



Human Rights Thematic Review

CHILDREN & YOUNG PEOPLE



FOREWORD

The Northern Ireland Policing Board (the Board) has a statutory responsibility, as set out in 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 fulfil this statutory duty the Board appointed Human Rights Advisors in 2003 to develop a Human Rights Monitoring Framework setting out the key areas of police work to be examined. The PSNI is monitored in each of these key areas throughout the year by the Human Rights and Professional Standards Committee with the assistance of the Board's Human Rights Advisor. Every year since 2005 the Board has published a Human Rights Annual Report detailing the findings of this monitoring work.

In recent years the Board has strengthened its Human Rights Monitoring Framework with the introduction of the human rights thematic review. The thematic reviews have been led by the Human Rights and Professional Standards Committee and are intended to provide focused scrutiny on a specific area of police work from a human rights perspective. A key feature of this approach is use of the community's experience of policing as the evidence base to evaluate police policy and practice. The first thematic review examined the PSNI approach to policing domestic abuse and was published in March 2009. A thematic review into police powers to stop, search and question individuals was recently completed and will be published shortly. The Committee is also currently undertaking a thematic review into policing with and for lesbian, gay, bisexual and transgender individuals.

This human rights thematic review, which I am pleased to present, considers the PSNI approach to policing with children and young people: an area identified by the Human Rights and Professional Standards Committee as a key priority. The process of the thematic review has enabled issues of concern to the community to be identified and considered. Throughout the review process the Committee heard evidence from a wide range of

stakeholders including those working with the most marginalised young people. Mechanisms were established to ensure that the opinions of young people on policing were also taken into account and considered by the Committee.

Publication of this thematic review marks the start of a process of monitoring and review by the Committee in terms of the PSNI response to tackling the issues raised and recommendations made. The Committee intends to keep policing with children and young people on its agenda and will continue to liaise with stakeholders to seek their valuable input and feedback.

The Board is indebted to all the stakeholders who contributed their valuable time and shared their considerable experience in this critically important area. I would also like to thank the Board's Human Rights Advisor, Alyson Kilpatrick BL, for providing invaluable guidance throughout the review process and for her expertise and dedication in producing this report.

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Acting Chairman

Northern Ireland Policing Board

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INTRODUCTION

Northern Ireland has a population of approximately 500,000 children and young people, one third of the population.¹ Over 100,000 (20%) of them fall below 60% of the median income threshold. In 1999, approximately 20% of children suffered from a mental health issue.² In 2008, the United Kingdom Children's Commissioners reported that in Northern Ireland children and young people experience higher levels of stress than in Great Britain with a high level of self-harm and suicide.³ Furthermore, it appears that the cost of childcare is higher in Northern Ireland, but it corresponds to the lowest provision of childcare in Europe.

The conflict post-1968 had a significant impact upon the realisation of children's rights under the United Nations Convention on the Rights of the Child (UNCRC). According to the United Kingdom Children's Commissioners' Report of 2008 there remained "residual 'after-effects' for many children and young people. Sectarianism, paramilitary control, loss and bereavement result in an inability to cope or to access opportunities which all children should enjoy... for example, access to play and leisure, access to adequate health care, access to education etc, are often more difficult to achieve."⁴

The number of children from minority ethnic communities is increasing rapidly. For them, racism and discrimination within society generally is a fairly frequent experience.⁵ For example, Irish Travellers are more likely to be stopped and searched than others. If the *ratio* is considered the figures show that in 2006-2007 Travellers had a 1 in 22 chance of being stopped and searched compared to 1 in 107 of the total population. The numbers have declined,

¹ Within this report the terms "child", "young person" and "juvenile" are used interchangeably to refer to people under the age of 18 years old. Different organisations and documents, which are quoted or referred to, use different language.

² *Health of the Public in Northern Ireland: Report of the Chief Medical Officer, 1999: Taking Care of the Next Generation.*

³ *UK Children's Commissioners' Report to the United Nations Committee on the Rights of the Child 2008.*

⁴ *Ibid*, page 6.

⁵ According to Northern Ireland Council for Ethnic Minorities (NICEM).

however for 2009-2010, when 1 in 48 Travellers compared to 1 in 75 of the population were likely to be stopped and searched.⁶ That trend *may* be replicated in relation to the use of other police powers against those groups and to the use of police powers against children and young people within those groups. All of the factors may combine to mean that measures which limit children's free access to public areas are felt more acutely in Northern Ireland and may have additional effects not experienced in Great Britain.

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

The report highlighted that of the calls routinely received by North Belfast police, 32% were for incidents categorised as 'youths causing annoyance'.⁷ It was clear that most interaction between young people and the police took place in the context of alleged anti-social behaviour and public disorder. The report also noted, however, that young people sometimes provoked the police and adults felt intimidated and frightened by them. Alcohol consumption was seen as a key factor both in young people perpetrating violence but also in them being victims of violence. Northern Ireland was, and still is, a society in

⁶ This is based upon a total white population of 1.7m (Census 2001) and the highest estimation of 3,900 Travellers (AITHS 2010).

⁷ It is to be noted that the category 'youths causing annoyance' has been removed by the PSNI as a category of offending: see further at page 28. See also Recommendation 19 at page 86.

which housing, education and services are segregated. Those who live in interface areas still suffer serious and sporadic incidents of violence.⁸

The Northern Ireland Policing Board Human Rights and Professional Standards Committee (the Committee), as part of its continuing duty to monitor the PSNI's compliance with the Human Rights Act 1998 and to ensure the fair, efficient and effective policing of all of the people of Northern Ireland identified policing with children and young people as a key priority and has carried out a thematic review of PSNI policing with children and young people. Further to that, the Committee met with a number of organisations and individuals who work with children and young people from difficult social realities. The following is informed by, amongst other things, the views of young people and those people who work with, and know, the children and young people who are often spoken *about* but rarely spoken *to*. The Committee was struck by their message and considers it important to begin this thematic review with a pledge: that children and young people must be protected and respected and no longer subjected to unfair and inaccurate stereotyping.⁹

“Children and young people come into conflict with the law for a range of complex reasons. Social exclusion, political alienation and economic deprivation are central to the problems faced daily... contributing to what is perceived or labelled ‘anti-social’ or ‘offensive’ behaviour. Yet early intervention strategies generally focus on the prevention of offending and community safety targeting children and young people as ‘troublesome’ individuals... young people’s offending and anti-social behaviour, particularly when repeated regularly reflects unmet complex needs. These combine to define and restrict their daily lives, leaving them with a deep sense of rejection and powerlessness... They are often survivors of childhood traumas such as

⁸ *Young People’s Attitudes and Experiences of Policing, Violence and Community Safety in North Belfast*, 2005, ICR for the Northern Ireland Policing Board.

⁹ It is important to note that such negative stereotyping is not the responsibility of the police alone. Society has created an environment in which children and young people have been categorised as a problem. While the police have a part to play, the role of other statutory agencies and society in general should not be underestimated. This is discussed further at pages 14 - 17.

sexual or physical abuse, domestic violence¹⁰ or living in unsafe neighbourhoods.”¹¹

“Despite evidence demonstrating the debilitating impact on children’s lives and self-esteem of trauma, violence and/or deprivation, their consequent behaviour is publicly denounced as ‘anti-social’ or ‘delinquent’. Mental ill-health, regularly revealed through depression, self-harm and suicide, is often undiagnosed or inappropriately treated. In such circumstances, children’s low self-esteem is consolidated – their voices rarely heard, their opportunities limited and advocacy denied.”¹²

The Committee does not underestimate the grave hurt and harm caused to communities by offending behaviour but rejects the argument that somehow community safety is prejudiced by the police (and other agencies) adopting a rights-based (and child-centred) approach. The Committee believes that children and young people and the communities within which they live are better served by a multi-agency approach to tackling the complex needs of young people rather than simply punishing them. The PSNI has, by some initiatives noted further below, shown leadership by ensuring that diversionary methods are available to deal with children and young people. There remains a gap however in service delivery which the police cannot, and should not be required to, fill. As is discussed elsewhere in this report, the police require the support of partner agencies to provide support to young people in crisis. On that basis, the Committee wishes to endorse police service delivery which is preventative, diversionary and which has the best interests of children and young people at the centre of its functions.¹³

¹⁰ In its thematic review of domestic abuse policing, the Committee heard of the links between domestic abuse within the home and young people’s exposure to risk-taking and criminal offending. The thematic review can be downloaded at www.nipolicingboard.org.uk.

¹¹ *A Manifesto for Youth Justice in Northern Ireland* Include Youth, October 2008. Include Youth works with children and young people from socially disadvantaged areas, those with special needs, those who have poor educational experiences, those from a care background, young people who have committed or are at risk of committing crime and those who are misusing drugs or alcohol.

¹² *Ibid.*

¹³ The Committee will highlight in this respect the PSNI initiative of Integrated Offender Management (IOM) the aim of which is to turn around the lives of offenders by

Aside from the humanitarian and human rights considerations, the Committee is persuaded that this approach also makes sense in terms of economics and efficacy.¹⁴ A policing strategy needs to reach the most at-risk and marginalised children and young people and must be based upon evidence of what works. Any strategy that does not grow out of real evidence, with a clear focus on achieving real results, is bound to fail.

According to research carried out by the Queen's University of Belfast "across Northern Ireland several high profile incidents of serious violence... have been represented by politicians and the media as inevitable outcomes of escalating 'crisis' in the criminal and anti-social behaviour of children and young people. Local 'family feuds', 'breakdown' in parental responsibility and control, the emergence of a marginalized 'underclass' youth with ready access to alcohol and drugs, communities unable to self-regulate in the context of a deficit in official policing, have been portrayed as evidence of individual and social pathology with families labelled 'inherently evil', their children as 'scum'. Within this climate, progress in challenging negative representations of children and young people and proactively working to fulfil their rights has been inhibited, if not reversed."¹⁵

The Committee appreciates that the PSNI is operating within a challenging environment. Resources are limited and the security threat is real. That cannot be underestimated. The Committee wishes to encourage and support the PSNI to continue to engage with local communities in a meaningful and sustained way and to tackle crime and anti-social behaviour at the local level, relying on local expertise and the work already underway by community-based groups to prevent offending by focusing on the *causes* of offending.

It may seem trite but it must be a fundamental principle that our children and young people must be valued, listened to and viewed as part of the solution to

providing a gateway for them to halt their pattern of offending. IOM is discussed at page 129 below.

¹⁴ The Youth Justice Board has reported that in the UK the amount spent on 'locking up' young people is 11 times greater than is spent on preventative projects.

¹⁵ *Children, Rights and Justice in Northern Ireland: Community and Custody*, 2008, Una Convery, Deena Haydon, Linda Moore and Phil Scraton.

the continuing challenges in Northern Ireland, rather than the problem. That must be the starting point for any consideration of a policing with young people strategy. Over the course of many months the Human Rights and Professional Standards Committee has received oral testimony and written submissions from a wide range of stakeholders including those working with the most marginalised young people. The Committee has been impressed by the level of commitment and dedication shown by all those organisations and individuals and, perhaps more importantly, is persuaded by the strength of the arguments.

This thematic review signals the beginning of a process, not the final word. This report has, necessarily, limited the terms of reference. It cannot cover every issue and it does not provide answers to every question but, it is hoped, will raise awareness of the issues, make some helpful recommendations and start the process of monitoring and review. The Committee will continue to monitor closely the PSNI response to tackling the issues and welcomes the continued input of the PSNI and the statutory and voluntary sectors.

The Committee is grateful to the PSNI for its co-operation in this thematic review and its willingness to discuss difficult issues. Some of this thematic review may be challenging but it is intended to provide an opportunity to explore further the issues and solutions in collaboration with the PSNI. To put the findings and recommendations fully in context, the review must be read as a whole. Extracts should not be relied upon out of context. Throughout the review, reference is made to good practice guidance and to formal recommendations. The Committee expects the PSNI to consider both the guidance and the recommendations. It should not be assumed that if a recommendation is made it necessarily means that the PSNI has failed in some way. A small number of recommendations formalise what may already be PSNI practice. However, it is important that practice *is* formalised to ensure that it is always followed.

TERMS OF REFERENCE

- The policing of anti-social behaviour including anti-social behaviour orders and a consideration of the 'naming and shaming' practice adopted in England and Wales which may extend to Northern Ireland.¹⁶
- Police practice and policy regarding the dispersal of groups of young people, public order and crowd control, stop and search and other powers to control the activities of children and young people. Regard will be had to community engagement, strategic planning and community safety issues.
- Alternatives such as diversionary disposals and community restorative justice.

LEGAL CONTEXT¹⁷

Section 32 of the Police (Northern Ireland) Act 2000 imposes a general duty on police officers to: protect life and property; to preserve order; to prevent the commission of offences; and, where an offence has been committed, to take measures to bring an offender to justice.¹⁸ The Human Rights Act 1998 came into force in October 2000 and imposes a duty on all public authorities in the United Kingdom, including the police, to act in a way which is compatible with the individual rights and freedoms contained within the European Convention on Human Rights (ECHR).¹⁹ Those rights and freedoms apply equally to children and adults and include the right to life;²⁰ the right not to be subjected

¹⁶ It is important to make plain that the Committee chose to include anti-social behaviour in this thematic review not because it is perpetrated by children and young people but because society assumes falsely that young people are the main protagonists of anti-social behaviour. As the PSNI has recognised, anti-social behaviour is often at the top of the list of priorities for District Policing partnerships. While anti-social behaviour is undoubtedly an issue of concern for the community and for the police it is essential that both society generally and agencies responding to allegations have a true picture of the nature and scale of the problem. As the Committee has seen, young people are not the main protagonists but, rather, have been unfairly stereotyped as such. That misconception must be addressed.

¹⁷ This section sets out only the key provisions of law relevant to policing in Northern Ireland as it relates to children and young people. It does not provide an exhaustive overview of the law in this area.

¹⁸ Section 32(1) Police (Northern Ireland) Act 2000.

¹⁹ Section 6 Human Rights Act 1998.

²⁰ Article 2 ECHR.

to torture, inhuman or degrading treatment or punishment;²¹ the right to a fair trial and the presumption of innocence until proven guilty;²² the right to respect for private and family life;²³ freedom of thought, conscience, and religion;²⁴ freedom of expression;²⁵ and freedom of assembly and association.²⁶

Police officers must ensure when carrying out their duties that the enjoyment of the rights and freedoms contained within the ECHR are secured for all members of the public without discrimination on any of the relevant grounds.²⁷ Furthermore, officers must have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status, sexual orientation, sex, between persons with a disability and persons without, and between persons with dependants and persons without.²⁸ To treat people equally does not mean treating all people in the same way: it requires the police to take differences into account and provide a service tailored to specific needs to ensure that all individuals, regardless of, for example, age, gender or sexual orientation enjoy equal access to the benefit and protection of the ECHR.

Where children are concerned, the PSNI must comply not only with the ECHR but must also have regard to a number of other international instruments that set down standards specifically in relation to children. Most significant of those is the United Nations Convention on the Rights of the Child (UNCRC).²⁹ The UNCRC is a legally binding international agreement that came into force in the United Kingdom in January 1992. The UNCRC spells out the basic human rights that children everywhere – without discrimination – have: the right to

²¹ Article 3 ECHR.

²² Article 6 ECHR.

²³ Article 8 ECHR.

²⁴ Article 9 ECHR.

²⁵ Article 10 ECHR.

²⁶ Article 11 ECHR.

²⁷ Article 14 ECHR.

²⁸ Section 75 Northern Ireland Act 1998 and Article 6.2 PSNI Code of Ethics 2008. The PSNI Code of Ethics sets down standards and behaviours expected from police officers and provides guidance on how they should conduct themselves.

²⁹ The other international instruments are: the Beijing Rules (1985); the Tokyo Rules (1990); and the Riyadh Guidelines (1990). Although none are legally binding in the United Kingdom, PSNI Policy Directive 13/06 *PSNI Policing with Children and Young People*, section 3(3)(6) requires the police to apply the human rights standards contained in the Rules to police interactions with children and young people.

survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. It further protects children's rights by setting standards in health care, education and legal, civil and social services. The UNCRC also takes into account the need for children to have special assistance and protection due to their vulnerability.

While the UNCRC has not yet been incorporated into UK law (and therefore cannot be *directly* enforced by an individual in a domestic court) it is "legitimate to assume that Parliament has not maintained on the statute book a power capable of being exercised in a manner inconsistent with the treaty obligations of this country".³⁰ Furthermore, the European Court of Human Rights has held that, when considering the rights and freedoms enshrined in the ECHR, particular importance should be attached to the rights of the child.³¹ The rights of the child may, depending upon the circumstances, override other ECHR rights.

The police should apply the UNCRC in its entirety and in doing so must pay particular attention to the following core principles contained within the UNCRC: the right to life;³² the best interests of the child must be paramount;³³ the State has a duty to protect children from all forms of violence;³⁴ children have a right not to be discriminated against;³⁵ and, children have a right to have their opinions taken into account in matters concerning them and a right to freedom of expression.³⁶ While the UK Government has not incorporated the UNCRC into domestic law it is clear that UK courts considering a claim under the Human Rights Act 1998 will take the UNCRC into account. That should include the General Comments and Concluding Observations of the UN Committee on the Rights of the Child.

³⁰ Lord Browne-Wilkinson in *R v Secretary of State for the Home Department, ex parte and Thompson* [1997] 3 WLR 23, at 49F-H.

³¹ See e.g. the decision of the Grand Chamber in *Sahin v Germany* (Application no. 30943/96), July 2003.

³² Article 6 UNCRC.

³³ Article 3 UNCRC.

³⁴ Article 19 UNCRC.

³⁵ Article 2 UNCRC.

³⁶ Articles 12 and 13 respectively.

In terms of youth justice, the stated principal aim of the youth justice system in Northern Ireland is to protect the public by preventing offending by children.³⁷ All persons and bodies exercising functions in relation to the youth justice system, including the PSNI, must have regard to that principal aim, with a view (in particular) to encouraging children to recognise the effects of crime and to take responsibility for their actions.³⁸ All such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.³⁹

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) provide that the juvenile's right to privacy must be respected at all stages in order to avoid harm being caused to him or her by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender may be published.⁴⁰ The juvenile's right to privacy (whether alleged against, accused of, or convicted of, offending behaviour) is paramount.⁴¹

All of the legal requirements and principles outlined in this section should be considered and incorporated into all aspects of policing insofar as they affect, or have the potential to affect, children and young people: from policy writing, to training, to operational planning, to frontline policing. The PSNI has developed a 'screening tool' for all police policy which attempts to 'child-proof' operational guidance and procedures. That is an excellent start but is not sufficient on its own. A policy is only as good as the training which follows it and the practical application of it by each and every officer.

³⁷ Section 53(1) Justice (Northern Ireland) Act 2002. A "child" includes anyone under the age of 18 years old.

³⁸ Section 53(2) Justice (Northern Ireland) Act 2002.

³⁹ Section 53(3) Justice (Northern Ireland) Act 2002.

⁴⁰ Rule 8.

⁴¹ The United Nations Minimum Rules for the Administration of Justice.

PSNI POLICY

PSNI Policy Directives, Service Procedures and guidance set out the legal framework and boundaries within which the police must carry out their duties. The overarching Policy Directive *PSNI Policing with Children and Young People* was reviewed and revised in May 2008. That revision was subject to internal and external consultation. External consultees included young people from PSNI's Independent Advisory Groups. The policy is in a child friendly format and has been distributed widely. That policy was again reviewed and reissued on 15 January 2010. It considers contextual issues concerning young people and policing in Northern Ireland and incorporates UNCRC standards.⁴² The UNCRC is appended to the policy. It should be noted that appending the UNCRC is a very positive addition, however that in itself is insufficient if the principles espoused by the UNCRC are not translated into practice. Accordingly, practice as well as policy must be scrutinised.

The PSNI policy provides a general framework for police interaction with children and young people. It states that "police engagement with children and young people from an early age can only pay dividends, supporting communities and building positive relationships thereby encouraging young people to play an active part in society."⁴³ It reminds officers that they ought to "engage with children and young people in an open minded manner to understand and address their concerns in the most appropriate way for each individual."⁴⁴ The policy states that "in order to build and maintain positive relationships with and between children and young people officers must be visible and accessible where resources and security allow. Members, especially Neighbourhood Policing Teams, should use foot patrolling to enhance contact and familiarity with children and young people... communicating important messages to young people is easier and more impactful [sic] if delivered by local officers who are known."⁴⁵

⁴² *PSNI Policing with Children and Young People*, PSNI Policy Directive 13/06, January 2010, section 3(1)(a).

⁴³ *Ibid.* section 3(1)(b).

⁴⁴ *Ibid.* section 3(1)(e).

⁴⁵ *Ibid.* sections 7(1)(2) and 7(1)(4).

Foot patrolling and contact with children and young people can enhance relationships but only if the contact is positive. Foot patrolling and contact can be counter-productive if the officers are not fully aware of the issues affecting children, appreciative of their particular vulnerabilities, respectful to and engaged by them. When making contact with young people during a patrol it is essential that officers listen to what the young people have to say and answer their questions. As discussed further below, almost every person who made a submission to the Committee expressed satisfaction with some officers but a high level of dissatisfaction with other officers. It was certainly made clear that the first and most fundamental factor which influences police practice is the 'mindset' of officers as they go about their business. While the PSNI is mindful of the issues, it would seem that the level of service delivery is not consistent across Northern Ireland. The PSNI is developing a process whereby a police officer's understanding of the issues and his or her ability to engage positively with young people is a factor relevant to promotion prospects and career development. That is a welcome development and displays a genuine understanding by the PSNI of the importance of policing with children and young people both to the organisation's ability to police effectively and of the wider benefits to society.

The policy states that "mid to late teenage years are a difficult time whereby some young people come into contact with the criminal justice system."⁴⁶ However, the policy also recognises that there are many circumstances when children and young people come into contact with the police due to complaints from members of the public based on a negative perception associated with the young people concerned rather than based on evidence or fact, and that "young people are much more likely to be victims of crime than older people."⁴⁷ That is undoubtedly correct. Whether, however, the principle has been applied across the PSNI at all ranks and within all Districts is more questionable. Recent media coverage of young people involved in disorder in North Belfast and Derry/Londonderry presented a distorted picture of Northern

⁴⁶ *Ibid.* section 3(1)(d).
⁴⁷ *Ibid.* section 3(1)(e).

Ireland's young people and has, very likely, contributed to their further demonisation.

Where a problem exists, policy states that children and young people must be seen as part of the solution and not just as part of the problem. The involvement of children and young people in problem solving needs to go beyond consultation and should involve active engagement. Officers are advised within policy guidance that they should be careful not to underestimate the influence or advice that young people can bring when asked to solve problems that affect them. Consultation is advocated with, for example, advisory groups, District Policing Partnerships, statutory bodies and agencies working with marginalised and hard to reach children and young people. The policy emphasises "a local approach to local problems."⁴⁸ This overarching policy is supplementary to other Policy Directives and Service Procedures dealing with other specific issues such as child protection⁴⁹ and youth diversion.⁵⁰ Additionally, the vulnerability of children is highlighted in policy governing, for example, the use of force.⁵¹ Those policies that are particularly relevant to the terms of reference of this thematic review will be discussed in greater detail below.

The PSNI Code of Ethics 2008 records that the "police service promotes policing with the community as a core function of all policing activity." Article 1.2 of the Code of Ethics 2008 requires officers to carry out their duties in co-operation with the local community. It reminds officers that they may have special responsibilities in relation to children and young people.⁵² It is said elsewhere, but it is worth repeating: critical to the success or failure of the PSNI in this context is the translation of policy into practice. Officers must not only know the contents of the policy and understand the framework within

⁴⁸ *Ibid.* section 7(3).

⁴⁹ *Police Service of Northern Ireland Child Protection Policy*, PSNI Policy Directive 06/05, August 2009.

⁵⁰ *Youth Diversion Scheme*, PSNI Service Procedure 17/2008, September 2009.

⁵¹ *Public Order and Use of Force*, PSNI Policy Directive 07/07, April 2009.

⁵² *Police Service of Northern Ireland Code of Ethics 2008*, which is available at www.nipolicingboard.org.uk.

which the policy operates, they must ensure that the *spirit* of the policy is followed.

THE POLICING OF ANTI-SOCIAL BEHAVIOUR

At the outset, it must be emphasised that anti-social behaviour has been included within this thematic review not because children and young people are the protagonists of anti-social behaviour but because they are often *perceived to be* the protagonists. This thematic review attempts to dispel that myth.

Anti-social behaviour is a term applied to a wide variety of behaviour from serious violence and intimidation to relatively minor disturbance causing subjective feelings of annoyance. Research has shown that the perception of anti-social behaviour is not matched by actual levels of anti-social behaviour. For example, one person may interpret a behaviour as anti-social while another may interpret the same behaviour as youthful exuberance. That is not to undermine the real and often serious harm that persistent serious anti-social behaviour can cause for people and neighbourhoods but in order to assess and thereafter develop an effective strategy, the nature and scale of the problem must be known.

Northern Ireland Government departments do not collect and analyse disaggregated data in respect of children's lives. There is no standardised methodology for collecting data across Northern Ireland departments and agencies. Neither is data compared across the jurisdictions. Information about specific groups is limited and is not co-ordinated. Information collected is not disaggregated to reflect local concentrations, which impedes planning and the appropriate allocation of resources.

In a community built upon mutual empathy and respect, studies show a reduction in the *perception* of anti-social behaviour. To put it another way, the more we know and understand other members of our community, for example

young people, the less likely we are to consider them a threat⁵³ Therefore, it seems clear that strategies which are founded upon meaningful community engagement and which are aimed at building mutual empathy and respect are more likely to result in a more effective and targeted response. There can be little doubt that increased community cohesion can develop trust between all members of the community and foster better relations. All of the research carried out in the UK suggests that anti-social behaviour and the perception of anti-social behaviour is associated with poor social and economic conditions such as poverty, social deprivation and a lack of social integration and equality. As stated above, the perception of anti-social behaviour rarely matches the actual level of anti-social behaviour in a community.

Children and young people have been subjected to negative stereotyping for centuries, which then feeds perceptions of anti-social behaviour. That needs to be addressed by society as a whole. As members of society, police officers are likely to share some of society's misconceptions and therefore be influenced by society's negative stereotyping. In any event, the negative stereotyping and inaccurate perception of anti-social behaviour (particularly related to children and young people) almost certainly results in increased numbers of reports and therefore an increased focus by the police in response. The police are required to respond to reports received, sometimes to find that no criminal or other offending behaviour has taken place. To enable the police to allocate resources effectively and efficiently, society must address collectively its false perceptions of anti-social behaviour. It is the responsibility of all government departments and statutory agencies to work together to ensure that the PSNI is able to concentrate its limited resources on policing criminal activity.

The police must respond appropriately to incidents of criminal offending rather than subjective estimations of annoyance. To do so, the police service needs to have a clear picture of the actual levels of anti-social behaviour within its

⁵³ See, for example, the report commissioned by the Home Office *The drivers of perceptions of anti-social behaviour*, Mackenzie, Bannister, Flint, Parr, Millie and Fleetwood, Research Report 34, March 2010.

Districts and a better understanding of who is committing the anti-social acts, and why. With resources strained, a targeted approach which identifies the true nature and scale of the problem is, surely, a priority. The PSNI should collect data so as to identify the true nature and extent of anti-social behaviour and in particular should record whether the victim or perpetrator is under the age of 18 years. It must however be recognised that the police cannot routinely *demand* a person's age. The PSNI already records, as discussed elsewhere, approximate age. The collection and analysis of such data should not, however, be left to the police alone. The police rely on the information of other agencies such as the Public Prosecution Service, the Court Service and Health and Social Services. The Committee considers it important that all relevant agencies co-operate with each other and with the PSNI to identify the nature and scale of the problem to enable the police to better target its policing response.

Recommendation 1

The PSNI should record, for every reported incident of anti-social behaviour, the age or approximate age of both victim and perpetrator.

The police service cannot redress society's negative stereotyping nor can it tackle the reasons for and many consequences of anti-social behaviour on its own. What is required, it seems, is a committed joined up strategy which brings all of the relevant players together to focus on tackling the complex conditions which foster anti-social behaviour and the perception of anti-social behaviour. An overarching strategy with one single lead agency which takes responsibility for early intervention may be one solution but is outside the remit of this review.

In a study undertaken by the Institute for Conflict Research in the Creggan area of Derry/Londonderry⁵⁴ young men believed that by simply standing at the corner shop, they attracted complaints. That contributed to their perception of being victimised by the community. The same views were

⁵⁴ *Creggan Community Restorative Justice: An Evaluation and Suggested Way Forward*, Institute for Conflict Research, 2001.

expressed during the course of this thematic review with youth workers highlighting the ensuing alienation of young people. Young people who are alienated are more likely to come into contact with the police for anti-social behaviour because “comprehensive feelings of victimisation, in the absence of any positive or rewarding response to young people from the community makes it difficult for young people to see the difference between acceptable and unacceptable behaviour, since all their behaviour meets with censure”.⁵⁵ The report was clear that young people desired positive adult attention and affirmative interaction with adults. A lack of mutual trust, however, prevented that from happening.

Recent media coverage and commentary about children and young people, crime (for example rioting) and anti-social behaviour has generated a wide-ranging debate. Quite often, however, the debate is based upon misinformation, prejudice and distrust. If the police and relevant agencies are committed to tackling both the consequences of offending by young people *and* the complex disadvantage suffered by many of those young people it is incumbent upon all of them to dispel the myths and engage in a debate with courage and compassion. The Committee wishes to facilitate that debate and to provide a forum for the exchange of views. Not only would stakeholders express their views and raise their concerns, the PSNI may also express their views and explain their actions.

Police officers responding to reports of anti-social behaviour involving children and young people should be reminded during the operational briefing that they must deal with children and young people in a way which appropriately reflects their vulnerability and with an awareness of the issues they face. PSNI policy provides that prior to the commencement of any operation or engagement of resources to tackle matters relating to anti-social behaviour etc. reference must be made to the rights, vulnerabilities and issues faced by those children and young people potentially involved through operational briefings. It also provides that advice should be sought from Community

⁵⁵ *Ibid.*

Safety staff, Youth Diversion Officers and Anti-Social Behaviour Officers. To that should be added: advice from members of Public Protection Units who should be aware of any particular issues of concern for a child or young person. If Recommendation 25 below is accepted, Youth Diversion Officers will be made available to Public Protection Units and will have access to all relevant information concerning a young person who may be at risk.

During the course of the thematic review, the Human Rights Advisor to the Board observed live operations in which children and young people came into contact with the police. During the Gold and Silver Command briefings the rights and vulnerabilities were highlighted effectively and, during the operations, close attention was paid to the application of the relevant principles. Throughout the operations, decisions were reviewed to ensure that the rights of the children and young people were protected. In those operations at least the PSNI displayed an understanding of the principles but also, and more importantly, exhibited a real commitment to applying the principles in a practical and effective way.

Unfortunately, based upon submissions made to the Committee, it would seem that cannot be said of all operations and the Committee will therefore be monitoring closely live operations concerning children and young people for the following 12 months. In the meantime, PSNI should involve youth advisers, whether from within the PSNI or from the voluntary sector, in the planning of operations involving children and young people.

Recommendation 2

PSNI should involve youth advisers in the planning of operations involving children and young people.

The Human Rights and Professional Standards Committee understands and respects the concern expressed by some members of the community about youth offending but cannot accept that the problem is solved simply by harsher policing or more punitive sanctions. That is particularly the case where, as was the evidence of all of those who appeared before the

Committee, the young people concerned are more likely to be victims of offending behaviour than perpetrators. Furthermore, the Committee is aware that many of the young people in contact with the police and the criminal justice system have, for example, had negative experiences, are learning disabled, have drug or alcohol dependencies, are from deprived neighbourhoods or have suffered physical or emotional abuse.

The Committee is strongly of the view that such young people need a variety of support and interventions before they need punishment. Ultimately, it is more effective and therefore more likely to satisfy communities who may feel threatened by real and perceived offending by young people. The PSNI also recognises that and has been proactive in establishing, for example, early intervention, integrated offender management, diversionary disposals and leadership programmes. The Committee wishes to encourage long-term constructive solutions which build upon community partnerships.

Recommendation 3

To engage effectively with communities, particularly with children and young people, the PSNI should develop an outward facing team of officers with community policing experience in each District.

Anti-Social Behaviour Forums (ASBFs)

An Anti-Social Behaviour Forum (ASBF) is a District-based initiative established to share information and discuss local issues of anti-social behaviour. Within an ASBF the PSNI, the Northern Ireland Housing Executive (NIHE), District Councils, and the Youth Justice Agency (YJA) are represented. An inspection by the Criminal Justice Inspection Northern Ireland (CJINI) in 2008 found that the PSNI often takes the lead in an ASBF.⁵⁶ The primary aim of the ASBF is to divert persons away from the Criminal Justice

⁵⁶ *Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs*, Criminal Justice Inspection Northern Ireland (CJINI), October 2008.

System.⁵⁷ They consider both individual cases and a strategic approach to addressing anti-social behaviour at neighbourhood level.⁵⁸ The ASBF's aim is to engage with local partners to ensure that a "broad spectrum of appropriate alternative methods can be co-ordinated to tackle anti-social behaviour."⁵⁹ PSNI works with the YJA to ensure that prohibitions in Anti-Social Behaviour Orders (ASBOs) or other diversionary initiatives do not contradict other conditions already imposed on an individual by a court or through other means.

If the ASBF does not consider whether and if so what support is needed by the alleged perpetrator, that seems to be a missed opportunity and to undervalue the importance of strategic and local partnership. Furthermore, any intervention is unlikely to be effective if it does not target the cause of the young person's behaviour and seek to provide for it. The Committee believes that ASBFs would benefit from greater community involvement particularly with those organisations and individuals within the voluntary sector who should be invited to contribute. Some very positive examples of such partnership are already apparent across Northern Ireland. For example, in the Short Strand area of Belfast one of the first steps taken by police officers in response to complaints of disorder is to make contact with local youth workers. Youth workers and police should be encouraged to build upon those relationships.

Recommendation 4

The PSNI should, through its participation in Anti-Social Behaviour Forums, develop links with local youth workers with the aim of addressing more effectively anti-social behaviour. Those partnerships should be represented on the Anti-Social Behaviour Forums.

PSNI policy on ASBFs requires that an ASBF reviews its Community Engagement Processes to ensure that they: publicise the work carried out;

⁵⁷ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 21(2).

⁵⁸ *Ibid.* section 21(3).

⁵⁹ *Ibid.* section 21(5) and see also CJINI, October 2008, para. 3.17.

maintain and develop local communication with the wider public; provide consistent information to victims and witnesses who might help monitor behaviour or who may be directly affected by it; and provide clear community education to ensure that ASBOs and other anti-social behaviour strategies, and their potential consequences for individuals, are understood by the community.⁶⁰ Missing in that list appears to be any requirement to consult with and *pay regard to* the views of the community including the alleged perpetrators or those who work with alleged perpetrators. While there may be other mechanisms for such engagement, they appear to be piecemeal and pay insufficient regard to the complex issues which combine to create anti-social behaviour and perceptions of anti-social behaviour. The policy does recognise that communities can provide support and create dialogue within the community itself to support rather than sanction those most vulnerable or marginalised in society.⁶¹ That must not become simply a mantra but must be truly and practically enshrined in all the activities of the ASBF.

Whilst the Committee appreciates that the PSNI's Community Engagement Process is, in part, responding to a recommendation made by CJINI,⁶² the Committee reminds officers that publicity which may identify an individual or an individual's family must be a lawful, necessary and proportionate means of addressing anti-social behaviour: it must not discriminate or result in a certain individual or group of individuals being victimised within their communities. In particular, in communities where paramilitaries/armed groups still operate and administer their own version of 'justice', publicising information that allows for a child or young person to be identified could result in serious harm and physical injury being caused to the child or young person. The PSNI must proactively ensure that the child or young person's Article 2 ECHR right (the right to life) and the Article 3 ECHR right (not to be subjected to torture, inhuman or degrading treatment) are protected at all times. Issues in relation

⁶⁰ *Ibid.* section 21(6).

⁶¹ *Ibid.* section 21(6).

⁶² *Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs*, Criminal Justice Inspection Northern Ireland (CJINI), October 2008, para. 2.11.

to publicising anti-social behaviour orders are considered in greater detail in the 'Naming and Shaming' section of this review.⁶³

Anti-Social Behaviour Officers

Most PSNI Districts have an Anti-Social Behaviour Officer whose core function is to deal with anti-social behaviour. The role includes: liaison with all agencies involved in seeking to reduce anti-social behaviour; regular attendance at anti-social behaviour forums; involvement, oversight and management of anti-social behaviour reduction work in the District; and internal and external promotion of the PSNI commitment to reduce anti-social behaviour. Anti-Social Behaviour Officers act as the central keeper of records in relation to anti-social behaviour in their District.⁶⁴ During its 2008 inspection the CJINI found that in areas where there were no dedicated Anti-Social Behaviour Officers there was, on occasion, a lack of co-ordination or pro-activity in the setting up and effective running of the ASBFs.⁶⁵ CJINI Inspectors were also told by PSNI officers that they "felt that officers on the ground (i.e. response officers) had very limited knowledge of ASBOs which led to problems with identifying and addressing breaches. This was particularly a problem in areas where there was no nominated [Anti-Social Behaviour] officer who could provide information to response and sector/neighbourhood officers and educate them within the District."⁶⁶

The Anti-Social Behaviour Officer role was not a recognised role but one that developed over time. Districts 'B', 'D', 'E', 'F' and 'H' have officers who have specialised in anti-social behaviour interventions. There were no specialist officers in 'A', 'C' or 'G' Districts. A recommendation was made in the CJINI inspection report that PSNI senior management enhance the knowledge of PSNI officers in operational roles in relation to ASBOs in order to enable them

⁶³ See page 45.

⁶⁴ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 22.

⁶⁵ *Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs*, Criminal Justice Inspection Northern Ireland (CJINI), October 2008, see e.g. para. 3.8.

⁶⁶ *Ibid.* para. 5.4

to address breaches more effectively.⁶⁷ The Committee will be pursuing that with the CJINI firstly and thereafter with the PSNI.

The PSNI considers that service delivery in relation to anti-social behaviour can be achieved by better use of neighbourhood officers who would draw on the skills of colleagues who had previously assumed the role of Anti-Social Behaviour Officer. In other words, it would appear that the Anti-Social Behaviour Officer role/duties will no longer be assumed by a designated officer. That is disappointing, particularly given the publicity surrounding alleged anti-social behaviour and the perception of anti-social behaviour. If the role is absorbed by neighbourhood officers who have to continue to perform all of their other roles and duties it seems unlikely that the skills and knowledge base will improve; it is more likely that expertise, experience and relationships built through local partnership working will be lost. There will no longer be an identifiable point of contact for communities and other agencies. Neither will there be an officer taking the lead on anti-social behaviour and co-ordinating the service's approach.

Recommendation 5

The PSNI should provide within each District a nominated Anti-Social Behaviour Officer who has received the bespoke youth training as per Recommendation 24 of this thematic review.

Anti-Social Behaviour Orders (ASBOs)

In the event that Anti-Social Behaviour Orders (ASBOs) continue to be a tool available in Northern Ireland to tackle anti-social behaviour, the Committee suggests the following practice should be applied by the PSNI.

The Anti-Social Behaviour (NI) Order 2004⁶⁸ (the 2004 Order) introduced the Anti-Social Behaviour Order (ASBO) to Northern Ireland. The 2004 Order enables designated authorities to apply to the magistrates' court for an ASBO

⁶⁷ *Ibid.* para. 6.16.

⁶⁸ This came into force on 25 August 2004.

restricting the future behaviour of a person who has been committing anti-social behaviour. The 2004 Order has since been amended by the Criminal Justice (NI) Order 2005.⁶⁹ The authorities that may apply for an ASBO are:⁷⁰ a district council; the Northern Ireland Housing Executive; and, the Chief Constable who may apply in respect of any person in Northern Ireland.⁷¹

Before applying for an ASBO the relevant authority must consult.⁷² For example, a district council must consult the Chief Constable⁷³ and the Chief Constable must consult the relevant district council and (if the person resides or appears to reside on premises provided or managed by the Housing Executive) he must also consult the Housing Executive. The requirement to consult is more than merely procedural. Consultation should be meaningful and should consider whether an application for an ASBO is the most appropriate and proportionate means of proceeding. The consultation should enable the relevant agencies to consider whether, in fact, the child or young person who is alleged to be committing anti-social behaviour could be better dealt with by co-ordinating the provision of support and other services.

Recommendation 6

In advance of any decision to apply for an ASBO the PSNI should consult the statutory agencies required by the 2004 Order and other statutory or voluntary agencies with which the child or young person has been in contact.

⁶⁹ Which came into force on 18 September 2006.

⁷⁰ Art. 2 of the 2004 Order. The Secretary of State may by order add to the category of relevant authorities: art. 2(2) of the Criminal Justice (NI) Order 2005. Whether registered social landlords such as housing associations will be added is a contentious matter but, given the practice in England and Wales, it is likely they will be.

⁷¹ The Chief Constable may delegate his functions to designated officers: art. 2(6) of the 2004 Order.

⁷² Art. 5 of the 2004 Order.

⁷³ The Chief Constable may delegate his consultation function to designated officers, art. 2(6) of the 2004 Order. Furthermore, it is not for the courts to second guess the Chief Constable's choice of rank or person to whom the power was delegated unless that choice was irrational or *ultra vires*, *Chief Constable of the West Midlands v Birmingham Justices* [2002] EWHC 1087 (Admin).

An ASBO may be applied for in relation to any person aged ten years or over if: the person has acted in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself/herself; and that such an order is necessary to protect relevant persons from further anti-social acts by him/her.⁷⁴ By including behaviour which is likely to cause harassment etc. the legislation has permitted, some say encouraged, the subjective interpretation of others' behaviour. That can lead to real difficulties both for the victim of anti-social behaviour and for the person accused of anti-social behaviour.

The British Crime Survey measures *perceptions* of anti-social behaviour based on seven strands of behaviour. One strand, "teenagers hanging around on the streets" cannot on any objective assessment be categorised, in and of itself, as anti-social. It would appear that the mere presence of young people on the streets is perceived by some as anti-social. Police or governmental action which reinforces that message will simply feed into negative stereotyping of young people and increase the perception of anti-social behaviour and social decline where none exist.

Following a visit to the United Kingdom in 2004 the Council of Europe's Commissioner for Human Rights, Mr Alvaro Gil-Roble, commented, "What is so striking, however, about the multiplication of civil orders in the United Kingdom, is the fact that the orders are intended to protect not just specific individuals, but entire communities. This inevitably results in a very broad, and occasionally, excessive range of behaviour falling within their scope as the determination of what constitutes anti-social behaviour becomes conditional on the subjective views of any given collective. It also makes it difficult to define the terms of orders in a way that does not invite inevitable breach. This is particularly important as the breach of an order is a criminal offence with potentially serious consequences. At first sight, indeed, such orders look

⁷⁴ Art. 3(1) of the 2004 Order.

rather like personalised penal codes, where non-criminal behaviour becomes criminal for individuals who have incurred the wrath of the community.”⁷⁵

PSNI ASBO policy provides no definition of anti-social behaviour other than that included in the legislation and states that the fact it is not defined in the legislation “allows for ASBOs to be used in a wide variety of circumstances.”⁷⁶ The policy refers to examples included in Appendix C to the Northern Ireland Office (NIO) guidelines for practitioners.⁷⁷ Appendix C recommends applying for an ASBO when there is a persistent pattern of behaviour of a serious nature which cannot be dealt with easily or adequately by other remedies. The guidelines give examples of anti-social behaviour. Included are acts which are not ‘anti-social’ but criminal, for example, hate related incidents; taking and driving away a vehicle; and criminal damage. The PSNI policy clearly states that “ASBOs are not a substitute for a weak criminal case” and that criminal matters should be fully investigated and full use made of both the Adult and Youth Diversion Schemes.⁷⁸ The majority of submissions to the Committee during the course of this thematic review criticised ASBOs as, amongst other things, ineffective. Furthermore, many indicated that the police service was failing to deal with serious criminality, which could not be dealt with by way of an ASBO. That needs to be addressed.

Recommendation 7

In the event that ASBOs continue to be available to the PSNI as a measure to tackle anti-social behaviour, they should only be used for persistent anti-social behaviour when other alternatives have been tried and failed. ASBOs should not be used as a means of policing criminal activity.

⁷⁵ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4 – 12th November 2004, for the attention of the Committee of Ministers and the Parliamentary Assembly, Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, June 2005, para. 110*

⁷⁶ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums, PSNI Service Procedure 35/2006, April 2010, section 8(a).*

⁷⁷ *A Guide to Anti-Social Behaviour Orders, Community Safety Unit, Northern Ireland Office. Note, responsibility for this area has now been devolved to the Department of Justice.*

⁷⁸ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums, PSNI Service Procedure 35/2006, April 2010, section 3(1)(g).*

The Department of Justice does not hold information centrally on the exact nature of anti-social behaviour which has led to ASBOs being granted (nor did the Northern Ireland Office before it).⁷⁹ Neither does the PSNI. It is therefore difficult to gauge from practice the types of behaviour for which ASBOs are being sought and granted in Northern Ireland. If this information was captured it may lead to a better understanding of the types of behaviour for which ASBOs are being sought and it may dispel (or confirm) worries that they are being inappropriately applied for in respect of behaviour which should have been progressed as a criminal matter. Such information could also assist the PSNI in providing its officers with more detailed guidance and examples of behaviour that could give rise to an ASBO application.

Recommendation 8

For a period of 12 months the PSNI should collate, and thereafter share with the Human Rights and Professional Standards Committee of the Policing Board, statistics which record the number of applications made, the nature of the application and details of the behaviour which resulted in the application for an ASBO. That information should be broken down according to District. The PSNI should begin recording no later than 1 April 2011.

During the course of this thematic review a large number of young people (when asked about their perception of anti-social behaviour) referred to adults engaging in drunken rowdy behaviour and the aggressive and intimidating behaviour of adults who “didn’t like us hanging around.” It must be remembered that young people are more likely to be the victims of crime and anti-social behaviour than perpetrators. Recent images of disorder should not be allowed to distort the way the police or other agencies deal with or respond to young people.

As stated in a recent report commissioned by the Home Office the “presence of notable numbers of young people in an area seems to be something to

⁷⁹ David Ford MLA, Minister of Justice, 14 May 2010, (AQW 6534/10).

which the public in the UK has an unusually delicate sensitivity, and while it is one of the seven strands of ASB used in the BCS [British Crime Survey], it would probably be more accurate to see it as a shorthand stereotype used as a substitute for levels of neighbourhood disorder.”⁸⁰ The PSNI can contribute to this inaccurate stereotyping and indeed may have done so by categorising a type of offending behaviour as “youths causing annoyance”. The PSNI recognised the problem and has now removed that category of offending. The PSNI has shown leadership in that respect and should be supported in its future endeavours by other agencies.

The recent decision of the police to publicise images of young people together with leaflets asking for the community to give information in relation to “sectarian disorder” is, however, considered by the Committee, if it signals a policy shift, to be a retrograde step.⁸¹ For a number of reasons the practice is not one which the Committee can support other than in exceptional cases, where the law and policy is applied strictly. Not only does release of the images engage (and *arguably* infringe without justification) the rights of the young people, it contributes to unhelpful and inaccurate stereotyping of young people generally. In a study conducted by the ICR “some young people reported that once labelled within the community as a ‘troublemaker’, the reputation and label remained fixed: “*once a hood, always a hood*”.” Young people reported feeling hopeless about the prospect of positive change and that they “just had to accept the situation as it was, and that this stigmatised and marginalised position within the community was simply their lot in life.”⁸² While the release of those images was not in the context of ASBOs the principle is similar and must be considered carefully both in relation to ASBOs and otherwise.

The police have an important part to play in promoting actual and perceived neighbourhood safety. Effective policing, which makes neighbourhoods feel

⁸⁰ *The drivers of perceptions of anti-social behaviour* Mackenzie, Bannister, Flint, Parr, Millie and Fleetwood, March 2010.

⁸¹ As part of *Operation Exposure* in Derry/Londonderry discussed further below.

⁸² *Creggan Community Restorative Justice: An Evaluation and Suggested Way Forward*, Institute for Conflict Research, 2001.

safer, depends in large part upon the community having a voice. Community involvement in policing strategies not only assists the police but it assists the community which feels more connected to the other members of the community and to the police. That vision of policing with the community advocated by the Independent Commission on Policing for Northern Ireland (the Patten Commission), with human rights protection as the core function of the police service, is a model of policing which could go a long way to addressing anti-social behaviour and the perception of anti-social behaviour across Northern Ireland.

The PSNI should satisfy itself before making an application for an ASBO that the behaviour complained of *is in fact* anti-social and not simply the result of conflicting lifestyles. It is clear from the body of case law in England and Wales (and an emerging body of case-law in Northern Ireland) that anti-social behaviour can be very wide-ranging and includes but is not limited to dropping litter, verbal abuse, harassment, assault, excessive noise, litter, graffiti, drug dealing, vehicle crime and prostitution. Whether, however, criminal offending should be dealt with by means of an ASBO is doubtful. This is considered further below.

The definition of anti-social behaviour is similar to that found in the Public Order legislation with a notable difference; there is no requirement to prove that the anti-social behaviour has actually *caused* any person harassment, alarm or distress. Accordingly, it is unnecessary to produce a 'victim' of the behaviour and it is sufficient that there is evidence of conduct *likely to cause* harassment, alarm or distress. Furthermore, there is no requirement that the defendant intended his or her behaviour to have such effect. If the court is satisfied that the defendant has acted in an anti-social manner, it must go on to consider separately whether an order is necessary to protect relevant persons from further anti-social acts by the defendant. Whether an order is necessary to protect persons is a matter of judgment for the court. An ASBO should not be used as a means of punishment; it should only be imposed if it really is *necessary* to constrain future anti-social behaviour.

The court may make an order which prohibits the defendant from doing anything described in the order.⁸³ That appears to be an almost limitless power to prohibit the defendant from doing any act set out. The prohibition must, however, be necessary to protect persons from further anti-social acts and must therefore be tailored to the particular defendant and his or her particular pattern of behaviour. An ASBO should not be seen as an opportunity to constrain every possible anti-social act whether committed before application or that may be committed in the future. The terms of the order should be precise and capable of being understood by the defendant.⁸⁴

Where the recipient of the ASBO is young and vulnerable he or she must be able to understand what it is he or she is being asked to do or refrain from doing. Given the considerable constrictions that may be placed upon a young person the PSNI should always opt to reduce rather than enlarge the extent of the order. For example, not all the conditions set out in an ASBO have to run for the full term of the ASBO itself.⁸⁵ The test must always be what is *necessary* to deal with the particular anti-social behaviour of the defendant and what is *proportionate* in all of the circumstances. The terms of an ASBO should be negative and prohibitory; that is, they should not be positive or mandatory.⁸⁶ A term which, for example, required a young person to attend school would be a mandatory term and invalid.

While the 2004 Order sets the parameters within which an ASBO may be made and does not determine the wording of the actual ASBO a court would have to be satisfied that the impugned conduct or activity causes harassment, alarm or distress. The concept of conduct causing distress or alarm requires some definition. It must point to conduct outside the range of legitimate activity which a citizen is reasonably entitled to pursue in a pluralist, democratic and open society which calls for reasonable give and take on all

⁸³ Art. 3(3) of the 2004 Order.

⁸⁴ Who may be a young child or a person of low ability. In *R v P* [2004] EWCA Crim 287 (CA), the court was critical of an order directed to a 16 year old which was complicated and legalistic. Plain and simple language should always be preferred.

⁸⁵ *Lonergan (Ashley) v (1) Lewes Crown Court (2) Brighton & Hove CC & S of S for the Home Dept.* [EWHC] 457 (Admin) [2005] 1 WLR 2570.

⁸⁶ See e.g. *ibid. Lonergan*.

sides.⁸⁷ It must be conduct that causes or would reasonably cause alarm or distress to a person of reasonable fortitude to such a degree that it unreasonably interferes with his/her enjoyment of life or home life and that it would be unreasonable to subject him/her to a continuation of such conduct.

An order can include a term that the defendant may not enter a designated exclusion zone. The purpose of the exclusion zone is to prevent a defendant from entering the area in which he or she is carrying out the anti-social activity thereby giving relief to a specific community. In England and Wales ASBOs have been made which provide for exclusion zones which have the deliberate effect of excluding the defendant from entering their home. Clearly, a number of ECHR rights may be infringed by the imposition of such an order. If a similar scenario is considered in Northern Ireland, within the context of 93% of social housing being segregated, the impact upon the defendant is considerable. If the defendant is a young person his or her safety is seriously compromised. In those circumstances the PSNI should not, as part of an ASBO application, consider a term which prohibits a young person from entering his or her home. While the Committee was satisfied that no such term has been applied in Northern Ireland there is nothing in the PSNI Policy Directive or other guidance which prohibits the police from requesting such a term. That should be addressed.

Recommendation 9

The PSNI should not, as part of an ASBO application, consider a term which prohibits a young person from entering his or her home.

Other terms which have been imposed by an ASBO include non-association terms and curfews. If a non-association term is imposed it must be considered carefully and limited to that which is actually necessary. For example, a term which prohibits a defendant from associating with named individuals with whom he commits anti-social behaviour may be appropriate whereas a term which prohibits him from associating in any group of three or more may be

⁸⁷ See e.g. *Re Northern Ireland Housing Executive* [2005] NIQB 7, Girvan J

unduly restrictive and unnecessary. Where a non-association term is considered it is important that it only applies to those persons against whom there is evidence of anti-social behaviour committed together with the defendant.⁸⁸

A term may be imposed which prohibits the wearing of prescribed clothing, for example, where a defendant wears a hooded top “to cause fear and to avoid detection when committing anti-social acts”. The Divisional Court in England upheld such a term, the effect of which was to disable the defendant’s confidence that he would escape accountability for his actions and was both necessary and proportionate.⁸⁹ Great caution must be exercised if the police are considering applying for such a term. Young people have been demonised to such an extent that the distrust of hooded tops can be symptomatic of that demonisation rather than indicative of any malign intent on the part of the young person. The PSNI must positively dispel myths, not lend their support to them.

The terms of an ASBO must be very carefully considered and drafted. The consequences of the ASBO may unnecessarily prohibit, for example, a young person attending his or her local doctor, travelling on public transport or utilising services or a support network. The effect of any proposed term must be fully explored and should never be more than absolutely necessary depending upon the circumstances of an individual case.

An ASBO should not prohibit an offender from committing specified criminal offences if the sentence which could be passed following conviction for the offence, or a guilty plea, should be a sufficient deterrent. Furthermore, an ASBO must not be used merely to increase the sentence of imprisonment that

⁸⁸ Note, in *Anderson v UK* [1998] EHRLR 218 it was held that there is no general right of freedom to associate with others only where the association is for political reasons or demonstration.

⁸⁹ *R (on the application of B) Greenwich Magistrates’ Court & Metropolitan Police Service* (QBD) (unreported) 10 November 2008. Note, each case must be justified on its own facts and the term must be proportionate and necessary. This does not permit an ‘anti-hoodie’ ASBO in all cases.

the offender is to receive.⁹⁰ That does not mean, however, that an ASBO can never contain a term which if committed would be a criminal offence, only that the court should be careful to impose such a term when absolutely necessary and not if the only purpose is to increase the sentence.⁹¹

Interim order

The police may apply for an interim ASBO to cover the period between the commencement of the proceedings and the final determination.⁹² Before an application is made the police (and thereafter the court) must be satisfied that it is just to make the order pending the determination of the main application. In particular, the police must be satisfied that the requirements of consultation and necessity are met before an interim order is made. An interim order may contain the same terms as a final order so long as they are necessary to protect persons from further anti-social acts. An interim order must be for a fixed period and will cease to have effect on the determination of the main application. Once made, breach of an interim order carries the same penalties as breach of a final order. It is a criminal offence to breach the terms of an ASBO, whether interim or final. At the substantive hearing therefore, even if the application for a final order is dismissed, the defendant will have been subject to an order having criminal law consequences between the making of the interim order and the conclusion of the substantive hearing.⁹³

The formulation of an ASBO requires great care. That is particularly so where the order is made before a final hearing before all the evidence can be heard and assessed. District Judges (Magistrates) may differ widely in their views as to what is anti-social behaviour. That may open the door to arbitrariness in determining the parameters of criminal activity. A court being asked to make an interim order should require compelling evidence that a final order will be made in due course.

⁹⁰ *R v W and another* [2006] 3 All ER 562 (CA).

⁹¹ See e.g. *R v Boness* [2005] EWCA Crim 2395; *R v Stevens* [2006] All ER (D) 23 February 2006.

⁹² *Ibid.* art. 4.

⁹³ Even if the final order contains different provisions, the breach of a term discontinued subsequently at final hearing will still be a criminal offence *Parker v DPP* [2005] EWHC 1485 (Admin).

Before making an application for an interim ASBO without notice the police should consider: what the defendant is likely to do if given notice; whether that will prejudice the application bearing in mind the vulnerability of witnesses; the gravity of the complaints; the fundamental right of a defendant to have notice of proceedings; the urgent need for protection of an order; the nature of the order sought; and, the protection afforded to a defendant such as a quick return date and the right to apply to vary or discharge the order. The burden of proof both evidentially and legally is on the police, save where a defendant argues that his conduct was reasonable in which case he would have an evidential but not legal burden to prove it. It is now settled that proceedings for the application of an ASBO are civil, not criminal. It follows that the rules of civil evidence apply, including the admissibility of hearsay evidence, considered further below.

The House of Lords considered this issue and held that the standard (or level) of proof however to which the case must be proved, depends on which part of the test is being considered. Their Lordships held that the burden of proving that the defendant has acted in an anti-social manner is the criminal standard (proof beyond reasonable doubt). When the court is considering whether it is necessary to make an order, however, that does not involve a standard of proof; rather it is an exercise of judgement or evaluation (balance of probabilities).⁹⁴ It has now been decided that no question of religious or sexual discrimination arises from the legislation.⁹⁵

Hearsay evidence, evidence which the court is asked to accept when the witness is not giving evidence, may be relied upon in ASBO proceedings.⁹⁶ That includes both first-hand and multiple hearsay. While hearsay evidence may be used on an application for an ASBO, the police should always present the best evidence available such as a witness who can give direct evidence of anti-social behaviour and the effect on him or her. If the witness will not give evidence for fear of retribution, then evidence of their fear should be given by

⁹⁴ *R (McCann) v Crown Court of Manchester* [2002] 4 ALL ER 593 (HL).

⁹⁵ *Re Northern Ireland Commissioner for Children and Young People* [2004] NIQB 40 [2004] 7 BNIL 30.

⁹⁶ *R v Manchester CC ex parte McCann* [2001] EWCA Civ 281 (HL).

a professional witness. For example, a police officer could give evidence on behalf of the victim of the nuisance. Ideally, the officer will have spoken directly to the victim and be able to attest to their fear.

ASBO on conviction

Any criminal court, on conviction of a person for a relevant offence, can make an order to prohibit the defendant from doing anything specified in the order.⁹⁷ The order, whilst made by the criminal court, has the same effect as a ‘free-standing’ ASBO made by the magistrates’ courts. The prosecutor can apply to the court dealing with the sentencing of the defendant to make an order, or the court of its own volition may make an order if it considers it appropriate.⁹⁸ The conditions to be met before an ASBO on conviction can be granted are the same as those for an application for a free-standing order.⁹⁹ An order on conviction in criminal proceedings must be in the prescribed form.¹⁰⁰

As with a free-standing ASBO the procedure for an ASBO on conviction is civil and the rules set out above apply in the same way in that hearsay evidence is admissible to prove anti-social behaviour. It is immaterial whether evidence led in support or defence of an order on conviction would have been admissible in the proceedings in which the defendant was convicted.¹⁰¹ It is essential that the application is dealt with as a separate application in the sense that both limbs of the test must be considered to the requisite standard and the court must be satisfied that it is necessary to make an order. The fact that a defendant has been convicted of criminal activity does not mean an ASBO is appropriate.

⁹⁷ Art. 6 of the 2004 Order. The procedural rules are set out in the Magistrate’s Court (ASBO) (NI) Rules 2004 and Magistrate’s Court (Anti-Social Behaviour Orders) (NI) (Amendment) Rules 2008 (SR 2008/253).

⁹⁸ Art. 6(3) of the 2004 Order.

⁹⁹ That the offender has acted in an anti-social manner to one or more persons not of the same household as himself and that an order is necessary to protect persons within NI from further anti-social acts: art. 6(2) of the 2004 Order.

¹⁰⁰ Form 4 as contained in the Magistrates’ Courts (Anti-social Behaviour Orders) Rules (NI) 2004 (SR 2004/324).

¹⁰¹ Art. 6(5) of the 2004 Order. In other words, once the defendant is convicted of a relevant offence evidence which would have been inadmissible in those criminal proceedings becomes admissible for the purposes of considering whether to make an ASBO.

It is worth repeating that an ASBO should *not* be added as a matter of course to a criminal sentence. An order on conviction may specify one or more relevant authorities (other than the Chief Constable) for the purpose of exercising functions in relation to the order. If the prosecution has made the request, only it may specify the authority. Thereafter a copy of the order must be served by the prosecution upon the Director of Public Prosecutions (if the DPP is not conducting the prosecution), the Chief Constable and any specified authority. If the court has made the order of its own motion, the court must specify the authority.¹⁰² An order on conviction may be varied or discharged on application by the defendant to the court which made the order.

Interim order on conviction

An interim ASBO may be made before determination of an ASBO on conviction but only if the court considers it just to do so pending final determination.¹⁰³ An interim order on conviction must be in the form prescribed.¹⁰⁴ The interim order must be considered properly (as set out above) and only made on an interim basis if it is just to do so.¹⁰⁵ The defendant may appeal to the county court against the making of an interim ASBO on conviction. On appeal the county court may make such order as may be necessary to give effect to its determination of the appeal and any incidental or consequential orders as appear to it to be just.¹⁰⁶

A particular difficulty arises if the court considers of its own motion that an order is appropriate because the defendant will not have had notice of an application before the sentencing hearing. In such a case, the English High Court has stressed that the court deciding on the making of an order must have particular regard to fairness in the procedure. There is a danger that the defendant will suffer unfairness because he or she will not know the case he has to meet. "Elementary fairness requires a court, if it proposes to make an

¹⁰² Art. 6B of the 2004 Order, as amended.

¹⁰³ Art. 6A of the 2004 Order, as amended

¹⁰⁴ Form 4A, art. 2(5) of the Magistrates' Courts (Anti-social Behaviour Orders) Rules (NI) 2004 (SI 2004/324) as amended by the Magistrates' Courts (Anti-social Behaviour Orders) (Amendment) Rules (NI) 2006 (SR 2006/414).

¹⁰⁵ Art. 6A of the 2004 Order, as amended.

¹⁰⁶ Art. 6A(6) & (7) of the 2004 Order, as amended.

order of its own motion, to indicate the basis on which it provisionally considers an order may be appropriate, and the material on which it proposes to rely so that the person potentially liable can make meaningful submissions as to why the order should not be made at all or should not be made in the form provisionally proposed by the court".¹⁰⁷

If a custodial sentence is imposed, the court may make an order which is suspended in that it does not begin to run until after release. However, where the custodial sentence is in excess of a few months and the defendant was liable to be released on licence (and therefore subject to recall), the circumstances in which necessity could be shown are likely to be limited.¹⁰⁸ Not all criminal activity is anti-social behaviour for the purposes of an ASBO. In an interesting case the English Court of Appeal considered whether an ASBO should have been made against an adult defendant who broke into a number of hotel rooms and stole credit cards. The court did not accept that offences of burglary and dishonesty were necessarily anti-social within the terms of the legislation: the rooms were empty when the defendant broke in and so the offence of burglary did not cause harassment or alarm (though the court accepted that it could cause distress). In that case, the defendant was suffering from schizophrenia which was being treated and the treatment would diminish or completely remove the risk of re-offending. In those circumstances, it was not necessary to impose an ASBO.¹⁰⁹

An ASBO can place significant restrictions on the liberty of the individual and for that reason it is particularly important that procedural fairness is scrupulously observed.

Breach of an anti-social behaviour order

If, without reasonable excuse, a person does anything which he or she is prohibited from doing by an ASBO, he or she is guilty of an offence and

¹⁰⁷ *R (C) v Sunderland Youth Court* [2003] EWHC 2385 (Admin) as per Sullivan J.

¹⁰⁸ *R v P* [2004] EWCA Crim 287 (CA) where the defendant was a young man with a short history of offending and psychiatric illness. Compare *R v Scott Parkinson* [2004] EWCA 2757 (CA), the case of an adult offender with a long history of offending where the court imposed an order to take effect on his release from custody.

¹⁰⁹ *R v Verner* [2004] EWCA Crim 2931 (CA).

liable on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (or both). On conviction on indictment he or she will be liable to imprisonment for a term not exceeding five years or to a fine, or both.¹¹⁰ The maximum penalty for a child or young person is a 2 year Juvenile Justice Centre Order. A conditional discharge is not available for this offence.¹¹¹

Reporting restrictions and children

In any proceedings for, or in relation to, an ASBO against a child,¹¹² the court *may* direct that no report shall be published which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child; and that no picture may be published as being or including a picture of the child.¹¹³ In so far as the proceedings relate to an order made on conviction, the restrictions on reporting *criminal* proceedings concerning a child¹¹⁴ do not apply.¹¹⁵ The effect of the above is that in proceedings for an ASBO against a child (including once the order is made) there is no automatic restriction on reporting the name, address or details of that child. The onus, therefore, is on the person representing the child to apply for a restriction order.¹¹⁶

It is clear that so-called 'naming and shaming' became a fundamental tool in the armoury of measures to tackle anti-social behaviour in England and Wales. Government guidance has stressed the importance of publishing

¹¹⁰ Art. 7(1) of the 2004 Order.

¹¹¹ Article 7 of the 2004 Order.

¹¹² Defined as any person under the age of 18 years by art. 8(6) of the 2004 Order.

¹¹³ Art. 8(1) of the 2004 Order. Breach of such an order is a criminal offence punishable by a fine not exceeding level 5 on the standard scale. If publication is in a newspaper, it is the proprietor, editor or publisher of the paper who commits the offence. If publication is by a programme service the person who has functions corresponding to those of an editor of a newspaper commits the offence: art. 8(2) of the 2004 Order.

¹¹⁴ *As per* art. 22 Criminal Justice (Children) (NI) Order 1998. If sch. 6 to the Youth Justice and Criminal Evidence Act 1999 comes into force, art. 22 of the 1998 Order will be repealed and restrictions on reporting criminal proceedings concerning a child will be primarily governed in Northern Ireland by section 49 of the Children and Young Persons Act 1933.

¹¹⁵ Art. 8(4) of the 2004 Order, nor will Section 49 of the Children and Young Persons Act 1933 apply in respect of ASBOs on conviction if sch. 6 to the Youth Justice and Criminal Evidence Act 1999 ever comes into force.

¹¹⁶ Under the Children and Young Persons Act 1933.

ASBOs for two reasons: (i) to improve the effectiveness of the order because people are more likely to know about and report breaches; and, (ii) as a deterrent. Important and additional issues arise when it comes to ASBOs for children. The court has the onerous task of balancing the interests of the child against the public interest.

In anti-social behaviour proceedings, the UK Government encouraged the courts to consider the public interest and only make a restriction order if there was a good reason, aside from age. In one case, an English High Court considered whether publishing photographs, names, addresses and details of young people and the orders made against them infringed Article 8 of the ECHR (right to respect for the home, private and family life). The court held that the relevant authority considering publishing details of a defendant subject to an ASBO must first consider whether the proposed publicity was necessary and proportionate to its legitimate aims as such publicity undoubtedly infringed the defendant's rights protected by Article 8 of the ECHR.¹¹⁷

Case-law recognises that the graver the impact of a decision (for example, to publish images) upon the individual affected by it, the more substantial the justification that is required. Given the backdrop of paramilitary punishment beatings and other vigilante type activity in Northern Ireland, the publication of images of children which label them at least as anti-social and potentially as sectarian and violent is a factor which may undermine any justification argument. Accordingly, in Northern Ireland the publication of details in relation to children and young people who are the subject of an ASBO is less likely to be compatible with the Human Rights Act 1998.

PSNI ASBO policy

PSNI has a policy document outlining procedure and guidance in relation to ASBOs, Acceptable Behaviour Contracts (ABCs) and Anti-Social Behaviour

¹¹⁷ *Stanley v London Borough of Brent* [2004] EWHC 2229 (Admin).

Forums (ASBFs).¹¹⁸ The policy is available to view through the PSNI website.¹¹⁹ In relation to ASBOs, the policy provides guidance on the application of the Anti-Social Behaviour (Northern Ireland) Order 2004 and makes reference throughout to Northern Ireland Office guidelines for practitioners.¹²⁰ The policy outlines the procedures police officers must follow for making applications for stand-alone ASBOs and interim orders, and it contains file preparation guidance in relation to ASBOs on conviction. If it is suspected that an ASBO has been breached this should be investigated by the PSNI in the same manner as any other criminal offence.

The policy notes that the “most common behaviour tackled by ASBOs is general unruly conduct, however ASBOs have also been used to combat racial harassment, drunk and disorderly behaviour, throwing missiles, vehicle crime and prostitution”.¹²¹ It recognises that the making of an ASBO engages several rights protected by the Human Rights Act 1998, including Article 8 ECHR (right to respect for private and family life), Article 10 ECHR (right to freedom of expression) and Article 11 ECHR (right to freedom of assembly and association). It states that the “determination of whether it is in accordance with the Human Rights Act 1998 to issue an ASBO in any given case is, ultimately, a matter for the court. PSNI does not issue ASBOs.”¹²² However, the policy goes on to state that “there is potential for PSNI action in relation to an ASBO application to interfere with a person’s human rights and that any such interference must be in accordance with the law; pursue a legitimate aim; and be necessary in a democratic society.”¹²³

The policy goes further and provides that “other interventions/methods should be considered to prevent the anti-social behaviour before seeking an ASBO...

¹¹⁸ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010.

¹¹⁹ http://www.psni.police.uk/service_procedure_3506.pdf

¹²⁰ *A Guide to Anti-Social Behaviour Orders*, Community Safety Unit, Northern Ireland Office. Note, responsibility for this area has now been devolved to the Department of Justice.

¹²¹ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 9(2).

¹²² *Ibid.* section 7(1).

¹²³ *Ibid.* section 7(2).

It is not necessary for all other remedies to be exhausted before applying for an ASBO and they are not necessarily a last resort. However, all the circumstances should be taken into account before deciding whether seeking an ASBO is the proportionate response to the identified problem.”¹²⁴ It also states that “ASBOs are not a substitute for a weak criminal case.”¹²⁵

The policy requires officers to consider using a warning letter to the individual committing the anti-social behaviour at an early stage. The letter should clearly indicate the types of behaviour that are considered to be anti-social and that if the behaviour does not cease, an application for an ASBO may result. However, the use of a warning letter is not compulsory in every case and may not be issued when, for example, it is believed it may lead to victims or witnesses being harassed or intimidated. Consideration should be given as to whether the letter should be delivered in person in order that it can be explained and, in the case of children and young people, the Youth Diversion Officer should be advised of the correspondence. The Committee considers the involvement of the Youth Diversion Officer (YDO) to be an integral part of the process and recommends that in all cases the YDO should be involved in the decision making.

Recommendation 10

In all cases where an ASBO or Anti-Social Behaviour Contract is under consideration for a child the Youth Diversion Officer and Anti-Social Behaviour Officer should be involved in the decision-making process.

The letter should also contain contact details of agencies that could offer advice and support to help the individual. Once a decision to seek an ASBO has been made, consideration should be given as to whether a notice advising the individual of the decision should be sent which would inform the individual of the behaviour they are engaging in and offer further advice and support.¹²⁶ Save for those cases where giving notice of an ASBO application

¹²⁴ *Ibid.* section 3(1)(e).

¹²⁵ *Ibid.* section 3(1)(g).

¹²⁶ *Ibid.* section 13.

is genuinely and reasonably believed to risk the safety of witnesses, it is suggested that the PSNI should always send a warning letter and should always consult with relevant agencies. It may be that a warning letter and inter-agency contact means an ASBO is not necessary. If a young person is not safe, however, whether as a result of potential retribution within the community or violence at home the PSNI must consider very carefully the potential repercussions of sending letters to the home.

Very often ASBO applications are undefended and, where an interim order is sought, notice is not given to the person against whom the interim order is sought. This means that ASBOs with disproportionate, punitive or vague prohibitions can be imposed without the benefit of representations from a lawyer and, where a child is involved, there is unlikely to be an advocate to make representations that reporting restrictions should be imposed. Furthermore, interim orders without notice do not give the child the opportunity to participate in the proceedings despite Article 12 UNCRC which requires the State to ensure children's views are sought and given due weight in all matters affecting them. Although a person subject to an ASBO or an interim ASBO can apply to the court to have it amended or discharged after the order has been made, a study by the Youth Justice Board for England and Wales found that few young people were aware that they could apply to the court to change their order.¹²⁷

If the PSNI considers an ASBO is necessary to protect persons from further anti-social behaviour, the police officer making the application needs to be satisfied that documented evidence exists regarding the subject. Community Impact Statements are recognised in the PSNI policy as being "a useful method for portraying to the court how anti-social behaviour has affected the community."¹²⁸ Where children and young people are the subject of an ASBO application, the PSNI policy requires: that all available remedies and diversionary measures be considered at an early stage; that the relevant

¹²⁷ *Anti-Social Behaviour Orders*, Youth Justice Board for England and Wales, 2006.

¹²⁸ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 14(8).

authorities and agencies are consulted in order that support, diversion, mentoring or other intervention can be considered; that every effort is made to meet with these other agencies to consider a particular case, although if they decline to meet this should not be allowed to unduly delay proceeding with an application where deemed appropriate; and that parents/guardians are kept fully informed at all stages of the ASBO process.

Once an ASBO is granted it will last for a minimum of two years: this can be disproportionately long. Although it is for the court to ultimately decide, the agency making the ASBO application can suggest the duration of the order. PSNI policy states that the proposed duration “should be dependent upon the period of time deemed necessary to protect the community. An order can be granted for life.”¹²⁹ The Committee wishes to remind police officers that if they are proposing the duration of an ASBO in an application against, or that will impact upon, a child or young person, they must not only consider how best to protect the community but also must consider whether the proposed duration of the order would be in the best interests of that individual child.

CJINI reported that in Northern Ireland no ASBOs had been served on a person under the age of 18 that lasted for more than two years but that “the provision of support rests with the decisions of the individuals involved in the ASBO forum or application.”¹³⁰ The legislation permits an ASBO to be discharged early if the applicant agency and person subject to the ASBO both consent. The PSNI policy requires the lead officer to monitor ASBOs for their duration and to consider additional advice and support to help the person subject to the order to adhere to it.¹³¹ However, the policy does not require officers to keep the relevancy of the order under review and does not provide guidance on when an officer should consider applying for an ASBO to be discharged early.

¹²⁹ *Ibid.*, section 15(6).

¹³⁰ Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs, Criminal Justice Inspection Northern Ireland (CJINI), October 2008, para 4.7.

¹³¹ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 18 (7) and (8).

That is an oversight. Police officers should keep orders under review particularly those which have been made for children and young people. One year in the life of a young person can see remarkable change. That young person who has engaged with the process and is working to address the behaviour which resulted in an ASBO should be encouraged and supported through the process. That must also mean that the order should be discharged early if the circumstances merit it. If the PSNI progresses with the Policing with the Community Strategy as first envisioned, local police officers will have an on-going relationship with the young person, the community and the providers of support to the young person. They will therefore be well informed about the order's success or otherwise.

Once an ASBO has been granted by a court, a copy of the order should be served on the person against whom it has been made, and a copy forwarded to the police. PSNI policy states that where a police officer secures an ASBO against an individual they should inform other agencies involved and the victims/witnesses to the anti-social behaviour that the ASBO has been granted. They should encourage these other agencies and victims/witnesses to report breaches of the ASBO in order that action can be taken. A copy of the ASBO should also be made available within the PSNI District where the order was granted for reference and production to the court in the event of a breach. The NIHE or District Councils should also forward copies of ASBOs they have obtained to the relevant PSNI District.¹³²

Whilst the details of the ASBO should be explained by the court to the person against whom the order has been made, PSNI policy states that the police should consider additional advice and support to help the person to adhere to the order and that consideration should be given as to whether there are any schemes to help support that person or their family, for example, in the case of a young person, a mentoring scheme. The policy states that such support should also be considered even where the ASBO application is refused.¹³³ That is an extremely important part of PSNI policy and is likely to provide the

¹³² *Ibid.* section 18.

¹³³ *Ibid.* section 18(8).

most effective route to combating anti-social behaviour while securing the rights of the child are protected and his or her best interests remain paramount.

Recommendation 11

In every case where a child or young person is implicated in anti-social behaviour the police should consider, in conjunction with relevant agencies, advice and support to include whether there are any projects or initiatives to support the young person and his or her family.

Another complaint made during the course of this thematic review was that when serious and persistent anti-social behaviour (importantly, this was not confined to young people as perpetrators) was occurring within communities the police were slow to respond or did not attempt to solve the problem effectively. It appears that service delivery is inconsistent and can be seen as too harsh when dealing with some behaviour but not targeted or effective when dealing with other behaviours. If the PSNI adopts a problem-solving approach which is intelligence led and which is based upon strong community involvement the outcome is likely to lead to be the prevention and reduction of crime and anti-social behaviour. Early identification of a problem if coupled with an ability to intervene effectively is likely to have a positive impact on community confidence and community co-operation.

Release of photographs and details of young people

Naming and shaming – ASBOs

A presumption has developed in England and Wales that once a person receives an ASBO he or she will be 'named and shamed', not only by the press, but also by local authorities including local police. This practice has been applied rigorously regardless of whether the person subject to the ASBO is an adult or a child, and regardless of any particular vulnerabilities of the person that may be exacerbated by publication of the ASBO. It is a practice which undoubtedly engages the Article 8 ECHR right to respect for private and family life. Therefore, should the police wish to publicise an ASBO it must

be lawful, proportionate and necessary for the prevention of disorder or crime.¹³⁴ Following his visit to the United Kingdom in 2004 the Council of Europe's Commissioner for Human Rights, Mr Alvaro Gil-Robles, said that it was "entirely disproportionate to aggressively inform members of the community who have no knowledge of the offending behaviour, and who are not affected by it, of the application of ASBOs. It seems to me that they have no business and no need to know."¹³⁵

In criminal proceedings, reporting restrictions automatically take effect in respect of children. That is because of the recognised damaging effect adverse publicity can have on a child: it can lead to vilification affecting all aspects of the child's life including school; it may also result in vigilantism; and, in any event it may raise misplaced levels of fear of crime within communities. There is little evidence to suggest that naming and shaming has any beneficial effect on children and young people and, if anything, may prevent them from overcoming their anti-social behaviour. ASBOs have been routinely referred to as 'badges of honour'.

Whilst the Government has stated the intention of naming and shaming is not to punish the person subject to an ASBO, but to inform the community what action has been taken and to engage local people in helping to monitor the conditions that have been set out in the ASBO, this rationale does not ask the additional question: is publicity in the best interests of the child and if not can the rights of the child be overridden by other legitimate competing rights?¹³⁶

The Northern Ireland Office (now the Department of Justice) ASBO guidelines for practitioners state that the "effectiveness of ASBOs will usually depend on local people being aware of the details, and reasonable and proportionate

¹³⁴ Article 8(2) ECHR.

¹³⁵ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4 – 12th November 2004, for the attention of the Committee of Ministers and the Parliamentary Assembly*, Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, June 2005, para. 120.

¹³⁶ Hazel Blears MP, in the course of debate on the Criminal Justice Bill 2006, said "Publicity is not to punish or shame the individual, but is there to let the community know that action has been taken and to engage local people in helping to monitor the conditions that have been set out in the ASBO..."

publicity will be critical to this end... Each individual case should be judged on its own merits.” As regards young people the guidance states “The applicant authority can challenge an application by the defence to have reporting restrictions put in place where it is pertinent to the effectiveness of the ASBO that the community should know the details. Even if reporting restrictions are imposed by the court this does *not* prevent the applicant from advising victims, witnesses and the local community of the existence and details of the order.”¹³⁷

The PSNI policy states that if considering challenging reporting restrictions on the ground that the restrictions would be detrimental to the effectiveness of the ASBO, it is important that officers “consider what benefits full publicity would have and to balance this with the safety and rights of the child or young person.”¹³⁸ The PSNI does not routinely name and shame but there has certainly been one instance where leaflets were distributed and local stakeholders informed of the details both of the ASBO and the person against whom it was made. That ASBO did not, however, relate to a child or young person. In Northern Ireland, given the present sectarianism and vigilante activity, naming and shaming may be particularly dangerous and can potentially engage the absolute Article 3 ECHR right (not to be subjected to torture or to inhuman or degrading treatment or punishment), and the Article 2 ECHR right (to life).

The ‘naming and shaming’ of children and young people subject to ASBOs in England and Wales has been aggressive, from sensationalised headlines in the tabloid newspapers to doorstep distribution of leaflets containing photographs, names and addresses of the young people in question. The naming and shaming of children and young people in Northern Ireland has not followed the same pattern. It would be a particularly worrying trend in this jurisdiction given that paramilitaries/armed groups who still operate within

¹³⁷ *A Guide to Anti-Social Behaviour Orders*, Community Safety Unit, Northern Ireland Office.

¹³⁸ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 14(5)(e).

some communities may use the fact that an ASBO has been granted as evidence against a 'troublesome' young person.

PSNI policy reminds officers of the particular importance of completing an Occurrence Management Form where a child or young person is implicated for any element of anti-social behaviour. This is because the PSNI Youth Diversion Scheme provides for the sharing of information between key agencies.¹³⁹ The policy also contains a reminder that, unlike in criminal cases, there are no automatic reporting restrictions with regards to ASBO proceedings. PSNI policy states that an application by the defence to have reporting restrictions imposed should not normally be challenged unless it is considered that restrictions would be detrimental to the effectiveness of the ASBO. If considering challenging such an application, police officers are to "consider what benefits full publicity would have and to balance this with the safety and rights of the child or young person."¹⁴⁰ Regular and ongoing consultation with relevant agencies is more likely to resolve anti-social behaviour. That should be the preferred course where children and young people are concerned.¹⁴¹

Unless reporting restrictions have been imposed by the court, there is no specific prohibition on publicising ASBOs. PSNI policy states that if the police decide to publicise an ASBO it is necessary to demonstrate a policing purpose for doing so, and prior to doing so a risk assessment must be carried out "due to the potential for retribution by various groups."¹⁴² In relation to children and young people PSNI policy states further that "extreme caution should be exercised to ensure the best interests of the child are promoted. It is likely to be hard to show that publication of an ASBO is going to promote the best interests of the child. Legal advice should be sought in any instance

¹³⁹ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 14(5).

¹⁴⁰ *Ibid.* section 14(5).

¹⁴¹ *Ibid.* section 14(6).

¹⁴² *Ibid.* section 18(6)(b).

where publicising an ASBO in respect of anyone under 18 is contemplated.”¹⁴³

The starting point must always be that publicity is at variance with the long established principle of anonymity. By article 3.1 of the Code of Ethics, police officers are obliged to retain, use and disclose information and data in accordance with the right to respect for private and family life contained in Article 8 of the ECHR and must comply with all relevant legislation and Police Service policy and procedure governing the gathering, retention, use and disclosure of personal information and data.¹⁴⁴

So far, the PSNI has decided not to publish the details of an ASBO concerning a child. In this respect, the PSNI should be commended for its approach, which is more respectful of the rights of the child than other UK police services and local authorities. The Committee is strongly of the view that the PSNI should not publish an ASBO made against a person less than 18 years.

Recommendation 12

PSNI should amend its policy to provide that the police will not resist an application for reporting restrictions in relation to an ASBO made against a person under the age of 18 years and in the event that there is no application made on the child’s behalf the PSNI will not publish the details of the child.

Release of images of young people suspected of disorder

ACPO guidance on the release of images of suspects and defendants makes clear that the Data Protection Act and the Human Rights Act both apply to a decision to release images of any suspect or defendant. In respect of persons under the age of 18 it advises that “images should not normally be released. However, for those aged between 15 and 18 the court may allow them to be

¹⁴³ *Ibid.* section 18(6)(g).

¹⁴⁴ PSNI Code of Ethics 2008 available at www.nipolicingboard.org.uk.

identified once convicted of a serious crime, such as murder... Images of juveniles... [where there is no reporting restriction] may be issued where there are concerns for their safety... Where appropriate any risk assessment should also be recorded.” ACPO clearly draws distinctions, as it should, between suspects and those convicted of serious offences such as murder. In the latter case, the guidance refers to a court being the arbiter of the decision to report or not to report. In any event, ACPO guidance does not contemplate the reporting of details of young people under the age of 15 years.

Article 6 ECHR (the right to a fair trial) is clearly engaged where identification of a suspect is in issue. The publication of an image of a suspect may therefore infringe that person’s Article 6 rights unless, despite the release of the image, he or she may still be assured a fair trial and the potential breach can be justified for example on public protection grounds. Article 6 applies with equal force in respect of a child as an adult. The release by the PSNI of images of young people pursuant to Operation Exposure which was followed by a leaflet drop referring to persons wanted for questioning in relation to sectarian interface violence engaged various rights protected by the Human Rights Act 1998. The leaflet stated “Don’t turn a blind eye to violence in our communities. Help us tackle sectarianism in our City... we have already solved hundreds of crimes...” That policy/decision may not, on its face, pay sufficient regard to the Article 6 rights of the young people concerned. The language does, on reading, link those young people to the pictures of rioting shown in the media and suggests that they are the young people involved in the criminal behaviour.

Article 8 ECHR provides that everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others. In other words,

the right to privacy is not absolute; it is a qualified right which can be interfered with in certain limited circumstances.

Article 8 is clearly engaged by any decision to release a person's details, which includes an image of that person. That right may, however, be interfered with if that interference can be justified on the grounds that release was necessary and proportionate in the interests of public safety or for the prevention of crime or disorder. In every case, the police must balance the rights of the individual to privacy against the rights of the community to be protected from harm. Whether or not the release of an image is lawful will depend upon a proper assessment of the reason for the release of the image, whether it is necessary because other methods have been tried and failed, whether the release of the image is proportionate to the aim being pursued and whether the release of the image is the least possible interference with the Article 8 right. In reaching a decision the police must ask themselves "is this really likely to assist a lawful purpose and is it the best and least intrusive method of achieving that purpose?" The police must be satisfied that, taking account of all the relevant circumstances, the release of the image is proportionate to the aim to be pursued. Factors relevant to that decision include, for example, the nature of the offence, the potential risk to the public and the potential impact on the person (or their family) whose image is to be released.

Police services have released images of suspects in cases where there is a clear and serious risk to the public from *not* releasing the image. For example, where a dangerous person is at large who poses a risk to the general public. However, in a well-known English case two young people convicted of a high-profile murder were protected by virtue of a court order which prohibited the release of any details whatever which could identify the individuals or their whereabouts. The decision was influenced by the real risk of harm to the convicted men on release from prison. That case did not concern the release of an image of a suspect but of a convicted person. The principles applied to the court's decision are, however, relevant. In the absence of compelling reasons, the police service should not release images of a suspect.

If the suspect is a child, the level of protection afforded is greater still. The privacy of a child or young person should be very carefully protected and very great weight must be given to the welfare of the child or young person. Dispensing with the young person's prima facie right to privacy (for example, for the purposes of more easily identifying suspects) by the release of images of children wanted for questioning is a decision which is difficult to justify save in exceptional cases where the safety of the general public is at stake.

When a child or young person is brought before a criminal court, whether as an offender or otherwise, the court must have regard to the welfare of the child, for example, by imposing reporting restrictions automatically or on application. Even when a child or young person is convicted of an offence the court will protect his or her identity. To undermine that protection by publishing images in advance is troubling. By way of further illustration, a child whose image was published in the media who was subsequently brought before a court would at that stage have his privacy protected and an order made prohibiting the publication of any personal details. If those images and details have already been put in the public domain, his or her privacy is not capable of being protected. One then has the unhelpful scenario that should the child be acquitted or convicted of a lesser offence that information will not be published and the child will be fixed, at least in the public consciousness, as a child who has committed a criminal offence. When one overlays the association between the images and the nature of the violence alleged the child may forever be marked as a 'sectarian' and potentially violent child. That has implications for his or her future rehabilitation, integration within the community, personal safety and future prospects.

Article 8 also extends to the family of the young person whose image has been publicised. They too are entitled to the right to privacy. The release of an image of their son/brother etc may identify the family and may bring upon the family the censure of the local community. That family will also be at risk of stigmatisation and at risk of retribution within the community. The media furore which surrounded the Ardoyne riots of July 2010, for example, provides

some evidence of the strength of feeling within the community and the public's wish that the perpetrators should be held accountable. The potential for retribution within the community is a factor the police should take into account before taking the unusual and exceptional decision to dispense with the young person's right to anonymity.

PSNI Media Policy¹⁴⁵ provides that in relation to victims "any active or imminently active legal proceedings should be taken into consideration before releasing details... If an early arrest is likely the identity of the victim should be withheld until they are charged, even if consent has been given." In relation to suspects or arrested persons the policy states that "the police service does not name or confirm identity of suspects or arrested persons." Of particular importance is the provision that "nothing should be released to the media which is likely to identify a juvenile offender... If a juvenile is charged only their age and a general area of residence will be given out to reporters..."

On the release of photographs of *convicted* offenders PSNI policy provides that "in the case of terrorist trials, we do not release photographs. The legal justification is based on Article 2 of the ECHR, which imposes on public bodies the duty to protect life. This duty includes not exposing persons to unnecessary risk. Knowing that groups on both sides would use photos to target the opposition, the police could not justify routine disclosure of photos." Furthermore, "photographs of suspects are issued only in extreme circumstances and there are very strict guidelines governing their release. The photograph of a suspect can only be given to the media on the authority of the senior investigating officer, in consultation with an ACPO rank officer and the Public Prosecution Service, bearing in mind the Contempt of Court Act."

During this thematic review stakeholders raised serious concerns about the safety of children identified in Operation Exposure and following rioting at the Ardoyne interface in July 2010. There is real fear that the images will be used

¹⁴⁵ PSNI Media Policy, PB 8/07.

for the purposes of identifying either members of the 'other' community or identifying young people who deserve 'summary justice' dispensed by paramilitary groups. Those stakeholders also suggested that the young people themselves are highly unlikely to report any threat to the PSNI and therefore will be unprotected from potential retribution.

In 2004, 16% of the children and young people who responded to a survey carried out by the Children's Law Centre reported that paramilitary and sectarian activity affected their lives.¹⁴⁶ In 2007 the Northern Ireland Commissioner for Children and Young People (NICCY) carried out a review of children's rights in Northern Ireland.¹⁴⁷ Some of the children and young people who took part in the review who lived in interface areas or areas of heightened community tension talked of continued paramilitary control within their communities and that the threat of paramilitary violence was still very real.

During 2009/2010 there were 46 casualties resulting from paramilitary style shootings (an increase of 26 from the previous year). The number of casualties resulting from paramilitary style assaults increased from 41 the previous year to 81.¹⁴⁸ Primary research conducted in six communities in Northern Ireland during 2008 found that there was concern amongst communities "that there were no longer effective controls on young people, that there was a 'policing vacuum' and that the 'protectors' of the community had 'retired'. The police were either unwilling to intervene or unwelcome In Republican/Nationalist Communities there was a continuing reticence to report the 'anti-social behaviour' of young people to dissident paramilitaries as it was felt that they punished too heavily. Yet a lack of trust in the police remained."¹⁴⁹

¹⁴⁶ *Shout out Soon* 2004 a report commissioned by the Children's Law Centre.

¹⁴⁷ *Children's Rights: Rhetoric or Reality. A Review of Children's Rights in Northern Ireland 2007/08*, Northern Ireland Commissioner for Children and Young People (NICCY), November 2008.

¹⁴⁸ PSNI Central Statistics Unit 2009/2010.

¹⁴⁹ *Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland*, Siobhán McAlister, Phil Scraton and Deena Haydon for Queen's University Belfast, Prince's Trust Northern Ireland and Save the Children, November 2009, page 71.

Whilst the PSNI is unable to prevent the media from publicising details of children and young people involved in anti-social behaviour, the circumstances in which the PSNI publish personal information relating to a child or young person should be limited to those exceptional cases where publication is lawful, necessary and proportionate. The PSNI's ASBO policy recognises this and states that where reporting restrictions have not been imposed "It is likely to be hard to show that publication of an ASBO is going to promote [the best interests of the child]. Legal advice should be sought in any instance where publicising an ASBO in respect of anyone under 18 is contemplated."¹⁵⁰ The principle enshrined in that policy applies equally to decisions to publish details of suspects of anti-social behaviour or disorder.

Recommendation 13

PSNI policy should be amended to include the following guidance. Police officers should never release images or other details of any person under the age of 18 years into the public domain save where the release is necessary for the purpose of protecting the general public or the young person from serious injury and only after all reasonable methods have been tried and failed. Each and every decision to release a single image or other detail into the public domain must be justified. In each case before the decision is taken the PSNI should conduct a detailed risk assessment and consult with all relevant individuals and agencies. A record of the risk assessment and consultation must be recorded.

Use of ASBOs in Northern Ireland

In 2008 the UN Committee on the Rights of the Child recommended in its Concluding Observations that the United Kingdom conduct an independent review of ASBOs, with a view to abolishing their application to children.¹⁵¹ In

¹⁵⁰ Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums, PSNI Service Procedure 35/2006, April 2010, section 18(6)(g).

¹⁵¹ *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern*

response the United Kingdom Government stated that, in relation to England, “the use of ASBOs has been independently examined on a number of occasions and we currently have no intention to stop their use.”¹⁵² However, it also said that it “will continue to work closely with the Devolved Administrations who will be reflecting on the Concluding Observations within their own jurisdictions.”¹⁵³ The coalition government has announced that it intends to remove the ASBO from the statute book in GB because it is an ineffective tool to combat anti-social behaviour. In Northern Ireland the power to change the law in relation to anti-social behaviour rests with the Department of Justice and it appears more likely than not that ASBOs will continue as part of the Justice Minister’s community safety strategy. That is a decision for the Department which is considering the approach to tackling anti-social behaviour as part of its revised community safety strategy. It should be recognised in this context that ASBOs have not been used to the same extent as in Great Britain and have not attracted the same criticism.

In response to a recent question in the Northern Ireland Assembly regarding his assessment of the success of ASBOs and their impact on reducing anti-social behaviour, the Minister of Justice referred to a 2008 CJINI inspection in which it reported a sensible approach to the introduction of ASBOs in Northern Ireland.¹⁵⁴ The Minister has said that his Department plans to tackle anti-social behaviour and to deliver a 15% reduction in anti-social behaviour incidents by 2011. That reduction is to be achieved through prevention, intervention (including diversionary programmes) and enforcement (which provides for a graduated approach from warning letters to Acceptable Behaviour Contracts through to Anti-Social Behaviour Orders).¹⁵⁵

The PSNI also has a target in the 2010-2013 Policing Plan to reduce the number of anti-social behaviour incidents to ensure a 15% reduction by March

Ireland, United Nations Committee on the Rights of the Child, (CRC/C/GBR/CO/4), October 2008.

¹⁵² *Progress Report, Annex A: Children’s Plan and the UNCRC, Priorities for Action*, Department for Children, Schools & Families, 2008.

¹⁵³ <http://www.dcsf.gov.uk/childrensplan/progressreport/annexea/index.cfm?id=2146>

¹⁵⁴ David Ford MLA, Minister of Justice, 21 May 2010 (AQW 6639/10).

¹⁵⁵ David Ford MLA, Minister of Justice, 14 May 2010 (AQW 6261/10).

2011.¹⁵⁶ ASBOs have been issued relatively sparingly to date in Northern Ireland, with a total of 122 having been issued between 2005 and 2009.¹⁵⁷ It is not easy to track information on how many ASBOs were granted following an application by PSNI, a district council or the NIHE and how many were granted on conviction; how many unsuccessful applications for ASBOs have been brought and by which authority; the duration and prohibitions attached to ASBOs granted; information about the person subject to the ASBO; how many ASBOs have been breached; whether the breach was prosecuted; the outcome of the prosecution; and whether the sanction was imposed purely as a result of breach of ASBO or whether it related to other offences being tried alongside the breach.

Any statistics on ASBOs that can be gathered are piecemeal. The Northern Ireland Court Service collates information centrally on the number of ASBO applications made, both those which are successful and unsuccessful, but this information is not published. Central monitoring by PSNI Community Safety Branch does not include the total number of ASBOs applied for, only those that are granted. Recent figures related by the Minister of Justice, supplied by the relevant organisations, indicate that as at 1 April 2010 there were 39 ASBOs in place in Northern Ireland: 28 of which were issued against adults and 11 issued against persons under 18 years.¹⁵⁸ Of those 39 ASBOs, 6 have been breached, and of the 6 breached, 4 were prosecuted by the courts: 2 received a Custodial Sentence (1 suspended); 1 a Youth Conference Order; and 1 a Probation Order. The PPS, as at 21 May 2010, had not decided how to proceed with one of the ASBO breaches and had decided not to prosecute the other.¹⁵⁹

CJINI reported in October 2008 that the PSNI had applied for 90.8% of the ASBOs granted in Northern Ireland by the end of December 2007 and details of the individuals being monitored for anti-social behaviour incidents were

¹⁵⁶ *Policing Plan 2010 – 2013*, Northern Ireland Policing Board and the PSNI, Part 2.

¹⁵⁷ David Ford MLA, Minister of Justice, 2 July 2010 (AQW 7896/10).

¹⁵⁸ David Ford MLA, Minister of Justice, 23 April 2010 (AQW 6210/10).

¹⁵⁹ David Ford MLA, Minister of Justice, 21 May 2010 (AQW 6709/10). The answer did not indicate how many of the 6 ASBOs breached were held by juveniles.

being held by the PSNI ASBO officer. Most people interviewed during the CJINI inspection found that to be appropriate given the PSNI's expertise in collating and preparing files and the fact that the PSNI has the resources to address anti-social behaviour. However some stakeholders, particularly those with an interest in children's rights and welfare, felt that this was not appropriate and that "the PSNI should be prosecuting individuals for criminal offences using the methods available to them rather than taking a civil action which could eventually lead to a criminal outcome."¹⁶⁰

Like the UN Convention on the Rights of the Child (UNCRC), the International Covenant on Civil and Political Rights (ICCPR) is a legally binding international instrument. The UN Human Rights Committee considered the United Kingdom's sixth periodic report on the ICCPR in July 2008.¹⁶¹ In its Concluding Observations on the report, the Committee expressed a number of concerns. The fact that breach of an ASBO is a criminal offence and may result in children being detained was roundly criticised as was the manner in which names and photographs of people subject to ASBOs (particularly when including children) are put into the public domain. The Committee recommended that the United Kingdom "should review its legislation on [ASBOs], including the definition of anti-social behaviour, in order to ensure that it complies with the provisions of the Covenant. In particular, the State party should ensure that young children are not detained as a result of breaching the conditions of their ASBOs and that the privacy rights of children and adults subject to ASBOs are respected."¹⁶²

In October 2008 the United Nations Committee on the Rights of the Child considered the measures the United Kingdom has adopted to give effect to

¹⁶⁰ *Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs*, Criminal Justice Inspection Northern Ireland (CJINI), October 2008, para. 3.7.

¹⁶¹ *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland*, United Nations Human Rights Committee, (CCPR/C/GBR/CO/6), July 2008.

¹⁶² *Ibid.* para. 20.

the UNCRC and on the progress made on the enjoyment of those rights.¹⁶³ In its Concluding Observations the Committee expressed a number of concerns at the application of ASBOs to children in the United Kingdom, particularly: at the ease of issuing such orders, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences; that ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system; and that most children subject to ASBOs are from disadvantaged backgrounds.

The UN Committee expressed concern at the use of Mosquito devices and at the concept of dispersal zones. It also noted that the steady reduction in playgrounds occurring in recent years has the effect of pushing children into gathering in public open spaces: a behaviour that may be seen as anti-social according to ASBOs. A number of recommendations were made in the Concluding Observations, including: that the United Kingdom should reconsider the use of ASBOs (as well as other measures such as Mosquito devices insofar as they may violate the rights of children). The Committee advised the UK Government that it should ensure, both in legislation and in practice, that children are protected against unlawful or arbitrary interference with their privacy, including by introducing stronger regulations for data protection. That required, for example, intensifying its efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child. The Committee considered expressly the law relating to ASBOs and recommended that the United Kingdom should conduct an independent review of ASBOs, with a view to abolishing their application to children.¹⁶⁴

¹⁶³ *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, United Nations Committee on the Rights of the Child, (CRC/C/GBR/CO/4), October 2008.

¹⁶⁴ *Ibid.* para. 80.

During the course of conducting this thematic review the general consensus amongst stakeholders representing the interests of children and young people, and most respondents to the consultation for this review, was that ASBOs do not work and should not be used against children and young people. There is a (false) perception that children and young people are responsible for the majority of anti-social behaviour and crime. Negative reporting in the media and the use of words such as “yobs” and “hoodies” in newspaper headlines does nothing to assist this inaccurate and unfair stereotyping. Most crime is actually committed by adults and children are more likely to be victims of crime than they are to be offenders. Stakeholders have raised a number of specific concerns in relation to ASBOs and these are discussed in the remainder of this section. However, it must be noted that the discussion is limited to how the PSNI in practice police, and in theory ought to police, anti-social behaviour in accordance with the Human Rights Act 1998.

Prohibitions

Prohibitions attached to ASBOs can be extremely restrictive and may violate the rights of children to respect for private and family life (Article 8 ECHR) and freedom of movement and peaceful assembly (Article 15 UNRCR and Article 11 ECHR): as noted above this is a view endorsed by the UN Committee on the Rights of the Child. The CJINI inspection in 2008 found that in 13 of the 16 ASBOs issued against under 18s the prohibitions attached to the ASBO contained some form of exclusion either in relation to area or curfew.¹⁶⁵

Even where an ASBO is not made against a child it may adversely affect that child and infringe his or her rights under the ECHR or the UNCRC, for example, exclusion zones against a parent/guardian may prevent them from taking their child to a park or other leisure facilities which may contravene the Article 31 UNCRC right of that child to engage in play and other recreational activities. If an ASBO prevents a family from getting a NIHE house then, depending on where the family is forced to reside instead, this may

¹⁶⁵ *Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs*, Criminal Justice Inspection Northern Ireland (CJINI), October 2008, para. 4.11.

contravene Article 27 UNCRC: the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development which incorporates an obligation on the state to provide material assistance to parents/guardians where there is a need with regard to housing.

ASBO prohibitions can be difficult to understand (even for adults) and difficult to comply with. This is highlighted in the CJINI inspection report. "One young person, a male aged 16 years, told [CJINI] Inspectors that the exclusion zone was in an area which covered the town centre but also bordered his house; therefore he could walk one way down the road without being in breach of his ASBO, but not the other. This caused him considerable inconvenience, for example preventing him from going to the local shop to buy a pint of milk. Staff in the [Juvenile Justice Centre] also informed [CJINI] Inspectors that his school was within the exclusion zone and therefore he was unable to attend school unless accompanied by his parent. This young person informed [CJINI] Inspectors that this prohibition was confusing as he had been given a map of the area but this did not have a line drawn on to indicate the area of the exclusion zone; instead a number of street names were listed. This led to confusion for the young person who was stopped by police in one of the prohibited streets but both he and his father were bewildered as to why this constituted a breach as they did not realise it was in the exclusion zone."¹⁶⁶

CJINI highlighted in its report that many young people do not take ASBOs seriously and so are more likely to breach an ASBO without fully knowing the potential outcomes of their actions.¹⁶⁷ Whilst other statutory, voluntary and community organisations have sought to address the educational deficit, it should remain the responsibility of the agency applying for the ASBO to ensure that a young person receiving an ASBO understands the full terms of the order and the consequences should they breach it.

The United Kingdom Government reported to the UN Committee on the Rights of the Child in 2008 that of the 37 under 18s in Northern Ireland who

¹⁶⁶ *Ibid.* para. 4.10.

¹⁶⁷ *Ibid.* para. 2.13.

were subject to an ASBO between 2004 and 2008, 10 (27%) of these individuals were convicted of breaching their ASBOs.¹⁶⁸

PSNI policy states that whilst the court should explain the details of the ASBO to the person against whom it is issued, the police should consider additional advice and support to help the person to adhere to the order and consideration should be given as to whether there are any schemes to help support the defendant or their family, for example, in the case of a young person, a mentoring scheme. The policy states that such support should also be considered even where the ASBO application is refused.¹⁶⁹

Although it is the court that ultimately determines which prohibitions will be attached to an ASBO, the agency making the ASBO application will submit a draft order to the court outlining suggested prohibitions. In practice, courts tend to follow the applicant's draft order. PSNI policy states that when drafting prohibitions they should be "reasonable, justified, proportionate, realistic and practical. Consideration should be given to the effects of imposing prohibitions on the defendant. They should be necessary to protect persons within a defined area (as outlined on a map) from the anti-social behaviour. This area can be the whole of Northern Ireland if necessary. Prohibitions should be specific in respect of time and areas of exclusion."¹⁷⁰ As per Recommendation 9 of this report, the PSNI should not consider a term which prohibits a young person from entering his or her home"

PSNI policy refers to sample prohibitions contained in Appendix D to the Northern Ireland Office guidelines for practitioners.¹⁷¹ Some of the examples given in Appendix D to the guidelines are prohibitions that would act as precursors to criminal behaviour, for example, a prohibition on entering a

¹⁶⁸ *UK Government, Implementation of the Convention on the Rights of the Child. Response to the list of issues raised in connection with the consideration of the third and fourth periodic report of the United Kingdom of Great Britain and Northern Ireland*, UK Government, (CRC/C/GBR/4), September 2008, para 169.

¹⁶⁹ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 18(8).

¹⁷⁰ *Ibid.* section 15(4) and (5).

¹⁷¹ *A Guide to Anti-Social Behaviour Orders*, Community Safety Unit, Northern Ireland Office. The Department of Justice now has responsibility for this area.

shopping centre rather than a prohibition against shoplifting. As noted above, such prohibitions are likely to be unduly restrictive and in the case of a child interfere with their rights under the ECHR and UNCRC.

Some of the example prohibitions given in the NIO guidelines prohibit acts that are already criminal offences, for example assaulting, threatening or intimidating any person; threatening to cause, attempting to cause or causing criminal damage to property or premises ; drinking alcohol in any public street or place; carrying weapons in a public place; committing any lewd or obscene act in any public place; and driving any motor vehicle or being carried in/or on a motor vehicle which is not licensed, taxed or insured by that driver. These acts constitute criminal offences and if any person over the age of 10 commits them anywhere in the United Kingdom they are committing a criminal offence regardless of whether an ASBO has been issued against them specifically prohibiting the acts. However, if it is a term of an ASBO that the recipient does not commit a nominated offence, the potential sentence for breaching the ASBO may be greater than the potential sentence for committing the crime.

The relatively low rate of ASBOs issued in Northern Ireland to date as compared to England and Wales would indicate that they have not been applied for to avert the due process of the criminal justice system. However, PSNI must continue to ensure officers are able to recognise clearly the difference between anti-social behaviour and criminal behaviour and deal with each type appropriately. In the absence of statistics which provide a better picture of the anti-social behaviour alleged and details of prohibitions attached it is not possible to comment further. In the event that Recommendation 8 of this report is accepted this will be considered by the Human Rights and Professional Standards Committee further.

Detention

As stated above, the breach of an ASBO (which is a civil order or injunction) is a criminal offence and may result in a young person being detained in police custody for a period of time. Whilst Article 5 ECHR allows for a person to be detained in police custody where they have breached a court order, Article 37

UNCRC requires that the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. It is difficult to envisage a circumstance when detention of a child in police custody for breach of an ASBO alone would be appropriate: if the alleged act of the child is sufficiently serious to warrant detention the child should be detained on the grounds of reasonable suspicion that they have committed a criminal offence other than breach of an ASBO. In Scotland, ASBO legislation specifically provides that breach of an ASBO by a person under the age of 16 years old will not lead to detention where no other offences are involved.¹⁷²

Recommendation 14

PSNI policy should be amended to prohibit the detention of any person under the age of 16 years where that person has been arrested in respect of breach of an ASBO alone.

Equality issues

Since the UK Government first proposed the introduction of ASBOs there has been fierce opposition from stakeholders who argue that ASBOs disproportionately target children and young people. That is a real possibility given the negative stereotyping and demonization referred to above. The police should resist contributing to that negative stereotyping. The mere fact that a group of young people has congregated in a public place should not be sufficient ground for the police to apply for (or be granted) an ASBO.

A report, which drew on findings of primary research conducted within six communities in Northern Ireland during 2008, has stated “In one community, all groups interviewed stated that the police regularly threatened young people with [ASBOs]. While no ASBOs had been issued, some children and young people had received warning letters for behaviour they did not consider to be anti-social. ASBOs, they argued, were used to threaten young people, based on the assumption that ‘hanging about’ was a precursor to anti-social

¹⁷² Anti-Social Behaviour etc. (Scotland) Act 2004, section 10.

behaviour... In the experience of these young people, ASBOs had become another tool to regulate and control their behaviour- behaviour that involved merely standing or sitting in groups within their own neighbourhoods. On many occasions they were moved under the threat of an ASBO. Yet there were no safe, local alternatives.”¹⁷³

Police should never utilise the ASBO legislation to quash behaviour which is no more than, for example, annoying, eccentric or bizarre. The Council of Europe Commissioner for Human Rights, Mr Alvaro Gil-Robles, commented following his visit to the United Kingdom in 2004 “There is a world of difference between hassle and harassment. It is not because a child is causing inconvenience that he should be brought to the portal of the criminal justice system.”¹⁷⁴

Between the introduction of ASBOs in 2004 and the end of December 2007 ASBOs had been issued against 65 individuals in Northern Ireland, 30 of which had been issued against under 18s (46.2%).¹⁷⁵ CJINI reported that this was less than ASBOs issued by similar local authority areas in England and Wales but expressed concern that the numbers were increasing in a similar pattern.¹⁷⁶ However, the recent figures provided by the Department of Justice would indicate that the proportion of ASBOs issued against under 18s is decreasing: of the 39 ASBOs in place in Northern Ireland on 1 April 2010, 11 of these (28%) were issued against juveniles.¹⁷⁷

Of the 65 ASBO recipients in Northern Ireland up to the end of December 2007 the majority were issued against males (57 people: 87.7%) and White

¹⁷³ *Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland*, Siobhán McAlister, Phil Scraton and Deena Haydon for Queen’s University Belfast, Prince’s Trust Northern Ireland and Save the Children, November 2009, page 77.

¹⁷⁴ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom, 4 – 12th November 2004, for the attention of the Committee of Ministers and the Parliamentary Assembly*, Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, June 2005, para. 117.

¹⁷⁵ *Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs*, Criminal Justice Inspection Northern Ireland (CJINI), October 2008, Appendix 3.

¹⁷⁶ *Ibid.* page vii.

¹⁷⁷ David Ford MLA, Minister of Justice, 23 April 2010 (AQW 6210/10).

people (63 people: 96.9%). A slightly higher number had been issued against those from a Catholic background (25 people: 38.5%) than from a Protestant background (21 people: 32.3%), although the religious background of 19 ASBO recipients (29.2%) was not known.¹⁷⁸ Stakeholders expressed concern to CJINI inspectors about other socio-economic factors that could potentially lead to unequal treatment of individuals, for example against students and members of the travelling community.¹⁷⁹

In 2006, the Youth Justice Board published the findings of research examining a sample of ASBOs issued to 10 to 17 year olds during 2004 and 2005 across England and Wales.¹⁸⁰ The report found that the young people in the study sample were mainly White males although 22% were from Black and Minority Ethnic groups. They tended to be from a highly disadvantaged group, characterised by: family breakdown and inconsistent supervision or boundary setting from carers; educational difficulty and under-achievement; previous abuse, bereavement and loss; and, residence in high-crime neighbourhoods, with relatively few age-appropriate facilities.

In England and Wales the use of ASBOs escalated to such an extent that parents argued, according to the Youth Justice Board, that they had no effect and had become a 'badge of honour' for young people. Children from disadvantaged backgrounds are already more likely to enter the criminal justice system. ASBOs may therefore act as a self-fulfilling prophecy by introducing children, who are already at higher risk, to the criminal justice system. In addition to targeting young people from disadvantaged backgrounds, ASBOs have also been shown to disproportionately target children with a disability. A survey carried out for the BBC by the British Institute of Brain Injured Children (BIBIC) in 2007 revealed that more than a third of children given ASBOs in England and Wales were likely to suffer from

¹⁷⁸ *Anti-Social Behaviour Orders: an inspection of the operation and effectiveness of ASBOs*, Criminal Justice Inspection Northern Ireland (CJINI), October 2008, Appendix 3.

¹⁷⁹ *Ibid.* para. 4.13.

¹⁸⁰ *Anti-Social Behaviour Orders*, Youth Justice Board for England and Wales, 2006.

underlying brain disorders such as autism, ADHD and a low learning age.¹⁸¹ Neither the PSNI guidance nor the Northern Ireland Office guidance contain any specific reference to the rights and needs of people with a disability. That is an oversight, which should be redressed if the PSNI are to continue to make use of the anti-social behaviour legislation.

Recommendation 15

The PSNI should forthwith incorporate within the relevant Policy Directive or Service Procedure guidance which recognises the particular vulnerabilities of young persons with a disability. Thereafter that should be included within relevant training.

The BIBIC also facilitates the *Ain't Misbehavin* campaign which has expressed concern that children are being penalised for their disabilities and likely to be further marginalised. "Behaviour that is likely to cause "harassment, alarm and distress to other people" may be subject to an ASBO and could draw a child or young person, through no fault of their own, into criminal proceedings. Yet these feelings are so subjective. As demonstrated in a recent Horizon programme – "Living with ADHD", anyone witnessing a screaming child throwing itself on the floor spitting and swearing in the middle of a supermarket would be hard pressed not to say that they were slightly alarmed and distressed, and what if that child demonstrated violence? Indeed, the natural assumption is that this behaviour is the result of bad parenting. However, things are rarely what they seem..." A number of cases are highlighted by BIBIC in which children with learning difficulties had been made subject to an ASBO, for example, a 15 year old with Asperger's syndrome was banned from looking over at his neighbour's garden, a child with Tourettes syndrome was prohibited from swearing in public and a child with ADHD was prohibited from going onto specified roads including the road he must travel down to attend school. Another child of 15 with ADHD who had been evicted from his home (along with his parents) was excluded from the

¹⁸¹ <http://news.bbc.co.uk/1/hi/england/somerset/6388865.stm>

area in which his grandparents resided leaving him effectively isolated from his family.¹⁸²

Critics of ASBOs argue (with some justification based upon the documented pattern in England and Wales) that ASBOs are a 'postcode lottery' which results in uncertainty about the types of behaviour considered acceptable. That is less likely to be the case in Northern Ireland with one police service working under the same policy framework and having received the same training. However, each District Commander has a degree of autonomy. Recent figures supplied by the Department of Justice (collated by relevant agencies) show that in the Ballymena District Council area more ASBOs were issued than in any other area of Northern Ireland during 2008 (17 out of 32: 53%). In 2009, Ballymena and Belfast jointly issued the most ASBOs (each issued 5 out of 25: 20%).¹⁸³ Of the 39 ASBOs in place as at 1 April 2010, 20 (51%) were issued within Ballymena District Council area.¹⁸⁴ Of the 11 ASBOs out of the 39 in place against juveniles, 7 (64%) were issued within Ballymena District Council area.¹⁸⁵

It is not possible to discern from those figures which were 'free-standing' ASBOs and which were ASBOs on conviction. Neither is it possible to gauge how many applications preceded the issue of the orders. To better monitor the issue of ASBOs on PSNI application, the PSNI should compile and share with the Committee the number of applications made, the nature of the application and the ASBOs issued according to District. If the PSNI complies with Recommendation 8 above it should be possible to analyse the use of ASBOs across Northern Ireland and according to District.

The fact that the Department of Justice has not yet carried out a review of ASBOs with a view to abolishing their application to children, as recommended by the UN Committee, does not detract from the PSNI's individual responsibility to comply with the Human Rights Act 1998 and the

¹⁸² <http://www.aintmisbehavin.org.uk>

¹⁸³ David Ford MLA, Minister of Justice, 7 May 2010, (AQW 6378/10).

¹⁸⁴ David Ford MLA, Minister of Justice, 23 April 2010 (AQW 6210/10).

¹⁸⁵ *Ibid.*

UNCRC. Just because the PSNI is permitted in law to apply for ASBOs against children this does mean that the PSNI *must* make use of the powers. Suggestions as to how the criminal justice system ought to be reformed do not fall within the remit of the terms of reference for this review. That is an issue best left to the legislature. The Committee must, however, monitor the PSNI's compliance with the Human Rights Act 1998. It is the Committee's view that, given the obvious rights infringements, coupled with the fact that ASBOs are considered to be ineffective, the PSNI should not apply for ASBOs in relation to children and young people under the age of 18 years.

Recommendation 16

The PSNI should consider limiting applications for ASBOs to people over the age of 18 years old and should instead consider the alternative disposals available in respect of children.

Acceptable Behaviour Contracts (ABCs)

An Acceptable Behaviour Contract (ABC) is a voluntary written agreement between a person involved in anti-social behaviour and other relevant local agencies. ABCs list the 'anti-social' behaviour which the person signing up to the contract is alleged to have been involved in and which they agree not to continue. Usually an ABC lasts for six months. PSNI policy states that "the types of behaviour ABCs may be used for are similar to that for an ASBO."¹⁸⁶ ABCs were originally designed for 10 to 17 year olds but have been developed to include adults.

PSNI policy states that due to the flexible nature of ABCs, "there may be circumstances when they could be used for children under 10 years of age."¹⁸⁷ If under 10, the child would not sign the contract but their parents/guardians have to take responsibility for the child's behaviour. The Committee is concerned at the application of any sanction relating to the

¹⁸⁶ *Anti-Social Behaviour Orders and Acceptable Behaviour Contracts and Social Behavioural Forums*, PSNI Service Procedure 35/2006, April 2010, section 20(6)(c).

¹⁸⁷ *Ibid.* section 20(2).

behaviour of children less than 10 years, the age of criminal responsibility. An ABC for which the parent or guardian takes responsibility may introduce a family and a child to the Criminal Justice process more quickly and without any tangible benefit. There is clear potential for a child to be at risk of excessive discipline if the parent or guardian feels at risk of punishment following the child's misbehaviour. The Committee wishes to see the various elements fully considered before the PSNI adopts the practice.

Recommendation 17

In the event that PSNI considers an ABC to be lawful and appropriate for a child under the age of 10 years, which should only ever be an exceptional case, the human rights implications should be fully explored. Thereafter, an assessment should be provided annually to the Human Rights and Professional Standards Committee of those instances where an ABC has been entered into in respect of a child under the age of 10 years.

The Committee does not endorse the use of ABCs for any child below the age of criminal responsibility i.e. 10 years old.

PSNI policy states "ABCs are not a necessary precursor to an ASBO but are often used as an early intervention... Consideration should be given as to whether an ABC is suitable for the individual... Where there is offending behaviour and sufficient evidence to prove it, this should be dealt with through the normal Youth/Adult Diversion process for consideration of a restorative intervention or prosecution."¹⁸⁸ It is worth noting that should there not be sufficient evidence to prove the offending behaviour, it is questionable whether an ABC should be considered as an alternative or as a first step towards an ASBO.

PSNI policy requires that a Youth Diversion Officer (YDO) should offer advice and support to police officers who are pursuing an ABC in relation to a child or

¹⁸⁸ *Ibid.* section 20.

young person. All relevant information relating to the child or young person should be considered by the initiating officer and YDO, and agreement reached that an ABC is an appropriate course of action. When they decide that an ABC is the appropriate course, the initiating officer will invite the young person and other relevant agency representatives to a formal meeting. During the formal meeting the initiating officer explains the ABC process to the young person and the potential consequences should they continue with their behaviour.

The PSNI policy states that the formal meeting should take place at a location agreed by those involved in the contract, though it goes on to suggest that “The use of Police premises may help reinforce the seriousness of the behaviour; however it should be emphasised that the meeting is not part of a criminal interview or investigation.”¹⁸⁹ The policy states that Neighbourhood Policing Team officers are ideally placed to initiate the process but that there is nothing to prevent officers involved in response policing pursuing such a course of action. Officers who “have attended Restorative Justice Training will have particular skills suited to the process, however this training is not essential.”¹⁹⁰

The PSNI policy requires that “the circumstances and behaviours that have led to [an ABC] being pursued should be fully discussed [at the formal meeting]. The individual must be made aware of all the information that goes to prove the anti-social behaviour. The individual must be given the opportunity to admit their involvement, and their consent to proceed with the process must be secured. It is important that all those involved are made fully aware that should this behaviour continue it is likely that more formal action may be pursued.”¹⁹¹ Advice and guidance may also be provided at the meeting regarding further support for the individual and their family from other relevant agencies on the basis of informed consent.

¹⁸⁹ *Ibid.* section 20(8)(a).

¹⁹⁰ *Ibid.* section 20(8)(b).

¹⁹¹ *Ibid.* section 20(9).

In terms of the content of the ABC, the PSNI policy states that “the contract should reflect the behaviour to be addressed and be written in a language that is easily understood. Attention should be given to the educational understanding with regard to literacy. The contract should specify which behaviours the individual must not engage in. It may also have positive requirements such as engaging in a community group or attending school regularly. The conditions should be reasonable, justified, proportionate, realistic and practical.”¹⁹² The comments and recommendations made above in relation to the terms of an ASBO apply with equal force to ABCs.

Where an ABC has been agreed for a child, a copy of the contract is forwarded to the YDO who should maintain a central index folder for ABCs. Documentation is subject to the 12 month weeding rule for non-offence behaviour and 30 months for offence behaviour. Once the ABC is in place, it is the primary responsibility of the initiating officer to monitor its completion and that officer must meet with the individual on at least two occasions during the contract. If an ABC is breached, PSNI policy requires that “there must always be a response” and a structured approach to the response taken: verbal/written advice by the initiating officer to the individual; a meeting to reiterate the contract issues; and details of the breach recorded appropriately in the main file.

Whilst there is no legislative sanction for breach of an ABC, PSNI policy states that if the breach of the ABC “is serious or if there has been a number of breaches then legal action such as ASBO application should be considered. The contract should state what the potential consequences of a breach are.”¹⁹³ If the YDO identifies a young person with a pattern of anti-social behaviour which is not being addressed by the Neighbourhood Policing Team or response officers, the PSNI policy requires that the YDO brings the matter to the attention of the Area Commander in which the behaviour is taking place who in turn should nominate a suitable officer under their command to pursue the appropriate action, supported by the YDO.

¹⁹² *Ibid.* section 20(9).

¹⁹³ *Ibid.* section 20(12)(d).

It is absolutely imperative that a person agreeing to an ABC knows from the outset that breach of an ABC may lead to more formal action, such as an ASBO. It is important when being advised of this that a person isn't pressurised into agreeing to an ABC for fear that if they don't it may lead to more formal action: ABCs are supposed to be voluntary agreements. Stakeholders have raised concerns in relation to the 'voluntary' aspect of ABCs for children and young people. The Children's Law Centre submits, with some justification, that the use of police premises is inappropriate and intimidating, that it undermines the 'voluntary' nature of the agreement and is counterproductive to genuine engagement and meaningful consultation as per Article 12 of the UNCRC.¹⁹⁴

Article 12 of the UNCRC requires that children's views must be sought and given due weight in all matters affecting them. Article 40 UNCRC requires "Every child alleged as or accused of having infringed the penal law has at least the following guarantees... Not to be compelled to give testimony or to confess guilt." Although a child is not being asked to admit to having committed a criminal offence during the formal meeting for an ABC, they are being asked to admit to behaviour which, if the ABC is breached, may form the evidential basis of an ASBO which, if breached, may lead to a criminal conviction. As discussed in the section of this report on ASBOs, the sentencing for the criminal conviction may take account of past behaviour including the behaviour that was admitted to during the course of the formal meeting for the ABC. All of that must be explained to a young person before he or she agrees to the ABC. The consent must be informed and meaningful.

An ABC must be entered into freely and in the absence of any pressure being put upon the child whether by the police, the parents or a community representative. The PSNI policy requires the contract to be agreed and signed at the formal meeting, but recognises that it is not always possible to achieve this in every case and, if necessary, the initiating officer will arrange for a further formal meeting to facilitate the drawing up of the ABC. To have the

¹⁹⁴ Written submission by the Children's Law Centre in response to the terms of reference for this thematic review.

meeting in police premises is unlikely to give the young person a real opportunity to digest what is being alleged and what is being proposed. The better course would be for the young person to be given a copy of the contract and time to think about the consequences of signing it away from the police or police premises.

Unlike an ASBO, the conditions contained within an ABC are determined by the police officer initiating the contract. It is therefore vital that initiating officers fully understand the consequences the prohibitions will have on the whole of that young person's life, including their home life, their school life, their ability to meet with friends and their access to leisure and play facilities: the prohibitions should not be unduly restrictive and should result in as little interference as possible with the rights of the child. The initiating officer should proactively consider whether any of the conditions may endanger the child in any way. To do so effectively, the officer will have to have trusted links with other agencies and should be fully aware of any risk in the local community.

Unlike ASBO prohibitions, the conditions of an ABC may require positive action. The Committee recognises that positive conditions could potentially be beneficial to a young person, for example, if they have alcohol problems then attending a support group may help them to resolve their issues. However it queries whether ABCs are the correct medium through which to impose such obligations given that breach of an ABC can be used as an evidential basis for pursuing an ASBO which in turn may lead to a criminal conviction if breached. The length of time for which breach of an ABC can be used as evidence in an ASBO application appears to be indefinite.

Conclusion

The Committee appreciates that anti-social behaviour is an issue of real concern to communities and businesses in Northern Ireland. District Policing Partnerships highlighted tackling anti-social behaviour as one of the key issues in their areas that ought to be reflected in the Northern Ireland Policing Plan 2010-2013. The Policing Plan 2010-2013 contains a target to increase

the percentage of people who agree that the PSNI and other agencies are dealing with the anti-social behaviour and crime issues that matter in local areas to 60% by 31 March 2012; and a target to reduce the number of incidents of anti-social behaviour to ensure a 15% reduction by 31 March 2012. Policing non-criminal activity in a bid to increase public confidence in the police service does serve a legitimate purpose provided, where children are concerned, that any police action taken is in the best interests of the child.

Stakeholders indicated at the roundtable meeting held in September 2009 (as part of this thematic review) that the way forward for tackling anti-social behaviour is to change mindsets to look at preventative measures rather than sanctions. Whilst applying for ASBOs against children may temporarily make some members of the community feel that something is being done there is no persuasive evidence that ASBOs work. Furthermore, and in any event, the Human Rights and Professional Standards Committee is not persuaded that an ASBO is usually in *the child's* best interests: the UN Committee on the Rights of the Child has made that clear.

POLICE POWERS

The exercise of police powers (particularly in relation to children and young people) must be lawful, necessary, proportionate and in the best interests of that child or young person. Police officers should engage in positive dialogue with the child or young person in an open minded manner, ensuring that the child or young person understands the reason why, and consequences of, the police officer exercising any particular power. Every contact the police make with a child or young person, and in particular when it is a first contact, affects that child or young person's perception of, and confidence in, the police. A negative interaction with the police may deter a child or young person who is a victim of crime from reporting the incident, or may lead to them withdrawing their complaint and no longer wishing to prosecute the offender.

Dispersal Zones

Dispersal powers were introduced in England and Wales by the Anti-Social Behaviour Act 2003. They are not currently available to the police in Northern Ireland. The legislation permits an officer of the rank Superintendent or above to designate an area as a dispersal zone where the officer has grounds for believing: that any members of the public have been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons in public places in any locality in the relevant police area; and that anti-social behaviour is a significant and persistent problem in the relevant locality.¹⁹⁵

If an area has been designated as a dispersal zone, and a police officer has reasonable grounds for believing that the presence or behaviour of a group of two or more persons in any public place in the relevant locality has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed, the police officer may order the people in a dispersal zone to leave the area and not return for 24 hours. The legislation also contains a power permitting police officers to remove a person under the age of 16 found within a dispersal zone between the hours of 9pm and 6am and remove him or her to their home unless the officer has reasonable grounds for believing that the person would, if removed to that place, be likely to suffer significant harm.

The UN Committee on the Rights of the Child in 2008 expressed concern that dispersal zones restrict a child's right to freedom of movement and peaceful assembly as enshrined in Article 15 UNCRC (and also Article 11 ECHR).¹⁹⁶

The Northern Ireland Office proposed, in a consultation paper for a 5 year community safety strategy, that dispersal powers be introduced in Northern

¹⁹⁵ Anti-Social Behaviour Act 2003, section 30(1).

¹⁹⁶ *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, United Nations Committee on the Rights of the Child, (CRC/C/GBR/CO/4), October 2008, para. 35.

Ireland.¹⁹⁷ A number of respondents to the consultation paper raised a number of objections. In particular there was a concern amongst respondents that the powers would be used disproportionately against young people who were not engaging in criminal or anti-social behaviour but who congregated in public places because there were no suitable leisure or play facilities. Not only would dispersal powers interfere with the rights of those young people under Article 15 UNCRC and Article 11 ECHR, but disproportionate use of those powers against a person based upon their age would arguably breach their Article 14 ECHR right.

In relation to the power to remove those under the age of 16 from dispersal zones and return them home, it became apparent in the Domestic Abuse Thematic Review completed by the Human Rights and Professional Standards Committee in March 2009 that the home may be a place of danger for a young person and the very reason that young person is on the street. Furthermore, returning a young person to their home in a police car may send a message out to the community that the young person was 'up to no good.' That can have wide ranging consequences for the young person, including stigmatisation and alienation and, as discussed previously, it may lead to paramilitary punishment style attacks.

Although there have been no firm legislative proposals the community safety strategy is now being considered by the Department of Justice. Should dispersal powers be afforded to the PSNI, the Committee will meet with the PSNI to discuss how it intends to exercise the powers. Although the PSNI cannot yet avail of dispersal zone powers they are able to ask groups of young people to 'move on' where, for example, they are causing a breach of the peace. A recent survey conducted amongst young people in Northern Ireland found that 70% of the 212 respondents had some form of contact with the police. The most common form of contact, 33%, was being told to move

¹⁹⁷ *Together. Stronger. Safer*, Community Safety Unit, Northern Ireland Office, October 2008.

on.¹⁹⁸ Similarly, in a survey carried out in 2003 amongst 1,163 young people in Northern Ireland, the second most frequent form of contact with the police was being asked to move on (20%).¹⁹⁹

Many young people have said that if the police had simply explained why their presence in an area was causing concern they would almost certainly have accepted that and moved freely. That underlines the importance of police officers engaging with young people in an open minded manner and valuing their input. It is hoped that bespoke youth training and better community engagement will equip officers with the skills (and mind-set) to deal appropriately with young people.

Mosquito Devices

Mosquito devices emit a high frequency sound that causes discomfort to those who hear it. The sound is most audible, and therefore causes the most discomfort to, those under the age of 20 years. They are inexpensive to buy and have been used by shops and businesses throughout the United Kingdom to deter young people from congregating on (or even entering) their premises. The device does not differentiate between young people who are engaged in illegal activity and young people who are not. The Committee is concerned that the Mosquito device does not encourage young people to act responsibly but presumes that they will not. The use of such devices potentially violates young people's right to enter a public space and sends out a negative message. It is strongly arguable that the Mosquito device constitutes a disproportionate interference with Article 8 ECHR and that the interference is discriminatory because it affects only young people.

Use of the Mosquito device is also incompatible with the UNCRC which requires state parties to ensure that the child is protected against all forms of

¹⁹⁸ *Beyond the Margins. Building Trust in Policing with Young People*, Achieve Enterprises and the Institute for Conflict Research, March 2010, page 18.

¹⁹⁹ *Ibid.* page 18 which refers to *Policing, Accountability and Young People*, Institute for Conflict Research, 2003.

discrimination or punishment,²⁰⁰ recognises the rights of the child to freedom of peaceful assembly,²⁰¹ and requires states parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse.”²⁰²

The Parliamentary Assembly of the Council of Europe examined recently the use of Mosquito devices. The Assembly reported that “the physical impact of high-frequency sounds on children and young people still lacks adequate medical research: this is of concern and the precautionary principle should therefore apply. However, the main issues raised by this kind of device are their degrading and discriminatory consequences for young people, who are driven from given places as “unwanted”. This is neither politically acceptable nor consistent with the safeguard of fundamental human rights which the use of ‘Mosquito’ devices clearly infringes. For these reasons, legislative measures should be taken throughout Europe against the marketing of such devices and their use in public places should be banned.”²⁰³

The Parliamentary Assembly considered the use of Mosquito devices to be a disproportionate interference with Article 8 ECHR, the right to respect for private and family life, which also includes the right to respect for physical integrity. It found that the devices are inconsistent with the general prohibition on discrimination in the enjoyment of any right set forth by law, as provided for by article 1 of Protocol No. 12 to the ECHR, and they are in breach of Article 14 of the ECHR, which states that the enjoyment of rights and freedoms protected by the Convention shall be secured without discrimination on any ground such as “birth or other status”.

The Parliamentary Assembly also considered that the use of Mosquito devices has the potential, depending on the circumstances, to interfere with Article 3 ECHR (prohibition against torture, inhuman or degrading treatment or

²⁰⁰ Article 2.2 UNCRC.

²⁰¹ Article 15 UNCRC.

²⁰² Article 19.1 UNCRC

²⁰³ *Prohibiting the marketing and use of the “Mosquito” youth dispersal device*, Parliamentary Assembly, Council of Europe, March 2010.

punishment); Article 11 ECHR (right to freedom of peaceful assembly); Article 2.2 UNCRC (protection against all forms of discrimination and punishment); Article 15 UNCRC (freedom of peaceful assembly); and Article 19.1 UNCRC (protection from all forms of physical or mental violence, injury or abuse). The Assembly emphasised that these devices inflict acoustic pain on young people and treats them “as if they were unwanted birds or pests”. Children and young people have the right pursuant to Article 3 ECHR to be protected from attacks against their physical and psychical integrity.

ACPO has declined to accredit the use of Mosquito devices by police forces: a lack of evidence that the product is safe; potential side-effects on people suffering disabilities; and issues surrounding discrimination informed ACPO’s decision. However, whilst ACPO has not endorsed the use of Mosquito devices it has not taken steps to prohibit their use. In 2006, the Board’s Human Rights Advisors wrote to ACC Criminal Justice to establish the PSNI’s position on the use of the Mosquito device. ACC Criminal Justice indicated that the PSNI would neither use nor recommend the Mosquito device and that a direction had been issued to officers highlighting the PSNI’s position.²⁰⁴ The Human Rights and Professional Standards Committee commends the PSNI for taking that stance and respectfully endorses that decision.

PSNI recognises the detrimental impact Mosquito devices can have on children and young people and has discussed the issue of private use with stakeholders at its Youth Champion Forum. Following those discussions, PSNI has engaged with the manufacturer of Mosquito devices to ensure that a sign to warn that a device is operating in the immediate area is made available to all purchasers of the devices. It is suggested that in the absence of legislation prohibiting the sale, marketing and use of the devices in Northern Ireland (the UK is required to guarantee the rights contained within the ECHR) the PSNI should consider what protective measures are required to protect young people from harm. PSNI is continuing to engage with stakeholders on this issue and is considering whether, and if so what, further

²⁰⁴ Letter from ACC Criminal Justice to Policing Board’s Human Rights Advisors dated 27th November 2006.

action should be taken in respect of those utilising the devices in Northern Ireland. The Committee will continue to work with the PSNI to that end.

Public Order and Crowd Control

Public order policing during parades and other public events raises difficult human rights issues, for example during parades a number of rights conflict: the right to freedom of expression, assembly and association²⁰⁵ on the one hand; and the right to protest or to enjoy peaceful enjoyment of the home environment on the other.²⁰⁶ Perhaps most controversial in public order situations where children and young people are present is police use of force.

The use of force by police officers has the potential to interfere with individual rights under Article 2 ECHR (right to life); Article 3 ECHR (prohibition against torture, inhuman or degrading treatment or punishment); and Article 8 ECHR (right to respect for private and family life). Police officers have the right to defend themselves from unlawful physical violence but also have a duty to protect others from harm: if a police officer does not take appropriate action to protect others from harm, he or she may be violating that person's human rights. PSNI policy on the use of force is primarily contained within two Policy Directives: Public Order and the Use of Force²⁰⁷ and Police Use of Firearms.²⁰⁸ Together, those Policy Directives replicate the legal framework within which force may be used. They provide clear procedures and guidance on the use of force generally, and more specifically in relation to the use of CS incapacitant spray (CS Spray), vehicle mounted water cannon, batons, handcuffs, limb restraints, public order dogs and firearms, including Attenuating Energy Projectiles (AEP). In addition, PSNI Guidelines on the

²⁰⁵ Articles 10 and 11 of the European Convention on Human Rights.

²⁰⁶ Article 8, 10 and 11, and Article 1 of Protocol 1 of the European Convention on Human Rights.

²⁰⁷ *Public Order and the Use of Force (Including CS Incapacitant Spray, Batons, handcuffs and vehicle Mounted Water Cannon)*, PSNI Policy Directive 07/07, June 2007.

²⁰⁸ *Police Use of Firearms*, PSNI Policy Directive 12/08, August 2008.

Operational Use of Taser²⁰⁹ set out PSNI procedure and guidance on the use of Taser.

PSNI policy on use of force is reflective of a “graduated and flexible response to the threat”, with a stronger justification required for using force, which is potentially lethal or lethal. Police officers may only lawfully use lethal force where they honestly believe that it is absolutely necessary to avert a real and immediate risk to the lives of themselves and/or others.²¹⁰

AEPs are less-lethal kinetic energy projectiles (impact rounds). AEP entered operational service across the UK in June 2005. Unlike its predecessors, the AEP impact round is not a rigid baton. It performs differently from a traditional baton round in the way in which it attenuates its energy by reducing peak forces, extends the duration of impact and spreads the area of contact. AEP may only be used lawfully if it is absolutely necessary to do so to reduce a serious risk of loss of life or serious injury or substantial and serious damage to property, which is likely to cause or is judged to be likely to cause a serious risk of loss of life or serious injury.²¹¹ The AEP was not designed for use as a crowd control technology.²¹²

AEP has been used in stand-alone situations as a less lethal alternative to conventional firearms, and has been used during public disorder situations. However, at all times the AEP must only be used in relation to an identified, targeted individual, whether acting alone or as part of a group. An AEP can *never* be lawfully fired *into* a crowd or *as a means of* crowd control.

Taser is a single shot weapon designed to temporarily incapacitate a subject through the use of an electric current, which temporarily interferes with the body’s neuromuscular system. The use of Taser may be justified where the

²⁰⁹ *Guidelines on the Operational Use of Taser*, PSNI Service Procedure 6/2008, January 2008 – to be read in conjunction with PSNI Policy Directives 07/07 and 12/08.

²¹⁰ *Police Use of Firearms*, PSNI Policy Directive 12/08, August 2008, section 3(2)(e)(iii)(bb).

²¹¹ *Ibid.* section 7, para. 8 (5)(a) and para. 9(7)(b).

²¹² *As per* AEP guidance.

officer using it honestly and reasonably believes that it is necessary in order to prevent a risk of death or serious injury. It is intended to cover a situation where an officer honestly believes that a situation is in immediate danger of escalating to a point where the use of lethal force will be required.²¹³

Any use of force, however moderate, has the potential to take a life or cause serious physical or mental injury to a person. The more vulnerable the person against whom the force is used, the greater the risk is of causing harm to that person. In recognising this, the PSNI policies on use of force all require that officers give special consideration to the heightened vulnerabilities of children and members of other vulnerable groups in relation to the use of force. They must take cognisance of the United Nations Convention on the Rights of the Child (UNCRC) which requires that the best interests of the child are the primary consideration in all operations concerning children.²¹⁴ The threshold that has to be met before any given type of force is used is the same regardless of whether the person against whom it is to be used is a child or an adult: however, in assessing whether that threshold has been met in the case of a child or vulnerable person, the assessment must be more rigorous.

PSNI policy includes specific reference to children and young people and imposes a strict set of criteria. It explicitly requires that every effort should be made to ensure that children or young people are not placed in danger. A dynamic risk assessment must be carried out before the use of AEP is authorised. The police are also required to consider the rights of children and young people when planning an operation in which recourse may be had to the use of force. They must take all reasonable steps to limit recourse to the use of force and to ensure that members of the public are not placed in danger. While the PSNI pre-operation briefings and policing of public disorder is compliant with the Human Rights Act more could be done to deal with the build up to public disorder. By way of example, the Committee considers that more efforts should be concentrated on the policing with the community

²¹³ PSNI Service Procedure 6/2008, Guidance Notes, paras.10.3 and 10.4.

²¹⁴ PSNI Policy Directive 07/07, s. 3(2)(g) and PSNI Policy Directive 12/08, s.3(3)(i). Similar wording is contained in PSNI Service Procedure 6/8008, Guidance Notes, paras.10.7 and 10.8.

strategy and grass roots engagement to prevent the likelihood of public disorder. This is discussed further below.

Where a firearm has been discharged, including an AEP, the Police Ombudsman must be informed immediately, irrespective of whether a complaint has been made. The Ombudsman is required to carry out a thorough investigation which will include not only the circumstances of any injury to, or death of, any person who may have been affected, but also the circumstances leading up to the discharge and all surrounding issues such as the management of the incident and planning of the operation.²¹⁵ Where Taser has been drawn, or aimed at a subject, the Ombudsman must be notified, but he will usually only investigate if a complaint is made. However, the Ombudsman will carry out a thorough investigation in all cases where Taser is discharged.²¹⁶ Any other situation where a police officer has used force may also be the subject of a Police Ombudsman investigation regardless of whether or not a complaint has been made.²¹⁷

PSNI's written policy, as contained in Policy Directives and Service Procedures, on public order and crowd control is comprehensive, fully embraces human rights principles and is in accordance with international best practice. During those live operations, observed by the Human Rights Advisor on behalf of the Human Rights and Professional Standards Committee, the policy was also applied in practice. Training continues to be delivered professionally so as to embed human rights principles and practice 'on the ground'. It is essential that practice always follows the written policy.

Use of force against children and young people 2009/2010

Since January 2008, the PSNI has collected its data on particular types of force used by officers by means of an electronic use of force monitoring form. Any incident that involves use of force by an officer, other than those listed on

²¹⁵ PSNI Policy Directive 12/08, s.3(9)(b).

²¹⁶ PSNI Service Procedure 6/2008, Guidance Notes, paras.14.4 and 14.5.

²¹⁷ As he can also investigate matters referred to him by the Policing Board, the Public Prosecution Service, the Chief Constable, or matters of his own volition – Police (Northern Ireland) Act 1998, s.55.

the electronic monitoring form, will still be reported. In that case, it is reported to the officer's supervisor and recorded in his or her notebook. This would include, for example, unarmed skills and/or use of handcuffs.²¹⁸

The PSNI provides the Policing Board with a six monthly report on uses of force recorded on the electronic use of force monitoring system.²¹⁹ For each category of force included in the report, the PSNI provides a breakdown of the location of the use (e.g. roadway, dwelling etc.); the District in which the force was used; the incident type (e.g. assault, domestic etc.); the type of police duty (e.g. mobile patrol, foot patrol etc.); and, where a weapon was actually discharged/ drawn and used/ sprayed, the gender and approximate age of the member of the public against whom the force was used. PSNI also provides a breakdown of the reason for use (e.g. to protect public, to protect property etc.) for each category of force, except where an AEP has been used during a public disorder incident.

During 2009/2010, AEPs were pointed but not discharged on 23 occasions. AEPs were discharged on 15 occasions, with a total of 33 AEPs being fired. 20 of the occasions where AEPs were pointed but not discharged were occasions where the AEP was used as a 'less lethal' option to conventional firearms. The remaining 3 occasions where AEPs were pointed but not discharged were during serious public disorder incidents. All 15 discharges of AEP occurred during three serious public disorder situations.²²⁰

The report provided to the Policing Board details the reasons for the use of AEP where it is used as a less lethal alternative to conventional firearms, not when it is used during public disorder incidents. Every discharge of AEP during public disorder incidents is reported to the Board by way of bespoke recording forms which are sent within a number of hours of the incident

²¹⁸ *Public Order and the Use of Force (Including CS Incapacitant Spray, Batons, handcuffs and vehicle Mounted Water Cannon)*, PSNI Policy Directive 07/07, June 2007, section 13(1)(d).

²¹⁹ As per recommendation 21 of the Policing Board's Human Rights Annual Report 2008.

²²⁰ PSNI Use of Force Report, 1 April 2009 – 31 March 2010. The three public disorder incidents were: Ardoyne, July 2009; Mountpottinger Road, Belfast, August 2009; and Craigavon, February 2010.

occurring. For completeness, however, every use of AEP during public disorder incidents should be recorded on the use of force monitoring form and included in the six monthly reports to the Board.

Recommendation 18

The reason(s) for PSNI use of AEP during public disorder situations should be recorded on the electronic use of force monitoring form and included in the six monthly use of force report provided to the Human Rights and Professional Standards Committee.

While the PSNI has withdrawn the category of 'Youths Causing Annoyance' from its crime recording the term continues to be used on the use of force monitoring form. The use of force report to the Board for 2009/2010 records that Batons were drawn 13 times, and used 3 times, against 'Youths Causing Annoyance', and that CS Spray was drawn but not sprayed 4 times, and sprayed 5 times, against 'Youths Causing Annoyance'. Such terminology perpetuates the myth that it is only youths who cause annoyance or are guilty of anti-social behaviour. It also begs the question as to how a 'youth causing annoyance' could escalate into a situation where batons or CS Spray are used. Such terminology is unhelpful both to young people and the PSNI. If the young people were engaging in, for example, criminal activity, the incident type should be recorded as 'Crime', not 'Youths Causing Annoyance'.

Recommendation 19

PSNI should, forthwith, review policy documents, Service Procedures and recording forms for the purposes of deleting the term 'Youths Causing Annoyance.' PSNI should provide an assurance to the Human Rights and Professional Standards Committee that the term 'Youths Causing Annoyance' is no longer used as a classification when recording or reporting on any type of incident.

Using the data received from the PSNI for the last financial year, the table below shows incidents recorded on the electronic use of force monitoring system between 1 April 2009 and 31 March 2010 where a weapon was

actually discharged/ drawn and used/ sprayed by approximate age of member of the public against whom the force was used.

Table 1: Approximate age of member of the public against whom force was used, 1 April 2009 to 31 March 2010²²¹

Approx. age Type of Force	17 and under	18-29	30-39	40-49	50-59	60+	Total
AEP (discharged)	3 ²²²	26	1	1	0	0	31
Baton (used)	36	245	66	24	11	0	382
CS Spray (sprayed)	26	242	94	53	15	0	430
Firearms (discharged)	0	2	2	2	1	0	7
Police Dog	3	37	16	3	3	2	64
Taser (discharged)	1	3	3	1	0	0	8
TOTAL	69	555	182	84	30	2	922

The use of force report provided to the Board is not published by the PSNI. Whilst there is a requirement that official statistics do not reveal the identity of an individual or organisation, or any private information relating to them, arrangements for confidentiality protection must not be so restrictive as to limit unduly the practical utility of official statistics.²²³

Stop, Search and Question

There are a number of statutory powers available to the PSNI to stop, search and question persons. These powers are exercised against both adults and children. The most commonly used powers are:

A. Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE): a police officer has the power to stop and search an individual

²²¹ PSNI Use of Force Report, 1 April 2009 – 31 March 2010. Note that the figures in the table may not be a unique count of the number of persons on whom force was used, as force may be used by more than one officer on a member of the public.

²²² All three were approximately 17 years of age.

²²³ *Code of Practice for Official Statistics*, UK Statistics Authority, January 2009, Principle 5.

or vehicle (or anything which is in or on the vehicle) in any public place if the officer has reasonable grounds for suspecting that he or she will find stolen or prohibited articles.²²⁴

B. Terrorism Act 2000 (TACT), section 44: provided an authorisation is in place, which can only be granted by an officer of rank Assistant Chief Constable and above, a police officer has the power to (i) stop a vehicle and search the vehicle, the driver and/or the passenger(s) of the vehicle and anything in or on the vehicle or carried by the driver or the passenger(s);²²⁵ and (ii) stop a pedestrian and search the pedestrian and anything carried by him or her.²²⁶ An authorisation may be given only if the person giving it considers it expedient for the prevention of acts of terrorism. Note that the exercise of the power is predicated upon a lawful authorisation rather than reasonable suspicion;

C. Justice and Security (Northern Ireland) Act 2007 (JSA): Under section 21 of the JSA, a police officer has the power to stop a person for so long as is necessary to question him to ascertain his identity and movements.²²⁷ The power to stop a person includes the power to stop a vehicle.²²⁸ Under section 24 JSA, a police officer has power to stop and search a person in a public place to ascertain whether the person has munitions²²⁹ or wireless apparatus²³⁰ unlawfully with him or her; to search a person who is not in a public place if the officer reasonably suspects the person to have munitions unlawfully with him or her or wireless apparatus;²³¹ enter and search any premises for the purpose of ascertaining whether there are munitions or wireless apparatus unlawfully on the premises,²³² and to seize and, if necessary, destroy

²²⁴ PACE, Article 3.

²²⁵ TACT, s.44(1).

²²⁶ TACT, s.44(2).

²²⁷ JSA, s.21(1).

²²⁸ JSA, s.21(5).

²²⁹ Explosives, firearms and ammunition and anything capable of being used in the manufacture of an explosive, firearm or ammunition: JSA, Schedule 3, s.1(3)(a).

²³⁰ A scanning receiver or a transmitter (as defined): JSA, Schedule 3, s.1(3)(f).

²³¹ JSA, Schedule 3, section 4.

²³² JSA, Schedule 3, section 2(1).

any munitions in the course of the search.²³³ A police officer also has the power under the JSA to enter any premises if s/he considers it necessary in the course of operations for the preservation of the peace or the maintenance of order.²³⁴

Traditionally the most frequently used power by PSNI has been the power to stop and search under PACE, however the use of the power under section 44 TACT increased each year since 2008. During 2009/2010 the use of section 44 TACT exceeded the use of the PACE power.²³⁵ The increase in the use of section 44 TACT, which is a power aimed at disrupting terrorism, has been attributed by the PSNI to the increase in dissident activity in Northern Ireland. Also of note during 2009/2010 was the increase in the use of the section 21 JSA power to stop and question a person.²³⁶

There has been much concern and public debate surrounding police use of powers to stop and search without suspicion under section 44, particularly following the judgment of the European Court of Human Rights in January 2010 whereby it held that section 44 TACT was unlawful and in violation of the Article 8 ECHR right to respect for private and family life.²³⁷ In light of this, some Members of the Policing Board raised concerns about the PSNI's increased use of section 44 TACT, and also section 21 JSA, and through the Human Rights and Professional Standards Committee instigated a thematic review. The review examined whether the PSNI, when exercising its powers under TACT and JSA, is acting in accordance with the law both at an organisational and individual officer level; whether the powers are being used

²³³ Unless it appears that the munitions are being held and will be used lawfully: JSA, Schedule 3, section 5.

²³⁴ JSA, section 23(1).

²³⁵ Between 1 April 2009 and 31 March 2010 there were a total of 23,793 uses of the power to stop and search under PACE across the whole of Northern Ireland compared to 28,692 uses of the section 44 TACT power during the same period. Between 1 April 2008 and 31 March 2009 there were 20,011 uses of the power under PACE and only 9,548 uses of the section 44 TACT power. These statistics are sourced from PSNI Stop and Search Statistical Reports which are available through the PSNI website.

²³⁶ Between 1 April 2009 and 31 March 2010 there were 5,286 uses of the power to stop and question under section 21 JSA compared to only 112 uses during the same period in 2008/2009.

²³⁷ *Gillan and Quinton v The United Kingdom*, (Application No. 4158/05).

operationally in accordance with the law; whether the powers are being used disproportionately; and whether officers are properly trained and understand the extent of the powers and how they can be used. An important part of the review was to consider the impact of the exercise of the powers on community confidence.

The British Government has announced that section 44 authorisations will no longer be confirmed but that the power contained within the Terrorism Act will be reviewed as part of a more wide-ranging review of counter-terrorism laws. Therefore, section 44 TACT is not currently used within Northern Ireland. The Human Rights and Professional Standards Committee will consider this further following the publication of the Government's review and its thematic review report will be published in due course. For present purposes, it is the exercise of the powers to stop and search children and young people which is considered here.

The Youth Issues Team of PSNI Community Safety Branch are currently consulting with the Northern Ireland Commissioner for Children and Young People (NICCY) on preparing a general information leaflet on stop and search aimed at children and young people and on a leaflet to be handed out when a child or young person is stopped and searched. Before the leaflets are finalised it is intended that draft copies will go to NICCY's Youth Panel, which is made up of young people, for consideration and feedback. PSNI will continue to consult with young people through their youth engagement programme and if any issues arise in relation to stop and search these will be fed back to the PSNI Human Rights Training Adviser who will address the issues in training where appropriate.

It is not possible to quantify the full extent to which section 44 TACT, or any other stop, search and question power, has been used against children and young people. In order to monitor use of the powers, District Commanders complete a quarterly spreadsheet containing details of the power used; the Area and District in which it was used; the gender of the person searched; the ethnicity of the person searched (based on officer perception of ethnicity); any

resulting arrests; and, for PACE stop and searches, the reason for carrying out the stop and search. This information is forwarded to PSNI Central Statistics Branch and reports are then provided to the Policing Board on a quarterly basis. The Board, through the Human Rights and Professional Standards Committee, monitors the statistics and, where any trends emerge, queries those trends with the PSNI. The PSNI's quarterly reports are also available to the public through the PSNI's website.

The PSNI's quarterly statistical reports to the Board do not record the age of the person stopped, searched and/or questioned. Whilst an officer will ask for the name, address and date of birth of any person stopped, searched and/or questioned, there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.²³⁸ However, whilst the PSNI cannot require a person to disclose their date of birth, it is obliged under section 75 of the Northern Ireland Act 1998 to have due regard to the need to promote equality of opportunity between nine categories of person, including people of different age groups. PSNI fulfils its section 75 duty by having an equality scheme which monitors any adverse impact of policies it adopts on the promotion of equality of opportunity.²³⁹ That equality scheme must be applied in respect of all policy and practice.

The second most common form of contact young respondents to a recent survey had with the police, 29%, was that of being stopped and questioned.²⁴⁰ Of the respondents from a Protestant tradition who reported having had contact with the police, 33% said that they had been stopped and questioned. Of the respondents from the Catholic tradition who reported having had contact with the police, 24% said that they had been stopped and questioned. A survey carried out in 2003 amongst 1,163 young people found that the most frequent form of contact with the police was being stopped and questioned

²³⁸ Pace Code of Practice 'A', para. 4.2.

²³⁹ Northern Ireland Act 1998, schedule 9, section 4(2)(c).

²⁴⁰ *Beyond the Margins. Building Trust in Policing with Young People*, Achieve Enterprises and the Institute for Conflict Research, March 2010, page 18.

(22%).²⁴¹ A survey carried out amongst young people in Derry/Londonderry in 2005 found that 32% had been stopped and questioned by the police.²⁴² Whilst the findings would indicate that powers to stop, search and question are frequently used against young people, surveys provide only a snapshot and may not relate directly to the use of formal powers under PACE, TACT or JSA.

Data to be completed by police officers filling out the electronic use of force monitoring form includes the 'approximate age' of the person against whom the force was used. This enables both the PSNI and the Committee, to whom the PSNI provides six monthly statistics on the use of force, to monitor the age of persons against whom force is used. The age, or approximate age, should also be recorded on the stop and search and stop and question forms to enable the appropriate monitoring to be undertaken.

Recommendation 20

District Commanders should include in their quarterly spreadsheets detailing police use of powers to stop, search and question, the age, or approximate age, of all persons against whom the stop, search and question power have been used. This information should be forwarded to the Central Statistics Branch for inclusion in the quarterly reports that are provided to the Board and that are published on the PSNI's website.

If a police officer is exercising any of the powers to stop and search or question a young person, the way in which the officer interacts with the young person can have a lasting impact on that young person. The approach adopted by an officer should always be respectful and inspire a feeling of confidence and safety rather than vulnerability and anxiety. A number of young people have expressed dissatisfaction with the manner in which a search was carried out giving examples of rough, bad-mannered and

²⁴¹ *Ibid.* page 18 which refers to *Policing, Accountability and Young People*. Institute for Conflict Research, 2003.

²⁴² *Ibid.* page 13 which refers to *Something to Say – a condensed TRIPROJECT report on the views of young school leavers in the Derry City Council areas*, R. Roche, 2005.

oppressive behaviour. While that is likely to be a small minority of officers, it is unacceptable and damaging for police/community relations. During the training which the Human Rights Advisor observed this was impressed upon all officers but it must be reinforced in all briefings and taskings. There is no excuse or justification for an officer to behave in a way which is unprofessional, regardless of the behaviour of the person stopped. Supervisory officers have an important part to play in reinforcing that message.

Community Engagement

Recommendation 1 of the Commission on Policing in Northern Ireland (the Patten Commission) required the police service to focus policing on a human rights approach. What was anticipated was a police service that respected human rights both in the technical sense *and* in the behavioural sense. The second broad theme of Patten was policing with the community. The Patten report is underpinned throughout by it. It should be a core function of the police service and every police station and every police officer. Furthermore, the Police (NI) Act 2000 requires the police to carry out their functions in co-operation with, and with the aim of securing the support of, the local community. It represents a style of policing to meet local community needs; it is not a specialist form of policing. Rather, it should be the core *philosophy* of the service and its means of *delivering* its service. In 2006, the PSNI established a new policing with the community branch to give renewed emphasis to policing with the community and embed it as the dominant style of policing within Northern Ireland.

Respect for and protection of human rights is central to this policing model. One depends upon the other. Human rights jurisprudence reminds us that the protection of human rights must be practical and effective. That means the police service must be scrutinised at all levels so that policy (both in the drafting and implementation stages), training (including appraisal), investigations and operations (from planning to implementation including decision-making on the ground) are effective in ensuring human rights

compliance. Central to the vision of police reform is meaningful engagement, community consent and police accountability.

The future of policing in Northern Ireland should be built upon the police service embracing a human rights culture in genuine and practical partnership with the community. What is needed, it seems to the Committee, is a dynamic dialogue in which the community can express its views and concerns to the police and the police can report back to the community and explain its actions. Policing with the community requires a paradigm shift - it depends upon an attitude of mind both of the community and the police alike. Progress can only be maintained and built upon if the police and the community work *in partnership*. Good examples of community partnership do exist within the PSNI. Of particular note are Dunmurry and East Belfast. In East Belfast *Street by Street* is a unique grass roots community safety initiative which provides a holistic community response to issues of anti-social behaviour in which the PSNI has fostered positive relationships with voluntary and statutory agencies and focuses efforts on prevention. Neighbourhood policing teams are central to the co-ordinated response. In its inaugural year the project saw a significant decrease in reports of anti-social behaviour.

Every interaction between a police officer and a child or young person will influence that child or young person's perception of the police. Successful engagement with children and young people from an early age "can only pay dividends, supporting communities and building positive relationships thereby encouraging young people to play an active part in society."²⁴³ Survey findings contained in a report by Achieve Enterprises and the Institute for Conflict Research, prepared in response to this thematic review, indicate that "while young people have a generally positive view of the police [as an organisation], there is a strong sentiment among them that the police neither fully understand them nor treat them fairly."²⁴⁴ A literature review contained within the same report found "a broad consensus among young people, of all

²⁴³ *PSNI Policing with Children and Young People*, PSNI Policy Directive 13/06, January 2010, section 3(1)(b).

²⁴⁴ *Beyond the Margins. Building Trust in Policing with Young People*, Achieve Enterprises and the Institute for Conflict Research, March 2010, page 25.

backgrounds, that the police do not understand young people and the issues facing them” and that “negative relationships between young people and the police inhibit more successful engagement between the PSNI and young people.”²⁴⁵

Young people who reported having some form of contact with the police experienced both positive and negative forms of behaviour: the most common was ‘disrespectful’ (38%); followed by ‘polite’ (32%); ‘wrongly accused of misbehaviour’ (31%); ‘fair’ (30%); ‘stopped without reason’ (29%); ‘professional’ (28%); and ‘swore’ (23%).²⁴⁶ If one compares the findings from that report to one carried out in 2003,²⁴⁷ it suggests that young people today are less likely to experience unacceptable behaviour from police.²⁴⁸ It seems, therefore, that some real progress has been made.

Whilst PSNI has worked, and continues to work, hard to build upon its relationship with children and young people there is clearly more to be done to challenge and change the negative perceptions still felt by many young people towards the PSNI. PSNI policy is sending out the correct message, requiring officers to “engage with children and young people in an open minded manner to understand and address their concerns in the most appropriate way for each individual.”²⁴⁹ It encourages the use of foot patrolling, especially by Neighbourhood Policing Teams, “to enhance contact and familiarity with children and young people”²⁵⁰

However, given the recent findings in the Achieve Enterprises survey (which mirror feedback received from stakeholders during this thematic review), PSNI guidance may not always be translating into practice. In particular, in areas of

²⁴⁵ *Ibid.* page 15.

²⁴⁶ *Ibid.* page 20.

²⁴⁷ *Policing, Accountability and Young People.* Institute for Conflict Research, 2003.

²⁴⁸ *Ibid.* page 21. Note that the respondents to the surveys in 2003 and 2010 are different in terms of size (1,163 in 2003 and 212 in 2010) and in terms of the groups targeted (the 2003 survey was broadly representative of the young population in Northern Ireland while the 2010 survey focused on young people who were more likely to come into contact with the police).

²⁴⁹ *PSNI Policing with Children and Young People*, PSNI Policy Directive 13/06, January 2010, section 3(1)(e).

²⁵⁰ *Ibid.* section 7(1)(2).

disadvantage where young people are more likely to come into contact with the police, first-hand accounts have been shared by community representatives and youth workers of inappropriate responses by police officers to incidents involving young people and a lack of understanding by officers of local issues. It must be stressed that they were recounted as individual incidents, applying to a small number of officers but any such behaviour needs to be tackled by the PSNI on a service-wide basis. All of those who reported negative experiences considered two factors to be paramount: a rapid turnover of officers on Neighbourhood Policing Teams; and a lack of local knowledge and skill by Response Teams and Tactical Support Groups (TSGs). Underlying that was the common complaint that members of Response Teams and TSGs exhibited an unhelpful and antagonistic attitude towards young people.

Dedicated Neighbourhood Policing Teams have been established in each policing District to provide a visible, accessible and intelligence-led policing service in local areas. Throughout the course of this thematic review, individuals and organisations have been very keen to name those neighbourhood officers who are doing excellent work in the communities they serve. Community representatives and youth workers have spoken highly of the relationship between those officers and the young people in their area. Unfortunately, those relationships have often not been sustained for any length of time as officers are routinely transferred to different geographic areas or to positions requiring different specialism. On average, neighbourhood officers stay in position for between six months and two years making it difficult to maintain and build upon community/police relationships.

Having spoken to a number of PSNI officers there appears to be a perception that for career progression purposes there is no discernable benefit to staying within the field of neighbourhood policing. If that is correct, it is to undervalue officers who play a central (one might say crucial) role within the police service. If the Policing with the Community Strategy is to succeed, which surely must be a priority, it will depend upon those individual officers being able to maintain relationships with their local community and being valued for

the indispensable service they provide both to the community and to the PSNI service wide. The PSNI acknowledges that but should consider further how those roles can be better valued and rewarded to make them both attractive and important for career development.

Recommendation 21

The PSNI should review the deployment of officers with a view to securing that officers, in particular neighbourhood officers, Youth Diversion Officers and Anti-Social Behaviour Officers, are assigned to duty according to their particular interest, skills and experience and thereafter remain in that position for at least two years.

Where a good relationship does exist between a Neighbourhood Policing Team and the local community, the hard work put into building it can be undermined immediately by a Response Team or Tactical Support Group (TSG) behaving inappropriately. The chance of that happening is escalated if those officers do not have good local knowledge or local accountability. By way of example, knowing which community representatives or youth workers to speak to when there is a disturbance may prevent a situation from escalating into full scale public disorder. The Committee met with detached youth workers and were very impressed by the dedication, expertise and the judgment shown by them. Clearly, there is some challenging yet extremely important work being done on the ground and it is being done with little resources.

The Committee saw the value in supporting and enhancing the role of youth workers particularly with hard to reach young people and considers that a network which is sustainable and properly resourced should be established to enable them to do their work effectively. It is often youth workers who 'hold the line' at interface areas and who make a real difference to the lives of young people in the most deprived areas. Their contribution needs to be properly recognised.

There has been some very good work already undertaken by the police but it is piecemeal and does not appear to be a service wide initiative. In Dunmurry, for example, all officers due to serve in the Response Team for that area must first work in the Dunmurry Neighbourhood Team. That 'initiation' lasts for approximately six weeks. The Dunmurry initiative grew out of community dialogue between a creative and dedicated team of officers and the local community. All stakeholders who had experience of the Dunmurry model commented favourably on the police approach and on individual officers. There was clearly mutual empathy and respect demonstrated. The Dunmurry model is one which could usefully be rolled out across the service.

Recommendation 22

The PSNI should make a service wide commitment, using the Dunmurry initiative as a template, to ensuring that officers have completed a six week placement in a Neighbourhood Policing Team in the local area before being deployed to a Response Team or to a Tactical Support Group.

Much of this thematic review has been concerned with the PSNI response to young people as potential offenders. That does not deal adequately with the police response to children and young people who may be *victims* of crime and anti-social behaviour. Given their inherent vulnerabilities (including the continued risk of paramilitary style punishment attacks) it is particularly important that children and young people trust that the PSNI will protect and respect them. The legacy of the conflict continues to have a deep residual effect on young people in Northern Ireland and may in part explain the low level of trust they feel towards the police (as evidenced in the Achieve Enterprises and Institute for Conflict Research survey results outlined above). Engaging with these young people may be difficult for officers who face hostility not only from the young people but from their parents or guardians and, at times, the wider community. That will not be improved unless and until the PSNI achieves the aims of the Policing with the Community Strategy. A starting place is, however, police relationships with those community

representatives and youth workers who already command the respect and trust of young people in the community.

The UK Government has acknowledged that “the engagement and innovation of third sector organisations is crucial for reaching the most disaffected young people in local communities.”²⁵¹ It is stated elsewhere that “we need the help of third sector and other partners, particularly at local level, to create the right policies, access mainstream services for offenders, and transform services to reduce re-offending.”²⁵² In recognising this, the PSNI Youth Diversion Policy states that Youth Diversion Officers “will develop and maintain a close working relationship with relevant agencies and in appropriate instances, recognised community groups or schemes that can assist in addressing crime and anti-social behaviour committed by children and young people.”²⁵³

During the course of this thematic review, the Committee and the Human Rights Advisor on its behalf, met with a number of youth workers and representatives from community organisations and were impressed at the dedication and commitment with which they approach their role and the value that they bring to the communities within which they operate, particularly in relation to diversionary activities for young people. These types of community based initiatives need secured funding so that their work can continue.

Article 12 UNCRC requires that children who are capable of forming their own views have the right to express those views freely in all matters affecting them. Their views are to be given due weight in accordance with their age and maturity. Additionally, however, that is of direct benefit to the police service. It enables more meaningful engagement with children and young people and the building of trusting relationships. The first contact a child or young person has with a police officer would, ideally, not be as a result of the child or young

²⁵¹ *Youth Crime Action Plan 2008*, HM Government, July 2008, page 36. This plan applied to England and Wales only.

²⁵² *Working with the Third Sector to Reduce Re-Offending. Securing effective partnerships 2008 – 2011*, Ministry of Justice, National Offender Management Service, October 2008, page 7.

²⁵³ *Youth Diversion Scheme*, PSNI Service Procedure 17/2008, September 2009, section 8(3).

person's suspected involvement in a criminal offence, in respect of alleged anti-social behaviour or as a result of the child or young person being a victim of crime. Ideally, the first contact would be in a neutral environment, for example, through school or a youth club.

PSNI has been proactive in developing initiatives aimed at engaging with children and young people and giving them a say in how they are policed. For example, there is a programme of youth consultation evenings; a partnership scheme with Include Youth which consults with children and young people who have become marginalised; and an initiative whereby young people are invited to meet with student officers to allow the officer and the young person to raise issues and voice concerns about interaction in both confrontational and non-confrontational situations.

PSNI works with the education system through the Citizenship and Safety Education (CASE) Programme. CASE is delivered to schools and other youth institutions by trained police officers who talk to pupils about a range of issues from fireworks right through to drugs, alcohol and farm safety. Police officers also deliver Road Safety education to the post primary sector. *Bee Safe* is a multi-agency community safety educational event aimed to promote safety and develop community awareness in young children as they prepare for secondary level education. The *Bee Safe* events teach pupils how to react in dangerous situations and avoid becoming the victims of crime.

To mark *Safer Internet Day*, which took place across Europe on 9 February 2010, PSNI joined forces with Microsoft Ireland to promote internet safety in primary schools. PSNI has also recognised the benefits social media can bring to their engagement with children, young people and the community and has set up blogs and various PSNI pages on social networking sites. The PSNI website itself has a section dedicated to young people and there is also a PSNI website, known as *Urzone*, specifically targeted at 10-14 year olds. *Urzone* is designed to complement the lessons delivered by the CASE programme. It contains information and advice on a range of issues and provides links to other relevant sites. There is an interactive section which

allows young people to seek advice from police officers online. In addition to service wide operations over the past few summers, the PSNI has been one of the key agencies involved in *Addressing Young Persons Drinking in Northern Ireland* and the public campaign *You, Your Child and Alcohol*.

PSNI is also involved in a number of small scale local initiatives, for example, police in the North Belfast District Command Unit work closely with young people as part of the Young Voices North Belfast project.²⁵⁴ PSNI also participate in, and provide funding, to other localised initiatives, such as the *Summer Splash* scheme which has been run by Community Safety Partnerships in a number of district council areas since 2008. The purpose of *Summer Splash* is to reduce crime and anti-social behaviour by providing events and activities to divert young people (aged 13 to 18 years) away from problems they may be having in their local area.

PSNI has also attempted to develop its' own diversionary initiatives. During summer 2009, before schools finished for the holidays, PSNI Community Safety Branch organised two half day events in Lurgan and Belfast. The events were aimed at year 11 pupils and focused on, for example, peer pressure which may lead to public disorder during the summer months. Details of diversionary activity planned in the areas during July and August 2009 were handed out to pupils attending the events. Unfortunately, no funding was provided for the events to run in 2010 despite positive feedback being received from the schools in which the events were held. However, the PSNI still participates in the *Summer Splash* scheme. Officers within Community Safety Branch regularly consider how to better engage with children and young people. It may be that the establishment of the Youth Independent Advisory Groups will provide a useful forum within which to take this forward. However, since the 'in principle' roll-out in February 2010 they are yet to be fully established within Districts.

²⁵⁴ The Young Voices North Belfast project, managed by Include Youth, has been running since April 2006 with the overall aim to improve communication and relationships between the police and young people in the North Belfast remit, enabling more effective and positive engagement.

Recommendation 23

The PSNI should progress the roll-out of Youth Independent Advisory Groups by securing that each District has its own group within six months of the publication of this report.

A number of people who made submissions to the thematic review indicated that there was, however, a disparity between what young people wanted or needed and what was provided. For example, young people are often unable to access services that may be available for lack of money or lack of transport. Also, the schemes and projects may not be attractive to young people as they are informed by adults rather than by the young people themselves. If projects are to be accessed by the young people who need them most they must be informed by the young people. That will not happen unless young people (or at least those who work with young people) are consulted.

DNA and fingerprints

The PSNI Youth Diversion Policy provides that children and young people will have their DNA and fingerprints taken in all appropriate circumstances and that “under no circumstances should [Investigating Officers] fail to take fingerprints and DNA on the assumption that they are not required as the juvenile will be dealt with by way of a police diversionary disposal.”²⁵⁵ “Appropriate” is not further defined. By an amendment to the Police and Criminal Evidence (NI) Order 1989, the police may now retain fingerprints, DNA samples and DNA profiles after the purpose for which they had been obtained has been fulfilled. There is no statutory time limit and the power applies equally to children as to adults. The only limitation is as to the use to be made of the material: for the prevention or detection of crime; the investigation of an offence; or the conduct of a prosecution. A DNA sample is the raw material which contains a person’s genetic information. A DNA profile

²⁵⁵ *Youth Diversion Scheme*, PSNI Service Procedure 17/2008, section 9(9).

is that information which is extracted from the sample and recorded in coded form.

In 2004, the House of Lords considered a case brought by two individuals (one adult, one child) seeking the destruction of DNA samples and DNA profiles which had been retained despite neither of the individuals being convicted of an offence. The House of Lords held that retention in such cases was lawful. However, the case was subsequently considered by the Grand Chamber of the European Court of Human Rights (ECtHR) whose judgment was delivered on 6 December 2008.²⁵⁶ The ECtHR found that the blanket policy in England and Wales, which is mirrored in Northern Ireland, of retaining indefinitely the DNA samples, materials and fingerprints of all people who have been arrested but not convicted is in breach of the Article 8 ECHR right to respect for private and family life.

The crucial point that must be remembered in the course of the debate is that the regime applies equally to people who are innocent. The ECtHR stressed the importance of treating those people who have not been convicted of anything (and in many cases not charged) as innocent people for all purposes. It is a fundamental requirement under Article 6 ECHR that a person is considered innocent *unless and until* convicted of an offence. That includes the general rule that no suspicion regarding an accused person's innocence may be voiced after his or her acquittal. The ECtHR highlighted the fact that a volunteer will have his or her data destroyed upon request, which means an innocent person who was arrested or charged but not convicted is treated differently to a volunteer but in the same material way as a convicted person.

In the course of giving its judgment, the ECtHR made reference to the policy adopted in Scotland as an example of what *might* be considered a lawful policy. In Scotland, DNA samples and profiles are destroyed if a suspect is not proceeded against, is acquitted or is given an absolute discharge save in those cases where the person is arrested on suspicion of certain serious

²⁵⁶ *S and Marper v The UK* (App Nos. 30562/04 and 30566/04).

sexual and violent offences. Even in the case of serious sexual and violent offences, DNA samples and profiles must be destroyed after three years unless a Chief Constable applies to a Sheriff to extend the period for a further two years. After five years, the DNA samples and profiles must be destroyed and no further extension is possible.

In response to the ECtHR judgment, the UK Government, through the Crime and Security Act 2010, proposes a statutory framework for the retention and destruction of biometric material, including DNA samples, DNA profiles and fingerprints that have been taken from an individual as part of the investigation of a recordable offence. The following criteria will be applied to the retention and destruction of biometric material if the new framework is applied:²⁵⁷

- Adults - convicted: indefinite retention of fingerprints, impressions of footwear and DNA profile;
- Adults - arrested but not convicted: retention of fingerprints, impressions of footwear and DNA profile for six years;
- Under 18 year olds - convicted of serious offence or more than one minor offence: indefinite retention of fingerprints, impressions of footwear and DNA profile;
- Under 18 year olds - convicted of single minor offence: retention of fingerprints, impressions of footwear and DNA profile for 5 years;
- 16 and 17 year olds - arrested for but not convicted of serious offence: retention of fingerprints, impressions of footwear and DNA profile for 6 years;
- All other under 18 year olds - arrested but not convicted: retention of fingerprints, impressions of footwear and DNA profile for 3 years;
- All DNA samples will only be retained until the DNA profile is loaded onto the database, but they will never be retained for more than 6 months.

²⁵⁷ The Act is not yet in force.

Given the clear and unanimous criticism by the ECtHR of the retention both of DNA samples and profiles for indefinite periods and its positive reference to the Scottish model, it is possible that the new statutory framework which will treat people who have not been convicted in the same way as those convicted, at least for the following six years (or three years in the case of under 18s arrested but not convicted of non-serious offences), will be considered disproportionate and not a justified interference. Such blanket retention of the profiles of innocent people for three or six years arguably fails to give proper recognition to the principle of innocence until proven guilty.

It must be noted that the ECtHR's judgment did not make the domestic law invalid. It required the Government to reconsider and change the law under which DNA and other information is retained by police. Accordingly, as a matter of technical construction the PSNI is not *bound* by the decision of the European Court of Human Rights. The law as it applies is that as laid down in the House of Lords. All lower courts will be bound by the House of Lords decision. However, the House of Lords may, if another case reaches it, decide the matter differently in light of the ECtHR's decision. Indeed, all courts are obliged to have regard to the ECtHR's judgments when reaching any decision (but not bound necessarily to follow them). Furthermore, the ECtHR did not consider the case of a person arrested but not charged with an offence and a person in that situation is likely to argue that the point remains 'live' in the House of Lords.

PSNI is not obliged *at law* to retain DNA material and fingerprints in accordance with PACE (not now nor when the new statutory framework is implemented) but is *entitled* to do so. ACPO guidance on retention does not have statutory authority and does not bind any police service. The PSNI is at liberty to adopt a policy that is in keeping with the ECtHR's judgment and so, for example, the PSNI could adopt the Scottish model and destroy DNA profiles if a suspect is not proceeded against, is acquitted or is given an absolute discharge save in those cases where the person is arrested on suspicion of certain serious sexual and violent offences.

The Minister for Justice has indicated that a legislative provision will be proposed for Northern Ireland, which may or may not mirror the English or Scottish position. The Human Rights and Professional Standards Committee will consider the matter further once the legislative amendment is proposed.

COMPLAINTS AGAINST THE POLICE

As important in all of this, is the police reaction to violations of rights if they do occur. In Northern Ireland, there are institutional safeguards in place, which seek to ensure that any violations are identified and dealt with appropriately. Accountability mechanisms, both external and internal, aim to secure adherence to human rights principles. Those processes themselves need to be transparent and accessible to the community.

A number of stakeholders raised the issue of complaints against the police by young people with the majority submitting that young people are not aware of their right to complain, do not trust the PSNI internal complaints system and do not in any event have faith in the system itself. That needs to be addressed by all those organisations responsible for oversight of the police service. The Office of the Police Ombudsman for Northern Ireland was established in order to provide an independent system for investigating complaints against the police in Northern Ireland.²⁵⁸ The Police Ombudsman investigates individual complaints about PSNI. The Policing Board investigates complaints against senior officers. Both organisations are concerned that they have not reached young people and are working with partners to raise awareness among young people of their respective roles and to include young people very directly in the decision-making processes.

TRAINING

Effective training on human rights principles and practice is critical for any police service committed to compliance with the Human Rights Act. Officers

²⁵⁸ By the Police (Northern Ireland) Act 1998.

must understand the practical impact human rights principles have on core policing functions. Police College training materials have been audited to ensure relevant human rights standards and principles are fully integrated. There remains further work to be done to ensure that trainers are adequately trained in human rights principles; that trainers have access to specialist human rights expertise; and to establish a credible and effective framework for the internal evaluation of training. The Committee is currently monitoring the delivery of training and will, through the Human Rights Advisor, be carrying out a detailed review of District training courses.

The PSNI recruited an experienced Human Rights Training Adviser in July 2009 who is working to review all training materials and lesson plans and will be working closely with PSNI trainers to ensure that all training incorporates human rights principles. The Human Rights Training Adviser will also be screening all training to ensure that it complies with the UNCRC and that the principles enshrined are understood in practical scenarios. That is a very welcome development and will contribute greatly to the more uniform delivery of training across the service.

In particular, the Human Rights Advisor to the Board will be discussing with the PSNI Human Rights Training Adviser the most appropriate mechanism by which officers receive bespoke youth training. Such training is essential both at Police College and thereafter once officers have assumed their duties in District. During the course of 2009/2010 the Committee was advised of bespoke training on domestic abuse and policing with members of the lesbian, gay and bisexual community. The training which appeared to have been most effective was training which was informed and partly delivered by Women's Aid and the Rainbow Project respectively. It was the involvement of those who are most familiar with the issues which really added value to the training. That is an approach which should be considered for policing with children and young people. Not only would training be delivered on youth issues generally there would be specific reference in all other training to those issues which most affect marginalised groups.

Recommendation 24

The PSNI should consider developing bespoke youth training which will be delivered at Police College and thereafter by refresher training within Districts. All officers who will be deployed within Neighbourhood Policing Teams, Response Teams and Tactical Support Groups should have received the training before taking up their positions.

ALTERNATIVE DISPOSALS

The Youth Justice System in Northern Ireland

Restorative Justice

The Northern Ireland Criminal Justice Review 2000, which followed the Belfast/Good Friday Agreement of 1998, made a number of recommendations for youth justice, including placing restorative justice at the heart of the system.²⁵⁹ The review also recommended bringing 17 years olds within the youth justice system and a greater incorporation of human rights standards within the legislative framework.

Restorative justice is an umbrella term used to encompass a wide range of programmes and approaches which, in general, aim to encourage those who have caused harm to acknowledge the impact of what they have done and make reparation, whilst at the same time offering victims the opportunity to have their harm or loss acknowledged and have amends made to them. It is an approach which encourages dialogue and provides a safe forum for the community to be involved in tackling crime. It contrasts with the traditional criminal justice model of 'catching and convicting' offenders (which focuses on guilt), in which the offender rather than the victim is central, and which allows only for limited community involvement.

The Government accepted most of the Criminal Justice Review recommendations many of which were then incorporated into legislation. For

²⁵⁹ *Review of the Criminal Justice System in Northern Ireland*, Criminal Justice System Review, March 2000.

example, it is provided that the principal aim of the youth justice system in Northern Ireland, as enshrined in section 53 of the Justice (Northern Ireland) Act 2002, is to protect the public by preventing offending by children.²⁶⁰ All persons and bodies exercising functions in relation to the youth justice system must have regard to that principal aim in exercising their functions, with a view (in particular) to encouraging children to recognise the effects of crime and to take responsibility for their actions.²⁶¹

Agencies must also have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.²⁶² A “child” for the purposes of the 2002 Act includes anyone under the age of 18 years old.²⁶³ A person under the age of 10 years cannot commit a criminal offence. In other words, the age of criminal responsibility is ten years.²⁶⁴ The 2002 Act introduced new community-based disposals which were aimed at addressing the needs of the victim: Reparation Orders²⁶⁵ and Community Responsibility Orders.²⁶⁶ The Act also provided a statutory footing for youth conferencing which is discussed in further detail below.²⁶⁷

²⁶⁰ Justice (Northern Ireland) Act 2002, section 53(1).

²⁶¹ *Ibid.* section 53(2).

²⁶² *Ibid.* section 53(3).

²⁶³ *Ibid.* section 53(6).

²⁶⁴ Criminal Justice (Children) (Northern Ireland) Order 1998, Article 3.

²⁶⁵ Justice (Northern Ireland) Act 2002, section 54 amending the Criminal Justice (Children) (Northern Ireland) Order 1998. A reparation order is a court order which requires the young person who committed the offence to complete an agreed activity carried out to the benefit of the victim, or the community at large, for up to a period of 24 hours. The Youth Justice Agency has responsibility for overseeing the discharge of this order through its Community Services Centres. The Youth Justice Agency website provides further details of possible court outcomes:

²⁶⁶ http://www.youthjusticeagencyni.gov.uk/youth_justice_system/court_outcomes/

Ibid. section 55 amending the Criminal Justice (Children) (Northern Ireland) Order 1998. A community responsibility order is a court order which requires a young person to attend a Community Services centre for a period of 20-40 hours. The hours of attendance will be completed over a number of months through planned sessions of between 2 and 4 hours at a time – these sessions will not interfere with school or work. Each session will be used to help the young person: understand their responsibility to the local community; understand the impact of the offence on themselves and others; understand the reasons for their involvement in the offence; look at ways to prevent re-offending; look at other areas of need which will improve the situation; and, where appropriate, undertake practical activities to make amends. The Youth Justice Agency website provides further details of possible court outcomes:

Anti-social behaviour is disruptive to relationships within the community. Interventions should be aimed at ending the disruption and restoring goodwill. The emphasis is on restitution rather than punishment. The concept of restorative justice is growing widely throughout the world and, increasingly, it is being recognised as the most effective means of tackling juvenile crime and anti-community activity within local communities. For example, speaking at an event hosted by the Northern Ireland Policing Board a senior police officer from the Greater Manchester Constabulary spoke of his inspiration to introduce to Manchester the practice and principles which he learned on a visit to Northern Ireland. The Committee hopes that the restorative process is supported and enhanced throughout Northern Ireland.

Youth Conferencing²⁶⁸

The Youth Conference Service was established in Northern Ireland in 2003 and is overseen by the Youth Justice Agency (YJA).²⁶⁹ At a youth conference the offender, victim (or victim representative), relevant professionals (including police officers) and others are brought together to discuss the offence and its repercussions, and to agree on an action plan for the offender. A young person can be referred for a youth conference at one of two stages of the criminal justice process: (i) prior to conviction if, having been charged by the Public Prosecution Service (PPS), the young person admits the offence, the PPS can make a diversionary referral; or (ii) following conviction, in which case the conference is a court-ordered conference. Save in exceptional circumstances, there is a statutory requirement for the court to order a conference for a convicted young person who agrees to participate.

A recent report examining the operation and outcomes of the Youth Conference Service in Northern Ireland concluded that the service “is working

²⁶⁷ http://www.youthjusticeagencyni.gov.uk/youth_justice_system/court_outcomes/
Ibid. sections 57 – 61 amending the Criminal Justice (Children) (Northern Ireland) Order 1998.

²⁶⁸ More information on youth conferencing is available through the Youth Justice Agency website: http://www.youthjusticeagencyni.gov.uk/youth_conference_service/

²⁶⁹ The Youth Justice Agency was launched in 2003 as an Executive Agency of the Northern Ireland Office (as recommended in the Criminal Justice Review 2000) and is now an Agency of the Department of Justice.

well and makes a highly positive contribution to the delivery of youth justice across Northern Ireland.”²⁷⁰ The report found that victim participation in the conferences was high and that victims tended to be satisfied with the process and outcomes,²⁷¹ and that whilst it was difficult to assess the impact of youth conferencing on reoffending rates the signs were encouraging.²⁷² The report suggested that England and Wales could benefit, and reduce the number of young people being detained in custody.²⁷³

In 2008, the Criminal Justice Inspection Northern Ireland (CJINI) carried out an inspection of the Youth Conference Service in Northern Ireland and reported that much successful work had been carried out with the PSNI, especially with the Youth Diversion Officers (YDOs). The report recorded that “police officers had been reluctant to attend conferences as victims. However, attendance rates had improved and the [Youth Conference Service] attributed this to the good work of the YDOs. There was a very good working relationship with YDOs and there were regular meetings to explore any issues. The [Youth Conference Service] had been involved in the past year in the training of new PSNI officers at the Police College.” They had also undertaken joint training with PSNI YDOs and had regular contact with PSNI Community Safety Branch. Some training sessions had been delivered in police Districts but that had not been extended beyond Belfast. The report recorded that YDOs perceived their work as very worthwhile and most felt that they were supported in their work by police management. However, “they also

²⁷⁰ *Making Amends: Restorative Youth Justice in Northern Ireland*, Jessica Jacobson and Penelope Gibbs for the Prison Reform Trust, October 2009, page v.

²⁷¹ *Ibid.* page 12. Victims were present in two-thirds of all conferences held in 2008-2009: 89% expressed satisfaction with the conference outcome and 90% said they would recommend the process to a friend.

²⁷² *Ibid.* pages 10 – 11. In 2006 the combined re-offending rate for youth conferencing was 37.7% compared to 52.1% for community sentences and 70.7% for custodial sentences.

²⁷³ *Ibid.* pages 20 -21. The number of children sentenced to custody in England and Wales between 1991 and 2006 has more than tripled. In 2006 the ratio of the 10-17 year old population in Northern Ireland who were sentenced to custody was 1:2265 whilst the equivalent ratio of the 10-17 year old population in England and Wales was 1:760.

felt that their work was not valued by most rank and file officers and that it was seen as social work rather than core police business.”²⁷⁴

That sentiment has also been expressed during this thematic review. It is extremely disappointing if the police service or some officers fail to recognise the value that is added by, for example, Youth Diversion Officers. Their work is fundamental to an effective and human rights-compliant police service. They are central to the vision of policing with the community and to neighbourhood policing more generally. Officers who work with young people and receive training to enable them to do that effectively are, in the Committee’s view, indispensable members of the police service and of the community which they serve. In fact, the Committee encourages an enhanced role for YDOs particularly in those locations where vulnerable and marginalised young people come into conflict with the police. To highlight offending by young people (including rioting) as a serious priority for the police service but to fail to value those officers who appear to be making a real difference to tackling that offending is unhelpful.

The CJINI recommended that the Youth Conference Service develop an awareness programme both within the Police College and amongst officers in Districts. A follow up inspection by the CJINI published in April 2010 has found that this recommendation is partially completed: the Youth Conference Service delivers training on a seven-week rota to all new recruits in the Police College at Garnerville, and to all recruits six months later in Maydown. CJINI Inspectors found there had been positive feedback from student officers and training managers at the College about the usefulness of these presentations. Some Districts had also received training at the date of the follow up inspection, with feedback from District trainers, YDOs and from other officers in those Districts being positive. The Youth Conference Service has advised

²⁷⁴ *Inspection of the Youth Conference Service in Northern Ireland*, Criminal Justice Inspection Northern Ireland (CJINI), February 2008, para. 3.3.

CJINI that it aims to work towards ensuring all Districts have received the training and that it will continue its commitment to student officers.²⁷⁵

Previous CJINI inspection reports had criticised the Criminal Justice System in Northern Ireland for delays in processing youth cases with one report recommending “greater flexibility with regard to decisions on informal warnings and cautions to young people is required so that...‘cases are dealt with expeditiously’. The PSNI should therefore assume delegated responsibility for decisions on youth warnings and cautions.”²⁷⁶ As will be discussed later in this report, the PSNI may only deliver Informed Warnings and Restorative Cautions following a decision by the PPS that the warning or caution is an appropriate disposal. In 2007, the CJINI found that the average number of days between an incident being reported and a conference being completed was 210 days. Inspectors spoke to young people at conferences who found it difficult to relate to incidents that had taken place a number of months previously. CJINI stated “it would help reduce delay in the system if the PSNI were able to refer minor cases directly to the [Youth Conferencing Service] that were deemed unsuitable for warning and caution.”²⁷⁷

The Justice (Northern Ireland) Act 2002 requires that all persons and bodies exercising functions in relation to the youth justice system have regard to the general principle that any delay in dealing with children is likely to prejudice their welfare.²⁷⁸ The PSNI sit on the Delay Action Group along with the PPS, the Department of Justice and Northern Ireland Court Service, the purpose of which is to reduce any unnecessary delay in both adult and youth criminal cases. There was no suggestion by CJINI in its 2008 report that PSNI or any of the other agencies had been causing undue delay in Youth Conferencing cases, but simply that there would be less delay if PSNI could refer minor

²⁷⁵ *Youth Conference Service. A follow-up review of inspection recommendations*, Criminal Justice Inspection Northern Ireland (CJINI), April 2010, page 8.

²⁷⁶ *Avoidable Delay. A thematic inspection of delay in the processing of criminal cases in Northern Ireland*, Criminal Justice Inspection Northern Ireland (CJINI), May 2006, para. 9.6.

²⁷⁷ *Inspection of the Youth Conference Service in Northern Ireland*, Criminal Justice Inspection Northern Ireland (CJINI), February 2008, para. 5.5.

²⁷⁸ Justice (Northern Ireland) Act 2002, section 53(3).

cases directly to the Youth Conferencing Service. However, as it is laid down in statute that diversionary referrals to the Youth Conferencing Service can only be made by the PPS,²⁷⁹ it would only be possible for the PSNI to make diversionary referrals following legislative amendment.

In addition to the Youth Conference Service, the YJA delivers a range of services, including diversionary activities, community-based disposals and custodial services. In offering these services the YJA works in partnership with the statutory, voluntary and community sectors, including the PSNI.

PSNI Youth Diversion Scheme

The PSNI Youth Diversion Scheme was introduced in September 2003 and provides the framework within which the police respond to all persons below the age of 18 years for non-offence behaviour, who have offended, or who are potentially at risk of offending or becoming involved in anti-social behaviour. The Scheme draws on restorative justice principles and “is built on the premise that children and young people commit crime and anti-social behaviour for reasons, which are many and varied.”²⁸⁰ PSNI policy sets out the aims of the Youth Diversion Scheme:

- A. To work in partnership with agencies, both statutory and voluntary, the business sector and the community to prevent children and young people becoming involved in offending or anti-social behaviour;
- B. To identify children and young people who are at risk in terms of their safety or well-being, or at risk of becoming involved in offending or anti-social behaviour, but, initially come into contact with police for reasons which are non-offence related;
- C. To provide an effective, equitable and restorative response to all children and young people throughout Northern Ireland who have

²⁷⁹ Criminal Justice (Children) (Northern Ireland) Order 1998, Article 10A.

²⁸⁰ *Youth Diversion Scheme*, PSNI Service Procedure 17/2008, September 2009, section 3(3).

- offended or are at risk of offending or becoming involved in anti-social behaviour;
- D. To divert, whenever possible, those children and young people who have offended from becoming further involved in the Criminal Justice System;
 - E. To promote the needs of victims and the community throughout the process and whenever possible engage them appropriately in a restorative intervention;
 - F. To encourage children and young people who have offended to take responsibility for their behaviour and the consequences, to consider the choices they have made, and explore the impact on others.²⁸¹

PSNI Community Safety Branch has responsibility for the Scheme. It collates and monitors information and data relating to children and young people involved in risk taking and/or criminal behaviour and works closely at a strategic level with partner agencies, including the Youth Justice Agency. Youth Diversion Officers (YDOs) are responsible for the administration of the Scheme, including maintaining the Youth Diversion Database, and must also develop and maintain a close working relationship with relevant agencies and recognised community groups or schemes.

Non-offence behaviour

Where a child or young person has come to the attention of police for reasons of potential risk taking, but their behaviour does not constitute a criminal offence, a record must be made by the police officer who made the initial contact. The risk taking factors may give rise to a concern that the young person is more susceptible to becoming involved in offending behaviour, or it may cause concern as to the young person's safety or well-being.

The PSNI policy states it is essential that police officers deal with this type of young person appropriately, "acting within the law, adhering to the principles of proportionality, necessity, impartiality and sensitivity", however, this is to be

²⁸¹ *Ibid.* sections 2(1)-(6).

balanced with “a need to record sufficient detail of that contact for the purposes of an audit trail, and to enable early identification of risk, particularly when it is evidenced by a pattern of behaviour or circumstances.”²⁸² The policy recognises that where no offence has been committed police officers do not have specific power to demand details of the individual involved, but states “there is nothing to prevent a police officer asking for brief details of identity and explaining the reasons why they are asking. Many children and young people will be happy to provide it.”²⁸³ Parents or guardians of the young person will always be informed of the details of the interaction between the police and their child and will be given a contact telephone number for further information if required.

Where a record of non-offence behaviour has been made it will be forwarded to the YDO who will input the information onto the Youth Diversion Database. After 12 months the YDO must ensure that the record is reviewed and it will normally be removed unless subsequent behaviour has occurred within the 12 months timeframe or the behaviour displays an element of risk which would warrant retention, for example, sexual behaviour.²⁸⁴ Details of these Non-Offence Referrals whilst they remain on the Database “should not as a matter of course be made available to the decision-maker for juveniles who have committed offence related behaviour. Only if there is information of particular relevance to the offence in question should it be brought to the attention of the decision-maker. Non-Offence Referrals will *not* be included in an investigation file in respect of a child or young person, unless, in exceptional circumstances the information is considered so relevant as to mitigate on behalf of the child or young person, or would go to provide relevant evidence of a pattern of behaviour. The reasons for inclusion of Non-Offence Referral information in an investigation file must be clearly documented.”²⁸⁵

²⁸² *Ibid.* section 9(1)(a).

²⁸³ *Ibid.* section 9(1)(b). The policy also states at section 9(1)(c) that where a child or young person declines to provide details it is a matter of good practice for the police officer to record a brief description of the individual in their notebook along with a brief description of the circumstances and forward the details to the YDO.

²⁸⁴ *Ibid.* section 8(6).

²⁸⁵ *Ibid.* section 9(1)(h).

If the YDO receives three referrals for a particular child in a rolling 12 month period they should automatically consider referring that child to a relevant agency/multi-agency forum.²⁸⁶ Referral to an agency/multi-agency forum can also be made where there have been less than three referrals in 12 months where the YDO believes there are genuine concerns or reasons for doing so.²⁸⁷ Any referrals to an agency/multi-agency forum can only be made with the informed consent of the child's parent or guardian. However, this does not preclude any police officer taking appropriate and immediate action in respect of a child or young person, including referral to Social Services, if they have reasonable cause to believe the child would otherwise be likely to suffer significant harm.²⁸⁸ Where a child under the age of 10 years old has acted in a manner which would otherwise be considered criminal but for their age, details of that child's behaviour can be recorded as non-offence behaviour and referred to the YDO on the basis that they may be at risk of becoming involved in similar behaviour in the future which would put themselves or others at risk.²⁸⁹

Public Protection Units (PPUs) have been established in each District Command Unit. Each District has a PPU located within one police station. All specialist officers are located at that station. Domestic Abuse Officers are located in PPUs alongside Child Abuse Investigation Teams, a vulnerable and missing persons' team, and a sex offender management team, to ensure domestic abuse and child protection issues can be identified at as early a stage as possible to allow for an intervention to protect victims.

Behaviour giving rise to a Non-Offence Referral may be an early indicator of a serious problem, for example the young person subject to the Non-Offence Referral may be witnessing domestic abuse in their home. However, as their behaviour is not criminal, and because they are perhaps not displaying any physical or visible emotional signs that would necessarily indicate that they are subject to such abuse, they may not come to the attention of officers

²⁸⁶ *Ibid.* section 9(1)(e).

²⁸⁷ *Ibid.* section 9(1)(g).

²⁸⁸ Children (Northern Ireland) Order, Article 65.

²⁸⁹ *Youth Diversion Scheme*, PSNI Service Procedure 17/2008, section 9(1)(d).

within the PPU. PSNI considered the benefit of including YDOs within each PPU team but determined that YDOs were better utilised as part of Community Safety Teams. The Committee, however, recommends not that YDOs are redeployed to a PPU team but that the YDOs should liaise with and provide advice to the PPU team. The YDO should be an integral part of any decision-making, child-protection issues, planning and operational briefings concerning children and young people.

Recommendation 25

PSNI should provide for a specialist Youth Diversion Officer to be available to each Public Protection Unit. Each Youth Diversion Officer should liaise with colleagues within each PPU and across the PSNI to ensure a consistent approach.

Offence behaviour

Where a child or young person over the age of 10 years is alleged to have committed a criminal offence, there are a number of potential outcomes in respect of the disposal of the case: Community Based Restorative Justice; Informed Warning; Restorative Caution; YJA Youth Conference; and Prosecution.

The PPS always makes the decision as to whether there will be a diversionary disposal or a prosecution. If the PPS decide there will be a diversionary disposal, it is for the PPS to decide what that disposal will be: an Informed Warning or a Restorative Caution (which are both usually delivered by the police); referral to a Community Based Restorative Justice scheme; or YJA Youth Conference. Diversionary options can only be considered once the PPS is satisfied that the evidential test for prosecution has been met. There can only be a diversionary disposal if the young person has admitted guilt. PPS guidance on diversion states that “the admission must be clear and reliable for the restorative process to be effective. This admission may be made in the course of formal police interview or at any stage up until trial. The

admission may be made to police or to the Public Prosecutor either by the offender in person or through his or her solicitor.”²⁹⁰

Although diversionary disposals are not convictions, they do go on to a young person’s criminal record for 12 months in the case of an Informed Warning, and 30 months in all other cases. The PSNI are currently considering how diversionary disposals are recorded on the CAUSEWAY system so that once expired they will not show up on a young person’s criminal record or pursuant to an Access NI check. It is essential that the police develop a secure method of recording the disposal which does not inhibit a young person’s prospects beyond the period for which it is ‘in force’.

Prior to any questions being put or any interview taking place after a child or young person has been formally cautioned, the interviewing officer must provide the child or young person and a parent or guardian with information on all of the potential outcomes. This is an extremely important step to enable the young person to make an informed decision as to how to proceed. The information must include advice that a diversionary disposal may be cited in court for an offence listed under the Sex Offenders legislation, and can give rise to a requirement for notification and placement on the Sex Offenders register where appropriate.²⁹¹ PSNI policy states that “under no circumstances should information on the potential outcomes including the [Youth Diversion Scheme] be given in such a manner so that it may be construed that an admission of guilt was induced through the offer of a diversionary disposal.”²⁹²

Not only must the admission of guilt be given freely it must be given following a full and frank explanation of the consequences and longer term effects of admitting guilt: it must be a fully informed admission of guilt. Article 6 ECHR contains a set of minimum rights to which everyone charged with a criminal

²⁹⁰ *Guidelines for Diversion*, Public Prosecution Service, para. 2.3.

²⁹¹ *Youth Diversion Scheme*, PSNI Service Procedure 17/2008, section 9(2)(a).

²⁹² *Ibid.* section 9(2)(c).

offence is entitled.²⁹³ These include the right to be informed promptly, in a language which the accused understands and in detail, of the nature and cause of the accusation against him or her, and the right to defend him or herself against the accusations. PSNI policy contains an aide memoire of the form of words to be read to the child or young person and their parent or guardian after they have been formally cautioned. The interviewing officer is required to ensure that the content of the aide memoire is understood by the child or young person and their parent or guardian.

As important, is the manner in which the information is passed on to the young person. The officer must not, whether by words or otherwise, apply pressure to the young person.

Informed Warnings²⁹⁴

An Informed Warning is considered by many stakeholders to be the best means of dealing with low level offending. Although not a criminal conviction it is recorded on a young person's criminal record for 12 months. An Informed Warning is effectively a formal reprimand by a police officer. A meeting is conducted by a trained police facilitator and usually takes place in a police station in the police District where the offence was committed. The young person and his or her parent(s) or guardians attend the meeting. The police facilitator must research the circumstances of the incident in question, including where possible the views of the victim. Other agencies, community representatives and victims may also be in attendance at the meeting although in most instances where an Informed Warning is given a face-to-face meeting with the victim is not required.

During the meeting the facilitator explores the incident by asking those present what happened from their perspective, how they felt at the time, and how they have felt since. The aim of the process is to discuss the incident and ensure that the child or young person understands the impact of the crime and to try and identify what actions may be taken to repair the harm caused.

²⁹³ Article 6(3) ECHR.

²⁹⁴ *Youth Diversion Scheme*, PSNI Service Procedure 17/2008, Appendix B, section 2.

Informed consent (confirmed by signature) is required from the offender and a parent or guardian before proceeding with the disposal. If any agreement for action arises out of the meeting the facilitator must make a record of it. Whilst the agreement is voluntary and therefore not capable of being enforced formally, the facilitator is expected to monitor completion and record success or failure as appropriate.

Restorative Cautions²⁹⁵

A Restorative Caution is delivered by way of a restorative conferencing process during which the child or young person meets his or her victim and other members of the community who were affected by the offending. Although not a criminal conviction it is recorded on a young person's criminal record for 30 months. Restorative Cautions are usually delivered in the area where the offence occurred and at a location which is deemed most appropriate to all participants in the process. Informed consent (evidenced by way of signature) is required from the offender and a parent or guardian before proceeding with this disposal.

A trained facilitator organises, and is responsible for, delivering the Caution. The facilitator does not necessarily have to be a police officer but may be a representative from a partner agency or community group. In 'A' District (North and West Belfast), PSNI has piloted a process whereby Restorative Cautions are delivered in appropriate cases in partnership with trained facilitators who work for community restorative justice schemes. A police officer must be present when a Restorative Caution is being facilitated by a non-police officer and if there is any disagreement about the non-police facilitator on the part of any of the participants, the facilitator will be changed.

Immediate cautioning

As noted above, CJINI previously recommended that in order to address delays in processing youth cases, the PSNI should assume delegated

²⁹⁵ *Ibid.* Appendix B, section 3.

responsibility for decisions on youth warnings and cautions.²⁹⁶ Such delegated responsibility would require legislative change. More recently CJINI has stated that assessing existing working arrangements to determine how minor offences can be expedited “should not necessarily mean the exclusion of the PPS, as a more timely decision from a prosecutor has clear benefits for both organisations.”²⁹⁷

In May 2010, the PSNI introduced “immediate cautioning” across all Districts in Northern Ireland. Where an investigating officer believes that an Informed Warning or Restorative Caution is appropriate in a particular case, rather than refer the file to the PPS for a decision the investigating officer may telephone the PPS, give a verbal outline of the case and obtain permission to proceed with the Warning or Caution. The telephone call is followed up with a short note to the PPS.

Recommendation 26

The PSNI should report to the Human Rights and Professional Standards Committee with its review of the immediate cautioning pilot within three months of the publication of this report.

Before the PPS directs that an Informed Warning or Restorative Caution can be given it must be satisfied that the evidential burden for prosecution has been met. Whether the PPS can satisfy itself that the evidential burden has been met without examining the files is a matter for the PPS. In respect of the police action, the information given to the PPS must be a full and frank summary of the matter, which enables the PPS to reach an informed decision.

Police Discretion

Rather than refer a matter to the PPS as a criminal incident, police officers may exercise their discretion to deal informally with the most minor offences.

²⁹⁶ *Avoidable Delay. A thematic inspection of delay in the processing of criminal cases in Northern Ireland*, Criminal Justice Inspection Northern Ireland (CJINI), May 2006, para. 9.6.

²⁹⁷ *Avoidable Delay*, Criminal Justice Inspection Northern Ireland (CJINI), June 2010, para. 3.19.

In terms of exercising discretion in relation to children and young people, PSNI policy states “The [Youth Diversion Scheme] does not interfere with the discretion of a police officer. In the case of a juvenile however it is particularly important to ensure that a particular individual does not receive multiple informal warnings as to their behaviour from different police officers, and thereby *fail* to be identified as at *risk* of progressing into a cycle of offending. YDOs must promote regular contact with officers to ensure effective sharing of information in respect of children and young people who regularly come to the attention of police.”²⁹⁸

A criticism that has been made of the current Youth Diversion within the Criminal Justice System is that it is not truly diversionary as the PSNI must refer every file to the PPS for a decision, which can lead to such delay that the restorative disposal is rendered meaningless for both victim and offender. As noted above, CJINI has criticised the Criminal Justice System for delays in processing youth cases. PSNI carried out research and, following legal advice, have developed a discretion model for dealing with low level offending by children and young people. The YDO can play an important part in discretion cases and should be informed in the decision-making process or at least act as a point of advice and information regarding the young person. As is recognised by PSNI, a young person who needs or could benefit from a support package may otherwise be overlooked.

The discretion model is now fully operational in ‘D’ District (Carrickfergus, Antrim, Lisburn and Newtownabbey) and ‘E’ District (Armagh, Banbridge, Craigavon, Newry and Mourne). Often, where a low level offence has been committed, the victim simply wants an apology or for the harm to be repaired, rather than the young person being put through the Criminal Justice System. Where it comes to a police officer’s attention that an appropriate low level offence has been committed and the victim is agreeable to the discretion model being used, the officer will try and reach an agreement (with the victim and the offender) as to how the matter should be dealt with. Usually the

²⁹⁸ *Youth Diversion Scheme*, PSNI Service Procedure 17/2008, section 9(10)(c).

solution will be an apology to the victim and/or a proportionate form of reparation.

The PSNI has reported that the scheme is working well to date and hopes that it will be rolled out across all Districts in due course. The scheme requires that all incidents are dealt with within two weeks from the date the incident is first reported to the date an agreement is reached. The scheme is victim focused and can only be considered as officially “dealt with” by the PSNI if the victim is satisfied with the outcome. If the victim is not satisfied, the PSNI will consider referring the matter to the PPS for progression through the formal Youth Diversion Scheme. The Committee wishes to consider the success or otherwise of the scheme and will monitor, in co-operation with the police, whether discretion is being used in appropriate cases.

Where police discretion is used it is not recorded as a ‘clearance’. This may result in some police officers, who are conscious of clearance rates and targets, being reluctant to exercise their discretion. However, the Committee would remind officers that their priority when taking action in relation to children and young people should not be that they are meeting their targets, but that the action taken is in the best interests of that child or young person.

Community Restorative Justice

In the late 1990s, community restorative justice programmes were developed in Northern Ireland as an alternative to ‘self-policing’ by paramilitary groups. Unlike international models of community restorative justice, where projects often faced community apathy and official disdain, the restorative justice programmes in Northern Ireland were born from communities that were well organised at neighbourhood level with a high level of structure and activity. The role communities played in dealing with low-level crime was given formal recognition in 2007 when the Northern Ireland Office published the Protocol for Community-Based Restorative Justice Schemes. The Protocol sets out a framework for relations between the Criminal Justice System and the community-based schemes in line with recommendations in the Criminal

Justice Review, which recognised that “community restorative justice schemes can have a role to play in dealing with the types of low-level crime that most commonly concern local communities,” but that they should, “receive referrals from a statutory criminal justice agency, rather than from within the community, with the police being informed of all such referrals.”²⁹⁹

The Protocol limits the schemes to dealing with criminal matters only following a referral from the PPS rather than from within the community. It requires that schemes engage, and have a direct relationship, with police on all matters governed by the Protocol. If the scheme becomes aware of an offence or an offender, the PSNI is to be informed promptly of the details. Where a scheme refers a criminal matter to the PSNI, reports are made by the PSNI to the PPS in the usual way. The PPS may then refer the case back to the scheme. If the PPS decides not to refer the case back to a scheme, the scheme can take no further action with regard to the disposal of the case, although it may offer support to the victim or the offender where a relationship with the victim or offender has been established. The Protocol recognises that not every minor incident need be referred to the PSNI and that cases falling below the standard of criminal behaviour can be handled by the schemes informally.

There are currently 16 schemes accredited under the Protocol. Prior to receiving accreditation schemes must be inspected and approved by CJINI.³⁰⁰ In inspecting the schemes, CJINI applies criteria that relate to United Nations guidelines for member states implementing restorative justice programmes.³⁰¹ For example, restorative justice processes should be used only with the free

²⁹⁹ *Review of the Criminal Justice System in Northern Ireland*, Criminal Justice System Review, March 2000, para. 9.98.

³⁰⁰ See *Northern Ireland Alternatives*, Criminal Justice Inspection Northern Ireland (CJINI), May 2007, which approved for accreditation: East Belfast Alternatives, Greater Shankill Alternatives, North Belfast Alternatives, North Down Alternatives, and Northern Ireland Alternatives; *Community Restorative Justice Ireland*, CJINI, June 2008, which approved for accreditation: CRJI Central Office Belfast, CRJI Colin Belfast, CRJI Falls Belfast, CRJI Greater Andersonstown Belfast, CRJI Upper Springfield Belfast, CRJI Head Office Derry, CRJI Ballymagroarty Derry, CRJI Brandywell Derry, CRJI Creggan Derry, CRJI Shantallow Derry; and *Community Restorative Justice Ireland: Newry and South Armagh Scheme*, CJINI, October 2008 which approved for accreditation: CRJI Newry and South Armagh.

³⁰¹ *Basic Principles on the use of Restorative Justice Programmes in Criminal Matters*, United Nations Economic and Social Council, No. 2002/12. 24 July 2002.

and voluntary consent of all of the relevant parties (which may be withdrawn at any time); agreements should be arrived at voluntarily and should be reasonable and proportionate; disparities leading to power imbalances, and the safety of the parties, should be taken into consideration in referring a case to, and during, a restorative process; parties should have the right to legal advice about the process; before agreeing to participate, parties should be fully informed of their rights, the nature of the process, and the possible consequences of their decision; and neither victim nor offender should be coerced, or induced by unfair means, to participate in the process or to accept the outcome.

In approving community based restorative justice schemes for accreditation, CJINI has reported that good working relationships generally exist between the PSNI and the various schemes. CJINI also reported that the schemes were triaging cases properly and passing appropriate cases to the PSNI, providing officers with all the details they required and indicating how they would deal with a case if it was referred back to them. CJINI will continue to monitor the work of the various schemes, including all training, trainers and training material, and will carry out follow up reviews where recommendations have been made to ensure that they are implemented.³⁰² To date there has been a relatively modest number of cases progressed through the Protocol.

During the course of this thematic review a number of people involved in restorative justice projects in Northern Ireland (including Northern Ireland Alternatives and Community Restorative Justice Ireland) submitted that the Protocol was inhibiting progress and was a disincentive to participants. Any changes to the Protocol or the way in which community based restorative justice schemes deal with offending behaviour is a matter for the Department of Justice to discuss in conjunction with the schemes, the PPS and the PSNI. The Minister of Justice recently stated in a written response to an Assembly question “I intend to review arrangements shortly to examine how best

³⁰² See, for example, *Northern Ireland Alternatives: A follow-up review of the community restorative justice schemes operated by Northern Ireland Alternatives*, Criminal Justice Inspection Northern Ireland (CJINI), February 2010.

schemes' restorative skills can contribute to the continuing success of restorative practices in the criminal justice system.³⁰³

The low number of Protocol cases dealt with by community based restorative justice schemes does not detract from the fact that the schemes carry out large volumes of other casework and provide services, not just for children and young people, but for the whole community, for example, in providing community health, social and housing advice. Representatives from the schemes are on occasions asked to attend Youth Conferences and in areas where there exists a strong relationship between scheme workers and local police, police officers frequently refer non-criminal cases directly to schemes for informal resolution. During the course of the various CJINI inspections police officers spoke of the benefits of building relationships with such schemes, saying that the schemes “had opened doors and facilitated contacts” they would not otherwise have had.³⁰⁴ In terms of dealing with offending behaviour, if the enhanced police discretion model outlined above, and the use of community facilitators for delivering Restorative Cautions, is rolled out across Northern Ireland, the Committee is hopeful that there will be even greater partnership working between PSNI and community based schemes in the future.

Some stakeholders working within the community restorative justice field have expressed dissatisfaction with the ad hoc relationship between police and restorative justice schemes and have advocated that the inter-agency working needs to be more structured. The Committee agrees that the processes require more structure. The PSNI should therefore report to the Committee within six months of the publication of this report setting out the structures and formal processes in place.

Recommendation 27

The PSNI should report to the Committee within six months of the publication of this report setting out the structures and formal

³⁰³ David Ford MLA, Minister of Justice, 14 May 2010 (AQW 6246/10).
³⁰⁴ CJINI, June 2008, page 8.

processes in place for working with community restorative justice schemes.

However, it is also recognised that the criticism may not be as a result of PSNI inactivity or unwillingness to support the schemes. In fact, the PSNI has taken the lead in promoting and supporting many of the schemes and has made representations to the Department of Justice, in order to assist the schemes, to refer cases directly as part of a pilot project. Following receipt of the PSNI's report to the Committee, this will be considered further and the Committee will, if considered appropriate, support the PSNI in its continued endeavours.

Other Methods of Diversion

Engagement with other professionals

It is widely recognised that children who have been subject to abuse are at a much higher risk of offending. Child abuse takes many forms including physical abuse, emotional abuse, sexual abuse, neglect, bullying and domestic abuse (whether as a direct victim or a witness). Very often, patterns of offending by a child or young person indicate an underlying problem. It is important that the police identify this and do not compartmentalise children as either victims or offenders. Every police officer is a child protection officer. However, identifying and tackling the issue is not the sole responsibility of the police. Inter-agency working between organisations delivering frontline services to children is becoming the norm. Even greater efforts must be made, however, to ensure a truly joined-up approach.

PSNI actively engages with individuals, representative groups and community bodies to explore and tackle a wide range of issues including: engagement with children and young people; children and young people as victims and witnesses; crime prevention and the safety of children and young people; and dealing with children and young people who have committed an offence. PSNI meets regularly with external agencies, for example, through the Regional

Child Protection Committee³⁰⁵ and Area Children and Young People's Committee.³⁰⁶ That is extremely positive and should be enhanced.

Integrated Offender Management (IOM)

In recent years the UK Government has been evaluating how best criminal justice agencies, government departments, the NHS, local authorities and partners in the private and third sector can work together. In doing so the Government has been looking at how resources can be used more efficiently and effectively within the justice system. This has included developing an Integrated Offender Management (IOM) model which requires more investment in community-based approaches for offenders as an alternative to the "revolving door" of short-term custody.³⁰⁷

IOM provides all agencies engaged in local criminal justice partnerships with a single coherent structure for the management of repeat offenders, including adults and young offenders. It builds upon and expands existing programmes for managing offenders, recognising where work can be simplified and also where there are gaps in the current provision. IOM is founded upon the following principles: all partners tackling offenders together; local response to local problems; offenders face their responsibility or face the consequences; making better use of existing (and proven) programmes and governance; and all offenders at high risk of harm and re-offending are 'in scope'. Intensity of

³⁰⁵ The Regional Child Protection Committee (RCPC) replaced the four Area Child Protection Committees. The RCPC reflects the proposed membership of the Safeguarding Board for Northern Ireland (SBNI). The SBNI derives from the Department of Health, Social Services and Public Safety's paper "Safeguarding Board for Northern Ireland (SBNI)" and will include a regional Safeguarding Board and five Safeguarding Panels located within each of the five Health and Social Care Trust areas. A proposed Bill to place the SBNI on a statutory footing is currently with the Northern Ireland Executive and it is anticipated that, if the Bill is passed, the SBNI will commence in March/April 2010. This SBNI is designed to ensure greater co-operation at the highest level within Government Departments, the Health and Social Services Boards and Trusts, the police, local government and in the voluntary and community sectors.

³⁰⁶ The responsibilities of the four Area Children and Young Peoples Committees transferred to the Regional Health and Social Care Board (RHSCB) on 1 April 2009.

³⁰⁷ *Integrated Offender Management: Government Policy Statement*, Ministry of Justice and Home Office, June 2009.

management relates directly to severity of risk, irrespective of the position within the criminal justice system or whether it is statutory or non-statutory.³⁰⁸

IOM has been pioneered in a number of areas across England and Wales. Drawing on the model implemented in Hertfordshire, the PSNI commenced a pilot in the Ballymena area in July 2008 targeting prolific offenders. The aim is to intervene at an early stage by addressing the reason for the offending behaviour. Thereafter, innovative and bold steps are taken to prevent re-offending. IOM tackles issues such as homelessness, addiction, mental health issues and family breakdown. Instead of simply catching and convicting offenders, it looks to rehabilitate them for the benefit of the offender but also the community within which he or she resides.

A dedicated and committed team of police officers are working very hard to integrate within the community and solve the problems of the community. They have adopted a creative and forward thinking strategy, which places them at the heart of the community which they serve. The results are, already, impressive. By way of example, by October 2009 there had been a 20% decrease in Dwelling Burglaries in the Ballymena Area over a 12 month period, with over 400 victims of crime having received 'closure'.³⁰⁹ As a result of the success of the pilot scheme in Ballymena the decision was taken to extend IOM across the whole of 'H' District (Larne, Ballymena, Ballymoney, Coleraine and Moyle).

The PSNI is the lead agency for IOM but its success depends upon the co-operation and involvement of local partners such as the Probation Board, the Youth Justice Agency, the Northern Ireland Housing Executive, the Court Service, solicitors and those providing addiction and re-training services. The PSNI should be commended for its creative and bold approach to tackling the causes of offending. The pilot should be rolled out across Northern Ireland following a successful post-implementation review.

³⁰⁸ *Ibid.* pages 8 – 10.

³⁰⁹ www.psnipolice.uk/211009_pilot_integrated_offender_management_programme_success

Recommendation 28

The PSNI should consider rolling out the Integrated Offender Management model across Northern Ireland.

It is understood that the PSNI will consider rolling out the Integrated Offender Management model across Northern Ireland once the pilot project has been evaluated. That is welcomed by the Human Rights and Professional Standards Committee which wishes to endorse the creative approach taken by the PSNI and invites all other relevant agencies to support the PSNI in its work.

Early intervention

As discussed above, where a child or young person has come to the attention of police because of risk taking behaviour which does not constitute criminal offending, a record of the incident is made by the police officer who made the initial contact and thereafter forwarded to the Youth Diversion Officer for the purposes of identifying risk and to allow for early intervention. The UK Government has reported that “a minority of young people commit crime and, of them, a much smaller minority – around one in twenty – become prolific and serious offenders committing half of all youth crimes. People in this group are often disadvantaged by poor or indifferent parenting, and display a range of personal and family difficulties which mean they can often be identified early when problems begin to manifest themselves.”³¹⁰

In June 2010, Child Intervention Panels (a PSNI initiative), were launched on a pilot basis within the South Eastern Health Trust area. The panels consist of representatives from a wide range of relevant agencies, for example, social services, educational authorities and the Youth Justice Agency. The panels can be used for all children, not just those over the age of 10: they will not deal exclusively with criminal issues. The aim of the panels is to identify signs that a child is at risk, or poses a risk to others, at an early stage and to take joint action in relation to that child, both in terms of removing the child from

³¹⁰ *Youth Crime Action Plan 2008*, HM Government, July 2008, page 27.

harm and supporting them to move away from the risk of offending. The panels will not be police led: it is up to each individual agency to flag up issues and initiate a panel where necessary.

The Child Intervention Panels and Integrated Offender Management are good examples of where the PSNI has been instrumental in some truly innovative and progressive work with young people. The positive must be given as much attention as the negative and must be supported and developed further.

Another particularly impressive initiative is PSNI involvement in the Prince's Trust Personal Development Programme. The Programme was re-launched in September 2006 and since then the PSNI has seconded 26 police officers as Team Leaders and a further 7 officers as Development Coaches. The Programme facilitates police officers and civilian staff who are seconded as the leader of a team of young people to complete a local community project. The young people are, largely, from disadvantaged or marginalised backgrounds who may become involved in anti-social or offending behaviour. The premise is simple: the young people have an opportunity for positive intervention in their lives and the police officers have an opportunity to learn from the young people and build relationships of respect and trust.

Police officers and staff acquire and develop a range of leadership skills and knowledge which can then be applied to their operational duties and be shared within the PSNI. Leaders interact with young people in an environment where trust and confidence can be fostered in a non-threatening way. They begin to understand what motivates young people in a positive way and also what might drive them towards risk-taking behaviour. Police officer leaders have reported that, as a result of the Programme, they developed a better sense of understanding and were enabled to take a balanced and coherent approach with young people.

By participation in the Programme the police officers are viewed by the young people as valued and integral members of society and police officers view the young people with the same respect. It also brings leaders into contact with a

wide range of other organisations and individuals who work with young people in local areas. The Programme has proven to be of enormous benefit both to the leaders themselves and to the PSNI generally because when leaders return to their 'normal' roles they can maintain and build upon the contacts and relationships formed. Having listened to the views of young people the police have an opportunity (which should not be missed) to show that they really have listened and provide feedback and an explanation of the actions arising from the consultation. The Prince's Trust Development Programme seems to the Committee to be a perfect example of a forward thinking strategy to improve police/community cohesion.

In 2009, in the Northern Ireland *Prince's Trust Celebrate Success Awards*, PSNI won the 'Inspiring Leaders' award for its ongoing contribution to the Team Leader Programme. PSNI also supports the Prince's Trust One to One Programme. This is a mentoring programme which helps young offenders through their transition from prison, to integration back into their communities.

More recently, however, it has been suggested that the PSNI is not nominating officers in sufficient numbers to achieve a real benefit service-wide. That is a missed opportunity and may be a retrograde step. The Committee can see the potential of such a scheme and considers it an important step towards implementation of the Policing with the Community Strategy. Unless and until police officers and young people can interact positively with each other and really understand each other's perspectives there is little prospect of an enhancement of community trust and, thereafter, community safety. The Prince's Trust Personal Development Programme should be viewed as an integral part of police officers' development. In particular, the Committee can see the benefit of participation in the Programme for officers who serve with Response Teams and in Tactical Support Groups.

The PSNI youth team within Community Safety Branch has also developed, in conjunction with Include Youth, a consultation engagement programme which is run through the Police College. The programme is headed by a steering

group, which includes young people. Young people get the opportunity to meet student officers from across Northern Ireland and discuss a wide range of issues. Young people can form relationships with officers and explain, for example, how experience can influence a young person's reaction to the police. Student officers can learn from the young people and draw from that experience as they progress with their career as police officers. The consultation programme is conducted centrally but does include issues brought to the PSNI's attention by officers from around Northern Ireland. Role-play is often used to deal with issues such as stop and search, underage drinking and anti-social behaviour. The programme should be an opportunity to bring together officers at all stages of their careers with young people and should focus on bringing neighbourhood police officers together with young people from their local area. Members of Response Teams and Tactical Support Groups could benefit from the engagement and overcome the obvious difficulties of perception.

While these initiatives are excellent, they are driven by a small team of dedicated officers working with limited resources. The Human Rights and Professional Standards Committee will consider whether and if so how it can support the PSNI. In the meantime, the consultation programme should be rolled out to provide the same opportunities across Northern Ireland to a greater number of officers. The programme should be considered at District level to enable more officers and young people to avail of the programme across Northern Ireland.

Recommendation 29

There should be an increased focus on providing opportunities for young people across Northern Ireland to meet with police officers with the aim of building relationships. The opportunities should be available locally but form part of a regional strategy which is delivered consistently in all policing Districts. The model consultation programme currently operating out of Police College should be extended across all Districts.

CONCLUSION

The Committee was particularly concerned that this thematic review should provide an opportunity for engagement with a wide range of children and young people, particularly those from difficult social realities. Expertise was sought from C2k and Public Achievement, two external organisations specialising in education and outreach to children and young people. C2k ran a competition *Your Say on Policing* which invited young people to write a news article outlining their views on police and policing issues. Public Achievement produced a short film documenting children and young people's views on policing. Public Achievement then extended the scope of their work and, working alongside the Institute for Conflict Research, produced a report *Beyond the Margins: Building Trust in Policing with Young People*.

That report has been an invaluable resource for the Committee which has made extensive use of it. There is simply no substitute for listening directly to young people and taking their advice. Once their advice is taken it is incumbent on all of us involved with children and young people to provide them with feedback on what has been done to implement their ideas. The Committee will be working to include within the Policing Plan targets relating to youth issues.

The central theme which has emerged from all of the work is that the policing approach to children and young people needs to be multi-faceted yet cohesive. The experiences shared with the Committee show that children and young people can have very different experiences depending on where they happen to live. That is unacceptable and must be addressed. The Committee believes that the most appropriate way of ensuring a consistent approach across all Districts and policing areas is for the PSNI to have a strategic steering group dedicated to issues concerning children and young people, which is capable of pulling together all of the elements such as child protection, Neighbourhood Policing Teams, youth justice and community engagement. The Youth Champion's Forum, which is led by the PSNI

Champion for children and young people, could be used as a reference and consultation group for that purpose.

Recommendation 30

The PSNI should establish a steering group dedicated to issues concerning children and young people. The strategic lead should be the PSNI Champion for children and young people.

Despite the fact that the Committee has been critical of *some* police practice, it wishes to make clear that it is impressed at the extent to which the PSNI is seeking out solutions to problems which are created by society rather than by the police. Operating sometimes in a vacuum, the PSNI has stepped into areas better (and more appropriately) the responsibility of other organisations. The PSNI recognises, perhaps better than most, that effective policing requires innovative ideas and collaboration with local communities. The PSNI also recognises that children and young people are central to any effective policing strategy and is currently exploring truly ground-breaking new approaches. For example, the PSNI has undertaken a comprehensive study of need across Northern Ireland and is working with partner agencies to develop a strategy which better targets need and prevents offending rather than simply punishing it.

The PSNI senior team has been instrumental in promoting a revised approach to policing and the Committee welcomes that approach and wishes to support its efforts. The various initiatives are still being considered but the Committee will return to them in due course and will seek to enhance the PSNI's service delivery in co-operation with the PSNI.

Finally, the Committee wishes to thank all those individuals and organisations who contributed to this thematic review. Their assistance made the work possible. The thematic review will be monitored and the Human Rights and Professional Standards Committee will continue to work with the PSNI to discuss the recommendations and their implementation. The monitoring of human rights compliance requires regular review and reinvigoration. It

involves an open dialogue with the PSNI and with those who are policed by the PSNI. The shared objective is to improve upon but also support the PSNI to deliver its service for the benefit of all members of the community.

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