

NORTHERN IRELAND POLICING BOARD**MINUTES OF A MEETING OF THE PERFORMANCE COMMITTEE HELD ON
11 MARCH 2021 AT 9.30AM VIA VIDEO CONFERENCING FACILITY****PRESENT:**

- Mr Mervyn Storey, Chair
- (3)** Ms Carmel McKinney, Vice-Chair
- Mr Edgar Jardine
- Ms Deirdre Toner
- Ms Joanne Bunting
- Mr Trevor Clarke
- (4)** Mrs Dolores Kelly
- Mr Gerry Kelly
- Ms Liz Kimmins
- Mr Mike Nesbitt

**EX-OFFICIO MEMBERS
IN ATTENDANCE**

- (3)** Mr Tom Frawley

**POLICE SERVICE OF
NORTHERN IRELAND IN
ATTENDANCE**

- (1)** Assistant Chief Constable Mark McEwan
- (1)** Detective Chief Superintendent Anthony McNally
- (2)** Assistant Chief Constable Jonathan Roberts

**OFFICIALS IN
ATTENDANCE:**

Amanda Stewart, Chief Executive

Mr Adrian McNamee, Director of Performance

Six Board Officials

HUMAN RIGHTS ADVISOR:

Mr John Wadham

- (1) Item Number: 6.1 only**
- (2) Item number: 6.2 only**
- (3) Item Number: 1 to 6.3**
- (4) Item Number: 1 to 6.4**

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.

A Member requested a break in Committee at 10.55am to allow members to virtually attend the European Day of Remembrance of Victims of Terrorism.

2. CONFLICTS OF INTEREST

The Chair declared a conflict of interest for Agenda Item 6.3 PSNI Notifiable Membership as a member of the Apprentice Boys of Derry and the Independent Orange Order.

A Member declared a conflict of interest for Agenda item 6.2 as a family member has a professional interest in legacy matters.

3. DRAFT MINUTES OF MEETING OF THE PERFORMANCE COMMITTEE

The Committee considered the minutes of the meeting held on the 11 February 2021 and agreed the minutes.

It was therefore:-

RESOLVED:-

That the draft minutes of the Performance Committee meetings held on the 11 February 2021 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.**

Members discussed the updates on AP8 from the meeting held on 10 December 2020 in relation to the CHIS (Covert Human Intelligence Sources) Act 2020. The Director of Performance provided a summary on information held on CHIS and the Human Rights Advisor gave an update noting that the Act was given Royal Assent on 1st March 2021 but no date has yet been given for implementation.

Members raised concerns regarding the retrospectivity of the Act. The Human Rights Advisor noted that in practice, the Act makes lawful an already widespread practice, however the legislation does not work retrospectively as the Court of Appeal ruled that the MI5 authorisation process has always been lawful. Members also raised concerns regarding the debates in both Houses of Parliament concerning the absence of any restriction as what kinds of crimes could be authorised and the implications for PSNI.

It was:-

AGREED:-

To write to the Chief Constable to request that a PSNI representative attend the Performance Committee in relation to the Covert Human Intelligence Sources (Criminal Conduct) Act to continue discussion and raise Member's concerns.

To write to PSNI when the CHIS Bill has been progressed through the House of Commons and House of Lords to continue discussion and raise Member's concerns. **(AP1)**

Members also discussed the updates on AP1 from the meeting held on 14 January 2021 regarding PSNI officers' rights to enter properties under current COVID legislation as a letter was issued to PSNI on 18 January 2021 and an update requested on 22nd February 2021. There has been no response from PSNI.

Following discussion it was:-

AGREED:-

- The Chair of the Board to write to the Chief Constable regarding timeliness on responding to Committee correspondence.
- Committee to submit a question to the Chief Constable to provide an update on the response to this correspondence.
- The Chair of the Performance Committee to contact the Chief Constable in relation to the Health Regulations and the power of PSNI officers to enter premises if the above responses are not satisfactory. **(AP2)**

Members also discussed the updates on AP10 from the meeting held on 14 January 2021 regarding the OPONI 5 year legislative review. A paper on this was presented at the January Performance Committee meeting, after which Members views were sought and two responses from Members were received.

The Director of Performance updated Members that this issue was being taken forward by the Chair's Advisory Group as part of the wider departmental stocktake. Members discussed the power and functions of the advisory group and noted that whilst there is a need for the issue to be reviewed holistically it is important that the recommendations made in the OPONI 5 year legislative review are discussed at the Performance Committee.

Following discussion it was:-

AGREED:-

Officials to provide a paper to Members in relation to the OPONI 5 year legislative review at the April Performance Committee. **(AP3)**

5.0 CHAIRPERSON'S BUSINESS

The Chair confirmed that he had no items of business for discussion.

6.0 ITEMS FOR COMMITTEE BUSINESS

6.1 PERFORMANCE PLAN: MEASURE 2.4.1 LEVEL OF CRIME OUTCOMES

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:-

Outcome 2: *We have confidence in policing; and*

Indicator 2.4: *Delivery of effective crime outcomes; and*

Measure 2.4.1: *Levels of crime outcomes to identify and respond to areas of concern in outcome statistics, with a particular focus on domestic abuse in 2020/21.*

Members were 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 McEwan and D/C/S McNally and invited them to briefly introduce Members to PSNI's performance in respect of level of crime outcomes. ACC McEwan updated Members, noting that while there is room for improvement regarding crime outcomes, generally the overall picture is encouraging, positive and going in the right direction. He acknowledged the challenging effect Covid-19 has had on the justice system, particularly in respect of assessing if levels of crime

outcomes are trends or as a result of Covid-19, and advised that work is being carried out nationally on this issue.

In respect of the justice system, ACC McEwan noted that victim attrition and evidential difficulties are a concern for PSNI. He advised Members that the PSNI has been working in partnership with the Public Protection Service and the Department of Justice to address this and other areas that require improvement; most notably through the establishment of the Victim and Witness Steering Group. He elaborated by noting that PSNI has been working on addressing how they can keep victims and witnesses engaged throughout the process, the vital role of family liaison officers and how remote evidence has supported victims and witnesses in an endeavour to improve the securing of justice outcomes. PSNI also highlighted that the 'think-charge' approach has paid dividends and concluded by touching on restorative justice and its status within the legal system as a crime outcome and stated that while overall crime is down, that is not the case for Domestic Abuse or Hate Crime.

Members engaged in discussion with PSNI and sought clarity on number of issues including the levels of crime outcomes in regards to crimes against older people. A Member noted the inherent difference on outcome rates for older people and the difficulties with using aggregate totals being potentially misleading without knowing the breakdown of crime types. ACC McEwan noted that aggregate totals will give some indication but agreed they are of limited value and that categorisation based on vulnerability is often more useful, as it is a more nuanced approach and can be tackled through the likes of Support Hubs.

PSNI also engaged in discussion with Members in regards to crime outcomes for Hate Crimes, noting that the PSNI are good in regards to after care for victims of hate crime, such as building resilience and help with housing. However, more work needs to be done on supporting victims through the criminal justice system, which is currently being facilitated through PSNI advocacy schemes. A Member also raised a concern with the data provided by PSNI indicating a significant percentage of 'Evidential Difficulties' for Domestic Abuse offences. They welcomed further

information on how current PSNI initiatives would assist in improving outcomes. The PSNI elaborated on their previous reference to a 'think charge' approach and the wider use of Body Worn Video, both factors which are aimed at improving outcomes. ACC McEwan noted that Body Worn Video is now used in over 80% of all domestic abuse calls. A Member noted their support of the 'think charge' approach and welcomed further information to be provided in future reporting for crime outcomes across Districts.

A discussion was shared in respect of Crime Outcomes and the ability to benchmark with other Police Services and the quality assurance process of PSNI statistics. PSNI advised that some areas of crime outcomes are not comparable with similar Services, due for a variety of reasons including the recording of crime and legislation, for example the PSNI is the only Service that records crime outcomes for Over 60s.

Members asked the PSNI for an update on any outcomes in respect of the Muckamore Abbey Case. PSNI noted that roughly around 150 people have been designated as a suspect from unlawful imprisonment to assaults and there is over 300,000 hours of CCTV is being reviewed. D/C/S McNally noted that they have ensured safeguarding has been put in place where criminality was seen on CCTV and have ensured that anyone involved has been suspended. PSNI highlighted that the first file has been submitted to the PPS and they will continue to submit files on a bimonthly basis. Members challenged the timeframes and potential concerns for victims or their families and PSNI noted they believe they have submitted a robust case to the PPS and are hopeful of prosecutions.

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

6.2 PSNI BRIEFING ON LEGACY INVESTIGATIONS BRANCH

The Chair welcomed ACC Roberts and invited PSNI to brief Members on the Legacy and Disclosure Branch (LIB).

ACC Roberts presented to Members an overview of the work undertaken the Legacy and Disclosure Branch, discussing the work of the Legacy Support Unit, the Sensitive Disclosure Governance Unit, Legacy Litigation and Investigations. The caseload, case sequencing model and some significant cases were also presented to Members.

Members engaged in discussion with PSNI regarding the LIB Case Sequencing Model. ACC Roberts noted that the Case Sequencing Model is used to prioritise the large amounts of cases using four factors; contemporary persons of interest, forensic potential, case progression and criminal justice status. Members expressed concerns regarding the effectiveness and fairness of the model. ACC Roberts highlighted that LIB only review the accuracy of the cases against the model, rather than the model itself. It was noted by PSNI that it is intended to make legacy cases relevant today and that if a factor changed within a case it would push it further up, as the model does not work in a way that would be a detriment to victims. PSNI also noted that the model is reviewed annually.

Members also discussed with PSNI the implications of the case sequencing model in relation to the Pat Finucane case. ACC Roberts noted that PSNI updated the NIO on the current situation with the case prior to the NIO's making a decision on the public enquiry. Following the Da Silva Report, PSNI carried out an assessment to identify any actions to be taken. Some actions were identified with four recommendations to be addressed by the PSNI. ACC Roberts also noted that any information was passed to OPONI and that PSNI have been addressing the out workings of the Da Silva Report and will consider if a review is necessary.

PSNI discussed with Members the Legacy Investigation Branch commitment to demonstrate their capacity to be independent and the ongoing legal challenge regarding the independence of the PSNI. ACC Roberts noted the Code of Ethics

used by the LIB and presented to Members statistics regarding LIB staff's military and RUC service.

Following discussion it was:-

AGREED:-

That Officials will write to PSNI requesting the following information:

- The number of completed family reports by LIB since it was established;
- A further breakdown of the figure showing that 75% of all LIB staff by rank/grade that have no RUC service; and
- Clarification on the number of current civil litigation cases. **(AP4)**

ACC Roberts gave an update to Members regarding the REDS teams and their role to supplement the Case Sequencing Model and giving families of victims as much information as possible. Members also expressed concern regarding the number of LIB Family Reports issued, as it was noted that five family reports were issued in 2019 and only a further four have been issued since.

Following discussion it was:-

AGREED:-

That officials will circulate correspondence from PSNI regarding family reports from the Legacy Investigation Branch briefing from 2019 to all Performance Committee Members. **(AP5)**

The Chair thanked PSNI for their attendance and presentation. PSNI Officials left the meeting.

6.3 HUMAN RIGHTS ADVISOR'S ANALYSIS OF PSNI'S REVIEW OF NOTIFIABLE MEMBERSHIPS

The Human Rights Advisor provided a paper to inform Members of the human rights principles and considerations in regards to the recent key stakeholder consultation that was initiated by PSNI on the Review of Notifiable Membership for Police Officers.

The Human Rights Advisor provided detail to Members on police membership of organisations and freedom of association. Members were asked to note the information provided and consider the recommendation of the Human Rights Advisor to consider responding to the PSNI consultation on police membership of organisations by requesting the PSNI approach the membership issue by setting out the human rights principles that should apply.

Members engaged in discussion with the Human Rights Advisor and sought clarity on number of issues including –

- The need for the consultation process to be based on Human Rights principles and that PSNI should be clear what officers needed to disclose;
- Discussed what Memberships other Police Services in different jurisdictions require their Officers to disclose. The Human Rights Advisor noted that this typically involves areas such as the ability to join trade unions or organise strikes; and
- Regarding the recommendation that Police Officers should not be overtly active in political organisations, Members expressed concerns regarding what conduct would define 'political'.

It was:-

AGREED:-

The Human Rights advisor will share a paper regarding Notifiable Membership's with PSNI outlining the human rights principles Members wish PSNI to consider in their consultation. **(AP6)**

6.4 HUMAN RIGHTS ADVISOR UPDATE REPORT FOR FEBRUARY 2021

Members were provided with a paper to update them of the work that the Board's Human Rights Advisor, John Wadham had completed during February 2021 that included:-

- Taking forward the recommendations of the COVID report;
- Continuing to monitoring the use of Spit and Bite Guards;
- Consulting on the Human Rights Monitoring Framework;
- Monitoring the Covert Human Intelligence Sources (Criminal Conduct) Bill;
- Monitoring the custody visiting system, particularly in relation to TACT detention drafting an article on custody visitors for Law Society newsletter; and
- JSA stop and search review of authorisations (by Counsel).

Mr Wadham informed Members that his future work would include:-

- Human Rights Monitoring Framework review;
- Human Rights Annual Report and COVID-19 Report responses from PSNI;
- Attending the Gold Command meetings in relation to the Murder Archive in PSNI Seapark operation;
- Board and Performance Committee and assisting with preparation of reports;
- Monitoring authorisations for stop and search under the Justice and Security Act;;
- Monitoring the Covert Human Intelligence Sources (Criminal Conduct) Bill;
- Meetings with PSNI lawyers and other PSNI officers; and
- Working to improve the custody visiting system.

Members sought clarity and additional information on Mr Wadham's work in respect of:-

- Issuing of Fixed Penalty Notices to the BAME communities during the BLM protests in the Covid-19 Review.
- Human Rights concerns regarding the PSNI's use of Facial Recognition Software; and
- The PSNI's monitoring of social media data and how it is retained and used in the future.

Following discussion it was:-

AGREED:-

That Officials and the Human Rights Advisor will write to PSNI requesting the following information:

- Examine the use of Fixed Penalty Notice and the impact on BAME communities and consider any implications for the Covid-19 Review;
- PSNI use of Automatic Facial Recognition Software; and
- PSNI use of social media monitoring and its retention for future use.

(AP7)

6.5 DRAFT PROGRAMME OF WORK APRIL TO JUNE 2021

The Director of Performance provided Members with the proposed draft Programme of Work covering April to June 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 any other areas to be considered for the April to June 2021 period.

Members reviewed the information available and following discussion it was:-

AGREED:-

The Director of Performance to amend draft programme of work and circulate to all Performance Committee Members for further comment. **(AP8)**

The Director of Performance stated that if Members identified further items that they could be added to the Programme of Work.

The Chief Executive of the Board noted that the Board Chair has set out an expectation that the Deputy Chief Constable will attend all future Performance Committee meetings.

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 11 February 2021.

Members **agreed** to ask the Chief Constable the following questions:

- The Chair of the Performance Committee wrote to ACC Todd on 18th January 2021 in relation to the Health Regulations and the power of PSNI officers to enter premises. Can the Chief Constable provide an update on the response to this correspondence?
- Members discussed the ongoing investigation in relation to abuse allegations at Muckamore Abbey Hospital. Could the Chief Constable provide further information on:
 - The expected timeframe to conclude this investigation;
 - Any update on the Public Prosecution Service's decisions in relation to this case; and
 - Any potential to provide additional resources to the investigation team in order to speed up the process.

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 15th April 2021 at 09.30am in Waterside Tower.

The meeting closed at 1.15pm.

TRIM 444431