

NORTHERN IRELAND POLICING BOARD

TERMS OF REFERENCE REVIEW OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI) RESPONSE TO COVID 19

May 2020

REVIEW OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI) RESPONSE TO COVID 19

Introduction

The Policing Board has asked its Human Rights Advisor, to conduct a review of the PSNI's response to COVID-19. The overarching aim is to assess and report to the Board on the policing approach to the exercise of the new dispersal powers alongside any other operational policing decisions taken in response to COVID-19 that have the potential to impact on public confidence in the service as a whole.

The review will consider the extent of the application the Health Protections (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020¹ along with the temporary introduction of spit and bite guards, the temporary suspension of the Independent Custody Visiting Scheme and the health and safety issues for both PSNI and the public.

Background

The COVID-19 emergency has resulted in police services throughout the UK and Ireland being given very significant new powers which impact on the rights of our society.

Generally speaking, the public have accepted that these powers are necessary and appear to be complying with them. However, there have been examples across policing services of members of the public not understanding or adhering to the guidance and instances where police action or enforcement activity has not been proportionate.

Some of the problems might be because people are confusing the Prime Minister's "instructions"², the provisions of the Coronavirus Act 2020 and the new Health Protection Regulations.³

¹ Available here <https://www.health-ni.gov.uk/publications/health-protection-coronavirus-restrictions-northern-ireland-regulations-2020>

² 23 March 2020 <https://www.telegraph.co.uk/news/2020/03/23/boris-johnson-announces-uk-lockdown-speech-full/>

³ See Annex for more details. The Health Protections (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020 which are made by the Department of Health under section 25 of the Public Health Act (Northern Ireland) 1967.

In Northern Ireland, following enactment of the new legislation, the PSNI set out its approach to supporting the decisions of the Northern Ireland Executive.

The PSNI communicated its approach to the use of the powers stating where officers encounter people outside who do not appear to be complying with social distancing, officers will use the new dispersal powers to protect the health of the public using a four-phase approach - Engage with the public to encourage voluntary compliance; Explain why dispersal is vital to reduce the spread of this virus; Encourage people to disperse and Enforce where necessary when people do not listen and put others at risk. With the latter being determined only do this when it is absolutely necessary.

A few weeks on it was then suggested that they need to use these powers more robustly in the future:

“PSNI Chief Constable Simon Byrne told the daily press conference at Stormont that the public would see more police patrols and "a different approach" from his officers in the coming days in order to prevent the spread of the virus.”

“You have to have a reasonable excuse to have a need to leave home," said Mr [Assistant Chief Constable] Todd. “It is not just a reason but a need and I see no need for anybody to drive to take their daily exercise so that would be a breach. “We will encourage you to go home. If not you may face a fine.”⁴

On 10th April the PSNI launched Police a dedicated web page for social distancing breaches to allow receipt of public reports of complaints around behaviour.

“28th March until today (Friday, 10th April), ACC Todd said Police Service NI has received 906 complaints of the restrictions not being adhered to including people making non-essential journeys, not adhering to social distancing or gatherings in public places.”⁵

⁴ 9th April 2020 <https://www.bbc.co.uk/news/uk-northern-ireland-52234994>

⁵ <https://www.psni.police.uk/news/Latest-News/100420-police-service-ni-launches-dedicated-web-page-for-social-distancing-breaches/>

The PSNI's approach to their new powers appears, however, generally proportionate:⁶

“What does this mean for you?

This means that if a person commits an offence of failing to comply with any such direction or restriction imposed on them without reasonable excuse, officers will consider an appropriate disposal. That may initially be advice and guidance or a Community Resolution Notice (CRN).

However, if required Police will enforce this legislation and issue a penalty notice of £60. The issuance of a penalty notice in the first instance is not in itself a criminal offence – the Police do not want to criminalise people - we simply want to ensure that people follow the regulations. For those who continue to disregard the NI Executive directions, the fine can be doubled each time and summary prosecution can be sought for those who refuse to pay or comply. The £60 fine can fall to £30 if paid within 14 days. If a person has already received a fixed penalty notice, the amount will increase to £120 and double on each further repeat offence...

There has however been increasing negative public and media challenge to the legality of police actions, in particular around travel to exercise.

The Introduction of Spit and Bite Guards

During the autumn of 2019 the Policing Board has been in discussions with the PSNI about the introduction of ‘Spit and Bite Guards’.⁷ This follows an analysis undertaken by the Policing Board in 2016/17⁸ and a request from the Chief Constable at the end of July asking the Policing Board for its support for the introduction of this equipment. The Board's Performance Committee discussed this issue on several occasions with PSNI senior officers and the Police Federation and currently a number of concerns from Members are being responded to.

⁶ See also the College of Policing sensible briefings <https://www.college.police.uk/News/College-news/Pages/Health-Protection-Guidelines.aspx>

⁷ Spit and bite guards are devices intended to cover the mouth, face and sometimes the head of a restrained person in order to prevent them spitting at or biting others. Although their effectiveness in reducing injuries from biting is unclear.

⁸ See a detailed analysis of the human rights issues in the Policing Board's Human Rights Annual Report 2016/17.

The spread of Covid-19 in February and March and attacks on officers resulted in the Chief Constable deciding to enhance the protection provided to his officers by temporarily introducing this equipment in custody suites and, a few days later to provide them to officers who were involved in 'COVID-19 response crews' and 'Cell van callsigns'. Draft guidance on their use was provided to the Policing Board and the PSNI took into account much of the Policing Board's response in that amended guidance.

Custody Visiting

The Policing Board's Independent Custody Visitors (ICVs) are volunteers from the community. They make unannounced visits to police custody suites to monitor the welfare and treatment of people in detention and the conditions of detention. They do this by, in pairs, speaking with people in detention, inspecting facilities and checking custody records. The ICVs report their findings to the Board and this helps ensure PSNI meet their human rights responsibilities. The ICVs are also part of the UK's National Preventive Mechanism which is designed to ensure that there are systems for the independent monitoring of every place of detention and delivers on the UK's obligation to the United Nations.⁹ Unfortunately, the COVID-19 emergency makes it difficult for the ICVs to carry out their primary function in the usual way and the absence of regular visiting reduces the protections for those arrested and detained in Northern Ireland.

Violence in the home

There seems to be some indications that restricting people to their homes is increasing the risk of violence in the home, particularly violence against women.¹⁰ It may also be the case that vulnerable people including children and people with disabilities may be more at risk from both violence and sexual assault. What is certain is that victims of this kind of crime will have fewer opportunities to interact with others outside the home, to seek advice or to make complaints about their treatment. The PSNI has obvious duties under the Police (Northern Ireland) Act and Human Rights Act to protect such victims. There are obvious practical

⁹ <https://www.nationalpreventivemechanism.org.uk>

¹⁰ <https://www.nidirect.gov.uk/campaigns/domestic-violence-and-abuse-disclosure-scheme;>
<https://www.gov.uk/government/publications/coronavirus-covid-19-and-domestic-abuse/coronavirus-covid-19-support-for-victims-of-domestic-abuse> and
<https://www.belfasttelegraph.co.uk/news/health/coronavirus/potential-domestic-murders-probed-as-coronavirus-lockdown-sparks-violence-and-abuse-in-northern-ireland-homes-39098755.html>

difficulties in the PSNI carry out these responsibilities but the Board will be reassured that the PSNI are taking active steps where possible.

Terms of Reference

For all these reasons, the Policing Board has decided to implement a review of the PSNI during this emergency and, in particular, its use of its new powers, the introduction of Spit and Bite Guards, the deployment of equipment to protect police officers and the protection of those arrested and detained in custody.¹¹

The review will consider:

- Whether the operational use of the powers and new equipment is:
 - in accordance with the law and compliant with human rights;
 - being used proportionately and whether officers can be protected in any other ways;
- Whether PSNI training and guidance for officers is adequate and has sufficient detailed consideration of the human rights issues;
- The protection of those required to remain at home;
- The impact on community confidence; and
- Whether there are any recommendations that should be made or lessons that could be learned (including whether the use of spit and bite guards by the PSNI should be restricted or should cease completely).

Given the emergency this review will not be able to include the usual active monitoring processes (being present and watching events or PSNI deployments) or face to face meetings with stakeholders and PSNI officers and staff. However, the actions of police officers and the PSNI will be monitored in the following ways:

- Seeking regular information from the PSNI on any relevant new policies and procedures and any difficult or controversial uses of these powers;¹²

¹¹ The Scottish Police Authority have also announced a similar review <http://www.spa.police.uk/news/615837/>

¹² Sections 33A and section 76A of the Police (Northern Ireland) Act 2000 provide the authority for this. Any material that is confidential will obviously be kept confidential and the Policing Board will make arrangements to ensure that material is anonymised where necessary or, where necessary, is only accessed by its Human Rights Advisor (who has DV security clearance).

- Participating in any weekly internal reporting or update meetings that the PSNI holds on the emergency and its use of these powers and new equipment;
- Reviewing the facts and circumstances of reports in the media;
- Reviewing any complaints made about the use of the powers;
- Seeking relevant information directly from key stakeholders (including the Police Federation) and via the Policing Board's website; and
- Once travelling and meetings are possible again, an 'after the event' analysis.

The collection of this information will be the basis of a report to the Policing Board which will be published in due course.

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May 2020

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DOCUMENT TITLE

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