

**NORTHERN IRELAND POLICING BOARD****MINUTES OF A MEETING OF THE PERFORMANCE COMMITTEE MEETING  
HELD ON 14 MAY 2020 at 10.00, WATERSIDE TOWER (VIA ZOOM)**

**PRESENT:**

Mr Mervyn Storey, Chairperson  
Ms Carmel McKinney  
Mr Edgar Jardine\*  
Ms Deirdre Toner  
Mrs Joanne Bunting\*  
Mr Trevor Clarke\*  
Mrs Dolores Kelly\*  
Mr Gerry Kelly  
Ms Liz Kimmins  
Dr Tom Frawley, Board Vice-Chairperson\*

**POLICE SERVICE OF**           **1**    T/ACC Tim Mairs  
**NORTHERN IRELAND IN**   **1**    Superintendent Pat Foy  
**ATTENDANCE:**

**OFFICIALS IN**                            Ms Jenny Passmore, Director of Performance  
**ATTENDANCE:**                        Mr Adrian McNamee, Director of Partnership  
Five Board Officials

**HUMAN RIGHTS ADVISOR:**        Mr John Wadham

**(1) Item numbers: 7.3**

\* Denotes attended meeting via Zoom

## **1. APOLOGIES**

Apologies were received from Mr Alan Chambers.

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**

Carmel McKinney declared that she is currently an Equality Commissioner for Northern Ireland, however this should not impact on her role with the Committee.

## **3. ELECTION OF VICE-CHAIRPERSON**

As the term of office for the former Vice Chair of Performance Committee ended on 31 March 2020 Members were requested to make nominations for the position to the Director of Performance prior to the meeting.

Ms Carmel McKinney was nominated for the position by Mr Gerry Kelly and seconded by Ms Deirdre Toner. No other Members were nominated. Ms McKinney thanked Members for the nomination and outlined her experience from various organisations that she could bring to the role of Vice-Chairperson.

In accordance with procedure Members present voted with all Committee Members voting Ms McKinney into the position of Vice-Chair of the Performance Committee. Ms McKinney subsequently signed a Declaration of Acceptance for the role.

## **4. DRAFT MINUTES OF MEETING OF THE PERFORMANCE COMMITTEE**

The Committee considered the minutes of the meeting held on the 12 March 2020. The Committee agreed to make the following amendment on page 5 as recorded below–

**from**

“Members discussed the draft Code of Ethics and were of the view that there should be more focus on the responsibility of the service as a whole as well as that of the individual officer and that the Chief Constable’s Foreword should be clearly linked to the general content of the Code of Ethics.”

**to**

“Members discussed the draft Code of Ethics and were of the view that there should be further detail on the ethical values underpinning the service as a whole and a distinction made on how these apply to individual officers.”

It was therefore:-

**RESOLVED:-**

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

## **5.0 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.**

## **5.1 PSNI RESPONSE TO THE CODE OF ETHICS (AP1 13 February 2020)**

The Members considered PSNI’s response to the Committee’s request for the full draft Code of Ethics documents to be provided for Members to examine.

Following discussion it was:-

**AGREED:-**

That Board Officials should meet with PSNI colleagues to clarify amendments and provide Members' comments. Furthermore, PSNI are requested to provide the rationale for the changes and are invited to attend Performance Committee on 11 June 2020 to provide an update on the full review of the Code to Members. **(AP1)**

## **5.2 PSNI RESPONSE TO CSAE AND CHILDREN WHO GO MISSING (AP7 13 February 2020)**

The Committee considered the written response from PSNI in relation to their request for further information regarding online Child Sexual Abuse and Exploitation (CSAE); Child Abduction Warning Notices (CAWNs); Paramilitary involvement in CSAE; and outcomes for victims of CSAE.

Members discussed a number of issues and expressed some concerns in relation to analysis and statistics provided. There was a general agreement for a composite report to policing the risk to children seeking contribution from other key stakeholders such as National Crime Agency, representatives of the PSNI Youth Champions Forum, Public Prosecution Service, Education Authority and the Safeguarding Board for Northern Ireland.

Following discussion it was:-

### **AGREED:-**

To write to PSNI to clarify information on the following –

- The number of searches and arrests in 2019/20 as a result of referrals made to the Child Internet Protection Team (CIPT); and
- The rationale of subjecting a child over 16 to the Care Order as per Article 68 of the Children (NI) Order 1995 before a CAWN can be served to a person of concern.

Officials are asked to schedule a briefing into Child Sexual Abuse and Exploitation to coincide with the Police Performance Monitoring report expected in October 2020. **(AP2)**

### 5.3 PSNI RESPONSE TO STOP AND SEARCH (AP5 13 February 2020)

Members considered PSNI's response to correspondence from the Committee in relation to requests for further information for the following issues:

- Service Instruction;
- Supervision and monitoring;
- Record keeping;
- Children and Young People; and
- Dr John Topping's third report.

Members discussed the information provided and were in agreement that PSNI's response did not fully address all the questions raised. One of the foremost concerns was in respect of the Service Instruction and how Children and Young People are treated during stops especially for children at the younger age of the range from 10 to 18 years old.

Furthermore, Members considered the response in relation to the monitoring of community background and whether learning from Dr Topping's report and recommendations from the Independent Reviewer, David Seymour, would be incorporated into the Service Instruction.

Following discussion it was:-

#### **AGREED:-**

To write to PSNI to provide feedback on –

- The Service Instruction and guidance delivered to officers especially when dealing with children and young people at the younger age of the range stopped under 'Stop and Search' powers;

And to seek further information on:

- Reporting of Community Background;
- What learning from Dr John Topping's report would be incorporated into the Service Instruction; and

- What recommendations in relation to ‘Stop and Search’ have been considered and discharged from David Seymour’s Independent Review Report. **(AP3)**

#### **5.4 PSNI RESPONSE TO MEASURE 2.1.2 OF POLICING PLAN 2019/20 CRIMES AGAINST OLDER PEOPLE (AP5 12 MARCH 2020)**

The Committee considered PSNI’s response in relation to the request for detail on the number of arrests which have resulted in prosecution in respect of crimes against older people and a copy of the Older Person’s Strategy. Members were content that PSNI provided the Older Person’s Strategy, however it was felt insufficient statistical information was provided for arrests that had led to prosecution.

It was:-

#### **AGREED:-**

To write again to PSNI to request details of outcome rates, specifically the method of outcome applied to each crime recorded against Older People. **(AP4)**

#### **6.0 CHAIRPERSON’S BUSINESS**

##### **6.1 DEPUTY CHIEF CONSTABLE’S CORRESPONDENCE TO CHAIR REGARDING LEGACY INVESTIGATION BRANCH (2 APRIL 2020)**

The Director of Performance delivered an update to Members in respect of correspondence received by the Chair from the Deputy Chief Constable in relation to the Legacy Investigation Branch (LIB).

The correspondence contained a number of documents including the Family Guidance Document (which has replaced the Manual of Guidance), the Family Engagement Strategy and the Conflict of Interests Policy.

Members had a number of concerns in relation to the Conflict of Interests Policy, the practiced Case Sequencing Model and also the potential for reputational damage to PSNI and the impact of confidence from both political communities.

The Board's Human Rights Advisor, Mr John Wadham provided Members with a Human Rights perspective of LIB recognising the complex nature evidenced by the ongoing judicial process that PSNI are currently involved with to determine 'Practicable Independence'. Mr Wadham has agreed to provide feedback on the three documents to include any comments from Members.

Following discussion it was:-

**AGREED:-**

That Members are to provide Board Officials and the Human Rights Advisor with written responses to the LIB documentation to provide a response to PSNI. **(AP5)**

## **7.0 ITEMS FOR COMMITTEE BUSINESS**

### **7.1 PERFORMANCE COMMITTEE REPORT FOR 2019/2020**

The Director of Performance provided Members with an overview of the work of the Performance Committee's work during the 2019/2020 financial year as instructed under the Committee's terms of reference.

Members were asked to note the information within the paper which highlighted achievements and key issues considered by the Committee during the period including-

- Consideration of Independent Reviewers reports in respect of PSNI use of powers in the Terrorism Act 2000 and Justice & Security (NI) Act 2007;
- Monitoring of the work of PSNI Legacy Investigation Branch;
- Monitoring PSNI compliance with the Human Rights Act 1998 for a number of areas including Stop and Search, Domestic Abuse, Sexual Offences, Body Worn Video, Biometric Retention and Spit and Bite Guards;

- Production of an annual report on PSNI compliance with Human Rights Act 1998 through an assurance report ;
- Consideration of the Board's human rights previous thematic reports;
- Ongoing Monitoring of and implementation of the recommendations from the Board's previous Human Rights Reports;
- Revision of the Code of Ethics for Police Officers with a recommendation for review made to the Board;
- Assessment of the effectiveness of the Code of Ethics; and
- Monitoring of trends and patterns in complaints against the PSNI.

## 7.2 DRAFT HUMAN RIGHTS ANNUAL REPORT 2019/2020

Mr John Wadham, the Board's Human Rights Advisor presented the Draft Human Rights Annual Report 2019/2020 to Members for their consideration. The paper provided Members with an overview of the performance of PSNI in complying with the Human Rights Act 1998.

Members were asked to consider the draft Report and provide feedback to Board Officials. Officials will record and track changes and Members requested that the report is tabled at the committee in June prior to sharing with PSNI for for factual accuracy checking

It was:-

**AGREED:-**

That Committee Members would provide written representations to Officials of their suggested amendments to the Draft Human Rights Annual Report 2019/2020. **(AP6)**



### **7.3 PSNI TEMPORARY USE OF SPIT AND BIT GUARDS DURING THE COVID-19 PANDEMIC**

A Board Official presented the paper in preparation for PSNI attendance to provide Committee Members with their briefing on PSNI's use of Spit and Bite Guards during the Covid-19 pandemic following the Chief Constable's decision to temporarily introduce the devices during this period.

The paper provided background information on the ongoing correspondence and discussions between the Board/Committee and PSNI since September 2019 regarding the proposal to introduce spit and bite guards. Spit and bite guards were first brought to the Committee's attention following the Chief Constable's correspondence in late July 2019 asking for the Board's support to introduce them.

Additionally, the paper provided Members with a statistical analysis of the use of spit and bite guards since their temporary introduction in March 2020. It also outlined concerns raised previously by Members and provided updates where available from PSNI which included –

- Article 4 of the PSNI Code of Ethics (application of non-violent methods and minimising use of force);
- Legal Framework (Criminal Law (NI) 1967, Police and Criminal Evidence (NI) Order 1989 (PACE), common law and Human Rights Act 1988 incorporating the European Convention on Human Rights (ECHR));
- Restraint and Use of Force (Articles 2 and 3 of ECHR);
- Age Restriction (under 18);
- Evidence Base regarding the Safety of Officers and the Risk of Infection;
- Use of Alternatives; and
- Impact on their use on vulnerable individuals such as an individual with a mental health issue.

Members were asked to note the information provided to assist in their discussion with PSNI. Members were also asked to consider PSNI's request for the Board to be represented on the PSNI working group which has been established to look at the

proposal to introduce spit and bite guards into the service following COVID-19. Members agreed that it would not be appropriate for the Board to be a member of the working group, however they would like to receive copies of the information considered by the group..

The Chair welcomed T/ACC Tim Mairs and Superintendent Pat Foy who attended the meeting via video conferencing. The Chair invited them to update Members on PSNI's temporary use of spit and bite guards during this Covid-19 Pandemic.

T/ACC Mairs briefed Members on both the short term use of the devices during the pandemic and also the discussions regarding proposals to introduce them into the service following the pandemic.

T/ACC Mairs highlighted that there were three drivers behind this introduction of spit and bite guards during COVID:

- Risk of Infection and Psychological Harm;
- Obligations under the Health and Safety at Work (NI) Order; and
- The potential risk to members of the public of harm or of engagement with Human Rights (in particular Article 3) or Article 5 of the Health and Safety at Work (NI) Act.

T/ACC Mairs provided information to confirm that the rollout of spit and bite guards had been restricted to officers/staff in four areas; custody suites, Covid-19 response officers, cell vans and armed response units. He provided Members with a statistical breakdown during the temporary measures which included a total of 43 incidents of either spitting or biting between 13 March and 7 May 2020 and 11 uses of a spit and bite guard.

The T/ACC discussed that this is a use of force and each use of the device is reported to the Office of the Police Ombudsman for Northern Ireland (OPONI) for investigation. Further information was given to Members on the review process during their temporary issue, the Section 75 Screening process and the assessment of harm and risk to officers and staff through the Police Powers Development Group (PPDG) and the development of a strategic plan to be taken forward. The Strategic Objectives include –

- To ensure that actions and decisions maximise the health and safety of PSNI officers, staff and non-employees;
- To ensure that actions and decisions uphold the human rights of the public, particularly those most vulnerable in society;
- To develop an evidence base to inform organisational decision making;
- To support the Chief Constable with information and evaluation of the use of Spit and Bite Guards during the Covid-19 Operational period;
- To work with the Policing Board to progress the consultation on the use of Spit and Bite Guards, and to complete an Equality Impact Assessment and Community Impact Assessment; and
- To maintain and enhance the legitimacy of policing through a transparent and accountable approach.

Following the briefing Members engaged in discussion with the PSNI colleagues as they sought further understanding on the temporary and longer term objectives of PSNI for the use of spit and bite guards. Concerns were raised not only on the current use of the devices, but on the use of appropriate Personal Protective Equipment as an alternative and the training provided to officers.

Members raised further concern in relation to the reported 'low impact perceived' in respect of the use of spit and bite guards on children and those with disabilities. Members would like the screening to be revisited and for a wider engagement strategy to be developed to support it reflecting the specific needs of all the section 75 groups.

T/ACC Mairs gave a commitment to engage with Board Members and other stakeholders to ensure that any long term strategic decisions on Spit and Bite Guards is given a comprehensive consideration. He expressed that such an evidence base would be available by September 2020.

The Chairperson thanked PSNI for their attendance and asked for them to convey his and the Committee thanks and appreciation to officers who had attended a tragic and fatal incident involving a young family his constituency area of Ballycastle.

PSNI left the meeting.

Following discussion it was:-

**AGREED:-**

To write to PSNI outlining concerns including—

- working group papers should be provided to the Board's Human Rights Advisor;
- an update on the Section 75 Report;
- The reviews and analysis for Spit and Bite Guards during Covid-19;
- Details of other uses of force used when applying these devices;
- the evidence base for any proposed introduction including an outline of costs and number of units procured;
- details on the training provided for officers in the use deploying Spit and Bite Guards; and
- OPONI's role. **(AP7)**

## 8. QUESTIONS FOR THE CHIEF CONSTABLE

The Director of Performance informed Members that due to the outbreak of Covid-19 and the uncertain impact on business as usual the issuing of Questions for the Chief Constable arising out of the meeting held on 12 March 2020 were delayed.

Members **noted** that responses from the Chief Constable in relation to the Apprentice Boys of Derry Parade; Notifiable Membership; and On The Run's should be available for the Board Meeting to be held on 4 June 2020 and for consideration at the next Performance Committee.

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

## **9. COMMUNICATION ISSUES**

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

## **10. ANY OTHER BUSINESS**

There was no other business.

## **11. DATE OF NEXT MEETING**

It was agreed that the next meeting would take place on Thursday 11 June 2020 at 10.00am in Waterside Tower via zoom.

The meeting closed 1.10pm.