



Human Rights Thematic Review: Policing with and for Lesbian, Gay, Bisexual and Transgender Individuals

Human Rights and Professional Standards Committee

FOREWORD

The Human Rights Act 1998 requires the Police Service of Northern Ireland (PSNI) to uphold and protect the fundamental rights and freedoms of individuals that are enshrined in the European Convention on Human Rights (ECHR). The Northern Ireland Policing Board (the Policing Board) has a statutory duty, under the Police (Northern Ireland) Act 2000, to monitor the performance of the PSNI in complying with the Human Rights Act.

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

In recent years the Committee has enhanced its human rights monitoring work by introducing human rights thematic reviews. Thematic reviews enable a more in-depth and dynamic examination of specific areas of policing from a human rights perspective. A key feature of this approach is use of the community's experience of policing as evidence by which to evaluate police policy and practice. The first thematic review, published in March 2009, examined the policing of domestic abuse. An update report on that thematic review was published in May 2011. The second thematic review, examining policing with children and young people, was published in January 2011. A thematic review examining the use of police powers to stop and search and stop and question was completed in June 2010 but has not yet been published. That review is to be updated for publication in 2012.

This human rights thematic review, which I am pleased to present, considers the PSNI approach to policing with and for people who identify as lesbian, gay, bisexual and transgender (sometimes referred to collectively as LGB&T). The review

considers the way in which PSNI engages with LGB&T individuals across a range of circumstances: as members of the public generally; as victims of crime, including hate crime, domestic abuse and sexual violence; as suspects when in custody or when being stopped and searched; and as employees or potential employees. Whilst recognising many positive steps taken by PSNI to better engage with LGB&T individuals, the review also identifies areas in which police practice could be improved and makes a total of 18 recommendations.

Publication of the thematic review signals the beginning of a process of monitoring and review. The Committee and the Human Rights Advisor will continue to engage with PSNI on the issues and monitor the implementation of the 18 recommendations. They will continue to meet with stakeholders to discuss how the review has affected their experience of policing.

In undertaking this review, the Committee and the Policing Board's Human Rights Advisor met with, and have been greatly assisted by, numerous individuals and organisations. On behalf of the Policing Board, I wish to thank everyone who has engaged with us on this important issue. I would also like to thank the Policing Board's Human Rights Advisor, Alyson Kilpatrick BL, for producing this report on the thematic review and for providing invaluable guidance throughout the process.

Brian Rea

Chair

Northern Ireland Policing Board

THEMATIC REVIEW: POLICING WITH AND FOR LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE

TABLE OF CONTENTS

TERMINOLOGY	1
GLOSSARY	3
TERMS OF REFERENCE	7
INTRODUCTION	8
LEGAL CONTEXT	12
International law	12
Domestic law	19
Police custody & conducting searches: transgender people	23
Employment, education and access to goods and services	25
ENGAGEMENT WITH LGB&T PEOPLE	29
Policing with the community	29
HATE CRIME	39
PSNI policy and legal framework	40
Hate crime in Northern Ireland	49
Homophobia in Northern Ireland	51
Transphobia in Northern Ireland	55
Reporting mechanisms	59
Advocacy Service	61
Hate Incident Minority Liaison Officers (HIMLOs)	64
TRAINING	67
HIMLO training	69

DOMESTIC ABUSE AND SEXUAL VIOLENCE	71
PSNI response to domestic abuse	77
Domestic abuse training	82
Sexual violence	83
PSNI AS AN EMPLOYER	87
Recruitment	88
Bullying and harassment	93
Internal support for LGB and transgender employees	98
CONCLUSION	103
APPENDIX 1: RECOMMENDATIONS	105

TERMINOLOGY

Within this report, the terms 'Lesbian', 'Gay', 'Bisexual' and 'Transgender' are referred to on some occasions as 'LGB&T' because historically, policy, research, statistical analysis and government action plans have dealt with the issues collectively. Where transgender is omitted within a piece of research, the issues are often abbreviated to 'LGB'. The term 'Transgender' is sometimes used interchangeably with the umbrella term 'Trans'. Lesbian, gay and bisexual are terms which refer to a person's sexual orientation. Transgender refers to a person's gender identity. It is a crucial distinction. A transgender person, just as a non-transgender person, has a sexual orientation which may be heterosexual, lesbian, gay, bisexual or asexual. Whilst the distinction between sexual orientation and gender identity should be obvious, it is often misunderstood. This may relate to the fact that "sexual orientation is often stereotypically associated with certain types of gendered behaviour in the popular imagination: for example, gay men may be assumed to be more likely than heterosexual men to behave in feminine ways, while lesbians may be assumed to be more likely than heterosexual women to behave in masculine ways."¹

From the outset, the Policing Board's Human Rights and Professional Standards Committee (the Committee) wishes to emphasise that transgender issues should be dealt with as a separate topic within a stand-alone report in recognition of the particular issues faced by transgender people, which do not correspond with the issues faced by lesbian, gay or bisexual people. To regard people simply as members of a homogenous group fails to afford them the dignity and respect for their identity to which they are entitled. It is hoped that including transgender issues within the umbrella of this thematic review does not create confusion. As emphasised, the reason for reporting on LGB&T issues within this one report (albeit where possible under separate sub-headings) is because they are often dealt with together (therefore comparative analysis requires it) and there are *some* common vulnerabilities that arise amongst people who identify as lesbian, gay, bisexual and transgender, particularly when it comes to reporting (or not reporting) crime. While

¹ *Transgender Research Review*, M. Mitchell and C. Howarth, Equality and Human Rights Commission, 2009, page 10.

the issues are dealt with under the umbrella of one thematic review for practical reasons; for the purposes of monitoring and further review the Committee will consider transgender issues as a separate and distinct topic from lesbian, gay and bisexual issues. Therefore, future update reports will be published separately.

Below is a glossary of some terms relevant to this thematic review, but it is by no means an exhaustive list. Labels or identities should not be applied to a person unless they have chosen it for themselves. Furthermore, the term(s) used by a person to describe their sexual orientation or gender identity may change over time. To ensure that this thematic review accurately represents the policing needs of lesbian, gay, bisexual and transgender persons, a diverse range of individuals and groups were consulted.

GLOSSARY

Bisexual - A person who is bisexual is often attracted to people of both genders.

Bullying - Bullying is persistent, unwanted and unwelcome conduct or behaviour, which has the purpose or effect of violating someone's dignity or creating an intimidating, offensive, degrading or hostile environment.

Cross-dresser / Transvestite – This refers to people who dress, either occasionally or more regularly, in clothes conventionally associated with the opposite gender. Cross-dressing people do not generally wish to permanently alter the physical characteristics of their bodies or change their legal gender. They do not necessarily experience gender dysphoria.

Discrimination – Discrimination is the less favourable treatment of a person or group of persons because of their identity or status. It is often based upon stereotype or prejudice. Discrimination may be direct or indirect and may be based upon, for example, a person's actual or perceived sexual orientation or gender identity or because of association with others of a perceived sexual orientation or gender identity.

Gay - A gay person is attracted to people of the same gender. The term can be used in respect of men and women.

Gender dysphoria – Gender dysphoria is a recognised medical condition whereby a person suffers distress, unhappiness and discomfort as the gender assigned to them at birth does not match the gender with which they identify.

Gender identity – Gender identity refers to a person's deeply felt internal and individual experience of gender, which may or may not correspond with the gender assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Gender reassignment – Gender reassignment is the altering of the gender assigned to a person at birth. This is a long process involving cultural, legal and medical adjustments such as telling family, friends and/or work colleagues; changing name and/or sex on legal documents; hormone therapy; and sometimes medical alteration to the chest and/or genitals.

Harassment – Harassment is unwanted conduct that is linked to a person's gender, race, marital or civil partnership status, age, dependant responsibilities, religious belief, political opinion, disability or sexual orientation. The unwanted conduct has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Hate crime – Hate crime is any hate incident, which constitutes a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate. A crime perceived to be motivated by Homophobia or Transphobia is a hate crime.

Hate incident – A hate incident is any incident, which may or may not constitute a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate. An incident perceived to be motivated by Homophobia or Transphobia is a hate incident.

Heterosexual – A heterosexual person is attracted to people of the other traditional gender.

Homophobia – Homophobia is the fear and/or dislike of homosexual people and homosexuality.

Homosexual – A homosexual person is someone who is attracted to people of the same gender. He or she may also be referred to as 'Gay'.

Intersex - Intersex describes a range of conditions where there is a discrepancy between the external genitals and the internal genitals. Many intersex people are assigned a gender at birth and may have surgical 'correction' to make them appear to be of that gender. That can cause gender dysphoria later in life.

Lesbian – A lesbian is a woman who is attracted to other women. This may also be referred to as 'Gay' however Gay is more often used to describe same-sex attracted men.

LGB – LGB is an acronym often used for Lesbian, Gay and Bisexual individuals.

LGB&T – LGB&T is an acronym often used for Lesbian, Gay, Bisexual and Transgender individuals.

Polygender / androgyne / genderqueer - Refers to people who identify their gender as not conforming to the traditional western model of gender as binary. They may identify their non-binary gender as a combination of aspects of men and women or alternatively as being neither men nor women.

Prejudice - Prejudice involves a judgment made about someone, often based upon stereotype, without knowing them. Prejudice is frequently negative.

Sexual orientation – Sexual orientation refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Stereotype – A stereotype is a commonly held, but oversimplified and often inaccurate, belief about the characteristics of a group of people.

Transgender – Transgender is often used interchangeably with 'Trans' as an umbrella term for people whose gender identity and/or gender expression does not correspond with the gender assigned at birth. It includes transsexual people, cross-dressing/ transvestite people, polygender / androgyne / genderqueer people and others who self-define as gender variant.

Trans – Trans is often used interchangeably with 'Transgender' as an umbrella term for people whose gender identity and/or gender expression does not correspond with the sex assigned to them at birth. It includes transsexual people, cross-dressing/

transvestite people, polygender/ androgyne/ genderqueer people and others who self-define as gender variant.

Transphobia – Transphobia is a fear and/or dislike of people who are Transgender or who challenge conventional gender categories of male/female.

Transsexual – Transsexual refers to a person who consistently self-identifies as a gender which does not correspond with the gender assigned at birth. A transsexual person may undergo gender reassignment to live fully in the gender with which they identify. Gender reassignment may or may not involve hormone therapy and/or surgery.

TERMS OF REFERENCE

A consideration of the Police Service of Northern Ireland (PSNI) approach to policing with and for lesbian, gay, bisexual and transgender (LGB&T) individuals and its compliance with the Human Rights Act 1998 in:

- Identifying, recording and encouraging the reporting of crimes committed against LGB&T individuals including, but not limited to, homophobic or transphobic motivated hate incidents and crimes; domestic abuse; and sexual violence;
- Supporting LGB&T victims of crime;
- Investigating crimes committed against LGB&T individuals and arresting the perpetrators;
- Providing internal support to LGB&T police officers and police staff; and
- Engaging with LGB&T stakeholder groups, organisations, and individuals.

This necessarily involves a review of PSNI policy, training, staffing, quality of service received by victims of crime and the ethos within the PSNI towards lesbian, gay, bisexual and transgender individuals.

INTRODUCTION

We must reject persecution of people because of their sexual orientation or gender identity...I understand that sexual orientation and gender identity raise sensitive cultural issues. But cultural practice cannot justify any violation of human rights. When our fellow humans are persecuted because of their sexual orientation or gender identity, we must speak out. Human rights are human rights everywhere, for everyone.²

It is true that attitudes are changing and that society is becoming more diverse but men and women are still subjected to discrimination, and in some cases violence, simply because of their sexual orientation or gender identity.³ That being the case, there is still a long journey to be undertaken before equality is fully realised. The Human Rights Act 1998 requires the Police Service of Northern Ireland (the PSNI), as a public authority, to uphold and protect the fundamental rights and freedoms of individuals that are enshrined in the European Convention on Human Rights (ECHR). The Northern Ireland Policing Board has a statutory duty to monitor the performance of the PSNI in complying with the Human Rights Act 1998.

In 2006, a report commissioned by the Policing Board reported that a number of people who described themselves as lesbian, gay or bisexual had suffered a negative experience in dealing with the PSNI.⁴ This was against a backdrop of an increase in the number of homophobic hate crimes. At that time, the PSNI were acknowledged to be committed to initiating policies and practices to address the issue but that policy needed to be supported by action to address societal Homophobia to ensure that the police were not seen to endorse a prejudice that manifested itself in violence against a particular section of the community.

² United Nations Secretary General Ban Ki-moon in his Special Address to the United Nations Human Rights Council, 25 January 2011.

³ For example, in 2008, a young man in Dungannon was murdered with horrific violence simply because he was gay. Hate crime is dealt with in detail below at pages 39 to 66.

⁴ *Policing, Accountability and the Lesbian, Gay and Bisexual Community in Northern Ireland*, K. Radford, J. Betts and M. Ostermeyer, Institute for Conflict Research, February 2006. This work did not include transgender people. More recent studies have considered the issues as they relate to Trans issues: *Equality Mainstreaming Policy and Practice for Transgender People*, U. Hansson and M. H. Depret, Institute for Conflict Research, June 2007 and *"The Luck of the Draw" A Report on the Experiences of Transgender Individuals Reporting Hate Incidents in Northern Ireland*, R.S. McBride and U. Hansson, Institute for Conflict Research, May 2010.

In recognising that discrimination and abuse based on sexual orientation and gender identity remain prevalent in society, the Committee has undertaken a thematic review to examine policing with and for people who identify as lesbian, gay, bisexual and/or transgender (sometimes referred to collectively as LGB&T). The Committee recognised at the outset that transgender individuals experience separate and very different challenges in their everyday lives, and have different legal protections. Likewise, lesbians face issues not encountered by gay men and vice versa. All persons are unique and no individual can or should be defined purely by reference to their gender identity or sexual orientation. However, there are some common vulnerabilities and policing issues that arise amongst people who identify as lesbian, gay, bisexual or transgender, particularly when it comes to reporting (or not reporting) crime. The Committee therefore considered it pragmatic to address lesbian, gay, bisexual and transgender policing issues within the body of one umbrella report but was mindful to ensure that lesbian, gay, bisexual and transgender individuals were given the opportunity to speak for themselves, not for each other. After the publication of this thematic review, the Committee will treat, for the purposes of future monitoring and reporting, transgender issues as a separate topic from lesbian, gay and bisexual issues.

The terms of reference for the thematic review were agreed by the Committee in September 2010. They were circulated amongst stakeholders whose views were sought and thereafter published on the Policing Board's website. An invitation to make a written or oral submission to the review was advertised in local newspapers. The Committee held a roundtable meeting in February 2011 with stakeholders who were affected by or had relevant experience of the issues to elicit their views and experiences of policing. The Committee was particularly keen to hear directly from people who identified as lesbian, gay, bisexual and transgender. The Policing Board's Human Rights Advisor, who is responsible for drafting this thematic review on behalf of the Committee, also met with a wide range of individuals, groups, representatives from voluntary organisations and police officers to ensure that evidence was gathered from a wide and inclusive spectrum of persons. The Human Rights Advisor and the Committee are enormously grateful to all those who contributed to this work. The extent to which people who had previously been isolated from access to services and discriminated against within society invited the

Human Rights Advisor and the Committee to discuss personal and sensitive issues, and the sophisticated analysis they applied to those issues, was truly impressive. The Human Rights Advisor and the Committee are indebted to them and wish to record that this work would have been impossible without their generosity and expertise.

The Human Rights Advisor and the Committee are also grateful to the PSNI for its engagement with the Policing Board and for its input into this review. Whilst this report makes a number of recommendations for the police to consider as a means of improving its service to lesbian, gay, bisexual and transgender individuals, it also recognises the efforts made by PSNI over the past number of years to provide an equal service that protects, respects and upholds equally the human rights of all persons in Northern Ireland. The police have engaged with the issues in a forthcoming, self-aware and positive manner which demonstrates a real commitment to improving the service it delivers. That being the case, the Committee is confident that the police will receive this report in the spirit in which it is intended and will work proactively with the Committee to achieve its objectives.

The experience of lesbian, gay, bisexual and transgender victims of crime has been reported on by the Policing Board's Human Rights Advisors every year since 2005.⁵ However, by conducting an examination of policing with *and for* lesbian, gay, bisexual and transgender people by way of thematic review, the Committee and the Human Rights Advisor have been able to consider the issues over a broader spectrum and in greater depth. The community's experience of policing provides a useful evidence base by which to evaluate police policy and practice. During the course of this thematic review, the Human Rights Advisor and the Committee have met with numerous individuals (including some police officers) and groups from across Northern Ireland who spoke on their own behalf and on behalf of those they represent. That included people who identify as lesbian, gay, bisexual and transgender. Those views have helped shape the contents of this review and the recommendations. The thematic review has not confined itself to considering lesbian, gay, bisexual and transgender persons as victims of crime; it has considered

⁵ In successive Human Rights Annual Reports.

police interactions with lesbian, gay, bisexual and transgender persons in all contexts, be they victims, suspects, witnesses, police officers or police staff.

This thematic review makes 18 recommendations aimed at achieving the shared objective of the Policing Board, the PSNI and the community which they serve - to improve policing. It is hoped that this review will raise public awareness of the issues, particularly Homophobia and Transphobia, and will commence a process of monitoring and review in which the community will lead. It is recognised that the issues faced by lesbian, gay, bisexual and transgender individuals are societal issues, which must be addressed collectively and across society. The police have not created Homophobia and Transphobia and cannot eradicate it alone. However, the police are often the first point of contact in the criminal justice system and can influence other participants in the process and wider civic society. Importantly, the PSNI is the only public authority equipped with the necessary powers to tackle hate crime directly and is well placed to secure that protection is afforded to vulnerable groups and therefore to enhance their participation within society.

Publication of this thematic review is not the end of the matter. The Committee and the Human Rights Advisor will maintain a dialogue with PSNI and stakeholders in order to track the progress the police have made in implementing the recommendations. Stakeholders will be kept informed as to PSNI's progress and the Human Rights Advisor and the Committee will continue to engage with members of the community in order to assess the impact that implementation of the recommendations has had on policing on the ground.

From the outset, the Committee wishes to record its support for the PSNI's commitment to improve the service it offers to lesbian, gay, bisexual and transgender people and to reinforce the message that prejudice, discrimination and intolerance must be rejected wherever it appears: civic and political society must embrace marginalised groups and collectively tackle the many inequalities faced by them. The police must be assisted in their endeavours but encouraged to improve further the protection and respect afforded to lesbian, gay, bisexual and transgender people within Northern Ireland.

LEGAL CONTEXT

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.⁶

Inadequacies and inconsistencies in legislation to protect lesbian, gay, bisexual and transgender people from discrimination persist across the world. 76 countries continue to criminalise same-sex sexual acts between consenting adults. The death penalty remains a sentencing option for engaging in a same-sex sexual act in 7 of those countries.⁷ While that is not the case in Great Britain or Northern Ireland, serious discrimination and persecution is still experienced by some, which can be particularly insidious because it is more covert.

International Law

United Nations

The United Nations was founded in 1945 by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, improving living standards and embedding human rights protections. On 10 December 1948, the Member States of the United Nations (by then there were 58) adopted the Universal Declaration of Human Rights. That represented "a world milestone in the long struggle for human rights."⁸ For the first time, a document considered to have universal value, setting out in detail how fundamental human rights should be universally protected, was given broad international support.

Despite the fact that the 58 Member States had differing traditions, ideologies, political systems, religious and cultural backgrounds, the Universal Declaration of

⁶ Extract from the introduction to the Yogyakarta Principles.

⁷ Iran, Mauritania, Nigeria (12 northern states), Saudi Arabia, Somalia (southern parts), Sudan and Yemen. For more information see *State-Sponsored Homophobia. A world survey of laws criminalising same-sex sexual acts between consenting adults*, International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), May 2011.

⁸ In the words of a United Nations General Assembly representative from France.

Human Rights represented a common and unified statement of goals and aspirations: a vision of the world as the international community wanted it to be, free from tyranny and oppression. Its creation arose largely from the strong desire for peace following World War II. The preamble to the Declaration emphasises that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind”.

Thereafter, Member States agreed to include within the Declaration the principles of non-discrimination, civil and political rights and social and economic rights. The fundamental rights recognised by the Declaration include, among others: the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education; the right to freedom of thought, conscience and religion; and, the right to freedom from torture and degrading treatment. Those rights are inherent rights, to be enjoyed by all human beings equally. They are particularly pertinent for lesbian, gay, bisexual and transgender people whose rights are sometimes violated on *multiple* dimensions.

Since 1948, the Universal Declaration of Human Rights has been translated into more than 200 languages and remains one of the best known and most cited human rights documents in the world. Although the Declaration is not a legally binding document in the sense that it cannot be relied upon directly by an individual in a domestic court, it has inspired more than 60 other human rights instruments and is meant to be implemented by Member States. Currently, there are no directly enforceable international human rights instruments that deal specifically with sexual orientation and/or gender identity. However, key human rights principles which are essential for the effective protection of lesbian, gay, bisexual and transgender people can be found in a number of existing United Nations treaties. Those treaties are binding upon the Member States that ratify them, which means that governments of Member States must ensure their application. They include:

- The International Covenant on Civil and Political Rights (ICCPR). This builds upon the fundamental principles outlined in the Universal Declaration of Human Rights and was ratified by the United Kingdom in 1976;
- The Convention on the Elimination of Discrimination against Women (CEDAW). This requires governments to prohibit discrimination against women in all forms. This includes ensuring that the rights of lesbians, bisexual women and transgender women are fully protected. CEDAW was ratified by the United Kingdom in 1986;
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). This requires governments to prohibit and prevent torture and cruel, inhuman or degrading treatment in all circumstances, to investigate all allegations of torture, to bring justice to the perpetrators and to provide a remedy to victims of torture. CAT was ratified by the United Kingdom in 1979;
- The Convention on the Rights of the Child (CRC). This sets out the full range of rights to which children are entitled and that governments must protect. The four core principles of the CRC are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and, respect for the views of the child. The CRC was ratified by the United Kingdom in 1991.

Council of Europe

The Council of Europe was founded on 5 May 1949 by 10 States (including the United Kingdom). It was formed as a result of popular movements to improve society and create a lasting peace following World War II. The Council of Europe now has 47 Member States and works to protect and promote democracy, human rights and the rule of law for its 800 million citizens. The European Convention on Human Rights (ECHR) was the first Council of Europe convention⁹ to deal with the protection of human rights. It is based directly upon the Universal Declaration of Human

⁹ A convention is a legal agreement between two or more states. States are invited to first sign a convention, showing that they want to follow what it says, then, when they are sure that they are able to do so, they can 'ratify' the convention: this means that they commit themselves to its values and instructions.

Rights¹⁰ and was signed by all Council of Europe Member States on 4 November 1950. The ECHR came into force on 3 September 1953 and comprises a number of articles, which have been supplemented over the years by protocols. By ratifying the ECHR, Member States of the Council of Europe must guarantee for their citizens the rights and freedoms contained within the ECHR. The United Kingdom ratified the ECHR in 1991 but did not incorporate it into domestic law until 2000.¹¹ Some rights are absolute which means they can never be interfered with in any circumstance (such as the right not to be tortured), but most are either qualified or limited rights. The rights can be categorised as follows:

- Absolute rights, such as the right to protection from torture and inhuman and degrading treatment (Article 3 ECHR), are rights which Member States can never withhold or take away in any circumstances;
- Limited rights, such as the right to liberty (Article 5 ECHR), are rights which may be limited by Member States under explicit and finite circumstances;
- Qualified rights are rights which require a balance between the rights of the individual and the needs of the wider community or State interest. These include the right to respect for private and family life (Article 8 ECHR), the right to manifest one's religion or beliefs (Article 9 ECHR), freedom of expression (Article 10 ECHR), freedom of assembly and association (Article 11 ECHR), the right to peaceful enjoyment of property (Protocol 1, Article 1 ECHR) and, to some extent, the right to education (Protocol 1, Article 2 ECHR).¹²

Interference with an absolute right will never be lawful. Interference with a qualified or limited right may be lawful if the interference is (i) intended to serve a legitimate aim; (ii) proportionate to the intended objective;¹³ and, (iii) is necessary in a democratic society.

¹⁰ However, whilst the Universal Declaration of Human Rights includes civil, political, social and economic rights, the ECHR mostly contains civil and political rights.

¹¹ By virtue of the Human Rights Act 1998 which came into force on 2 October 2000 (see page 19 below).

¹² When the United Kingdom ratified Protocol 1, Article 2, it accepted the principle of education in conformity with parents' religious and philosophical convictions "only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable expenditure."

¹³ Often described as not using a sledgehammer to crack a nut.

SUMMARY OF SELECTED ARTICLES AND PROTOCOLS OF THE ECHR

Article 2 Right to life

Article 3 Prohibition of torture

Article 4 Prohibition of slavery and forced labour

Article 5 Right to liberty and security

Article 6 Right to a fair trial

Article 7 No punishment without law

Article 8 Right to respect for private and family life

Article 9 Freedom of thought, conscience and religion

Article 10 Freedom of expression

Article 11 Freedom of assembly and association

Article 12 Right to marry

Article 14 Prohibition of discrimination in enjoyment of ECHR rights

Protocol 1 Right to peaceful enjoyment of property; education; and free elections

Protocol 4* Freedom of movement

Protocol 6 Abolition of the death penalty

Protocol 7* Right of appeal in criminal matters and right to compensation for wrong convictions

Protocol 12* General prohibition of discrimination

Protocol 13 Abolition of the death penalty in all circumstances

* N.B. the United Kingdom has not ratified Protocols 4, 7 or 12

The European Court of Human Rights (ECtHR) was set up in 1959 to oversee the rights enshrined in the ECHR and to ensure that every person within the jurisdiction of each Member State was afforded access to those rights. The ECtHR sits permanently in Strasbourg. Jurisprudence emanating from the ECtHR provides guidance on the interpretation of the ECHR, which is often described as a 'living instrument' capable of adapting to changing environments and as society evolves. The ECtHR consolidates the rule of law and democracy throughout the Council of Europe. If the ECtHR determines that a Member State has violated the ECHR that Member State is required to take action to ensure that a similar violation will not

recur. Judgments of the ECtHR have influenced the law in the United Kingdom as it relates to lesbian, gay, bisexual and transgender people. For example, in the landmark case of *Dudgeon v United Kingdom*,¹⁴ the ECtHR held that the United Kingdom had violated Article 8 ECHR (the right to respect for private and family life) by failing to decriminalise sexual activity between consenting males in Northern Ireland. In response to that judgment the law was amended.¹⁵

In the case of *Christine Goodwin v United Kingdom*,¹⁶ the ECtHR held that the United Kingdom had violated Article 8 ECHR (the right to respect for family and private life) and Article 12 ECHR (the right to marry and found a family) by failing to provide legal recognition of the gender identity of transgender people. In response to that judgment, the Gender Recognition Act 2004 was enacted. Current domestic legislation as it affects lesbian, gay, bisexual and transgender individuals is discussed in greater detail below. Of particular significance is the Human Rights Act 1998, which made it unlawful for public authorities to act in a way which is incompatible with the ECHR thereby making ECHR rights enforceable directly in domestic courts.¹⁷

Other Council of Europe bodies have also demonstrated strong leadership in removing discrimination of lesbian, gay, bisexual and transgender people. Since November 2007, the Office of the Commissioner for Human Rights has been working on implementing its LGB&T Human Rights Monitoring Programme.¹⁸ On 31 March 2010, the Council of Europe Committee of Ministers adopted recommendations on measures to combat discrimination on grounds of sexual orientation or gender identity.¹⁹ Those recommendations have been directed to all Member States and, whilst not enforceable directly, set standards for lesbian, gay, bisexual and transgender rights throughout Europe. The recommendations include:

¹⁴ *Dudgeon v United Kingdom*, ECtHR, 1981, application no.7525/76.

¹⁵ By virtue of the Homosexual Offences (Northern Ireland) Order 1982.

¹⁶ *Christine Goodwin v United Kingdom*, ECtHR Grand Chamber, 2002, application no. 28957/95.

¹⁷ Section 6 of the Human Rights Act 1998.

¹⁸ The programme aims to foster the effective observance of the human rights of LGB&T people and to assist Member States with implementation and promotion of relevant Council of Europe human rights standards.

¹⁹ Recommendation CM/Rec (2010): adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies.

- Member States should examine existing legislative and other measures, keep them under review and collect and analyse relevant data in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
- Member States should ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity;
- Member States should ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination.

Yogyakarta principles

The Yogyakarta Principles are not enforceable by an individual *directly* in a domestic court but are a comprehensive set of principles drawn from existing, binding international standards relating to sexual orientation and gender identity. Importantly, however, the courts may refer to the principles for the purpose of interpreting domestic legislation. The principles were developed and adopted unanimously by human rights experts from diverse regions and backgrounds during a meeting held in Yogyakarta, Indonesia, in November 2006. The principles recognise the fact that despite key UN human rights mechanisms having affirmed Member States' obligation to ensure effective protection from discrimination based on sexual orientation or gender identity, the international response had been fragmented and inconsistent. What was required was a more consistent understanding of the comprehensive regime of international human rights laws and their application to issues of sexual orientation and gender identity.

The 29 Principles address a broad range of fundamental issues related to the rights of lesbian, gay, bisexual and transgender people including: rape and other forms of gender-based violence; extrajudicial executions; torture and other forms of cruel, inhuman and degrading treatment; medical abuses; repression of free speech and assembly; discrimination in work, health, education, housing; access to justice; and,

immigration. Each Principle is accompanied by detailed recommendations. The Principles also make additional recommendations for the United Nations human rights system, national human rights institutions, the media and non-governmental organisations amongst others.

Domestic law

Police (Northern Ireland) Act 2000

Section 32 of the Police (Northern Ireland) Act 2000 imposes a general duty on all 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. That duty must be discharged without discrimination.

Human Rights Act 1998

The United Kingdom was one of the key architects of the ECHR. However, it was only when the Human Rights Act 1998 came into force on 2 October 2000 that the ECHR became enforceable directly in domestic courts. That did not mean that the rights were not enforceable before. The Act was intended to 'bring rights home', to enable individuals to litigate the ECHR rights in their *local* jurisdiction. Previously, individuals in the United Kingdom could only enforce ECHR rights and litigate any unlawful interference by taking a case to the ECtHR in Strasbourg (which took on average 5 years and cost on average £30,000). Importantly, public authorities in the United Kingdom, before 2 October 2000, were not required, as a matter of *domestic* law, to comply with the ECHR and the judiciary were not *obliged* to take the ECHR or judgments of the ECtHR into account.

The Human Rights Act makes it unlawful for a public authority to act incompatibly with specified articles of the ECHR, which are referred to by the Human Rights Act as 'convention rights'.²⁰ Any individual whose convention rights have been infringed by a public authority can raise the matter in an appropriate court or tribunal in the United Kingdom. If they are dissatisfied with the court's decision and have pursued

²⁰ The convention rights referred to by the Human Rights Act 1998 are Articles 2 – 12, 14 and Protocols 1 and 13 of the ECHR.

the issue as far as it can go in the United Kingdom (in most cases that means to the Supreme Court), they may take their complaint to the ECtHR in Strasbourg. The Human Rights Act requires courts and tribunals in the United Kingdom to take account of the case law of the ECtHR and to develop the common law (so far as is possible) compatibly with convention rights.²¹

When carrying out its duties the PSNI, as a public authority for the purposes of the Human Rights Act, must act compatibly with all convention rights. All policies, practices and procedures must be compatible. In order to act compatibly, police officers must not only refrain from unlawfully interfering with an individual's convention rights, they must also intervene in certain situations to protect third parties from violating another person's convention rights. For example, under Article 2 ECHR (the right to life) the police must not only refrain from the intentional and unlawful taking of life, they must also take all reasonable steps to safeguard lives within their jurisdiction from a threat of which they are aware. Where a death has occurred under suspicious circumstances, they must carry out an independent, effective, timely investigation which is capable of holding the perpetrator to account and which affords the relatives of the deceased sufficient access to the investigative process.

The right to private and family life

Prior to the judgment of the ECtHR in the case of *Dudgeon v United Kingdom*,²² legislation in Northern Ireland meant that sexual acts between consenting males was illegal.²³ Great Britain had previously repealed similar legislation.²⁴ The ECtHR held, in *Dudgeon*, that the criminalisation of sexual acts between consenting males

²¹ Domestic courts and tribunals are not obliged to apply Strasbourg jurisprudence, but they must take the judgments of the ECtHR into account. Domestic courts and tribunals must interpret legislation, insofar as possible, in a way which is compatible with the convention rights. They cannot strike down or amend legislation but a higher court may issue a declaration of incompatibility if it finds legislation to be incompatible with convention rights. It is left to Parliament to decide how to respond to that declaration. Thus, the Human Rights Act has expressly maintained the primacy of the legislature and the judiciary.

²² *Dudgeon v United Kingdom* (1981) application no.7525/76.

²³ The commission of an act of buggery and an attempt to commit buggery were offences under sections 61 and 62 of the Offences against the Person Act 1861. An act of gross indecency committed by a man with another man was also an offence under section 11 of the Criminal Law Amendment Act 1885 and an attempt to commit an act of gross indecency was an offence at common law.

²⁴ In 1967 in England and Wales and in 1980 in Scotland.

breached Article 8 ECHR (the right to respect for private and family life). Consequently, the Homosexual Offences (Northern Ireland) Order 1982 was introduced which decriminalised homosexual acts. The age of consent for such acts was fixed at 18 years old, one year older than the age of consent for heterosexual people, which was set at 17 years old. The Sexual Offences (Amendment) Act 2000 equalised the age of consent for homosexual and heterosexual acts in Northern Ireland, setting it at 17 years old. Subsequently, the Sexual Offences (Northern Ireland) Order 2008 lowered the age of consent for all persons to 16 years old, bringing Northern Ireland into line with the rest of the United Kingdom.

In December 2005, the Civil Partnership Act 2004 came into force. The Act enables same-sex partners throughout the United Kingdom to become 'civil partners'. Civil partners generally enjoy similar rights and responsibilities as married couples. However, equal rights in relation to adoption have not yet been extended to same-sex couples. The Adoption (Northern Ireland) Order 1987 allows only married couples to adopt jointly. For unmarried couples (including same-sex couples, regardless of whether or not they are civil partners) only one parent can be the legal guardian.²⁵ Same-sex couples do not have the option to marry therefore are necessarily excluded from the opportunity to adopt jointly.

A provision of the Equality Act 2010, which extends to England and Wales but not to Northern Ireland, removed the prohibition on same-sex unions in churches and other places of worship.²⁶ In September 2011, the Scottish Government launched a consultation on same-sex marriage. No such indication has been given by the Northern Ireland Assembly however the Office of the First and Deputy First Minister in its draft Programme for Cohesion, Sharing and Integration (CSI) has indicated its commitment to publish a sexual orientation strategy. It is not yet known whether that will include reference to civil partnership and marriage laws. The sexual orientation strategy is due to be published later this year (2012).²⁷ In 2006 there was a consultation exercise and a strategic plan was drafted by local government to tackle

²⁵ This legislation is currently before the courts on a judicial review brought by the Northern Ireland Human Rights Commission.

²⁶ The Marriages and Civil Partnerships (Approved Premises) Amendment Regulations 2011 implement this provision and came into force in England and Wales on 5 December 2011.

²⁷ Written answer to question asked in the Northern Ireland Assembly, 9 December 2011, AQO 734/11-15.

human rights and equality issues relating to sexual orientation. However, that plan has never been published.

Gender Recognition Act 2004

The ECtHR ruled, in July 2002, that the United Kingdom had violated Article 8 ECHR (the right to respect for private and family life) and Article 12 ECHR (the right to marry and found a family) in its failure to provide legal recognition to the gender identity of transgender people.²⁸ In response to that judgment the UK Government enacted the Gender Recognition Act 2004 (the 2004 Act), which came into force in April 2005. The Act extends to Great Britain and Northern Ireland. It provides full legal recognition of a transgendered person's gender identity for *all* purposes, including marriage, birth certificates, pension rights, social security benefits and privacy issues. Legal recognition is achieved when a Gender Recognition Certificate (GRC) is issued by a Gender Recognition Panel made up of at least one legal and one medical member. To qualify for a GRC, a transgender person has to show that he or she has been diagnosed as having gender dysphoria, that he or she has lived in his or her acquired gender role for 2 years and that he or she has an intention to do so permanently. He or she must be over the age of 18 years old.

The 2004 Act recognises that a person's gender identity, rather than surgery, is the defining factor and as such does not require a person to undergo gender reassignment treatment. The 2004 Act safeguards the privacy of transgender individuals by prohibiting the disclosure of information acquired in an official capacity relating to an application for a GRC or information about the gender history of a successful applicant. Disclosure is only permitted if the relevant transgender person has consented to it *or* if there is a valid public policy reason. Despite these privacy safeguards a number of transgender people reported having been asked by their employer to disclose information relating to their GRC. The Committee is concerned that such disclosure defeats the fundamental purpose of the Act and wishes to encourage others to consider this issue. The United Kingdom Government is currently undertaking a review of identity and privacy issues for transgender people, which includes a review of how gender identification is represented in passport

²⁸ *Christine Goodwin v United Kingdom* (2002) ECtHR Grand Chamber application no. 28957/95.

application forms and on passports.²⁹ The Committee will consider the outcome of that review, due to be completed by February 2013, and will consider whether, and if so to what extent, it will have an impact on policing in Northern Ireland.

If a person is married or in a civil partnership when an application for a GRC is made, the Gender Recognition Panel will issue an interim GRC (rather than a full certificate).³⁰ The reason provided for this is that if the marriage is not terminated or the civil partnership is not ended the issue of a full GRC would have the effect of creating either a same sex marriage or a civil partnership between different sexes, both of which are currently prohibited under the law. This has caused distress to people who do not wish to divorce their spouse or end their civil partnership.³¹

Police custody and conducting searches: transgender people

A Gender Recognition Certificate (GRC) provides full legal recognition of a transgendered person's gender identity for all purposes. That means that if a person is to be placed in police custody, he or she must be dealt with in all respects as recorded on the GRC. For example, a transgender woman must not be required to share facilities with a man. When a transgender person is being 'booked into' a police custody suite the custody staff must not disclose the person's gender history to others. Accordingly, if there are other people waiting in the booking in area, the custody staff should make no reference to the person's gender identity or to the fact that he or she has a GRC.

If a search is being conducted of a transgender woman or man who has a GRC, he or she must be searched by an officer of the same gender. The position is therefore clear; there is no room for a police officer's interpretation or divergence from that rule. The situation is a little more complicated, however, if the transgender person does not have a GRC. However, all stops and searches must be carried out with courtesy, consideration and respect for the person concerned. This has a significant impact on public confidence in the police. Every reasonable effort must be made to

²⁹ *Advancing Transgender Equality: A Plan for Action*, HM Government, December 2011, page 12.

³⁰ Section 4(3) of the Gender Recognition Act 2004.

³¹ *Transgender Research Review*, M. Mitchell and C. Howarth, Equality and Human Rights Commission, 2009, page 6.

minimise the embarrassment or discomfort that a person being searched may experience.³² Furthermore, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) Guidance Notes provide (albeit in reference to different circumstances) that “many people customarily cover their heads or faces for religious reasons. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex.”³³

Clearly, therefore, personal sensitivities are considered relevant to the conduct of a search and to the treatment of a person undergoing a search. Even in the absence of specific legal protection for transgender people who do not have a GRC, the police are able, and should be willing, to afford them the requisite courtesy, consideration and respect as afforded to a non-transgender person or a person with a GRC. To better ensure that transgender people are treated with the dignity and respect to which they are entitled police officers would benefit from a protocol which clarifies both the legal requirements and the correct procedures to be followed. Such a protocol would provide important guidance for police officers thereby reassuring them that they are acting appropriately and also enshrine good practice for the benefit of transgender people being dealt with by police officers.

Recommendation 1

The PSNI should, in consultation with its LGB&T Independent Advisory Group, finalise its draft protocol providing guidance and the procedures to be followed for dealing with a transgender person when, for example, conducting a search or dealing with documents. Thereafter, that protocol should be disseminated across the PSNI. The protocol should be shared with the Human Rights and Professional Standards Committee within 3 months of the publication of this thematic review.

³² *PACE Code of Practice A*, Northern Ireland Office, 2007 edition, para. 3.1.

³³ *Ibid.* Guidance Notes, para. 3.1.

Employment, education and access to goods and services

Transgender discrimination

Since 1999, it has been unlawful in Northern Ireland to discriminate against an individual who intends to undergo, is undergoing, or has undergone gender reassignment in employment and vocational training.³⁴ The relevant legislative provisions relate to recruitment, transfer, training and promotion, access to work-related benefits, facilities and services in the workplace, dismissal and any other detriment. It is also unlawful for an employer to instruct someone else to do something discriminatory, for example, telling an employment agency not to hire a transgender person. Pressure brought upon any person to discriminate is unlawful. Anyone who is treated less favourably by an employer or vocational training body on any of the above grounds when compared to someone for whom no gender reassignment ground exists can bring a civil claim against the employer or training body. Further legislation came into force in 2008 which introduced protection from direct discrimination or harassment on grounds of gender reassignment in the provision of goods, facilities, services or premises as well as in employment and vocational training.³⁵

Gender reassignment in the context of sex discrimination legislation refers to a reassignment of gender under medical supervision. The law in Northern Ireland does not therefore offer legal protection to a transgender person who does *not* intend to undergo gender reassignment under medical supervision. It excludes, for example, a person who refers to himself or herself as a 'cross-dresser', a polygender person and a transgender person who does not intend to undergo gender reassignment. Many transgender individuals submitted, during the course of this review, that this has created a hierarchy of rights in law for transgender people (in descending order of rights): those with a Gender Recognition Certificate; those without a Gender Recognition Certificate but who have undergone gender reassignment; and, those

³⁴ The Sex Discrimination (Northern Ireland) Order 1976 as amended by the Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999. These were brought into force following the judgment of the European Court of Justice in *P v S and Cornwall County Council* 1997 [IRLR] 347, whereby the Court ruled that discrimination on the grounds of gender reassignment fell within the prohibition of discrimination under the European Union Equal Treatment Directive (Directive 76/207/EEC).

³⁵ The Sex Discrimination (Amendment of Legislation) Regulations 2008.

who have not undergone gender reassignment.³⁶ This is outside the scope of the Committee's review but the Committee wishes to encourage further work by government to consider and address this issue.

Sexual orientation discrimination

Since December 2003, it has been unlawful for employers and others to discriminate on the grounds of sexual orientation in the areas of employment, vocational training and further and higher education.³⁷ That protection was extended, in January 2007, by the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (the 2006 Regulations). The 2006 Regulations make it unlawful for service providers to discriminate against a person because of his or her sexual orientation in, amongst other things, the provision of services and in the exercise of public functions. To comply with the 2006 Regulations, the PSNI was required to inform all officers and staff that it is unlawful to discriminate on grounds of sexual orientation; review policy and practice; establish non-discriminatory policies and practices; address acts of sexual orientation discrimination by employees in its disciplinary rules; keep its policy and practice under review and implement the effectiveness of its policies.

The PSNI, as an employer, has an Equal Opportunities policy which states that:

During the course of their employment, no police officer or member of police staff receives less favourable treatment or is discriminated against on the grounds of their sex, pregnancy or maternity leave, marital or civil partnership status, sexual orientation, race or ethnic origin, colour, religious belief (or similar philosophical belief), political opinion, national identity, age, disability or whether or not they have dependants. The PSNI recognises that all police officers and members of police staff should be treated with respect and dignity in the workplace. As such, the PSNI is committed to providing a working environment that is free from discrimination, victimisation, harassment, bullying and inappropriate behaviour. Commitment to the principle of equal treatment also ensures that all police officers and members of police staff are

³⁶ *Transgender Research Review*, M. Mitchell and C. Howarth, Equality and Human Rights Commission, 2009, page 6.

³⁷ The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003.

given equal opportunity to develop their skills and abilities and to realise their full potential within the PSNI. It also ensures that all individuals are provided with equal access to opportunities for employment, promotion, training and development.³⁸

The Equal Opportunities policy does not, but the Committee believes should, include express reference to transgender individuals. PSNI as an employer, and its provision of internal support to lesbian, gay, bisexual and transgender police officers and police staff, is considered later in this thematic review (at pages 87 to 102).

Section 75 Northern Ireland Act 1998

The PSNI must ensure that the ECHR rights of all members of the public are secured without discrimination on any ground.³⁹ Non-discrimination (or put another way, equality) is a fundamental human rights principle which underpins all of the aforementioned human rights instruments. Non-discrimination, in policing terms, does not mean that the police should treat everyone in exactly the same way: it requires the police to take differences into account and tailor their response accordingly to ensure that all individuals, regardless of, for example, sexual orientation or gender identity, enjoy equal access to the benefit and protection of their rights and to equality of outcomes.

In addition to ensuring that ECHR rights are secured without discrimination, PSNI has a statutory duty under section 75 of the Northern Ireland Act 1998 to 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.⁴⁰ The purpose of section 75 is to mainstream equality, making it central to the policy decision making of all public authorities. That means that equality must be incorporated into all policies from the drafting stage through to the review and implementation of policy. When policy is drafted or

³⁸ *Equal Opportunities Policy*, PSNI, PD 04/06, section 2.

³⁹ *As per* Article 14 ECHR.

⁴⁰ Section 75 of the Northern Ireland Act 1998 imposes this duty on all public authorities in Northern Ireland. It also requires that public authorities have regard to the desirability of promoting good relations between persons of different religious belief, political opinion, and racial group.

amended, it must be screened in order to identify any impact it may have on any of the groups identified by section 75. The public authority must consider how any potential adverse impact may be reduced and how an alternative policy might lessen the adverse impact that the screened policy may have. Depending on the number or nature of adverse impacts identified, the public authority should consider whether to subject the policy to an Equality Impact Assessment (EQIA). An EQIA procedure is a thorough and systematic review of policy.

Whether carrying out a full EQIA or conducting an initial screening of policy, PSNI is better placed to determine potential adverse impacts if it consults with those groups that the policy is most likely to affect. In the past, there has been some criticism of PSNI consultation exercises. In particular, it has been noted that PSNI had not consulted fully with all stakeholders before decisions are taken to implement policy. For example, before the decision to restructure the network support role or the Hate Incident Minority Liaison Officer (HIMLO) role neither the Policing Board's Reference Group nor the PSNI Independent Advisory Group were consulted.⁴¹

The Equality Commission for Northern Ireland, however, is the appropriate authority to analyse PSNI's compliance with its section 75 duties. The Human Rights and Professional Standards Committee will maintain a keen interest in the product of the Commission's analyses and it will raise any issues directly (and additionally) with the PSNI.

⁴¹ This is considered further below at pages 64-66 and pages 99-102.

ENGAGEMENT WITH LESBIAN, GAY, BISEXUAL & TRANSGENDER PEOPLE

As contributors to this thematic review reminded the Human Rights and Professional Standards Committee (the Committee), it is the 'mind-set' and approach of police officers and police staff which makes the difference to an encounter. If the police officer or member of staff approaches an individual and thereafter deals with him or her in a way which recognises particular vulnerabilities and is sensitive to that person's needs, the encounter is a positive one which engenders trust and support. When the mind-set is right, observance of policy becomes much easier and more instinctive. In order to effectively respond to a lesbian, gay, bisexual or transgender person, he or she must be treated with respect. Respect comes from understanding and familiarity. Therefore, it is incumbent on the PSNI to engage *effectively* with minority groups and learn from them. Engagement can never be achieved by applying a check-list of obligations but should be underpinned by a methodology which takes account of the particular vulnerabilities of the group to be engaged with. The PSNI has a number of initiatives to improve its engagement with the community, including with members of the lesbian, gay and bisexual communities and the transgender community.

Policing with the community

The model of policing adopted by PSNI is 'Policing with the Community'.⁴² Policing with the community depends upon meaningful engagement, community consent and accountability. It requires the service to be delivered in genuine partnership with the community including, perhaps most importantly, minority and vulnerable members of the community. Engagement must be structured so as to provide an opportunity for dialogue between the police and community in which an account can be given for actions taken and a holding to account for those actions. Both the police and the community need an opportunity to explain their decisions and actions and the impact of those decisions and actions upon them. Often, a simple discussion can assist community/police relationships as both can understand the relevant facts and the reasons for certain actions. When considering community engagement it is important

⁴² In March 2011 PSNI published its *Policing with the Community 2020 Strategy*.

to remember that engagement is only productive if it is undertaken with mutual respect (which permits honest challenge and dissent) and a willingness to listen and learn.

This is of particular importance where the community to be engaged with has suffered prejudice and discrimination and may comprise victims of crime who have been targeted as a result of their status. Officers undertaking such engagement must understand the issues. It is important to validate a person's gender expression by using the pronoun appropriate to his or her gender identity. Some transgender people prefer to use gender-neutral pronouns. If genuinely in doubt, an officer should politely and respectfully ask a person which pronoun they prefer, use it, and encourage others to do so. However, it is hoped that as a result of training, police officers will know the appropriate language to use and not have any doubt. A number of transgender people who contributed to this thematic review highlighted occasions when police officers had either knowingly or carelessly addressed him or her by the wrong pronoun. To knowingly treat a person with disrespect is unacceptable and unjustifiable. To carelessly do so is perhaps more understandable (for example, if an officer is naive or under pressure) but the result is as hurtful to the person who is being addressed. This can be remedied with relatively little effort: what is required is appropriate training underpinned by a clear policy position which is emphasised and monitored by supervisors and police leaders.

A number of contributors to this thematic review gave examples of occasions when police officers had treated them respectfully and in accordance with their acquired gender. The experience had a profound effect upon them and influenced their perception of the Police Service generally. They were keen to acknowledge the progress that has been made. However, others had a very different experience of police not only being disrespectful but wantonly aggravating the situation by asking inappropriate questions and demeaning the person. That must be stopped. It is hoped that continuing scrutiny and evaluation of the PSNI's policy, training and officer appraisal will ensure increasingly that officers who behave in such a manner will be dealt with robustly and that behaviour will change.

A recent report on experiences of transgender people in Northern Ireland highlighted that “police attitudes had and were continuing to positively change, and in fact a number of respondents reported having interactions with PSNI that confirmed this, although, the majority of respondents clearly expressed a view that they thought there was a need for further education and training amongst PSNI officers regarding transgender issues and the appropriate procedure in which to handle their cases.”⁴³ During the course of this thematic review submissions were received which reinforced that. Of particular concern was the confusion demonstrated by some police officers about the handling of documents, for example, Gender Recognition Certificates and driving licences. Importantly, where a police officer discloses information to a third party on a person’s status as defined by the Gender Recognition Act 2004, the act of disclosure may be a criminal offence. It is therefore extremely important that officers are adequately trained and supervised. Clearly, more training is required to deal with specific transgender issues. The Committee is aware of that and has considered the training that is available to officers and staff (see below at pages 67 to 70).

PSNI policy states that “Greater confidence, co-operation and increased reporting will be achieved if the Police Service deals effectively and professionally with hate incidents and continues to proactively build positive relationships with representatives and support organisations for minority and vulnerable groups.”⁴⁴ PSNI policy also states that the Police Service “must continue to proactively establish new, and build on the existing, partnerships within groups and organisations who engage with minority and vulnerable groups, victims of hate incidents and those who work to support them, and with statutory agencies, including Community Safety and District Policing Partnerships (DPPs), who in partnership can work to prevent hate incidents, raise awareness and support victims.”⁴⁵

The Committee agrees with and endorses that position. To achieve that objective in *practice*, police officers must engage proactively with individuals and groups who are

⁴³ “*The Luck of the Draw*” A Report on the Experiences of Transgender Individuals Reporting Hate Incidents in Northern Ireland, R.S. McBride and U. Hansson, Institute for Conflict Research, May 2010, page 83.

⁴⁴ *Police Response to Hate Incidents*, PSNI, PD 02/06, version 4, issued December 2008, section 3(1)(c).

⁴⁵ *Ibid.* section 4(3).

not traditionally represented on community stakeholder forums. A specific strategy for engaging with the lesbian, gay, bisexual community and with the transgender community is an essential element of that. The PSNI has established a number of positive initiatives for that purpose; however, the Committee is concerned that good practice is not replicated across Northern Ireland. Rather, there appears to be pockets of good practice that are not replicated and initiatives that have been developed but not committed to in the longer term.

Participation in Gay Pride Events

The PSNI has a presence at Gay Pride events in Belfast, Foyle and Newry. There are information stalls at the events at which information about PSNI can be obtained and people can speak to a police officer. Additionally, lesbian, gay and bisexual police officers are permitted to attend the event as participants, with some Gay Police Association (GPA) members wearing GPA polo shirts. That is extremely positive and will help to highlight to all who attend, participate in or simply observe the events that the PSNI is committed to equality, welcoming to recruits who are lesbian, gay, bisexual or transgender and eager to offer an equal policing service to lesbian, gay, bisexual and transgender people.

Independent Advisory Groups

PSNI has a number of Independent Advisory Groups (IAGs), one of which is dedicated to lesbian, gay, bisexual and transgender people. On the LGB&T IAG, members of the lesbian, gay and bisexual community are represented, but there is no transgender person currently sitting on the IAG. The IAG meets regularly to discuss issues and to provide feedback to the police on the success or otherwise of policing policy and practice.

Members of the LGB&T IAG have expressed their dissatisfaction at the way in which the groups were organised and the input they had into policing issues. They were critical of the lack of consultation on a number of decisions taken which affected members of their community. For example, the LGB&T IAG was not consulted over the decision to transfer Hate Incident Minority Liaison Officer (HIMLO) duties from Community Safety to Neighbourhood Policing Teams (discussed at pages 64 to 66), nor was it consulted over the decision to remove the Network Support Officers' role

(discussed at pages 99 to 102). That undermines the function of the IAG, which is there to provide advice and guidance on operational matters. However, the PSNI has made real efforts to learn from that feedback and has developed a more robust mechanism for engaging regularly and meaningfully with the IAGs. PSNI has worked hard with the IAGs to ensure their criticisms and concerns have been addressed. A framework/plan of action for the functioning of all PSNI IAGs has been drawn up with the input and support of members of the LGB&T IAG.

There are no transgender people currently on the LGB&T IAG. The PSNI should consider why this is the case and consider how to address that deficiency. In an evaluation of a training course delivered to HIMLOs, police officers who received the training highlighted the positive impact of meeting with transgender people and suggested that more face to face contact would be beneficial to their work. To have a transgender person or persons on the IAG would provide a point of contact for the police through which to obtain advice and guidance and could assist in building relationships. The Policing Board has a LGB&T Reference Group which serves an equally important, but different, function. The Reference Group includes a transgender person who has contributed enormously to the work of the Policing Board. The Human Rights and Professional Standards Committee will work with the Policing Board's Community Engagement Committee and with the PSNI to encourage representation of transgender people on the IAG and will report further in the coming months.

Belfast Community Safety Partnership: 'Tension Monitoring'

A Tension Monitoring Group was established in Belfast by the Belfast Community Safety Partnership. It is a multi-agency group consisting of partners, including the PSNI, from frontline and community services who work together to prevent the escalation of tensions that can lead to hate crime, interface violence and the fear of crime.⁴⁶ A Hate Crime Officer has been employed by Belfast Community Safety Partnership to work on the tension monitoring project and to carry out other hate crime projects initiated by Belfast Community Safety Partnership. The PSNI is an

⁴⁶ Partners on the group include the PSNI, the Northern Ireland Housing Executive, Belfast City Council, the Rainbow Project, South Belfast Roundtable, NICEM, Northern Ireland Alternatives and the Department of Justice Community Safety Unit.

essential partner in that project and has provided leadership in that respect. It is important, however, that the Tension Monitoring Group does not rely solely on reports from the PSNI but that it utilises and builds upon community resources as an effective means of accurately gauging and responding to tensions that exist within communities.

Unite Against Hate Campaign

The *Unite Against Hate* campaign is a multi-agency forum initiated by the Office of the First Minister and Deputy First Minister, the Equality Commission, the Community Relations Council, the Northern Ireland Office (now the Department of Justice) Community Safety Unit and the PSNI. The campaign's objectives are to: inspire and to unite; to sensitise the general public to the problem of hate crime and its costs; to create a climate of zero tolerance for hate crime and discrimination; and, to promote diversity.⁴⁷ The campaign is supported by a number of local celebrities, sports organisations and other stakeholder organisations, including the Rainbow Project⁴⁸ and the Belfast Butterfly Club.⁴⁹

In February 2011, a billboard campaign was launched by *Unite Against Hate* to urge people to report hate crime. There is an educational toolkit which provides teachers with a number of examples of how to introduce children and young people in the post-primary school sector to the campaign. The PSNI online hate crime reporting form is linked to the campaign. The PSNI continues to support and play an active part in the campaign. A great deal of effort and time has been devoted to furthering the objectives of that campaign. Additionally, the PSNI has demonstrated real commitment by its appointment of a dedicated hate crime officer who takes the lead on hate crime across the service.⁵⁰ In November 2010, the PSNI was honoured with an award at a United Kingdom-wide award ceremony for its contribution to the campaign.⁵¹ The Committee wishes to commend the PSNI, support its continued efforts and encourage the expansion of the campaign.

⁴⁷ www.uniteagainsthate.org.uk

⁴⁸ The Rainbow Project is a health organisation that works to improve the physical, mental & emotional health of gay, bisexual and non-heterosexual men in Northern Ireland.

⁴⁹ The Butterfly Club is a trans support group.

⁵⁰ Inspector Jeremy Adams.

⁵¹ The PSNI received an award in the Diversity in Action category of the Jane's Police Review Gala Awards on 4 November 2010.

Foyle Protocol

The Rainbow Project recommended in a 2009 report, *Through Our Eyes*, that a hate crime partnership should be established in each policing district. The recommendation states that “Using the structure of ‘A Partnership Protocol’ aka ‘The Foyle Protocol’ a protocol should be developed using key issues as identified by minority groups, PSNI and other relevant agencies in each policing district throughout Northern Ireland. An action plan stating key activities and responsibilities should be developed, incorporating key issues as identified by minority groups, PSNI and other relevant agencies in each policing district throughout Northern Ireland.”⁵²

The Foyle Protocol is an excellent example of partnership working which has tangible benefits. The Protocol is a document endorsed by PSNI, Derry District Policing Partnership and Derry Community Safety Partnership. It is designed to tackle the problem of homophobic attacks (hate crime), fear of attack, suicide, self-harm and the incidence of domestic violence between same gender couples in the Derry City Council area and also to develop a greater understanding and acceptance of the gay lesbian and bisexual community in general. It was developed in 2004 following a meeting between Rainbow Project Derry and police officers from Foyle District Command Unit to discuss issues arising in the Derry City Council area and to agree a course of action. The main issues raised by Rainbow Project at that meeting were:

- The need to improve the reporting of homophobic incidents to the police by the ‘Commercial Gay Scene’;
- The need to develop an anonymous system of reporting incidents by the ‘Non Commercial Gay Scene’;
- The focus should be on reducing the fear of crime amongst the gay community as this appeared to Rainbow Project at that time to be on the increase; and
- Attention needed to be paid to the treatment which gay people sometimes received from police officers and a greater understanding achieved as to the repercussions that the ‘Non Commercial Gay Scene’ can experience

⁵² *Through Our Eyes*, J. O’Doherty, The Rainbow Project, June 2009, page 49, Recommendation 4.

through contact with police, i.e. fear of exposure, court cases, family, work etc.

Following the meeting it was agreed that the best way to address the various issues was to form a partnership with relevant agencies and to develop a protocol with measurable objectives. Partners who signed up to the Protocol included the Rainbow Project, Derry City Council Community Safety Partnership, Derry District Policing Partnership, Northern Ireland Housing Executive, Women's Aid, Foyle Victim Support, and University of Ulster (Magee campus) amongst others. The Protocol sets out the steps the police will take to investigate a homophobic hate incident or crime and is designed to reduce the number of suicides and self-harm incidents and to reduce the number of domestic violence incidents between same-sex attracted couples.

Whilst many aspects of the Foyle Protocol are incorporated within PSNI's overarching *Police Response to Hate Incidents* policy, the Committee agrees with the recommendation of the *Through our Eyes* report that each policing district should have its own local protocol which contains a locally tailored plan to formalise partnerships, perhaps using the template of the Foyle Protocol. The Committee considers this is now particularly important given the transfer of HIMLO duties to Neighbourhood Policing Teams (as to which see further at pages 64 to 66 below).

Recommendation 2

The PSNI should develop a hate crime partnership for each policing district. The PSNI should consider whether the Foyle Protocol should be the starting point for consideration or whether there is a more effective model which can be adopted. The PSNI should report to the Human Rights and Professional Standards Committee within 6 months of the publication of this thematic review on the progress made to establish effective hate crime partnerships.

'A' District hate crime forum

In 2011, PSNI set up a hate crime forum in A District (North Belfast and West Belfast) which is led by the District Commander. It is very encouraging that the District Commander is the lead officer as this demonstrates a high level commitment

to the issues and has the real potential to deliver on objectives. The hate crime forum includes relevant stakeholders and is aimed at developing protocols and working practices within the District to combat hate crime. The forum is in its infancy but the feedback so far has been very positive. The Committee recognises this good practice but, as stated above, hopes to see a more strategic approach which extends across Northern Ireland rather than a piecemeal approach.

In addition, the PSNI is in the early stages of forming a service-wide steering group to develop good practice for dealing with hate crime across Northern Ireland. Terms of Reference have been drawn up in consultation with relevant stakeholders and will provide a sound framework for policy and procedural developments. The success or failure of the initiative is likely to depend on the level of consultation and input from stakeholders. The Committee wishes to encourage and support the PSNI in this work. It will monitor progress and report further in the coming months.

‘B’ District Hate Crime Investigators

In B District (South Belfast and East Belfast) there are a number of measures to supplement and support service policy on the police response to hate incidents. For example, two dedicated Hate Crime Investigators ensure that the investigation of hate crime is progressed to a standard that sustains the confidence and support of the victim and the community, with a particular emphasis on the objective of maximising clearance rates. Hate Crime Investigators monitor trends in hate incidents through the use of crime pattern analysis. They work in partnership with local neighbourhood teams to address issues of concern. The feedback in respect of the work of Hate Crime Investigators has been extremely positive. There has not yet been any comparative analysis carried out to establish whether the initiative has had an effect on hate crime reporting and clearance rates but such an analysis should be conducted.

The Rainbow Project recommended in June 2009, in its *Through Our Eyes* report, that a review should be carried out on the effectiveness of the role of HIMLOs and the role of Hate Crime Investigators to establish the most effective means of

preventing, identifying and dealing with incidents of hate.⁵³ That review has not been undertaken. The Committee agrees with the *Through Our Eyes* recommendation and considers that such a review should now be undertaken.

Recommendation 3

As part of its evaluation of HIMLO duties as per Recommendation 9 of this thematic review, the PSNI should consider whether establishing Hate Crime Investigators within each District would provide a more effective way of preventing, identifying and dealing with incidents of hate crime. The findings should be included in the evaluation report that is to be prepared in a format that can be shared amongst stakeholders. If PSNI consider some model other than the establishment of Hate Crime Investigators to be more appropriate, that should be explained in the evaluation report.

⁵³ *Through Our Eyes*, J. O'Doherty, The Rainbow Project, June 2009, page 49, Recommendation 3.

HATE CRIME

It follows that if the PSNI has engaged effectively with all members of the community the service that is offered to victims of hate crime is more effective. The PSNI has bespoke policies dealing with hate crime, including lesbian, gay, bisexual and transgender hate crime.⁵⁴

Hate crime aims to instil fear. It can take many forms but the most common forms of hate crime known to the police are assaults, intimidation, harassment and criminal damage. Hate crime is particularly hurtful to victims as they are targeted because of their personal identity, racial or ethnic origin, sexual orientation, gender identity or disability. The impact on individual victims varies but it leaves many feeling permanently unsafe and anxious. As well as having a physical effect on victims, hate crime can lead to poor mental health and increase the risk of suicide. The impact of the crime may also resonate throughout the wider community. When a person or group is the subject of a hate crime as a result of their identity, it demeans society as a whole. To turn a blind eye, condone or actively encourage it undermines civilised values and shames society.

The Police Service has a clear obligation to protect, respect and promote human rights. Inclusiveness and diversity should be the fundamental principles underpinning core business and service delivery. While that will take time to embed within the organisation, a more immediate and tangible objective must be to assist and support the victims and witnesses of hate crime whilst taking effective action against perpetrators. Victims of hate incidents and crimes suffer 'primary victimisation' at the hands of a perpetrator but if that victim then experiences indifference or rejection from the police or any other organisation, he or she will commonly suffer what is known as 'secondary victimisation'. This secondary victimisation has been referenced by many contributors as a major cause of the underreporting of hate crime. Furthermore, a person who is subjected to secondary victimisation will likely share that experience with members of their community, which can in turn lead to a climate of mistrust or reluctance within the community to report similar incidents.

⁵⁴ Which are considered further below.

PSNI policy and legal framework

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

All operational decision-making occurs within a policy framework: therefore there must always be a robust and accessible policy to which reference can be made and which guides decision-making. Policy writing is a skill, which requires a high degree of expertise, knowledge and attention to detail. Policy writers are integral to a functioning police service which has a stated commitment to human rights compliance and they should be encouraged and supported to develop and revise policy as required. The Committee therefore supports PSNI in its policy work and encourages further training and development for its policy writers.

A central proposition of the Report of the Independent Commission on Policing for Northern Ireland (the Patten report) was that the fundamental purpose of policing should be, in the words of the Belfast Agreement 1998, “the protection and vindication of the human rights of all... There should be no conflict between human rights and policing: Policing means protecting human rights.”⁵⁵ As per recommendation 2 of the Patten report, PSNI adopted the following police oath of office to reflect a commitment to human rights:

⁵⁵ *A New Beginning: Policing in Northern Ireland*, Report of the Independent Commission on Policing for Northern Ireland, September 1999, para. 4.1.

“I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, and that in doing so I will act with fairness, integrity, diligence and impartiality, uphold fundamental human rights and accord equal respect to all individuals and to their traditions and beliefs.”

The PSNI Code of Ethics, published in 2003 (and most recently revised in 2008), sets down the standards of conduct and practice expected of police officers and makes officers aware of their obligations under the Human Rights Act 1998.⁵⁶ Article 1.1 of the Code requires that when police officers are carrying out their duties, they “shall obey and uphold the law, protect human dignity and uphold the human rights and fundamental freedoms of all persons as enshrined in the Human Rights Act 1998, the European Convention on Human Rights and other relevant human rights instruments.”

Article 6.1 of the Code of Ethics requires that “Police officers shall act with fairness, self-control, tolerance and impartiality when carrying out their duties. They shall use appropriate language and behaviour in their dealings with members of the public, groups from within the public and their colleagues. They shall give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.” Article 6.2 of the Code of Ethics requires that “In carrying out their duties police officers shall treat all persons or classes of persons equally regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority disability, age, sexual orientation, marital or family status, property, birth or any other status. Any difference in treatment shall be required to be justified and proportionate.”

Speaking at the launch of the LGB&T Advocacy Scheme in B District, the Deputy Commander said:⁵⁷

⁵⁶ The statutory authority for the Code of Ethics is derived from section 52 of the Police (Northern Ireland) Act 2000.

⁵⁷ Superintendent Chris Noble speaking on 10 June 2010. The Advocacy Scheme is discussed further below at pages 61 to 64.

Attacks on people with a different sexual orientation or gender identity highlight the necessity to ensure that as a society we stamp out hate crime once and for all. We are working tirelessly with our partners to do this. Our *Policing a Shared Future Strategy* outlines the need to ensure that everything we do is underpinned by fairness and respect towards all members of our community. This includes ensuring equality for all, improving relations between different groups in our society by promoting diversity and building confidence in the police.

That is a very clear public statement of the PSNI's commitment to ensuring equality in the delivery of its service to all lesbian, gay, bisexual and transgender people. Whether that commitment has yet been fully realised, however, is less clear but it is certainly a very positive start. The implementation of policy into practice is considered throughout this thematic review.

PSNI hate crime policy

When an incident or crime has been reported to the police by the victim or any other person as being motivated by prejudice or hate, it must always be recorded and investigated as a hate incident or crime in accordance with the PSNI policy *Police Response to Hate Incidents*.⁵⁸ The aims and objectives of the policy are to:

- Record, respond and investigate all reported hate incidents in a consistent, robust, proactive and effective manner;
- Maintain Hate Incident Minority Liaison Officers (HIMLOs) in every police District;
- Ensure that every reported hate investigation is appropriately supervised;
- Ensure that every victim is offered the assistance of a HIMLO and provided with information relating to local statutory and voluntary support agencies;
- Take reasonable/appropriate steps to identify and protect repeat victims;
- Work in partnership with other agencies to address areas of hate incidents prevention, reporting and response.

⁵⁸ *Police Response to Hate Incidents*, PSNI, PD 02/06, version 4, issued December 2008, section 2(1)(d).

- Ensure that appropriate training is given on the application of the policy.⁵⁹

PSNI policy defines a hate *incident* as “any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.”⁶⁰ The policy defines a hate *crime* as “any hate incident, which constitutes a criminal offence, perceived by the victim or any other person as being motivated by prejudice or hate.”⁶¹ Importantly, ‘any other person’ includes a police officer. Accordingly, even if the victim does not recognise the crime as motivated by hate (for example, due to internalised homophobia) but the police officer believes it to be so, the police officer must record it as a hate incident or crime. This takes the onus off the victim who may be traumatised, lacking in confidence in dealing with the police, or unaware of hate crime policy. The policy continues that a hate crime “requires a full and comprehensive investigation with a view to maintaining the confidence of the victim and detecting and prosecuting the offender.”⁶²

The policy “must be consistently applied across every police district to ensure that every reported incident is investigated to the same standard and that every victim receives the same level of assistance and support.”⁶³ The policy states “It must be clearly understood that to report a hate incident, evidence is not needed. Perception on the part of anyone is all that is required. The perceived motivation will be recorded and investigated in addition to any (other) criminal offences, which are being investigated. Evidence is not the test, the perception test relates to anyone including a police officer.”⁶⁴

The policy highlights that victims are often repeat victims. Repeat victimisation is defined as “[W]here a person or immediate family member suffers more than one hate incident in a 12 month period following the date the first crime was reported.”⁶⁵ The Committee considers this 12 month recording period to have the potential to

⁵⁹ *Ibid.* section 3(2).

⁶⁰ *Ibid.* section 2(1)(a).

⁶¹ *Ibid.* section 2(1)(a).

⁶² *Ibid.* section 2(1)(a).

⁶³ *Ibid.* section 4(4).

⁶⁴ *Ibid.* section 2(1)(d).

⁶⁵ *Ibid.* section 7(8)(2).

exclude some vulnerable victims. For example, if a person happens to be attacked every 13 months, he or she would not be recorded as a repeat victim. While the Committee recognises that this derives from ACPO guidance and bench-marking from other police services, the Committee suggests that PSNI should consider removing that 12 month limit and replacing it with individual assessments in each case taking into account the relevant circumstances. The policy recognises that “many incidents, regardless of when they have taken place, can have long-term implications for individuals, families or communities and this should not be overlooked.”⁶⁶ Therefore, in this context, the application of a ‘12 month rule’ appears arbitrary to the Committee.

The policy helpfully requires that all victims reporting hate incidents, whether by telephone or otherwise, must be provided with information of support agencies that can provide emotional, psychological or practical support and asked if they require any help to make contact with a support agency or some other person, including the District HIMLO. Even if the victim does not want the police to investigate any further, they must be provided with the information.

The policy acknowledges that hate crime can raise fear amongst the whole community. It recognises that low level incidents can lead to more serious incidents and acknowledges that hate incidents are under-reported to the police. It provides examples of why this is the case, for example, previous experience and/or a lack of confidence in the police; perception that the police aren’t interested, that they cannot or will not take any action; and a fear of confidentiality and being exposed to other incidents. The policy further states that “It is imperative that all officers remember that their initial actions taken at the scene of an incident can have a significant impact on the success of any later investigation. In some cases this can determine the difference between conviction and acquittal of an accused at court.”⁶⁷

The policy details numerous victim considerations and suggests that in the case of a transphobic incident, where the victim is not presenting in their normal social dress, police officers should facilitate the victim to change to their usual social presentation

⁶⁶ *Ibid.* section 7(8)(3).

⁶⁷ *Ibid.* section 7(4)(1).

as soon as practicable.⁶⁸ “When seeking to identify potential witnesses to an incident police officers must be mindful that the use and disclosure of personal information about a victim may involve a breach of Article 8 ECHR and of the Data Protection Act 1998 if not handled sensitively and appropriately. Officers should seek legal advice if they are unsure about disclosure of information.”⁶⁹

“Immediate action at the scene is the optimum opportunity to secure evidence and failure to do so may result in the permanent loss of such evidence. If a power of arrest exists and the suspect is both identifiable and can be located, then an arrest should be effected at the earliest practicable opportunity.”⁷⁰ “The fact that a victim of Hate Incidents withdraws a complaint is not in itself sufficient reason to consider discontinuation of an investigation. Other evidence from a witness, suspect interviews, forensic evidence and evidence recovered as a result of searches may be sufficient to obtain a prosecution. The Public Prosecution service (PPS) offer pre prosecutorial advice and this should be fully utilised as required.”⁷¹

The policy states that, where possible, a full withdrawal statement should be obtained in writing from the victim if criminal proceedings have commenced. The information in the withdrawal statement will enable the prosecutor to make an informed judgement as to whether the case can still proceed. Every hate incident must be investigated with a view to providing the prosecutor with sufficient evidence to prove to a court beyond reasonable doubt that it was motivated by hate.

Sergeants, where practicable, are required to attend all reported hate incidents to provide advice and assistance to officers. The policy states that this sends a clear message to the victim/witness/community that the matter is being taken seriously. Sergeants are required to ensure the investigating officer is taking positive action and is fully supporting the victim. The policy states that they should “undertake intrusive supervision in randomly selected hate investigations and take appropriate

⁶⁸ *Ibid.* section 7(5)(3)(f).

⁶⁹ *Ibid.* section 7(7).

⁷⁰ *Ibid.* section 7(4)(2).

⁷¹ *Ibid.* section 7(11)(1).

action if required.”⁷² They must ensure that hate incidents are recorded correctly on police computer systems and that all forms have been completed correctly.

On an investigation in which no person has been made amenable there is an initial 14 day review followed by a 28 day review by an officer of at least the rank of Inspector. According to the policy, only in exceptional circumstances where the Review Officer is “absolutely satisfied, that further investigation will not disclose any additional information or evidence they may then direct no further police action is necessary.”⁷³ That is an appropriate and robust policy aimed at ensuring that all investigations are kept under review.

Hate crime legal framework

Homophobia and Transphobia are not in themselves criminal offences. If, for example, a person is assaulted because he or she is lesbian, gay, bisexual or transgender the PSNI record the assault as a homophobic or transphobic hate motivated crime. The fact that the crime is motivated by hate on homophobic or transphobic grounds is a factor which should influence the sentencing of the crime as an aggravating feature. The Criminal Justice (No. 2) (Northern Ireland) Order 2004 makes provision for sentences to be increased where the offence for which a person is convicted was aggravated by hostility based on grounds of race, religion, sexual orientation or disability. It is also an offence, under the Public Order (Northern Ireland) Order 1987, to commit acts intended to, or likely to, stir up hatred against a group of persons or arouse fear of a group of persons. ‘Group of persons’ means a group of persons categorised according to religious belief, sexual orientation, disability, colour, race, nationality and ethnic or national origins. Neither piece of legislation, however, includes express reference to offences committed on the grounds of Transphobia. The Human Rights and Professional Standards Committee considers that this could be made more evident in the legislation and express reference should be included.

Responsibility for prosecuting hate crime rests with the Public Prosecution Service for Northern Ireland (PPS). The PPS recently published a new policy document

⁷² *Ibid.* section 7(6)(1)(i).

⁷³ *Ibid.* section 7(7)(3)(a).

which provides guidance to prosecutors on how decisions as to the prosecution of hate crime are taken and the assistance which will be given to victims and witnesses.⁷⁴

It is police policy to indicate hate as a motivating factor on the case file that is sent to the PPS. The PPS then applies the test for prosecution in the normal way. This is not the same test as the perception-based test used by police responding to reports of hate incidents and crime. Instead, the test to be applied by prosecutors is whether, based on the available evidence that can be adduced before the court, there is a reasonable prospect that the court will find it proved that the offence was motivated by hostility beyond reasonable doubt, i.e. hostility based on one of the four specified categories, namely, the victim's actual or perceived religion, race, sexual orientation or disability. The PPS policy notes that the term 'motivated by hostility' is not defined and "may be difficult to prove in practice; background evidence could be important if relevant to establish motive."⁷⁵ It is therefore imperative that the PSNI continues to record all types of hate incidents, even where a crime is not disclosed, as this may provide evidence necessary in a future prosecution.

The PPS policy states that "prosecutors cannot be solely reliant on the police making an initial identification of hate crime for the purposes of prosecuting a case as aggravated by hostility... Prosecutors need to be vigilant to make sure that they consider the possibility of a case being aggravated by hostility."⁷⁶ The PPS will apply for special measures where appropriate to assist victims and witnesses of hate crime to give evidence. The prosecution does not automatically stop if the victim withdraws. PPS policy has been revised so that in a number of specific case categories, including hate crime, detailed reasons are given to all victims and their families for a decision not to prosecute.

The fact that special legislative provisions exist for sentencing crimes motivated by hate is indicative of a desire to ensure that the criminal justice system in Northern Ireland takes hate crime seriously. However, between March 2007 and October 2010

⁷⁴ *Hate Crime Policy*, Public Prosecution Service for Northern Ireland, 2011.

⁷⁵ *Ibid.* para. 9.3.10.

⁷⁶ *Ibid.* para. 9.4.1 and 9.4.2.

there were only 11 sentences imposed in Northern Ireland for crimes motivated by hate.⁷⁷ While that does not of itself mean that hate crime is not taken seriously, the Committee suggests that the matter deserves further consideration and review. The wider criminal justice system is outside the remit of the Policing Board but the extent that it impacts *upon* or is influenced *by* police practice and therefore whether the police are efficient and effective is a matter properly within the Policing Board's remit. For example, the Committee has been advised by stakeholders that a major factor in a victim's decision whether to report a crime to the police or not is the record of successful prosecutions in the past. Therefore, issues such as whether sufficient evidence is being collected by the police for the purpose of subsequent prosecution (and how that is presented to the PPS in police crime files) is a matter which is directly relevant to the Policing Board's statutory oversight function. For the avoidance of doubt, the Committee does not intend to review case files or the detail of prosecutions; it is concerned with whether the police are effectively presenting cases to the PPS for prosecution as a matter of general practice. The Committee will consider how this can be kept under review in due course in consultation with relevant stakeholders.

As previously stated, the law does not provide for a sentence to be increased where hostility is based on the ground of gender identity, nor seemingly is it an offence to stir up hatred against or arouse fear of a group of persons based upon their gender identity. The Committee considers that to be a gap in the protection available for transgender individuals. Making offenders amenable for hate crime is not an issue for the police alone and must be addressed by the wider criminal justice system. In January 2011, the Department of Justice launched a consultation on a Community Safety Strategy for Northern Ireland. Included in the consultation paper was a commitment to develop and publish draft proposals for a strategic approach to addressing hate crime which would, amongst other things, involve "ensuring an effective legal framework for hate crime."⁷⁸ The Committee hopes that the legal framework that is developed will include provision for increased sentencing for transphobic hate crime.

⁷⁷ Written answer to question asked in the Northern Ireland Assembly, 8 October 2010, AQW 710/11.

⁷⁸ *Building Safer, Shared and Confident Communities. A Consultation on a Community Safety Strategy for Northern Ireland*, Department of Justice Northern Ireland, January 2011, page 28.

In England and Wales, the Home Office has launched its first national strategy to promote transgender equality⁷⁹ and has announced a forthcoming legislative amendment which will make Transphobia a relevant aggravating factor in the sentencing of persons convicted of transphobic hate crime.⁸⁰ The amendment is part of a UK Government strategy to stamp out transgender prejudice. The amendment was escalated after the brutal murder of a transgender woman in September 2011 and is stated to be a response to the increasing violence and hostility towards transgender people. This lays the groundwork and provides a template which could be followed in Northern Ireland to ensure the same equality is afforded locally.

Hate crime in Northern Ireland

Where a person is targeted for attack because of his or her actual or perceived sexual orientation or gender identity there are many effects on the victim which are less obvious than physical effects and therefore may not receive the necessary attention: they may become afraid of public spaces or strangers, they may be afraid to be in their own home, they may become depressed, suffer poor mental health and they may become suicidal. Often there are reverberations of the crime throughout the lesbian, gay, bisexual and transgender communities who may also become fearful. Consciousness of sexual orientation or gender identity in public spaces may become heightened and may impact upon a person's behaviour in public, for example, a lesbian, gay or bisexual person may avoid displaying affection with their partner. This curtails the right of lesbian, gay, bisexual and transgender people to express who they are (contrary to Article 10 ECHR) and interferes with their private and family life (contrary to Article 8 ECHR).

The PSNI records and publishes data on hate incidents and hate crimes where the motivation for the prejudice or hate is perceived to be based upon race or ethnicity; faith or religion (non-sectarian); faith or religion or political opinion (sectarian); disability; sexual orientation (homophobic incidents/crimes); or gender identity (transphobic incidents/crimes).

⁷⁹ *Advancing Transgender Equality: a Plan for Action*, HM Government, December 2011.

⁸⁰ The amendment is contained within the Legal Aid Sentencing and Punishment of Offenders Bill, which will amend section 146 and schedule 21 of the Criminal Justice Act 2003.

PSNI began recording homophobic incidents on 1 July 2000. A homophobic incident is defined as “any incident which is perceived to be homophobic by the victim or any other person.” Homophobia is defined by the police as “a fear or dislike directed towards lesbian, gay or bisexual people, or a fear or dislike directed towards their perceived lifestyle, culture or characteristics.”⁸¹

PSNI have collated data on transphobic incidents since 2006. A transphobic incident is defined as “any incident which is perceived to be transphobic by the victim or any other person.”⁸²

A person does not have to be lesbian, gay or bisexual to be a victim of a homophobic hate incident or crime nor do they need to be transgender to be the victim of a transphobic hate incident or crime. It is sufficient that he or she was targeted because of *perceived* sexual orientation or gender identity. It is also worth noting that many people fall within a number of categories, for example, a transgender person with a disability may be the victim of an assault which was motivated by Transphobia, by the victim’s disability or for other reasons not connected with the person’s gender identity or disability. No two cases are the same, which reinforces the importance of keeping the focus on the victim and responding accordingly.

PSNI publishes an annual statistical report detailing trends in hate motivated incidents and crimes recorded by the Police Service. Table 1 shows the level of incidents and crimes recorded by the PSNI during 2010/2011 together with detection rates.⁸³

⁸¹ *Police Response to Hate Incidents*, PSNI, PD 02/06, version 4, issued December 2008, Appendix A, section 2.

⁸² *Ibid.* Appendix A, section 3.

⁸³ ‘Detected crime’ is a term that describes offences which have been ‘cleared up’ by the police.

Table 1: Hate incidents and hate crimes recorded by PSNI, 1 April 2010 to 31 March 2011⁸⁴

Type of hate crime	Incidents recorded	Crimes recorded	Crimes detected	Detection rate (%)
Transphobic	22	8	1	12.5
Homophobic	211	137	24	17.5
Sectarian	1,437	995	287	28.8
Faith/Religion	21	17	0	0.0
Disability	38	31	4	12.9
Racist	842	531	71	13.4
TOTAL	2571	1719	387	22.5

As can be seen from Table 1, the detection rates for non-sectarian hate crime are considerably below those of sectarian hate crime. That suggests that a focused approach (which was adopted in relation to sectarian hate crime) to a particular category of hate crime can have tangible results.

Homophobia in Northern Ireland

The detection rate during 2010/2011 for all types of recorded crime in Northern Ireland was 27.3%;⁸⁵ therefore the detection rate of 17.5% for homophobic motivated crime is significantly below average. Of the 137 crimes during 2010/2011 recorded as having a homophobic motivation, 86 involved violence against the person. 35 recorded crimes involved criminal damage. There were 11 victims under the age of 18 years old and 119 victims between the ages of 18 and 64.⁸⁶ Where gender of the victim was known, 113 were male and 18 were female.

As shown by Tables 2 and 3 below, the majority of known incidents and crimes with a homophobic motivation occurred in B District (East and South Belfast) and G District (Foyle, Limavady, Strabane and Magherafelt). That is perhaps unsurprising as they represent the two largest urban areas in Northern Ireland.

⁸⁴ *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2010/11*, PSNI, July 2011.

⁸⁵ *Police Recorded Crime in Northern Ireland 2010/11*, PSNI, May 2011, page 11.

⁸⁶ One victim was either aged 65+ or their age was unknown.

Table 2: Hate incidents and crimes with a homophobic motivation recorded by PSNI according to District, 1 April 2010 to 31 March 2011⁸⁷

District	Incidents recorded	Crimes recorded	Detection rate
A	28	18	38.9
B	48	28	25.0
C	20	10	0.0
D	17	19	26.3
E	15	7	0.0
F	16	15	13.3
G	54	29	10.3
H	13	11	0.0
TOTAL	211	137	17.5

Table 3: Hate incidents and crimes with a homophobic motivation recorded by PSNI in B and G Districts, 1 April 2010 to 31 March 2011⁸⁸

B District	Incidents recorded	Crimes recorded	Detection Rate
East Belfast	19	10	30.0
South Belfast	29	18	22.2
TOTAL	48	28	25

G District	Incidents recorded	Crimes recorded	Detection Rate
Foyle	26	16	18.8
Limavady	8	5	0.0
Magherafelt	16	7	0.0
Strabane	4	1	0.0
TOTAL	54	29	10.3

It is widely accepted, including by the Police Service, that hate crime is under reported. Therefore, the number of reports of hate incidents and crimes received by PSNI does not represent the true scale of the problem in Northern Ireland.

⁸⁷ *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2010/11*, PSNI, July 2011.

⁸⁸ *Ibid.*

In January 2009, the PSNI's LGB&T Independent Advisory Group commissioned the Rainbow Project⁸⁹ to survey people who identified as lesbian, gay and bisexual in Northern Ireland about their experiences and fears of homophobic hate crime and their perceptions of policing in Northern Ireland. A total of 1,143 responses to the survey were received: the largest response rate of any LGB research ever conducted in Northern Ireland.

The findings from the survey were published by the Rainbow Project in its June 2009 report, *Through Our Eyes*.⁹⁰ Key findings from the survey included:

- 39% of respondents had been the victim of some sort of crime in the previous three years, over half of whom perceived the crime to be motivated by Homophobia;
- 30% of those experiencing homophobic hate incidents in the previous three years had been injured physically;
- 68% of homophobic hate incidents were carried out by strangers. 24% of incidents were carried out by neighbours or someone living in the local area. 9% of incidents were carried out by work colleagues;
- 60% of homophobic hate incidents were carried out at weekends (i.e. Friday to Saturday);
- 53% of homophobic hate incidents occurred between 9pm and 3am;
- 64% of homophobic hate incidents were never reported to the police;
- The most common reason for not reporting was fear that the police would not or could not do anything. Another common reason was that respondents did not think it would be taken seriously or they did not think it was serious enough to report.
- 30% of respondents had some contact with the PSNI over the previous year. Of those, 53% were either very or somewhat satisfied with the service they had received while 29% were either very or somewhat dissatisfied;

⁸⁹ The Rainbow Project is a health organisation that works to improve the physical, mental & emotional health of gay, bisexual and non-heterosexual men in Northern Ireland.

⁹⁰ *Through Our Eyes*, J. O'Doherty, The Rainbow Project, June 2009.

- 21% of respondents reported having experienced problems with the police at some point, with the most common problems being unsatisfactory service and/or police being rude or impolite.

The use of inappropriate language remains a problem within wider civil society. Homophobic language is frequently used to refer to someone or something as being inferior without referring to actual or perceived sexual orientation. Despite the intent of such language, such phrases liken being gay to something that is negative. This type of language is something that lesbian, gay, bisexual and transgender people have to encounter on a regular basis and it is known to be particularly problematic in schools. According to a survey carried out in 2008 amongst more than 2000 teachers and teaching staff in primary and secondary schools in England, Scotland and Wales, 90% of secondary school teachers and more than 2 in 5 primary school teachers reported that pupils, regardless of their sexual orientation, experienced name calling and homophobic bullying at school. Half of teachers failed to respond to homophobic language when they heard it. Only 7% reported responding every time homophobic language was heard. In addition to direct bullying, 95 per cent of secondary school teachers and 75% of primary school teachers reported hearing the phrases 'you're so gay' or 'that's so gay' in their schools. 8 out of 10 secondary school teachers and 2 out of 5 primary school teachers reported hearing other insulting homophobic remarks.⁹¹ It is clear therefore that homophobic language is still tolerated and that its impact on the lesbian, gay, bisexual and transgender communities is stark.

Reducing the occurrence of such homophobic language and behavior is not a task for the education system or the criminal justice system alone, although PSNI officers who work with schools do highlight homophobia as part of their Citizenship and Safety Education (CASE) lessons. The PSNI should be commended for taking the lead in discouraging the use of homophobic language in schools but more is required from schools, the statutory agencies and private individuals to challenge inappropriate language and to report any homophobic incidents they witness to the police, to teachers and to supervisors in a workplace.

⁹¹ *The Teachers' Report*, Stonewall, 2009.

Transphobia in Northern Ireland

“Transphobia has a negative effect on an individual’s capacity to fully access and enjoy their rights as citizens, seeking as it does to exclude, marginalise and discriminate against transgender people.”⁹² An English study which examined transgender peoples’ experiences of inequality and discrimination found that, based on 872 transgender respondents to an online survey, 73% reported that they had experienced harassment, with 10% of those respondents being victims of threatening behaviour when out in public spaces. It found that confidence in the police among members of the transgender community was quite high, but that 18.5% of those who had actually had interactions with the police felt they were not treated appropriately.⁹³ In respect of Northern Ireland, the transgender population is often fearful and reluctant to come forward making it difficult to gauge the levels of harassment and discrimination experienced by them. PSNI statistics provide some indication of the nature of transphobic hate crime, but it is highly likely that they represent only the tip of the iceberg.

Between 1 April 2010 and 31 March 2011, PSNI recorded 22 transphobic incidents and 8 crimes with a transphobic motivation.⁹⁴ Of the 8 crimes recorded, 5 involved violence against the person.⁹⁵ Only 1 of the 8 crimes was detected. Between 2006/2007 and 2010/2011 there have been 32 crimes recorded with a transphobic motivation and of those, only 2 have been detected. That means that the average detection rate for transphobic crime over the past 5 years is 6.25%. That is considerably below average.

In 2007, the Institute for Conflict Research published the first report to focus specifically on the transgender population in Northern Ireland.⁹⁶ Common difficulties

⁹² *Transphobia in Ireland*, C. McIlroy, Transgender Equality Network Ireland (TENI), 2009, page 4.

⁹³ *Engendered Penalties: Transgender and Transsexual People’s Experiences of Inequality and Discrimination*, S. Whittle, L. Turner and M. Al-Alami, the Equalities Review, 2007, page 16.

⁹⁴ *Trends in Hate Motivated Incidents and Crime Recorded by the Police in Northern Ireland 2004/05 to 2010/11*, PSNI, July 2011.

⁹⁵ Given the small numbers involved, further information on the victims of the crimes cannot be released by PSNI into the public domain as the police fear that to do so may lead to the identification of particular victims.

⁹⁶ *Equality Mainstreaming Policy and Practice for Transgender People*, U. Hansson and M. H. Depret, Institute for Conflict Research, June 2007.

experienced by transgender respondents included “a general lack of knowledge, awareness and understanding of transgender identities and issues.” The report states that “lack of awareness has helped to feed and sustain prejudice and discriminatory practices towards transgender people, in the population at large, in elements of public service delivery and in the supply of goods and services.”⁹⁷ In May 2010, a second research report was published by the Institute for Conflict Research, looking specifically at the experiences of transgender people reporting hate incidents in Northern Ireland.⁹⁸ A total of 18 responses to the survey were received. Key findings included:

- 12/18 respondents always or frequently worried about safety: only 2/18 rarely or never did;
- 13/18 respondents had suffered a transphobic incident;
- A total of 41 transphobic incidents were reported as having been experienced by respondents in the previous 12 month period;
- The most common types of transphobic incidents reported by respondents were being verbally insulted or threatened; intimidated by being followed; or having ‘had something thrown at you’;
- Of those that reported an incident or crime to the police, 3 were satisfied with how the police handled the matter; 3 fairly dissatisfied; and 4 disappointed;
- 4 respondents stated that they had heard nothing from the police since they had reported the incident. When asked to provide details in their survey responses, comments included “Police did not think it was a problem and got my title wrong” and “It was Jan 2005, hours after being attacked and hunted through the streets, I got to a police station. They took my details then ran me home in a police car”.
- 5 respondents stated that the police got back in contact with them to provide follow up details. When asked to provide details in their survey responses, comments included “Eventually got report with my title wrong” and “could not do anything”.

⁹⁷ *Ibid.* page 3.

⁹⁸ “*The Luck of the Draw*” A Report on the Experiences of Transgender Individuals Reporting Hate Incidents in Northern Ireland, R.S. McBride and U. Hansson, Institute for Conflict Research, May 2010.

- Of 10 respondents who had not reported a transphobic incident or who were reluctant to do so, 6 said the reason was that they didn't think the police could help or would be interested and 5 said that they thought they wouldn't be taken seriously or would be laughed at.
- When asked to describe how they had been affected by transphobic incidents, 11 respondents reported experiencing stress and fear, 5 were angry and 5 suffered mental health issues as a result.

Whilst some respondents recognised that police attitudes had and were continuing to change positively, the majority of respondents expressed the view that there was a need for further education and training amongst PSNI officers regarding transgender issues and the appropriate procedure for handling their cases. That view has also been reflected by transgender individuals who have contributed to this thematic review. It seems that inappropriate treatment from police in some cases could derive from a lack of understanding of how to deal with transgender people. PSNI engagement with the transgender population generally is discussed elsewhere in this thematic review: recommendations 11, 12 and 14 seek to address any educational needs of police officers in respect of transgender issues.

In terms of dealing with transphobic hate crime, the Institute for Conflict Research noted that:

PSNI are continuing to make progressive strides in the area of hate crime to ensure that all victims of hate crime are treated appropriately, sensitively and with the same standard of care and attention as one another. However, this report has found that many victims of transphobic hate incidents have a lack of confidence in the police due to past negative experiences, which has an impact on an individual's willingness to report transphobic hate incidents to the PSNI. Whilst the PSNI have enacted a robust set of policy and procedural guidelines to tackle the challenges posed by hate crime, it was found that currently there is a lack of standardisation both in the training and approach of

[Hate Incident Minority Liaison Officers], as well as the manner in which hate crime is handled in different policing districts.⁹⁹

Policing Plans are published annually and contain details of objectives agreed by PSNI and the Policing Board against which the PSNI is measured. In the Policing Plan 2011-2014, hate crime is identified as a priority. There is a specific target to increase the detection rate for homophobic hate crime by 4 percentage points.¹⁰⁰ However, there is no target in relation to transphobic hate crime, which is an oversight which should be addressed.

Recommendation 4

The Policing Plan should include a specific target for increasing the detection rate of homophobic and transphobic hate crime.

As discussed above, the PSNI has a robust policy on tackling hate crime, however, based upon the results of this review it would seem that it is not applied consistently across Northern Ireland.

The PSNI hate crime policy states that “Police officers cannot decide whether or not to record or investigate a hate incident or crime because there appears to be no evidence to support the perception. Police officers must accept the perception-based view of the victim or any other person. This sends out a strong message that police will treat victims of hate crime seriously and will conduct thorough and objective investigations.”¹⁰¹ That is absolutely correct but it appears that many contributors to this thematic review have experienced difficulty persuading a police officer that they have been the victim of a hate crime. That should not happen. It is not for the victim to persuade the police – the police must accept without challenge the victim’s or any other person’s assessment of the crime.

⁹⁹ *Ibid*, page 124.

¹⁰⁰ *Policing Plan 2011-2014* which is accessible at [accessible at www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk).

¹⁰¹ *Ibid*. section 2(1)(a).

Recommendation 5

The PSNI should circulate to all police officers and staff an unambiguous statement reminding officers and staff of their obligations under PSNI policy to accept without challenge the view of a victim or any other person that the crime was motivated by hate on one of the defined grounds.

Reporting mechanisms

Hate crime is under-reported. The reason(s) for a failure to report a homophobic or transphobic hate crime vary from case to case but commonly include a fear that the reporting of the crime will exacerbate the situation, result in the victim being 'outed' in the local community and subject to prejudice and further victimisation and a belief that the police cannot or will not do enough to respond thereby leaving the victim more vulnerable. Since that is the perception of a number of contributors to this review, the PSNI must take steps to address it. The best way to address it is to ensure that policy and practice prevents such fears being realised. There is little that has more impact than the effective prosecution of hate crime.

It is also recognised that there may be a fear of reporting hate crime where the victim was involved in criminal activity at the same time as he or she became a victim of hate crime. For example, the Public Prosecution Service (PPS) hate crime policy acknowledges that whilst no guarantee can be provided to people who commit minor offences in such circumstances that they will not be prosecuted "when deciding if a prosecution should take place, [the PPS] will consider such offences in the context of what has occurred."¹⁰²

Association of Chief Police Officers (ACPO) guidance on hate crime recognises that the policing of public sex environments can create a dilemma for police officers. The guidance states that the "police have a responsibility to ensure that local community concerns are adequately addressed, as much of the activity between consenting adults in such environments may be unlawful. However, police must accept they also have the dual responsibility of ensuring that victims of homophobic attacks in such

¹⁰² *Hate Crime Policy*: Public Prosecution Service for Northern Ireland, 2011, para. 3.7.

environments receive a professional police response. Therefore, careful consideration should be given to planning police operations in such environments to ensure that staff are fully briefed in respect of their dual responsibilities.”¹⁰³ A recommendation was made in the Policing Board’s 2007 Human Rights Annual Report that PSNI amend its policy on policing unlawful public sexual activity to include specific guidance to officers on how they can ensure arrest operations are conducted sensitively and with the least interference with Article 8 ECHR (right to respect for private and family life). In accepting that recommendation PSNI amended its policy which now states:

The principle of [ECHR] Article 8 is especially important when planning and conducting arrest operations. The consequences of, for example, uniformed officers arresting a suspect at their home in connection with unlawful public sexual activity could be devastating for the suspect and their family... In such circumstances planners and investigators should use arrest powers sensitively and should consider options such as voluntary attendance or pre-arranged meetings where an arrest can take place if necessary. Failure to do so could lead to the inappropriate disclosure of deeply sensitive information which is in no way relevant to the police investigation. Suspects in such cases are presumed innocent until proven guilty and should not be penalised by unnecessary and insensitive disclosure of private information as a result of police action.¹⁰⁴

Lesbian, gay, bisexual and transgender individuals must be encouraged to report hate crime and must be supported when they have the courage to do so. The PSNI has established mechanisms to assist victims with reporting hate incidents and crime with an online reporting form (which can be used across Northern Ireland) and, a third party reporting mechanism in B District. These are considered below.

¹⁰³ *Hate Crime: Delivering a Quality Service. Good Practice and Tactical Guidance*, Association of Chief Police Officers (ACPO), March 2005, para. 15.9.25.

¹⁰⁴ *Policing Unlawful Public Sexual Activity*, PSNI Service Procedure 19/2006, June 2008, section 8(4)(d).

Online reporting

Hate incidents can be reported online via the PSNI website. Those reports are retrieved from the web server and forwarded to District HIMLOs by Community Safety Branch Headquarters. If personal details are provided, PSNI will follow up and investigate. Even if details are not provided, PSNI will record the report for monitoring purposes. Online reporting is a welcome initiative as it enables a victim, or someone on the victim's behalf, to report from the safety of their own home and to provide details which some may find too difficult to provide in a face to face meeting with a police officer. The online reporting mechanism is only effective, however, if it is well managed and adequately resourced to ensure that follow-up is speedy and effective. There has not yet been any post-implementation analysis of the online reporting initiative. Such analysis would provide clear evidence of the effectiveness of online reporting and reveal any inadequacies with the process.

Recommendation 6

The PSNI should analyse the effectiveness of the online reporting initiative, using empirical evidence, and report to the Human Rights and Professional Standards Committee within 6 months of the publication of this thematic review. The analysis should involve LGB&T stakeholders to consider whether the reporting mechanism is effective or could be improved.

Advocacy service

ACPO guidance on hate crime recognises the benefits of assisted reporting schemes in sending a clear message to communities that the police are determined to address the problem of homophobic and transphobic hate crime.¹⁰⁵ PSNI has been involved in the development and funding of an LGB&T Advocacy Service in B District (East Belfast and South Belfast). The Service was launched in June 2010 and is facilitated by the Rainbow Project in partnership with the PSNI, the Northern Ireland Housing Executive (NIHE) and the Belfast City Council Good Relations Unit. The Advocacy Service was set up to work with lesbian, gay, bisexual and transgender people in areas such as hate crime, domestic abuse and homelessness.

¹⁰⁵ *Hate Crime: Delivering a Quality Service. Good Practice and Tactical Guidance*, Association of Chief Police Officers (ACPO), March 2005, para. 5.3.

Its main objectives were to encourage reporting, reduce crime including hate crime, enhance crime investigations, improve clearance rates for hate crimes, provide support for victims and reduce anti-social behaviour against lesbian, gay, bisexual and transgender people.

At its launch, officers in B District expressed their belief that the Advocate would become an invaluable tool in addressing the underreporting of hate crime amongst lesbian, gay, bisexual and transgender victims. In a public statement issued on the PSNI website it is stated that "It is also hoped that in time, members of the LGBT community will consider the Police Service as a career option and thus help the Police Service become more representative of the entire community... Building trust and promoting diversity were key priorities in today's policing environment."¹⁰⁶ The Committee agrees but believes, based upon stakeholder submissions to this thematic review, that the PSNI could be more proactive in using the service. In particular, the PSNI should, as a matter of policy, consider directing all victims of LGB&T hate crime in the Belfast Area to the Advocacy Service.¹⁰⁷ For example, the Committee is of the view that a very basic and cost effective way to ensure the service is accessed by those who need it is for police officers to provide all victims of hate crime in the Belfast Area with the contact details of the Advocacy Service on a report being made of LGB&T hate crime.

Recommendation 7

The PSNI should ensure that all victims who report any homophobic or transphobic hate crime which has been committed in the Belfast Area are provided with contact details for the LGB&T Advocacy Service.

There is one dedicated LGB&T Advocacy Officer whose responsibilities include:

- Supporting lesbian, gay, bisexual and transgender people in their disclosure and reporting of incidents and crimes;

¹⁰⁶ *LGBT Advocacy Scheme Launched Press Release* 10 June 2010, which can be accessed at www.psnipolice.uk/lgbt_advocacy_scheme_launch_100610.

¹⁰⁷ Currently, the Advocacy Service is limited to, and funded only in respect of, the Belfast Area.

- Advising lesbian, gay, bisexual and transgender people of their choices and to empower them to take control over what happens next;
- Accompanying lesbian, gay, bisexual and transgender people in a supportive role should they wish to take things further with PSNI, NIHE etc.;
- Providing information about support and services available to lesbian, gay, bisexual and transgender people and their families;
- Speaking on behalf of lesbian, gay, bisexual and transgender people to agencies and service providers;
- Raising awareness of issues lesbian, gay, bisexual and transgender people have faced/are facing to improve services in the future;
- Treating all matters with sensitivity and respect for service users' privacy.

Funding for the LGB&T Advocacy Officer was provided by PSNI, NIHE and Belfast City Council. Leaflets have been produced to raise awareness of the Advocacy Service both for professionals supporting lesbian, gay, bisexual and transgender people and for potential victims of hate crime, discrimination and domestic abuse. Feedback from stakeholders in respect of the Advocacy Service has thus far been extremely positive. It is now timely for the PSNI to evaluate formally the effectiveness of the service and, assuming the evaluation is positive, to make a long-term commitment to continuing the service. In particular, the evaluation should consider whether funding will be made available to secure the continuation of the Advocacy Officer post and whether provision will be made to extend the service to other police Districts. As NIHE and Belfast City Council are funding partners and the scheme operates through the offices of the Rainbow Project, it is recognised that the evaluation will require input from all involved. The Committee is supportive of the Advocacy Service and wishes to encourage and work with PSNI to develop the service across Northern Ireland and will endeavour to facilitate multi-agency work to achieve that.

Recommendation 8

The PSNI should evaluate the implementation of the LGB&T Advocacy Service according to terms of reference agreed with the Human Rights and Professional Standards Committee. The PSNI should report to the Human

Rights and Professional Standards Committee on the findings of the evaluation within 6 months of the publication of this thematic review.

Hate Incident Minority Liaison Officers (HIMLOs)

PSNI developed the role of Hate Incident Minority Liaison Officers (HIMLOs) to provide support to victims of hate incidents and crimes and to provide guidance to operational officers investigating hate crime. HIMLOs are required to identify and engage with local minority groups to increase confidence in the PSNI response to hate incidents and are expected to raise public awareness of hate incidents in their local areas. They are required to take the lead in supporting and advising victims of hate incidents and are also required to provide support to police officers investigating hate crimes. Further to a recommendation in the Policing Board's 2007 Human Rights Annual Report, HIMLOs are required to review district command and control logs on a monthly basis as a matter of standard practice to identify incidents which may constitute hate incidents and crimes but which may not have been recorded as such.¹⁰⁸ That is an important requirement and must continue to be carried out.

Until the summer of 2010, HIMLO duties were performed by Sergeants in each of the District Community Safety Teams. However, following a review, HIMLO duties were transferred to Sergeants within Neighbourhood Policing Teams. Sergeants are assisted by Constables appointed as deputies. Most new Sergeants and Constables with HIMLO duties have now received a bespoke three day training programme on hate crime delivered by an external consultant. Training during the three days included a focus on each of the six categories of hate crime recorded by PSNI. The Rainbow Project was asked to participate in training for the Homophobia session and a transgender person was asked to participate in training for the Transphobia session.

Feedback from officers who attended the training programme was mixed. Whilst officers did not have complaints about the quality of the training, many had expected that the training would be about the practical aspects of HIMLO duties, for example,

¹⁰⁸ *Human Rights Annual Report 2007*, Northern Ireland Policing Board, Recommendation 29.

how to input information on to the police computer system, rather than general training on hate crime. As regards their HIMLO duties, some officers reported that they did not believe the transfer of HIMLO duties to neighbourhood officers was working. That view has also been expressed by many contributors to this thematic review. There is a real perception that the importance attached to HIMLO duties has been diluted because they are now being undertaken by officers who have had the role forced upon them in addition to their existing duties without sufficient training, support or motivation.

PSNI's rationale for the decision was that placing HIMLO duties with neighbourhood officers has made tackling hate crime the responsibility of the whole neighbourhood team. The decision came about following a resource to risk review of Community Safety roles. However, evidence to this thematic review suggests that expertise, experience and relationships built through local partnership working are being lost as a result of the decision. A complaint from many stakeholders, aside from the worry that the role of the HIMLO is not as effective as it used to be, is that PSNI did not consult amongst relevant stakeholders prior to the decision being taken. Furthermore, it is not clear who the HIMLOs within each Neighbourhood Team are and there appears to be confusion amongst stakeholders as to what the duties of HIMLOs are. This needs to be corrected.

Recommendation 9

The PSNI should evaluate HIMLO duties, as currently performed by Neighbourhood Officers. The evaluation should be conducted in consultation with relevant stakeholders, including PSNI's Independent Advisory Groups and the Policing Board's LGB&T Reference Group. An evaluation report, which includes an analysis of HIMLO duties, the number of officers assuming the role of HIMLO and the training plan relevant to those officers, should be provided to the Human Rights and Professional Standards Committee within 6 months of the publication of this thematic review.

Recommendation 10

Once the evaluation as per Recommendation 9 has been completed, the PSNI should consider whether the PSNI policy *Police Response to Hate Incidents* requires amendment.

The above recommendations do not *presuppose* that the PSNI should necessarily revert to its previous position where HIMLOs were dedicated roles based within Community Safety Teams. Indeed, there was some criticism made by stakeholders of the way in which the role was previously carried out. For example, it was noted that “with low numbers of HIMLO, and since this role is an addition to their daily duties, the HIMLO can often be difficult to contact.”¹⁰⁹ Another issue that emerged was that there was “a lack of standardisation of how HIMLOs engage with communities affected by hate incidents, how the HIMLOs have been trained, and in the types and location of advocacy schemes.”¹¹⁰

The Committee supports the principle and rationale of the PSNI that equality should be mainstreamed in the sense that it should be the clear responsibility of each and every police officer but there has been concern expressed by both stakeholders and police officers that the transfer of HIMLO duties is resulting in a diminution in PSNI support for and engagement with victims of hate crime and relevant strategic partners. Regardless of where a HIMLO is based, be it within a Community Safety Team or a Neighbourhood Team, it is important that PSNI (in the words of ACPO) “recognise the need for an ongoing investment in terms of training and support. It is essential that liaison officers are allocated the time to perform the role, thus effectively meeting the needs of this community.”¹¹¹ It is intended that the evaluation report to be prepared by PSNI as per Recommendation 9 will set out clearly how PSNI intends to achieve this.

¹⁰⁹ *Through Our Eyes*, J. O'Doherty, The Rainbow Project, June 2009, page 46.

¹¹⁰ “*The Luck of the Draw*” A Report on the Experiences of Transgender Individuals Reporting Hate Incidents in Northern Ireland, R.S. McBride and U. Hansson, Institute for Conflict Research, May 2010, page 113.

¹¹¹ *Hate Crime: Delivering a Quality Service. Good Practice and Tactical Guidance*, Association of Chief Police Officers (ACPO), March 2005, para. 15.9.18.

TRAINING

Through training, police officers are taught the fundamental principles of human rights law, the complex way in which competing rights interact, how rights can be balanced, protected and respected when carrying out operational duties and the circumstances in which individual rights can be limited lawfully. That cannot, however, be achieved through a discrete stand-alone lesson. Rather, human rights principles, where relevant, must be integrated into all aspects of training so they are instinctively applied in all operational scenarios. Equality is one of the most fundamental of all human rights and can be said to be a cornerstone of human rights compliance. Accordingly, the principles of equality and fairness should be integrated into all aspects of police training. By virtue of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and the Sex Discrimination (Amendment of Legislation) Regulations 2008,¹¹² it is unlawful for service providers to discriminate against a person because of his or her sexual orientation or on grounds of gender reassignment in, amongst other things, the provision of services and in the exercise of public functions. To ensure compliance with the law, including the relevant Regulations, the PSNI must therefore pay careful attention to the training of officers and staff.

All student officers should receive Equality and Diversity training and Hate Crime training. Both are relatively basic and are intended to provide an overview of the issues. Some training has been delivered in partnership with relevant stakeholders. For example, the Rainbow Project was involved in delivering some training but that was not routine and has not been developed as a continuing commitment. The Committee considers that training should be developed and built in to future training plans, which makes better use of the expertise of lesbian, gay, bisexual and transgender people.

Once confirmed in rank, most officers will receive additional training in their District according to local training needs, as assessed by the District Commander and discussed within District Policing Partnerships. Training varies from District to District

¹¹² S.I. 2006 No. 439, which came into force in January 2007; S.I. 2008 No. 963, which came into force in April 2008.

and from officer to officer. That is perhaps as it should be to reflect the fact that local training needs may differ and some officers require more training in one area than another. However, certain training is so fundamental to the delivery of a human rights compliant service that all officers should be compelled to attend. The Committee considers that Equality and Diversity training is fundamental to the work of a police officer and a member of police staff and should be compulsory. That means that any officer who did not receive relevant training at Police College should attend training as soon as reasonably practicable. Thereafter, refresher training should be built in to the training package delivered over the course of an officer's career at suitable intervals. A defined training strategy with clear objectives can only be implemented effectively following a thorough training needs analysis. A thorough training needs analysis should be carried out in association with local lesbian, gay bisexual and transgender stakeholders. Training that is delivered by and with members of the lesbian, gay, bisexual and transgender communities will result in the more efficient and effective targeting of training.

There remains some uncertainty about the extent to which training is delivered to officers in Districts. It would therefore be helpful if the PSNI developed and shared with the Committee the LGB training strand and the transgender training strand which are developed as part of the integrated training strategy. Those strands should identify: the clear objectives for training; who is responsible for deciding on training needs; who is responsible for delivering the training; the extent of the obligation on officers and staff to attend training; which officers and staff require what training and within what timeframe; whether training is delivered in the classroom or by e-learning package or a combination of both; and, a programme of evaluation of training. The training strands should clearly set out the mechanism by which the training needs of officers are monitored. The training strands should incorporate a skills profile of the organisation and thereafter permit a skills audit to be undertaken of individual roles. To better assess whether training is delivered according to need, each officer and member of staff should have a personal skills profile which is monitored by the Police College in consultation with the relevant District Commander.

Recommendation 11

The PSNI should develop as part of its integrated training strategy, a LGB training strand and a transgender training strand for police officers and staff. In developing those strands the PSNI should take advantage of the expertise available from stakeholders. A copy of the proposed training strands should be provided to the Human Rights and Professional Standards Committee within 12 months of the publication of this thematic review. They should be produced in a format that can be circulated amongst stakeholders.

Recommendation 12

The PSNI Police College should develop, consistently with the PSNI Corporate Plan, a LGB&T skills assessment of the organisation. Within that assessment, the training received by officers and members of staff should be reviewed. Each officer and member of staff should maintain an individual skills profile, which is monitored by the Police College. As officers and members of staff assume additional or different duties, their profile should be reviewed to ensure that relevant training has been received or is to be received.

HIMLO training

In late 2010, the PSNI engaged an independent consultant to deliver training on equality, diversity and hate crime. Officers who were to assume Hate Incident Minority Liaison Officer (HIMLO) duties as part of a neighbourhood policing team received the training which included training on equality and diversity issues relating to lesbian, gay, bisexual and transgender individuals. Those who attended provided feedback on the training. The feedback raised a number of matters, which require further attention. Among the areas identified as requiring improvement were:¹¹³

- The need for more practical training on the extent of the HIMLO role and the nature of HIMLO duties, which should be interactive rather than provided by e-learning package;

¹¹³ HIMLO Training Evaluation Report, March 2011.

- The inconsistency between Districts with a greater joined up approach required;
- The need for more training for constables, particularly in response teams;
- Having a central point of contact for hate crime within each District would be helpful and would enable information sharing between Districts;
- Greater knowledge required of the different issues facing minority groups. This would be particularly effective if it included face to face contact with members of minority groups;
- Lack of knowledge regarding transgender issues, in particular as regards documents;
- The Hate Crime manual had not been updated to account for the restructuring and transfer of HIMLO duties to neighbourhood teams;
- There is some reluctance amongst supervisors to embrace the management of hate crime.

A number of officers who attended the training expressed discomfort at their lack of understanding of the role and the lack of consistency in approach. In particular, a number of officers expressed the view that the removal of the dedicated HIMLO officer within Districts was having an adverse impact upon the service offered to victims of hate crime. The issues raised should be addressed urgently. The PSNI should review the post-training analysis of the equality and diversity training delivered to officers who are to assume HIMLO duties and provide the Committee with a report on the steps to be taken to address officers' concerns.

Recommendation 13

As part of its evaluation of HIMLO duties as per Recommendation 9 of this thematic review, the PSNI should review the post-training analysis of the equality and diversity training delivered to officers who are to assume HIMLO duties. Included within the evaluation report to be provided to the Human Rights and Professional Standards Committee should be details of the steps to be taken to address officers' concerns.

DOMESTIC ABUSE AND SEXUAL VIOLENCE

Domestic abuse is a serious and endemic problem in Northern Ireland which has a devastating impact upon victims, their children and other family members. Domestic abuse involves the exercise of control and misuse of power by one person over another within an intimate or familial relationship. It is defined by the PSNI and the Public Prosecution Service for Northern Ireland as “threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) inflicted on one person by another where they are or have been intimate partners or family members, irrespective of gender or sexual orientation.”¹¹⁴ Domestic abuse is not, in itself, defined as a criminal offence thus a perpetrator of domestic abuse can only be charged and prosecuted if they have committed an identified criminal offence. However, the PSNI keeps a record of all domestic incidents, even if no offence has been disclosed. This enables the police to take steps to protect a victim from harm in the event that the behaviour may escalate and provides evidence of a pattern of abuse if an offence is later committed.

The PSNI responds to, on average, a domestic incident every 23 minutes of every day. In Northern Ireland during 2010/2011 there was a known domestic abuse motivation for 22,685 recorded incidents and 9,546 recorded crimes. Crimes with a known domestic abuse motivation accounted for 22.5% of all recorded crimes involving violence against the person; 35% of all murders (there were 7 murders with a domestic abuse motivation); 12.8% of the most serious sexual offences; and 16% of all rapes.¹¹⁵

There are many misunderstandings and myths about the nature of domestic abuse. Inaccurate stereotypes can make reporting abuse all the more difficult for victims. Domestic abuse does not occur exclusively between heterosexual couples. There are no official statistics on the levels of domestic abuse perpetrated against lesbian, gay, bisexual and transgender persons in Northern Ireland. A small number of

¹¹⁴ *Service Level Agreement between the Police Service of Northern Ireland and Public Prosecution Service for the Investigation, Management and Prosecution of Domestic Violence and Abuse*, April 2011, section 2.

¹¹⁵ *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2010/11*, PSNI, July 2011.

studies exist which indicate that lesbian, gay, bisexual and transgender persons throughout the United Kingdom frequently experience domestic abuse but rarely report the abuse to the police. For example, 80% of transgender respondents to a 2010 survey indicated that they had experienced some form of emotional, sexual or physical abuse from a partner.¹¹⁶ The most frequently experienced type of abuse was transphobic emotional abuse: 73% of respondents experienced abuse from partners which specifically aimed to oppress their gender identity, undermine their ability to transition, or to influence their decision about 'coming out' to others.¹¹⁷ Of the respondents who answered questions about seeking help and support, only 13% had contact with the police regarding their experience of domestic abuse.¹¹⁸

In a survey carried out in 2006, 38% of lesbian, gay and bisexual respondents said that they had experienced domestic abuse at some time in a same sex relationship. That included 40% of female respondents and 35% of male respondents.¹¹⁹ An even greater number indicated that they had experienced at least one form of abusive behaviour from their partner: 78% had experienced emotional abuse; 40% had experienced physical abuse; and 41% had experienced sexual abuse. That suggests that some of the individuals who did not self-define as having experienced domestic abuse may have been in domestically abusive relationships.¹²⁰ Of those stating that they had experienced domestic abuse at some time in a same sex relationship, 22% did not seek help from anyone. Of those that did seek help most used informal or private means, with only 9% reporting the abuse to the police.¹²¹

Changes in life circumstances often signify a flashpoint for domestic abuse. Gender reassignment is a major change in life circumstances, although the extent to which a person's gender identity is an additional catalyst in domestic abuse will vary from

¹¹⁶ *Out of Sight, Out of Mind? Transgender People's Experiences of Domestic Abuse*, Scottish Transgender Alliance and Scotland's LGBT Domestic Abuse Project, 2010, page 12. Most of the 60 respondents were from Scotland, although there were a number of responses from transgender people living in other parts of the United Kingdom and the USA.

¹¹⁷ *Ibid.* page 12.

¹¹⁸ *Ibid.* page 27.

¹¹⁹ *Comparing Domestic Abuse in Same Sex and Heterosexual Relationships*, C. Donovan, M. Hester, J. Holmes, and M. McCarry, November 2006, page 7. This was a United Kingdom wide survey and results were based upon responses from 746 people.

¹²⁰ *Ibid.* page 8.

¹²¹ *Ibid.* page 11.

case to case.¹²² A lesbian, gay, bisexual or transgender person may suffer domestic abuse from their family or a current or former partner after they 'come out' to them. The gender identity or sexual orientation of a victim is not the cause of the domestic abuse - the abuse is never the fault of the victim - but the fact that a person is lesbian, gay, bisexual or transgender can be used as a means of threatening, isolating and emotionally abusing a victim. Every case of domestic abuse is different. Just because a victim is lesbian, gay, bisexual and/or transgender does not mean that the abuse he or she has suffered was framed in terms of sexual orientation or gender identity but it may inhibit the reporting of the offence. The police response to every domestic incident will be different to target the needs of a specific victim, but the quality of service provided to each victim must be equally effective. To provide some context and explain the extent to which a person's sexual orientation or gender identity may be used by a perpetrator, a number of examples are provided below.

Behaviour where sexual orientation is used to exert power and control

A victim may be subject to threats of violence to stop him or her from expressing their sexual orientation. A perpetrator may threaten to reveal a person's sexuality to family, friends or work colleagues. A victim may be threatened that their sexual orientation will be used against them in respect of child custody. A number of contributors to this thematic review explained the effects of emotional abuse which is aimed at reinforcing internalised homophobia, for example, by making a person feel that they are abnormal or wrong for being attracted to people of the same sex. This is particularly harmful if the victim is young or has only recently 'come out'. Emotional abuse often plays on fear that mainstream agencies are homophobic to persuade a person from reporting abuse. Perpetrators often isolate the victim from family and friends and prevent the victim from meeting with others in the LGB community and/or accessing support groups.

Younger lesbian, gay and bisexual people and people who have only recently 'come out' may be more susceptible to financial control and emotional abuse from an older partner who uses the secrecy of their relationship and partner's lack of acceptance of

¹²² *Shining the Light: 10 Keys to Becoming a Transgender Positive Organisation*, G. Gooch, Galop, June 2011, page 38.

sexual orientation to control them and keep them in the relationship.¹²³ Younger people may live in the family home and depend upon their parents financially and for emotional support so they are particularly vulnerable to familial abuse.

Behaviour where gender identity is used to exert power and control

Transgender people can experience the same abuse as other victims of domestic abuse but are prone to being abused additionally in respect of mannerisms and appearance, for example, being forced to change his or her dress or the way they wear their hair, to undermine a fundamental aspect of identity. Some victims may have their property destroyed, for example, photographs, make up and clothes. Others have had their medication destroyed and access to medical care blocked. Internalised Transphobia may be exploited by encouraging a person to see themselves as 'abnormal' or making them feel ashamed. A victim's fear is often escalated by the perpetrator who threatens to leave them alone or cut them off from family and friends. A transgender person is often reluctant to access mainstream services because of the prejudice they have previously experienced from some service providers; this can be played upon by a perpetrator making it less likely than ever that a victim will access the protection of the police. The high risk trigger points in a transgender person's life, and therefore the times when they will need greater protection, include 'coming out' and when they reveal their decision to undergo gender reassignment.

Research has shown that 62% of transgender people experience transphobic harassment in their everyday lives, which impacts negatively upon the sense of self and emotional wellbeing.¹²⁴ To experience transphobic emotional abuse from a partner or close family member compounds this feeling of worthlessness. Mental health practitioners have reported that the pressure often placed on transgender people not to express their gender identity has serious negative mental health impacts with a greatly enhanced risk of suicide. 34% of 872 transgender respondents to a United Kingdom wide survey reported that they had attempted

¹²³ *Towards Gender Equality: Exploratory Evidence of the Attitudes Towards and the Needs of Male Victims of Domestic Violence and Abuse in Northern Ireland with Recommendations for Change*, Men's Advisory Project, September 2010, page 78.

¹²⁴ *Out of Sight, Out of Mind? Transgender People's Experiences of Domestic Abuse*, Scottish Transgender Alliance and Scotland's LGBT Domestic Abuse Project, 2010, page 16.

suicide at least once as a direct result of internalised Transphobia or because of other people's reactions to their transgender identities.¹²⁵ Transphobic emotional abuse is therefore a highly abusive and dangerous form of control.

Barriers for lesbian, gay, bisexual and transgender people reporting domestic abuse

Reporting rates amongst victims of domestic abuse are generally low and it is frequently reported that female victims will be assaulted by a male partner more than 35 times before reporting the abuse to the police. Reporting rates amongst lesbian, gay, bisexual and transgender victims of domestic abuse are lower still. Only 9% of lesbian, gay and bisexual respondents to a 2006 United Kingdom wide survey who had experienced domestic abuse sought help from the police (7.1% women, 10.9% men). A sizeable proportion sought help from friends (57.9%); counsellor/therapist (32.6%); relatives (25.2%); GP (13.8%); lesbian/gay helpline/organisation (13.5%); and someone at work (11.9%). However, more than one in five (22.2%) had not sought any help from any source.¹²⁶

In 2008, 1 in 4 Lesbians living in Great Britain reported that they had experienced domestic abuse.¹²⁷ Of those women, 4 out of 5 did not report the abuse to the police. Of those that did report, only half were happy with the way the police dealt with the situation.¹²⁸

It must be acknowledged that lesbian, gay, bisexual and transgender people face barriers in respect of reporting domestic abuse related *both* to gender (in particular gender stereotyping) and to their sexual orientation. Domestic abuse is considered further in the Policing Board's thematic review on domestic abuse published in 2009 and updated in 2011.¹²⁹

¹²⁵ *Engendered Penalties: Transgender and Transsexual People's Experiences of Inequality and Discrimination*, S. Whittle, L. Turner, and M. Al-Alami, the Equalities Review, February 2007, page 78.

¹²⁶ *Comparing Domestic Abuse in Same Sex and Heterosexual Relationships*, C. Donovan, M. Hester, J. Holmes, and M. McCarry, November 2006, page 11.

¹²⁷ 1 in 4 of the general population of women is said to suffer domestic abuse at some point in their lives. The fact that a woman is in a same sex relationship with another woman does not make them any less likely to suffer domestic abuse.

¹²⁸ *Prescription for Change. Lesbian and Bisexual Women's Health Check 2008*, Hunt R., and Fish J., Stonewall and De Mont Fort University, 2008, page 12. The survey was carried out amongst LGB women living in England, Scotland and Wales and results were based upon responses from 6,178 people.

¹²⁹ The reports can be accessed at www.nipolicingboard.org.uk

24% of transgender respondents to a 2010 Scottish survey who had experienced domestic abuse had told no-one about the abuse they had suffered. 13% told the police. Of those that did not contact the police, the most common reason for not reporting was that “domestic abuse was a private matter and should be dealt with privately rather than involving the police.” Another common reason cited for not contacting police was because of concerns about revealing their status to the police and potential Transphobia they may experience.¹³⁰

There are many reasons why victims do not report domestic abuse to the Police Service: they may not recognise the abuse as being abuse; they may not trust the police; they may think that the police will not be able to do anything to help; they may think they won't be believed if they report; they may fear what the abuser will do if they find out the abuse has been reported; and, they may not want the abuser to get into trouble. A victim may wish to stay in a relationship with his or her abuser and may remain silent out of fear that reporting the abuse will jeopardise the relationship, and in any event that the response will be inadequate to protect the victim. The reasons for wanting to stay in an abusive relationship are complicated and unique to each individual case, but can include love and/or fear, victims may stay for the sake of the children, or it may be that they do not have the financial means, accommodation or support networks to live independently from the abuser. It is never acceptable to assume that because a victim has remained with an abuser that he or she is undeserving of help or unwilling to accept help. The fear of leaving an abuser may itself be a symptom of the abuse.

The level of isolation and vulnerability experienced by LGB and transgender victims of domestic abuse can be exacerbated by the fact that they are a member of a minority group. A victim may be reluctant to reveal sexual orientation or gender identity to a stranger. One submission, made during the thematic review, reflected powerfully one of the difficulties: every time a lesbian, a gay man, a bisexual person or a transgender person reports to the police they have to come out all over again.

¹³⁰ *Out of Sight, Out of Mind? Transgender People's Experiences of Domestic Abuse*, Scottish Transgender Alliance and Scotland's LGBT Domestic Abuse Project, 2010, page 27.

PSNI response to domestic abuse

PSNI is “committed to the principle that domestic abuse is totally unacceptable behaviour in any shape or form, and that everyone has a right to live free from fear and abuse. Where domestic abuse occurs, or has the potential to occur, the paramount consideration is to ensure the safety and well-being of victim(s), children and police officers (attending such incidents) and to ensure that, where appropriate, alleged perpetrators of abuse are challenged and held to account to reduce the potential for re-offending. It is imperative that police deal effectively with domestic abuse from the initial report.”¹³¹

PSNI and the Public Prosecution Service for Northern Ireland have a common definition for domestic abuse which includes all forms of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) inflicted on one person by another where they are or have been intimate partners or family members, irrespective of gender or sexual orientation. Every time PSNI is called to a domestic incident, a record is made of the incident, even if an offence is not disclosed. PSNI publishes data on domestic abuse motivated incidents and crimes on an annual basis and it publishes quarterly statistical updates on domestic abuse motivated incidents and crimes. In July 2011, PSNI published the 2010/2011 annual domestic abuse statistics in a new format which includes a data series covering each financial year from 2004/2005 to 2010/2011. The data series provides a breakdown of the types of crimes committed which have a known domestic abuse motivation, information on the age and gender of victims of domestic abuse, detection/clearance rates for crimes with a domestic abuse motivation and geographic patterns of domestic abuse incidents and crimes.¹³² That statistical information enables a more comprehensive analysis to be undertaken in respect of the nature of domestic abuse.

¹³¹ *Police Response to Domestic Incidents* PSNI Policy Directive 09/08, July 2008 (reissued December 2010), section 3(2).

¹³² *Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2010/11* PSNI, July 2011. PSNI statistics are available through the PSNI website: www.psnipolice.uk

The PSNI has a number of domestic abuse officers who are trained specifically to deal with the many and varied aspects of domestic abuse. Domestic abuse officers are located within PSNI Public Protection Units (PPUs) and are dedicated to dealing with domestic abuse cases. The extent of a domestic abuse officer's role is vast and varied but their role should primarily be investigative and concentrate on the most serious offences, high risk victims and repeat alleged perpetrators of domestic abuse. There are currently 40.5 domestic abuse officers deployed throughout Northern Ireland. Given the number of domestic incidents, it is usually response officers who attend the scene of a domestic incident. Domestic abuse officers should, however, be readily available to response teams to provide guidance. In the Policing Board's thematic review of domestic abuse, it was recommended that domestic abuse officers should be investigative and made available for every shift.¹³³ However the extent to which domestic abuse officers are investigative and the shift patterns of their work continues to vary from area to area. The Committee is monitoring PSNI's implementation of the recommendations made in the domestic abuse thematic review and will report on progress at regular intervals (most recently in May 2011). In the meantime, PSNI are reminded of the importance of maintaining the investigative capacity of specialist officers.

PSNI policy makes clear that when responding to a domestic incident, no distinction should be made by officers or police staff on any ground such as sexual orientation, race, colour, language, religious belief, political or other opinion, racial group, age, marital status, between men and women generally, between persons with a disability and persons without, or other status.¹³⁴ Victims of domestic abuse require specialist support from other statutory agencies and the voluntary sector. PSNI policy emphasises that "in every reported case, information on support agencies must be made available to all victims."¹³⁵ That includes support services aimed at lesbian, gay, bisexual and transgender persons but there is a paucity of specialist domestic abuse services available which means a victim may be left without adequate support. That is outside the remit of the Policing Board but the Committee wishes to

¹³³ *Thematic Inquiry on Domestic Abuse*, Northern Ireland Policing Board, March 2009, Recommendations 3 and 4.

¹³⁴ *Police Response to Domestic Incidents*, PSNI Policy Directive 09/08, July 2008 (reissued December 2010), section 3(3)(d).

¹³⁵ *Ibid.* section 3(1)(f).

highlight the need for more specialist support and encourage those responsible for ensuring services are available to actively consider the level of need across Northern Ireland.

The introduction of Multi-Agency Risk Assessment Conferences (MARAC) has created a partnership model for dealing with domestic abuse. In a MARAC, local agencies meet formally to discuss high risk victims within their area. Information is shared about the risks faced and the actions needed to ensure victims' safety. A safety plan is developed for each victim. The MARAC will normally achieve more successful outcomes in high risk domestic abuse cases than would be achieved by individual agencies working with their own limited information. The roll out of MARAC across Northern Ireland commenced in December 2009.

To date, over 1,500 high risk cases have been discussed at a MARAC in Northern Ireland. Over 2,000 children have been involved in those cases. The police perform a central role within a MARAC. Each MARAC is, usually, chaired by a police officer of at least sergeant rank. The information brought to the MARAC from the police officer should cover the risks to the victim and any children. The police officer should research any recent police involvement in the case and provide the MARAC with up to date information/intelligence about the family. The police officer should also inform partner agencies on the result of background checks against the perpetrator to identify previous convictions, bail conditions, warning markers and impending prosecutions. The Northern Ireland MARAC Guide 2009¹³⁶ states that it is important that representatives at a MARAC reflect the needs and risks faced by victims, therefore potential attendees could include specialist services from the voluntary sector such as representatives from lesbian, gay, bisexual and transgender support groups.

A 'DASH checklist' is used by all agencies engaging in the MARAC process. Where a victim is identified by the checklist as being high risk, they will be referred to the MARAC process. The purpose of the DASH checklist is to provide a consistent and practical tool for practitioners working with victims of domestic abuse to help them

¹³⁶ *The Northern Ireland MARAC Guide 2009 - Principles to Practice*, Co-ordinated Action Against Domestic Abuse (CAADA), 2009.

identify risks, assess the risks, and manage the risks. It has been compiled taking into account the known risk factors, which have been drawn from extensive research and analysis by leading academics in the field of domestic homicides, 'near misses' and lower level incidents. The checklist can be used for all types of relationships, including same-sex relationships. Other police services that have used the DASH risk tool have found that they are better able to identify and manage high risk cases.

All response officers (or domestic abuse officers if the case is passed immediately to the specialist officer) are required to complete a DASH checklist when attending the scene of *all* domestic abuse crimes, incidents and breaches of non-molestation and occupation orders. Response officers and domestic abuse officers have received training on the completion of the DASH checklist and domestic abuse officers have responsibility for ensuring the checklists have been completed correctly. When asking victims the questions on the checklist, police guidance states that officers should use gender neutral terms such as partner and ex-partner.¹³⁷ By creating a safe, accessible environment, LGB and transgender victims accessing the service should feel able to disclose both domestic abuse and their sexual orientation or gender identity.

By providing a supportive, understanding and professional response to a report of domestic abuse, the police can increase confidence and encourage more lesbian, gay, bisexual and transgender persons to report abuse. It is important that police officers and staff are aware of additional reporting barriers, as outlined above, that face LGB and transgender victims. They should be aware of the emotional effects of domestic abuse on lesbian, gay, bisexual and transgender victims. The police should not assume that the partner of any victim of domestic abuse is of the opposite sex and they should be conscious of not using stereotypes. It is important that the police don't inadvertently 'out' a victim or a perpetrator whilst carrying out an investigation into a report of domestic abuse. Confidentiality, or fear that confidentiality will not be respected, is one reason why lesbian, gay, bisexual and transgender victims of domestic abuse may be deterred from reporting abuse. Article 3.1 of the PSNI Code of Ethics requires that "Police officers shall gather, retain, use and disclose

¹³⁷ MARAC Toolkit for Police Professionals in Northern Ireland, Co-ordinated Action Against Domestic Abuse (CAADA), 2011.

information or data only in accordance with Article 8 of the ECHR and shall comply with all relevant legislation and Police Service policy and procedure governing the gathering, retention, use and disclosure of information and data.” Furthermore at Article 3(3) the Code states “Information or data of a personal or confidential nature in the possession or control of police officers shall be kept confidential, unless the performance of duty, compliance with legislation or the needs of justice require otherwise.”

Where the victim of domestic abuse is a transgender person, he or she may be experiencing internalised Transphobia as a result of the abuse. The abuser may have encouraged the victim to feel ashamed about being transgendered and/or they may have made the transgender person feel uncomfortable with their own body. It is therefore vital that the police validate the transgender victim’s gender identity by ensuring that they use the correct pronouns and address the transgender person by their preferred name. Upon disclosure that a person is transgender, the police should remain sensitive and respect confidentiality. The police must not disclose the status of any person as transgender to any other person unless they have been given express permission by the transgender person to do so.

The PSNI domestic abuse policy contains specific reference to domestic abuse in same sex relationships and states that care must be taken by officers not to ‘out’ lesbian, gay or bisexual victims or perpetrators by careless use of language or questioning.¹³⁸ Specific guidance is not provided in respect of transgender victims. Therefore, when the domestic abuse policy is next reviewed (the review was due to have commenced in December 2011) it should include specific reference to issues that may be faced by transgender victims of domestic abuse.

Recommendation 14

When PSNI Policy Directive PD 09/08 *Police Response to Domestic Incidents* is next reviewed, included within it should be an overview of issues that may be faced by victims of domestic abuse who are transgender and guidance on how officers should treat transgender victims.

¹³⁸ *Police Response to Domestic Incidents*, PSNI PD 09/08, July 2008 (reissued December 2010), section 18 and Annex D, para. 2(1)(b) and para. 2(10).

Domestic abuse training

In March 2009, the Policing Board published a thematic review which examined the policing of domestic abuse.¹³⁹ It recommended that PSNI continue to work with lesbian, gay and bisexual groups to review and thereafter devise a training plan to better enshrine lesbian, gay and bisexual issues within police policies and training programmes.¹⁴⁰ PSNI, in accepting that recommendation, stated that it had worked with LGB groups in the past and that it will continue to work with them in the future to improve service delivery. In particular, PSNI referred to the LGB awareness sessions delivered by the Rainbow Project,¹⁴¹ an e-learning module which aims to cultivate awareness of issues relating to sexual orientation that may arise in the workplace and in the delivery of policing; and, section 75 and equal opportunities training. However, there is no programmed LGB training plan, as required by the recommendation.

It has been recommended in this current thematic review (Recommendation 11) that PSNI develop a lesbian, gay, bisexual training strand as part of its integrated training strategy. Recommendation 11 also requires PSNI to develop a separate transgender training strand. The development of these training strands will enable the PSNI to consider whether the training provision already provided is adequate and if not why not; will provide transparency to stakeholders; and, it will ensure that PSNI remains committed (and demonstrates that commitment) to delivering training aimed at protecting some of the most vulnerable people in our society.

The PSNI Service Procedure *Risk Identification, Assessment and Management in Relation to Domestic Abuse, Stalking and Harassment and Honour Based Violence* contains the following guidance: “The vulnerability of victims cannot be overstated. This could be further compounded by issues such as traditional gender roles, literacy

¹³⁹ *Thematic Inquiry on Domestic Abuse*, Northern Ireland Policing Board, March 2009. This report is available to download through the Policing Board’s website, as is an update report dated May 2011: www.nipolicingboard.org.uk

¹⁴⁰ *Thematic Inquiry on Domestic Abuse*, Northern Ireland Policing Board, March 2009, Recommendation 13.

¹⁴¹ The Rainbow Project is a health organisation that works to improve the physical, mental & emotional health of gay, bisexual and non-heterosexual men in Northern Ireland. More information on the Rainbow Project and the Advocacy Service is available through the website: www.rainbow-project.org

and language and/or immigration or refugee status. Note that a Lesbian, Gay, Bisexual or Transgender victim accessing services will have to disclose both domestic abuse and their sexual orientation or gender identity. Creating a safe and accessible environment where victims feel they can do this and using gender neutral terms such as (ex) partner is essential.”¹⁴² The Service Procedure has been carefully developed and contains essential guidance on the issues that may arise in domestic abuse situations. It is particularly welcome that the PSNI has taken the opportunity to highlight the particular issues involved and the requirement for sensitivity when dealing with a person whose sexual orientation or gender identity may inhibit them from accessing the service available to other victims.

Sexual Violence

Sexual violence and abuse can be defined as any type of behaviour perceived to be of a sexual nature which is unwanted and takes place without consent or understanding. The Sexual Offences (Northern Ireland) Order 2008 makes the intentional sexual touching of a person without their consent illegal. It is also an offence to have any sexual activity with a young person under the age of 16, regardless of whether they purport to consent to the activity: a person under the age of 16 years is unable to consent at law.

Sexual violence is more likely to be perpetrated by a person known to the victim than by a stranger. PSNI includes sexual abuse within its definition of domestic abuse. The Department of Justice for Northern Ireland is working in partnership with the Department of Health, Social Services and Public Safety for Northern Ireland to develop a single governmental strategy by 2013 for tackling domestic and sexual violence.¹⁴³ PSNI sits on a Regional Steering Group for Domestic Violence and an Inter-Departmental Steering Group for Sexual Violence, as well as various sub-groups, and will work closely with government to develop the joint strategy by 2013.

¹⁴² *Risk Identification, Assessment and Management in Relation to Domestic Abuse, Stalking and Harassment and Honour Based Violence*, PSNI SP/15/2011, July 2011.

¹⁴³ There are currently two separate strategies, both of which are led jointly by the Department of Justice and the Department of Health, Social Services and Public Safety: *Tackling Violence at Home*, for domestic abuse, and a *Regional Strategy to tackle Sexual Violence and Abuse in Northern Ireland*.

During 2010/2011 there were 1,933 sexual offences recorded by PSNI. 56% of victims were under the age of 18, while 43% were between the ages of 18 and 64. The remaining 1% were aged 65 or above. Of the 1,933 recorded sexual offences, 1,605 were classified as 'serious sexual crime', i.e. rape, sexual assaults, sexual activity and offences such as abuse of children through prostitution and pornography and trafficking for sexual exploitation.¹⁴⁴ The actual number of sexual offences committed in Northern Ireland during any given year is almost certainly significantly higher than the number recorded by the police: as with domestic abuse, sexual violence is an under-reported crime.

Information on the sexual orientation or gender identity of victims of sexual offences is not recorded by PSNI. Of 60 transgender respondents to a Scottish survey carried out in 2010, 47% indicated that they had experienced some form of sexual abuse from a partner. 10% said someone had forced, or tried to force them, to engage in sexual activity for money.¹⁴⁵ Whilst the sample is too small to make reliable statements about the transgender population in the United Kingdom as a whole, the statistics show a high level of sexual exploitation amongst the respondents to the survey.

Experiences of rejection impacting upon self esteem and negative stereotypes about transgender people may impact upon a transgender person's ability to negotiate consent in sexual relationships. This is compounded by the fact that many transgender people disassociate themselves from their bodies as a way of coping with their difference. A transgender person's relationship to their body can make articulating and processing the experience of sexual violence difficult.¹⁴⁶ Gender stereotypes are inaccurate and further complicate the situation for transgender people. Stereotypes include "that a transgender person must have deceived the perpetrator about their true identity, or that transgender women can physically defend themselves like men. This can lead to victims being treated like perpetrators. In reality, transgender women on hormone treatment do not have a greater physical

¹⁴⁴ *Trends in Police Recorded Crime in Northern Ireland, 1998/99 to 2010/11*, PSNI, May 2011, pages 17 and 26.

¹⁴⁵ *Out of Sight, Out of Mind? Transgender People's Experiences of Domestic Abuse*, Scottish Transgender Alliance and Scotland's LGBT Domestic Abuse Project, 2010, page 18.

¹⁴⁶ *Shining the Light. 10 Keys to Becoming a Transgender Positive Organisation*, G. Gooch, Galop, June 2011, page 39.

advantage than non transgender women, there is more physical variation within the sexes than between them, and physical strength is no indicator of ability to defend oneself in the face of sexual violence, which can happen to people of any gender or sexuality.”¹⁴⁷

Of 746 respondents to a United Kingdom wide 2006 survey on abuse within same sex relationships, 40.5% of lesbian, gay and bisexual respondents reported that they had experienced sexual abuse at some point in a same sex relationship. Most abuse was experienced by those under the age of 25.¹⁴⁸ Young people who lack sexual experience may be more vulnerable to sexual abuse in a relationship. They may feel pressurised to engage in sexual activity they are not comfortable with by an abusive partner.

In a 2003 report examining the experiences of young lesbian, gay and bisexual people in Northern Ireland, 63 respondents (17%) reported that they had experienced sexual abuse and 27 respondents (7%) reported having been paid for sex. 111 (31%) respondents reported having had sex in public places such as car parks or public toilets.¹⁴⁹ Perpetrators of homophobic or transphobic abuse and sexual assaults may be more likely to target people at public places where it is thought by them that lesbian, gay, bisexual and transgender people meet. This is exacerbated because the perpetrator believes that victims are less likely to tell the police what has happened to them. The main priority of the police when responding to a report of such an incident should always be the safety of the victim rather than whether consensual sexual activity might have been taking place. Police policy recognises that people “who frequent certain public areas associated with ‘cruising’, have an increased risk of being the victim of a homophobic crime.”¹⁵⁰

¹⁴⁷ *Ibid.* page 40.

¹⁴⁸ *Comparing Domestic Abuse in Same Sex and Heterosexual Relationships*, C. Donovan, M. Hester, J. Holmes, and M. McCarry, November 2006, page 10.

¹⁴⁹ *SHOUT: The Needs of Young People in Northern Ireland Who Identify as Lesbian, Gay, Bisexual and/or Transgender*, Department of Education and Youthnet, December 2003, page 15. ‘Cruising’ refers to open spaces where people look for consensual sex with other people, such as parks, heaths and lay-bys. ‘Cottaging’ is looking for or having sex in a public toilet.

¹⁵⁰ *Policing Unlawful Public Sexual Activity*, PSNI Service Procedure 19/2006, June 2008.

PSNI recognises that the reporting of domestic abuse and other crimes amongst lesbian, gay, bisexual and transgender victims is low. To improve upon this, PSNI has been involved in the development and funding of a lesbian, gay, bisexual and transgender Advocacy Service in B District (East Belfast and South Belfast). The Advocacy Service is facilitated by the Rainbow Project in partnership with the PSNI, the Northern Ireland Housing Executive (NIHE) and Belfast City Council. The Advocacy Service is considered in detail at pages 61 to 64 of this thematic review.

PSNI AS AN EMPLOYER

The way in which an organisation treats its employees, and the way in which those employees treat each other, is demonstrative of the outward facing service an organisation provides. In order to secure the confidence of the whole community in Northern Ireland, it is important that the composition of the PSNI is reflective of the community which it serves. It is critical that the way in which police officers conduct themselves and treat others, including colleagues, does not reflect stereotypes or prejudices in respect of lesbian, gay, bisexual and transgender people. Given the important role the police have in upholding, promoting and respecting the human rights of all, and the wide ranging powers available to them in order to carry out those functions, the police must lead by example. This is reflected in the PSNI Code of Ethics which states:

Whether on or off duty, police officers shall not behave in a way that is likely to bring discredit upon the Police Service.¹⁵¹... Police officers shall act with fairness, self-control, tolerance and impartiality when carrying out their duties. They shall use appropriate language and dealings with members of the public, groups from within the public and their colleagues. They shall give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.¹⁵²

Police officers shall act with integrity towards members of the public and their colleagues so that confidence in the Police Service is secured and maintained. They shall avoid all forms of behaviour that may reasonably be perceived to be abuse, harassment, bullying or victimisation... They shall to the best of their ability respect and support their colleagues in the execution of their lawful duties.¹⁵³

Police staff (i.e. those employees who are not police officers) are not bound by the PSNI Code of Ethics. They are employed under similar terms and conditions as

¹⁵¹ *PSNI Code of Ethics 2008*, Article 1.10.

¹⁵² *Ibid.* Article 6.1.

¹⁵³ *Ibid.* Articles 7.1 and 7.2.

employees of the Northern Ireland Civil Service (NICS) and are bound by the NICS Code of Ethics. This requires staff to “always act in a way that is professional and that deserves and retains the confidence of all those with whom [they] have dealings” and to carry out their responsibilities “in a way that is fair, just and equitable and reflects the Civil Service commitment to equality and diversity and the obligations of [their] department or agency under Section 75 of the Northern Ireland Act 1998.”¹⁵⁴ The Policing Board will consider, in partnership with the PSNI and other relevant statutory bodies, the alignment of the Codes of Ethics to ensure that all police officers and staff are required to operate to the same high standards.

Recruitment

The Policing Board has a statutory obligation to keep itself informed of the extent to which the membership of the police and police staff is representative of the community in Northern Ireland. It must assess the effectiveness of measures taken to secure that membership is representative.¹⁵⁵ Much oversight has focused on the percentage of Catholic and Protestant officers in PSNI. That is significant for a number of reasons but the community in Northern Ireland is defined by much more than religion. Lesbian, gay, bisexual and transgender people are a valuable and significant part of the community. They are tax-payers (or entitled to benefits), voters, law-abiders (and law-breakers), victims and witnesses and supporters or dissenters of the police service. They should not be seen as a group whose issues and challenges relate solely to their sexual orientation or gender identity but as fully participating members of society equally entitled to access all services in equal measure and with equal outcomes. As emphasised throughout this review, however, treating people equally may mean adopting special measures for minority groups to enable them to achieve equality.

While there is no doubt that lesbian, gay and bisexual people are valued within society and seen as participating members of society, there remains prejudice and barriers to accessing equal opportunities, with the sometimes very public prejudice displayed by a very small minority of people within Northern Ireland. In respect of

¹⁵⁴ *Northern Ireland Civil Service Code of Ethics*, paragraphs 5 and 11.

¹⁵⁵ Sections 3(c)(v) and (d)(i) of the Police (Northern Ireland) Act 2000.

transgender people, however, there remains widespread ignorance and, in some cases, real hostility. The Home Secretary recently highlighted that equality, including transgender equality is “not just the right thing to do; it is central to our ambitions to build a better society and a modern economy which genuinely builds on the talents of all.”¹⁵⁶ The Human Rights and Professional Standards Committee (the Committee) agrees and wishes to play its part in consigning Transphobia to the past.

There are no official statistics on the lesbian, gay, bisexual and transgender population in Northern Ireland. When introducing civil partnerships in 2004, the United Kingdom Government estimated that 5-7% of the adult population identified as lesbian, gay or bisexual. Northern Ireland’s total adult population in 2002 was approximately 1.8 million. On that basis, while it is by no means an automatic assumption, one could expect there to be approximately 90,000 to 126,000 lesbian, gay and bisexual people in Northern Ireland.¹⁵⁷ In terms of the transgender population in Northern Ireland, very little statistical information or research exists. The Institute for Conflict Research (ICR) estimated in May 2010 that there were between 140 and 160 individuals associated with the three main transgender support groups in Northern Ireland.¹⁵⁸ However, as ICR recognises, this figure is likely to be an underestimate as it does not include people who have not, or are unable to, ‘come out’ due to personal circumstances. Other issues, such as awareness and confidence, also prevent people from accessing the support of such organisations. During the thematic review process, the Policing Board’s Human Rights Advisor met a number of transgender people who did not live as the gender with which they identified as a result of fear. When asked, a number said that should society be more accepting of them they would live life in their acquired gender.

PSNI is an Equal Opportunities Employer. It maintains a focus on achieving compositional change within the organisation to ensure that the workforce is, at all

¹⁵⁶ At the launch of *Advancing Transgender Equality: a Plan for Action*, HM Government, December 2011.

¹⁵⁷ Note this figure is only an estimate by the Government based on a number of studies and made in its *Final Regulatory Impact Assessment: Civil Partnership Act 2004*.

¹⁵⁸ ‘*The Luck of the Draw*’ A Report on the Experiences of Transgender Individuals Reporting Hate Incidents in Northern Ireland, R.S. McBride and U. Hansson, Institute for Conflict Research, May 2010, page 31. The three main transgender support groups referred to in the report are the Belfast Butterfly Club; the Oyster Group; and the Purple Group.

grades and ranks, reflective of society. In 2011, PSNI published a draft Equality, Diversity and Good Relations Strategy for consultation. This is PSNI's second Equality and Diversity Strategy: the first was published in 2008.¹⁵⁹ The Strategy seeks to ensure that equality, diversity and good relations are mainstreamed into all PSNI practices and procedures. It contains performance indicators which measure whether PSNI is seen to be 'fair' in delivering policing to all sections of society by having appropriate employment and working practices; and whether PSNI is seen to have an engaged workforce reflective of the society it services at all grades, ranks, and in specialist posts/locations. The Strategy lists a number of associated objectives, for example, "to develop a recruitment outreach strategy which encourages applications from underrepresented backgrounds to the Service" and "to have a retention strategy, specifically focused on officers and staff from underrepresented backgrounds within the Service and within specialist posts/locations." The Policing Board will monitor the implementation of this Strategy as will PSNI's Strategic Diversity Steering Group.¹⁶⁰

The Policing Board's Human Resources Committee, its Reference Groups (including the LGB&T Reference Group) and its Youth Advisory Panel have been involved in the consultation process for the Strategy. Responses to the Consultation have not been *universally* positive; they involve a range of views from relevant stakeholders, both positive and negative. In respect of LGB&T stakeholders who commented on the draft Strategy when making submissions to this thematic review, negative views were expressed more frequently. The Human Rights and Professional Standards Committee has noted the concerns raised and will keep the draft Strategy under review throughout the consultation process. The very purpose of a consultation process is to receive the views of stakeholders to shape and develop policy.

The Human Rights and Professional Standards Committee is satisfied that the PSNI's intentions are to better enshrine equality within policing policy and practice. Whether that is achieved by the Strategy which is out for consultation will be kept under consideration. In the meantime, it has to be recorded that the Strategy as

¹⁵⁹ *Policing a Shared Future 07-10*, PSNI, June 2008.

¹⁶⁰ PSNI's Strategic Diversity Steering Group is chaired by the Deputy Chief Constable and has representatives from all the Departments and Districts at the senior level as well as Members of the Policing Board as observers.

currently drafted makes scant reference to transgender issues, which is a missed opportunity but one which PSNI ought to consider and take advice on from its LGB&T Independent Advisory Group. The Committee will encourage the PSNI and the Policing Board to work together to better reflect transgender issues.

PSNI conducts equality monitoring of all 9 section 75 categories¹⁶¹ as an integral part of the recruitment process for police officers and staff. Additionally, in 2010, it initiated a project to increase the section 75 data held for existing employees. However, section 75 data does not include information on gender identity nor can a person be compelled to disclose their sexual orientation on a section 75 monitoring form. It is therefore difficult to measure the actual number of lesbian, gay, bisexual and transgender employees in any organisation. However it would be useful if, when providing its first progress report to the Policing Board on its Equality, Diversity and Good Relations Strategy, the PSNI included information on any specific actions taken to encourage applications from lesbian, gay and bisexual people and transgender people in Northern Ireland. The Committee stresses that this is not to require the PSNI to provide the number of officers or staff who identify as lesbian, gay, bisexual or transgender, not least because to require a person to disclose his or her orientation or gender identity would not be appropriate or helpful. Rather, it is about ensuring that no potential applicant is dissuaded from applying to the PSNI.

Recommendation 15

When providing its first progress report to the Policing Board on its Equality, Diversity and Good Relations Strategy, the PSNI should include information on any specific actions taken to encourage applications from lesbian, gay and bisexual people and from transgender people.

Whilst legal protections exist to protect lesbian, gay and bisexual individuals and (some) protections exist to protect transgender individuals from discrimination in the workplace, those protections are not sufficient in themselves to deter employers and

¹⁶¹ Section 75 of the Northern Ireland Act 1998 places a statutory obligation on public authorities in carrying out their various functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without.

individuals from acting in an inappropriate manner towards lesbian, gay, bisexual and transgender colleagues. Bad experiences from past employment may haunt prospective lesbian, gay, bisexual and transgender recruits to PSNI. It is therefore important that PSNI makes clear from the outset that it welcomes applications from all suitable qualified persons, regardless of their sexual orientation or gender identity.

In a public statement issued in June 2010, the PSNI said that it hoped “in time, members of the LGB&T community will consider the Police Service as a career option and thus help the Police Service become even more representative of the entire community.”¹⁶² Furthermore, PSNI’s Equal Opportunities policy states that it welcomes job applications from all suitably qualified candidates irrespective of factors such as sex or sexual orientation.¹⁶³ This is an unambiguous statement for which the PSNI should be commended. However, that policy contains no explicit reference to non-discrimination on the basis of ‘gender identity’. Whilst sex discrimination in law includes discrimination based on gender reassignment, this does not include discrimination against transgender people who have not, and who do not intend to, undergo gender reassignment under medical supervision. For clarity, it would be helpful if PSNI made clear in all equal opportunities documentation that it does not discriminate on the grounds of gender identity.

Recommendation 16

The PSNI should amend its Equal Opportunities Policy, PD 04/06, to include explicit reference to the fact that it will not discriminate against, or treat anyone less favourably, on the ground of gender identity. That Policy should contain a definition of gender identity. The PSNI should also consider amending its Equal Opportunities Statement and welcoming statement on all future job vacancies so that where gender is referred to it includes “or gender identity.” For example, that PSNI welcomes job applications from all suitably qualified persons regardless of their gender or gender identity.

¹⁶² *LGBT Advocacy Scheme Launched*, PSNI Press Release, 10 June 2010, which can be accessed via the PSNI website: http://www.psnipolice.uk/lgbt_advocacy_scheme_launch_100610

¹⁶³ *Equal Opportunities Policy*, PSNI Policy Directive, PD 04/06, section 2.

Bullying and harassment

In June 2007, the Institute for Conflict Research published a report focusing specifically on the transgender population in Northern Ireland.¹⁶⁴ The report includes reference to findings from a survey completed by 31 transgender respondents. Of those 31 respondents, 14 indicated that they had experienced problems in the workplace because of their gender status. Of those 14 respondents, 5 stated they had experienced verbal attacks and 5 had suffered forms of harassment. Satisfaction at the response by employers to complaints varied: 4 respondents referred to being satisfied or very satisfied with their employer's response while 4 stated that they were dissatisfied or very dissatisfied. The main issue cited by respondents to the survey in respect of employment was "a lack of knowledge and understanding about gender status and transgender issues and therefore a need for people to conceal their identity at work."¹⁶⁵

In March 2010, the Rainbow Project published a report containing data from a survey conducted amongst LGB workers in Northern Ireland. The report also presents a narrative based upon one to one interviews with participants. It states that a common theme running through the interviews "was the acknowledgement that there is a certain level of verbal abuse or negative comments about LGB people, either direct or indirect, that must be tolerated and accepted, for fear of being identified as the 'person who always complains'."¹⁶⁶ The report notes that "Northern Ireland has made tremendous progress in the promotion of equality throughout most areas of our society, particularly since 1998," but it states that, "it has generally been the case that particular strands of equality or 'good relations' have been promoted, such as sectarianism and racism, at the expense of other strands, such as sexual orientation and gender identity."¹⁶⁷

In respect of respondents to the Rainbow Project survey who work in the public sector, almost 1 in 4 (24.5%) respondents reported that they conceal their sexual

¹⁶⁴*Equality Mainstreaming Policy and Practice for Transgender People*, U. Hansson and M. H. Depret, Institute for Conflict Research, June 2007.

¹⁶⁵ *Ibid.* page 14.

¹⁶⁶ *Through Our Eyes: Experiences of Lesbian, Gay and Bisexual People in the Workplace*, M. McDermott, Rainbow Project, March 2011, page 6.

¹⁶⁷ *Ibid.* page 13.

orientation in the workplace; more than 1 in 4 (26.3%) respondents believed that their sexual orientation would have a negative impact on their chances of progressing in work; 2 out of 5 (40.0%) respondents had heard negative comments about lesbian, gay and bisexual people from a colleague or colleagues in the workplace; and, 1 in 4 (25.1%) respondents had made a complaint relating to their treatment on grounds of sexual orientation or perceived sexual orientation. Of those that made a complaint, almost 1 in 3 (32.2%) said no action was taken in respect of the complaint. A substantial proportion of respondents to the survey across public, private, community and voluntary sectors reported that their employer either did not have, or they were unsure if there was, an equal opportunities policy or an anti-bullying procedure.¹⁶⁸

PSNI has a number of equality and diversity policies in place, including an equal opportunities policy¹⁶⁹ and an anti-bullying policy,¹⁷⁰ all of which are available on the police intranet along with other associated documents. PSNI's Equality and Diversity Unit works to ensure that all police officers and staff are aware of, understand and adhere to these policies. The Policing Board's Human Rights Advisor has spent time discussing the issues with various members of the Unit and was impressed by their dedication to ensuring the implementation of best practice and their enthusiastic contribution to this thematic review. However, it is recognised that more needs to be done.

In 2008, the PSNI undertook a cultural audit whereby all employees (i.e. police officers and police staff) were asked to complete a questionnaire as a means of understanding issues affecting staff, to chart progress against the Shared Future Strategy and to assess any change that had occurred since the previous cultural audit in 2005.¹⁷¹ A total of 3,357 completed questionnaires were returned, representing a 30% response rate. The questionnaires were then analysed by a firm of independent consultants. In respect of diversity, PSNI's direction of travel was

¹⁶⁸ 28.2% of respondents working in the public sector said their organisation did not have, of they were unsure if there was, an equal opportunities policy. 32.2% of respondents working in the public sector said their organisation did not have, of they were unsure if there was, an anti-bullying procedure or policy.

¹⁶⁹ *Equal Opportunities Policy*, PSNI Policy Directive, PD 04/06.

¹⁷⁰ *Bullying and Harassment*, PSNI Service Procedure, SP 13/2011.

¹⁷¹ *Police Service of Northern Ireland Cultural Audit 2008: Summary*, PSNI Equality and Diversity Unit.

graded as 'good' with 71% of respondents providing a positive rating, 17% a neutral rating and 12% a negative rating. Over half of the respondents believed that PSNI placed too great an emphasis on diversity. Key stakeholders consulted as part of the audit felt that whilst there was evidence of better understanding of diversity issues within the 'rank and file', that people had become fearful of talking about sensitive topics at all as they may "say the wrong thing."

Concern was raised in focus groups that greater awareness of diversity issues "may distract the organisation from delivering effective policing for fear of causing offence."¹⁷² That is disappointing. The Committee believes an effective way to manage that anxiety is to provide training which focuses on raising awareness, supports officers to express anxiety or ignorance of the issues and which corrects what is a mistaken perception of diversity and equality. The right to equal treatment is a fundamental human right – in many ways the most fundamental of all - without which all other human rights are more likely to be undermined. Officers must understand that all people are entitled to equal treatment and if it is perceived to somehow undermine policing, then something has gone wrong. Police officers would benefit, as would other members of society, from meeting more people from the lesbian, gay, bisexual and transgender communities to discuss the issues in a safe environment. It is ignorance, which leads to fear, which in turn leads to discriminatory treatment.

Those concerns are not unique to PSNI employees. Equality and diversity is often associated with so-called 'political correctness', a term which has generated much negative attention in recent years, and which is frequently cited as the reason for unpopular decisions and an impediment to preventing certain evils.¹⁷³ There is a public perception, sometimes fuelled by public commentators, that equality and diversity means prioritising the rights of minorities at the expense of the majority, that it creates division rather than harmony, and that it is obstructive. To believe that is, in the view of the Committee, to misunderstand fundamentally the principles of equality and diversity. Diversity means difference. All persons are affected by different things

¹⁷² *Ibid*, page 7.

¹⁷³ See, for example, the following articles: *Child grooming hidden by political correctness says MP*, BBC, June 2011 www.bbc.co.uk/news/uk-politics-13899463 and *'Political correctness' fostered extremists*, BBC, April 2011, www.news.bbc.co.uk/today/hi/today/newsid_9468000/9468966.stm.

in different ways therefore diversity affects every person. Equality is about respecting and placing positive value on those differences. In the workplace it means considering individual and group needs in order to ensure that all employees are placed on an equal footing in terms of their ability to participate and fulfil their potential. It does not mean giving one group of people an advantage over others: if that does happen, it is more likely that the situation has been created by a failure on the part of decision makers and managers, not because of the application of the principles of equality and diversity. The greatest resource the police and society has is its people and if some people are inhibited from full participation because of prejudice that is a waste of resources and undermining of democracy, which at its best values all people equally even when the majority does not.

PSNI is committed to ensuring that, during the course of employment, no police officer or member of police staff will receive less favourable treatment or is discriminated against on the grounds of sex, sexual orientation or gender identity etc.¹⁷⁴ While the Committee does not doubt the PSNI's intentions it is clear that more needs to be done to realise the aspirations of the policy. During the thematic review, testimony was received from serving and former police officers of overt discrimination which appeared to go unchecked.¹⁷⁵ Fortunately, that represented a small minority of officers but it remains a real concern. PSNI leadership has a responsibility to ensure that any discrimination (both overt and more covert) is dealt with robustly and that supervisors are held to account for any inappropriate behaviour of those under their command. Supervisors and Line Managers, who fail to challenge such behaviour are guilty through acquiescence of contributing to the trauma such incidents cause lesbian, gay, bisexual and transgender persons.

A failure to properly explain policy or practice aimed at achieving equality amongst employees is bound to harbour resentment. It is therefore essential that any organisation delivering equality and diversity training ensures that it is relevant and meaningful. It should not be a tick box exercise and, if possible, it should be

¹⁷⁴ As set out in the *Equal Opportunities Policy*, PSNI Policy Directive, PD 04/06 and PSNI's Equal Opportunities Statement (which is contained in an annex to PD 04/06).

¹⁷⁵ Although transgender groups and individuals outside of the PSNI were consulted, no transgender police officers or staff came forward to make an oral or written submission to the review.

conducted in a safe learning environment that encourages discussion and debate: something which is impossible to achieve through e-learning alone.

A recommendation was made by independent consultants analysing the results of the 2008 cultural audit that PSNI should reinforce the message that talking about differences is acceptable, and that managers act as role models by, for example, challenging inappropriate comments but in a way which leads to discussion not criticism. In response, PSNI stated that it was of the view organisationally that its Neutral Working Environmental Policy provides sufficient safeguards to protect a good and harmonious workplace for staff and officers. The PSNI should keep that under review. In addition to that, PSNI responded that training programmes continue to be delivered to employees with the aim of promoting positive attitudes to diversity and challenging inappropriate attitudes in the workplace.¹⁷⁶ The policy is positive but is not, in itself, sufficient. It is the application of policy in practice which counts. Despite the fact that a sizable proportion of individual respondents to the 2008 cultural audit believed PSNI placed too great an emphasis on diversity, it is incumbent on PSNI that it continues to take the lead organisationally to demonstrate that diversity is a high priority matter and to afford it the time, training and resources it deserves. Whilst homophobic and transphobic behaviour *may* be predictable within any sizable organisation, it is by no means inevitable.

PSNI's bullying and harassment policy is very clear that there is no place for such behaviour in the workplace. It states that all police officers and staff are responsible for their own behaviour and for constructively challenging and reporting inappropriate behaviour. Furthermore, it states that all Supervisors and Line Managers must manage police officers and staff in a way that demonstrates zero tolerance of bullying and/or harassment, and they must recognise the warning signs of bullying and/or harassment, such as inappropriate and/or offensive language, behaviour, gestures, jokes, banter, materials, clothing, inappropriate use of ringtones, picture messaging and/or social networking sites.¹⁷⁷ The policy is certainly comprehensive

¹⁷⁶ Training topics delivered include Equal Opportunities, Diversity, Bullying, Harassment and Grievance Awareness. Topic specific training has also been delivered to some officers and staff, including LGB&T awareness training.

¹⁷⁷ *Bullying and Harassment* PSNI Service Procedure, SP 13/2011, section 3(6). This policy was reviewed and reissued on 27 June 2011.

but relies upon a person bringing a matter to the attention of senior managers. There are many reasons why a person may be fearful to do so, for example, for fear that raising an issue may further the prejudice and create resentment. Therefore, policy and training are essential but must be complemented by robust oversight which is proactive not simply reactive. Grievance, Bullying and Harassment Awareness sessions have been delivered by PSNI in all Districts and Departments as a means of ensuring that the policy is translated into practice. That is to be encouraged and should continue.

PSNI has carried out a further cultural audit during 2011 which is due to be completed in the coming months. The Policing Board's LGB&T Reference Group is keen to consider in detail the findings of this audit, particularly those relating to the section on diversity. PSNI has previously provided the Policing Board with information on the 2005 and 2008 cultural audits, and has indicated that it will do so again with the 2011 audit.

Recommendation 17

Upon completion of the 2011 cultural audit, the PSNI should provide the Policing Board's Human Rights Advisor with a copy of the full report prepared by the consultants tasked with analysing the audit findings. The PSNI should continue to provide to its LGB&T Independent Advisory Group and the Policing Board's LGB&T Reference Group a summary of the report and its findings.

Internal support for lesbian, gay, bisexual and transgender employees

The Gay Police Association (GPA) is a United Kingdom-wide organisation which works towards equal opportunities for gay police service employees; offers advice and support to gay police service employees; and, promotes better relations between the police service and the gay community. The GPA is recognised within PSNI as a staff association and is funded by PSNI. There is one GPA representative who, in addition to fulltime duties as a police officer, is tasked with raising the profile of the GPA and acting as a liaison between lesbian, gay and bisexual police officers

and staff and the GPA. To assist in delivering this role, the GPA representative receives duty credit hours per month.

Network support officers

In 2008, a full-time Network Support Officer was appointed to support the development of the GPA within the PSNI. The role was intended to raise and establish the profile of lesbian, gay and bisexual police officers and to provide them with support in the workplace. Similarly, a Network Support Officer was appointed to support female officers within PSNI and a Network Support Officer was appointed to support the Ethnic Minority Police Association. All three posts were internal secondments rather than permanent posts. In terms of the LGB Network Support Officer, evidence from those who contributed to this review suggested that as the role developed, it became more than an exclusively inward facing role designed to offer support to LGB employees: the Network Support Officer is reported to have engaged with stakeholders and improved relations between lesbian, gay, bisexual and transgender organisations, individuals and the police.

At the PSNI Strategic Diversity Steering Group meeting in March 2010, the decision was taken to return all three Network Support Officers to 'frontline' duties. This decision was made as part of the ongoing 'Resource to Risk' process.¹⁷⁸ The discontinuation of the dedicated Network Support role was opposed by a number of stakeholders who launched a campaign to have the posts reinstated. However, PSNI is maintaining its decision and has no plans to reinstate the dedicated Network Support roles. PSNI's rationale for the decision is that designated representatives of Staff Association Networks (including the GPA) receive 12 hours duty credit per month to assist them in delivering their internal support roles to officers and staff. The Equality and Diversity Unit provide the Associations with financial and professional support. The Head of Human Resources in each District and Department is trained to deal with the issues covered by the Network Support roles and therefore can deliver the service internally to all staff. Support can also be sought from local diversity champions. As regards external engagement with minority

¹⁷⁸ The 'Resource to Risk' process seeks to put officers where they are needed and ensure that resource distribution is matched to the delivery of the Chief Constable's strategic principles. A focus has been on removing officers from 'desk jobs' and putting them back out on the street where they are visible to communities.

groups, PSNI believes that the role provided by the Community Safety Branch and District Hate Incident Minority Liaison Officers provides sufficient capacity to engage as required with relevant stakeholders, including the PSNI Independent Advisory Groups.¹⁷⁹

The discontinuation of the Network Support role has been a contentious issue. When the decision was first made, Members of the Policing Board met with representatives from the Board's LGB&T, minority ethnic and women's reference groups to discuss the removal of the Network Support Officers for each of these sectors. At that meeting the representatives expressed their concern that alternative sources of support, for example, Supervisors/Line Managers or Human Resources personnel, would not provide the same level of expertise and service to officers and staff. In terms of support to lesbian, gay, bisexual and transgender officers and staff, there is also an issue of confidence in speaking to Supervisors/Line Managers or Human Resources personnel about personal matters pertaining to sexual orientation or gender identity, particularly if a person is not 'out' in work. For some, the appointment of a dedicated LGB Network Support Officer signalled a commitment from PSNI to increasing the lesbian, gay, bisexual demographic within the police service and to enhancing the experience of lesbian, gay and bisexual officers and staff.

Representations were made during the course of this thematic review both from those who believed that the Network Support role should be reinstated, and from those who agreed with the decision to discontinue the role. What was apparent was that regardless of job title, there ought to be someone available to whom lesbian, gay, bisexual and transgender officers and staff can turn. In respect of lesbian, gay and bisexual officers and staff, that role could in theory be fulfilled by the GPA. Provided he or she has adequate resources, the GPA representative is in a position to raise the profile of the GPA within PSNI. The GPA can offer advice and support to lesbian, gay and bisexual police officers and staff where they do not feel it appropriate, or lack the confidence, to speak to their Supervisor/Line Manager or Human Resources personnel. Whether this is the most appropriate and effective

¹⁷⁹ The District Hate Incident Minority Liaison Officers are discussed at pages 64 to 66 of this thematic review and the LGB&T Independent Advisory Group at inter alia pages 32 to 33.

means of ensuring support remains to be seen. It certainly is possible that 'mainstreaming' of equality and diversity issues is the most effective approach if, but only if, it means that all police officers become equality and diversity promoters and develop the necessary knowledge, skill and commitment. The Committee will, after a sufficient period has elapsed to properly assess the outcomes, consider this matter specifically and report further. In the meantime, the PSNI should report to the Committee on its analysis of the success or otherwise of the restructuring including the measure against which success or otherwise is measured.

There is currently no dedicated support, such as the GPA, for transgender officers or staff. The PSNI should consider how it will ensure that a transgender officer or member of staff will be supported within the organisation.

Recommendation 18

The PSNI should consider what steps it takes or may take to ensure that lesbian, gay, bisexual and transgender officers or staff are supported within the PSNI and report on the results of that consideration to the Human Rights and Professional Standards Committee within 6 months of the publication of this thematic review. Within that report, the PSNI should assess whether there has been any impact on the support available to officers and staff following the transfer of functions from Network Support Officers to Supervisors and Line Managers and include reference to whatever protections are in place to ensure equality and diversity is promoted in a practical and effective manner.

PSNI's Strategic Diversity Steering Group continues to meet regularly. It is chaired by the Deputy Chief Constable and comprises senior representatives from all Departments and Districts and Members of the Policing Board (the latter attending as observers). The Group will oversee implementation of PSNI's Equality, Diversity and Good Relations strategy which, as discussed above, contains performance indicators, objectives and actions aimed at ensuring PSNI has appropriate employment and working practices and has an engaged workforce reflective of the society it serves. Representation will aim to include persons at all grades, ranks, and in specialist posts/locations. The Policing Board's Human Rights Advisor has met with the Deputy Chief Constable and was struck by the extent to which she has

stated both publicly and within the Police Service and without equivocation her commitment to ensuring that equality and diversity are principles which inform and influence everything that the police do. That augurs well for the future of the PSNI.

As per recommendation 15 above, the first progress report to the Policing Board on the Equality, Diversity and Good Relations Strategy is to include information on any specific actions taken to ensure that the composition of police officers and staff is reflective of the lesbian, gay, bisexual population and the transgender population in Northern Ireland.

CONCLUSION

In recognising that discrimination and abuse based on sexual orientation and gender identity remain prevalent in society, the Policing Board, through its Human Rights and Professional Standards Committee, undertook this thematic review to examine policing with and for people who identify as lesbian, gay, bisexual and transgender. The Committee was encouraged by the level of engagement with the PSNI and its willingness to address issues which some may have found challenging. Police officers and members of police staff have demonstrated a genuine and substantive belief in the principle of equality and have explored creative approaches to ensuring equality and diversity are central to the future development of the Police Service.

The issues faced by lesbian, gay, bisexual and transgender individuals are societal issues, which must be addressed collectively and across society. The police have not created Homophobia and Transphobia and cannot eradicate it alone. However, the police are often the first point of contact in the criminal justice system and can influence other participants in the process and wider civic society. They are therefore a critical participant. The Committee recognises the considerable efforts that have already been made by the PSNI to address, for example, the quality of service offered to lesbian, gay, bisexual and transgender victims of crime and to witnesses and family members of those affected by crime as well as the efforts made for the benefit of lesbian, gay, bisexual and transgender police officers and members of staff. It is clear that the PSNI is putting in place a framework for better engagement and that it will continue to work to improve the training that is available to officers and staff.

While the Committee does not doubt the PSNI's commitment to ensuring that equality and diversity issues continue to be addressed, it believes there is still much to do to ensure equality of outcome. Given the level of engagement with stakeholders during this review, it is obvious that expertise and support are being offered to assist both the PSNI and the Policing Board in their endeavours and that will be invaluable.

The Committee makes 18 recommendations aimed at achieving the shared objective of the Policing Board, the PSNI and the community they serve - to improve policing. The Committee will commence a process of monitoring and review in which the community will lead. The Committee and the Human Rights Advisor will maintain a dialogue with PSNI and stakeholders in order to track the progress the police have made in implementing the recommendations. Stakeholders will be kept informed as to PSNI's progress and the Human Rights Advisor and the Committee will continue to engage with members of the community in order to assess the impact that implementation of the recommendations has had on policing on the ground. To that end, an update report will be published in due course.

The Committee wishes to conclude this thematic review by reinforcing the central message that prejudice, discrimination and intolerance must be rejected wherever it appears and the police must be assisted in their endeavours but encouraged to improve further the protection and respect afforded to lesbian, gay, bisexual and transgender people within Northern Ireland. Unless and until people who identify as lesbian, gay, bisexual and transgender achieve equality of outcome in the service they receive and experience a marked reduction in the discrimination they endure, which is not a policing issue alone, society will not have achieved the objective of the Yogyakarta Principles: that sexual orientation and gender identity are not the basis for discrimination and abuse.

ALYSON KILPATRICK BL

February 2012

APPENDIX - RECOMMENDATIONS

Recommendation 1

The PSNI should, in consultation with its LGB&T Independent Advisory Group, finalise its draft protocol providing guidance and the procedures to be followed for dealing with a transgender person when, for example, conducting a search or dealing with documents. Thereafter, that protocol should be disseminated across the PSNI. The protocol should be shared with the Human Rights and Professional Standards Committee within 3 months of the publication of this thematic review.

Recommendation 2

The PSNI should develop a hate crime partnership for each policing district. The PSNI should consider whether the Foyle Protocol should be the starting point for consideration or whether there is a more effective model which can be adopted. The PSNI should report to the Human Rights and Professional Standards Committee within 6 months of the publication of this thematic review on the progress made to establish effective hate crime partnerships.

Recommendation 3

As part of its evaluation of HIMLO duties as per Recommendation 9 of this thematic review, PSNI should consider whether establishing Hate Crime Investigators within each District would provide a more effective way of preventing, identifying and dealing with incidents of hate crime. The findings should be included in the evaluation report that is to be prepared in a format that can be shared amongst stakeholders. If PSNI consider some model other than the establishment of Hate Crime Investigators to be more appropriate, that should be explained in the evaluation report.

Recommendation 4

The Policing Plan should include a specific target for increasing the detection rate of homophobic *and* transphobic hate crime.

Recommendation 5

The PSNI should circulate to all officers and staff an unambiguous statement reminding officers and staff of their obligations under PSNI policy to accept without challenge the view of a victim or any other person that the crime was motivated by hate on one of the defined grounds.

Recommendation 6

The PSNI should analyse the effectiveness of the online reporting initiative, using empirical evidence, and report to the Human Rights and Professional Standards Committee within 6 months of the publication of this thematic review. The analysis should involve LGB&T stakeholders to consider whether the reporting mechanism is effective or could be improved.

Recommendation 7

The PSNI should ensure that all victims who report any homophobic or transphobic hate crime which has been committed in the Belfast Area are provided with contact details for the LGB&T Advocacy Service.

Recommendation 8

The PSNI should evaluate the implementation of the LGB&T Advocacy Service according to terms of reference agreed with the Human Rights and Professional Standards Committee. PSNI should report to the Human Rights and Professional Standards Committee on the findings of the evaluation within 6 months of the publication of this thematic review.

Recommendation 9

The PSNI should evaluate HIMLO duties, as currently performed by Neighbourhood Officers. The evaluation should be conducted in consultation with relevant stakeholders, including PSNI's Independent Advisory Groups and the Policing Board's LGB&T Reference Group. An evaluation report, which includes an analysis of HIMLO duties, the number of officers assuming the role of HIMLO and the training plan relevant to those officers, should be provided to the Human Rights and Professional Standards Committee within 6 months of the publication of this thematic review.

Recommendation 10

Once the evaluation as per Recommendation 9 has been completed, the PSNI should consider whether the PSNI policy *Police Response to Hate Incidents* requires amendment.

Recommendation 11

The PSNI should develop as part of its integrated training strategy, a LGB training strand and a transgender training strand for police officers and staff. In developing those strands PSNI should take advantage of the expertise available from stakeholders. A copy of the proposed training strands should be provided to the Human Rights and Professional Standards Committee within 12 months of the publication of this thematic review. They should be produced in a format that can be circulated amongst stakeholders.

Recommendation 12

PSNI Police College should develop, consistently with the PSNI Corporate Plan, a LGB&T skills assessment of the organisation. Within that assessment, the training received by officers and members of staff should be reviewed. Each officer and member of staff should maintain an individual skills profile, which is monitored by the Police College. As officers and members of staff assume additional or different duties, their profile should be reviewed to ensure that relevant training has been received or is to be received.

Recommendation 13

As part of its evaluation of HIMLO duties as per Recommendation 9 of this thematic review, the PSNI should review the post-training analysis of the equality and diversity training delivered to officers who are to assume HIMLO duties. Included within the evaluation report to be provided to the Human Rights and Professional Standards Committee should be details of the steps to be taken to address officers' concerns.

Recommendation 14

When PSNI Policy Directive PD 09/08 *Police Response to Domestic Incidents* is next reviewed, included within it should be an overview of issues that may be faced by victims of domestic abuse who are transgender and guidance on how officers should treat transgender victims.

Recommendation 15

When providing its first progress report to the Policing Board on its Equality, Diversity and Good Relations Strategy, the PSNI should include information on any specific actions taken to encourage applications from lesbian, gay and bisexual people and from transgender people.

Recommendation 16

The PSNI should amend its Equal Opportunities Policy, PD 04/06, to include explicit reference to the fact that it will not discriminate against, or treat anyone less favourably, on the ground of gender identity. That Policy should contain a definition of 'gender identity'. The PSNI should also consider amending its Equal Opportunities Statement and welcoming statement on all future job vacancies so that where gender is referred to it includes "or gender identity." For example, that PSNI welcomes job applications from all suitably qualified persons regardless of their gender or gender identity.

Recommendation 17

Upon completion of the 2011 cultural audit, the PSNI should provide the Policing Board's Human Rights Advisor with a copy of the full report prepared by the consultants tasked with analysing the audit findings. The PSNI should continue to provide to its LGB&T Independent Advisory Group and the Policing Board's LGB&T Reference Group a summary of the report and its findings.

Recommendation 18

The PSNI should consider what steps it takes or may take to ensure that lesbian, gay, bisexual and transgender officers or staff are supported within the PSNI and report on the results of that consideration to the Human Rights and Professional Standards Committee within 6 months of the publication of this thematic review. Within that report, the PSNI should assess whether there has been any impact on the support available to officers and staff following the transfer of functions from Network Support Officers to Supervisors and Line Managers and include reference to whatever protections are in place to ensure equality and diversity is promoted in a practical and effective manner.



**PUBLISHED BY
NORTHERN IRELAND POLICING BOARD**

Waterside Tower, 31 Clarendon Road,
Clarendon Dock, Belfast, BT1 3BG

Tel: +44 (0) 28 9040 8500

Fax: +44 (0) 28 9040 8544

Textphone: +44 (0) 28 9052 7668

Email: information@nipolicingboard.org.uk

Website: www.nipolicingboard.org.uk

DOCUMENT TITLE

Human Rights Thematic Review: Policing with and for
Lesbian, Gay, Bisexual and Transgender Individuals

ONLINE FORMAT

This document is available in PDF format
from our website.

PUBLISHED MARCH 2012

This document may also be made available upon request
in alternative formats including CD and large print.

It may also be made available in minority languages
or on audio cassette. Requests for alternative formats
should be made to the Northern Ireland Policing Board.

DISCLAIMER

While every effort has been made to ensure the accuracy
of the information contained in this document, neither
the Northern Ireland Policing Board nor its consultants
will be held liable for any inaccuracies that may be
contained within.

facebook

Join us on Facebook

www.facebook.com/policingboard



**INVESTORS
IN PEOPLE**