

**NORTHERN IRELAND POLICING BOARD**

**MINUTES OF A MEETING OF THE PERFORMANCE COMMITTEE HELD ON  
15 APRIL 2021 AT 9.30AM VIA VIDEO CONFERENCING FACILITY**

**PRESENT:**

(2) Mr Mervyn Storey, Chair  
Ms Carmel McKinney, Vice-Chair  
Mr Edgar Jardine  
Mrs Dolores Kelly  
Mr Gerry Kelly  
Ms Liz Kimmins

**EX-OFFICIO MEMBERS  
IN ATTENDANCE**

Mr Tom Frawley

**POLICE SERVICE OF  
NORTHERN IRELAND IN  
ATTENDANCE**

(1) Deputy Chief Constable Mark Hamilton  
(1) Assistant Chief Constable Mark McEwan  
(1) Detective Superintendent Emma Neill

**OFFICIALS IN  
ATTENDANCE:**

Mr Adrian McNamee, Director of Performance  
Six Board Officials

**HUMAN RIGHTS ADVISOR:**

Mr John Wadham

(1) Item Number: 6.1 only

(2) Item number: 1 to 6.1

## **1. APOLOGIES**

Apologies were received for Trevor Clarke, Mike Nesbitt and Deirdre Toner who were attending other Board Business.

Apologies were also received for Joanne Bunting.

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**

No conflicts of interest were declared.

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

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

It was therefore:-

### **RESOLVED:-**

That the draft minutes of the Performance Committee meetings held on the 11 March 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 AP1 from the meeting held on February 2021 in relation to the information provided by T/ACC Roberts regarding stop and search and the Young People Independent Advisory Group outcomes. Members discussed concerns relating to the high numbers of children being stopped and how police are monitoring their use of this power on ethnic minorities correctly. The Director of Performance advised Members that Officials are currently analysing the response from ACC Roberts and have programmed it into the Committee's Programme of Work for May 2021.

Members also discussed AP5 from the meeting held on February 2021 regarding the Police Ombudsman Office and the investigations into complaints made about the use of spit and bite guards. To date the Police Ombudsman has received one public complaint and initiated two investigations using her own motion powers under s.55(6) of the Police (NI) Act 1998 in relation to the use of Spit and Bite Guards.

Following discussion it was:-

#### **AGREED:-**

To write to OPONI to request an update regarding the status and timeframe for completion regarding the investigations into complaints made about the use of spit and bite guards **(AP1).**

Members also discussed the updates on AP2 from the meeting held on 11 February 2021 Regarding the Gold Strategy for 2021 Parades, Protests, Bonfires, Commemorations, Re-enactments, Funerals and Related Activity for 2021.

Following discussion it was:-

**AGREED:-**

Officials to provide an update on the status of the report of the Flags, Identity, Culture and Traditions Commission **(AP2)**

**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 COVERT HUMAN INTELLIGENCE SOURCES (CRIMINAL CONDUCT) ACT 2021**

The Human Rights Advisor presented a paper providing Members with a summary of the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, highlighting how the original Bill was amended during its passage through Parliament. The Human Rights Advisor also updated Members on the 'Third Direction' case.

Members discussed with the Human Rights Advisor if there would be any implications if PSNI deviated from the national code of practice regarding the Act. The Human Rights Advisor discussed with Members that the legislation is not devolved generally and it would be possible to have differences, however this may be problematic as MI5 would use a different process to PSNI. The Human Rights Advisor noted that the guidance for the Covert Human Intelligence Sources Act could be open and transparent without making it restrictive for PSNI.

Members were asked to note the implications and the potential issues identified by the Human Rights Advisor that the Act may raise to inform Members' discussion with PSNI who attended the meeting.

The Chair welcomed DCC Hamilton, ACC McEwan and D/Supt Neill and invited them to briefly introduce Members to PSNI's plans for the implementation of the Covert Human Intelligence Sources (Criminal Conduct) Act 2021.

ACC McEwan updated Members, noting that the Covert Human Intelligent Sources (CHIS) is a crucial tactic used in preventing crime, safeguarding victims and protecting the public. It was highlighted that a CHIS is only authorised in very carefully considered situations. ACC McEwan highlighted that the 2021 Act is adding legislation to already used police tactics. The Regulation of Investigatory Powers Act 2000 (RIPA) states that all CHIS must be considered against necessity, proportionality and the European Convention on Human Rights and the Human Rights Act must be considered. PSNI noted that any CHIS authorisation must be proportionate to what is sought to be achieved, accompanied with detailed risk assessment and strict oversight. The CHIS legislation provides that the overseeing officer will be at Superintendent level and currently in the PSNI oversight is at ACC level with prior approval always required by an ACC.

ACC McEwan also noted that authorisations will be overseen by the Investigatory Powers Commissioner's Office (IPCO) and will have judicial oversight which will be seen in writing within seven days. PSNI have been involved in the national working group covering all aspects of the Act and its application and are working towards a phased implementation in July 2021. Once this is finalised the Board's Human Rights Advisor will be invited to oversee the detail.

DCC Hamilton noted his understanding of the concerns of the public and NGO's regarding the implementation of the CHIS Act. The DCC noted that the Act further codifies a sensitive area of authorisations, more specifically than the existing RIPA legislation. PSNI noted that the use of CHIS is a necessary activity and is

not a new practice, however PSNI welcome the strong legislative framework that this new Act brings.

Members raised concerns with PSNI regarding the implementation of the Act, discussing the use of young people as covert human intelligence sources. PSNI ensured that the use of young people is time bound and involves significant monitoring, risk of harm and threat to life is of the utmost importance in this regard. PSNI noted that particular risk assessments and safeguarding measures would be of the highest level, which would be balanced against necessity and proportionality. It was also highlighted that this is a last resort tactic and would only be used if it was necessary to prevent harm.

Members also raised concerns regarding the possibility of a CHIS breaking the law without it being cleared at ACC level. PSNI assured Members that this activity would not be covered under the CHIS legislation and the Act will not prevent the PPS from consideration of a prosecution. It was noted by DCC Hamilton that if a CHIS has been forced to do something that exceeded their authorisation this can be assessed by a prosecutor to evaluate if they did it to protect themselves.

Members discussed with PSNI the implications of working with MI5 in regards to CHIS and engaged in discussion regarding the management of the memorandum of understanding standing between the PSNI and MI5. Members noted that it is part of the St. Andrews agreement to review the memorandum of understanding and to have the Human Rights Advisor and the Board inspect this to be assured that the work of MI5 and PSNI are compatible.

Therefore, following discussion it was:-

**AGREED:-**

To write to PSNI to request that the Human Rights Advisor meets with PSNI with a view to monitor/assess the MOU between PSNI and MI5 **(AP3)**.

Members also engaged in discussion with PSNI regarding the reports from IPCO and their assessment of the CHIS powers prior to the 2021 Act. PSNI noted that it was assessed that PSNI had a high level of compliance with previous CHIS legislation and that IPCO inspects this annually.

It was:-

**AGREED:-**

That Board Officials will write to PSNI to request a summary of the previous IPCO reports from 2020 and, where possible, a summary of the recommendations and PSNI actions **(AP4)**.

It was also:-

**AGREED:-**

That Board Officials will write to PSNI to request a summary of the schematic process regarding PSNI's implementation of the CHIS legislation for the Human Rights Advisor to review **(AP5)**.

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

## **6.2 ANNUAL COMMITTEE EFFECTIVENESS REVIEW**

The Board Vice Chair and Board Director of Partnership provided members with an update in relation to the Annual Committee Effectiveness Review. The Board Vice Chair provided Members with some context for the Review and that as well as being a governance requirement, this exercise also provides an opportunity for

Committee Members to comment on the effectiveness and efficiency of the Committee.

In relation to the recent effectiveness questionnaire/survey sent to Members, the Director of Partnership provided analysis of the responses received. A total of 6 responses out of a possible 10 were received from Performance Committee members and this was made up of 3 political members and 3 independent members. There were 3 categories of questions to consider, the first being the Objectives, Remit and Strategy of the Committee. In response to this section, it was found that the majority of responses agreed that members had a clear understanding of the Terms of Reference (ToR) and that all responses agreed that the Committee has a clear ToR to enable it to annually assess its performance. It was also noted that in response to the statement regarding the Committee spending an appropriate amount of time on strategic rather than operational issues, 50% of those who responded to the review disagreed and 50% agreed. There was a range of responses to the statement about the Committee programme of Work being balanced and allowing for consideration of all matters in the Committee ToR as 33% disagreed, and 66% agreed or strongly agreed. 33% of those who responded to the statement regarding the range and frequency of PSNI or other presentation as satisfactory indicated that they disagreed, however 33% agreed with this statement and a further 33% strongly agreed.

The second category looked at whether the skills mix in the Committee could be developed in order to enhance the work of the Committee. The Director of Partnership noted that all those who responded agreed that the Committee has an appropriate range of skills and expertise to be effective and to meet the requirements of its ToR. It was also noted that all either agreed or strongly agreed that it was representative of the local community and, in respect of the statement about appropriate training/ induction for new and existing members, 66% indicated that they either agreed or strongly disagreed that appropriate induction and training had been arranged for new or existing members. Members agreed with the statement regarding meetings being appropriately resourced and prepared with



proportionate levels of discussion being facilitated to enable informed decisions and recommendations to be reached.

The third category looked at the role and scope of the Committee. The Director of Partnership noted to Members that there were no negative responses to statements A-D in this section. It was highlighted that statement E referred to the Committee monitoring PSNI compliance with the Human Rights Act and production of an Annual report on this. Responses varied with 17% disagreeing with this state, and 83% agreeing or strongly agreeing with this statement.

Following discussion it was:-

**AGREED:-**

That Officials will share the feedback from the Annual Committee Effectiveness Review to all Members **(AP6)**.

It was also:-

**AGREED:-**

That Board Vice Chair will share the Annual Committee Effectiveness Review action plan for Committee Review **(AP7)**.

### **6.3 DRAFT ANNUAL COMMITTEE REPORT**

The Director of Performance presented a paper to Members on the Draft Annual Committee Report. The role of the Performance Committee is to support the Board in its responsibilities for issues related to PSNI operational performance, to include performance against the Policing Plan measures specific to the Committee; Human Rights compliance; and the Professional

Standards of Police Officers. The Committee also oversees the exercise of the functions of the NCA and HMICFRS in Northern Ireland.

Members were requested to provide any further comment or amendment to be made to this draft and approve for inclusion in the Board's Annual Report and Accounts 2020/21. Members were content with the information provided by the Director of Performance and **APPROVED** the report for inclusion in the Board's Annual Report and Accounts 2020/21.

#### **6.4 DRAFT HUMAN RIGHTS MONITORING FRAMEWORK**

The Human Rights Advisor presented a paper to Members on the revised draft Human Rights Monitoring Framework following discussions with Members and key stakeholders. Members agreed at the June 2020 Performance Committee that the Framework should be reviewed and views sought with key stakeholders to assist in that review. Members were requested to agree to recommend the Monitoring Framework to the Board as the new approach to monitoring PSNI's compliance with the Human Rights Act.

The Human Rights Advisor noted that there was an external consultation process with a number of key stakeholders including PSNI and the Police Federation. The Human Rights Advisor engaged in discussion with Members noting that stakeholders agreed that in order for Human Rights monitoring to remain contemporary and dynamic the new Framework should apply criteria to identify future themes. These criteria include: national/local emerging policing issues; an environmental scanning of police performance; reports from other key stakeholder bodies; new PSNI policy or equipment introduced; Board or PSNI request and issues following engagement with key stakeholder groups. Members discussed concerns in regard to how this monitoring framework will translate into a work programme, noting that priorities should be identified for the next three years.

Following discussion it was:-

**AGREED:-**

That the Human Rights Advisor will consider feedback and meet with the Members from Political Parties in order to bring a Draft Human Rights Monitoring Framework, along with a draft three year programme of work, to a future Committee **(AP8)**.

## **6.5 HUMAN RIGHTS ADVISOR UPDATE REPORT FOR MARCH 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 March 2021 that included:-

- Taking forward the recommendations of the COVID report and the Human Rights Annual Report;
- Consulting on the Human Rights Monitoring Framework and re-drafting;
- Monitoring the Covert Human Intelligence Sources (Criminal Conduct) Act;
- Monitoring the custody visiting system, particularly in relation to TACT detentions; and
- JSA stop and search review of authorisations (by Counsel).

The Human Rights Advisor also attended the following meetings/calls since the last report:

- Performance Committee meeting;
- Board meeting;
- Remaining Monitoring framework consultees;
- Police reviewers in UK (Scotland and Joint Committee on Human Rights);
- Independent Reviewer of Terrorism Legislation;
- Other PSNI officers;
- PSNI lawyers; and

- Various meetings with Board officials.

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

- The future work of the Human Rights Advisor will consist of:
- Human Rights Monitoring Framework review;
- Human Rights Annual Report (19/20) and COVID-19 Report responses from PSNI;
- Starting the draft of the Human Rights Annual Report for 20/21;
- Attending the Gold Command meetings in relation to the Murder Archive in PSNI's Seapark operation;
- Board and Performance Committee and assisting with preparation of reports;
- Monitoring authorisations for stop and search under the Justice and Security Act (with Counsel);
- Guidance for the implementation of the Covert Human Intelligence Sources (Criminal Conduct) Act;
- Meetings with PSNI lawyers and other PSNI officers; and
- Continuing working to improve the custody visiting system.

The Human Rights Advisor also engaged in discussion with Members regarding the recent riots in Northern Ireland and to acknowledge that he could not be present in Gold Command due to the current travel restrictions from the Covid-19 Health Regulations. Members acknowledged that if similar circumstances arose the Human Rights Advisor would ensure his presence, travel restrictions permitting.

## **6.6**

### **OFFICE OF THE POLICE OMBUDSMAN 5 YEAR REVIEW**

Board Officials provided a paper to update Members on of the Police Ombudsman for Northern Ireland's Five Year Review under Section 61(4) of the Police (Northern Ireland) Act 1998 following their initial consideration in January 2021. Members were requested to note the views of Members in relation to each

of the recommendations contained within the OPONI Five Year Review and use this analysis to discuss the report further with the Ombudsman at her upcoming meeting with Board Members.

At the 14 January 2021 Performance Committee Members requested that the table containing a draft Board response to each recommendation be circulated to all Members providing Members with the opportunity to comment on each of the recommendations. From the responses received, Members have consensus/agreement in relation to 17 of the recommendations. However, there is a difference of opinion or a requirement for further discussion on 18 of the recommendations.

Therefore, following discussion it was:-

**AGREED:-**

All political parties to consider the recommendation and submitted a response, and then the agreed recommendations will be sent to the Ombudsman **(AP9)**.

**6.7**

**INTRODUCTION TO PERFORMANCE PLAN 2020/21 ANNUAL ASSESSMENT**

Board Officials provided a paper to Members to introduce the work relating to the Performance Plan Annual Assessment for 2020/21.

They noted that by virtue of the Police (NI) Act 2000 and the Annual Performance Plan, the Board is required to prepare and publish for each financial year a summary of the Board's Assessment. Board Officials presented to Members the approach adopted in respect of reporting on the Performance Plan Annual Assessment and included a draft Assessment for Outcome. When completed this Assessment will be brought to the Board for approval as part of the Board's Annual Report and Accounts.

Members expressed concerns regarding the legislative gap in Domestic Abuse legislation. Board Officials noted that when Domestic Violence and Abuse (DV/A) was considered by Members in September 2020, they welcomed the introduction of the Domestic Abuse and Family Proceedings Bill 2020 and through discussion with the PSNI, they identified a possible legislative gap regarding to the Bill not including Domestic Abuse Protection Notices (DAPNs) or Domestic Abuse Protection Orders (DAPOs). Members requested clarity on this legislative gap from the Justice Committee. In response, they were provided with assurances that the Justice Committee supported the introduction of DAPNs and DAPOs in Northern Ireland and that they agreed to bring forward an amendment to the Domestic Abuse and Family Proceedings Bill at Consideration Stage to place a duty on the Justice Minister to provide for a scheme within 24 months of commencement of this legislation, with the aim of ensuring appropriate progress is made in this area. Therefore, Board Officials noted this will be reviewed as part of future monitoring and through 2021/22 reporting on DV/A, the first report of which will be coming to Performance Committee in May 2021.

## **6.8 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. At the 11 March Performance Committee Members requested further time to consider the Draft Programme and a copy was shared to all Members for comment following the Committee meeting.

The Director of Performance provided an updated Programme for Members information. **NOTED.**

## **7. QUESTIONS FOR THE CHIEF CONSTABLE**

Members **noted** the responses from the Chief Constable in relation to their question on the Health Regulations and the power of PSNI officers to enter premises and their question on the abuse allegations at Muckamore Abbey Hospital

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 13<sup>th</sup> May 2021 at 09.30am in Waterside Tower.

The meeting closed at 1.00pm.





