

# HUMAN RIGHTS

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## ANNUAL REPORT 2011

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



PROTECTION OF  
HUMAN RIGHTS

SCRUTINY

COMPLIANCE

ACCOUNTABILITY

OVERSIGHT

CONFIDENCE  
IN POLICING

## FOREWORD



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

The Policing Board has an obligation, under section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000, to monitor the performance of the Police Service of Northern Ireland (PSNI) in complying with the Human Rights Act 1998. In 2003 the Policing Board appointed Human Rights Advisors who devised a human rights monitoring framework. The monitoring framework sets out in detail the standards against which the performance of the police in complying with the Human Rights Act 1998 is monitored by the Policing Board and identifies key areas to be examined. The Policing Board's Human Rights and Professional Standards Committee (the Committee) is responsible for implementing the human rights monitoring framework. The Committee is assisted in this task by the Policing Board's Human Rights Advisor. Every year since 2005, the Human Rights Advisor has presented the Committee with a Human Rights Annual Report.

The Human Rights Annual Report contains an overview of the human rights monitoring work carried out during the year by the Committee and the Human Rights Advisor, highlighting both good police practice and areas in which practice could be improved. Formal recommendations are made where it is believed that PSNI action is necessary. Since 2005 the PSNI has implemented 176 recommendations contained within Human Rights Annual Reports. This impressive implementation record is demonstrative of PSNI's ongoing commitment to ensuring that a human

rights culture exists within the organisation. The Chief Constable is on record as saying that the Human Rights Act is central to everything the Police Service does.

Another way in which the Committee and the Human Rights Advisor monitor the performance of the PSNI in complying with the Human Rights Act is by way of thematic review. This mechanism enables a more in-depth and dynamic examination of specific areas of policing from a human rights perspective. A key feature of this approach is use of the community's experience of policing as the evidence base to evaluate police policy and practice.

To date, four thematic reviews have been completed, two of which have been published. The first, examining the policing of domestic abuse, was published in March 2009 and made 14 recommendations for PSNI to implement. A further report recording the progress of the PSNI in implementing the 14 recommendations was published in May 2011. The second review, examining the use of police powers to stop and search and stop and question, was presented to the Committee in June 2010. That review remains in draft and is to be updated for publication in 2012. The third review, examining policing with children and young people, was published in January 2011 and made 30 recommendations for PSNI to implement. A thematic review into policing with and for lesbian, gay, bisexual and transgender individuals is due to be published in early 2012.

Publication of a thematic review signals the beginning of a process of monitoring and review. The Committee and the Human Rights Advisor continue to engage with PSNI on the issues and monitor the implementation of the thematic recommendations. They continue to meet with stakeholders to discuss how the review has affected their experience of policing.

Given this in-depth thematic work, the Human Rights Annual Report represents only an overview of the human rights monitoring work carried out by the Policing Board during 2011. Findings and recommendations made in thematic reviews are equally as important, and carry as much weight as, recommendations made in Human Rights Annual Reports.

The Human Rights Annual Report 2011 makes 16 new recommendations for the PSNI. The Committee, with the assistance of the Human Rights Advisor, will oversee PSNI's implementation of these recommendations and will report further next year.

Membership of the Human Rights and Professional Standards Committee has changed since the publication of last year's Human Rights Annual Report.<sup>1</sup> The Committee consists of 4 Members of the Legislative Assembly (MLAs) and 3 independent Members,<sup>2</sup> one of whom, Ryan Feeney, is the Policing Board's lead Member on human rights issues. As such, Ryan will have a significant role in leading this area of the Policing Board's work.

The Policing Board's Human Rights Advisor, Alyson Kilpatrick BL, was appointed in January 2009. On behalf of the Policing Board, I would like to thank Alyson for producing this Human Rights Annual Report, for her commitment to the human rights monitoring work and for the continued expert advice and guidance she provides throughout the year.

**Brian Rea**  
**Chairman**  
**Northern Ireland Policing Board**

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<sup>1</sup> The Policing Board was reconstituted in May 2011.

<sup>2</sup> Conall McDevitt MLA (Chair), Ryan Feeney (Vice Chair), Gerry Kelly MLA, Robin Newton MLA, Joan O'Hagan, Caitriona Ruane MLA and Deborah Watters.

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## INTRODUCTION

In this seventh Human Rights Annual Report I continue to monitor, on behalf of the Human Rights and Professional Standards Committee (the Committee) of the Northern Ireland Policing Board (the Policing Board), the compliance of the PSNI with the Human Rights Act 1998 according to the previously agreed Human Rights Monitoring Framework. The Northern Ireland Policing Board is under a statutory duty to secure the maintenance of the police service 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.<sup>1</sup> Section 6 of 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 (the ECHR).

The process of monitoring human rights compliance is based upon three broad principles: that it is the PSNI's performance as a whole (the success as well as any failure) that is monitored; that the process should be dynamic and one in which there is a dialogue between the PSNI and the Policing Board, which recognises and addresses problems as they arise; and, that the process should not be retrospective. The Policing Board monitors compliance with the Human Rights Act 1998 according to the standards set out in the PSNI Code of Ethics and a more detailed set of criteria which include international human rights standards drawn from the ECHR and other relevant human rights instruments. The Code of Ethics and the monitoring framework are grounded in the jurisprudence of the European Court of Human Rights, which underpins the Human Rights Act 1998. Other human rights instruments are used to supplement that jurisprudence where there are gaps or ambiguities. That is a process that is recognised as legitimate by the European Court of Human Rights.

Importantly, the standards against which the PSNI is measured do not reflect the subjective views of the Policing Board, its Members or its Human Rights Advisor.

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<sup>1</sup> By sections 3(1), (2) & (3)(b)(ii) of the Police (Northern Ireland) Act 2000.

Rather, they are the objective standards which result from the incorporation of the ECHR by the Human Rights Act 1998.

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 cooperation, 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. 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.

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 Human Rights Act 1998 every bit as much as other members of the community; human rights protect police officers both in the line of duty and in their daily activities. 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.

The approach adopted by the Policing Board keeps firmly in mind the key principle that the protection of human rights must be practical and effective. That requires the examination of PSNI's compliance at all levels and across all areas of policing. It includes, for example, policy and procedure but must necessarily extend to assessing the impact of human rights considerations on police decision-making on the ground. That does not undermine or interfere with the operational responsibility of the Chief Constable; it provides a mechanism by which to assess whether human rights compliance is practical and effective. The ECHR is a living instrument, which means standards may change over time and according to circumstances. The Monitoring Framework is therefore necessarily drawn broadly to enable changes to be made where necessary and as soon as reasonably practicable.

The Policing Board's approach to its human rights monitoring function continues to develop. The Committee and 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. The thematic approach, which began in 2009, has provided an opportunity for the community to work in partnership with the Policing Board and provide the evidence base against which the performance and behaviour of the PSNI can be assessed. It is the community's experience of policing which will ultimately influence its acceptance of the legitimacy of the police and its continuing support for the police. Thematic reviews are complementary to annual reporting by way of the Human Rights Annual Report. While the Human Rights Annual Report monitors compliance according to the agreed monitoring framework, the thematic process enables greater analysis of the practical effect of strategy and policy on the ground.

As stakeholders have reminded the Committee, it is the *implementation* of policy and the adherence to human rights principles in practical scenarios that is the true measure of human rights compliance. To date, the Committee has completed four thematic reviews: domestic abuse; police powers to stop and search and stop and question;<sup>2</sup> policing with children and young people; and, policing with and for lesbian, gay, bisexual and transgender people, which is due for publication in early 2012.

In this year's Human Rights Annual Report, the Committee has paid particular attention to the extent to which the PSNI has progressed its Policing with the Community Strategy. Central to the vision of police reform, for the Independent Commission on Policing for Northern Ireland (the Patten Commission), was 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. It requires the police to carry out their functions in cooperation with, and with the aim of securing the support of, the local community. The Committee is convinced that an effective partnership between police and the community will result in a more effective

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<sup>2</sup> Which remains in draft, to be updated post the Governmental review of counter-terrorism powers, and published in early 2012.



police service and enhanced community safety: a police service not engaged fully with its community will find it difficult to act effectively against crime and disorder.

There is more work to be done to achieve that vision but the Policing Board and the PSNI will continue to work in partnership to achieve policing with the community as the core function of the police service. The success of the Strategy will be judged by its delivery of community confidence through effective engagement and partnership working. Policing with the community is not just about working *with* communities; it is about working *within* communities. Thematic reviews will be a continuing method of measuring and reporting upon the success (or otherwise) of the Strategy.

In its Human Rights Annual Report, the Committee reports on the PSNI's work in 14 areas of policing and measures the PSNI's progress in implementing the recommendations made by previous Human Rights Annual Reports. In addition to monitoring PSNI compliance in, for example, policy, training, investigations and operations, the Policing Board through the Committee assesses the impact of a human-rights-based approach to decision-making on the ground. During the year, the Committee has continued to pay particular attention to those areas of concern to the community, including: the use of powers to stop and search or question; the policing of hate crime; the police response to domestic abuse; retention of DNA material and profiles; policing of children and young people; the use of force; and, the policing of disorder. They are examined in detail with recommendations made where it is considered that further work is required. There is much progress reported this year but also some areas of concern for which specific recommendations have been made and which will be monitored closely.

In the Human Rights Annual Report 2010, the Committee made 5 new recommendations. The PSNI implemented 3 of those recommendations in full, 1 recommendation has been withdrawn but replaced with a new recommendation and 1 recommendation remains outstanding but is being considered for the purpose of implementation. There are no recommendations outstanding from previous Human Rights Annual Reports. That means the PSNI has implemented 176 recommendations contained within Human Rights Annual Reports since 2005. That

is a significant achievement and demonstrates a continuing commitment both to the development of a human rights culture within the PSNI and to the accountability mechanism itself. As in 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 to police constables delivering the service on the ground. I wish to thank the PSNI for its continued cooperation and for its commitment to addressing difficult issues with transparency and professionalism.

In this Human Rights Annual Report, the Committee makes 16 new recommendations. The increased number of recommendations compared to 2010 is not indicative of a reduction in the PSNI's commitment to human rights compliance but reflects a number of legislative and policy developments made during the year. Rather than relying simply on a response to formal recommendations made in Human Rights Annual Reports, however, the oversight provided by the Committee depends upon PSNI providing regular updates on any proposed changes to policy or practice and in particular any human rights initiatives undertaken, or to be undertaken, in the future. The Policing Board and the PSNI will therefore work towards ensuring that policy amendments or changes to practical application are shared in advance of their imposition. The Committee looks forward to positive partnership working with the PSNI to achieve the shared objective – improved policing for all of the people of Northern Ireland.

Finally, I would like to extend a personal thank you to 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. Dr Peter Gilleece, as Director of Policy, has been instrumental in ensuring that the Policing Board and the Committee adopt a proactive and community based analysis of police compliance, which ensures that the approach to monitoring is reflective of the needs of the community and is kept refreshed and invigorated. Siobhan Fisher, who supports us all tirelessly and is responsible for securing a high level of work throughout the year, has been indispensable to the work of the Committee and the Board. I also wish to thank Gillian Robinson who has provided unwavering assistance, a commitment to

the work and a level of expertise that has been invaluable to the compilation of this Human Rights Annual Report and to the monitoring work carried out throughout the year.

**ALYSON KILPATRICK BL**

## 1. PSNI HUMAN RIGHTS PROGRAMME OF ACTION

The report of the Independent Commission on Policing for Northern Ireland (the Patten report) is underpinned by a vision of policing which is based upon meaningful engagement, community consent and police accountability.<sup>1</sup> Importantly, accountability is both the giving of an account for actions taken and the holding to account for those actions. Accountability is as much a state of mind, of professional standards and culture, as it is of structures. Strong accountability results in stronger community policing with the police securing the respect, support and help of local communities. The monitoring of police compliance with human rights standards therefore requires transparency and the proactive submission of policy and practice to public scrutiny.

Recommendation 1 of the Patten report required that there be a “comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach.” In response to that recommendation, PSNI published its first Human Rights Programme of Action on 10 September 2004. The Programme of Action was indicative of PSNI’s willingness, at an organisational level, to embrace human rights not only as a core value in police processes, but as a guide to behaviour. It set out in detail the steps that had been taken to ensure that the policing focus in Northern Ireland remained on human rights, for example, by the introduction of a new police oath of office,<sup>2</sup> publication of a Code of Ethics,<sup>3</sup> and the incorporation of human rights principles into all aspects of police training.

PSNI indicated that it accepted Patten Recommendation 1 as an obligation to put in place *and maintain* an overall framework for human rights compliance. The Policing Board suggested that the best way of ensuring a long-term focus on human rights

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<sup>1</sup> *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999.

<sup>2</sup> The PSNI attestation for police officers states “I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all individuals and their traditions and beliefs; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof according to law.”

<sup>3</sup> First published in 2003, and most recently revised and reissued in 2008, the PSNI Code of Ethics 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.

was for PSNI to draw up an annual Human Rights Programme of Action in which the police would respond with specificity to recommendations contained within the Policing Board's Human Rights Annual Reports. That was accepted by PSNI.

PSNI has published an annual Human Rights Programme of Action since 2005. This year was no exception: the PSNI Human Rights Programme of Action 2010/2011 was published on 4 May 2011 and set out the PSNI's response to the Human Rights Annual Report 2010. As in previous years, the Programme of Action is available to download from the PSNI website.<sup>4</sup>

Additionally, the Policing Board's Human Rights Advisor has been granted unrestricted access to 'Overview' which is an internal police computer system containing information such as action plans and updates against recommendations made by various organisations, including the Policing Board. This enables the Human Rights Advisor to check progress, as and when necessary, throughout the year and has proven to be an extremely useful resource. That is a very positive development which demonstrates PSNI's acceptance of the role of oversight and accountability. However, access to Overview does not negate the need for PSNI to continue to produce and publish its annual Human Rights Programme of Action.

In the spirit of Patten Recommendation 1, the Programme of Action will continue to provide a public demonstration of PSNI's commitment to the ongoing development of its understanding, integration and application of human rights principles to practical policing.

Rather than relying simply on a response to formal recommendations made in Human Rights Annual Reports, the oversight provided by the Policing Board's Human Rights and Professional Standards Committee (the Committee) depends upon PSNI providing regular updates on any proposed changes to policy or practice and in particular any human rights initiatives undertaken, or to be undertaken, in the future.

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<sup>4</sup> [www.psnipolice.uk](http://www.psnipolice.uk)

The Committee therefore looks forward to receiving a copy of the PSNI Human Rights Programme of Action 2011/2012 within 3 months of the publication of this Human Rights Annual Report. Thereafter, the Committee will work closely with PSNI to ensure timely receipt of information about ongoing developments.

## 2. TRAINING

With training, police officers are taught the fundamental principles of human rights law, the complex way in which competing rights interact, how rights can be balanced, protected and respected when carrying out operational duties and the circumstances in which individual rights can be limited lawfully. That cannot be achieved through a discrete, stand-alone lesson. Rather, human rights principles where relevant, must be integrated into all aspects of training so they are instinctively applied in all operational scenarios.

The report of the Independent Commission on Policing for Northern Ireland (the Patten Report)<sup>1</sup> required the PSNI to adopt a human rights approach both in the technical and behavioural sense. The technical aspect is relatively straightforward; it envisages a police service which has human rights embedded within all policy documents and service procedures and a mechanism for the quantitative review of policy and procedure. What is more challenging is the integration of human rights principles as a core function of policing, which is delivered in a practical and effective way in all police business. From the foundation training course for student officers at Police College through to District training, that is the aspiration of the PSNI.

By the engagement of an expert Human Rights Legal Advisor and Human Rights Training Adviser, the PSNI has demonstrated a continuing commitment to ensuring high quality training is offered to police officers. The Human Rights Advisor to the Policing Board has been afforded access to training materials, e-learning packages and to the classroom. She has observed a large number of training modules and practical scenario based training. The Human Rights and Professional Standards Committee of the Policing Board (the Committee) has been involved throughout the development of the training programme with over 30 recommendations made in Human Rights Annual Reports between 2005 and 2010 directed at training specifically. PSNI has accepted all of those recommendations.

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<sup>1</sup> *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999.

## **Student officer training**

Respect for human rights by police officers requires more than technical knowledge, although sufficient technical knowledge is an essential precondition to compliance. Officers must be equipped with the requisite skill and attitude to ensure that human rights standards are applied in practice. The role of the trainer is therefore critical. Trainers must ensure within each lesson, that students understand when and why the Human Rights Act 1998 is relevant and how it impacts upon police actions in practical situations. Reference to the Human Rights Act as an 'add-on' at the end of a lesson does not achieve that. Quite the contrary: it relegates human rights protection to an academic subject rather than the core function of a police officer. As an intrinsic part of police decision making, human rights principles should be referenced throughout lessons.

Perhaps the best way to report upon the progress made by PSNI and to provide an insight on the training commitments at the PSNI Police College is by way of an example from a lesson observed by the Policing Board's Human Rights Advisor. The scenario in which the training was set was police powers to stop and search a person under terrorism legislation. The trainer, from the outset, discussed the legislative basis for the powers to stop and search and stop and account. While doing so he reminded student officers of their positive obligation to protect life within Article 2 of the European Convention on Human Rights (ECHR) and the obligation to protect the right to private and family life within Article 8 of the ECHR. The class discussed the balancing exercise involved and considered the right not to be discriminated against within Article 14 ECHR. The trainer reinforced the important principle that a person should not be targeted for a stop and search because of, for example, where he or she lived or his or her political opinions.

The trainer discussed with the class whether the search engaged the Article 5 ECHR right to liberty (which it does) and explained that a stop and search will not constitute an unlawful breach of that right *provided* it is lawful, necessary, proportionate and that it only lasts for so long as is reasonable in order to effect the stop and search. The trainer discussed the Article 8 ECHR right and explored a number of practical examples. Student officers were then asked how they should react if the person



being searched made clear their distrust of the police. The trainer discussed with the class the right to express an opinion within Article 10 ECHR and stressed that the person should not be treated any differently or with any less respect by virtue of their stated opinion. At the end of the lesson the trainer summed up the key learning points and stressed the important points of principle.

That example is of a class observed during 2011. It was clear that the renewed focus and commitment of officers and staff at PSNI Police College to embed human rights principles within training has had a tangible effect upon trainers and thereafter will have a positive impact upon newly confirmed officers. The PSNI deserves credit for the steps it has taken thus far and for its achievements in respect of training.

However, further attention is required to ensure that each and every lesson reinforces that positive approach to human rights standards. During 2010/2011, the Human Rights Advisor observed a number of lessons delivered to student officers and others at Police College and, whilst impressed with the commitment of all trainers to delivering an informative and interesting lesson, some comment is required in respect of the human rights element of a small number of the lessons. In a small number of lessons:

- ECHR articles were referenced with little or no explanation as to how they tied in with the topic being taught;
- 'Human rights' was presented in a PowerPoint slide at the end of the lesson which was the only reference, implicit or explicit, to human rights;
- The knowledge of some trainers on human rights as they applied to the specific lesson could be improved; and
- There were missed opportunities to reference equality and diversity considerations. Equality and diversity appears to be seen by some trainers as a separate topic, taught during the initial week of student officer training. Instead, trainers should be encouraged to consider equality and diversity principles as fundamental human rights principles.

Student officers' attitudes towards human rights are undoubtedly shaped by those of their trainers. The fact that the vast majority of students attending the training observed by the Policing Board's Human Rights Advisor were knowledgeable about the Human Rights Act, had an appetite to learn, and demonstrated a willingness to embrace a human rights culture within their future careers, is a tribute to the Police College trainers. In respect of that small number of lessons where further work is required, the PSNI Human Rights Training Adviser, with input from the PSNI Human Rights Legal Advisor, is working towards ensuring a very high standard of training is met across *all* disciplines and by *all* trainers.

Since taking up post in July 2009, the PSNI Human Rights Training Adviser has been proactive in reviewing PSNI training materials, attending lessons and providing feedback and support to trainers to integrate practical and relevant human rights information into their lessons. In 2010, the PSNI Human Rights Training Adviser carried out a review of training across the PSNI and provided the Human Rights and Professional Standards Committee with a report on the structures in place to monitor the quality of training. That work has resulted in significant improvements to the training programme and the Committee wishes to thank the PSNI Human Rights Training Adviser and her colleagues for their considerable assistance.

Recruitment to the PSNI is currently suspended. It will therefore be some time before another foundation training course is delivered to student officers. PSNI could use this time to re-evaluate the content of foundation training lessons and the way in which human rights teaching is delivered within those lessons. Rather than make a formal recommendation around the future development of the foundation training course, the Committee is content that there will be an invigorated effort to incorporate up to date and relevant human rights references into all aspects of the course. The Policing Board's Human Rights Advisor will continue to work closely with the PSNI Human Rights Training Adviser to ensure that is the case.

### **Investigation Video Project**

Training for student officers focuses on classroom based learning, which is reinforced by practical exercises. At the conclusion of foundation training, student officers should have sufficient knowledge to conduct an investigation from arrival at the crime scene to the charge of a suspect. Complementary resources are also now available through an Investigation Video Project completed in 2011. The Video Project consists of a series of realistic video clips which take students through all the steps required in an investigation. The Video Project has been carefully constructed to prompt recurring themes and practical challenges. There is a comprehensive training manual which reinforces the high quality training provided in the classroom. The Video Project has the potential to be utilised beyond foundation training and into Districts and can be updated as required. The Policing Board's Human Rights Advisor has viewed the Video Project and was impressed at the quality of investigative training and attention to detail. The Committee commends the police officers and staff involved in developing the Video Project.

### **Training on the PSNI Code of Ethics 2008**

In addition to attending student officer training, the Policing Board's Human Rights Advisor attended a number of other police training sessions delivered throughout the year, for example, public order training; firearms training; human rights and leadership training for newly appointed Superintendents and equivalent senior support staff; custody and detention training; and, training on the PSNI Code of Ethics 2008. As with the student officer training, there was some disparity in the extent to which human rights standards were incorporated into the training but that is being addressed by the PSNI Human Rights Training Adviser who is providing regular updates on progress. Despite some disparity, training was delivered professionally, skilfully and with attention to human rights standards. It should be recorded that no training fell below a reasonable standard but given the fundamental importance of getting training right, the Committee wants to ensure that experienced and well-resourced trainers are encouraged and supported in their endeavours to embed human rights standards within every aspect of training.

Bespoke training on the PSNI Code of Ethics was developed and delivered in June 2011 by the PSNI Human Rights Training Adviser in response to Recommendation 1 of the Policing Board's Human Rights Annual Report 2010. Recommendation 1 required PSNI to provide the Committee with an assurance, within six months of the publication of the Human Rights Annual Report 2010, that all persons tasked with training responsibilities had read and *understood* the Code of Ethics 2008 and its incorporation of relevant human rights principles. Thereafter, PSNI Trainers were to ensure that reference to the relevant articles of the Code of Ethics was incorporated into lessons.

The rationale behind Recommendation 1 derived from the fact that a number of police officers, including trainers, viewed the Code of Ethics as little more than a disciplinary tool without appreciating that it was also intended to make police officers aware of the rights and obligations arising from the ECHR. PSNI accepted Recommendation 1 and required all police officers and staff involved in delivering training to complete an online confirmation that they had read the Code of Ethics since it was reissued in 2008.<sup>2</sup> In order to challenge misconceptions, to assist with understanding and to offer support, a two hour workshop was developed and delivered by the PSNI Human Rights Training Adviser in Belfast, Coleraine and Enniskillen.<sup>3</sup> The aim of the workshop was to assist trainers:

- To develop their awareness of the Code of Ethics 2008; and
- To consider how the Code of Ethics could be more effectively integrated into training.

Attendance at the workshops was voluntary. Approximately 40 police officers and members of staff of varying ranks attended and discussed the relevance of the ECHR to the various articles of the Code of Ethics. The Policing Board's Human Rights Advisor attended one of the workshops during which there was challenging but constructive discussion on the perception of the Code of Ethics within the PSNI generally and the utility of the Code as a training tool. The Human Rights Advisor

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<sup>2</sup> The PSNI Code of Ethics was first issued in 2003 and revised and reissued in 2008.

<sup>3</sup> The course was entitled *Cracking the Code: Professional policing, human rights and the Code of Ethics*.

found the training to be effectively and capably delivered by the PSNI Human Rights Training Adviser, who hopes to deliver the course again during 2012. The Committee wishes to support that aspiration and considers that such training should be a recurring element of the training offered to officers and staff and that officers and staff should be encouraged to attend.

Recommendation 1 of the Policing Board's Human Rights Annual Report 2010 has been implemented in full.

### **Human rights refresher training**

Recommendation 2 of the Policing Board's Human Rights Annual Report 2010 has also been implemented in full. It recommended that bespoke lessons on human rights refresher training and human rights in training design, which were developed and delivered by the PSNI Human Rights Training Adviser in 2010, should continue to be made available to all officers and staff involved in delivering or designing training. The refresher training was subsequently delivered in 2011 to trainers involved in crime and combined operational training. It is hoped that the training will be offered to the remainder of training officers and staff.

If trainers are to integrate human rights standards effectively into all aspects of training, they must have a comprehensive knowledge and understanding of the Human Rights Act 1998, the ECHR, other relevant international instruments and the practical application of the respective standards. Through her observation of lessons, the Policing Board's Human Rights Advisor identified a knowledge gap amongst a small number of trainers. She has also identified a knowledge gap amongst a small number of police officers. That must be addressed. Human rights training requires regular assessment and reinvigoration. It is not 'old hat', which can be covered once and endure for the future. Refresher courses such as those developed by the PSNI's Human Rights Training Adviser are an essential component of the training package. PSNI has advised that refresher courses are core business for training purposes. That should continue to be the case over the longer term.

Trainers and supervisors have a responsibility to lead by example. They must ensure that police officers have not only a working knowledge of the Human Rights Act and the skills to apply that knowledge in practice but also a positive attitude towards their duty to promote, respect and defend the human rights of all members of the community without discrimination.

### **District training**

District Commanders are responsible for identifying training needs within their Districts and, where a need is identified, to ensure that the relevant officers receive the appropriate training. A Professional Development Unit (PDU) exists within each PSNI District to provide a coordinated approach to professional development. PDU Managers in each District meet regularly thus ensuring that District lesson plans maintain consistency with content, procedures and standards. The PSNI Human Rights Training Adviser attends those meetings. She reviews District training materials, attends lessons and provides feedback and support to District trainers to assist them with integrating practical and relevant human rights information into their lessons. The Policing Board's Human Rights Advisor attended a number of PDU meetings and was reassured that District trainers are committed to improving the consistency of training across Districts. Inconsistency of practice between PSNI Districts and Areas has been identified as a particular concern by the Committee, stakeholders and other agencies but the relevant officers and members of staff within PSNI are conscious of those concerns and are working proactively to address them. This will be kept under review and returned to in future Human Rights Annual Reports and thematic reviews.

Whilst the Policing Board's Human Rights Advisor has reviewed District training lessons and documentation in the past, and will continue to do so in respect of training that is specifically relevant to ongoing work, such as topics examined by way of thematic review, it is the role of the PSNI Human Rights Training Adviser to audit and contribute to training, education and development throughout the PSNI, including at District level. It is therefore essential that the PSNI Human Rights Training Adviser receives adequate support in order that she may continue to drive human rights training within the organisation and at all levels.

In April 2011, the Policing Board's Human Rights Advisor attended a District Training Presentation Day during which trainers from each of the 8 PSNI Districts delivered presentations on, for example, training interventions which had a positive impact on operational performance, initiatives and partnerships District trainers had been involved in. The event was extremely positive with District trainers sharing their training experiences from across Northern Ireland. Good practice was discussed and disseminated with the aim of ensuring that no learning was lost. Such meetings should be encouraged as a significant contribution to securing greater consistency across the PSNI both in training and, importantly, in the practical delivery of the policing service.

### **Superintendents' leadership course**

The PSNI was at the forefront of the development of the National Decision Model, which has at its core the application of human rights principles. That will have a positive impact upon decision-making on the ground. The Policing Board's Human Rights Advisor attended two leadership training sessions delivered to newly promoted Superintendents and police staff. That element of training which was delivered by the PSNI Human Rights Training Adviser focused on the incorporation of human rights principles into decision-making and the role of police leaders in enshrining human rights within police practice. That component of the course was of high quality and made good use of practical scenarios and problem-solving examples. The training should continue to be delivered by PSNI as part of its annual training package. It is understood that the PSNI intend to do so.

### **Internal evaluations**

Recommendation 4 of the Policing Board's Human Rights Annual Report 2009 required the PSNI internal evaluation team to evaluate the integration of human rights principles into the practical aspects of the PSNI Personal Safety Programme (PSP) training courses. In 2011, the PSNI Human Rights Training Adviser observed training delivered to PSP trainers, she met with PSP trainers to discuss the training and she reviewed the relevant portion of the PSP trainer's manual. The PSNI Human Rights Training Adviser prepared a report on the integration of human rights principles into the practical aspects of PSP training based upon her observations,

conversations and review of documentation. In the report she outlined areas in which the PSP training was strong and areas in which there was room for improvement. This report has been shared with the PSP trainers and has been brought to the attention of PSNI's PSP Practitioner's Forum which is responsible for monitoring and standardising all aspects of the PSP training courses. The report has also been shared with the Policing Board's Human Rights Advisor. Accordingly, Recommendation 4 of the Policing Board's Human Rights Annual Report 2009 has been implemented in full.

The PSNI Human Rights Training Adviser's review of the PSP training courses, and the way in which she reviews other lessons and course documentation, is similar to the role that was previously carried out by PSNI's internal evaluation team. The PSNI Human Rights Legal Advisor assists with the internal evaluation and provides a valuable contribution to the process. On that basis, rather than setting specific targets for the number of evaluations that must be carried out within a set period, which can result in little more than quantitative review, the Committee will take a more qualitative approach in the future. The Committee is satisfied that the PSNI Human Rights Training Adviser and the PSNI Human Rights Legal Advisor are well placed to undertake the continuing evaluation of training. The Policing Board's Human Rights Advisor will continue to work with them to identify key training areas requiring review on an individual basis and to report to the Committee on progress or otherwise.<sup>4</sup> Recommendation 10 of the Policing Board's Human Rights Annual Report 2008, which required the internal evaluation team to conduct 45 evaluations over a 12 month period, is therefore withdrawn.

### **Further training initiatives**

It is notable that PSNI continues to develop training materials and aide memoires to improve the knowledge and skill of officers on the ground. For example, PSNI has devised a booklet entitled *Aide Memoire: The Human Rights Act 1998* which is an easy to use booklet containing an explanation of the relevant ECHR rights. Additionally, officers who attend the human rights training delivered by the PSNI

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<sup>4</sup> One area identified has been training on children and young people and the use of force: that review has been completed by the PSNI Human Rights Training Adviser and is discussed in more detail in Chapter 7 of this Human Rights Annual Report.



Human Rights Training Adviser are issued with a pocket guide entitled *Human Rights: the Pocket Guide for Police Officers and Staff* which was amended for Northern Ireland and contains practical examples of the application of human rights principles into operational policing.<sup>5</sup> There is also a guide developed by G District (Foyle, Limavady, Magherafelt and Strabane) and H District (Larne, Ballymena, Ballymoney, Coleraine and Moyle) entitled *Patrol Officers Guide*. The guide is intended to act as an aide memoire for patrol officers. It provides an outline of those offences which patrol officers are most likely to encounter on duty, summarises police powers and outlines the relevant human rights considerations. That guide is to be made available to all officers, which is welcomed. The efforts expended by the PSNI in this respect should be commended. It demonstrates not only a willingness to embrace a human rights culture but a determination to ensure that each and every officer has the knowledge base and skill to give practical effect to the rights enshrined in the ECHR.

### **Training with minority and vulnerable groups**

A number of stakeholders and some Members of the Policing Board have expressed a desire to see more use being made of external experts within PSNI training. The Committee agrees that stakeholders, particularly those representing minority or vulnerable groups such as young people, minority ethnic people and lesbian, gay, bisexual and transgender people should be invited to participate in the development of specialist training and in the delivery of some element of that training. That does not envisage the appointment of external training consultants. Rather, it should embrace partnership working with those groups who have been marginalised or under-represented in the past. Training that was delivered to PSNI by, for example, Women's Aid (on domestic abuse) and the Rainbow Project (on hate crime) produced very positive results. The Policing Board will support the PSNI in its endeavours to use more of this type of training.<sup>6</sup> In the meantime, the PSNI should consider how to better utilise the experience and expertise available within the community for the development and delivery of specialist training packages.

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<sup>5</sup> *Human Rights: the Pocket Guide for Police Officers and Staff*, A. Beckley, 2000, special edition for PSNI edited by PSNI Human Rights Legal Advisor, November 2010.

<sup>6</sup> More detailed comment is made in respective thematic reviews.

**Recommendation 1**

**PSNI should consider how to better utilise the experience and expertise available within the community for the development and delivery of specialist training packages.**

### 3. POLICY

It is of fundamental importance that all PSNI policy should set the framework within which decisions may be made and against which police practice can be monitored and measured. Policy should ensure that human rights standards are applied in all policing work. If a policy is well developed and clearly written, it will enhance the shared knowledge of officers and staff, set expectations for professional behaviour, and ensure consistency in the application of standards in operational policing. Policy also plays a crucial role in influencing a positive culture for the police service and minimises legal risk. Policy should have embedded within it human rights considerations in a practical and effective way. A simple statement that human rights considerations have been taken into account is not sufficient in itself. Rather, the policy should have within it an explanation of the application of human rights standards. Policy should also be contextual in order that officers can fully appreciate the standards to be applied to individual decisions.

It must not be forgotten that all operational decision-making occurs within a policy framework therefore there must always be a robust and accessible policy to which reference can be made and which guides decision-making. Policy writing is a skill which requires a high degree of expertise, knowledge and attention to detail. Policy writers are integral to a functioning police service which has a stated commitment to human rights compliance and they should be encouraged and supported to develop and revise policy as required.

The PSNI policy framework consists largely of Policy Directives and Service Procedures. Policy Directives contain overarching policies. Service Procedures outline a course of action or steps to be taken in order to implement policies and contain guidance. In previous Human Rights Annual Reports, criticism was directed at the ad hoc nature of policy writing within PSNI and the disorganisation of the policy database. In particular, concern was expressed that policy may remain on the database when it was out of date, obsolete or had been amended. Officers must be able to access policy as and when required and be confident that the policy is up to date and accurate.

Considerable efforts have been made to address those issues and a robust mechanism has been developed to monitor and update policy when necessary. PSNI is in the process of streamlining its policy framework. Streamlining which results in comprehensive Policy Directives and Service Procedures which are easily accessible, relevant, practical and immediate is welcomed. However, the streamlining of policy must be undertaken carefully and caution exercised to ensure that important guidance is not lost. The PSNI have shared their proposals for streamlining of policy with the Human Rights Advisor to the Policing Board who will be kept advised of progress. The Human Rights and Professional Standards Committee (the Committee) is content to await the first review of the process and will continue to monitor and report on the policy review.

A number of Policy Directives and Service Procedures are available to the public through the PSNI website. Those that are not on the website (due to their classified nature) are available to the Policing Board's Human Rights Advisor who has access to the PSNI intranet site. All Policy Directives and Service Procedures that are overdue for review are monitored by the PSNI internal database known as 'Overview'. Any overdue Policy Directive or Service Procedure which is flagged on Overview as a high priority is brought to the attention of the PSNI Organisational and Improvement Committee on a quarterly basis. The commitment to transparency and accountability demonstrated by the unrestricted access to Overview given to the Human Rights Advisor is evident. The Committee is encouraged at PSNI's willingness to share information in this way.

Recommendation 6 of the Policing Board's Human Rights Annual Report 2009 recommended that PSNI provide the Policing Board with details of all Policy Directives and Service Procedures that were 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 was due to be completed. That information is now available through Overview, to which the Policing Board's Human Rights Advisor has access. In those circumstances, Recommendation 6 is withdrawn. However, should access to Overview be discontinued for any reason, this recommendation will be returned to.

During 2011, there have been a number of new Service Procedures introduced in relation to domestic abuse, honour based violence and female genital mutilation.<sup>1</sup> In December 2010, the overarching domestic abuse Policy Directive<sup>2</sup> was revised and reissued and PSNI are currently working on a revised Service Procedure addressing the police response to stalking and harassment. Policy development in that area has been exceptional and should be commended.

### **PSNI policy on retention of DNA**

By an amendment to the Police and Criminal Evidence (Northern Ireland) Order 1989, PSNI has a statutory power to retain indefinitely fingerprints, DNA samples<sup>3</sup> and DNA profiles<sup>4</sup> after the purpose for which they had been obtained has been fulfilled. The regime applies equally to people who are innocent as to those who are subsequently convicted of an offence, and it makes no distinction between adults and children. Whilst people may apply to have samples, profiles and fingerprints destroyed, the criteria for destruction, as set out in guidance issued by the Association of Chief Police Officers (ACPO) and adopted by PSNI, is an operational decision for the Chief Constable to consider based on the individual circumstances of each case. The ACPO guidance states that removal from the database should be limited and reserved for exceptional cases.<sup>5</sup>

In the 2008 case of *Marper* the Grand Chamber of the European Court of Human Rights (ECtHR) held that the blanket policy applied in England and Wales, which is mirrored in Northern Ireland, of retaining indefinitely the DNA samples, materials and fingerprints of all people who have been arrested but not convicted of an offence is in breach of Article 8 of the European Convention on Human Rights (ECHR), right to respect for private and family life.<sup>6</sup> The ECtHR stressed the importance of treating

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<sup>1</sup> (i) *Risk Identification, Assessment and Management in Relation to Domestic Abuse, Stalking and Harassment and Honour Based Violence (HBV) (DASH)*, PSNI SP/15/2011, July 2011; (ii) *Shielding National Insurance Numbers – victims of Domestic Abuse and Honour Based Violence (HBV)*, PSNI SP/9/2011, May 2011; (iii) *Police Response to Female Genital Mutilation*, PSNI SP/7/2011, April 2011; (iv) *Police Response to Honour Based Violence*, PSNI SP/2/2011, March 2011; and (v) *Police Response to Forced Marriage*, PSNI SP/3/2011, March 2011.

<sup>2</sup> *Police Response to Domestic Incidents*, PSNI PD/09/08, December 2011.

<sup>3</sup> A DNA sample is the raw material which contains a person's genetic information.

<sup>4</sup> A DNA profile is that information which is extracted from the sample and recorded in coded form.

<sup>5</sup> *Retention Guidelines for Nominal Records on the Police National Computer*, ACPO, 2006.

<sup>6</sup> *S and Marper v The UK* (App Nos. 30562/04 and 30566/04).

those people who have not been convicted of anything (and in many cases not charged) as innocent people for all purposes. Amending the legislative framework for the retention and destruction of DNA samples, profiles and fingerprints is a devolved matter for the Northern Ireland Assembly. In March 2011, the Department of Justice for Northern Ireland (DOJ) launched a public consultation on proposals for a new legislative framework. The consultation document proposes that:

- All DNA samples taken upon arrest will be destroyed, regardless of whether or not the individual is subsequently convicted of an offence. Samples will only be retained for as long as necessary to create a DNA profile, and for no longer than 6 months.
- Persons arrested but not charged with an offence will have their DNA profile and fingerprints destroyed immediately.
- Persons charged but not convicted of an offence that is not serious (as defined) will have their DNA profile and fingerprints destroyed immediately.
- The DNA profile and fingerprints of persons charged but not convicted of a serious offence will be retained for 3 years. That can be extended by a further period of 2 years by application to a court.
- The DNA profile and fingerprints of persons charged and convicted of an offence will be retained indefinitely if the person convicted was over the age of 18 years at the time the offence was committed.
- If a person has been convicted of a first offence, the offence is not serious, a custodial sentence of less than 5 years has been imposed, and the person was under the age of 18 years old when the offence was committed, their DNA profile and fingerprints will not be retained indefinitely: they will be retained for a period of 5 years plus the length of any custodial sentence imposed in respect of the offence.
- In all other circumstances where a person is convicted of an offence committed when they were under the age of 18 years, their DNA profile and fingerprints will be retained indefinitely.

The legislative framework contained within the consultation document would apply not just to fingerprints, DNA profiles and DNA samples taken after the new

framework is introduced, but would apply to fingerprints and DNA currently retained. The DOJ proposals are closely aligned to the Scottish model of retention which the ECtHR in *Marper* referenced as an example of what *might* be considered to be compliant with the ECHR. Similar (but substantively distinct) legislative amendments have been proposed in England and Wales by the Westminster Government in order to give effect to the *Marper* judgment. Whilst government has been deliberating over a new retention and destruction framework, police services throughout England, Wales and Northern Ireland have, save in exceptional cases, continued to retain indefinitely DNA samples, profiles and fingerprints of all persons whether arrested, charged or convicted.

The United Kingdom Supreme Court recently considered whether ACPO guidelines on the retention and destruction of DNA samples, profiles and fingerprints comply with the ECHR and therefore by extension with the Human Rights Act 1998. The Supreme Court held, in May 2011, that the ACPO guidelines are unlawful because they are incompatible with Article 8 ECHR.<sup>7</sup> The Supreme Court reiterated that Parliament conferred a *discretion* on police services to retain data, meaning the power is permissive not mandatory. The Supreme Court said that it was open to ACPO to reconsider and amend their guidelines pending government action rather than waiting for a new (compliant) legislative framework.

PSNI's policy on retention and destruction of DNA samples, profiles and fingerprints is based upon ACPO guidelines. The Policing Board in its Human Rights Annual Report 2009 recommended that PSNI consider reviewing its policy rather than waiting for new legislation to be introduced. As noted by the Supreme Court earlier this year, PACE confers discretion on the police to retain data, not a requirement to do so. Despite that, no policy review has been carried out by PSNI. However, PSNI has consulted with DOJ over the proposed legislative amendments and is broadly supportive of the DOJ proposals. PSNI intends to await the introduction of the new legislative framework before reissuing a revised policy. PSNI has advised the

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<sup>7</sup> *R (on the application of C) (FC) (Appellant) v The Commissioner of Police of the Metropolis (Respondent)*, [2011] UKSC 21.

Committee that it will review that position should there be an inordinate delay in the legislation coming into force.

Given that PSNI has been involved in the DOJ consultation process on a new retention and destruction framework, the Committee expects there to be no unnecessary delay in a revised policy taking effect once the legislative framework comes into force. The Committee appreciates that there is likely to be substantial work and cost involved in giving effect to the new framework and will continue to maintain a dialogue with PSNI as to progress made. In the meantime, however, the PSNI should consider the judgment of the ECtHR in *Marper* and the Supreme Court's judgment in *C* when considering an individual's application for samples and profiles to be destroyed. The PSNI should report to the Committee within 3 months of the publication of this Human Rights Annual Report on the steps it has taken in respect of applications to have samples and profiles destroyed.

## **Recommendation 2**

**The PSNI should, within 3 months of the publication of this Human Rights Annual Report, provide to the Human Rights and Professional Standards Committee an analysis of all new<sup>8</sup> decisions taken upon application by an individual to have DNA profiles, samples and fingerprints destroyed together with any decisions taken to review or amend the policy to be adopted on any such an application being made.**

It is clear that the DOJ proposals, which are closely aligned to the Scottish model and are therefore more in line with the ECtHR's judgment in *Marper*, do not anticipate that a person who is arrested but not charged with an offence which is not a sexual or violent offence will have his or her profile, sample or fingerprints stored on the database. That being the case, the PSNI should provide to the Committee an explanation (together with reasons) for any decision to continue to store such information or material. That explanation should be provided within 6 weeks of the publication of this Human Rights Annual Report.

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<sup>8</sup> In other words, all decisions taken after the date of publication of this Human Rights Annual Report.



### **Recommendation 3**

**PSNI should provide to the Human Rights and Professional Standards Committee an explanation (together with reasons) for any decision to continue to store such information or material. That explanation should be provided within 6 weeks of the publication of this Human Rights Annual Report.**

The issue of the retention of photographs has not been included within the DOJ's proposed legislative framework. Current practice is for the PSNI to retain indefinitely the photographs of persons taken upon arrest. PSNI believe that photographs form an essential part of a custody record and should be retained as part of that record. DOJ recognises that this practice, if it remains unchanged, may be subject to legal challenge. However, DOJ is of the view that photographs cannot be treated in the same manner as DNA and fingerprints and so has concluded that photographs should not form part of the proposed new legislative framework unless there is an authoritative judicial ruling to the contrary.<sup>9</sup> PSNI are in the process of developing a system for the proportionate control and retention of photographs. The Committee is concerned that the indefinite retention of photographs raises human rights issues which must be considered carefully and kept under close review.

### **Recommendation 4**

**PSNI should report to the Human Rights and Professional Standards Committee, within 3 months of the publication of this Human Rights Annual Report, on the structures and policy in place to ensure that the retention of photographs by police of all persons arrested is lawful, proportionate and necessary.**

Thereafter, the Committee will consider the matter and report publicly on its deliberations.

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<sup>9</sup> *Final Legislative Proposals for the Retention and Destruction of DNA and Fingerprints*, Northern Ireland Assembly Committee for Justice, Official Report (Hansard), 8 September 2011.

## 4. OPERATIONS

Effective, efficient and impartial policing is central to a human rights compliant Police Service. The majority of police operations raise significant human rights issues. For example, Article 2 (the right to life), Article 3 (the right not to be subject to torture, inhuman or degrading treatment) and Article 8 (the right to respect for private and family life) of the European Convention on Human Rights (ECHR) are engaged in all operations where recourse may be had to the use of force. Police policy must comply with the Human Rights Act 1998 and so must all operations from the planning to the execution stage. The Policing Board considers this aspect of its monitoring function to be critical to its overall assessment of PSNI's compliance with the Human Rights Act 1998.

Whilst the Chief Constable bears responsibility for operational decisions, the Policing Board, in discharging its statutory functions, undertakes regular reviews of operational decisions, the planning and execution of operations and the community impact of operations. Importantly, human rights monitoring does not confine itself to non-operational matters. Quite the contrary, it is the operational application of human rights standards which is central to human rights monitoring. Such oversight does not interfere with the Chief Constable's responsibility for, or ability to make, operational decisions; it provides an essential accountability mechanism.

### **Counter-terrorism operations**

The threat of an attack from terrorist groups in Northern Ireland has been assessed as 'severe', with the tragic murder in April 2011 of Constable Ronan Kerr providing a stark demonstration of that. PSNI statistics show that during 2010/2011, there were 72 recorded shooting incidents and 99 recorded bombing incidents linked to the security situation; there were 83 casualties as a result of paramilitary-style attacks; there were 86 firearms and 2,574 rounds of ammunition found; and 2.9kg of explosives were recovered in searches during the year.<sup>1</sup>

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<sup>1</sup> *Police recorded security situation statistics, 1 April 2010 to 31 March 2011*, PSNI, May 2011.

The statutory powers available to PSNI officers specifically for the purpose of investigating terrorist activity are mostly contained within the Terrorism Act 2000 (TACT) and the Justice and Security (Northern Ireland) Act 2007. Importantly, those powers are additional to the powers available to combat crime. The powers available to PSNI and all police services in the United Kingdom under TACT include 'cordoned' areas; arrest without warrant; extended detention; search of premises and persons; stop and search in designated areas; restrictions on parking; and port and border controls. A government appointed Independent Reviewer of Terrorism Legislation reviews the operation of TACT throughout the United Kingdom. The current Independent Reviewer, David Anderson Q.C., was appointed earlier this year and published his first monitoring report in July 2011.<sup>2</sup>

Use of the controversial power under section 44 TACT, which allowed a police officer to stop and search a person in a designated area without having a suspicion that the person was a terrorist or had committed a terrorist-related offence, was suspended by the Home Office in July 2010 in response to the ruling of the European Court of Human Rights (ECtHR) in the case of *Gillan & Quinton*. In *Gillan*, the ECtHR found that the section 44 TACT power was an unlawful interference with the Article 8 ECHR right (the right to respect for family and private life).<sup>3</sup>

The Home Office considered the future use of section 44 TACT as part of a counter-terrorism review which was published in January 2011.<sup>4</sup> It concluded that the power to stop and search without reasonable suspicion under section 44 should be replaced with a more tightly defined power to stop and search without suspicion. A replacement power, contained within section 47A and Schedule 6B TACT, took effect on 18 March 2011 under temporary legislation and similar (permanent) provision will be made once the Protection of Freedoms Bill completes its passage through Parliament. The main changes effected by the new provisions relate to the authorisation process.

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<sup>2</sup> *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson Q.C., July 2011.

<sup>3</sup> *Gillan and Quinton v The United Kingdom* (Application No. 4158/05).

<sup>4</sup> *Review of counter terrorism and security powers*, HM Government, January 2011.

A Code of Practice for Northern Ireland, which was issued by the Northern Ireland Office in March 2011 in respect of the replacement section 44 TACT power, states under the heading 'Oversight and Community Engagement' that the "appropriate use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board."<sup>5</sup> The Policing Board already undertakes monitoring of the use of such powers and will continue to do so.

The Justice and Security (Northern Ireland) Act 2007 (JSA) provides the PSNI with additional powers of entry, search and seizure that are not available to other police services in the United Kingdom whether by the common law or existing statutory provisions such as TACT. Robert Whalley CB was appointed in May 2008 as Independent Reviewer of JSA and most recently reported in November 2011.<sup>6</sup>

A power to stop and search for the purposes of ascertaining whether a person has munitions or wireless apparatus unlawfully with him or her is contained within section 24 JSA. There is no requirement that a police officer exercising this power reasonably suspects that the person has such items. No prior authorisation is required from any other police officer before the power is exercised. Therefore, similar (though not identical) issues arise under the JSA as arose in relation to the section 44 TACT power. Following publication of the Home Office counter-terrorism review, the Secretary of State for Northern Ireland announced, in February 2011, his intention to amend the section 24 JSA power to bring it in line with the new (more tightly circumscribed) section 47A TACT power. The proposed changes to the section 24 power are included within the Protection of Freedoms Bill but have not yet taken effect. However, PSNI has advised that in light of the draft legislation it has introduced an internal authorisation regime with geographic and temporal boundaries authorised by an Assistant Chief Constable. This internal regime has been in effect since 6 October 2011. The lawfulness of the JSA power is currently under consideration by the High Court in Belfast. The Committee will await the outcome of that court hearing and will return to this specific issue in the coming months.

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<sup>5</sup> *Code of Practice (Northern Ireland) for the authorisation and exercise of stop and search powers relating to section 47A of Schedule 6B to the Terrorism Act 2000*, Northern Ireland Office, March 2011, para. 12.1.

<sup>6</sup> *Report of the Independent Reviewer: Justice and Security (Northern Ireland) Act 2007. Fourth Report, 2010-2011*, Robert Whalley CB, November 2011.

Table 1 shows the number of stop/searches and stop/questions carried out by PSNI between 1 October 2009 and 30 September 2011. The suspension of section 44 TACT in July 2010 fell near the start of Quarter 2 of 2010/2011. Up until this date, the section 24 JSA power had been used relatively sparingly. However, following suspension of the section 44 TACT power, use of section 24 JSA by PSNI increased substantially. Robert Whalley CB noted that “there has been some displacement effect from the change in relation to section 44. But it is not as great as might have been expected. There has not been a full-scale shift from one power to the other.”<sup>7</sup>

Note that the section 44 replacement power, found in section 47A and Schedule 6B of TACT and which took effect in March 2011, was not used by PSNI during Quarter 1 or 2 of 2011/2012. Reliance on section 24 JSA has continued during this time albeit there has been a reduction in the use of this power in Quarter 2 of 2011/2012.

**Table 1: Number of stop/searches and stop/questions across all PSNI Districts, 1 October 2009 to 30 September 2011 – Trend Information**<sup>8</sup>

	2009/2010		2010/2011				2011/2012	
	Q.3	Q.4	Q.1	Q.2	Q.3	Q.4	Q.1	Q.2
<b>PACE</b> <sup>9</sup>	6,286	6,046	5,997	5,691	5,566	5,531	4,894	4,486
<b>TACT S.43</b> <sup>10</sup>	27	21	33	170	93	79	115	48
<b>TACT S.44</b>	5,786	8,277	8,841	314	1	-	-	-
<b>JSA S.21</b> <sup>11</sup>	1,027	1,890	1,962	921	1,424	1,048	962	824
<b>JSA S.24</b>	118	228	175	2,925	5,067	3,554	4,200	2,735
<b>TOTAL</b>	<b>13,244</b>	<b>16,462</b>	<b>17,008</b>	<b>10,021</b>	<b>12,151</b>	<b>10,212</b>	<b>10,171</b>	<b>8,093</b>

<sup>7</sup> *Report of the Independent Reviewer: Justice and Security (Northern Ireland) Act 2007. Third Report, 2009-2010*, Robert Whalley CB, November 2010. para. 174.

<sup>8</sup> *PSNI Stop and Search Statistics, 2010/2011 report*, 1 April 2010 – 31 March 2011 and *PSNI Stop and Search Statistics, Quarter 2 report*, 1 July 2011 – 30 September 2011. Note that Table 1 does not reflect the total number of persons stopped and searched/questioned as multiple legislative powers can be exercised on the same occasion against the same individual, for example, a person may be stopped and questioned under s.21 JSA and also searched under section 43 TACT.

<sup>9</sup> Article 3 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) permits a police officer, in a public place or place accessible to the public that is not a private dwelling, to search any person or vehicle for stolen or prohibited articles, such as offensive weapons and drugs, provided the officer has reasonable grounds for suspecting that they will find stolen or prohibited articles.

<sup>10</sup> Section 43 TACT permits a police officer to stop and search a person whom the officer reasonably suspects to be a terrorist to discover whether the person has in their possession anything which may constitute evidence that they are a terrorist.

<sup>11</sup> Section 21 JSA permits a police officer to stop a person for so long as is necessary to question him/her to ascertain his/her identity and movements. The power to stop a person includes the power to stop a vehicle. There is no requirement that reasonable grounds for suspicion exist before this power is exercised.

Robert Whalley CB, in his 2010 report, notes the substantial increase over the past couple of years in PSNI use of a range of counter-terrorism powers. He attributes that to the increased security threat. He states that “it remains of paramount importance that stop and question and stop and search operations are carried out only when absolutely necessary and in full recognition of their potential to alienate individual members of the public and groups whose support for the police is essential if normal policing is to develop.” He goes on to state that, in his judgment, “the overall increased use of these powers is justified in response to the scale of the challenge from the residual terrorist groups, and in particular the risk to life from firearms and explosives.”<sup>12</sup>

David Anderson Q.C. states in his July 2011 report that “a high proportion of terrorist activity, especially in Northern Ireland, is dealt with under the normal criminal law. That is as it should be: terrorism is crime, and should be prosecuted as such wherever possible. Special procedures and offences for dealing with terrorism may be justified when there is an operational need for them, when their use is confined to cases of need and when it is proportionate to their impact on individual liberties.”<sup>13</sup>

The Human Rights and Professional Standards Committee (the Committee) endorses that view. PSNI counter-terrorism work has been discussed regularly at Policing Board meetings and during briefings with the Chief Constable and his senior team. The Policing Board’s Human Rights Advisor met with both Mr Whalley CB and Mr Anderson Q.C. during 2011. The Committee met with Mr Whalley CB and intends to meet with Mr Anderson Q.C. in the near future to discuss the issues that arise. The Committee has continued to receive quarterly statistics from PSNI on police use of stop, search and question powers under TACT, JSA and PACE. Those statistics contain information such as the number of persons stopped and searched/questioned, the ethnicity of those persons, the number of subsequent arrests made and District and Area use of powers.

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<sup>12</sup> Robert Whalley CB, November 2010, paras. 278 – 279.

<sup>13</sup> David Anderson QC, July 2011, page 5.

A recommendation was made in the Policing Board’s thematic review of policing with children and young people that PSNI include approximate age information when producing statistics on persons stopped, searched and/or questioned.<sup>14</sup> PSNI accepted that recommendation and has started to include age information in the quarterly stop and search reports provided to the Policing Board. As shown in Table 1 (page 32), there were 8,093 uses of stop and search powers by PSNI during Quarter 2 of 2011/2012. That figure accounts for 7,573 persons being stopped, searched and/or questioned. As evidenced by Table 2 below, more than half of those people were below the age of 25. The Office of the Police Ombudsman has also recently highlighted the fact that men younger than 24 are the group most likely to complain about the police.<sup>15</sup> The Committee will consider if there is a link between the two. It has certainly been reported to the Committee that community confidence may have been adversely affected by police use of the powers against young people.<sup>16</sup>

**Table 2: Number of persons stopped, searched and/or questioned under PACE, TACT and JSA across all PSNI Districts by age breakdown, 1 July 2011 – 30 September 2011**<sup>17</sup>

<b><u>Age band</u></b>	<b><u>Total persons</u></b>
<b>1 – 5</b>	-
<b>6 – 10</b>	2
<b>11 – 14</b>	189
<b>15 – 17</b>	886
<b>18 – 25</b>	2,911
<b>26 – 35</b>	1,488
<b>36 – 45</b>	916
<b>46 – 55</b>	549
<b>56 – 65</b>	155
<b>Over 65</b>	47
<b>Age unknown</b>	430
<b><u>TOTAL</u></b>	<b><u>7,573</u></b>

<sup>14</sup> *Human Rights Thematic Review: Children and Young People*, Recommendation 20, Northern Ireland Policing Board, January 2011.

<sup>15</sup> *Equality Monitoring Report 2006-2011*, Police Ombudsman for Northern Ireland, October 2011.

<sup>16</sup> For example during the course of the thematic review of policing with children and young people and by submissions to the Committee.

<sup>17</sup> *PSNI Stop and Search Statistics*, Quarter 2 report, 1 July 2011 – 30 September 2011.

Given that people aged 25 and under are more likely to be formally stopped, searched and/or questioned by the police, it is welcome that PSNI has developed a stop and search information leaflet, in conjunction with the Northern Ireland Commissioner for Children and Young People (NICCY), to be handed out by police officers to all young people subjected to a stop and search. Just because a significantly higher proportion of younger people are subject to police stop and searches, it does not follow that PSNI are using the powers in such a way as to discriminate. However, the information does demonstrate that young people are more likely to be formally stopped and searched by the police and it reinforces the need for PSNI to ensure that all police officers are adequately trained to inspire a feeling of safety and confidence in young people rather than vulnerability and anxiety. Evidence was gathered from a number of young people during the course of the Policing Board's children and young people thematic review which identified dissatisfaction with the manner in which searches were carried out, with examples given of disrespectful and oppressive behaviour. Whilst that may be attributable to only a small number of officers, it is unacceptable and counter-productive. Such behaviour can have a lasting negative impact upon the young person and the wider community within which they live. The Committee will continue to monitor and raise the issue with the PSNI to discern what further measures may be required.

Arrest rates following use of stop, search and question powers are low. Of 45,394 persons stopped, searched and/or questioned under PACE, TACT and JSA during 2010/2011, there were 1,705 arrests (4%).<sup>18</sup> This does not, of itself, mean that the power is being used incorrectly or ineffectively but it does give rise to a number of issues which require further exploration. As evidenced by Table 3 (page 36), which shows the number of arrests made following use of the powers during 2010/2011, there are comparatively higher arrest rates for stops and searches under PACE and section 43 TACT. This may be attributable to the fact that before a search is carried out using those powers, police officers must have a reasonable suspicion that the person is carrying stolen or prohibited articles, such as an offensive weapon or drugs (PACE); or that the person is a terrorist (section 43 TACT).

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<sup>18</sup> *PSNI Stop and Search Statistics*, 2010/2011 report, 1 April 2010 – 31 March 2011.



**Table 3: Number of stop/searches and stop/questions across all PSNI Districts leading to an arrest, 1 April 2010 to 31 March 2011**<sup>19</sup>

	<b><u>2010/2011</u></b>	<b><u>No. of arrests</u></b>	<b><u>% leading to arrest</u></b>
<b>PACE</b>	22,785	1,549	6.80%
<b>TACT S.43</b>	375	5	1.33%
<b>TACT S.44</b>	9,156	52	0.57%
<b>JSA S.21</b>	5,355	26	0.49%
<b>JSA S.24</b>	11,721	95	0.81%
<b>TOTAL</b>	<b>49,392</b>	<b>1,727</b>	<b>3.50%</b>

In March 2010, the Human Rights and Professional Standards Committee agreed terms of reference for a thematic review of police powers to stop, search and question under TACT and JSA. Publication of the thematic review, which was in draft and not agreed by the Committee at that stage, was postponed pending the outcome of the Home Office counter-terrorism review. The Committee has agreed that in light of the findings of the Home Office counter-terrorism review, the thematic review should be updated by the Human Rights Advisor with a view to publication during 2012. That thematic review will contain a more detailed analysis of statistics than is contained within this Human Rights Annual Report and it will consider the issues discussed above, together with recommendations that may be made. Unrestricted versions of the PSNI quarterly stop and search statistics are available to view through the PSNI website.<sup>20</sup>

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<sup>19</sup> This information was provided by PSNI Central Statistics branch. Note that Table 3 does not reflect the total number of persons stopped and searched/questioned (of which there were 45,394 during 2010/2011) as multiple legislative powers can be exercised on the same occasion against the same individual, for example, a person may be stopped and questioned under s.21 JSA and also searched under s.43 TACT.

<sup>20</sup> [www.psnipolice.uk](http://www.psnipolice.uk)

## 5. COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS

The Policing Board has a statutory duty to keep informed as to the workings of PSNI complaints and disciplinary proceedings and to monitor any trends and patterns emerging.<sup>1</sup> That work is undertaken by the Human Rights and Professional Standards Committee (the Committee). The Committee is also responsible for monitoring the performance of the PSNI in complying with the Human Rights Act 1998.<sup>2</sup> Issues relating to human rights compliance, complaints and discipline are intertwined: through monitoring the quality of interactions between the police and the public, the Committee is able to gauge the extent to which a human rights culture exists within the PSNI.

The Office of the Police Ombudsman for Northern Ireland (OPONI) was established under the Police (Northern Ireland) Act 1998 which requires an independent and impartial police complaints system. The Committee meets formally with the Police Ombudsman and senior officials from his Office twice a year and convenes special meetings as necessary. During 2011, the Committee discussed a range of issues with OPONI including trends and patterns in complaints against police officers and the resolution of those complaints. The Committee also considers individual investigation reports produced by the Police Ombudsman. For example, in August 2011 the Committee met with the Police Ombudsman to discuss his investigation and report into the 1994 murders at the Heights Bar in Loughinisland and subsequent police investigation.<sup>3</sup> 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 Department of Justice, the Secretary of State, the Director of Public Prosecutions or the Chief Constable.<sup>4</sup>

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<sup>1</sup> Section 3(3)(c)(i) Police (Northern Ireland) Act 2000.

<sup>2</sup> As per the Policing Board's statutory duty under section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000.

<sup>3</sup> *Public statement by the Police Ombudsman under section 62 of the Police (Northern Ireland) Act 1998 relating to the complaint by the victims and survivors of the murders at the Heights Bar, Loughinisland on 18 June 1994*, Police Ombudsman for Northern Ireland, June 2011.

<sup>4</sup> Section 55 of the Police (Northern Ireland) Act 1998.

The Committee monitors PSNI internal disciplinary procedures to ensure that lessons are learned from the outcomes of proceedings and that best practice is promoted across the Police Service. Within the PSNI, Professional Standards Department (PSD) deals with allegations of misconduct, unless they are being dealt with at a local level by local senior management. During 2011, the Committee met on a number of occasions 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 internal allegations of misconduct and deals with matters which otherwise come to its 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.<sup>5</sup>

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 and breaches of the Code of Ethics, the Committee can assess the effectiveness of the Code<sup>6</sup> and the extent to which individual officers are paying due regard to human rights principles.

In order to provide the Committee with a structure to undertake its key role in monitoring complaints, discipline and the Code of Ethics and to address broader concerns, such as quality of service, accountability and evidence of learning, a Professional Standards Advisor was appointed by the Committee in 2011 to devise a Professional Standards Monitoring Framework. The purpose of the Framework is to enable the Committee to identify trends and patterns in complaints and misconduct and to challenge the PSNI as to what is being done to address those trends, for example, over the last few years there was an upward trend in the number of complaints and allegations made by members of the public against police officers in

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<sup>5</sup> Revised and reissued in 2008.

<sup>6</sup> As per the Policing Board's statutory duty under section 3(1)(d)(iv) of the Police (Northern Ireland) Act 2000.

A District (North and West Belfast). The Committee therefore met with the District Commander of A District and the Assistant Chief Constable responsible for Urban Region, which includes A District, to discuss the rise in the level of complaints and how this was being addressed by PSNI. It is hoped that by using the Professional Standards Monitoring Framework to challenge PSNI in this way, the Committee can assist with improving PSNI's professional standards and consistency of service throughout Northern Ireland. It is important to note that due to the considerable efforts of the District Commander within A District, together with officers and staff of PSD, a notable reduction in complaints has been achieved. It is important that the learning from that exercise is captured and disseminated across the PSNI.

### **Public complaints**

The Police Ombudsman's Annual Report 2011 provides statistics on the number and pattern of complaints made by members of the public against police officers between 1 April 2010 and 31 March 2011.<sup>7</sup> That report is available to download through the Police Ombudsman's website.<sup>8</sup>

In the Policing Board's Human Rights Annual Report 2010 it was noted that there had been a 14% increase in the number of complaints made to the Police Ombudsman during 2009/2010 compared to the previous year and that there was the highest level of allegations during 2009/2010 than had ever been recorded since the Police Ombudsman's office was established in 2000. Given the substantial increase in complaints and allegations, the Human Rights and Professional Standards Committee facilitated discussion with PSNI as to how these levels could be reduced. As a result, PSNI developed a Complaints Reduction Strategy which has an overarching aim of increasing community confidence and trust in policing.

The Complaints Reduction Strategy was rolled out across the PSNI in October 2010 and it contained year one targets to reduce the number of complaints against police by 5%; to reduce the number of allegations against police by 5%; and to reduce the number of officers attracting multiple complaints.

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<sup>7</sup> *Annual Report and Accounts for the year ended 31 March 2011*, Police Ombudsman for Northern Ireland, July 2011.

<sup>8</sup> [www.policeombudsman.org](http://www.policeombudsman.org)

In 2010/2011, OPONI received 3,313 complaints, which represents a 6% decrease compared to the previous year (3,542). The number of allegations made to OPONI during 2010/2011 fell by 4% from 6,492 in 2009/2010 to 6,256.<sup>9</sup> From October 2010 (the month that the Complaints Reduction Strategy was introduced) to July 2011 complaints fell by 7% and allegations fell by 8%.<sup>10</sup> The number of officers attracting multiple complaints reduced by 17%, from 310 officers in October 2010 to 256 officers in July 2011.<sup>11</sup>

The success of the Complaints Reduction Strategy is attributable to a range of steps taken by PSD, such as monthly briefing sheets to each District, working with District and Departmental Professional Standards Champions, case conferences for officers with multiple complaints, distributing examples of best practice and lessons learnt, briefings at the Police College, briefings at Inspector and Sergeant forums and a focus on reducing incivility allegations. The focus applied by PSD to reducing complaints during the past year is welcomed by the Committee.

Incivility allegations were discussed in some detail in last year's Human Rights Annual Report. '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. In 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.<sup>12</sup> That analysis revealed 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 PSNI. Male officers and officers with less than 5 years of service were over-represented among those 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

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<sup>9</sup> *Annual Report and Accounts for the year ended 31 March 2011*, Police Ombudsman for Northern Ireland, July 2011, page 18.

<sup>10</sup> *Complaint Reduction, Corporate Control Strategy Summary*, PSNI, September 2011, page 3.

<sup>11</sup> *Ibid.*

<sup>12</sup> *2010 Analysis of Incivility Complaints*, Police Ombudsman for Northern Ireland, June 2010.

explore innovative ways of dealing with less serious allegations; and that the PSNI should outline its response to the Police Ombudsman's incivility report to the Policing Board. The Police Ombudsman also recommended that PSNI communicate the results of the incivility report throughout the organisation and that results should be used to inform training plans.

The Committee met with officials from OPONI, the Deputy Chief Constable, and officers from PSD to discuss the findings of the incivility report. All parties agreed, without reservation, that there was no excuse for incivility. PSNI focused on incivility allegations within its Complaints Reduction Strategy. A target was also included in the 2011-2014 Policing Plan that PSNI reduce the number of allegations of incivility made by 5%.<sup>13</sup> In 2010/2011, 685 allegations of incivility were made to OPONI, which represents a 19% decrease compared to the previous year (845).<sup>14</sup> Whilst it is encouraging that PSNI's efforts to reduce incivility allegations appear to be paying off, incivility still accounted for 11% of all allegations made to OPONI during 2010/2011. It is therefore important that the PSNI continues to focus on reducing incivility allegations and does not lose momentum. The Committee will continue to work with the PSNI in its endeavours and will keep the matter under review.

In 2009/2010, there were 1,878 allegations of oppressive behaviour made to OPONI, which accounted for 29% of all allegations.<sup>15</sup> The number of allegations of oppressive behaviour increased in 2010/2011: 1,901 allegations were made which accounted for 30% of all allegations made.<sup>16</sup> PSNI has confirmed that it will now renew its focus on reducing oppressive behaviour allegations as part of its Complaints Reduction Strategy. The Committee will continue to receive updates from PSNI on progress made in implementing the Strategy.

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<sup>13</sup> *Policing Plan, 2011 – 2014*, Northern Ireland Policing Board and PSNI, target 4.2.

<sup>14</sup> *Annual Report and Accounts for the year ended 31 March 2011*, Police Ombudsman for Northern Ireland, July 2011, page 21 and *Annual Report and Accounts for the year ended 31 March 2010*, Police Ombudsman for Northern Ireland, July 2010, page 34.

<sup>15</sup> *Annual Report and Accounts for the year ended 31 March 2010*, Police Ombudsman for Northern Ireland, July 2010, page 35.

<sup>16</sup> *Annual Report and Accounts for the year ended 31 March 2011*, Police Ombudsman for Northern Ireland, July 2011, page 22.

## **Complaint outcomes**

When a complaint is made, it is dealt with by OPONI in accordance with statute. Provided it is within the Police Ombudsman's remit, there is a basis for the complaint, the complaint hasn't been withdrawn or it hasn't been closed due to non-cooperation of the complainant, the Police Ombudsman will either refer the complaint to PSNI to be dealt with by informal resolution or local resolution, or the Ombudsman will investigate the complaint formally. If the investigation indicates that a criminal offence may have been committed by a police officer, the Police Ombudsman must notify the Public Prosecution Service for Northern Ireland (PPS). During 2010/2011, the Police Ombudsman recommended 17 criminal charges to the PPS. Those 17 recommendations concerned 13 police officers. The charges recommended related to alleged offences of perverting the course of justice (5 charges); careless driving (3 charges); misconduct in a public office (2 charges); assault occasioning actual bodily harm (1 charge); assault occasioning grievous bodily harm (1 charge); causing death by dangerous driving (1 charge); common assault (1 charge); conspiracy to pervert the course of justice (1 charge); perjury (1 charge); and threats to kill (1 charge).<sup>17</sup>

## **Informal resolution**

Less serious complaints can be dealt with by way of informal resolution but only if the complainant agrees to that course. 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 2010/2011, there were 403 complaints, which had been closed, where informal resolution was attempted and of those 403 complaints 301 (75%) were deemed to be successful. Unsuccessful attempts at informal resolution were referred for formal investigation by the Police Ombudsman.<sup>18</sup>

## **Local resolution**

Local resolution was piloted in D District (Antrim, Carrickfergus, Lisburn and Newtownabbey) between June 2010 and November 2010 whereby responsibility for

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<sup>17</sup> *Ibid.* page 28.

<sup>18</sup> *Ibid.* page 31.

resolving less serious complaints was returned to Local Resolution Officers, that is, Inspectors and Sergeants in the unit where the complaint arose. Local resolution, so long as the complainant agrees, enables concerns to be dealt with in an appropriate, responsive and timely manner. As with informal resolution, local resolution relies on the complainant being involved in the process but, unlike informal resolution, does not involve PSNI Professional Standards Department. The local resolution process involves direct liaison between the OPONI and PSNI managers at District level. The OPONI retains oversight of the process and performs a monitoring role. An initial assessment of local accountability and officer involvement with the complainant suggests that lessons are learned and applied more quickly. It is also the case that officers are more likely to understand the nature of the grievance felt by the complainant as they engage with the process more directly. That being the case, the advantages of local resolution have been recognised by both the police and the complainant.

The Committee met with the PSNI and with officials from the OPONI during 2011 to discuss local resolution. The OPONI provided a report to the Committee on the results of the pilot. The report indicated that, on the whole, the pilot had been a success. During the relevant 6 month period the OPONI received 225 complaints relating to incidents occurring in D District. Of those, 63 were deemed suitable for local resolution and of those 63, 32 were resolved locally. The average time taken to resolve a complaint locally was 30 days: more than 3 times quicker than informal resolution which takes an average of 104 days. Most complainants engaging in the local resolution process expressed high levels of satisfaction with both the process and the Local Resolution Officers involved.

The OPONI and PSNI are keen that local resolution is rolled out across all police Districts. At present the scheme is continuing in D District, but in order that it can be applied effectively throughout Northern Ireland, legislative change is required. Currently, legislation permits only the OPONI to deal with public complaints, save for cases that are suitable for informal resolution.<sup>19</sup> An issue that arose during the local resolution pilot was the concern of some Local Resolution Officers that they were not

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<sup>19</sup> As per sections 52 and 53 of the Police (Northern Ireland) Act 1998.



adequately trained to carry out the role and that they did not have adequate time to properly conduct local resolutions. PSNI is conscious of the need to ensure that Inspectors and Sergeants appointed as Local Resolution Officers are adequately trained and provided with support to take on the role, which is additional to their existing duties. The Committee supports PSNI in its view that Inspectors and Sergeants, as frontline supervisors, are the officers best placed to take on this role.

However, whether the process is a success and is an appropriate means of dealing with more minor complaints will depend upon the results of ongoing assessment. The Police Ombudsman and the Committee will continue to monitor the process and report further in due course. The Police Ombudsman recommended that PSNI, the Police Ombudsman and the Policing Board establish a working party to consider the feasibility of rolling out the local resolution process to all Districts. That working party has been established with representation from the Policing Board, the PSNI and the OPONI.

### **Formal investigation by the Police Ombudsman**

Where a complaint is not to be dealt with by informal resolution or local resolution and where it is not otherwise closed, for example due to the complainant failing to cooperate or where the complaint is withdrawn, the Police Ombudsman will investigate the complaint formally. Once the investigation is concluded, the Police Ombudsman will issue a report which may contain a recommendation(s). Of the 5,632 recommendations made following investigations completed and closed by the Police Ombudsman during 2010/2011, 4,169 were findings (74%) that the allegations were not substantiated due to insufficient evidence.<sup>20</sup>

Even when a complaint is unsubstantiated, however, 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, *may* suggest that the complainant's perception of, and trust in, the PSNI has been undermined. Such a negative impression can reverberate throughout the community in which that individual lives. Therefore, the

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<sup>20</sup> *Annual Report and Accounts for the year ended 31 March 2011*, Police Ombudsman for Northern Ireland, July 2011, page 27.

fact that a large percentage of allegations were not substantiated does of itself not mean there is room for complacency.

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 concerned. During 2010/2011, the Police Ombudsman made 325 recommendations to the Chief Constable relating to individual police officers of which 66% were for advice and guidance, 16% were for management discussion, 13% were for a Superintendent's Written Warning and 6% were for a misconduct hearing.<sup>21</sup>

The Police Ombudsman also has power to make recommendations to the Chief Constable which are directed at the improvement of policing policy and practice. During 2010/2011, the Police Ombudsman made 39 policy and practice recommendations to the Chief Constable covering issues such as domestic abuse investigations, road traffic collisions, call handling, Taser, custody suites and training.<sup>22</sup>

### **Complaints against senior officers**

A complaint made by, or on behalf of, a member of the public about a senior officer (i.e. an officer of the rank of Assistant Chief Constable and above) will be investigated by the Police Ombudsman. If the complaint is suitable for informal resolution, the Police Ombudsman will refer it to the Policing Board to resolve rather than to the PSNI. If, following a formal investigation by the Police Ombudsman, there are recommendations for disciplinary proceedings, those will be referred to the Policing Board as the appropriate disciplinary authority for senior officers. Thus, in terms of public complaints about senior officers, the Police Ombudsman remains the investigating authority with the Policing Board the disciplinary authority. Any public complaints made to the Policing Board about a senior officer will be referred by the Policing Board to the Police Ombudsman. Any public complaints made directly to the Police Ombudsman's Office are within the Police Ombudsman's investigative remit.

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<sup>21</sup> *Ibid.* page 28.

<sup>22</sup> *Ibid.* page 33.

The Policing Board, however, cannot commence disciplinary proceedings against a senior officer in respect of a public complaint *unless* it has received recommendations from the Police Ombudsman.<sup>23</sup> During 2011, there were no recommendations for disciplinary proceedings received by the Policing Board from OPONI in respect of senior officers.

### **Direction and control complaints**

Direction and control complaints relate to the delivery of police services and concern PSNI policy or operational matters rather than allegations of misconduct against specific police officers. Where such a complaint is made, the relevant District or Department will contact the complainant, either in person or by letter, and provide an explanation for the PSNI's actions and, where appropriate, may offer an apology, make reparation, and/or explain the action PSNI has taken to remedy a problem identified by the complaint. PSNI's Professional Standards Department 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 6-monthly basis.<sup>24</sup> Those are reviewed by the Policing Board's Human Rights Advisor.

Between 1 April 2010 and 31 March 2011, PSNI received 169 direction and control complaints, 164 of which have now been finalised. Direction and control complaints have been increasing over recent years: there were 133 received in 2009/2010; 113 in 2008/2009; and 82 in 2007/2008. The month in which the most direction and control complaints were received during 2010/2011 was August 2010 with 31 complaints. Of those complaints relating to August 2010, 9 related to the policing of a band parade in H District and the subsequent inadequacy of information provided to the public. An Inspector wrote to each of the complainants outlining the circumstances and legal position regarding the police tactics used and police deployment used on the evening in question. To date, no response has been received from any of the complainants. Other common types of direction and control complaints received during 2010/2011 included dissatisfaction with the way in which police responded to the report of an incident; the length of time taken for police to

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<sup>23</sup> Part VII of the Police (Northern Ireland) Act 1998 refers.

<sup>24</sup> As required by Recommendation 27(h) of the Policing Board's Human Rights Annual Report 2005.

respond to the report of an incident; the resourcing of police officers; roads policing; recovery of vehicles from the roadside; arrest and detention; and firearms licensing.

### **Internal discipline and the Code of Ethics 2008**

Police misconduct is dealt with internally by PSNI.<sup>25</sup> The Professional Standards Department (PSD) within PSNI deals with more serious misconduct, with less serious matters being dealt with at a local level by supervisory officers. Those supervisory officers are themselves overseen by Professional Standards 'Champions' who are Superintendents appointed within every District and Department to oversee local misconduct action. Allegations of misconduct may arise and be investigated internally or they may be referred by the Police Ombudsman who may make a recommendation for disciplinary action. Where there is evidence of criminality, a crime file will be opened, investigated and referred to the Public Prosecution Service.

Where an allegation of misconduct has been made, the standards against which officers are measured are those contained in the PSNI Code of Ethics 2008. The purpose of the Code of Ethics is:

- (1) To lay down standards of conduct and practice for police officers; and
- (2) To make police officers aware of the rights and obligations arising out of the European Convention on Human Rights.<sup>26</sup>

The Code of Ethics is therefore more than a disciplinary tool. It is a comprehensive human rights document. Where there are breaches of the Code of Ethics, PSNI must investigate and address the cause of the breach. It is not sufficient for breaches to be dealt with solely by the imposition of sanctions to individual officers. PSNI should also ensure that the officer understands how the Code was breached. There should be some consideration of whether, and if so what, action is needed to prevent other officers from breaching the Code in the same manner. PSNI correlates its statistics on disciplinary matters against specific Articles of the Code of Ethics and tracks and

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<sup>25</sup> Unless the misconduct relates to a senior police officer, in which case the Policing Board is the relevant disciplinary authority.

<sup>26</sup> As required by section 52(1), Police (Northern Ireland) Act 2000.

trends those Articles most commonly alleged to have been breached. That information is shared with the Committee by 6-monthly reports.

During 2010/2011, PSD recorded a total of 409 alleged breaches of the Code of Ethics.<sup>27</sup> That is a reduction of 30% compared to the 585 alleged breaches recorded during 2009/2010. Whilst there has been a reduction in the number of alleged breaches originating from an internal misconduct file, the greatest reduction has been in the number of alleged breaches referred to PSNI by OPONI.

**Table 1: Number of alleged breaches of the Code of Ethics, 1 April 2008 to 31 March 2011**

	<b>Origin of alleged breach</b>		<b>Total alleged breaches</b>
	<b>Police Ombudsman</b>	<b>Misconduct file</b>	
<b>2008/2009</b>	338	274	612
<b>2009/2010</b>	307	278	585
<b>2010/2011</b>	179	230	409

The sub-Articles of the Code of Ethics that were most frequently alleged to have been breached during the previous 6 years are:

**Sub-Article 2.1**

- *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 a neglect of duty such as a failure to investigate an incident or a failure to keep a victim updated as to progress. In 2010/2011, PSD recorded 98 alleged breaches of sub-Article 2.1 (24% of all

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<sup>27</sup> Examination of the Articles of the Code of Ethics that are breached most frequently, PSNI Professional Standards Department (PSD), April 2011. Note that for each case of misconduct, only one Article of the Code of Ethics is recorded by PSD for the purposes of the report. However, the misconduct may in fact amount to a breach of more than one Article. Where this is so, the case file will reflect all breaches of the Code: it is just for statistical purposes that only the main Article breached is recorded. Note also that the PSD report does not include misconduct which has been dealt with from start to finish at local level: PSD’s report only includes cases it has dealt with and cases which have been referred to PSNI by the Police Ombudsman.

alleged breaches of the Code of Ethics during that year). Sub-Article 2.1 is the sub-Article most frequently alleged to have been breached for the third consecutive year: in 2008/2009 it was alleged to have been breached on 119 occasions; and, in 2009/2010 it was alleged to have been breached on 112 occasions.<sup>28</sup> Allegations of that nature originate primarily from OPONI referrals. Sub-Article 2.1 was also the most frequently breached sub-Article during 2010/2011 to result in a Superintendent's Written Warning.<sup>29</sup>

PSNI has analysed previously the conduct resulting in higher levels of alleged breaches of sub-Article 2.1 and reported to the Policing Board on its findings.<sup>30</sup> PSNI identified that a common theme was a recurrent failure by individual officers to investigate, prepare and/or submit a file. By identifying that common theme, PSNI was able to address it through bi-monthly Discipline Champions' meetings. PSNI is also working on a Service Procedure aimed at setting out minimum standards for the quality of case files, which will provide officers with a framework for managing performance in this regard.

### **Sub-Article 1.10**

- *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 typically include allegations such as domestic abuse, threatening behaviour, neglect of duty, incivility, traffic offences and abuse of position. It is a positive statement of intent that all reports of domestic abuse involving officers or staff (as suspected perpetrators) are forwarded to PSD by each District Commander.

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<sup>28</sup> 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 2.1 to figures prior to 2008/2009.

<sup>29</sup> PSNI provides the Policing Board with 6 monthly figures on the number of Superintendents Written Warnings given during the period and the article of the Code of Ethics that was breached as a result of the conduct giving rise to the Warning. During 2010/2011 there were 120 Superintendents Written Warnings issued, of which 39 were for breach of sub-Article 2.1 of the Code of Ethics.

<sup>30</sup> As per Recommendation 10 of the Policing Board's Human Rights Annual Report 2009.

In 2010/2011, PSD recorded 93 alleged breaches of sub-Article 1.10 (23% of all alleged breaches of the Code of Ethics during that year). Over two-thirds of those alleged breaches (69%) originated from internal PSNI investigations. The 93 alleged breaches represents the highest number of alleged breaches of sub-Article 1.10 recorded over the previous 6 years.<sup>31</sup> Therefore, given the decrease in the overall number of allegations (30%) it suggests that sub-Article 1.10 requires specific and renewed attention, which has proved successful in respect of other types of allegation. The PSNI should analyse the behaviour and/or conduct that was alleged to have resulted in sub-Article 1.10 breaches with a view to identifying any trends or patterns that emerge and thereafter report to the Human Rights and Professional Standards Committee with the results of that analysis within 6 months of the publication of this Human Rights Annual Report.

#### **Recommendation 5**

**The PSNI should analyse the behaviour and/or conduct that was alleged to have resulted in sub-Article 1.10 breaches with a view to identifying any trends or patterns that emerge and thereafter report to the Human Rights and Professional Standards Committee with the results of that analysis within 6 months of the publication of this Human Rights Annual Report.**

#### ***Sub-Article 7.2***

- *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 police officers who have been referred to the Public Prosecution Service for criminal offences such as assault or traffic related offences. In 2010/2011, PSD recorded 82 alleged breaches of sub-Article 7.2 (20% of all alleged breaches of the Code of Ethics during the year). Whilst that is higher than the 64 alleged breaches recorded by PSD in 2009/2010, it is

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<sup>31</sup> The number of alleged breaches of sub-Article 1.10 recorded by PSD over the past 6 years are: 2005/2006, 24; 2006/2007, 39; 2007/2008, 79; 2008/2009, 73; 2009/2010, 51; and 2010/2011, 93.

fewer than the number of alleged breaches recorded in previous years. Alleged breaches of this sub-Article predominantly originate from misconduct investigations initiated within the PSNI rather than from a referral by the Police Ombudsman.

### **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, to an informal sanction, to no further action.

<b><u>Formal sanction</u></b> (these can only be imposed following a formal disciplinary hearing conducted by PSD)	<b><u>Informal sanction</u></b> (which are imposed at local level)
Dismissal from the PSNI	Superintendent's Written Warning
A requirement to resign	
A reduction in rank or pay	Management Discussion
A fine	
A reprimand	Advice and Guidance
A caution	

PSNI provides the Policing Board's Human Rights Advisor on a 6-monthly basis with summary details of all cases that resulted in formal disciplinary hearings; details of disciplinary action arising as a result of completed investigations; information on the number of officers convicted of criminal offences and the disciplinary action taken by PSNI against those officers; and information on officers who are currently suspended or who have been repositioned pending an investigation into alleged criminality. The Committee also monitors the levels of suspended and repositioned police officers within PSNI.

That information enables the Committee to monitor how PSD deals with the most serious allegations of breach of the Code of Ethics and the sanctions imposed where the allegations are substantiated. It is not appropriate to provide details of individual cases in this Human Rights Annual Report however the Policing Board's Human Rights Advisor has reviewed all of the information and has discussed a number of



cases with PSD. PSD has engaged very positively in that respect and has given the Human Rights Advisor access to all information she has requested.

### **Officers leaving PSNI whilst under investigation**

Where a police officer leaves PSNI, whether by retirement, resignation or dismissal, he or she cannot be subsequently investigated in relation to previous misconduct nor can the Police Ombudsman compel that officer to attend interview as a witness or to give evidence. However, the officer can still be investigated and dealt with by police and the Public Prosecution Service in respect of any criminal matters that are identified.

A recurrent concern expressed by some Policing Board Members and stakeholders has been that of officers perceived to resign or retire for the purpose of avoiding misconduct proceedings. As a result of that concern the Committee has continued to monitor the number of officers leaving the PSNI with misconduct proceedings pending. During 2010/2011, a total of 22 police officers left PSNI whilst under investigation for alleged misconduct. Of those, 13 police officers were suspended at the time they left. Police officers who are suspended cannot resign or retire from the PSNI without the consent of the Chief Constable. In that context, it should be noted that the likely outcome of a misconduct hearing, should the suspended officer be found to have committed a serious disciplinary offence, is to dismiss that officer or require him or her to resign. In other words, the outcome is likely to be the same. PSNI contends that the community's interests are best served by the prompt removal from policing of officers who fail to live up to a high standard and that retaining an officer simply to require him or her face a misconduct panel (with the ultimate sanction being dismissal in any event) makes neither operational nor economic sense. Whilst awaiting a hearing, a suspended officer receives full pay. The Committee keeps under review those cases where an officer has been permitted to resign during suspension and raises any issues of concern with PSD. No individual cases have given cause for concern in the relevant reporting period.

A more specific concern raised by some Policing Board Members and stakeholders has been in respect of historic cases dealt with by the Police Ombudsman. If a

person who no longer serves with the PSNI has evidence which may assist the Ombudsman's investigation he or she should cooperate voluntarily with the investigation; the Ombudsman has no power to compel. The PSNI has stated unequivocally that it expects all former officers to cooperate with the Police Ombudsman but that it has no power to require them to do so. That is undoubtedly correct, as things stand. In the absence of legislative amendment that will remain the case. It is a matter for the Office of the Police Ombudsman and the Department of Justice to consider whether and if so how this matter should be addressed.

### **Integrity tests**

Integrity tests are one of a number of options available to 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 2010 and 31 March 2011, no integrity tests were carried out by PSD. That does not suggest that PSD has failed to investigate fully or appropriately: it means that integrity testing was not required or was not appropriate for those allegations made during 2010/2011.

### **Regulation 20 reports**

The Police Ombudsman has statutory responsibility for the investigation of certain matters referred by the Policing Board, the Department of Justice, the Secretary of State, the Public Prosecution Service and the Chief Constable.<sup>32</sup> 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 (which is attended by a Policing Board official in an observer capacity) to consider any action taken by PSNI in response to recommendations made in Regulation 20 reports.<sup>33</sup> Progress on implementing the recommendations is logged onto 'Overview' (the internal police computer system to which the Policing Board's Human Rights Advisor has access).

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<sup>32</sup> Section 55 of the Police (Northern Ireland) Act 1998.

<sup>33</sup> The panel consists of representatives from PSNI Operational Support, PSNI Professional Standards department, the Police College and the PSNI Human Rights Legal Advisor. A representative from the Policing Board and from the Office of the Police Ombudsman also attends each meeting.

Between 1 April 2010 and 31 March 2011, there were 40 Regulation 20 reports issued by the Police Ombudsman.<sup>34</sup> 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:

- Discharge of Taser x 8
- Discharge of firearm x 8
- Failure in duty x 6
- Inappropriate conduct x 6
- Discharge of AEP x 5
- Fatal road traffic collision x 2
- Attempt to pervert the course of justice x 2
- Death in police custody x 1
- Death following contact with police x 1
- Death in police station (not in custody) x 1

The Committee has considered the Police Ombudsman's findings in each of the aforementioned reports. Not all Regulation 20 reports are put into the public domain as some may contain confidential information, however, summaries of many of the reports can be obtained through the OPONI website.<sup>35</sup> The Committee raises any issues or trends emerging through meetings with the PSNI. No particular concerns requiring any further action were identified in the relevant period.

### **Judicial reviews**

Judicial review is a public law remedy by which a person with a sufficient interest can challenge the lawfulness of a policy, decision, action or failure to act, alleged against a public authority. The Policing Board's Human Rights Advisor has agreed a mechanism with PSNI Legal Services Branch whereby an annual schedule is provided by PSNI of all new, ongoing and recently concluded judicial review

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<sup>34</sup> *Annual Report and Accounts for the year ended 31 March 2011*, Police Ombudsman for Northern Ireland, July 2011, page 78.

<sup>35</sup> [www.policeombudsman.org](http://www.policeombudsman.org)

applications. The Policing Board's Human Rights Advisor thereafter requests further information on any given case as required.

During 2011, there were a number of judicial review proceedings involving PSNI. Those with a particular relevance to human rights compliance included:

- Taser: An application was made in July 2008 which sought to quash the decision of the Chief Constable to introduce Tasers for use by the PSNI; a declaration that the use of a Taser was in breach of the ECHR and contrary to section 6 of the Human Rights Act 1998;<sup>36</sup> and, a declaration that the decision of the Chief Constable was in breach of section 75 of the Northern Ireland Act 1998. The Policing Board was joined as a party to the proceedings. The applicant sought to quash the decision of the Policing Board to support the Chief Constable's proposal to introduce Taser and to quash the decision of the Policing Board that the decision to deploy Tasers was an operational matter for the Chief Constable. The case was heard by the Lord Chief Justice in March 2009 with judgment being given in January 2011. The application for judicial review was dismissed on all grounds.
- Operation Exposure: In summer 2010, PSNI produced leaflets containing images of young people whom they wished to speak to in connection with sectarian interface violence. The leaflets were distributed amongst local households and requested that the public assisted with identification. PSNI also released some images to local newspapers. In September 2010, leave to judicially review the operation, known as Operation Exposure, was granted. The ground on which leave was granted was that the operation arguably breached Article 8 ECHR (the right to respect for private and family life). The substantive hearing of the judicial review took place in September 2011. Judgment is awaited.

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<sup>36</sup> Section 6 of the Human Rights Act 1998 makes it unlawful for public authorities to act in way which is incompatible with the ECHR.

## 6. PUBLIC ORDER

The Policing Board's Human Rights and Professional Standards Committee (the Committee) monitors the policing of public order situations which, particularly in Northern Ireland, may raise challenging human rights issues. The PSNI is required to balance, and reconcile, the competing rights of different groups, often in the context of contentious parades and associated protests. For example, the right to freedom of expression, assembly and association<sup>1</sup> may conflict with the right to protest and/or to enjoy the peaceful occupation of the home.<sup>2</sup> The use of force by police officers during public order situations raises significant human rights issues, which are considered in chapter 7 of this Human Rights Annual Report. In the context of this chapter, it is important to emphasise that the use of force during public order operations has the potential to undermine the legitimacy of the operation and diminish public confidence in the PSNI. It is therefore critical that police officers are clear about the circumstances in which they may use force and the legal test for each use of force.

Each year the Committee monitors public order operations through the Human Rights Advisor and at meetings with relevant stakeholders, including the PSNI and the Parades Commission.

### **Parades Commission determinations**

It became clear during the year that there is some confusion about the respective remits of the PSNI and the Parades Commission. Accordingly, it is considered appropriate to set out in some detail the role of the Parades Commission. Importantly, however, it should be noted that not all public order operations referred to below concern parades.

The Public Processions (Northern Ireland) Act 1998 provides that the Parades Commission will promote greater understanding by the general public of issues concerning public processions; promote and facilitate mediation as a means of

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<sup>1</sup> Articles 10 and 11 of the European Convention on Human Rights (ECHR).

<sup>2</sup> Articles 8, 10, 11 of the ECHR and Article 1 of the first protocol to the ECHR.

resolving disputes concerning public processions; keep itself generally informed as to the conduct of public processions and protest meetings; and keep under review and make such recommendations as it thinks fit to the Secretary of State concerning the operation of the Act. The Parades Commission may also facilitate mediation between parties to particular disputes concerning proposed public processions; take such other steps as appear to the Parades Commission to be appropriate for resolving such disputes; and issue determinations in respect of particular proposed public processions and protest meetings.<sup>3</sup> The Parades Commission must issue a Code of Conduct which provides guidance to those wishing to organise a parade or protest and regulates the conduct of those participating.<sup>4</sup>

A determination may impose on the persons organising, taking part in or supporting a procession such conditions as the Parades Commission considers necessary, which may include conditions as to the route of the procession and/or a prohibition from entering any place. In considering any particular case, the Parades Commission must have regard to guidelines and in particular any public disorder or damage to property which may result; any disruption to the life of the community which may be caused; any impact on relationships within the community; any failure of a person to comply with the Code of Conduct (whether in relation to the parade in question or any related protest meeting or in relation to any previous procession or protest meeting); and the desirability of allowing a procession customarily held along a particular route to be held along that route.

The Parades Commission may also issue a determination in respect of a proposed protest meeting which may impose upon those persons organising or taking part in it such conditions as the Parades Commission considers necessary. That may include conditions as to the place at which the meeting may be held, its maximum duration, or the maximum number of persons who may constitute it. In considering any particular case the Parades Commission must have regard to guidelines and in particular any public disorder or damage to property which may result from the protest meeting; any disruption to the life of the community which the meeting may

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<sup>3</sup> Section 2 of the Public Processions (Northern Ireland) Act 1998, as amended by the Public Processions (Amendment) (Northern Ireland) Order 2005.

<sup>4</sup> *Ibid.* section 3.

cause; any impact which the meeting may have on relationships within the community; and any failure of a person to comply with guidance issued by the Parades Commission (whether in relation to the meeting in question or the procession to which it relates or in relation to any previous protest meeting or procession).

A person who knowingly fails to comply with a condition imposed in a determination is guilty of an offence.<sup>5</sup> It is the responsibility of the police and the Public Prosecution Service to prosecute breaches of determinations.

Accordingly, the Parades Commission has primary responsibility for ensuring, in so far as the parade or protest itself is concerned, that the human rights of those wishing to parade and those wishing to oppose a parade are balanced. The PSNI is, however, responsible for policing any determination that is made by the Parades Commission and in doing so it is the responsibility of the PSNI to ensure that it carries out the policing operation in accordance with the relevant law and guidance, including the Human Rights Act 1998.

### **Monitoring the policing of public order events**

Not all parades or protests result in public disorder and not all disorder relates to parades or protests. When any public disorder incident occurs, the District Commander is required to submit to the Policing Board as soon as reasonably possible, a written record containing details of the nature of the disorder, any force used, any injuries sustained by police officers and members of the public and damage caused to property.<sup>6</sup> The Policing Board also receives 6-monthly reports on police use of force (discussed in more detail in chapter 7 of this Human Rights Annual Report). In submitting the 6-monthly reports, the PSNI provides details of any correlation between high incidents of use of force by the police and public disorder incidents. Since January 2011, there have been 12 incidents of public disorder of

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<sup>5</sup> *Ibid.* sections 8 and 9A.

<sup>6</sup> *Requirement for early reporting to the NI Policing Board Discharge of Attenuating Energy Projectiles (impact rounds) (form PB1) and incidents of public disorder (form PB2)*, PSNI General Order 50/02.

which the Policing Board has been notified. With the exception of 1,<sup>7</sup> all of those incidents occurred during the summer months.

There was serious public disorder involving hundreds of persons at an interface area in the Short Strand/Lower Newtownards Road area of East Belfast (B District) between 20 and 22 June 2011.<sup>8</sup> Missiles, fireworks, petrol bombs, paint bombs and live rounds were fired between factions and at police deployed to police the situation. Scaffolding from a local building site was used as a means of attacking police. Laser pens were used against police helicopters and against police on the ground. Five police officers complained of dazzle and discomfort from the effects of lasers. Substantial damage was caused to a number of police Land Rovers. Injuries were also sustained by three members of the public who were alleged to have been hit by gunfire coming from those involved in perpetrating the disorder. 2 persons suffered head injuries as a result of missiles thrown. Water cannon were deployed and used on the evening of 21 June 2011. Police discharged a total of 130 Attenuating Energy Projectile (AEP) rounds. A total of 108 AEPs were recorded as strikes with 22 recorded as misses.<sup>9</sup>

On 1 July 2011, there was further public disorder in East Belfast involving approximately 200 people. The disorder arose at a Battle of the Somme commemoration parade that was taking place at the interface between Short Strand and the Albertbridge Road. Police discharged a total of 10 AEP rounds. Water cannon were deployed and used. 9 baton strikes were recorded against identified targets alleged to have been involved in rioting. 12 police officers were injured by masonry thrown. There was 1 report of a member of the public being injured in the disorder.

On 9 July 2011, serious public disorder occurred in Ballyclare (D District) following the removal of flags by police officers. Approximately 150 persons were involved in

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<sup>7</sup> There was disorder in Lurgan on 29 January 2011 involving stoning, paint bombs, fireworks and petrol bombs. Six police vehicles sustained scorch damage. 1 AEP round was discharged.

<sup>8</sup> The disorder lasted between 8pm on 20 June 2011 and 4.30am on 21 June 2011, and between 5.44pm on 21 June 2011 and 4.12am on 22 June 2011.

<sup>9</sup> 55 AEP rounds were fired on 20/21 June (48 strikes). 66 AEP rounds were fired on 21/22 June (57 strikes).



the disorder with the police subjected to sustained attack from petrol bombs and masonry. A number of vehicles were hijacked and set alight and on a number of occasions pushed towards police lines. During the disorder a Translink bus was hijacked and used to ram a police vehicle resulting in the injury of 5 police officers. Water cannon were deployed and used by police. A total of 33 AEP rounds were discharged with 23 strikes recorded.

On 10 July 2011, there was public disorder in Carrickfergus during which a vehicle was hijacked and set alight close to a petrol station. A total of 2 AEP rounds were discharged.

Between 11 and 16 July 2011, there was serious public disorder in many areas across Northern Ireland. A total of 175 AEP rounds were discharged, with 121 strikes recorded. Flashpoints of disorder included:

- **North Queen Street, Belfast (A District), 11 July 2011, 9.30pm – 12 July 2011, 3.30am:** there was disorder at an interface area. Police were attacked initially by a small crowd throwing petrol bombs, which later swelled to approximately 50 persons. 8 AEP rounds were discharged with 6 strikes recorded. Water cannon were not used.
- **Broadway, Belfast (A District), 11 July 2011, 10pm – 12 July 2011, 4am:** police were initially attacked by approximately 20 people throwing petrol bombs. The numbers quickly increased to approximately 150 – 200. A total of 47 AEP rounds were discharged with 34 strikes recorded. Water cannon were also deployed and used. 8 police officers were injured, with two requiring hospital treatment. Substantial damage was caused to vehicles and property.
- **Oldpark Road, Belfast (A District), 11 July 2011, 10.30pm – 12 July 2011, 3am:** police intervened to prevent a group of people from entering an area with the apparent intention of causing interface violence. The group numbered approximately 15 – 30 persons, but quickly swelled to approximately 200 people. Police were attacked with various missiles. 22 AEP rounds were discharged with 17 strikes recorded. A total of 14 officers suffered various injuries to head, arms

and lower limbs, with two requiring hospital treatment. Water cannon were not used.

- **Crumlin Road / Ardoyne shop fronts, Belfast (A District), 12 July 2011, 5pm:** police conducted an operation to enforce a Parades Commission determination regarding a protest parade. Police came under sustained attack from crowds of up to 200 persons using fireworks, masonry, petrol bombs, industrial bins and burning vehicles. Water cannon were deployed and used by police. 77 AEPs were discharged with 48 strikes recorded. 1 member of the public was known to have been injured and 19 police officers reported injury. Substantial damage was caused to vehicles and property as a result of the disorder.
- **Portadown (E District), 11 July 2011 – 16 July 2011:** there was a series of disorder incidents occurring over a number of nights in Portadown. The first disorder commenced following the lighting of a bonfire on 11 July 2011 at which stones and bottles were thrown across a 'peace wall'. Water cannon were not used. On the evening of 15 July 2011 a total of 21 AEP rounds were discharged with 16 strikes recorded when a crowd of approximately 70 - 100 people attacked police lines. Substantial damage was caused to police Land Rovers and a number of police officers sustained minor injuries.
- **Armagh (E District), 12 July 2011, 4pm – 13 July 2011, 4.30am:** 2 vehicles were hijacked and set alight, with an estimated 15 – 20 people involved in the disorder. Water cannon were not used by police and no AEP rounds were discharged.
- **Ballymena (H District), 12 July 2011, 8pm – 13 July 2011, 2am:** there were approximately 30 people involved in disorder which included the hijacking and attempted arson of vehicles. Police intervened and prevented the vehicles from being set alight. Petrol bombs, bottles and stones were thrown at police. No AEP rounds were discharged by the police and water cannon were not used.

During 2011, the Policing Board's Human Rights Advisor attended a number of planning meetings, reviewed the public order strategy and planning documents, discussed with relevant police officers the planning of the operations and observed briefing meetings and thereafter from the Silver Command room the policing of a parade and protest in A District (North and West Belfast) over the 12 July period.

She also attended an information sharing event in February 2011 to discuss lessons learned from previous public order policing and to disseminate good practice in advance of the summer. The aim of the event was to ensure that consistency was maintained across Northern Ireland and that officers were reminded of the various significant issues involved and the importance of human rights compliance both leading up to and during a public order operation. Officers were reminded of the extent (and limit) of their powers. The technical and practical application of those powers was reinforced and comprehensive discussion undertaken about the duty to plan an operation so as to reduce the likelihood of recourse to the use of force. The application of rights to vulnerable groups was restated in strong and unambiguous language with a discussion of the practical scenarios when such issues may arise. The extensive training which is delivered to all officers was reinforced during briefing sessions.

The police officers involved were clearly mindful of the competing rights at stake and their duty not only to avoid the violation of rights but (during the policing of the operation) to uphold the human rights of those participating in, supporting and observing the parade and the protest. The human rights of police officers were also highlighted with a practical and effective approach to the protection of those rights being displayed. It is important to emphasise that the rights of police officers play an important part in the planning for and execution of public order operations. The Committee does and will continue to support, and for that purpose monitor, the protection of the rights of police officers in equal measure. For example, during public disorder the relevant Commanders routinely and regularly review the developing situation and ensure that in all decisions taken in relation to the giving or refusal of authority for the deployment and use of force the rights of officers are considered and balanced. Police officers are rights holders as much as those with whom they are engaged during public disorder.

Use of AEP rounds by police in Northern Ireland remains a difficult and contentious issue, particularly during public disorder situations. AEP discharge “less-lethal” kinetic energy projectiles. While an AEP is designated as less lethal technology it has the potential to take life and therefore must be used only where absolutely

necessary to do so.<sup>10</sup> AEP can only be used by a limited number of specially trained PSNI officers acting within 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 serious injury. Thus the test that must be met before AEP can be discharged lawfully is one of absolute necessity: 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 during both stand alone incidents and public order situations. During a public disorder situation AEP must not be used as a *means of* crowd control and may only be used in relation to a targeted, identified individual. An AEP must not be discharged into a crowd if an identified individual cannot be isolated and therefore targeted. During the disorder occurring between 11 and 16 July 2011, 121 out of 175 AEPs discharged were recorded as strikes with the remainder (54) being recorded as misses. Given the increase in the number of AEP rounds discharged during 2010/2011, it is timely to conduct an in-depth analysis of the use of AEP generally and the training (including the briefings) given to officers who may be deployed with AEP.

The PSNI issued a press release in August 2011 detailing the tactics used during the public order operations in July and the decision making process that must be undertaken before AEP and water cannon may be used. PSNI is in the process of carrying out a review of public order policing. The review will include structured interviews with members of the public from across Northern Ireland. In the early stages of that review PSNI held a 2 day conference for police officers from across Northern Ireland. The purpose of the conference was to establish areas of good practice in respect of public order and areas in which there is room for improvement.

During the 6 month period 1 April 2011 to 30 September 2011, a total of 350 AEP rounds were discharged by police officers. This is substantially higher than the

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<sup>10</sup> There has not been a death recorded since the introduction of the new AEP baton round however medical evidence and guidance issued reminds officers that the device has the potential to take life if fired at close range or to the head or chest area.

combined number of AEPs discharged in the previous 2 year period where a total of 214 AEP rounds were discharged.<sup>11</sup> An analysis of statistics alone does not provide evidence as to the propriety of use however the fact that 130 AEP rounds were discharged across 2 nights in one area (East Belfast) and 175 AEP rounds were discharged over the July period, may have a negative impact on community confidence if not analysed and explained. The Police Ombudsman for Northern Ireland investigates all uses of AEP therefore it is not for the Policing Board to comment on individual uses. However, the Committee considers that it is timely to have a discrete and careful analysis of the use of AEP during public disorder situations with a renewed focus on training and briefing on the legal test for the lawful deployment and use of AEP.<sup>12</sup> This work will be conducted in the coming months by the Committee. In the meantime the PSNI should, following on from its own review of public order policing and the use of force, provide to the Committee a report setting out the findings of the review and all steps taken or to be taken as a result of that review. PSNI has advised that such a report is already underway.

### **Recommendation 6**

**The PSNI should, within 3 months of the conclusion of its review of public order policing and the use of force, provide to the Human Rights and Professional Standards Committee a report setting out the findings of the review and all steps taken or to be taken as a result of that review. In particular, the PSNI should consider any issues that arise in relation to the use of AEP rounds.**

There continues to be feedback from members of the community that suggests consistency of service across Northern Ireland has still not been achieved, including in respect of public order policing. It is essential that consistency is achieved across all Districts and Areas. That would be assisted by regular debriefing sessions following parades or protests to ensure that lessons are learned. Those debriefing

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<sup>11</sup> Between 1 April 2009 and 31 March 2010, 33 AEP rounds were discharged; between 1 April 2010 and 31 March 2011, 181 AEP rounds were discharged: *Use of force statistics 1 April 2010 to 31 March 2011*, PSNI, July 2011.

<sup>12</sup> The Police Ombudsman has to date found no adverse findings in respect of AEP use during 2011 (not all investigations have been concluded).

sessions should deal routinely with human rights issues that arose. If the PSNI involve those who were engaged in the organisation of the parade or protest, both the police and the community would enhance their knowledge and understanding of the issues that arise or are likely to arise. The PSNI is committed to working with communities in this respect and undertakes a number of community consultation exercises both publicly and privately but more could be done and should be done on a routine basis throughout the year. Lessons learned from the debriefing sessions should thereafter be disseminated within the PSNI. The information sharing event delivered at the Police College in February 2011, which drew upon the lessons learned from the policing of parades and protests in A District, was an excellent opportunity for officers to learn from the encounters in A District. The PSNI should build in to its annual programme of learning events public order information sharing sessions which are available to all officers from across Northern Ireland.

#### **Recommendation 7**

**The PSNI should develop annual briefing sessions which consider lessons learned from the previous year's public order operations and which consider in particular the human rights issues involved in the planning and execution of public order operations.**

## 7. USE OF FORCE

Police officers have statutory powers which include the authority to use force in specified circumstances. The use of force engages in a direct and fundamental way the rights contained within the European Convention on Human Rights (ECHR) such as Article 2 (the right to life); Article 3 (the right not to be subject to torture, inhuman or degrading treatment or punishment) and Article 8 (the right to respect for private and family life).<sup>1</sup> Police officers have the right to defend themselves from unlawful violence and the duty to protect others from harm. Each and every use of force must be in accordance with the law, necessary and proportionate to the circumstances. To ensure that each use of force is lawful, the PSNI is required to have a clear and accessible policy which sets the legal framework for officers and which provides practical guidance on the use of force. Policy must be kept under review to ensure it is up to date with officers receiving regular and comprehensive training on that policy. PSNI policy on the use of force has been set out in detail in previous Human Rights Annual Reports so is not repeated here.

With each use of force the police officer should consider the objectives of the operation and keep under review whether the action proposed is lawful, necessary and proportionate. He or she must always consider whether there is a viable alternative to the use of force. In the planning of an operation in which force may be used, officers must consider those measures which will minimise to the greatest extent possible recourse to the use of lethal force. The PSNI adopts a graduated and flexible approach to the use of force. Where possible, force should be avoided. A careful use of words and the management of human interaction can resolve many situations. Force may be used only if other means remain ineffective or have no realistic chance of achieving the intended result. A minimalist approach should be adopted and recourse to potentially lethal force avoided if possible.

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<sup>1</sup> Which can encompass the physical, moral and psychological integrity of a person: *Botta v Italy* (Application No. 21439/93).

## **Use of force: children and young people**

In the Human Rights Annual Report 2009 it was recommended that 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.<sup>2</sup> It was recommended that the PSNI should, following completion of that review, but in any event within 6 months of the publication of that report, present its findings to the Human Rights and Professional Standards Committee (the Committee). In the Human Rights Annual Report 2010, it was recorded that work was underway to review training and the use of force policy in relation to its impact on children and young people.

In response to the recommendation contained within the Human Rights Annual Report 2009, the PSNI Human Rights Training Adviser and the PSNI Human Rights Legal Advisor worked together to conduct an audit of PSNI use of force policy and training in relation to children and young people. They met with PSNI Department Heads to discuss the recommendation and with trainers who identified a number of lessons where they believed that best practice was demonstrated and lessons where they believed there was room for improvement. Those lessons were then screened using an audit tool developed by the PSNI Human Rights Training Adviser. The audit tool was designed to screen how lessons addressed the specific needs of children and young people in relation to the subject area being taught. Where aspects of lessons were identified that could better highlight the needs of vulnerable groups, including children, the lesson was revised. As part of the audit process, the use of force policy was considered. Following discussions with trainers and operational commanders PSNI decided that the policy did not require amendment.

The Policing Board's Human Rights Advisor has met with the PSNI Human Rights Training Adviser on a number of occasions throughout the year to discuss the audit of PSNI use of force policy and training in relation to children. The PSNI Human Rights Training Adviser provided the Policing Board's Human Rights Advisor with an interim report on the audit in January 2011 and produced a final report in December

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<sup>2</sup> *Human Rights Annual Report 2009*, Northern Ireland Policing Board, Recommendation 12.



2011. Recommendation 12 of the Human Rights Annual Report 2009 has therefore been implemented. In her final report, the PSNI Human Rights Training Adviser concluded that if the use of force policy is fit for purpose, the most effective training appears to be to conduct dynamic risk assessments on practical scenarios followed by a skilled debriefing. Whilst there is much good practice in training, use of force on children is a challenging subject and PSNI recognises it is an area for continual monitoring, learning and improvement. As the final audit report was received very shortly before this Human Rights Annual Report was drafted there has been insufficient time to consider the findings of the audit in detail. The Human Rights Advisor to the Policing Board will consider that audit and the use of force policy before advising the Committee whether she is content that the policy does not require amendment.

### **Uses of force**

Taser is a single shot weapon designed to temporarily incapacitate a subject through the use of an electric current which temporarily interferes with the body's neuromuscular system. Taser can only be used by specially trained officers deployed to PSNI's Special Operations Branch or Road and Armed Response Vehicles.

The Attenuating Energy Projectile (AEP) discharges kinetic energy projectiles. AEP can only be used by a limited number of specially trained PSNI officers. AEP can never be used as a means of crowd control: they must always be used in relation to an identified, targeted individual.

<b>Type of force</b>	<b>Test for use</b>
Taser	Taser may be used by a police officer who honestly believes it is necessary in order to prevent a risk of death or serious injury. The test for the use of Taser is set at a slightly lower threshold than that for use of a firearm or AEP. It is 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. Taser use is linked to the prevention of recourse to lethal technology.
Attenuating Energy Projectile (AEP)	AEP may only be used lawfully where a police officer honestly believes it is absolutely necessary to do so to reduce a serious risk of loss of life or serious injury. 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.
Firearms	Firearms may only be discharged where a police 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.

PSNI must record the use of certain types of force 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.

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 6-monthly basis. The 6-monthly reports are 'restricted' as they contain detailed information which, if made available to the public, would breach statistical disclosure

rules.<sup>3</sup> It is therefore not possible for the PSNI to publish the use of force report in the format made available to the Policing Board.

Given that the use of force can raise community confidence issues (particularly in respect of AEP use, which has greatly increased over the past two summers), it would be beneficial if PSNI produced use of force statistics in an unrestricted format for publication on the PSNI website. The restricted, more detailed, use of force report should continue to be provided to the Human Rights and Professional Standards Committee.

### **Recommendation 8**

**PSNI should publish its use of force statistics on the PSNI website on a 6-monthly basis.**

The Policing Board is, however, able to provide the following information on the use of force by the PSNI between 1 April 2011 and 30 September 2011. This information derives from the 6-monthly use of force reports provided by PSNI to the Policing Board.<sup>4</sup>

#### **Attenuating Energy Projectile (AEP)**

**AEP can be used by a limited number of specifically trained officers in serious public order situations where an individual aggressor or aggressors can be identified and targeted. It can also be used by a small number of specifically trained firearms officers as a less lethal option at a stand-alone incident which would otherwise justify use of a firearm.**

Officers used AEPs on 109 occasions during the 6 month period. 13 involved the AEP being pointed but not fired, while 96 resulted in an officer discharging at least 1 AEP. All of the 96 occasions where AEPs were fired occurred during serious public disorder between 20 June 2011 and 16 July

<sup>3</sup> 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.

<sup>4</sup> *PSNI Use of Force Report, 1 April 2011 – 30 September 2011*, PSNI, November 2011.

2011 and resulted in a total of 350 AEP rounds being discharged. Rounds were most frequently discharged in East Belfast (140), North Belfast (107) and West Belfast (47). The main reason officers gave for using AEP was to protect other officers. Males aged 18-29 were the group against whom AEP was used most frequently.

### **Baton**

**Officers will report any use of batons to their immediate supervisors as soon as practicable and submit an electronic use of force form, making their baton available for inspection. In addition, in circumstances where a baton has been drawn but not used, officers will submit a report where it is reasonable to expect that a person (or persons) have anticipated a threat of force being used against them. There may also be occasions where a supervisory officer gives a direction to other officers to draw their batons. This would most likely occur during serious public order situations. In such circumstances only the officer giving the direction is required to complete an electronic use of force monitoring form. However, if any officer has occasion to strike an individual(s) then they must submit an electronic use of force monitoring form to indicate 'baton used'.**

Batons were either drawn or used on 439 occasions during the 6 month period. They were drawn (not used) on 289 occasions and were used on 150 occasions against 170 members of the public. The main reason officers gave for using batons was to protect themselves. Batons were drawn and used most frequently in East Belfast (20 uses), North Belfast (19 uses) and West Belfast (17 uses). Males aged 18-29 were the group against whom batons were used most frequently.

### **CS Spray**

**CS spray is issued to officers who have been trained in the Personal Safety Programme and is worn as part of the normal patrol equipment. Plain-clothes officers are also trained and issued with CS spray. CS**

**spray is personal protection equipment. Police policy states that it is not to be used during serious public order situations as a crowd dispersal tactic. An officer drawing the device and pointing it at any individual or group, must record this use and any warning given (even if the CS spray is not subsequently sprayed).**

There were 274 occasions when CS spray was reported to have been either sprayed or drawn during the 6 month period. On 110 of these occasions it resulted in the spray being drawn but not sprayed, while spray was drawn and sprayed on 164 occasions. The main reason officers gave for using CS spray was to protect themselves. Males aged 18-29 were the group against whom CS spray was used most frequently. The use of CS spray was greatest in Foyle (sprayed 21 times), North Belfast (sprayed 20 times) and Magherafelt (sprayed 14 times).

### **Firearms**

**The Chief Constable has given standing authority for all officers, subject to successful training, to be issued with a personal issue handgun. This standing authority is kept under regular review. Officers are required to report any instance when they have occasion to draw or point their personal issue handgun, even if it is not discharged.**

Firearms were drawn on 173 occasions during the 6 month period; however there were no occasions on which a firearm was discharged. The main reason officers gave for drawing firearms was to protect themselves. Firearms were drawn most frequently in North Belfast (26 occasions), West Belfast (17 occasions) Foyle (13 occasions) and Newry and Mourne (13 occasions).

### **Police Dog**

**Most police dogs are now attached to Tactical Support Groups (TSGs) and can be used for a variety of purposes. Use of force only reflects a very small proportion of the overall work that police dogs carry out.**

Officers reported the use of a police dog on 11 occasions during the 6 month period. There were 14 persons against whom a police dog was used. Of these people, 4 were bitten by the dog. The use of the police dog was most frequent in South Belfast (3 occasions) and Lisburn (3 occasions). The main reason officers gave using police dogs was to protect themselves. Males aged 18-29 were the group against whom police dogs were used most frequently.

### **Taser**

**Taser are issued to specialist firearms officers and to authorised firearms officers attached to Armed Response Vehicles. Use is recorded on the electronic monitoring form where a Taser has been drawn/aimed (at which stage a red dot appears on the subject indicating where the Taser would hit) or fired/discharged.**

There were 64 occasions when Taser was drawn during the 6 month period, of which 5 resulted in the Taser being fired. The main reason officers gave for using Taser was to protect themselves.

### **Water Cannon**

**PSNI has 6 water cannons at its disposal which are kept at different police locations within Northern Ireland to ensure that they can respond quickly to any incident. Water cannon vehicles are deployed and used only when authorised by appropriate officers in accordance with police policy.**

There were 14 reported uses of water cannon between 21 June 2011 and 12 July 2011. Between 1 April 2011 and 30 September 2011 water cannon were deployed in 28 other incidents without being used.

## 8. COVERT POLICING

It is in this important but sensitive area, where national security needs are balanced with the protection of civil liberties and human rights, that an oversight mechanism is most challenging. It is essential that oversight and accountability is robust and as transparent as permitted within the recognised boundaries. Any review of covert policing raises delicate issues of confidentiality, with a tension between the requirement to scrutinise and the requirement to maintain the secrecy of covert operations. To enable scrutiny to be undertaken, the PSNI has afforded the Policing Board's Human Rights Advisor access to all relevant information including sensitive information. The Human Rights Advisor must respect the confidential nature of that information but has been able to report to the Human Rights and Professional Standards Committee (the Committee) that the PSNI has not sought to obstruct her access to any information and has cooperated fully with the process.

The interception of communications, surveillance and the use of Covert Human Intelligence Sources (CHIS) by the police raise a number of significant human rights considerations: the most obvious of which is the right to respect for private and family life as per Article 8 of the European Convention on Human Rights (ECHR) and the right to life as per Article 2 ECHR. When using such powers the police are bound to comply with a strict statutory framework that is intended to ensure human rights compliance: the Regulation of Investigatory Powers Act 2000 (RIPA). By virtue of RIPA, only specified individuals may authorise surveillance and any police authorisation (save in urgent cases) must be approved by a Surveillance Commissioner. Scrutiny of the interception of communications, surveillance and CHIS is provided for in Part IV of RIPA.

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. A complaint that the interception of communications, surveillance or the use of CHIS has violated a person's human rights can be made to a statutorily constituted 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 Committee, through the Policing Board's Human Rights Advisor, monitors the reports of the Chief Surveillance Commissioner and the PSNI's response to those reports. Additionally, the Human Rights Advisor examines 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. The Committee is responsible for and keeps under review the PSNI use of powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007.<sup>1</sup>

### **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 protocols. Those policies, procedures and protocols were 'human rights proofed' by the Policing Board's Human Rights Advisors. Those procedures and protocols have been kept under review. They are due to be revised and up-dated and the Human Rights Advisor will 'human rights proof' the revised documents.

In the Human Rights Annual Report 2008 it was recommended that the PSNI should complete its review of all intelligence policies, procedures and protocols and develop an overarching policy on the management of intelligence within 12 months but should report to the Policing Board on the progress of its review within 6 months of the publication of the Human Rights Annual Report 2008.<sup>2</sup> Updates were provided and reported upon in the Human Rights Annual Reports 2009 and 2010, with PSNI explaining the reason for the delay, which was accepted. The Committee, however, now considers that the period of delay is unacceptable; to date no report has been presented to the Policing Board. That is disappointing and should be remedied

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<sup>1</sup> See further at chapter 4 of this Human Rights Annual Report.

<sup>2</sup> *Human Rights Annual Report 2008*, Northern Ireland Policing Board, Recommendation 24.



forthwith. That recommendation is therefore withdrawn but replaced with a new recommendation.

### **Recommendation 9**

**PSNI should forthwith complete its review of all intelligence policies, procedures and protocols and complete its overarching policy on the management of intelligence and report to the Policing Board within 4 weeks of the publication of this Human Rights Annual Report.**

### **National security**

Responsibility for national security intelligence work was transferred from the PSNI to the Security Services in 2007. However, 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. In accordance with Annex E to the St. Andrew's Agreement, the Policing Board's Human Rights Advisor was given access to the relevant protocols that underpin the principles within which the PSNI must operate, including those which govern the working relationship between the PSNI and the Security Service. Those documents have been examined and commented upon in previous Human Rights Annual Reports. During 2011, the Human Rights Advisor kept the relevant policy and practice under review to ensure that there had been no diminution of the PSNI's ability to comply with the Human Rights Act 1998. When the policies etc. are updated, the Human Rights Advisor will carry out a further review.

### **Chief Surveillance Commissioner's reports**

The function of the Chief Surveillance Commissioner is to review the use of surveillance, agents, informants, undercover officers and decryption. A team of Commissioners and specialist investigators carry out annual inspections of PSNI. The inspection team has access to all relevant officers, materials, policies and records and routinely carries out random checks on case-files and records.

The reports of the Chief Surveillance Commissioner have been examined each year by the Policing Board's Human Rights Advisors.<sup>3</sup> This year, the Human Rights Advisor was again provided unrestricted access to the 2011 report and the PSNI response to that report. The contents of those reports contain sensitive information which cannot be set out or summarised in this report. However, it can be recorded that the Chief Commissioner noted that of the recommendations made by him in 2010, all but 2 have been implemented by PSNI in full. The 2 recommendations which have not yet been implemented are in the process of being implemented. The 2011 report records, for another year, the high standards of compliance by PSNI with good practice identified in relation to oversight, audit and compliance structures. The Chief Commissioner once again described well developed policies and excellent investment in training. He referred specifically to the 'tenacious' observance of the legislative frameworks and the excellence demonstrated in respect of authorisations. He also found there to be clear and compliant guidelines in place for the use of Covert Human Intelligence Sources and that officers were well versed in their responsibilities and the legal boundaries within which they operate. A small number of recommendations were made, which are currently being implemented by PSNI.<sup>4</sup> The report commends PSNI, as it did in 2010, for its adherence to good practice. Additionally, however, the Chief Commissioner raised some issues of concern where further work is required but he did not consider them to be serious. In response to the report, PSNI identified the process and steps to be taken to comply with those concerns. The PSNI has already commenced the necessary process.

### **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

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<sup>3</sup> Reports dating back to 2002 have been examined.

<sup>4</sup> Those recommendations are confidential.

Human Rights Advisors have examined, validated and reported on the implementation of the Ballast recommendations.

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, the Policing Board's Human Rights Advisor considered whether the new arrangements complied with the right to life under Article 2 of the 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.<sup>5</sup> 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 adequately perform its statutory function, the Policing Board has established a special committee which is dedicated to overseeing the compliance of the Operation Stafford investigation with Article 2 ECHR. That special committee is constituted to receive confidential briefings from PSNI and

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<sup>5</sup> The police have a positive obligation under Article 2 of the European Convention on Human Rights (ECHR) to carry out an effective investigation into a death.

others on the progress of the investigation. The Human Rights Advisor has also been given access to documents and has been briefed on the progress of the investigation. The investigation is a live investigation, some of which is currently being heard by the courts. It would not therefore be appropriate to comment any further at this stage.

### **PSNI officers who interface with the Security Service**

An issue has arisen in respect of the oversight of those officers who work in areas where there is overlap with the Security Service. A number of stakeholders have expressed concern that the oversight mechanism is not sufficiently transparent. The Committee recognises the necessary limits to the transparency of such oversight (in the sense that they cannot be reported upon publicly) but maintains close scrutiny of the arrangements through the Policing Board's Human Rights Advisor, meetings with relevant officers and other oversight bodies. To reassure the community and those stakeholders who expressed concern, the Committee will be undertaking a review of the arrangements in place and will consider the extent to which those arrangements can be better explained and reported upon, for example, by using a special committee which can receive confidential briefings. The Committee is also considering undertaking a thematic review on the impact of security policing on community policing and will report further in the coming months.

## 9. VICTIMS

An analysis of the treatment of victims of crime can provide a strong indication of a police service's commitment to protecting and defending human rights and fundamental freedoms. In this chapter, the Human Rights and Professional Standards Committee (the Committee) considers how the PSNI treats victims and whether the rights of victims are protected and respected in accordance with the European Convention on Human Rights (ECHR), as incorporated into domestic law by the Human Rights Act 1998, together with other international instruments.<sup>1</sup> Article 1 of the ECHR requires States to secure the ECHR rights and freedoms of all persons, which requires more than refraining from violating rights. The police have a critical role in the upholding and protecting of those rights.

Furthermore, the Police (Northern Ireland) Act 2000 confers upon police officers the duty to protect life and property, to preserve order, to prevent the commission of offences, and where an offence has been committed, to take measures to bring the offender to justice. All victims of crime are entitled to the protection of the police and to a proper investigation, which keeps him or her informed throughout the process.

Should there be any doubt about it, the Policing Board and the Committee puts victims at the centre of its considerations. The Committee is convinced that by the application of human rights principles to all aspects of policing, the benefit is enjoyed most tangibly by the victims of crime. The Committee recognises that occasionally the debate on human rights within the media focuses on the rights of suspects and perpetrators and views the rights of victims as necessarily prejudiced by an adherence to human rights principles. That is not the case. In fact, the Human Rights Act 1998 has an impressive record in securing the protection of victims' rights and potential victims' rights. The protection of the rights of victims of crime lies at the heart of human rights laws. Many of the rights contained within the ECHR can be limited expressly on the grounds of public safety, in the interests of national security and to prevent the commission of offences. The Human Rights Act also places positive obligations on the State to protect victims of crime, requiring the police and

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<sup>1</sup> Such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

the State to take practical steps to protect people whose rights are threatened by others. The Committee will continue to undertake dedicated scrutiny of the protection of victims' rights by the PSNI through its Human Rights Annual Report and by dedicated thematic reviews.

### **Hate crime**

Hate crime aims to instil fear. It can take many forms but the most common forms of hate crime known to the police are assaults, intimidation, harassment and criminal damage. Hate crime is particularly hurtful to victims as they are targeted because of their personal identity, racial or ethnic origin, sexual orientation or disability. The impact on individual victims varies, but it leaves many feeling unsafe and isolated. In addition to the direct effect of a crime of, for example, violence, hate crime can impact negatively on mental health. The impact of a hate crime is often felt by other potential victims and by the wider community. Hate crime demeans society as a whole and should be given priority by the police and other relevant statutory agencies.

PSNI defines a 'hate incident' as being "any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate."<sup>2</sup> PSNI defines a 'hate crime' as being "any hate incident, which constitutes a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate."<sup>3</sup> When an incident is reported to the police which is perceived by the victim or any other person (including a police officer) to have been motivated by prejudice or hate, it must be recorded and investigated as a hate incident or crime in accordance with the PSNI policy *Police Response to Hate Incidents*. The policy states that "Police officers cannot decide whether or not to record or investigate a hate incident or crime because there appears to be no evidence to support a perception. Police officers will accept the perception-based view of the victim or any other person. This sends out a strong

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<sup>2</sup> *Police Response to Hate Incidents*, PSNI, PD 02/06, version 4, issued December 2008, section 2(1)(a). These are the same definitions adopted by the Association of Chief Police Officers (ACPO).

<sup>3</sup> *Ibid.* section 2(1)(a).

message that police will take hate crime seriously and will conduct thorough and objective investigations.”<sup>4</sup>

The PSNI records data on hate incidents and hate crimes where the motivation for the prejudice or hate is perceived to be based upon race or ethnicity; faith or religion (non sectarian); faith or religion or political opinion (sectarian); disability; sexual orientation (homophobic incidents/crimes); or, gender identity (transphobic incidents/crimes). PSNI publishes an annual statistical report detailing trends in hate motivated incidents and crimes in Northern Ireland as per the 6 categories of hate motivation.

Table 1 shows the level of incidents and crimes recorded by the police during 2010/2011 together with detection rates.<sup>5</sup> Comparisons to levels in previous financial years can be found in the PSNI’s 2010/2011 annual statistical report which contains comparative annual figures for each year dating back to 2004/2005.<sup>6</sup>

**Table 1: Number of hate incidents and hate crimes recorded by PSNI and detection rate, by type of hate motivation, 1 April 2010 to 31 March 2011**

<u>Type of hate crime</u>	<u>Incidents recorded</u>	<u>Crimes recorded</u>	<u>Crimes detected</u>	<u>Detection rate (%)</u>
<b>Transphobic</b>	22	8	1	13
<b>Homophobic</b>	211	137	24	18
<b>Sectarian</b>	1,437	995	287	29
<b>Faith/Religion</b>	21	17	0	0
<b>Disability</b>	38	31	4	13
<b>Racist</b>	842	531	71	13

Hate crime is a particularly insidious crime which requires particular attention by the police and other statutory agencies. To combat hate crime the PSNI should develop a robust hate crime strategy which builds upon the work already undertaken and which extends across Northern Ireland. Particular attention is required for those minority groups where the detection rate for hate crime is lower than, for example,

<sup>4</sup> *Ibid.* section 2(1)(a).

<sup>5</sup> ‘Detected crime’ is a term that describes offences which have been ‘cleared up’ by the police.

<sup>6</sup> *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2010/11*, PSNI, July 2011.

sectarian hate crime. Stakeholders have advised the Committee that the single most significant factor which will increase the reporting of hate crime by minority groups is evidence of successful detection and prosecution. That makes perfect sense; a victim who is already marginalised or isolated and vulnerable is less likely to identify themselves if they fear little will be achieved. The PSNI should involve its Independent Advisory Groups in the development of its strategy.

### **Recommendation 10**

**The PSNI should develop a hate crime strategy, in consultation with its Independent Advisory Groups, which considers the reasons for the underreporting of hate crime, the procedures in place for reassuring and protecting victims of hate crime and a robust response to hate crime. That strategy should be provided to the Human Rights and Professional Standards Committee within 12 months of the publication of this Human Rights Annual Report.**

### **Lesbian, Gay, Bisexual and Transgender thematic review**

In September 2010, the Committee agreed terms of reference for a thematic review examining policing with and for people who identify as lesbian, gay, bisexual and/or transgender (LGB&T).

The terms of reference for the thematic include the PSNI approach to policing with and for lesbian, gay, bisexual and transgender 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;
- 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 individuals, stakeholder groups and organisations.

Lesbian, gay and bisexual are terms which refer to a person's sexual orientation. Transgender refers to a person's gender identity. The Committee is cognisant of the need to treat transgender as a distinct issue, which has no relationship to LGB issues save for the fact that traditionally they have been dealt with together. For future reference, transgender issues will be dealt with separately. The thematic review is due to be published in early 2012.

### **Domestic abuse**

Domestic abuse is a serious and endemic problem in Northern Ireland which has a devastating impact upon victims, their children and other family members.

It has been clearly established that domestic violence constitutes a violation of several ECHR rights such as the right to life (Article 2 ECHR); the right to be free from torture or inhuman or degrading treatment (Article 3 ECHR); the right to respect for private and family life (Article 8 ECHR); and the prohibition of discrimination (Article 14 ECHR). For example, in one case the European Court of Human Rights (ECtHR) held that the State had failed to protect a woman and her daughter from violence on the part of her husband.<sup>7</sup> There was a violation of Articles 2 and 3 ECHR. The State authorities had failed to take protective measures in the form of effective deterrence against serious breaches of personal integrity. The ECtHR also upheld a complaint that Article 14 had been breached because domestic violence affected mainly women and the passivity in Turkey created a climate conducive to domestic violence.

Domestic abuse encompasses a wide range of threatening behaviour which can be psychological, physical, sexual, financial or emotional. Domestic abuse is not in itself a criminal offence thus a perpetrator of domestic abuse can only be charged and

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<sup>7</sup> *Opuz v Turkey* (Application No 33401/02) June 2009.

prosecuted if they have committed an offence, for example, assault. However, the PSNI keeps a record of all domestic incidents, even if no offence has been disclosed.

The PSNI responds to, on average, a domestic incident every 23 minutes of every day. In Northern Ireland during 2010/2011 there were 22,685 recorded incidents with a known domestic abuse motivation and 9,546 recorded crimes with a known domestic abuse motivation.<sup>8</sup> Crimes with a domestic abuse motivation accounted for 9% of overall recorded crime in Northern Ireland during 2010/2011. Domestic abuse was attributed to 22% of all recorded crimes involving violence against the person, including 35% of all murders (there were 7 murders with a domestic abuse motivation); and 13% of the most serious sexual offences, including 16% of all rapes.<sup>9</sup> The average detection rate for crimes with a domestic abuse motivation was 47%:<sup>10</sup> substantially higher than the average detection rate for overall recorded crime in Northern Ireland during 2010/2011 which was 27%.<sup>11</sup>

Of the crimes with a domestic abuse motivation recorded in 2010/2011 where there was a victim with known age and gender details, 10% of victims were under the age of 18; 68% were females over the age of 18; and 21% were males over the age of 18.<sup>12</sup> Of crimes with a domestic abuse motivation that were detected during 2010/2011 where the gender of the perpetrator is known, females represented 10% of perpetrators and males represented 90% of perpetrators.<sup>13</sup> Whilst not directly comparable, these figures do indicate that a sizeable proportion of domestic abuse is carried out by males against other males.

Table 2 (page 86) shows the geographical distribution of recorded incidents and crimes with a domestic abuse motivation.

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<sup>8</sup> *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2010/11*, PSNI, July 2011, Table 1.1, page 5.

<sup>9</sup> *Ibid.* page 8 and Table 2.2, page 12.

<sup>10</sup> *Ibid.* Table 4.1, page 21.

<sup>11</sup> *Police Recorded Crime in Northern Ireland, 1 April 2010 to 31 March 2011*, PSNI, May 2011, Table 8, page 8. 'Detected crime' is a term describing offences which have been 'cleared up' by the police.

<sup>12</sup> *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2010/11*, PSNI, July 2011, page 13.

<sup>13</sup> Information provided to the Policing Board by PSNI further to recommendation 1 of the Policing Board's domestic abuse thematic review.

**Table 2: Recorded incidents and recorded crimes with a domestic abuse motivation in each PSNI Area and District; per 1,000 population; and sanction detection rates, 1 April 2010 – 31 March 2011**

<b>Policing District / Area</b>	<b>Incidents</b>	<b>Incidents per 1,000 population</b>	<b>Crimes</b>	<b>Crimes per 1,000 population</b>	<b>Sanction detection rate</b>
<b>All with a domestic abuse motivation</b>					
North Belfast	1,844	24	744	9	49.7
West Belfast	1,323	22	522	9	44.6
<b>A District</b>	<b>3,167</b>	<b>23</b>	<b>1,266</b>	<b>9</b>	<b>47.6</b>
East Belfast	1,354	20	473	7	48.8
South Belfast	823	13	348	6	43.1
<b>B District</b>	<b>2,177</b>	<b>17</b>	<b>821</b>	<b>6</b>	<b>46.4</b>
Ards	661	8	330	4	47.6
Castlereagh	480	7	213	3	49.3
Down	540	8	295	4	40.0
North Down	644	8	330	4	55.2
<b>C District</b>	<b>2,325</b>	<b>8</b>	<b>1,168</b>	<b>4</b>	<b>48.1</b>
Antrim	635	12	293	5	40.6
Carrickfergus	470	12	190	5	48.4
Lisburn	1,686	14	680	6	49.9
Newtownabbey	904	11	377	5	47.7
<b>D District</b>	<b>3,695</b>	<b>12</b>	<b>1,540</b>	<b>5</b>	<b>47.4</b>
Armagh	514	9	221	4	40.7
Banbridge	402	8	165	3	40.0
Craigavon	1,174	13	575	6	41.0
Newry & Mourne	1,050	11	490	5	40.6
<b>E District</b>	<b>3,140</b>	<b>10</b>	<b>1,451</b>	<b>5</b>	<b>40.7</b>
Cookstown	418	11	198	5	55.6
D/gannon & S. Tyrone	438	8	204	4	49.5
Fermanagh	550	9	257	4	45.5
Omagh	511	10	199	4	57.8
<b>F District</b>	<b>1,917</b>	<b>9</b>	<b>858</b>	<b>4</b>	<b>51.6</b>
Foyle	2,282	21	866	8	46.4
Limavady	534	16	284	8	51.4
Magherafelt	353	8	131	3	48.1
Strabane	566	14	219	5	51.1
<b>G District</b>	<b>3,735</b>	<b>16</b>	<b>1,500</b>	<b>7</b>	<b>48.2</b>
Ballymena	818	13	347	5	40.9
Ballymoney	270	9	93	3	35.5
Coleraine	922	16	299	5	47.5
Larne	373	12	151	5	48.3
Moyle	146	9	52	3	34.6
<b>H District</b>	<b>2,529</b>	<b>13</b>	<b>942</b>	<b>5</b>	<b>43.3</b>
<b>N. Ireland</b>	<b>22,685</b>	<b>13</b>	<b>9,546</b>	<b>5</b>	<b>46.5</b>

In recognising that domestic abuse is a serious and endemic problem in Northern Ireland, the Committee agreed to undertake a human rights thematic review examining how effectively the PSNI tackles domestic abuse. The review, which was conducted on the Committee's behalf by the Policing Board's Human Rights Advisor, was published in March 2009 and made 14 recommendations for further improving PSNI's service to victims of domestic abuse. The thematic review credited the PSNI for the positive steps it had taken to improve service delivery and the approach to tackling domestic abuse by, for example, appointing a domestic abuse champion and other specialist domestic abuse officers, but it also recognised that there was more that could and should be done. Issues highlighted included training for domestic abuse officers; the working hours and shift patterns of domestic abuse officers; domestic abuse in same sex relationships; minority ethnic victims of domestic abuse; and how incidences of domestic abuse are recorded and flagged on police information systems. The PSNI responded positively to the thematic review and indicated its acceptance of all 14 recommendations.

Publication of the thematic review signalled the beginning of a process of monitoring and review. Since then, the Human Rights Advisor has continued to engage with PSNI on the issue and has monitored the implementation of the 14 recommendations. She has continued to meet with stakeholders to discuss the review and wider issues in relation to domestic abuse. In May 2011, an update report outlining PSNI progress in implementing the 14 recommendations was circulated amongst stakeholders. The update report records that PSNI has taken a number of steps over the past 2 years to implement some of the recommendations, in particular, in relation to: analysing statistics available; revising policy; developing a mechanism to dip-sample decisions not to arrest; and delivering training on taking initial reports of domestic abuse. However, some work is still required in order to implement fully all 14 recommendations.

During 2011, there have been a number of new Service Procedures introduced by PSNI in relation to domestic abuse, honour based violence and female genital

mutilation.<sup>14</sup> In October 2011, PSNI held a conference on honour based violence and forced marriage to which a range of agencies were invited. The intention of the conference was to provide an opportunity for frontline professionals to be better informed of the issues. PSNI's continued focus on this area should be commended.

The Committee has kept the issue of domestic abuse policing firmly on its agenda. In September 2011, the public session of the monthly Policing Board meeting was themed on the topic of domestic abuse policing. Stakeholders were invited to attend and were given the opportunity to put questions to Members of the Policing Board and to the Chief Constable and his colleagues. A number of issues recurred such as service of non-molestation orders, the use of body worn cameras, shift patterns and the investigative duties of domestic abuse officers. Those issues are currently being explored with PSNI and will be reported upon separately in due course.

### **Persons with a learning disability**

Learning disability is defined as a significantly reduced ability to understand new or complex information, to learn new skills, with a reduced ability to cope independently which started before adulthood with a lasting effect on development. While there has not been sufficient research undertaken as yet, it is readily accepted by all involved in the criminal justice system that persons with a learning disability are more likely to be a victim of crime than those without such a disability. It is therefore recommended that the PSNI should disaggregate the statistics it collates under the heading of disability hate crime to include a separate category for learning disability. This requires no more than the addition of a specific category.

### **Recommendation 11**

**PSNI should disaggregate the statistics it collates under the heading of disability hate crime to include a separate category for learning disability.**

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<sup>14</sup> (i) *Risk Identification, Assessment and Management in Relation to Domestic Abuse, Stalking and Harassment and Honour Based Violence (HBV) (DASH)*, PSNI SP/15/2011, July 2011; (ii) *Shielding National Insurance Numbers – victims of Domestic Abuse and Honour Based Violence (HBV)*, PSNI SP/9/2011, May 2011; (iii) *Police Response to Female Genital Mutilation*, PSNI SP/7/2011, April 2011; (iv) *Police Response to Honour Based Violence*, PSNI SP/2/2011, March 2011; and (v) *Police Response to Forced Marriage*, PSNI SP/3/2011, March 2011.

Recent research conducted jointly by the Policing Board and the Office of the Police Ombudsman reported that people with a learning disability often fail to report crimes such as harassment, with a level of acceptance shown by society to such abuse.<sup>15</sup> The report recommended that greater efforts should be made by all within the criminal justice system, including the police, to bring these issues to the attention of the public and to those who are victims of crime. The report has been disseminated widely within the PSNI. The Committee will work with the PSNI and other stakeholders to ensure that the recommendations within that report are implemented in an effective and practical way.

### **Training on victims**

An outstanding recommendation from the Policing Board's Human Rights Annual Report 2009 was that the PSNI internal evaluation team 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.<sup>16</sup> As discussed in chapter 2 of this Human Rights Annual Report, the way in which the PSNI Human Rights Training Adviser carries out reviews of lessons and course documentation is similar to the role carried out by PSNI's internal evaluation team. During 2011, the PSNI Human Rights Training Adviser observed student officer training on victims and witnesses, offering feedback to the trainer and reviewing course documentation. A Policing Board official also attended and reported back to the Policing Board's Human Rights Advisor who is satisfied that the recommendation in the Human Rights Annual Report 2009 has been implemented. Additionally, the Human Rights Advisor has reviewed PSNI policy on victims and witnesses and has observed crime training during which the duty of officers to victims was discussed in a comprehensive yet practical way.

As discussed above, however, training in relation to victims with learning disabilities requires further consideration. In the thematic review on children and young people published in 2010 the Committee recommended that police officers incorporate

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<sup>15</sup> *Views and experiences of people with a learning disability in relation to policing arrangements in Northern Ireland*, Northern Ireland Policing Board and the Police Ombudsman for Northern Ireland, 2011.

<sup>16</sup> *Human Rights Annual Report 2009*, Northern Ireland Policing Board, Recommendation 17.

guidance within relevant policy on recognising and thereafter dealing with mental health issues and learning disability. The same applies in respect of adults.

**Recommendation 12**

**The PSNI should consider how best to ensure that officers and staff are able to recognise learning disability and therefore to respond appropriately. The PSNI should report to the Human Rights and Professional Standards Committee within 12 months of the publication of this Human Rights Annual Report on its proposals.**

## 10. TREATMENT OF SUSPECTS

Detained suspects are particularly vulnerable to human rights infringements. The rights enshrined in the European Convention on Human Rights (ECHR) which are engaged include, but are not limited to, Article 2 (the right to life), Article 3 (the right not to be subject to torture, inhuman or degrading treatment or punishment), Article 5 (the right to liberty and security), Article 6 (the right to a fair trial) and Article 8 (the right to respect for private and family life). When the State removes a person's liberty and places him or her in detention it assumes responsibility for protecting that person's human rights. The detainee is unlikely to be able to assert his or her rights in any meaningful way.

Many people entering police detention are particularly vulnerable. It is known that a high percentage of people entering into police detention suffer from mental ill-health, have drug and alcohol dependency and/or are of low emotional intelligence with poor communication skills. Police detention presents a significant risk because often little information is known about the detainee due to the sudden nature of the detention. It is important that the law is known and applied, boundaries are clear and the framework of principles to be applied is understood by all officers. The Human Rights Advisor to the Policing Board has attended and observed training for custody staff and was impressed at the rigour of the training on human rights and the practical demonstration of human rights principles in practice.

The report of the Independent Commission on Policing for Northern Ireland (the Patten report) recommended that responsibility for inspecting custody suites should rest with the Policing Board and that lay visitors should be empowered to inspect conditions of detention and also to observe interviews on camera subject to the consent of the detainee.<sup>1</sup> The Policing Board's Independent Custody Visiting Scheme fulfils a critical function to ensure the protection of the human rights of all detained suspects. The Human Rights and Professional Standards Committee (the Committee) monitors the treatment of detainees and the conditions of their detention

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<sup>1</sup> That recommendation was enacted in section 73 of the Police (Northern Ireland) Act 2000. In 2001, the Policing Board established the Independent Custody Visiting Scheme.



by an analysis of the reports of Custody Visitors. All issues identified by Custody Visitors are considered by the Policing Board which follows up those issues with the PSNI. In the event that an issue is not resolved within an agreed timescale, the matter is escalated to the relevant Assistant Chief Constable.

Custody Visitors receive training on a regular basis, which includes human rights induction and refresher training to ensure that each Visitor is aware of the human rights issues involved in the detention of suspects. Custody Visitors have demonstrated an impressive commitment to training and have attended all training offered with enthusiasm.

### **Independent Custody Visiting Scheme**

The Policing Board is obliged, by virtue of section 73 of the Police (Northern Ireland) Act 2000, to make and keep under review arrangements for designated places of detention to be visited by lay visitors. That function is fulfilled through the Policing Board's Independent Custody Visiting Scheme. Custody Visitors are volunteers from across the community who are unconnected with the police or the criminal justice system. They are sub-divided into four Custody Visiting Teams operating across Northern Ireland. The Custody Visiting teams comprise: Belfast/Antrim responsible for 9 custody suites including Antrim Serious Crime Suite; North-West responsible for 5 custody suites; Tyrone/Fermanagh responsible for 4 custody suites; and, Down/Armagh responsible for 3 custody suites.

Custody Visitors make unannounced visits to designated<sup>2</sup> police custody suites where they inspect the facilities, speak to detainees and check custody records. They also view on remote camera live interviews with detainees held in Antrim Serious Crime Suite under terrorism legislation. Custody Visitors report back to the Policing Board and the PSNI on the welfare and treatment of persons detained in custody and the adequacy of facilities.

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<sup>2</sup> 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.

The Custody Visiting Scheme is much more than a mechanism by which the Policing Board fulfils its statutory function under section 73 of the Police (Northern Ireland) Act 2000: the Scheme fulfils a valuable function in ensuring that the human rights of detained persons are protected and it forms part of the United Kingdom's National Preventative Mechanism (NPM).<sup>3</sup>

Each Quarter, the Human Rights and Professional Standards 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 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.<sup>4</sup>

### **Days and times of visits**

Each year the Policing Board sets a guideline number of visits to be completed by each Custody Visiting Team. During 2010/2011, the guideline number of visits was set at 1,107. The Custody Visiting Scheme carried out a total of 1,122 visits therefore exceeding the required number of visits. That represents an increase of 56 visits from 2009/2010 when 1,066 visits were carried out. The Custody Visitors should be commended for their dedication to their role. The visits took place on all 7 days of the week and were conducted at all times of the day and night. As a result of discussions

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<sup>3</sup> The National Preventative Mechanism (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." 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.

<sup>4</sup> Statistics on the activity of Custody Visitors in 2010/2011 which are cited throughout this chapter are taken from *Custody Visiting in Northern Ireland during 2010/2011*, Northern Ireland Policing Board, 2011, available through the Policing Board's website: [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)

with Custody Visitor Team Coordinators, it was agreed to increase the guideline number of weekend and late night/early morning visits for each Team. Since then, visits taking place at weekends and evenings have increased as evidenced by Table 1 below.

**Table 1: Days and times of visits, 1 April 2009 – 30 September 2011**

	<u>2009/2010</u>	<u>2010/2011</u>	<u>Q.1 2011/2010</u>	<u>Q.2 2011/2010</u>
<b>Mon – Fri</b>	85%	76%	80%	79%
<b>Sat &amp; Sun</b>	15%	24%	20%	21%
<b>9am – 9pm</b>	94%	88%	85%	88%
<b>9pm – 9am</b>	6%	12%	15%	12%

### **Invalid visits**

Of the 1,122 visits carried out in 2010/2011, there were 48 visits aborted for various reasons, 10 of which were due to custody suites being temporarily closed. A system is in place whereby closures must be notified to the Policing Board, who in turn will notify the relevant Custody Visitors. Recommendation 3 in last year's Human Rights Annual Report, that PSNI notify the Policing Board of any closures and subsequent re-openings of custody suites, and that PSNI notify the Policing Board of any changes to the designation status of police stations, whether permanent or temporary, is an ongoing recommendation.

It is important that Custody Visitors record the reasons for aborted visits as it enables the Policing Board to analyse any emerging trends, for example, whether failure to notify the Policing Board of closures is a recurrent problem in any one particular station: to date this has not been the case. It also enables the Board to review whether access is being denied to Custody Visitors for any reason. Custody Visitors record details of delays in gaining access to custody suites. During 2010/2011 there were 56 occasions when there were delays of more than 10 minutes. The stations with the most delays were Antrim (14), Lisburn (7) and Musgrave Street (7). The most common reasons given were that staff were busy or that a detained person was being checked in at the time when the Custody Visitor arrived.

## **Detainees seen**

There were a total of 1,963 detainees held during visits to custody suites during 2010/2011. Custody Visitors must be allowed immediate access to any person detained at the police station, save where a delay is necessary and reasonable. However, detainees may only be spoken to with their consent. Of the 1,963 detainees held during visits in 2010/2011, 358 (18%) refused to be seen by a Custody Visitor. 687 were not seen for other reasons, for example, they were asleep (234) or being interviewed (206) at the time of the visit. The refusal rate during 2010/2011 (18%) is significantly lower than it has been over the past 3 years.<sup>5</sup> The refusal rate for the first half of 2011/2012 is even lower (10% for the period April 2011 – June 2011; and 6% for the period July 2011 – September 2011). The decrease in the refusal rate correlates with the commencement of a self-introduction pilot in October 2010. Prior to the self-introduction pilot, it was the escorting police officer who established whether a detainee wished to speak to a Custody Visitor. The refusal rate from April 2010 to September 2010 was 26%. The refusal rate in October 2010 (the first month of the pilot) decreased to 9%. The Committee, the PSNI and the Custody Visitor Team Coordinators all agreed that given the reduction in refusal rates, self-introduction should be introduced on a permanent basis from 1 April 2011.

## **Custody records**

A custody record must be opened as soon as practicable for each person who is brought to a police station to be detained. Custody Visitors are trained to check the custody records for detainees who consent to their record being checked. Where it is not possible to obtain consent, for example, because the detainee is asleep at the time of the visit, intoxicated or on drugs, Custody Visitors must be granted access to the custody record unless the detainee has refused consent. If access to the custody record is denied by custody staff, that should be noted by the Custody Visitor and reported to the Policing Board. Checking the custody record is an essential element of protection and enables Custody Visitors to ensure:

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<sup>5</sup> In 2009/2010 the refusal rate was 28%; in 2008/2009 it was 24%; and in 2007/2008 it was 28%.

- That detainees (arrested under PACE<sup>6</sup>) have been afforded their rights and entitlements (to have someone informed of their arrest, to consult with a solicitor, and to consult the PACE Codes of Practice);
- That medication, injuries, medical examinations, meals/diet are recorded and treated;
- That procedures to assess special risks/vulnerable detainees have been properly recorded and implemented;
- The timing and frequency of cell inspections of inebriated or otherwise vulnerable detainees (detainees at risk should be checked every 15 minutes) have been complied with; and
- That reviews of the continuing requirement for detention have been conducted.

The number of custody records inspected has been increasing: in 2008/2009 49% were checked; in 2009/2010 60% were checked; in 2010/2011 67% were checked; in the first Quarter of 2011/2012 74% were checked; and in the second Quarter of 2011/2012 78% were checked. Given the central importance of checking custody records, it is hoped that this trend will continue.

### **Satisfactory/unsatisfactory visits**

During 2010/2011, 82% of visits were deemed to be entirely satisfactory. That is an increase from 2009/2010 when 77% of visits were deemed satisfactory. A total of 227 issues were noted by Custody Visitors during 2010/2011. That represents a decrease in the overall number of concerns during 2009/2010 (268). Custody Visitors noted 13 concerns in relation to treatment/rights of detainees: of those, 4 related to insufficient checks; 4 related to detainees not being advised of their rights; and 3 related to the review of detention. Custody Visitors noted a further 49 concerns in respect of the health and well-being of detainees: of those, 11 related to adequate bedding; and 34 related to oxygen checks. 'Oxygen check' was introduced as a specific category in April 2010. Custody Visitors noted 165 concerns regarding the conditions of detention: of those, 20 related to cleanliness; 63 related to safety/security hazards; 41 related to sanitation; and 28 related to faulty equipment.

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<sup>6</sup> Police and Criminal Evidence (Northern Ireland) Order 1989.

While the numbers remain relatively low, and there has been a decrease in the overall number of concerns noted, there has been an increase in the number of concerns relating to the health and well-being of detainees. That is a cause for concern. It must be noted that any health and well-being concern can have disastrous consequences and therefore must be taken extremely seriously. The PSNI should analyse the reasons for the increase in the number of health and well-being concerns noted and consider what steps may be required to respond to the increase. Thereafter, the PSNI should report to the Human Rights and Professional Standards Committee within 3 months of the publication of this Human Rights Annual Report.

### **Recommendation 13**

**The PSNI should analyse the reason(s) for the increased number of concerns noted by Custody Visitors in respect of the health and well-being of detainees and consider what steps may be required to remedy those concerns. The analysis should pay particular regard to the rights guaranteed by the European Convention on Human Rights. The PSNI should report on its analysis to the Human Rights and Professional Standards Committee within 3 months of the publication of this Human Rights Annual Report.**

### **Vulnerable persons in custody**

In the Human Rights Annual Report 2010, the PSNI treatment of vulnerable persons in custody was dealt with and is not repeated here save to report that work is underway to ensure that vulnerable persons who may require specialist treatment have access to that treatment quickly and appropriately. In particular, further consideration is being given to the use of Forensic Medical Officers and the provision of psychiatric nurses. This will be returned to during 2012.

Recommendation 5 of the Human Rights Annual Report 2010 recommended that PSNI should consider requiring all custody officers to attend SafeTALK training. SafeTALK training is a half day awareness training session on suicide alertness. During 2011, PSNI considered the most appropriate suicide training package to be delivered to custody officers. PSNI is currently liaising with the Public Health Agency

and intends that SafeTALK training will be delivered to Custody Trainers. That is a very welcome development. In the event that PSNI confirms that training has been or will be delivered and when, Recommendation 5 will be implemented in full. Until that time, Recommendation 5 remains outstanding.

### **Non-designated custody suites**

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.<sup>7</sup> 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.<sup>8</sup>

The Police and Criminal Evidence (Northern Ireland) Order 1989 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) the constable has taken a person into custody from a person other than a constable without the assistance of any other constable and no other constable is available to assist and 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 or she must be taken to a designated station not more than six hours after his/her

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<sup>7</sup> Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), Article 36.

<sup>8</sup> Article 32 of PACE.

arrival at the first police station unless he/she 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/she were taken from the first police station.

A person must be taken quickly to a place of detention: he or she may not be 'held' outside of such a place because, for example, the station is busy and must never be held outside of a place of detention so as to delay the detention clock from commencing to run.<sup>9</sup> It can be noted that detention commences the moment an arrested person arrives at the first police station to which they are taken after arrest. Even if police are required to hold an arrested person in a police vehicle on station grounds due to the check-in area inside the station being busy, the detention clock will have already started. It is therefore in PSNI's interests to ensure that stations are adequately resourced to allow for the timely checking in of detainees.

There are currently 17 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.<sup>10</sup> That compared to 174 persons detained in non-designated stations during 2008/2009. Given the sharp rise in the number of persons held in non-designated stations, Recommendation 4 of last year's Human Rights Annual Report recommended that PSNI should continue to monitor the high number of detainees held in non-designated stations and to keep the designation status of stations under continual review. PSNI was to report to the Committee annually on the number of persons held in non-designated police stations with the report to detail the length of time each detainee is held.

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<sup>9</sup> Generally a person should not be kept in police detention for more than 24 hours without charge: Article 42(1) Police and Criminal Evidence (Northern Ireland) order 1989.

<sup>10</sup> Of those, none were detained for more than six hours. 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.



PSNI provides statistics on PACE detention to the Policing Board on an annual basis, including details of the number of persons held in non-designated stations. PSNI has provided the Policing Board with statistics detailing that during 2010/2011, 268 persons were held in non-designated stations. In response to Recommendation 4 of last year's Human Rights Annual Report, PSNI advised that listing the length of time detainees are held is unnecessarily bureaucratic and time consuming. PSNI advises that anyone who is processed through a non-designated custody suite is treated according to PACE legislation and the PACE Code of Practice and would not be detained beyond the legislative stipulation of 6 hours unless there are set reasons.

Given the duty on police officers to record the length of detention of all detainees, whether in designated or non-designated stations, and the fact that the number held in non-designated stations is relatively small, it is expected that the PSNI will have that information readily available. However, to avoid creating unnecessary additional bureaucracy Recommendation 4 of the Human Rights Annual Report 2010 is withdrawn but replaced with the recommendation that the PSNI should report to the Human Rights and Professional Standards Committee annually on the number of detainees held in non-designated police stations for more than 6 hours together with the reason for that further detention.

#### **Recommendation 14**

**PSNI should report to the Human Rights and Professional Standards Committee annually on the number of detainees held in non-designated police stations for more than 6 hours together with the reason for that further detention.**

The PSNI is reminded that to record periods of detention, particularly where that detention has been extended beyond 6 hours in a non-designated station, cannot be described as bureaucracy. Rather, it is a legal requirement under PACE. To provide an account for such periods of detention is a legitimate requirement of the accountability mechanism.

## **Immigration detainees**

Until early 2006, the practice in Northern Ireland, alone in the United Kingdom, 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”<sup>11</sup> to reflect the circumstances in which immigration detainees have been deprived of their liberty.

Since January 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. Many of these individuals have been held, in the first instance, at police custody suites. A Memorandum of Understanding exists between the PSNI and the UK Borders Agency (UKBA)<sup>12</sup> stipulating that “[immigration] detainees should 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 Policing Board’s Human Rights Annual Report 2009 that it is not uncommon for immigration detainees to be kept in police custody for periods of up to 5 days. Although PSNI has not created the circumstances in which immigration detainees are detained, a recommendation was made in the Human Rights Annual Report 2009 that the PSNI should report to the Policing Board on a 6-monthly basis the number of immigration detainees held in police custody and the duration of their stay. The PSNI accepted that recommendation and now provide the Policing Board with raw data on persons arrested for immigration offences. That data is then collated by the Policing Board’s statistics and research branch and a summary of the main findings provided to the Committee. The main findings for the period 1 April 2010 to 31 March 2011 are:

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<sup>11</sup> The Detention Centre Rules 2001, SI 2001238, Rule 3(1).

<sup>12</sup> 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.

- 333 persons were detained in police custody for immigration offences between 1 April 2010 and 31 March 2011;
- The main reason for arrest was 'Detained on Immigration Authority' (49.2%);
- 258 males (77.5%) were detained for immigration offences;
- Three fifths (60.1%) of immigration detainees were aged 25-40;
- Over one quarter (28.5%) of immigration detainees were held in Musgrave Street;
- Over half (52.9%) of immigration detainees were held for up to 24 hours, while over one quarter (25.8%) were held between 25 and 48 hours;
- 52 immigration detainees were held for 3 nights or more;
- 5 immigration detainees were held between 109 and 115 hours, a period spanning five overnight stays; and
- The largest group of immigration detainees are of Chinese origin (72 detainees, 21.6%).

Larne custody suite has been converted by the UKBA into a short term holding facility for immigration detainees. The custody suite has been refurbished to make it more suitable for the immigration detention of adults. The short term holding facility opened in July 2011. The effects of that on the number of immigration detainees held in police custody should be evidenced in the data provided to the Policing Board by PSNI and will be reported upon in due course.

### **Terrorism detainees**

The treatment, detention, questioning etc. of terrorism detainees is governed by Part I of Schedule 8 to the Terrorism Act 2000 (TACT) and Code H to the Police and Criminal Evidence (Northern Ireland) Order 1989. The Custody Visiting Scheme, analysed above, covers detention of persons arrested under section 41 TACT.

Section 41 TACT empowers a police officer to arrest without warrant a person whom he reasonably suspects to be a terrorist. This is a very wide power as the officer does not need to have a reasonable suspicion of a specific offence having been committed: the suspicion must be that the person is or has been concerned in the commission, preparation or instigation of acts of terrorism. The relevant acts need

not have been identified at the time of arrest. It may lawfully be used for the arrest in respect of certain terrorist offences such as membership and support of a proscribed organisation. A person arrested under section 41 may be detained for a period of up to 48 hours without the intervention of a court. Importantly, however, that power to detain remains subject to the common law principle that where a police officer concludes that prima facie proof of guilt is unlikely to be uncovered, he or she must release the detained person without condition. Detention can be extended for up to 14 days on judicial authority.<sup>13</sup> There is no power to release that person on police bail.<sup>14</sup>

In his report on the operation of the Terrorism Act in 2010, the Independent Reviewer of Terrorism Legislation, David Anderson Q.C., analysed the figures for section 41 arrests and detention in both Great Britain and Northern Ireland during 2009/2010. He reported that in Northern Ireland in 2009/2010 167 people were detained under section 41: more than twice the total for Great Britain (78). He stated “Adjusting for relative population sizes, section 41 was used some 70 times more frequently in Northern Ireland than it was in Great Britain during 2009/10.”<sup>15</sup>

Of the 167 people arrested under section 41 in 2009/2010, only 9 (5%) were detained for more than 48 hours, and 3 (2%) for more than 4 days. 95% were released within 48 hours. Nobody was detained for longer than 1 week. Fewer suspects were thus held for longer periods than in Great Britain. Statistics for the gender, age and ethnicity of terrorism suspects are not collated in Northern Ireland. Of the 167 persons detained under section 41 in Northern Ireland during 2009/2010, 36 (22%) were charged and the remainder released. 8 of those persons (5%) were charged under the Terrorism Act 2000.<sup>16</sup>

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<sup>13</sup> Between July 2006 and 25 January 2011 detention could be extended on judicial authority by up to 28 days, but since 25 January 2011, following the Home Office’s review of counter-terrorism powers, the maximum period of extended detention has reduced to 14 days.

<sup>14</sup> Paragraph 1.6 of PACE Code H.

<sup>15</sup> *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2011, page 55.

<sup>16</sup> *Northern Ireland Terrorism Legislation: Annual Statistics 2009/2010*, Northern Ireland Office, November 2010.

It is clear, therefore, that the power of arrest under section 41 TACT is used more frequently in Northern Ireland than in Great Britain. However, fewer people were held for periods in excess of 48 hours. David Anderson Q.C. states that “Those detained in Northern Ireland under the [Terrorism Act 2000] are appreciably less likely than in Great Britain to be charged, and relatively few of those charges are for terrorist offences.”<sup>17</sup> During 2010/2011, the number of persons arrested under the Terrorism Act 2000 increased. Of the 195 persons arrested under Section 41 of the Terrorism Act between 1 April 2010 and 31 March 2011 there were 17 persons held for more than 48 hours with an extension of further detention being made 18 times.<sup>18</sup> The compatibility of Schedule 8 TACT 2000 with Article 5 of the ECHR has recently been challenged in Northern Ireland.<sup>19</sup> The High Court in Belfast dismissed the detainee’s challenge but leave has been given to appeal to the Supreme Court. The Committee will return to this issue once Judgment is given.

David Anderson Q.C. has said that “Special procedures and offences for dealing with terrorism may be justified when there is an operational need for them, when their use is confined to cases of need and when it is proportionate to their impact on individual liberties. Such procedures and offences have proliferated over the past decade: but vigilance is required, in areas that I have specified, to ensure that these conditions are respected... While its use is sometimes necessary to unravel complex terrorist plots, the low proportion of those arrested under section 41 who were charged with terrorism offences in 2010 suggests that it may be overused, particularly in Northern Ireland.”<sup>20</sup> The Committee wishes to endorse that view and will continue to monitor the situation and report further in due course.

## **Recommendation 15**

**The PSNI should review its policy and practice in respect of arrests under section 41 of the Terrorism Act 2000 to ensure that police officers do not revert**

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<sup>17</sup> *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2011, pages 55 – 57.

<sup>18</sup> One person was subject to two extensions. *Northern Ireland Terrorism Legislation: Annual Statistics 2010/2011*, Northern Ireland Office, November 2011.

<sup>19</sup> *In the matter of an application for judicial review by Colin Duffy and others (No 2)* [2011] NIQB 16.

<sup>20</sup> *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2011, page 6.

**to section 41 in cases where it is anticipated that the suspect is more likely to be charged under non-terrorism legislation. The PSNI should thereafter provide reassurance to the Human Rights and Professional Standards Committee that relevant safeguards have been put in place.**

In Great Britain, statistics are compiled for terrorism arrests according to gender, age and ethnicity. Equivalent statistics are not currently compiled in Northern Ireland. The Committee will consider, having discussed the issue with relevant stakeholders, whether such statistics should be required of the PSNI.

## 11. HUMAN RIGHTS AWARENESS IN THE PSNI

The culture and ethos of an organisation is the way an organisation sees itself and the way in which it sees and interacts with others. A human rights culture in the PSNI depends upon a number of factors, most prominent of which are the promotion of human rights awareness throughout the organisation and an ongoing commitment to human-rights-based policing. The achievement of a human rights culture is a continuous process which is an ongoing responsibility for PSNI leadership in association with other key stakeholders: all have to play a part.

### **Monitoring human rights awareness and culture**

A human rights culture within a police service is demonstrated by the quality of its interactions with the community it serves. That can be measured by, amongst other things, an analysis of the complaints process, internal disciplinary mechanisms and close scrutiny of police action on the ground. The Policing Board, by its Human Rights and Professional Standards Committee (the Committee) monitors all aspects of policing and reports formally through the Human Rights Annual Report and thematic reviews.

The report of the Independent Commission on Policing for Northern Ireland (the Patten Report) is underpinned by a vision of policing which is based upon meaningful engagement, community consent and police accountability.<sup>1</sup> The Patten Report was building upon recognised principles: it recognised what has been true throughout democratic states – that for a police service to maintain legitimacy it must operate with the consent of the community. Accountability is both the giving of an account for actions taken and the holding to account for those actions. The police are accountable ultimately to the community. They must strive for legitimacy to achieve the active cooperation and trust of the community.

The Policing Board is focusing increasingly on a qualitative assessment of the actions of the police on the ground, taking into account the experiences of those who

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<sup>1</sup> *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999.

are policed. The community's view of policing and therefore its acceptance of the legitimacy of the PSNI is influenced by its experience of policing. The thematic review is the process by which the Policing Board carries out in-depth reviews of issues of particular concern to the community. In carrying out that function, the Policing Board looks both at policy and practice. It is the latter which reveals whether the police do respect and protect the rights of all people in Northern Ireland. The Human Rights Act 1998 helpfully provides a framework of principles: a model for a functioning society within which certain rights may be limited. To ground accountability in the Human Rights Act therefore enables scrutiny of police culture and awareness.

In order to uphold the duty to protect the human rights of its community, police have legitimate powers to limit the rights of others, most notably in depriving people of their liberty and in the state-sanctioned use of force. But this unique position comes with a commensurate level of scrutiny and accountability with clearly defined international standards being adhered to. 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, training (including appraisal), investigations and operations (from planning to implementation including decision-making on the ground) are effective in ensuring human rights compliance. Every aspect of policing, from stops and searches, making arrests, conducting interrogations and securing the crime scene, include human rights principles and must be kept under review. Accountability is as much a state of mind, of professional standards and culture, as it is of structures. Strong accountability results in stronger community policing with the police securing the respect, support and help of local communities.

A police service which is open to constructive criticism, welcomes scrutiny and accepts the input and ideas of the community it serves is one which truly has embraced a culture of human rights compliance. The monitoring work which has been undertaken by the Policing Board with the active cooperation of the police demonstrates a real willingness by the PSNI to submit to accountability mechanisms and to embrace a human rights culture in all that it does.



However, a culture of human rights compliance is not uncontested within the PSNI, for example, a recent article which appeared in the Police Federation for Northern Ireland's *PoliceBeat* publication<sup>2</sup> presented human rights and accountability as a potential impediment to effective policing and community safety. The article was negative in tone and caused disquiet amongst many members of the Committee. It was clear from that article that there may be some officers within PSNI who remain opposed in theory to a human-rights-based approach to policing. That must be addressed both by the PSNI and the Policing Board.

Having discussed the matter with PSNI leadership and a number of operational officers the disquiet has been allayed to the extent that the PSNI as an organisation has restated its commitment to protecting and upholding the human rights of all members of the community and has taken the opportunity on a number of occasions to emphasise its approach to embedding human rights protection as a core function of policing. That is as it should be: human rights compliance is a legal requirement and the foundation of peace, democracy and the rule of law. More work is required to instil that belief within the small minority of officers who still need to be convinced. The Committee will engage actively with the PSNI to consider what further steps are required.

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<sup>2</sup> The Police Federation for Northern Ireland is a body, similar to a Trade Union but without the right to resort to industrial action, which represents PSNI officers of all ranks from Constable to Chief Inspector.

## 12. POLICING WITH THE COMMUNITY

Central to the vision of police reform, for the Independent Commission on Policing for Northern Ireland (the Patten Commission), was 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.<sup>1</sup> That was enshrined in legislation by the Police (Northern Ireland) Act 2000, which requires the police to carry out their functions in cooperation with, and with the aim of securing the support of, the local community.<sup>2</sup> 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.

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 then that while the Confidence Route Map demonstrated a significant commitment by the PSNI to achieve the key priorities of policing with the community, more work was required in respect of service delivery, community engagement and effective local partnering. That work was progressed by PSNI and throughout 2011, the PSNI briefed the Policing Board on progress in developing its Policing with the Community Strategy and Implementation Plan. The Policing with the Community 2020 Strategy was published in March 2011 and makes an unequivocal statement as to the PSNI's commitment to further developing its policing with the community model.

The Policing Board has seen many excellent examples of local engagement between the police and the community that are producing tangible benefits for police

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

<sup>2</sup> Section 32(5) of the Police (Northern Ireland) Act 2000.

and the community alike. However, the extent to which high level community engagement has been progressed across Northern Ireland is fragmented. There is clearly more to be done but the Policing Board and the PSNI will continue to work in partnership to achieve policing with the community as the core function of the police service. The success of the strategy will be judged by its delivery of community confidence through effective engagement and partnership working. Policing with the community is not just about working with communities; it is about working within communities.

Monitoring the implementation of the PSNI's Policing with the Community Strategy remains a key priority of the Policing Board. The 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. Members of that Committee have recently engaged with inspectors from the Criminal Justice Inspection Northern Ireland (CJINI) who are currently carrying out a follow-up review of policing with the community. 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 has recently completed a review of policing with and for lesbian, gay, bisexual and transgender individuals. Through 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 work. The Committee has agreed that community style policing will be the focus of its next thematic review.

### **13. PRIVACY AND DATA PROTECTION**

Article 8 of the European Convention on Human Rights (ECHR) states that everyone has the right to respect for their private and family life, their home and their correspondence. There can be no interference by a public authority with the exercise of that right save as is in accordance with the law, 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 and is proportionate.

The Policing Board's Human Rights and Professional Standards Committee (the Committee) monitors compliance with Article 8 when carrying out its human rights monitoring work, for example, it considers the nature of complaints made against the police; it considers police use of powers such as stop and search and use of force; it considers police tactics used during operations; and it considers police policy, such as the policy to retain DNA samples and fingerprints. Each and every contact a police officer has with an individual engages Article 8 ECHR.

Through the process of thematic review, the Committee is also able to consider specific Article 8 issues, for example, during the course of the current thematic on policing with and for people who are lesbian, gay, bisexual and/or transgender (LGB&T), the Committee has heard evidence from stakeholders that some LGB&T people are afraid to report crimes to the police as they fear the police will inadvertently 'out' them during the course of investigating the crime. The Committee will address those particular issues in the report of the thematic review which is due to be published in early 2012.

All PSNI officers and staff handle personal information about members of the public, and about colleagues, on a daily basis. The way in which that information ought to be used, stored and distributed is governed by primary legislation, namely the Data Protection Act 1998 and the Freedom of Information Act 2000. Failure to comply with the legislation could have an adverse impact on an individual's enjoyment of their

Article 8 ECHR privacy rights. The police officer or staff member who acts in breach of the legislation may also have committed a criminal offence.

PSNI investigate any alleged breach of the legislation and where appropriate, internal misconduct proceedings are initiated. Article 3(1) of the PSNI Code of Ethics requires that “Police officers shall gather, retain, use and disclose information or data only in accordance with Article 8 of the ECHR and shall comply with all relevant legislation and Police Service policy and procedure governing the gathering, retention, use and disclosure of information and data.” Furthermore at Article 3(3) the Code states “Information or data of a personal or confidential nature in the possession or control of police officers shall be kept confidential, unless the performance of duty, compliance with legislation or the needs of justice require otherwise.”

The Data Protection Act 1998 provides individuals with an entitlement, subject to specified exemptions, to find out what personal information is held about them by businesses and organisations in the private and public sectors. It also requires that personal information is fairly and lawfully processed; processed for specified and lawful purposes; adequate, relevant and not excessive; accurate and up to date; not kept for longer than is necessary; processed in accordance with the rights of the data subject; secure; and not transferred to other countries without adequate protection.

The Freedom of Information Act 2000 provides individuals with the right to request information held by public authorities. Provided the information requested doesn't fall within an exempt category of information, the public authority must confirm whether they hold the information and they must normally provide it to the applicant within 20 working days.

All PSNI officers and staff receive data protection training upon appointment. They have all been issued with an electronic Data Protection Awareness Booklet. E-learning modules for data protection, freedom of information, information security and the government protected marking scheme are currently being undertaken by officers and staff. In addition, an e-learning module for records management is

currently in development and when completed it will also be undertaken by all staff. Written policy sets out the legal framework and contains guidance for officers and staff in respect of each discipline. In order to ensure compliance with the Data Protection Act, the PSNI Data Protection Office conducts random daily audits electronically of PSNI information systems and staff are required to complete a return. Audits carried out during 2010/2011 found no breaches of the Data Protection Act.

There were 6 complaints made directly to PSNI during 2010/2011 in respect of data protection, 5 of which required no further action and 1 of which resulted in remedial action being taken. A further 2 data protection complaints were made to the Information Commissioner's Office (ICO). The ICO decided that PSNI did not comply with 1 subject access request as not all of the relevant information was initially provided to the subject however the ICO deemed that no formal regulatory action was required. The purpose of the ICO is to protect information rights in the public interest throughout the United Kingdom. It does this by promoting good practice, ruling on complaints, providing information to individuals and organisations and taking appropriate action when the law is broken. In addition to considering data protection complaints, the ICO also considers freedom of information complaints.

During 2010/2011, the ICO issued PSNI with 6 decision notices in respect of breaches of the Freedom of Information Act 2000. To date, a further 2 decision notices have been issued in respect of breaches of the Freedom of Information Act. Of the 8 decision notices issued by the ICO since April 2010, there were 3 cases in which PSNI was found to have erred in applying certain exemptions when responding to information requests.<sup>1</sup> PSNI was required to respond appropriately to the relevant requests. The remaining 5 cases all involved complaints that PSNI refused to provide information by applying an exemption.<sup>2</sup> The ICO found that PSNI was correct to apply an exemption in each of those cases and therefore did not

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<sup>1</sup> Decision Notice FS50202772 issued 29 June 2010; Decision Notice FS50328067 issued 13 December 2010; and Decision Notice FS50387372 issued 8 November 2011.

<sup>2</sup> Decision Notice FS50210849 issued 30 June 2010; Decision Notice FS50216426 issued 3 June 2010; Decision Notice FS50244614 issued 18 October 2010; Decision Notice FS50265155 issued 31 March 2011; and Decision Notice FS50315818 issued 21 June 2011.

uphold the complaint, however, in each case it found procedural breaches of the Freedom of Information Act, primarily that PSNI had failed to issue an adequate refusal notice within the statutory timeframe of 20 days. The ICO did not require PSNI to take any further action in any of those 5 cases.

<b><u>ICO Decision Notice reference no.</u></b>	<b><u>Date issued</u></b>	<b><u>Basis of complaint</u></b>	<b><u>ICO findings</u></b>	<b><u>Action to be taken by PSNI</u></b>
FS50202772	29 June 2010	The complainant made two requests to the PSNI for information relating to travel arrangements made by or on behalf of the son of the then Chief Constable. PSNI refused to confirm or deny whether it held the requested information, citing the exemption at section 40(5) of the Freedom of Information Act (third party personal data).	The ICO found that section 40(5) had been incorrectly applied in this instance.	PSNI required to confirm or deny whether it holds information relating to the first request and to consider the second request accordingly.
FS50328067	13 December 2010	Further to the ICO decision notice FS50202772 (summarised in the row above), PSNI confirmed that it did hold information relating to the first request. PSNI refused to disclose the information as per the second request citing exemptions under section 38 (health and safety) and section 40 (third party personal data) of the Freedom of Information Act.	The ICO found that the section 40 exemption was applied correctly to some of the withheld information, but not to all of it.	PSNI required to disclose the information to which an exemption was wrongly applied.
FS50387372	8 November 2011	The complainant requested information relating to a police	The ICO found that PSNI wrongly	PSNI required to respond to

		investigation. PSNI refused to comply with the request, arguing that it was vexatious under section 14(1) of the Freedom of Information Act.	assessed the complainant's request as vexatious.	the request, either by providing the requested information or by issuing an appropriate refusal notice.
FS50210849	30 June 2010	The complainant requested information held by PSNI relating to the Smithwick Tribunal. PSNI refused to disclose the information and cited a number of exemptions.	The ICO was satisfied that exemptions did apply to all of the information that PSNI refused to provide. However, the ICO found that PSNI failed to provide a refusal notice within the statutory time limit and failed to confirm that the information was held within 20 working days.	No action required.
FS50216426	3 June 2010	The complainant requested information regarding the number of police message forms that were served on ex-security force members in Northern Ireland during a particular period. PSNI refused the request under section 12 of the Freedom of Information Act (i.e. the cost of complying with the request would exceed the appropriate cost limit).	The ICO found that the PSNI applied section 12 correctly. However, the ICO found that PSNI failed to specify its reliance on the application of section 12 within its refusal notice to the complainant.	No action required.



FS50244614	18 October 2010	The complainant requested information held by PSNI relating to a murder inquest. PSNI refused to disclose the information and cited a number of exemptions.	The ICO was satisfied that exemptions did apply to all of the information PSNI refused to provide. However, the ICO found that the PSNI failed to provide the complainant with an adequate refusal notice within the statutory time limit.	No action required.
FS50265155	31 March 2011	The complainant requested copies of reports relating to the Stevens Enquiries. PSNI refused to disclose some of this information and cited a number of exemptions.	The ICO was satisfied that exemptions did apply to all of the information PSNI refused to provide. However, the ICO found that PSNI failed to provide a refusal notice within the statutory time limit and failed to confirm that the information was held within 20 working days.	No action required.
FS50315818	21 June 2011	The complainant requested information relating to a specified address during the 1970s. PSNI refused to confirm or deny whether it held any relevant information, citing a number of exemptions.	The ICO found that PSNI correctly applied the exemptions. However the ICO found that PSNI failed to provide an adequate or timely refusal notice.	No action required.

## 14. CHILDREN AND YOUNG PEOPLE

The European Convention on Human Rights (ECHR) protects everyone from abuse of power, disrespect and neglect. The principles reflect that everyone is entitled to certain fundamental rights to enable them to flourish. Children and young people have the same rights as adults but have additional rights as a result of their vulnerability. For example, by virtue of the United Nations Convention on the Rights of the Child (UNCRC), which is an international treaty ratified by the UK government, there is a comprehensive set of rights for children, including the right to express their views and have them taken into account in all matters affecting them. The UK government by ratifying the UNCRC in 1991 agreed to make all laws, policy and practice compatible with the UNCRC. When interpreting domestic law, including the Human Rights Act 1998, account should be taken of the UNCRC and effect given to it. The European Court of Human Rights has held that when considering the rights and freedoms enshrined by the ECHR, particular importance should be attached to the rights of the child.<sup>1</sup> All decision making must involve a consideration of the best interests of the child.

The Northern Ireland Policing Board's Human Rights and Professional Standards Committee (the Committee), as part of its continuing duty to monitor PSNI 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 a key priority. Further to that, the Committee undertook a thematic review of policing with children and young people. Perhaps the most important lesson learned from the thematic review was that the demonization of children and young people has the potential to contaminate all aspects of policing and the criminal justice system. The Committee therefore highlighted the responsibility of all to end the demonization of children and young people as a matter of urgency. Since publication of the thematic review, stakeholders have continued to report negative stereotyping of young people by some police officers. PSNI recognises that such behaviour is unacceptable and is making considerable efforts to address it with police officers of all ranks. An update report on PSNI progress in

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<sup>1</sup> For example in *Sahin v Germany* (Application No. 30943/96) July 2003.

implementing the recommendations made in the children and young people thematic review will be published by the Committee in due course.

### **Thematic review**

A thematic review<sup>2</sup> of policing with children and young people was published by the Policing Board on 26 January 2011. As part of the thematic review process, the Human Rights and Professional Standards Committee received oral testimony and written submissions from a wide range of stakeholders including those working with the most marginalised young people. Mechanisms were established to ensure that the opinions of young people on policing were taken into account and considered by the Committee. The Policing Board's Human Rights Advisor also met with a large number of stakeholders, including police officers, to take evidence and discuss the issues.

The terms of reference for the thematic review were necessarily limited in scope but covered:

- the policing of anti-social behaviour, including anti-social behaviour orders (ASBOs) and a consideration of 'naming and shaming';<sup>3</sup>
- police practice regarding the dispersal of young people, public order and crowd control, stop and search and other powers to control the activities of children and young people; and
- alternative proposals such as diversionary disposals and community restorative justice.

A number of key issues arose and were dealt with comprehensively in the thematic review. A copy of the report can be accessed via the Policing Board's website.<sup>4</sup> A

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<sup>2</sup> Thematic reviews are complementary to the Policing Board's human rights monitoring framework and have been taken forward on behalf of the Policing Board by the Human Rights and Professional Standards Committee and the Policing Board's Human Rights Advisor. The purpose of a thematic review is to provide focused scrutiny on a specific area of police work. A key feature of this approach is use of the community's experience of policing as the evidence base to evaluate police policy and practice.

<sup>3</sup> It is important to make plain that the Committee chose to include anti-social behaviour in the thematic review not because it is perpetrated by children and young people but because society assumes falsely that young people are the main protagonists of anti-social behaviour: the Committee sought to address that misconception through the thematic review.

total of 30 recommendations were made. A number of key recommendations are summarised below.

The Committee recommended that PSNI should not apply for ASBOs in relation to children under the age of 18 years but should instead consider alternative disposals available in respect of children. The Committee also considered the issue of the release of images of persons under the age of 18 years and recommended that images should not be released save where the release is absolutely necessary for the purpose of protecting the general public or the young person and only after all reasonable methods have been tried and failed. Each and every decision to release a single image or other detail which may identify a child must be justified. In each case before the decision is taken the PSNI should conduct a detailed risk assessment and consult with all relevant individuals and agencies. A record of the risk assessment and consultation must be recorded. The PSNI accepted that recommendation and amended its policy to include revised guidance.

The Committee also considered the role of Neighbourhood Officers, Youth Diversion Officers and Anti-Social Behaviour Officers and concluded that officers should be assigned to duty according to their particular interest, skills and experience. In order to build and maintain meaningful relationships with their local communities it is important that such officers, particularly Neighbourhood Officers, are not moved around too frequently.

During the thematic review, some stakeholders expressed dissatisfaction with what some saw as an ad hoc relationship between police and community restorative justice schemes. However, the criticism may not be as a result of PSNI inactivity or unwillingness to support the schemes. In fact, the PSNI has taken the lead in promoting and supporting many of the schemes and the Committee will continue to support the PSNI in its endeavours. The thematic review recommended that PSNI provide a report to the Committee setting out the structures and formal processes in place for working with community restorative justice schemes.

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<sup>4</sup> [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)

A criticism that was made of Youth Diversion within the criminal justice system was that it is not truly diversionary as the PSNI must refer every file to the PPS for a decision, which can lead to such delay that the restorative disposal is rendered meaningless for both victim and offender. However, the Committee learnt during the course of the thematic review that PSNI has been instrumental in driving forward new diversionary disposals which may reduce delay in youth cases, for example: immediate cautioning; a formal model for police discretion; and a pilot whereby restorative cautions can be delivered by community restorative justice schemes. The Committee welcomed the proactive approach PSNI has taken.

The Committee was impressed at PSNI's role in initiating Child Intervention Panels and also the leading role it has taken in Integrated Offender Management: these are examples of where the PSNI has shown courageous leadership in some truly innovative and progressive work with young people. The central theme emerging from the thematic review was that the policing approach to children and young people needs to be multi-faceted yet cohesive. The experiences shared with the Committee show that children and young people can have very different experiences depending on where they happen to live. That is unacceptable and must be addressed.

The publication of the thematic review marked the start of a process of monitoring and review by the Committee in terms of the PSNI response to tackling the issues raised and the 30 recommendations made. PSNI has accepted all but one of the recommendations.<sup>5</sup> The Committee intends to keep policing with children and young people on its agenda and will continue to liaise with stakeholders to seek their valuable input and feedback. In October 2011, the public session of the monthly Policing Board meeting was themed on the topic of children and young people. Stakeholders were invited to attend and were given the opportunity to put questions to Members of the Policing Board and to the Chief Constable.

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<sup>5</sup> The recommendation that was not accepted was Recommendation 5 which required PSNI to provide each District with a nominated Anti-Social Behaviour Officer who has received bespoke youth training. The Human Rights and Professional Standards Committee has discussed PSNI's rejection of this recommendation. The consensus view amongst Members was that, rather than accept the rejection of the recommendation, there was merit in pursuing the issue with PSNI.

A key concern arising from the public meeting, which was also covered in the thematic review, was the issue of paramilitary punishment assaults and shootings.

### **Paramilitary assaults and shootings**

In 2004, 16% of the children and young people who responded to a survey carried out by the Children's Law Centre reported that paramilitary and sectarian activity affected their lives.<sup>6</sup> In 2007, the Northern Ireland Commissioner for Children and Young People (NICCY) carried out a review of children's rights in Northern Ireland.<sup>7</sup> Some of the children and young people who took part in the review who lived in interface areas or areas of heightened community tension talked of continued paramilitary control within their communities and reported that the threat of paramilitary violence remained. Primary research conducted in six communities in Northern Ireland during 2008 noted concern amongst communities "that there were no longer effective controls on young people, that there was a 'policing vacuum' and that the 'protectors' of the community had 'retired'. The police were either unwilling to intervene or unwelcome .... In Republican/Nationalist Communities there was a continuing reticence to report the 'anti-social behaviour' of young people to dissident paramilitaries as it was felt that they punished too heavily. Yet a lack of trust in the police remained."<sup>8</sup>

In Northern Ireland, given the present sectarianism and vigilante activity, naming and shaming may be particularly dangerous and can potentially engage the absolute Article 3 ECHR right (not to be subjected to torture or to inhuman or degrading treatment or punishment), and the Article 2 ECHR right to life. In 2010, stakeholders raised serious concerns about the safety of children identified by Operation Exposure.<sup>9</sup> There was a real fear that the images would be used for the purpose of identifying either members of the 'other' community or identifying young people who may receive 'summary justice' dispensed by paramilitary groups. Those stakeholders

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<sup>6</sup> *Shout out Soon*, Children's Law Centre, 2004.

<sup>7</sup> *Children's Rights: Rhetoric or Reality. A Review of Children's Rights in Northern Ireland 2007/08*, Northern Ireland Commissioner for Children and Young People (NICCY), 2008.

<sup>8</sup> *Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland*, Siobhán McAlister, Phil Scraton and Deena Haydon for Queen's University Belfast, Prince's Trust Northern Ireland and Save the Children, November 2009, page 71.

<sup>9</sup> See page 55 of this Human Rights Annual Report.

also suggested that young people are highly unlikely to report any threat to the PSNI and therefore will be unprotected from potential retribution.

Between 1 April 2010 and 30 September 2011, there have been 118 casualties reported to the PSNI of paramilitary style assaults and shootings: this figure accounts for 71 casualties of assault and 47 casualties of shootings.<sup>10</sup> Of those, 52 (44%) were aged between 16 and 24. When referring to 'casualties of paramilitary style assaults' PSNI include all victims of an assault or shooting carried out on an individual or individuals by one or more persons usually from their own community. Typically, the reasoning behind the attack is either to intimidate the victim or to punish them for anti-social activities. Each paramilitary style attack is verified by the Investigating Officer. Deaths are not included in the figures.<sup>11</sup>

In the following areas there have been 5 or more recorded casualties of paramilitary style assaults and shootings during the 18 month period between April 2010 and September 2011:

- West Belfast – 22 casualties
- North Belfast – 19 casualties
- East Belfast – 10 casualties
- Lisburn – 9 casualties
- Foyle – 8 casualties
- Strabane – 8 casualties
- Carrickfergus – 7 casualties
- Newtownards – 5 casualties
- Newtownabbey – 5 casualties

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<sup>10</sup> *PSNI Security Situation Statistics by District and Region, 2010/2011; PSNI Security Situation Statistics by Area and Region, 2010/2011; PSNI Security Situation Statistics by District and Region, 1 April 2011 – 30 September 2011; and PSNI Security Situation Statistics by Area and Region, 1 April 2011 – 30 September 2011.*

<sup>11</sup> Freedom of Information Request, F-2010-03008.

The areas in which there have been the most recorded casualties of paramilitary style shootings during the 18 month period between April 2010 and September 2011:

- West Belfast – 13 casualties
- North Belfast – 10 casualties
- Lisburn – 7 casualties
- Foyle – 7 casualties
- Strabane – 5 casualties

The areas in which there have been the most recorded casualties of paramilitary style assaults during the 18 month period between April 2010 and September 2011:

- East Belfast – 10 casualties
- North Belfast – 9 casualties
- West Belfast – 9 casualties
- Carrickfergus – 7 casualties
- Newtownards – 5 casualties

Whilst age, gender and perceived religion (based on the Investigating Officer's attribution) are recorded for all victims of paramilitary style attacks, this information is not published by PSNI as to provide such a breakdown has the potential to release personal information relating to individuals involved and could lead to the individuals being identified (thus breaching the Data Protection Act 1998).<sup>12</sup> However, upon request, PSNI is able to release some low level data that would not enable individuals to be identified. In response to a Freedom of Information request, PSNI advised that:

- Between 1990 and October 2010 there have been 1,306 recorded casualties as a result of paramilitary style assaults whose perceived religion was Protestant and 986 whose perceived religion was Roman Catholic.

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<sup>12</sup> Freedom of Information Request, F-2010-03008.



- In the same period there have been 1,065 recorded casualties as a result of paramilitary style shootings whose perceived religion was Protestant and 673 whose perceived religion was Roman Catholic.<sup>13</sup>

In response to another Freedom of Information request, PSNI advised that:

- Of 272 paramilitary attacks identified as having taken place in 2008, 2009 and 2010, 12 (4%) have since been regarded as having been detected/cleared.
- Of the 272 casualties, 8 (3%) have been under the age of 16.
- Of the 272 casualties, 121 (44%) have been aged 16 – 24.<sup>14</sup>

As noted above, 52 (44%) of the 118 casualties reported to the PSNI of paramilitary attacks carried out between April 2010 and September 2011 were aged between 16 and 24.

Section 32 of the Police (Northern Ireland) Act 2000 imposes a general duty on police officers to: protect life and property; to preserve order; to prevent the commission of offences; and, where an offence has been committed, to take measures to bring an offender to justice. The Human Rights Act 1998 imposes a duty on the police to act in a way which is compatible with the individual rights and freedoms contained within the ECHR. Those rights and freedoms apply equally to children and adults and include the right to life; the right not to be subjected to torture, inhuman or degrading treatment or punishment and the right to respect for private and family life.

Where children are concerned, the PSNI must comply not only with the ECHR but must also have regard to the UNCRC. The UNCRC takes into account the need for children to have special assistance and protection due to their vulnerability. The police therefore have a duty to protect children and young people against threats to their lives or physical integrity, to investigate suspicious deaths and serious assaults and to provide arrangements to secure legal accountability for those responsible for

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<sup>13</sup> Freedom of Information Request, F-2010-03008

<sup>14</sup> Freedom of Information Request, F-2011-00341

a death or serious injury. The police officer is obliged not to infringe the rights of the child or young person and to take reasonable steps to ensure that some other person does not infringe those rights.

The low level of detections in respect of identified paramilitary attacks is worrying and must be addressed. The PSNI should review the data and consider what steps should be taken to increase the detection rate of punishment attacks. In particular, the PSNI should consider what further measures are required to protect persons from violence within their communities. Thereafter, the PSNI should report to the Committee with the results of its review.

#### **Recommendation 16**

**The PSNI should review the available data and policy framework relevant to punishment attacks and consider what further measures are required to protect persons from such attacks. In particular, the PSNI should consider the particular vulnerability of children and young people and develop a strategy for addressing attacks on children and young people. The PSNI should report to the Human Rights and Professional Standards Committee within 3 months of the publication of this Human Rights Annual Report on the progress made and thereafter within 12 months of the publication of this report on the final strategy.**

## APPENDIX 1: 2011 RECOMMENDATIONS

<b>TRAINING</b>	
1.	PSNI should consider how to better utilise the experience and expertise available within the community for the development and delivery of specialist training packages.
<b>POLICY</b>	
2.	The PSNI should, within 3 months of the publication of this Human Rights Annual Report, provide to the Human Rights and Professional Standards Committee an analysis of all new <sup>1</sup> decisions taken upon application by an individual to have DNA profiles and samples and fingerprints destroyed together with any decisions taken to review or amend the policy to be adopted on any such an application being made.
3.	PSNI should provide to the Human Rights and Professional Standards Committee an explanation (together with reasons) for any decision to continue to store such information or material. That explanation should be provided within six weeks of the publication of this Human Rights Annual Report.
4.	PSNI should report to the Human Rights and Professional Standards Committee, within 3 months of the publication of this Human Rights Annual Report, on the structures and policy in place to ensure that the retention of photographs by police of all persons arrested is lawful, proportionate and necessary.
<b>COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS</b>	
5.	The PSNI should analyse the behaviour and/or conduct that was alleged to have resulted in sub-Article 1.10 breaches with a view to identifying any trends or patterns that emerge and thereafter report to the Human Rights and Professional Standards Committee with the results of that analysis within 6 months of the publication of this Human Rights Annual Report.
<b>PUBLIC ORDER</b>	
6.	The PSNI should, within 3 months of the conclusion of its review of public order policing and the use of force, provide to the Human Rights and Professional Standards Committee a report setting out the findings of the review and all steps taken or to be taken as a result of

<sup>1</sup> In other words, all decisions taken after the date of publication of this Human Rights Annual Report.

	that review. In particular, the PSNI should consider any issues that arise in relation to the use of AEP rounds.
7.	The PSNI should develop annual briefing sessions which consider lessons learned from the previous year's public order operations and which consider in particular the human rights issues involved in the planning and execution of public order operations.
<b>USE OF FORCE</b>	
8.	PSNI should publish its use of force statistics on the PSNI website on a 6-monthly basis.
<b>COVERT POLICING</b>	
9.	PSNI should forthwith complete its review of all intelligence policies, procedures and protocols and complete the overarching policy on the management of intelligence and report to the Policing Board within 4 weeks of the publication of this Human Rights Annual Report.
<b>VICTIMS</b>	
10.	The PSNI should develop a hate crime strategy, in consultation with its Independent Advisory Groups, which considers the reasons for the underreporting of hate crime, the procedures in place for reassuring and protecting victims of hate crime and a robust response to hate crime. That strategy should be provided to the Human Rights and Professional Standards Committee within 12 months of the publication of this Human Rights Annual Report.
11.	PSNI should disaggregate the statistics it collates under the heading of disability hate crime to include a separate category for learning disability.
12.	The PSNI should consider how best to ensure that officers and staff are able to recognise learning disability and therefore to respond appropriately. The PSNI should report to the Human Rights and Professional Standards Committee within 12 months of the publication of this Human Rights Annual Report on its proposals.
<b>TREATMENT OF SUSPECTS</b>	
13.	The PSNI should analyse the reason(s) for the increased number of concerns noted by Custody Visitors in respect of the health and well-being of detainees and consider what steps may be required to remedy those concerns. The analysis should pay particular regard to the rights guaranteed by the European Convention on Human Rights. The PSNI should report on its analysis to the Human Rights and

	Professional Standards Committee within 3 months of the publication of this Human Rights Annual Report.
14.	PSNI should report to the Human Rights and Professional Standards Committee annually on the number of detainees held in non-designated police stations for more than six hours together with the reason for that further detention.
15	The PSNI should review its policy and practice in respect of arrests under section 41 of the Terrorism Act 2000 to ensure that police officers do not revert to section 41 in cases where it is anticipated that the suspect is more likely to be charged under non-terrorism legislation. The PSNI should thereafter provide reassurance to the Human Rights and Professional Standards Committee that relevant safeguards have been put in place.
<b>CHILDREN AND YOUNG PEOPLE</b>	
16.	The PSNI should review the available data and policy framework relevant to punishment attacks and consider what further measures are required to protect persons from such attacks. In particular, the PSNI should consider the particular vulnerability of children and young people and develop a strategy for addressing attacks on children and young people. The PSNI should report to the Human Rights and Professional Standards Committee within 3 months of the publication of this Human Rights Annual Report on the progress made and thereafter within 12 months of the publication of this report on the final strategy.

**APPENDIX 2: IMPLEMENTATION OF 2010 RECOMMENDATIONS AND OUTSTANDING RECOMMENDATIONS FROM PREVIOUS YEARS**

		<b>Implementation Status</b>
<b>TRAINING</b>		
<b>2010 Recommendations</b>		
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.	Implemented
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.	Implemented
<b>2009 Recommendations</b>		
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.	Implemented
<b>2008 Recommendations</b>		
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.	Withdrawn

<b>POLICY</b>		
<b>2009 Recommendations</b>		
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.	Withdrawn
<b>USE OF FORCE</b>		
<b>2009 Recommendations</b>		
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.	Implemented
<b>COVERT POLICING</b>		
<b>2008 Recommendations</b>		
24.	PSNI should complete its review of all intelligence policies, procedures and protocols and develop an overarching policy on the management of intelligence within 12 months of publication of this report but should report to the Board on progress of its review within 6 months of the publication of this report.	Withdrawn

<b>VICTIMS' RIGHTS</b>		
<b>2009 Recommendations</b>		
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.	Implemented
<b>TREATMENT OF SUSPECTS</b>		
<b>2010 Recommendations</b>		
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.	Implemented (but is an ongoing requirement)
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 should include the length of time each detainee is held.	Withdrawn
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.	<b><u>Outstanding</u></b> <sup>1</sup>

<sup>1</sup> Page 97 of this Human Rights Annual Report refers. PSNI is currently liaising with the Public Health Agency and intends that SafeTALK training will be delivered to Custody Trainers. That is a very welcome development. In the event that PSNI confirms that training has been or will be delivered and when, Recommendation 5 will be implemented in full. Until that time, Recommendation 5 remains outstanding.



**APPENDIX 3: HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS  
2005 - 2010**

**Summary of Overall Status of Implementation of Recommendations**

	<b>Implemented in full</b>	<b>Withdrawn</b>	<b>Outstanding</b>	<b>Totals</b>
<b>2010 recs.</b>	3	1	1	5
<b>2009 recs.</b>	17	3	0	20
<b>2008 recs.</b>	20	10	0	30
<b>2007 recs.</b>	38	6	0	44
<b>2006 recs.</b>	42	3	0	45
<b>2005 recs.</b>	56	4	0	60
<b>Totals</b>	<b>176</b>	<b>27</b>	<b>1</b>	<b>204</b>

## 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. She sits on the Pro Bono Committee of the Bar of Northern Ireland, is a member of *Justice* and of Liberty, and a member of the Steering Group for the Preventing Possession Initiative.

Throughout her practice, Alyson has published extensively with four legal textbooks, law reports series and encyclopedia of law and practice. For example, she was a chapter author of *The Human Rights Act 1998: A Practitioner's Guide* (Sweet and Maxwell) and the author of *Discrimination Law* (Lemos & Crane). She was engaged to provide training to public authorities on, for example, the implementation of the Human Rights Act, the

law on homelessness and 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 Independent Commission on the Future of Housing in Northern Ireland, which reported on the strategic vision for the future of housing. She is Vice-Chair of the Board of the Simon Community Northern Ireland. She was recently invited to become a Fellow of the Royal Society. In January 2009, she was appointed independent Human Rights Advisor to the Policing Board and has since authored four thematic reviews and three Human Rights Annual Reports.

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