

**NORTHERN IRELAND POLICING BOARD**

**MINUTES OF MEETING OF THE PERFORMANCE COMMITTEE HELD ON  
09 SEPTEMBER 2021 AT 09:30**

**PRESENT:**

Mr Trevor Clarke, Chair Elect  
Ms Carmel McKinney, Vice-Chair\*  
Mr Edgar Jardine  
Ms Deirdre Toner\*  
Mrs Dolores Kelly\*  
Mr Gerry Kelly  
Ms Liz Kimmins\*  
Mr Mike Nesbitt (1)  
Mr Maurice Bradley

**EX-OFFICIO MEMBERS  
IN ATTENDANCE**

Mr Tom Frawley

**POLICE SERVICE OF  
NORTHERN IRELAND IN  
ATTENDANCE:**

(2) Deputy Chief Constable Mark Hamilton  
(2) Chief Superintendent Clare McGuigan  
(2) T/Chief Superintendent Pat Foy

**OFFICIALS IN  
ATTENDANCE:**

Mr Adrian McNamee, Director of Performance  
5 Board Officials

- (1) Present for items 1 - 7.1
- (2) Present for 7.1 only

\*Attended via video conferencing

## **1. ELECTION OF CHAIR**

The Director of Performance provided Members with information in relation to the election of the position of Chair of the Performance Committee as per Board Standing Orders 1-14 and s20(h)(i).

Members were advised on the process of electing a new Chair of the Performance Committee.

The Director of Performance invited nominations for the position of Chair.

Trevor Clarke was proposed by Carmel McKinney. Mr Clarke's nomination was seconded by Maurice Bradley. Five Members present indicated their support of Trevor Clarke's nomination to the position of Chair. As no other candidates were nominated Mr Clarke was duly elected chair unanimously and invited to make a brief acceptance speech.

## **2. APOLOGIES**

Apologies were received from Joanne Bunting in advance of the meeting.

The Committee agreed the agenda for the meeting.

The Chair asked Members to advise of any items they wished to raise at Item 9 under "Any Other Business". No further items were declared.

## **3. CONFLICTS OF INTEREST**

No conflicts of interest were declared.

#### **4. MINUTES OF THE PREVIOUS MEETING**

The Committee considered the draft minutes of the Performance Committee meeting held on 10 June 2021.

It was **RESOLVED**:-

- That the draft minutes of the Performance Committee meeting held on 10 June 2021 were agreed.

#### **5. 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 to be brought back to the Performance Committee.

**NOTED.**

The Director of Performance updated Members on AP2 from the meeting held on 14 January 2021 regarding Small Unmanned Aircrafts (SUA) and highlighted to Members that the Human Rights Advisor has considered all recent information and reported an update on this issue contained within the Human Rights Annual Report 2020-21 to be considered at Item 7.2.

The Director of Performance updated Members on AP7 from the meeting held on 11 February 2021 regarding the PSNI 'Whistleblowing' policy, Members were advised that Officials had contacted PSNI in response to a request for further statistical information and a full response from PSNI is included at Item 5.1. Members were further advised that an update to AP8 concerning biometric retention from the same meeting is now included in the Human Rights Annual Report at Item 7.2.

Members were informed that an update to AP7 from the meeting held on 11 March 2021 concerning the PSNI use of facial recognition software and also

social media monitoring and its retention for future use are also included in the Human Rights Annual Report at item 7.2.

The Human Rights Advisor updated Members on AP3 from the meeting held on 15 April 2021 in respect of PSNI and MI5 interaction. The Human Rights Advisor notified the Members that he had met jointly with representatives of PSNI and MI5 on 08 September 2021 to discuss current protocols and the existing Memorandum of Understanding. The Human Rights Advisor informed Members that based on his initial impressions gained at this meeting that there is a good level of co-operation but that PSNI lead investigations.

The Human Rights Advisor emphasised to Members that due to the sensitive nature of these discussions, and to allow him time to consider and prepare a full response, he advised that he would present further information at a later Committee meeting. The Human Rights Advisor stated that he planned to have further meetings with PSNI and MI5.

The Director of Performance updated Members on AP1 from the meeting held on 13 May 2021. AP1 requests further information from PSNI in response to Recommendation 7 of the COVID 19 Report in relation to Fixed Penalty Notices. PSNI have advised that consultations are ongoing with Department of Justice and the Court Service to establish if any potential remedy exists to redress the enforcement notice. The full response from PSNI to AP1 is at Item 5.1.

The Director provided an update on AP2 also from the meeting held on 13 May 2021 in relation to the COVID 19 Report, specifically, Recommendation 12 regarding the establishment of an Independent Action Group (IAG) on protests. The PSNI considered position is that existing IAGs should be utilised rather than creating a new bespoke group. The response from PSNI to AP2 is at Item 5.1.

The Director provided an update on AP3 also from the meeting held on 13 May 2021 in respect of the PSNI response to the HMIC Policing in the Pandemic Report. PSNI confirmed that they have fully accepted the report and are in the process of implementing and updating information against the recommendations. The response from PSNI to AP3 is at Item 5.1.

Following discussion, it was:-

**AGREED.**

Officials to write to PSNI to request a six monthly update on the implementation of the recommendations of the HMIC's Policing the Pandemic Report. **(AP 1)**

It was also:-

**AGREED.**

Officials to write to T/ACC Singleton to request further information on IAGs **(AP 2)**

The Director of Performance updated Members on AP1 regarding PSNI training uptake in relation to vulnerability. Members were informed that approximately 4,000 officers were identified for training of which approximately 3,700 have now completed the course. PSNI have confirmed that training is ongoing with the remaining officers to be scheduled to attend training.

An update was also provided on AP3 from the meeting of 10 June 2021 by the Director in relation to PSNI Professional Standards requesting that PSNI provide a 5 year analysis of misconduct proceedings and outcomes.

Members briefly discussed misconduct in relation to repositioning of officers as well as the increase in the number of suspensions.

Following discussion it was also:-

**AGREED.**

Officials to seek further information from PSNI in relation to suspensions and repositionings. **(AP 3)**

**6. CHAIRPERSON'S BUSINESS**

**6.1 POLICING POWERS DEVELOPMENT GROUP (PPDG) QUARTERLY REPORT**

The Director of Performance highlighted to Members a letter received from Assistant Chief Constable Jonathan Roberts together with the Policing Powers Development Group quarterly report for April to June 2021. The report contains official statistics and operational data from various internal sources and is collated to inform the PSNI Police Powers Development Group meeting.

Members were asked to note the contents of the report which provides statistics and operational data. The Director reminded Members that the information was provided for information purposes only.

Members discussed the report contents and the time period it reflects. It was clarified by Officials that the report contains information on a rolling 12 month period meaning the report covers from April 2020 to March 2021.

Members discussed the wide spectrum of statistical information made available in the report by PSNI in relation to Stop and Search, Use of Force and other matters of interest to the Performance Committee.

A member sought clarity on the issuing of Penalty Notices for Disorder and the relevant policy.

Following discussion it was:-

**AGREED.**

Officials to seek further information on the issuing of Fixed Penalty Notices. **(AP 4)**

## **7. ITEMS FOR COMMITTEE BUSINESS**

### **7.1 Review of the Code of Ethics**

The Director of Performance provided Members with an update in relation to the draft PSNI Code of Ethics. Members were asked to note the information provided within the paper so as to inform their discussion on the review of the Code of Ethics with PSNI and also to provide feedback and comments on the draft Code.

A brief overview of the Board's consultation requirement to issue and revise a Code of Ethics under Section 52(1)(a)(b) of the Police (Northern Ireland) Act 2000 was provided by the Director of Performance. It was highlighted to Members that since the February 2021 Performance Committee meeting PSNI have designed the new Code in parallel with their own internal consultation processes including responses from the Northern Ireland Policing Federation.

The revised Code of Ethics proposed by PSNI is informed by their view that the Code should be aspirational in nature and compliant with their existing service instructions. The PSNI envisage a Code of Ethics that provides more accountability for officers in relation to discipline matters and those engaged in misconduct hearings. It is also designed to be more reflective of current discipline issues.

Attention was drawn by a Member to the Police Federation response to the PSNI in respect of the aspirational concept that underpins the revised Code of Ethics.

A member suggested that balance was required in the Code of Ethics to ensure it could be aspirational as well as inspirational and instructional. Further points were raised regarding the College of Policing review of their Code and whether all UK police forces have introduced a Code of Ethics and also if a single Code should apply to all police forces.

The Human Rights Advisor clarified that all police forces were entitled to make their own decisions and none were compelled by the College of Policing to introduce a Code of Ethics, however, he pointed out that similar consultation processes are being undertaken by police forces in England and Wales. The Human Rights Advisor spoke of the architecture of process in terms of the current legal requirements, the unique circumstances in Northern Ireland and the relationships that exist between PSNI, Policing Board, Office of the Police Ombudsman Northern Ireland and Department of Justice to design, consult, implement and revise a Code of Ethics that gives an assurance to the community.

A Member asked that the Chair note, in the interests of transparency, her work with the Equality Commission so as to avoid a conflict of interest.

**NOTED**



The Chair welcomed Deputy Chief Constable Mark Hamilton and two PSNI colleagues to brief Members on the review of the Code of Ethics.

DCC Hamilton provided a brief background to their specific job roles within PSNI Professional Standards as designated 'Appropriate Authority' who has the authority to adjudicate on disciplinary matters examining if a breach of conduct has also breached the Code of Ethics. DCC Hamilton stressed that the Appropriate Authority decisions are absolute and cuts across rank.

PSNI gave Members a brief overview of the feedback with OPONI, Police Federation and the Attorney General's Office that have taken place to date in relation to the review of the Code of Ethics. PSNI believe that the Code of Ethics should reflect ethical behaviour, expanding the conversation into how and why we behave as we do as opposed to creating a purely discipline based code. The draft Code is also reflective of changing behaviour of offending, for example, cyber / information technology crimes are a greater threat today than when the original Code of Ethics was written. The Code is designed to be more reflective of a changing modern society.

PSNI informed Members that integrity, aspiring to be better, being more inclusive and tolerant and how this then manifests itself within the workplace, as well as with victims of crime, has influenced the new Code of Ethics. PSNI believe that all officers reading the Code of Ethics should be in no doubt as to how they are expected to behave and to perform in their duties, reflective of what the organisation does as well as setting the standards of behaviour that is commensurate with the duties of police officers. These standards of behaviour apply across the organisation irrespective of rank.

Members discussed with PSNI the question of striking a balance in the Code of Ethics between aspirational, inspirational and instructional. The code

should link with the values of the organisation and encouraging ethical decision making based in human rights.

Members discussed a range of issues such as:

- (1) How the code will be communicated throughout the service;
- (2) Membership of an organisation, party, movement or online forum encouraging or advocating bigotry, hatred or unlawful discrimination. It was also suggested to PSNI that this particular paragraph may need to be more prescriptive in stating what is acceptable;
- (3) 'Use of Force' within the Code;
- (4) The issue of officer discretion; and
- (5) Training of human rights and GDPR in PSNI.

The Chairperson thanked Deputy Chief Constable Mark Hamilton and his colleagues for attending the meeting and they left.

Following discussion it was:-

### **AGREED**

Officials to arrange for further consultation with the Police Ombudsman

**(AP 5)** and

Officials to arrange for further consultation with the Police Federation

**(AP 6)**

## **7.2 Final Draft Human Rights Annual Report 2020/21**

The Human Rights Advisor presented Members with the final draft of the Human Rights Annual Report. This reports on the PSNI performance in complying with the Human Rights Act 1998 during 2020 / 21. Members were

asked to approve the draft Human Rights Annual Report and agree to recommend the Report to the Board for approval.

The Human Rights Advisor informed Members that PSNI had provided some minor suggested amendments changes. He drew attention to the issue of Fixed Penalty Notices in relation to Covid-19 and the rescinding of fines and advised Members that PSNI have not as yet provided a formal response.

The Human Rights Advisor confirmed that following his meeting with PSNI and MI5 on 08 September 2021 there may be some amendments made to the Report. Gerry Kelly and Liz Kimmins asked that it be recorded that their view is that PSNI should not be investigating legacy cases as they are not Article 2 compliant.

Members briefly discussed with the Human Rights Advisor the processes for highlighting any subsequent amendments made to the text either suggested by them or as a result of the Human Rights Advisor meetings.

Following discussion it was:-

**NOTED**

Members had raised concerns with Legacy Investigation Branch investigations not being Article 2 compliant;

and it was also:-

**AGREED**

Members to provide final comments on the Human Rights Annual Report by the 17 September 2021 to Board officials and for the report to be recommended to the Board for approval **(AP 7)**

### **7.3 Human Rights Advisor Update for June - August 2021**

The Human Rights Advisor provided an update to Members on the work undertaken during June, July and August 2021 highlighting current work priorities and meetings held.

Mr Wadham provided members with an overview of areas within his current work programme including; Covert Policing and the Use of CHIS, Human Rights Act Review and the Non-Jury Trial Working Group.

Mr Wadham informed Members that he was invited from 09 July 2021 to be a member of the NIO Non-Jury Trial Working Group. This group has been formed as a recommendation in response to the Independent Reviewer of the Justice and Security Act (JSA). Mr Wadham stressed to Members that his membership of this group, and any contributions he made to it, are reflective of his own views and not those of the Board.

Following discussion, it was noted that Members were content with the Human Rights Advisor attending the NIO Non-Jury Trial Working Group. **(NOTED).**

The Human Rights Advisor provided a brief summary of a meeting held with PSNI in June 2021 to discuss Investigatory Powers Commissioners Office (IPCO) inspections, covert policing, CHIS and specifically Criminal Conduct Authorisations (CCAs) that comes into force on 15 September 2021. PSNI have agreed to provide the Human Rights Advisor with a summary of the IPCO recommendations and actions as well as a description of covert processes, including CHIS and CCA, for inclusion in his monthly and annual reports to the Board.

The Human Rights Advisor informed Members of his attendance at a Gold Command meeting in relation to the murder archive in PSNI's Seapark operation. Mr Wadham highlighted to Members that there are building

infrastructure issues on site that require urgent attention in order to protect the archive.

Members were requested to note the update of work undertaken by the Human Rights Advisor and to advise if any further areas of work should be added to the work schedule. Mr Wadham informed Members of his future work priorities and Members were content.

Following discussion it was:-

**AGREED.**

Officials to review Board representation on the Seapark Gold Group.

**(AP 8)**

#### **7.4 PSNI Serious and Organised Crime (SOC) Report**

An official of the Board provided Members with a paper in relation to the PSNI Serious and Organised Crime Report for the period January to March 2021. Members were asked to note the information provided. The official of the Board confirmed that SOC reports will be received quarterly and should be read in conjunction with NCA.

The Serious and Organised Crime (SOC) report summarises the performance and activity of PSNI in regards to key areas of focus. The report covers the type of criminality that is planned, co-ordinated and frequently targets the most vulnerable.

Board officials will present the November Committee with a composite report on SOC and NCA data for Quarter 1 providing greater detailed analysis as well as identification of key issues.

## 7.5 OPONI Quarterly Report on Complaints

A Board official provided Members with a paper in relation to the Office of the Police Ombudsman (OPONI) Quarterly Report on Complaints. The paper provides a summary of complaints and allegations received by OPONI between April and June 2021. Members were requested to note the increase in the number of complaints (31%) received by OPONI compared with the same period in 2020.

Board officials confirmed that engagement is ongoing with OPONI to obtain further information to allow for more detailed analysis into policing trends and patterns for the Committee. A detailed annual statistical report by OPONI is expected in September 2021 that aims to provide greater depth and detail on complaints, allegations, investigations and complaints.

Following discussion, it was:-

### **AGREED**

Officials to provide Members with further analysis on the OPONI complaints report. **(AP 9)**

## 7.6 Recent Board Publications

The Director of Performance presented members with the final designed publication of the Human Rights Monitoring Framework and the Annual Assessment of the Northern Ireland Policing Plan 2020 – 2025 that are on the Boards website.

It was **NOTED**.

## 7. QUESTIONS FOR THE CHIEF CONSTABLE

There were two questions identified by Members to ask the Chief Constable:

1. Seapark Archive – Can the Chief Constable provide an update on the ongoing work at the Seapark complex and in particular, reassurance that the storage of the murder archive has remained intact during this work?
  
2. Police Ombudsman’s Report – In a recent Ombudsman’s report (July 2021) entitled, “Complaints and Allegations Received by the Police Ombudsman for Northern Ireland – Quarterly Statistical Bulletin up to 30<sup>th</sup> June 2021” Members noted that the Ombudsman’s office received just over “700 complaints between April to June 2021. This is a 31% increase in the number of complaints received when compared with the same period last year”. Can the Chief Constable provide his understanding or explanation for this recent rise in complaints to the Ombudsman in this period?

#### **8. COMMUNICATION ISSUES**

There were no communication issues arising from the meeting.

#### **9. ANY OTHER BUSINESS**

No other business was conducted.

#### **10. DATE OF NEXT MEETING**

It was agreed that the next meeting would take place on **Thursday 14<sup>th</sup> October 2021** at **09.30am** in Waterside Tower.

Meeting closed at 1:00pm.

**PERFORMANCE DIRECTORATE**

**09 SEPTEMBER 20**

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**Chairperson**