

# HUMAN RIGHTS 2013

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

Annual Report  
**2013**



## FOREWORD



I am pleased to present the Northern Ireland Policing Board's (the Policing Board's) Human Rights Annual Report 2013.

The Policing Board is required by 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 order to assist it with fulfilling this duty, the Policing Board appointed Human Rights Advisors in 2003 to devise a framework detailing the standards against which the performance of the police in complying with the Human Rights Act 1998 is monitored by the Policing Board. Key areas to be examined were identified. The Policing Board's Performance Committee (the Committee), with the assistance of the Human Rights Advisor, is responsible for implementing the monitoring framework.<sup>1</sup>

Every year, since 2005, the Human Rights Advisor has presented the Committee with a Human Rights Annual Report. The Annual Report contains an overview of the 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 196 recommendations contained within the Annual Reports. That is testament to PSNI's commitment to ensuring that a positive human rights culture and awareness exists within the organisation. However, as demonstrated by the 8 recommendations from last year that remain outstanding and the 8 new recommendations made in this year's Human Rights Annual Report, maintaining a human rights culture is an ongoing commitment.

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<sup>1</sup> The Performance Committee consists of 9 Members: Jonathan Craig MLA (Chair), Gearóid Ó hEára (Vice Chair), Brice Dickson, Ryan Feeney, Gerry Kelly MLA, Chris Lyttle MLA, David McIlveen MLA, Brian Rea, Caitríona Ruane MLA and Debbie Watters.

PSNI has welcomed the oversight provided by the Policing Board in this regard, with ACC George Hamilton describing the Human Rights Annual Report as a “positive and welcome challenge”.<sup>2</sup>

Another method by which the Committee and the Human Rights Advisor monitor and report upon PSNI’s human rights compliance is through a thematic review. This approach enables a more detailed examination of specific areas of policing from a human rights perspective. A key feature of the thematic review is use of the community’s experience of policing to assist with informing the evidence base against which police policy and practice on the ground is evaluated. Four human rights thematic reviews have been published to date and have made a combined total of 73 recommendations.<sup>3</sup>

The most recent human rights thematic review was published in October 2013 and considers police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007. The thematic review provides in-depth scrutiny of the use of the powers and it makes 11 recommendations for the PSNI to implement. It is hoped that this thematic review will not only assist and improve police practice, but that it will also assist the community by putting into the public domain as much information about the use of stop and search powers as possible. The Committee wishes to encourage further discussion with the community and will continue to engage with PSNI and stakeholders on this important issue. Monitoring the implementation of the thematic recommendations and the Human Rights Annual Report recommendations will be taken forward by the Committee, with the assistance of the Human Rights Advisor, and will be reported upon publically in due course.

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<sup>2</sup> In his introductory comments to the *PSNI Programme of Action 2012 – 2013*. This document is available to download through the PSNI website: [www.psni.police.uk](http://www.psni.police.uk)

<sup>3</sup> A thematic review on the policing of domestic abuse was published in March 2009 and an update report was published in May 2011. A thematic review examining policing with children and young people was published in January 2011 and an update report was published in February 2014. A thematic review which considered the way in which PSNI engages with lesbian, gay, bisexual and transgender individuals was published in March 2012 and an update report will be prepared during 2014. A thematic review of police powers to stop, search and question individuals under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007 was published in October 2013. All of these thematic reviews and update reports are available to download through the Policing Board’s website: [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)

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

**Anne Connolly**

**Chair**

**Northern Ireland Policing Board**

# HUMAN RIGHTS ANNUAL REPORT 2013

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## 1. PSNI HUMAN RIGHTS PROGRAMME OF ACTION

A central proposition of the Report of the Independent Commission on Policing for Northern Ireland 1999 (the Patten report) was that the fundamental purpose of policing should be, in the words of the Belfast Agreement 1998, “the protection and vindication of the human rights of all... There should be no conflict between human rights and policing. Policing *means* protecting human rights.”<sup>4</sup>

Recommendation 1 of the Patten report required a “comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach.”<sup>5</sup> In response to that recommendation, on 10 September 2004, PSNI published a Human Rights Programme of Action. That indicated, in its thoughtful and detailed approach, a willingness at an organisational level to embrace human rights as a core value in all police processes and also as a guide to police officers’ behaviour. It set out the steps taken to ensure that the focus remained on human rights. By way of example, there was introduced a new police oath of office which included a commitment to the protection of human rights; there was published a new Code of Ethics which enshrined the standards of conduct and practice expected of police officers and made officers aware of their obligations under the Human Rights Act 1998. Underpinning all of that was the incorporation of human rights principles into all aspects of police training.

PSNI indicated that it regarded Patten Recommendation 1 as an obligation to put in place *and maintain* an overall framework of human rights compliance. The Policing Board was of the view that the best way to maintain a long-term focus on human rights was for PSNI to draw up and publish a Human Rights Programme of Action annually. In that programme of action PSNI would have an opportunity to demonstrate that long-term focus by responding with specificity to recommendations contained within each Human Rights Annual Report published by the Policing Board. PSNI accepted that proposal and has published a Human Rights Programme of Action annually since 2004.

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<sup>4</sup> *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 4.1.

<sup>5</sup> *Ibid.* paragraph 4.6.

The Policing Board's Human Rights Annual Report 2012, published on 8 February 2013, made 11 new recommendations. On 8 May 2013, PSNI published its Human Rights Programme of Action 2012 to 2013.<sup>6</sup> That Programme of Action outlined PSNI's acceptance of all 11 recommendations. In his introductory comments Assistant Chief Constable George Hamilton welcomed the Human Rights Annual Report, describing it as a "positive and welcome challenge." He stated "Human rights and accountability are essential for policing. The fundamental building blocks for community confidence and the delivery of effective policing are human rights and accountability. For PSNI, which came into being almost exactly one year after the Human Rights Act entered fully into force, human rights have been a central pillar to development and growth of the new Service." The Policing Board agrees and endorses his approach. However, to translate words into effective outcomes requires ongoing attention.

PSNI accepted all 11 recommendations contained within the Human Rights Annual Report 2012. It also set out its proposals for implementation. Unfortunately, there has been considerable delay in implementing many of those recommendations. While the Policing Board acknowledges that PSNI was under considerable pressure during the relevant reporting period that must not be permitted to deflect attention away from its human rights based approach to policing. Such an approach was central to police reform and provides, in the words of ACC Hamilton, the "building blocks for community confidence and the delivery of effective policing". That cannot be over-estimated. Throughout this Annual Report the specific steps taken by PSNI to implement recommendations are outlined.

The Policing Board's Human Rights Advisor continues to have 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. Such access enables the Human Rights Advisor to check progress, as and when necessary, throughout the year and has proven to be a useful resource. However, access to Overview does not negate the need for PSNI to continue to produce *and publish* its annual Human Rights

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<sup>6</sup> The *PSNI Programme of Action 2012 – 2013* is available to download through the PSNI website: [www.psnipolice.uk](http://www.psnipolice.uk)



Programme of Action. Nor can it act as a substitute for PSNI continuing to provide detailed briefings to the Policing Board, the Board's Performance Committee (the Committee) and the Human Rights Advisor. Therefore, the publication of an annual Human Rights Programme of Action, which specifies the detailed steps to be taken to ensure human rights compliance together with a timetable for the implementation of recommendations, should remain a commitment of PSNI. The publication of that programme is critical to the process of accountability and transparency as it demonstrates PSNI's commitment to and acceptance of scrutiny by the community which is served by PSNI.

The Committee looks forward to receiving a copy of the PSNI Human Rights Programme of Action 2013 to 2014 within 3 months of the publication of this Human Rights Annual Report. Thereafter, the Committee will work closely with PSNI to ensure timely implementation of recommendations and the receipt of information about ongoing developments.

## 2. TRAINING

With the adoption of a human rights-based approach to policing and the introduction of an ethical and disciplinary code for police officers<sup>7</sup> which is aligned to human rights standards, it follows that human rights standards must be integrated into all aspects of police training.<sup>8</sup> Through training, police officers are taught human rights law, the complex rights engaged in all police action and how those rights must be balanced, protected and respected. The training provided to police officers has been comprehensive and effective in achieving those multiple aims. However, PSNI as a whole must demonstrate with training among other things that the organisation is committed to pursuing that approach in all disciplines. That means that civilian staff must be trained as rigorously. All civilian staff must receive the human rights training relevant to their roles and their performance should be measured according to their compliance with the Human Rights Act 1998. Last year, Committee Members were not persuaded that civilian staff were receiving adequate human rights training and recommended that the training delivered to civilians was reviewed and updated. This is discussed further below.

Police officer training continued to be subject to review by the PSNI Human Rights Training Advisor. She concentrated on training police trainers to ensure that they were equipped to deliver relevant human rights training. That review was effective and resulted in a number of training initiatives both in the classroom and in operational scenarios. PSNI also examined alternative means of delivering human rights training such as 'e-learning' packages. The Performance Committee accepts that e-learning can be a useful means of providing the more technical information to enable trainees to engage meaningfully in the classroom and in operational training. However, e-learning is not an acceptable substitute for interactive training which permits a more in-depth discussion of the issues during which questions can be asked and answered. Training should involve more than the delivery of technical knowledge. A proficient trainer is uniquely placed to influence trainees' attitudes to a

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<sup>7</sup> The PSNI Code of Ethics 2008 (this was first adopted in 2003 and revised in 2008).

<sup>8</sup> The Patten report recognised that "training was one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel" and specifically recommended training in the "fundamental principles and standards of human rights and the practical implications for policing" (Recommendation 4, *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland (the Patten report), September 1999).

human rights-based approach to policing and instil in trainees the values that underpin human rights protection. It is critical that trainers and 'hands-on' training are valued within the police service, that they are given the requisite support and resources to design and develop training courses and that their own training and developmental needs are attended to.

It is equally important that police supervisors, particularly but not exclusively those who are charged with mentoring and guiding new recruits in their operational roles, are trained to ensure that the values and learning begun at Police College are maintained and reinforced when a new recruit takes up his or her post. The training of supervisors should therefore be a core focus of training.

To assist the Police Service with ensuring that human rights principles are woven into training in a practical and effective way, PSNI employs a Human Rights Training Advisor who has specialised human rights knowledge. She is responsible for reviewing training that is delivered at Police College and in Districts and she assists in the production of training materials, delivers training to trainers and engages with stakeholders to ensure that concerns that may relate to training are addressed. The Human Rights Training Advisor is a key participant in PSNI education and development plans and has contributed an enormous amount to the ongoing training of police officers and civilian staff. She has focused on contextualising human rights considerations in operational policing scenarios to make training more effective in practice. The Performance Committee is grateful to the Human Rights Training Advisor for her efforts and is confident that her continued input will ensure that high quality training is delivered to police officers and civilian staff. This dedicated role is crucial to ensuring that the integration of human rights principles into all aspects of training remains a priority within the PSNI. The Human Rights Training Adviser has however taken a one year career break, from October 2013. During that period, PSNI must ensure that there is no diminution in the oversight of human rights training.

PSNI affords the Policing Board's Human Rights Advisor access to training materials, to the classroom and to scenario based training. That continued in 2013, with the Human Rights Advisor maintaining close contact with the PSNI Human

Rights Training Advisor to identify priorities for human rights training. In May 2013 the Policing Board's Human Rights Advisor attended training delivered by PSNI to officers (including officers from other police services<sup>9</sup>) in preparation for the G8 summit held in Enniskillen. The Human Rights Advisor was impressed at the intensive training delivered to officers, which was highly professional, effective and sufficiently focused on the protection of human rights to ensure that all officers involved in the policing of the G8 summit were equipped to apply those human rights standards in practice.<sup>10</sup> The Committee commends PSNI trainers for the successful completion of that training package and for their efforts in delivering a gruelling schedule of training.

In the coming year the Committee and the Human Rights Advisor will continue to monitor all aspects of training but will pay particular attention to: (i) civilian staff; (ii) children and young people; (iii) victims of hate crime; and, (iv) victims of domestic abuse. As recruitment to PSNI has recommenced this year, the Committee will also pay particular attention to the training delivered to student officers and probationers. PSNI has already shared its proposals for the newly designed course with the Policing Board's Human Rights Advisor. The new design includes an initial period of e-learning for student officers followed by 22 weeks of classroom based training. That is a shorter course than the previous 32 week course however it is anticipated that the appropriate use of e-learning for the technical aspects of learning will mean that students begin their classroom training having absorbed the basic knowledge required in each particular subject. That should permit trainers to concentrate on the application of that knowledge in practice. The Committee will keep that under review. In the coming year the Policing Board's Human Rights Advisor intends to review the e-learning materials and she will observe a selection of lessons with a view to identifying the extent to which relevant human rights principles are integrated into all aspects of training in a practical and effective manner.

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<sup>9</sup> Assistance provided to PSNI by officers from Great Britain is known as 'mutual aid'.

<sup>10</sup> The policing of G8 is considered further at chapter 4.

## **Civilian staff**

The Report of the Independent Commission on Policing for Northern Ireland (the Patten report) recommended that all police officers and all civilian staff should be trained in the fundamental principles and standards of human rights and the practical implications for policing. The Patten report recommended that the human rights dimension should be integrated into every module of police training; that awareness of human rights issues and respect for human rights in the performance of duty should be an important element in the appraisal of individuals (not just police officers); and that the performance of the Police Service as a whole in respect of human rights, as in other respects, should be monitored closely by the Policing Board.<sup>11</sup>

If the Policing Board is to monitor the performance of the Police Service as a whole in complying with the Human Rights Act, the only way it can do that is to include in its consideration the performance of civilian staff. That is even more critical given the increase in the number of civilian personnel assuming conventional police roles. For example, civilian staff are now employed as Investigating Officers and Detention Officers. Furthermore, civilian staff are employed in many public-facing roles such as Station Enquiry Assistants and Call Handlers. They are every bit as much a part of the policing organisation as police officers. Simply put, PSNI cannot ensure compliance with the Human Rights Act unless and until civilian staff are trained to the same high standard as police officers.

It was recommended in the Policing Board's Human Rights Annual Report 2012 that PSNI provide the Committee with a written review of the training plan for civilians, with a particular focus on identifying the human rights training needs of such staff and how PSNI proposed to meet those needs and within what timeframe.<sup>12</sup> Further to that recommendation, which was accepted by PSNI, the Policing Board's Human Rights Advisor met with the PSNI Human Rights Training Advisor to discuss the training of civilian staff. The PSNI Human Rights Training Advisor has delivered

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<sup>11</sup> Recommendations 4, 5 and 7 of *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland (the Patten report), September 1999.

<sup>12</sup> Recommendation 1 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

human rights awareness training to newly appointed Station Enquiry Assistants (SEAs) and Call Handlers and she has delivered human rights training to staff working in Information and Communications Services (ICS). That has not however extended to other civilian staff. It is crucial that it does.

The Human Rights Training Advisor indicated that she would commence a scoping exercise of the training needs of other staff during 2014. An issue has arisen however which requires further consideration. The professional code of conduct which governs the conduct of civilian staff differs from the PSNI Code of Ethics that governs the conduct of police officers. Unlike the PSNI Code of Ethics for police officers, which is intended to make officers aware of their rights and obligations under the Human Rights Act and which is a useful training tool when designing and delivering training to police officers, the code of conduct for civilian staff is not based on human rights standards.<sup>13</sup> In other words, there is no contractual human rights framework to which civilian staff must adhere.<sup>14</sup> PSNI is responsible, as a matter of law, for the human rights compliance of each and every employee but the absence of a discipline and conduct code which sets out in unambiguous terms the standards required of civilian staff, including what might happen if those standards are not complied with, is a matter which must be addressed.

Whilst the PSNI Human Rights Training Advisor is able to, and has, proactively designed and delivered human rights awareness raising courses to a number of SEAs, Call Handlers and ICS staff, the extent to which that training may be rolled out to other civilian roles and the number of personnel who will receive such training is likely to depend upon resources. The development of a training plan for civilian staff is the responsibility of senior management within PSNI in conjunction with the Police College. The Committee believes that training for civilian staff is so important that it must not be easily displaced by other resourcing priorities

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<sup>13</sup> The PSNI Code of Ethics only applies to police officers and to civilian staff designated as: Investigating Officers; Detention Officers; and, Escort Officers under section 30 of the Police (Northern Ireland) Act 2003.

<sup>14</sup> This is discussed further in Chapter 5 of this Human Rights Annual Report which deals with Complaints, Discipline and the Code of Ethics.

The Policing Board's Human Rights Advisor has met with senior personnel within PSNI Police College to discuss the training of civilian staff and a commitment has been made to considering how a formal training plan may be developed and implemented. Some progress has been made in that staff have been identified who need human rights training as a matter of priority. Human rights training has been delivered, but only as part of induction training, to staff involved in potentially confrontational roles and those in public facing roles. The Committee wishes to see the training plan finalised and thereafter delivered as soon as possible. PSNI intends to report to the Committee during 2014. The Committee now expects that report to be received by the end of May 2014. Until the Committee receives that written review, which specifies the human rights training needs of civilian staff and how PSNI proposes to meet those needs and within what timeframe, Recommendation 1 of last year's Human Rights Annual Report will remain outstanding.

### **Children and young people training**

A recommendation was made in the Policing Board's children and young people thematic review, which was published in January 2011, that PSNI should consider developing bespoke youth training to be delivered at Police College and thereafter by refresher training within all Districts. That recommendation required that all officers who were to be deployed within Neighbourhood Policing Teams, Response Teams and Tactical Support Groups should receive that training *before* taking up their posts.<sup>15</sup>

PSNI accepted that recommendation in full and advised that between March 2010 and May 2011 a youth training programme was delivered by Include Youth to a total of 429 student officers. That programme provided an opportunity for officers to learn about the relevant legislative framework including the Human Rights Act and the United Nations Convention on the Rights of the Child (UNCRC). It also examined how officers may engage and interact more positively with young people. Feedback from the training demonstrated that practical scenarios or case studies based on the real life experiences of young people were a particularly effective training tool.

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<sup>15</sup> Recommendation 24 of *Human Rights Thematic Review: Policing with Children and Young People*, Northern Ireland Policing Board, January 2011.

Where young people provided input directly and were given the time to talk about their experiences and answer questions, the feedback from student officers was extremely positive. They did not, however, feel that sufficient time had been allocated to the training session; the session lasted approximately one hour.

Additionally, PSNI's Human Rights Training Advisor devised a half day training course on children, young people and human rights. That course was delivered to a number of police trainers during 2012. The Policing Board's Human Rights Advisor attended that training. She considered it to be an effective way of refreshing trainers' knowledge of children's rights issues to guarantee that trainers would include more child specific considerations into all training. It was hoped that the course would be repeated in 2013 but that was postponed due to limited officer availability during preparations for the G8 summit. The Committee considers that training to be an important training priority and therefore recommends that in 2014 PSNI repeats the training delivered in 2012.

#### **Recommendation 1**

**PSNI should, during 2014, deliver bespoke youth training to student officers at Police College, develop youth training to be delivered to police officers and civilian staff and re-commence the delivery of its training course to police trainers on children, young people and human rights.**

The Committee intends to monitor the provision of child specific training delivered by PSNI during 2014. To enable it to do so the Committee recommends that PSNI report to the Committee on steps taken to date and to be taken to ensure that training is delivered.

#### **Recommendation 2**

**PSNI should report to the Performance Committee within 3 months of the publication of this Human Rights Annual Report on the training delivered to police officers and civilian staff in respect of children and young people. That report should detail the nature of the training delivered and to whom the training was delivered by role, rank and District. That report should also specify the training planned for the upcoming year including the nature of the**



**training and the persons to whom the training is to be delivered by role, rank and District.**

PSNI has appointed an external youth organisation to support the roll out of Youth Independent Advisory Groups across all police Districts and to assist with the development of training. That is welcomed by the Committee.

### **Child protection training**

A recommendation was made in the Human Rights Annual Report 2012 that child protection training, which had been designed by trainers in 'A' District (North and West Belfast), should be rolled out across the PSNI and delivered to all front line police officers.<sup>16</sup> PSNI accepted that recommendation and has advised that six out of eight Districts have delivered the training. PSNI has advised that the two remaining Districts (Districts 'B' and 'C') have now commenced their child protection training in the first training cycle of 2014. The Committee is encouraged to learn of progress. Until the training is delivered in all eight Districts, however, Recommendation 2 of the Human Rights Annual Report 2012 is recorded as implemented in part.

Uptake of the training, which was not mandatory, varied from District to District but it has, thus far, been delivered to more than 1,000 officers working in a range of areas. It has focused particularly on frontline officers. The delivery of that training is welcomed by the Committee. The Committee is extremely keen to see the training delivered across the PSNI and recommends that all District Commanders should include child protection training for all officers as a priority within District training plans for 2014.<sup>17</sup>

### **Recommendation 3**

**Each District Commander should include child protection training as a priority within his or her District training plan for delivery in 2014.**

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<sup>16</sup> Recommendation 2 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

<sup>17</sup> The Policing Board and the Committee have received briefings from the PSNI on Operation Owl, which exposed serious lacunae in respect of the protection of children from sexual exploitation. That is an issue upon which the Committee will report in full later in 2014.

### 3. POLICY

PSNI policy sets out the framework within which decisions may be made and against which police practice can be monitored and measured. Police policy must dictate that decision-making and practice comply with the Human Rights Act 1998. If policy is itself human rights compliant it is much more likely that police decision-making and practice will be human rights compliant. In other words, policy is the first (and most basic) measure to ensuring that human rights standards are applied in practice. Policy also provides the starting point for PSNI trainers who seek to incorporate human rights principles into lessons.

An analysis of policy is helpful in measuring the consistency of a human rights-based approach to policing. It plays a crucial role in influencing a positive culture and minimises legal risk. Policy must therefore be up to date, accessible to police officers and staff and demonstrate how human rights are relevant to their roles and responsibilities. As discussed below, it should also be accessible to the public. Even if a policy contains restricted information which cannot therefore be published, PSNI may, and should, publish a summary of the policy that does not contain the restricted information.

PSNI policy is primarily contained within a number of Policy Directives and Service Procedures. Policy Directives contain overarching policies. Service Procedures are subsidiary documents that expand upon the principles and standards laid out in the Policy Directives and provide clear instructions and guidance on particular aspects of the implementation of the policy. Both however contain what might be fairly described as police policy. Police policy documents may, for example, relate to operational aspects of policing, to health and safety considerations, to human resourcing issues or to corporate governance matters. Police policy is available to all officers and staff through Policenet (the police intranet). Where a new policy has been issued or an existing policy revised, a message appears on the log in screen to advise users of the latest addition to, or revision of, the policy library. All officers and staff should have immediate access to Policenet. The Policing Board's Human Rights Advisor has access to Policenet and can view directly all policies.

## Publication of policy

It was recorded in the Policing Board's Human Rights Annual Report 2012 that PSNI had removed its policies and service procedures from its website thereby depriving the public of access to those documents. That was intended to be a temporary measure pending a review and streamlining of all policy. The Committee accepted that explanation at the time. The Committee does not accept however that the streamlining review merited the complete removal of all policy (including those for which review was complete and new policies which could therefore be assumed to be complete and up to date). It is unclear why those policies at least were not put onto the publicly accessible website. Furthermore, the Committee has not received an adequate explanation for the delay in completion of the policy streamlining review. A recommendation was thus made in the Policing Board's Human Rights Annual Report 2012 that PSNI should forthwith publish, on its publicly accessible website, those policies that had been finalised.<sup>18</sup>

PSNI accepted that recommendation and advised that a policy manager would be appointed to facilitate publication of policies on the website. In April 2013, a direction from Assistant Chief Constable Operational Support was disseminated within PSNI which stated that pending the appointment of the policy manager, all up to date policy documents should be uploaded to the PSNI website (provided they did not contain restricted information) by Departments with responsibility for the relevant policy. In September 2013, approval for the appointment of a policy manager was given by the PSNI Resourcing Forum. The policy manager was appointed on 2 December 2013. PSNI has advised that the policy manager will oversee and coordinate the publication of police policy.

While the Committee welcomes the appointment of a policy manager to complete the review, it is disappointed at the considerable time that has passed before this issue has been addressed. That is particularly so as the streamlining review was initiated a number of years ago. Despite the reminder sent by ACC Operational Support to all Departments of their individual responsibility to ensure their policies were published

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<sup>18</sup> Recommendation 3 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

where possible, not one policy has been published on the PSNI website. During that time, police policy has not been accessible to the community and therefore there has been a diminution in the transparency of police policy. That is not a minor or technical matter: it goes to the heart of accountability and transparency.

Policing in a democratic society requires police to be willing to account for their actions based on the principles of lawfulness, necessity and proportionality. To act lawfully, the police are required to have clear legal authority to act. The publication of police policy is extremely important in demonstrating that authority. The Information Commissioner also expects police services throughout the United Kingdom to publish their current, written protocols, policies and procedures unless publication is likely to adversely impact upon operational activity or the information is classified.<sup>19</sup> In Greater Manchester, for example, police have published a total of 99 policy documents, approximately 60 of which relate to operational policing matters.<sup>20</sup>

Recommendation 3 of the Human Rights Annual Report 2012 has not been implemented. The Committee will pursue this with PSNI over the coming months.

## **POLICY DEVELOPMENTS**

The Committee keeps itself informed of current developments in the criminal justice system and, where appropriate, responds to consultations on issues that fall within the Policing Board's statutory remit: to secure an efficient and effective Police Service that complies with the Human Rights Act 1998. Legislative developments to be brought forward by the Department of Justice (DOJ) in the coming year in respect of (i) a 'Faster, Fairer' Justice Bill; and (ii) a Mental Capacity (Health, Welfare and Finance) Bill, will be of particular interest to the Committee. These are referred to in summary below.

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<sup>19</sup> The Information Commissioner's Office has produced guidance for police services on the types of information that they should publish:

[http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information/definition\\_documents.aspx](http://www.ico.gov.uk/for_organisations/freedom_of_information/definition_documents.aspx)

<sup>20</sup> These documents are available through the Greater Manchester Police website: <http://www.gmp.police.uk/content/section.html?readform&s=AF0E366EC39E666B80257A62004DEEAA>

## Proposals for a 'Faster, Fairer' Justice Bill

The Justice Minister intended to introduce a Justice Bill to the Northern Ireland Assembly in 2013. That, however, has been delayed. The Bill is now likely to be introduced in 2014. The proposed Bill contains provisions aimed at improving access to justice, speeding up justice, and improving services to the public, particularly victims and witnesses of crime.

The provisions that are likely to be included in the proposed Bill can be grouped into four broad themes as follows.<sup>21</sup>

*Jurisdictional and procedural reform* including the creation of a single territorial jurisdiction for magistrates' courts and county courts; changes to committal proceedings in Magistrates' Courts; early guilty plea proposals; a system of statutory case management; proposals to allow the Public Prosecution Service (PPS) to issue summonses without the signature of a Lay Magistrate; and the creation of a new Prosecutorial Fine. These jurisdictional and procedural reform proposals are largely aimed at reducing avoidable delay in criminal cases.<sup>22</sup>

*Enhanced services for victims and witnesses* including a statutory Victims' Charter incorporating an updated Code of Practice along with a legal entitlement to provide a Victim Personal Statement in court. These proposals are intended to provide

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<sup>21</sup> These proposals are set out in the *Equality Consultation for a Proposed Justice Bill (NI) 2013*, Department of Justice, March 2013. Also contained within this consultation document were proposals for improving the system for collecting fines. Those proposals, rather than being included in the 'Faster, Fairer' Justice Bill, will instead be included in a Fines and Enforcement Bill to be introduced to the Assembly towards the end of 2014.

<sup>22</sup> The DOJ envisages: (i) that the creation of a single territorial jurisdiction for magistrates' courts and county courts will allow greater flexibility in the distribution of court business, thus ensuring the most efficient use of judicial time and court resources; (ii) that by removing the taking of oral evidence and cross-examination of witnesses in committal proceedings, with such proceedings instead taking place by way of a preliminary inquiry (i.e. a paper based exercise), not only will this reduce trauma by requiring witnesses to give evidence more than once, it will also reduce delays and costs associated with committal proceedings; (iii) that encouraging earlier guilty pleas will reduce delay in criminal cases, increase public confidence and reduce the burden on victims and witnesses; (iv) that giving judges greater powers to take action to compel lawyers to manage cases better will reduce the duration of criminal cases by reducing the number of unnecessary hearings and adjournments and that it will ensure a focus on the resolution of cases; (v) that allowing a prosecutor to issue a summons to a defendant on their own authority (i.e. without recourse to a Lay Magistrate) will speed up the process; and (vi) that by allowing the PPS to offer fines rather than prosecuting a case in court, the case will be disposed of much quicker, will cost the system less and will free up more court time.

statutory entitlements for victims in the form of a new Victims' Charter. The Charter will set out how victims of crime should be treated and the standards of service to be provided by key bodies within the criminal justice system; address more clearly the needs of bereaved families and ensure that their entitlements reflect those of other victims; and set out clearly the key milestones at which information will be provided, the timescales for the provision of this information, how it will be provided and who has responsibility for its provision. Victims will be given the opportunity to describe to the judge the impact the crime has had on their lives by way of a Victim Personal Statement. The DOJ has also identified areas where an expanded use of live link facilities would help obtain maximum value from the equipment already installed and help avoid undue delay in criminal cases.<sup>23</sup>

*Youth Justice and other reforms* including a revised aim of the Youth Justice System and the removal of under 18s from detention in the Young Offenders' Centre. The Youth Justice proposals are intended to give effect to two of the recommendations of the DOJ's Youth Justice Review<sup>24</sup> which required: (i) that section 53 of the Justice (Northern Ireland) Act 2002, which sets out the aims of the Youth Justice System, is amended to fully reflect the best interests principles as espoused in Article 3 of the United Nations Convention on the Rights of the Child (UNCRC);<sup>25</sup> and (ii) that courts should no longer be allowed to send persons under the age of 18 years old to Hydebank Wood Young Offenders' Centre and that arrangements should be put in place to manage their transition to Woodlands Juvenile Justice Centre.<sup>26</sup>

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<sup>23</sup> This includes proposals that expert witnesses from the Forensic Science Agency of Northern Ireland (FSNI) and certain witnesses from the PSNI (initially only telecommunications experts although this could be extended at a later date) will give evidence by live link as the rule, rather than the exception; that witnesses from outside the United Kingdom will be able to give evidence in all relevant criminal proceedings by live link; and to allow for committal proceedings to be held via live link in certain circumstances. The DOJ has also consulted on a further proposal to widen the opportunities for live link proceedings at weekend courts.

<sup>24</sup> *Review of the Youth Justice System in Northern Ireland*, Youth Justice Review Team (for the Department of Justice), September 2011.

<sup>25</sup> At present, the principal aim of the Youth Justice System, as set out in Article 53 of the Justice (Northern Ireland) Act 2002, is to protect the public by preventing offending by children. Article 3 of the UNCRC requires the best interests of the child to be the principal concern when making decisions that may affect a child.

<sup>26</sup> Woodlands Juvenile Justice Centre is run by the Youth Justice Agency. All girls and young women under the age of 18 who are remanded or sentenced to custody go to Woodlands, as do the majority of boys. The remainder of the boys, mostly 17 year olds, are sent to Hydebank Wood where they are accommodated separately within an adult prison establishment which also houses young men and all adult women prisoners. The Youth Justice Review reported that Hydebank Wood is not an appropriate environment for children and echoed the call that many youth organisations and other

DOJ proposes to introduce violent offender orders which would be used to place conditions on the behaviour of certain violent offenders in the community. DOJ envisages that these would assist relevant criminal justice agencies to better manage any risk the offender may pose to the public. DOJ also proposes to introduce court consideration of community sentences as an alternative to short custodial penalties. This is intended to reinforce through legislation that the court should consider a community sentence for low level offenders for whom a prison sentence of 3 months or less is being considered.

*Miscellaneous matters* will be proposed in the Bill including improvements to criminal record checking procedures; providing Assembly scrutiny in relation to court rules; changes to juries legislation; legal aid changes; and a number of corrections and technical improvements to existing laws. Once the Bill is introduced to the Northern Ireland Assembly, the Performance Committee will consider how the proposals might impact upon policing and will raise any issues or concerns it has with both the PSNI and the DOJ.

### **Proposals for a Mental Capacity (Health, Welfare and Finance) Bill**

In September 2013, the Committee received a comprehensive and helpful briefing from the Children's Law Centre on the implications for young people of proposed mental capacity legislation. The proposals will be contained within a Mental Capacity (Health, Welfare and Finance) Bill, which will be introduced to the Northern Ireland Assembly in 2014 by the DOJ and the Department of Health, Social Services and Public Safety (DHSSPS). The proposed Bill will provide for statutory interventions to be made in the lives of those who lack capacity to make decisions affecting their health, welfare and/or finances. It is intended to make provision for the protection of the interests of those deemed to lack capacity. The Bill will apply as equally to those within the criminal justice system as it will to those outside it.

The Children's Law Centre raised concerns with the Committee. In particular, that children below the age of 16 years will be excluded from the scope of the Bill and will

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bodies (including the Criminal Justice Inspection Northern Ireland) have previously made – that the practice of sending persons under the age of 18 to Hydebank Wood should cease.

not be afforded the same safeguards and protections as those aged 16 and over. The Committee has sought further information from PSNI and the Department of Justice on the implications of the Bill for policing. DOJ has indicated that there will be a full public consultation on the Bill before it is formally introduced to the Assembly. The Committee wants to ensure that the legislative framework supports police officers to deliver the best policing response to all persons who may lack mental capacity, including children. The Committee will therefore consider the Bill once it has been issued for consultation. In addition to those aspects of the Bill regarding the age of persons to whom the capacity element of the Bill will apply, the Committee will consider the wider policing implications of the Bill.<sup>27</sup>

### **Response to PSNI consultation on ‘Speedy Justice’**

‘Speedy Justice’ is a PSNI initiative which aims to improve PSNI efficiency and consistency in the disposal of low level criminal cases and deliver meaningful and timely outcomes for victim and offender, potentially limiting the need for a court appearance and criminal conviction. The Speedy Justice disposals that are available are:

*Discretion* which enables a police officer to exercise his or her discretion to deal informally with the most minor offences. Police officers must first secure agreement between the victim and the offender as to how the matter should be dealt with, for example, by way of reparation and/or an apology by the offender.

*Non-court diversions via telephone* if certain diversionary disposals are thought to be appropriate, a police officer will telephone the Public Prosecution Service (PPS) to obtain consent over the telephone before proceeding with the diversionary disposal. The police officer must follow that up by sending a streamlined case file to the PPS. Previously, all decisions to deliver a diversionary disposal were made by PPS following receipt of a full case file from the police. A streamlined case file requires

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<sup>27</sup> For example, if the Bill proposes to retain a police station as a ‘place of safety’ for the purposes of detaining a person believed to be suffering from a mental disorder, the Committee will consider whether such a duty should be placed upon the PSNI and whether the Bill should provide a list of suitable places other than a police station.



substantially less documentation. The diversionary disposals to which this relates in respect of young people are Informed Warnings and Restorative Cautions.

*No prosecution' streamlined case file* in cases of low level offending where the evidential test for prosecution has not been met, or where there is not a public interest in pursuing a prosecution, the streamlined case file process enables the police to seek a 'no prosecution' decision from the PPS. The streamlined case file process requires significantly less information to be submitted than a full case file.

PSNI introduced Speedy Justice disposals in 2010, initially on a pilot basis, with all the above disposals now available to investigating officers across all Districts. The range of Speedy Justice disposals were subject to equality screening.<sup>28</sup> An Equality Impact Assessment (EQIA) was issued by PSNI for public consultation in November 2012. The EQIA however covered discretion only. PSNI screened the other non-court diversionary disposals but concluded that no adverse impacts were identified and therefore that the various diversionary disposals need not be subjected to scrutiny by EQIA. The stated reason was that the decision making process for the other diversionary disposals had not changed (with the PPS continuing to be the final decision maker) and therefore an EQIA was not required. Rather, PSNI suggested, the change was to the means of obtaining a decision from the PPS (i.e. by telephone). The Policing Board queried that position and asked PSNI to confirm that its policies for giving effect to streamlined case files and non-court diversionary via telephone had been screened and, if appropriate, subjected to an EQIA at the time of drafting. PSNI confirmed that policies affecting non-court disposals had been subject to section 75 screening and were found to have no negative impact.

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<sup>28</sup> Section 75 of the Northern Ireland Act 1998 (the Act) requires public authorities in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between the nine equality categories i.e. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without (the 'equality of opportunity duty'). Section 75 also requires public authorities in carrying out their functions relating to Northern Ireland to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group (the 'good relations duty'). The Section 75 statutory duties require more than the avoidance of discrimination - they require positive action and this includes a requirement that public authorities consider whether the impact of any of their policies will affect different people in a different way and, if so, whether any adverse impacts can be mitigated. All existing policies, and any new policies or proposed revisions to existing policies, should be screened for adverse impacts upon section 75 categories and, depending on the outcome of the screening, a full Equality Impact Assessment (EQIA) may need to be carried out. An EQIA provides a more thorough and systematic analysis of a policy.

In its response to the EQIA consultation on discretion, the Policing Board raised a concern about the timing of the screening: that it had not been carried out in 2010 when the Speedy Justice initiative was first introduced across all police Districts. PSNI advised that “An EQIA requires a certain amount of data to allow meaningful analysis and as discretion was a new process we didn't have the data at the planning stage. However a screening exercise was carried out under s75 (1) of the Northern Ireland Act 1998 prior to implementation and there was no indication this would have an adverse impact on any group. As discretion was a shift in practice from previous years we also published the policy in draft form to a range of external bodies to seek views as part of a pre-consultation exercise.”<sup>29</sup>

Concern has been expressed by some stakeholders representing the interests of young people that diversionary disposals, including the use of discretion, may be disclosed to employers through a criminal record check. The PSNI may disclose such a disposal but will do so only if it is considered relevant and proportionate to the position which has been sought. That however, it is argued by stakeholders, conflicts with the best interests of the child as *per* Article 3 of the United Nations Convention on the Rights of the Child (UNCRC).

The Policing Board raised stakeholders’ concerns with PSNI and highlighted a judgment of the European Court of Human Rights (ECtHR), in a case originating from Northern Ireland, which stated that “the obligation on the authorities responsible for retaining and disclosing criminal record data to secure respect for private life is particularly important, given the nature of the data held and the potentially devastating consequences of their disclosure.”<sup>30</sup> In that case, the ECtHR held that there were insufficient safeguards in Northern Ireland for the retention and disclosure of criminal record data to ensure that data relating to the applicant’s private life was not, and would not be, disclosed in violation of the right to respect for private life as *per* Article 8 of the European Convention on Human Rights (ECHR).

Furthermore, in January 2013, the Court of Appeal in England and Wales held that a blanket disclosure requirement for minor past convictions and cautions breached the

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<sup>29</sup> Letter from PSNI to Policing Board, 16 April 2013.

<sup>30</sup> *MM v The United Kingdom* (Application no. 24029/07) [2012] ECHR.

right to privacy under Article 8 ECHR.<sup>31</sup> The court accepted that the interference with the Article 8 right had two legitimate aims: (i) the general aim of protecting employees, children and vulnerable adults; and (ii) the particular aim of enabling employers to make an assessment as to whether an individual is suitable for a particular kind of work. However, the court found that the blanket requirement went beyond what was necessary and was thus in violation of Article 8 ECHR.

The Policing Board sought clarification from PSNI on the circumstances which may result in discretionary and other diversionary disposals being disclosed. PSNI advised that a discretionary disposal may be disclosed as a result of an Enhanced Disclosure Check (EDC) if, but only if, disclosure is considered to be relevant and proportionate to the position applied for. Other diversionary disposals may be disclosed on a Standard Disclosure Check if considered by the PSNI to be relevant and proportionate to the position applied for.

The Department of Justice's Youth Justice Review (September 2011) recommended that diversionary disposals should not attract a criminal record nor should they be subject to employer disclosure.<sup>32</sup> The Department of Justice is considering how to proceed in response to that recommendation.<sup>33</sup> Given the possibility that disclosure may jeopardise unfairly the future employment prospects of young people, the Performance Committee intends to keep this issue under review.

Concern has also been expressed by stakeholders in respect of the training delivered to those officers who may determine whether a Speedy Justice disposal is appropriate. PSNI has delivered training on Speedy Justice disposals to student and operational officers. The Committee suggests however that child specific training (as recommended in chapter 2 of this Annual Report) is required to ensure that officers

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<sup>31</sup> *T, R (on the application of) v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice; AW, R (on the application of) v Secretary of State for Justice and JB, R (on the application of) v Secretary of State for Justice* [2013] EWCA Civ 25.

<sup>32</sup> Recommendation 21, *Review of the Youth Justice System in Northern Ireland*, Youth Justice Review Team (for the Department of Justice), September 2011.

<sup>33</sup> *Youth Justice Review Implementation Plan*, Update No.1 – January 2013. See also *Monitoring of Progress on Implementation of the Youth Justice Review Recommendations*, Criminal Justice Inspection Northern Ireland (CJINI), December 2013, at page 36.

have the requisite knowledge when considering a Speedy Justice disposal for a child or young person.

Further to the Speedy Justice EQIA consultation, PSNI has identified five measures aimed at mitigating any adverse impact that any section 75 group may suffer as a consequence of the implementation of Speedy Justice.<sup>34</sup> Those five measures are as follows.

1. PSNI is committed to introducing robust monitoring arrangements for both victims and offenders, mindful of human rights considerations and in line with other arrangements in place across the criminal justice system.
2. Guidance documents linked to Speedy Justice will continue to be informed and modified by feedback received before, during and after the EQIA process.
3. These consultations and data will be used to inform the carrying out of further review under Section 75 as and when appropriate.
4. Future implementation of Speedy Justice will be fully integrated with actions and targets as set out in the PSNI Equality, Diversity and Good Relations Strategy 2012 to 2017.
5. PSNI will continue to review its arrangements for public consultation to ensure that all groups, including children and young people, are afforded appropriate opportunities to make a meaningful input to the planning of processes that affect them.

### **PSNI consultation on test purchasing of alcohol**

Article 67 of the Criminal Justice (NI) Order 2008 provides police officers with power to test the purchase of alcohol by persons under the age of 18 years to identify licensed premises selling alcohol to such persons. Specifically, Article 67 permits a person under the age of 18 to enter licensed premises and to seek to purchase alcohol under the direction of a police officer acting in the course of his or her duty. PSNI announced, in November 2011, that it was preparing for the roll-out of its test-purchasing power across Northern Ireland. Following the intervention by a number of

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<sup>34</sup> *Speedy Justice EQIA Final Decision Report*, PSNI, July 2013.

stakeholders PSNI suspended the roll-out of test purchasing to enable a proper consultation exercise to be undertaken.

The Performance Committee accepts that the sale of alcohol to young people is an important issue but believes that the welfare and safety of those children who volunteer to assist with the scheme should be the paramount considerations. Despite safeguards,<sup>35</sup> stakeholders have concerns about the use of the power. In its 2011 submission to the Department of Justice's Youth Justice Review, the Children's Law Centre stated "There are extremely serious implications for the safety of children who are recruited to 'test purchase' alcohol on behalf of the PSNI and we must state that we believe this proposal to be completely in breach of the best interests of the child and the child's right to be protected from exploitation prejudicial to the child's welfare – Articles 3 and 36 of the UNCRC and potentially in breach of Article 3 of the ECHR – the right to be protected from inhumane or degrading treatment or punishment."<sup>36</sup>

PSNI carried out an EQIA on test purchasing powers and issued a draft EQIA report for consideration in November 2012. At the conclusion of that process, PSNI concluded that it was "reassured that the test purchasing procedures that PSNI has put in place to manage operations are robust. We believe they will protect children and young people who volunteer to take part in operations and also will play a role in protecting children and young people in wider society by reducing the ready availability of alcohol for those who are under age."<sup>37</sup> PSNI has not as yet recommenced its test purchasing scheme. If PSNI is minded to reinstate the scheme, the Policing Board has asked PSNI to provide it with notification together with a briefing *in advance* of the decision being announced and implemented. The Policing Board has not had any notification.

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<sup>35</sup> For example, a parent, guardian or carer must provide written consent before PSNI will permit a young person to participate in the scheme; the anonymity of the young person and their family is a fundamental consideration within the scheme and a young person cannot be involved in the scheme in any area where he or she is likely to be recognised.

<sup>36</sup> *Response to the Independent Youth Justice Review Team's Review of Youth Justice in Northern Ireland*, Children's Law Centre, March 2011, page 82.

<sup>37</sup> *Alcohol Test Purchasing Procedures EQIA Final Decision Report*, PSNI, June 2013.

#### **Recommendation 4**

**In the event that PSNI decides to introduce a test purchase of alcohol scheme it should notify the Performance Committee of that decision and, in advance of any introduction of the scheme, provide to the Committee a detailed briefing on the operation of the scheme with a particular emphasis on those measures intended to protect the welfare and safety of children.**

#### **Retention and destruction of DNA samples, profiles and fingerprints**

The Grand Chamber of the European Court of Human Rights decided, in the case of *S and Marper v UK*,<sup>38</sup> that the blanket policy in England and Wales, which is mirrored in Northern Ireland, of retaining indefinitely the DNA samples, profiles and fingerprints (frequently referred to collectively as 'biometric material') of all people who have been arrested but not convicted of an offence, does not comply with Article 8 of the European Convention on Human Rights – the right to respect for private and family life. This case and the subsequent implications for the PSNI have been discussed at length in previous Policing Board Human Rights Annual Reports.

In response to the *Marper* judgment, the Northern Ireland Assembly introduced a new legislative framework for the retention and destruction of biometric material through the Criminal Justice Act (Northern Ireland) 2013. Once the new framework is in operation,<sup>39</sup> DNA samples, profiles and fingerprints must be destroyed by the police in certain circumstances and may only be retained on the DNA database if certain criteria are satisfied. The new framework makes some distinction between the seriousness of offences, between adults and children and it provides for the appointment of an independent Biometric Commissioner. It will operate retrospectively in that it will apply to all fingerprints, DNA profiles and samples whether retained before or after the new law's enactment.

In 2013, the Policing Board's Human Rights Advisor was invited to attend, as an observer, the Northern Ireland DNA Database Governance Board. The Governance

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<sup>38</sup> *S and Marper v UK* (App nos. 30562/04 and 30566/04).

<sup>39</sup> The provisions of the Criminal Justice Act (Northern Ireland) 2013 that relate to biometric material (i.e. section 9 and schedules 2 and 3) will only come into force by way of an order to be made by the Department of Justice.

Board, which was established in 2011, comprises representatives from the Department of Justice, the PSNI, the Public Prosecution Service, Forensic Science Northern Ireland, the Information Commissioner's Office, Queen's University Belfast and the University of Ulster. The Governance Board keeps under review the arrangements for the control, management and operation of the Northern Ireland DNA database and it will continue to assess the performance of the database once the new biometrics legislative framework comes into effect.<sup>40</sup>

The Board's Human Rights Advisor was also invited during 2013 to attend (as an observer) a number of meetings of the PSNI Biometric Retention/Disposal Ratification Committee. That Committee represents the final stage of the retention/disposal process. In other words, it sits to decide whether an instruction is given to destroy biometric materials. The Committee assesses, in an individual application for removal, whether the criteria have been satisfied for retention.

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<sup>40</sup> The role of the DNA Database Governance Board is to: (i) Assess arrangements for the control, management and operation of the local DNA database and criminal DNA profiling, assessing compliance with relevant legislation, and that practice and procedures are developed in line with national obligations; (ii) Consider applications for the release of data from the database for use in research. Release of such data will only be authorised after taking advice from the Home Office's National DNA Database Ethics Group; (iii) Assess the performance of the database practices and procedures; (iv) Define and regularly review the level of security and the arrangements for storage and access to samples, and the level of security (physical and technical) required for the data held on the database and by suppliers; and (v) Report annually to the Minister of Justice, and provide responses to questions from Ministers, the Assembly and its Committees, and to media enquiries.

## 4. OPERATIONS

The monitoring of police operations is critical to the Policing Board's overall assessment of PSNI compliance with the Human Rights Act 1998. It is through the planning and conduct of police operations that policy is put into practice, that the effectiveness of training becomes apparent and that community confidence can be strengthened or diminished. The Chief Constable, on behalf of the PSNI, bears responsibility for operational decisions. The Policing Board does not seek to interfere with that decision making process, however, the Policing Board is required by statute to hold the Chief Constable to account for decisions of the PSNI, It therefore monitors operations and in particular the way they impact upon the efficiency and effectiveness of an impartial, human rights compliant Police Service that secures the confidence of the whole community in Northern Ireland.

The Committee's oversight does not interfere with the Chief Constable's operational responsibility for the exercise of his or her functions and the activities of police officers and civilian staff under his or her direction and control. Operational responsibility means, in the words of the Patten report, "that it is the Chief Constable's right and duty to take operational decisions, and that neither the government nor the Policing Board should have the right to direct the Chief Constable as to how to conduct an operation. It does not mean, however, that the Chief Constable's conduct of an operational matter should be exempted from inquiry or review after the event by anyone. That should never be the case... It is important to be clear that a chief constable, like any other public official, must be both free to exercise his or her responsibilities but also capable of being held to account afterwards for the manner in which he/she exercises them."<sup>41</sup>

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<sup>41</sup> *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraph 6.21.



## G8 SUMMIT

The annual G8 summit<sup>42</sup> was held in the Lough Erne Resort, Enniskillen, in June 2013. With leaders from each of the G8 and other countries expected to attend, it was evident that the security and policing of the event would be a complex operation. The Criminal Justice Inspection Northern Ireland (CJINI) published, shortly after the summit, an inspection report in which it recorded “It was abundantly clear that the planning commission in respect of the G8 summit was a hugely challenging one... The challenges were further exacerbated by the peculiarities of the Northern Ireland situation, including the venue being close to the land border with the Republic of Ireland and the security environment with the threat levels multi-layered, but overall standing at ‘severe’ meaning that a terrorist attack is ‘*highly likely*’. This was also against a backdrop of simmering continuing tensions surrounding parades and other highly significant events during the next several months.”<sup>43</sup>

In addition to holding internal pre-planning meetings, which were attended by the Policing Board’s Human Rights Advisor, PSNI was required to work closely with security organisations from other countries and with other police services within the United Kingdom. Over 8,000 officers were involved in policing the summit, of which approximately 4,700 were PSNI officers and approximately 3,600 were police officers deployed by police services in Great Britain (referred to as ‘mutual aid’ officers). Further assistance was provided by approximately 600 staff from two private security firms contracted by the Foreign and Commonwealth Office to help with security at venues.

The Chief Constable remained responsible operationally for the policing operation with all mutual aid officers being under his direction and control. Agreements were put in place to ensure that any complaints made about mutual aid officers could be dealt with by the Police Ombudsman for Northern Ireland.<sup>44</sup> The Policing Board’s

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<sup>42</sup> G8 stands for the ‘Group of Eight’ nations representing the world’s major industrialised democracies and includes the United Kingdom, France, Germany, Italy, Japan, Russia, Canada and the United States. The G8 summit is an annual event and the leaders of the eight countries discuss a wide range of political, economic and social issues.

<sup>43</sup> *A review of the criminal justice system’s preparedness for exceptional or prolonged public disorder*, Criminal Justice Inspection Northern Ireland (CJINI), June 2013, paragraph 2.79.

<sup>44</sup> The agreements were put in place pursuant to section 60 of the Police (Northern Ireland) Act 1998.

Human Rights Advisor attended and observed bespoke training delivered by PSNI to mutual aid officers.

The police presence gradually increased in the days leading up to the G8 summit. A four mile police cordon and steel fence was erected and secured around the Lough Erne resort. PSNI had in place a communication strategy to ensure that the local community was informed of the policing arrangements and the limitations they would impose upon travel in the area. PSNI launched and maintained a website<sup>45</sup> and a G8 *facebook* page<sup>46</sup> to provide the public with as much information as possible regarding the policing of the event.

Based upon the policing experience of the previous G8 summit to be held in the United Kingdom (Gleneagles in 2005), during which 358 persons were arrested, a temporary custody facility was established within the former St Lucia Army barracks in Omagh. It was intended to provide additional detention facilities should it be needed. Arrangements were put in place to enable the Policing Board's Custody Visitors<sup>47</sup> to visit the temporary facility and inspect the conditions of detention and treatment of detainees. The fact that the temporary facility was not in the end used, with only 2 arrests made by PSNI during the summit, was criticised by some who felt that the estimated £80 million spent on the security operation for the event was excessive and unnecessary. The Policing Board believes that success should be measured by the fact that so few arrests were made and that the small number of protests that were held were facilitated by PSNI and passed off peacefully. The fact that the summit was policed in such a professional, efficient manner contributed to the overall success of the event which was witnessed across the world.

Following the G8 summit, the Performance Committee asked the Chief Constable whether any lessons had been learned that could inform the policing of public order in Northern Ireland. The Chief Constable advised that comprehensive planning and preparedness for the event, together with the extra resources provided by the

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<sup>45</sup> [http://www.psni.police.uk/directory/g8\\_home.htm](http://www.psni.police.uk/directory/g8_home.htm)

<sup>46</sup> <https://www.facebook.com/PSNI.G8>

<sup>47</sup> The Policing Board's Custody Visiting Scheme is discussed in more detail in Chapter 10 (Treatment of Suspects) of this Human Rights Annual Report.

deployment of mutual aid officers, had contributed to the effectiveness of the policing operation.

## **COUNTER-TERRORISM OPERATIONS**

### **Current threat level**

The Security Service has assessed the threat level in Northern Ireland from Northern Ireland related terrorism to be severe. “Severe” means that “a terrorist attack is highly likely.”<sup>48</sup> The Chief Constable has advised the Policing Board on a number of occasions that in Northern Ireland “the threat remains severe”. The threat level in the rest of the United Kingdom from Northern Ireland related terrorism is “moderate”, meaning an attack is possible but not likely. In respect of international terrorism, the threat level has been graded as “substantial” across the United Kingdom, meaning an attack is a strong possibility.<sup>49</sup>

A PSNI statistical report records that “the security situation in Northern Ireland has improved over the last decade with fewer security related deaths, shootings, bombings and paramilitary style shootings and assaults recorded in 2012/13 than ten years ago in 2003/04. However, a significant threat still remains as evidenced by the two security-related deaths in 2012/13 and the numerous shooting and bombing incidents as well as the continued use of paramilitary style shootings and assaults.”<sup>50</sup> The statistical report, which is updated on a monthly basis and available to the public through the PSNI website,<sup>51</sup> sets out the number of security related deaths, shootings, bombing incidents, paramilitary style shootings and assaults and the number of firearms and explosives seized during a rolling 12 month period. The report covering the period 1 December 2012 to 30 November 2013 provides the following analysis of the previous ten years.

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<sup>48</sup> That is second highest in the potential threat levels. For further information see the Home Office website: <https://www.gov.uk/terrorism-national-emergency/terrorism-threat-levels>.

<sup>49</sup> The threat levels cited in this paragraph are correct as at 1 March 2014.

<sup>50</sup> *Police recorded security situation statistics, 1 December 2012 to 30 November 2013*, PSNI, December 2013, page 2.

<sup>51</sup> [www.psnipolice.uk](http://www.psnipolice.uk)

- There was one security-related death during the rolling 12 month period of 1 December 2012 to 30 November 2013, compared with two in the previous rolling 12 month period.
- There has been a decrease in the number of shooting incidents over the 12 month period ending 30 November 2013 compared to the previous 12 month period. There were 73 shooting incidents in the previous period and this decreased to 48 shooting incidents in the 12 month period of 1 December 2012 to 30 November 2013, a decrease of 25 incidents. There have been 30 shooting incidents during the first 8 months of 2013/2014 (April 2013 to November 2013).
- There were 39 more bombing incidents in the 12 month period to 30 November 2013 (73 incidents) than that recorded in the previous rolling 12 month period (34 incidents). During the first eight months of the 2013/2014 financial year there have been 50 bombing incidents, including a two year monthly high of 16 in October 2013.
- There has been a decrease in the number of casualties from paramilitary style assaults over the 12 months ending 30 November 2013. There were 43 casualties resulting from paramilitary style assaults in the previous 12 month period compared with 31 casualties in the 12 month period to 30 November 2013, a decrease of twelve casualties. During the first 8 months of the 2013/2014 financial year (April 2013 to November 2013) there have been 23 casualties of paramilitary assaults.
- The number of casualties resulting from paramilitary style shootings has decreased by six over the 12 month period ending 30 November 2013. During these 12 months there were 27 casualties resulting from paramilitary style shootings, six fewer than the 33 recorded in the previous rolling 12 month period. During the first 8 months of the 2013/2014 financial year (April 2013 to November 2013) there have been 19 casualties from paramilitary style shootings.
- The number of firearms seized has increased, with 70 firearms found during the previous rolling 12 month period compared with 83 firearms seized in the most 12 month period ending 30 November 2013. The numbers of firearms seized per month ranged from a low of 1 (August 2012) to a high of 19

(August 2013). During the first eight months of the 2013/2014 financial year 68 firearms have been recovered by the PSNI.

- There has been a decrease in the amount of explosives seized during the 12 month period to 30 November 2013. During this period 5.4kg of explosives were recovered by the PSNI, less than a third of the 20.6kg seized in the previous rolling 12 month period, a decrease of 15.2kg. This drop is mainly due to the fact that there was one very large seizure in the previous rolling 12 months, when 12kg of explosives were seized by the PSNI on the 26th January 2012 within the Fermanagh police area. During the first eight months of the 2013/2014 financial year PSNI has seized 2.0kg of explosives.
- The number of rounds of ammunition recovered by the PSNI has increased in the 12 month period ending in November 2013. During these 12 months 5,257 rounds of ammunition were seized, this is 2,339 rounds more than the previous rolling 12 month period (2,918 rounds). During the first 8 months of the 2013/2014 financial year (April 2013 to November 2013), 4,417 rounds of ammunition have been seized by the PSNI.

On 28 February 2013, the Secretary of State advised that the threat level remained severe. She went on to say that “It is clear from the violence carried out by both republican and loyalist groups that there are still people in Northern Ireland who demonstrate contempt for democracy and the rule of law. Their numbers remain small, but the threat they pose continues to be very real.”<sup>52</sup> More recently, on 5 June 2013, the Secretary of State advised that “While the threat level in Northern Ireland remains at severe, progress has been made. Excellent co-operation between the PSNI and other agencies has resulted in a number of arrests and charges over recent months.”<sup>53</sup>

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<sup>52</sup> The Secretary of State for Northern Ireland’s statement to the House of Commons, 28 February 2013.

<sup>53</sup> The Secretary of State for Northern Ireland in response to a House of Commons Oral Question, 5 June 2013. She also commented in response to an oral question on 15 January 2014 that “The threat level in Northern Ireland remains Severe, with persistent planning and targeting by terrorists, as illustrated by the attacks that took place before Christmas. However, action by the Police Service of Northern Ireland and its partners continues to keep those groups under pressure.”

## Counter-terrorism powers

PSNI has at its disposal a range of counter-terrorism powers, most of which are contained within the Terrorism Act 2000 (TACT) and the Justice and Security (Northern Ireland) Act 2007 (JSA). The powers available to the PSNI and all police services in Great Britain 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. In both authorising and using the powers, officers must have regard to a statutory Code of Practice which further defines and constrains the use of the powers.<sup>54</sup> The operation of TACT is reviewed annually by a Government appointed independent reviewer, currently David Anderson Q.C.<sup>55</sup>

The JSA provides the PSNI with additional powers of entry, search and seizure that are not available to police services in Great Britain under the common law or existing statutory provisions such as TACT. In both authorising and using JSA powers, officers must have regard to a statutory Code of Practice which further defines and constrains the use of the powers.<sup>56</sup> The operation of the JSA powers are reviewed annually by a Government appointed independent reviewer (Robert Whalley CB until February 2014 and thereafter David Seymour CB).<sup>57</sup> The Performance Committee met with Mr Whalley and Mr Anderson in 2013 to discuss a range of issues, including police use of stop and search powers; arrests, charges and prosecutions; proscription of organisations; operational need for counter-terrorism powers and community impact.

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<sup>54</sup> *Code of Practice (Northern Ireland) for the authorisation and exercise of stop and search powers relating to sections 43, 43A and 47A of the Terrorism Act 2000*, Northern Ireland Office, August 2012.

<sup>55</sup> The remit of the Independent Reviewer of Terrorism Legislation is to review annually the operation of the Terrorism Act 2000 (TACT) and Part 1 of the Terrorism Act 2006. The work of the Independent Reviewer is accessible at <https://terrorismlegislationreviewer.independent.gov.uk/>.

<sup>56</sup> *Code of Practice for the Exercise of Powers in the Justice and Security (Northern Ireland) Act 2007*, Northern Ireland Office, May 2013.

<sup>57</sup> The role of the Independent Reviewer of the JSA is to review the operation of the powers contained in sections 21 to 32 JSA, and to review the procedures adopted by the General Officer Commanding Northern Ireland for receiving, investigating and responding to complaints. The reports of the Independent Reviewer can be obtained through the Northern Ireland Office website: <https://www.gov.uk/government/organisations/northern-ireland-office>

## **Thematic review of police powers to stop, search and question**

There continues to be significant concern and public debate about the use of police powers to stop and search and stop and question, particularly those powers contained within the Terrorism Act 2000 (TACT) and the Justice and Security (Northern Ireland) Act 2007 (JSA) which may be exercised without an officer having a reasonable suspicion that the person has been involved in criminality. A thematic review was therefore initiated by the Policing Board's Human Rights and Professional Standards Committee, the objective of which was to monitor and report upon PSNI compliance with the Human Rights Act 1998 in its exercise of the stop, search and question powers contained within TACT and JSA.<sup>58</sup> Following a restructuring of the Policing Board's committees, the thematic review was completed by the Performance Committee. In taking forward this work on behalf of the Committee, the Human Rights Advisor to the Policing Board carried out a detailed review of the policy and practice of the PSNI. That work culminated in the publication of a thematic report in October 2013.<sup>59</sup>

To put the findings and recommendations of the thematic report fully in context, the report must be read as a whole and extracts should not be relied upon out of context. Throughout the report, reference is made to good practice and suggestions for improvements are made. The report makes 11 formal recommendations.

The Committee hopes that the thematic report will not only assist and improve police practice, but that it will also assist the community by putting into the public domain as much information about the use of stop and search powers as is possible. The Committee wishes to encourage further debate and engagement with the community on this issue.

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<sup>58</sup> The terms of reference to which the Committee worked were as follows: (i) Whether the PSNI acts in accordance with the law. The review was to consider both the organisational framework and practice; (ii) Whether the operational exercise of the powers is in accordance with the law; (iii) Whether the powers are being used disproportionately; (iv) Whether PSNI training is appropriate to ensure officers understand the limit as well as the extent of the powers; and (v) The impact on community confidence.

<sup>59</sup> *Thematic review of the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007*, Northern Ireland Policing Board, October 2013.

A specific issue that was raised during the course of the thematic review process was the manner in which young people were dealt with by police during stops and searches. The police must be mindful of the vulnerability of young people and the potential for an adverse impact to resonate throughout the community and undermine police community relations. The PSNI took that seriously and during 2012 it developed a stop and search information card for young people who are stopped, searched and/or questioned. That card was produced with considerable input from the Children's Law Centre, the Northern Ireland Commissioner for Children and Young People (NICCY) and Include Youth. The card provided an overview of the powers, the right to be told the reason for the exercise of the power, the extent of information to be provided by a police officer and how the stop and search should be carried out. The card was to be used by all police officers. Each police officer would be required to complete relevant details on the front of the card to include, for example, the date, the police officer's station and the unique reference number. The card would then be provided to the young person.

In last year's Human Rights Annual Report, the Human Rights and Professional Standards Committee welcomed that positive initiative and commended the PSNI and those stakeholders who contributed to the production of the card. The Committee believed that this initiative demonstrated a strong partnership between PSNI and stakeholders which produced real results which would ultimately enhance the protection of the rights of young people who are stopped, searched and/or questioned. The Committee believed there was also significant benefit for the police both in terms of the community engagement exercise and in the protection of police officers who could be assured that they were doing all they could to respect and protect the rights of young people. It was therefore recommended in last year's Human Rights Annual Report that the PSNI should consider issuing the same or a similar card to all persons who were stopped, searched or questioned.<sup>60</sup> PSNI accepted that recommendation and has agreed that the card will be handed out to both adults and young people. Although the card has now been distributed to all Districts, there has been some delay in using the card and it is intended that it will be launched in 2014 at the same time as a supporting DVD which has been developed

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<sup>60</sup> Recommendation 6 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.



by the Police Ombudsman's Office. Whilst this is welcomed by the Performance Committee, Recommendation 6 of last year's Human Rights Annual Report will remain outstanding until the card is in use across Northern Ireland for both adults and children.

### **Stop and search statistics**

The PSNI provides comprehensive reports to the Performance Committee on a quarterly basis which analyse the use of stop, search and question powers according to geographic area, gender, ethnicity, power used and subsequent arrest. A statistical analysis of the use of the powers up until year end 2012/2013 is included in the Policing Board's thematic review on police powers to stop, search and question. Quarterly reports are also available on the PSNI website, albeit the published reports contain slightly less information than the reports provided to the Committee as a result of statistical reporting rules.<sup>61</sup>

During 2013 PSNI has made some changes to the information that it now includes within its statistical reports and the manner in which this information is presented. PSNI's statistical branch discussed these proposed changes with the Policing Board's Human Rights Advisor before giving effect to them. The Human Rights Advisor is grateful to the statisticians for their proactive engagement in this regard and for their willingness to accommodate the requested changes.

Prior to Quarter 1 of 2013/2014 (1 April 2013 – 30 June 2013), the number of persons stopped and searched under section 23 of the Misuse of Drugs Act 1971 and section 53 of the Firearms (Northern Ireland) Order 2004 were recorded in the statistical reports as a use of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). Article 3 of PACE provides police officers with a power to stop and search persons for stolen articles, articles with a blade or point, prohibited articles and fireworks. Where a person is searched for drugs or firearms under the Misuse of Drugs Act or the Firearms Order respectively, this is clearly distinct from a PACE search. Therefore this anomaly in the statistical report was remedied and from

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<sup>61</sup> Not protectively marked versions of the statistical reports are published on the PSNI website: [www.psnipolice.uk](http://www.psnipolice.uk)

Quarter 1 of 2013/2014 onwards both the version of the report provided to the Performance Committee and the published version of the report detail uses of PACE, Misuse of Drugs and Firearms Order powers separately.

The version of the report provided to the Committee has, since Quarter 1 of 2013/2014, contained disaggregated statistics on the stop and search powers exercised under section 24 of the Justice and Security (Northern Ireland) Act 2007 (JSA).<sup>62</sup> As outlined in Table 1 below, the disaggregated information includes the number of dwellings searched under section 24, the number of other premises searched and the number of vehicles searched.

**Table 1: Number of dwellings, premises, vehicles and persons searched under section 24 JSA, 1 April 2013 – 30 September 2013**

<b><u>Searches under s.24 JSA</u></b>	<b><u>Q.1 2013/2014 (Apr – June)</u></b>	<b><u>Q.2 2013/2014 (July – Sept)</u></b>
<b>No. of dwellings searched</b>	49	31
<b>No. of other premises searched</b>	9	20
<b>No. of vehicles searched</b>	2,733	1,411
<b>No. of persons searched</b>	2,081	1,180

The number of persons stopped and searched under section 24, their gender and ethnicity, and the number of subsequent arrests made continues to be included within the report provided to the Committee but, since Quarter 2 of 2013 to 2014 (1 July 2013 – 30 September 2013) the number of persons is also broken down according to whether the person was searched pursuant to (i) reasonable suspicion;

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<sup>62</sup> Section 24 JSA gives effect to the powers to search for munitions and transmitters contained within Schedule 3 JSA. There are numerous powers contained within Schedule 3, including the power to enter and search any premises, including dwellings and vehicles, for munitions/wireless apparatus; the power to search a person (whether or not they are in a public place) for munitions/wireless apparatus (based upon reasonable suspicion); the power to stop and search a person for munitions/wireless apparatus in a location specified by an authorisation (no requirement for reasonable suspicion); and the power to seize, retain and, if necessary, destroy any unlawfully held munitions and power to seize and retain any unlawfully held wireless apparatus that are found during the course of a search of premises, vehicles or persons under Schedule 3.

or (ii) in the absence of reasonable suspicion, an authorisation. This is outlined in Table 2 below.

**Table 2: Number of persons stopped and searched under section 24 JSA according to the ground for search, 1 July 2013 – 30 September 2013**

<b><u>No. of persons stopped &amp; searched under s.24 JSA</u></b>	<b><u>Q.2 2013/2014 (July – Sept)</u></b>
<b>Reasonable suspicion</b>	42
<b>ACC authorisation</b>	1,138
<b>Total</b>	<b>1,180</b>

As can be seen from Table 3 below, the version of the report provided to the Committee also contained, since Quarter 1 of 2013/2014, statistics on the number of vehicles and persons searched under section 43A of the Terrorism Act 2000 (TACT).<sup>63</sup>

**Table 3: Number of vehicles and persons searched under section 43A TACT, 1 April 2013 – 30 September 2013**

<b><u>Searches under s.43A TACT</u></b>	<b><u>Q.1 2013/2014 (Apr – June)</u></b>	<b><u>Q.2 2013/2014 (July – Sept)</u></b>
<b>No. of vehicles searched</b>	19	15
<b>No. of persons searched</b>	25	12

Recommendations 4 and 5 of the Human Rights Annual Report 2012 recommended that PSNI included the additional information, in respect of section 24 JSA and section 43A TACT, in its statistical reports. Recommendations 4 and 5 of the Human Rights Annual Report 2012 have therefore been implemented.

<sup>63</sup> Section 43A TACT (introduced by the Protection of Freedoms Act 2012 and coming into force on 10 July 2012) provides a power for police to stop and search a vehicle, including its driver, any passengers and anything in or on the vehicle, if a constable reasonably suspects the vehicle is being used for the purposes of terrorism.

Table 4 below sets out information provided by PSNI to the Performance Committee in respect of the age of persons stopped, searched and/or questioned under PACE, TACT and JSA. This information was included in the Policing Board's stop, search and question thematic review, but is worth restating in this Human Rights Annual Report given that it is of particular public interest but not contained within the published versions of the PSNI statistical reports. PSNI has however agreed that from 2013/2014 onwards, it will include age data in the published version of its year-end report.

**Table 4: Age of person stopped, searched and/or questioned under PACE, TACT and JSA, 1 April 2013 – 30 September 2013**

<u>Age band of persons stopped, searched and questioned under PACE, TACT and JSA</u>	<u>No. of persons 2011/2012</u>	<u>No. of persons 2012/2013</u>
<b>10 and under</b>	12	14
<b>11 – 14</b>	998	845
<b>15 – 17</b>	3,996	3,968
<b>18 – 25</b>	13,261	12,434
<b>26 – 35</b>	7,042	6,458
<b>36 – 45</b>	4,489	3,942
<b>46 – 55</b>	2,670	2,041
<b>56 – 65</b>	845	576
<b>Over 65</b>	568	105
<b>unknown</b>	1,387	119
<b><u>TOTAL</u></b>	<b><u>35,268</u></b>	<b><u>30,502</u></b>

## THREATS TO LIFE WORKING GROUP

On 10 July 2013, the Police Ombudsman published a report into events surrounding the bombing and murders which took place at 38 Kildrum Gardens, Derry/Londonderry on 31 August 1988, sometimes referred to as the 'Good Samaritans Bomb' or 'the Good Neighbours Bomb'.<sup>64</sup> The case was referred to the Police Ombudsman in February 2005 by the family of one of the victims, with a number of complaints made in respect of the events leading to the explosion and the subsequent police investigation. In his July 2013 report, the Police Ombudsman concluded that the failure to warn the local community and an inadequate investigation represented an overall failure on the part of the Royal Ulster Constabulary (RUC) to the families of the deceased. In his concluding comments, the Police Ombudsman reflected, "It is important that the Chief Constable reflects on the circumstances surrounding these events, to satisfy himself that the tactical and strategic responses available to his officers continue to be effective in mitigating threats and risk to life."<sup>65</sup> In response to this, PSNI has formed a Threat to Life Working Group which will review the PSNI Threats to Life policy and the PSNI's tactical and strategic responses in mitigating threats and risks to life. The Board's Human Rights Advisor has been invited to sit on the Group and she will do so, on behalf of the Performance Committee, in an observer capacity.

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<sup>64</sup> *Public Statement by the Police Ombudsman under Section 62 of the Police (Northern Ireland) Act 1998 relating to the complaints by the relatives of a victim in respect of the events surrounding the bombing and murders at 38 Kildrum Gardens on 31 August 1988*, Police Ombudsman for Northern Ireland, July 2013.

<sup>65</sup> *Ibid*, paragraph 9.59.

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

The Policing Board has a statutory duty to keep itself informed as to the workings of complaints and disciplinary proceedings brought in respect of police officers and to monitor any trends and patterns emerging.<sup>66</sup> That work is undertaken by the Performance Committee (the Committee) which is also responsible for monitoring the performance of the PSNI in complying with the Human Rights Act 1998.<sup>67</sup> Those monitoring functions complement each other: a human rights culture can be demonstrated by the quality of the interactions between the police and the public. As noted by the Oversight Commissioner in his final report of 2007, such interactions are best measured by an assessment of the formal police complaints process, internal disciplinary mechanisms and also the daily, routine contacts between the police and the public.<sup>68</sup>

The Office of the Police Ombudsman for Northern Ireland (OPONI) was established under Part VII of the Police (Northern Ireland) Act 1998, which requires an independent and impartial police complaints system. The Committee meets formally with the Police Ombudsman and/or senior officials from his/her Office at least twice a year to discuss a range of issues, including trends and patterns in complaints against police officers and the resolution of those complaints. The Committee also considers individual investigation reports produced by OPONI<sup>69</sup> and it considers Regulation 20 reports as and when they are published.<sup>70</sup>

The Committee monitors PSNI internal disciplinary procedures to ensure that lessons are learned and that best practice is promoted across the organisation for all

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<sup>66</sup> Section 3(3)(c)(i) of the Police (Northern Ireland) Act 2000.

<sup>67</sup> Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000.

<sup>68</sup> *Report 19*, Office of the Oversight Commissioner, May 2007, page 26.

<sup>69</sup> Under section 62 of the Police (Northern Ireland) Act 1998 the Police Ombudsman may publish reports following major investigations. Decisions as to when to publish such reports and what material to include in them are taken at the discretion of the Police Ombudsman.

<sup>70</sup> A Regulation 20 report is produced by the Police Ombudsman following an investigation into a specific matter referred to him/her under section 55 of the Police (Northern Ireland) Act 1998 by the Policing Board, the Department of Justice, the Secretary of State, the Director of Public Prosecutions or the Chief Constable.

officers. The Committee meets formally with officers from PSNI Service Improvement Department at least twice a year to discuss professional standards issues.<sup>71</sup>

When an allegation of misconduct is made, the standards by which officers are measured are those contained within the PSNI Code of Ethics 2008. The 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. By monitoring PSNI internal disciplinary proceedings and breaches of the Code of Ethics, the Committee can assess the effectiveness of the Code<sup>72</sup> and the extent to which individual officers (and the Police Service as a whole) are respecting human rights principles.

To provide the Committee with a formal structure to undertake its monitoring function and to address broader concerns, such as quality of service, accountability and evidence of learning, a Professional Standards Advisor was appointed by the Policing Board in 2011. In accordance with a Professional Standards Monitoring Framework devised by the Advisor, PSNI and OPONI provide the Policing Board with complaints and disciplinary statistical information on a 6 monthly basis. This information is input into a Professional Standards report and the report is provided to the Performance Committee prior to meetings with OPONI and PSNI. Presentation of information in that manner enables the Committee to identify trends and patterns in complaints and misconduct cases. The report is used by the Committee at meetings with PSNI to challenge the organisation's performance and to seek further information from the police on any areas of concern.

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<sup>71</sup> The Service Improvement Department acts as the 'gatekeeper of integrity' for the organisation. It is responsible for providing guidance to Districts and Departments in respect of disciplinary matters and must ensure that consistent standards are applied. The Department decides on disciplinary recommendations arising from OPONI investigations into complaints, delegating each recommendation to the appropriate District or Department (as the case may be) to progress or referring the matter to a formal misconduct hearing. The Department can also initiate its own misconduct investigations.

<sup>72</sup> As per the Policing Board's statutory duty under section 3(1)(d)(iv) of the Police (Northern Ireland) Act 2000.

## COMPLAINTS

### Number of complaints

OPONI has produced an annual statistical report which provides detail on trends and patterns in complaints and allegations received between 1 April 2012 and 31 March 2013.<sup>73</sup> OPONI also reports upon trends in equality monitoring, public attitudes to the Police Ombudsman, complainant satisfaction and police officer satisfaction. The report is available to download through the OPONI website.<sup>74</sup> OPONI also has a section on its website through which members of the public can view details by year of complaints and allegations made according to policing area.<sup>75</sup>

In 2012/2013, OPONI received 3,265 complaints, which is a 2% decrease on the number of complaints received the previous year (3,341). The number of allegations received decreased by 13%, from 6,001 in 2011/2012 to 5,200 in 2012/2013.<sup>76</sup> This continued a downward trend in the number of allegations received and may in part be attributable to a Complaints Reduction Strategy which was introduced by PSNI in October 2010. That strategy included measurable targets to reduce the number of complaints and allegations made against officers and to reduce the number of officers attracting multiple complaints.<sup>77</sup> Since the Strategy has been introduced, the number of officers who have attracted three or more complaints has decreased year on year from 277 in 2010/11 to 266 in 2011/12 to 213 in 2012/13.<sup>78</sup>

While the annual data for 2013/2014 is not yet available to enable a year on year comparison, it would appear that the downward trend in the overall number of complaints and allegations is not continuing. The most recent six monthly report considered by the Committee under the Professional Standards Monitoring

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<sup>73</sup> *Annual Statistical Report of the Police Ombudsman for Northern Ireland 2012/2013*, Office of the Police Ombudsman for Northern Ireland, June 2013.

<sup>74</sup> [www.policeombudsman.org](http://www.policeombudsman.org)

<sup>75</sup> [http://www.policeombudsman.org/modules/new\\_statistics/](http://www.policeombudsman.org/modules/new_statistics/)

<sup>76</sup> *Annual Statistical Report of the Police Ombudsman for Northern Ireland 2012/2013*, Office of the Police Ombudsman for Northern Ireland, June 2013, page 26.

<sup>77</sup> The Complaints Reduction Strategy was discussed in more detail in the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

<sup>78</sup> *Annual Statistical Report of the Police Ombudsman for Northern Ireland*, Office of the Police Ombudsman for Northern Ireland, June 2013, page 31.



Framework covered the first six months of 2013/2014 (1 April 2013 – 30 September 2013). The Committee noted that during this period the number of complaints received by OPONI increased by 19%, and allegations by 17%, compared with the same period in 2012/2013. The increase was not just focussed in those areas where there has been an increased number of contentious parades, protests and demonstrations: the increase in complaints occurred across all police Districts except for F District,<sup>79</sup> and the increase in allegations occurred across all Districts.

A key factor in reducing the number of complaints appears to be a better understanding of the nature of the allegations made. That is the approach now favoured by the Committee. It is dependent upon OPONI categorising allegations according to allegation type. Further to a report by OPONI and an analysis carried out by the Human Rights and Professional Standards Committee in 2010, which found that ‘Incivility’ accounted for 14% of all allegations received between November 2000 and March 2009,<sup>80</sup> a target was set in the Policing Plan to reduce the number of allegations of incivility made against police by 5%. PSNI introduced its Complaints Reduction Strategy and focused on incivility allegations. Since then incivility allegations have decreased by 41% from 856 allegations in 2009/2010 to 503 allegations in 2012/2013.<sup>81</sup> That reduction is extremely encouraging and demonstrates the success of putting in place a Complaints Reduction Strategy.

Generally, the greatest proportion of allegations received by OPONI are of ‘Failure in Duty’, followed by ‘Oppressive Behaviour’ and then ‘Incivility’. In November 2012, OPONI published a report dedicated to examining oppressive behaviour allegations received between November 2000 and March 2012.<sup>82</sup> In that report it is recorded that the majority of oppressive behaviour allegations were classified within the sub-

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<sup>79</sup> F District comprises Cookstown, Dungannon & South Tyrone, Fermanagh and Omagh

<sup>80</sup> *2010 Analysis of Incivility Complaints*, Office of the Police Ombudsman for Northern Ireland, June 2010.

<sup>81</sup> *Annual Statistical Report of the Police Ombudsman for Northern Ireland 2012/2013*, Office of the Police Ombudsman for Northern Ireland, June 2013, page 28. However, there has been an increase in incivility complaints in the first half of 2013/2014. This will be more reported upon further.

<sup>82</sup> *Analysis of Oppressive Behaviour Allegations Received by the Office of the Police Ombudsman for Northern Ireland, 2000 – 2012*, Office of the Police Ombudsman for Northern Ireland, November 2012.

types of 'Oppressive Conduct and Harassment' and 'Other Assaults.'<sup>83</sup> It is further recorded that such allegations were more likely to be made by young men.<sup>84</sup> Persons who identified as being from a Catholic background were also over-represented. Moreover, the officers against whom the complaints were made were more likely to be in public facing roles, with younger officers and/or officers with fewer than 5 years' service being over-represented. In order to encourage a similar approach to reducing oppressive behaviour allegations as was applied to reducing complaints of incivility, a recommendation was made in last year's Human Rights Annual Report that PSNI should consider the findings of the OPONI report on allegations of oppressive behaviour and present to the Performance Committee the PSNI analysis of the findings together with its proposed means of reducing allegations of oppressive behaviour.<sup>85</sup>

PSNI accepted that recommendation and has advised that a control strategy for oppressive behaviour allegations has been developed and circulated amongst Service Delivery Superintendents together with details of officers who have attracted five or more oppressive behaviour allegations in the previous 12 months. PSNI advised that initiatives identified in the strategy are being taken forward together with an analysis aimed at understanding fluctuations in complaint trends. PSNI will present that analysis and the control strategy to the Committee in the coming months. Until that presentation is complete and the Committee has been provided with the opportunity to reflect upon it, Recommendation 7 of the Policing Board's Human Rights Annual Report 2012 will remain outstanding.

When considering the Professional Standards Monitoring Framework's six monthly report covering the first six months of 2013/2014 (1 April 2013 to 30 September 2013), the Committee noted an significant increase of 38% in the number of allegations of oppressive behaviour received compared to the same time period in 2012/2013. That is a statistic which causes the Committee disquiet and which will be

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<sup>83</sup> Other assault is where the complainant alleges unjustified or excessive use of force or violent conduct on the part of the police officer.

<sup>84</sup> In general, young men are the group most likely to complain to OPONI about the police. See *Equality Monitoring Report 2006-2011*, Office of the Police Ombudsman for Northern Ireland, November 2012.

<sup>85</sup> Recommendation 7 of the *Human Rights Annual Report 2013*, Northern Ireland Policing Board, February 2013.

monitored and reported upon further. In the meantime, the Committee looks forward to receiving a presentation from PSNI on its oppressive behaviour strategy as a matter of priority. Thereafter, the Committee will consider what further action is required to reduce the incidence of oppressive behaviour complaints.

### **Complaint outcomes**

When a complaint is made, it is dealt with by OPONI in accordance with its governing statute.<sup>86</sup> If the complaint is within the statutory remit of OPONI and the complaint has not been withdrawn or closed due to non-cooperation of the complainant, OPONI will either refer the complaint to PSNI to be dealt with by informal or local resolution (as to which see below) or OPONI will investigate the complaint formally.

When the investigation of an allegation is complete, a recommendation for allegation closure is made by OPONI. In 2012/2013, 7,556 recommendations for closure were made against 5,463 allegations closed.<sup>87</sup> The largest proportion of recommendations were to not substantiate the allegation due to insufficient evidence (39% in 2012/2013).<sup>88</sup> The making of an allegation whether substantiated or not is taken seriously by PSNI and is an indication of the police relationship with the public it serves. Over one fifth of recommendations were made to close the allegation following non co-operation of the complainant. Five percent recommended some form of action.

### ***Recommendations made to the Public Prosecution Service (PPS)***

If, on investigation, it is indicated that a criminal offence may have been committed by a police officer, OPONI sends a copy of the investigation report to the Director of Public Prosecutions together with the recommendations OPONI considers appropriate. This file will contain a recommendation as to whether, based on the

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<sup>86</sup> Part VII of the Police (Northern Ireland) Act 1998.

<sup>87</sup> Each allegation may have more than one associated recommendation, for example, when there are a number of police officers linked to an allegation, a recommendation for allegation closure is made for each one of the officers. Thus, the number of recommendations for closures made is greater than the number of allegations closed by OPONI.

<sup>88</sup> *Annual Statistical Report of the Police Ombudsman for Northern Ireland 2012/2013*, Office of the Police Ombudsman for Northern Ireland, June 2013, page 9.

evidence, the OPONI believes the officer should be prosecuted. During 2012/2013, OPONI recommended 19 criminal charges to the PPS. Those 19 charges concerned 6 police officers. The recommended charges related to alleged: data protection offences (4 charges); offences under the Computer Misuse Act (4 offences); threats to kill (3 charges); common assault (2 charges); resisting a police officer in execution of duty (2 charges); careless driving (1 charge); disorderly behaviour (1 charge); intent to pervert the course of justice (1 charge); and unlawful disclosure of information (1 charge).<sup>89</sup> The Public Prosecution Service subsequently directed prosecution in respect of 1 of those charges and no prosecution in respect of 8.<sup>90</sup>

### ***Recommendations made to the Chief Constable***

If OPONI considers that action is required in respect of an individual officer's conduct, it will send to the Chief Constable (or the Policing Board in the case of a complaint against an officer of the rank of Assistant Chief Constable or above) a memorandum containing OPONI's recommendations as to disciplinary action that should be taken. During 2012/2013, the Police Ombudsman made 308 recommendations to the Chief Constable relating to police officers' conduct, of which 51% were for advice and guidance, 24% for a Superintendent's Written Warning, 22% for management discussion and 3% for formal disciplinary proceedings.<sup>91</sup> The vast majority of recommendations made by OPONI to the Chief Constable are accepted and acted upon by PSNI. During 2012/2013 there were 231 recommendations for disciplinary action that were accepted by the PSNI and 8 that were not accepted.<sup>92</sup> The Committee is currently exploring a means of monitoring those recommendations that are not accepted and will pursue this with the PSNI and OPONI.

In addition to making recommendations for disciplining individual officers, the Police Ombudsman has power to make recommendations to the Chief Constable which are

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<sup>89</sup> *Ibid.* page 32.

<sup>90</sup> *Ibid.* page 33. At the date the OPONI statistical report was published, a direction was still to be given in respect of the remaining 10 recommended charges.

<sup>91</sup> *Ibid.* page 33.

<sup>92</sup> *Ibid.* page 33. At the date the OPONI statistical report was published, a decision was still to be made in respect of whether the remaining 69 recommendations made by OPONI in 2012/2013 were accepted or rejected by PSNI. In relation to the 8 recommendations not accepted, PSNI may still have taken action, but not with the specific outcome OPONI recommended.

aimed at improving police policy and practice. Given that these recommendations can sometimes relate to the manner in which PSNI respond to critical incidents (e.g. missing persons), it is in the public interest and PSNI's own interest to ensure that the recommendations are fully implemented and that the lessons learnt from the OPONI investigations are communicated throughout the Police Service. If OPONI makes policy recommendations of a similar nature on a recurring basis, this might be an indication that further work is required in respect of that specific issue. PSNI therefore ought to develop a system which identifies trends and patterns in OPONI policy recommendations. Where recurring recommendations are made, the system should highlight these and require PSNI to take further action.<sup>93</sup>

### **Recommendation 5**

**PSNI should put in place a system which identifies trends and patterns in OPONI policy recommendations. If recurring recommendations are made, the system should highlight these and require PSNI to take further action. That system should be put in place within 6 months of the publication of this Human Rights Annual Report. PSNI should thereafter provide the Performance Committee with an annual report highlighting trends and patterns in OPONI policy recommendations and any recurring recommendations. The report should also outline how lessons learned from the OPONI investigations have been communicated throughout the Police Service and how they have resulted in organisational change.**

### **Informal resolution<sup>94</sup>**

Less serious complaints can be dealt with by way of informal resolution but only if the complainant has agreed to that course. The informal resolution process involves the PSNI Service Improvement Department appointing an officer of the rank of Inspector or above to speak to the complainant and the officer who is the subject of the complaint with a view to reaching a satisfactory resolution. During 2012/2013

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<sup>93</sup> The Criminal Justice Inspection Northern Ireland (CJINI) recommended that PSNI should develop and implement systems for monitoring the implementation and the effectiveness of policy recommendations: *The Relationship Between PSNI and the Office of the Police Ombudsman for Northern Ireland*, CJINI, December 2013.

<sup>94</sup> *Annual Statistical Report of the Police Ombudsman for Northern Ireland*, Office of the Police Ombudsman for Northern Ireland, June 2013, pages 11 and 34.

there were 460 complaints deemed suitable for informal resolution. The proportion of complaints considered to be suitable for informal resolution has been falling in recent years. This will be partly as a result of reductions in Incivility and certain Failure in Duty type allegations following the implementation of the PSNI Complaints Reduction Strategy.<sup>95</sup> Also, during 2012/2013, 38 complaints were referred for local resolution in District D (as to which, see below), and these would have been considered for informal resolution had the local resolution project not continued there.

The proportion of complainants agreeing to participate in the informal resolution process has also been falling in recent years. During 2012/2013, 271 complainants agreed to participate in this process whilst 189 persons to whom it was offered did not. Of those complainants who did not consent, more than half failed to respond to the request to participate. Around three quarters of complaints referred to informal resolution each year are successful and this is mainly because the officer in question has been made aware of the issue, has been spoken to by a supervisor or manager, or other action has been taken which satisfied the complainant.

### **Local resolution**

Local resolution was piloted in 'D' District (Antrim, Carrickfergus, Lisburn and Newtownabbey) between June 2010 and November 2010. Through the local resolution process responsibility for resolving less serious complaints is returned to Local Resolution Officers, that is, appointed Inspectors and Sergeants in the unit in which the complaint arose. Local resolution depends upon the consent of the complainant to having their complaint dealt with in this manner. The success of local resolution in turn depends upon the willing co-operation and involvement of the complainant and the police officer. Unlike informal resolution, local resolution does not involve PSNI Service Improvement Department.

During the 'D' District pilot, the average time taken to resolve a complaint locally was 3 times shorter than informal resolution, achieving resolution completion on average

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<sup>95</sup> As such allegations were considered to be the most suitable for informal resolution.

within 30 days compared to the non-local resolution average of 104 days. Most of the complainants returning satisfaction questionnaires expressed high levels of satisfaction with both the process and the Local Resolution Officers involved. Given this success, OPONI and PSNI agreed to continue with local resolution in 'D' District. During 2012/2013 38 complaints (containing 47 allegations) were locally resolved in 'D' District.<sup>96</sup>

The statutory provision from which OPONI derives its authority to deal with complaints<sup>97</sup> does not provide for local resolution so the pilot in 'D' District has been operating on the basis of an agreement with the Department of Justice. Therefore legislative change is required before local resolution can be rolled out across all PSNI Districts. The Justice Minister has consulted upon proposals to make the required legislative changes and now intends to include the changes within a forthcoming Bill on reforms to OPONI. The Justice Minister's proposals, if implemented, will mean that if a complaint is less serious, would not result in disciplinary or criminal action against an officer and police believe they can resolve it quickly, the complainant will be asked if he or she wishes to use the process. Importantly, if a complaint is not resolved to the complainant's satisfaction, it will be referred back to OPONI. To ensure that public confidence is maintained, OPONI will continue to have a 'guardianship' role and will retain oversight and scrutiny of the local resolution process.

### **Complaints against senior officers**

A complaint made by, or on behalf of, a member of the public about a senior officer (an officer of the rank of Assistant Chief Constable or above) must be investigated by OPONI. If, following a formal investigation by OPONI, there are recommendations for disciplinary proceedings, those will be referred to the Policing Board as the appropriate disciplinary authority for senior officers. If the complaint is suitable for informal resolution, OPONI will refer it to the Policing Board to resolve. During 2012/2013, there were no recommendations for disciplinary proceedings received by

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<sup>96</sup> Information provided by OPONI to the Performance Committee further to the Committee's Professional Standards Monitoring Framework.

<sup>97</sup> Part VII of the Police (Northern Ireland) Act 1998.

the Policing Board from OPONI in respect of senior officers. There were no complaints dealt with by informal resolution.

### **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. When a direction and control complaint is made, the relevant District or Department will contact the complainant, either in person or by letter, and provide an explanation for PSNI action and, if appropriate, offer an apology, make reparation and/or explain the action that PSNI has taken to remedy a problem identified by the complaint. PSNI Service Improvement Department oversees the handling of direction and control complaints and provides the Policing Board with a summary of all new complaints made, together with a summary of all complaints finalised, on a six monthly basis.<sup>98</sup> Those summaries contain sensitive and confidential information which cannot be published in this Annual Report but are reviewed by the Policing Board's Human Rights Advisor. Any area of concern is reported by her to the Committee.

Between 1 April 2012 and 31 March 2013, PSNI received 181 direction and control complaints. During the previous year, 2011/2012, 136 such complaints were received. The reason for the increase in the number of direction and control complaints received during 2012/2013 appears to be attributable to the increased number of public assemblies and protests that have required police intervention: since December 2012, of 93 direction and control complaints received, over 40 have related to issues connected to public assemblies and protests, with recurring complaints relating to the manner in which police have dealt with road blocks and allegations that the police response to various parades and protests has been too lenient / too heavy handed. Whilst these complaints have been resolved by a police officer speaking to or writing to the complainants to explain the police action in the particular case, the direction and control complaints received during 2012/2013 provide a useful snapshot which demonstrates just how significant a public

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<sup>98</sup> As required by Recommendation 27(h) of the Policing Board's Human Rights Annual Report 2005.



confidence issue the policing of public assemblies and protests has become over the past year. This is considered in more detail in the next Chapter of this Human Rights Annual Report (Chapter 6, Public Order).

## **DISCIPLINE AND THE CODE OF ETHICS**

Police misconduct is dealt with internally by PSNI.<sup>99</sup> If an allegation of misconduct has been made, the standards against which police officers are measured are those contained within the PSNI Code of Ethics 2008. The purpose of the Code of Ethics<sup>100</sup> is to lay down standards of conduct and practice for police officers and to make police officers aware of the rights and obligations arising out of the European Convention on Human Rights.

The Code of Ethics is 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 therefore correlates its statistics on disciplinary matters against specific Articles of the Code of Ethics and tracks and trends those Articles most commonly alleged to have been breached. That information is shared with the Performance Committee.

The number of alleged breaches of the Code of Ethics had been increasing steadily each year until 2008/2009 when there were 612 alleged breaches. However since then, the number of alleged breaches has been on a downward trend (apart from a small increase of 4% in 2011/2012), with a total of 343 alleged breaches in 2012/2013. This is the lowest level of alleged breaches in 8 years and is 25% lower than the 456 alleged breaches in 2011/2012. Of the 343 alleged breaches recorded

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<sup>99</sup> Unless the misconduct relates to a police officer of rank Assistant Chief Constable or above, in which case the Policing Board is the relevant disciplinary authority.

<sup>100</sup> As per section 52(1) of the Police (Northern Ireland) Act 2000.

during 2012/2013, 51% arose out of complaints which were handled by OPONI and then referred to PSNI as the relevant disciplinary authority.<sup>101</sup>

Over the eight year period 2005/2006 to 2012/2013, the three sub-Articles of the Code of Ethics most commonly alleged to have been breached were:

<b><u>Sub-Articles of the Code of Ethics most commonly alleged to have been breached, 2005/2006 – 2012/2013</u></b>		
<b>1.</b>	<p><b><u>Sub-Article 7.2</u></b></p> <p><i>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.</i></p>	<p>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 and may arise from either on or off-duty conduct. In 2012/2013, Service Improvement Department recorded 73 alleged breaches of sub-Article 7.2 (21% of all alleged breaches of the Code of Ethics during the year). This represents a 35% reduction on 2011/2012. 95% of the 73 alleged breaches recorded during 2012/2013 originated from internal PSNI investigations.</p>
<b>2.</b>	<p><b><u>Sub-Article 2.1</u></b></p> <p><i>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,</i></p>	<p>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 2012/2013, Service Improvement Department recorded 68</p>

<sup>101</sup> Examination of the Articles of the Code of Ethics that are breached most frequently 2012/2013, PSNI, May 2013

	<p><i>impartial and careful manner so as to ensure accountability and responsibility in accordance with the law.</i></p>	<p>alleged breaches of sub-Article 2.1 (20% of all alleged breaches of the Code of Ethics during that year). This represents a 41% reduction on 2011/2012. 91% of the 68 alleged breaches of sub-Article 2.1 recorded during 2012/2013 came from OPONI referrals. Sub-Article 2.1 was also the most frequently breached sub-Article during 2012/2013 to result in a Superintendent's Written Warning.<sup>102</sup></p>
<p>3.</p>	<p><b><u>Sub-Article 1.10</u></b>  <i>Whether on or off duty, police officers shall not behave in such a way that is likely to bring discredit upon the Police Service.</i></p>	<p>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 and may arise from either on or off-duty conduct. In 2012/2013, Service Improvement Department recorded 43 alleged breaches of sub-Article 1.10 (13% of all alleged breaches of the Code of Ethics during that year). This is a slight increase on the 38 alleged breaches arising during 2011/2012. 60% of the 43 alleged breaches recorded during 2012/2013 originated from internal PSNI investigations.</p>

<sup>102</sup> PSNI provides the Policing Board with six-monthly figures on breaches of the Code of Ethics leading to a Superintendent's Written Warning being administered. During 2012/2013 there were 96 Superintendents Written Warnings issued, of which 32 were for breach of sub-Article 2.1 of the Code of Ethics.

## Sanctions for breach of the Code of Ethics

All alleged breaches of the Code of Ethics which relate to misconduct are dealt with through the PSNI disciplinary structure either at a local level or by PSNI Service Improvement Department. Allocation depends upon the seriousness of the alleged breach. If the allegation is substantiated the sanction(s) may vary from a formal sanction, to a local misconduct sanction, to no further action.

<b><u>Formal sanction</u></b> (imposed following a formal disciplinary hearing conducted by PSNI Service Improvement Department misconduct panel)	<b><u>Local misconduct sanction</u></b> (imposed at local level)
Dismissal from the PSNI	Superintendent's Written Warning
A requirement to resign	
A reduction in rank or pay	Advice and Guidance
A fine	
A reprimand	Management Discussion
A caution	

PSNI provides the Policing Board's Human Rights Advisor, on a six-monthly basis, with summary details of all cases that resulted in formal disciplinary hearings; details of Superintendent's Written Warnings; 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 or a gross misconduct matter. That information enables the Human Rights Advisor to monitor how PSNI Service Improvement Department deals with the most serious allegations of a breach of the Code of Ethics and the sanction(s) imposed for allegations that are substantiated.

### ***Review of misconduct and performance procedures***

In 2008 new misconduct and unsatisfactory performance procedures were introduced in England and Wales.<sup>103</sup> These new procedures were introduced further to the findings of a review commissioned by the Home Office in 2004 (known as the Taylor review) into the effectiveness of police misconduct and unsatisfactory performance procedures in England and Wales.<sup>104</sup> Whilst the Taylor review and the new procedures introduced to England and Wales did not extend to Northern Ireland, many of the key findings of the Taylor review are relevant in the Northern Ireland context. For example, one of the key points to emerge from the Taylor review was the need to shift the emphasis and culture in police misconduct and unsatisfactory performance matters from blame and punishment towards a focus on development and improvement. The review recommended that supervisory police officers should be given more responsibility to deal with misconduct at a local level.

Taking on board the Taylor review and the reforms in England and Wales, PSNI has been working closely with the Department of Justice for a number of years on legislative reform to the police discipline and unsatisfactory performance procedures in Northern Ireland. That work is still ongoing but is nearing completion.<sup>105</sup> The Performance Committee has closely followed developments and during 2013 it considered an analysis of the experience of a number of police services in England and Wales in implementing their new misconduct and unsatisfactory performance procedures. The general consensus based on the anecdotal evidence received from those services is that the new procedures are working successfully, with officers accepting when their conduct has fallen below standard and more often at an earlier stage. Most police services commented that an adherence to time scales and dealing with matters at a local level has considerably cut down on the time between

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<sup>103</sup> The following regulations came into force in England and Wales on 1 December 2008: the Police (Performance) Regulations 2008; the Police (Conduct) Regulations 2008; the Police (Complaints and Misconduct) (Amendment) Regulations 2008; the Police Appeals Tribunals Rules 2008; and the Police Amendment Regulations 2008.

<sup>104</sup> *Review of Police Disciplinary Arrangements Report (the Taylor Review)*, January 2005.

<sup>105</sup> During 2013 the Department of Justice issued for consultation 3 sets of draft Regulations: the Police (Conduct) Regulations 2013 which establish procedures for taking action in relation to misconduct by police officers; the Police (Performance) Regulations (Northern Ireland) 2013 which establish mechanisms for dealing with issues regarding unsatisfactory performance and attendance of police officers; and the Police Appeals Tribunals Rules (Northern Ireland) 2013 which provide for appeals to Police Appeals Tribunals (PATs) against the findings and specific outcomes arising from both the Conduct and Performance Regulations.

the commencement of a case and case closure. However, it was found that despite the new procedures having been in place in England and Wales for 5 years now, some senior staff are still finding it difficult not to base decisions on the old system and are reluctant to deal with minor misconduct matters without feeling the need to refer matters to a higher level.

In light of this, the Committee has highlighted to PSNI that when the new legislative framework comes into effect in Northern Ireland, it will be important to ensure that there is not only a change in organisational culture but also adequate support systems to develop confidence in decision-making. This will require adequate initial training and the establishment of monitoring systems to oversee the operation of the reforms which would enable early intervention to tackle any issues arising. PSNI has advised that a draft training programme has been developed and that quality assurance and consistency will be the responsibility of PSNI Discipline Branch. Discipline Branch staff will also play an important role in coaching and mentoring local investigators when the reforms are first introduced. PSNI's own research has shown that the police services that have experienced most benefit from the new procedures in England and Wales are the police services whose senior officers have embraced the reforms.

### ***Review of the Police Appeals Tribunal (PAT)***

Formal disciplinary hearings are conducted by a PSNI misconduct panel. In accordance with the Royal Ulster Constabulary (Appeals) Regulations 2000, the Policing Board must make arrangements for a Police Appeals Tribunal (PAT) to hear appeals from the PSNI misconduct panel.<sup>106</sup> During 2012 the Human Rights and Professional Standards Committee expressed concern in relation to the number of occasions where the PAT had overturned the finding or sanction imposed on officers by the PSNI misconduct panel. The Committee therefore commissioned its Professional Standards Advisor to undertake a review to examine 9 cases where the PAT had overturned the decision of the misconduct panel. In addition to flagging up lessons that could be learnt from these 9 cases, the Professional Standards Advisor also assessed the changes that are likely to impact on the PAT with the introduction

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<sup>106</sup> Before a case goes to the PAT, it will be subject to a Chief Constable's review.

of the proposed new legislative reforms to misconduct and performance procedures.<sup>107</sup> The Performance Committee has considered the Professional Standards Advisor's findings and is progressing implementation in conjunction with PSNI.

### **Suspended officers**

Regulation 5(1) of the Royal Ulster Constabulary (Conduct) Regulations 2000 provides the Chief Constable with authority to suspend an officer if there is a report, allegation or complaint indicating that the conduct of the officer did not meet the standards set out in the Code of Ethics. The Chief Constable has delegated that authority to the Deputy Chief Constable.<sup>108</sup> PSNI has advised that a decision to suspend an officer is only taken if all other options, including repositioning the officer to undertake other duties, are deemed inappropriate because of the nature of the allegation. Suspension is not a sanction but a pre-emptive measure to protect the integrity of the PSNI pending resolution of the matter. It is right that a police officer accused of a discipline offence is presumed innocent until proven otherwise.

The Performance Committee monitors the levels of suspended and repositioned police officers. During 2012/2013 there were 23 new suspensions.<sup>109</sup> This is a 26% decrease compared to the 31 officers suspended during 2011/12, but a return towards the levels of suspension seen in previous years (there were 20 suspensions in 2009/2010 and 20 suspensions in 2010/2011).<sup>110</sup>

Under regulation 6 of the Royal Ulster Constabulary (Conduct) Regulations 2000, if criminal proceedings are initiated against a police officer in respect of alleged misconduct, any disciplinary proceedings must await the conclusion of the criminal

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<sup>107</sup> During 2013 the Department of Justice issued the Police Appeals Tribunals Rules (Northern Ireland) 2013 for consultation. These Rules provide for appeals to PATs against the findings and specific outcomes arising from the proposed new Conduct and Performance Regulations (as to which, see footnote 105 above).

<sup>108</sup> Regulation 5(5) of the Royal Ulster Constabulary (Conduct) Regulations 2000 permits the Chief Constable to delegate this power to another senior officer.

<sup>109</sup> Four of which represent officers required to resign at a misconduct hearing but who were suspended for the subsequent four week notice period.

<sup>110</sup> Information provided by PSNI to the Performance Committee as part of the Professional Standards Monitoring Framework.

case unless the Chief Constable believes that in the exceptional circumstances of the case it would be appropriate for disciplinary proceedings to proceed. The conclusion of the criminal case will include any subsequent appeal. Thus a police officer may remain suspended on full pay for a long period of time. This has been an issue of concern to the Committee for some time, not least because it is an issue of community confidence.

As outlined above, PSNI has been working closely with the Department of Justice on legislative reform to the police discipline and unsatisfactory performance procedures in Northern Ireland. During 2013 the Department of Justice issued for consultation draft Police (Conduct) Regulations 2013 which establish procedures for taking action in relation to misconduct by police officers. Included within these Regulations is provision that will enable misconduct and criminal proceedings to take place in tandem, provided that this does not prejudice the criminal proceedings.

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

If a police officer has left the PSNI, whether by retirement, resignation or dismissal, he or she cannot be subsequently investigated in relation to misconduct alleged during service. The Police Ombudsman has no power to compel that officer to attend interview as a witness or to give evidence.<sup>111</sup> However, if the officer is alleged to have committed a criminal offence clearly he or she can, and should, be investigated and dealt with by the PSNI and the Public Prosecution Service.

A concern expressed by many Policing Board Members and stakeholders has been the perception that an officer may be permitted 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

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<sup>111</sup> During 2012 the Department of Justice consulted upon proposed reforms to the Office of the Police Ombudsman (*Future Operation of the Office of the Police Ombudsman for Northern Ireland*, Department of Justice, March 2012). Amongst other consultation questions, the Department asked whether or not the Police Ombudsman, when conducting investigations involving grave or exceptional matters, should be given a power to compel retired or former police officers to submit to witness interview and to require that they provide all relevant documentation to the Police Ombudsman which is within the officers' possession, custody, power or control. Mixed consultation responses were received in relation to this.



proceedings pending. During 2012/2013, a total of 17 police officers left PSNI whilst under investigation for alleged misconduct. Of those, 13 police officers were suspended at the time they left. This is an increase on the 8 police officers leaving PSNI during 2011/2012 whilst under investigation for alleged misconduct, of which 5 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 an officer who fails to live up to a high standard. To require an officer to remain within the PSNI simply to require him or her to face a misconduct panel (with the ultimate sanction being dismissal) makes neither operational nor economic sense.

### **Integrity tests**

Integrity tests are designed to test covertly an officer or group of officers' integrity where there may be intelligence to suggest integrity may be an issue. They are one of a number of options available to PSNI 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. In other words, they are intelligence led. Between 1 April 2012 and 31 March 2013, no integrity tests were carried out. That does not suggest PSNI has failed to investigate fully or appropriately: it means that integrity testing was not required or was not appropriate for those allegations being investigated during 2012/2013.

### **Regulation 20 reports**

By virtue of section 55 of the Police (Northern Ireland) Act 1998 the Police Ombudsman can investigate non-complaint matters. Such matters can be investigated by the Police Ombudsman of his or her own volition or following a referral by the Policing Board, the Department of Justice, the Secretary of State, the Director of Public Prosecutions or the Chief Constable of any matter indicating

criminality or misconduct by a police officer. The Chief Constable must also refer all discharges of firearms, AEP or Taser to the Police Ombudsman for investigation and also any incident where a person dies either in police custody or shortly following police contact (regardless of whether it is suspected that there was any wrongdoing on the part of the police).

During 2012/2013 there were 42 non-complaint matters referred by the Chief Constable to the Police Ombudsman, including 12 Historic Enquiry Team referrals. There were 16 non-complaint matters which the Police Ombudsman decided to investigate in the public interest and one matter was referred by the Director of Public Prosecutions.<sup>112</sup>

At the conclusion of these investigations into non-complaint matters a report, known as a Regulation 20 report, is sent to the Secretary of State, the Policing Board and the Chief Constable. The findings of each report are considered by the Policing Board's Performance Committee. During 2012/2013 there were 13 Regulation 20 reports issued by the Police Ombudsman.<sup>113</sup> These related to discharges of firearms, AEP and Taser. The Committee will continue to monitor the reports with a particular focus on whether the PSNI have learned lessons from the reports where appropriate.

### **Civilian personnel**

The PSNI Code of Ethics only applies to police officers (whether full or part-time) and to police staff who have been designated<sup>114</sup> as an Investigating Officer, a Detention Officer or an Escort Officer insofar as they are carrying out their designated functions.<sup>115</sup> It does not apply to any other civilian staff. Likewise the Office of the Police Ombudsman (OPONI) has remit only in respect of police officers and designated staff but not in respect of any other civilian staff.<sup>116</sup>

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<sup>112</sup> *Annual Report and Accounts for the year ended 31 March 2013*, Police Ombudsman for Northern Ireland, June 2013, page 14.

<sup>113</sup> *Ibid.* page 15.

<sup>114</sup> Under sections 30, 30A or 31 of the Police (Northern Ireland) Act 2003.

<sup>115</sup> The Code of Ethics was made applicable to designated staff by the Police Powers for Designated Staff (Code of Ethics) Order (Northern Ireland) 2008.

<sup>116</sup> The Police Ombudsman's remit was extended to include designated staff by the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008.

The legislation governing the remit of OPONI and the applicability of the Code of Ethics became law in 1998 and 2000 respectively.<sup>117</sup> At this time almost all policing functions were carried out by police officers. However, since then a programme of civilianisation has been initiated in accordance with the Report of the Independent Commission on Policing for Northern Ireland (the Patten report).<sup>118</sup> As a consequence, more civilian staff are now performing roles that were traditionally carried out by police officers and which involve interaction with the public and a high level of responsibility. Such staff are critical to ensuring the PSNI complies, and continues to comply, with the Human Rights Act. They are also critical to public confidence.

As at October 2013 there were 156 civilian staff carrying out the role of Investigating Officer; 142 carrying out the role of Detention Officer; 83 carrying out the role of Station Enquiry Assistant and 96 carrying out the role of Call Handler. Of those, 28 Investigating Officers and all 142 Detention Officers are 'designated staff' and are therefore bound by the Code of Ethics and answerable to OPONI.<sup>119</sup> The remaining 128 Investigating Officers have been appointed on an agency basis and are not therefore 'designated staff' for the purposes of the legislation. Accordingly, their conduct will not be measured against the standards set out in the PSNI Code of Ethics and OPONI will not be able to deal with any complaints made about them. The same applies to all 83 Station Enquiry Assistants, 96 Call Handlers and approximately 2,500 other civilian staff working within PSNI.

Members of the public are entitled to expect that all those working within the Police Service are held to a high ethical standard. The Committee believes that should be the case regardless of whether the individual is a police officer or a civilian member of staff. Non-designated civilian staff are subject to a Police Staff Handbook, which is based upon the Northern Ireland Civil Service (NICS) Staff Handbook but amended

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<sup>117</sup> The Police (Northern Ireland) Act 1998 and the Police (Northern Ireland) Act 2000.

<sup>118</sup> *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, paragraphs 10.22 – 10.24.

<sup>119</sup> The 28 Investigating Officers are designated in accordance with section 30 of the Police (Northern Ireland) Act 2003 and the 142 Detention Officers are designated in accordance with section 31 of the Police (Northern Ireland) Act 2003.

to take some account of the policing context.<sup>120</sup> The Handbook contains a section on Disciplinary Procedures which sets out the accepted standards of conduct for staff and the procedures that will be invoked following an allegation of misconduct. Non-designated civilian staff are also bound by the NICS Code of Ethics and Code of Conduct. However, misconduct matters are not aligned to breaches of the Handbook or the NICS Code of Ethics. Furthermore, there is no formal procedure for dealing with complaints received by a member of the public in respect of non-designated civilian staff. Where such a complaint is made, the matter is considered internally by PSNI to determine whether it warrants investigation as a disciplinary matter. If so the disciplinary matter will be dealt with in accordance with the procedures contained within the Staff Handbook. The Committee is concerned that civilian staff, who are increasingly carrying out operational policing roles, are not subject to the same regime as police officers and designated staff.

Records of civilian staff misconduct proceedings are not held centrally. They are held by Human Resources Managers in each District or Department. That means that it is difficult for PSNI (and by extension the Performance Committee) to monitor trends and patterns in complaints and misconduct matters arising in respect of civilian staff. The Policing Board's Human Rights Advisor has raised this with PSNI and has been advised that work is underway to modify the recording, tracking and monitoring of civilian staff discipline cases, thus enabling the monitoring of trends/patterns in the future. PSNI should report to the Performance Committee on progress made in this regard.

### **Recommendation 6**

**PSNI should report to the Performance Committee, within 6 months of the publication of this Human Rights Annual Report, on the processes it has in place to monitor trends and patterns in complaints and misconduct matters arising in respect of civilian staff.**

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<sup>120</sup> Note that non-designated civilian staff who are appointed on an agency basis are not subject to the Police Staff Handbook. They are however subject to the Northern Ireland Civil Service Code of Ethics and Code of Conduct.

The previous Police Ombudsman recommended in his five year review that any civilian staff operating directly in conjunction with police officers in the course of their policing functions should be brought within the remit of OPONI.<sup>121</sup> In response to the subsequent Department of Justice consultation,<sup>122</sup> the Human Rights and Professional Standards Committee endorsed that recommendation and stated that it would ensure greater accountability in respect of the Police Service as a whole. All other respondents to the consultation strongly supported that recommendation. The Justice Minister might therefore seek to extend the remit of OPONI to include civilian staff by including provision for this within a forthcoming Bill on legislative reforms to OPONI. A Bill is due to be introduced to the Northern Ireland Assembly in 2014 and the Performance Committee will consider the contents of the Bill in due course.

## **CIVIL CLAIMS AND JUDICIAL REVIEWS**

The PSNI provides the Policing Board with details of civil claims brought against it on a monthly basis, including details of compensation paid to plaintiffs either by court order or by way of an out-of-court settlement. Information is collated and considered by the Committee on an annual basis as part of its Professional Standards Monitoring Framework.

In respect of judicial reviews,<sup>123</sup> 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, on-going and recently concluded judicial review applications. The Policing Board's Human Rights Advisor can thereafter request further information on any given case, as required. During 2013, there were a number of judicial review proceedings initiated, ongoing and concluded that involved PSNI. Concluded judicial reviews of particular interest to the Committee related to the following.

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<sup>121</sup> Recommendation 4 of the Police Ombudsman's statutory five year review report on the working of Part VII of the Police (Northern Ireland) Act 1998. This five year review was completed in 2012 by the then Police Ombudsman, Al Hutchinson.

<sup>122</sup> *Future Operation of the Office of the Police Ombudsman for Northern Ireland*, Department of Justice, March 2012.

<sup>123</sup> 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.

*Justice and Security (Northern Ireland) Act 2007 (JSA)*:<sup>124</sup> On 9 May 2013 the Northern Ireland Court of Appeal held that the stop, search and questions powers contained within sections 21 and 24 JSA were unlawful given that a statutory Code of Practice was not in place.<sup>125</sup> A Code of Practice was subsequently introduced on 15 May 2013.<sup>126</sup>

*Release of images: Operation Exposure*:<sup>127</sup> In the summer of 2010 PSNI in Foyle produced leaflets containing images of children and young people whom they wished to speak to in connection with sectarian interface violence. The leaflets were distributed amongst local households requesting the public to assist with identification. PSNI also released 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 before the Divisional Court in September 2011. On 21 March 2013 judgment was delivered and the judicial review application was dismissed. The Court stated that the determination of whether the retention and use of photographs constitutes an interference with Article 8 ECHR requires a fact specific consideration in every case. It was accepted that there was an interference with Article 8 in the present case given the context within which photographs of the child had been published i.e. they disclosed to the public that the child in question was wanted for interview in connection with possible involvement in serious public disturbances. However the Court was satisfied that the decision to proceed with publication was in accordance with law and was for the legitimate purpose under Article 8(2) ECHR of preventing disorder or crime and protecting the rights and freedoms of others.

The remaining issue to be considered was whether the interference was justified in a democratic society in the sense of being a proportionate response to the legitimate

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<sup>124</sup> *In the matter of an application by Fox and McNulty for judicial review and in the matter of an application by Canning for judicial review* [2013] NICA 19.

<sup>125</sup> Section 21 JSA contains a power to stop and question and section 24 JSA contains a power to stop and search "without suspicion".

<sup>126</sup> *Code of Practice for the Exercise of Powers in the Justice and Security (Northern Ireland) Act 2007*, Northern Ireland Office, May 2013.

<sup>127</sup> *Re JR 38's Application* [2013] NIQB 44.

aim. The Lord Chief Justice, who was one of 3 judges delivering judgment in the case, said there was no doubt about the importance of the interests and welfare of the child when children come into contact with the criminal justice system. The Court was satisfied, however, that in this case the balance came down firmly in favour of the publication of the photographs for the following reasons:

- The violence at the interface was persistent, extending over a period of months, and was exposing vulnerable people to fear and the risk of injury;
- There was, therefore, a pressing need to take steps to bring it to an end by identifying and dealing with those responsible;
- Detection by arresting those at the scene was not feasible so use of photographic images was necessary;
- All reasonably practicable methods of identifying those involved short of publication of the photographs had been tried;
- The participation of children in groups engaged in public disorder inevitably corrodes the child's sense of proper respect for the rights and freedoms of others;
- That is particularly the case where the public disorder has a sectarian overtone;
- Where a child has become involved in such a group it is in the child's interest that his participation should be identified so that the child can be provided with the support necessary to prevent offending;
- Early identification of the participation of the child can help to ensure that the child benefits from those supports before he or she engages in very serious offending;
- The safeguards included in the PSNI guidance document ensured a rigorous approach to the need to publish; and
- The publication of the images was likely to lead to the identification of a high proportion of those involved and therefore ensure the referral to the appropriate diversionary services.

The Court concluded that the publication was necessary for the administration of justice and was not excessive in the circumstances. It did not accept the characterisation of the operation as a 'name and shame' policy but held that it was "a

process which was designed to protect the public by preventing reoffending and ensuring that the children involved were diverted if at all possible. That reflected the need to protect the children and address their welfare in circumstances where they were exposed to sectarian public disorder. The risk of stigmatisation could not outweigh those factors”.



## 6. PUBLIC ORDER

It is the duty of 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 the offender to justice.<sup>128</sup> In carrying out those functions police officers must be guided by the PSNI Code of Ethics<sup>129</sup> and must so far as practicable carry out their functions in co-operation with, and with the aim of securing the support of, the local community.<sup>130</sup> Crucially, the police have a positive obligation under Article 2 of the European Convention on Human Rights (ECHR) to protect the life of all involved, including police officers, and to ensure that all operations are planned so as to avoid recourse to lethal force. When considering whether an operation has been planned effectively, particularly in light of Article 2 ECHR, relevant factors will include the training of officers and the issue of equipment and weapons. During the course of a parade, assembly, protest or other public meeting the role of the police on the ground is pivotal. It is the police officer who responds by, for example, making arrests, issuing warnings, keeping protesters and marchers apart, protecting life and property, using force and implementing the criminal justice strategy. In the exercise of all relevant powers and duties the police must act compatibly with the ECHR.

The 'flags protests' in December 2012 marked the start of an operationally intensive year for PSNI in terms of public order policing. Coupled with the planning and resources that were required for policing the G8 summit, other major events such as the World Police and Fire Games, and parades and protests taking place during the summer months (and beyond),<sup>131</sup> it would be fair to say that 2013 has placed a considerable amount of pressure on police resources, both financially and in terms of personnel. Police officers must be credited for their resilience and ongoing efforts to engage with local communities, often in confrontational and hostile settings.

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<sup>128</sup> Section 32(1) of the Police (Northern Ireland) Act 2000.

<sup>129</sup> Section 31(A)(2) of the Police (Northern Ireland) Act 2000. The Code of Ethics is drafted by the Policing Board as per section 52 of the 2000 Act and incorporates relevant human rights standards.

<sup>130</sup> Section 31(A)(1) of the Police (Northern Ireland) Act 2000.

<sup>131</sup> Over 9,000 people participated in 24 parades in Belfast alone on 12 July 2013. Between that date and the end of 2013, there were over 100 parades and protests in the North Belfast area.

Given the increased focus in the media on public order policing over the past year, and misinformation that has circulated as regards what the police can and cannot do, it is worth setting out in this chapter a brief overview of the legal context within which the PSNI operate as regards public assemblies, parades and protests. Thereafter this chapter provides an overview of the monitoring carried out by the Policing Board during 2013 and provides detail on PSNI's own internal review of public order policing.

## LEGAL CONTEXT

### Public Processions (Northern Ireland) Act 1998

The Public Processions (Northern Ireland) Act 1998 formalised (with statutory underpinning) the Parades Commission. The Act provides the domestic legal framework for the regulation of 'public processions' and 'public protests' in Northern Ireland. A 'public procession' is defined as 'a procession in a public place, whether or not involving the use of vehicles or other conveyances'.<sup>132</sup> A person supports a public procession if at any time when the procession is being held he or she is in a public place and in close proximity to persons taking part in the procession and in all the circumstances (including conduct) his or her presence in that place may reasonably be taken as expressing support for the holding of the procession.<sup>133</sup> A 'protest meeting' is an open-air public meeting,<sup>134</sup> which is, or is to be, held at a place which is on or in the vicinity of the route or proposed route of a public procession and at or about the same time as the procession is being or is to be held. Furthermore, the purpose (or one of the purposes) of the meeting must be to demonstrate opposition to the holding of the procession on that route or proposed route.<sup>135</sup> Clearly, the provision relates specifically to a protest which is *against* a public procession.

The Public Processions Act requires any person 'proposing to organise' a public procession or protest meeting to give advance notice of that proposal to a police

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<sup>132</sup> Section 17(1) of the Public Processions (Northern Ireland) Act 1998.

<sup>133</sup> Section 17(2A) of the Public Processions (Northern Ireland) Act 1998.

<sup>134</sup> Within the meaning of the Public Order (Northern Ireland) Order 1987.

<sup>135</sup> Section 17(1) of the Public Processions (Northern Ireland) Act 1998.

officer of the rank of Sergeant or above, by leaving the notice with the officer at the police station nearest to the proposed starting place of the procession or, as the case may be, nearest to the place at which the protest meeting is to be held.<sup>136</sup> Notice must be given in accordance with specific requirements provided by the Public Processions Act and must specify information such as date, time and location of the proposed procession or protest, numbers of persons likely to take part and arrangements being made by the organiser to control the event.<sup>137</sup> The Chief Constable is obliged to ensure that a copy of the notice is given immediately to the Parades Commission.<sup>138</sup>

The Parades Commission has power to issue a determination in respect of any proposed public procession or protest meeting. The Commission may impose such conditions on the persons organising, taking part in or supporting the public procession or protest meeting as the Commission considers necessary.<sup>139</sup> Without prejudice to the Commission's power to impose any such conditions it considers necessary, it has the power to impose a condition on a public procession in relation to the route and to prohibit the procession from entering any place.<sup>140</sup> In respect of a protest meeting the Commission may specifically impose a condition in relation to the place of the meeting, its maximum duration and the maximum number of participants.<sup>141</sup> The Commission has power to amend or revoke any determination which it issues.<sup>142</sup>

Any person who organises or takes part in a public procession or protest meeting in respect of which the notice requirements have not been met, or which is held on a date, at a time or along a route/in a place which differs from the date, time or route/place specified in the notice, is guilty of a criminal offence.<sup>143</sup> It is an offence to knowingly fail to comply with any condition(s) imposed by the Parades

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<sup>136</sup> Sections 6(1) and 7(1) of the Public Processions (Northern Ireland) Act 1998. The only processions for which notice need not be given are funeral processions and processions of a class or description specified by the Secretary of State. The Secretary of State has not prescribed any exempt processions.

<sup>137</sup> Sections 6(4) and 7(4) Public Processions (Northern Ireland) Act 1998.

<sup>138</sup> Sections 6(6) and 7(5) of the Public Processions (Northern Ireland) Act 1998.

<sup>139</sup> Sections 8(1) and 9A(1) of the Public Processions (Northern Ireland) Act 1998.

<sup>140</sup> Section 8(2) of the Public Processions (Northern Ireland) Act 1998.

<sup>141</sup> Section 9A(2) of the Public Processions (Northern Ireland) Act 1998.

<sup>142</sup> Section 8(4) of the Public Processions (Northern Ireland) Act 1998.

<sup>143</sup> Sections 6(7) and 7(6) of the Public Processions (Northern Ireland) Act 1998.

Commission<sup>144</sup> or to incite another person to fail to comply with a Parades Commission condition.<sup>145</sup> A person commits an offence if he or she, for the purpose of preventing or hindering any 'lawful public procession or protest meeting' or of annoying any person taking part in or endeavouring to take part in one, hinders, molests or obstructs those person or acts in a disorderly way towards them or behaves offensively and abusively towards them.<sup>146</sup>

The Parades Commission is a public authority under the Human Rights Act 1998 and is therefore obliged to ensure that an appropriate human rights balance is achieved between those wishing to parade, those wishing to protest and those who live in the vicinity of those parades and/or protests, by issuing determinations as and when it considers appropriate. Any assessment of whether the policing of parades and protests complies with the Human Rights Act 1998 must therefore distinguish between those decisions for which the PSNI has legal responsibility and those decisions for which the Parades Commission has responsibility. It must be noted that it is not for the PSNI to determine whether each determination of the Parades Commission, or the law underpinning the determination, is compliant with the Human Rights Act 1998. The police are obliged to take measures to bring offenders to justice and that includes the commission of offences prescribed by the Public Processions (Northern Ireland) Act 1998. The responsibility of the PSNI is to police any determination of the Parades Commission and to take appropriate operational decisions within the relevant legal framework, including the Human Rights Act.

### **Public Order (Northern Ireland) Order 1987**

The police have powers to control open-air meetings under the Public Order (Northern Ireland) Order 1987. If a senior police officer reasonably believes that an open-air public meeting which is being held or is intended to be held may result in serious public disorder, serious damage to property or serious disruption to the life of the community or that the purpose of persons organising it is to intimidate others with a view to compelling them not to do an act they have the right to do or to do an act

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<sup>144</sup> Sections 8(7) and 9A(7) of the Public Processions (Northern Ireland) Act 1998.

<sup>145</sup> Sections 8(8) and 9A(8) of the Public Processions (Northern Ireland) Act 1998.

<sup>146</sup> Section 14 of the Public Processions (Northern Ireland) Act 1998.

they have no right to do, the senior police officer may give directions (in writing) imposing on the person organising or taking part in the meeting such conditions as to the place at which the meeting may be held (or continue to be held), its maximum duration or the maximum number of persons who may constitute it, as appear necessary to prevent disorder, disruption, damage or intimidation.<sup>147</sup> It is an offence to fail to comply with such a direction.<sup>148</sup> That power does not however apply in relation to a protest meeting which comes within the scope of the Public Procession (Northern Ireland) Act 1998 i.e. a proposed protest which relates to a public procession.<sup>149</sup>

If the Secretary of State, either acting on information provided by the Chief Constable, or for any other reason, is of the opinion that the issuing of such a direction will be insufficient to prevent disorder, damage, disruption or intimidation or that the holding of any open-air public meeting is likely to cause serious public disorder, serious disruption to the life of the community, or place undue demands upon the police, he or she has power to prohibit that public meeting and to prohibit the holding of any open-air meeting in an area or for a period of time not exceeding 28 days.<sup>150</sup> A person who organises or participates in such a meeting commits an offence.<sup>151</sup> That power does not however apply in relation to a protest meeting which comes within the scope of the Public Procession (Northern Ireland) Act 1998 i.e. a proposed protest which relates to a public procession.<sup>152</sup>

The Public Order (Northern Ireland) Order 1987 creates a number of additional offences relating to behaviour in a public place. If a person in any public place or at or in relation to any public meeting or public procession uses threatening, abusive or insulting words or behaviour or displays anything or does any act or, being the owner or occupier of any land or premises, causes or permits anything to be displayed or any act to be done on that land or on those premises, with the intent to commit a

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<sup>147</sup> Article 4(2)-(4) of the Public Order (Northern Ireland) Order 1987.

<sup>148</sup> Article 4(6) of the Public Order (Northern Ireland) Order 1987.

<sup>149</sup> Article 4(7) of the Public Order (Northern Ireland) Order 1987.

<sup>150</sup> Article 5(1) of the Public Order (Northern Ireland) Order 1987.

<sup>151</sup> Article 5(5) of the Public Order (Northern Ireland) Order 1987.

<sup>152</sup> Article 5(7) of the Public Order (Northern Ireland) Order 1987.

breach of the peace or by which a breach of the peace is likely to be occasioned, he or she commits a criminal offence.<sup>153</sup>

A person commits a criminal offence if he or she, for the purpose of preventing the transaction of the business for which a lawful public meeting was called, acts in a disorderly manner.<sup>154</sup> This does not apply to a protest meeting which comes within the scope of the Public Procession (Northern Ireland) Act 1998. It is a criminal offence to use threatening, abusive or insulting words or behaviour or to display any written material which is threatening abusive or insulting if intended to stir up hatred or to arouse fear of a group of persons. This offence is free-standing: it is not related to attendance at an open-air meeting.<sup>155</sup> It is also an offence to engage in, in a public place, disorderly behaviour, riotous behaviour or behaviour whereby a breach of the peace is likely to be occasioned.<sup>156</sup> It is also a criminal offence to sit, stand, kneel, lie down or otherwise conduct oneself in a public place so as to wilfully obstruct traffic or wilfully hinder or seek to hinder any lawful activity.<sup>157</sup>

A person who wears a uniform (which signifies association with any political organisation or with the promotion of any political object) in a public place or at any public meeting commits a criminal offence.<sup>158</sup> The wearing of the uniform does not have to be intended to cause offence or arouse fear but the Chief Constable has power after consulting with the Secretary of State to, by order, permit the wearing of a uniform if satisfied that the wearing of the uniform on any ceremonial, anniversary or other special occasion will not be likely to involve the risk of public disorder.

A police officer above the rank of Inspector may, if he or she reasonably believes that activities may take place in any locality that are likely (if they take place) to involve the commission of offences and that it is expedient to prevent or control such activities, give an authorisation for a period of 24 hours. If such an authorisation is given, any police constable in uniform has power to require any person to remove any item which the constable reasonably believes is worn wholly or mainly for the

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<sup>153</sup> Article 19(1) of the Public Order (Northern Ireland) Order 1987.

<sup>154</sup> Article 7 of the Public Order (Northern Ireland) Order 1987.

<sup>155</sup> Article 9 of the Public Order (Northern Ireland) Order 1987.

<sup>156</sup> Article 18 of the Public Order (Northern Ireland) Order 1987.

<sup>157</sup> Article 20 of the Public Order (Northern Ireland) Order 1987.

<sup>158</sup> Article 21(1) of the Public Order (Northern Ireland) Order 1987.

purpose of concealing identity. He or she may also seize any item which the officer believes is intended to be worn for that purpose.<sup>159</sup> The authorisation may be extended for a further period of 24 hours if a police officer, of at least the rank of Superintendent, believes that it is expedient having regard to the offences that have been committed in connection with the activities for which the authorisation was given or are reasonably suspected to have been committed.<sup>160</sup> It is an offence to fail to remove an item when required to do so.<sup>161</sup>

### **Police (Northern Ireland) Act 1998**

Any person who assaults, resists, obstructs or impedes a constable (or other designated person) in the execution of his duty, or a person assisting a constable in the execution of his duty, is guilty of an offence.<sup>162</sup>

### **Roads (Northern Ireland) Order 1993**

Any person who, without lawful authority or reasonable excuse, in any way intentionally or negligently obstructs the free passage along a road is guilty of an offence.<sup>163</sup> It is also an offence to deposit, or cause or permit to be deposited, anything on a road in such a position as to cause, or be likely to cause, any obstruction or danger.<sup>164</sup>

### **Road Traffic (Northern Ireland) Order 1995**

It is an offence to, without reasonable cause or lawful authority, intentionally cause anything to be on or over a road; interfere with a motor vehicle, trailer or cycle; or, interfere with traffic equipment in such circumstances that it would be obvious to a reasonable person that to do so would be dangerous.<sup>165</sup>

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<sup>159</sup> Article 23A(2) of the Public Order (Northern Ireland) Order 1987.

<sup>160</sup> Article 23A(4) of the Public Order (Northern Ireland) Order 1987.

<sup>161</sup> Article 23A(7) of the Public Order (Northern Ireland) Order 1987.

<sup>162</sup> Section 66(1) of the Police (Northern Ireland) Act 1998.

<sup>163</sup> Article 88 of the Roads (Northern Ireland) Order 1993.

<sup>164</sup> Article 94 of the Roads (Northern Ireland) Order 1993.

<sup>165</sup> Article 33 of the Road Traffic (Northern Ireland) Order 1995.

## **Protection from Harassment (Northern Ireland) Order 1997**

A person commits a criminal offence if he or she pursues a course of conduct which amounts to harassment of another and he or she knows or ought to know that this conduct amounts to harassment of the other.<sup>166</sup> That person ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other. This does not apply to a course of conduct if the person who pursued it shows that it was pursued for the purpose of preventing or detecting crime; that it was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or that in the particular circumstances the pursuit of the course of conduct was reasonable.<sup>167</sup>

A person also commits a criminal offence if his or her course of conduct causes another to fear, on at least two occasions, that violence will be used against him or her if he or she knows or ought to know that the course of conduct will cause the other so to fear on each of those occasions. A person ought to know that it will cause another to fear that violence will be used against him or her on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion. It is a defence to show that the course of conduct was pursued for the purpose of preventing or detecting crime; the course of conduct was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or the pursuit of the course of conduct was reasonable for the protection of the alleged perpetrator or another or for the protection of the perpetrator's or another's property.<sup>168</sup>

### **Power of arrest**

Under Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the police have power to arrest any person suspected of involvement in a

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<sup>166</sup> Article 4 of the Protection from Harassment (Northern Ireland) Order 1997.

<sup>167</sup> Article 3 of the Protection from Harassment (Northern Ireland) Order 1997.

<sup>168</sup> Article 6 of the Protection from Harassment (Northern Ireland) Order 1997.



criminal offence. The Article 26 PACE power of arrest is predicated upon a person's involvement or suspected involvement or attempted involvement in the commission of a criminal offence; and reasonable grounds for believing that at least one of the criteria specified in Article 26 has been satisfied and, because of that, it is necessary to arrest the person in question.

The specified reasons are: to enable the name or address of the person in question to be ascertained; to prevent the person in question from causing physical injury to him or herself or any other person, suffering physical injury, causing loss of or damage to property, committing an offence against public decency, or causing an unlawful obstruction on a road (within the meaning of the Road Traffic (Northern Ireland) Order 1995); to protect a child or other vulnerable person from the person in question; to allow the prompt and effective investigation of the offence or of the conduct of the person in question; and/or to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

PACE Code of Practice G regulates the exercise of the Article 26 arrest power. It states that it is an operational decision at the discretion of the arresting officer as to what action he or she may take at the point of contact with the individual; the necessity criterion or criteria (if any) which applies to the individual; and whether to arrest, report for summons, grant street bail, issue a fixed penalty notice or take any other action that is open to the officer.<sup>169</sup>

## **MONITORING THE POLICING OF PUBLIC ORDER EVENTS**

The Policing Board meets regularly with PSNI and raises numerous questions with the Chief Constable throughout the year in respect of the PSNI approach to public order policing. Such meetings and questions were more frequent during 2013 given the 'flag protests' commencing in December 2012, a number of flash points of disorder during 2013 and the policing of the G8 summit and other major events such as the World Police and Fire Games and the City of Culture events in Derry/Londonderry. Members have raised questions with regard to policing tactics

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<sup>169</sup> *PACE Code of Practice G: Statutory Power of Arrest by Police Officers*, para. 2.4.

used, resource implications (financial and personnel), welfare of police officers, the criminal justice strategy (arrests, prosecutions etc.) and the level of engagement between the police and local communities before, during and after the event. While the operational planning and implementation of those plans is the responsibility of the Chief Constable, the Policing Board is obliged to consider the human rights implications of public order policing and community confidence issues. Therefore, the Policing Board cannot and does not direct the PSNI as to its operational activity but it is determined to continue to hold the Chief Constable to account for the performance of the PSNI in this critical area of policing.

Every year, prior to the annual 12 July parade (and associated protests) in Belfast, the Policing Board's Human Rights Advisor, on behalf of the Performance Committee, attends pre-planning meetings and observes the policing operation from the Silver Command room. This year was no exception and the Human Rights Advisor was able to report to the Committee that throughout the 12 July policing operation the police officers involved were professional, disciplined, and resilient and carried out their duties with a focus on the protection of human rights. The Human Rights Advisor also attended the pre-planning meetings and the Silver Command room during the G8 Summit. Once again, she found that the operation was well-planned, professional and aimed at protecting the rights of all involved.

The Performance Committee receives and considers, on a six-monthly basis, use of force reports prepared by PSNI. Those reports, which are considered in more detail in Chapter 7 of this Human Rights Annual Report, provide details of any correlation between high incidents of use of force by the police and public disorder incidents. In addition, the relevant District Commander is required to submit to the Policing Board, as soon as reasonably possible after a major public disorder incident, a written record containing details of the nature of the disorder, any force used, any injuries sustained by police officers or members of the public and any damage caused to property.<sup>170</sup> Those records are considered by the Performance Committee.

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<sup>170</sup> *Requirement for early reporting to the Policing Board following discharge of Attenuating Energy Projectiles (impact rounds) and other public order incidents*, Appendix J to the Manual of Policy, Procedure and Guidance on Conflict Management, PSNI, 2013. The report to the Board must be made where (i) an AEP is discharged; (ii) the incident involves 200 persons; or (iii) where the incident is of such intensity there is likely to give rise to widespread media reporting or public interest (e.g. a

The Committee received reports relating to 3 nights of disturbances in the Woodvale Road area of Belfast. On 12 July 2013 a crowd of upwards of 1,000 people marched up to police lines on the Woodvale Road as the police had put in place a block in order to uphold a Parades Commission determination and prevent an Orange Order parade from passing shop-fronts at Ardoyne. The police were attacked by a variety of missiles including ceremonial swords, pike shafts, masonry, petrol bombs and ball bearings. A total of 20 officers were injured. Water Cannon were used and a total of 45 Attenuating Energy Projectiles (AEPs) were discharged. The following evening an un-notified parade attempted to walk up the Woodvale Road. This was stopped by a line of police officers in Land Rovers who were then attacked by a crowd of approximately 100 people using masonry, bottles, spiked fencing and petrol bombs. Seven officers were injured. Four AEPs were discharged. Police were subsequently attacked for a third consecutive night on 14 July 2013, again by masonry and petrol bombs. Five officers were injured. Eight AEPs were discharged.

The Committee received reports relating to disturbances in the Lower Newtownards Road area of Belfast on the evening of 15 July 2013 whereby approximately 20 masked males threw blast bombs and petrol bombs at police. There then followed violent disorder. Water Cannon were used and 2 AEPs were discharged. The Committee was also notified of disturbances in Portadown on 15 July 2013 whereby disorder broke out at an interface area, with crowds of over 100 on each side of a 'peace wall' throwing bottles and golf balls at each other. As a consequence of police intervention to quell the violence, 9 police officers were injured. Neither water cannon nor AEP were deployed.

On 9 August 2013 a protest took place in Royal Avenue in Belfast City Centre. The protest was in breach of Parades Commission determinations and meant that a notified Anti-Internment parade was unable to proceed along its notified route. Police attempts to clear the protest failed and serious disorder broke out. Police used Water Cannon and discharged 37 AEPs. The protestors caused damage to buildings and private vehicles in the area and 56 police officers were injured.

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person has died/been seriously injured as a result, there has been significant damage to property, there have been prominent arrests etc.).

The Policing Board was briefed by PSNI in July 2013, September 2013 and October 2013 on public order issues. Board Members have praised the resilience of police officers in the face of unrelenting violence and abuse. Members are in agreement that the only way to deliver an enduring resolution to such disorder is through agreement and dialogue with the community.

Members have also considered a report published by the Criminal Justice Inspection Northern Ireland (CJINI) in June 2013, *Criminal Justice System's Preparedness for Exceptional or Prolonged Public Disorder*. CJINI considered that in light of recent events it was necessary to investigate the justice system's preparedness for prolonged public disorder as well as the advanced pre-planning and readiness required in planning for such events. The CJINI inspection considered the challenges posed to the PSNI and the criminal justice system by exceptional, spontaneous or prolonged public disorder, including the parades season and the G8 summit which took place in June 2013. The report states that how the criminal justice system responds to periods of exceptional public disorder such as the 'flag protests' of December 2012 and January/February 2013 is key in maintaining and increasing public confidence in the system as a whole. It stated that the ability of agencies to co-ordinate and co-operate with one another in ensuring that those alleged to have committed public order offences are called to account promptly for their actions, acts not only as a visible demonstration of the system's effectiveness in dealing with those who break the law, but also acts as a deterrent to prevent further public disorder. The report made several recommendations, including some operational recommendations for PSNI and strategic recommendations for the wider criminal justice system (with the Department of Justice assigned as the responsible agency for taking these forward). The Policing Board met with the Chief Inspector of CJINI and with the Chief Constable in July 2013 to discuss this report and the manner in which PSNI intends to implement the recommendations. The Policing Board will continue to liaise with CJINI and PSNI in this regard.

## **PSNI REVIEW OF PUBLIC ORDER POLICING**

Following widespread disorder during the summer of 2011, in which there was a significant increase in the number of AEPs used by the PSNI during public order

operations compared to previous years, PSNI committed to carrying out a review of public order policing. Recommendation 6 of the Policing Board's Human Rights Annual Report 2011 required PSNI to provide the Human Rights and Professional Standards Committee with a report setting out the findings of the review and all steps taken or to be taken as a result of that review. The recommendation also required that PSNI should consider any issues that may arise in relation to the use of AEP rounds.

PSNI accepted that recommendation and, in June 2012, ACC Operational Support attended the Human Rights and Professional Standards Committee to brief Members on PSNI's review of public order policing. In advance of the meeting Members were provided with a copy of an internal review report. The report represented the culmination of analysis, discussion and consultation with a broad range of police officers and staff and a range of external partners. It contained a number of important findings and recommendations in respect of intelligence and information, planning, tactics, police use of force and resources. In particular, PSNI reviewed its use of force during 2011 with a particular focus on the use of AEP and Water Cannon. That included consideration of potential alternatives to AEP and how the PSNI's use of force was managed within the available tactical options.

To build on that review, PSNI commissioned an external piece of research to be undertaken jointly by the University of Ulster and the Institute of Conflict Research on community attitudes to public order policing. As part of this work a number of Board Members and the Board's Human Rights Advisor attended a workshop in November 2012 alongside a number of police officers and community workers. During the workshop the initial findings of the research were presented as a stimulus to a series of roundtable discussions between police and community representatives on key issues. The final report, *Community Perspectives on Public Order Policing in Northern Ireland*, was provided to the Human Rights and Professional Standards Committee in March 2013 and made 7 recommendations for PSNI to consider implementing. Some of the key findings in the report were as follows.

- Individual views of the PSNI and public order policing are shaped very much by local contexts, relationships with the PSNI and previous experiences of

policing; and the personality and policing methods of individual officers are a significant factor during particular public events. The general consensus was that public order policing was being delivered and experienced across Northern Ireland in a multitude of forms, which was leading to the assumption that it was inconsistent, poorly managed and its success or failure was dependent on numerous external factors. Furthermore, the findings suggested that policing was increasingly being framed between two distinct and separate styles, the 'soft, hearts and minds' community approach versus the 'militaristic, confrontational' public order approach.

- The scale of deployment of Tactical Support Groups (TSGs) along with their use of force has significant implications on how the public perceive PSNI's approach to public events. There was recognition in the research report that how public order tactics are reported in the media may have implications for how people perceive 'policing' more generally and are open to manipulation by particular groups who wish to project the message that policing has not changed and continues to be discriminatory and militaristic.
- The level of pre-planning and the sharing of information between the key stakeholders involved in public events often influence the level of success.
- Focus groups held with young people demonstrated that their views were very much shaped by previous experiences of routine policing, and that when opportunities had existed to meet and engage with the police, they viewed them more favourably.
- PSNI officers who were interviewed as part of the research accepted that wider social and political issues relating to the management of public order events dictated that the PSNI could not provide solutions to ritual community conflagrations and clashes.

Following a change in the Policing Board's Committee structures, the monitoring of public order policing and compliance with the Human Rights Act became the responsibility of the Performance Committee. In April 2013 the Performance Committee met with PSNI and with the research team to discuss the research report and the PSNI response. Implementation of the recommendations is being taken forward by an internal PSNI Public Order Review Group. The purpose of this group, which reports to a Strategic Group chaired by ACC Operational Support, is to identify

learning, from both published reports and from operational experience, and to ensure that best practice is implemented throughout the Police Service in a strategic, consistent manner. The Policing Board received a presentation from PSNI on this ongoing work in September 2013 and the Committee will seek a further update during 2014.

## **PUBLIC ORDER ANNUAL DEBRIEF**

Following feedback from members of the community that suggested consistency of service across Northern Ireland had not been achieved, including in respect of public order policing, a recommendation was made in the Human Rights Annual Report 2011 which required PSNI to develop annual briefing sessions which considered lessons learned from the previous year's public order operations and which considered in particular the human rights issues involved in the planning and execution of public order operations.<sup>171</sup> The Annual Report suggested that if PSNI involved those who were engaged in the organisation of parades and protests, both the police and the community would enhance their knowledge and understanding of the issues that arise or are likely to arise.

PSNI accepted that recommendation and has held an internal debrief each year since, which is informed by consultation with external stakeholders, including the Policing Board, and feedback from the community. By continuing to have an annual public order debrief and through the establishment of an internal Public Order Review Group, it is evident that PSNI is committed to continuous improvement and that feedback received from oversight organisations such as the Policing Board and CJINI, from academics and from the community, is welcomed by PSNI and is used to inform future public order operations. The Performance Committee intends to meet with PSNI in early 2014 to receive an update on the work of the Review Group and to discuss the key issues emerging from the 2013 annual debrief.

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<sup>171</sup> Recommendation 7 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

## 7. USE OF FORCE

Police officers have a range of powers, which include the authority to use force in order to defend themselves or another, to effect an arrest, to secure and preserve evidence or to uphold the peace. The use of force engages in a direct and fundamental way the rights protected by the European Convention on Human Rights (ECHR) such as Article 2 (the right to life); Article 3 (the right not to be subjected to torture, inhuman or degrading treatment or punishment) and Article 8 (the right to respect for private and family life).<sup>172</sup> Police officers have the right to defend themselves from unlawful violence and the duty to protect others from harm.

There are many types of force which police officers may use including hands-on restraint techniques, firearms, Taser, Attenuating Energy Projectiles (AEPs), Water Cannon and batons. Any use of force may be potentially lethal therefore officers must always ensure that before using any force, they consider the objectives of the operation and keep under review, as circumstances develop, whether the proposed force is lawful, necessary and proportionate. Consideration must always be given to whether there is a viable alternative to the use of force. Article 4 of the PSNI Code of Ethics, which draws upon the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states “Police officers, in carrying out their duties, shall as far as possible apply non-violent methods before resorting to any use of force. Any use of force shall be the minimum appropriate in the circumstances and shall reflect a graduated and flexible response to the threat. Police officers may use force only if other means remain ineffective or have no realistic chance of achieving the intended result.”<sup>173</sup>

Article 2 of the ECHR is one of the most fundamental rights of all - the right to life. It provides that “Everyone’s right to life shall be protected by law.” It places a duty upon police officers not only to refrain from taking human life, but also a duty to take steps to protect life. However, deprivation of life is not regarded as inflicted in contravention of Article 2 ECHR if it results from the use of force which is no more

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<sup>172</sup> Which can encompass the physical, moral and psychological integrity of a person: *Botta v Italy* (Application No. 21439/93).

<sup>173</sup> PSNI Code of Ethics 2008.



than absolutely necessary in defence of any person from unlawful violence. The test of absolute necessity is very strict. It is difficult to justify the use of lethal force where less life-threatening equipment may be available.

PSNI policy requires that where circumstances permit, before lethal or potentially lethal force is used, a police officer should identify himself or herself and give a clear warning of the intent to use force affording sufficient time for the warning to be observed unless affording time would put the officer or another person at risk of death or serious harm. Even where the use of lethal or potentially lethal force is unavoidable the police must continue to exercise restraint in the use of that force, minimise damage and injury caused, render assistance and medical aid at the earliest opportunity and notify relatives or other persons if a person has been injured or killed.

<u>Test for use</u>
<b>Taser:</b> Taser may be used by a police officer who genuinely, honestly and reasonably 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 the use of a firearm or AEP. It is intended to provide for a situation where an officer honestly believes that a situation is in immediate danger of escalating to a point where the use of AEP or firearms will be required. Taser use is therefore closely aligned to the prevention of recourse to lethal technology.
<b>AEP:</b> The Attenuating Energy Projectile may only be used if a police officer genuinely, honestly and reasonably 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 used is the same as for conventional firearms. As it is considered a less lethal option, it is preferred as an alternative to conventional firearms if it is available, the circumstances are appropriate and the test of absolute necessity has been met.
<b>Firearm:</b> A firearm may only be discharged where a police officer genuinely, honestly and reasonably believes it is absolutely necessary to do so in order to save life or prevent serious injury subject only to the exceptions that the discharge is for training purposes or for the lawful destruction of an animal.

## Monitoring police use of force

Mechanisms are in place, both internally and externally, to ensure that PSNI is held to account for all uses of force by its officers. Any incident that involves the use of force by a police officer is recorded in the police officer's notebook and reported to the relevant supervisor. Any such incident may be the subject of a Police Ombudsman investigation regardless of whether or not a complaint has been made. The Police Ombudsman will, in every case where death has occurred following contact with the police, investigate the death. Where a firearm, an AEP or a Taser has been discharged, the Police Ombudsman will investigate the incident. Where Taser has been drawn or aimed at a subject, but not discharged, the Police Ombudsman must be notified, but will usually investigate only if a complaint is made. At the conclusion of the Police Ombudsman's investigation, a Regulation 20 report is completed.<sup>174</sup> The Policing Board receives a copy of all Regulation 20 reports and considers any findings or recommendations contained within them. If a Taser is used (whether drawn or discharged) a Taser evaluation form must be completed and sent to the Association of Chief Police Officers (ACPO). If an AEP is discharged, the relevant District Commander must submit a record of the AEP use to the Policing Board.<sup>175</sup> Those forms are considered by the Performance Committee (the Committee).

Every police officer is responsible personally for his or her decision to use force. If it appears to the PSNI or to the Police Ombudsman that force may have been used unlawfully, the police officer involved will be subject to a criminal investigation and may be prosecuted. Obedience to the orders of a supervisor is no defence for unlawful use of force if that police officer knew that the order to use force was unlawful and the officer had a reasonable opportunity to refuse to obey it.

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<sup>174</sup> Under section 55 of the Police (Northern Ireland) Act 1998, the Police Ombudsman must investigate certain matters referred by the Policing Board, the Department of Justice, the Secretary of State, the Public Prosecution Service and the Chief Constable. The Police Ombudsman also has power to investigate certain matters of his or her own volition. At the conclusion of an investigation a report, known as a Regulation 20 report, is sent to the Secretary of State, the Policing Board and the Chief Constable. Regulation 20s are discussed further at chapter 5 of this Annual Report.

<sup>175</sup> Form PB1, *Requirement for early reporting to the NI Policing Board Discharge of Attenuating Energy Projectiles (impact rounds) and other public order incidents*, Appendix J to the Manual of Policy, Procedure and Guidance on Conflict Management, PSNI, 2013.

Responsibility lies, additionally, with the officer's supervisor who issued the unlawful order.

The use of force by police officers is reviewed regularly by PSNI. Any issues that arise are addressed by ACC Operational Support with whom the Policing Board has a direct line of communication. Ultimately, the Chief Constable is accountable to the Policing Board for all uses of force by the PSNI. It is an important element of oversight and accountability that officers using force record the use on an electronic use of force monitoring form. The following uses of force must be recorded on the electronic monitoring form and thereafter submitted in a report to the Committee for consideration.

*Attenuating Energy Projectile (AEP)* AEP are issued only to and may be used only by specially trained officers who are authorised to use AEP. It may be used during serious public disorder but only where an individual aggressor or aggressors can be identified and targeted. That is a critical limit to the use of AEP. It can never be used as a crowd control measure and must never be discharged randomly or into a crowd where an individual aggressor or aggressors cannot be identified. The AEP may also be used during a stand-alone incident as a less lethal option where the use of a firearm would also be justified. AEP Officers are required to report all incidents where an AEP has been pointed, even if it has not been discharged.

*Baton* Police officers must report any use of a baton to their immediate supervisors as soon as practicable, submit an electronic use of force form and make the baton available for inspection. In addition, in circumstances where a baton was drawn but not used, the officer must submit a report where it is reasonable to expect that a person (or persons) anticipated a threat of force being used against them. If a supervisory officer gives a direction to other officers to draw their batons only that supervisory officer is required to complete the electronic use of force monitoring form. However, if any officer strikes an individual(s) that officer must submit an electronic use of force monitoring form to indicate that a baton was used.

*CS Spray* CS spray is issued only to officers trained in the Personal Safety Programme. Those officers will carry CS Spray as part of their patrol equipment. CS

spray is designated 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 who draws the CS Spray device and points it at any individual or group must report that use and any warning given even if it is not sprayed.

*Personal Firearms* The Chief Constable has issued standing authority for all officers, so long as he or she has completed the necessary training, to be issued with a personal issue firearm. That standing authority is kept under regular review. Officers are required to report any instance when a personal firearm has been drawn or pointed even if it is not discharged.

*Police Dog* Most police dogs are now attached to Tactical Support Groups (TSGs). They are considered as an option in a variety of scenarios including public disorder. Use of force, however, accounts for only a very small proportion of the work that police dogs are used for.

*Taser* Taser are issued to specialist firearms officers and to authorised firearms officers attached to Armed Response Vehicles. If a Taser is drawn and/or aimed (at which stage a red dot appears on the subject indicating where the Taser would hit) that must be reported, even if it is not subsequently discharged.

*Water Cannon* PSNI has 6 water cannon available. Water cannon are deployed and used only when authorised by appropriate officers in accordance with police policy.

PSNI collates the data captured on the electronic use of force monitoring forms, including any trend information, into a six-monthly report which is considered by the Performance Committee. That report contains information classified as 'restricted' therefore it is not published by PSNI. However, PSNI publishes a less detailed, not protectively marked, statistical report on use of force on its website on a six monthly basis.

Table 1 below provides an overview of the use of force by the PSNI between 1 April 2011 and 30 September 2013.

**Table 1: Police use of force between 1 April 2011 and 30 September 2013<sup>176</sup>**

Use of Force	1 April 2011 – 31 March 2012 (12 months)	1 April 2012 – 31 March 2013 (12 months)	1 April 2013 – 30 September 2013 (6 months)
AEP Pointed	20	32	22
AEP Discharged	96 <sup>177</sup>	20 <sup>178</sup>	33 <sup>179</sup>
<b>AEP Total</b>	<b>116</b>	<b>52</b>	<b>55</b>
Baton Drawn Only	537	588	294
Baton Drawn & Used	284	333	223
<b>Baton Total</b>	<b>821</b>	<b>921</b>	<b>517</b>
CS Drawn (not sprayed)	187	200	93
CS Sprayed	330	262	149
<b>CS Total</b>	<b>517</b>	<b>462</b>	<b>242</b>
Firearm Drawn/Pointed	360	364	190
Firearm Discharged	0	1	0
<b>Firearm Total</b>	<b>360</b>	<b>365</b>	<b>190</b>
<b>Police Dog Used</b>	<b>33</b>	<b>45</b>	<b>26</b>
Taser Drawn	126	171	110
Taser Fired	9	11	9
<b>Taser Total</b>	<b>135</b>	<b>182</b>	<b>119</b>
Water Cannon Deployed	31	158	119
Water Cannon Used	14	17	12
<b>Water Cannon Total</b>	<b>45</b>	<b>175</b>	<b>131</b>

As demonstrated by Table 1 above, the level of AEP use has decreased substantially between 2011/2012 and 2012/2013, however it has increased again during the first six months of 2013/2014. Table 2 below shows the frequency of AEP use during serious public disorder since 1 April 2012.

<sup>176</sup> *PSNI Use of Force Statistics, 1 April 2012 – 31 March 2013*, PSNI, June 2013 and *PSNI Use of Force Statistics, 1 April 2013 – 30 September 2013*, PSNI, December 2013.

<sup>177</sup> 350 AEPs were fired by 96 officers.

<sup>178</sup> 34 AEPs were fired by 20 officers.

<sup>179</sup> 98 AEPs were fired by 33 officers (96 were fired during public disorder).

**Table 2: AEP frequency of use during serious public disorder incidents between 1 April 2012 and 30 September 2013<sup>180</sup>**

Day	Area	No. of occasions	Rounds fired
12 July 2012	North Belfast	2	6
3 September 2012	North Belfast	1	6
5 December 2012	Carrickfergus	2	3
5 January 2013	East Belfast	3	3
7 January 2013	East Belfast	4	5
11 January 2013	Carrickfergus	3	5
12 January 2013	East Belfast	5	6
12 July 2013	North Belfast	15	45
13 July 2013	North Belfast	1	4
14 July 2013	North Belfast	3	8
15 July 2013	East Belfast	1	2
9 August 2013	North Belfast	8	30
9 August 2013	South Belfast	3	7
<b>Total</b>		<b>51</b>	<b>130</b>

Males aged between 18 and 29 years are the group against whom AEP was most frequently used in 2012/2013. Males aged between 18 and 29 years were also the group of persons against whom Batons, CS Spray and Police Dogs were most frequently used during 2012/2013. That follows the same pattern as in 2011/2012. In general, young men are also the group most likely to complain to OPONI about the police.<sup>181</sup> People aged between 18 and 29 years are also most likely to be victims of crime, with males slightly more likely to be victims than females.<sup>182</sup>

<sup>180</sup> Figures for the period 1 April 2012 – 31 March 2013 are provided by *PSNI Use of Force Statistics, 1 April 2012 – 31 March 2013*, PSNI, June 2013 and figures for the period 1 April 2013 – 30 September 2013 are provided by *PSNI Use of Force Statistics, 1 April 2013 – 30 September 2013*, PSNI, December 2013.

<sup>181</sup> See *Equality Monitoring Report 2006-2011*, Office of the Police Ombudsman for Northern Ireland, November 2012.

<sup>182</sup> Of 68,765 victims of crime recorded by PSNI during 2012/2013, 21,384 (31%) were aged 18 – 29. Of the 68,765 victims, 31,668 were female (46%) and 37,011 (54%) were male. Gender was not recorded for 86 victims. Data on victim characteristics is available through the statistics section of the PSNI website: [www.psnipolice.uk](http://www.psnipolice.uk)

## **PSNI Manual of Policy, Procedure and Guidance on Conflict Management**

All PSNI decision making, including the decision to use force, is taken in accordance with the Association of Chief Police Officers (ACPO) National Decision Model (NDM). The NDM is an established approach to managing conflict. At the centre of the NDM is a statement of Mission and Values which recognises the need to protect and respect the human rights of all. PSNI influenced the NDM by advocating for human rights to be placed at the centre of all police decision-making. That is a tribute to PSNI.

To streamline and consolidate guidance on the NDM with other existing policies on police use of force, PSNI published a Manual of Policy, Procedure and Guidance on Conflict Management in 2013. This Manual provides detailed guidance on the legal basis upon which force may be used, information on the weapons available and their correct use, information on reporting structures and instructions as to post-incident procedures. Providing all the necessary guidance within one comprehensive document should serve a number of purposes: it should create better awareness, improve accessibility to information and promote understanding and compliance. A copy of the Manual has been provided to the Policing Board's Human Rights Advisor, however, as it is marked 'restricted' it is not available to the public. Many of the separate policies that the Manual replaced were not marked 'restricted' and were previously available to the public on the PSNI website. It is in the police interest as well as in the public interest to make policies available publically. In particular, the public is entitled to know that force can only be used in strictly defined circumstances and that post-incident procedures designed to ensure accountability for use of force are in place. Accordingly, the Committee recommends that the Manual of Policy, Procedure and Guidance on Conflict Management is published by PSNI.

### **Recommendation 7**

**PSNI should publish forthwith its Manual of Policy, Procedure and Guidance on Conflict Management. Only those parts of the policy that cannot be published due to the information being of a confidential nature should be redacted.**

## 8. COVERT POLICING

The ability of law enforcement agencies to carry out surveillance and the technology available to them continues to grow. For example it was estimated, in 2011, that there were 1.8 to 2.4 million surveillance cameras in operation the United Kingdom. A person's mobile phone, if switched on, can reveal their location within a range of 150 to 400 metres in urban areas. Cards carried in wallets contain not only magnetic strips but microchips and, increasingly, radio-frequency identification which enable large amounts of information concerning a person's finances, movements and habits to be gathered.<sup>183</sup> Surveillance and other intelligence gathering techniques used by the police, such as the interception of communications and the use of Covert Human Intelligence Sources (CHIS), can present real challenges in terms of compliance with the Human Rights Act 1998. Oversight and accountability in this area should be robust and as transparent as permitted within legitimate boundaries.

The Regulation of Investigatory Powers Act 2000 (RIPA), which extends to Northern Ireland, has very specific rules and accompanying Codes of Practice relating to intercepting communications, acquiring communications data, conducting covert surveillance, the use of CHIS and accessing electronic data protected by encryption or password. RIPA requires that when an authority uses any covert technique to obtain private information about any person, they must do so in a way that is necessary, proportionate and compatible with the European Convention on Human Rights (ECHR), in particular, Article 8 ECHR (the right to respect for private and family life). Only specified persons are entitled to grant authorisations for use of covert techniques. RIPA established an Interception of Communications Commissioner; an Intelligence Services Commissioner; and a Chief Surveillance Commissioner. Save in urgent cases, any police authorisation of intrusive surveillance<sup>184</sup> must be approved by a Surveillance Commissioner.

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<sup>183</sup> *Freedom from Suspicion. Surveillance Reform for a Digital Age*, Justice, October 2011, pages 8 – 9.

<sup>184</sup> As per section 26(3) RIPA, intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle (and that involves the presence of an individual on the premises or in the vehicle or is carried out by a means of a surveillance device). Intrusive surveillance applications may be made by a limited number of public authorities, including the police.



Between 2000 (when RIPA came into force) and 2011, in the United Kingdom there have been at least 2.7 million requests for communications data, including phone bills and location data; more than 4,000 authorisations for intrusive surveillance; and at least 30,000 authorisations for directed surveillance.<sup>185</sup> There have also been more than 20,000 warrants for the interception of phone calls, emails, and Internet use in England, Scotland and Wales. The number of warrants issued in respect of Northern Ireland is unknown as the Interception of Communications Commissioner has decided not to disclose details of Northern Ireland figures in the interest of national security and for the prevention and detection of serious crime.<sup>186</sup>

## **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 PSNI to mount executive policing operations, make arrests and refer cases to the Public Prosecution Service for Northern Ireland. Annex E to the St. Andrew's Agreement includes a paper by the British Government on future national security arrangements in Northern Ireland. It was drafted in anticipation of the transfer of responsibility in 2007. In the paper, the Government confirmed that it accepted and would ensure that effect was given to the five key principles which the Chief Constable of PSNI identified at the time as being crucial to the effective operation of the new national security arrangements. The five principles are:

1. All Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI.
2. PSNI will be informed of all Security Service counter-terrorist investigations and operations relating to Northern Ireland.

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<sup>185</sup> *Freedom from Suspicion. Surveillance Reform for a Digital Age*, Justice, October 2011, page 5. Directed surveillance is covert surveillance that is not intrusive but is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of *private information* about any person (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek *authorisation* under RIPA).

<sup>186</sup> *Freedom from Suspicion. Surveillance Reform for a Digital Age*, Justice, October 2011, page 58.

3. Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy, and using police procedures.
4. The great majority of national security CHIS in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols.
5. There will be no diminution of the PSNI's ability to comply with the Human Rights Act or the Policing Board's ability to monitor said compliance.

### **Oversight of covert and national security policing**

The principal oversight mechanisms in place for ensuring PSNI accountability in respect of RIPA and national security matters are summarised below.

#### ***RIPA Commissioners***

Scrutiny of the interception of communications, acquisition of communications data, covert surveillance and the use of CHIS are provided for in Part IV of RIPA. RIPA established an Interception of Communications Commissioner, an Intelligence Services Commissioner and provided additional powers to a Chief Surveillance Commissioner. Each Commissioner has specific responsibility to report to the Prime Minister. There is provision for such reports to be laid before Parliament. It is the role of the Chief Surveillance Commissioner to review the use of covert surveillance, property interference, CHIS and encryption. The Chief Surveillance Commissioner is assisted in that task by a team of Surveillance Commissioners, Assistant Commissioners and Inspectors, collectively known as 'the Office of Surveillance Commissioners' (OSC).

Part IV of RIPA also established a Tribunal for dealing with complaints arising from the interception of communications, acquisition of communications data, property interference, covert surveillance and the use of CHIS. The Tribunal is the designated forum in which an individual may raise a complaint that ECHR rights have been violated. The Tribunal can hear, consider and investigate complaints and has power to award compensation and to quash an interception warrant or an authorisation for

surveillance or the use of CHIS. However, once the Tribunal has determined a complaint, the only information it is authorised to provide to the complainant is a statement that a determination has been made in his or her favour or a statement that no determination has been made in his or her favour.

### ***Government appointed reviewer of national security arrangements***

In January 2007, Lord Alex Carlile of Berriew CBE Q.C., the first Independent Reviewer of Terrorism Legislation,<sup>187</sup> was invited by the Secretary of State for Northern Ireland to review annually the operation of the arrangements for handling national security-related matters in Northern Ireland, with particular reference to the role of the Security Service once it assumed lead responsibility for intelligence work in Northern Ireland. Lord Carlile remains in post as the reviewer of national security arrangements. He met with the Human Rights and Professional Standards Committee in January 2013 to discuss his role and remit in respect of national security and to discuss the current working arrangements for national security in Northern Ireland. The Board's Human Rights Advisor has also met with Lord Carlile on a number of occasions and the Performance Committee hopes to meet with him during 2014.

### ***Government appointed reviewers of terrorism legislation***

David Anderson Q.C. was appointed by the UK Government in 2011 as the Independent Reviewer of Terrorism Legislation. Every year he produces a report on his review of the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 across the United Kingdom. He has also reported (in separate reports) on, inter alia, the use of control orders under the Prevention of Terrorism Act 2005 and on the operation of the Terrorist Asset-Freezing Act 2010. Robert Whalley CB was appointed by the UK Government in May 2008 as the Independent Reviewer of Justice and Security (Northern Ireland) Act 2007. His role is to review and report annually on the operation of the powers contained in sections 21 to 32 JSA, and to review the procedures adopted by the General Officer Commanding Northern Ireland for receiving, investigating and responding to complaints.

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<sup>187</sup> Lord Carlile was in post as Independent Reviewer of Terrorism Legislation from 2001 and was replaced in 2011 by David Anderson QC.

Mr Whalley will finished his term in post in February 2014. His replacement is David Seymour CB.<sup>188</sup> The Committee and the Human Rights Advisor wish to record their gratitude to Mr Whalley for his constructive, transparent and professional engagement with them during his time in post. Mr Whalley always accepted an invitation to meet to discuss his important work and has given generously of his time and experience. His work has contributed greatly to improving police practice.

The Human Rights and Professional Standards Committee met with Mr Anderson and Mr Whalley in February 2012 and the Policing Board's National Security Project Group (see below) met with Mr Whalley in July 2013. The Board's Human Rights Advisor also meets with the reviewers on a regular basis and the Performance Committee hope to meet with David Anderson Q.C. and David Seymour CB during 2014.

### ***Police Ombudsman***

The Police Ombudsman for Northern Ireland does not have jurisdiction to deal with complaints against members of the Security Services. However, the Police Ombudsman retains responsibility for dealing with complaints against PSNI officers, including those who work alongside the Security Services. Annex E to the St. Andrew's Agreement states "The Security Service and the Ombudsman's office have been working together to agree arrangements for the Ombudsman's access to sensitive information held by the Service, where this becomes necessary for the discharge of the Ombudsman's statutory duties."

### ***Policing Board***

The Policing Board has a statutory duty under the Police (Northern Ireland) Act 2000 to maintain and secure an efficient and effective Police Service. Amongst other things, the Policing Board must monitor the performance of the police in carrying out their general duties (to protect life and property, to prevent the commission of offences etc.) and in complying with the Human Rights Act 1998. The Policing Board must also monitor the performance of the police in carrying out their functions with the aim of (a) securing the support of the local community; and (b) acting in co-

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<sup>188</sup> <https://www.gov.uk/government/news/new-independent-reviewer-announced>

operation with the local community. The Policing Board must make arrangements for obtaining the co-operation of the public with the police in the prevention of crime.

In discharging those duties, the Policing Board has retained oversight and held the Chief Constable to account in all aspects of police work. With regard to covert policing techniques, the Policing Board's Human Rights Advisor, on behalf of the Performance Committee, and in accordance with the Human Rights Monitoring Framework, has had a role in assisting the Board to discharge that duty. She has kept under review the mechanisms in place for ensuring that PSNI officers comply with the requirements of RIPA and the Human Rights Act in relation to covert policing. Every year since 2002 the Human Rights Advisor has monitored the annual inspection reports of the Office of Surveillance Commissioners (OSC) in respect of PSNI and the PSNI response. The contents of the OSC report together with the PSNI response contain sensitive information which cannot be set out or summarised in this Human Rights Annual Report. However, the Human Rights Advisor has access to both reports in full. The OSC assessment of the PSNI for the relevant period was, for another year, one of an exceptional level of professionalism. All recommendations from previous reports have been implemented satisfactorily. In respect of one recommendation considerable efforts by PSNI have resulted in protections being built in to the process that go above and beyond those that were recommended.

Until 2013, Policing Board Members did not have access to the OSC reports. However, since January 2013, Assistant Chief Constable Crime Operations has provided Members with a redacted version of OSC reports and has provided confidential briefings on those reports. That is a development that is welcomed by the Committee and which provides reassurance that PSNI is prepared to share sensitive information in a secure environment.

The Policing Board's role in respect of national security was referred to at Annex E to the St. Andrews Agreement, which states "There will be no diminution in police accountability. The role and responsibilities of the Policing Board and the Police Ombudsman vis a vis the Police will not change... The Policing Board will, as now, have the power to require the Chief Constable to report on any issue pertaining to

his functions or those of the police service. All aspects of policing will continue to be subject to the same scrutiny as now. To ensure the Chief Constable can be fully accountable for the PSNI's policing operations, the Security Service will participate in briefings to closed sessions of the Policing Board to provide appropriate intelligence background about national security related policing operations. On policing that touches on national security the Chief Constable's main accountability will be to the Secretary of State, as it is now."

Annex E also envisaged a role for the Policing Board's Human Rights Advisor(s). It stated that the Human Rights Advisor "should have a role in human rights proofing the relevant protocols that will underpin the Chief Constable's five key principles, and also in confirming that satisfactory arrangements are in place to implement the principles."

The Memorandum of Understanding between PSNI and the Security Service, together with relevant protocols and service level agreements, have been subjected to 'human rights proofing' by previous Policing Board Human Rights Advisors. It was reported in the Human Rights Annual Report 2012 that the Memorandum of Understanding between PSNI and the Security Service, together with relevant protocols and service level agreements, were being reviewed by PSNI. A recommendation was made that upon completion of its review, PSNI should subject them to human rights proofing by the Policing Board's Human Rights Advisor and thereafter publish the documents to the greatest extent possible. The recommendation required PSNI to provide a written explanation to the Performance Committee in the event that it decided not to publish any document or to publish all or any in a redacted form.<sup>189</sup> PSNI accepted that recommendation and has taken this forward with the Policing Board's Human Rights Advisor. The Human Rights Advisor has reviewed the memoranda and service level agreements in draft form and has raised no concerns concerning their compliance with the Human Rights Act 1998. She advised the Committee that the documents enshrined in clear terms the five principles of Annex E and has embedded within them necessary safeguards to ensure compliance. Importantly, however, such a review of documentation cannot

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<sup>189</sup> Recommendation 8 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

provide reassurance that the agreements are applied in practice. That requires ongoing review and oversight. The Policing Board is considering how to improve arrangements for the accountability of PSNI in this critical area.

As the memoranda and service level agreements remain in draft, PSNI has yet to publish the documents (or provide the Committee with a written explanation as to whether they will be published and in what format). Therefore, Recommendation 8 of the Policing Board's Human Rights Annual Report 2012 remains outstanding. All relevant persons are in the meantime working closely to ensure that the recommendation is implemented shortly.

A recommendation was also made in the Human Rights Annual Report 2012 that PSNI should put in place a formal training plan to ensure that all officers who are or may be involved in the application of RIPA receive all necessary training as and when required.<sup>190</sup> The Annual Report recognised that training was already included in a number of lessons but the Committee wished to see that formalised and made mandatory. PSNI accepted the recommendation and has indicated that a review of RIPA training is being carried out. It was initially envisaged that the review would be completed by September 2013 but there was some understandable delay in meeting that timeframe: RIPA training to be provided in the Student Officer Training Programme and Probationer Training Programme was yet to be confirmed and PSNI wished to consider that student officer training within its review of RIPA training. While the Policing Board's Human Rights Advisor has been impressed by the work that has already gone in to reviewing RIPA training and ensuring that efficient and up to date training is delivered to all relevant officers, until such time as the training plan is formalised and shared with the Performance Committee, Recommendation 9 of the Human Rights Annual Report 2012 will remain outstanding.

### **Project Group on Covert and National Security Policing**

Given the nature of the work undertaken by the above-mentioned oversight mechanisms, there are understandable limitations on the extent to which the bodies

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<sup>190</sup> Recommendation 9 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

in question can report publically upon their work. It has been reported in previous Human Rights Annual Reports that concern exists that there is insufficient transparency in respect of the oversight mechanisms. In February 2013, the Human Rights and Professional Standards Committee met with the Committee on the Administration of Justice (CAJ). The CAJ had published a research report in November 2012 on covert and national security policing.<sup>191</sup> In that report, CAJ was critical of the accountability mechanisms in place and argued that there was an ‘accountability gap’. Referring to the transfer of responsibility for national security intelligence work from PSNI to the Security Service in 2007, CAJ comments that “Contrary to official assurances it does appear that both the role of the Policing Board and the Police Ombudsman have been diminished by the transfer.”<sup>192</sup> CAJ questioned whether Security Service closed session briefings to the Policing Board, as provided for by the St. Andrews Agreement, could afford effective scrutiny over the Security Service’s work given that the Policing Board had no statutory remit in respect of the Security Service. CAJ recommended, inter alia, that there should be a full review of the entire St. Andrews agreement arrangements.

Taking cognisance of those concerns, and those previously expressed to the Human Rights and Professional Standards Committee, the Performance Committee agreed at its meeting in May 2013 to establish a Project Group on oversight arrangements for covert and national security policing. The Committee agreed that the Project Group would work to the following terms of reference:

- (i) To consider the existing accountability mechanisms, including in particular the level of transparency;
- (ii) To consider the extent and effectiveness of the Policing Board’s oversight role; and
- (iii) To make recommendations, if appropriate.

The effectiveness of the role of the Policing Board will necessarily have to be considered in the context of the Board’s statutory remit, which is limited to holding

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<sup>191</sup> *The Policing You Don’t See. Covert policing and the accountability gap: Five years on from the transfer of ‘national security’ primacy to MI5*, Committee on the Administration of Justice (CAJ), November 2012.

<sup>192</sup> *Ibid.* page 14.



the police, rather than the Security Service, to account. It is hoped that through the work of the Project Group, a framework can be produced which will enable the Board to effectively fulfil its oversight role. The Group has met on a number of occasions and will report on progress shortly.

### **Unmanned Aerial Systems (UAS) and RIPA**

In March 2013, PSNI advised the Policing Board that it was intending to purchase a number of Unmanned Aerial Systems (UAS) for use during the G8 Summit in June 2013. PSNI advocated for UAS because, unlike the planes and helicopters in its Air Support Unit, they could be operated at low altitudes thereby countering inclement weather; they were deployed easily by police officers on the ground; they had lower running costs than traditional aircraft; they were silent; they could be operated in situations that would be too dangerous for helicopters such as inshore searches near cliffs; and, they could be utilised to support post-incident cordons for long periods without degrading the wider Air Support Unit functions (such as transport and complex searches) by using up helicopter and pilot flying hours. PSNI advised that all UAS would be operated by police officers on the ground in the vicinity of the craft and those officers would have passed a Civil Aviation Authority (CAA) approved course. PSNI is required to satisfy the CAA that it has safe operating systems for the UAS prior to any use.

In accordance with PSNI's Financial Memorandum, any expenditure which might be considered novel and contentious must be approved by the Policing Board, the Department of Justice and the Department of Finance and Personnel. When advised of PSNI's intention to purchase UAS, Members of the Policing Board asked a number of questions, in particular as to the human rights implications should UAS be used for *covert* surveillance. PSNI assured Members that the primary use of UAS was to provide *overt* support to police but that should a request be made to assist with the covert investigation of crime, authorisation would be sought under the Regulation of Investigatory Powers Act (RIPA). In April 2013, the Policing Board agreed to approve PSNI proposals to purchase UAS. That approval was subject to a full review of UAS being carried out after one year of operation to assess the technical operation of the systems and their effectiveness; value for money; legal

compliance in deployment and oversight by the Chief Surveillance Commissioner. The first reported use of UAS following the G8 summit was in November 2013 when UAS were used to carry out an aerial search of an area during a bomb alert in North Belfast.<sup>193</sup> That use was overt.

Some models of UAS are capable of intercepting communications, acquiring communications data, conducting covert surveillance and accessing electronic data protected by encryption or passwords. As stated above, PSNI has assured the Board that its primary use of UAS is to provide overt support to policing but the Committee, through the Policing Board's Human Rights Advisor, will review all aspects of UAS and report in due course. Given that the technology is capable of creating tension with the right to privacy guaranteed by Article 8 ECHR, particular attention will be paid to the circumstances in which RIPA authorisation is required should UAS be used during an investigation.

The Home Office Code of Practice on covert surveillance lists various types of surveillance activities that do not constitute intrusive or directed surveillance for the purposes of RIPA and which therefore require no directed or intrusive surveillance authorisation. Included within the list is overt use of CCTV and Automatic Number Plate Recognition (ANPR) cameras. The Code of Practice states that "The use of overt CCTV cameras by public authorities does not normally require an authorisation under the 2000 Act. Members of the public will be aware that such systems are in use... However, where overt CCTV or ANPR cameras are used in a covert and pre-planned manner as part of a specific investigation or operation, for the surveillance of a specific person or group of people, a directed surveillance authorisation should be considered. Such covert surveillance is likely to result in the obtaining of private information about a person (namely, a record of their movements and activities) and therefore falls properly within the definition of directed surveillance."<sup>194</sup> The use of the CCTV or ANPR system in these circumstances goes beyond their intended use for the general prevention or detection of crime and protection of the public."<sup>195</sup>

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<sup>193</sup> <http://www.bbc.co.uk/news/uk-northern-ireland-24812412>

<sup>194</sup> See footnote 185 above.

<sup>195</sup> *Covert Surveillance and Property Interference*, Home Office, September 2010, paras 2.27 – 2.28.

A statutory Surveillance Camera Code of Practice was published by the Home Office in June 2013 pursuant to section 30(1)(a) of the Protection of Freedoms Act 2012. This Code of Practice is applicable to England and Wales only. It applies to the use of surveillance camera systems that operate in public places in England and Wales but it does not include covert surveillance by public authorities. A CCTV Code of Practice has been published by the Information Commissioner's Office (ICO).<sup>196</sup> The ICO Code provides good practice advice to those involved in operating CCTV and other devices which view or record images of individuals for any of the following purposes: seeing what an individual is doing; potentially taking some action in relation to an individual; and, using the images of an individual in some way that will affect their privacy. Whilst there is no statutory obligation on PSNI to comply with the ICO Code, it must comply with the Data Protection Act 1998. The purpose of the ICO Code is to assist authorities in complying with their legal obligations under the Data Protection Act. Misuse of images captured by CCTV may amount not only to a breach of the Data Protection Act, but also to a breach of the Article 8 ECHR right to respect for private and family life.

The ICO Code of Practice states "Recorded material should be stored in a way that maintains the integrity of the image. This is to ensure that the rights of individuals recorded by the CCTV system are protected and that the material can be used as evidence in court. To do this you need to carefully choose the medium on which the images are stored, and then ensure that access is restricted. You may wish to keep a record of how the images are handled if they are likely to be used as evidence in court. Finally, once there is no reason to retain the recorded images, they should be deleted. Exactly when you decide to do this will depend on the purpose for using CCTV."<sup>197</sup> The ICO Code also states that persons operating CCTV and other recording devices must let people know that they are in an area where CCTV surveillance is being carried out, e.g. by placing signs at the entrance to the CCTV zone. It requires "In the exceptional circumstance that audio recording is being used, this should be stated explicitly and prominently."<sup>198</sup> The ICO Code of Practice provides that if CCTV is to be used in a covert, pre-planned manner, consideration

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<sup>196</sup> *CCTV Code of Practice*, Information Commissioner's Office, 2008.

<sup>197</sup> *Ibid.* page 12.

<sup>198</sup> *Ibid.* page 15.

should be given as to whether a directed surveillance authorisation under RIPA is required.<sup>199</sup>

As for the application of the ICO Code of Practice to UAS, it is arguable that the guidance could apply to UAS as it does to CCTV, for example, in respect of the retention and storage of images recorded by UAS. However, there are logistical difficulties: whilst it is relatively straightforward to advise the public that CCTV surveillance is in operation by placing a sign in the area where surveillance is being carried out, that would not be possible for UAS. Furthermore, whether the UAS surveillance is covert (requiring authorisation under RIPA) or overt (not requiring authorisation under RIPA) may not be readily discernible. While the intention may be that the surveillance is overt, the size of the UAS, the height at which it is flying and the cloud cover may mean it cannot be seen by the naked eye. There is, therefore, an apparent gap in the regulation and guidance applicable to UAS being used for overt surveillance purposes or for surveillance not in relation to a specific operation or investigation.<sup>200</sup> Therefore, the Committee recommends that in the course of the post-implementation review of UAS to be provided to the Policing Board, PSNI should identify and explain the extent to which UAS has been used for surveillance purposes, the framework within which PSNI uses UAS for overt surveillance and for surveillance which does not relate to a specific operation or investigation.

### **Recommendation 8**

**In the course of the post-implementation review of UAS to be provided to the Policing Board the PSNI should identify and explain the extent to which UAS has been used for surveillance purposes together with a detailed explanation of the framework within which PSNI uses UAS for overt surveillance and for surveillance which does not relate to a specific operation or investigation.**

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<sup>199</sup> *Ibid.* page 23.

<sup>200</sup> To come within RIPA surveillance must be either carried out in relation to a specific investigation or operation in such manner that it is likely to result in the obtaining of private information about a person (known as 'directed surveillance'), or be carried out in relation to anything taking place on residential premises or in any private vehicle (known as 'intrusive surveillance').

Thereafter, the Committee will consider the means by which it may be satisfied as to the use of UAS, for example, by requiring a report to be made to the Board when UAS are deployed.

## 9. VICTIMS

After a criminal offence has been committed, a victim's first contact with the criminal justice system is almost always with the police. That contact will likely continue throughout any ensuing judicial process. The police response to the report of a criminal offence will therefore have a direct and often decisive impact on the victim's attitude to the criminal justice system. It may impact upon his or her willingness to support a prosecution and to report, and encourage others to report, future criminality. It is critical that the police treat all victims with compassion and respect for their dignity.<sup>201</sup> They must ensure that the victim feels that the offence is being considered properly and is being taken seriously. Victims often feel a sense of frustration, fear and insecurity but police (both officers and civilian staff) can make a real difference to a victim's experience and they can act as a gateway to appropriate support services. As the first point of contact may be through a civilian Call Handler or Station Enquiry Assistant, it is equally important that police officers and civilian staff are adequately trained, resourced and supervised specifically to engage with victims.<sup>202</sup>

During 2013, there have been a number of developments which should have a positive impact on the experience of victims engaging with the criminal justice process. Of particular note is the establishment of Victim and Witness Care Units and the launch of a Sexual Assault Referral Centre.

### **Victim and Witness Care Units**

In December 2011, the Criminal Justice Inspection Northern Ireland (CJINI) published an inspection report on the care and treatment of victims and witnesses in

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<sup>201</sup> Article 2.3 of the PSNI Code of Ethics includes a duty to "treat all victims of crime and disorder with sensitivity and respect their dignity" and requires police officers to consider the special needs, vulnerabilities and concerns victims have. It requires police officers to keep victims updated on the progress of any relevant investigations. 'Victims' is defined in Article 2.3 of the Code as including within its meaning the relatives of a deceased person where the circumstances of the death are being investigated by the police.

<sup>202</sup> The training of civilian staff is discussed in chapter 2 of this Human Rights Annual Report and the handling of complaints and misconduct matters in respect of such personnel is discussed in chapter 5.

the criminal justice system in Northern Ireland.<sup>203</sup> One of the recommendations arising from that inspection report was that PSNI and the Public Prosecution Service (PPS) should establish jointly Witness Care Units to achieve consistency, co-ordination, a single point of contact and an overall improved experience for victims and witnesses. That recommendation was endorsed by the Department of Justice in its five year strategy for improving services for victims and witnesses of crime.<sup>204</sup> A Victim and Witness Care Unit opened in Belfast in November 2012 and has been operational since then in the Belfast area. With the establishment of a further Unit in Derry/Londonderry during 2013, it is hoped that both Units will be in a position to service the whole of Northern Ireland during 2014.

The Units comprise PSNI case officers and PPS staff. Every time a prosecution case file is sent from PSNI to the PPS, it is allocated a case officer from the Victim and Witness Care Unit. That provides all victims and witnesses with a single point of contact. The case officer will keep victims and witnesses up to date with case decisions (for example, decisions not to prosecute, bail decisions etc.) and will try to manage expectations (for example, with regard to timeframes and likely case outcomes). Approximately 11% of contested cases do not proceed on the day listed for trial due to prosecution witnesses not attending. It is anticipated that the new Units will improve upon the degree of witness participation. Where a prosecution is proceeding, the case officer will carry out a needs analysis which can include organising child care. If a case officer identifies an intimidated and/or vulnerable witness, that will be notified to relevant PSNI and PPS officers to ensure that special measures can be considered and put in place. Victim and Witness Care Unit letterheads have been printed in various languages and interpreters are used where needed.

The introduction of Victim and Witness Care Units is a very positive development. It merits noting however that a case that will be dealt with by a Unit must still be recorded by PSNI and updated appropriately on the NICHE recording system. Relevant police officers and staff are due to receive training in early 2014. A service

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<sup>203</sup> *Care and Treatment of Victims and Witnesses in the Criminal Justice System in Northern Ireland*, Criminal Justice Inspection Northern Ireland (CJINI), December 2011.

<sup>204</sup> *Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime. A Five Year Strategy*, Department of Justice for Northern Ireland, October 2012.

procedure is to be issued setting out the responsibilities of PSNI and the Victim and Witness Care Unit. The draft procedure will be shared with external partners in advance for their input. Thereafter, as referred to in Chapter 3 of this Human Rights Annual Report, the Performance Committee expects that the Service Procedure will be published on the PSNI website.

### **Sexual Assault Referral Centre (SARC)**

In September 2013, a Sexual Assault Referral Centre (SARC) was launched. It is known as The Rowan and is located within the grounds of Antrim Area Hospital. The Rowan has been funded jointly by PSNI and the Department of Health, Social Services and Public Safety (DHSSPS). It is a purpose built facility where female and male victims of sexual abuse, assault and rape can receive medical care and counselling and have the opportunity, if they choose, to assist the police investigation. A SARC can contribute to and enhance criminal investigations while at the same time enabling health providers and support workers to provide services to victims in an appropriate environment. The Rowan provides a supportive framework and a rapid response. The Rowan service is available by appointment 24 hours a day, 365 days a year. A victim may be referred by the police, by other professionals or by self-referral.<sup>205</sup>

PSNI launched a DVD in September 2013 as part of a campaign aimed at preventing rape and sexual assault. *Without Consent it's Rape* is a short film which shows the devastating impact of rape on victims, friends and family. It also highlights the consequences for the offender. The DVD was launched in partnership with the Policing Board and the Youth Justice Agency. It is specifically aimed at those aged between 16 and 25 years old. It will form part of an educational package which is distributed through Policing and Community Safety Partnerships and Local Neighbourhood Policing Teams across Northern Ireland.

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<sup>205</sup> Victims can self-refer to the Rowan by calling 0800 389 4424.



## VULNERABLE PEOPLE

To act compatibly with the Human Rights Act 1998, the PSNI must uphold and protect the human rights of all members of the community and provide an equal service to all which also secures equality of outcome. That requires the police to take an individual's particular circumstances into account and to tailor the response to ensure that all individuals may enjoy equally the benefit and protection of rights.

A person may be vulnerable for one of a number of reasons, for example, by reason of age, disability, mental ill health, by virtue of factors such as intimidation or the fact that he or she was a victim of a hate, domestic or sexual crime. It is critical that police are trained to respond appropriately to vulnerable persons, to meet their individual needs and to seek support from other organisations where appropriate. In the Policing Plan 2012 to 2015, PSNI identified the following groups of people as needing an improved service from the police due to their vulnerability to crime, particularly violent crime:

- Children and young people, in particular males aged 16 to 24 and children in care;<sup>206</sup>
- Older people (aged 60 years and over);
- Victims of domestic abuse;<sup>207</sup>
- Victims of hate crime,<sup>208</sup> and
- Victims of serious sexual crime.<sup>209</sup>

Vulnerable people may come into contact with police as a victim but also as a witness or as a suspect. In the case of victims and witnesses, Article 2.3 of the PSNI Code of Ethics requires that officers “treat all victims of crime and disorder with sensitivity and respect their dignity” and requires police officers to consider the special needs, vulnerabilities and concerns victims have.

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<sup>206</sup> Chapter 14 of this Human Rights Annual Report deals with children and young people.

<sup>207</sup> The police response to victims of domestic abuse is considered in a later section of this chapter.

<sup>208</sup> The police response to victims of hate crime is considered in a later section of this chapter.

<sup>209</sup> While the Policing Plan refers to ‘serious’ sexual crime, both the PSNI and the Policing Board are keen that all sexual crimes are recognised and recorded as serious.

The Criminal Justice Inspection Northern Ireland (CJINI) and the Department of Justice have undertaken work to consider ways in which the criminal justice system can improve its service to victims and witnesses of crime, including vulnerable and intimidated witnesses and the range of 'special measures' available to assist them to give their best evidence in court with as little stress as possible.<sup>210</sup> Even if a person is not a victim of crime, the fear of crime can have a profound impact upon a person's life. It may prevent them from leaving their own home and they may be fearful of speaking to strangers. Such anxiety can lead to depression and other forms of mental ill health. Fear of crime is a particular concern for the older population in Northern Ireland.

PSNI has a specific policy document which sets out guidance for preventing and responding to crime against older people.<sup>211</sup> The policy document recognises that:

- Crimes against older people must be treated with urgency and efficiency: victims and witnesses must be confident in the service they receive.
- A perception exists that older people are more likely to be targeted for burglary because they keep large amounts of money in their homes. Working in partnership with outside agencies and older people, joint campaigns can be designed to provide reassurance to prevent crime.
- Some older people suffer elder abuse (which is also detailed in PSNI's domestic abuse policy).
- While older people may be experienced and resourceful, some may also be vulnerable.
- Older people are particularly likely to experience physical and psychological ill-effects as a result of crime.
- Older people are disproportionately fearful of crime but one explanation may be that a larger proportion of older people live alone.

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<sup>210</sup> *Care and Treatment of Victims and Witnesses in the Criminal Justice System in Northern Ireland*, Criminal Justice Inspection Northern Ireland (CJINI), December 2011; *The Use of Special Measures in the Criminal Justice System in Northern Ireland*, CJINI, April 2012; and *Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime. A Five Year Strategy*, Department of Justice for Northern Ireland, October 2012.

<sup>211</sup> *Preventing and Responding to Crime Against Older Persons*, PSNI Policy Directive 10/06 (most recently reviewed and reissued 23 September 2009).

The policy document details types of crime that are typically suffered by older persons, for example, distraction burglary<sup>212</sup> and bogus traders both of which have a disproportionate effect on older victims.

The Pensioners Parliament, Age Sector Platform, Age NI and local older peoples groups all identify crime, the impact of crime, the fear of crime, the investigation of crime and levels of detection and prosecution as significant issues. In November 2013, the Policing Board's Partnership Committee met with the Commissioner for Older People for Northern Ireland to discuss those issues. The Commissioner raised particular concern about the low detection rate of crimes against older people and highlighted that the detection rate for burglary offences against older people as very disappointing when compared to detection rates for burglary against other sections of the community. The Commissioner also raised that issue directly with PSNI, as has the Partnership Committee. It is a matter that the Committee will continue to monitor.

Another group of people considered to be particularly vulnerable are those with a learning disability. The experience of persons with a learning disability in contact with the police was considered in a joint research report, published in 2011, by the Policing Board and the Office of the Police Ombudsman.<sup>213</sup> The report found that people with a learning disability often fail to report crimes such as harassment and that there is a degree of acceptance by society of such abuse. The report recommended that greater efforts should be made by all within the criminal justice system, including the police, to bring the issues to the attention of the public and to those who are victims of crime. To address the recommendations in the report, PSNI established a working group on learning disability. Disability advocates were key partners on the working group together with an official from the Policing Board (the latter in an observer capacity). At the final meeting of the learning disability working group in February 2013, an update was provided on PSNI progress in implementing the policing recommendations. The majority of the recommendations were reported

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<sup>212</sup> Distraction burglary is a form of burglary where the offenders trick the occupant or distract them thereby allowing others to gain access and commit burglary.

<sup>213</sup> *Views and Experiences of People with Learning Disabilities in Relation to Policing Arrangements in Northern Ireland*, August 2011, NIPB and OPONI.

to have been progressed by PSNI working alongside the key stakeholders on the working group.

Furthermore, PSNI now funds a disability advocate who works alongside police which is a very positive initiative which the Committee welcomes. The reporting of disability motivated hate crime has increased from 15 (in 2011 to 2012) to 35 (in 2012 to 2013). That is encouraging but indicates that disability hate crime is still, based upon the experience of disability spokespersons, under-reported. It is therefore important that PSNI gives effect to the recommendations in the research report. By way of example, PSNI should continue and build upon the work already undertaken to raise awareness of the police and their role in combating hate crime. While the working group no longer meets, PSNI continues to engage with disability organisations in other forums. That includes a Disability Hate Crime Steering Group, which was established by the voluntary sector to promote awareness of disability crime across the criminal justice system, disability sector, statutory agencies and the public.

## **DOMESTIC ABUSE**

Any person can experience domestic abuse regardless of gender, race, ethnic or religious group, economic status, disability or lifestyle. It can take place in lesbian, gay, bisexual and transgender relationships as well as in heterosexual relationships. Domestic abuse can also be perpetrated by family members. That is recognised in the definition of domestic abuse developed by the Northern Ireland Regional Steering Group and adopted by PSNI. It defines domestic abuse as “any incident of threatening behaviour, violence or abuse (psychological, physical, verbal, sexual, financial or emotional) inflicted on one person by another where they are or have been intimate partners or family members, irrespective of gender or sexual orientation”<sup>214</sup>

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<sup>214</sup> In this context ‘incident’ means an incident anywhere and not confined to the home of one of the partners/family members; ‘intimate partners’ means there must have been a relationship with a degree of continuity and stability. The relationship must also have had (or reasonably supposed to have had) a sexual aspect, such as in the relationship between husband and wife or between others generally recognised as a couple including same sex couples; and ‘family members’ include mother, father, son, daughter, brother, sister, grandparents, whether directly or indirectly related, in-laws or stepfamily.”

All forms of domestic abuse - psychological, financial, emotional and physical - come from the abuser's desire for power and control over an intimate partner or other family member. Domestic abuse is repetitive and life-threatening, it tends to worsen over time and it destroys the lives of victims and their children. Domestic abuse can involve a wide range of behaviour, not all of which is recognised as criminal. For example, some forms of emotional abuse are not defined as criminal but can have a serious and lasting impact on an adult or child's sense of well-being and autonomy. However, many types of behaviour do constitute a criminal offence, such as physical assault, wounding, attempting to choke, sexual assault, rape, threats to kill, harassment and putting a person in fear of violence.<sup>215</sup>

PSNI responds to all reported incidents of domestic abuse, whether or not a crime is revealed. PSNI publishes quarterly statistics on domestic abuse incidents and crimes on its website. PSNI also publishes a more detailed annual statistical bulletin which includes year-end figures, trends in domestic abuse incidents and crimes since 2004/2005 and provides additional commentary. The latest annual statistical bulletin, covering the period 2004/2005 to 2012/2013, was published on 5 July 2013.<sup>216</sup> There were 27,190 domestic abuse incidents and 11,160 domestic abuse crimes recorded by PSNI between 1 April 2012 and 31 March 2013. That means that police responded to a domestic incident on average every 19 minutes. The figures for 2012/2013 represent a 8% increase in the number of incidents and a 7% increase in the number of crimes recorded by PSNI compared to the number recorded in 2011/2012. That is the highest number of domestic abuse incidents and crimes recorded by PSNI in any one year since recording began in 2004/2005. Of the 11,160 domestic abuse crimes recorded during 2012/2013, 3,888 were detected.<sup>217</sup> The overall detection rate for domestic abuse crimes decreased from 41% in 2011/2012 to 35% in 2012/2013.

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<sup>215</sup> For more information on what domestic abuse is and recognising the signs, see the Women's Aid survivors handbook which is available through the Women's Aid website: [www.womensaid.org.uk](http://www.womensaid.org.uk)

<sup>216</sup> *Trends in Domestic Abuse Incidents and Crimes in Northern Ireland 2004/05 to 2012/13*, PSNI, July 2013.

<sup>217</sup> 'Detected crime' is a term that describes offences which have been 'cleared up' by the police. The Home Office revised its approach to the recording of detected crime in April 2013 to incorporate the use of discretionary disposals along with existing 'crime outcomes'. A more detailed explanation of the way in which police record a crime as being detected is available through PSNI's *User Guide to Police Recorded Crime Statistics in Northern Ireland*, August 2013.

It can be said that because domestic abuse is committed by a person well-known to the victim, the offender can be more quickly identified and intercepted, meaning the detection rate for domestic abuse crimes should be higher than for other crimes where the perpetrator is not immediately known. The detection rate recorded during 2012/2013 (35%) is higher than the detection rate for crime overall (26%).<sup>218</sup> However, the detection rate for recorded sexual offences and violence against the person offences with a domestic abuse motivation (12% and 31% respectively) is considerably lower than the detection rate for those types of crime overall (21% and 33% respectively).

Crimes with a domestic abuse motivation accounted for 26% of *all* violence against the person offences and 21% of *all* sexual offences recorded by PSNI during 2012/2013. There were 7,722 offences involving violence against the person and 404 sexual offences with a domestic abuse motivation recorded during 2012/2013 (including 5 homicides, 24 attempted murders and 172 offences of rape). Over the nine year period between 2004/2005 and 2012/2013 there have been a total of 62 homicides with a domestic abuse motivation. Those figures are alarming and should alert any police service to the risks inherent in not providing sufficient focus, resources and expertise to combating domestic abuse.

As for victim characteristics, it can be seen that 70% of victims of domestic abuse crimes recorded by PSNI during 2012/2013 were female and 30% were male.<sup>219</sup> Persons under the age of 18 accounted for 12% of all victims. Where ethnicity was known, 99% of victims were white and within that category most recorded nationality as United Kingdom or Ireland. However it has been suggested that reporting rates amongst persons recently arrived in the UK and Ireland are particularly low. Offender characteristics<sup>220</sup> show that of all domestic abuse offenders who were dealt with by the police by means of a formal detection in 2012/2013, 87% were male and 12% were female. The vast majority (94%) were over the age of 18. Where ethnicity was known, 98% were white. In terms of Victim/Offender relationship<sup>221</sup> where the

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<sup>218</sup> *Trends in Police Reported Crime in Northern Ireland 1998/99 to 2012/13*, PSNI, July 2013.

<sup>219</sup> This information is included in the statistical report pursuant to the Recommendation 1 of the *Thematic Inquiry on Domestic Abuse*, Northern Ireland Policing Board, March 2009.

<sup>220</sup> As above.

<sup>221</sup> As above.

relationship was known, 33% were ex-spouses, partners, boyfriends or girlfriends; 30% were current spouses, partners, boyfriends or girlfriends; 24% were parent and child; and 8% were siblings.

### **Police response to domestic abuse**

The police response to domestic abuse has been a recurring item on the Policing Board's agenda over the past number of years, with a human rights thematic review on the issue published in March 2009. An update report to that thematic was published in May 2011. The thematic review raised many issues, which were subsequently endorsed in an inspection report published by the Criminal Justice Inspection Northern Ireland (CJINI) in December 2010 on the effectiveness of the criminal justice system in responding to and handling cases of domestic violence and abuse.<sup>222</sup> The CJINI inspection report made a total of 13 recommendations.<sup>223</sup> A follow-up review on the inspection recommendations was published by CJINI in October 2013.<sup>224</sup> The follow-up review assessed one of the original inspection recommendations as achieved, six as partially achieved; and six as not achieved.<sup>225</sup> CJINI's Chief Inspector expressed his grave concern at the level of progress made to date and urged PSNI to apply greater strategic leadership and effort to this critical issue. In light of the limited progress made against the inspection recommendations, the rise in reported instances of domestic violence and abuse and the significant risks to victims, the Chief Inspector indicated that CJINI Inspectors would return to the issue by way of a full inspection in 2015.

The Performance Committee met with the Chief Inspector CJINI in November 2013 to discuss the CJINI follow up review findings. The Committee shared the Chief Inspector's concerns. The Committee was particularly disappointed that PSNI had not implemented a recommendation requiring PSNI to explore the feasibility of

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<sup>222</sup> *Domestic Violence and Abuse*, Criminal Justice Inspection Northern Ireland (CJINI), December 2010.

<sup>223</sup> The inspection report made 6 recommendations for PSNI; 1 for PSNI in conjunction with the PPS; 3 for the PPS; and 3 for the Department of Justice.

<sup>224</sup> *Domestic Violence and Abuse: A follow-up review of inspection recommendations*, CJINI, October 2013.

<sup>225</sup> Of the 6 recommendations for PSNI, two were assessed as partially achieved and four as not achieved. The 1 recommendation for PSNI in conjunction with the PPS was assessed as partially achieved.

issuing Body Worn Digital Recording Systems ('head cams') across all Districts for domestic abuse incidents.<sup>226</sup> That was a recommendation also made by the Policing Board in 2009. The use of photographic evidence has been shown to assist greatly in the prosecution of perpetrators. Since 2009 the Board has sought assurance regarding the use of head cam technology in gathering evidence at domestic abuse incidents. The fact that the equipment is still not being used routinely for domestic incidents is a serious oversight. Although officers are now able to use their *Blackberry*<sup>TM</sup> devices to take digital photographs at the scene of domestic incidents, that is not a substitute for body worn cameras. The Committee intends to pursue all of the issues raised in the numerous reports directly with PSNI and will carry out its own thematic follow-up review in 2014.

The CJINI follow-up review raised a number of other issues of concern to the Committee. For example, the absence of a consistent approach by all Districts with regards to the numbers and working patterns of domestic abuse officers<sup>227</sup> and the co-location of Women's Aid workers in police stations. The Committee recognises that there are many dedicated officers involved in this area of work, but Members believe that their efforts should be supported by a greater strategic focus at senior officer level, with some decisions (such as deployment of head cams) implemented on an organisational basis rather than left to the discretion of individual Districts.

The Committee has raised these issues with the Chief Constable and has reiterated its support for the use of head cams in all police attendances at domestic situations. The Committee called upon the Chief Constable to give immediate strategic direction regarding use of this equipment.

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<sup>226</sup> Recommendation 11 of *Domestic Violence and Abuse*, CJINI, December 2010.

<sup>227</sup> The online news website the Detail ([www.thedetail.tv](http://www.thedetail.tv)) asked PSNI why there were 12.5 specialist domestic abuse officers working in E District (Armagh, Banbridge, Craigavon, Newry and Mourne) compared to the next highest of 7 specialist domestic abuse officers in D District (Antrim, Carrickfergus, Lisburn and Newtownabbey) and in A District (North and West Belfast). The PSNI response was that each District allocates its own domestic abuse officers depending on local need. Yet during 2012/2013 the highest rate of domestic abuse incidents per 1,000 of the population was not in E District but was in North and West Belfast (A District) and Foyle (G District). For more information, see *Murder, rape, kidnap and assault: a year of domestic abuse in Northern Ireland*, Kathryn Torney for the Detail, 20 November 2013. Another interesting article on this subject is *Providing Safe Houses for Those in Danger*, Kathryn Torney for the Detail, 20 November 2013.



The Performance Committee also asked the Chief Constable to review and provide the Committee with his analysis of the main contributing factors leading to detection rates for domestic abuse motivated crimes decreasing during 2012/2013. In response, the Chief Constable has referred to the fact that victims may withdraw support for a prosecution due to a number of factors, including familial concerns, financial constraints and a lack of a support network in escaping an abusive relationship. The Committee is not satisfied that that response deals adequately with the issue. Clearly the non-cooperation of a victim will affect detection rates but that is nothing new and does not explain why the detection rate fell during 2012/2013 compared to previous years.

PSNI also suggested that the withdrawal of support by a victim for a prosecution may actually be a consequence of greater partnership working. Where a high risk victim has been dealt with through a Multi-Agency Risk Assessment Conference (MARAC), the MARAC process may allow the victim to escape the violent situation or it may provide them with the support they need to fulfil their needs. PSNI suggested that while that means the immediate risk to a victim has been averted, it may also mean that the victim disengages from the criminal justice process as their needs have been met. PSNI advised that where the victim does not wish to co-operate with the police, and if there are no further investigative or evidential opportunities, then it will not be possible to progress a prosecution.

Assuming that line of reasoning is correct, which the Committee does not necessarily accept, it would be a surprise to and concern of the Committee if the drop in detection rates was attributable to a higher proportion of high risk victims discontinuing their co-operation with the police. MARAC only deals with high risk victims. While the high risk victim's needs may have been met through MARAC, and they may no longer be in immediate danger, the high risk perpetrator will not have been brought to justice and will not therefore be liable to be managed under the Public Protection Arrangements for Northern Ireland (PPANI) (unless they have previous convictions). Therefore, a perpetrator will be free to enter into a new relationship without PPANI supervision and without having been held culpable for their actions. Clearly, more is required to ensure that where a victim does withdraw support for a prosecution, all vital evidence has been gathered by the police and

passed to the Public Prosecution Service (PPS). As noted above, the strength of such evidence would be much improved if body-worn photographic equipment was issued and used for domestic incidents across all police Districts.

Another recommendation of the CJINI report was that PSNI and the PPS should reach agreement about the inclusion of assessments by Investigating Officers of the reasons for withdrawal statements being made, and views about whether, and if appropriate how, the case should proceed to prosecution without the consent of the victim/witness.<sup>228</sup> PSNI's domestic abuse policy recommends that where possible a Domestic Abuse Officer should record any retraction statement. The policy details the information that should be recorded in it. It also states "Where a victim has advised of an intention to withdraw a complaint of domestic abuse, this should be referred to the DAO [Domestic Abuse Officer], who will arrange to meet with the victim, and if appropriate, record any retraction statement". A Service Level Agreement between PSNI and the PPS includes a section on 'withdrawal of complaint in domestic violence/abuse cases.' Prosecutors and police indicated to CJINI Inspectors that there were differences in the quality of withdrawal statements depending on whether it had been taken by a Domestic Abuse Officer or a Response Officer. In one police District a policy was in place that required Domestic Abuse Officers to take withdrawal statements. That approach, it was suggested, resulted in fewer victims withdrawing because specialist Domestic Abuse Officers are skilled in dealing with it appropriately and they were more effective at explaining the risks of withdrawing and the benefits of continuing with the criminal justice process. In its recent follow-up review, CJINI concluded that while the policy and Service Level Agreement set out the required content of the withdrawal statement, more work was required to be done to ensure implementation in operational practice.

The Performance Committee asked the Chief Constable in December 2013 to outline exactly how he intended to provide greater strategic focus at a senior management level to improve the police response to domestic abuse incidents and ensure consistency in approach across all police Districts. In response, the Chief

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<sup>228</sup> Recommendation 5 of *Domestic Violence and Abuse*, CJINI, December 2010. A similar recommendation was made by Recommendation 10 of the Policing Board's domestic abuse thematic review.

Constable advised the Policing Board that an action plan had been developed which reflected recent review documents produced by PSNI in respect of public protection as well as an analytical document compiled following engagement with partner agencies. The action plan will be taken forward by an Assistant Chief Constable. During 2014 the Performance Committee intends to follow up with PSNI on the detail of the action plan and the steps to be taken to give effect to it.

## **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, faith, racial or ethnic origin, sexual orientation, gender identity or disability.<sup>229</sup> The impact of the crime varies from victim to victim but it leaves many feeling permanently unsafe and anxious. As well as having a physical impact on victims, hate crime can lead to poor mental health and increase the risk of suicide. The impact of the crime may also resonate throughout the wider community.

The PSNI has a clear obligation to assist and support victims of hate crime whilst taking effective action against perpetrators. In doing so, officers are required to abide by the Code of Ethics, Article 6.1 of which requires that “Police officers shall act with fairness, self-control, tolerance and impartiality when carrying out their duties. They shall use appropriate language and behaviour in their dealings with members of the public, groups from within the public and their colleagues. They shall give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.” That is particularly important when dealing with victims of hate crime as they have already suffered ‘primary victimisation’ at the hands of a perpetrator. If that victim then experiences indifference or rejection from the police or any other organisation, he or she will commonly suffer what is known as ‘secondary victimisation’.

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<sup>229</sup> For research into the impact of hate crime on victims, see *Equality groups perceptions and experiences of crime*, S. Botcherby, F. Glenn, P. Iganski, K. Jochelsen and S. Lagou for the Equality and Human Rights Commission and University of Lancaster, 2011, which considers findings from the British Crime Survey, including the emotional reaction to crime of victims who perceived the crime to have been an identity based crime.

If an incident or crime is perceived by the victim or any other person as being motivated by prejudice or hate on grounds of 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 must record the incident or crime as a hate incident or crime and must respond to it in accordance with PSNI Service Procedure *Police Response to Hate Incidents*.<sup>230</sup>

The PSNI records and publishes data on hate incidents and hate crimes on a quarterly basis. Table 1 below shows the number of hate incidents and crimes recorded by the police during 2011/2012 and 2012/2013 together with detection rates.<sup>231</sup> Comparisons to levels in previous financial years can be found in the PSNI's 2012/2013 annual statistical report which contains annual figures for each year dating back to 2004/2005.

**Table 1: Number of hate incidents and hate crimes recorded by PSNI and detection rate, by type of hate motivation, 1 April 2011 to 31 March 2013<sup>232</sup>**

<u>Type of hate crime</u>	<u>Incidents recorded</u>		<u>Crimes recorded</u>		<u>Crimes detected</u>		<u>Detection rate (%)</u>	
	<u>11/12</u>	<u>12/13</u>	<u>11/12</u>	<u>12/13</u>	<u>11/12</u>	<u>12/13</u>	<u>11/12</u>	<u>12/13</u>
<b>Racist</b>	696	750	458	470	77	85	17	18
<b>Homophobic</b>	200	246	120	149	18	25	15	17
<b>Sectarian</b>	1,344	1,372	885	889	149	145	17	16
<b>Faith/Religion</b>	8	22	6	14	1	2	17	14
<b>Disability</b>	33	74	15	35	6	4	40	11
<b>Transphobic</b>	4	15	3	6	0	0	0	0

<sup>230</sup> *Police Response to Hate Incidents*, PSNI Service Procedure 16/2012, December 2012 (updated in June 2013). The Service Procedure defines a hate incident as “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.” A hate crime is defined as “any hate incident, which constitutes a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate.”

<sup>231</sup> ‘Detected crime’ is defined in footnote 217 above.

<sup>232</sup> *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2012/13*, PSNI, July 2013 and *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2011/12*, PSNI, July 2012.

As illustrated by Table 1, the number of recorded incidents and crimes with a hate motivation increased in 2012/2013 compared to the previous year across all categories. Hate crime is known to be under-reported, so the fact that more reports are being made does not necessarily mean that more hate incidents/crime are occurring. The increase may be attributable to a range of factors. For example, a person may be more willing to report due to an increased awareness of hate crime, greater confidence in the police and/or third party support. The increase in reporting may also be attributable to police officers more readily identifying and recording incidents and crime as being hate motivated. PSNI has focused on those factors since the start of 2012/2013 as part of an internal review of the police response to hate crime (discussed below). The Committee hopes that focus on this critical issue will continue and that reporting rates will continue to increase.<sup>233</sup> Together with an increase in reporting rates however the Committee wishes to see an increase in detection rates.

During 2012/2013 PSNI recorded 100,389 crimes in Northern Ireland (that figure includes hate motivated crimes outlined in the table above). The overall detection rate for these 100,389 crimes was 26.4%.<sup>234</sup> It is evident that the detection rate for hate crime is considerably lower than the detection rate for overall crime. PSNI is aware of that and advises that it is committed to addressing the low detection rate through its review of hate crime (outlined in more detail below). The Performance Committee will monitor the impact of that review.

It should be noted that there is no criminal offence specifically for 'hate crime' in Northern Ireland but the Criminal Justice (No.2) (Northern Ireland) Order 2004 enables an enhanced sentence to be passed where a crime is proved to have been motivated by hate based on race, religion, sexual orientation or disability. It is also an offence, under the Public Order (Northern Ireland) Order 1987, to commit acts intended to, or likely to, stir up hatred against a group of persons or arouse fear of a group of persons. "Group of persons" means a group of persons categorised according to religious belief, sexual orientation, disability, colour, race, nationality or

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<sup>233</sup> The PSNI quarterly bulletin covering the period up to 30 September 2013 indicates that reporting rates are continuing to increase.

<sup>234</sup> *Trends in Police Reported Crime in Northern Ireland 1998/99 to 2012/13*, PSNI, July 2013.

ethnic or national origins. Neither piece of legislation includes express reference to offences committed on the grounds of Transphobia. The Performance Committee considers that to be an omission and believes that express reference to Transphobia should be included in the legislation.

If the police record a hate crime as having been detected, that means that the criminal offence has been dealt with but not that the hate motivation has been dealt with. In order for an enhanced sentence to be passed under the 2004 Order, or for a person to be found guilty of stirring up hatred or arousing fear of a group of persons under the 1987 Order, the hate motivation must be proved in court according to the criminal standard of proof *i.e.* beyond reasonable doubt. Very few enhanced sentences have been passed by the courts in Northern Ireland (only 15 between 2007 and 2011). As regards offences of stirring up hatred or arousing fear, the 1987 Order has not generally been a tool used by the Criminal Justice System when responding to hate crime.<sup>235</sup> The fact that special legislative measures exist for sentencing crimes motivated by hate is indicative of a desire to ensure that the Criminal Justice System in Northern Ireland takes hate crime seriously, but further work is clearly required. That has been recognised by the Department of Justice, which has established a Hate Crime Strategic Steering Group. The Justice Minister has also stated that, by Autumn 2014, he hopes to have in place a ‘data capture’ system which will accurately record the flow of hate crime cases through the system enabling agencies to identify issues or areas for improvement.<sup>236</sup>

### **PSNI hate crime review**

The Human Rights and Professional Standards Committee received a briefing from PSNI in February 2013 in respect of the PSNI response to hate crime. Members were updated on PSNI’s review of hate crime which was initiated in 2012 to address

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<sup>235</sup> For further information and consideration of the prosecution of hate crime in Northern Ireland, see *Criminal Justice Responses to Hate Crime in Northern Ireland*, Neil Jarman, November 2012 (available through the NIACRO website as part of the Challenge Hate Crime’ project: [www.niacro.co.uk/challenge-hate-crime](http://www.niacro.co.uk/challenge-hate-crime)).

<sup>236</sup> *Ford Responds to Human Rights Commission Report on Hate Crime*, Department of Justice news release, 15 October 2013.

recommendations made by the Policing Board<sup>237</sup> and to deal with recurring concerns raised by various stakeholders, including criticism of the decision in 2010 to transfer the Hate Incident Minority Liaison Officer (HIMLO) role from Community Safety to Neighbourhood Policing Teams and the lack of consultation with stakeholders before this decision were taken.

At the outset of its review, PSNI established an internal Hate and Signal Crime review team to consider the issues of reporting and detecting hate crime, with a particular focus on (i) access to services and communication; (ii) investigation and procedures; and (iii) training. The review team consulted a Hate and Signal Crime community group which consists of stakeholders representing minority groups. PSNI commissioned a Service Strategic Assessment of hate crime in Northern Ireland. That detailed assessment analysed where, when and against whom each type of hate crime was most commonly occurring and the detection rates for each. Other work undertaken by the internal review team included exploring the range of initiatives which Districts and Departments deliver to minority communities; establishing protocols to enable online reporting via third parties such as Victim Support; reviewing consultation methodologies with minority groups; reminding all officers and staff of the need to accept a victim or any other party's perception of a hate crime as such; re-establishing the SMS messaging system for Deaf and Hard of Hearing; and reviewing the role of the minority support advocates, whose efforts are now much more focussed on victim support, increasing reporting of hate and signal crime and incident monitoring. There are currently minority support advocates funded by PSNI who deal with homophobic and transphobic hate crime; racist hate crime (for victims from EU countries); racist hate crime (for victims from non-EU countries); and an advocate for disability hate crime. Victims can self-refer to the

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<sup>237</sup> Recommendation 10 of the Board's *Human Rights Annual Report 2011* (published February 2012) required PSNI to 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. A number of recommendations were also made in the Board's *Human Rights Thematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgender Individuals* (published March 2012) which related to the police approach to hate crime generally: Recommendation 2 required PSNI to consider developing a hate crime partnership for each District; Recommendations 3, 9 and 12 requires PSNI to review Hate Incident Minority Liaison Officer duties; Recommendation 5 requires PSNI to remind officers that they should accept without challenge the view of a victim or any other person that a crime was motivated by hate; Recommendation 6 requires PSNI to review the effectiveness of the online reporting initiative; and Recommendation 10 requires PSNI to review its hate crime policy.

advocates, or they may be referred by PSNI or other third parties. Victim Support is co-ordinating the advocacy service and a referral pathway has been developed to ensure that all victims of hate crime are fully informed as to the advocacy and support services available.

In September 2012, PSNI produced a Hate Crime Control Strategy. In December 2012, a new PSNI Service Procedure *Police Response to Hate Incidents* was published. The new Service Procedure replaced the PSNI hate crime policy document and the review team was keen that it defined more clearly the roles and responsibilities of frontline officers responding to hate crime. The Service Procedure was further updated in 2013 to set out the role and responsibility of Area Commanders responsible for monitoring and taking 'ownership' of all hate crimes and incidents in their area of command. The amended policy also sets out clear procedures that must be followed to identify and respond to repeat victims of hate crime. PSNI consulted with stakeholders when drafting the new Service Procedure and the final document has been shared with stakeholders. However it is not available on a wider basis as PSNI is not currently publishing policies on its website (as discussed in Chapter 3 of this Human Rights Annual Report). Recommendation 3 of the Human Rights Annual Report 2012 remains outstanding but will, if implemented, ensure that the hate crime policies are available to the public.

A Hate Crime Booklet has also been produced and circulated to personnel at District level and uploaded on to the police intranet to provide officers with information on the six strands of hate crime and details of support agencies. Hate Crime Videos are being produced with a local film company through which victims from each of the six strands of hate crime will convey their experiences of hate crime and the police response. It is intended that these videos will be used by PSNI internally as a means of portraying the impact of hate crime on the injured party. PSNI has appointed Sergeants based within Neighbourhood Policing Units as Hate and Signal Crime Officers (HSCOs). The HSCOs replace the former HIMLO structure. The HSCOs are responsible for reviewing hate crime in their area and providing advice and support to investigating officers. Within each District, two Sergeants have been appointed as the 'Lead' Hate and Signal Crime Officer for their District (LHSCO). The LHSCOs meet every two to three months to discuss issues arising within the various Districts;



to receive organisational information which they can relay back to the HSCOs in their Districts; and to meet with, and receive training from, external partners. External partners invited to the meetings include the minority support advocates, Victim Support, the Northern Ireland Human Rights Commission, the Policing Board and other key groups representing the various hate crime strands.

The HSCOs and LHSCOs have received hate crime training tailored to assist them in fulfilling their new role. They are required to attend a five day investigation training course to assist in raising their awareness of investigative tools and techniques. It is important that all HSCOs attend that course. The detection rate for hate motivated crime remains significantly lower than that of other crimes and, even where hate crime is detected, the proportion of offenders being brought to justice for the hate element of the offence is minimal. Although PSNI must work with the legislation (which has its limitations) and rely upon the PPS to advance a prosecution, the legislation does provide for enhanced sentences for certain hate crimes<sup>238</sup> and for the prosecution of individuals for stirring up fear or hatred of particular groups.<sup>239</sup> Evidence must be identified, recorded and presented to the PPS so as to satisfy the legislative definition(s). Therefore, it is essential that HSCOs receive adequate and nuanced training to enable them to fulfil their critical responsibilities. The Investigative Skills Training Course is an essential element of that.

PSNI's hate crime review team has considered the training delivered to frontline police officers and a two day hate crime training course was designed and delivered to District Trainers in January 2013. The course included sections on human rights (delivered by the Northern Ireland Human Rights Commission); transgender training (delivered by the voluntary family support group Support Acceptance Information and Learning – SAIL); racism training (delivered by NICEM); Lesbian Gay and Bisexual issues training (delivered by the Rainbow Project); and disability training (delivered by Disability Action). The PPS also provided an input on the prosecution of hate crime. Trainers were updated on the recent changes to the way in which PSNI respond to and investigate hate crime, with key aspects of the new Service Procedure highlighted. The rationale behind delivering the course to PSNI Trainers

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<sup>238</sup> Under the Criminal Justice (No. 2) (Northern Ireland) Order.

<sup>239</sup> Under the Public Order (Northern Ireland) Order 1987.

was to enable them to incorporate their learning into the design and delivery of hate crime training which has recently been rolled out across all Districts for frontline police officers. It also introduced Trainers to individuals within the community and voluntary sector with expertise and capacity to deliver training on the composite strands of hate crime. Trainers were encouraged to engage with those individuals and, where possible, utilise their services at District level.

In addition to meeting with PSNI in February 2013, the Human Rights and Professional Standards Committee met with the Director of the Institute of Conflict Research to discuss his report on criminal justice responses to hate crime in Northern Ireland.<sup>240</sup> The report considered the overall extent and nature of hate crime in Northern Ireland; the reporting and recording of hate incidents and crimes; police detection rates; prosecution; the effectiveness of legislation designed to tackle hate crime; work of the Youth Justice Agency, Probation Board and Prison Service; and the main policy responses by government departments and statutory agencies. In terms of the police, prosecutorial and legislative response, comparison is made to England, Wales and Scotland. The Committee welcomed the findings of the report and queried with PSNI why detection rates for racist hate crime in Northern Ireland were so much lower than the detection rate for racist hate crime in parts of Great Britain - in particular, when compared to Strathclyde Police, which had a detection rate of 63.5% for racist hate crime during 2010/2011 (compared to 13.4% for PSNI during the same period). PSNI advised that they had recently visited Strathclyde Police and that they intended to apply the best practice learnt from that visit to its approach to tackling hate crime.

PSNI continues to engage with key stakeholders in respect of hate crime through a range of forums, including through a recently established PSNI/Policing Board Strategic Consultative Group; the Department of Justice Hate Crime Strategic Steering Group; the Disability Hate Crime Steering Group; and the Northern Ireland Trans Forum. PSNI has invited stakeholders to attend and participate in LHSCO

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<sup>240</sup> *Criminal Justice Responses to Hate Crime in Northern Ireland*, Neil Jarman, November 2012. This report was commissioned as part of a 3 year 'Challenge Hate Crime' project led by NIACRO and the Northern Ireland Prison Service. In addition to publishing this report, NIACRO has published a series of other reports, papers and documentation as part of the 'Challenge Hate Crime' project, all of which are available through the NIACRO website: [www.niacro.co.uk/challenge-hate-crime](http://www.niacro.co.uk/challenge-hate-crime)

meetings. Furthermore, PSNI has established a Hate Crime Steering Group. The Group consists of internal PSNI representatives and external stakeholders. The Policing Board's Human Rights Advisor sits on the Steering Group in an observer capacity.

A report on racist hate crime, published in October 2013 by the Northern Ireland Human Rights Commission (NIHRC), found that taken collectively the approach of the criminal justice agencies in Northern Ireland did not demonstrate the necessary partnership needed to ensure the outcomes required by the human rights framework. NIHRC found that while there was evidence of engagement between the criminal justice agencies, as well as with minority ethnic groups, the outcomes secured, such as community safety, convictions, and victim experiences were not as good as they might otherwise have been.<sup>241</sup> Based upon stakeholder feedback and statistical information such as detection rates and enhanced sentences, it would appear that these criticisms in respect of the criminal justice response to racist hate crime could be equally applied to the response to all other forms of hate crime. PSNI's work in this field over the past 18 months must be recognised and stakeholder feedback on PSNI's review of hate crime thus far appears to be largely positive. However, it is important that PSNI maintains momentum on this work. In order to secure consistency of approach between the Districts, PSNI must ensure that strategic focus remains on this issue at an organisational level, with direction given from senior officers. The Performance Committee will continue to monitor this.

## **'LEGACY' CASES**

In Northern Ireland, the 'legacy of the past' as it has become known has meant that there remain many unresolved murders and suspicious deaths, some of which involve alleged state involvement. Jurisprudence from the European Court of Human Rights has established that the right to life under Article 2 of the European Convention on Human Rights (ECHR) carries a procedural obligation which means an investigation must follow a suspicious death. If a State body or agent may bear some responsibility for the death whether directly or indirectly, the State must carry

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<sup>241</sup> *Aggravated by Racial Hostility. Human Rights and the Criminal Justice System in Northern Ireland*, Northern Ireland Human Rights Commission, October 2013.

out an effective official investigation.<sup>242</sup> Included within that is a requirement to keep next of kin involved to whatever extent is necessary to protect their legitimate interest in the investigation.<sup>243</sup> Failure to treat relatives in a humane and compassionate way may amount to a breach of Article 3 ECHR (prohibition of inhuman or degrading treatment).<sup>244</sup>

In addition to its obligations under the ECHR, PSNI is required by the Police (Northern Ireland) Act 2000 to bring perpetrators of crime to justice. PSNI also has obligations under other domestic statutes to assist coronial inquests<sup>245</sup> and public inquiries,<sup>246</sup> furnishing relevant documentation to the inquests/inquiries where required.

In a report published by CJINI in November 2013 it was recognised that “the PSNI arguably carries one of the most significant workloads surrounding legacy matters in terms of the volume of investigations, the costs and indeed the impacts.”<sup>247</sup> CJINI reported that the lack of a co-ordinated approach across the criminal justice system in respect of legacy cases has in many cases created false expectation amongst victims and their families. CJINI stated that the issue of managing expectations could be further assisted by a more transparent approach to the issue of prioritisation for PSNI investigations. CJINI recommended that the PSNI should consider adopting a formal publicly available prioritisation model for legacy cases; it should have, as its overall objective, widely available and understood criteria for the prioritisation of legacy cases; and this prioritisation model should be further supported by a clear communication strategy.<sup>248</sup> The prioritisation of legacy cases is a matter which the Policing Board has previously raised with PSNI and which the Performance Committee will pursue further during 2014.

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<sup>242</sup> See for example, *McCann and Others v. the United Kingdom*, ECHR (1995).

<sup>243</sup> See for example, *Isayeva v Russia*, ECHR (2005) which states at paragraph 214 “there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.”

<sup>244</sup> See for example, *Janowiec and Others v. Russia*, ECHR (2012).

<sup>245</sup> Under the Coroners Act 1959.

<sup>246</sup> Under the Public Inquiries Act 1959.

<sup>247</sup> *A Review of the Cost and Impact of Dealing with the Past on Criminal Justice Organisations in Northern Ireland*, Criminal Justice Inspection Northern Ireland (CJINI), November 2013.

<sup>248</sup> *Ibid.*, paragraph 3.8.

When carrying out work on legacy cases, PSNI is involved in giving effect to the United Kingdom's obligations under Article 2 ECHR. In a series of judgments delivered between 2000 and 2003, the European Court of Human Rights (ECtHR) found that the United Kingdom had violated Article 2 ECHR in respect of various failings in the investigative procedures concerning the death of the applicants' relatives.<sup>249</sup> All six cases concerned the actions of security forces in Northern Ireland. The various failings identified in the cases were summarised on a case by case basis by the Committee of Ministers of the Council of Europe as follows:<sup>250</sup>

- Lack of independence of police investigators from the officers or members of the security forces implicated in the incident (*Jordan, McKerr, Kelly and others, Shanaghan, McShane, Finucane*);
- The independent police investigation did not proceed with reasonable expedition (*McKerr, McShane*);
- Lack of public scrutiny and information to the victims' families on the reasons for the decision of the Director of Public Prosecutions not to prosecute any officer in respect of relevant allegations (*Jordan, McKerr, Kelly and others, Shanaghan, Finucane*);
- The inquest procedure did not play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed (*Jordan, McKerr, Kelly and others, Shanaghan, McShane, Finucane*);
- The scope of examination of the inquest was too restricted (*Shanaghan, Finucane*);
- There was no prompt or effective investigation into allegations of collusion (*Shanaghan, Finucane*);
- The persons who shot the deceased, and in the McShane case, the soldier who drove the armoured personnel carrier that fatally injured the applicant's husband, could not be required to attend the inquest as witnesses (*Jordan, McKerr, Kelly and others, McShane*);

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<sup>249</sup> *McKerr v United Kingdom (UK)* (2002) 34 EHRR 20, *Jordan v UK* (2003) 37 EHRR 2, *Kelly and Others v UK* (2000) 30 EHRR CD223, *Shanaghan v UK* (2000) 30 EHRR CD370, *McShane v UK* (2002) 35 EHRR 23, and *Finucane v UK* (2003) 37 EHRR 29).

<sup>250</sup> *Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases)*, Interim Resolution CM/ResDH(2007)73 of the Committee of Ministers of the Council of Europe.

- The non-disclosure of witness statements prior to the appearance of a witness at the inquest prejudiced the families' ability to prepare for and to participate in the inquest and/or contributed to long adjournments (*Jordan, McKerr, Kelly and others, Shanaghan, McShane*);
- The absence of legal aid for the representation of the victim's family at an inquest (*Jordan*);
- The public interest immunity certificate had the effect of preventing the inquest from examining matters relevant to the outstanding issues in the case (*McKerr*);
- The inquest proceedings did not commence promptly and did not proceed with reasonable expedition (*Jordan, McKerr, Kelly and others, Shanaghan, McShane*).

The United Kingdom Government subsequently presented the Committee of Ministers of the Council of Europe with a 'package of measures' which were collectively designed to ensure Article 2 compliance in light of the aforementioned ECtHR judgments. Included within the package of measures was the Historical Enquiries Team (HET). The HET was established in April 2005 to provide a bespoke unit that would re-examine over 3,000 deaths attributable to the security situation in Northern Ireland between 1968 and the signing of the Good Friday Agreement in 1998.

The Secretariat of the Committee of Ministers published a memorandum on 19 November 2008 which outlined their final assessment of HET based on submissions from the United Kingdom Government, PSNI, the Irish Government and several non-governmental organisations.<sup>251</sup> It was the view of the Secretariat that the HET could not provide a full effective investigation in conformity with Article 2 ECHR in historical cases given that it only sought to identify if further evidentiary opportunities existed. Despite that, the Secretariat considered HET to be a useful model for bringing a 'measure of resolution' to families and next-of-kin in such cases. In other words, that it could play an important role as one element in the package of measures designed

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<sup>251</sup> *Cases concerning the action of security forces in Northern Ireland*, Memorandum CM/Inf/DH(2008)2 revised of the Secretariat of the Committee of Ministers of the Council of Europe.

to satisfy the United Kingdom's obligations to conduct effective investigations in alleged violations of Article 2 of the ECHR.

In monitoring PSNI performance in complying with the Human Rights Act, the Human Rights and Professional Standards Committee considered PSNI involvement in the mechanisms that contributed to the United Kingdom's 'package of measures', including the HET. The Committee received regular briefings from both PSNI and the HET in respect of progress in examining the deaths within the remit of the HET. The Committee also met on a number of occasions with a University of Ulster researcher, Professor Patricia Lundy, to discuss her research into the HET.

In March 2012, the Human Rights and Professional Standards Committee met with Professor Lundy to discuss her research which looked at HET review processes and procedures in Royal Military Police (RMP) investigation cases. Professor Lundy reported that there were apparent anomalies and inconsistencies in the HET investigation process where the military was involved, compared to historic cases where non-State or paramilitary suspects were involved. She questioned whether such anomalies and inconsistencies impacted upon the ability and/or perception of the HET to undertake impartial, effective investigations in cases involving State agents or agencies. Professor Lundy also found that some HET interviews in RMP cases appeared to lack robustness and that those inconsistencies were frequently not challenged adequately. The Policing Board recommended that Her Majesty's Inspectorate of Constabulary (HMIC) should carry out a review. Subsequently, the Department of Justice invited the HMIC to undertake a review of the procedures and approach of the HET in respect of RMP cases.

Having agreed to undertake an inspection on the role and function of the HET, HMIC drew up terms of reference for the review in consultation with the Chief Constable and the Policing Board. Between November 2012 and May 2013 HMIC interviewed over 180 people and examined material relating to 31 cases that the HET had

reviewed. HMIC published a report on its inspection on 3 July 2013 which made a total of 20 recommendations.<sup>252</sup> The key findings can be summarised as follows:

	<b>HMIC FINDINGS</b>
<b>Does the HET's approach conform to current policing standards and practices?</b>	<p>HMIC concludes that there is an unacceptably large range of areas where the HET's approach does not conform to current policing standards and practices, for example:</p> <ul style="list-style-type: none"> <li>• Concern was raised by HMIC about the lack of explicit systems and processes underlying the HET operation e.g. storage and cataloguing of relevant material is haphazard and inconsistent; no standard format for recording policy decisions; many such decisions not recorded at all. Furthermore, staff coming from outside Northern Ireland bring with them different working practices and adopt inconsistent approaches to the review process. No effective induction process capable of addressing these differences.</li> <li>• HMIC raised concern at the lack of a clearly defined complaints process for the HET together with an absence of reporting of its work directly to the public.</li> </ul>
<b>Does the HET adopt a consistent approach to all cases?</b>	<p>HMIC concluded that HET, as a matter of policy, treats deaths where there was state involvement differently from those cases where there is no state involvement. HMIC found that state involvement cases appeared to be treated less rigorously in areas such as:</p> <ul style="list-style-type: none"> <li>• How interviews under caution are conducted.</li> <li>• The nature and extent of pre-interview disclosure.</li> <li>• The way claims made by state agents about suspects being unfit for interview under caution were verified.</li> </ul> <p>HMIC concluded that:</p> <ul style="list-style-type: none"> <li>• Those practices may seriously undermine the</li> </ul>

<sup>252</sup> *Inspection of the Police Service of Northern Ireland Historical Enquiries Team*, Her Majesty's Inspectorate of Constabulary (HMIC), July 2013.



	<p>capability of the HET to review cases in order to determine whether the force used was or was not justified in state involvement cases, and to the identification and punishment of those responsible.</p> <ul style="list-style-type: none"> <li>• Those practices may undermine the effectiveness of the PSNI and the PPS to the extent that state involvement cases relating to the British Army are not routinely referred to these bodies.</li> </ul>
<p><b>Is the HET’s approach to cases with state involvement compliant with the European Convention on Human Rights (ECHR)?</b></p>	<p>HMIC concluded that the HET’s approach to state involvement cases is inconsistent with the United Kingdom’s obligations under Article 2 ECHR,<sup>253</sup> in particular:</p> <ul style="list-style-type: none"> <li>• The inconsistency in the way that state involvement and non-state involvement cases are dealt with undermines the effectiveness of the review process.</li> <li>• The deployment of former RUC and PSNI officers in state involvement cases easily gives rise to the view that the process lacks independence.</li> </ul>

Following a meeting with HMIC to discuss the inspection findings, the Policing Board agreed, at a meeting on 4 July 2013, that a dedicated working group should be established to take forward and oversee the implementation of the recommendations contained in the HMIC report. The HET Working Group was thus established and it was agreed that the Group would:

- Review PSNI failures to respond promptly to issues raised in relation to the work of HET;
- Lead on addressing the challenges identified in the HMIC report;

<sup>253</sup> HMIC recognised that the HET was not by itself capable of complying with Article 2 (given that it was confined to reviewing rather than investigating deaths) but that it could, as per the Secretariat Council of Europe Committee of Ministers (Memorandum CM/Inf/DH(2008)2, November 2008), be capable of playing an important role in satisfying the state’s continuing obligation to conduct Article 2 compliant investigations when taken together with other measures. Thus whilst not capable of complying with Article 2 in itself, the HET should not operate so as to violate Article 2. HMIC recorded flaws in the HET which were not Article 2 compliant. HMIC recognised that these flaws were “relevant to whether the HET was capable of playing a role in the satisfaction of Article 2 when taken together with other measures.”

- Agree the oversight mechanism for the review of HET and the on-going operation of HET;
- Seek to ensure that the management, leadership and governance arrangements of HET and PSNI leadership are addressed as a matter of urgency;
- Publish a plan and programme for consultation; and
- Seek to ensure the implementation of the HMIC recommendations.

The Working Group has since held a series of meetings with the Chief Constable and other interested parties, including victims' families, non-governmental organisations and other stakeholders. The Group will report upon its work in due course.

## 10. TREATMENT OF SUSPECTS

The treatment of suspects by the police inevitably engages a range of rights under the European Convention on Human Rights (ECHR). For example, most criminal investigations will interfere with a suspect's privacy protected by Article 8 ECHR; the manner in which the investigation is conducted will engage Article 6 ECHR which includes the right to a fair trial, the right to be presumed innocent until proven guilty and, if charged, to have access to a solicitor and to be told in a language the suspect understands the charges against them; detention or conditions attached to bail may interfere with a suspect's freedom of assembly and association under Article 11 ECHR.

When the police remove a suspect's liberty and place him or her in detention, the police assume a responsibility for protecting that person's human rights. Arrest and detention must be carried out in accordance with Codes of Practice<sup>254</sup> and in compliance with the ECHR. The detention itself engages the right to liberty and security under Article 5 ECHR and can only be justified if one of the specific criteria set out in Article 5 ECHR has been met.<sup>255</sup> Both before and after charge the police must periodically determine whether continued detention is necessary or whether, for example, full release or release on bail would be more appropriate.<sup>256</sup> The right to life under Article 2 ECHR requires the police not only to refrain from taking life, but also to safeguard detainees from self-harm or harm from others. Article 3 ECHR encompasses the right not to be subjected to torture or inhuman or degrading treatment. The police must therefore ensure that all detained persons for whom they have responsibility are treated in a humane and dignified manner. In their dealings with detained persons, police must as far as possible apply non-violent methods before resorting to any use of force. Where force is required, such use of force must be the minimum required in the circumstances and must be lawful, proportionate and

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<sup>254</sup> Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) Code of Practice C governs the detention, treatment and questioning of persons by the police and Code of Practice H governs the same in respect of terrorism suspects.

<sup>255</sup> For example, the detention must be in accordance with a procedure prescribed by law and for the purpose of bringing the detainee before a court on reasonable suspicion of having committed an offence.

<sup>256</sup> Article 41 of the Police and Criminal Evidence (Northern Ireland) Order (PACE) 1989 sets out the requirements for reviews of detention. Further guidance is contained within Code C of the PACE Codes of Practice.

necessary. The police must take every reasonable step to protect the health and safety of detained persons and must take immediate action where medical assistance is required.<sup>257</sup>

Where any police action is likely to interfere with a suspect's rights, police must be satisfied that the action is predicated upon a lawful power, is proportionate and necessary and that there is no less intrusive alternative. If not, or if the police have not kept an adequate record of the reasoning behind the course of action they have taken, there may be adverse consequences for any ensuing prosecution and may give rise to a civil claim against the police. Given the rights at stake, particularly in the context of detained persons, any inappropriate or unlawful police action, whether intentional or as a result of inadvertence, may have serious consequences on the health and well-being of suspects.

## **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.<sup>258</sup> That function is discharged 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: Belfast/Antrim (visits carried out by this team include visits to Antrim Serious Crime Suite)<sup>259</sup>; North-West; Tyrone/Fermanagh; and, Down/Armagh.

Custody Visitors make unannounced visits to designated police custody suites where they inspect the facilities, speak to detainees and check custody records. They can also view, on remote camera, live interviews with detainees held in Antrim Serious Crime Suite under terrorism legislation (provided the detainees consent). Custody

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<sup>257</sup> These requirements in respect of detained persons have been codified by Article 5 of the PSNI Code of Ethics.

<sup>258</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.

<sup>259</sup> Where persons suspected of involvement in terrorism are held.

Visitors report to the Policing Board and the PSNI on the welfare and treatment of persons detained in custody and the adequacy of facilities. The Policing Board's Performance Committee (the Committee) receives reports on the work of the Scheme which highlight any issues raised and the remedial actions taken to address them. The reports cover three distinct areas: the rights of the detainee; the health and well-being of the detainee; and the conditions of detention.

Custody Visitors fulfil an invaluable critical function in ensuring the protection of the human rights of detained suspects and, through their reports, enable the Committee to monitor the treatment of detainees and the conditions of their detention. Any specific concerns identified by Custody Visitors are raised with PSNI. There is a process in place between the Policing Board and the PSNI to ensure that action is taken in respect of those concerns. The Scheme also forms part of the United Kingdom's National Preventive Mechanism (NPM).<sup>260</sup> 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.

The Policing Board publishes quarterly statistics and an annual report on the work of Custody Visitors, all of which are made available for public viewing through the Policing Board's website.<sup>261</sup>

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<sup>260</sup> The National Preventative Mechanism (NPM) represents a major break-through for the implementation of the Optional Protocol to the UN's 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.

<sup>261</sup> [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)

## **Work of the Custody Visiting Teams during 2012 to 2013<sup>262</sup>**

Each year the Policing Board sets a guideline number of visits to be completed by Custody Visiting Teams. During 2012/2013, the guideline number of visits was set at 818. The actual number of visits carried out was 753. Of the 753 visits, 735 were deemed to be valid visits. The other 18 visits could not be completed due, for example, to the custody suites being closed (6), the custody suite being too busy (5) and, given that visits are always carried out in pairs, the unavailability of a second Custody Visitor (2). The visits took place over each of the 7 days of the week and were conducted at all times of the day and night, with 61 (8%) being carried out on a Saturday, 79 (10%) being carried out on a Sunday and 68 (9%) being carried out between 9pm and 9am.

The average length of a visit was 25 minutes. Custody Visitors record details of delays in gaining access to custody suites. During 2012/2013 there were 27 occasions when there were delays of more than 10 minutes, generally due to the custody staff being busy. While the Committee recognises that there may be occasions when custody staff are extremely busy, Custody Visitors must not be delayed access save where it is genuinely unavoidable.

### ***Detainees seen by Custody Visitors during 2012/2013***

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 1,172 detainees held during visits in 2012/2013, 63 (5%) refused to be seen by a Custody Visitor. 504 (43%) were not seen for other reasons, for example, 196 were sleeping and 170 were being interviewed at the time of the visit. That means that Custody Visitors saw 52% (605) of all detainees held in 2012/2013. That is higher than the previous 2 years (during 2010/2011 only 47% of detainees held during visits were seen by Custody Visitors and during 2012/2013 51% were seen). This improvement in the percentage of detainees being seen is largely attributable to the continuing increase in the number

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<sup>262</sup> The 2012/2013 statistics referenced in this section refer to the period 1 April 2012 – 31 March 2013 and are sourced from *Annual Custody Visitors' Statistics, 2012/2013*, Northern Ireland Policing Board, May 2013.

of detainees consenting to be seen by a custody visitor. Until October 2010, the escorting police officer established whether a detainee wished to speak to the Custody Visitors. Since October 2010, the Custody Visitors introduce themselves and ask the detained person whether they consent to a visit. The adoption of this self-introduction system has meant that the overall refusal rate<sup>263</sup> has steadily decreased from 18% in 2010/2011 to 5% in 2012/2013.

### ***Custody records***

A custody record must be opened as soon as practicable for every person who is brought to a police station to be detained. Custody Visitors are trained to check the custody records of any detainee who has consented to that inspection. If 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 is 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 that:

- Detainees (arrested under the Police and Criminal Evidence (Northern Ireland) Order 1989, known as PACE) 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).
- Medication, injuries, medical examinations, meals/diet are recorded and treated.
- Procedures to assess special risks/vulnerable detainees have been properly recorded and implemented.
- Rules concerning the timing and frequency of cell inspections of all detainees, particularly inebriated or otherwise vulnerable detainees (detainees at risk should be checked every 15 minutes) have been complied with.
- Reviews of the continuing requirement for detention have been conducted.

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<sup>263</sup> Calculated as the number of detainees who refuse to be seen as a percentage of the number of detainees who were held in custody at the time of the visit.

Custody Visitors continue to demonstrate an impressive commitment to ensuring that custody records are checked. In 2008/2009 49% were checked; in 2009/2010 60% were checked; in 2010/2011 67% were checked; in 2011/2012 76% were checked; and in 2012/2013 70% were checked. Given the central importance of checking custody records, it is hoped that the Custody Visitors will be able to maintain a high percentage of records that are checked and to increase that number in the coming years.

### ***Satisfactory/unsatisfactory visits***

During 2012/2013, 87% of visits were deemed to be entirely satisfactory. That is a similar level of satisfaction to 2011/2012 when 86% of visits were deemed as satisfactory. It represents an improvement on 2010/2011 when 82% of visits were deemed satisfactory and 2009/2010 when 77% of visits were deemed satisfactory. A total of 104 reasons for concern were noted by Custody Visitors during 2012/2013, 82 of which related to the conditions of detention; 15 to the health and well-being of detainees and 7 to the treatment of detainees. Where reasons for concern are identified, they are raised with PSNI who must advise the Policing Board within 28 days of the action taken to remedy the concern. If the Policing Board is not advised within 28 days, the matter may be escalated and referred for the attention of the relevant District Commander.

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

The Chief Constable designates police stations which are to be used for the purpose of detaining arrested persons and he or she has 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>264</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 strictly limited circumstances that a person may be detained in a station that has not been designated, and it is unlikely to be for more than 6 hours.<sup>265</sup>

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<sup>264</sup> Article 36 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE).

<sup>265</sup> Article 32 of PACE. Detention in a non-designated station can only extend beyond 6 hours if it is authorised by an officer not below the rank of Superintendent and only if that officer is satisfied on



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. PSNI provides the Policing Board with statistics on PACE detention on an annual basis and reported that during 2012/2013 there were a total of 25,258 persons detained in police stations, of which 157 were detained in Ardmore and 18 were detained in Magherafelt. Magherafelt is a non-designated station while Ardmore is designated but its custody suite is subject to limited opening hours.

In the Human Rights Annual Report 2011 it was recommended that PSNI should report to the Policing Board annually if detainees have been held in non-designated police stations for more than 6 hours together with the reason for that further detention.<sup>266</sup> PSNI accepted that recommendation and has committed to inform the Committee should an occasion arise where a detainee is kept beyond 6 hours. PSNI advises that such a scenario is exceptional and no such reports have to date been received by the Committee.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) requires that all places of detention be monitored by a National Preventive Mechanism (NPM).<sup>267</sup> The United Kingdom's NPM is currently made up of 18 visiting or inspecting bodies, including the Policing Board's Independent Custody Visiting Scheme, who visit places of detention such as prisons, police custody, immigration detention centres, children's secure accommodation and mental health institutions. However, as noted above, Custody Visitors in Northern Ireland only have a statutory remit to visit persons detained in designated police stations. The United Kingdom's NPM made a recommendation for

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reasonable grounds that it would expose the detainee and those accompanying him/her to unacceptable risk of injury if he/she were taken from the first police station and moved to a designated station.

<sup>266</sup> Recommendation 14 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012.

<sup>267</sup> OPCAT is an international human rights treaty designed to strengthen protection for people deprived of their liberty. It recognises that such people are particularly vulnerable and aims to prevent their ill-treatment by requiring States to designate a NPM to carry out visits to places of detention, to monitor the treatment of and conditions for detainees and to make recommendations regarding the prevention of ill-treatment. The United Kingdom ratified OPCAT in December 2003 and designated its NPM in March 2009. The NPM is coordinated by Her Majesty's Inspectorate of Prisons (HMIP).

the Justice Minister in its 2011/2012 annual report that non-designated police custody suites in Northern Ireland should be brought within the remit of the Policing Board's Custody Visiting Scheme.<sup>268</sup> The Performance Committee supports this recommendation and the Justice Minister has indicated that he will take it forward during 2014.

## MENTAL HEALTH

There are a wide range of settings in which the police may encounter a person with mental ill health – the person may be a witness, a victim or a suspect. They may be a member of the public against whom the police feel compelled to take action under the Mental Health (Northern Ireland) Order 1986.<sup>269</sup> As *per* a Criminal Justice Inspection Northern Ireland (CJINI) inspection report published in April 2010, which examined mental health issues in the criminal justice system, “Evidence suggests that around 16% of those individuals who are placed into custody meet one or more of the assessment criteria for mental disorder. In addition, it is estimated that 78% of male prisoners on remand and approximately 50% of female prisoners are personality disordered – a figure seven times that of the general population. Personality disorder is often combined with and aggravated by the abuse of alcohol and drugs. Mental health within the criminal justice system is not a marginal issue.”<sup>270</sup>

Article 5 of the PSNI Code of Ethics requires police officers to “ensure that all detained persons for whom they have responsibility are treated in a humane and dignified manner” and to “take every reasonable step to protect the health and safety of detained persons.” The way in which the police treat a detained person with mental ill health can be vital to that person's well-being and future

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<sup>268</sup> Recommendation 7 of *Monitoring Places of Detention. Third Annual Report of the United Kingdom's National Preventive Mechanism, 2011 – 2012*, National Preventive Mechanism, February 2013.

<sup>269</sup> Under the Mental Health (Northern Ireland) Order 1986, where a police officer finds a person in a public place who appears to be suffering from a mental disorder and to be in immediate need of care or control, the police officer may, if the officer thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety. A place of safety ought to be a hospital, but as a measure of last resort can be a police station.

<sup>270</sup> *Not a Marginal Issue – Mental Health and the Criminal Justice System*, Criminal Justice Inspection Northern Ireland (CJINI), March 2010, page viii.

recovery/treatment, with the Association of Chief Police Officers (ACPO) Guidance on the Safer Detention and Handling of Persons in Police Custody recognising that police custody often provides the 'gateway' to healthcare services for vulnerable people.<sup>271</sup>

Police officers are not expected to diagnose specific conditions however all officers in direct contact with the public should recognise the possibility of a person suffering mental ill health. Police officers should be aware of relevant guidance,<sup>272</sup> referral pathways and local protocols for facilitating appropriate access to health and social care and, in the case of young people, children's services. If a Custody Sergeant suspects that a detained person suffers from mental ill health or is otherwise mentally vulnerable he/she is obliged under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) Codes of Practice to seek the services of an 'appropriate adult' to represent the person's best interests.<sup>273</sup>

The CJINI 2010 inspection report on mental health in the criminal justice system found that PSNI "is struggling to deal with mentally disordered persons, with often inadequate support from the Health Service. On occasion it finds hospitals unco-operative and having to return people into the community with every expectation that they will be back into the criminal justice system within a short time."<sup>274</sup> CJINI made a number of recommendations for the various criminal justice agencies and reported upon progress in a March 2012 follow up review. In the foreword to that follow up review, the Chief Inspector of the CJINI commented that, "The early assessment and screening of people with mental health problems remains difficult as they enter into the justice system. There are still no clear rules about where people are to be taken when they are arrested or detained by the police."

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<sup>271</sup> *Guidance on the Safer Detention and Handling of Persons in Police Custody*, National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO), 2012.

<sup>272</sup> Such as *Guidance on Responding to People with Mental Ill Health or Learning Disabilities*, National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO), 2010.

<sup>273</sup> PACE Code of Practice C, paragraphs 3.10 – 3.13.

<sup>274</sup> *Not a Marginal Issue – Mental Health and the Criminal Justice System*, Criminal Justice Inspection Northern Ireland (CJINI), March 2010, page viii.

In 2012, PSNI initiated a review of healthcare provision within police custody suites which it hopes will result in the greater involvement of, and earlier intervention by, healthcare professionals from a nursing and psychiatric background. PSNI advised that a more holistic approach will, in its view, offer better outcomes in terms of the health and well-being of detainees, which may in turn assist with reducing re-offending. It is also likely to provide a cost saving benefit to the organisation. A recommendation was made in the Policing Board's Human Rights Annual Report 2012 that PSNI report to the Policing Board on that review.<sup>275</sup> That recommendation was accepted and the Policing Board's Human Rights Advisor has met with those in PSNI involved in the work to discuss progress. It was agreed that a briefing and report to the Performance Committee, as required by last year's recommendation, would be deferred to early 2014 by which time PSNI will be in a better position to provide more detail on the manner in which the new arrangements for healthcare provision in police custody will operate. Therefore, Recommendation 10 of the Human Rights Annual Report 2012 remains outstanding.

## **IMMIGRATION DETAINEES**

Immigration removal centres are used by the United Kingdom Border Agency (UKBA) for temporary detention in situations where people have no legal entitlement to be in the United Kingdom but have refused to leave voluntarily. Those detained at any such centre can leave at any time to return to their home country. However if they refuse to return voluntarily, the UKBA will enforce their return. In July 2011 the UKBA opened a removal centre in Larne which can accommodate up to 19 detainees at any one time. The facility, known as 'Larne House', is a residential short term holding facility, which is used solely for the detention of an immigration detainee for a period of up to 7 days.<sup>276</sup> It is said to be designed to provide secure and humane detention under a relaxed regime in order to reflect the circumstances in which immigration detainees have been deprived of their liberty (*i.e.* they are not under arrest and have not been charged with a criminal offence). Responsibility for inspecting the facilities and treatment of detainees held there rests with Her

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<sup>275</sup> Recommendation 10 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

<sup>276</sup> In line with UKBA policy, the maximum period of detention allowed is five days, or seven if removal directions have already been served.

Majesty's Chief Inspector of Prisons (HMIP)<sup>277</sup> and an Independent Monitoring Board appointed by the Home Office Minister for Immigration.<sup>278</sup>

Prior to the opening of Larne House, immigration detainees in Northern Ireland were routinely held in police custody suites before being transferred to immigration removal centres in Great Britain. It was noted in the Policing Board's Human Rights Annual Report 2009 that immigration detainees were being held in police custody for periods of up to five days. Although PSNI did not create the circumstances for such detention it was recommended that the PSNI should report to the Policing Board on the number of immigration detainees held in police custody and the duration of each stay.<sup>279</sup> The PSNI accepted that recommendation and began to provide the Policing Board routinely with the requested data.

Following the opening of Larne House in July 2011, it was anticipated that immigration detainees would no longer be held in police custody. However, it was reported in the Human Rights Annual Report 2012 that while the number of immigration detainees held in police custody during 2011/2012 had decreased compared to the previous year (from 333 detainees in 2010/2011 to 228 detainees in 2011/2012), there remained 146 immigration detainees held in police custody for the period between Larne House opening in July 2011 and 31 March 2012. Based on that information it was a cause for concern that UKBA may have been continuing to rely on the use of police custody for immigration detainees. A recommendation was therefore made in the Human Rights Annual Report 2012 that PSNI should explain the continued detention of immigration detainees in police custody.<sup>280</sup>

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<sup>277</sup> See *Report on an unannounced inspection of the short-term holding facility at: Larne House*, 1-2 November 2011, Her Majesty's Chief Inspector of Prisons (HMIP), November 2011.

<sup>278</sup> The Independent Monitoring Board for the Glasgow and Edinburgh Short Term Holding Facilities carried out visits to Larne House on four occasions between 1 February 2012 – 31. For more information see *Annual Report, 1 February 2012 – 31 January 2013*, Independent Monitoring Board for the Glasgow and Edinburgh Short Term, May 2013. See also *Submission to the United Nations Committee Against Torture*, Northern Ireland Human Rights Commission (NIHRC), May 2013, in which the NIHRC made a number of observations and recommendations in respect of the facility at Larne House.

<sup>279</sup> Recommendation 20 of the *Human Rights Annual Report 2009*, Northern Ireland Policing Board, January 2010.

<sup>280</sup> Recommendation 11 of the *Human Rights Annual Report 2012*, Northern Ireland Policing Board, February 2013.

In response to that recommendation PSNI has clarified that the immigration detainees captured by the data were not in police custody *as a consequence of* their immigration status. In other words, that UKBA were not relying upon police custody as a holding facility. Instead, they were held in police custody pursuant to PACE on suspicion of having committed a criminal offence. PSNI advised that as soon as the PACE offence is dealt with the detainee is released into UKBA custody. PSNI has in place a process for notifying UKBA that an immigration detainee is ready to be released. PSNI has provided an assurance that the system is working well for both organisations. Recommendation 11 of the Human Rights Annual Report 2012 is therefore implemented.<sup>281</sup> The Committee intends to keep that issue under review.

## **TERRORISM DETAINEES**

### **Arrest and subsequent charge**

Section 41 of the Terrorism Act 2000 (TACT) empowers a police officer to arrest without warrant a person whom he or she reasonably suspects to be a terrorist. A person arrested under this power may be detained without being charged for up to 48 hours without the intervention of a court. Beyond 48 hours, court warrants for pre-charge detention are required. Detention can be extended by the court for up to a total of 14 days. During 2012/2013 a total of 157 people were arrested by PSNI under section 41 TACT. That is almost identical to the figure for 2011/2012 (159) and close to the middle of the annual 130 to 195 range that has applied since 2006. Of the 157 persons arrested during 2012/2013, 14 (9%) were held for longer than 48 hours. Of those, 7 were held for 2 to 3 days, 3 were held for 4 to 5 days and 4 were held for 6 to 7 days. Ten of the 14 were charged and 4 were released.<sup>282</sup> As noted by the Independent Reviewer of TACT, David Anderson Q.C., in his 2013 report (and in previous reports), the section 41 arrest power is used much more frequently in

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<sup>281</sup> As per paragraph 5.1.2 of the *Annual Report, 1 February 2012 – 31 January 2013*, Independent Monitoring Board for the Glasgow and Edinburgh Short Term, May 2013, “If there is a detainee that can not be managed after already being accepted at Larne House then there are contingencies and plans in place to ensure that the individual is moved to a more suitable location. in the first instance this would always be to the mainland and a long term IRC [Immigration Removal Centre]. Only in exceptional circumstances would police stations be used. There have been no such cases since the Facility was opened.”

<sup>282</sup> *Northern Ireland Terrorism Legislation: Annual Statistics 2012/2013*, Northern Ireland Office, November 2013.

Northern Ireland than it is in Great Britain, but a far higher proportion of those held in Great Britain were detained for longer than 48 hours.<sup>283</sup>

David Anderson Q.C. has commented that he was struck “by the very low proportion of those arrested under section 41 [in Northern Ireland] who are subsequently charged under the Terrorism Acts: less than 5% (a total of 8 people) in 2009-10.”<sup>284</sup> Further to a recommendation in the Human Rights Annual Report 2011, PSNI carried out a review to ensure that section 41 arrests were being carried out in appropriate circumstances.<sup>285</sup> The Assistant Chief Constable Crime Operations wrote to the Human Rights and Professional Standards Committee, in January 2013, to outline the findings of that review and to seek to assure the Committee that police officers did not use the TACT power of arrest in cases where it was reasonably anticipated that the suspect was more likely to be charged under non-terrorism legislation. Mr Anderson noted, in his 2012 report, that while there remained a disparity, the figures for 2010/2011 revealed a narrowing in the gap between charging practice in Great Britain and Northern Ireland.<sup>286</sup> The upward trend in the proportion of section 41 detainees charged with terrorism offences in Northern Ireland appears to be continuing. During 2011/2012, of 159 section 41 TACT detainees, 39 (25%) were charged and of those, 19 (12%) were charged with terrorism related offences. During 2012/2013, of 157 TACT detainees, 50 (32%) were charged, and of those, 38 (24%) were charged with terrorism related offences.<sup>287</sup>

The Northern Ireland Office publishes annual statistics which detail charges brought under terrorism legislation.<sup>288</sup> The most recent report reveals that between 19

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<sup>283</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 2013, para. 8.13. In Great Britain there were 49 persons arrested in 2012 under section 41 TACT, of which 36 (73%) were held for more than 48 hours.

<sup>284</sup> *Ibid.* para. 7.45.

<sup>285</sup> Recommendation 15 of the *Human Rights Annual Report 2011*, Northern Ireland Policing Board, February 2012. This recommendation has been implemented.

<sup>286</sup> *The Terrorism Acts in 2011. Report of the Independent Reviewer on the operation of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, June 2012, page 68.

<sup>287</sup> Statistics provided by the Northern Ireland Office.

<sup>288</sup> The most recent of the Northern Ireland Office statistical reports covers the time period 1 April 2012 to 31 March 2013: *Northern Ireland Terrorism Legislation: Annual Statistics 2012/2013*, Northern Ireland Office, November 2013.

February 2001 and 31 March 2013, a total of 396 charges under TACT have been brought in Northern Ireland against 304 persons. The charges were as follows:

- Section 11 (Membership of proscribed organisation) – 88 charges
- Section 12 (Support of proscribed organisation) - 21 charges
- Section 13 (Uniform of proscribed organisation) - 10 charges
- Section 15 (Fund-raising) - 42 charges
- Section 16 (Use and possession) - 4 charges
- Section 17 (Funding arrangements) - 4 charges
- Section 19 (Disclosure of information: duty) - 1 charge
- Section 54 (Weapons training) - 1 charge
- Section 56 (Directing terrorist organisation) - 4 charges
- Section 57 (Possession for terrorist purposes) - 143 charges
- Section 58 (Collection of information) - 60 charges
- Section 103 (Terrorist information) - 18 charges

David Anderson Q.C. recorded, in his 2013 report, that there were 22 people put on trial in Northern Ireland during 2012 for terrorism-related offences, of which only three were convicted and 19 acquitted. In Great Britain, of the 31 people put on trial in 2012 for a terrorism-related offence, 26 (84%) were convicted and five acquitted.<sup>289</sup>

It would appear therefore that only a small number of persons arrested in Northern Ireland under section 41 TACT are subsequently charged with a terrorism offence. Of those charged with a terrorism offence, not all cases proceed to court. Furthermore, where a case does proceed to court, the likelihood of securing a conviction for the terrorist offence remains low. David Anderson Q.C. comments, in his 2013 report “The temptation to overuse section 41 will always be present, particularly in Northern Ireland where the boundaries between terrorism and other forms of violent crime are often uncertain. It should never be forgotten that section 41 is an exceptional power, whose existence can be justified only by the particular

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<sup>289</sup> *The Terrorism Acts in 2011. Report of the Independent Reviewer on the operation of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2013, paras. 11.12 and 11.26 – 11.27.



operational difficulties of detecting terrorism; and that the objective in Northern Ireland as elsewhere is to achieve the highest possible degree of normalisation. The most recent figures however point to a welcome improvement.”<sup>290</sup> The Performance Committee endorses those comments.

## **Bail**

David Anderson Q.C. and the previous Independent Reviewer of TACT, Lord Alex Carlile of Berriew CBE Q.C., have both made recommendations to the United Kingdom Government that persons arrested under section 41 TACT should be entitled to apply to the court for bail. The Government continues to reject that recommendation on the basis that it raises too great a public safety concern. David Anderson Q.C. comments in his 2013 report that “It is hard to understand the justification for this, unless it be assumed (implausibly) that those accused of terrorist crimes, however peripheral or indirect their connection with terrorism, are inherently more dangerous than anybody else. As is well established in relation to other types of crime, bail will not be granted if there are substantial grounds for believing that the defendant would fail to surrender to custody, commit an offence while on bail or obstruct the course of justice.”<sup>291</sup> An application (emanating from a Northern Ireland case) has been lodged with the European Court of Human Rights. The Court is asked to consider whether bail should be available for terrorist suspects held on pre-charge detention.<sup>292</sup> The Committee will await the outcome of that case and report in due course.

## **Monitoring of section 41 TACT detainees**

On 7 August 2012, section 117 of the Coroners and Justice Act 2009 came into force. Section 117 amended section 36 of the Terrorism Act 2006 to enable the Independent Reviewer of Terrorism Legislation, currently David Anderson Q.C., to

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<sup>290</sup> *The Terrorism Acts in 2011. Report of the Independent Reviewer on the operation of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2013, para. 8.42.

<sup>291</sup> *Ibid.* para. 8.44.

<sup>292</sup> Application nos, 29062/12 *Duffy v UK* and 26289/12 *Gabriel Magee v UK*. The case also challenges the process for obtaining warrants for further detention on the grounds that it does not comply with the Article 5 ECHR requirement for a suspect to be brought promptly before a competent legal authority.

consider as part of his review whether requirements and practices have been complied with in relation to persons detained throughout the United Kingdom under section 41 TACT. To assist the Independent Reviewer, it has been made a statutory requirement in England and Wales that Custody Visitor reports to terrorism detainees are provided directly to him. There is no similar statutory provision in respect of the Policing Board's Custody Visiting Scheme,<sup>293</sup> although the Human Rights and Professional Standards Committee agreed in March 2013 that it would support such provision.

Pending legislative developments,<sup>294</sup> the Policing Board's Independent Custody Visitor Code of Practice for Northern Ireland has been amended by the Policing Board to bring the arrangements for TACT visits into line with the arrangements put in place by the Home Office for TACT visits in England and Wales. As a consequence of those changes, Custody Visitors are now notified every time the police arrest and detain someone pursuant to section 41 TACT. The Custody Visitors then carry out a visit to Antrim Serious Crime Suite (where section 41 detainees are held) as soon as practicable thereafter. That means that a higher number of TACT detainees will have the opportunity to be seen by Custody Visitors, thereby allowing Custody Visitors to monitor their rights, treatment and conditions of detention. A number of unannounced visits to the Serious Crime Suite still take place.

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<sup>293</sup> Section 73(2) of the Police (Northern Ireland) Act 2000 stipulates that reports on custody visits in Northern Ireland (including those to section 41 TACT detainees) must be made to the Policing Board and the Chief Constable. Unlike in England and Wales, section 73 of the Police (Northern Ireland) Act 2000 has not been amended to provide a statutory basis for the Policing Board to provide reports on TACT custody visits to the Independent Reviewer of Terrorism Legislation.

<sup>294</sup> Officials at the Department of Justice for Northern Ireland have advised the Policing Board that statutory amendments may take some time to enact but have suggested that in the interim the Board may wish to provide reports to Mr Anderson on a voluntary basis. The Board has sought Mr Anderson's views in this regard and will consider this proposal further in due course.

## 11. POLICING WITH THE COMMUNITY

It has long been recognised that the police are better equipped to deal effectively against crime and disorder when they are engaged with, and have secured the cooperation of, the community which they serve. The notion of policing by consent, that the police owe their duty to the public, not to the state, was developed in the early 19<sup>th</sup> Century with the establishment of the Metropolitan Police Service. Almost two centuries later, and central to the vision of police reform for the Independent Commission on Policing for Northern Ireland (the Patten Commission), that approach is now known as ‘policing with the community.’ It has been enshrined in legislation<sup>295</sup> and endorsed by PSNI and by the Policing Board. The *Policing with the Community 2020 Strategy*, published in March 2011, makes an unequivocal statement of PSNI’s commitment to developing its policing with the community model.

Monitoring the implementation of the Policing with the Community 2020 Strategy is a key priority for the Policing Board and is carried out by the Policing Board’s Partnership Committee. The Policing Board’s Performance Committee also maintains a very keen interest in the Strategy as its success will undoubtedly contribute to, and be evidence of, PSNI’s commitment to a human rights-based approach to policing. In monitoring PSNI performance against all of the 14 areas set out in the Human Rights Monitoring Framework, the Performance Committee considers the extent and effectiveness of PSNI engagement with the community. That provides the Committee with a useful indicator of the extent to which PSNI has undergone cultural change and is prepared to be held to account by the oversight structures and to give an account for its actions to the public. The following provides some examples of the Committee’s work. They are related to the subjects covered in the other chapters of this Human Rights Annual Report.

*Chapter 1, Human Rights Programme of Action*, The Committee requires PSNI to publish a human rights programme of action on an annual basis to send out a message to the public that PSNI is committed to the ongoing development of its

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<sup>295</sup> Section 31(A)(1) of the Police (Northern Ireland) Act 2000 requires the police to carry out their duties with the aim (a) of securing the support of the local community, and (b) of acting in co-operation with the local community. The Policing Board is required to monitor the performance of the police in carrying out those duties.

understanding, integration and application of human rights principles to practical policing.

*Chapter 2, Training,* The Committee has been keen to understand the extent to which PSNI embarks on joint training initiatives with the community and involves stakeholders in the development and delivery of training. A recommendation was made in the Human Rights Annual Report 2011 that PSNI consider how to better utilise the expertise and the experience within the community for the development and delivery of specialist training packages. The response to that recommendation was outlined in the Human Rights Annual Report 2012.

*Chapter 3, Policy,* PSNI Policy makes a statement to the public as to the parameters within which the police operate. It is important that it is accessible to the public. Whether it is published or not should ultimately depend on the public interest, rather than the police interest, save for those policies that contain classified information. It was highlighted in the Human Rights Annual Report 2012 that PSNI has removed policies that were previously available to the public through its website. A recommendation was made to require PSNI to reinstate the policy section of its website and, whilst PSNI accepted that recommendation, the Committee is disappointed to record that it has not yet been fully implemented.<sup>296</sup>

*Chapter 4, Operations,* The Committee considers the extent to which PSNI involves the community in operations during the planning stages, during the operation and during post-operation reviews. In the context of operations involving the use of stop, search and question powers, the Committee met with the independent reviewers of terrorism legislation<sup>297</sup> during 2013 and discussed a range of issues, including the community impact of use of the powers and the continued operational need. This was also raised with the Committee by the Committee on the Administration of Justice (CAJ) which published a report in November 2012 examining police use of

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<sup>296</sup> This is discussed in more detail in Chapter 3 of this Human Rights Annual Report.

<sup>297</sup> Mr David Anderson, Independent Reviewer of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006; and Mr Robert Whalley, Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007.

stop, search and question powers in Northern Ireland.<sup>298</sup> Community engagement was further explored in the Committee's thematic review of stop, search and question powers, which was published in October 2013. The thematic review states "It is clear that effective policing is only possible where the police have the support and confidence of the community. It bears repeating that the police need the support of the community every bit as much as they need the support of legislative powers to combat criminality and terrorism. Therefore, any police action which has the potential to undermine community confidence in, and thereafter community support for, the police must be taken very seriously indeed."<sup>299</sup> The thematic review recommended that each District Commander should, in consultation with Policing and Community Safety Partnerships, Independent Advisory Groups, Reference Groups (where applicable) and the Performance Committee, devise a strategy for improved consultation, communication and community engagement in respect of the use of stop and search powers under both the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007. The recommendation requires the strategy to include an agreed mechanism by which the PSNI will explain the use of powers to the community and will answer any issues of concern.<sup>300</sup>

*Chapter 5, Complaints, Discipline and the Code of Ethics*, The Committee believes that the extent to which PSNI has built a successful partnership with the community can be measured through monitoring the quality of interactions between the police and the public. Such interactions can be measured by an assessment of the formal complaints process, internal disciplinary mechanisms and also the daily, routine contacts between the police and the public. Issues that have been discussed in this chapter of the Human Rights Annual Report in previous years, for example, incivility complaints, have highlighted areas in which PSNI could improve in order to build a better relationship with the community it serves.

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<sup>298</sup> *Still part of life here? A report on the use and misuse of stop and search/question powers in Northern Ireland*, Committee on the Administration of Justice, November 2012. The report can be accessed through the CAJ website: <http://www.caj.org.uk/publications>

<sup>299</sup> *Human Rights Thematic Review: Police Powers to Stop, Search and Question under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007*, Northern Ireland Policing Board, October 2013, pages 99 – 100.

<sup>300</sup> *Ibid.* Recommendation 9.

*Chapter 6, Public Order,* Public order particularly in the context of parades and protests is an area which provides a clear insight into the extent to which PSNI's Policing with the Community Strategy is working. It is critical in such situations that PSNI has in place an effective engagement strategy before, during and after the event which involves all relevant parties. In 2012, as part of a public order review, PSNI commissioned an external piece of research to be undertaken jointly by the University of Ulster and the Institute of Conflict Research.<sup>301</sup> That research specifically looked at the community experience of public order policing and made a number of recommendations. Following completion of this research, PSNI has met with the Policing Board to discuss the police response and proposals for implementing the recommendations.

*Chapter 7, Use of Force,* Any use of force by the police, however justified, has the potential to upset community relations. The riots in London in 2011, which were sparked following a fatal shooting by the police, are a prime example of that. In Northern Ireland there is particular contention regarding PSNI use of Attenuating Energy Projectiles (AEP). PSNI is entitled as a matter of law to use AEP – the legal test, or threshold for use, is that of absolute necessity to prevent an immediate risk to life. It is the same as that for conventional firearms. Furthermore, the Police Ombudsman investigates all uses of AEP. Despite that, the use of AEP does present a community confidence issue not to mention a risk to life and it remains the case that PSNI should continue to seek less lethal alternatives. The Committee encourages PSNI to consider a means of communicating to the public its deliberations in respect of less lethal weaponry. The Committee will work with PSNI to achieve that.

*Chapter 8, Covert Policing,* The policing of the security situation in Northern Ireland and the use of covert and counter-terrorism powers does not always sit happily or comfortably alongside a community approach to policing. As discussed in the Human Rights Annual Report 2012, concern was raised with the Human Rights and Professional Standards Committee during roundtable meetings in 2012 that the effect of using such powers was often to alienate the police from the public. It was

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<sup>301</sup> *Community perspectives on public order policing in Northern Ireland*, University of Ulster and Institute for Conflict Research, February 2013.

clear that stakeholders attending the meetings wished to support the police but felt that more engagement aimed at a meaningful exchange of information would be of great assistance. In 2013, the Performance Committee agreed to establish a Project Group on Covert and National Security Policing, the terms of reference for which are: (i) to consider the existing accountability mechanisms, including in particular the level of transparency; (ii) to consider the extent and effectiveness of the Board's oversight role; and, (iii) to make recommendations, if appropriate.

*Chapter 9, Victims,* The way a victim is treated throughout the criminal justice process may impact upon not only the victim's confidence in the police, but also upon their family's confidence and the confidence of the wider community. That is particularly apparent in cases of hate or signal crime. Even where perceived failings may be the result of an inadequate response by a partner agency the police often bear the brunt of a diminution in community confidence. It is therefore crucial that PSNI engage with all criminal justice agencies and that they work towards improving services for victims and witnesses. It is important that such work involves input from those affected by crime (and organisations representing such persons) in order to ensure that PSNI provides the best response to any person affected by crime regardless of race, disability, sexual orientation, gender identity etc.

*Chapter 10, Treatment of Suspects,* The manner in which suspects of crime are treated by the police will affect their perception of and support for the police. Where arrest is perceived to be arbitrary, that may also impact negatively on community confidence.

*Chapter 12, Human Rights Awareness in the PSNI,* A human rights-based approach to policing has been shown to enhance public confidence and integrate the police into the community.

*Chapter 13, Privacy, Data Protection and Freedom of Information,* The way in which the Article 8 ECHR right to respect for privacy and family life is respected by the police can impact directly upon the community's perception of PSNI. The Human Rights and Professional Standards Committee held roundtable meetings with community workers and representatives in Belfast, Armagh and Derry/Londonderry

during 2012. During those meetings concern was expressed regarding alleged heavy handed and unjustified searches of homes in local areas. However, one attendee pointed out that in appropriate cases, where the police engaged with local community representatives before carrying out the searches, damage to community relations could be minimised. In relation to data protection, it is clear that data protection breaches can damage community relations and undermine confidence in the police whereas freedom of information and transparency increases public confidence. PSNI, as a public authority, is obliged to follow its publication scheme and to respond as openly as possible to freedom of information requests. Each year the Committee reports upon data protection and freedom of information complaints received by PSNI and the Information Commissioner's Office.

*Chapter 14, Children and young people*, Every interaction between the police and a young person will influence that young person's perception of the police. Police officers should engage with young people in an open-minded manner to understand and address their concerns in the most appropriate way for each individual. Young men are most likely to be stopped and searched by the police and are most likely to be the subject of police force compared to any other group. Complaints against the police from young men are also high. Police engagement with this disengaged and often alienated group is crucial. Recommendations were made in the Policing Board's children and young people thematic review which required PSNI to roll out Youth Independent Advisory Groups across all Districts; to increase focus on providing opportunities for young people across Northern Ireland to meet with police officers with the aim of building relationships; and to involve youth advisers in the planning of operations involving children and young people.<sup>302</sup>

Every interaction between the public and a PSNI employee whether a police officer or a member of police civilian staff has the potential to impact upon wider community confidence. This in turn impacts upon the extent to which the community is prepared to support and co-operate with the PSNI. In carrying out its oversight function, the Performance Committee will therefore continue to consider the extent to which PSNI 'polices with the community' across all areas of police policy and practice.

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<sup>302</sup> Recommendations 2, 23 and 29 of the *Human Rights Thematic Review: Policing with Children and Young People*, Northern Ireland Policing Board, January 2011.



## 12. 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 a continued commitment to human-rights-based policing. When PSNI was established in 2001, it embraced the protection of human rights as a core function of policing. 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>303</sup> publication of a Code of Ethics,<sup>304</sup> and the incorporation of human rights principles into all aspects of police training. Although there is not a scientific way in which the existence of a human rights culture can be measured, the extent to which it exists in PSNI is considered by the Policing Board through analyses of policy, training, actions taken and interactions with the community.

Criticism has been reported which suggests that the Human Rights Act impedes the PSNI in carrying out their duties and that they are more hampered than police services in Great Britain, particularly in the context of policing public order situations. Such criticism is ill-informed and inaccurate. The Human Rights Act incorporates the fundamental rights and freedoms of the European Convention on Human Rights into domestic law. All police services in the United Kingdom, not just the PSNI, must comply with the Human Rights Act and must balance competing rights and interests in a wide range of extremely difficult and challenging situations. If faced with policing similar public disorder other police services would be required to operate within the same human rights legal framework as PSNI. However, the best *tactical* decision as regards arrest during public disorder in, for example, London would not necessarily be the best tactical decision during disorder in Belfast. Public order scenarios often

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<sup>303</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>304</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.

present very different policing challenges. That is because the police in Northern Ireland do not operate in the same environment as police in Great Britain as recognised by the fact that PSNI officers are often under much greater threat, they have additional stop, search and question powers to their counterparts in Great Britain, they routinely carry personal protection weapons and they have a range of specialised weapons at their disposal, including water cannon.

Furthermore, PSNI's human rights based approach to policing, and the Policing Board's human rights monitoring function, has been identified as good practice in Great Britain. For example:

- The Police and Justice Act 2006 made it a requirement that Police Authorities in England and Wales monitor the performance of their police service in complying with the Human Rights Act 1998. In January 2009 the Association of Police Authorities (APA) issued guidance to Police Authorities which relied heavily upon the Policing Board's Human Rights Monitoring Framework.
- The Equality and Human Rights Commission for England and Wales has published the Policing Board's *Human Rights Thematic Review: Policing with Children and Young People* as a good practice guide for police.
- The PSNI Code of Ethics (which lays down standards of conduct for police officers and is intended to make them aware of their obligations under the Human Rights Act) has now been cited by police services in England, Wales and Scotland as inspiration for the development of their own Codes of Ethics.

Having human rights at the heart of policing ensures that the rights of the community and the rights of officers who serve the community are both protected and upheld. To suggest that PSNI cannot provide strong effective policing *and* comply with human rights principles does a great disservice to the police and fails to recognise that human rights compliance has been central to confidence building in the Police Service in Northern Ireland over the last number of years.

Maintaining a human rights culture, particularly in the context of such public criticism, can be challenging but it is an ongoing responsibility of PSNI leadership. PSNI has

made a clear commitment that the protection of human rights remains a core function of the Police Service.

For example, ACC George Hamilton, in May 2013, made a comprehensive and unambiguous statement which merits setting out in detail:

“Human rights and accountability are essential for policing. The fundamental building blocks for community confidence and the delivery of effective policing are human rights and accountability. For PSNI, which came into being almost exactly one year after the Human Rights Act entered into force, human rights have been a central pillar to development and growth of the new Service. We haven’t always got it right and at times it’s been a steep learning curve. However, as has been recognised, since 2005 we have implemented almost 200 recommendations contained within previous Human Rights Annual Reports. Human rights underpin all our policies, practices procedures and decision making at every level and in every department of the organisation. We don’t have to look too far for an example of how this works in practice. The past year has presented a significant challenge for policing. Human rights are always at the core of our operational response to policing protests and public order. The recent flag protests and the associated disorder have thrown some of the difficult decisions we face into sharp focus. It has opened up the debate on how we balance what are sometimes competing human rights.

“The European Convention on Human Rights has been the framework through which all decisions have been made, from the senior commanders’ level right through all ranks to the officers on the ground, who at times have had to make split second decisions in the face of serious and sustained disorder. The decision to accommodate peaceful protest; the decision to engage with and talk to those involved; the decision to forcibly remove protestors; the decisions to use water cannon and impact rounds when disorder broke out; the decision to evidence gather for follow-up investigation; the decision of how we appoint finite resources across a range of demands – all of these decisions have sought to balance individual and collective human rights.

“The principles of human rights, of proportionality, accountability, legality and necessity have become the language used in our planning meetings and command rooms. It is a balance. It is a challenge and different communities will have their own view. However, the role of the police is clear, to uphold and balance human rights.

“There has been much debate. Our decisions and tactics have been challenged. And it is right and proper that they are challenged. The Board has, and will, continue to hold us robustly to account on the issue. Whilst we continually review our operational tactics on a regular basis there will be one constant factor in all our decision making, and that is a core focus on human rights.

“During the past year we have also seen murderous and attempted murderous attacks by terrorists on a prison officer, police officers and other members of the community. When the discontent of a minority is expressed through violence the safety of the community is threatened. The Police Service must act accordingly, protecting the community and protecting its officers. The greater the challenges faced by the Police Service, the more important human rights policing and accountability becomes.

“The Board’s human rights annual report recognises the success and progress we have made. It also, rightly, challenges us to do more. And we will respond to that challenge.”<sup>305</sup>

While PSNI Leadership has clearly demonstrated a commitment to a human rights based approach, ensuring that a human rights culture exists throughout the organisation remains a challenge. In 2011 PSNI carried out a cultural audit amongst all employees (officers and civilian staff) in order to assess the extent to which the culture of PSNI was ‘fit for purpose’ in order to deliver a policing service as envisaged by the ‘Patten Report’ in 1999<sup>306</sup> and to assess changes since the last Cultural Audit was carried out in 2008. Of the respondents to a survey which formed part of the Audit, only 65% agreed with the statement “I see the protection of human

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<sup>305</sup> ACC George Hamilton’s introduction to the *PSNI Human Rights Programme of Action 2012-2013*, PSNI, May 2013.

<sup>306</sup> *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999.

rights as a fundamental part of my job.” 10% disagreed with that statement and the remainder were either neutral, did not know or did not answer. That is a negative and worrying development when compared to the 2008 Cultural Audit where 69% of respondents agreed with the statement, although when considering the extent to which a human rights culture existed in PSNI in 2008, that was also a disappointingly low figure. It is incumbent upon PSNI Leadership to ensure that misconceptions regarding human rights are addressed and ensure that messages such as those enunciated by ACC Hamilton are heard by all officers and civilian staff of all ranks and grades.

Not only must those messages be heard, they must be accepted and put into practice. Given the results of the recent cultural audit the Performance Committee will consider what further work it needs to do to ensure that human rights awareness and acceptance of a human rights-based approach to policing within PSNI start to improve. It is not a matter of discretion: police officers have no choice but to comply with the Act. If there is hostility towards compliance with the Act its application in practice is likely to be undermined. This will be explored further.

### 13. PRIVACY, DATA PROTECTION AND FREEDOM OF INFORMATION

Article 8 of the European Convention on Human Rights (ECHR) guarantees the right to respect for private and family life, the home and correspondence. There can be no interference by a public authority with the exercise of that right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security; in the interests of public safety; in the interests of 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. The Performance Committee monitors PSNI compliance with Article 8 ECHR and considers and reports upon privacy issues as they arise in a variety of contexts, for example, it considers the manner in which the police exercise a range of powers that interfere with privacy rights, such as powers of search, powers of surveillance, powers to obtain and retain DNA samples, profiles and fingerprints etc.

Law Enforcement Agencies hold a vast amount of personal data on individuals.<sup>307</sup> In respect of information held by the PSNI, some information is accessible to the majority of officers and staff through the internal police computer system (NICHE) and some is only accessible to those with the highest level of security clearance. Article 3 of the PSNI Code of Ethics requires police officers to exercise great care when obtaining, recording, using and disclosing any information that relates to private lives, regardless of whether it is secret information or routine. The same applies to civilian staff with access to personal information.

Incorrect use of what may seem like routine information may constitute a breach of the PSNI Code of Ethics (and thus a disciplinary matter), a violation of Article 8 ECHR, a breach of the Data Protection Act (and may amount to a criminal offence),

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<sup>307</sup> A press article in August 2012 reported that over 50 million intelligence reports have been gathered routinely by United Kingdom police forces and made available on the Police National Database (the Police National Database is used by law enforcement agencies across the United Kingdom, including the PSNI, although only authorised and appropriately vetted users can access it). According to the press article, the intelligence files on the Database include information about protestors who have attended demonstrations, un-convicted 'persons of interest', associates of criminals, allegations of crimes and details of victims of sexual or domestic abuse. The article states that the Database contains at least 317.2 million records. Source: *Police share more than 50m records about members of the public*, The Guardian, 21 August 2012: <http://www.guardian.co.uk/uk/2012/aug/21/police-share-50m-records-public>

and it could put a person's life in danger contrary to Articles 2 (the right to life) and Article 3 (the right not to be subjected to torture etc.) of the ECHR.

A failure to handle information lawfully whether intentionally or inadvertently will also undermine public confidence in the police. PSNI policy seeks to provide a standardised and structured process for the handling of confidential information received from any individual who contacts the police with information and expects it to be handled in a confidential manner.<sup>308</sup> That includes information provided by persons who have contacted the police in their professional capacity, for example, teachers, social workers etc. Confidentiality cannot always be guaranteed however. For example, the information may have to be subjected to an onwards disclosure in the performance of police duty, in compliance with data protection, freedom of information or other legislation or in connection with investigations or legal proceedings. Where any police officer or civilian member of staff receives information which suggests there may be a threat to life, the matter must be referred to a line manager immediately who will then deal with the threat in accordance with established protocols.<sup>309</sup>

### **Compliance with the Data Protection Act and the Freedom of Information Act**

The Performance Committee monitors PSNI compliance with the Data Protection Act 1998 and the Freedom of Information Act 2000 given the clear link between that legislation and Article 8 ECHR. PSNI policy sets out the framework and contains guidance for officers and staff on data protection, freedom of information and records management.<sup>310</sup>

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

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<sup>308</sup> *Handling of Confidential Information Supplied by Members of the Public*, PSNI Service Procedure 02/13 (this links to *The Management of Intelligence*, PSNI Policy Directive 01/11).

<sup>309</sup> As set out in *Threat to Life*, PSNI Service Procedure 15/2012.

<sup>310</sup> *PSNI Data Protection Policy*, PSNI Policy Directive 06/08; *Freedom of Information*, PSNI Service Procedure, 07/2013; and *Records Management*, PSNI Service Procedure 03/2012.

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 does not fall within an exempt category of information, the public authority must confirm whether it holds the information and it must normally provide it to the applicant within 20 working days. The Freedom of Information Act also requires public authorities to have in place a publication scheme which requires the authority to make certain kinds of information routinely available. PSNI has a publication scheme which sets out categories of published material that is available to the public. According to the PSNI's Freedom of Information Policy, there are seven categories of information that PSNI will publish, one of which is policies and procedures.<sup>311</sup> However, as noted in Chapter 3 of this Human Rights Annual Report, PSNI removed all policies from its website in 2012 due to a streamlining review and has not yet republished them. That is disappointing and is something that the Performance Committee will continue to pursue with PSNI.

Given the vast amount of personal information the police store or have access to, a failure to comply with the Data Protection Act or the Freedom of Information Act could have an adverse impact on an individual's enjoyment of their Article 8 ECHR right. Moreover, as noted above, inappropriate handling of police information concerning an individual could put that individual at risk of serious harm, and possible death, contrary to their rights under Articles 2 and 3 ECHR.

All police officers and staff receive data protection training upon appointment. Where the Data Protection Act is breached, the police officer or staff member who acts in breach of the legislation may have committed a criminal offence in doing so. They may also be investigated by PSNI's Service Improvement Department and internal misconduct proceedings may be initiated. In order to ensure compliance with the Data Protection Act, the PSNI Data Protection Office conducts random daily audits

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<sup>311</sup> Section 6(3)(c)(v) of *Freedom of Information*, PSNI Service Procedure, 07/2013.



electronically of PSNI information systems and staff are required to complete a return.

There was one complaint made directly to PSNI between 1 April 2012 and 30 September 2013 in respect of data protection. This complaint was resolved at a local level and required no further action. A further 11 data protection complaints were made to the Information Commissioner's Office (ICO). The ICO required no action to be taken by PSNI in respect of any of these complaints. In this context, it is worth noting that PSNI processed a total of 6,533 subject access requests during this 18 month period.

The purpose of the ICO is to uphold 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 the 18 month period 1 April 2012 and 30 September 2013, PSNI received and processed 1,524 requests made under the Freedom of Information Act. During the same period, ICO issued six decision notices in respect of complaints made against PSNI regarding the Freedom of Information Act. In all six decision notices the complaint was not substantiated and the ICO upheld the PSNI's application of the exemptions and refusal to provide information.<sup>312</sup>

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<sup>312</sup> ICO Decision Notice reference numbers FS50394912, 15 May 2012; FS50430642, 26 July 2012; FS50425383, 31 July 2012; FS50430305, 31 July 2012; FS50433759, 31 July 2012; and FS50448193, 18 December 2012.

## 14. CHILDREN AND YOUNG PEOPLE

Policing with children and young people is a key issue for the Policing Board, with a dedicated thematic review on the issues published in January 2011.<sup>313</sup> That thematic review made 30 recommendations for the PSNI. A follow up report on PSNI implementation of the recommendations was considered by the Human Rights and Professional Standards Committee in November 2012 and by the Performance Committee in November 2013. The update report was published in February 2014.<sup>314</sup> It is evident through this work, and through feedback received from stakeholders on the Policing Board's Youth Advisory Panel, that children and young people must be central to any successful policing strategy and that all children in society, including victims and offenders, must be safeguarded. Child offenders are likely to have been a victim of crime themselves, they have often suffered neglect and abuse and frequently have witnessed domestic violence, drug abuse and/or alcohol addiction. Tackling those issues clearly requires a collaborative response from government, all statutory agencies and the community and voluntary sector.

Specific reference to children and young people has been included throughout this Human Rights Annual Report. That recognises their central importance. They are not a stand-alone category but they do suffer particular vulnerabilities and therefore require dedicated attention. For example, chapter 2 of this Annual Report refers to a child protection training course that has been developed by PSNI for roll out to frontline police officers across all Districts. Whilst recognising other work in respect of training that has taken place with regard to children's rights, a recommendation is made in chapter 2 that PSNI report to the Performance Committee on the training delivered to police officers and civilian staff in respect of children and young people, across all ranks and across all Districts and Departments.

Chapter 3 reports upon some recent policy developments. With regard to the Department of Justice and Department of Health, Social Services and Public Safety

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<sup>313</sup> *Human Rights Thematic Review: Policing with Children and Young People*, Policing Board, January 2011.

<sup>314</sup> The thematic review and the update report are available to download through the Policing Board's website: [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)

proposals to introduce new mental capacity legislation to Northern Ireland, that is a substantial and significant piece of legislation that will have implications for policing. The Committee has already written to the Justice Minister and Health Minister in respect of concerns raised by the Children's Law Centre. The Committee is grateful to the Children's Law Centre for bringing their concerns to the Committee's attention and for providing Members with a comprehensive briefing. The Committee wants to ensure that whatever legislative framework is in place, it supports police officers to deliver the best policing response to all persons who may lack mental capacity, including children. The Performance Committee will return to consider the Bill in due course once it has been issued for consultation.

Also discussed, in chapter 3, is the PSNI consultation on Speedy Justice which focused specifically on police discretion. Speedy Justice is applicable in both adult and youth cases and PSNI previously advised the Performance Committee that 81% of offenders receiving a police discretionary disposal between May 2010 and February 2012 were adults. It was recently reported that the Public Prosecution Service (PPS) had raised concern that police are using discretion in some cases without enough evidence to prove that an offence had even occurred.<sup>315</sup> In one case a discretionary disposal was issued to two children below the age of criminal responsibility. Concern has also been raised that, at the time of admitting guilt and agreeing to a discretionary disposal, some persons were under the influence of alcohol/drugs or may have had mental health needs. The Performance Committee raised this with the Chief Constable in December 2013 and asked him to outline the action he intends to take to address all of those concerns.

In response, the Chief Constable advised that the PPS carry out monthly checks including dip sampling to provide assurance to PSNI that discretion is being used appropriately. The Chief Constable advised that the PPS has raised only a small number of concerns during those checks and that PSNI has taken remedial action to remedy any issues raised. As regards the two children below the age of criminal responsibility who were dealt with by way of a discretionary disposal, the Chief

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<sup>315</sup> *Prosecutors criticise PSNI's use of 'speedy justice'*, Niall McCracken for the Detail, 14 November 2013.

Constable advised that was a “regrettable but isolated error” and that PSNI had increased the frequency of checks as a consequence.

In respect of offenders under the influence of alcohol/drugs and/or suffering from mental health issues, a reminder has been issued to all police officers that vulnerable offenders and victims must be treated appropriately and sensitively in order to safeguard their rights and to ensure their understanding of the process. The Chief Constable advised that as part of the PSNI Equality, Diversity and Good Relations Strategy 2012 to 2017, within the goal of reducing inequality in service delivery, one measure is to use data analysis to evaluate the use of powers, including discretionary disposals.

Another policy matter affecting young people, discussed in chapter 3 of this Human Rights Annual Report, is PSNI’s proposal to introduce test purchasing of alcohol powers. The Performance Committee accepts that the illegal sale of alcohol to children under 18 years is an important issue for the police and wider society. However, the welfare and safety of children who volunteer to assist with the scheme must remain the paramount consideration for police. Despite safeguards being built into the scheme, stakeholders continue to have concerns about PSNI’s proposed use of the power. Recommendation 4 of this Annual Report requires PSNI to notify the Performance Committee should PSNI decide to introduce the scheme.

Statistics are provided in chapter 4 in respect of the age of people stopped and searched by the police. That data is sourced from reports that are made available to the Policing Board alone, however the Policing Board’s Human Rights Advisor has discussed with PSNI statisticians the importance of making that data available to the public and it has been agreed that age data will be included in the published version of PSNI’s year- end report from 2013/2014 onwards.

In October 2013, the Policing Board published a thematic review of the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007. A specific issue that was raised during the course of the thematic review was the manner in which young people were dealt with by police during stops and searches. A recommendation was made in the thematic

review that PSNI should develop and thereafter issue guidance to all police officers in Northern Ireland on stopping and searching children. That guidance should draw upon the guidance already produced and issued in G District (Foyle, Limavady, Magherafelt and Strabane). The G District guidance is aimed at reducing the alarm and distress caused to children by the use of powers against their parents or guardians or against the children themselves.

The G District guidance provides that if a child is present during a search officers conducting the search must make every effort to ensure that the child remains at all times within the sight of the parent or guardian, that the child will be treated sensitively commensurate with their vulnerability, and that officers will attempt to explain in simple language what is happening and reassure the child that there is nothing to fear and will, if possible and appropriate in the circumstances, leave the search of the child who is in the company of adults to the end of the process. The Policing Board's Human Rights Advisor spent time with relevant senior officers in G District discussing the guidance and she was impressed by the level of care and consideration applied to the guidance and the real understanding of police officers of the peculiar vulnerabilities of children. The Performance Committee believes that guidance could usefully be adopted by all Districts.

Chapter 5 of this Human Rights Annual Report records that in general, young men are the group most likely to complain to the Police Ombudsman about the police.<sup>316</sup> Chapter 7 of this Human Rights Annual Report records that young men are also the group of persons against whom force is most likely to be used by the police. Police engagement with this disengaged and often alienated group is crucial. Chapter 11, Policing with the Community, recognises that every interaction between the police and a young person will influence that young person's perception of the police. Police officers should engage with young people in an open minded manner to understand and address their concerns in the most appropriate way for each individual.

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<sup>316</sup> *Equality Monitoring Report 2006-2011*, Office of the Police Ombudsman for Northern Ireland, November 2012.

As regards victims of crime, the Policing Plan 2012 to 2015 identifies children and young people, in particular males aged 16 to 24 years and children in care, as a group of people needing an improved service from the police due to their vulnerability to crime, particularly violent crime. As regards offenders, the Policing Board has considered, during 2013, ways in which the criminal justice system could provide a more holistic, restorative approach to reducing youth offending.

The Policing Board held a roundtable meeting on youth justice good practice in November 2013. Attending the meeting alongside Policing Board Members were representatives from PSNI, the Department of Justice, the Youth Justice Agency, the PPS, the Probation Board, the Court Service, the Office of the Lord Chief Justice, CJINI and community based restorative justice schemes. Also in attendance were the Manager of Hull Youth Justice Service and a Chief Inspector from Humberside Police. The Hull representatives provided attendees with a presentation on the youth justice system in Hull. Following the presentation there was a discussion on the processes in place in Hull and how they compare to Northern Ireland.<sup>317</sup>

Following the presentation, the Department of Justice and PSNI provided an update on youth justice developments in Northern Ireland, including the introduction of the Youth Engagement Clinic model. Youth Engagement Clinics were developed as a means of tackling the causes of delay in youth cases and reducing reoffending by young people. They were launched on a pilot basis in 2012 and were subject to an Equality Impact Assessment (EQIA) which was issued for consultation by the Department of Justice in November 2013.<sup>318</sup>

A number of other important issues have arisen during the past year which have a particular impact on children and young people. The Committee continues to keep policing with children and young people on its agenda and will be meeting with relevant stakeholders in due course to consider its next steps.

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<sup>317</sup> The Hull youth justice system was cited as a model of good practice during a meeting between Policing Board Members and the Lord Chief Justice in April 2013. When developing proposals for reform to the youth justice system in Northern Ireland, the Department of Justice and other agencies, including PSNI and the Youth Justice Agency, participated in a study visit to Hull.

<sup>318</sup> *Consultation on Youth Engagement Clinics Equality Impact Assessment*, Department of Justice, November 2013.

## APPENDIX 1: 2013 RECOMMENDATIONS

<b>TRAINING</b>	
1.	PSNI should, during 2014, deliver bespoke youth training to student officers at Police College, develop youth training to be delivered to police officers and civilian staff and re-commence the delivery of its training course to police trainers on children, young people and human rights.
2.	PSNI should report to the Performance Committee within 3 months of the publication of this Human Rights Annual Report on the training delivered to police officers and civilian staff in respect of children and young people. That report should detail the nature of the training delivered and to whom the training was delivered by role, rank and District. That report should also specify the training planned for the upcoming year including the nature of the training and the persons to whom the training is to be delivered by role, rank and District.
3.	Each District Commander should include child protection training as a priority within his or her District training plan for delivery in 2014.
<b>POLICY</b>	
4.	In the event that PSNI decides to introduce a test purchase of alcohol scheme it should notify the Performance Committee of that decision and, in advance of any introduction of the scheme, provide to the Committee a detailed briefing on the operation of the scheme with a particular emphasis on those measures intended to protect the welfare and safety of children.
<b>COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS</b>	
5.	PSNI should put in place a system which identifies trends and patterns in OPONI policy recommendations. If recurring recommendations are made, the system should highlight these and require PSNI to take further action. That system should be put in place within 6 months of the publication of this Human Rights Annual Report. PSNI should thereafter provide the Performance Committee with an annual report highlighting trends and patterns in OPONI policy recommendations and any recurring recommendations. The report should also outline how lessons learned from the OPONI investigations have been communicated throughout the Police Service and how they have resulted in organisational change.
6.	PSNI should report to the Performance Committee, within 6 months of the publication of this Human Rights Annual Report, on the processes it has in place to monitor trends and patterns in complaints and misconduct matters arising in respect of civilian staff.

<b>USE OF FORCE</b>	
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7.	PSNI should publish forthwith its Manual of Policy, Procedure and Guidance on Conflict Management. Only those parts of the policy that cannot be published due to the information being of a confidential nature should be redacted.
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<b>COVERT POLICING</b>	
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8.	In the course of the post-implementation review of UAS to be provided to the Policing Board PSNI should identify and explain the extent to which UAS has been used for surveillance purposes together with a detailed explanation of the framework within which PSNI uses UAS for overt surveillance and for surveillance which does not relate to a specific operation or investigation.
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**APPENDIX 2: IMPLEMENTATION STATUS OF OUTSTANDING  
RECOMMENDATIONS FROM PREVIOUS YEARS**

		<b>Implementation status</b>
<b>TRAINING: 2012 RECOMMENDATIONS</b>		
1.	The PSNI should provide the Human Rights and Professional Standards Committee with a written review of the training plan for police staff, with a particular focus on identifying the human rights training needs of police staff and how PSNI proposes to meet those needs and within what time frame. That review should be provided to the Human Rights and Professional Standards Committee within 6 months of the publication of this Human Rights Annual Report.	Outstanding
2.	The PSNI should deliver the child protection training as developed by 'A' District trainers to all front line police officers.	Outstanding
<b>POLICY: 2012 RECOMMENDATION</b>		
3.	The PSNI should forthwith publish, on its publicly accessible website, those policies that have been finalised.	Outstanding
<b>OPERATIONS: 2012 RECOMMENDATIONS</b>		
4.	The PSNI should forthwith collect statistics on the use of the powers contained at section 43A of the Terrorism Act 2000 and amend its quarterly statistical reports to include the statistics collected.	Implemented
5.	The PSNI should forthwith collect and disaggregate its statistics on the use of all powers contained within section 24 of and Schedule 3 to the Justice and Security (Northern Ireland) Act 2007. In particular, the statistics should identify the powers used according to whether the stop and search was pursuant to an authorisation, was undertaken with reasonable suspicion or without and whether it was exercised in relation to a person, vehicle or premises.	Implemented
6.	The PSNI should consider whether the same, or a similar card, to that developed for young people should be handed out to all persons who are the subject of a stop, search and/or question under PACE, TACT or JSA.	Outstanding

<b>COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS: 2012 RECOMMENDATION</b>		
7.	The PSNI should consider the findings of the OPONI report on allegations of oppressive behaviour and present to the Human Rights and Professional Standards Committee the PSNI analysis of the findings together with its proposed means of reducing allegations of oppressive behaviour. That presentation should be made to the Human Rights and Professional Standards Committee within 6 months of the publication of this Human Rights Annual Report.	Outstanding
<b>COVERT POLICING: 2012 RECOMMENDATIONS</b>		
8.	On completion of its review of the Memorandum of Understanding, the relevant protocols and service level agreements between the PSNI and the Security Service, the PSNI will subject them to human rights proofing by the Policing Board's Human Rights Advisor and thereafter publish those documents to the greatest extent possible. In the event that PSNI decides not to publish any document or to publish all or any in a redacted form it should provide to the Human Rights and Professional Standards Committee the written reasons for so deciding.	Outstanding
9.	The PSNI should forthwith put in place a formal training plan to ensure that all officers who are or may be involved in the application of the Regulation of Investigatory Powers Act 2000 receive all necessary training as and when required. The provision of training should be kept under review and provided as and when required.	Outstanding
<b>TREATMENT OF SUSPECTS: 2012 RECOMMENDATIONS</b>		
10.	The PSNI should provide to the Human Rights and Professional Standards Committee, within 6 months of the publication of this Human Rights Annual Report, a report on its review of healthcare provision in police custody suites. That report should include any specific consideration given to ensuring that all healthcare professionals are sufficiently experienced and independent from the police, particularly in respect of terrorism detainees.	Outstanding
11.	The PSNI should provide an explanation to the Human Rights and Professional Standards	Implemented

	Committee within one month of the publication of this Human Rights Annual Report for the continued detention of immigration detainees in police custody. That report should address specifically the reason for those detainees not being transferred to Larne House.	
<b>TREATMENT OF SUSPECTS: 2011 RECOMMENDATION</b>		
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.	Implemented

**APPENDIX 3: HUMAN RIGHTS ANNUAL REPORT RECOMMENDATIONS 2005 - 2012**

**Summary Implementation Record**

	<b>Implemented in full</b>	<b>Outstanding</b>
<b>2012 recs.</b>	3	8
<b>2011 recs.</b>	16	0
<b>2010 recs.</b>	4	0
<b>2009 recs.</b>	17	0
<b>2008 recs.</b>	20	0
<b>2007 recs.</b>	38	0
<b>2006 recs.</b>	42	0
<b>2005 recs.</b>	56	0
<b>Totals</b>	<b>196</b>	<b>8</b>



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