

HUMAN RIGHTS ANNUAL REPORT 2015 RECOMMENDATIONS UPDATE

The Board's Human Rights Annual Report 2015, published on 31 March 2016, made 14 new recommendations for PSNI to implement relating to issues such as human rights training, policy and guidance in relation to Domestic Violence Protection Notices, the operation of the Youth Diversion Scheme, the deployment of Small Unmanned Aircraft, the service of non-molestation orders and police detention. One recommendation remained outstanding from the Human Rights Annual Report 2014 which related to the publication of all Policy Directives and Service Procedures on the PSNI website.

This summary document records progress on those recommendations - in summary form. The Human Rights Annual Report 2016 will be published in due course. That report will provide all relevant statistical analysis, comprehensive scrutiny of PSNI performance during 2016 and make new recommendations for the PSNI to consider. This summary report provides a very brief overview of areas of interest from last year and an update on progress made against previous recommendations.

PSNI PROGRAMME OF ACTION – CHAPTER 1

In May 2016, PSNI published its Human Rights Programme of Action 2015/16.¹ The Programme of Action confirmed PSNI's acceptance of all 14 recommendations made in the 2015 Report and outlined the steps that the police had taken, or proposed to take, in order to give effect to them and the outstanding recommendation from 2014. In his introductory comments to the 2015/16 Human Rights Programme of Action, Assistant Chief Constable Mark Hamilton comments that PSNI embraces the challenge brought by the Policing Board through its human rights monitoring work and acknowledges that while implementation of the recommendations demands time and resource, it leads to improvements in policing. Since then the Performance Committee has received various reports from PSNI on its implementation of the

¹ The *PSNI Programme of Action 2015/2016* is available to download through the PSNI website: <https://www.psni.police.uk/inside-psni/our-policies-and-procedures/human-rights/>

recommendations and the Policing Board's Human Rights Advisor has met with many of the officers and staff responsible for taking forward the work.

TRAINING – CHAPTER 2

Training continued to be a focus of attention for the Policing Board throughout 2016. A report critical in respect of recent cultural and other change within the Police College was received by the Board, which caused concern and led to a programme of review and monitoring which resulted in a comprehensive action plan and review report.² While work continues at the Police College and the Board continues to engage with the PSNI to implement the action plan, significant progress is recorded together with many examples of good practice.

Human Rights Training Advisor

For a number of years, the PSNI employed a dedicated Human Rights Training Advisor with specialist human rights knowledge and experience in delivering training. She was responsible for reviewing all training delivered at the Police College and within police districts and assisted in the production of training materials. The Human Rights Training Advisor's contribution in the view of the Committee undoubtedly improved the training of police officers and civilian staff and ensured that human rights were contextualised into operational policing scenarios.

It was reported, in the Human Rights Annual Report 2015, that the Human Rights Training Advisor had left her post. A recommendation was made requiring PSNI, without delay, to recruit a Human Rights Training Advisor with sufficient expertise and experience to ensure that the highest level of human rights training is delivered within the PSNI.³ In response, PSNI advised that the recommendation would be considered as part of a wider corporate review of staffing across the whole organisation, including within the Police College, as part of its response into the impact of the Voluntary Exit Scheme. The Human Rights Training Advisor post was however considered an organisational priority. A recruitment competition has been

² *Police College Review*, October 2016, Police College.

³ Recommendation 1, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

completed and the Committee hopes to learn of the appointment of a new training advisor shortly.

POLICY – CHAPTER 3

Publication of policy

The failure of the PSNI to publish all policy has been an ongoing concern of the Committee. In the Human Rights Annual Report 2012 it was reported that PSNI had removed all of its policies from its website. In 2014, a dedicated policy section was reinstated on the PSNI website with a number of policies published, but there remained a considerable backlog. In 2015, PSNI reported to the Performance Committee that it was undertaking a Corporate Policy Review and that all would be subject to review. Thereafter, PSNI advised that all policy (to be divided into Policy documents and Service Instructions) would be published.

The Committee has consistently advocated for the publication of PSNI policy to the greatest extent possible and has made a number of recommendations, including a recommendation in the Human Rights Annual Report 2014, requiring PSNI to publish all Policy Directives and Service Procedures that were currently in force (subject to redaction of classified information). Furthermore, if any Policy Directive or Service Procedure was undergoing a review it was recommended that such fact should be noted but the document itself remains available for public inspection.⁴ In the Human Rights Annual Report 2015 that recommendation was recorded as not implemented.

Since then the Corporate Policy Review team has prioritised the publication of policy. The “Corporate Policy” section of the PSNI website is now more visible, and as at 14 February 2017 contains 55 Policy/Service documents. PSNI has assured the Board’s Human Rights Advisor that as new documents are finalised they will be uploaded to the website to the greatest extent possible and without delay. While the Committee is satisfied that the recommendation from the 2014 Human Rights Annual Report can now be regarded as having been discharged, PSNI is reminded that the

⁴ Recommendation 2, *Human Rights Annual Report 2014*, Northern Ireland Policing Board, February 2015.

recommendation represents an ongoing commitment to publish all current Policy and Service documents, and to keep them published for so long as they remain in force.

Case file preparation – Working Together project

The Committee was disappointed, in November 2015, to note the findings of the Criminal Justice Inspection Northern Ireland (CJINI) on the quality and timeliness of police files submitted to the PPS.⁵ During the CJINI inspection, approximately 33% were assessed as either unsatisfactory or poor. CJINI also found failings in relation to the criminal disclosure process,⁶ with disclosure deemed to have been dealt with satisfactorily in only 23% of the Crown Court cases reviewed. CJINI called for greater collaboration between the PSNI and the PPS to address significant failings in the preparation of case files and also the standards applied around disclosure. Six strategic recommendations were made, one of which was for the PSNI and PPS to immediately establish a Joint Prosecution Team to address poor practice. The Working Together Project was established in response to the recommendations. The Project involves joint PSNI and PPS participation to deliver the key objectives in a manner that is sustainable for the future.

Recommendations were made in the Human Rights Annual Report 2015 requiring PSNI firstly to report to the Performance Committee by 30 September 2017 on progress in implementing the CJINI recommendations,⁷ and thereafter to complete the Working Together Project and implement the CJINI recommendations by 31 December 2017. PSNI were then to provide the Committee with a written briefing on the outcomes of the Project and the steps taken or to be taken.⁸ The Board's Human Rights Advisor met with representatives from the Working Together Project team during 2016 to discuss progress and written updates were provided to the

⁵ The Criminal Justice Inspection Northern Ireland (CJINI) recently completed an inspection of police case files: *An Inspection of the Quality and Timeliness of Police Files (Incorporating Disclosure) Submitted to the Public Prosecution Service for Northern Ireland*, CJINI, 26 November 2015.

⁶ Disclosure refers to the statutory duty placed on both the police and the PPS to disclose material to the defendant which may be of assistance to his or her defence. It is an essential element of the prosecutorial process governed by law and an inseparable part of a fair trial. Consideration of disclosure issues should be an integral part of a good investigation and therefore also part of the case papers. It is not something that exists separately.

⁷ Recommendation 11, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

⁸ Recommendation 2, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

Performance Committee in October 2016 and January 2017. A Working Together Project Board has been established which is jointly chaired by an Assistant Chief Constable and a Senior PPS Director. Through this Board the work of the Project Team is governed and progress monitored.

Progress against all of the CJINI recommendations was provided to the Board in January 2017. A range of initiatives have been undertaken in order to deliver the objectives in relation to the CJINI recommendations. Furthermore, PSNI and PPS are scoping the potential to extend the remit of the Project to include other partners, such as the Court Service, in order to provide further benefits.

Domestic Violence Protection Notices and Domestic Violence Protection Orders

Schedule 7 to the Justice Act (Northern Ireland) 2015 makes provision for Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs). There are a number of human rights considerations which apply to the victim, the perpetrator and any children in the family. The 2015 Act contains some provisions which attempt to strike a balance in the application of rights however police officers require practical direction on the operation of the powers. Clear guidance and a comprehensive policy document are therefore required and police officers must be confident in their understanding and application of that policy. Recommendation 3 of the Human Rights Annual Report 2015 required PSNI to provide the Committee with its draft written policy and guidance on the use of its powers to issue DVPNs and apply for DVPOs, and the proposed training plan for officers.⁹ The Annual Report emphasised that training must take place *before* the roll out of the powers.

PSNI accepted that recommendation however at present the guidance, which is being developed by the Department of Justice (DOJ) in collaboration with other agencies including the PSNI, is incomplete as is the development of police policy

⁹ Recommendation 3, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

and training plans.¹⁰ Therefore while Recommendation 3 of the Human Rights Annual Report 2015 remains outstanding, the Committee appreciates that this is for reasons outside PSNI's control and that the police are working closely with partner agencies and the Department of Justice in order to give effect to the relevant provisions of the 2015 Act. The Committee looks forward to receipt of the draft policy, guidance and training plans in due course. In the interim the Committee reiterates that appropriate guidance, policy and training should be in place *before* any roll out of DVPNs and DVPOs.

OPERATIONS – CHAPTER 4

A specific area for the consideration of the Committee continues to be the PSNI's use of powers to stop and search persons and vehicles, to search premises and to stop and question. PSNI provides the Board with quarterly and year end statistical reports which show PSNI's use of such powers which are contained within the Misuse of Drugs Act 1971, the Firearms (Northern Ireland) Order 2004, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Justice and Security (Northern Ireland) Act 2007 (JSA) and the Terrorism Act 2000 (TACT).¹¹ The statistical reports show the use of the various powers according to geographic area, gender, ethnicity, age, power used and subsequent arrest. Those statistics are analysed and discussed with the PSNI regularly.

COMPLAINTS, DISCIPLINE AND THE CODE OF ETHICS – CHAPTER 5

The Committee established a Professional Standards Monitoring Framework, which enables the Committee to consider trends and patterns in complaints and misconduct proceedings. Additionally, the Framework enables the Committee to address broader concerns, such as quality of service, accountability and evidence of

¹⁰ The 2015 Act empowers the Department of Justice to develop guidance relating to the exercise of police powers.

¹¹ The Misuse of Drugs Act, Firearms Order and PACE provides police officers with a range of powers to stop and search persons, vehicles and premises for drugs, firearms, and, in respect of PACE, stolen articles, articles with a blade or point, prohibited articles and fireworks. The powers in TACT provide police across the United Kingdom with search powers specifically relating to the investigation of terrorist activity. The JSA applies only to Northern Ireland and provides PSNI officers with additional powers to search for unlawful munitions or wireless apparatus.

learning. In accordance with the Framework the PSNI and OPONI provide the Committee with information each year on: trends and patterns in complaints and allegations made to OPONI by members of the public; self-referrals from PSNI to OPONI;¹² PSNI Anti-Corruption & Vetting Branch and Discipline Branch Annual Report, which provides an overview of police misconduct matters and breaches of the Code of Ethics; details of Statute Barred Cases;¹³ details of compensation claims received and concluded by PSNI; and a Policy Evaluation Group Annual Report, which sets out learning identified from OPONI policy recommendations. The Committee also receives six monthly reports on complaints and allegations and Statute Barred Cases.

These are analysed and reported upon in the Human Rights Annual Report. Any issues of concern or areas of good practice are recorded together with recommendations considered appropriate.

Civilian personnel

The legislation which provides the Police Ombudsman with power to investigate complaints and which applies the PSNI Code of Ethics to police conduct came into force in 1998 and 2000 respectively.¹⁴ At that 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).¹⁵ Those roles involve interaction with the public and a high level of responsibility. Civilian staff play an increasingly important role in ensuring that PSNI complies with the Human Rights Act 1998.

¹² In accordance with section 55 of the Police (Northern Ireland) Act 1998 the Chief Constable must refer any incident where a death has occurred following contact with the police, and he/she may refer any incident which indicates possible criminality or misconduct and which the Chief Constable believes it is in the public interest for the Ombudsman to investigate. The Chief Constable must also notify the Police Ombudsman of all discharges of firearms, AEP or Taser.

¹³ Statute Barred Cases are cases where a prosecution could not proceed due to the police file not being submitted to the Public Prosecution Service within the statutory timescale for the relevant offence.

¹⁴ The Police (Northern Ireland) Act 1998 and the Police (Northern Ireland) Act 2000.

¹⁵ *A New Beginning: Policing in Northern Ireland, Report of the Independent Commission on Policing for Northern Ireland*, September 1999, paragraphs 10.22 – 10.24.

As discussed in previous Human Rights Annual Reports, civilian staff are subject to a different code of conduct and a different complaints system than police officers.¹⁶ If a complaint is made against a member of civilian staff, the matter is dealt with by PSNI internally to determine whether it warrants investigation as a disciplinary matter.¹⁷

A recommendation was made in the Human Rights Annual Report 2015 requiring PSNI to include within the Professional Standards Monitoring Framework (PSMF) information on trends and patterns identified in civilian staff complaints and misconduct matters.¹⁸ PSNI accepted that recommendation. The first report will be received in June 2017.

Informed warnings

In *D's Application* the Divisional Court in Belfast accepted that police officers conscientiously sought to comply with PSNI policy on the Youth Diversion Scheme in administering an Informed Warning, however as the child involved was not referred to the possibility of seeking legal advice prior to accepting it his consent could not be regarded as sufficiently or properly informed.¹⁹

A recommendation was made in the Human Rights Annual Report 2015 requiring PSNI to amend its Youth Diversion Scheme to include clear guidance that a child must always be referred to the possibility of seeking legal advice when an Informed Warning is to be administered. Thereafter the PSNI was to confirm to the Committee that the Scheme had been amended and that officers had received appropriate advice on the amendment.²⁰ PSNI accepted that recommendation and reported in May 2016 that the necessary policy change had been implemented. Forms 63/1:

¹⁶ Unless they have been designated under sections 30, 30A or 31 of the Police (Northern Ireland) Act 2003 as an Investigating Officer, a Detention Officer or an Escort Officer in which case they will be subject to the Code of Ethics insofar as they are carrying out their designated functions as per the Police Powers for Designated Staff (Code of Ethics) Order (Northern Ireland) 2008; and the Police Ombudsman has remit to investigate complaints made against them as per the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008.

¹⁷ *Ibid* (i.e. unless they have been designated under the 2003 Act).

¹⁸ Recommendation 5, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

¹⁹ *D's Application* [2015] NIQB 78.

²⁰ Recommendation 6, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

Certificate of Caution and 63/2: Certificate of Informed Warning were reissued to include the declaration that legal advice had been offered. The importance of ensuring that legal advice is offered has been reemphasised to Youth Diversion Officers (YDOs) who administer all cautions and informed warnings to children.

PUBLIC ORDER – CHAPTER 6

In this year's Human Rights Annual Report, the Committee analyses the PSNI's policing of public order throughout the year and records important judicial decisions on police powers.

USE OF FORCE – CHAPTER 7

PSNI collates data on all uses of force monitoring and produces a six-monthly use of force report, which is considered by the Performance Committee.²¹ Those reports contain information such as frequency of use of each type of force, the date and location of use, the gender and age of person on whom the force was used and trend information. While a statistical report does not in itself measure PSNI human rights compliance when using force, the six monthly reports do provide the Committee with a broad overview of the use of force. Any issues identified are raised directly with PSNI's senior command team. The statistics are analysed and reported upon in each Human Rights Annual Report together with issues of concern, good practice and any recommendations deemed appropriate.

PAVA spray

The Human Rights Annual Report 2016 will report on the new PAVA irritant spray introduced as an alternative to CS irritant spray to some officers, for example, those equipped with Taser. Throughout 2016 PSNI piloted the use of PAVA, which is not flammable, by specialist firearms officers and officers performing duties at airports. The pilot was initially due to run for six months from 1 January 2016 but was

²¹ The statistical reports provided to the Committee are classified as 'Official – Sensitive' as they contain information that cannot be published due to statistical reporting rules, however, a less detailed version of the report is published through the PSNI website on a six monthly basis.

extended for a further six months. The Committee received updates on the use and outcome of the pilot.

COVERT POLICING – CHAPTER 8

Covert policing raises significant issues in which various rights enshrined in the European Convention on Human Rights and Fundamental Freedoms (ECHR) must be considered. Each year the Performance Committee monitors and reports upon PSNI performance in this area.

Small Unmanned Aircraft ('Drones')

In June 2013, PSNI purchased a number of small unmanned aircraft (SUAs), commonly referred to as drones.²² Recommendation 8 of the Human Rights Annual Report 2015 required PSNI to report to the Performance Committee in writing every six months on the nature and extent of SUA use.²³ PSNI accepted that recommendation and first reported to the Committee in September 2016. In this Human Rights Annual Report the Committee analyses that use by frequency and type.

VICTIMS – CHAPTER 9

Domestic abuse

PSNI publishes quarterly and annual statistics on domestic abuse incidents and crimes on its website. PSNI also publishes a more detailed statistical bulletin on an annual basis which includes trend information on domestic abuse incidents and crimes since 2004/05. Further to a recommendation made by the Committee in 2009 in its Human Rights Thematic Review on Domestic Abuse, the bulletin also provides some information on victim and perpetrator characteristics. The Human Rights Annual Report 2016 analyses the police response to domestic abuse.

²² The PSNI currently own and operate 6 SUA systems.

²³ Recommendation 8, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

In the Human Rights Annual Report 2015, PSNI were required to disaggregate for a period of 12 months the statistics on outcome rates for domestic motivated crime according to each disposal type, including conviction, in a form which can be easily accessed and understood. At the end of the 12 month period PSNI was to report to the Performance Committee with the empirical evidence distilled from the statistics.²⁴ In response to that recommendation PSNI advised that it already provides a detailed breakdown in its annual statistical reports with regard to disposal types. However the annual statistical reports do not go on to provide data as to how many of the 2,362 cases in which there was a charge or summons resulted in a conviction.

The Committee will keep this under review. In the meantime, Recommendation 9 of the Human Rights Annual Report 2015 remains outstanding.

Non-molestation orders

The service of ex-parte non-molestation orders has been an issue of concern to the Performance Committee for a number of years. The Performance Committee believed that more needed to be done to ensure that the orders were served expeditiously. In particular, the Committee wished to see oversight mechanisms put in place to alert police supervisors to any undue delays in the service of orders. To address these concerns PSNI carried out an internal review which put in place better processes to ensure that orders are received and prioritised, that a consistent approach is taken across all Districts and that there is a system of checks and balances in place.

Given the potential risk to the victims of domestic abuse from the failure to serve orders the Performance Committee has kept the matter under review. A recommendation was made in the Human Rights Annual Report 2015 which required PSNI to continue to monitor the service of non-molestation orders and provide the Committee by 31 March 2017 with an analysis of the length of time taken to serve orders, an analysis of the checks and balances put in place to oversee the service of orders and the extent to which applicants and their legal representatives are kept

²⁴ Recommendation 9, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

informed of the service of orders.²⁵ PSNI accepted that recommendation and will provide the Committee with the report by 31 March 2017.

TREATMENT OF SUSPECTS – CHAPTER 10

In 2015/16 Custody Visitors raised a concern in one detention suite that a cell buzzer had been switched off. A buzzer is a device in the cell which allows detainees to alert custody staff. While it was explained by the relevant Custody Sergeant that when the buzzer is switched off, the detainee was monitored via CCTV, it was recognised by the Board's Performance Committee that the ability of a detainee to alert custody staff to potential difficulties is critical and that if a detainee is unable to do so and is not continuously monitored by CCTV, there is a clear and obvious risk that they could suffer harm undetected. The Human Rights Annual Report 2015 recommended that the PSNI report to the Committee and outline the number of times and the reasons for a buzzer in a cell having been switched off between 1 January 2014 and 1 January 2016. The report was to reference specific policy covering this issue and the alternative arrangements that were or should be made to ensure the safety of the detainee.²⁶ PSNI accepted the recommendation which will be considered further in the coming months.

Another issue raised by Custody Visitors was that in one suite exercise facilities were out of order on a number of occasions. The Human Rights Annual Report 2015 recommended that PSNI provide the Committee with a report detailing the period during which exercise facilities were or are unavailable for use by detainees. The recommendation also made clear that if exercise facilities are unavailable to detainees held for extended periods, consideration should be given to moving that detainee to an alternative station.²⁷ PSNI accepted that recommendation and PSNI's Custody Branch undertook to review the availability and use of exercise facilities in

²⁵ Recommendation 10, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

²⁶ Recommendation 12, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

²⁷ Recommendation 13, *Human Rights Annual Report 2015*, Northern Ireland Policing Board, March 2016.

custody suites. That review is analysed and reported upon in the Human Rights Annual Report 2016.

Recommendation 14 of the Human Rights Annual Report 2015 required PSNI to carry out a training needs analysis for all Custody Staff and ensure that all staff receive sufficient training on the identification of and appropriate response to: detainees presenting with physical or mental health issues and/or addictions; and on child protection issues. That recommendation was accepted. The training needs assessment and progress on PSNI's comprehensive custody review is analysed and reported upon in the Human Rights Annual Report 2016.

POLICING WITH THE COMMUNITY & HUMAN RIGHTS AWARENESS – CHAPTER 11

In recognition of the potential negative impact of diminishing resources, Policing with the Community and Human Rights Awareness in the PSNI received close scrutiny in the last year and is reported upon throughout the Human Rights Annual Report with a particular emphasis in this chapter on the potential negative impact of diminishing resources on operational activity.

PRIVACY, DATA PROTECTION AND FREEDOM OF INFORMATION – CHAPTER 12

In this chapter the Committee analyses and reports upon PSNI compliance with, for example, the Data Protection Act 1998 and the Freedom of Information Act 2000.

CHILDREN AND YOUNG PEOPLE – CHAPTER 13

The Policing Board, working closely with the PSNI and benefitting from the expert input from partners, has been focused on policing with children and young people for some years and it has remained a strategic priority for PSNI and the Committee in 2016.