

**NORTHERN IRELAND POLICING BOARD****MINUTES OF A MEETING OF THE PERFORMANCE COMMITTEE HELD ON  
10 DECEMBER 2020 at 10.00, WATERSIDE TOWER AND VIA VIDEO  
CONFERENCING FACILITY**

<b>PRESENT:</b>		Mr Mervyn Storey, Chair
		Ms Carmel McKinney
		Mr Edgar Jardine
		Ms Deirdre Toner*
		Mr Trevor Clarke
		Mrs Dolores Kelly*
		Mr Gerry Kelly
		Ms Liz Kimmins
	(1)	Mr Mike Nesbitt
	(2)	Ms Joanne Bunting
<b>EX-OFFICIO MEMBERS IN ATTENDANCE</b>	(3)	Mr Tom Frawley, Board Vice-Chair*
<b>POLICE SERVICE OF NORTHERN IRELAND IN ATTENDANCE</b>	(4)	ACC Mark McEwan
	(4)	Chief Supt Melanie Jones
	(4)	PSNI staff member*
<b>INDEPENDENT REVIEWER OF JUSTICE &amp; SECURITY (NI) ACT 2017</b>	(5)	Mr David Seymour CB*
<b>INDEPENDENT REVIEWER OF TERRORISM LEGISLATION</b>	(5)	Mr Jonathan Hall QC

**OFFICIALS IN ATTENDANCE:** (6) Amanda Stewart, Chief Executive  
Mr Adrian McNamee, Director of Performance  
Five Board Officials

**HUMAN RIGHTS ADVISOR:** Mr John Wadham

- (1) Item numbers: 1 to part of 6.2
- (2) Item numbers: part of 4.1 to 10.0
- (3) Item numbers: 4 to 10.0
- (4) Item number: 6.1
- (5) Item number: 6.2
- (6) Item numbers: 1 to 6.3

\* Denotes Members that joined the meeting using video conferencing facility.

## 1. APOLOGIES

No apologies were received.

The Committee agreed the agenda for the meeting.

The Chair asked Members to advise of any issues they wished to raise at Item 9 under “Any Other Business”. No issues were declared.

## 2. CONFLICTS OF INTEREST

The Chair declared a conflict of interest at Agenda Item 4.1.

## 3. DRAFT MINUTES OF MEETING OF THE PERFORMANCE COMMITTEE

The Committee considered the minutes of the meeting held on the 12 November 2020. Ms Liz Kimmins proposed acceptance of the recorded draft minutes and Mr Mike Nesbitt seconded the proposal.

It was therefore:-

**RESOLVED:-**

That the draft minutes of the Performance Committee meetings held on the 12 November 2020 were agreed.

#### **4.0 UPDATE ON ACTION LOG**

The Director of Performance provided an update on the actions listed on the Action Log. Members noted the remaining current open actions and expected timeframes for these matters to be brought back to the Performance Committee. **NOTED.**

#### **4.1 SUMMARY OF ACTION LOG AND ACCOMPANYING CORRESPONDENCE/DOCUMENTATION**

The Director of Performance informed Members that four actions raised at previous Committee meetings held in September and November 2020 had been addressed through correspondence provided by PSNI and information compiled by Board Officials.

**PSNI's update in response for their implementation of the recommendations from the Police Scotland's Operational Review of the Apprentice Boys of Derry Procession on 10 August 2019; and the request for a more focussed internal review and identification of lessons learned in respect to detainment of children and young people on the bus and what human rights considerations were taken into account.**

The Director of Performance provided Members with the Chief Constable's response that indicated that 7 of the 8 recommendations had been implemented and that the remaining recommendation should be completed by July 2021. In respect to the treatment of Children and Young People it was outlined that this was considered by a Gold Commander and that an overarching Gold Strategy is used for policing parades and events and since

2018 “Special consideration should be given to the heightened vulnerabilities of children and members of other vulnerable groups in relation to the use of force. PSNI have incorporated the United Nations Convention on the Rights of the Child into police practice via Policy Directive. Article 3 of this Convention requires the best interests of children to be a primary consideration in all actions concerning children”.

It was also reported that Police Scotland concluded that PSNI delivered a well-planned, safe and secure event that involved some 24,000 people. It was policed in the Gold Commander’s Strategy and that it was considered an additional internal review would not provide additional learning over and above the Police Scotland report.

Members discussed the response and it was:-

**AGREED:-**

To write to the Chief Constable to request a copy of the overall Gold Strategy used for the procession and to reconfirm Members concerns for the lack of a review for the treatment of Children and Young People during this operation. **(AP1)**

**PSNI’s response for clarity and an update on the ‘Service-wide roll out’ milestone for the Working Together Project.**

Members considered the written response from PSNI which indicated that COVID had impacted progress to date and that the expectations were to re-start the roll out in January 2021 in partnership with the Public Prosecution Service. Members were content that PSNI had adequately answered the question.

**Information provided by Board Officials in relation to a breakdown of figures for recorded incidents for each spits and bites and the ages of perpetrators under the age of 18 and whether they were Cared for Children.**

Officials provided Members with information on spit and bite guards in the format of two tables relating to –

- Statistical Breakdown of Spit and Bite Incidents as reported by officers from 1 January 2020 – 26 November 2020; and
- Number of Occasions Spit and Bite Guards Deployed by District from 27 March 2020 to 26 November 2020 including a commentary on age of under 18s; gender; ethnicity; aggravating factors including drugs, alcohol and mental health; uses in custody and reasons for and duration use.

The Director of Performance confirmed that Officials were still seeking information from PSNI in relation to the 22 recorded perpetrators under the age of 18 years old for spitting and biting incidents and confirmed that this would be tabled at a later meeting once received.

Members were informed that correspondence received by the Board's Human Rights advisor from Chief Superintendent Sam Donaldson at Agenda Item 5.2 under 'Chairs Business', related to the Chief Constable's decision to issue spit and bite guards to a wider array of officers from 18 December 2020 with a total of approximately 4000 officers to be equipped. The letter provided the Chief Constable's considerations for reaching his decision including the-

- Rationale;
- Legal view;
- Policy; and
- Accountability.

Members welcomed the information provided and raised concerns from the statistical evidence for deployment of spit and bite guards including -

- 25 recorded use with mental health as an aggravating factor, was the mental health issues known before; and
- 9 applications for a recorded period of 60+ minutes.

Further discussion took place on the Chief Constable's decision with Members giving consideration to the arguments both for and against the use of Spit and Bite Guards.

It was:-

**AGREED:-**

That Board Officials would provide a comprehensive status report in respect of information available on Spit and Bite Guards, including contacting PSNI in relation to additional information on the times that they have been deployed where mental health has been a recorded factor and for periods of time greater than 60 minutes. **(AP2)**

**PSNI's response for the request for additional information in relation to hate crime on whether any officer or staff member had committed a hate crime; breakdown of offender profile for attacks on places of worship; and information on hate crime Champions and Advocates.**

Members considered the response from ACC Mark McEwan that confirmed that no officer or staff member had committed a hate crime and discussed a range of issues from the information provided including -

- Attacks on places of worship;
- Race Hate Advocacy groups; and
- Support Hubs and their future funding.

Following discussion it was:-

**AGREED:-**

To write to PSNI to gain a further update on –

- If there are any plans to introduce a dedicated faith/religious hate crime advocate; and
- If there are any plans to expand the disability hate crime advocate service. **(AP3)**

Also it was:-

**AGREED:-**

That Officials to seek clarification for the evaluation of Support Hubs and ascertain details in respect of their future funding. **(AP4)**

## **5.0 CHAIRPERSON'S BUSINESS**

### **5.1 CORRESPONDENCE FROM THE JUSTICE MINISTER IN RESPECT OF THE NEW ADVOCACY SERVICE**

Members considered the correspondence from the Justice Minister for the introduction of the new advocacy scheme to support victims of domestic and sexual violence and abuse. The communication highlighted –

- An expected improvement in support services for victims;
- Closure of a gap in the existing provision; and
- The intended introduction dates and implementation plans.

### **5.2 CORRESPONDENCE FROM CHIEF SUPERINTENDENT SAM DONALADSON IN RESPECT OF PSNI'S INTRODUCTION OF SPIT AND BITE GUARDS**

This was discussed under Agenda Item 4.1 'Summary of Action Log and Accompanying Correspondence/Documentation' under the section for information provided by Board Officials in relation to a breakdown of figures for recorded incidents for each spit and bite incident and the ages of perpetrators under the age of 18 and whether they were Cared for Children.

## **6.0 ITEMS FOR COMMITTEE BUSINESS**

### **6.1 PERFORMANCE PLAN: MEASURE 1.2.1 REPEAT OFFENDERS**

A Board Official presented a paper providing Members with analysis of work relating to PSNI's performance against a Measure within the Performance Plan 2020/21 specific to Repeat Offenders. Members were also asked to note the key issues and opportunities within the paper to assist with further scrutiny of police performance and to inform discussion with PSNI who attended the meeting.

The Chair welcomed ACC Mark McEwan and Chief Superintendent Melanie Jones and invited them to brief Members on PSNI's performance against Repeat Offenders. PSNI presented information in the OBA Report Card and provided a statistical commentary of their performance against the Measure. PSNI stated that repeat offenders are those that commit another offence within 365 days of the previous crime, with the majority of repeat offenders having complex chaotic lives, 76% having mental health and addiction struggles. PSNI also evidenced overlap in the relationship between repeat offenders and victims of crime with 48% of repeat offenders being a victim of crime at some stage.

PSNI updated Members on work being carried out for repeat offenders that includes -

- Although PSNI's primary role is to bring people to Justice that they are collaborating with partners to reduce re-offending;
- Focus on Prevention First Strategy;
- Reducing Offending in Partnership and the Community Safety Department to collaboratively work to tackle local concerns;
- Use of Youth Diversion Officers and work with the Education Authority to intervene at early stages especially for lower level crimes such as anti-social behaviour;
- Work with Health and Social Care to provide necessary support for offenders where mental health or addictions are present;
- Reducing Offending Units used in each District; and
- Working group established to monitor repeat offending and inform and shape approach to prevent and reduce repeat offending.



PSNI informed Members that small numbers of repeat offenders are responsible for high volume of repeat crime demonstrated from a recent case in which an offender with mental health and addiction problems was released from a custodial sentence and carried out 44 offences inside an 11 day period.

Members engaged in discussion with PSNI and sought clarity on number of issues including -

- The effectiveness of mental health courts;
- Benchmarking used for comparative analysis from other forces;
- Training and support for frontline officers and how this is co-ordinated;
- The importance of impact – the demonstration of effectiveness; making a difference and adding value from the assessment from any initiatives;
- How the District Repeat Offending Units operate and how officers within the unit carry out duties;
- Review of the current system;
- Explanation as to why Belfast City and Derry and Strabane Districts have higher rate of offences, due to greater density of population and more bail hostels in the area;
- Neighbourhood Policing Teams role; and
- Explanation of why short sentencing can create difficulties in trying to address individuals who may re-offend.

The Chairperson thanked PSNI for their attendance and briefing. PSNI officials then left the meeting.

Following discussion it was:-

**AGREED:-**

To write to PSNI to gain further information on the introduction of Mental Health Courts in 2020 as outlined through 2019/20 PSNI reporting, whereby those who came before the court would be able to have sentencing deferred to allow offenders to engage with mental health services for treatment.

- An update on the initiative, including the status of the Mental Health Courts; and
- Further information on deferring sentencing for those repeat offenders identified as having a mental health issue **(AP5)**

## **6.2 INDEPENDENT REVIEWERS FOR JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007 AND TERRORISM LEGISLATION**

A Board Official provided Members with a paper summarising the most recent annual reports of the Justice and Security (Northern Ireland) Act 2007 (JSA) and the Terrorism Legislation. Members were asked to note the key issues within the paper to inform their discussion with the Independent Reviewers.

The Chair welcomed Mr David Seymour CB, Independent Reviewer of JSA and Mr Jonathan Hall QC, Independent Reviewer of Terrorism Legislation. The Chair invited Mr Seymour to provide Members with an update from his latest Twelfth Report (1 August 2018 to 31 July 2019).

Mr Seymour informed Members that this would be his final report as Independent Reviewer and that, generally, it has been positive but some outstanding issues remain. The oversight regime for JSA powers has been upheld as compliant with European Convention of Human Rights by the courts. He noted that there has been a decreasing trend in the use of the powers and that body worn video (BWV) had provided a positive impact. Mr Seymour reported that there was less concerns for the Tactical Support Group and the public order situation had improved with minimal complaints made to Office of the Police Ombudsman for Northern Ireland.

Mr Seymour identified the following issues with PSNI's use of JSA Stop and Search powers -

- BWV should be used more;
- PSNI need to improve the supervision of these powers and additionally demonstrate how they are doing so;
- PSNI need a more proactive approach to communications;

- Live streaming on social media outlets is increasingly problematic for officers;
- Individuals still cannot get a copy of their stop and search record without going to a station;
- The authorisation process is onerous and needs to be completed less frequently;
- PSNI need to comply with Court of Appeal's judgment in Ramsey;
- PSNI could be doing more to analyse the impact of the use of JSA powers on children and young people.

Members sought Mr Seymour's views on a JSA authorisation which was in place between 29 July and 11 August 2020 and later found to be unlawful. Mr Seymour indicated that the response from PSNI has been good example of proactive communications and, as a result, the reaction has been fairly muted.

The Chair then invited Mr Jonathan Hall QC to brief the Members for the findings of his report on Terrorism Legislation and the Operation of the Terrorism Acts (TACT) 2000 and 2006 that was published on 19 March 2020. Mr Hall outlined that he believed that the stop and question and stop and search powers under Schedule 7 and Section 43 were not problematic. Mr Hall considered the continuing pattern regarding Schedule 41 with a large number of arrests and low charge rate indicating challenges in the conversion of intelligence into evidence. Mr Hall identified differences in the PSNI's approach to dealing with various proscribed groups, as PSNI tend to use more the aggressive powers of TACT rather than PACE legislation, which would be used in England and Wales more frequently.

Mr Hall notified he has a new report due out in 2021 and he would be interested in feedback from the Board and whether they agree with his findings. Mr Hall highlighted to Members that, unlike England and Wales, there was no published counter-terrorism strategy for Northern Ireland which would provide greater transparency around how terrorism is being policed. Mr Hall identified this as a matter requiring further discussion.

The Chairperson thanked Mr Seymour and Mr Hall for their attendance and briefing. The Independent Reviewers then left the meeting.

### 6.3 THE COVERT HUMAN INTELLIGENCE SOURCES BILL (CHIS)

The Board's Human Rights Advisor, Mr John Wadham, provided Members with a paper to summarise the CHIS Bill 2019-2021 that had been introduced to the House of Commons on 24 September 2020. This further examined the implications of the Bill for Northern Ireland and the PSNI and highlights issues with the Bill as currently drafted.

Mr Wadham informed Members in principle the Bill enabled police forces to allow informers to break the law. The Bill would replace Regulation of Investigatory Powers Act 2000 (RIPA) and would introduce authorisations to explain and justify criminal activity. Mr Wadham confirmed that PSNI have strict controls in relation to crime authorisation and was asking for support to monitor the progress of the Bill and to write to PSNI supporting the implementation of guidance for how this new legislation, when in force, is utilised.

Members considered the information and discussed the following concerns –

- The Third Direction Case;
- Guidance and the need for an Equality Impact Assessment (EQIA);
- Retrospective application;
- Operation Stakeknife and the CC John Butcher's Report;
- PSNI's accountability; and
- Previous Board papers in relation to authorisations.

Following discussion it was:-

#### **AGREED:-**

To request PSNI provide their own guidance in relation to the enactment of the CHIS Bill and that any policy is subject to a full EQIA. **(AP6)**

And it was:-

#### **AGREED:-**

That Officials to identify previous Board papers in relation to CHIS Bill or similar type policy and provide an update to Committee Members. **(AP7)**

Also it was:-

**AGREED:-**

That Board's Human Rights Advisor will report back to Performance Committee when the judgement on the Third Direction Case is concluded and assess the impact at that stage, if any, on the Stakeknife investigation. **(AP8)**

#### **6.4 PSNI REVIEW OF NOTIFIABLE MEMBERSHIP FOR POLICE OFFICERS**

The Director of Performance provided a short paper to inform Members of the recent key stakeholder consultation that was initiated by PSNI on the Review of Notifiable Membership for Police Officers.

Members were asked to note that PSNI has consultation with key stakeholders and will engage with Performance Committee on the issue when they attend the meeting of the Performance Committee of 11 February 2021. Members were content with this arrangement. **NOTED.**

#### **6.5 HUMAN RIGHTS ADVISOR'S UPDATE REPORT FOR NOVEMBER 2020**

Members were provided with a paper to update them of the work that the Board's Human Rights Advisor, John Wadham had completed during November 2020 that included:-

- Assisting with the publication of the COVID-19 Review Report and taking forward the recommendations;
- Work on the Human Rights Monitoring Framework;
- Monitoring the Covert Human Intelligence Sources (Criminal Conduct) Bill; and
- Meetings.

Mr Wadham informed Members that his future work included:-

- Engagement on the Board's Human Rights Monitoring Framework;
- Attending the Gold Command meetings in relation to the Murder Archive in PSNI's Seapark operation;
- Board Meeting (3 December) by video-conferencing and Performance Committee (10 December) in person;
- Assisting with the preparation of reports on Stop and Search and Spit and Bite Guards;
- Attending the PSNI Public Order Annual Review; and
- Meetings with PSNI lawyers and other officers.

Members were content with the information provided by the Board's Human Rights Advisor on the work he has carried out to date and also with the future work programme as identified. **NOTED.**

## **6.6 PERFORMANCE COMMITTEE DRAFT PROGRAMME OF WORK JANUARY TO MARCH 2021**

The Director of Performance provided Members with the proposed draft Programme of Work covering January to March 2021 based on the Committee's Terms of Reference to allow officials to plan for Committee Business going forward. Members were asked to provide feedback and identify areas/thematic approaches to be considered for January to March 2021.

Members reviewed the information available and agreed to proceed with the draft Programme of Work as outlined from January to March 2021. The Director Performance directed Members that if further items were identified in the future that they could be added to the Programme of Work.

## 7. QUESTIONS FOR THE CHIEF CONSTABLE

Members were reminded that there were no questions submitted to the Chief Constable following the Performance Committee meeting on 12 November 2020.

Members **agreed** that they had no questions arising out of the meeting for the Chief Constable.

## 8. COMMUNICATION ISSUES

Members were asked to consider if there were any communications issues arising from the meeting. No communications issued were raised.

## 9. ANY OTHER BUSINESS

There was no other business.

## 10. DATE OF NEXT MEETING

It was agreed that the next meeting would take place on Thursday 14 January 2021 at 10.00am in Waterside Tower.

The meeting closed at 1.30pm