview' report."⁶

The Overview report to which PSNI referred was, for 2009/2010, attached to a Continuous Improvement Summary Report which was provided to the Policing Board's Resource and Improvement Committee. However, the Overview report for 2009/2010 did not contain the specific details of overdue Policy Directives and Service Procedures as required by Recommendation 6 of the 2009 Human Rights Annual Report. Furthermore, from 2010/2011 onwards the Resource and Improvement Committee will no longer receive an Overview report with the Continuous Improvement Summary Report. Therefore, evidence is still required to satisfy the Policing Board that Overview provides a sufficient safeguard to ensuring that Policy Directives and Service Procedures are reviewed regularly.

I have met with staff from PSNI's Corporate Development Branch to discuss this issue and to consider how the purpose of Recommendation 6 may be achieved. I accept that the oversight of Overview by PSNI Organisational and Improvement Committee should, in theory, provide that Policy Directives and Service Procedures that are placed on Overview are reviewed as soon as possible. In order to satisfy myself that this is the case I shall be reviewing the Overview report sent to the Organisational and Improvement Committee, together with minutes from the meetings, over the course of the next year. I have also been granted access to the Overview system through a remote server located at the Policing Board. If an adequate system is in place, I will withdraw Recommendation 6 of the 2009 Human Rights Annual Report. I will report further to the Human Rights and Professional Standards Committee and publicly in the 2011 Human Rights Annual Report.

⁶ *Human Rights Programme of Action*, PSNI, 2009-2010, page 5.

In order to competently complete a review of policy, the police officer or member of staff responsible for conducting the review should have attended the Policy Writers' Workshop. The Workshop provides guidance on drafting methodology, including how to incorporate relevant human rights and equality principles into policy documents. PSNI accepted a recommendation in the 2008 Human Rights Annual Report that the Workshop was made mandatory for all police officers and staff who develop, draft or review Policy Directives or Service Procedures.⁷

PSNI POLICY ON RETENTION OF DNA

In 2008, the Grand Chamber of the European Court of Human Rights (ECtHR) held that the blanket policy in England and Wales, which is mirrored in Northern Ireland, of retaining indefinitely the DNA samples, profiles and fingerprints of all people who have been arrested but not convicted of an offence is in breach of the Article 8 ECHR right to respect for private and family life.⁸ In the course of giving its judgment the ECtHR made reference to the policy adopted in Scotland as an example of what *might* be considered a lawful policy. In Scotland, DNA samples and profiles are destroyed if a suspect is not proceeded against, is acquitted or is given an absolute discharge save in those cases where the person is arrested on suspicion of certain serious sexual and violent offences.

The PSNI is not obliged *at law* to retain DNA material and fingerprints but is *entitled* to do so by an amendment to the Police and Criminal Evidence (NI) Order 1989.⁹ PSNI is at liberty to adopt a policy that is in keeping with the ECtHR's judgment and so, for example, PSNI could adopt the model used in Scotland. It was recommended in last year's Human Rights Annual Report that the PSNI review its policy in respect of applications to have DNA material, profiles and fingerprints removed from the database. The review was to make reference to Article 8 ECHR and include expressly, consideration of the rights

⁷ *Human Rights Annual Report*, Northern Ireland Policing Board, 2008, Recommendation 14.

⁸ *S and Marper v The UK*, ECtHR, (App Nos. 30562/04 and 30566/04).

⁹ Article 64(1A) Police and Criminal Evidence (Northern Ireland) Order 1989.

of children and young people. The PSNI was to report to the Human Rights and Professional Standards Committee within three months of the publication of the 2009 Human Rights Annual Report, setting out its findings as to whether, and if so why, the policy is necessary and proportionate.¹⁰

PSNI has not provided that report but instead has stated “PSNI continues to work with colleagues in Great Britain and Government to ensure that our policy on DNA material, profiles and fingerprints meets ECHR standards and complies with UK legislation. This is a current and ongoing issue for all United Kingdom Police Services.”¹¹

Whilst the Northern Ireland Assembly is actively working to introduce a new statutory framework for the retention and destruction of DNA samples, profiles and fingerprints of arrested persons, which I hope will be in keeping with the ECtHR’s judgment, it is disappointing that the PSNI has not engaged directly on the issue. The PSNI polices within the jurisdiction of Northern Ireland and is an autonomous police service and public authority for the purposes of the Human Rights Act 1998. The PSNI does not appear to have had regard to its responsibility to consider the exercise of its powers and the exercise of its discretion or, if it has given the issue due consideration, it has failed to explain that consideration to the Policing Board. Accordingly, Recommendation 7 remains outstanding. However, given the imminent review to be carried out by the Department of Justice which will consider the strategy to be applied to Northern Ireland I consider it appropriate to withdraw Recommendation 7 but I will keep the matter under review and report further once the proposals are finalised.

¹⁰ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 7.

¹¹ *Human Rights Programme of Action*, PSNI, 2009-2010, page 6.

4. OPERATIONS

The monitoring of operations is critical to the Policing Board's overall assessment of PSNI compliance with the Human Rights Act 1998. It is during operations that the real challenges faced by the police in balancing competing interests are most visibly evidenced. The Policing Board's monitoring role includes reviewing guidance issued to operational officers to ensure that the planning and execution of operations is human rights compliant; studying the working arrangements put in place by the PSNI to ensure that its operations are human rights compliant; and examining the conduct of operations (including whether officers follow PSNI guidelines) and the impact the operation has on the community.

Rather than monitor PSNI operations in the abstract, this year the monitoring of operations is considered in context in relevant chapters and in thematic reviews. For example, chapter 6 considers the policing of parades, chapter 7 considers the use of force and chapter 10 considers the treatment of suspects. The Human Rights and Professional Standards Committee (the Committee), on behalf of the Policing Board, has conducted a number of thematic reviews during the course of the year. The purpose of the thematic review is to give more anxious scrutiny to those issues of concern to the community and to hold the PSNI to account for any failure in human rights compliance. By way of example, the use by PSNI of powers to stop and search has been considered in detail in a thematic review.¹ Operations targeting anti-social behaviour and policing with children and young people are considered in a dedicated children and young people thematic review.² It is the monitoring of PSNI policy in practice which provides the Committee with the ability to scrutinise whether human rights compliance truly is practical and effective. It is the experience of those members of the community who are policed by the PSNI which can inform such an assessment.

¹ It is expected that this thematic review will be published in early 2011 and will be available to view through the Policing Board's website, www.nipolicingboard.org.uk, or a hard copy will be available from the Policing Board upon request.

² This thematic review was published in January 2011 and is available to view through the Policing Board's website, www.nipolicingboard.org.uk, or a hard copy is available from the Policing Board upon request.

POLICE POWER TO STOP, SEARCH AND QUESTION

The Policing Board's thematic review on police powers to stop, search and question was undertaken following much concern and public debate about police use of powers to stop and search without suspicion under section 44 of the Terrorism Act 2000.³ The thematic review, which will be published during 2011, contains a detailed analysis of the legal framework within which the powers are used, findings in relation to the PSNI use of the powers to date and recommendations for the future, taking cognisance of the ongoing Home Office review of anti-terrorism legislation.⁴ The review also considers PSNI use of powers contained within the Justice and Security (Northern Ireland) Act 2007.

To put the findings and recommendations fully in context, the thematic review must be read as a whole. Throughout the review, reference is made to good practice guidance and to formal recommendations. The Committee expects the PSNI to consider both the guidance and the recommendations. The Committee will, working with the PSNI and its key stakeholders, keep under review the PSNI use of stop, search and question powers.

It was recommended in the 2009 Human Rights Annual Report that PSNI analyse its stop, search and question powers, considering in particular

³ Section 44 of the Terrorism Act 2000 allows a police officer to stop and search vehicles, drivers, passengers and pedestrians for the purpose of searching for articles of a kind which could be used in connection with terrorism. The power to stop and search under section 44 flows from an authorisation granted by an officer of at least the rank of assistant chief constable on the grounds that such an authorisation is expedient for the prevention of acts of terrorism. An authorisation under section 44 takes immediate effect, but must be confirmed by the Secretary of State within 48 hours. If not so confirmed the authorisation expires. On 8 July 2010 the Home Secretary announced that authorisations would not be confirmed unless they were 'necessary' and she made clear that practice (if not the statute) will have to reflect that. Accordingly, the current position (as at January 2011) is that an authorisation may only be given by the PSNI if it is necessary for the prevention of terrorism.

⁴ Announced by the Home Secretary on 13 July 2010, a review of key counter-terrorism and security powers is underway. Section 44 of the Terrorism Act 2000 is being considered as part of the review in light of the Home Secretary's announcement on 8 July 2010: see footnote 3 of this chapter. Lord Ken Macdonald QC is providing expert independent oversight of the review.

whether the powers used are justified, necessary and proportionate.⁵ Given that the thematic review represented a collaborative process between the Policing Board and the PSNI, during which PSNI provided the requisite analysis, I consider the recommendation in last year's Human Rights Annual Report to be implemented.

PSNI continues to provide the Committee with quarterly statistics on police use of powers to stop, search and question under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007. I am pleased to report that from April 2010 onwards the PSNI has been capturing data on the ethnicity of persons stopped, searched and questioned according to the 'eleven plus one' categories of ethnic group detailed in the 2001 Northern Ireland census.⁶ Prior to this ethnicity was presented according to only six categories of ethnic group.⁷

Whilst the PSNI publishes unrestricted versions of its quarterly stop, search and question statistics on its website,⁸ the statistics published for the first quarter of 2010/2011 are less detailed than in previous years: they exclude any information on ethnicity and do not include information on use of specific powers by Area and District. This is due to changes in statistical disclosure rules. However, the Committee continues to receive and monitor this information by way of a restricted statistical report. PSNI has agreed to include as much ethnicity, Area and District information as it can, within the bounds of the disclosure rules, in a year end stop and search report for 2010/2011. This will be published on the PSNI's website. I will report further on this next year.

⁵ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 9.

⁶ White; Irish Traveller; Mixed; Indian; Pakistani; Bangladeshi; Other Asian; Black Caribbean; Black African; Other Black; Chinese; and Other Ethnic Group.

⁷ White; Chinese; Indian Sub-Continent; Irish Traveller; Black; and Other.

⁸ www.psni.police.uk

POLICY AND DEPLOYMENT LOGS

The policy and deployment log of Coleraine District Command Unit (DCU) explicitly requires that human rights considerations are articulated when setting out the aims and objectives of an operation. This was commended in previous Human Rights Annual Reports and a recommendation was made in 2007 that PSNI consider adopting the Coleraine log as its standard operational planning log.⁹ PSNI rejected that recommendation as “unnecessary bureaucracy and a duplication of the processes currently in place within PSNI”.¹⁰ It was therefore recommended in the 2009 Human Rights Annual Report that the PSNI should provide me with an explanation of the processes currently in place, outlining how they secure the protection of human rights and, by cross reference, indicating how they adopt, in substance, the best practice contained within the Coleraine DCU policy and planning log.¹¹

In response to that recommendation PSNI stated, in its Human Rights Programme of Action for 2009/2010 that the “current system provides a more in depth audit of Police decision making than that provided by the Coleraine document in that staff are asked to consider Articles 2 - 14 ECHR.”¹² I subsequently requested that PSNI, as per Recommendation 8 of the 2009 Human Rights Annual Report, provide me with a more detailed explanation of the processes currently in place service wide. I have since been provided with a copy of an internal PSNI memorandum summarising the findings from an exercise whereby the respective planning forms that officers must complete prior to conducting any operation were compared.¹³ Throughout completion of the exercise, advice was sought from the PSNI Human Rights Legal Advisor.

⁹ *Human Rights Annual Report*, Northern Ireland Policing Board, 2007, Recommendation 10.

¹⁰ *PSNI Human Rights Programme of Action*, PSNI, 2008 – 2009, page 19.

¹¹ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 8.

¹² *PSNI Human Rights Programme of Action*, PSNI, 2009 - 2010, page 6.

¹³ PSNI Memorandum, Operational Support Department, Emergency Planning Branch, 3 July 2010.

At the 'intention' section of the Coleraine form four intentions are specifically defined: to uphold and balance the rights of all; to provide adequate resources to deal safely with the event; to facilitate peaceful protest against the event; and to deal effectively with any threat to the event. The current Service form also contains an 'intention' section, with those completing it requested to "clearly define the aims and intentions of the operation."¹⁴ Officers are not prompted to refer to the four specific intentions as in the Coleraine form, but the memorandum summarising the comparison exercise states that "it would be reasonable to expect that any competent completion would include a reference to the Human Rights Act either directly or indirectly via reference to the applicable Gold strategy."¹⁵ PSNI goes on to state that there "may be some benefit when the form is next reviewed in considering adding text to the Service form that reflect the requirements of the Human Rights Act along the following lines: 'INTENTION – This should include the clearly defined aims and intentions of the operation *which should include an indication of the mechanisms to be used to uphold and balance the Human Rights of all*'. In addition in terms of the policy document as a whole it may be useful to adopt the legal framework section of the Coleraine Form into the Service Form as a final checklist, confirming as it does that the authors believe all legislative considerations have been made as required."¹⁶

Unlike the Coleraine DCU form, the Service form specifically states that officers are required to consider the PSNI Code of Ethics. The Code of Ethics encompasses a broader range of human rights standards than just the Human Rights Act. The memorandum summarising the comparison exercise concludes that both forms "deliver the same objectives when competently completed", but that from a planner's perspective "the Service form is the more comprehensive document." It states "the Service form, competently completed, should ensure relevant engagement with the Human Rights Act and considerations as it stands, and through a process which actively requires

¹⁴ PSNI Service Form 11/14.

¹⁵ PSNI Memorandum, Operational Support Department, Emergency Planning Branch, 3 July 2010.

¹⁶ *Ibid.*

those completing it to think clearly about their intentions rather than simply take cognisance of a pre-prepared checklist.”¹⁷

In those circumstances, I am satisfied that Recommendation 8 of the 2009 Human Rights Annual Report has been implemented in full and that PSNI has given sufficient consideration to the contents of the Service policy and planning log. The findings from the comparison exercise will act as a useful point of reference for the next review. As part of the Policing Board’s ongoing monitoring work I will, on behalf of the Committee, continue to monitor guidance and documentation issued to operational officers to ensure that the planning and execution of operations is human rights compliant

¹⁷ *Ibid.*

5. COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS

A central component of human rights compliance is the monitoring of reactions to violations of rights if they do occur. In Northern Ireland there are institutional safeguards in place, which seek to ensure that any violations are identified and dealt with appropriately. Accountability mechanisms, both external and internal, aim to secure adherence to human rights in practice. Those processes *themselves* need to be transparent and accessible to the community. The way in which complaints are handled is critical to achieving a better, more compliant, police service. The transparency and accountability which flows from the combined work of the Police Ombudsman's office, the Policing Board and the PSNI has facilitated the community and the police to move towards greater mutual empathy and respect. It has strengthened both the community and the police. We are now moving from a negative relationship between the police and some members of the community to one where the police *protect* the community and the community *helps* the police to prevent and solve crimes. It is essential that progress is maintained and built upon.

The Oversight Commissioner, in his final report of 2007, observed that a human rights culture is demonstrated by the quality of the interactions between police and public. That is best measured by an assessment of the formal police complaint process, internal disciplinary mechanisms and also the daily, routine contacts between the police and the public.¹ In line with its statutory duty, the Policing Board, through the Human Rights and Professional Standards Committee (the Committee), keeps itself informed as to the workings of PSNI complaints and disciplinary proceedings and monitors any trends and patterns emerging.² In doing so, the Policing Board is able to gauge, in part, the extent to which the Patten Commission's objective of a human rights based approach to policing has been achieved.³ It is worth

¹ *Report 19*, Office of the Oversight Commissioner, May 2007, page 26.

² Section 3(1)(c)(i) Police (Northern Ireland) Act 2000.

³ *A New Beginning: Policing in Northern Ireland (the Patten Report)*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, page 18 states "It is a central proposition of this report that the fundamental purpose of

restating that scrutiny should focus on whether human rights compliance is practical and effective. Written policy and guidance, while of fundamental importance, are insufficient on their own. Analysis of complaints provides some basis for assessing the quality of interactions between police officers and members of the community and therefore whether human rights principles are applied in practical scenarios.

Established under the Police (Northern Ireland) Act 1998, the Office of the Police Ombudsman for Northern Ireland provides an independent and impartial police complaints system for members of the public and the PSNI. The Committee meets with the Police Ombudsman and senior officials from his Office twice a year and during meetings in 2009/2010 discussed a range of issues including the Police Ombudsman's Annual Report, trends in the number and categories of complaint against police officers, average times for the resolution of complaints, the resolution of complaints at a local level, powers to compel retired officers to co-operate with investigations, and the role of the Police Ombudsman in dealing with historical cases. The Committee also considers Regulation 20 reports as and when they are published. A Regulation 20 report is produced by the Police Ombudsman following an investigation into a specific matter referred to him by the Policing Board, the Director of Public Prosecutions or the Chief Constable.⁴

The Committee also monitors PSNI internal disciplinary procedures to ensure that lessons are learned from the outcomes of the proceedings and that best practice is promoted across the service. Within the PSNI, Professional Standards Department (PSD) deals with allegations of misconduct, unless they are being dealt with at a local level by supervisory officers. During 2009/2010 the Committee met with the Deputy Chief Constable, who is responsible for maintaining the integrity of the PSNI, and with officers from PSD to discuss complaints and misconduct issues. PSD investigates both internal allegations of misconduct and matters which otherwise come to its

policing should be, in the words of the Agreement [April 1998], the protection and vindication of the human rights of all.”

⁴ Section 55 Police (Northern Ireland) Act 1998.

attention (usually by a referral from the Police Ombudsman). Where an allegation of misconduct has been made, the standards by which officers are measured are those contained within the PSNI Code of Ethics.⁵

The PSNI Code of Ethics 2008 lays down standards of conduct and practice for police officers and is intended to make police officers aware of their rights and obligations under the Human Rights Act 1998. Standards within the code are to be applied to relationships between police officers and the general public, sections of the public and particular individuals. By monitoring PSNI internal disciplinary proceedings, the Committee can assess the effectiveness of the Code of Ethics⁶ and the extent to which individual officers are paying due regard to human rights principles.

The Human Rights Act 1998 also protects police officers when in the line of duty: it provides a framework within which to operate. If the police stay within the framework they will be seen, quite rightly, as essential members of the community performing a valuable public function. The Code of Ethics 2008 sets down standards for police officers which incorporate all relevant human rights principles. Breaches of the Code therefore provide an essential mechanism by which to monitor human rights compliance.

COMPLAINTS MADE TO THE POLICE OMBUDSMAN

The Police Ombudsman's Annual Report 2010 provides detailed statistics on the number and pattern of complaints made by members of the public against police officers between 1 April 2009 and 31 March 2010.⁷ That report is available to download through the Police Ombudsman's website.⁸

⁵ Revised and reissued in 2008.

⁶ As required by section 3(1)(d)(iv) Police (Northern Ireland) Act 2000.

⁷ *Annual Report and Accounts for the year ended 31 March 2010*, Police Ombudsman for Northern Ireland, July 2010.

⁸ www.policeombudsman.org

Number of complaints and allegations

The Police Ombudsman reported a 14% increase in complaints received by his Office from members of the public during 2009/2010 compared to the previous year: 3,528 complaints were received in 2009/2010 compared to 3,086 complaints in 2008/2009. The highest level of allegations in the history of the Police Ombudsman's Office, which was established in 2000, was recorded: there were 6,419 allegations made in 2009/2010 which is a 19% increase on the 5,395 allegations made in 2008/2009.

Given this substantial increase in complaints and allegations the Committee considered an analysis of complaints and allegations made against PSNI officers over a ten year period. The purpose of the exercise was to gain a better understanding as to why complaints and allegations have been rising since 2000, and to facilitate discussions with PSNI as to how complaints could be reduced. As a direct result of discussions with the Committee, the PSNI has developed a Complaints Reduction Strategy. The Strategy is being taken forward by PSD with the overarching aim of increasing community confidence and trust in policing. Objectives have been set to reduce the number of complaints against police in 2010/2011 by 5%; to reduce the number of allegations against police in 2010/2011 by 5%; and to reduce the number of officers attracting multiple complaints.

PSD has discussed with the Committee how it seeks to achieve these aims and reported, at a meeting in October 2010, that complaints in the 2010/2011 financial year to date have already decreased when compared to the same period in the previous year. That is very encouraging. The Committee will continue to monitor the number of complaints and allegations made against police officers and it will continue to meet with PSD to discuss the impact of the Complaints Reduction Strategy. Furthermore, the Committee is undertaking a project of work aimed at improving the Committee's oversight in respect of quality of service issues.

It must be noted that the fact there is an *increase* in complaints and allegations does not necessarily mean that police practice is getting worse.

The increase may be attributable to a number of factors, including a greater public awareness of the Police Ombudsman's Office and greater public confidence in his Office. The increase in allegations may be attributable to the fact that Police Ombudsman Investigators have become more specific over the years about the nature and composition of the complaint, with many complaints containing multiple allegations. The increased number may also be a reflection of the 'normalisation' of policing: that the community has greater confidence in policing itself. A person is more likely to make a complaint if he or she believes it will be resolved.

Regardless of the reasons for the increase the fact remains that a substantial number of complaints and allegations have been made, and continue to be made, against police officers. If complaints and allegations tell us anything about the extent to which a human rights culture has become embedded within PSNI it is the extent to which lessons are learned and action taken in response that informs us. The nature of complaints and allegations must be monitored closely for that purpose. That is particularly the case when the same allegations continue to be made year on year.

PSD has shown considerable commitment to improving PSNI service delivery and human rights compliance and has been proactive in working with the Policing Board to that end. PSD officers and staff should be commended for that.

Nature of allegations

Failure in duty made up the largest proportion of allegations made against police officers to the Police Ombudsman during 2009/2010 (2,394 allegations: 37%), followed by oppressive behaviour (1,878 allegations: 29%) and incivility (845 allegations: 13%). These three types of allegations have accounted for between 79% and 90% of all allegations over the past ten year period.

When the same types of allegations are rising year on year that is a quality of service issue for the PSNI. The root causes of the allegations must be identified and targeted. The Police Ombudsman has carried out an analysis of

incivility allegations made between November 2000 and March 2009. That analysis, detailed below, is very useful and has assisted the Human Rights and Professional Standards Committee in holding the PSNI to account over its interactions with the general public. However it is, ultimately, the responsibility of the PSNI to ensure that lessons are learned from emerging trends and patterns.

Incivility complaints and allegations

'Incivility' refers to allegations such as police officers being rude, showing a lack of respect, being abrupt or displaying a lack of sensitivity in some situations. During 2010 the Committee considered a report by the Police Ombudsman which provided an analysis of incivility complaints and allegations made between November 2000 and March 2009. That analysis found that between November 2000 and March 2009, 14% of all allegations received (5,821) related to incivility, representing a significant quality of service issue for the police. Males and officers with less than 5 years of service were over-represented among those officers who attracted incivility complaints. The Police Ombudsman recommended that the PSNI should make supervisory officers more responsible for the conduct of officers in their charge; closely monitor officers who attract multiple complaints containing incivility allegations; examine closely why traffic related incidents attract a disproportionate number of incivility allegations; continue to work with the Police Ombudsman to explore innovative ways of dealing with less serious allegations; and that the PSNI should outline its response to the incivility report to the Policing Board.

The Committee has since met with officials from the Police Ombudsman's Office, the Deputy Chief Constable, and officers from PSD to discuss the findings in the incivility report. All parties agreed, without reservation, that there is no excuse for incivility. PSNI has disseminated the incivility report throughout the organisation and has brought issues regarding civility training to the attention of PSNI training college. PSNI has indicated its support for exploring other ways of dealing with incivility allegations. Less serious complaints can already be resolved informally and, in addition to this, the

Police Ombudsman and the PSNI is piloting a local resolution scheme whereby less serious complaints are dealt with by local supervisory officers rather than by the Police Ombudsman. Local resolution is discussed, at page 34 below, in further detail.

The fact that police officers should remain civil and respectful at all times when dealing with members of the public is not only common sense and a basic customer service principle, it is also contained within the PSNI Code of Ethics which states at Article 6.1 that:

Police officers shall act with fairness, self-control, tolerance and impartiality when carrying out their duties. They shall use appropriate language and behaviour in their dealings with members of the public, groups from within the public and their colleagues. They shall give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.

I reiterate that message and echo the sentiments of the Oversight Commissioner:

In the end, the quality of police interactions with the public will determine whether the people of Northern Ireland believe that the vision of the Independent Commission with respect to human rights has been achieved.⁹

The Committee will seek to include a reference to the reduction in incivility complaints in the Policing Plan for 2011 – 2014.

Officers with multiple complaints

The Police Ombudsman provides each District Commander with a regular update on the number of allegations made against officers in his or her District. This includes information on the officers in each District against whom

⁹ *Report 19*, Office of the Oversight Commissioner, May 2007, page 26.

three or more complaints have been made in a rolling twelve month period. That enables the District Commander to take action where appropriate.

The Police Ombudsman also provides the Policing Board with monthly figures of officers up to, and including, the rank of Inspector against whom there have been three or more complaints in a rolling twelve month period. Comparing statistics as at 31 March 2010 to 31 March 2009, there was an increase of 23% in the number of officers with three or more complaints.¹⁰

As with overall complaints, the number of officers attracting three or more complaints has been increasing steadily for a number of years. 'A' District (North and West Belfast) has had the most officers with three or more complaints over the past three years. It is therefore a positive development that 'A' District has introduced an intervention strategy involving officers with multiple complaints attending a case conference with the District Professional Standards Champion during which the reasons for the multiple complaints will be addressed. An intervention strategy for officers with multiple complaints also forms part of the PSD Complaints Reduction Strategy and details of these officers are distributed to the District Professional Standards Champions who meet with PSD on a bi-monthly basis.

The Police Ombudsman, in his study of incivility complaints, recommended that PSNI should make supervisory officers more responsible for the conduct of officers in their charge. It is important that District Commanders and Professional Standards Champions ensure that immediate supervisors are made aware of any officers under their charge against whom there is a complaint (be it one complaint or multiple complaints). PSNI Code of Ethics requires supervisors to "challenge and address any behaviour that is in violation of [the] Code" and reminds them that they have a "particular responsibility to secure, promote and maintain professional standards and integrity through the provision of advice and guidance, or other remedial or

¹⁰ 340 officers on 31 March 2010 compared to 277 on 31 March 2009. These figures were provided to the Policing Board by the Police Ombudsman.

appropriate action.”¹¹ Supervisors should therefore be kept informed of any action to be taken against any officers under their charge and they should be tasked with, or at least involved in, speaking to the officer about the complaint. District Commanders and Professional Standards Champions should also be conscious that where complaints are made about multiple officers under the charge of one supervisor there may be a need to review that officer’s supervisory capabilities.

The Committee intends to consider further the role of supervisors and District Professional Standards Champions in addressing inappropriate behaviour and will review how PSNI ensures consistency in practice across all Districts.

Complaint outcomes

Where a complaint is made, there is a process by which the Police Ombudsman will deal with it. Provided it is within the Police Ombudsman’s remit, there is a basis for the complaint, and the complainant hasn’t withdrawn the complaint, the Police Ombudsman will either refer the complaint to PSNI to be dealt with by informal or local resolution, or he will formally investigate the complaint. If at any stage of the process matters of a criminal nature come to the Police Ombudsman’s attention, he *must* notify the Public Prosecution Service immediately. This does not preclude the Police Ombudsman from continuing to investigate the complaint: he can still recommend that disciplinary action is taken against the officer concerned; however, his investigations may be delayed pending the outcome of the criminal investigations. During 2009/2010 the Police Ombudsman made 5 recommendations for prosecution with a total of 7 charges recommended. The recommended charges were for assault occasioning actual bodily harm (1 charge); perjury (2 charges); common assault (2 charges); perverting the course of justice (1 charge); and misconduct in a public office.

¹¹ Articles 10.2 and 10.3, *PSNI Code of Ethics*, 2008.

Informal resolution

Less serious complaints can be dealt with by way of informal resolution provided the complainant agrees to this. The informal resolution process involves a senior police officer speaking to the complainant and the officer who is the subject of the complaint with a view to reaching a satisfactory resolution. During 2009/2010 there were 514 complaints where informal resolution was attempted and of these 398 (77%) were deemed to be successful.

Local resolution

Local resolution was piloted in 'D' District (Antrim, Carrickfergus, Lisburn and Newtownabbey) between June 2010 and November 2010 whereby responsibility for resolving less serious complaints was handed back to Local Resolution Officers, that is, Inspectors and Sergeants in the unit where the complaint arose. As with informal resolution, local resolution relies on the complainant agreeing to be involved in the process. It also requires local officers to take responsibility for complaints and to address issues that arise. Local accountability and officer involvement with the complainant should mean that lessons are learned and applied quickly and for the benefit of the police and the community alike.

The Committee has discussed the pilot scheme with the PSNI and with officials from the Police Ombudsman's Office who reported that the general feedback on the scheme has been positive. Early indications show that local resolution is speedier and involves less bureaucracy than informal resolution. The Police Ombudsman will be producing a report on the pilot scheme in early 2011 and the Committee will discuss the findings of that report with the Police Ombudsman and PSNI.

Formal investigation by the Police Ombudsman

Where a complaint is not to be dealt with by informal or local resolution, and where it is not otherwise closed, for example, due to complainant non co-operation, the Police Ombudsman will formally investigate the complaint. When the investigation of an allegation is complete a recommendation for

allegation closure is made. Of the 5,476 recommendations arising from investigations completed and closed by the Police Ombudsman during 2009/2010, 4,041 recommendations (74%) were that the allegations were not substantiated due to insufficient evidence.

The fact that a large percentage of allegations were not substantiated does not mean there is room for complacency. Although a minority of allegations made against the PSNI may be malicious, the vast majority are not. Every member of the public has the right to expect a high standard of service from the PSNI and, where they feel that standard has not been reached, they have a right to complain to the Police Ombudsman. The fact that an individual has complained about an interaction with a police officer, regardless of whether or not there is *evidence* to substantiate it, suggests that the complainant's *perception of*, and trust in, the PSNI as a whole has been tainted. Such a negative impression can reverberate throughout the community in which that individual lives.

Where a complaint is substantiated the Police Ombudsman has the power, following consultation with the Chief Constable, to direct that the Chief Constable brings disciplinary proceedings against the officer involved. The Police Ombudsman may make recommendations as follows:

- (i) *A recommendation that the officer faces formal misconduct charges.*

Formal misconduct charges are dealt with by PSNI Professional Standards Department (PSD) via a formal disciplinary hearing. Sanctions that can be imposed following a formal disciplinary hearing include: dismissal from the PSNI; a requirement to resign; a reduction in rank or pay; a fine; a reprimand; or a caution. During 2009/2010 the Police Ombudsman made 13 recommendations to the Chief Constable that officers were dealt with by way of a formal misconduct charge.

- (ii) *A recommendation that the officer is given one of the following informal sanctions: a Superintendent's Written Warning; Management Discussion; or Advice and Guidance.*

Informal sanctions are delivered at local level. During 2009/2010 the Police Ombudsman made 34 recommendations to the Chief Constable that officers were dealt with by way of a Superintendent's Written Warning; 352 recommendations that officers were dealt with by way of Advice and Guidance; and 12 recommendations that officers were dealt with by way of a Management Discussion.

The Committee noted in its analysis of complaints since 2000 that Advice and Guidance has been the most common type of recommendation made by the Police Ombudsman to the Chief Constable over the past ten years. Advice and Guidance is recommended where it is considered that the officer concerned would benefit from words of advice from their District Commander. The Police Ombudsman's annual report 2009/2010 states that the primary objective of Advice and Guidance is that "officers will learn from the experience and their practice will improve", but the report also acknowledges that "in some circumstances, officers may regard this outcome as nothing more than a 'rap on the knuckles' or a 'word in the ear'."¹²

Proposed changes to police disciplinary procedures and unsatisfactory performance procedures in Northern Ireland will be subject to consultation in 2011. These proposed changes originate from the Taylor Review.¹³ One recommendation of the Taylor Review was to

¹² *Annual Report and Accounts for the year ended 31 March 2010*, Police Ombudsman for Northern Ireland, July 2010, page 13.

¹³ *Review of Police Disciplinary Arrangements Report, ("the Taylor Review")*, January 2005. The Taylor Review recommended a new disciplinary procedure and a review of the unsatisfactory performance procedures in England and Wales. One of the key points to emerge from the review in England and Wales was the need to shift the emphasis and culture in police misconduct and unsatisfactory performance matters from blame and punishment towards a focus on development and improvement. PSNI Professional Standards Department considered the reforms in England &

give supervisory police officers more responsibility to deal with misconduct at a local level. If PSNI is to pass more control for dealing with misconduct to local supervisory officers it is important that all forms of informal sanctions are considered serious and significant. PSNI, in anticipation of the changes, has already issued a new Service Procedure on local misconduct action and Superintendents' Written Warnings.¹⁴

- (iii) *A recommendation to improve policing policy and practice.*

During 2009/2010 the Police Ombudsman made 67 policy and practice recommendations to the Chief Constable covering issues such as records management; firearms; Taser; CS Spray; custody suites; and training.

COMPLAINTS AGAINST SENIOR OFFICERS

Complaints against officers of rank Assistant Chief Constable and above are referred to the Policing Board.¹⁵ During 2009/2010 there were no such complaints.

DIRECTION AND CONTROL COMPLAINTS

Direction and control complaints relate to the delivery of police services and are generally made against PSNI policy or operational matters as opposed to being made against specific police officers. Where a complaint is made, the relevant District or Department will contact the complainant, either in person

Wales to establish: (i) whether or not they would be appropriate for adoption in Northern Ireland, taking particular account of the unique complaints structure where the Police Ombudsman is responsible for the public police complaints system; and (ii) to benefit from any learning experienced by police services there. A draft paper has been completed and considered by a working group which included representatives from the Policing Board, Department of Justice, PSNI, Police Federation and Police Staff Associations.

¹⁴ *Local Misconduct Action and Superintendents' Written Warnings*, PSNI Service Procedure SP 1/2010, issued January 2010.

¹⁵ As per the Royal Ulster Constabulary (Conduct) (Senior Officer) Regulations 2000.

or by letter, and provide explanation for the PSNI's actions and, where appropriate, will offer an apology, make reparation, and/or explain action PSNI has taken to remedy a problem identified by the complaint. PSD oversees direction and control complaints and provides the Policing Board with a summary of all new complaints made, together with a summary of all complaints finalised, on a six monthly basis.¹⁶

During 2009/2010, PSNI received 133 direction and control complaints, 113 of which have now been finalised. That is an increase from the 113 direction and control complaints received in 2008/2009 and the 82 complaints received in 2007/2008. I have reviewed PSD's summary of each of the complaints and the way in which they have been finalised. The complaints are wide ranging and include, by way of example, delays in police response times; too many police attending in response to incidents; not enough, or no, police presence in response to incidents; issues with firearms licensing; clamping of untaxed vehicles; and issues with police helicopters damaging crops and livestock. There was not one recurring complaint that would explain the rise in the number of direction and control complaints over the past two years. Having reviewed the complaints I am satisfied that the police are responding to them in an efficient and effective manner, with many resolved through face to face meetings between the complainant and local supervisory officers.

INTERNAL DISCIPLINE AND THE CODE OF ETHICS

An allegation of misconduct may be made against a police officer by another officer from within the PSNI or it may emerge following investigation into a complaint made to the Police Ombudsman. Depending on the seriousness of the allegation, it will either be dealt with by PSNI PSD or by a supervisory officer, ranging from the District Commander to an immediate supervisor, who works in the same District as the officer against whom the complaint has been made. Where an allegation of misconduct has been made, the standards

¹⁶ As required by the *Human Rights Annual Report*, Northern Ireland Policing Board, 2005, Recommendation 27(h).

against which officers are measured are those contained in the PSNI Code of Ethics 2008.

The Code of Ethics

The human rights based approach to policing envisaged by Patten has been translated into a single Code of Ethics to which all PSNI officers are bound and which is, in the words of the former Chief Constable, “central to policing”.¹⁷ The purpose of the Code is to:

- (i) lay down standards of conduct and practice for police officers; and
- (ii) to make police officers aware of the rights and obligations arising out of the European Convention on Human Rights.¹⁸

If police officers are to comply with the Code of Ethics they must understand it in its entirety. When student officers first join the PSNI they are taught about, and provided with a copy of, the Code of Ethics however this in itself is not sufficient to discharge the Chief Constable’s ongoing obligation to ensure that all serving police officers have read and understood the Code.¹⁹ PSNI should ensure that Trainers consistently incorporate the relevant Articles of the Code into lesson plans. In order that Trainers can incorporate it into lessons, they must have an in-depth understanding of the Code and appreciate that it is not just a disciplinary tool but that it is also an important human rights document. The revisions to the Code of Ethics in 2008 provided PSNI with an opportunity to ensure that the contents and *purpose* of the Code was understood by all serving police officers, particularly Trainers. Recommendation 1 of this Human Rights Annual Report aims to ensure that all Trainers are fully aware of the Code of Ethics and its utility in preparing lesson plans.

Where there are breaches of the Code of Ethics, the PSNI must investigate and address the cause of the breach. That does not mean by simply imposing

¹⁷ *PSNI Code of Ethics*, 2008, page 4.

¹⁸ Section 52 (1) Police (Northern Ireland) Act 2000.

¹⁹ Section 52 (8) Police (Northern Ireland) Act 2000.

a sanction on the individual officer who breached the Code, but it must ensure that the officer understands why the Code was breached. There must also be a consideration of whether, and if so what, action is needed to prevent other officers from breaching the code in the same manner. For example, there may be highlighted a need for better training in a particular area.

The Human Rights and Professional Standards Committee has a responsibility to assess the effectiveness of the Code.²⁰ That means reviewing periodically the contents of the Code to ensure that it reflects current human rights standards²¹ and monitoring steps taken by the PSNI to investigate and address breaches.

Breaches of the Code of Ethics

It is an ongoing recommendation, first stated in the Policing Board's Human Rights Annual Report 2006, that PSNI correlates its statistics on disciplinary matters against specific articles in the Code of Ethics. The Policing Board should then track breaches of the Code of Ethics disclosed and track any discernable trends.²² The Policing Board's role in tracking breaches is simplified by a six monthly report produced by PSD. The report examines the Articles of the Code of Ethics that are alleged to have been breached most frequently since 2005/2006.²³

²⁰ Section 3(1)(d)(iv) Police (Northern Ireland) Act 2000.

²¹ The Code was first published in 2003 and was most recently revised in 2008.

²² *Human Rights Annual Report*, Northern Ireland Policing Board, 2006, Recommendation 26.

²³ *Examination of Articles of the Code of Ethics that are Breached Most Frequently*, PSNI Professional Standards Department, April 2010. The information in the report is compiled using PSD databases and therefore the report does not include figures for alleged breaches of the Code that have been dealt with from start to finish at a local level. It does not include complaints against officers that are not substantiated, dealt with informally or locally, or where no disciplinary action is taken against the officer as a result of the complaint. The report does however include cases referred to the Chief Constable by the Police Ombudsman for disciplinary action. Whilst the Police Ombudsman does not categorise complaints according to the Code of Ethics, PSD categorises the allegations arising out of the complaint according to the Code once the case has been referred by the Police Ombudsman.

During 2009/2010 PSD recorded a total of 585 alleged breaches of the Code of Ethics.²⁴ The sub-Articles of the Code that are most frequently alleged to have been breached during the last five years are:²⁵

- *Sub-Article 1.5: The police service is a disciplined body. Unless there is good and sufficient cause to do otherwise, police officers must obey all lawful orders and abide by the provisions of Police Regulations. They shall refrain from carrying out any orders they know, or ought to know, are unlawful. No disciplinary action shall be taken against a police officer who refuses to carry out an unlawful order.*

Sub-Article 1.5 misconduct allegations typically relate to neglect of duty. In 2009/2010, PSD recorded 68 alleged breaches of sub-Article 1.5 (12% of all alleged breaches of the Code of Ethics during the year). The number of alleged breaches of sub-Article 1.5 has remained broadly unchanged over the last three years. They originate primarily by a referral by the Police Ombudsman.

- *Sub-Article 1.10: Whether on or off duty, police officers shall not behave in such a way that is likely to bring discredit upon the police service.*

Sub-Article 1.10 misconduct allegations can include allegations of domestic abuse, threatening behaviour, neglect of duty, incivility, excess alcohol, substance abuse, abuse of position and so on. In 2009/2010, PSD recorded 51 alleged breaches of sub-Article 1.10 (9% of all alleged breaches of the Code of Ethics during the year). Alleged breaches of sub-Article 1.10 have been on a decreasing trend over the last two years with over one half originating from misconduct investigations initiated within the PSNI.

²⁴ *Ibid.*

²⁵ *Ibid.* pages 2 – 3.

- *Sub-Article 2.1: Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime. They shall be conducted in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law.*

Sub-Article 2.1 misconduct allegations typically involve failure to investigate an incident. In 2009/2010, PSD recorded 112 alleged breaches of sub-Article 2.1 (19% of all alleged breaches of the Code of Ethics during the year). This represents the sub-Article most frequently alleged to have been breached for the second year in a row: in 2008/2009 it was allegedly breached on 119 occasions.²⁶ Allegations of this nature primarily originate from a referral by the Police Ombudsman.

- *Sub-Article 7.2: Police officers shall, at all times, respect and obey the law and maintain the standards stated in the Code. They shall, to the best of their ability, respect and support their colleagues in the execution of their lawful duties.*

Sub-Article 7.2 misconduct allegations typically relate to criminal offences such as assault, driving with excess alcohol and theft. In 2009/2010, PSD recorded 64 alleged breaches of sub-Article 7.2 (11% of all alleged breaches of the Code of Ethics during the year). The total number of alleged breaches of sub-Article 7.2 has been on a downward trend over the past five years. Allegations predominantly originate from misconduct investigations initiated within the PSNI rather than from a referral by the Police Ombudsman.

A similar trend has been identified in respect of the most frequently breached sub-Articles of the Code of Ethics that resulted in a Superintendents' Written

²⁶ Due to a change in the Code of Ethics in February 2008 it is not possible to directly compare the number of alleged breaches of sub-Article 2.2 to figures prior to 2008/2009.

Warning (SWW). During 2009/2010, the most frequently breached articles of the Code which resulted in a SWW were sub-Articles 1.5, 1.10 and 2.1.²⁷ In 2008/2009, the most frequently breached sub-Articles resulting in a SWW were sub-Articles 1.1 (the duty to protect life and property, preserve order, prevent commission of offences and bring offenders to justice), 1.5 (duty to obey lawful orders) and 2.1 (police investigations). In response to Recommendation 10 of the 2009 Human Rights Annual Report, which I consider to have been implemented in full, the PSNI investigated the conduct resulting in the high number of SWWs being given for breaches of those three sub-Articles and reported on its findings to the Policing Board.²⁸ PSNI identified a common theme in relation to breaches of sub-Articles 1.1 and 2.1: a recurrent failure by individual officers to investigate, prepare and/or submit a file. By identifying that common theme, PSNI was able to ensure that it was addressed via the bi-monthly Discipline Champions' meetings. PSNI also intends to publish a Service Procedure aimed at setting out the minimum standards for the quality of case files and providing officers with a framework for managing their performance in this regard.

By tracking breaches of the Code of Ethics PSNI has the opportunity to correct patterns of behaviour identified internally before the behaviour is repeated and a public complaint made. All of the sub-Articles identified by PSNI as recurrent breaches typically relate to allegations such as a failure or neglect of duty, behaving in a way that brings discredit on the police service and a failure to investigate. That correlates broadly with the Committee's ten year analysis of Police Ombudsman complaints which found that failure in duty, oppressive behaviour and incivility accounted for between 79% and 90% of all allegations made to the Police Ombudsman since 2001. The Committee will continue to track and trend PSNI complaints and disciplinary proceedings. However, given the fact that some of the misconduct trends identified internally by PSNI are mirrored in public complaints, it is also in PSNI's interest to continue tracking and trending breaches of the Code of Ethics and

²⁷ Figures supplied to the Policing Board by PSNI in compliance with the *Human Rights Annual Report 2005*, Northern Ireland Policing Board, Recommendation 27(b).

²⁸ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 10.

taking action to address any issues identified. I have met with representatives from PSD and they have committed to continue producing the report examining the Articles of the Code of Ethics that are alleged to have been breached most frequently. They have ensured transparency in all their dealing with me and with the Committee, and they have demonstrated a genuine desire to address police misconduct and performance failures.

Sanctions for breach of the Code of Ethics

All alleged breaches of the Code of Ethics representing misconduct will be dealt with through the PSNI disciplinary structure either at a local level or by PSD depending on the seriousness of the alleged breach. If the allegation is substantiated sanctions can vary from a formal sanction,²⁹ to an informal sanction,³⁰ to no further action.

In addition to providing the Policing Board with the PSD report examining the most frequently breached Articles of the Code of Ethics and details of all conduct leading to a Superintendent's Written Warning, PSNI provides the Policing Board on a six monthly basis with summary details of all cases that resulted in formal disciplinary hearings;³¹ details of all current investigations of misconduct being conducted by PSD and disciplinary action arising as a result of completed investigations;³² and, information on the number of officers convicted of criminal offences and the disciplinary action taken by PSNI against those officers. This information enables the Policing Board to monitor

²⁹ Formal sanctions include: dismissal from the PSNI; a requirement to resign; a reduction in rank or pay; a fine; a reprimand; and a caution. These can only be imposed following a formal disciplinary hearing.

³⁰ Informal sanctions include: Superintendent's Written Warnings; Management Discussion; or Advice and Guidance. These are imposed at local level as a result of a recommendation by the Police Ombudsman that a particular informal sanction be imposed; following an investigation and conclusion by PSD that a particular informal sanction be imposed; or following an investigation and conclusion by local supervisory officers' that a particular informal sanction be imposed.

³¹ As required by the *Human Rights Annual Report*, Northern Ireland Policing Board, 2005, Recommendation 27(a).

³² As required by the *Human Rights Annual Report*, Northern Ireland Policing Board, 2005, Recommendation 27(e). I have agreed with Professional Standards Department that rather than report separately on new investigations, from next year onwards the numbers of new investigations will be included in the report examining the Articles of the Code of Ethics that are alleged to have been breached most frequently.

how PSD deals with the most serious allegations of breach of the Code of Ethics and the sanctions imposed if the allegations are substantiated. I have received additional information and detail which has enabled me to examine closely the nature of allegations and PSNI response to those allegations. No issues arose from that information.

PSNI APPROACH TO SUSPENSION, RESIGNATION AND RETIREMENT

PSNI approach to suspension, resignation and retirement was set out in detail in the 2009 Human Rights Annual Report.³³ The report highlighted a number of concerns raised by some Policing Board Members, namely, that suspension for a long period of time means that an officer continues to be paid without contributing to the police service; and that the confidence of the community may be undermined if officers are perceived to avoid misconduct proceedings by resigning or retiring from the PSNI.

Where there are criminal proceedings pending against a police officer, disciplinary proceedings against that officer must usually be delayed until the outcome of the criminal proceedings. It is only in exceptional circumstances that the Chief Constable can deem it appropriate to proceed with the disciplinary proceedings in advance of the criminal proceedings. Where officers are suspended pending the outcome of protracted criminal proceedings, the cost implication for the PSNI is significant.

The Committee monitors the progress of criminal proceedings in relation to all repositioned and suspended officers. The Committee has also had discussions with PSNI in relation to the process in England and Wales, introduced as a result of the Taylor Review,³⁴ whereby misconduct proceedings can continue despite there being ongoing criminal proceedings provided the criminal proceedings will not be prejudiced. PSNI is considering adopting a similar approach as part of the proposed changes to police disciplinary procedures and unsatisfactory performance procedures. That is

³³ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, pages 76 – 86.
³⁴ Footnote 13 of this chapter refers.

necessarily a lengthy process, requiring new legislation to be enacted, which is outwith the control of PSNI. The proposed changes will have an important effect upon PSNI ability to deal more efficiently with police misconduct allegations. The much publicised delays within the Criminal Justice System undoubtedly prejudice the PSNI's attempts to streamline misconduct hearings. Unless and until the criminal process is made more efficient the PSNI will continue to have officers suspended for long periods of time, on full pay, awaiting the outcome of a criminal trial. It is incumbent on all partners within the Criminal Justice System to address the issue of delay.

Where an officer retires from the police service, he or she cannot be investigated by PSNI PSD in relation to misconduct carried out during their service nor can the Police Ombudsman compel that officer to attend interview as a witness and give evidence. However, the officer can still be investigated and dealt with by the police and the Public Prosecution Service in the usual way in respect of any criminal proceedings.

The concern expressed - that officers may retire or resign from the PSNI in order to avoid misconduct proceedings – was set out at length in the 2009 Human Rights Annual Report. In short, an officer who faces criminal or serious misconduct proceedings may be suspended pending investigation and as a result of suspension cannot retire or resign from the PSNI without the consent of the Chief Constable. In 2009 I reported that I was satisfied that this process addressed the concerns in relation to retirement and resignation.³⁵ I have however continued to monitor the number and type of cases where disciplinary proceedings are not commenced or not concluded because the officer in question retires or otherwise leaves the police service before that stage is reached.

In 2009/2010, there were 28 officers who left the PSNI with disciplinary proceedings pending: 19 officers resigned; 7 took severance, 1 was retired on

³⁵ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, pages 81 – 86.

medical grounds; and, 1 officer's contract was not renewed.³⁶ The allegations against the officers ranged from misconduct matters, such as failure in duty, to criminal matters such as an alleged assault, threats to kill and criminal damage. It must be remembered that in all cases where an allegation of a criminal nature has been made, criminal investigations will proceed in the usual manner and the officer will be liable to prosecution.³⁷

INTEGRITY TESTS³⁸

Integrity tests are one of a number of options available to officers within PSNI Professional Standards Department (PSD) investigating allegations of criminal misconduct by an officer. The tests are only carried out in operationally appropriate cases where reliable information about an identified officer has been received. Between 1 April 2009 and 31 March 2010 no integrity tests were carried out by PSD. That does not suggest that PSD failed to investigate fully or appropriately: it reflects the fact integrity testing was not needed or appropriate for the allegations made during 2009/2010.

REGULATION 20 REPORTS

The Police Ombudsman has statutory responsibility for the investigation of certain matters referred by the Policing Board, the Public Prosecution Service and the Chief Constable.³⁹ The Police Ombudsman also has power to investigate certain matters of his own volition. At the conclusion of the investigation a report, known as a Regulation 20 report, is sent to the Secretary of State, the Policing Board and the Chief Constable. PSNI established a review panel to consider any recommendations made in the

³⁶ Information provided by PSNI as required by *Human Rights Annual Report*, Northern Ireland Policing Board, 2005, Recommendation 27(d). The numbers for 2009/2010 are broadly similar to 2008/2009 where there were 24 officers who left PSNI with disciplinary proceedings pending: 17 officers who resigned, 5 severances, 1 retirement and 1 officer whose contract was not renewed.

³⁷ Thereby resulting in significant savings.

³⁸ As required by the *Human Rights Annual Report*, Northern Ireland Policing Board, 2005, Recommendation 19, PSNI must provide the Policing Board with aggregated data on integrity tests carried out during the year.

³⁹ Police (Northern Ireland) Act 1998, section 55.

Regulation 20 reports.⁴⁰ PSNI provides the Policing Board with a schedule of its responses to the Regulation 20 reports on a six-monthly basis.⁴¹ I have discussed with PSNI PSD that from next year PSNI will copy the Policing Board into its written responses to the Police Ombudsman as and when they are sent. This should be an effective way in which the Policing Board can monitor PSNI implementation of Regulation 20 recommendations. It will discharge PSNI of its obligation to provide the Policing Board with the six monthly schedules of responses but will instead require the PSNI to copy those responses to the Policing Board within a reasonable time of their completion.⁴²

Between 1 April 2009 and 31 March 2010 there were 18 Regulation 20 reports issued by the Police Ombudsman. As each incident requires thorough investigation, there is commonly a time lag between the date of the incident and publication of the report. The reports issued related to investigations into:

- Circumstances surrounding death x 4
- Use and discharge of Taser x 4
- Use of personal protection firearm x 2
- Attempted murder of a serving police officer
- Enquiry into an anonymous telephone call to Omagh Police Station
- Inappropriate use of police information and communications facilities
- Concerns that a police officer attempted to pervert the course of justice
- Failure to locate a human body
- Allegation of theft involving an on-duty police officer
- Alleged inappropriate behaviour by a police officer at court
- Breach of the Data Protection Act 1998 and/or the Computer Mis-Use Act 1990

⁴⁰ The panel consists of representatives from PSNI Operational Support, PSNI Professional Standards department, the Police College and the PSNI Human Rights Legal Adviser. A representative from the Policing Board and from the Office of the Police Ombudsman also attends each meeting.

⁴¹ Discharging its continuing obligation under Recommendation 25 of the *Human Rights Annual Report*, Northern Ireland Policing Board, 2005.

⁴² Thus satisfying the intention of Recommendation 25 of the *Human Rights Annual Report*, Northern Ireland Policing Board, 2005.

The Human Rights and Professional Standards Committee has considered the Police Ombudsman's findings in each of the aforementioned reports and I have also reviewed each Regulation 20 report. Of the 18 Regulation 20 reports issued during 2009/2010, recommendations for the PSNI were made in 9 of the reports. The Committee maintains a database of all of the Regulation 20 report recommendations made to date in order to ensure that the same recommendations are not being made duplicated and that lessons are learned. The Committee will continue to monitor whether and if so to what extent the PSNI displays evidence of learning from the Regulation 20 reports.

Not all Regulation 20 reports are published by the Police Ombudsman as they contain confidential information, however, summaries of many of the reports can be obtained through the Police Ombudsman website.⁴³

JUDICIAL REVIEWS

Judicial review is a public law procedure through which people with a sufficient interest can challenge the lawfulness of a decision, action or failure to act, alleged against a public body. There are a number of grounds on which to base a judicial review challenge and one of those grounds is that the decision, action or failure represents a breach of the Human Rights Act 1998. It is therefore important that the Policing Board, in monitoring the performance of the PSNI in complying with the Human Rights Act, is aware of the details and outcome of all judicial review applications brought against the PSNI.

I have agreed a mechanism with PSNI Legal Services Branch whereby I am provided with an annual schedule of all new, ongoing and recently concluded judicial review applications, from which I am able to request further information on any given case.⁴⁴

⁴³ www.policeombudsman.org

⁴⁴ Thereby fulfilling Recommendation 27(f) and Recommendation 27(g), *Human Rights Annual Report*, Northern Ireland Policing Board, 2005.

6. PUBLIC ORDER

Public order policing, particularly in Northern Ireland, raises difficult human rights issues. The consideration of public order policing is often within the context of parades however the principles which apply, apply to all public order situations. Everyone has the right, guaranteed by the European Convention on Human Rights (ECHR), to freedom of peaceful assembly and to freedom of association with others.¹ The right, however, is qualified: it can be restricted in certain circumstances provided any restriction of the exercise of the right is lawful, proportionate and necessary.² Those who wish to participate in a parade or other public meeting have the right to do so. They have the right to expect the police, in clearly defined circumstances, to protect the exercise of that right for so long as it remains peaceful. Those who reside in the locality of the parade or meeting also have the right to protest so long as that protest is peaceful. Furthermore, they have the right to peaceful enjoyment of their home environment.³ Balancing those, often competing, rights and interests is always challenging.

Where the right to peaceful assembly is engaged in the context of a parade or protest, a number of other ECHR rights may be engaged: the right to freedom of thought, conscience and religion;⁴ the right to freedom of expression;⁵ and, in the case of passers-by or people living near by, the right to respect for private and family life.⁶ The mere fact that a protest, march or procession may offend others does not mean it must be restricted. Banning a march or protest would only be justified if there was a real threat of disorder that could not be prevented by other reasonable measures.⁷

¹ Article 11 European Convention on Human Rights (ECHR).

² The restriction must be necessary in a democratic society: in the interests of national security; in the interests of public safety; for the prevention of disorder or crime; for the protection of health and morals; or for the protection of the rights and freedoms of others.

³ Article 8 ECHR.

⁴ Article 9 ECHR.

⁵ Article 10 ECHR.

⁶ Article 8 ECHR.

⁷ See, for example, *Christians Against Racism and Fascism* (1980) 21 DR 138.

In Northern Ireland any public procession must be notified to the police. The Chief Constable is then under a duty to ensure that a copy of the notice is given immediately to the Parades Commission. Protest meetings are dealt with differently. However, where notice has been given of any public procession, anyone proposing to organise a related protest meeting must also give notice to the police. As with a public procession the Chief Constable is then under a duty to ensure that a copy of the notice is given immediately to the Parades Commission. The Parades Commission upon considering the competing rights of all persons affected will decide whether to impose conditions upon the public procession or related protest meeting.⁸

It is important to remember, in any assessment as to whether the policing of public processions complies with the Human Rights Act 1998, that there is a separation of responsibility for decision-making. It is the Parades Commission which is charged with taking decisions which affect the human rights of those wishing to parade and those who reside in the locality of a parade.⁹ In respect of the decisions which are for the Parades Commission to make, it is incorrect to level criticism at the PSNI. The Parades Commission has power to issue a determination in respect of any proposed public procession, imposing on the persons organising or taking part in it such conditions as the Commission considers necessary. The conditions may include the route of the procession and may prohibit it from entering any place. The Commission must have regard to any public disorder or damage to property that may result from the procession, any disruption that may result to the community, any impact it may have on relationships within the community, any failure to comply with the Code of Conduct and the desirability of allowing a procession customarily held along a particular route. The Parades Commission is a public authority and must therefore act compatibly with the ECHR.

Accordingly, it is the Parades Commission which has primary responsibility for ensuring that the human rights of those wishing to parade and those who oppose any parade are protected. Even if some members of the community

⁸ Public Processions (Northern Ireland) Act 1998.
⁹ Public Processions (Northern Ireland) Act 1998

take issue with the decision of the Parades Commission, the PSNI has to carry the decision into effect. The responsibility of the PSNI is to police any determination made by the Commission and, in doing so, the PSNI must act in accordance with relevant law including the Human Rights Act 1998.

MONITORING THE POLICING OF PUBLIC ORDER EVENTS

The Human Rights and Professional Standards Committee (the Committee) monitors the policing of public order situations. To assist the Committee in fulfilling its oversight function, the Committee receives briefings through the year from PSNI on its preparations for the marching season. The PSNI and the Committee are concerned at the level of violence at a number of flashpoints in Northern Ireland during the marching season and at the financial burden associated with policing the violence. For example, in 2010, 83 officers sustained injuries during attacks upon them, including a shotgun being fired at police lines in North Queen Street, Belfast and a breeze block being dropped on the head of a female officer in North Belfast.

While the PSNI attempts to engage with local communities and other stakeholders in preparation for the marching season the Committee is concerned that the PSNI is not receiving the support it requires from other partners.

The rights and wrongs of parading and protesting in Northern Ireland, is an issue that the police can not, as an impartial police service, be called upon to resolve. The Committee is keen to take a more pro-active approach to how it monitors the policing of parades and develop a strategy for working more closely with the PSNI to that end. A number of meetings have been held, for example, with the District Commanders of 'A' District (North and West Belfast) and 'G' District (Foyle, Limavady, Magherafelt and Strabane). The wider issue of parades is one that must be addressed by local communities, local businesses, politicians, education providers, other partner agencies and the Criminal Justice System. The Committee is considering ways to involve

stakeholders in the meetings it intends to hold in the coming months and has met with the Minister of Justice for Northern Ireland to discuss the issue.

Parades monitoring 2010

In the relevant reporting period, the PSNI once again carried out extensive training on human rights and public order policing for officers involved in the operational planning and command of public processions and related protests. The training provided comprehensive guidance on the legislative framework, the human rights implications for policing and key developments in case law.

I have attended and observed a number of training exercises, all of which were current, engaging and fully enshrined human rights principles and international best practice. The training has, as a central function, the aim of respecting, protecting and fulfilling the human rights of all members of the community. I also attended a number of command meetings during which officers demonstrated a clear understanding both of the relevant operational and tactical matters and the practical application of human rights principles. The rights of children and other vulnerable groups were given particular consideration and measures put in place, so far as possible, to ensure their vulnerabilities were recognised and their rights protected.

I observed, from the Silver Command room, the policing of a parade in A District (North and West Belfast) during which there was sustained and serious public disorder. Once again, I was impressed at how police officers applied human rights considerations in practice. All authorisations for the deployment and use of force were considered carefully, with the assistance of advice from the PSNI Human Rights Legal Adviser. The operation adhered not only to policy and guidance but complied with the requirements of the Human Rights Act 1998 in every material respect. That the PSNI managed to do so in the most difficult of circumstances when faced with the threat of

serious violence is testament to its officers' commitment to human rights standards.¹⁰

In 2010, Her Majesty's Inspector of Constabulary (HMIC) considered the issues arising in public order situations primarily in England and Wales. The report that followed included a case study on the policing of contentious parades and protests in Northern Ireland and reported "The approach and experience of the Police Service of Northern Ireland has important lessons for police forces in Great Britain as they begin to deal with growing numbers of protests and counter-protests in their towns and cities."¹¹ The report was particularly complimentary about the PSNI's engagement with local communities throughout the year, not just where there is a possibility of disorder.

The Committee wishes to encourage further engagement which should include other agencies who share responsibility for the rights and protections of those who live within the community and who may be involved during a public procession whether as a marcher, a protestor or a local resident. The Committee will develop this further with the Minister of Justice.

Use of force statistics

The use of force by the PSNI during public events and parades raises significant human rights issues. The Committee monitors the use of force by the police and receives six monthly statistical reports on all recorded uses of force. In the 2009 Human Rights Annual Report, it was recommended that when supplying the Committee with this statistical report, the PSNI should also provide details of any correlation between high incidents of usage of force by the police and public disorder events.¹² PSNI accepted this was an

¹⁰ The Policing Board gave consideration to the operation and in particular the compliance of the PSNI with human rights principles. The Policing Board was advised in respect of the balance struck between the rights of the public, the marchers, the protestors and the police officers involved. Thereafter, the Policing Board gave its unanimous support to the PSNI.

¹¹ *Adapting to Protest – Nurturing the British Model of Policing*, Her Majesty's Inspector of Constabulary (HMIC), 2010.

¹² *Human Rights Annual Report*, Northern Ireland Policing Board, 2009 Recommendation 11.

ongoing recommendation and has committed to continue supplying it in all future use of force statistical reports.¹³ Use of Force is considered separately at chapter 7.

PUBLIC ORDER HUMAN RIGHTS TRAINING

PSNI accepted the recommendation in the 2008 Human Rights Annual Report that officers involved in the operational planning and command of public processions should receive refresher public order human rights training at least every two years.¹⁴ Refresher training was held in May 2010. The training included a comprehensive outline by the PSNI Human Rights Legal Adviser of the key human rights principles relevant to public order policing, incorporating up to date case law; a presentation on public order policing from a Tactical Adviser's perspective; and a number of scenario based exercises requiring officers to apply their knowledge of the legal framework and their police powers to practical operational planning. Upon completion of each exercise officers were debriefed and there was a discussion of the issues led by the PSNI Human Rights Legal Adviser and the PSNI Human Rights Training Adviser. I commend the PSNI Human Rights Legal Adviser for devising this training course and I am grateful to him for his continued engagement with me on the issue of public order.

Recommendation 20 of the 2008 Human Rights Annual Report is intended to be a continuing recommendation. Therefore the public order human rights training should continue to be delivered by PSNI to all relevant officers at least once every two years or sooner should there be any significant changes to the legal framework within which public order is policed.

¹³ *Human Rights Programme of Action*, PSNI, 2009-2010, page 8.

¹⁴ *Human Rights Annual Report 2008*, Northern Ireland Policing Board, Recommendation 20.

7. USE OF FORCE

The use of force by police officers engages, in a direct and fundamental way, rights guaranteed by the European Convention on Human Rights (ECHR), for example, Article 2 (the right to life); Article 3 (the right not to be subjected to torture, inhuman or degrading treatment); and, Article 8 (the right to respect for private and family life). A police officer has the right to defend him or herself from unlawful physical violence but also has a duty to protect others from harm and to refrain from subjecting another to harm. The rights of individuals therefore must be balanced. The police have express statutory authority to use force in closely defined circumstances. Each use of force must be in accordance with law and must be necessary and proportionate.

A clear and accessible policy, which contains comprehensive guidance to officers, is critical to ensuring that each use of force is lawful. In the 2009 Human Rights Annual Report I set out at length the policy framework within which police officers may use force.¹ The policy framework is designed to regulate police action to ensure that where police use force against a member of the public, the force used is lawful, proportionate, restrained and necessary; that it is not used discriminatorily against an individual; and that the force, under no circumstances, amounts to torture, inhuman or degrading treatment or punishment.²

¹ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, pages 104 – 117. PSNI's use of force policy framework is contained within Article 4 of the Code of Ethics and three PSNI policy documents: (i) Policy Directive 07/07, *Public Order and the Use of Force (Including CS Incapacitant Spray, Batons, Handcuffs and Vehicle Mounted Water Cannon)*, version 4 issued 27 October 2009; (ii) Policy Directive 12/08, *Police Use of Firearms*, version 3 issued 15 April 2010; and (iii) Service Procedure 6/2008, *Guidelines on the Operational Use of Taser*, most recently issued on 12 October 2009.

² Article 3 of the European Convention on Human Rights (ECHR) states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." This is an absolute right to which there can be no exceptions.

POTENTIALLY LETHAL FORCE AND LESS LETHAL TECHNOLOGIES

Any use of force has the potential to cause injury and in some cases death.³ Whilst the police are required to refrain from taking life, and must take steps to protect it, deprivation of life by the police will not be regarded as being unlawful when it results from the use of force which is no more than absolutely necessary for a specified aim which, in the United Kingdom, must be to save life or prevent serious injury. That does not mean that the police are permitted to take a life per se, but that they are permitted to use force which might result in the deprivation of life.⁴

PSNI's approach to the use of force is based upon the Conflict Management Model which stresses that a careful use of words and the management of human interaction can resolve many situations. Article 4 of the PSNI Code of Ethics 2008 provides that police officers "may use force only if other means remain ineffective or have no realistic chance of achieving the intended result. Police officers responsible for the planning and control of operations where the use of force is a possibility shall so far as possible plan and control them to minimise recourse to the use of force, in particular, potentially lethal force."

The Chief Constable has given standing authority for all officers, subject to successful completion of relevant training, to be issued with a personal issue handgun which may be carried when officers are both on and off duty. Both initial firearms judgemental training (using the Firearms Training Simulator) and firearms refresher training (tactical) have been observed during the relevant period. I have also reviewed course documentation. The training integrates in a comprehensive and practical way the relevant human rights principles and international best practice. The Trainers are particularly skilled at imparting the relevant information in a manner which enables officers to apply those principles to practice: scenario based training is a key component.

³ Article 2 ECHR requires public authorities, including the police, to (i) refrain from the intentional and unlawful taking of life; (ii) to take appropriate steps to safeguard the lives of those within its jurisdiction; (iii) in certain circumstances to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual; and (iv) to carry out an effective investigation into a death.

⁴ *McCann v UK*, (1995) 21 EHRR 97.

The Belfast Agreement 1998 records that in a peaceful environment the police service should be unarmed. An unarmed police service is the norm throughout the rest of the United Kingdom and in the Republic of Ireland. PSNI aspires to be an unarmed police service and the Chief Constable keeps the question of moving towards a routinely unarmed police service under regular review.⁵ The use of a firearm by a police officer is, however, a measure of last resort. Firearms may only be discharged “where the officer honestly believes it is absolutely necessary to do so in order to save life or prevent serious injury, unless the discharge is for training purposes or the destruction of animals.”⁶ During 2009/2010 firearms were drawn or pointed on 345 occasions and discharged on 5 occasions.⁷ Strict scrutiny is applied, both internally within the PSNI and externally by the Police Ombudsman, to every incident where a firearm is discharged.

Over the past ten years a number of less lethal technologies have been introduced by the PSNI as an alternative to firearms: Attenuating Energy Projectiles (AEPs); Taser; water cannon; and CS spray.⁸ These have been discussed at length in previous Human Rights Annual Reports with a number of recommendations made in the 2009 Human Rights Annual Report in respect of AEP and Taser.

AEP

The AEP discharges less-lethal kinetic energy projectiles. It can only be used by a limited number of specially trained PSNI officers and there is strict guidance in relation to its deployment and use. It may only be used lawfully if it is absolutely necessary to do so to reduce a serious risk of loss of life or

⁵ *A New Beginning: Policing in Northern Ireland (the Patten Report)*, September 1999, Recommendation 65, states “The question of moving towards the desired objective of a routinely unarmed police service should be periodically reviewed in the light of developments in the security environment.”

⁶ *PSNI Code of Ethics*, 2008, sub-Article 4.4.

⁷ *PSNI Use of Force Report*, 1 April 2009 – 31 March 2010.

⁸ The Patten Report recommended that research be undertaken into the development of less lethal alternatives to the use of firearms. In response, the Northern Ireland Office established a Steering Group to examine alternative policing approaches to conflict management, including less lethal technologies. To date, the Steering Group has looked at a number of less lethal technologies. The Policing Board continues to be involved in the work of the Steering Group.

serious injury.⁹ Thus the test that must be met before AEP can be lawfully used is the same test as for conventional firearms. As it is considered a less lethal option it will be preferred as an alternative to conventional firearms if it is available, the circumstances are appropriate and the test of absolute necessity has been met.

AEP has been used as a less lethal option to a conventional firearm during both stand alone incidents and public order situations. During a public order situation AEP must not be used *as a means of* crowd control and only in relation to a targeted, identified individual or group of individuals. The Police Ombudsman for Northern Ireland investigates all incidents where an AEP is discharged.

Many stakeholders have voiced concerns over the use of AEP by the PSNI and this has been discussed in consecutive Human Rights Annual Reports, particularly in relation to the debate over whether AEP should ever be used against children. However, as I noted in the 2009 Human Rights Annual Report, to require police to make a subjective assessment of age, below which the use of AEP can *never* be justified, is to confuse the test for its use and may in fact create a situation where a child is placed in greater danger.¹⁰ That said, the PSNI must use every means possible to ensure that training is comprehensive, practical and reinforces the special protection all children require. It was therefore recommended in the 2009 Human Rights Annual Report that the PSNI conduct a further review of all training manuals and lesson plans and address specifically the interests of the child in any operation which may involve the use of force.¹¹

In response to that recommendation the PSNI Human Rights Training Adviser and the PSNI Human Rights Legal Adviser are working together to conduct an

⁹ Or substantial and serious damage to property which is likely to cause, or is judged to be likely to cause, a serious risk of loss of life or serious injury: PSNI Policy Directive 12/08, section 7, para. 5(5)(a) and 6(7)(b).

¹⁰ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, pages 108 – 113.

¹¹ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 12.

audit of PSNI use of force policy and training in relation to children. They have met with PSNI Department Heads to discuss the recommendation, key legal principles underpinning the use of force policies, and PSNI practice in relation to children. It was agreed that the method by which the recommendation is addressed has to be feasible given current staffing and financial constraints. Since then, Department Heads have identified a selection of relevant lessons from each of their areas of work. They will screen those lessons using an audit tool and any deficiencies identified in the lessons as a result of the screening exercise will be remedied. The audit tool was developed by the PSNI Human Rights Training Adviser and is designed to screen how lessons address the specific needs of children in relation to the subject area being taught.

The PSNI Human Rights Training Adviser will oversee the screening process carried out by each Department and both she and the PSNI Human Rights Legal Adviser have committed to provide the Human Rights and Professional Standards Committee with a report on their audit by January 2011. I have met with the PSNI Human Rights Training Adviser on a number of occasions throughout the year to discuss the recommendation and I have been kept informed as to the progress made in implementing it. I am satisfied that completion of the recommendation is imminent and I look forward to receiving a copy of the audit report in due course.

Taser

Taser is a weapon designed to temporarily incapacitate a subject through the use of an electric current which temporarily interferes with the body's neuromuscular system. Taser is issued to trained officers in Special Operations Branch and Armed Response Units and, according to PSNI policy, may only be used by those officers "where the officer honestly and reasonably believes that it is necessary in order to prevent a risk of death or serious injury."¹² The test for the use of force is set at a slightly lower threshold than that for use of a firearm or AEP. PSNI policy goes on to state that "It is

¹² PSNI Service Procedure 6/2008, Guidance Notes, para.10.3.

intended to cover a situation where an officer honestly believes that a situation is in immediate danger of escalating to a point where the use of lethal force will be required.”¹³

It was recommended in the 2009 Human Rights Annual Report that PSNI consider amending the Taser policy document to make clear that use will be justified where an officer honestly and reasonably believes that it is immediately necessary to use Taser to prevent or reduce the likelihood of recourse to lethal force.¹⁴ Whilst the policy document already contains this guidance as currently drafted, it requires two separate provisions to be read together in order to be understood. The recommendation was intended to make it easier for officers reading the policy document to understand what the test for use of Taser is. In accepting that recommendation PSNI “considered in detail whether the test for the use of Taser should be amended, as set out in the recommendation... PSNI believes that the current test for the use of Taser remains the most appropriate one.”¹⁵ Given that PSNI has given consideration to the recommendation, I consider it to be implemented. However, the recommendation did not ask PSNI to change the existing test for the use of Taser. Rather, it required clarification, in guidance, that was already contained within the Taser policy document. Given that work is underway with the PSNI Human Rights Training Adviser and the PSNI Human Rights Legal Adviser, during the course of which I (along with the PSNI Advisers) will be reviewing all of the use of force policies, training and guidance, I will report further once the work is complete.

MONITORING POLICE USE OF FORCE

Where the police use force against a member of the public the use must be lawful, proportionate, restrained and necessary. In no circumstances should it amount to torture, inhuman or degrading treatment or punishment. To this end, mechanisms are in place, both internally and externally, to ensure that

¹³ *Ibid.* Guidance Notes, para.10.4.

¹⁴ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 13.

¹⁵ *Human Rights Programme of Action*, PSNI, 2009-2010, page 9.

PSNI is held to account for all uses of force by its officers. Any incident involving the use of force may be the subject of a Police Ombudsman investigation regardless of whether or not a complaint has been made.¹⁶ Where a firearm, an AEP or a Taser have been discharged, the Police Ombudsman will carry out a thorough investigation into the incident. Where Taser has been drawn or aimed at a subject, but not discharged, the Police Ombudsman must be notified, but he will usually only investigate if a complaint is made.¹⁷ At the conclusion of his investigation, the Police Ombudsman sends a report outlining his findings to the Secretary of State, the Policing Board and the Chief Constable. That report is known as a Regulation 20 report. Where the Police Ombudsman identifies any areas of training, policy or practice which can be improved he will make relevant recommendations to the Chief Constable. The Police Ombudsman may also make recommendations to the Chief Constable that individual officers face disciplinary proceedings. As discussed in chapter 5 of this Human Rights Annual Report, the Human Rights and Professional Standards Committee monitors the findings contained in Regulation 20 reports and the PSNI response.

Police officers are individually responsible for their own actions. If it appears to the PSNI or to the Police Ombudsman that force has been used unlawfully, the police officer involved will be subject to a criminal investigation and may be prosecuted. Obedience to the orders of a supervisor is no defence for breaking the law if a police officer knew that the order to use force was unlawful and had a reasonable opportunity to refuse to obey it. Responsibility also rests with the supervisor who gave the unlawful order.¹⁸

Recording the use of force

There are robust internal mechanisms in place within the PSNI for monitoring all uses of force by police officers. Any incident that involves the use of force

¹⁶ The Police Ombudsman can investigate matters referred to him by the Policing Board, the Public Prosecution Service, the Chief Constable, or matters of his own volition: Police (Northern Ireland) Act 1998, section 55.

¹⁷ PSNI Service Procedure 6/2008, Guidance Notes, paras.14.4 and 14.5.

¹⁸ PSNI Policy Directive 07/07, section 3(4) and PSNI Policy Directive 12/08, section 3(3).

by a police officer is recorded in their notebook and reported to their supervisor. In addition, the use of certain types of force must be recorded on an electronic use of force monitoring form. The types of force recorded on this form are:

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

The electronic use of force monitoring form provides PSNI with an efficient single submission and notification process that caters for all of the categories of force listed above.¹⁹ PSNI is also able to draw on information collected on the forms in order to respond to requests for information from other public bodies, by politicians, from stakeholders and also from within PSNI itself.

The use of force by police officers is reviewed, and any issues arising addressed, by ACC Operational Support with whom the Policing Board has a direct line of communication. Ultimately the Chief Constable is accountable to the Policing Board for all uses of force by the PSNI.

PSNI collates the data captured on the electronic use of force monitoring forms, including any trend information, into a report which is presented to the Policing Board, and analysed by the Human Rights and Professional Standards Committee, on a six monthly basis.²⁰ While a statistical report does

¹⁹ *PSNI Post Implementation Review, Electronic Use of Force Monitoring Form*, September 2008 (updated August 2010).

²⁰ As required by ongoing Recommendation 36 of the *Human Rights Annual Report*, Northern Ireland Policing Board, 2005. This reporting mechanism also satisfies Recommendation 14 of the *Human Rights Annual Report*, Northern Ireland Policing Board, 2009. The report includes data on the reason each use of force recorded on the electronic monitoring form; the location of the use; the use per District and per Area; the incident type; the type of police activity; and, where a weapon was actually

not in itself measure PSNI human rights compliance when using force, the six monthly reports provide the Committee with an overview of PSNI use of force and can flag issues, enabling more in-depth scrutiny of specific incidents. The six monthly reports are marked ‘restricted’ as they contain detailed information which, if made available to the public, would breach statistical disclosure rules.²¹ It is therefore not possible for the PSNI to publish the use of force report, at least not in the format made available to the Policing Board. This is disappointing as the publication of statistics by public authorities enhances participation amongst stakeholders and demonstrates the organisation’s commitment to human rights accountability. As one report states, “Statistical indicators are a powerful tool in the struggle for human rights. They make it possible for people and organizations—from grassroots activists and civil society to governments and the United Nations—to identify important actors and hold them accountable for their actions.”²²

Having requested and received the permission of the PSNI, I am however able to provide the following overhead information on the use of force by the PSNI between 1 April 2009 and 31 March 2010.²³

Attenuating Energy Projectile (AEP)
Officers used AEPs on 38 occasions during the period. 23 involved the AEP being pointed but not fired, while 15 resulted in an officer discharging at least 1 AEP. A total of 33 AEPs were discharged in this period. All 15 occasions when AEP were fired occurred during 3 serious public disorder incidents: Ardoyne (North Belfast) on 13 July 2009; Mountpottinger (East Belfast) on 31 August 2009; and Craigavon on 27 February 2010. The group against which AEPs were used most frequently were males aged 18-29 (26 occasions, 84%). ‘A’ District (North and West Belfast) recorded the highest level of AEP usage (21 occasions, 55%).

discharged / drawn and used / sprayed, the gender and age of the member of the public against whom the force was used.

²¹ The *Code of Practice for Official Statistics*, UK Statistics Authority, January 2009, requires that individuals or any private information relating to them are not revealed.

²² *Human Development Report 2000. Human Rights and Human Development*, United Nations Development Programme (UNDP), 2000, page 89.

²³ *PSNI Use of Force Report*, 1 April 2009 – 31 March 2010.

Baton
Batons were either drawn or used on 986 occasions during the period. They were drawn (not used) on 638 occasions and were used on 348 occasions. Males aged 18-29 were the group against whom batons were used most frequently (243, 64%). 'G' District (Foyle, Limavady, Magherafelt and Strabane) recorded the highest level of baton usage (177, 18%). Batons were either drawn or used on 415 (42%) occasions in the Urban Region, compared with 571 (58%) occasions in the Rural Region.
CS Spray
There were 587 reported uses of CS spray during the period. On 217 of these occasions it resulted in the spray being drawn but not sprayed, while spray was drawn and sprayed on 370 occasions. Of the 430 persons sprayed 235 (55%) were males aged 18-29. The use of CS Spray was greatest in 'A' District (North and West Belfast) where CS was sprayed on 96 occasions and drawn on a further 23.
Firearms
Firearms were drawn or pointed on 345 occasions during the period. On a further 5 occasions firearms were discharged. The use of firearms was greatest in 'A' District (North and West Belfast), where a firearm was drawn or pointed on 73 occasions, but on no occasion was one fired.
Police Dog
Officers reported the use of force using a police dog on 56 occasions during the period. Two thirds occurred in the Rural Region (37 occasions, 66%), of which 18 (32%) were in 'F' District (Cookstown, Omagh, Fermanagh, Dungannon and South Tyrone). All the people against whom a police dog was used were male (64), of these 37 were aged 18-29 (58%).
Taser
There were 145 occasions where Taser was used during the period, of which 9 resulted in the Taser being fired. The use was greatest in 'B' District (South and East Belfast), where Taser was used on 31 occasions, 21% (drawn on 27 occasions and fired on a further 4 occasions). This was closely followed by 'C' District (Ards, Castlereagh, Down and North Down), where Taser was used on 30 occasions, 21% (drawn on 28 occasions and fired on 1 occasion).

Water Cannon

Water cannon were deployed on 10 occasions during the period. Water cannon were used on one occasion. This one use was in 'A' District (North and West Belfast).
--

8. COVERT POLICING

The interception of communications, surveillance and the use of covert human intelligence sources (CHIS) by the police raise a number of human rights considerations: the most obvious of those is the right to respect for private and family life¹ and, particularly in the Northern Ireland context, the right to life.² When using these powers the police are bound to comply with a strict statutory framework³ which is designed to ensure human rights compliance. Adherence to the statutory framework is monitored by the Chief Surveillance Commissioner who carries out annual inspections of all law enforcement agencies, including the PSNI, during which guidance is offered as to how policy, procedures, documentation and training can be improved. Complaints that the interception of communications, surveillance or the use of CHIS has breached a person's human rights can be made to a Tribunal. The Tribunal can hear, consider and investigate complaints and has power to award compensation and to prevent further use of the covert powers in the particular case.

Given the oversight structures already in place, the Human Rights and Professional Standards Committee (the Committee) monitors the reports of the Chief Surveillance Commissioner and the PSNI response to those reports. This year I have again examined the mechanisms in place for ensuring that all police officers comply with legislative requirements in relation to covert policing. This has involved monitoring PSNI covert policing policies, procedures and covert policing training.

POLICIES AND PROCEDURES

Since the transfer of responsibility for national security intelligence work from PSNI to the Security Services in 2007, PSNI C3 Intelligence Branch has completed a comprehensive review of all intelligence policies, procedures and

¹ Article 8 European Convention on Human Rights (ECHR).

² Article 2 ECHR.

³ Regulation of Investigatory Powers Act 2000 (RIPA).

protocols. It has also established an electronic library that is accessible to all C3 Intelligence Branch officers.

The next phase of the review is the production of an overarching policy on the management of intelligence. It was recommended in the 2008 Human Rights Annual Report that the overarching policy be completed within the year.⁴ It was not completed within that timeframe and therefore it was recommended in the 2009 Human Rights Annual Report that the PSNI report to the Committee within three months on the progress of the implementation of the overarching policy, providing an explanation for any further delay.⁵ PSNI has provided that update report and I therefore consider last year's recommendation to be implemented in full. PSNI explained that in order to bring about a 'future proofed' corporate approach to intelligence collection and management, any policy written had to align itself with the C3 IT Strategy. The production of the overarching policy has therefore been temporarily suspended whilst the C3 IT Strategy project is progressed. As the C3 IT Strategy is complex and long term in nature, PSNI is in the process of drafting a Management of Intelligence policy reflecting the 'as is' situation in order to avoid any unnecessary delays.

Once the interim overarching Management of Intelligence policy has been issued I hope to be able to confirm that the recommendation in the 2008 Human Rights Annual Report has been implemented in full. The PSNI Overview⁶ system should act as a safeguard to ensure that the interim policy is regularly reviewed and updated to align itself with the C3 IT Strategy once that project has been completed.

⁴ *Human Rights Annual Report*, Northern Ireland Policing Board, 2008, Recommendation 24.

⁵ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 15.

⁶ Overview is discussed in chapter 3 of this Human Rights Annual Report at pages 15 - 16.

NATIONAL SECURITY

Responsibility for national security intelligence work was transferred from the PSNI to the Security Services in 2007. However, whilst the Security Service provide the strategic direction for national security, the PSNI contribution to countering terrorism remains central. In all circumstances, including where national security issues are involved, it is the role of the PSNI to mount executive policing operations, make arrests and take forward prosecutions under the direction of the Public Prosecution Service for Northern Ireland.

Annex E to the St. Andrew's Agreement states that the Security Service will participate in briefings to closed sessions of the Policing Board to provide appropriate intelligence background about national security related policing operations. That is to ensure the Chief Constable can be fully accountable for PSNI's policing operations. During 2009/2010 I met with the Director of the Security Services in Northern Ireland. I also met with senior officers within PSNI Crime Operations Department to discuss the working arrangements between the PSNI and the Security Service.

In accordance with Annex E to the St. Andrew's Agreement, I was given access to the relevant protocols that underpin the principles within which the PSNI must operate. Those documents have been examined and commented upon in previous Human Rights Annual Reports. I intend, over the course of the next reporting period, to conduct a further review of the protocols to ensure that there has been no diminution of the PSNI's ability to comply with the Human Rights Act 1998.

THE CHIEF SURVEILLANCE COMMISSIONER'S REPORT

The reports of the Chief Surveillance Commissioner have been examined each year by the Policing Board's Human Rights Advisors.⁷ This year I was again provided unrestricted access to the 2010 report and the PSNI response

⁷ Reports dating back to 2002 have been examined.

to the report. I have discussed the contents of both documents with the PSNI Human Rights Legal Adviser, to whom I am grateful. The Chief Commissioner reported that of the recommendations made by him in 2009, all but three have been implemented by PSNI in full. The three recommendations which have not yet been implemented are in the process of being implemented.

The 2010 report records, for another year, the high standards of compliance by PSNI with good practice identified in relation to oversight, audit and compliance structures. He described well developed policies and excellent investment in training. He also found there to be clear and compliant guidelines in place for the use of Covert Human Intelligence Sources and that officers are well versed in their responsibilities and the legal boundaries within which they operate. Three recommendations were made, which are currently being implemented by PSNI.⁸ The report commends PSNI for its sophisticated structures and adherence to good practice.

OPERATION BALLAST

The Statement by the Police Ombudsman for Northern Ireland on the investigation into the circumstances surrounding the murder of Raymond McCord Junior and related matters (the Operation Ballast Report) was published on 22 January 2007. It contained 20 recommendations, 17 of which were directed to the PSNI. Recommendation 20 of the Operation Ballast Report required the Policing Board to establish a mechanism to review the PSNI response to the recommendations. The Policing Board accepted that responsibility and since 2007 the Policing Board's Human Rights Advisors have examined, validated and reported on the implementation of the Ballast recommendations. I reported on the implementation of the recommendations in last year's Human Rights Annual Report. The report reflected that of the 17 recommendations made, 13 have been implemented in full with the remaining 4 implemented in part. Those recommendations which remain outstanding

⁸ Those recommendations are confidential.

are, necessarily, ongoing recommendations which will continue to be implemented as the investigation progresses.

In December 2009, the Chief Constable announced his intention to transfer the investigation of those deaths highlighted by the Operation Ballast Report (now known as the Operation Stafford investigation) from the Historical Enquiries Team (HET) to PSNI Crime Operations. Following the announcement, I provided advice to the Human Rights and Professional Standards Committee on whether the new arrangements complied with the right to life under Article 2 of the European Convention on Human Rights (ECHR), in particular the requirement that the investigation be independent, publicly accountable and such that the relatives of the deceased are kept informed in so far as required to protect their legitimate interests.⁹ Whilst it is the Chief Constable alone who is tasked with making operational decisions, such as the decision to transfer Operation Stafford, the Committee on behalf of the Policing Board is legally obligated to monitor the implications of the decision to transfer on PSNI compliance with the Human Rights Act 1998.

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

To enable the Policing Board to perform adequately its statutory function, the Board has established a special committee which is dedicated to overseeing

⁹ The police have a positive obligation under Article 2 ECHR to carry out an effective investigation into a death.

the compliance of the Operation Stafford investigation with Article 2 ECHR. That special committee is constituted to receive confidential briefings from PSNI and others on the progress of the investigation. I have also been given access to documents and have been briefed on the progress of the investigation. I have been assured that I will continue to receive such briefings and will have unrestricted access to all information, intelligence and evidence which I request. I will continue to provide advice to the special committee and to the Human Rights and Professional Standards Committee as to the arrangements in place.

The PSNI has put in place a mechanism by which an independent panel comprising two persons will receive confidential briefings on a regular basis and will receive, for example, the contents of the Current Situation Reports and any Serious Crime Review Team Reports prepared in respect of the Operation Stafford investigation. The PSNI has undertaken to make appropriately qualified personnel available to the Panel to answer any queries that arise. There is an agreed process for the resolution of any disagreement that may arise. The Panel will brief the relatives routinely. The PSNI has shown a real commitment to ensuring that the investigation is robust, independent and will involve the families to the fullest extent possible.

I will continue to provide the special committee and the Human Rights and Professional Standards Committee with advice on the human rights implications of the investigation as and when required.

9. VICTIMS

Article 1 of the European Convention on Human Rights (ECHR) requires States to *secure* the Convention rights and freedoms for everyone in their jurisdiction: not just refrain from infringing them. The protection of human rights therefore lies at the heart of the ECHR and the police have an important role in upholding and vindicating these rights. In order to act compatibly with the Human Rights Act 1998, which gives effect to the rights and freedoms contained within the ECHR, the PSNI must protect all members of the community and provide an equal service to all. If a member of the community is vulnerable that means adopting special measures to ensure that access to the service is actually equal.

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

PSNI policy recognises that. Article 2.3 of the PSNI Code of Ethics 2008 states:

Police officers shall treat all victims of crime and disorder with sensitivity and respect their dignity. Police officers shall consider any particular needs, vulnerabilities and concerns which victims may have. Subject to the rules governing confidentiality, victims shall be updated on the progress of any relevant investigations in accordance with Police Service policy and procedure. (Note: The term 'victims' includes

the relatives of a deceased person where the circumstances of the death are being investigated by the police.)

PSNI policy sets out how officers should deal with victims and witnesses, which includes the requirement that police officers should liaise with victims and update them on the progress and status of their particular investigation and that PSNI will make appropriate referrals to both voluntary and statutory agencies in an effort to provide enhanced support to victims and witnesses.¹ PSNI policy is comprehensive and adequately safeguards the rights and interest of victims, including those with a vulnerability.

Each PSNI District has a Public Protection Unit (PPU) located within one police station. Located alongside each other within that station are specialist officers who have a role or duty to provide services to specific categories of victim: Domestic Abuse Officers; Child Abuse Investigation Teams; Vulnerable and Missing Persons' Officers; and a Sex Offender Management Team. PSNI also has Hate Incident Minority Liaison Officers for victims of hate crime and Family Liaison Officers for the families of homicide victims and victims of fatal road traffic collisions.

This year I have met with a wide range of individuals and organisations, for example, in relation to disability, ethnicity, gender identity, sexual orientation, human trafficking and sexual exploitation, domestic abuse and children and young people. The Human Rights and Professional Standards Committee (the Committee) has also engaged with a number of individuals and groups. The confines of this Human Rights Annual Report do not permit an in-depth analysis of the service PSNI provides to each and every category of victim and to attempt to do so would not do justice to the policing needs of those categories of victim. The process of thematic review, which is an increasing focus of the work of the Committee, does permit such an in-depth analysis.

¹ *Dealing with Victims and Witnesses*, PSNI Policy Directive 05/06, version 5 issued 19 May 2009. Note that PSNI will only make referrals to other agencies provided the victim does not object, and in certain cases, such as domestic abuse, murder and sexual assault, PSNI will only make referrals with the express consent of the victim.

The fundamental purpose of a thematic review is to seek and use the views of those who experience policing on the ground as an evidence base for critically evaluating the operational interpretation and application of the policies and strategies designed by the Chief Constable and the senior command team. The PSNI has, so far, engaged positively with the Committee on the thematic reviews undertaken and has shown a real commitment to the shared objective of improving policing and ensuring the rights of all members of the community are respected, protected and fulfilled. The Committee will continue to use the thematic process to identify issues of particular concern to the community and study them closely.

In the remainder of this chapter I highlight victims of hate crime and victims of domestic abuse, both areas of policing in which the Committee has undertaken work in the relevant year. I also set out the terms of reference for the Committee's ongoing thematic inquiry into policing with and for lesbian, gay, bisexual and transgender (LGB&T) individuals.

The Policing Board, in conjunction with the Office of the Police Ombudsman for Northern Ireland, is also engaged in a project researching the views and experiences of people with learning disabilities from a policing perspective. I look forward to the outcomes from this important and timely project and will report further next year.

DOMESTIC ABUSE

Domestic abuse is a serious and endemic problem in Northern Ireland with the PSNI responding to, on average, a domestic incident every 20 minutes of every day. Given the importance of the issue the Policing Board, through the Human Rights and Professional Standards Committee, undertook a human rights thematic review examining how effectively the PSNI tackles domestic abuse. The review did not just consider white, heterosexual women as victims of domestic abuse but also considered men; lesbian, gay and bisexual victims; and victims from traveller and ethnic minority communities. The

review considered the reasons why victims may be deterred from reporting incidents to the police.

A thematic report, published on 24 March 2009, details the key findings from the review and outlines PSNI's compliance with the Human Rights Act 1998 in respect of this critical area for policing.² The report makes 14 recommendations for the police to consider as a means of further improving their service to victims of domestic abuse.

The PSNI responded positively to the thematic report and indicated its acceptance of all 14 recommendations. The Committee has monitored the implementation of those recommendations and held a roundtable meeting with PSNI and stakeholders in G District (Foyle, Limavady, Magherafelt and Strabane) in May 2010 and October 2010. The purpose of the meeting was to discuss PSNI progress in implementing the recommendations in that District. Members heard evidence at the meeting of the good practice model that exists in the Foyle Area but raised issues regarding the dissemination of that good practice throughout the Districts. I have also met with representatives from other stakeholder groups across Northern Ireland and discussed whether, and if so to what extent, the recommendations have been implemented.

The PSNI has undertaken some notable work since March 2009 which address some aspects of the recommendations in the thematic report, for example in training call handlers, reviewing the domestic abuse policy, and providing the Committee with disaggregated statistics. However there still remain a number of matters outstanding. I will be providing the Committee with an update report in early 2011 detailing these outstanding matters. The update report will also outline other positive work the PSNI has carried out, for example, the introduction of DASH³ and Honour Based Violence⁴ Service

² The report is available for download at www.nipolicingboard.org.uk.

³ The Risk Identification, Assessment and Management in Relation to Domestic Abuse, Stalking & Harassment and Honour Based Violence (DASH) Service Procedure requires a DASH risk identification checklist to be used for all domestic abuse crimes, incidents and breaches of non-molestation and occupation orders. The purpose of the

Procedures and it will detail other developments in the policing of domestic abuse that have emerged since the thematic report was published, for example, the roll out of MARAC (Multi Agency Risk Assessment Conference)⁵ across all Districts.

The thematic review signalled the start of a process of review by the Committee. The update report will be a further step in that process. The Committee intends to keep domestic abuse policing on its agenda and will continue to liaise with stakeholders to seek their valuable input and feedback.

By adopting a thematic approach to reviewing how domestic abuse in Northern Ireland is policed, the Committee was able to gauge a more in depth understanding of the quality of service the PSNI provides all victims of domestic abuse. Due to the success of the domestic abuse thematic the Committee committed to conduct two further human rights thematic reviews: the first examining policing with respect to children and young people (discussed at chapter 14 of this report); and the second examining policing with and for lesbian, gay, bisexual and transgender (LGB&T) individuals in Northern Ireland (discussed at page 83 of this report). Over time the thematic review will become a significant element of the Policing Board's human rights monitoring framework and will complement the continuous monitoring process which is reported on in the Human Rights Annual Report.

DASH checklist is to give a consistent and practical tool to practitioners working with victims of domestic abuse to help them identify risks, assess the risks, and manage the risks. The DASH checklist is used by all agencies engaging in the MARAC (Multi Agency Risk Assessment Conferencing) process and where a victim is identified as "high risk", they will be referred to the MARAC process.

⁴ The Honour Based Violence Service Procedure includes reference to Forced Marriage and Female Genital Mutilation. This new Service Procedure complements the current PSNI guidance on Forced Marriages and increases awareness of the specific needs of minority ethnic victims.

⁵ In a MARAC local agencies will formally meet to discuss the highest risk victims in their area, information about the risks faced by those victims, the actions needed to ensure safety, and the resources available locally are shared and used to create a safety plan around that victim which involves all agencies. The MARAC will normally achieve more successful outcomes in high risk domestic violence cases than would be achieved by individual agencies working with their own limited information. MARAC was initially introduced as a pilot in the Antrim area and, following its success, the NIO, DHSSPS & PSNI agreed to jointly fund the regional roll-out, with a funding package to cover the period from April 2009 to 31 March 2011. The roll-out of MARAC across the eight PSNI Districts commenced in December 2009.

HATE CRIME

All human beings are born free and equal in dignity and rights.⁶ The enjoyment of the rights and freedoms set out in the European Convention on Human Rights (ECHR) must 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.⁷ PSNI must therefore be sure that it upholds and protects the human rights of all members of the community in equal measures, bearing in mind that it may need to tailor its services to suit certain groups or individuals in order to achieve this equality.

Whilst it does not automatically follow that a member of a minority group will always be more vulnerable than other victims, or will require a specialised response, PSNI must be mindful that being part of a minority *may* make a person more vulnerable than other victims. PSNI policy recognises this and requires that vulnerable victims are dealt with by investigating officers in a way that is appropriate to their needs.⁸ Given the importance of what is at stake, all officers must adhere to this policy. In particular, the policy states that where a victim cannot clearly understand English, or where the victim is deaf or hard of hearing, an interpreter should be requested at the first opportunity to ensure that vital evidence is not lost and that the victim is not caused any further distress by the inability to effectively communicate.⁹ If a person believes he or she is the victim of a crime *because* he or she is a member of a minority group, that crime is categorised as a hate crime.

Recording of hate crime

Hate incidents are defined as any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as

⁶ Article 1 of the Universal Declaration of Human Rights which states “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

⁷ Article 14 European Convention on Human Rights

⁸ *Dealing with Victims and Witnesses*, PSNI Policy Directive 05/06, version 5 issued 19 May 2009, section 7(4)(5)(a).

⁹ *Ibid.* section 7(4)(4).

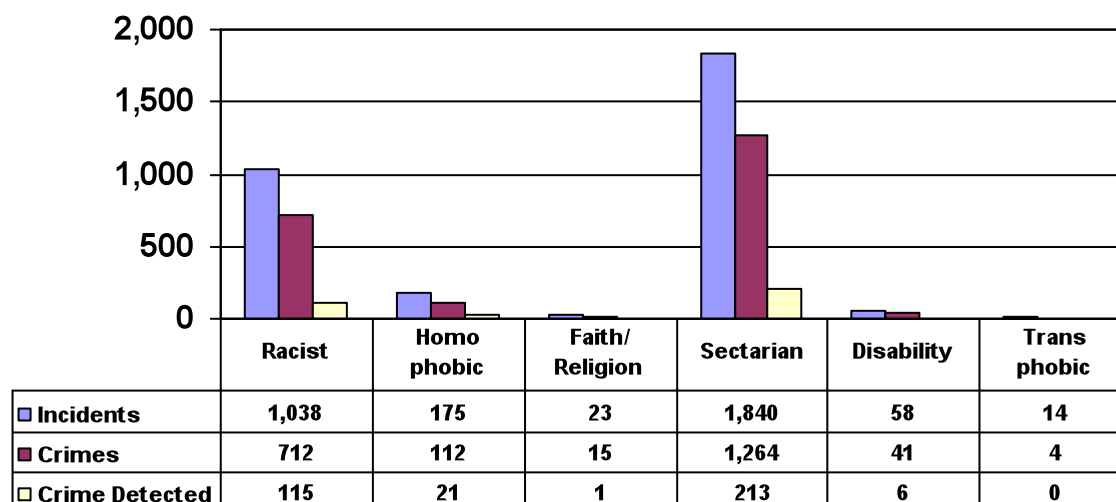
being motivated by prejudice or hate. However, not all hate incidents will proceed to be recorded as a hate crime.¹⁰ Hate crime is defined as any hate incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate. Both of these definitions have been adopted by ACPO and the PSNI.¹¹

PSNI records the number of incidents and crimes committed in Northern Ireland each year with a hate motivation. Hate motivation is classified according to whether the motivation for the incident or crime was racist; homophobic; based on faith/religious grounds; sectarian; based on disability; or transphobic. The chart on page 80 shows the total number of incidents and crimes with a hate motivation recorded by PSNI during 2009/2010 together with the number of recorded offences cleared. What it does not reflect is the overall number of hate motivated incidents and crimes that occur in Northern Ireland as many victims fail to report. Furthermore, I have heard submissions from victims that officers have, at times, failed to identify and record an incident or crime as motivated by hate. To examine the reasons for the under-reporting for all categories of hate crime would require several dedicated pieces of work. The Human Rights and Professional Standards Committee has already commenced a thematic review into policing with and for lesbian, gay, bisexual and transgender (LGB&T) individuals which will consider, amongst other matters, the reasons for the under-reporting of homophobic and transphobic motivated hate crime.

¹⁰ “Hate crime” is not in itself an offence but the Criminal Justice (No. 2) (Northern Ireland) Order 2004 makes provision for sentences to be increased where the offence for which a person is convicted was aggravated by hostility based on grounds of race, religion, sexual orientation or disability. It is also an offence, under the Public Order (Northern Ireland) Order 1987, to commit acts intended to, or likely to, stir up hatred against a group of persons or arouse fear of a group of persons. “Group of persons” in this context refers to fear or hatred of persons based on religious belief, sexual orientation, disability, colour, race, nationality (including citizenship) or ethnic or national origins.

¹¹ *Police Response to Hate Incidents*, PSNI Policy Directive 02/06, Version 4 issued 12 December 2008, section 2(1)(a).

Chart 1: Hate Motivated Incidents, Crime and Clearances, 1 April 2009 to 31 March 2010¹²



The overall clearance/detection rate for recorded crime in Northern Ireland during 2009/2010 was 25.8%.¹³ That compares to a clearance/detection rate of only 16.6% for hate motivated crime recorded during 2009/2010.¹⁴ The clearance/detection rate reflects the number of crimes for which a person was made amenable: it does not mean that 16.6% of recorded crimes were followed by the imposition of a sentence for a crime motivated by hate.¹⁵ Between March 2007 and October 2010 there have been 11 sentences imposed in Northern Ireland for crimes motivated by hate.¹⁶ It is clear that making offenders of hate crime amenable for their offending is not just an issue for the police: it needs to be addressed by the wider criminal justice system.

Hate Incident Minority Liaison Officers (HIMLOs)

PSNI developed the role of Hate Incident Minority Liaison Officers (HIMLOs) to provide support to victims of hate incidents and crimes and to provide guidance to operational officers investigating hate crime. HIMLOs are required

¹² PSNI Statistical Report 1 April 2009 – 31 March 2010, page 24.

¹³ PSNI Statistical Report 1 April 2009 – 31 March 2009. A total of 109,139 crimes recorded with a total of 28,139 of these cleared.

¹⁴ PSNI Statistical Report 1 April 2009 – 31 March 2009. A total of 2,148 hate motivated crimes recorded with a total of 356 of these cleared.

¹⁵ Footnote 10 of this chapter refers.

¹⁶ Minister of Justice in response to an Assembly Question, 8 October 2010, (AQW 710/11).

to identify and engage with local minority groups to increase confidence in the PSNI response to hate incidents and they are expected to raise public awareness of hate incidents in their local areas. Until summer 2010 HIMLO duties were performed by Sergeants in each of the District Community Safety Teams. However, following a review, HIMLO duties are now performed by Neighbourhood Policing Team Sergeants, with Constables appointed as deputies to assist the Sergeants. The practical effect this will have on the HIMLO service provided to victims of hate incidents and crimes remains to be seen and will be considered in greater detail as part of the Committee's LGB&T thematic review.

Disability Hate Crime and HIMLOs

In the 2009 Human Rights Annual Report, I referred to research carried out by the Institute of Conflict Research (ICR) on disability hate crime¹⁷ and recommended that PSNI should disseminate the ICR report to all relevant officers with a view to informing policy and practice. Furthermore, the PSNI was to report to the Committee on measures taken to implement the ICR recommendations.¹⁸ Those recommendations were as follows:

1. The PSNI should work with disability support organisations to establish protocols and procedures for third party reporting of disability hate crimes;
2. The operational systems and processes used by PSNI for recording and reviewing disability hate crimes should be reviewed against the standards of best practice; and
3. HIMLOs play a key function in supporting those most affected by disability hate crimes. The PSNI should review the awareness of disability hate crime among HIMLOs and develop appropriate training as necessary.

¹⁷ *Hate crime against people with disabilities: a baseline study of experiences in Northern Ireland*, Institute for Conflict Research, June 2009.

¹⁸ *Human Rights Annual Report*, Northern Ireland Policing Board, 2010, Recommendation 16.

PSNI confirmed in its Human Rights Programme of Action 2009/2010 that it had distributed the ICR report amongst all HIMLOs and Community Safety Superintendents.¹⁹ Since then, HIMLO duties have been moved from Community Safety Teams to Neighbourhood Policing Teams. It therefore follows that the ICR report ought to be disseminated amongst all the officers recently appointed to take on HIMLO duties.

Third party reporting to the police of all types of hate crime already occurs informally through a variety of voluntary organisations. PSNI is formally involved in a third party reporting arrangement for homophobic and transphobic hate crime and for racial hate crime. PSNI has advised that it is willing to engage with stakeholders who are interested in establishing formal protocols and procedures for third party reporting of disability hate crime. PSNI also has an online hate crime reporting form which enables any person to report an incident or crime perceived to have been motivated by hate.

Until recently each PSNI District took it in turn to host best practice forums. Now that HIMLO duties lie with Neighbourhood Policing Teams it is unlikely that best practice forums will be run by Districts and instead there will be a reliance on the central Community Safety Branch to hold such forums. As already stated, the potential impact of the new arrangements on HIMLO duties will be considered in greater depth as part of the Committee's LGB&T thematic review.

All officers with newly appointed HIMLO duties have received, or will be receiving, a bespoke three day hate crime training programme which will include presentations by relevant agencies on all six areas of hate crime recorded by the PSNI.

Whilst I consider Recommendation 16 of the 2009 Human Rights Annual Report to have been implemented in full, on the basis that PSNI has disseminated the ICR report and updated me on its position as regards the

¹⁹ *Human Rights Programme of Action*, PSNI, 2009 – 2010, page 12.

recommendations, the three ICR recommendations do not appear to have been implemented. Those recommendations must now be viewed in light of the removal of HIMLO duties from Community Safety Teams to Neighbourhood Policing Teams. This will be examined in the current LGB&T thematic review.

LESBIAN, GAY, BISEXUAL AND TRANSGENDER INDIVIDUALS

Sexual orientation²⁰ and gender identity²¹ are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse. In recognising that discrimination and abuse based on sexual orientation and gender identity does still prevail in society today, the Policing Board, through the Human Rights and Professional Standards Committee, has launched a thematic inquiry to examine policing with and for lesbian, gay, bisexual and transgender (LGB&T) individuals. The thematic inquiry will not just limit itself to considering LGB&T individuals as victims of hate crime, but it will consider all police interactions with LGB&T individuals.

The terms of reference for the inquiry are that the Committee will consider the PSNI approach to policing with and for LGB&T individuals and its compliance with the Human Rights Act 1998 in:

- Identifying, recording and encouraging the reporting of crimes committed against LGB&T individuals including, but not limited to, homophobic or transphobic motivated hate incidents and crimes; domestic abuse; and sexual violence;
- Supporting LGB&T victims of crime;

²⁰ 'Sexual orientation' refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

²¹ 'Gender identity' refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

- Investigating crimes committed against LGB&T individuals and arresting the perpetrators;
- Providing internal support to LGB&T police officers and police staff; and
- Engaging with LGB&T stakeholder groups, organisations, and individuals.

This will necessarily involve a review of PSNI policy, training, staffing, the quality of service received by LGB&T victims of crime, and the ethos within the PSNI generally towards LGB&T individuals.

The Committee also hopes to raise public awareness of homophobic and transphobic motivated hate crime and will examine whether victims are deterred from reporting these crimes because of the way they are treated at any stage of the criminal justice process.

STUDENT OFFICER TRAINING ON VICTIMS

It was recommended in the 2009 Human Rights Annual Report that the PSNI internal evaluation team should evaluate student officer training on victims and witnesses as a matter of priority within the next cycle of evaluation and report to the Committee on its findings.²² That evaluation has not yet been carried out. I have spoken to the PSNI Human Rights Legal Advisor and Human Rights Training Adviser who have advised me that it was not possible with the resources available in the relevant period to carry out the evaluation. However, they have committed to doing so in the coming months. In any event, the process for review of training which is now in place (and considered in chapter 2 of this report) does ensure that training is screened for human rights compliance and is kept up to date. I therefore consider the recommendation to remain outstanding however I will continue to work with

²² *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 17.

PSNI to agree a mechanism by which the recommendation can be satisfied without an unduly onerous burden being placed on PSNI.

SATISFACTION LEVELS OF VICTIMS

In previous years the PSNI Quality of Service Survey was cited to give a general indication of how victims of crime rated the service they received from the PSNI. However, this survey was not carried out during 2009/2010 and the Chief Constable has indicated that he will instead run a series of victim surveys within the various PSNI Areas. The Policing Board will receive the results of those surveys and will continue to monitor victim satisfaction through this mechanism. The treatment of victims of crime is a significant indicator of the commitment of the police service to the defence and protection of human rights and fundamental freedoms. The people best placed to give an indication of how well victims of crime have been treated by the police are the victims themselves. It is therefore important that the PSNI should continue to monitor victim satisfaction levels and I look forward to reviewing the results of the upcoming Area surveys.

10. TREATMENT OF SUSPECTS

The treatment of suspects inevitably raises human rights issues under the European Convention on Human Rights (ECHR). The rights engaged include, but are not limited to, Article 2 (the right to life); Article 3 (the right not to be subject to torture, inhuman and degrading treatment); Article 5 (the right to liberty and security); and, Article 8 (the right to respect for private and family life). The ECHR provides a minimum standard of protection, a floor not a ceiling. Human rights exist to protect everyone from abuse of power, disrespect and neglect. Article 5 ECHR can be limited in certain circumstances. Where police deprive an individual of their right to liberty, the detention must have a clear legal basis and it must be proportionate, that is, there must be an adequate reason for the detention and the detention should not be for an unreasonably long time.

The Policing Board's Independent Custody Visiting Scheme fulfils a valuable function in ensuring the protection of the human rights of detained suspects. In this Human Rights Annual Report I continue to monitor the treatment of detainees and the conditions of their detention by an analysis of the reports of the Custody Visitors. I also consider issues relating to the detention of persons in non-designated police stations and to the detention of immigration detainees.

INDEPENDENT CUSTODY VISITING SCHEME

The Northern Ireland Independent Custody Visiting Scheme was established by the Policing Board in 2001. Pursuant to section 73 of the Police (Northern Ireland) Act 2000, implementing Patten Recommendation 64,¹ a Government Order gave Custody Visitors responsibility for inspecting all custody and interrogation suites and viewing on remote camera live interviews with detained terrorist suspects. In his final report (Report 19), published in May

¹ *A New beginning: Policing in Northern Ireland (the Patten Report)*, Report of the Independent Commission on Policing for Northern Ireland, September 1999.

2007, the Oversight Commissioner confirmed that Patten Recommendation 64 had been implemented in full.²

As at 31 March 2010, there were 57 Independent Custody Visitors. Custody Visitors are volunteers from across the community who are unconnected with the police or the criminal justice system. The Custody Visitors are divided amongst four Custody Visiting Teams³ operating across Northern Ireland. They visit the 20 designated⁴ police custody suites, unannounced, to report on how detained people are being dealt with by the police and the conditions in which they are held. Detainees are most commonly held in custody under the Police and Criminal Evidence (Northern Ireland) Order 1989, the Terrorism Act 2000, the Justice and Security Act 2007 and the Immigration Act 1971.

Every Quarter, the Human Rights & Professional Standards Committee (the Committee) receives a report on the work of the Scheme. The report highlights any issues raised and the remedial actions taken to address them. The report covers three distinct areas:

- The Rights of the Detainee;
- The Health & Wellbeing of the Detainee; and
- The Conditions of Detention.

The Policing Board publishes an annual report on the work of the Custody Visitors. Detailed statistics are published on a quarterly basis, all of which are made available for public viewing through the Policing Board's website.⁵

² *Report 19*, Office of the Oversight Commissioner, 19 May 2007.

³ Belfast/Antrim; Down/Armagh; North-West; and Tyrone/Fermanagh. Custody Visitors from the Belfast/Antrim Team also conduct visits to Antrim Serious Crime Suite.

⁴ Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 requires the Chief Constable to designate the police stations which are to be used for the purpose of detaining arrested persons.

⁵ Statistics on the activity of Custody Visitors in 2009/2010 which are cited throughout this chapter are taken from *Custody Visiting in Northern Ireland during 2009/2010*, Northern Ireland Policing Board, 2010, available through the Policing Board's website: www.nipolicingboard.org.uk

The Custody Visiting Teams conduct a significant number of visits on an annual basis. Between 1 April 2009 and 31 March 2010, 1,066 visits were carried out. Again, in this year's Human Rights Annual Report, I would like to commend the dedication of the Custody Visitors. The work they carry out is a valuable safeguard to ensure that the human rights of detained persons are protected. The Independent Custody Visiting Scheme has recently been designated as one of only four Northern Ireland bodies to form part of the United Kingdom's National Preventative Mechanism (NPM).⁶ The NPM represents a major break-through for the implementation of the Optional Protocol to the Convention against Torture (OPCAT) in the United Kingdom, with the bodies that form it carrying out a system of regular visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. In determining which bodies should be included in the United Kingdom's NPM, the Government's overriding criterion was that "bodies should possess the independence, capability and professional knowledge to carry out the requirements set out in Article 18 of the Optional Protocol to the Convention against Torture."⁷ It is a credit to all of the Custody Visitors who have volunteered over the years that the Policing Board's Independent Custody Visiting Scheme met the Government's criteria.

The Custody Visiting Scheme has also received the Investing in Volunteers award. It is the first Custody Visiting Scheme in the UK to achieve this accreditation.⁸ That award is further credit to the Custody Visitors for their hard work and dedication. Without the involvement and commitment of the volunteers, the Scheme would cease to operate.

⁶ A written ministerial statement on 31 March 2009 designated 18 bodies throughout the United Kingdom that would form the National Preventative Mechanism in accordance with Article 17 of the Optional Protocol to the Convention against Torture and other Cruel (OPCAT).

⁷ Letter dated 17 June 2009 from Jiwan Raheja, Ministry of Justice, to Patrice Gillibert, Secretary of the Subcommittee on Prevention of Torture.

⁸ Investing in Volunteers is the UK quality standard for all organisations which involve volunteers in their work. The Standard, assessed locally by Volunteer Now, enables organisations to comprehensively review their volunteer management and also publicly demonstrates their commitment to volunteering.

Days and times of visits

The 1,066 visits during 2009/2010 took place on all days of the week, both day and night. 85% of visits were carried out between Monday and Friday with 15% carried out on Saturdays and Sundays. This is a slight decrease on the 17% of visits made at weekends in the previous year. 94% of visits were made between 9am and 9pm with the remaining 6% being made between 9pm and 9am. This is also a slight decrease on the previous year when 9% of visits were made between 9pm and 9am.

The days and times of visits together with the fact that the number of weekend and late night/early morning visits had decreased was discussed at Custody Visitor Team Leader meetings during 2010. As a result of those discussions it was agreed to increase the guideline number of weekend and late night/early morning visits for each Team. As a result of that agreement, for the first half of 2010/2011 weekend visits increased to 22%. Visits between 9pm and 9am also increased to 12% of the total visits carried out between 1 April 2010 and 30 September 2010.

Invalid visits

Of the 1,066 visits carried out during 2009/2010, 41 were aborted for various reasons, the most common being that the custody suite was busy (11 visits) or closed (10 visits). A recommendation was made in the 2009 Human Rights Annual Report that each Regional ACC should inform PSNI District Policing Command, who in turn should notify the Custody Visiting Scheme Administrator, when a designated custody suite is closed and when it is subsequently re-opened.⁹ In response, PSNI provided assurance that a system was already in place, included in the PSNI Custody Policy Directive, with responsibility for notifying operational police and Operational Support Department resting with each District.¹⁰ However, I have been advised by the Custody Visiting Teams that there has been a small number of un-notified closures since the recommendation was made. Although those closures were

⁹ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 18.

¹⁰ *Human Rights Programme of Action*, PSNI, 2009-2010, page 11.

for relatively short periods of time it suggests that some officers within Districts are still unaware of their responsibility to notify.

While I consider the recommendation in the 2009 Human Rights Annual Report to be implemented (as there is a system in place), I remind Districts of the obligation on each of them to notify when a designated suite is closed and when it is subsequently re-opened. Likewise, when a custody suite has been designated, or de-designated, whether permanently or on a temporary basis, PSNI should ensure that steps are taken to notify the Custody Visiting Scheme Administrator as promptly as reasonably possible. The PSNI should ensure that a memorandum is sent to all relevant officers to remind them that there is a duty to notify the Custody Visiting Scheme Administrator as soon as reasonably practicable of the closure and subsequent re-opening of any designated custody suite.

Recommendation 3

The PSNI should forthwith advise all relevant officers within each District of the duty to notify the Custody Visiting Scheme Administrator as soon as reasonably practicable (i) of the closure and subsequent re-opening of any designated custody suite; and (ii) of the designation or de-designation of any police station, whether permanently or on a temporary basis. Thereafter, the PSNI should ensure that all relevant officers have read and accept that responsibility.

Detainees seen

There were a total of 1,475 detainees held in custody suites during the 1,025 valid visits in 2009/2010. Of those detainees, 408 refused to be seen and 394 were not seen for 'other reasons', for example, because they were being interviewed, were asleep, or were with a solicitor at the time of the visit. The overall refusal rate for 2009/2010, i.e. the number of detainees who refused to be seen as a percentage of the number held in custody at the time of a valid visit, was 28%. The refusal rate for the previous year was 24%, and in 2007/2008 it was 22%. Being able to see and speak with detainees allows for Custody Visitors to check that detainees have been afforded their rights and

that the conditions of their detention are adequate. It is also an important safeguard that enables Custody Visitors to flag up any concerns they have about the detainees' health and wellbeing. Whilst a high refusal rate is not a problem created by the Custody Visitors, it is one which must be fully explored and a solution found.

Custody Visitor Team Leaders discussed the high refusal rate at Team Leader meetings during 2010 and suggested that the refusal rate may be reduced if Custody Visitors were permitted to introduce themselves to detainees before the detainees were asked by the escorting officer whether or not he or she consented to speaking to the Custody Visitors. The Independent Custody Visiting Association (ICVA) advised that a number of Police Authorities in England and Wales establish consent by using self-introduction and that there has been an increase in the number of detainees spoken to as a result. The Policing Board and the PSNI therefore agreed to introduce self-introduction on a pilot basis. Early figures indicate that self-introduction has already resulted in a significant decrease in the number of detainees refusing to see Custody Visitors. I will report further next year by which time a full assessment will have been carried out on the impact of self-introduction on refusal rates.

Custody records checked

A custody record must be opened as soon as practicable for each person brought to a police station. Custody Visitors are trained to check those records for detainees who consent and also for those who are not seen because they are asleep, intoxicated or on drugs at the time of the visit. It is also possible for Custody Visitors to check the custody record of a detainee who refused to be seen provided the detainee has consented to his or her record being checked. As was stressed in the 2009 Human Rights Annual Report it is important that Custody Visitors inspect custody records where possible. I am pleased to report that during 2009/2010 a total of 892 (60%) out of 1,475 custody records were checked by Custody Visitors. This includes 298 detainees who refused to be seen by a Custody Visitor but who

consented to their custody record being checked. That is an increase from 49% of custody records checked during the previous year.

Delays to visits

Of the 1,025 valid visits made during 2009/2010, there were 60 (6%) occasions when Custody Visitors were delayed by more than 10 minutes in gaining access to custody suites. The Belfast/Antrim Team recorded the highest number of delays at 46 visits (77% of all delays) as was also the case in the previous two years. The main reason for the delay, on 52 occasions (87% of all delays), was that the custody suite was busy. Custody Visitor Team Leaders are understanding of the reasons for the delays and do not believe them to be deliberate or evasive. Some Custody Visitors have, however, suggested to their Team Leader that where there is a delay they would prefer to be brought through to a back room to wait rather than in the public waiting area where they feel they may have been 'forgotten about' on occasions. Some stations already do bring Custody Visitors through to a back room to wait where there is going to be a delay and it is a policy other stations could give some thought to adopting. Given the importance of the role Custody Visitors play, they should be facilitated wherever possible and practical.

Satisfactory/unsatisfactory visits

Custody Visitors classed 786 out of the 1,025 valid visits (77%) as satisfactory. The North-West team recorded the highest level of satisfaction (88%: 192 out of 218 valid visits) while visits to the Antrim Serious Crime Suite recorded the lowest level of satisfaction (68%: 17 out of 25 valid visits).

The primary legislation which governs the rights of police detainees is the Police and Criminal Evidence (NI) Order 1989 (PACE) together with the associated Codes of Practice. The ECHR and other international human rights instruments,¹¹ require States to respect, protect and fulfil human rights

¹¹ Such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),

including the protection of a detained person's physical and mental well-being.¹² Furthermore, the PSNI is obliged to ensure that standards in police custody suites are safe, humane and effective. In addition to the minimum standards required by PACE, there is a best practice guide produced by the National Centre for Policing Excellence (NCPE). The Guidance on the Safer Detention and Handling of Persons in Police Custody (SDHP),¹³ to which the PSNI has signed up, identifies the standards expected in the handling of persons who come into police contact. The SDHP Guidance complements PACE. The majority of the SDHP is concerned with the safety of the detainee (for example in respect of self-harm and suicide) but provides some guidance in respect of the facilities and accommodation.

The Criminal Justice Inspection Northern Ireland (CJINI) reported in June 2009 with its findings following an inspection of police custody provision.¹⁴ The CJINI report found that the cells used for PACE detention, measured against OPCAT, were generally of a good standard and that, overall, custody services were performed to an acceptable standard. CJINI proposes to carry out regular follow-up reviews of police custody. The Committee will continue to monitor CJINI's findings and will make recommendations to PSNI where necessary.

The Committee also monitors and analyses concerns raised in the reports of Custody Visitors. During 2009/2010 there were 9 concerns raised as to the treatment/rights of the detainee; 11 concerns raised as to health and well being of the detainee; and 248 concerns raised as to the conditions of detention. Of the 9 concerns raised in relation to the treatment/rights of detainees, 1 related to the detainee not being told his rights; 1 involved

the International Covenant on Civil and Political Rights (ICCPR), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) and the Standard Minimum Rules for the Treatment of Prisoners.

¹² See, for example, *Barabanshchikov v Russia* [2009] ECHR 24

¹³ *Guidance on the Safer detention and Handling of Persons in Police Custody*, National Centre for Policing Excellence on behalf of the Association of Chief Police Officers and the Home Office, 2006.

¹⁴ *Police Custody: the detention of persons in police custody in Northern Ireland*, Criminal Justice Inspection Northern Ireland, 2009.

access to legal advice; 3 related to insufficient checks on the detainee being carried out; and 4 related to other concerns. 10 of the 11 concerns regarding the health and well being of detainees related to adequate bedding and 1 to access to a toilet and washing facilities.

Table 1 sets out the number and types of concern relating to conditions of detention.

Table 1: Concerns relating to condition of detention, 1 April 2009 to 31 March 2010

Reason	Belfast/ Antrim	Down/ Armagh	North- West	Ty/Fer	Antrim SCS	Total
Lighting	3	3	1	2	0	9
Ventilation	5	0	1	0	0	6
Alarm	1	0	0	0	0	1
Cleanliness	9	12	5	2	0	28
Safety/Security hazards	65	25	10	7	2	109
Sanitation	40	1	4	6	6	57
Faulty equipment	9	0	4	11	2	26
Other	6	4	1	1	0	12
Total¹⁵	138	45	26	29	10	248

Overall, the number of concerns raised in 2009/2010 (248) relating to conditions of detention has decreased by 42% compared to 2008/2009 (424). The number of concerns raised in relation to safety and security (109) is a decrease from the previous year (188). The reduction must be welcomed however any safety or security hazard could result in disastrous consequences. When a person is detained any potential safety/security hazard may interfere with the rights protected by the ECHR, particularly the Article 2 right to life.

A number of the safety hazards related to potential ligature points in shower and toilet areas, however, PSNI has deemed shower and toilet areas as

¹⁵ The total number of concerns relating to the condition of detention (248), treatment/rights (9) and health and well being of detainees (11) total more than the total of unsatisfactory visits (239) as there are multiple reasons for concern on some visits.

supervised areas and, as detailed in the Risk Assessment,¹⁶ those areas are not required to be ligature free. Other safety concerns involved flaking paint in some cells; faulty door locks; items which could be used for self harm such as paperclips and scissors left in medical rooms and interview rooms; and oxygen checklists not having been completed for some time. All of those issues were brought to the immediate attention of the relevant Custody Sergeants for attention.

The Policing Board has developed a mechanism for monitoring whether the PSNI has responded to concerns in a satisfactory and timely manner.¹⁷ If the Policing Board is not informed, within 28 days of the concern being flagged, of the action PSNI has taken to remedy the problem, the matter is referred to the relevant Area Commander to be addressed. Thereafter, any remaining issues are progressed through the District Commander. Custody Visitor Team Leaders are advised of the outcomes of unsatisfactory visits on a monthly basis.

In the 2009 Human Rights Annual Report, it was recommended that the Committee, in consultation with Custody Visitors, should consider a means of ensuring that Custody Visitors have a line of communication with District Commanders through the Custody Visiting Scheme in association with the relevant Committees of the Policing Board.¹⁸ That recommendation was made because Custody Visitors had indicated to previous Human Rights Advisors that an annual meeting between representatives of the Custody Visiting Team and the District Command Team would be useful. However, having reconsidered the recommendation at a Custody Visitors' Team Leader meeting, Team Leaders decided that there was no real benefit to be derived from regular pre-arranged meetings with the District Commanders as there is already a line of communication. It was agreed that if they did wish to discuss a specific issue they would contact the relevant Commander directly. That

¹⁶ PSNI GRA 12 – Custody Duties Section 6 – Detention of Persons.

¹⁷ In line with the process agreed with PSNI in response to Recommendations 25 & 26 of the *Human Rights Annual Report*, Northern Ireland Policing Board, 2008.

¹⁸ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 19.

being the case, I am satisfied that sufficient consideration has been given to the issue and that Recommendation 19 of the 2009 Human Rights Annual Report has been implemented.

NON-DESIGNATED STATIONS

The Chief Constable designates police stations which are to be used for the purpose of detaining arrested persons and he has the power to designate a station which was not previously designated or to direct that a designation of a station previously made, shall cease to operate.¹⁹ Stations which have not been designated by the Chief Constable are not currently included within the remit of the Policing Board's Independent Custody Visiting Scheme. It is only in limited circumstances that a person can be detained in a station that has not been designated, and it is unlikely to be for more than six hours.²⁰

There are currently 20 designated police stations, thus rendering all other police stations non-designated. As Custody Visitors do not visit non-designated stations they cannot monitor the treatment of detainees held there or the conditions of their detention. During 2009/2010 there were a total of 287 persons detained in non-designated police stations:²¹ this compares to

¹⁹ Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), Article 36.
²⁰ Article 32 of PACE requires that a person arrested elsewhere than at a police station shall be taken to a police station as soon as practicable after the arrest. The police station must be a designated police station unless (i) it appears that it will be necessary to hold the person for less than six hours and the locality in which the constable is working is covered by a police station that is not designated, (ii) the arresting constable has no assistance and it appears to the constable that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the constable or some other person, or (iii) it appears to the constable that he will be unable to take the arrested person to a designated police station without exposing the arrested person or himself to unacceptable risk of injury. If the first station to which the arrested person is taken is not a designated station, he must be taken to a designated station not more than six hours after his arrival at the first police station unless he is released previously or the arrest was made by a police constable and the continued detention at the first police station is authorised by an officer not below the rank of Superintendent. Continued detention may only be authorised if the officer is satisfied on reasonable grounds that it would expose the person and those accompanying him to unacceptable risk of injury if he were taken from the first police station.

²¹ Statistics provided by PSNI Central Statistics Unit. Letter from ACC District Policing, Urban Region to Policing Board's Human Rights Advisor dated 22 September 2010 explains that 32 of these persons were held in Newtownabbey and Carrickfergus stations; 1 in Larne station; 90 in Magherafelt station and 164 in Strabane station.

174 persons detained in non-designated stations during 2008/2009. Of the 287 persons detained in non-designated stations, 90 (31%) were detained in Magherafelt Custody Suite and 164 (57%) were detained in Strabane Custody Suite. The Northern Ireland Human Rights Commission has previously raised concerns with the Policing Board over the Chief Constable's decision to 'de-designate' Strabane station, in particular the fact that the nearest designated stations would all entail significant travelling time.²²

I raised the increase in the number of detentions in non-designated stations with PSNI District Policing Command, which has now assumed responsibility for Custody Management. In response District Policing advised me:

"In 2009 a strategic decision was taken to de-designate Strabane custody suite. This decision was based on Sergeant rank resources and operational requirements.

In making the decision, consideration was given to the fact that there still remained two fully functioning and designated custody suites within G District boundaries. Despite this consideration, the geographic position of Strabane and Magherafelt (also de-designated) would at times dictate that if a prisoner was arrested for an offence which could be guaranteed to be disposed of within six hours it was in the prisoner's best interest to be dealt with locally in either Strabane or Magherafelt. Alternatively, an arrest for a relatively straight forward offence, i.e. driving with excess alcohol, would mean a round trip of one hour and depending on the capacity at the time in Strand Road, possibly a wait of up to two hours to have detention authorised, the prisoner processed and a disposal decision made.

²² Letter dated 7 May 2010 from the Chief Commissioner of the NIHRC to Chairman of the Policing Board.

Of the 287 prisoners held within non-designated stations none were detained beyond six hours.”²³

Between 1 April 2010 and 30 September 2010, the number of detainees held in Strabane and Magherafelt Custody Suites remained high: 85 in Strabane and 55 in Magherafelt.²⁴ Whilst the PSNI may legally hold detainees in non-designated stations provided they are not held in excess of 6 hours, PSNI should continue to monitor the high numbers of detainees retained in those stations and should keep their designation status under continual review.

Recommendation 4

The PSNI should continue to monitor the high number of detainees held in non-designated stations and should keep the designation status of stations under continual review. The PSNI should report to the Human Rights and Professional Committee annually on the number of persons held in non-designated police stations, that report to include the length of time each detainee is held.

VULNERABLE PERSONS IN CUSTODY

During 2009/2010 I monitored the PSNI’s approach to the detention of vulnerable persons in police custody, which is based upon ACPO guidance on Safer Detention and Handling of Persons in Police Custody.²⁵ In relation to persons likely to self-harm the PSNI uses a generic risk assessment which contains various control measures to avert any risks identified. All relevant information is recorded on the NICHE Custody Record Risk Assessment which is accessible to the relevant police officers. The risk assessment,

²³ Letter from ACC District Policing, Urban Region to Policing Board’s Human Rights Advisor dated 22 September 2010.

²⁴ Statistics provided by PSNI Central Statistics Unit. Note, that Strabane was re-designated in August 2010. However, whilst it remains designated as at January 2011, for operational purposes it is treated as a non-designated station, with detainees being held there for no more than 6 hours, as it does not have the necessary resources that are required of a designated station.

²⁵ *Guidance on the Safer detention and Handling of Persons in Police Custody*, National Centre for Policing Excellence on behalf of the Association of Chief Police Officers and the Home Office, 2006.

specific to each detainee, is reviewed on a regular basis particularly after an incident and is made known to all police officers and staff interacting with the detainee.

To reduce the risk of self-harm, detainees are supervised and their movements restricted in areas which are not ligature free. Their shoelaces and belts are removed while in the cell and cell alarms are checked regularly. In the 2009 Human Rights Annual Report, it was recorded that Custody Visitors had no concerns regarding ligature points in the relevant period. However, it was also noted that Custody Visitors do not have access to solicitor consultation rooms. PSNI was reminded that detainees are not to be left unobserved in a solicitor consultation room.²⁶

Tragically, one man died in custody in Strand Road police station in October 2009. The Police Ombudsman reported on failures of the PSNI to properly protect him whilst in custody. While he found no evidence that police had subjected the prisoner to any form of harassment or inappropriate behaviour and officers within the station's custody suite would have had no indication that the detainee was at risk of self-harm, the Police Ombudsman found that some officers "repeatedly breached guidelines designed to minimise risk to prisoners". The detainee was left alone and unsupervised in the consultation room on a total of nine occasions, for periods of up to 33 minutes at a time. The Police Ombudsman said "It is totally unacceptable that any prisoner should have been left unsupervised for such significant periods of time, particularly while in possession of shoelaces in a room with a viable ligature point".²⁷ The Police Ombudsman also criticised "a generally lax attitude" towards the management of the custody suite. Failings included inaccurate record keeping relating to night time checks on detainees and inadequate communication between officers during shift handovers. That is completely unacceptable and reminds police officers of the potential consequences of failing to follow strictly the policy and guidance which is aimed at protecting a detainee while in their care and under their control.

²⁶ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, page 173.
²⁷ Report of the Police Ombudsman for Northern Ireland, 26 October 2010.

The Committee will monitor and report further on the PSNI response to the Police Ombudsman's report and consider whether any additional recommendations are required. In the meantime, the PSNI should consider availing of SafeTALK training for all custody personnel. SafeTALK is a half day training session on suicide alertness.

Recommendation 5

The PSNI should consider requiring all custody officers to attend SafeTALK training and report to the Human Rights and Professional Standards Committee within six weeks of the publication of this Human Rights Annual Report as to whether, and if so when, the training will commence.

IMMIGRATION DETAINEES

Until early 2006, the practice in Northern Ireland - alone in the UK – was to hold immigration detainees in prisons rather than in Immigration Removal Centres (Immigration Centres). Immigration Centres are not prisons and those detained there have not been charged with a criminal offence. Nor have they been detained through the normal judicial process. Immigration Centres are designed to provide "secure and humane detention under a relaxed regime"²⁸ to reflect the circumstances in which immigration detainees have been deprived of their liberty. Since 2006, immigration detainees and some asylum seekers are routinely transferred from Northern Ireland to detention facilities in Scotland and England, with the majority transported to Dungavel Immigration Removal Centre in Scotland.²⁹ Individuals deemed eligible for the fast track asylum procedure are held, in the first instance, at police custody suites.

A Memorandum of Understanding exists between the PSNI and the UK Border Agency (UKBA)³⁰ stipulating that "[immigration] detainees should

²⁸ The Detention Centre Rules 2001, SI 2001238, Rule 3(1).

²⁹ The decision to transport immigration detainees out of Northern Ireland was taken without any form of public consultation.

³⁰ Protocol for the use of PSNI custody facilities by HM Customs and Excise and protocol for the use of PSNI custody facilities by the UK Immigration Service.

preferably only spend one night in police cells, with a normal maximum of two nights. In exceptional cases, a detainee may spend up to five nights continuously in a police cell... if, for instance, he is awaiting transfer to more suitable... accommodation.” It was reported in the 2009 Human Rights Annual Report that it is not uncommon for immigration detainees to be kept in police custody for periods of up to 5 days in facilities identified by both the Northern Ireland Human Rights Commission³¹ and the Criminal Justice Inspection Northern Ireland³² as unsuitable for the purpose. Although the problem has not been created by the PSNI, a recommendation was made in the 2009 Human Rights Annual Report that the PSNI should report to the Human Rights and Professional Standards Committee on a six monthly basis the number of immigration detainees held in police custody and the duration of their stay.³³ In accepting that recommendation, PSNI provided the raw data on arrests for immigration offences during the period 1 April 2010 to 30 September 2010. The Policing Board’s Statistics and Research Branch collated this raw data and prepared a statistical report on immigration detainees during that six month period. The main findings are as follows:³⁴

- 146 persons were detained in police custody for immigration offences between 1 April 2010 and 30 September 2010.
- The main reason for arrest was ‘Detained on Immigration Authority’ (45.9%).
- 117 males (80.1%) were detained for immigration offences.
- Almost three fifths (58.2%) of immigration detainees were aged 25-40.
- Over one quarter (27.4%) of immigration detainees were held in Musgrave Street.
- Over half (53.4%) of immigration detainees were held for up to 24 hours, while over one quarter (26.7%) were held between 25 and 48 hours.

³¹ *Our Hidden Borders: The UKBA’s Powers of Detention*, Northern Ireland Human Rights Commission, 2009.

³² *Police Custody*, Criminal Justice Inspection Northern Ireland, 2009.

³³ *Human Rights Annual Report*, Northern Ireland Policing Board, 2009, Recommendation 20.

³⁴ *Persons Detained in Police Custody for Immigration Offences*, 1 April to 30 September 2010, Northern Ireland Policing Board, 2010.

- Eighteen immigration detainees were held for 3 nights or more, thus exceeding the “normal maximum of 2 nights.”
- Three immigration detainees were held between 109 and 120 hours, a period spanning five overnight stays (111, 112 and 114 hours exactly).
- Chinese is the main nationality of immigration detainees (34 detainees, 23.3%).

In light of the Government’s commitment to ‘minimising’ the detention of children in Immigration Centres,³⁵ it is worth noting that of the 146 persons detained in police custody for immigration offences between 1 April and 30 September 2010, 2 were below the age of 18 years: an 11 year old was detained for 7 hours and a 17 year old was detained for 47 hours.

Recommendation 20 of the 2009 Human Rights Annual Report has been implemented for this year. As it is an ongoing recommendation PSNI has agreed to continue providing six monthly immigration detainee data to the Policing Board. The Committee will continue to monitor the data provided by PSNI and, as the Policing Board has a direct line of communication with UKBA, will raise any issues arising from those figures with UKBA. The Committee will also keep itself aware of UKBA’s proposals to refurbish the existing custody suite at Larne police station to make it suitable as a short term holding centre for immigration detainees.

³⁵ Oral Answers to Questions, House of Commons, 6 September 2010, Damien Green, Column 21.

11. HUMAN RIGHTS AWARENESS IN THE PSNI

The culture and ethos of an organisation include the way in which it sees itself and the way in which it sees and interacts with others. A human rights culture depends upon a number of factors, most prominent of which are the promotion of human rights awareness throughout the PSNI together with an ongoing commitment to rights-based policing. The creation of a human rights culture is not something which is achieved once and then endures without further attention. It is a continuous process which is an ongoing responsibility of the PSNI, the Policing Board and government.¹ That is perhaps of even greater importance when resources are stretched and the security environment is challenging.

MONITORING PSNI HUMAN RIGHTS AWARENESS AND CULTURE

A human rights culture within the police service is demonstrated by the quality of interactions between police and public. That can be measured by, amongst other things, an analysis of the formal police complaints process, internal disciplinary mechanisms and close scrutiny of police interactions with the community. The Human Rights and Professional Standards Committee (the Committee) monitors all of those elements, and more, through its human rights monitoring framework. The Committee reports upon its findings in the Human Rights Annual Reports and thematic reviews.

Respect for and protection of human rights should be central to all policing functions. An *effective* policing strategy depends upon it. Human rights jurisprudence reminds us that the protection of human rights must be practical and effective. That means that the police service must be scrutinised at all levels so that policy (both in the drafting and implementation stages), training (including appraisal), investigations and operations (from planning to

¹ *Report 19*, Office of the Oversight Commissioner, May 2007. Recommendation 4 of *A New beginning: Policing in Northern Ireland* (the Patten Report) is therefore considered to be an ongoing recommendation.

implementation including decision-making on the ground) are *effective* in ensuring human rights compliance.

The process of thematic review, which is an increasing focus of the work of the Committee, permits such in-depth analysis. The thematic process will continue to identify issues of particular concern to the community and study them closely. The PSNI has, so far, engaged positively with the Committee on the thematic reviews and has shown a real commitment to the shared objective: to improve policing and ensure the human rights of all members of the community are respected, protected and fulfilled. The Committee will carry out its monitoring function in this important area of work by further thematic reviews with an increased focus on whether and to what extent human rights principles are not only enshrined within and kept up-dated by written policy and guidance, but whether those principles are applied in practical scenarios. Measuring the impact of policy on the ground, which is informed by the views and experiences of the community, will be an integral element of the Policing Board's monitoring work.

12. POLICING WITH THE COMMUNITY

Central to the vision of police reform, for the Independent Commission on the Future of Policing (the Patten Commission) and the Policing Board, has been the concept of policing with the community. It was anticipated that policing with the community would be a core function of the police service and every police station.¹ That was enshrined in legislation by the Police (Northern Ireland) Act 2000, which requires the police to carry out their functions in co-operation with, and with the aim of securing the support of, the local community.² It was envisaged that it would become the dominant style of policing throughout the police service.

The Patten Commission believed that neighbourhood policing should be at the core of police work in Northern Ireland, and that an effective partnership between police and community meant a more effective police service and enhanced community safety. It recorded that a police service not engaged with its community would find it difficult to act effectively against crime and disorder, because it would not know the community or gain its cooperation. In August 2009, PSNI reported that its Strategic Review 2009 reaffirmed neighbourhood policing as the preferred style of policing in Northern Ireland.

As the PSNI is committed to developing further its policing with the community model it must remain committed to ensuring meaningful engagement, community consent and police accountability. The PSNI must embrace a human rights culture in genuine and practical partnership with the community. It requires a dynamic dialogue in which the community can express its views and concerns to the police and the police can report back to the community and explain its actions. There should be genuine participation of the police service in the community which it serves, with police officers responding to the needs of the community. What is also required, however, is for the community to participate in its own policing and to support the police. The PSNI has

¹ *A New beginning: Policing in Northern Ireland (the Patten Report)*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, Recommendation 44.

² Section 32(5) Police (Northern Ireland) Act 2000.

expressed its commitment to this model of policing and the Chief Constable briefed the Policing Board on his plans for the delivery of Policing with the Community in November 2009.

Throughout 2010, the PSNI briefed the Policing Board on progress in developing its Policing with the Community Strategy and Implementation Plan. In May 2010, the PSNI presented the Confidence Route Map as a delivery guide for Policing with the Community within PSNI. The Policing Board acknowledged that while the Confidence Route Map demonstrates a significant commitment by the PSNI to achieve the key priorities of policing with the community, more work is required in respect of service delivery, community engagement and effective local partnering. That work is progressing and is being developed in conjunction with the Policing Board and other partner agencies.

The PSNI has now established a policy and vision statement with objectives, implementation timelines, the identification of community priorities, internal communications material, a new call handling regime, reporting systems and performance measures. Work is ongoing in relation to resource and training implications, evaluation processes, external communications and feedback from partner agencies. The PSNI recognises that more precise standards against which to assess individual officers are required and is developing its performance review processes accordingly.

Monitoring the implementation of the PSNI's Policing with the Community Strategy remains a key priority of the Policing Board. The Policing Board's Community Engagement Committee works with the PSNI to secure, support and monitor the implementation of policing with the community as a core function of the PSNI. The Committee has worked with PSNI during this reporting period to progress the development of an agreed Strategy and Implementation Plan that will deliver Policing with the Community as the core function of the PSNI. The Community Engagement Committee also consider police performance at District level as it impacts on policing with the community.

Furthermore, as respect for and protection of human rights is central to the Policing with the Community Strategy – they are inextricably linked - the PSNI should continue to embrace a human rights culture in genuine and practical partnership with the community. A police service is there to protect the human rights of all members of the community. Police officers have a key part to play in this. The police fight crime, they maintain public order but they do so in association with the community and for the benefit of the community. PSNI recognise that in the absence of an effective strategy which is practical and effective in ensuring the human rights protection of all members of the community, community co-operation and confidence may be lost.

Therefore, the Human Rights and Professional Standards Committee (the Committee) maintains a close interest in, and scrutiny of, PSNI policing with the community. The Committee does so by carrying out thematic reviews of issues of particular concern to the community. For example, the Committee has considered the policing of domestic abuse, policing with children and young people, the use of police powers to stop and search and it is currently undertaking a review of policing with and for lesbian, gay, bisexual and transgender individuals. By the in-depth assessment of such areas of police activity the Committee can identify issues of concern to the community and it can report upon police success or failure in addressing those concerns. The thematic approach enables the Committee to work with the police to improve service delivery. The Committee will continue to conduct thematic reviews and will invite stakeholders to suggest additional areas of police work for scrutiny.

13. PRIVACY AND DATA PROTECTION

The Human Rights Act 1998 requires the PSNI, as a public authority, to act in a way which is compatible with the European Convention on Human Rights (ECHR). Article 8 ECHR states that everyone has the right to respect for their private and family life, their home and their correspondence. A public authority cannot interfere with the exercise of that right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In this chapter I provide a brief summary of PSNI data protection and freedom of information compliance during 2009/2010. In previous Human Rights Annual Reports the Data Protection Act 1998, the Freedom of Information Act 2000 and other issues such as records management have been discussed at length. Whilst the mishandling of information may infringe an individual's Article 8 ECHR right to respect for private and family life, the wider issue of privacy, and PSNI's respect for Article 8, is evidenced through the daily interactions police officers have with the public and through the way in which they exercise their powers, for example, stop and search powers, covert policing powers, powers to take and retain DNA and fingerprints, powers to deal with children and young people and powers of detention. Article 8 issues are considered where they arise in the various chapters of this Human Rights Annual Report and have been, or will be, considered in greater detail in the published and upcoming thematic reviews.

PSNI COMPLIANCE WITH THE DATA PROTECTION ACT 1998 AND THE FREEDOM OF INFORMATION ACT 2000

PSNI policy sets out the framework, and contains guidance for officers and staff, on data protection,¹ freedom of information² and records management.³ Freedom of information and data protection staff have received formal training in respect of each discipline. There are a number of e-learning training packages available to all police officers and staff which cover: Freedom of Information; Data Protection; Information Security; and, the Government Protected Marking Scheme.

To ensure compliance with the data protection regime, the PSNI Data Protection Office conducts random daily audits electronically of PSNI information systems and staff are required to complete a return. The electronic monitoring conducted during 2009/2010 found no breaches of data protection. There was, however, one breach of PSNI Acceptable Use Policy which was dealt with by means of Advice and Guidance delivered at District Command level.

During 2009/2010 a total of 15 complaints (made by 13 complainants) were made to the PSNI Data Protection Office. Following review of the complaints the Data Protection Office found that 7 complaints were not substantiated, therefore requiring no further action by PSNI. Of the 8 substantiated complaints, 1 complaint related to inaccurate data. PSNI resolved the complaint by correcting the inaccuracy. The remaining 7 substantiated complaints all related to PSNI refusal to provide information. PSNI resolved each of those complaints by taking remedial action and releasing further information. In that context, it is important to record that there were a total of 2,818 Subject Access requests received and processed by PSNI during 2009/2010.

¹ *PSNI Data Protection Policy*, PSNI Policy Directive 06/08, version 2 issued 2 September 2009.

² *Freedom of Information Policy*, PSNI Policy Directive 03/04, most recently issued 4 March 2010.

³ *PSNI Records Management Policy*, PSNI Policy Directive 06/04, version 3 issued 3 September 2009.

The Information Commissioner's Office is a United Kingdom independent authority which was set up to uphold information rights in the public interest, to promote openness by public bodies and to secure data privacy for individuals. During 2009/2010 the Information Commissioner did not issue any decisions against the PSNI in respect of data protection. The Commissioner did issue one Decision Notice in respect of freedom of information: whilst the Commissioner was satisfied that the request for information could correctly have been refused under the Freedom of Information Act as the process of extracting the requested information from the physical files would exceed the cost limit,⁴ he found that PSNI did not complete correctly the Refusal Notice because it was not clear from the Notice why the exemptions applied to the withheld information. The PSNI had provided some explanation but the arguments were generic and did not refer to the actual information requested. The Commissioner did not require the PSNI to take any remedial steps in relation to the request but made some comments regarding good practice.⁵

The Commissioner reminded PSNI of the guidance which recommends that, in most circumstances, a reasonable time for completing an internal review is 20 working days. He was concerned that the relevant review took significantly longer than that to complete. However the Commissioner appreciated that the complaint was handled by the PSNI in 2006 and that the PSNI has subsequently taken steps to improve its review handling procedures.

⁴ On the grounds, as per section 12 of the Freedom of Information Act 2000, that to comply with the request would exceed the fixed financial limit.

⁵ Decision Notice FS50152489, Information Commissioner's Office, 21 May 2009.

14. CHILDREN AND YOUNG PEOPLE

The conflict in Northern Ireland post-1968 had a significant impact upon the realisation of children's rights under the United Nations Convention on the Rights of the Child (UNCRC). According to the United Kingdom Children's Commissioners' Report of 2008 there remained "residual 'after-effects' for many children and young people. Sectarianism, paramilitary control, loss and bereavement result in an inability to cope or to access opportunities which all children should enjoy... for example, access to play and leisure, access to adequate health care, access to education etc, are often more difficult to achieve."¹

In 2005 the Policing Board published a report prepared by the Institute for Conflict Research (ICR) into young people's attitudes and experiences of policing, violence and community safety in North Belfast.² The ICR reported that the relationship between the PSNI and children and young people was a cause for concern, with many feeling harassed by the police. It recorded how children believed their age and appearance were the reasons for their harassment in a number of cases. The report indicated that many young people in the area had poor experiences and negative views of the police. Over 65% thought that the police did not understand the issues and problems experienced by them. There was suspicion of the police and continuing community tension.

The ICR report highlighted that of the calls routinely received by North Belfast police, 32% were for incidents categorised as 'youths causing annoyance'.³ It was clear that most interaction between young people and the police took place in the context of alleged anti-social behaviour and public disorder. The ICR report also noted, however, that young people sometimes provoked the

¹ *United Kingdom Children's Commissioners' Report to the United Nations Committee on the Rights of the Child, 2008.*

² *Young People's Attitudes and Experiences of Policing, Violence and Community Safety in North Belfast, 2005, Institute for Conflict Research for the Northern Ireland Policing Board.*

³ It is to be noted that the category 'youths causing annoyance' has been removed by the PSNI as an Incident Recording Classification.

police and adults felt intimidated and frightened by them. Alcohol consumption was seen as a key factor both in young people perpetrating violence but also in them being victims of violence. Northern Ireland was, and still is, a society in which housing, education and services are segregated. Those who live in interface areas still suffer serious and sporadic incidents of violence.

The Human Rights and Professional Standards Committee (the Committee), as part of its continuing duty to monitor the PSNI's compliance with the Human Rights Act 1998 and to ensure the fair, efficient and effective policing of all of the people of Northern Ireland, identified policing with children and young people as one of its key priorities. During 2009 and 2010 the Committee conducted a thematic review into PSNI policing with children and young people.

The terms of reference for the thematic review were necessarily limited in scope and focused upon three areas which stakeholders indicated were a priority:

- The policing of anti-social behaviour including anti-social behaviour orders and a consideration of the 'naming and shaming' practice adopted in England and Wales which may extend to Northern Ireland;
- Police practice and policy regarding the dispersal of groups of young people, public order and crowd control, stop and search and other powers to control the activities of children and young people. Regard will be had to community engagement, strategic planning and community safety issues; and
- Alternatives such as diversionary disposals and community restorative justice.

Over the course of many months the Committee received oral testimony and written submissions from a wide range of stakeholders including those working with the most marginalised young people. The Committee was

impressed by the level of commitment and dedication shown by those organisations and individuals. The Committee also recognised that the starting point for any consideration of a policing with young people strategy must be to value and listen to the young people themselves. Mechanisms were therefore established to ensure that the opinions of young people on policing were taken into account and considered by the Committee. I also met with a large number of stakeholders individually and with police officers to discuss the issues covered by the terms of reference. Where additional issues arose during the process, they were also covered in the review. Other issues which relate to policing with children and young people have also been dealt with in the relevant chapters of this Human Rights Annual Report.

It is important to stress that the terms of reference, including as they do, reference to anti-social behaviour, permitted the Committee the opportunity to dispel the myth that children and young people are most likely to be involved in anti-social behaviour. Anti-social behaviour has been (wrongly) associated with young people. The thematic review sought to address the misconceptions and throughout has attempted to correct the negative stereotyping involved in many discussions regarding anti-social behaviour. While the police are not responsible for creating such negative stereotyping, it is possible that police action can contribute to it.

A thematic report highlighting the main findings from the thematic review process was published in January 2011. These findings stand alongside the chapters of the Human Rights Annual Report with equal force. The thematic report is available to download through the Policing Board's website⁴ or a hard copy can be obtained from the Policing Board upon request. The thematic review has made a number of recommendations for the PSNI. The PSNI will have an opportunity to respond to the recommendations and indicate whether the recommendations are accepted or rejected. The Committee will then monitor the implementation of the recommendations. In

⁴ www.nipolicingboard.org.uk

next year's Human Rights Annual Report I will include a detailed analysis of the progress made in this important area of policing.

The thematic review signalled the beginning of a process, not the final word. The thematic report does not cover every issue and does not provide answers to every question but, it is hoped, will raise awareness of the issues, make some helpful recommendations and start the process of monitoring and review. The Committee welcomes the continued input of all interested stakeholders, individuals and the PSNI.

APPENDIX 1: 2010 RECOMMENDATIONS

TRAINING	
1.	PSNI should provide the Human Rights and Professional Standards Committee with an assurance, within six months of the publication of this Human Rights Annual Report, that all persons tasked with training responsibilities have read and understand the Code of Ethics 2008 and its incorporation of relevant human rights principles. Thereafter, PSNI Trainers should ensure that the relevant articles of the Code of Ethics are incorporated into lessons.
2.	The PSNI Human Rights Training Adviser should continue to deliver bespoke human rights refresher training and human rights in training design on an annual basis. Both courses should continue to be made available to all officers involved in delivering or designing training.
TREATMENT OF SUSPECTS	
3.	The PSNI should forthwith advise all relevant officers within each District of the duty to notify the Custody Visiting Scheme Administrator as soon as reasonably practicable (i) of the closure and subsequent re-opening of any designated custody suite; and (ii) of the designation or de-designation of any police station, whether permanently or on a temporary basis. Thereafter, the PSNI should ensure that all relevant officers have read and accept that responsibility.
4.	The PSNI should continue to monitor the high number of detainees held in non-designated stations and should keep the designation status of stations under continual review. The PSNI should report to the Human Rights and Professional Committee annually on the number of persons held in non-designated police stations, that report to include the length of time each detainee is held.
5.	The PSNI should consider requiring all custody officers to attend SafeTALK training and report to the Human Rights and Professional Standards Committee within six weeks of the publication of this Human Rights Annual Report as to whether, and if so when, the training will commence.

**APPENDIX 2: IMPLEMENTATION STATUS OF 2009
RECOMMENDATIONS AND OUTSTANDING 2008 RECOMMENDATIONS**

		Implementation Status
TRAINING		
2009 Recommendations		
1.	The PSNI should appoint a PSNI Human Rights Trainer to work within the Police College and in partnership with the Human Rights Training Adviser. In the event that the PSNI does not appoint a PSNI Trainer, it should present an alternative proposal for ensuring operational input into training and support for the Human Rights Training Adviser within two months of the publication of this report.	Implemented
2.	The Human Rights Training Adviser should report to the Policing Board within six months of the publication of this report with her analysis of the training materials and advise the Policing Board whether she is satisfied that existing training materials are audited on a regular basis and that all new courses have human rights principles adequately integrated within them.	Implemented
3.	The PSNI should provide the Policing Board's Human Rights Advisor with a schedule of all new District training courses devised since April 2008, together with course outlines and materials. That schedule should be provided forthwith.	Withdrawn
4.	The PSNI internal evaluation team should evaluate the integration of human rights principles in the practical aspects of PSNI personal safety training courses within three months of the publication of this report.	<u>Remains Outstanding</u> ¹
5.	The Human Rights Training Adviser should, as part of her report to the Policing Board set out in Recommendation 2 of this report, include her findings in respect of human rights refresher training.	Implemented
2008 Recommendations		
3.	The PSNI should provide evidence to the Policing Board of the adoption and incorporation of the recommendations set out in the PSNI human rights training adviser's 2007 report into standard PSNI training design within six months of the publication of this report.	Implemented

¹ Pages 12 – 13 of this 2010 Human Rights Annual Report refer: I intend to consider the practicality and benefit of conducting internal evaluations and will report further on the status of this recommendation next year.

5.	The PSNI should provide the Policing Board's Human Rights Advisor with a schedule of all new District training courses devised by the Police College, the joint forum and/or District Trainers, together with course outlines and materials, within six months of the publication of this report.	Withdrawn
10.	The PSNI internal evaluation team should conduct no less than 45 evaluations of PSNI training courses delivered by the PSNI over the next 12 months and report its findings and recommendations to the Policing Board on a quarterly basis.	<u>Part Implemented</u> ²
POLICY		
2009 Recommendations		
6.	The PSNI should provide the Policing Board with details of all Policy Directives and Service Procedures that are overdue for review by more than one year and include within that briefing the reason for the delay and the date by which the review is to be completed. The first briefing should be presented within three months of the publication of this report and thereafter on an annual basis.	<u>Remains Outstanding</u> ³
7.	The PSNI should review its policy in respect of applications to have DNA material, profiles and fingerprints removed from the database and report its findings to the Policing Board. That review should make reference to Article 8 of the ECHR and include expressly, consideration of the rights of children and young people. The PSNI should report within three months of the publication of this report. The PSNI should set out its findings as to whether, and if so why, the policy is necessary and proportionate.	Withdrawn
OPERATIONS		
2009 Recommendations		
8.	The PSNI should provide to the Policing Board's Human Rights Advisor, within three months of the publication of this report, an explanation of the processes currently in place, outlining how they secure the protection of human rights and, by cross reference, indicate how they adopt, in substance, the best practice contained within the Coleraine DCU policy and planning log.	Implemented

² As above.

³ Pages 15 -16 of this 2010 Human Rights Annual Report refer: I shall be reviewing the Overview report sent to the PSNI Organisational and Improvement Committee, together with minutes from the meetings, over the course of the next year. I have also been granted access to the Overview system through a remote server located at the Policing Board. If an adequate system is in place to monitor the review of Policy Directives and Service Procedures, I will withdraw the recommendation next year.

9.	The PSNI should analyse its figures for stop and search and stop and question under the Police and Criminal Evidence (Northern Ireland) Order 1989, the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007, considering in particular whether the powers used are justified, necessary and proportionate. The first analysis should be presented to the Policing Board in the 3 rd financial quarter of the year and thereafter on an annual basis.	Implemented
COMPLAINTS, DISCIPLINE AND CODE OF ETHICS		
2009 Recommendations		
10.	The PSNI should investigate the behaviour or conduct resulting in the high number of Superintendents' Written Warnings under sub-Articles 1.1 (the duty to protect life and property, preserve order, prevent commission of offences and bring offenders to justice), 1.5 (the duty to obey all lawful orders and refrain from carrying out unlawful orders) and 2.1 (the duty to conduct investigations in a thorough, fair and impartial manner), of the Code of Ethics and report to the Policing Board with its findings within six months of the publication of this report.	Implemented
PUBLIC ORDER		
2009 Recommendations		
11.	When supplying the Policing Board with six monthly statistics on the use of force recorded on the electronic use of force monitoring form, the PSNI will provide details of any correlation between high incidents of usage and public disorder events.	Implemented
USE OF FORCE		
2009 Recommendations		
12.	The PSNI should work with the Human Rights Advisor to the Policing Board to conduct a further review of all training manuals and lesson plans and address specifically the interests of the child in any operation which may involve the use of force. The PSNI should, following completion of the review, but in any event within six months of the publication of this report, present its findings to the Policing Board's Human Rights and Professional Standards Committee.	<u>Part Implemented</u> ⁴
13.	The PSNI should consider amending Service Procedure 6/2008, Guidance Notes, paragraph 10.3 to make clear that use will be justified where the officer honestly and reasonably believes that it is immediately necessary to use Taser to prevent or reduce the likelihood of recourse to lethal force.	Implemented

⁴ Pages 59 - 60 of this 2010 Human Rights Annual Report refer: full implementation of this recommendation is imminent.

14.	The PSNI should, using the electronic use of force monitoring form, carry out an annual review of all uses of force and report to the Policing Board with its findings. The report should track and trend the use of force across all PSNI Districts and consider what steps are taken to address any issues arising. The first report should be provided to the Policing Board within six months of the publication of this report.	Implemented
COVERT POLICING		
2009 Recommendations		
15.	The PSNI should report to the Policing Board within three months of the publication of this report on the progress of its implementation of the overarching policy. That report should provide an explanation for any further delay.	Implemented
2008 Recommendations		
24.	The PSNI should complete its review of all intelligence policies, procedures and protocols and develop an overarching policy on the management of intelligence within twelve months of the publication of this report but should report to the Policing Board on the progress of its review within six months of the publication of this report.	<u>Part Implemented</u> ⁵
VICTIMS' RIGHTS		
2009 Recommendations		
16.	The PSNI should disseminate the June 2009 report, <i>Hate crime against people with disabilities: a baseline study of experiences in Northern Ireland, Institute for Conflict Research</i> , to all relevant officers within the PSNI with a view to informing policy and practice. The PSNI should report to the Policing Board within six months of the publication of the 2009 Human Rights Annual Report, on measures to be taken to implement the recommendations.	Implemented
17.	The PSNI internal evaluation team should evaluate student officer's training on victims and witnesses as a matter of priority within the next cycle of evaluation and report to the Policing Board on its findings.	<u>Remains Outstanding</u> ⁶

⁵ Pages 67 - 68 of this 2010 Human Rights Annual Report refer: PSNI is working towards introducing an interim overarching policy. This interim policy is due to be issued to the organisation shortly, following which the recommendation will be considered to have been implemented. I will report further next year.

⁶ Pages 84 – 85 of this 2010 Human Rights Annual Report refer: I intend to consider the practicality and benefit of conducting internal evaluations and will report further on the status of this recommendation next year.

TREATMENT OF SUSPECTS		
2009 Recommendations		
18.	Each Regional ACC should inform PSNI Operational Support Department, who in turn will notify the Custody Visiting Scheme Administrator, when a designated custody suite is closed and when it is subsequently re-opened.	Implemented
19.	The Policing Board, in consultation with Custody Visitors, should consider an alternative means of ensuring that Custody Visitors have a line of communication with District Commanders through the Custody Visiting Scheme in association with the relevant Committees of the Policing Board.	Implemented
20.	The PSNI will report to the Policing Board on a six monthly basis with the number of immigration detainees held in police custody during the relevant period and the length of time spent by each detainee in police custody.	Implemented

APPENDIX 3: HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS 2005 - 2009

Summary of Overall Status of Implementation of Recommendations

	Implemented in full	Implemented in part	Withdrawn	Outstanding	Totals
2009 recommendations	14	1	2	3	20
2008 recommendations	20	2	8	0	30
2007 recommendations	38	0	6	0	44
2006 recommendations	42	0	3	0	45
2005 recommendations	56	0	4	0	60
Totals	170	3	23	3	199

Alyson Kilpatrick BL



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

Throughout her practice, Alyson has published extensively. For example, as contributor to *The Human Rights Act 1998: A Practitioner's Guide* (Sweet and Maxwell) and the author of *Discrimination in Housing Law* (Lemos & Crane). She was engaged to provide training to public authorities on the implementation of the Human Rights Act, the law on homelessness and the anti-social behaviour (ASBO) legislation. Due to her specialist interest in the latter, she contributed to the Panorama Special Investigation *ASBOs on Trial*. She is regularly invited to speak at conferences on legal practice and

procedure involving human rights, the rights of Irish Travellers, policing and criminal justice and the rights of the homeless. In 2009, Alyson was invited to be a member of the Irish Government's delegation to Timor Leste on United Nations Security Council Resolution 1325 (women, peace and security), where she spoke on policing and security.

Alyson is a Commissioner on the Future of Housing in Northern Ireland and is a Director of the Simon Community Northern Ireland. She is a fellow of the Royal Society. In January 2009, she was appointed independent Human Rights Advisor to the Policing Board and has since authored three thematic reviews and two Human Rights Annual Reports.

**PUBLISHED BY
NORTHERN IRELAND POLICING BOARD**

Waterside Tower, 31 Clarendon Road,
Clarendon Dock, Belfast, BT1 3BG

Tel: +44 (0) 28 9040 8500

Fax: +44 (0) 28 9040 8544

Textphone: +44 (0) 28 9052 7668

Email: information@nipolicingboard.org.uk

Website: www.nipolicingboard.org.uk

DOCUMENT TITLE
HUMAN RIGHTS ANNUAL REPORT 2010

ONLINE FORMAT

This document is available in PDF format
from our website.

PUBLISHED JANUARY 2011

This document may also be made available upon request
in alternative formats including CD and large print.

It may also be made available in minority languages
or on audio cassette. Requests for alternative formats
should be made to the Northern Ireland Policing Board.

DISCLAIMER

While every effort has been made to ensure the accuracy
of the information contained in this document, neither
the Northern Ireland Policing Board nor its consultants
will be held liable for any inaccuracies that may be
contained within.



Join us on Facebook
www.facebook.com/policingboard