

HUMAN RIGHTS ANNUAL REPORT

2020/21

EXECUTIVE SUMMARY

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

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**STOP AND
SEARCH**

1. FOREWORD

I am pleased to present the Northern Ireland Policing Board's (the Board's) 14th Human Rights Annual Report.

The Board's Human Rights Annual Report provides an account of the performance of the PSNI in its compliance with the Human Rights Act 1998 and an overview of the monitoring work carried out during the year by the Board. With the specialist advice of the Board's appointed Human Rights Advisor, this Report highlights good policing practice and areas in which practice could be improved with specific recommendations.



The Human Rights Annual Report 2020/21 contains 20 recommendations for PSNI including human rights training and policy, PSNI use of aircraft, treatment of suspects, social media policy and legacy investigations.

This Report brings transparency to issues that infringe societal rights, assists public understanding of the implementation of human rights standards in police service delivery and explains how the Board conducts its monitoring work. It helps maintain public confidence in the PSNI which is paramount in securing its legitimacy. This fundamental principle lies at the heart of the work which the Policing Board, assisted by the Human Rights Advisor, carries out on behalf of everyone in our community.

PSNI has now implemented over 200 recommendations made in the 13 previous Annual Reports relating to issues such as domestic abuse, hate crime, covert policing, children and young people, public order, complaints and discipline, use of force, stop and search and most recently the PSNI's response to the Covid-19 pandemic. The sheer extent of the scope of work undertaken by the Policing Board and the Human Rights Advisor highlights the importance of keeping human rights under review as there are always new and emerging issues.

The report has been drafted in line with the Board's previous Human Rights Annual Reports using the existing Human Rights Monitoring Framework (2003). However, the Human Rights Advisor has since reviewed this framework and sought views with key stakeholders to assist in that review. Stakeholders agreed that in order for Human Rights monitoring to remain contemporary and dynamic the new Framework should apply criteria to identify future themes. It was further agreed that a number of core areas would be considered as part of the each of the future reports by the Human Rights Advisor.

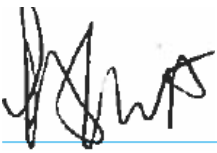
These areas include policy, practical policing, training and human rights culture, complaints and adherence to the Code of Ethics. This new Human Rights Monitoring Framework has been included as an Annex at the end of the report.

A rights based approach to policing protects the public and officers responsible for delivering the service. The Board's oversight regime has been recognised as good practice nationally and internationally. Having a positive human rights culture in our policing service and a willingness to be held to account to the community through the Policing Board is welcome.

As a Board, we must also keep our own work under review and we welcome feedback on this Annual Report and the Human Rights Monitoring Framework. Views or comments can be provided to the Board at the following email address:

PerformanceCommittee@nipolicingboard.org.uk

In conclusion, I would like to record thanks to our Human Rights Advisor, John Wadham, for his work in producing this Report.



Doug Garrett

Chair

Northern Ireland Policing Board

2. EXECUTIVE SUMMARY

The Board is under a duty to secure the maintenance of the police in Northern Ireland (s.3(1) of the Police (Northern Ireland) Act 2000) and to ensure that the police are efficient and effective (s.3(2)). In carrying out those functions, the Board has a further duty - to monitor the performance of the police in complying with the Human Rights Act 1998 (Police (Northern Ireland) Act, s.3(3) (b)(ii)). Section 57 (2)(a)(ii) of the 2000 Act also compels the Board to issue an annual report which should include the performance of the police in complying with the Human Rights Act 1998. This Human Rights Annual Report was prepared by the Policing Board's Human Rights Advisor, John Wadham and Board officials for the reporting period 2020/21.

John Wadham was appointed as the Board's Human Rights Advisor in June 2019 and took up the post on 24 July 2019. The Human Rights Advisor is appointed to provide the Board with independent advice and expertise on PSNI's compliance with the Human Rights Act 1998. The PSNI has provided access to all of its documents and materials and to observe any police procedures or actions the Advisor has requested. The Human Rights Advisor has Developed Vetted security clearance which enables him to delve more deeply into policing processes, particularly sensitive and covert processes that Members of the Board cannot review themselves. Through written reports, recommendations and in other ways, the Advisor reassures the full Board that all parts of the PSNI's operations are subject to the robust accountability required by the Police (Northern Ireland) Act 2000.

As to the level of scrutiny, the monitoring process keeps firmly in mind the key principle that emerges from human rights jurisprudence, namely that the protection of human rights must be 'practical and effective'. The monitoring process will therefore continue to examine the PSNI's compliance with its obligations under the Human Rights Act 1998 at all levels. This will include close scrutiny of the mechanisms in place which are intended to ensure that policy (both at the drafting and the implementation stages), training (from preparation through to implementation, awareness and appraisal), investigations and operations (from planning through to implementation) are effective in ensuring human rights compliance. It will also attempt to assess the impact of human rights considerations on decision making on the ground, allowing an input from the communities that are policed by the PSNI.

In this year's Annual Report nine key areas of policing are examined for their Human Rights compliance with analysis and updates provided. These areas cover issues such as training and PSNI human rights awareness; Policy; Operations; Complaints, Discipline and Code of Ethics; Use of Force; National Security and Covert Policing; Vulnerable Victims of Crime; and lastly Treatment of Suspects. The Human Rights Advisor has made 20 formal recommendations where it has been identified that PSNI action is necessary. It should be noted that not all of these recommendations have been agreed by all of the Policing Board's Members. Provided below is each recommendation with an overview of its context;

RECOMMENDATION 1

Within the restrictions that the COVID-19 pandemic has brought to the training/classroom environment and the Board's stated position that the use of Spit and Bite Guards should cease, it is recommended that if spit and bite guards are proposed for permanent use by the Chief Constable, a spit and bite guard practical element should be considered/introduced within the annual operational personal safety programme {PSP} refresher for officers designated to use the guards in order to provide further reinforcement on their use, subject welfare and possible medical considerations. It is also recommended that future training on Spit and Bite Guards, if introduced, be carried out face to face rather than only online.

Spit and Bite Guards were introduced during the early stages of the COVID-19 pandemic. Their use has been discussed through Policing Board Committees throughout the year and the Board recommended PSNI stop their use by December 2020 in the previous Human Rights Annual Report 2019. As this recommendation regarding their use has not been implemented by PSNI, the Human Rights Advisor now recommends that all officers receive refresher training and are also trained on their use in person to ensure proper levels of understanding of their impact if their use continues. The Board has received a new report on Spit and Bite Guard use and the Human Rights Advisor will be setting his views in early 2022.

RECOMMENDATION 2

In order to assess the level of human rights awareness in PSNI and to assess the extent to which a human rights culture exists, the PSNI and the Policing Board should jointly commission an independent organisation to repeat the assessment to enable the PSNI and Board to understand how far the PSNI, its officers and staff have moved and what still remains to be done.

In 2004, the Board's Human Rights Advisor worked with the PSNI's Human Rights Champion to create a questionnaire that assessed PSNI officers' knowledge of human rights. The results were included in previous Human Rights Annual Reports, and the current Human Rights Advisor has now recommended that they should be reintroduced and included going forward with the questionnaire being delivered by an independent organisation.

RECOMMENDATION 3

Given the delay in taking action on Recommendation 2 from the 2019/20 report (albeit the delay was partly during the Pandemic) the PSNI should prioritise this work and, where necessary, provide the resources that are needed to take action without unnecessary delay.

Recommendation 2 from the previous Human Rights Annual Report involved PSNI developing and publishing a plan and timetable to ensure that all of its policies are published and, when relevant, set out the human rights issues involved in detail. The Board has previously asked for PSNI to publish all policy on its website, as to ensure that police action and policy is human rights compliant it must be accessible for the general public.

RECOMMENDATION 4

The PSNI Service Instruction should be extended to cover the use of all PSNI aircraft, should be published alongside the Privacy Impact Assessment and should set out, in summary, the Regulation of Investigatory Powers Act 2000 authorisation processes.

As well as traditional helicopters and fixed wing aircraft, PSNI now have the use of 12 operational drones. The Human Rights Advisor monitored the use of drones and gave feedback on a now-published Service Instruction. While other documents are due to be published with regards to aircraft, there is no overarching policy and the Human Rights Advisor has now recommended that the PSNI should extend their service instruction.

RECOMMENDATION 5

The PSNI publish its policy on its monitoring of social media for policing purposes and include in this its retention and access arrangements. If a new policy is to be developed this should be subject to public consultation and an equality impact assessment.

It is unclear whether the social media monitoring undertaken by PSNI is solely done by the Communications Branch to measure performance, or whether this was also accessible for criminal justice purposes. While PSNI have issued a directive to help officers and staff decide whether a proposed activity requires authorisation, the Human Rights Advisor has recommended that a policy should be published, and if no relevant policy exists one should be created.

RECOMMENDATION 6

The PSNI should consult the Policing Board and the wider public if facial recognition technology is to be recommended to assist in preventing crime or investigating offences and this should be subject to an equality impact assessment and human rights audit.

PSNI uses a CCTV Behavioural Analytics System which speeds up identification of activities and suspects on substantial hours of CCTV, however it is not the same process for facial recognition software. As other police forces in the UK begin to use facial recognition software, if PSNI considers following suit there should be transparent consultation with the Board and the public.

RECOMMENDATION 7

Despite the delay to resolve the issue as to who should investigate legacy cases, the PSNI should continue to investigate these cases properly and promptly, should be adequately resourced for the task and, in the absence of guidance from the Supreme Court (and the cases pending still with the Council of Europe's Committee of Ministers), follow the advice from the Court of Appeal to ensure its compliance with Article 2.

Article 2 of the European Convention of Human Rights relates to the right to life. Regarding the above recommendation, this is specifically involving the duty to have independent investigations following a death.

After a review by Her Majesty's Inspectorate of Constabulary in 2014/15, the Historical Enquiries Team (HET) was replaced by the Legacy Investigations Branch (LIB). In 2018, the Northern Ireland Office consulted on the creation of a Historical Investigations Unit which would cover all Troubles-related investigations, including those from the HET, LIB and Police Ombudsman. However, the UK government in 2021 proposed another new policy dealing with Troubles-related deaths and injuries, which has received universal opposition within Northern Ireland.

The shifting approach to legacy-related criminal investigations creates uncertainty and instability for not only LIB, but the Police Ombudsman and Jon Boutcher's external investigation team. Therefore, due to the delay to resolve this issue, the Human Rights Advisor is recommending that the PSNI should continue to investigate these cases and should be adequately resourced for the task, in the absence of guidance from the Supreme Court.

RECOMMENDATION 8

The PSNI should review its use of the common law offence of Unlawful Assembly given its vague nature, likely violation of Article 7 (the requirement for clarity in the criminal law) and the fact that it was abolished in England and Wales many years ago. Consideration should also be given to the use of the Terrorism Act in such cases, perhaps by consulting the Independent Reviewer of Terrorism Legislation.

The Board's Independent Human Rights Advisor spent time with Gold and Silver Commands across Belfast during summer 2020 to get an in-depth insight into the most common public order issues faced by PSNI.

It was reported during 2020 that the PSNI had used the old common law offence of Unlawful Assembly while dealing with a public order event. This vague provision raises human rights issues that require consideration and has been abolished in England and Wales.

RECOMMENDATION 9

- A. The PSNI should investigate and report to the Board on why the arrest rate varies so significantly between Districts; and
- B. The PSNI should take a series of representative samples of those stopped and searched and track them through the system to find out what substantive outcomes are achieved – what happens to those arrested or referred to the PPS (Public Prosecution Service).

This recommendation relates to the number of arrests made by PSNI after an individual was stopped and searched. In practice, the number of stops under Misuse of Drugs and PACE (powers of arrest) went up, with the success rate (a stop leading to an arrest or other outcome like a community resolution notice) went down.

PSNI's reported stop and search success rates vary between Districts and no information has been given to the Board on the reason for this. Therefore, the Human Rights Advisor has recommended tracking stop and search cases through the system to give a better view of stop and search effectiveness.

RECOMMENDATION 10

- A. The category of 13 to 17 years old used by the PSNI for young people stopped and searched should be broken down further so that more information is available on the youngest children in this group; and
- B. The PSNI reconsider the proposal that an internal record be kept of any stop and search under JSA (Justice and Security Northern Ireland Act 2007) or TACT (Terrorism Act 2000) involving children or where an unexpected incident has occurred which might prove controversial.

The Children's Law Centre has raised concerns in relation to the PSNI's Stop and Search Report for 1 January 2020 to 31 December 2020, contending that children and young people are being "systematically targeted through the disproportionate use of stop and search." In order to examine this, the Human Rights Advisor has noted that the above information is required.

In his 11th annual review the independent reviewer of Justice and Security for Northern Ireland, Mr David Seymour CB, made the above recommendation. In his most recent report, Mr Seymour notes that it is unfortunate that the PSNI did not accept this recommendation at least insofar as it applied to children.

RECOMMENDATION 11

- A. The PSNI should publish Dr Topping’s research and provide an official response to its findings;
- B. The PSNI should publish its leadership approach to stop and search and should make it transparent on why they use stop and search in the way that they do, including its analysis of how the use of these powers aligns with service objectives and clearly demonstrate why no mitigation measures are considered necessary;

Research undertaken for the PSNI by Dr Topping found that PSNI officers felt pressured to conduct high volumes of searches and that this was in response to the specific culture inside individual stations rather than any formal target-setting reasons. Therefore, the Human Rights Advisor has made the above recommendation that the PSNI should publish its leadership approach to stop and search and should make it transparent on why they use stop and search in the way that they do.

RECOMMENDATION 12

The PSNI should change the recording system to ensure that in future any use of force is recorded in the stop and search record as well as being recorded as a use of force.

When a PSNI officer needs to use force during a stop and search – this includes using hand restraints on a person being searched – they must complete a separate “use of force” form which sits on a standalone system. Because of this, there is no automated way of recording a link between a search and a use of force.

RECOMMENDATION 13

The system for recording community background is put in place quickly and, at least, by 1 January 2022.

Following the Ramsey judgement regarding the use of stop and search, the Court of Appeal required PSNI to find a way to record community background of those stopped under the Justice and Security (Northern Ireland) Act 2007. While there has been work undertaken by PSNI on this issue, a system to record community background has not yet been implemented.

RECOMMENDATION 14

The PSNI should report to the Policing Board on improvements made on its reporting of the use of force and further deployment of Conducted Energy Devices [CEDs] to a wider range of officers should only be made following discussion with the Board and include consideration of the human rights implications, potential dangers with its use and benchmarking with other police services.

A Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) report on the PSNI, published September 2020, stated that "the PSNI does not monitor its use of force or stop and search powers closely enough," and encouraged further scrutiny of the use of these powers from external bodies to measure appropriate use and improve performance.

CEDs are Conducted Energy Devices, such as TASERS. The HMICFRS report also highlighted that most PSNI frontline officers are not issued with TASERS, which are less lethal than firearms, and this leaves them with fewer options when using force. It recommended a wide consultation with communities led by the Chief Constable if further TASERS were to be introduced.

RECOMMENDATION 15

The PSNI to commission research to identify the factors that make the use of force (and what kind of force) more likely and to learn lessons to try to reduce, as far as possible, any use of force. Specifically, with the availability of firearms, what causes an officer to escalate the use of force to draw or point a firearm and how this can be reduced.

The College of Policing recently published an analysis on the use of force by the police in England and Wales called Police Use of Force: Tactics, Assaults and Safety. The analysis aimed to identify whether there were any patterns in the data that might warrant more in-depth investigation using a range of research methods and data sources. The Board's Human Rights Advisor recommends similar examination of PSNI's use of force.

RECOMMENDATION 16

The Policing Board will work with the PSNI over the next year to seek to make public the use of force statistics by gender, age, ethnic minority and disability etc. Subject to the actions taken by the PSNI to respond to the stop and search case of Ramsey, the Policing Board will discuss with the PSNI the production of statistics on the use of force and community background status of those subjected to this use of force. PSNI should report to the Board on the reasons for the increases in the number of times force has been used.

The PSNI currently use AEPs (baton rounds), personal batons, PAVA (irritant spray), firearms, police dogs, TASERS, handcuffs, limb restraints, unarmed physical tactics, spit and bite guards and water cannons. Some of these are considered "less lethal options." The use of these "less lethal options" was up 58% on the previous year, however no official public statistics are currently provided of the protected characteristics breakdown referred to in this recommendation.

RECOMMENDATION 17

There should be a wider debate of the asymmetry in intelligence gathering and law enforcement functions in Northern Ireland involving the PSNI and the Policing Board and this should be initiated by the PSNI.

Jonathan Hall QC, the Independent Review of Terrorism, pointed out in his 2019 annual report issues that the activities of law enforcement in Northern Ireland have some unhelpful and asymmetric structures. These have been created (albeit unintended) by the mandate of MI5 (including the Security Act 1989 that governs its work) and the definitions in the Terrorism Acts. These issues need to be considered and discussed to ensure they align with human rights principles and that adequate resources are provided to try to protect everyone's right to life and to try to ensure that everyone is free from harm.

RECOMMENDATION 18

The PSNI should report to the Policing Board with its response to the criticism from Jonathan Hall QC that young and vulnerable people should, where there is a choice, be arrested under PACE rather than TACT so that bail is available and should consult those organisations representing children and young people on the consequences of the current policy.

Jonathan Hall QC, the Independent Reviewer of Terrorism, highlighted in his 2019 Annual Report that PSNI arrests people under TACT (Terrorism Act 2000) legislation more often than other police forces in UK, and also has a lower conviction rate.

Jonathan Hall QC, noted that it is of particular concern because, as he says there are perfectly justifiable reasons for not arresting someone under section 41 of the Terrorism Act 2000, for example if they are young or vulnerable and it would therefore be in their best interests to be released on bail while an investigation is ongoing.

RECOMMENDATION 19:

The Investigatory Powers Commissioner encourages all those inspected to publish the reports from his Office (suitably redacted if necessary) and PSNI should follow this approach, perhaps starting by producing a summary of the inspection and the action that it has taken. Further consideration should be given to disclosing other Service Instructions, policies and procedures to ensure greater transparency.

Every year the Investigatory Powers Commission inspects the covert activities of the PSNI – use of informers (CHIS), listening devices, telephone taps, and other secret surveillance. The Commission produces a report, makes recommendations and suggestions for improvement every year as a result. This or a summary of it should be published to help to reassure the public that these covert activities are lawful, justified and subject to independent verification.

RECOMMENDATION 20:

Given the identification by many Parliamentarians of flaws in this Act and the concerns from the past of the use of CHIS and possible criminal offences, the PSNI should develop more detailed guidance to ensure human rights compliance.

This recommendation relates to the Covert Human Intelligence Sources (Criminal Conduct) Act 2021. A CHIS is a Covert Human Intelligence Source. The Act allows MI5, police forces and some other public authorities to authorise their agents or officers to commit particular criminal offences where it is necessary.

The Human Rights Advisor has therefore recommended that the Chief Constable commence discussions in relation to the PSNI developing its own guidance on these issues in order to reassure both officers and the public.



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