

Year  
**5**  
**Human  
Rights**  
Review

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\*This report was prepared by the Policing Board's Human Rights Advisor with the assistance of the Board's Human Rights and Professional Standards team. It is designed to assess the extent of the PSNI's compliance with human rights over the last five years. Included as part of this report is the Policing Board's assessment of the compliance by the PSNI with human rights over the last two years (April 2022 to March 2024). The Policing Board, by consensus, has adopted and published this report but not every member of the Board endorses each and every part of this report.

## CHAIR'S FOREWORD

I am pleased to present the Northern Ireland Policing Board's (the Board's) 16th Human Rights Annual Report included with a Five-Year Review for the period April 2019 to March 2024.

Human Rights monitoring is a key part of the Board's work which we invest a lot of work and time to. Our Human Rights Advisor, who acts independently in reviewing matters and providing assurance to the Board has produced a number of key reports over the last 5 years. As such we agreed to take a strategic look back to assess progress made within the service, and what we have found is encouraging. This is demonstrated in the analysis of progress against recommendations made.

Responding to domestic abuse cases, supporting vulnerable victims, providing training and awareness for officers on human rights issues are all areas where positive actions have been taken.

Recognising the rights of police officers and staff, the Board also reviewed the compliance with international human rights standards regarding those working within policing as they have the same right as anyone else to respect for human rights and fundamental freedom, and to work in an environment free of harassment or discrimination in any form. The public rightly expect officers to conform to the highest professional standards in service delivery and given the focus nationally on police conduct, the PSNI has also taken more robust action to deal with its own officers and staff who have violated the law or the PSNI's own Code of Ethics.

The implementation of human rights standards and principles remains central to good policing and be pivotal to everything that PSNI do. With the specialist advice of the Board's independent Human Rights Advisor, this Report highlights good policing practice and areas in which practice could be improved with specific recommendations. Over this five-year period, the Board has made 119 recommendations for the improvement of Human Rights in Policing. In sixty percent of these, work is still ongoing and it is encouraging that the PSNI have accepted all but eight. This report contains a further 18 recommendations for PSNI to consider in making ongoing improvements.

The Board's Human Rights Annual Report provides an account of the performance of the PSNI in its compliance with the Human Rights Act 1998 and is a reflection of the work undertaken by the Policing Board, in holding PSNI to account. This Report is an open and public commentary on police performance and of the Policing Board's monitoring work carried out during a five-year period. It helps maintain public confidence in the PSNI which is paramount in securing its legitimacy. This fundamental principle lies at the heart of the work which the Policing Board, assisted by the Human Rights Advisor, carries out on behalf of everyone in our community.

The importance of having Annual Reports is reflected in the sheer breadth of work undertaken by the Policing Board and by the Human Rights Advisor in identifying emerging issues which pose new and emerging issues for PSNI. These detailed reports have led to improvements in how the PSNI address issues such as domestic abuse, hate crime, covert policing, children and young people, public order, complaints and discipline, use of force, stop and search and the permanent introduction of spit and bite guards.

The Board will continue to monitor the implementation of these recommendations and has raised this with the senior team in PSNI and the Human Rights Advisor will focus on this over this coming year.

A rights-based approach to policing protects the public and officers responsible for delivering the service. The Board's oversight regime has been recognised as good practice nationally and internationally. Having a positive human rights culture in our policing service and a willingness to be held to account to the community through the Policing Board is welcome and central to wider public confidence.

In conclusion, I would like to thank our Human Rights Advisor, John Wadham, for his work in producing this Report and for his expert advice to the Board.

## EXECUTIVE SUMMARY

The PSNI is one of the most ‘human rights aware’ police services in the UK and, perhaps globally. This direction was driven by our experience of the Troubles’, the Good Friday/Belfast Agreement and the Patten Report on policing. The approach to policing has benefitted Northern Ireland and its people and, at least in most areas of policing, has provided an important compass to assist officers in navigating their way through the difficult decisions that they have to make every day. However, there is still a way to go before the PSNI can said to be truly compliant in practice and these issues are set out in more detail in the Full Report.

The Policing Board has a statutory duty under section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 to monitor the performance of the PSNI in complying with the Human Rights Act 1998. It also has an advocacy role and in relation to Human Rights and the Board is assisted in fulfilling its duties by other oversight bodies which also make significant contributions to the work of the PSNI and its compliance with human rights, ranging from the Criminal Justice Inspectorate of Northern Ireland to the UK Joint Human Rights Committee.<sup>1</sup> Also many NGOs and others who advocate on behalf of their clients or the constituencies they serve are concerned with PSNI compliance and make a significant contribution.

This Five-Year Review sets out the Policing Board’s assessment of the PSNI’s compliance with the Human Rights Act 1998.<sup>2</sup> And what we have found is encouraging. There has been progress made in many areas, such as responding to domestic abuse cases, supporting vulnerable victims, training, and awareness for officers on human rights issues. The PSNI has also taken more robust action to deal with its own officers and staff who have violated the law or the PSNI’s own Code of Ethics.

There is a question about whether the positive desire to celebrate human rights principles that existed at the beginning of the creation of the PSNI is perhaps a little less obvious in 2023. Certainly, at a technical level, knowledge of human rights law

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<sup>1</sup> A full list is provided in the Full Report.

<sup>2</sup> Link to 5 Year Review, The detailed evidence, authority, references and footnotes for the conclusions and assessments in this Executive Summary Report are provided in detail in the more comprehensive Review and are not repeated in this summary.

is still very high amongst officers, particularly amongst senior officers. Positive responses to human rights challenges from the Policing Board, however, continue to be welcomed by the service and as the new Chief Constable recently wrote as part of the fact check process for this Review:

*"...At the outset I wish to restate my absolute support for, and adherence to, the ECHR and the Human Rights Act both personally and as the (then) Chief Constable of the PSNI. I see both the ECHR and Human Rights Act as 'friends' to policy, and not an inhibitor to anything the Police Service is required to do."*<sup>3</sup>

In relation to the 119 recommendations made over the last 5 years in the Board's in the Board's human rights reports the Human Rights Advisor has assessed that 24 recommendations have been accepted and implemented by the PSNI, 12 recommendations have been superseded and 71 are currently a work in progress. 8 recommendations have been rejected by PSNI and 4 are for other government bodies. This is an impressive record although the Board would obviously prefer a higher acceptance rate and the consequential actions delivered more quickly.

Interestingly, more specific and detailed reports such as the Strip Searching of Children and Young People appear to lead to more recommendations being accepted than more wide ranging reports such as the Privacy and Policing Report – where most of the recommendations were rejected by the PSNI.

However, it is also worth noting that the need to research, draft and publish new reports on important and urgent issues has sometimes prevented the Board and its Human Rights Advisor from pressing harder and more frequently on the delivery of recommendations from previous reports.

Senior officers and managers within PSNI are generally very committed to ensuring human rights compliance. This is both because of their personal commitment but also because it is a duty under the law. Compliance failure is often a subject of criticism by the Board and, sometimes, leads to criticism in the media. The Human Rights Advisor regularly observes the leadership on this issue provided by senior officers and the commitment is very often reflected down the ranks.

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<sup>3</sup> Letter to the Human Rights Advisor, 5 January 2024.

Partnership working between the Board and Senior PSNI Officers has led to a number of significant changes over the last five years that has improved PSNI's compliance with Human Rights. For example, the use of force and the need for the use of weapons by PSNI officers has been one of the most difficult issues that has confronted the Board and the wider Northern Ireland society in the past few years. This is particularly true of the use of public order weapons like water cannon and baton rounds, although the fact that both of these have been used infrequently and carefully in the last five years is an important success.<sup>4</sup> Use of Conducted Energy Devices, partly through the efforts of the Board, remains restricted to a few specially trained officers and is, largely an important practical alternative to the use of lethal force.

Board reports have led to the reductions in the number of strip searches of children and young people in custody and the greater focus by PSNI on the rules designed to protect them. Perhaps another example of success in promoting compliance would be the pressure from the Board to ensure greater transparency in relation to the use of covert surveillance. This has resulted in some documents, at least in part, being made public (Investigatory Powers Commissioners, annual inspection reports and Covert Human Intelligence Sources guidance). The Board's continuing role in considering such sensitive issues is demonstrated by the recent formal request for a report on the surveillance of journalists and lawyers by PSNI and by the pressure from the Board for greater openness by PSNI on whether and if so, how it uses these powers to investigate its own officers and staff. Such effectiveness must be contrasted with the increasing erosion of privacy, driven by technological developments and systems and the Human Rights Advisor carried out some ground breaking work in this area and produced the report "Human Rights Review of Privacy and Policing". Rapid technological advancements opens up a new 'frontier' of rights protection, in particular privacy rights, and a specific concern of the Policing Board is the apparent absence of consultation by the police, the DOJ, or the NIO on issues of privacy in relation to the governance of new capabilities.

Perhaps, as importantly, video recording by members of the public, CCTV and police officers Body Worn Video (BWV) help to ensure human rights compliance and

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<sup>4</sup> Although, the obvious reduction in serious public disorder remains a key factor.

increase the understanding of the public about the difficult role of officers.<sup>5</sup> The Human Rights Advisor, officials and Board Members acknowledged a shift in their attitudes and, perhaps a more in depth understanding, following the viewing of the BWV of a sample of applications of Spit and Bite Guards<sup>6</sup> and use of CEDs.<sup>7</sup>

There remains, however, work to do across several areas to ensure that policing experienced by individuals throughout Northern Ireland is human rights compliant. This can be seen in the development of policy and guidance as well as the style of policing delivered on the ground. There have been improvements in training officers on handling mental health crises. The Board is particularly concerned about the effects of an overburdened and underfunded health service on policing.<sup>8</sup> In addition, there is still a need for further refinement in policies to ensure that individuals in such vulnerable circumstances are treated with dignity and respect and that their human rights are fully upheld throughout all interactions with the police, for example in relation to strip searching of young people in custody. Moreover, there is ongoing work needed to address issues such as the use of stop and search powers to ensure they are applied in a manner consistent with human rights principles.

This document reviews the progress made by PSNI in implementing the Board's Human Rights recommendations over the past five years. It does find failures by the PSNI to deliver on previous policy recommendations and thus raises questions about its commitment to fully deliver and embed change. This criticism itself is not new, the Human Rights Annual Report by Keir Starmer KC and Jane Gordon as far back as 2005 devoted several pages to the issue of embedding human rights principle and practice into policy.

In the first year of his appointment the current Human Rights Advisor to the Policing Board had a number of meetings with senior officers in the PSNI, including the (then) Chief Constable along with PSNI lawyers, to try to persuade them to take primary ownership of human rights compliance, allowing the Board to act properly as an accountability mechanism. An outsider, looking at human rights and policing in

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<sup>5</sup> For more information on the use of BWV by PSNI see the Human Rights Annual Report 2019/20, page 33.

<sup>6</sup> A Review of PSNI's use of Spit and Bite Guards by the Policing Board, February 2022.

<sup>7</sup> [Human Rights Review of PSNI's Use of Force](#), January 2023.

<sup>8</sup> [Policing and Mental Health Related Incidents | PSNI](#), [PSNI Calls and Mental Health Related Incidents | PSNI](#)



Northern Ireland would be entitled to conclude that human rights expertise is the domain of the Board whereas the practical details of compliance in policing on the ground is exercised hundreds of times a day by hundreds of officers.

Pursuing this approach, in September 2021 the Policing Board published an updated version of its Human Rights Monitoring Framework setting out this new 'direction of travel':

*'As a public authority the Police Service of Northern Ireland (PSNI) has the primary legal responsibility for practical compliance with human rights (section 6 of the Human Rights Act 1998). The legal advice and compliance function lies with and must be embedded within the PSNI itself and the PSNI is required to assess its own policies and operations for their compliance with human rights and make any necessary adjustments.'*

In 2020, in order to press the PSNI to embed human rights, the Board requested the PSNI to ensure that all of its policies and procedures set out clearly any human rights issues that are relevant and to publish those policies and procedures. A recommendation that was repeated the following year as a result of the delay in implementation. It is not clear why these recommendations were not progressed given their importance and given the fact that the Board's approach was based on the belief that PSNI would wish itself to take ownership of human rights compliance.

However, as a result of these recommendations the PSNI produced 'Guidance relating to Human Rights for use in creating Service Policies/Service Instructions within the PSNI' and required authors of new policies to complete a standard template 'Police Service of Northern Ireland Human Rights Assessment – Screening Checklist'. Whilst many of these templates have not been as detailed as they need to be, in other cases they have been excellent. One of the best new Service Instructions (SI) that has benefitted from this new procedure being the Missing Persons Investigations service instruction.<sup>9</sup> In other cases new SI's have not picked up on the obvious human rights issues that would assist officers to carry out their

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<sup>9</sup> SI 0423, July 2023.

important roles and duties in compliance with human rights<sup>10</sup> and these issues are addressed in more detail in Chapter 9, Levers of Change.

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<sup>10</sup> Including the Policing Board's Human Rights Monitoring Framework.

## RECOMMENDATIONS

### **Recommendation 1 – Vulnerable Victims**

The collation of baseline data on repeat victimisation and the development of the bespoke toolkits for supporting repeat victims should be progressed as a priority. This should include data in relation to each victim category (domestic abuse, sexual offences, stalking, hate crime, community background etc.)

### **Recommendation 2 - Vulnerable Victims**

PSNI should explore and research the impact of the increasing requirement of police officers having to deal with people in distress is having upon policing and provide a report to the Department of Justice, the Health Department and the Assembly and others. PSNI should consider in conjunction with healthcare services, introducing Right Care, Right Person approach to deal with mental health and other vulnerabilities within an agreed timeframe.

### **Recommendation 3 – Vulnerable Victims**

PSNI should report to the Policing Board on what extra can be done to ensure victims of domestic abuse in these communities are better served and protected through their work to support victims of domestic abuse in paramilitary controlled communities. This report should also include data in relation to each victim category (domestic abuse, sexual offences, stalking, hate crime, community background etc.)

### **Recommendation 4 – Vulnerable Victims**

The Policing Board supports the recommendation within the CJINI report where it repeats its recommendations from its previous similar 2015 inspection<sup>11</sup>, calling for the establishment of a prosecution team to develop new prosecution protocol, to

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<sup>11</sup> [An inspection of the quality and timeliness of police files incorporating disclosure submitted to the Public Prosecution Service for Northern Ireland. \(cjini.org\)](https://www.cjini.org)

develop and deliver organisational investigative standards and to provide guidance on disclosure. Overall, the report recommends that PSNI and PPS jointly review the previous recommendations and provide a joint action plan for implementation. It also recommends that DOJ introduce custody time limits to speed up the criminal justice system for victims and defendants alike.

### **Recommendation 5 – Vulnerable Victims**

It is recommended that the inclusion of discussion materials in relation to consent and coercive behaviour for Training Development Unit students within the Train the Trainer course, be developed and introduced.

### **Recommendation 6 – Vulnerable Victims**

The PSNI should, in the wake of recent criticisms of their approach to race hate crime in a recent BBC Spotlight programme, report to the Board on the detail of its work in this area and produce an action plan to tackle the issue and reassure communities.

### **Recommendation 7 – Stop and Search**

The PSNI should report to the Board on any progress on the Board's four aims in relation to stop and search powers:

- To ensure the service remains transparent and accountable;
- To improve public understanding on how and why the powers are used;
- To support a more intelligence-led and targeted approach to stop and search and improve the 'stop-to-outcome' ratio.
- Record and monitor the community background of all those stopped and searched

### **Recommendation 8 – Stop and Search**

The report, ‘An Analysis of Incidents of Stop Searches Conducted on Members of the Irish Traveller Community between 1<sup>st</sup> July 2022 and 30<sup>th</sup> June 2023.’ should be published and academic experts and other relevant stakeholders on stop and search should be invited to comment.

### **Recommendation 9 – Stop and Search**

The PSNI should provide a report to the Policing Board setting out the likely reasons for this increase and for the variation of use of the JSA exceptional stop and search powers over the last five years.

### **Recommendation 10 – Stop and Search**

In England and Wales of independent bodies (HMICFRS, College of Policing and the IOPC) carried out a thorough and detailed investigation into the use of the stop and search provision available in that jurisdiction that also does not require reasonable suspicion. PSNI should ask a group of similar independent experts to carry out a review of the JSA power and the investigation should take a similar approach to establish the facts.

### **Recommendation 11 – Arrest and Custody**

The PSNI should report to the Board on progress on the changed approach to data collection in relation to community background, the data that has resulted, and any proposed substantive action it intends to take and publish the data in due course.

### **Recommendation 12 – Public Order**

Hate crime in Northern Ireland remains a real issue and, unfortunately recent research found that between 2017 and 2022, hate crimes in Northern Ireland had a lower charge rate than any other serious offenses including historically undercharged sex crimes. PSNI should report to the Board on how it is going to tackle this issue.

### **Recommendation 13 – Use of Force**

The PSNI should provide the Policing Board with a detailed paper setting out the advantages and risks associated with the new weapon Taser10® and this should include the results of any independent assessments of its capacity and dangers before any commitments to purchase.

### **Recommendation 14 – Use of Force**

A recent report on the potential causes of racial and ethnic disparities in the use of Taser in England and Wales has been published by a number of universities. A similar initiative, but extended to both the use of all weapons by PSNI officers and to include community background, should be taken in Northern Ireland.

### **Recommendation 15 – Privacy and Surveillance**

As reported in recent Human Rights Annual Reports, the PSNI continue to hold biometric data (fingerprints, photographs, and DNA profiles) on hundreds of thousands of people in Northern Ireland unlawfully and has been doing so since 2008. This is despite the fact that the Assembly drafted legislation to deal with this issue a few years ago (although never implemented). The PSNI, supported by the Policing Board, should request that the assembly legislate urgently on this issue.

### **Recommendation 16 – Privacy and Surveillance**

The PSNI should provide a report to the Policing Board on the rules and procedure on how the covert surveillance of officers and staff is used when individuals are being investigated for misconduct (rather than crime).

### **Recommendation 17 - Training**

The post of the Human Rights Training Advisor should be filled at the earliest opportunity.

### **Recommendation 18 - Policy**

The PSNI need to provide the resources to deliver human rights content for policy materials and it is suggested that responsibility for delivering this should be given to the PSNI's Human Rights Legal Advisor who should be provided with the necessary additional resources to ensure that this happens. The above guidance should also be updated to include more information linking policing practices and human rights principles and more up to date sources of information. In the event of any delay in producing a new version the current version should be published by July 2024.

## CHAPTER 1 VULNERABLE VICTIMS

After a criminal offence has been committed, a victim's first contact with the criminal justice system is often with the police. The police response to the report of a criminal offence will therefore have a direct and often decisive impact on a victim's attitude to the criminal justice system and PSNI in particular. It may impact upon a victim's willingness to support a prosecution and to report, and encourage others to report, future criminality. It is critical that the police treat all victims with compassion and respect for their dignity. They must ensure that the victim feels that the offence is being considered properly and is being taken seriously.

In examining this area, Board officials have analysed PSNI's performance in respect of the Policing Plan over the last five years and engaged with key stakeholders to consider how the PSNI identify vulnerability at the first point of contact and assess the risk of harm to victims, and the effectiveness of the PSNI response thereafter, particularly in relation to the quality of collaborative support provided with partner agencies. The findings of external reviews conducted by criminal justice organisations, alongside regular engagement with community groups and victim organisations, has been pivotal to this area in the monitoring framework.

The Northern Ireland Policing Plan 2020-2025, specifically Outcome 1, contains measures focussed on repeat victims of crime; victims of domestic abuse, child sexual abuse and exploitation, and hate crime. The Policing Plan Outcome sets out impacts that the Board wishes to see in policing in order to make Northern Ireland a safe place to live. This chapter will focus on those groups and on their right to be protected.

The PSNI Public Protection Branch (PPB), responsible for this area, has five area-based teams, aligned with the five health and social care trusts. The teams are made up of child abuse investigators, domestic violence and adult safeguarding investigators, and offender management teams. PPB teams investigate incidents related to domestic abuse graded as high risk. Most incidents involving children are investigated by PPB officers. Although local policing teams can investigate lower-risk incidents involving children, they are supported by the PPB if safeguarding issues are identified. Rape, serious sexual offences and child sexual exploitation (CSE) are investigated by a central team of specialist investigators.



## HMICFRS

The HMICFRS PEEL Inspection in 2018 found that the service had good strategies for protecting vulnerable people and supporting victims, an improvement from the 2016 inspection. The report noted that the service had a thorough understanding of the nature and scale of vulnerability in Northern Ireland, and officers and staff recognised it as a priority. It found that the service was continuing to develop its understanding of mental health and was working well with a wide range of partner organisations to tackle vulnerability. The inspection reported that the service generally investigated crimes involving vulnerable victims to a good standard with most investigations inspected allocated to officers with the appropriate skills and experience. Further HMICFRS inspections in 2020 also rated PSNI as ‘good’ in protecting and supporting victims, noting the introduction of body worn video as a positive step.

HMICFRS’ inspection of PSNI (published in October 2023)<sup>12</sup> found that PSNI had a good knowledge of vulnerability and officers/staff are aware of their responsibilities to identify it and the processes for reporting it. Call handlers identified vulnerability at the first point of contact by effectively using and recording THRIVE<sup>13</sup> risk assessments for every call. The THRIVE assessment is repeated when an officer is sent to an incident. The command and control system does not have a process to identify age-related vulnerability, instead, call handlers work on the basis that any person under 18 years of age or over 60 years of age is vulnerable, until there is information to the contrary. This positively supports a culture of identifying vulnerability. However, the inspection noted that this process needs to be repeated outside the control room. The inspection also found that PSNI’s outcome rates for victims compare favourably to those in England and Wales, citing Northern Ireland as statistically one of the safest places to live in the UK, partly due to the high standard of investigations, specifically for the most serious crimes. According to the inspection of the total number of crimes recorded by the PSNI in the year ending 31 March 2022, 19.8% were assigned outcome one, meaning a person has been

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<sup>12</sup> [The Police Service of Northern Ireland: An inspection of police effectiveness, efficiency, vetting and standards](#)

<sup>13</sup> [Threat, harm, risk, investigation, vulnerability and engagement \(THRIVE\) model - His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services \(\[justiceinspectorates.gov.uk\]\(http://justiceinspectorates.gov.uk\)\)](#)

charged or summonsed for the crime compared to the rate of 6.4% in England and Wales.

## Vulnerability

The repeat victimisation<sup>14</sup> rate in Northern Ireland for 2022/23 was 17.7%, equating to 10,665 victims, for women the rate is 19.4%, and 16.3% for males. In September 2021 PSNI started a process to address repeat victimisation to identify and target repeat victims and early indicators show that this has shown an 8.6% decrease in the number of active repeat victims who PSNI are addressing through this process, which is positive.

A welcome update is PSNI's continued participation in Multi-Agency Support Hubs which aims to bring key professional together to provide a better quality of information sharing and decision making. These Support Hubs facilitate early intervention to help reduce vulnerability. The PSNI report during 2022/23 from February 2023 to June 2023 87 repeat victims have been referred to Multi Agency Support Hubs across Northern Ireland. During 2022/23 PSNI reported on the development of baseline repeat victimisation data to provide support in assessing progress and to ensure the victim is allocated to the appropriate specialism within the PSNI. Toolkits were also developed with options including physical measures, crime prevention advice and other bespoke interventions for repeat victims. However, in June 2023, PSNI informed the Board that '*...unfortunately this work has been disrupted due to resourcing and budgetary issues, however following recent appointments to our Strategic Partnership & Prevention Branch this work is being prioritised.*' This work will continue to be monitored through the Board's Performance Committee and Policing Plan reporting mechanisms.

### New Recommendation 1

**The collation of baseline data on repeat victimisation and the development of the bespoke toolkits for supporting repeat victims should be progressed as a priority. This should include data in relation to each victim category (domestic abuse, sexual offences, stalking, hate crime, community background etc.)**

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<sup>14</sup> A repeat victim is a person who has been linked to more than one crime within the past 365 days

In July 2023 the (then) Chief Constable reported<sup>15</sup> ‘increasingly, there is a requirement for Armed Response Officers to interact with, and to provide support to, members of the public who are experiencing mental health crisis, or who are deemed otherwise vulnerable. During the year officers attended 922 incidents involving an Emotionally or Mentally Distressed (EMD) person or a person otherwise vulnerable. This is an 11.6% increase from 2021/22.’ Of concern is that PSNI report that 75% of repeat victims have been flagged as having a vulnerability (including physical and mental health, drug and alcohol dependency)<sup>16</sup>, however through this system of flagging, officers have shown that they are aware of these victims and their vulnerabilities and are using early intervention techniques to address this. Officers spend a considerable amount of time looking after people in crisis, such as accompanying vulnerable individuals to hospital Emergency Departments.<sup>17</sup> It is estimated that 70% of calls to police are not crime related and police now answer upwards of 20,000 calls annually which are crisis related or are dealing with mental health or vulnerability issues. Those who are vulnerable require a health-led response and on occasions, the arrival of police officers is not conducive to de-escalating the situation. PSNI has invested in significant training for frontline officers to better equip them to deal with the changing environment they are expected to police.

## Other Agencies

The police service are, all too often, having to take responsibility to protect the human rights of victims of crime when others, particularly, other public services have an important role. The PSNI is increasingly picking up this duty to protect victims because other services have failed or are not available ‘out of office hours’. Some of this is down to resource pressures on public services yet PSNI faces similar pressures. Apart from the fact that, on occasion, this is not a good use of officer’s expertise and PSNI’s resources, police officers often can only provide a ‘policing or criminal justice’ response when a different approach is necessary. This issue is important but cannot be explored in any detail in this report.

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<sup>15</sup> [CC End of Year Report 22-23.pdf \(nipolicingboard.org.uk\)](#)

<sup>16</sup> [The Northern Ireland Policing Plan & Performance Plan 22-23 - Annual Assessment \(nipolicingboard.org.uk\)](#)

<sup>17</sup> [Policing and mental health: picking up the pieces \(justiceinspectors.gov.uk\)](#)

## New Recommendation 2

**PSNI should explore and research the impact of the increasing requirement of police officers having to deal with people in distress is having upon policing and provide a report to the Department of Justice, the Health Department and the Assembly and others. PSNI should consider in conjunction with healthcare services, introducing the Right Care, Right Person approach to deal with mental health and other vulnerabilities within an agreed timeframe.**

## Impact on Victims

In October 2021 the DOJ launched the new Victims and Witness Strategy for Northern Ireland (2021-2024)<sup>18</sup> the long-term aim of which is to put victims and witnesses at the centre of the criminal justice system. PSNI were a partner agency contributing to the development of this strategy. This new strategy built on the previous strategy aimed at improving access to justice for all victims and witnesses and calls for the establishment of a Victims of Crime Commissioner Designate, who was appointed in March 2022. The strategy also sets out a series of measures for PSNI to meet such as reviewing the definition of vulnerability and reviewing PSNI training. PSNI's focus on victims is evident in the reporting to the Policing Board on Policing Plan measures relating to domestic abuse, hate crime, repeat victims and repeat offending.

In May 2021, Victim Support commissioned a report<sup>19</sup> to better understand and describe the adult victim's recovery journey with the majority of participants reporting a positive experience of their first interaction with the police and in their communication with the police. Many suggested that this police reaction was helpful in their recovery journey suggesting that they felt reassured, secure, listened to and believed when these interactions were positive. An issue of concern arose around the consistency of police provision.

Quality police investigations are a key component to a fair criminal justice system and in June 2023, CJINI published their inspection considering file reviews by the

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<sup>18</sup> [victim and witness strategy 2021-2024 0.pdf \(justice-ni.gov.uk\)](#)

<sup>19</sup> [Microsoft Word - Victim recovery journey - Final Report \(KMG\).docx \(victimsupportni.com\)](#)

PSNI and PPS following the pandemic<sup>20</sup>, following two previous inspections in 2006 and 2015. Progressing files in a timely manner was important in tackling avoidable delay which was not well dealt with in 2015 and there were similar findings in this inspection. The impact of delay in the system can have a detrimental impact on a victim. Following the publication of this inspection report the Commissioner Designate for Victims of Crime in Northern Ireland expressed her concern with the lack of progress stating; *“I am extremely disappointed and concerned that overall the outcomes for victims remains poor and the length of time cases are taking to progress through the system has increased. These avoidable delays increase stress and anxiety for the victim, witnesses and their families who have been psychologically preparing themselves for the trial only to have the case adjourned to a later date.”*

In October 2023 CJINI published their follow-up Inspection on the Care and Treatment of Victims and Witnesses by the Criminal Justice System<sup>21</sup> which provided an update on previous recommendations made in their 2020 Inspection. CJINI noted the commitment to vulnerability but were less satisfied with how this was understood across the organisation. The concerns raised previously around consistency of service and a single point of contact were considered in this Inspection with a joint protocol implemented with the PPS. A further recommendation notes the positive steps taken by PSNI in the provision of information to victims by police first responders, however CJINI suggest that more needs to be done regarding referrals and sign posting to Victim Support and other victims’ support services. CJINI further note the review of the training in the Police College but encourage more training at district level and on measuring its impact. A further recommendation asked PSNI to find technological solutions to review risk and identify vulnerability and while PSNI responded to this by developing an app, the first version of which was to be trialled for Public Protection Notices (PPNs) in respect of domestic incidents, it is noted by CJINI, that at the time of the publication of the inspection it had not yet been implemented. The role of the Family Liaison Officer

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<sup>20</sup> [File Quality, Disclosure and Case Progression and trial recovery from the COVID-19 pandemic. \(cjini.org\)](https://www.cjini.org)

<sup>21</sup> [Victims and Witnesses: The care and treatment of victims and witnesses by the criminal justice system in Northern Ireland. A Follow-Up Review of recommendation implementation. \(cjini.org\)](https://www.cjini.org)

was assessed and while it is a positive move that they are a centralised resource, there still remain issues regarding the training and role. CJINI encourage a follow-up review in two years.

## Training

The importance of training for new and existing officers is most important in their engagement with vulnerable victims. As previously discussed the role of the human rights training advisor within the Police College is vital to ensuring officers and staff are trained appropriately. An example of such guidance and oversight by the training advisor is a human rights audit of the PSNI Learning Technology Faculty (LTF) in December 2022, who deliver a range of technology focused training services including the use and management of police information systems (e.g. NICHE), mobile devices and radio. Whilst much of the content delivered by LTF is technical in nature and relates to the appropriate use of equipment and information systems; elements of training, in particular within the area of call handling and dispatcher, and body worn video will involve interaction and engagement with the Human Rights Act and related elements of vulnerability. Contact management/control room staff engaged as the first point of contact with the public have an important role. They must pay attention to detail from the beginning. Their tasks may include: supporting and safeguarding victims; recording information accurately; and making the most of every opportunity to secure evidence. A number of inputs within the Call Handler/Dispatch courses are delivered by external speakers or other guest speakers within the wider PSNI organisation. For example, lessons on Sexual Communication, Sexting & Harassment; Vulnerability & Victim Support and Domestic Abuse are provided by subject matter experts/guest speakers.

Furthermore, training is providing on the Control Works system to examine in more depth the practical job role in, for example, dealing with priority incidents and missing persons. Initial training for call handlers and dispatchers covers THRIVE, vulnerability, domestic abuse, mental health, missing persons and crime recording. Given that the public generally contact police during times of crisis, such crises can be heightened whenever the caller is themselves vulnerable. Risk assessment, and in particular, risk assessment of vulnerability is essential to protect the victim and the wider community. Risk assessment should be consistent, tailored to the call,

reviewed at regular intervals and recorded effectively to inform responders and other agencies involved in the incident. Similarly, risk assessment and reassessment of incident logs should also be considered however contact is made. Call handlers/dispatchers are given training on the THRIVE model in order to understand and consider the level of threat, harm and risk posed to an individual when contact is first made. THRIVE assesses the appropriate initial police response to a call for service. It allows for a judgment of the relative risk posed by the call and places the individual needs of the victim at the centre of that decision to allow for a prioritisation of the level of response needed. Course inputs are linked to THRIVE particularly in the content of mental health, domestic abuse, sexual abuse and offences against children.

During 2020 the College undertook a human rights audit of Investigative Training which delivers a range of nationally accredited and bespoke courses to assist officers in delivering professional, ethical and effective investigations. This covers areas within; the Initial Crime Investigators Development Programme, the Investigative Supervisor Development Programme, the Management of Serious and Complex Investigations Development Programme and the Specialist Child Abuse Investigation Development Programme. Courses relating to the work of PPB. The review found that courses contain job specific content relating to risk assessment on vulnerability and sufficient controls to assess vulnerable witnesses and that controls are in place to mitigate risk of unethical behaviour/oppressive interview conduct.

## Domestic Abuse

States have a positive obligation to protect victims from domestic abuse, and the ECtHR has developed case law highlighting that domestic abuse is not only a violation of Article 8

(right to a private and family life) but can also potentially be a violation of Article 3 (prohibition of torture). In *Valiuliene v Lithuania* (2013), the court explained that the very act of domestic violence is fundamentally humiliating and debasing for the victim and that the intention of the perpetrator is to belittle the victim's dignity. Therefore, all domestic abuse cases should be considered under Article 3 as the application under Article 8 alone '*would fall short of the real and full meaning of*

*violence in the domestic context and would thus fail to qualify as a gendered understanding of violence.'*<sup>22</sup>

In Northern Ireland, victims of domestic abuse/sexual abuse are still largely associated with being female. While women are disproportionately affected, men are also victims, as are older people, and people with vulnerabilities. As mentioned, Outcome 1 of the Northern Ireland Policing Plan 2020-2025 contains measures focussed on repeat victims of crime; specifically, victims of domestic abuse, child sexual abuse and exploitation, and hate crime. Domestic abuse<sup>23</sup> is an ongoing, long-term issue which accounts for a significant proportion of overall crime<sup>24</sup> across the whole of Northern Ireland. The number of domestic abuse crimes is increasing and the types of crimes are becoming more complex, since 2016/17 the proportion of sexual offences with a domestic motivation has ranged from 18.5% to 22.8% and the proportion of violence against the person offences with a domestic motivation has been at least 30%.

A Multi-Agency Risk Assessment Conference (MARAC) is a short focused meeting with the aim to increase the safety and well-being of the adults and children who have been exposed to domestic abuse. It is a meeting where agencies discuss the risk of serious harm to people experiencing domestic abuse in their local area, and make safety plans to support those at high risk.

An independent review was commissioned by the MARAC Operational Board on the effectiveness of MARAC, this has commenced with the final report received in July 2023 with a briefing on the findings in September 2023. The Chair of the MARAC

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<sup>22</sup> Valiulienė v Lithuania Concurring Opinion of Judge Pinto de Albuquerque paras 29-30

<sup>23</sup> The PSNI has adopted the definition of domestic violence and abuse as outlined in the 2016 Northern Ireland Government Strategy 'Stopping Domestic and Sexual Violence and Abuse in Northern Ireland' as: 'threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual, physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former intimate partner or family member'. 'Incident' means an incident anywhere and not confined to the home of one of the partners/family members; 'Family members' include mother, father, son, daughter, brother, sister, grandparents, whether directly or indirectly related, in-laws or stepfamily; 'Intimate partners' means there must have been a relationship with a degree of continuity and stability. The relationship must also have had (or reasonably supposed to have had) a sexual aspect, such as in the relationship between husband and wife or between others generally recognised as a couple including same sex couples.

<sup>24</sup> [Domestic Abuse Incidents and Crime Recorded in Northern Ireland Monthly Update to 31st March 2023 \(psni.police.uk\)](https://psni.police.uk)



Operational Board is meeting with DOJ/DOJ in early 2024 to discuss the governance arrangements for progress against the recommendations throughout 2024.

## Statistics

In 2022/23, the repeat victimisation rate for domestic abuse was 24%<sup>25</sup>. The trend in domestic abuse incidents has been generally upward, with an overall increase in recorded incidents in the last 10 years of 19%, although data for 2022/23 compared to 2021/22 shows a decrease of 0.9%. However, domestic abuse incidents have remained at 17 per 1,000 population in 2021/22 and 2022/23. Domestic abuse crimes have also shown an increasing trend in the last ten years, with the highest level of domestic abuse crimes recorded in 2022/23 of (22,343). The largest volume increase in domestic abuse crimes was seen within violence against the person which rose by 640 (3.7%) between 2021/22 and 2022/23. This increase should be seen in the context of the new domestic abuse and stalking offences which were introduced in February 2022. PSNI began recording these offences in April 2022.<sup>26</sup> There were 12 domestic abuse crimes per 1,000 population in 2022/23, an increase from 11 domestic abuse crimes per 1,000 population in 2021/22.

When a suspect is identified but there were evidential difficulties and the victim does not support, or withdraws their support for, police action, this is referred to as an evidence-led prosecution. This can provide a way to safeguard the victim and prevent further crimes from being committed, particularly in domestic abuse cases. Of the nine cases HMICFRS reviewed<sup>27</sup>, only one had a record showing that officers had considered progressing the case without the victim's support. In the remaining eight cases, it wasn't clear whether this had happened. They recommend that the service should make sure it consistently records whether evidence-led prosecutions have been considered in all cases where the victim has withdrawn support. This will help it fully understand whether opportunities to protect a victim from future harm or bring offenders to justice have been missed. Since the introduction of the stalking

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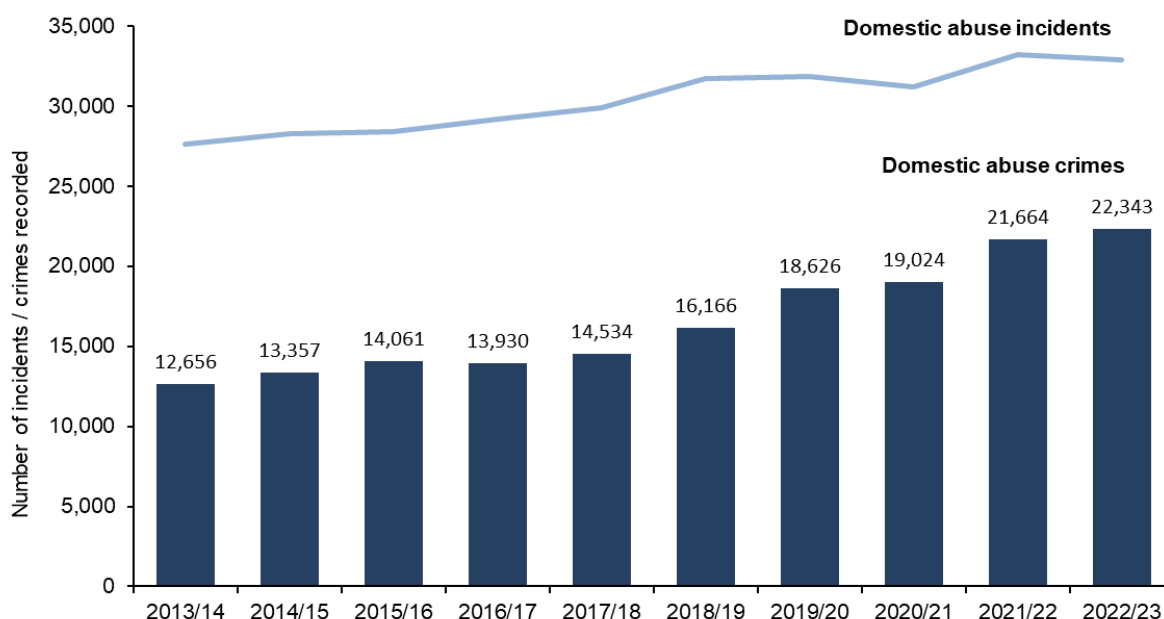
<sup>25</sup> Figures correct at March 2023 - PSNI Management Information provided to the Performance Committee as part of the service reporting on the Policing Plan.

<sup>26</sup> [Domestic Abuse Incidents and Crime Recorded in Northern Ireland Monthly Update to 31st March 2023 \(psni.police.uk\)](https://psni.police.uk) The Domestic Abuse Offence was introduced in February 2022 and is included within the Stalking and Harassment classification. For more information, please see the section 'Points to note in this bulletin'. Table 3 of the accompanying spreadsheet provides the number of stalking offences recorded to March 2023.

<sup>27</sup> [The Police Service of Northern Ireland: An inspection of police effectiveness, efficiency, vetting and standards](#)

legislation on 19 October 2023 290<sup>28</sup> arrests have been made. It is worth noting that CJINI have recently carried out an inspection on this area which will be published during 2024.

[Domestic Abuse Incidents and Crime Recorded in Northern Ireland Monthly Update to 31st March 2023 \(psni.police.uk\)](https://psni.police.uk)



ASSIST NI continue to provide advocacy services to victims of domestic and sexual abuse, they are now in Year 2 of service provision and to date this year have provided support to 812 victims including almost 100 children. This is following a triage process that sees over 5,000 victims’ cases reviewed and services considered, with additional referrals to specialist services. PSNI continue to recruit new advocates and ensure that continuous professional development in the service remains at a high standard to provide the best possible service to victims. Whilst the vast majority of victims do identify as female, there has been an increase in the number of male victims that are being supported within ASSIST services. The referral process between the ASSIST and the PSNI has also now been automated to make referrals more efficient.

<sup>28</sup> PSNI Management Information

In June 2023 the new non-fatal strangulation offence commenced and PSNI launched a training module to support this which is available to all officers and staff across the organisation. Police continue to work with their criminal justice partners to support the introduction of this new offence. Since July 2023 179<sup>29</sup> arrests have been made.

## Under-Reporting

In some traditionally paramilitary controlled areas in both communities, there remains a prevalent taboo culture of contacting the police due to fear of repercussions from paramilitary organisations or being seen to be bringing the police into the area or ‘informing’ on a perpetrator, especially if that perpetrator is a member or affiliated with a paramilitary organisation. Women’s Aid’s report to the NI Select Committee<sup>30</sup> in 2022 comments on the testimonies from women trying to escape the cycle of abuse they are trapped in, and the additional barriers they face due to their abuser being in a paramilitary organisation or having the assumed protection of a paramilitary organisation. They state that Women’s Aid have heard from many women from different community backgrounds whose perpetrators have hidden behind a paramilitary association, which due to this organisation’s ongoing intimidation of the community, means therefore that the community isn’t willing to denounce the perpetrator due to their ‘standing’ either for their known paramilitary association, or being seen as a ‘leader’ within that community. The perpetrator’s ‘standing’ is seen as more important than what they do to women behind closed doors, and therefore the woman is ostracised by the community they’ve known their whole lives for speaking out against their well-connected abuser or seeking help from the police.

Whilst PSNI continue to work with key stakeholders across the sector who ran workshops online in 2022 to highlight some of the general factors that presented challenges including, understanding the culture, however there is little evidence of the work being done to support victims of domestic abuse in paramilitary controlled communities.

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<sup>29</sup> PSNI Management Information

<sup>30</sup> [committees.parliament.uk/writtenevidence/108538/pdf/](https://committees.parliament.uk/writtenevidence/108538/pdf/)

### New Recommendation 3

**PSNI should report to the Policing Board on what extra can be done to ensure victims of domestic abuse in these communities are better served and protected through their work to support victims of domestic abuse in paramilitary controlled communities. This report should also include data in relation to each victim category (domestic abuse, sexual offences, stalking, hate crime, community background etc.)**

Work is being progressed for other victims in marginalised communities such as with the Migrant Centre NI and CaraFriend. In April 2023 two workshops were undertaken with PSNI Public Protection Branch and Local Policing Teams to understand complex conversations when members of the LGBTQIA community report domestic and sexual crimes. This focused on appropriate language, dispelling myths and how to information gather in such cases. There will be further work including audio visual material produced alongside the Migrant Centre in to focus on cultural barriers to reporting and building trust and confidence across communities.

### Domestic Homicides

In the 12 months from 1st April 2022 to 31st March 2023 there were eight homicides with a domestic abuse motivation recorded by the police, compared with nine homicides with a domestic abuse motivation recorded by the police in the previous 12 months. Five of the victims were female and three were male, compared with four female and five male victims during the previous 12 months. In December 2020 the Department of Justice launched domestic homicide reviews (DHRs)<sup>31</sup> with the first two formal reports published in November 2022 which highlighted some key findings how victims can be better supported by the PSNI. There is a need to promote an improved organisational culture where victims of domestic violence and abuse feel listened to, safeguarded, and supported, and where harmful behaviour is effectively managed. With regards to the use of police powers to safeguard vulnerable people the report stated that these were not always satisfactorily applied. PSNI advised the

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<sup>31</sup> If a person aged over 16 dies from or what appears to be from domestic violence and abuse a Domestic Homicide Review (DHR) may be carried out. Any decision to carry out a DHR will be so lessons can be learned from the death which will lead to improved responses and services for victims, and prevent future domestic homicides. Section 9 of the Domestic Violence, Crime and Victim's Act 2004 was commenced in Northern Ireland on 10 December 2020. The legislation provides specific functions for the Department of Justice and a duty on other statutory organisations to participate in the domestic homicide review process

Board in December 2022 that work has commenced on the recommendations resulting from the DHRs, with actions such as; training 3,600 police officers and staff on the new protection from stalking legislation and 6,000 officers and staff on domestic abuse legislation, coercive control, impact, and pathways to support; online use of the Public Protection Notification to expediate the referrals to support statutory agencies; and a new Service Level Agreement is being created with the Public Prosecution Service for file standards in Domestic Abuse cases.

### Legislative Developments<sup>32</sup>

There have been three key pieces of legislation introduced since February 2022.

1) Domestic Abuse & Civil Proceedings Act (NI) 2021

This legislation received royal assent in March 2021. It had an agreed period of circa 12 months for the operationalisation of the offences contained within. The key provisions within this legislation were:

- 21<sup>st</sup> February 2022 - Domestic abuse offence (including coercive controlling behaviours);
- 21<sup>st</sup> February 2022 - Domestic abuse aggravators;
- 21<sup>st</sup> February 2022 - Child aggravators. They are both for children who are present during domestic abuse allegations and for those who are direct victims as U18 (outside of the parent child relationship where it would be more appropriate to capture this under the child cruelty offence);
- 6<sup>th</sup> April 2022 - Regulations for Operation Encompass – to allow there to be legislative cover to share information for those children who are present / normally residing at a place where police have attended a domestic abuse call out in the previous 24 hours. When the “pilot” was introduced this was on the basis of securing consent; and
- Expected late 2024 Domestic abuse protection orders and notices –

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<sup>32</sup> <https://www.legislation.gov.uk/nia/2021/2/enacted>

the regulations for the application of notices and orders have to be laid before the court by February 2024 which additional time expected to ensure that post regulations being formalised the operationalisation can be completed.

## 2) The Protection from Stalking Act (NI) 2022

This legislation received royal assent on 26<sup>th</sup> April 2022, and the offences of stalking and threatening & abusive behaviour went live straight away. There was no commencement order required to be brought forward for these offences. Within this legislation there were also provisions to introduce Stalking Protection Orders (full and interim). Following a period of operationalisation they were introduced on 19<sup>th</sup> October 2023. This is the first opportunity for police to seek an order of this nature, albeit the provisions allow for this to be retrospective to the time at which the offence became law.

Following its introduction PSNI state;

‘...there has been a significant focus on quality assurance and development of Continual Professional Development, alongside preparation for new legislative provisions under the Justice (SOTV) Act (NI) 2022. Since September 2022 PPS and PSNI Domestic Abuse Policy have undertaken a robust review of no prosecution, and Not Guilty Anticipated Plea (NGAP) files which looked at the quality and timeliness of police files, compliance with the Service Level Agreement, quality of PPS decision making and compliance with PPS internal guidance. This has resulted in a number of learning recommendations being compiled to focus on evidence led prosecutions being sought where possible.’<sup>33</sup>

## 3) The Justice (Sexual Offences & Trafficking victims) Act (NI) 2022

This legislation was again introduced by royal assent and commencement (from 27<sup>th</sup> April 2022) in stages all of which are now live in respect of new offences and extension of previous offences:

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<sup>33</sup> PSNI report to Performance Committee on Measure 1.1.1 in 2022/23 Policing Plan

- a. Non fatal strangulation offence went live on 26<sup>th</sup> June 2023 – this did not remove the previous offence of choking with intent to commit an indictable offence, it added a new and standalone offence recognising the impact and aspects of non fatal strangulation (impacting on the supply of blood / oxygen to the brain by strangulation, asphyxiation, choking, drowning including using instruments);
- b. Anonymity of victims and suspects (in sexual offences) – this provision went live on 28<sup>th</sup> September 2023 and provided extended powers of anonymity to both victims and suspects. This made it an offence to release suspect information prior to the point at which they were charged by police. DOJ are continuing to have discussions with media outlets in respect of their challenges around these provisions in respect of suspects;
- c. 27<sup>th</sup> November saw the remaining offences and provisions going live. This included;
  - i. Cyber flashing (unwanted sexual images being shared / shown);
  - ii. Grooming (masquerading online as a child with the intention to communicate with an identified or as yet unidentified child with the intent to commit a relevant sexual offence);
  - iii. Voyeurism (up skirting and down blousing – as the offences have been presented in E&W although they are gender neutral);
  - iv. Threats to release private images (previously was only an offence if the images were actually shared); and
  - v. Abuse of position of trust roles extended to include those involved in sports and religious coaching.

## Training

The Policing Board last made a recommendation in respect of domestic abuse in 2020/21<sup>34</sup>, which following consideration of PSNI's implementation examining PSNI

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<sup>34</sup> Rec 12 - As a result of the proposed new legislation on domestic violence in respect of domestic abuse, harassment, stalking and coercive control, which is expected to be in place this year, it is now recommended

policy and training in respect of the new domestic abuse legislation, was closed; however, work has continued in this area, and it is regularly reported through the Policing Plan reports to the Performance Committee as outlined above.

PSNI advised the training programme for the new Domestic Abuse and Family Proceedings Bill, mentioned below, was launched in March 2021 with the aim of changing how frontline officers and staff understand and respond to domestic abuse, particularly the investigation of the new domestic abuse offence which will criminalise abusive behaviour. The programme aims to raise awareness of the varied forms of domestic abuse, physical and non-physical and provides strategies and skills to improve outcomes for victims. The Human Rights Advisor has reviewed the material and was particularly impressed with its quality.

In support of the above legislative changes there has been a commitment through the development of online training materials, digital assets, case studies, FAQs and internal guidance for all staff and officers as referenced by the former Chief Constable in his Accountability Report to the Policing Board (April 2023). Trainers have been working with PPB to design and roll out this training which is expected to be incorporated into the Local Area Training cycle in November 2023. SPOs were introduced in October 2023 with training for the introduction of the order taking the form of instructional videos and practical guides. This training has been well received and undertaken widely across the service, with Year 2 domestic abuse training currently on going in person via district trainers.

The PSNI continue to report that ASSIST NI is in Year 2 of service provision and continues to provide advocacy services to victims of domestic and sexual abuse, support has been provided to 812 victims, including 100 children. The PSNI report:

‘...whilst the majority of victims do identify as female, there has been an increase in the number of male victims that are being supported with ASSIST services. Within Quarter 2 this sees 398 females and 49 males accepted into services.’

The final roll out of ‘*Operation Encompass*’ was in May 2023, in schools across Northern Ireland. Up to June 2023, since the launch of ‘*Operation Encompass*’ there

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that PSNI should provide the Board with its draft written policy and guidance on the use of the new powers and the proposed training plan for officers. [Human Rights Annual Report 2020/21 \(nipolicingboard.org.uk\)](https://www.nipolicingboard.org.uk)



have been referrals in respect of 3480 children following 1858 qualifying domestic abuse incidents and since July 2021 PSNI have made 13,000 referrals to schools across NI following after domestic abuse calls<sup>35</sup>. In May 2023 the founders of Operation Encompass showed their support to PSNI and the Education Authority by being part of the media awareness campaign, highlighting the importance of this work and how this will benefit children in schools across the country who are seeing the trauma associated with domestic abuse.

## Sexual Offences

The 2016-20 Strategic Outcomes for Policing<sup>36</sup> set a strategic outcome to 'Improve the service to vulnerable groups in collaboration with partners in relation to: '.... sexual offences.' This has continued and the current Policing Plan 2020-2025 contains a measure to consider crime rates with reports to the Policing Board focussing on sexual offences.

## Statistics

During 2021/22, 9.0% of all sexual offences and 3.5% of rape offences were assigned outcome one. Again, this compares with outcome one rates in England and Wales of 4.3% and 2.1%, respectively. Although the comparison appears favourable, charging conditions in Northern Ireland are different to those in England and Wales. In Northern Ireland, police can charge a suspect at a much earlier stage without the approval of a prosecutor. Moreover, the figures for Northern Ireland though better than for England and Wales remain very low.

There are a range of support services for victims of sexual violence. The Rowan is the regional Sexual Assault Referral Centre (SARC) in Northern Ireland, providing professional support services to people who've been raped, sexually abused or sexually assaulted recently or in the past. They support; children, young people, adult men, and adult women and are available 24 hours a day all year. Nexus, one of Northern Ireland's largest charities supporting people affected by sexual abuse, has a helpline which has seen an increase in calls in the last year of 75% from 1,927 in 2021-22 to 3,378 in 2022-23. Sexual Offences Legal Advisors (SOLAs) are qualified

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<sup>35</sup> BBC Spotlight NI 'The Fear Inside' 28 November 2023

<sup>36</sup> <https://www.nipolicingboard.org.uk/sites/nipb/files/media-files/Strategic-outcomes-for-policing-2016-2020.pdf>

lawyers who can offer legal advice and support to adult victims of a serious sexual offence, based in Victim Support NI and are independent from the police and prosecution services and who can advocate on a victims' behalf and represent their interests to other organisations within the criminal justice system, like the PPS or PSNI. PSNI has worked with Nexus to design 'Rape Myths' training for the police service working in this area.

Sexual offences have shown an upwards trend, with sexual offences representing 3.8% of overall recorded crime in 2022/23<sup>37</sup> with 4,232 sexual offences recorded, increasing by 4.7% compared to figures for 2021/22. Of more concern is that figures show a charge/summons rate of 2.9% for rape and 8.3% for other sexual offences.<sup>38</sup> A high attrition rate for rape and sexual crimes has been identified as a key organisational priority and the PSNI is working with DOJ and academics to understand the reasons for disengagement in the criminal justice journey, the Policing Board will continue to monitor this area.

According to the PPS 'Annual Statistical Bulletin on Cases Involving Sexual Offences 2021/22'<sup>39</sup> the PPS received a total of 1,509 files involving a sexual offence. This was an increase of 3.8% in the number of files received involving an offence of rape, from 578 to 600. The overall conviction rate was 73.2%. Files received included a total of 1,573 suspects, 622 of whom were charged or reported for rape (an increase of 2.3% on 2020/21) and 951 were in respect of other sexual offences (a decrease of 9.9%). The test for prosecution was met in respect of 35.5% of decisions, which included 546 decisions for prosecution<sup>40</sup> or diversion from the courts, representing an increase from 2020/21 (27.8%). Of the 994 decisions not to prosecute issued during 2021/22, the vast majority (98.3%) did not pass the evidential test. The remaining 1.7% did not pass the public interest test. The average number of days for the issue of indictable prosecution decisions (prosecution in the Crown Court) in

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<sup>37</sup> PSNI Management Information. Sexual offences data can include historic offences, where an incident is reported months or years after it occurred.

<sup>38</sup> PSNI Management Information

<sup>39</sup> [PPS publishes latest statistical bulletin on cases involving sexual offences | Northern Ireland Statistics and Research Agency \(nisra.gov.uk\)](https://www.nisra.gov.uk/pps-published-latest-statistical-bulletin-on-cases-involving-sexual-offences)

<sup>40</sup> This is a two-stage test: The Evidential Test – the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction. The Public Interest Test – prosecution is required in the public interest. Most serious offences and offences against women, children and vulnerable victims will usually pass the public interest test.

cases involving sexual offences was 274 calendar days which is a slight decrease of 19 days in 2021/22. The average for summary prosecution decisions (prosecution in the Magistrates' or Youth Courts) was 28 days, which is an increase of 12 days from 2020/21. Delay in these cases continues to be of concern to agencies supporting victims.

## **Gillen Review**

One of the most significant reports to be published into sexual offences is Sir John Gillen's Report into the law and procedures in serious sexual offences in Northern Ireland<sup>41</sup> in April 2019, which is an extensive review of the legislation and procedure covering the prosecution of serious sexual offences to determine whether current arrangements deliver the best outcomes for victims, defendants and justice, and to make recommendations for improvements. The report makes 16 key recommendations which are continuing to be implemented by PSNI and partners. The PSNI report that the:

“Public Protection Branch is continuing to work closely with the PPS Serious Crime Unit (SCU) to improve rape and serious sexual crime investigations, and progress on the Gillen Review<sup>42</sup> recommendations including the introduction of Disclosure Management Documents and are preparing their joint seven-year strategy on investigating and prosecuting Serious Sexual offences.”<sup>43</sup>

## **External Inspections/Reports**

Of further concern in Northern Ireland, is that when victims of sexual crime are referred to counselling after their attack to help them process the trauma, during the investigation or subsequent court case, the police, prosecution, or defence may seek access to their counselling records which may then be used to question the victim in court.<sup>44</sup> In February 2023, Northern Ireland's Commissioner for Victims of Crime Designate Geraldine Hanna expressed her concern that this is putting some victims off accessing crucial therapeutic support and is causing those that do avail of support to censor what they say for fear of how it may be used against them. The

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<sup>41</sup> [gillen-report-may-2019.pdf \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/publications/gillen-report-may-2019.pdf)

<sup>42</sup> <https://www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni>

<sup>43</sup> PSNI Report to Performance Committee on Policing Plan Measure

<sup>44</sup> This is more likely when the alleged perpetrator raises the consent of the victim as a defense to the charge.

Commissioner is working closely with the Bar of NI, the judiciary, voluntary sector, the Public Prosecution Service, the PSNI, and counselling organisations with the hope of finding a positive way forward on this issue.

Concerns were expressed by some police officers about the availability of equipment and trained staff to facilitate video-recorded statements. However it is now welcome that a new facility that ensures vulnerable witnesses giving evidence will not meet defendants within a court building, was officially opened in Belfast on 28 September 2023, and enables vulnerable or intimidated victims and witnesses to provide their evidence to the court, using live link video technology.

A CJINI Inspection in 2018/19<sup>45</sup> aimed to investigate how the criminal justice system deals with sexual violence and abuse in Northern Ireland with the PSNI establishing a Central Disclosure Unit with experienced detectives overseeing file quality and disclosure in serious sexual offence cases as a result. However, a recently published CJNII report<sup>46</sup> looking at file quality and disclosure more generally noted that:

‘expert evidence, where needed, is a critical part of a case. It includes forensic evidence and medical evidence both of which were cited by the legal professionals as key causes of delays in making decisions and progressing cases at court. Streamlined processes had been promoted by the police and prosecution for example, a shortened version of forensic drugs reports which in turn aided the defence lawyers to advise their clients. Other forms of forensic evidence particularly digital evidence were more problematic. As discussed in CJI’s Cyber Crime report, there were significant delays in obtaining evidence from mobile telephones, and with the continued growth of social media, there were increasing pressures on the police causing delays in progressing cases. This was particularly relevant in sexual violence cases ...’

The report notes that the Policing Board no longer required the PSNI to prioritise and report on two key collaborative projects - the Working Together Project and the Indictable Case Process (ICP). The ICP was the criminal justice system response to improving Crown Court cases to ensure the production of higher quality investigation

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<sup>45</sup> [Without witness. Public Protection Inspection 1: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland. \(cjini.org\)](#)

<sup>46</sup> [File Quality, Disclosure and Case Progression and trial recovery from the COVID-19 pandemic. \(cjini.org\)](#)

and prosecution files, reduce the number of adjourned hearings and trials at court, encourage earlier guilty pleas by defendants, and create a collaborative culture among key organisations in the criminal justice system. Due to the impact of reduced resources and reducing officer numbers the CJI note that they have;

‘significant concerns regarding the longer-term ability for the Police Service to ensure the quality and timeliness of police files and how well disclosure would be handled.’

## New Recommendation 4

**The Policing Board supports the recommendation within the CJINI report where it repeats its recommendations from its previous similar 2015 inspection<sup>47</sup>, calling for the establishment of a prosecution team to develop new prosecution protocol, to develop and deliver organisational investigative standards and to provide guidance on disclosure. Overall, the report recommends that PSNI and PPS jointly review the previous recommendations and provide a joint action plan for implementation. It also recommends that DOJ introduce custody time limits to speed up the criminal justice system for victims and defendants alike.**

The Department of Health and the Department of Justice jointly published a draft Domestic and Sexual Abuse Strategy<sup>48</sup> in early 2023 covering the time period up to 2030, setting out a renewed focus on tackling domestic and sexual abuse. The Strategy has four pillars of Partnership, Prevention, Support and Justice, each having its own expected outcomes and key priority areas with a focus on the strengthening of the police response to domestic and sexual abuse, monitored through a Strategic Oversight Board. Following discussions with a number of key strategic partners in the domestic abuse/sexual abuse area, there has been a separate pillar to reflect children and young people.

It is important that the PSNI provide a victim-focussed service where they can aim to play their part in securing appropriate and effective criminal justice outcomes in order to maintain and enhance confidence in policing.

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<sup>47</sup> [An inspection of the quality and timeliness of police files incorporating disclosure submitted to the Public Prosecution Service for Northern Ireland. \(cjini.org\)](https://www.cjini.org)

<sup>48</sup> [dsa-strategy.PDF \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk)

## Training

Learning within the 23-week Student Officer Training Program (SOTP) is focused upon the application of police powers in accordance with relevant legislation, codes of practice and multi-agency operating procedures. Learning is delivered within six distinct topic areas, namely: Foundations of Policing, Criminal Justice System, Investigative Skills, Road Policing, Public Protection and Safety, and Officer Safety and Wellbeing. Within these areas, students are trained on a range of subjects including the management of those offences and incidents which cause harm and impact on the most vulnerable in society. As a consequence of this, human rights considerations are required to be understood and applied throughout the programme in order to prepare student and probationer officers for the demands of operational policing. In 2019 the College conducted a human rights audit of this programme, considering lessons and material in domestic abuse, sexual offences, adult safeguarding & mental health. The audit found that improvements suggested by the Training Advisor have been implemented, in particular, it was evident there is an improved focus on communication skills.

## Violence Against Women & Girls

Westminster has ratified the Council of Europe's Istanbul Convention (the Convention on preventing and combating violence against women and domestic violence), which came into force on 1st November 2022. The new legislation is therefore an important step in bringing Northern Ireland in line with the rest of the UK and internationally regarding violence against women and girls, which includes domestic abuse and stalking. In the UK's Report submitted to the Council of Europe Convention on preventing and combating violence against women and domestic violence on 30 June 2023, it notes the following progress.

*"In Northern Ireland, the Department for Communities has made changes to legislation to support victims of domestic violence. The changes apply equally to men and women but are expected to benefit mostly women, as domestic violence occurs most commonly against women. In line with commitments made under 'New Decade New Approach', the Northern Ireland Executive agreed to the development and publication of a suite of Social Inclusion Strategies, including a new Gender Equality Strategy (GES). The Strategy is being developed using a codesign approach with involvement*

*from stakeholders representing both the men's and women's sectors. Subject to Executive approval, the GES will aim to tackle gender inequality and address the barriers that gender stereotypes can present. Steps will be taken to ensure that the GES is appropriately aligned to and complements the new Ending Violence Against Women & Girls Strategy."*

A HMICFRS investigation in 2020 in England and Wales showed that victims of crime with insecure immigration status do not report domestic abuse due to the fear that their information will be forwarded to Immigration Enforcement. In February 2023 the Detail reported that they had discovered that PSNI had handed over information on 33 victims to Home Office Immigration Enforcement between May 2020 and May 2022 and correspondence from the Domestic Abuse Commissioner for England and Wales published in 2023<sup>49</sup>, showed that all police forces have shared information with Immigration Enforcement over the last three years. In respect of the 33 in Northern Ireland, 13 of these were victims of human trafficking, modern slavery and domestic abuse. This raised serious concerns by migrant groups supporting victims who are of the view that this goes against current PSNI strategies whose aim is to protect victims and most recently women and girls.

In 2020 the NPCC approved guidance addressing information sharing with the Home Office where the victim or witness is a suspected immigration offender. While the guidance highlight information sharing between the different law enforcement bodies to uphold the law, it does not appear to identify any specific statutory requirement for the sharing of information on an individual's immigration status, but instead sets out the lawful basis for doing so. Previous NPCC guidance was assessed by HMICFRS, IOPC and the College of Policing as being eligible for the subject of a super-complaint in 2020 finding that victims of crime with insecure or uncertain immigration status were fearful that if they report crime, their information would be shared with the Home Office. Migrant groups have called for a 'firewall' between policing and immigration, however this was rejected in December 2021 in a government review claiming it could be more harmful to potential victims, witnesses and the public interest.

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<sup>49</sup> [Safety-Before-Status-Report-2021.pdf \(domesticabusecommissioner.uk\)](#)

When questioned on this matter by the Policing Board, the PSNI stated that while their policy is derived from the revised 2020 NPCC policy, they instructed their officers in July 2021 to not routinely search police databases for the purpose of establishing the immigration status of a victim or witness. However, they note that there may be circumstances when an officer may become aware of an individual's insecure immigration status and if that individual is wanted for immigration offences a referral to and advice from the Home Office would be sought. The Police National Database, where immigration flags are held was developed in response to recommendations on information sharing between agencies made in the Bichard inquiry (following the murders of Holly Wells and Jessica Chapman. They further note the importance of the Home Office National Referral Mechanism 'with consent' referrals which allow victims to access a range of services and support.

Between May 2020 and February 2023, the Home Office National Command and Control Unit (HONCCU) received 722 calls from PSNI, 43 of which related to individuals as victims 24 of which relate to Police Service Modern Slavery and Human Trafficking and rather than being referrals on immigration status, informing the HONCCU that the individual is a victim of crime ensures that no further action is taken by the Home Office and provides a gateway to support services. Further policy work both nationally and in PSNI is being developed and on 9 November 2023 the Domestic Abuse Commissioner for England and Wales published a briefing setting out the necessity for a firewall between statutory services and Immigration Enforcement.

### **Executive Office Strategy**

The Executive Office launched their Strategic Framework for Ending Violence Against Women and Girls in July 2023 and PSNI published their Violence Against Women & Girls (VAWG) Strategy<sup>50</sup> in September 2022 which sets out their action plan to tackle violence<sup>51</sup> against females in Northern Ireland and reported to the

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<sup>50</sup> [Tackling Violence Against Women and Girls Action Plan \(psni.police.uk\)](https://psni.police.uk)

<sup>51</sup> Offences of violence against the person (excluding death or serious injury caused by unlawful driving and corporate manslaughter) and sexual offences, where the gender of the victim is defined as female or transgender



Policing Board in October 2023 with an update on the implementation of their own VAWG Strategy.<sup>52</sup>

The two outcomes of the Strategy are; ‘Contribute to having a society in which violence and abuse against women and girls in any form, anywhere, is not acceptable and will not be tolerated’; and ‘Build trust and confidence in women and girls in policing’, these will be delivered through 41 actions/measures and are reported to the Performance Committee of the Policing Board who will monitor implementation and progress. It is noted that in comparison to their England and Wales counterparts where a budget of £60 million is in place, PSNI have no additional capital spend, however the statistics are favourable, such as there is a 6.4% outcome rate in NI for rape whereas in England its 1.9%. The figures in Northern Ireland remain low.

## Statistics

In the rolling 365 days to the 31<sup>st</sup> August 2023 there were 25,870 offences recorded which match the criteria of a VAWG offence, a reduction of 6.3% on the previous 365-day period, and accounting for 23.5% of all crime. VAWG victims account for 75.6% of all victims of sexual offences and 48.4% of violence against the person offences which makes for stark reading. There are 3,354 repeat victims of VAWG offences, a repeat victimisation rate of 18.7%. There are 481 repeat VAWG offenders<sup>53</sup>, equating to repeat offending rate of 12.2%. Repeat VAWG offenders committed 1,480 (26%) offences in the 365-day period. A charge/summons outcome has ranged over the last five years between 30% (2018/19) and 19% (2019/20), although most years it has been around 20%. The charge/summons rate for 2022/23 is 19.7%, an increase on 2021/22 when it was 19.0%.<sup>54</sup>

Research published by Queen’s University Belfast and Ulster University highlighted an alarming amount of unwanted sexual encounters, following a survey of over 2,000 students across Northern Ireland. A range of collaborative measures have been put in place to protect women and girls, such as; the Ask for Angela scheme, Operation Vigilant aimed at protecting Women and Girls through coordinated deployment of

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<sup>52</sup> [Tackling Violence Against Women and Girls - Action Plan - One Year On \(psni.police.uk\)](#)

<sup>53</sup> Repeat offenders are defined as “offenders who have been linked by an Offender Detection report to two or more crimes in the last year”. These individuals may or may not have been convicted of an offence.

<sup>54</sup> PSNI Management Information

operational assets on the streets, the ONUS Safer Places scheme which involves 1,700 businesses registered keeping officers better informed in terms of key locations, developments have been made with the Night Time Economy group with the introduction of the safer socialisation steering group with Hospitality Ulster and following an increase in cases of spiking, partnership work with Women's Aid.

## Training

Following a previous visit by the Policing Board's Human Rights Advisor in 2021/22, informal comments were raised by the Policing Board on how trainers approach and discuss issues of consent and coercive behaviour within the classroom with students. This is separate to the identification of relevant offences or the use of police powers in investigating crimes, instead focusing upon integrity and safe classroom management. The recent murder of Sarah Everard and renewed focus upon VAWG/domestic violence/coercive control/misogyny has highlighted training issues., Discussion materials for TDU (Training Development Unit) students within the Train the Trainer course can act as a further element of assisting and equipping trainers to manage and challenge professional conduct, behaviour, standards and ethics in order to create a learning environment where learners can feel safe, be safe and can develop skills to appropriately challenge bias/attitude/perception or unethical behaviour and to continue to promote a policing service that can maintain public confidence. Inspired by national Project Servitor, the PSNI has recently piloted Project Vigilant by training two Tactical Support Group units to spot the signs that someone is planning or preparing to commit a crime, with a focus on VAWG offences. These units were deployed as part of a small pilot to patrol VAWG hotspots primarily focussing on the night-time economy over the Christmas period as part of a focus on 'Safer Spaces'. The pilot is currently being evaluated and PSNI are considering how this training can be rolled out across the rest of the service.

## New Recommendation 5

**It is recommended that the inclusion of discussion materials in relation to consent and coercive behaviour for Training Development Unit students within the Train the Trainer course, be developed and introduced.**

## Hate Crime

Collecting data on hate crime is essential for tracking patterns in and for increasing understanding of the crime and assists in monitoring why police attempts to combat hate crime are not as successful as they could be. PSNI records and publishes data on hate incidents and hate crimes on a quarterly basis.<sup>55</sup> The Board continues to consider the PSNI response to overall hate crime as part of the Police Performance Plan measure 1.1.1 which examines the repeat victimisation rate of all hate-motivated crime and requires the PSNI to report on its initiatives designed to support those victims.

### Statistics<sup>56</sup>

In the year ending 2022/23 there were 185 repeat victims of hate crime, an increase of 25 compared to the previous financial year. There was an increase in the number of incidents recorded in three of the six hate crime categories (sectarian, disability and transphobic) when compared to the previous 12 months.

In September 2023, the PSNI reported that 11.1% of reported hate motivated offences have resulted in a charge/summons outcome, which has remained consistent in the last five years, compared to 18.7% of all recorded crime. In September, the PSNI have also noted that 20.9% of hate crimes have been assigned the outcome 'Investigation Complete - no suspect', which has steadily decreased from 31.7% in 2017/18.

### Marrinan Review

In June 2019 the Department of Justice established an independent review<sup>57</sup> "to consider whether existing hate crime legislation represents the most effective approach for the justice system to deal with criminal conduct motivated by hatred, malice, ill-will or prejudice, including hate crime and abuse which takes place online".

Recommendations proposed by Judge Marrinan were designed to consolidate all hate crime law into one piece of legislation, to expand the categories that would trigger such prosecutions and/or increased sentences and ensure that all such

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<sup>55</sup> [Hate Motivation Statistics | PSNI](#)

<sup>56</sup> PSNI Management Information

<sup>57</sup> [hate-crime-review.pdf \(justice-ni.gov.uk\)](#)

crimes were properly recorded. However, the report raised a number of difficult questions which need to be considered and resolved by the Assembly.

The Board noted, however, that the failure to protect victims of hate crime is an important human rights issue and that without improvements in hate crime laws, the PSNI will be hampered in its duty to respond effectively. His report recommends a new definition of hate crime;

“A hate crime may be defined as a criminal act perpetrated against individuals or communities with protected characteristics based on the perpetrator’s hostility, bias, prejudice, bigotry or contempt against the actual or perceived status of the victim or victims.”

Since then, the Department of Justice established a dedicated hate crime branch to progress the recommendations. Work has been taken forward to progress the implementation of non-legislative recommendations, in addition to the development of a Hate Crime Bill to be introduced in the next mandate.

## **NPCC**

The National Police Chiefs’ Council/Independent Advisory Group (NPCC/IAG) Hate Crime Audit in September/October 2022 aimed to provide the PSNI with an independent review of performance levels and identify any areas for improvement in relation to hate crime. The findings were positive with the report ‘highlighting that PSNI’s records were some of the richest seen, with few missed opportunities and displayed empathy to the victim. In addition to the examination of Police records, the audit team engaged with victims to understand how they felt about the service they had received. The report outlines that 75% of the victims spoken to saying the service they received from PSNI was ‘excellent or good’<sup>58</sup> and the recommendations are currently being worked through to form a baseline to improve future service delivery.

## **Training**

In 2021 the Board’s Human Rights Advisor to the Policing Board sampled the lesson plans for the role of Hate and Signal Crime Officer, which the Advisor welcomed. This

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<sup>58</sup> [Chief Constable's End of Year Report 2022-2023 \(psni.police.uk\)](https://www.psnipolice.uk/Chief-Constable's-End-of-Year-Report-2022-2023)

is a two-day programme designed for officers performing an enhanced Hate Crime role regarding sectarian, disability, race, transgender identity and sexual orientation hate crimes. The training is delivered by community and advocacy groups. The programme includes the following content: Identifying barriers to reporting for the monitored strands of Hate Crime, Outlining misconceptions around migration, Outlining the PSNI objectives in dealing with Hate and Signal Incidents, Explaining how these objectives fit alongside Policing with the Community Values.

### **Race Hate Crime**

According to the 2021 Census, 65,604 people or 3.4% of Northern Ireland's population are from ethnic minorities. This has increased from 32,414 people or 1.79% in the 2011 Census. In 2021 the largest ethnic group was Asian/Asian British (1.6%), followed by mixed/multiple ethnic groups (0.8%) and Black/African/Caribbean/Black British (0.6%). Other ethnicities and Arab made up 0.4% of the population with the smallest group being Irish Travellers who made up 0.1% of the population.

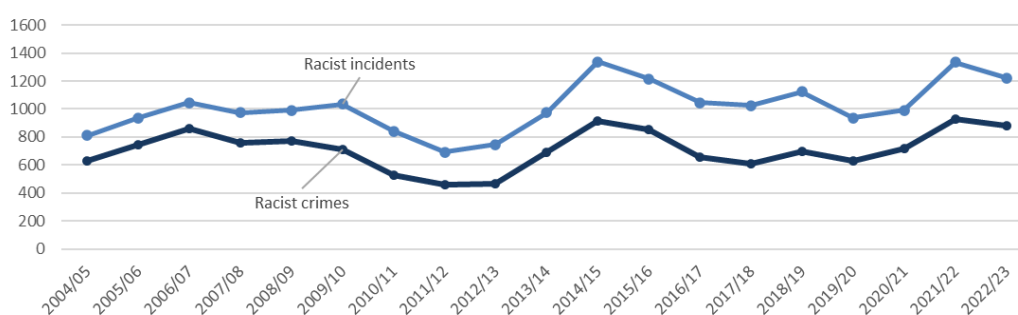
In June 2017, the Policing Board published its dedicated human rights thematic review which examined all aspects of the police response to racism, from prevention to detection, from victim support to engagement with the wider community. The thematic report, which was prepared by the Board's then Human Rights Advisor on behalf of the Performance Committee, provided an in-depth scrutiny of the service but also highlighted the good work taking place across the PSNI to tackle racist hate crime and to secure safer communities for the whole of Northern Ireland. It contained 14 recommendations, all of which were implemented.

However, since then, in October 2021 Amnesty International called Belfast:

*“a safe place for racists’ citing that ‘if you commit a racially motivated hate crime here, you have a 90% chance of getting away with it....Police figures show that the vast majority of racist hate crimes in Northern Ireland go unpunished.”*

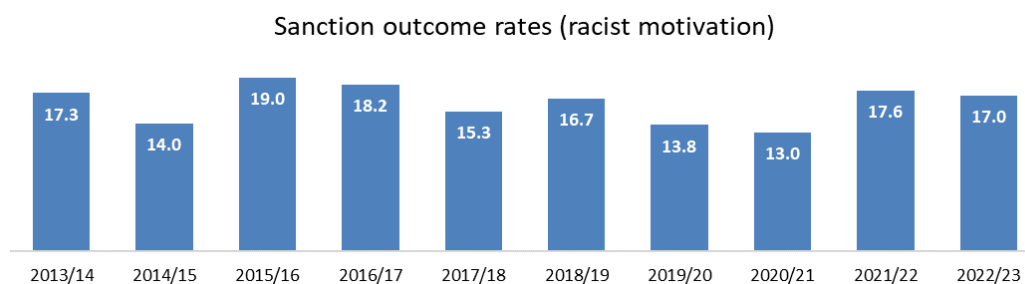
The statistics show that in 2022/23 the sanction outcome rates for racist motivation hate crimes fell 0.6 percentage points to 17.0% (2021/22, 17.6%)<sup>59</sup>. Sanction outcomes include charge/summons, cautions (adult and juvenile), community resolutions (formerly referred to as discretionary disposals), penalty notices for disorder, and offences taken into consideration.

PSNI data for the period 1 July 2022 to 30 June 2023<sup>60</sup> showed there were 1,267 racist incidents recorded by the police in Northern Ireland, 34 fewer than for the previous 12 months. Of these, there were 543 incidents which did not involve a crime (that is, incidents where the circumstances did not amount to an offence being committed). The remaining 724 incidents involved one or more crimes (amounting to 880 racist crimes in total). Not all racist incidents will result in the recording of a crime, as what has occurred in the incident may not be of the level of severity that would result in a racist crime being recorded and some racist incidents will result in multiple crimes being recorded. Around two in five incidents recorded in this time period did not result in a crime being recorded. The number of racist crimes recorded by police also decreased with 876 recorded in the 12 months to June 2023, a reduction of 21 on the previous 12 months. The number of racist incidents (7) and crimes (5) per 10,000 population remained the same as the previous year. Racist crimes represented 0.8% of all recorded crime.



<sup>59</sup> PSNI Management Information

<sup>60</sup> [Hate Motivation Statistics | PSNI](#)



In response to an Assembly Question in March 2021, the Justice Minister commented that work was underway within the Department to combat racist hate crimes, as part of wider hate crime actions, and to support victims of all crime, including race hate, through the Victims and Witnesses Strategy. The Minister noted that there needs to be emphasis on preventative actions, focused on societal attitudes and community cohesion, moreover, the Minister outlined that the Department is in discussion with The Executive Office, which has responsibility for the Racial Equality Strategy and Together: Building a United Community (T:BUC) Strategy aimed at improving good relations, to discuss opportunities to connect and strengthen this work with community safety commitments. The Minister further commented that improving the effectiveness of the criminal justice system is considered necessary as a robust response to enforcement.

A positive measure has been that the Hate Crime Advocacy Service, jointly funded by the PSNI and DOJ, has moved to a commissioned service model with effect from 1 April 2022. This service offers a safe and confidential space to provide support to victims of hate and signal crimes across the different protected characteristics, delivered through a consortium of advocacy organisations, including: Victim Support NI, Leonard Cheshire, the Rainbow Project and the Migrant Centre NI. It is encouraging that all police districts have a Hate Crime Champion at Chief Inspector rank who is responsible for ensuring that hate crimes are recorded and investigated accurately. The Police Property Fund, administered by the Policing Board, has provided funding to a range of initiatives aimed at tackling racism in communities and improving local community safety.

The PSNI's approach to race hate has been criticised by a recent BBC Spotlight investigation. The programme suggested that the PSNI approach was based on resolving community tensions rather than protecting the ethnic minority and black communities and robustly investigating crime.<sup>61</sup> However, the new Chief Constable and other senior officers, when questioned by Board Members at the public session two days later appeared to understand the criticism levelled by the programme and were committed to criminal investigation approach.

## New Recommendation 6

**The PSNI should, in the wake of recent criticisms of their approach to race hate crime in a recent BBC Spotlight programme, report to the Board on the detail of its work in this area and produce an action plan to tackle the issue and reassure communities.**

### Sexual Orientation Hate Crime

Sexual orientation hate crimes represented 0.3% of all police recorded crime<sup>62</sup>.

There was a sharp increase in the number of sexual orientation motivated incidents and crimes in 2020/21 and 2021/22, followed by a decrease in the latest financial year, 2022/23 with 435 sexual orientation incidents recorded by the police and 290 sexual orientation crimes recorded by the police. Despite this fall, both incidents and crimes recorded their second highest levels since the data series began in 2004/05.

The Rainbow Project is a Northern Irish Charity representing the LGBTQ+ Community. They argue that many incidents do not reach the bar of being a criminal offence and many young people do not report hate crimes and incidents to the PSNI<sup>63</sup>. They state young people fear further abuse and harassment if a report is made. A positive outcome for the victim who does make a report is that they are signposted to support provided through the Hate Crime Advocacy Service (HCAS).

Although a decrease in incidents and crimes has been recorded for 2022/23 it reflects that more victims are coming forward to report crimes than in previous years.

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<sup>61</sup> Transmitted on 5 December 2023.

<sup>62</sup> [Hate Motivation Statistics | PSNI](#)

<sup>63</sup> <https://www.belfasttelegraph.co.uk/news/northern-ireland/record-number-of-lgbtq-hate-crime-incidents-reported-in-northern-ireland-branded-shocking-by-local-charity/41667137.htm>



This is reflected in figures for England & Wales<sup>64</sup> also where the numbers fell for the first time on record by 6% on the previous year.

### **Disability Hate Crime**

There is no specific hate crime legislation designed to protect people with disabilities or for every group of people protected by equality laws in Northern Ireland. The Criminal Justice (No.2) (NI) Order 2004 enables a sentence to be increased where it is proven that the basic offence for which a person has been convicted was motivated by hate crime against one of the currently protected characteristics (race, religion, sexual orientation, or disability). This legislation has been criticised because the hate element of the crime is only considered at the sentencing stage and can sometimes be overlooked. The person is only charged with the crime of assault rather than the hate element that motivated it. The DOJ has indicated that a new Hate Crime model is to be considered further following the judge's review.

Section 2 of the current Criminal Justice (No.2) (Northern Ireland) Order 2004 provides for two thresholds for proving aggravation (currently by hostility) – where the offender 'demonstrates' hostility towards the victim or where the offence is 'motivated (wholly or partly) by' hostility. There is a rationale in the judge's report for including 'by reason of' as a third threshold for proving aggravation based on protecting vulnerability and equality groups, particularly disability victims. However, the DOJ in its response to the Marrinan report has referred to complexities associated with the third threshold but has committed to undertake further work regarding the impact of the inclusion of this additional threshold.

Some progress has been made in NI in improving legal support for the victims, witnesses and alleged perpetrators of crime who have a disability through the development of the Victims Charter. The United Nations Convention on the Rights of People with Disabilities ((CRPD) requires that training be provided for people working within the criminal justice system, including police officers, as an effective

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<sup>64</sup> [Hate crime, England and Wales, 2022 to 2023 second edition - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/hate-crime-2022-to-2023-second-edition.pdf)

measure to address stigma and promote ways to address barriers of access to justice.

Disability incidents increased from 123 to 139 and crimes rose from 93 to 102<sup>65</sup>. According to Disability Action NI deaf and disabled women are at greater risk of violence, abuse, and exploitation than people who are not disabled and experience disproportionate levels of domestic violence and face barriers to accessing appropriate support.<sup>66</sup>

Accessibility to justice and specifically the police has been cited as a concern in research conducted in 2021<sup>67</sup> which noted an example of a deaf person in Northern Ireland who rang the police in England, even though there was a police station close to them in Northern Ireland because the legal system was considered inaccessible to deaf people.

There are challenges associated with the identification of disability when disabled people are held in custody. A person who is arrested may have undiagnosed mental health issues and may not wish to disclose the condition. Research conducted in England and Wales illustrates that questions such as ‘do you have a mental illness’ were unlikely to elicit a true response, with challenges particularly highlighted with regard to a custody setting<sup>68</sup>. During the research for the Policing Board’s review of the Strip Searching of Children and Young People in PSNI Custody, the Human Rights Advisor noted the issues experienced by children and how this would most likely be replicated for a vulnerable adult with a disability.

### **Sectarian Hate Crime**

During 2022/23 incidents and crimes<sup>69</sup> with a sectarian motivation showed the largest overall increase with 171 more incidents and 141 more crimes, representing 0.8% of all police recorded crime. The level of sectarian incidents in 2022/23 is the second highest financial year recorded since 2015/16, both incidents and crimes have increased since 2018/19. Attacks on premises are recorded where a crime has a sectarian motivation, where the premises is the intended target of the attack, and

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<sup>65</sup> [Hate Motivation Statistics | PSNI](#)

<sup>66</sup> [Disability Strategy Expert Advisory Panel \(communities-ni.gov.uk\)](#) pp.59-60

<sup>67</sup> [Implementing Article 13 of the UNCRPD postprint.pdf \(qub.ac.uk\)](#)

<sup>68</sup> [the-welfare-of-vulnerable-people-in-police-custody.pdf \(justiceinspectorates.gov.uk\)](#)

<sup>69</sup> [Hate Motivation Statistics | PSNI](#)

where the premises are one of the following: a church or chapel, a GAA or Ancient Order of Hibernians Hall, an Orange Hall or Apprentice Boys Hall, or a school. These figures are a subset of sectarian motivated crimes.

The PSNI are actively involved in several working groups facilitated by the DOJ to consult on the Independent Review of Hate Crime Legislation in Northern Ireland. It is a positive sign that workshops have already been conducted, including discussions on how to define Sectarianism among other things. PSNI have also recently developed and published a leaflet for victims of sectarian hate crime indicating where to get support from a range of organisations and via the Hate Crime Advocacy Service.<sup>70</sup>

As part of the Planning Guidance issued to PCSPs each year they are asked to consider several Community Safety Priorities set by the Department of Justice, Hate Crime is one of these. The Northern Ireland Executive supports the integration of newcomers to Northern Ireland and Northern Ireland is increasingly becoming a more multi-cultural society with increasing population diversities across all council areas. PCSPs are encouraged to further develop initiatives that enable refugees, asylum seekers, minority ethnic people or any member of the community to report hate crime.

In October 2023, in partnership with the Policing Board, PCSPs and the Hate Crime Advocacy Service, a new campaign was launched to highlight the devastating impact that hate crime has on victims and to encourage everyone to report hate crime when they see it. The campaign, which was launched on the first day of Hate Crime Awareness Week campaign (HCAW), has been developed to prompt the public to 'put yourself in their shoes' and think about how they would feel if they were on the receiving end of hate crime. PCSPs further address hate crime and support the PSNI Hate Crime Awareness Week in October by delivering bespoke Hate Crime Projects and Initiatives, such as awareness raising and training, encouraging increased reporting, supporting integration of ethnic minorities in local communities, capacity building and increasing resilience.

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<sup>70</sup> [Sectarian Hate Crime Leaflet.pdf \(psni.police.uk\)](#)

## Crime Against Older People

In PSNI, crime prevention officers support older victims of all crime types and every burglary where the victim is over 60 years old is attended by an officer with the crime allocated to the crime investigation department for further investigation. As mentioned, PSNI has resources within the District Community Planning teams who identify repeat victims of crime and create individual contact plans. They are able to use their well-established links with the Multi-Agency Support Hubs to assist where appropriate.

In 2019 the Commissioner for Older People in Northern Ireland (COPNI) published two significant reports focussing on the experiences of older people who are victims of crime in Northern Ireland<sup>71</sup> and a wide-ranging technical report on improving access to justice for older victims of crime. A more recent report published in March 2023, '*A Different Crime*<sup>72</sup>' draws on personal experience and makes 24 recommendations, of which eight are for PSNI to consider. More recently CJINI (September 2023) published an inspection report<sup>73</sup> of the Criminal Justice System's Approach to Vulnerable Older People in Northern Ireland. Feedback from older people who have been victims of crime highlighted the good work done by the PSNI and community police officers in providing information about personal safety and home security measures. Outreach programmes and initiatives had also helped inform older people of the levels and types of crimes affecting older people in their community. While crimes against older people have reduced by 8.1% to August 2023, references have been made by the COPNI to a lack of a visible police presence, a lack of information about the progress of investigations and the level of contact with the police following an incident being reported.

It's concerning that crime outcome rates are not as favourable for older people compared to their younger counterparts as there's a strong, negative correlation between age and outcome rate over the period. In 2018, the PSNI were commended for publishing crime outcome rate statistics by age of the complainant – the only

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<sup>71</sup> [206567-online-a4-crime-report-56p.pdf \(copni.org\)](#)

<sup>72</sup> [a-different-crime-2023-crime-report.pdf \(copni.org\)](#)

<sup>73</sup> [An inspection of the criminal justice system's approach to Vulnerable Older People in Northern Ireland \(cjini.org\)](#)

police service in the UK or Ireland to do so. However, this has since been stopped and in their 2019 report, COPNI has recommended;

“The Northern Ireland Policing Board should immediately reintroduce specific outcome rate targets for crimes where complainants are aged 60+ and retain same in all future Policing Plans”.

There may be a number of contributory factors regarding the outcome rates, including the likelihood that older people might be more reluctant to participate in the criminal justice system beyond reporting a crime to the police for fear of retribution by the offender, reluctance to attend court to give evidence, and a heightened trauma that older people can experience from the investigation process and the support they need to do this, usually provided for by family members. Equal access to justice is a fundamental right of all citizens; however equal access requires that all victims should be treated with dignity and respect but treating all victims in the same manner does not necessarily provide fair access, as some victims need additional support to overcome individual or structural obstacles to participation.

What is clear, and I am sure there are many other examples is that the criminal justice system in Northern Ireland more needs to be done to support older victims of crime. The CJINI report recommends that the;

“PSNI and PPS should develop and implement an action plan to better enable vulnerable older victims of crime to give their best evidence and enable the effective progression and acceleration of cases, where appropriate.”

A further recommendation requests PSNI to review their older persons’ strategy in line with that of the NPCC. These, once implemented, will be important steps towards giving credence to the human rights of older people in respect of access to justice.

## **Police Officers**

Police officers are also regularly victims of crime, particularly of assaults.

Unfortunately there has been a increase in the number of assaults of police officers on duty – from 2,414 in 2018/19 to 2,823 in 2019/2020 to 3,020 in 2020/2021.

Officers and staff are also the victims of hate crimes. Women also reported concerned about misogyny and discrimination, and other groups report similar concerns. Other staff associations raised fair trial concerns, particularly the considerable delays in the misconduct systems that created problems for those victims of other officers and staff and those accused of misconduct. Finally, there were concerns from some groups about freedom of expression and association and the change made by PSNI so that officers could no longer attend Pride in uniform.

The Review of the Human Rights of Police Officers and Staff described these allegations, set out the rights of officers and staff and made a series of recommendations to try to reduce the number violations of their rights.

## CHAPTER 2 STOP AND SEARCH

### Introduction

Stop and search is regarded by PSNI and all police forces as an important tool and, if used properly, can reduce crime, keep people safe and identify offenders.

‘The Police Service of Northern Ireland has a positive obligation to prevent and detect crime in order to protect our communities from harm and build a safe, confident and peaceful society. Stop and Search is an operational tool used to prevent, detect and investigate crime as well as to bring offenders to justice...

The Police Service recognises that stopping and searching members of the public is a significant intrusion into their lives and are committed to ensuring that these powers are used in a way that’s fair, lawful, proportionate, justifiable and accountable.’<sup>74</sup>

However, as set out in the 2020/21 Human Rights Annual Report:

‘the challenge for PSNI is given the consistently low outcomes, the potentially damaging impact on community relations and the lack of evidence to suggest stop and search reduces crime, and the human rights issues, why has stop and search not been subject to more fundamental reform?’

Latest statistics:

- In comparison to other forces in England and Wales the PSNI numbers of stop and searches per 1000 population is 11, the seventh highest, and five times higher than the three lowest forces. Note however, that the number of stop and searches in some other force areas, such as Merseyside and Metropolitan Police, are significantly higher, at 37 and 20, respectively.<sup>75</sup>
- in comparison with all the forty plus forces in England and Wales the PSNI’s arrest rate following a stop and search is the lowest – 7% compared with 21% in some forces like Sussex, Suffolk, North Yorkshire.

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<sup>74</sup> PSNI website, ‘Stop and Search’.

<sup>75</sup> [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614422/Police_powers_and_procedures_Stop_and_search_and_arrests_England_and_Wales_year_ending_31_March_2023.pdf)

- That comparison would be even worse if included the 1% arrest rate of the Justice and Security Act power (see below).<sup>76</sup>
- The use of the Justice and Security Act powers increased last year (2022/23) by 127% (section 21) and 63% (section 24).
- In Northern Ireland in the last year (2022/23) the numbers of stops and searches increased by 25%, with 68% conducted under the Misuse of Drugs Act with an arrest rate of 5%.
- 14 people were stopped each year for every 1,000 people in Northern Ireland.
- some people will be stopped more than once and the chances of being stopped are higher if you are an Irish Traveller, from an ethnic minority or a Catholic (see below for the details).
- 69 children under 12 were stopped and searched.

The main powers which the majority of stop and search encounters are contained within the Misuse of Drugs Act 1971, the Firearms (Northern Ireland) Order 2004, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Justice and Security (Northern Ireland) Act 2007 (JSA) and the Terrorism Act 2000 (TACT).<sup>77</sup> The Justice and Security (Northern Ireland) Act 2007 provides the PSNI with additional powers of entry, search and seizure that are not available to other police services in the United Kingdom under the common law or existing statutory provisions such as TACT - these powers extend to Northern Ireland only (see below)<sup>78</sup>.

Any use of a stop and search power, be it for road traffic purposes or counter-terrorism reasons, potentially engages a range of human rights<sup>79</sup> and therefore PSNI should ensure that all use is proportionate, justified and is strictly in accordance with the legal framework. As a result, in February 2019 the Board agreed that the police

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<sup>76</sup> Note on statistics: unless otherwise referenced, the majority of the statistics quoted in this chapter were obtained from the official statistics published by PSNI and validated by the Northern Ireland Statistics and Research Agency for October 2022 to September 2023.

<sup>77</sup> The Misuse of Drugs Act, Firearms Order and PACE provides police officers with a range of powers to stop and search persons, vehicles and premises for drugs, firearms, and, in respect of PACE, stolen articles, articles with a blade or point, prohibited articles and fireworks.

<sup>78</sup> The powers in TACT provide police across the United Kingdom with search powers specifically relating to the investigation of terrorist activity. The JSA applies only to Northern Ireland and provides PSNI officers with additional powers to search for unlawful munitions or wireless apparatus.

<sup>79</sup> For example, the Article 5 European Convention of Human Rights (ECHR) right to liberty and security of the person; the Article 8 ECHR right to privacy; and, on a broader basis, the Article 14 ECHR right to freedom from discrimination in the enjoyment of other ECHR rights



use of the powers to stop and search and stop and question would be subject to more focused scrutiny.<sup>80</sup>

The use of stop and search raises important questions of human rights, privacy and community alienation but, separately, whether stop and search, particularly not well-focused stop and search, is an effective use of police time which might be better used for one of the many other priorities of the PSNI.<sup>81</sup> This lack of effectiveness also undermines the justification for its continued extensive use.

However, it should be noted that stop and search does impact on a person's human rights less significantly than an arrest would and that PACE Code A, paragraph 1.4 states:

'The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals *without exercising their powers of arrest.*'

## Purpose, Effect and Principles

Understanding how stop and search is used is important because it also has the potential to damage public trust and confidence in the police, particularly if its use is perceived as not justified.<sup>82</sup> So it is vital that these powers are used fairly and appropriately in all cases, and that the police can demonstrate this to the public. The Board has long been concerned about the PSNI's transparency around its use of stop and search.<sup>83</sup> It has never been disputed that it is an important power, however when misapplied or overused evidence shows that it can be counter-productive.<sup>84</sup>

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<sup>80</sup> The findings of the review were published in May 2019, the full report is available at: <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/committee-review-psni-use-of-stop-and-search-powers.pdf>

<sup>81</sup> 'If a costed business case was made for the PSNI's use of stop and search, taking the 158,085 PACE-type uses of the power between 2010/11 and 2016/17, this works out at thousands of hours of officer time. The question for the PSNI therefore, is not whether they should consider change and reform to stop and search, but when; and whether the same crime-fighting ends could be achieved by more pro-social and effective means. John Topping, Feb 2018, <https://www.agendani.com/stop-and-search/>. See also John Topping, 'Stop and search on the rise in Northern Ireland to little effect, data shows' Guardian, 4 September 2019.

<sup>82</sup> <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

<sup>83</sup> See the Human Rights Thematic Review (2013), Human Rights Annual Reports and Performance Committee briefings and correspondence.

<sup>84</sup> <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>

As summarised by Her Majesty’s Inspector of Constabulary Fire and Rescue Service (HMICFRS):

“The use of these powers can be inflammatory if not carried out carefully and fairly. The damage that apparent or perceived unfairness inflicts on community relations could potentially outweigh any increase in public safety from the police activity, especially if the emphasis is on lower-level offending. The resultant lack of trust between the police and some communities can prevent these communities from providing information to the police when a crime is committed, contributing to a “wall of silence”. This makes it much harder for policing to be intelligence-led.”<sup>85</sup>

In seeking to protect the rights of the majority, the police at times must interfere with certain individual rights. However, they are only permitted to do so if the infringement is provided by law and necessary to achieve a legitimate aim. In circumstances where there is a victim, the police may have positive obligations to use powers to intervene (clearly justifying the necessity of a lawful interference). However, the use of stop and search is not typically directly victim-led and officers have a very wide discretion to apply these intrusive powers. Therefore, it is crucial that police services are able to analyse, understand and explain to the public how and why they are being used and beyond generalist justifications of ‘preventing and detecting crime’. Doing so will demonstrate compatibility with human rights and equality law, and reassure the public that there is genuine accountability for police actions. It is for these reasons that the Board has regularly advocated for improved recording, monitoring and analysis of these powers under the following areas:

### **1) To ensure the service remains transparent and accountable**

Transparency requires data to be of sufficient quality to permit analysis of trends or patterns, otherwise police services cannot reliably demonstrate whether powers are being used in a fair, non-discriminatory and lawful way. This requires detailed

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<sup>85</sup> <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

community background and minority ethnic monitoring, transparent access to data and an analysis on real and effective outcomes. Finally, it requires taking action on any disproportionate use against children and young people, minority ethnic communities and Irish Travellers.

## **2) To improve public understanding on how and why the powers are used**

The stated objectives of stop and search are also undermined if there is a public perception that the powers are being used unfairly or ineffectively. Those who feel they have been unjustifiably targeted or where the basis of their selection is unclear are less likely to trust the police and co-operate with them when they have a problem.<sup>86</sup> It is vital that the public has access to reliable data and information on stop and search. The lack of any overall strategy to stop and search remains a particular concern.

This apparent lack of strategy is twofold. On one hand, officers have a wide margin of discretion - that is part of the legislation and reasonable suspicion. But on the other hand, the evidence points to the fact this discretion is

- a) ineffective in terms of outcomes;
- b) allows the powers to not follow their strict legislative purpose; and
- c) allows unofficial strategies to take hold at a district level i.e. the targeting of young males for low level drug possession.

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<sup>86</sup> Equality Commission.

[https://www.equalityhumanrights.com/sites/default/files/ehrc\\_stop\\_and\\_search\\_report.pdf](https://www.equalityhumanrights.com/sites/default/files/ehrc_stop_and_search_report.pdf)

### 3) To support a more intelligence-led and targeted approach to stop and search, and improve the ‘stop-to-outcome’ ratio

Evidence shows that stop and search has a very weak and inconsistent relationship with crime and its effectiveness as a deterrent is not proven.<sup>87</sup> Its effectiveness as an investigatory power can be established by whether the object of the stop and search is connected to the outcome (the arrest rate and ‘find rate’ - how often the item being searched for is found).<sup>88</sup> A better ‘stop-to-outcome’ ratio would demonstrate that the exercise of these powers is fair and rational, which could improve public trust over their use. High volume of stops/low outcomes, lack of data and analysis and benefits impact on public confidence.

At present, the Policing Board cannot reassure members of the public that stop and search activities by the PSNI are always justified. Particularly because data related object versus outcome is not publicly available, although it is recorded<sup>89</sup>. However, the management figures which have not been validated<sup>90</sup> obtained from PSNI are that 21% of stops and searches resulted in an ‘object’ being found and the object found was ‘linked to the original reason for the stop and search’ 94% of the time. However, it should be recognised that while the 2020 PEEL inspection highlighted areas of improvement in terms of stop and search, HMICFRS generally determined that the PSNI was good at treating the public with fairness and respect, and in a fashion that inspires public confidence. That study found that:

- *many PSNI officers understood how to use stop and search properly.*
- *the use of the powers was generally well supervised.*

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<sup>87</sup> Home Office (2016)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508661/s-top-search-operation-blunt-2.pdf#page=3](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508661/s-top-search-operation-blunt-2.pdf#page=3)

<sup>88</sup> Home Office, ‘Best Use of Stop and Search Scheme’

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/346922/Best\\_Use\\_of\\_Stop\\_and\\_Search\\_Scheme\\_v3.0\\_v2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/346922/Best_Use_of_Stop_and_Search_Scheme_v3.0_v2.pdf)

<sup>89</sup>At odds with, for example, the Met who do publish this type of data: <https://www.police.uk/your-area/metropolitan-police-service/performance/stop-andsearch/?tc=E05000362#:~:text=Performance%20statistics&text=Total%20number%20of%20stop%20and,April%202023%20and%20July%202023.&text=Of%20the%2025%2C219%20stop%20and,had%20>

<sup>90</sup> They are probably accurate but cannot be validated to the high standard required by the statistics authority.

Finally, it is problematic in the context of Article 8 (the right to privacy) if, the primary justification for a power of search of a particular individual is not based on anything about the person who is subject to the power but is only directed towards him or her to discourage the activities of others (and, apparently, has little deterrent effect anyway - see below).

### **New recommendation 7**

**The PSNI should report to the Board on any progress on the Board's four aims in relation to stop and search powers:**

- 1. To ensure the service remains transparent and accountable;**
- 2. To improve public understanding on how and why the powers are used;**
- 3. To support a more intelligence-led and targeted approach to stop and search and improve the 'stop-to-outcome' ratio.**
- 4. Record and monitor the community background of all those stopped and searched.**

### **Public Confidence**

The role of the PSNI is to keep people safe, to protect property and prevent disorder, but that has to be tempered by the need for the stop and search powers to be "justified, lawful and stand up to public scrutiny".

A few years ago Mr Justice Colton, in a Northern Ireland High Court judgment, said:

"Those involved in the creation and exercise of stop and search powers should not underestimate the potential for public harm in the event that the powers are used arbitrarily and excessively in respect of minors in terms of the effect it could have on confidence in and support for the PSNI. In those circumstances I consider that there is an obligation on the respondents to satisfy the "in accordance with law" requirements of Article 8(2) or the "quality of law" requirement demanded by Convention law. It is a power which does require justification and which requires to provide effective guarantees and safeguards against abuse. The relevant law must be clear and precise and thus will require

rules to ensure that the power is not capable of being arbitrarily exercised in circumstances which do not justify its exercise.”<sup>91</sup>

In 2017 the College of Policing published a study exploring the relationship stop and search had with crime at a borough level in the Metropolitan Police over a 10-year period. Overall it found

“only limited evidence of stop and search having had a deterrent effect on crime”

and advised that;

“it is important not to overstate the benefits of stop and search and present it as a panacea to crime reduction, particularly at a force or borough level.”<sup>92</sup>

Furthermore, the College of Policing noted that ‘reasonable suspicion’ searches are supposed to be investigative in nature, reminding that;

“from a legal perspective, as every search must have grounds and be justified in and of itself, the use of the power cannot be justified solely – or even primarily – in terms of any overall effect on crime at a particular time or place”.<sup>93</sup>

While concluding that ‘reasonable suspicion’ stop and search should be principally assessed in terms of its success as an investigative power, the report noted that there is much debate about the criteria against which searches should be evaluated as ‘successful’. For example: arrests only, arrests and other criminal justice outcomes, allayed suspicions, consistency between suspected and found item. The power must only be used because the officer has a suspicion, objectively justified, that the particular person has a prohibited item on his or her person at that particular time.

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<sup>91</sup> NIQB 75 COL 11019 9/8/2019 Judicial Review Ailise NiMurchu.

<sup>92</sup> Paul Quinton, College of Policing, Ben Bradford, University of Oxford, Matteo Tiratelli, University of Manchester ‘Does more stop and search mean less crime? Analysis of Metropolitan Police Service panel data, 2004–14’ [https://whatworks.college.police.uk/Research/Documents/SS\\_and\\_crime\\_report.pdf](https://whatworks.college.police.uk/Research/Documents/SS_and_crime_report.pdf). See also by the same authors, in the British Journal of Criminology, Volume 58, Issue 5, September 2018.

<sup>93</sup> *ibid* 29

## Evidence: High Volumes, Low Outcomes

Officers are required to make a record of the details of a stop and search at the time of encounter or as soon as practicable after the search is completed. This data is downloaded from a stop and search database, validated and published on a quarterly basis.<sup>94</sup>

Recent statistics October 2022 to September 2023 compared to the previous 12 months show:<sup>95</sup>

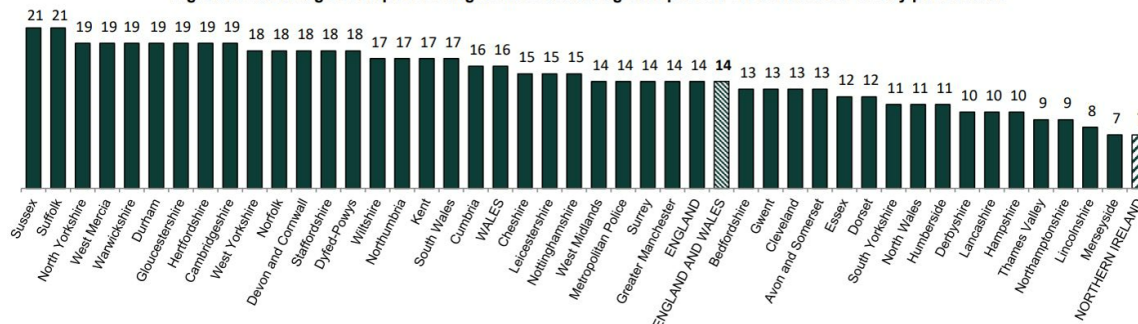
- There were 26,113 persons stopped and searched/questioned. This is 25% more than the previous year;
  - 68% of stops were conducted under the Misuse of Drugs Act (arrest rate 5%) and 10% of stops were conducted under PACE\* (arrest rate 20%); and
  - 17% of stops were conducted under the Justice and Security Act Section 24\* (arrest rate 1%) and 4% under the Justice and Security Act Section 21\* (arrest rate 1%).
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- *The table below shows the percentage of stops resulting in arrests across the police forces in England, Wales and Northern Ireland. This table presents a positive position for the PSNI in that Northern Ireland has the lowest numbers of arrests along with Merseyside, but this is not a true reflection as the figure of 7% does not take into account JSA. The inclusion of JSA figures would make for harsher reading for the PSNI.*

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<sup>94</sup> There is an excellent User Guide to: Use of Stop and Search Powers by the Police in Northern Ireland, May 2022.

<sup>95</sup> Use of Stop and Search Powers by Police in Northern Ireland, April 2022 to March 2023, Northern Ireland Statistics Agency, 24 May 2023.

Figure 7: Percentage of stops resulting in an arrest during 1st April 2022 to 31st March 2023 by police force<sup>(1,2)</sup>



(1) The latest data available for England and Wales is 2022/23 (*Police powers and procedures, England and Wales, year ending March 2023*). For comparability, the 2022/23 NI figures are also shown.  
 (2) In the interest of comparability, the NI figure excludes stops under JSA Section 21 and 24.  
 (3) Rates per 1,000 are calculated using NISRA's mid-2022 [population estimates](#).

## Variation Across Districts

The arrest rate also continues to vary from 3% in Ards & North Down and Fermanagh and Omagh to 8% in Belfast City. This continuing differential was the focus of a specific recommendation in the Human Rights Annual Report for 2020/21. Since that recommendation was published, the Human Rights Advisor has had a series of meetings with PSNI officers in 2023 to try to understand why these differences continue to occur and, whether, those districts with higher arrest rates can provide advice to officers in other districts.

## Disproportionality

A second issue that needs to be explored is why the figures for the numbers of Irish Travellers are so high.<sup>96</sup> The Equality Commission's analysis of the 2021 Census data has 2,609 Irish Travellers resident in Northern Ireland.<sup>97</sup> The NISRA figures for the same group has 407 stopped and searched.<sup>98</sup> That is nearly 16% of the Traveller population is subject to this power every year.

In the Republic of Ireland a study was by the University of Limerick - *Irish Travellers' Access to Justice*<sup>99</sup> commissioned by the Irish Human Rights and Equality Commission and the Irish Research Council. In her foreword for the report The Irish Human Rights and Equality Commissioner Sinead Gibney stated:

<sup>96</sup> 'A degree of undercounting may exist for the Irish Traveller category as some Irish Travellers are likely to be categorised as White.' Table 7, note (1) Use of Stop and Search Powers by Police in Northern Ireland, October 2022 to September 2023, Northern Ireland Statistics Agency, 22 November 2023.

<sup>97</sup> [Equality Commission for Northern Ireland Census 2021 Briefing](#).

<sup>98</sup> It is not possible to know from these figures whether or not these are all separate individuals.

<sup>99</sup> Irish Travellers' Access to Justice.



“For too long, damning reports relating to racism faced by Travellers in Ireland have been left to gather dust. As Chief Commissioner, I know it is crucial that the State and its criminal justice institutions and individuals listen to the voices of participants and the weight of evidence, and that their shared experiences lead to meaningful change.”<sup>100</sup>

At the PSNI Service Accountability Panel meeting, in September 2023, it was agreed that an analysis of stop and search encounters involving members of the Travelling community would be carried out. To this end, work has been commenced to consider the following:

- An examination of each of the 373<sup>101</sup> Irish traveller stops which occurred within the last 12 months and which will include examination of the grounds recorded for these encounters (to be presented in a percentage / number format, against each type of grounds used);
- Consideration and presentation of what percentage of stops took place in which locations (with a particular focus on Armagh, Fermanagh, Derry, Newry, Belfast and Ballymena);
- Consideration and presentation of how many travellers stopped in NI had addresses in ROI (i.e. do not reside in NI);
- Consideration and presentation of how many stops involved vehicles (vans in particular);
- Consideration and presentation of what percentage of stops were male / female;
- Consideration and presentation of what percentage of stops resulted in an item being found (to be grouped into category i.e. drugs / PACE weapon etc); and
- Consideration and presentation (if it's possible to establish) of what percentage of stops related to the same person and also members of the same family, as a separate percentage.

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<sup>100</sup> In a meeting with the Policing Authority in June 2022 The Commissioner said “An Garda Síochána had not been given an opportunity to respond to the allegations prior to the publication of the report and that the organisation would have to do its own inquiry before accepting that finding.” And the Chief Executive of the Policing Authority, Helen Hall, said the policing authority are not satisfied with his comments in relation to the report and that the oversight body “would not be leaving this alone”.

<sup>101</sup> This is the figure from the previously released set of statistics, July 2022 to June 2023.

This report was discussed at the Service Accountability Panel in November

## New Recommendation 8

**The report, 'An Analysis of Incidents of Stop Searches Conducted on Members of the Irish Traveller Community between 1<sup>st</sup> July 2022 and 30<sup>th</sup> June 2023.' Should be published and academic experts and any other relevant stakeholders on stop and search should be invited to comment.**

The statistics for minority ethnic groups are also proportionally higher than that for the white population.<sup>102</sup> Given what is known about disproportionality in relation to community background, comparisons between those with Protestant backgrounds and these minority groups is likely to be even starker.

Of course, an arrest is only one possible indicator of a positive outcome following a stop and search; other positive outcomes recorded are a Community Resolution, report to the PPS or a Penalty Notice for Disorder. However, it is not clear from the PSNI's response or the statistical bulletins what offences result in a report being sent to PPS without the person being arrested, or indeed, what action the PPS then take, if any.<sup>103</sup> Secondly, neither an arrest nor a report to the PPS necessarily results in a prosecution let alone a conviction. Moreover, without further breakdown and meaningful analysis of these figures it is questionable whether these outcomes should be considered as 'positive'.

The 2017/18 PEEL Legitimacy Inspection recommended that all 43 police forces in England and Wales should be analysing how often the item being searched for is found (the 'find rate') for different types of searches, including separating out possession of drugs from supply. They also recommended that forces act on disparities and publish the analyses and results. Inspectors noted that, if forces cannot establish what proportion of their searches are related only to possession, they cannot assess whether those searches align with local and force crime-reduction priorities.<sup>104</sup> While the Inspection did not include the PSNI, this type of public data analysis would be particularly helpful considering the above concerns. And that 65% of those stopped aged 17 and under were stopped under the Misuse

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<sup>102</sup> Census, 2021, 3.4% of the population of Northern but 4.4% of the stop and search population..

<sup>103</sup> Of course, for an arrest a police officer must also have reasonable grounds to believe an arrest is necessary.

<sup>104</sup> Ibid, Page 6

of Drugs Act, for which the overall arrest rate is currently only 5%. From July 2022 to June 2023 10% of those stopped (2,617) were aged 17 and under. 68% of those were stopped and searched under the Misuse of Drugs Act. 4 of those stopped, searched and subsequently arrested were under 12. While other outcomes may have been used, data reflecting whether the object of the search matches the outcome would provide a more comprehensive picture.

The HMICFRS report also considered the negative effect of disproportionate use of police powers across the 43 forces in England and Wales.<sup>105</sup> It highlighted that, despite having more data on the use of police powers at an individual level, police services are still unable to explain why these powers are used in the way that they are. For instance, HMICFRS found that the most common reason given for the use of stop and search powers is due to suspected drug possession. However, the Inspectorate is calling on police leaders to consider whether focusing stop and search on tackling drug possession is the most effective use of the powers.

HMICFRS said:

“Police forces must analyse their data and either explain, with evidence, the reasons for disproportionality, or take clear action to address it. The police must be able to show the public that their use of these powers is fair, lawful and appropriate, or they risk losing the trust of the communities they serve.

We know that the proportion of stop and searches that actually find drugs is very low, and the disproportionate use of these powers on BAME people is having a damaging impact on public trust.

We are therefore calling on police leaders to consider if focusing stop and search on drugs possession is an effective use of these powers, and to better explain the reasons for disproportionality. It is clear that now is the time to have an evidence-based national debate.”<sup>106</sup>

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<sup>105</sup> <https://www.justiceinspectores.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

<sup>106</sup> <https://www.justiceinspectores.gov.uk/hmicfrs/news/news-feed/police-must-show-stop-search-and-use-of-force-is-fair-or-risk-losing-public-trust/>

Stop and search powers are monitored at District performance meetings by reviewing the number of stop and searches conducted against the number of complaints generated. However, a low number of complaints does not mean that the exercise of these powers is not impacting communities negatively. In fact, the issue here is not about the professional conduct of officers during searches, but about the national body of evidence warning about the negative consequences of overusing stop and search.<sup>107</sup> Furthermore, the reliance by the PSNI on the number of official complaints regarding stop and search has frequently been contested by organisations representing children and young people (Childrens Law Centre, NI Commissioner for Children and Young People, Include Youth). These organisations highlight that individuals, particularly young persons, who are repeatedly subjected to stop and search will not feel they have any agency in the complaints system if they feel intimidated and criminalised through the use of these powers.

Dr Topping's research for the PSNI found that officers felt pressurised to conduct high volumes of searches in response to informal practices rather than formal target-setting (such as emails, "naming and shaming", praise of those generating the most searches etc.).<sup>108</sup> The PSNI have subsequently denied that this is true. However, the Board have been advised that some changes have been made to the Student Officer Training Programme in response to select areas of Dr Topping's research, it is not clear whether the PSNI have implemented any changes regarding the culture around stop and search at District level.

### **PSNI Policy And Service-Level Directions For Stop And Search**

The Board suggested in the past that there are three potential levels of guidance which the PSNI might want to have in policy documents or Service Instructions. The first is guidance for individual officers on how a particular power should be used in relation to an individual - much useful guidance on this topic is provided by the various statutory codes. Secondly, the PSNI could give more detailed guidance to officers on the street and their supervisors on each of the powers and could cover more details of the use of BWV, more detailed explanations of the human rights

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<sup>107</sup> <https://www.gov.uk/government/publications/do-initiatives-involving-substantial-increases-in-stop-and-search-reduce-crime-assessing-the-impact-of-operation-blunt-2> For ex. see: Paul Quinton, College of Policing, Ben Bradford, University of Oxford, Matteo Tiratelli, University of Manchester '2004-14',

<sup>108</sup> Continuing a-PACE Research (commissioned by the PSNI).

issues that are engaged, particularly the right to privacy in Article 8 and, lastly for supervisors, best practice on “after-the-event” assessments of the encounters and learning lessons (including how to take advantage of BWV recordings). Thirdly, guidance could provide more useful assistance to supervisors on how they task officers before shifts on which powers to use in which (geographical) areas and for which policing objectives.

In July 2021, the PSNI launched guidance on its internal intranet pages (POINT) which are designed to assist both operational officers and supervisors, regarding the use of stop and search. These pages contain valuable information (along with important updates) designed to assist officers whilst carrying out their roles.

The development and roll out of Body Worn Video has allowed more transparency to stop and search encounters and more scope for supervisors to give feedback. PSNI produced a very helpful ‘Guidance for Supervisors for reviewing and dip-sampling Body Worn Video Footage’ in February 2023 following recommendations from HMICFRS.<sup>109</sup>

Table below shows the percentage of stop and searches in which body worn video (BWV) was used by the officer over the last 5 financial years.

**Percentage of stop and searches in which body worn video (BWV) was used by the officer**

<b>Financial Year</b>	<b>Percentage of stops BWV was used</b>
April 18 - March 19	43%
April 19 - March 20	66%
April 20 - March 21	82%
April 21 - March 22	89%
April 22 - March 23	89%

<sup>109</sup> Her Majesty’s Inspectorate of Constabulary, Fire and Rescue Service, ‘Disproportionate use of Police Powers: A Spotlight on stop and search and the use of force.’

(1) Figures exclude vehicle-only stops, stops conducted under only JSA S21 (stop and question) and any persons/vehicles searched under warrant.

While the development of a Service Instruction is also a significant step forward for PSNI it appears to repeat what PSNI officers are already doing or are taught in the Police College. This could be a positive opportunity for the PSNI to be progressive and shift the culture around stop and search in Northern Ireland. For instance, compared to the comprehensive guidance provided in the College of Policing's Authorised Professional Practice (the APP), the Home Office's Best Use of Stop and Search Scheme (BUSS) and the detailed Code of Practice produced by Police Scotland, it is questionable whether the PSNI's approach will have much of an impact and improve public confidence. It is significant that the Court of Appeal has since highlighted the guidance within the Scottish Code of Practice in respect of children and young people and suggested that consideration should be given to formally incorporating similar guidance to PSNI officers.<sup>110</sup>

The provision of the PSNI's Equality Screening Form for this Service Instruction might have been a good opportunity to find out how the service assesses the impact of its approach to stop and search on different equality groupings. For instance, the Equality Commission for Northern Ireland<sup>111</sup> advises that the four key benefits of equality screening are:

- i) It identifies those policies likely to have an impact on equality of opportunity;
- ii) When used appropriately, screening is an analytical tool which helps to draw considerations of equality of opportunity into the policy making process;
- iii) Screening is the first of the two methods by which the necessary level "regard" is demonstrated as being paid to the statutory equality goal; and
- iv) Screening provides evidence that the decision-maker has paid some regard to the need to promote equality of opportunity, though not necessarily the appropriate level of 'regard'.

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<sup>110</sup> Judicial Communications Office, 26 February 2021: Judicial Review Ailise Ni Murchu, 9 August 2019,

<https://www.judiciaryni.uk/sites/judiciary/files/decisions/Summary%20of%20judgment%20-%20In%20re%20Ailise%20Ni%20Murchu.pdf>

<sup>111</sup> <https://www.equalityni.org/Employers-Service-Providers/Public-Authorities/Section75/Section-75/Screening>

However, the PSNI have provided very limited information and analysis in their screening of this Service Instruction. For instance, the only data-set relied upon in the screening is the PSNI statistical bulletin produced by NISRA. There is no indication that the PSNI has considered the large body of available research (statistics or perception) to assist their understanding of who the policy might affect the most. For instance, the Young Life and Times Survey; data the Office of the Police Ombudsman; Dr John Topping's Continuing a-PACE Research (commissioned by the PSNI); relevant findings of external inspections (HMICFRS PEEL, the Board's Human Rights Annual Reports); comparative findings drawn from national data and research (Home Office, the College of Policing, Police Scotland).<sup>112</sup> In fact, for political opinion, marital status, sexual orientation, and disability the form simply states that PSNI do not currently record these in relation to stop and search. It is, therefore, of concern that, despite this very limited evidence-based analysis on the impact of this policy, the PSNI conclude that it will have a low impact on 7 out of 9 groupings (with a medium impact on age and gender). Furthermore, no explanations were given to clarify these ratings as it was considered 'Not Applicable'.

In terms of the proposals to reduce any adverse impact on the groups identified, the PSNI discuss officer's use of body worn video during stop and search encounters. While this is useful for monitoring purposes, this does not detail how the service will ensure there is no discrimination in the first instance. For example, detailed guidance on unconscious (implicit) bias, vulnerability and human rights considerations in the policy would promote good practice and mitigate risk. In response to Question 7 on whether the policy needs no further equality investigation, it states "The PSNI have developed a plan in relation to stop and search". It then lists a number of internal and external stakeholders involved in this plan (the Board is included), however it does not provide any further information or documentation. This relates to the Board's ongoing frustration over the apparent lack of consolidated approach to stop and search at a leadership level.

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<sup>112</sup> The only independent study on PSNI's stop and search of children and young people showed that young males from deprived backgrounds were 2.5 times more likely to be stopped and searched.

Ultimately, the PSNI did not consider that an Equality Impact Assessment (EQIA) is necessary and the policy is screened out. This appears to conflict with the Equality Commission's considerations whereby an EQIA is likely to be necessary;

- where the policy is highly relevant to the promotion of equality of opportunity;
- where it affects a large number of people;
- where it affects fewer people but where its impact on them is likely to be significant;
- where it is a strategic policy or has a significant budget attached; and
- where further assessment provides a valuable opportunity to examine evidence and develop recommendations.

Fundamentally however, it is not the Service Instruction, a description of current practice that requires an EQIA type consideration, but the policy and practice itself. For instance, this policy will be applied by a significant number of operational officers using a wide range of legislative provisions against a large number of individuals. Moreover, from the lack of data collation and analysis on the impact on all equality groupings, it would appear that an EQIA which concerned the policy would provide a valuable opportunity to examine further evidence. Finally, the screening process should ensure that due regard is given to whether the policy is the most appropriate way of achieving a certain aim, what evidence there is to support that, and if alternative options or appropriate mitigation measures should be taken to lessen equality impacts.

Nevertheless, the Service Instruction, Stop and Search, SI0321 was published and it is an important document – the first in PSNI's history. It sets out useful instructions to officers, include the importance of reasonable suspicion (for most powers), the need to use Body Worn Video throughout the encounter, and the requirement for supervision and monitoring by senior officers.

However, questions remain, therefore, around whether the current general stop and search Service Instruction provides sufficient safeguards as bespoke policy guidance for each of the different statutory powers to stop and search. A general policy which covers issues such as the conduct of searches, the responsibilities of officers and the internal oversight structures (including discipline) in relation to all stop and search powers, while a helpful resource for assisting an officer's understanding of



PSNI's general approach to stop and search, it may not emphasise the need for an individual officer to decide which the most suitable power is in a given situation.

As far back as 2019,<sup>113</sup> Mr David Seymour (the previous Independent Reviewer of the Justice and Security Act) stated that a clearly articulated, service-wide strategy would demonstrate the cumulative impact of the safeguards already in place is effective. This goes beyond the assurance from the PSNI that officers are guided by instructions on the legal and professional use of these powers, and would provide transparency around the supervisory and accountability arrangements. PSNI advised at the time that they consider a high-level policy allows officers to consider and apply any human rights issues arising across all aspects of stop and search. Mr David Seymour also highlighted supervision as an area requiring further improvement. He found that 10% of the stop and search/question were monitored by a supervising officer but it was not clear that they were supervised systematically (for example, in response to a service wide instruction). He noted that it is also unclear what the outcome is of such supervision in terms of lessons learned and promulgated.

In March 2022, PSNI established a quality assurance mechanism for stop and search where dip sampling of stop and search is carried out by supervisors. Following research into these stop and search dip sampling figures from April 2022 to March 2023, it was identified that 26,529 stop and search records were created, of which 4,310 were quality assured (dip sampled) by supervisors, equating to 16% of all records being dip sampled by supervisors, across the service. When a supervisor has quality assured a record there are currently 3 options for them to choose from: 'No further action', 'Advice Given' and 'Other'. Of the 4310 dip samples checked, 3952 were listed as 'No Further Action', 289 as 'Advice Given' and 69 as 'Other'. PSNI further analysed each record to ascertain the issues being noted by supervisors as 'Advice Given' and what issues are being recorded by supervisor against the 'Other' category, including a breakdown of the issues highlighted and the records that have been incorrectly listed under the wrong closing category. The two main reasons given for 'Advice Given' are 'Grounds' and BWV issues. In respect of grounds, officers were recording insufficient grounds on the record, i.e., 'smell of

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<sup>113</sup> Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Eleventh Report: 1 August 2017 – 31 July 2018, David Seymour CB, March 2019

cannabis', 'speech slurred' or 'in an area known for drug dealing'. PSNI note that while these, are individual grounds they need to be accompanied by further grounds, for example - Smell of cannabis from vehicle, pupils dilated and drug paraphernalia seen in the vehicle. PSNI have advised that these issues can be addressed by the further education of officers around the grounds required to conduct a stop and search. This education can be delivered by district training as a recap, or through guidance being sent service wide via the e-mail system.

With regards to BWV issues, there were a variety of issues in this category, but perhaps the biggest concern is the 'Officer Discretion' category. Current service policy outlines that all stop search encounters should be recorded on BWV. BWV footage can assist with evidence and also negate any complaints made regarding searches. Officers should also be reminded that the entire interaction with the subject should be recorded, preferably upon approaching the subject and certainly when the officer decides to conduct a search to ensure compliance with GOWISELY is captured and to ensure that dip sampling can assess whether or not officers are carrying out searches in a professional manner.

It is worth highlighting that, of the records analysed, the overwhelming majority were completed correctly with good explanations recorded by supervisors.

The points mentioned above, if implemented, should increase the quality of the PSNI's stop & search records, decrease the instances of officers not recording the interactions, improve confidence in the stop & search procedures regarding the public as a whole and ensure that the service is acting in a professional manner / is carrying out accurate accountability checks surrounding the use of these powers.

### **Children and Young People**

In May 2018 Dr John Topping from Queen's University published research which gave the first independent analysis of how 16 year olds are experiencing stop and search powers being exercised by the PSNI.<sup>114</sup> The findings raised a number of issues concerning the socio-economic background of young people being stopped and how young people understand their rights under these powers. Dr Topping

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<sup>114</sup> John Topping and Dirk Schubotz, *The 'usual suspects'? Young people's experiences of police stop and search powers in Northern Ireland*, ARK research update, May 2018.

referred to stop and search powers as “the most prevalent form of adversarial contact between the public and the PSNI.”

In September 2019 Queen's University, in partnership with Include Youth and the Children's Law Centre, hosted a conference on young people, policing and stop and search powers in Northern Ireland. Consideration was given to how the suggested overuse of the power to stop and search can seriously undermine police legitimacy, particularly in the absence of opportunities for the police to engage positively with children and young people. In response PSNI advised that they are not out to criminalise young people and try to provide interventions and other forms of disposal where they can. They have further stated:

“there is no restriction in law preventing the stop and search of under 18s, therefore police officers will use their powers under stop and search when they have reasonable grounds [to do so]”.<sup>115</sup>

The PSNI carried out a survey of young people in 2021, the summary included:

“From the comments gathered in the survey, the overall feedback could be summarised as involving concerns around the behaviour and attitudes of police officers. The main themes which emerged (when the comments were grouped) centred on unprofessionalism, aggressiveness, non-informative (re why searched or what for) and discriminatory behaviours towards young people, which seems to be linked to comments that indicated a feeling that searches were not justified, were uncomfortable / frightening experiences and the people who provided the feedback by majority, had decreased confidence / respect / trust in police, stated that their stop and search had a negative impact on them, felt their search was random and that it was not justified.

There also appeared to be themes emerging which suggests knowledge of stop and search is low regarding the survey respondents. This came through via a significant number of comments that indicated respondents did not know that they could make a complaint about their search or felt that no action would be taken if they did. A significant amount of feedback suggested that respondents felt young people were stop searched for alcohol, drugs and antisocial

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<sup>115</sup> <https://www.nicva.org/article/psni-urged-to-reconsider-use-of-stop-and-search-on-under-18s>

behaviour. This again suggests a lack of knowledge around police powers (i.e. no power to search re anti-social behaviour).”<sup>116</sup>

Dr John Topping commented at the end of this document:

“...the survey confirms long-standing evidence about the negative impact stop and search has on community relations in Northern Ireland – and particularly regarding children and young people.

A significant theme running throughout the survey are negative experiences from respondents derived from officer attitudes, treatment, behaviours and communication. It is a stark feature that 77% of respondents described their direct stop and search experience as ‘negative’. This is underpinned by the fact in every single category of response to officer behaviour around a stop and search encounter, a greater number of respondents did not find officers were polite, respectful, professional, fair, calm or understanding. Similarly, in terms of procedural aspects of a stop, the survey details a distinct lack of communication around grounds, rights or information related to the search.

When taken together with the high levels of stop and search by PSNI relative to the rest of the UK, coupled with low arrest-rates – and particularly for children (3.8%) – the survey points to the fact stop and search is having overall, a net negative impact on police relations with young people vis-à-vis the efficacy of the power in detecting crime.”<sup>117</sup>

A number of useful internal recommendations were made following this survey.

Finally, with regards to stopping children or individuals who have particular vulnerabilities, the grounds for the search should be clearly communicated in simple and easy to understand language, the use of technical or legal language should be avoided unless required by law. This will be facilitated by the creation of the information card following one previously produced by the Children’s Law Centre some years ago but never fully rolled out. Any decision taken to stop and search a

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<sup>116</sup> PSNI, *Stop & Search survey of Young People. Action plan/recommendations*. See also *Stop & Search Survey Summary Findings*

<sup>117</sup> Page 4.

child must be in the best interests of that child, taking into consideration that exploitation of the child may be a factor in the case. In fact the PSNI position is:

“Our conduct may be an opportunity to develop relationships with children during these exchanges.”<sup>118</sup>

In June 2023 the PSNI introduced a ‘Children and Young Person’s Strategy’ and this included the following statement:

“The percentage of stop and searches involving young people has reduced. In 2014/2015, 15.7% of people stopped and searched were children and young people under 18 years of age. This percentage reduced to 11% in 2021/2022.”

The current proportion is 9% with 67% stopped and searched under the Misuse of Drugs Act.

To the extent that the new Strategy dealt with stop and search it said we will:

Make sure if you are stopped and searched that it is explained to you why you have been asked to go through the process.

Make sure that officers conducting the search respect your rights and treat you fairly.

Make sure that the powers we have to conduct a search are not abused.

Consult with children and young people groups to ensure our practises are subject to scrutiny and provide detailed data about stop and searches if requested.

Get feedback from you to inform how the Police Service delivers policing – we will listen to your experiences and follow up on complaints.

Review our actions and consider changes to policy, practice and guidance and changes will be discussed with children and young people and representative groups.”

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<sup>118</sup> Page 10, Youth Justice, Service Instruction SI0817, 2017 (reviewed 2022).

In practice, it is difficult to measure success in this context as it fails to deal seriously with the findings as set out above.

The CLC has previously raised concerns in relation to the PSNI's Stop and Search report – 1 January 2020 to 31 December 2020,<sup>119</sup> contending that children and young people are being;

“systematically targeted through the disproportionate use of stop and search”.<sup>120</sup>

It refers to the fact that children between the age of 13 and 17 make up only 6% of the population but account for 12% of all stop and searches in Northern Ireland.<sup>121</sup> It raised further concerns that the searches appear to be “hugely ineffective”, with only 4% of stop and searches of 13 to 17 year olds leading to arrest.<sup>122</sup>

“The practice is disproportionate and ineffective, but it goes even further than that. In areas of high deprivation, the rates are even more worrying and severely undermines children and young people’s confidence in the police. In the end, this has a negative impact on the safety and protection of children and young people who make up around 12% of all victims of crime. These young people rely on the police, but the disproportionate and inappropriate use of stop and search powers has the effect of making young people less trusting of police and therefore less likely to turn to them for help, placing them more at risk.”

The most up to date statistics show 3% of stop and searches of 13 to 17 year olds led to an arrest but it should be noted that some 17% of stop and searches of 13 to 17 year olds led to some form of outcome (arrest, community resolution, report to the PPS, penalty notice for disorder).

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<sup>119</sup> <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/stop-and-search-statistics/2020/q3/psni-stop-and-search-report-q3-2021.pdf>. See also Topping and Bradford, Now you see it, now you don't: On the (in)visibility of police stop and search in Northern Ireland, *Criminology and Criminal Justice*, Vol. 20, Issue 1.

<sup>120</sup> <https://childrenslawcentre.org.uk/stop-search-highlights-systematic-targeting-of-children-young-people/>

<sup>121</sup> It is not clear what the 'available population' figures for stop and search might be – that is the relative population of children on the street or any evidence of the proportion of younger or older people involved in crime on the streets.

<sup>122</sup> PACE stop and search accounts for majority of 10-14 age bracket, but Misuse of Drugs Act (MDA) accounts for majority of 15-17. Beyond general arrest rates a focus on MDA for under 18s, the arrest rate comes down to 2.9%.

In February 2021 the Court of Appeal<sup>123</sup> found that the arrangements put in place for the exercise of stop and search powers under the Justice and Security Act 2007 in respect of children and young persons were in accordance with the law, but that the PSNI had failed to implement the scheme. It noted, however, that the PSNI has now altered its position and for that reason it was not necessary to make a declaration that “quality of law” test had not been met.

The Court considered that the absence of record-keeping regarding what triggered the search prevented appropriate monitoring and supervision of the use of these powers in respect of children and young people. It said this was an area of considerable sensitivity and its importance was recognised in the Code of Practice for the 2007 Act (paragraphs 5.9 to 5.14). There was also well documented research evidence about the difficulties arising from encounters between police and children and young people and the Court said that monitoring and supervising to confirm the proportionate and necessary use of the powers was particularly important in relation to this cohort.

The Court commented that the detailed guidance as to the matters to take into consideration when interacting with young people within the Scottish Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person is particularly helpful to those officers engaged in utilising stop and search powers and said that consideration should be given to formally incorporating similar guidance to PSNI officers. It noted that to some extent this is already happening as a result of the provision of training flowing from the review in 2017. The Court did not accept that the absence of such guidance from the Code gives rise to any unlawfulness commenting that guidance cannot predict every possible scenario:

“In our view the protections against arbitrary use of the powers in relation to children and young people contained in the 2007 Act, the Code of Practice and Policy Directive PD 13/06 together with the role of the Independent Reviewer provide an adequate basis for the protection of children and young people from the arbitrary use of the stop and search power. We recognise, however, that

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<sup>123</sup> Judicial Communications Office, 26 February 2021:  
<https://www.judiciaryni.uk/sites/judiciary/files/decisions/Summary%20of%20judgment%20-%20In%20re%20Ailise%20Ni%20Mhurchu.pdf>

until its recent acceptance of the obligations flowing from the legal regime the PSNI did not adequately give effect to all parts of the relevant protective measures.”

Some time ago the Independent Reviewer of the Justice and Security Act recommended that:

‘An internal record be kept of any stop and search under JSA or TACT involving children or where an unexpected incident has occurred which might prove controversial. The purpose of this recommendation is to aid collective learning and best practice; to improve training; to avoid unnecessary repetition of avoidable mistakes; and put the PSNI in a better position to respond to allegations that children have been stopped and searched unnecessarily. This recommendation is made against the background that there is concern in some quarters about the way children are stopped and searched/questioned in Northern Ireland. It can be the first encounter that a child has with the police and it can have an adverse impact on a young person and reinforce hostile attitudes to the police which may be prevalent in their community. The PSNI have considered this recommendation carefully and concluded that it is not feasible to accept it. Their view is that these powers are “without reasonable suspicion” powers and, accordingly, police officers should not be required to articulate reasons why a particular person should be stopped and searched. In their view it is sufficient under the legislation and the Code of Practice that an individual is told that due to the current threat in the area and to protect public safety a stop and search authorisation has been granted. The PSNI have a number of stop and search governance groups one of which is the Children and Young Persons Forum where stop and search is examined to ensure fair and effective use and, as a result of these meetings, the PSNI are satisfied the powers are being used appropriately”.

However, the PSNI introduced a change to their recording system (Origin) which outlines that:

Where children are subject to a search using the powers in section 24 of the JSA, the officer should make a record of the specific basis for the search.



In cases where the child is the principal target of a search, the officer should record the basis for the search as is the case with an adult subject.

In a case where the search is of a child who accompanies the principal subject of the search (i.e. is not the target of the search but happens to be present in the vehicle or at the scene) the officer should record the reason why the officer decided that it was necessary and proportionate to conduct the search of the child, in addition to the search of the adult subject(s). (Note - The Origin recording application now has the functionality for this information to be entered whilst creating the search record). It is unfortunate that the PSNI did not accept this recommendation at least insofar as it applied to children. It would not have been particularly burdensome, and those records would have informed the work of this new PSNI working group and been a recognition that there is an issue which is of concern to many in the community.<sup>124</sup>

The Board particularly welcomes the PSNI's Stop and Search Working Group regarding children and young people and its survey in partnership with statutory and voluntary organisations. The group includes representatives of the Northern Ireland Commissioner for Children and Young People (NICCY), the Children's Law Centre, Youth Work Alliance, Policing Board officials, Action for Children, Education Authority NI, SE Health Trust, Include Youth, Department of Health NI, and Dr John Topping from Queen's University Belfast. Following an online survey with 3235 participants survey which aimed to gather data on Children and Young Persons perceptions and experiences of the PSNI's use of Stop and Search Powers, an action plan was devised and presented to the Police Powers Development Group (PPDG) now the Service Accountability Panel (SAP). The aim of the survey was to improve the understanding of the impact stop and search has on children and young people. During May to October 2022 PSNI held a series of engagements with young people, facilitated by youth organisations. At these workshops, PSNI got the opportunity to hear the views of young people regarding their experience of stop and search and how they were treated. It was noted that experiences in general mirrored the feedback from the online survey regarding treatment and officers not being polite. The young people provided excellent and useful feedback regarding the development of a stop and search information card to be carried by officers to inform

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<sup>124</sup> Para 7.10.

young people who are stopped and searched with correct information on the stop, that is, their rights, grounds for the search, asking questions and use of BWV during the interaction.

The current guidance is that supervisors strongly consider a 100% supervision check regarding these searches. Furthermore, the guidance checklist designed to assist police supervisors with the task of supervising / dip sampling stop search encounters has been created as mentioned above. PSNI district training is developing awareness training to operational police officers. It will also contain a procedural element to include items such as informing young people why they are being stopped and searched and informing them what police are searching for.

However, the Independent Reviewer of the Justice and Security Act, Marie Breen-Smyth, recommended in her 2020/21 report to expedite this and that:

“a stop and search card designed for young people be developed and adopted by the PSNI without any further delay. A competition open to young people to design such a card could both expedite the development of a suitable card and afford opportunities for positive interactions between the PSNI and young people and their organisations and the PSNI.”<sup>125</sup>

Finally, stopping and searching children and young people, has been of concern at an international level. As far back as 2016, in its concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland of 2016, the UN Committee on the Rights of the Child recommended the recording of community background regarding stop and search of young children:

‘The Committee recommends that the State party:

- (a) Prohibit the use of non-statutory stop-and-search checks against children;
- (b) Ensure that the statutory use of the stop-and-search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory;

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<sup>125</sup> Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Fourteenth Report 1st August 2020 – 31st July 2021, para. 6.23

(c) Regularly collect, analyse and publish data relating to the use of stop and search on children, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.<sup>126</sup>

### Recent Positive Steps By PSNI

One of the possible ways to improve the way that stop and search is used would be to increase the role of supervisors, now much easier as a result of the use body worn video (BWV) cameras. The PSNI, supported by the Board, has recently started working a number of options and ideas as follows:

- A pilot exercise to assess how much impact there would be on front line supervisors to review the BWV footage of all stop searches involving people under the age of 18.
- A checklist or guidance document for supervisors to refer to whilst dip sampling stop searches, which highlight these concerns as areas to focus on for learning and further investigation if serious wrongdoing is suspected.
- Instructions to ensure that BWV cameras are activated prior to interactions with young people, so that the entire encounter is captured and can be reviewed (along with any ensuing stop search activity) by a supervisor.
- An update to the stop and search guidance 'point pages' conveying the thoughts and feelings of young people regarding stop and search (to increase officer awareness around these issues).
- The results of this exercise to be communicated to district training so that awareness training can be delivered to operational officers. This training should also have a procedural element to include items such as informing young people why they are being stopped and searched and informing them what they are looking for.
- The continued development of a stop and search information card designed specifically for children and young people and for this card to specifically outline information on rights and procedure (this is currently an item that the stop and search working group regarding children and young people are planning to progress)

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<sup>126</sup> UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/5

- Corporate communications department to deliver the content of any information card via social media in an effort to raise awareness amongst young people ([Y-stop.org](http://Y-stop.org) contains useful information around this area, including tools for young people to better enable them to develop skills to help them deal with stop and search).
- Focus groups with police officers to discuss the views expressed in this survey and explore why. The focus groups should be informed by these results and could be used for further qualitative analysis.
- As already outlined within the HMICFRS report titled, Disproportionate use of police powers: A spotlight on stop & search and the use of force.
- At an appropriate time, share this whole research plan with the Northern Ireland Policing Board.
- Ensure that this work complements the children and young person strategy.
- Ensure that this work complements what Professional Standards Department (PSD) are doing.

### **Exceptional Stop and Search Powers: The Justice and Security (Northern Ireland) Act 2007**

The 2007 Act provides the PSNI with additional stop and search powers. The Act also allows the PSNI to stop and search a person (or a vehicle) or to search premises for any wireless apparatus or munitions without the usual human rights protection – the officer does not need to have reasonable suspicion.

The use of the Justice and Security Act powers increased last year by 127% (section 21) and 63% (section 24).

### **New Recommendation 9**

**The PSNI should provide a report to the Policing Board setting out the likely reasons for this increase and for the variation of use of the JSA exceptional stop and search powers over the last five years.**

Failure to co-operate with the officer is a specific criminal offence. This exceptional provisions are not restricted to those involved in terrorism but can and are also used for those involved in any criminal activity and ‘wireless apparatus’ includes mobile phone and similar everyday devices. The definitions are very wide and include:

- ‘anything used or capable of being used in the manufacture of an explosive, a firearm or ammunition,
- “firearm” includes an air gun or air pistol...’<sup>127</sup>

The provision in 2007 was designed to capture some of the measures in the Terrorism Act 2000 that were specific to Northern Ireland but which, the Government believed were necessary to retain, despite the success of the peace process. It is not clear from the Parliament debates on the measure why this extension beyond terrorism was justified and it appears not to have been challenged in Parliament.

The Reviewer Professor Marie Breen-Smyth, has produced two Reports and these provides a very detailed and comprehensive analysis of this stop and search power making it unnecessary to set out in detail the challenges and issues that this power brings with it.<sup>128</sup> In her latest report she says:

‘...the use of JSA powers should be proportionate to the threat level, which if sufficiently reduced, would permit the retiring of JSA powers altogether. As set out in some detail in Section 4 above, the threat level in Northern Ireland was ranked as ‘SEVERE’ (an attack is highly likely) and was then lowered in March 2022 to SUBSTANTIAL (an attack is likely).<sup>129</sup> The reduction in the overall use of JSA stop and search, on the face of it, would appear to reflect the improved security situation.’<sup>130</sup>

However:

‘...it is clear that the frequency with which the powers are used varies widely across policing districts. Mapping such variation exactly on to the level of threat, it is apparent from more detailed inquiries that it is in districts where the threat from dissident republicans is most intense that the powers are most used. It is less clear, partly to do with the way the threat is defined and assessed, the extent to which the use of powers map onto threats from other sources such as

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<sup>127</sup> Schedule 3, para 1(3)(b) & (c)

<sup>128</sup> Report of the Independent Reviewer of the Justice and Security Act, Professor Marie Breen-Smyth, June 2022, <https://www.gov.uk/government/publications/annual-reports-of-the-independent-reviewer-of-justice-and-security-northern-ireland-act-2007>. Her second report was published in July 2023.

<sup>129</sup> The threat level was raised to severe in March 2023 and then lowered again in March 2024.

<sup>130</sup> Para 5.13.

loyalist groups for example. It seems reasonable to conclude that the degree to which the powers are used is determined at least in part by the level of threat in a district.<sup>131</sup>

‘In discussions with the PSNI at various levels, I note what I consider to be a misunderstanding on the part of some officers that JSA powers may be used for the purposes of intelligence gathering or for the purposes of disrupting the activities of those the police suspect are in the process of committing or conspiring to commit a crime. It is clear from the passages above that my predecessors, and now I, do not consider this a proper use of the powers.’<sup>132</sup>

Finally

‘These low arrest rates raise the question of the purpose of stopping and searching for any age, but particularly the stopping and searching of children, in the absence of evidence of any other law enforcement benefit. In the policing of children I refer to Service Instruction SI1032125 of 02/09/2021 paragraph 7 which states that “Any decision taken to stop and search a child must be in the best interests of that child, taking into consideration that exploitation of the child may be a factor in the case.”

I recommend that, in producing their policy statement on the use of stop and search recommended in the 14th report at paragraph 6.67, that the PSNI specify their policy specifically in relation to the use of JSA powers on children who are the targets of the stop and search.’<sup>133</sup>

When this stop and search provision was being passed by the UK Parliament there was virtually no discussion. However:

‘The safeguards ensure that the use of the powers will be reviewed each year, and that the Secretary of State will be able to repeal the powers by order, under clause 40, when they are no longer needed. As we make increasing progress

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<sup>131</sup> Para 5.15.

<sup>132</sup> Para 5.59.

<sup>133</sup> Para 5.33.

towards normalisation, therefore, the option of lapsing the powers by order will be available, without the need for fresh primary legislation.’<sup>134</sup>

The stop and search power can now only be used if there was an authorisation in place from an Assistant Chief Constable and, if for more than a few days, the Secretary of State. Potentially an important protection except that since that amendment came into force the power has been in constant use and in every area of Northern Ireland – authorisations are renewed every two weeks.<sup>135</sup>

The requirement that police officers need an objective basis – reasonable suspicion – before they are entitled to stop and search a person is a fundamental protection. The courts have stated that:

‘It is an old and cherished tradition of our country that everyone should be free to go about their business in the streets of the land, confident that they will not be stopped and searched by the police unless reasonably suspected of having committed a criminal offence. So jealously has this tradition been guarded that it has almost become a constitutional principle.’<sup>136</sup>

And

‘The Government argue that in certain circumstances a particularly intrusive search may amount to an interference with an individual's Article 8 rights, as may a search which involves perusing an address book or diary or correspondence, but that a superficial search which does not involve the discovery of such items does not do so. The Court is unable to accept this view. Irrespective of whether in any particular case correspondence or diaries or other private documents are discovered and read or other intimate items are revealed in the search, the Court considers that the use of the coercive powers conferred by the legislation to require an individual to submit to a detailed search of his person, his clothing and his personal belongings amounts to a clear interference with the right to respect for private life. Although the search is undertaken in a public place, this does not mean that Article 8 is

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<sup>134</sup> Col 900.

<sup>135</sup> There was one two week period for one area of Northern Ireland that it did not apply but members of the public living there were never told.

<sup>136</sup> Lord Bingham, para 1, R (on the application of Gillan) v Commissioner of Police for the Metropolis, [2006] UKHL 12.

inapplicable. Indeed, in the Court's view, the public nature of the search may, in certain cases, compound the seriousness of the interference because of an element of humiliation and embarrassment. Items such as bags, wallets, notebooks and diaries may, moreover, contain personal information which the owner may feel uncomfortable about having exposed to the view of his companions or the wider public.<sup>137</sup>

As the Code of Practice for the Exercise of Powers in the Justice and Security (Northern Ireland) Act 2007 states:

'The powers should therefore not be authorised solely on the basis that there is general endangerment from unlawfully held munitions or wireless apparatus...

An authorisation should not be given on the basis that the use of the powers provides public reassurance or that the powers are a useful deterrent or intelligence gathering tool.'<sup>138</sup>

The geographical area that is covered by the authorisation and its duration must be no greater than is necessary. Despite these restrictions the power has been authorised every two weeks and for every area of Northern Ireland since this provision of the Act came into force in 2007 (except on one occasion, see above).<sup>139</sup> The Human Rights Advisor visited PSNI in May 2022 and was taken through the process and read through a sample of fifteen recent authorisations and found that:

- (i) Some of the intelligence suggested that the PSNI needs to take urgent action to search specific address or person or act to protect a person and once that action had been taken<sup>140</sup> the intelligence would not justify an authorisation;
- (ii) The number and significance of the pieces of intelligence varied from authorisation to authorisation and in relation to the four areas of Northern Ireland. However, several authorisations were very weak on the need for

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<sup>137</sup> Gillan and Quinton v UK, para 63.

<sup>138</sup> Para 8.21.

<sup>139</sup> See the detail of the 'Geographical Spread' at para 5.14 of the latest report in June 2022 from the Independent Review of the JSA.

<sup>140</sup> The action rarely involved the need to use any stop and search power, let alone a JSA power.



an authorisation covering all four areas of Northern Ireland although the power is used across Northern Ireland;

- (iii) It was rarely obvious to the reader of the intelligence that the JSA stop and search power would assist with the particular threat set out in the intelligence;
- (iv) There were no examples described in the intelligence where the JSA power had helped to deal with the threat (or the threat described in a previous authorisation);
- (v) The very low statistical 'success rate' of the JSA stop and search power<sup>141</sup> would suggest that its ability to deal with the threats set is, in fact, unlikely and it was nowhere suggested in any of the applications that it would be successful;
- (vi) There were many examples in the intelligence where it appeared that the test of reasonable suspicion had been met and 'normal' Police and Criminal Evidence Order (PACE) stop and search powers or a warrants to search particular premises would have been available. This suggests that the more specific the intelligence is, the more PACE powers would have been sufficient, and the less likely it is that a JSA authorisation would be justified;
- (vii) It seems arguable that if a PACE stop and search power exists in the particular circumstances set out in the intelligence, that the PSNI are under a duty to use PACE instead of the less 'human rights compliant' JSA power;
- (viii) The intelligence in the applications for authorisations does sometimes give examples of intelligence that is not very specific or does not identify particular individuals or premises. In such circumstances the reasonable suspicion PACE powers might not be available and the JSA authorisation would then be justified under to the 2007 Act.<sup>142</sup> However, there appear to be no examples in the applications of any specific plans to use the powers or examples of where the power was actually used in practice;<sup>143</sup>

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<sup>141</sup> Less than 1%, Use of Stop and Search Powers by the Police in Northern Ireland, 1<sup>st</sup> April to 31<sup>st</sup> March 2021.

<sup>142</sup> However, even in these examples, there might have been more intelligence than had been set out in the authorisation that would have allowed the PACE power to be used anyway.

<sup>143</sup> Note: the JSA stop and search power has always been available to deal with the issue identified in the intelligence examples because the applications include past intelligence when the power was, in fact, available.

- (ix) It should also be noted that section 21 of the JSA (the stop and account power) applies without the need for any authorisation. This power allows the PSNI to stop anyone to question them about their identity and movements or to question them about recent explosions or other similar incidents. This power could be used in many situations not covered by PACE stop and search powers. In practice, these powers might also result in responses from the person questioned which then triggered the reasonable suspicion power of PACE and allowing a 'normal' stop and search.

The stop and search powers provided by the JSA are very similar in procedure and structure to the previous stop and search provisions in the Terrorism Act 2000, sections 44 and 45. Those provisions were ruled unlawful by the ECtHR in the case of *Gillan and Quinton v UK* (2010) (see quote above):

'In conclusion, the Court considers that the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They are not, therefore, "in accordance with the law" and it follows that there has been a violation of Article 8 of the Convention.'<sup>144</sup>

The Policing Board set out its concerns later in that year and as a result the PSNI has responded as follows:

'I have directed the Authorising Officers to be more discriminating and more intrusive in their consideration of the applications and in particular I have asked them in particular I have asked them to closely consider the grounds to support authorisations which extend to the entirety of Northern Ireland. I am keen that we proceed in a direction which over time shows a reduction in the routine use of powers if the National Security threat continues to diminish. I am also encouraging more focused short-term use in response to emerging issues.

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<sup>144</sup> Para. 87

It is my hope that this signals a journey towards a more focused and hopefully much reduced usage of the JSA power.’<sup>145</sup>

However, in preparation for a ‘deep dive’ discussion with senior police officers, PSNI lawyers and lawyers and civil servants from the Northern Ireland Office in May 2023 the Human Rights Advisor examined a number of more recent authorisations. Unfortunately he found similar problems, in particular that those authorisations were not based on the second part of the requirement:

‘The authorising police officer must also be satisfied that the powers are necessary to prevent such endangerment and that the use of these powers is required to help deal with the perceived threat.’<sup>146</sup>

As a result, it would be difficult to argue that all of those authorisations were lawful. However, the result of the ‘deep dive’ is that a working group involving PSNI and the NIO has been created which will make recommendations to improve the quality of the intelligence and the authorisations.<sup>147</sup> A detailed discussion on re-structuring the process and intelligence necessary for authorisations was held in September 2023 and it is hoped that this will result in better evidenced decisions.

The real test of the lawfulness of authorisations might come when the stop and search power is next examined by the High Court.<sup>148</sup> However, it does not seem that any court has ever examined an authorisation following a challenge. Obviously, a person stopped and searched would find it difficult to make allegations about unlawfulness because the process is secret.

In England and Wales there is a similar stop and search power, section 60 of the Criminal Justice and Public Order Act 1994 which, if authorised, does not require an officer to have reasonable suspicion before it is exercised. Recently this power has

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<sup>145</sup> Letter from the Deputy Chief Constable, 5 October 2022.

<sup>146</sup> Para 8.22 of the Code.

<sup>147</sup> The Board’s Thematic Review of the Police Use of the Powers to Stop and Search required the PSNI to have a clear stand-alone policy on the use of TACT and JSA stop and search. A stand-alone policy was apparently developed, but never finalised as it was superseded by a high-level policy covering all searches, which referenced appropriate legislation, Codes of Practice, College of Policing guidance and the PSNI search manual. However in 2018 Counsel instructed by the Board, examined the relevant policy documents and the range of information on the PSNI website and commented that while the information is appropriate and helpful, “it does not articulate a specific PSNI policy in respect of searches under TACT or JSA on the website. It would be helpful if this could be rectified as a matter of urgency”.

<sup>148</sup> Awaiting judgment in case from before the summer.

being challenged by the Criminal Justice Alliance who have submitted a super-complaint which has been investigated jointly by HMICFRS, College of Policing and the Independent Office for Police Conduct.<sup>149</sup>

## New Recommendation 10

**In England and Wales a trio of independent bodies (HMICFRS, College of Policing and the IOPC) carried out a thorough and detailed investigation into the use of stop and search provision available in that jurisdiction that also does not require reasonable suspicion. PSNI should ask a group of similar independent experts to carry out a review of the JSA power and the investigation should take a similar approach to establish the facts.**

### Recording of Community Background

In the Human Rights Annual in 2007, the then Human Rights Advisors, Keir Starmer KC and Jane Gordon, stated:

‘PSNI policy instructs District Commanders to monitor the community and religious background of individuals stopped and/searched on the basis of indicators such as location of the stop or search or, where supplied, the individual’s postcode, an act on any identified disproportionality. A template devised by the Analysis Centre facilitates this monitoring exercise...

While we recognise that the Analysis Centre’s template may not be wholly effective in providing a robust monitoring framework where community background... We recommend therefore that the PSNI takes steps to establish an effective method of monitoring the use of stop and search powers across districts.’<sup>150</sup>

In 2013, the Policing Board stated:

‘The Policing Board, as the organisation with the statutory responsibility to monitor the use of the powers, has previously recommended that the PSNI should compile and publish statistics according to ethnicity but it has not previously recommended that the PSNI should compile and publish statistics

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<sup>149</sup> Report on the Criminal Justice Alliance’s super-complaint, 15 December 2023.

<sup>150</sup> Pages 66 & 67.

according to community background. However, taking into account the revised Codes of Practice and the continued concern amongst some stakeholders that the powers are being used disproportionately against people from a catholic/nationalist/republican background the Committee has reconsidered that issue. The PSNI may wish to consult the Equality Commission in this respect.<sup>151</sup>

This one remaining recommendation from 2013 has been repeated in several other Policing Board reports and has been the subject of many meetings and discussions and with the PSNI. It has even been the subject of a Court of Appeal judgment. Unfortunately, the justification refusing to take this action or for the delays have changed over this long period and a series of senior officers have been defeated in their attempts to deliver.

In the case of Ramsey<sup>152</sup> the Court of Appeal resolved two issues of dispute.

First, the PSNI argued that after a search of a person using this power it was only necessary to record the fact that there was an authorisation in place:

‘52. First, the requirement for the officer to record the basis for the search is itself a discipline in ensuring that the officer acts in accordance with the requirements of the Code. The record need not be extensive comprising at most a sentence or two but providing sufficient information to explain why there was a basis...

... the powers should be used only if it is proportionate and necessary. Proportionality requires the powers to be used only where justified by the particular situation. Effective monitoring and supervision can only be achieved if there is a record for the basis of the search.’

Secondly, the Court decided that the community background of those stopped using this power need to be monitored by PSNI.

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<sup>151</sup> Human Rights Thematic Review on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007.

<sup>152</sup> Court of Appeal, 25 February 2020.

'54. The second issue in dispute is the requirement to monitor community background. Paragraphs 5.6 to 5.8 of the Code are entitled "Avoiding Discrimination". Those paragraphs incorporate by reference the types of discrimination set out in sections 75 and 76 of the Northern Ireland Act 1998. There is a particular focus on the risk of profiling people from certain ethnicities or religious backgrounds and consequently losing the confidence of communities...

58. The evaluation of the pilot by the PSNI has tended to suggest that the best option may be assessment by the individual police officers of community background. We understand that such an option has not yet been implemented but we are satisfied that the requirements of the Code are that some proportionate measure is put in place in order to ensure that there can be adequate monitoring and supervision of the community background of those being stopped and searched.'

The Independent Reviewer commented:

'Given the lack of progress on this subject over the past 7 years, a sceptical observer might view this programme of work as an attempt to "kick the can down the road". Indeed, it could be argued that this programme of work is unnecessary. All that is required is a separate assessment, after the event, based on intelligence, existing information and officer perception of the individual's background'<sup>153</sup>

However, some positive developments can be detected. Marie Breen-Smyth, the more recent Independent Reviewer, collaborated with the PSNI and the Northern Ireland Statistics and Research Agency to produce some useful indicative figures:<sup>154</sup>

'The estimated religious composition of those persons stopped and searched/questioned under JSA powers between August 2020 and July 2021 across Northern Ireland was as follows:

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<sup>153</sup> Para 5.9, Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Thirteenth Report 1st August 2019 – 31st July 2020.

<sup>154</sup> Modelling 2011 Census Small Area Religious Composition onto Justice and Security Act Stop & Search postcode data, 18<sup>th</sup> March 2022.

- 45% Catholic
- 24% Protestant
- 4% Other/None
- 28% Missing'

### Latest PSNI Response

The Performance Committee in October 2023, in light of the fifteenth report of the Independent Reviewer of the Justice and Security (NI) Act 2007 (1 August 2021 to 31 July 2022) asked, 'What progress has been made to date by the PSNI in such monitoring and what impediments remain, if any, to implementation?'

The PSNI replied:

"We acknowledge and recognise that the issue of collation of community background monitoring data has been a relevant issue raised by other partners including the independent reviewer. We had always articulated that the preferable position was to have the collation of the data underpinned by relevant legislation to ensure a lawful basis and deliver a complete data set. We now have clarity that this will not be the case so we are taking steps to move forwards without such legislation. We continue to work with the NIPB Human Rights Advisor on this important issue.

Following a community background monitoring (CBM) data collection paper from ACC Operational Support Department (OSD) to the Strategic Management Board in January 2023 it was agreed, in the absence of legislative change, that community background monitoring data (*in regard to JSA stop and search powers*) would be collected.

The following recommendations were agreed:

- Endorse interpretation of Legal Opinion regarding the lawful basis for collection of community background data.
- Agree in principle to collect community background data, initially for Justice & Security Act (JSA) stop and search powers.

- Consider the collection of community background data for JSA powers to be a pilot with a view to moving to other stop and search powers once methodology, policy and requisite architecture have been established and assessed.
- Approve proposed collection methodology with future plan to integrate with Niche.
- Approve the outline Operational Support Department (OSD) plan as below to be brought back to future PSNI Senior Management Board with an updated implementation schedule:
  - Carry out stakeholder analysis and draft a stakeholder engagement plan to ensure appropriate consultation takes place;
  - Draft new Service Instruction, DPIA, EQIA, RRD Schedule etc. (as identified as necessary through consultation) with support of Legal Services and DPO;
  - Draft outline transformation plan to incorporate requisite ICT changes; and
  - Draft training and engagement plans.

ACC OSD has initiated a working group to develop a plan to progress the implementation of Community Background Monitoring of persons stopped and searched under Justice and Security Powers and this convened in June 2023.

This is a significant piece of work requiring coordination across several areas of the organisation. The current preferred method of collection of Community Background Monitoring is three staged:

1. Data matching using PSNI records (NICHE);
2. Questioning of subject; and
3. Officer Perception.

In order to achieve this, work is being progressed through the working group in a number of areas:

- Articulation of the necessity for the collection of community background data as being of “substantial public interest”;



- Clarity regarding the definition of the term community background and identification of what community backgrounds are to be recorded;<sup>155</sup>
- Drafting of proposed CBM policy/guidance;
- Sect 75 screening;
- EQIA process;
- Stakeholder consultation and engagement;
- Incorporation of CBM into Stop and Search SI for JSA;
- ICS scoping and development;
- Corporate Information management (DPIA etc.);
- Communications Strategy;
- Training; and
- Identification of what other areas of business CBM may be required (e.g. Custody, File Prep, Call Management etc.) in order to provide consistent data collection and data matching.’

On 18<sup>th</sup> January 2024 the PSNI told the Human Rights Advisor that it will be implementing a pilot scheme to collect community background information, scheduled to commence in March 2024.

Cases challenging the JSA stop and search power continue and as recently as June 2023 another judicial review was heard in the High Court in Northern Ireland. In that case the applicant alleged that he had been stopped and searched over twenty times.

### **The European Convention on Human Rights, Article 14: Indirect Discrimination**

Article 14 of the ECHR also prohibits discrimination in relation to the exercise of all the other rights of the Convention:

‘The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’<sup>156</sup>

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<sup>155</sup> Obviously careful consideration needs to be given to this as not all Catholics are nationalists for instance or Protestants unionists.

<sup>156</sup> Emphasis added.

The following Articles are particularly relevant to the issues raised above: Article 3 is engaged when the use of force (a spit and bite guard) is employed; Article 5 is engaged by arrests and detentions; Article 6 is engaged by charging a person with a criminal offence; and Article 8 is engaged by stop and search.

Evidence that any group of people (on the basis of their sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status) is subjected to interference with their other rights more than equivalent others, is unlawful, unless there is an evidence-based, objective and reasonable justification for this. It is unlawful regardless of the absence of intentional discrimination. Unlawful discrimination under Article 14 does not require any other right to have been violated, only that the other right has been engaged.

Therefore, if the evidence is that a disproportionate number of people from one religion, national or social origin, national minority political group were subject to disproportionate action by a police service this would be unlawful – unless that difference can be objectively justified, and this justification is a legitimate one. It is the responsibility of the police service to investigate this disproportionality and to justify it, if the service is it to avoid the finding of a violation.<sup>157</sup>

It is worth noting that in her report of 2020/21, the Independent Reviewer of the Justice and Security Act also makes this recommendation:

‘I have also commented at length on the long running issue of community monitoring, and the requirement to gather community monitoring data for people searched under the JSA. I urge the PSNI to implement a method for gathering this data without any further delay and whilst resolving other concerns around legislation. I also have recommended that they consult the Equality Commission on this issue and review their procedures and practices in relation to targeting, assessing, reporting and responding to community impact,

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<sup>157</sup> In the leading case of *DH v Czech Republic*, the Grand Chamber of the ECtHR set out the principles in relation to Article 14 and the basis for finding violations.

particularly in communities where stop and search activities are concentrated.<sup>158</sup>

Recommendation 5 from that 2021/22 report stated:

‘Given the history of the PSNI dealing with this difficult issue of policing all communities across Northern Ireland, the PSNI should engage an independent equality expert to assist it with its analysis and development of an action plan.

In the meantime, the PSNI should collect, collate and compare the community background statistics of those arrested and charged with the figures of those subsequently prosecuted.’

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<sup>158</sup> Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Fourteenth Report 1st August 2020 – 31st July 2021, para. 2.8. See also the same issue raised in the subsequent report [Report of the Independent Reviewer Justice and Security \(Northern Ireland\) Act 2007 – Fifteenth Report \(publishing.service.gov.uk\)](#) pp.89-90.

## CHAPTER 3 ARREST AND CUSTODY<sup>159</sup>

### Introduction

When the police arrest and detain a person, they assume responsibility for the protection of both the detainee's rights and welfare. Detention directly engages Article 5 of the ECHR (the right to liberty and security) and police must follow strict procedures and take every reasonable step to uphold the rights and welfare of all detained persons.<sup>160</sup> Articles within the PSNI Code of Ethics reflect these provisions and also require police officers to ensure that all detained persons are treated in a humane and dignified manner. It stipulates that arrest and detention must be carried out in accordance with the relevant Police and Criminal Evidence Order 1989 (PACE), the Codes of Practice made under PACE and in compliance with the ECHR. Police have a duty to protect the health and safety of detained persons and take immediate action to secure medical assistance where required.<sup>161</sup>

When any person is arrested the police have a particular duty to ensure that subsequent detention complies with human rights as:

“Detention by the police is the moment when detainees are most at risk of ill-treatment or of suffering other types of abuse”.<sup>162</sup>

In a recently completed investigation by the Police Ombudsman she found:

‘This was a volatile incident, but it was also a serious and unwarranted assault on a man who was intoxicated. Police detainees are often vulnerable and distressed, and this type of behaviour has no place in custody suites.’<sup>163</sup>

The United Nations’ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human

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<sup>159</sup> The Policing Board is in the process of writing its report on ‘Children and Young People and Policing’ and issues of the arrest and treatment in custody of that group of people will be dealt with in more detail in that report. However, the recently published report, [Human Rights Review Children and Young People: Strip Searching in Police Custody](#) is referred to and summarised below.

<sup>160</sup> And for ensuring that any use of force is lawful and avoids ill-treatment contrary to Article 3.

<sup>161</sup> More details of the human rights issues in relation to arrest and detention are set out in the Policing Board’s Human Rights Monitoring Framework, page 29 onwards.

<sup>162</sup> Association for the Prevention of Torture, Police custody: Risks and safeguards, APT website, online at: [www.apr.ch/en/police-custody-risks-and-safeguards](http://www.apr.ch/en/police-custody-risks-and-safeguards).

<sup>163</sup> Regulation 20 report to the Policing Board, 4 January 2024.

rights treaty designed to strengthen protection against ill-treatment of people who are detained. Inspections on the efficiency, effectiveness and treatment of detained persons in custody in Northern Ireland are conducted by the Criminal Justice Inspection Northern Ireland (CJINI) and the Regulation Quality and Improvement Authority (RQIA), and the Policing Board's Independent Custody Visiting Scheme (ICVs) which are all part of the system of protections included within the UK Government's system for compliance.

'Every day the PSNI deal with detainees, all have individual needs and many have a complex range of mental health, alcohol and substance misuse and aggression issues. Some are children and young people, who may have a history of life in care, behavioural difficulties and educational needs or are vulnerable adults which means that a police custody suite is not the most appropriate place for them.

Effectively engaging with detainees to make sure they have any immediate physical and mental health needs met, they are kept safe and legal requirements complied with while in custody presents a constantly challenging working environment for Police Officers, Custody Detention Officers and health professionals. Regardless of whether detainees have been in police custody many times before or this is their first time, they each have individual needs that need to be assessed and risks managed.'<sup>164</sup>

During a CJINI Inspection looking at the standard of police custody in Northern Ireland and the experience of detainees in 2020, a number of recommendations were made. They called for a further examination of the reasons for arrest and detention in custody of Irish Travellers and people of Black ethnicities, use of force, improvements to the coverage of audio recording in custody cells, the introduction of IT processes to alert within its system children on the Child Protection Register ensuring it applies to custody records, and a review of the provision of health care training.

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<sup>164</sup> Chief Inspectors Forward, Police Custody the Detention of Persons in Police Custody in Northern Ireland, Criminal Justice Inspection of Northern Ireland, September 2020.

In response to the recommendations made by CJINI in their inspection report, the PSNI developed a Strategic Action Plan and identified key areas for development and learning. This action plan enabled the PSNI to analyse existing practices and to work towards implementing the recommendations.

The Office of the Police Ombudsman for Northern Ireland (OPONI) has also made several recommendations regarding the area of Custody on completion of their investigations over the years. In February 2020, the PSNI accepted and implemented a recommendation requesting custody staff to be proactive when processing new detainees in order to establish if any potentially dangerous substances have been ingested or concealed and appropriate medical help sought if required. OPONI also recommended regular refresher training for custody sergeants, staff and to consider joint training between custody staff and Health Care Practitioners (HCPs), including first aid. PSNI have confirmed that first aid training is in place and have accepted the recommendation of regular refresher training. They have also accepted the recommendation of joint training between staff and HCPs. A further recommendation made in January 2023, which the PSNI are considering is guidance documents in relation to seizure, labelling and storage of drugs be amended to make specific reference to suspected controlled substances to ensure consistency across all custody suites. The final recommendation made by OPONI that has been accepted is in relation to new procedures when CDO's are conducting strip searches whereby, one CDO conducts the search whilst another observes and detainee property should be logged after completion of the search. PSNI have also revised the training in strip searches to make them more comprehensive in light of the sensitive nature of the role and in light of the Policing Board's Human Rights Review of Strip Searching of Children and Young People as mentioned below.

Once a person has been arrested the police also have considerable additional powers, which include the power to use force to ensure that the detained person complies:

- Search of the outer clothing of the arrested person, a strip search,<sup>165</sup> or an intimate search;<sup>166</sup>
- Detaining a person to secure evidence or to question them for up to four days (longer for those arrested under the Terrorism Act 2000);<sup>167</sup>
- Taking samples, like fingerprints and mouth swabs (for creating DNA identity profiles);
- Search the person's home or other property;
- Decide whether the person should continue to be detained or can be released or bailed to return to the police station or to court; or
- To charge the person with an offence.

In relation to searches in custody, particularly strip searches of children and young people the Policing Board recently reported:

'The issue of strip searches of children and young people has been the subject of considerable concern over the last two years across the UK. In Northern Ireland, the issue of strip searching of children in custody was raised by organisations in the children's sector at a PSNI Youth Champions Forum meeting in May 2022...

The responsibility of custody officers and staff to protect those arrested and detained is incredibly important, which is why it is paramount to examine the current practice of strip searching of young people and scrutinise whether guidance and governance frameworks are sufficient – both to protect the young people in custody and to give correct guidance to custody officers and staff. The

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<sup>165</sup> Code C of the PACE Order for the Detention, Treatment and Questioning of Persons by Police Officers, Annex A, Part B states: '9. A strip search is a search involving the removal of more than outer clothing. In this Code, outer clothing includes shoes and socks.' '11(e) if necessary to assist the search, the detainee may be required to hold their arms in the air or to stand with their legs apart and bend forward so a visual examination may be made of the genital and anal areas provided no physical contact is made with any body orifice.'

<sup>166</sup> 'An intimate search consists of the physical examination of a person's body orifices other than the mouth. The intrusive nature of such searches means the actual and potential risks associated with intimate searches must never be underestimated.' PACE Order, Code C, Annex A, para 1. An intimate search may only be carried out by a registered medical practitioner or registered nurse. There was one intimate search recorded during 2022/23, which had a negative result.

<sup>167</sup> Subject to the detailed custody time limits.

report examines the relevant legislation, statistics, PSNI custody officer training and current governance arrangements. This report puts a particular focus on the role of Appropriate Adults. An Appropriate Adult has a crucial role in protecting a vulnerable or young person in custody and a significant concern of this report is the strip searching of young persons in custody without the presence of an Appropriate Adult.<sup>168</sup>

The research for the Report found:

‘Of the 1,279 of juveniles arrested and brought to custody in 2022, 27 strip searches were conducted (that is 2.1% of the juveniles arrested and in custody in that year). Of these cases, 22 individuals were 17 years old, 3 were 16 years old, 1 was 15 years old and 1 was 14 years old; 4 were females and 23 were males. Of these searches an Appropriate Adult was present on only six occasions.

Ten of these young people identified as Catholic, four as Protestant, six as having no religion, and seven refused to provide details. 26 were white and one was of an Irish traveller ethnicity. All were single and had no dependants. Whilst there will always be some issues of reliability in relation to such data produced by self-identification and the number of young people who have not declared their community background, they indicate that over twice as many children and young people strip searched identified as Catholic rather than Protestant.

With regards to the outcome of the search, there were only prohibited items found as a result of these strip searches, namely drugs and a weapon, on two occasions...

In 17 of the 27 strip search cases considered for this Report the young person arrived at the custody suite wearing handcuffs... In six cases a use of force was recorded in the custody suite (e.g., hand restraints to ensure the safety of the young person), and in two the cases a use of force was recorded during the strip search.<sup>169</sup>

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<sup>168</sup> Executive Summary, [Human Rights Review Children and Young People: Strip Searching in Police Custody](#).

<sup>169</sup> Page 15 and 17.



A series of recommendations were made in the Report, including updating guidance and re-evaluating governance frameworks and recommendations regarding the amendment of PACE legislation and Codes.

The Report also considered the role of the Appropriate Adult in some detail. Appropriate Adults safeguard the welfare, rights, and effective participation of both children and vulnerable adults in custody. The Northern Ireland Appropriate Adult Scheme is run by Mindwise. The failure by the PSNI to ensure Appropriate Adults were present for children and young people obviously raises questions about whether vulnerable adults were provided with them when they were needed. Obviously, it is likely that in many cases that it will be police officers (and the medical staff that support them) who will need to identify whether a detained person needs the assistance of an Appropriate Adult – not always an easy task.

## Statistics

During 2014/2015, a total of 24,377 arrests were made under the PACE (Northern Ireland) Order 1989.

There were 21,474 arrests made under PACE Order during 2022/23, 82% of which were males. During 2022/23 there were only 49 persons detained in police custody for more than 24 hours and released without charge. During the same period there were 22 applications to Magistrates Courts for warrants of further detention (for more than 36 hours), in relation to 17 individuals. Six of these applications were for an additional 24 hours or less, 5 were for between 25 and 35 hours and the other 11 were for a period of 36 hours. Of the 22 applications to Magistrates Courts for warrants of further detention, 5 of these were for a second warrant of further detention.

Of the 17 persons subject to a warrant of further detention, 9 spent less than 24 hours under its authority, while 3 spent between 24 hours and 36 hours and the remaining 5 people were detained over 36 hours under the authority of these warrants. A total of only 10 of those people were subsequently charged.<sup>170</sup>

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<sup>170</sup> Police and Criminal Evidence (PACE) Order Statistics, 1 April 2022 to 31 March 2023, PSNI/NISRA

## Coronavirus restrictions

As set out in the Board's Report on the Thematic Review of the Policing Response to COVID-19, the difficulty of understanding the rapidly changing law at the time and assuming that the law gave PSNI greater powers than it did, is creating problems. The High Court recently concluded that following an incident involving the PSNI arresting two people in 2021:

'...the police did not have lawful grounds to detain either of them post charge and, accordingly, they were both unlawfully detained when brought before the magistrates court.'<sup>171</sup>

## Training

It is essential that custody training, whether aimed at custody sergeants performing the role in a substantive or backfill capacity, custody constables and Civilian Detention Officers {CDOs}, equips staff to recognise their legal and human rights obligations in relation to the management and care of detained persons, and, to appropriately assess and mitigate the risks posed by vulnerable persons detained in police custody.

In 2020 the College undertook a training review which took the form of a snapshot review of a number of lesson plans, documents and assessment schemes as well as ongoing discussions with police trainers involved in the assessment and delivery of lessons. Lesson plans reviewed included: Autism; Risks in the Suite; Preventing Deaths in Custody; Independent Custody Visitor; Human Rights (Collaborative Working); Risk Assessment; and Rights, Care Plan Pre-release Risk Assessment. The review found that the trainers evidenced good understanding of human rights obligations/vulnerability/risk assessment considerations evidenced by discussions during monthly governance meetings and lesson observation. It was further noted that courses contain relevant sections on Human Rights compliance and that NICHE inputs were heavily focused on the safe management of detainees and the management of detainee vulnerability.

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<sup>171</sup> JR 310, 15 December 2023.

## Rights in Custody

A person detained in police custody is entitled to have a friend or relative informed of their detention. Requests to have someone informed must be complied with as soon as it is practicable and in any case within 36 hours (48 hours under TACT). Delay in complying with the request can be authorised only in certain clearly defined circumstances.<sup>172</sup> A person detained in police custody is also entitled to consult a solicitor privately. Such requests must be permitted as soon as is practicable and in any event within 36 hours (48 hours under TACT). However, a delay in complying with such a request may be authorised, but only in the strict circumstances defined in PACE or TACT. There are also rights to examine the Codes of Practice and to medical care.<sup>173</sup>

### Detainees under the Terrorism Act 2000 (TACT)

'Terrorism' is defined as the use or threat of action if:

- “(i) The action involves serious violence against a person; serious damage to property; endangers a person’s life, other than that of the person committing the action; creates a serious risk to the health or safety of the public or a section of the public; or is designed seriously to interfere with or seriously to disrupt an electronic system;
- (ii) The use or threat of action is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public; and
- (iii) The use or threat of use is for the purpose of advancing a political, religious, racial or ideological cause.”<sup>174</sup>

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<sup>172</sup> Of the 21,474 people arrested only 6,920 of them are reported as requesting a friend or relative be informed.

<sup>173</sup> Of the 21,474 people arrested only 14,913 of them are reported as requesting a solicitor.

<sup>174</sup> Section 1, Terrorism Act 2000. All three criteria must be satisfied unless the use or threat of action involves the use of firearms or explosives in which case the second criterion need not be satisfied.

[PSNI Security Situation Statistics](#)

Section 41 of TACT empowers a police officer to arrest without warrant a person whom he or she reasonably suspects to be a terrorist. A ‘terrorist’ is defined as a person who has committed specified terrorist offences or a person who “is or has been concerned in the commission, preparation or instigation of acts of terrorism”. Therefore, suspicion of the commission of specific crimes need not be demonstrated at the time of the arrest. A person arrested under section 41, may be detained without charge for up to 48 hours without judicial intervention. If detention is to extend beyond 48 hours, it must be extended by a Judge. The extension may be for up to but no more than a *total* of 14 days.

From 2010 there was an increase in the proportion of those arrested under section 41 who were subsequently charged. This increased from 21% in 2010/2011 to 25% in 2011/2012 to 32% in 2012/2013. That trend reversed in 2013/2014 reducing to 19% and has further reduced in 2014/15 to 15%.

From November 2022 to 31 October 2023 there were a total of 123 arrests made under section 41 of the Terrorism Act 2000 in Northern Ireland, 11 more than in the previous year. Of the 123 arrests made under section 41 this resulted in 27 people being charged with an offence. This represents an increase of nearly 50% on the previous 12 months.

A recommendation made in the Human Rights Annual Report of 2011, requesting PSNI to carry out a review of section 41. In 2014, the Independent Reviewer of Terrorism Legislation, David Anderson KC, commented in his annual report, “The low charging rate during 2013/14 is, on the face of it, disappointing. I have previously emphasised the need for reasonable suspicion in relation to each person arrested under section 41”.<sup>175</sup>

Jonathan Hall KC, the current Independent Reviewer of Terrorism Legislation in his Annual Report for 2020 (published in April 2022), also raised issues about the PSNI general use of TACT rather than PACE for arrests of those suspected of terrorism.<sup>176</sup>

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<sup>175</sup> 410 *The Terrorism Acts in 2013. Report of the Independent Reviewer on the operation of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, David Anderson QC, July 2014, para. 8.12.

<sup>176</sup> See paras 9.36 onwards. See also para 928 of Jonathan Hall KC’s report for 2021.

This was subsequently considered in Policing Board's Human Rights Annual Report for 2020/21.

The PSNI's approach appeared to be out of step with the approach taken in Great Britain and meant that suspects have fewer rights and could face longer periods in custody, (a particular issue for juveniles arrested). In principle, the use of police powers should be proportionate, and the least impactful provisions should apply wherever possible. Jonathan Hall KC and the Board's Human Rights Advisor met with the PSNI's Terrorism Investigation Unit to discuss this issue in June 2023. In this meeting officers helpfully set out some of the reasons that they considered justified the near automatic use of TACT section 41 arrest powers in terrorist cases. It was, however, noted that an exception was usually made for juveniles and vulnerable people who were usually arrested under PACE. However, a request for greater clarity concerning the detail of PSNI's policy on this was sought, and in particular whether the presumption is that section 41 is the appropriate power for all offences under TACT and the PSNI replied as follows:

The Police Service is committed to using all of the powers lawfully available to it to protect the people of Northern Ireland from terrorism, while ensuring that the rights of suspects are respected. A key element of this is exercising powers of arrest when the relevant thresholds are met. Persons suspected of terrorist offences are normally arrested under s.41 of the Terrorism Act 2000 (TACT).

It is not Police Service policy to utilise the power of arrest under s.41 of TACT on the basis of public perception. The decision to arrest a suspect under s.41 of TACT or under Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) is made after a determination in each case. The Police Service ensures that the best interests of the child are taken into account in all decisions related to them. This is enshrined in Service Instruction 0817, which reflects the specific needs and vulnerabilities of children who come into contact with the police and wider criminal justice system.

While the availability of bail is an important issue, it is not the sole or decisive one in deciding whether a child should be arrested under TACT or PACE. It is important to note that the Police Service carries out very few arrests of children under TACT. In the past 5 years, November 2017 to October 2022, there have been 618 security-

related arrests under s.41 of TACT, of which 3 involved a person under the age of 18 years old. In conclusion, the Police Service has noted the Advisor's Report, and will continue to ensure that the best interests of children are taken into account in all police decisions affecting them.

Unfortunately, this response does not appear to answer why TACT rather than PACE is chosen in Northern Ireland and not in England and Wales.

### **New Custody Suite: Waterside**

Following a visit to the new custody suite by Policing Board members two issues were raised:

The first issue concerned the view of the toilet area in cells. In particular, the fact that viewing through the windows of the cell door gives a full-on, non-obstructed view of the toilet via the mirror. I wondered whether the Board could be reassured about the privacy issues by developing some specific rules for police officers and police staff that have any access to cells?

#### **PSNI response**

Each new Custody Suite is designed in line with national guidance: *Design Guide Police Custody Suites, Standard Number STD/Z/DG/078*, produced by the Home Office and the National Police Estates Group. The document provides a Design Guide for Police Custody Suites.

In the guidance, Cell mirrors are noted in section 8.13.4. There is an annotated drawing in the Appendices at PCDG 29, referring to the Cell Observation Mirror. It is best practice to have a full view through the observation viewfinder or the hatch. Each Cell in the custody suite is also monitored by CCTV, for the protection of both detained persons and staff. The area of the toilet is pixilated on the monitor to allow privacy for the detained person. In order to protect the detainees, all areas of the cell are viewable from the door window. Staff will open the viewing window if the detainee is believed to be at risk, however staff also carry out routine physical checks, where they would look through the door. In many cases the door is opened and the detainee spoken to. During the night, if the detainee is sleeping, and rousing is not required, staff may just use the viewing window. This is at the discretion of the

custody staff, under the supervision of the Custody Sergeant. Our approach would tie in with our core values and how we treat the public with dignity and respect. We are not of a view that this requires additional specific rules as each case depends on the circumstances at the time.

The second issue, concerns the fact that the bed starts six inches off the ground with mattress to go on top making it about seven. There was concern that people falling could be injured on the hard floor. I think that it was suggested that officers would put a second mattress on the floor if a detainee was drunk but this would require officers doing so in every case.

### **PSNI response**

Each new Custody Suite is designed in line with national guidance: *Design Guide Police Custody Suites, Standard Number STD/Z/DG/078*, produced by the Home Office and the National Police Estates Group, providing a Design Guide for Police Custody Suites. This is the key national document that polices services across the UK and is used as their good practice design guide. It provides advice and good design, that has been assessed by the Policing Federation [Custody Representatives], Home Office Advisors, Custody Inspectors, HMIC, Design and Construction Professionals from NPEG and is endorsed by the NPCC. PSNI Standards and Scales align with the document.

It is of note that the bed is also a bench, for sitting and sleeping. Cell beds and benches are noted in attached national guidance at 8.13.2, stating *“a solid surface material suitably constructed by approved fabricators should be used. Please refer to typical drawings noting standard cell bench height and accessible cell bench height.”*

There is an annotated drawing in the Appendices at PCDG 24 and PCDG 25, outlining the details of a “Limited Mobility Cell Bench” and a “Standard Cell Bench.” The former has a bed/bench height of 480mm, which is around a normal office chair height, while the standard cell height is 243mm high. PSNI do not install the higher bench, as there have been no requests from custody branches to do so.

However, one reason for the raised bed is to allow the detained person to sleep or rest above the floor. Having a bed, with a mattress is in the interest of the detained person. Rest and sleep is of more importance as time in custody continues. As each detained person is admitted to custody, they are assessed. If required, the medical assessment is supported by either the Nursing team of the Forensic Medical Officer. The Custody Sergeant will carry out a risk assessment. Custody Staff have a number of options, including constant observation. However, if Custody Staff have a concern, they have the ability of putting another mattress on the floor beside the bed. This is all part of the Custody Sergeant’s considerations and will form part of the risk assessment.

### Searches by transgender officers

The PSNI have identified a difficult issue in relation to the law on searches by transgender officers and staff. This issues concerns a conflict between the Police and Criminal Evidence Order 1989 and the Sex Discrimination (NI) Order 1976 for officers and staff without a Gender Recognition Certificate. The Department of Justice have been alerted to this issue but it appears that no resolution is likely in the short term.

### Port Powers

TACT also allows law enforcement agencies to be stopped, examined (questioned for up to an hour) and detained (for up to six hours) when travelling through ports and airports.<sup>177</sup> Jonathan Hall KC reports that the number of stops over the last few years in Northern Ireland is as follows:

2016	2082
2017	1248
2018	717
2019	559

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<sup>177</sup> The powers under Schedule 7 to the Terrorism Act 2000 allow a counter-terrorism port and border officer (including authorised police officers) to stop, question, search and detain a person at a UK port or the Northern Ireland border area to determine whether they are or have been involved in terrorism.



2020	120
2021	139 <sup>178</sup>

## Independent Custody Visitors

Currently, there are 29 ICVs, a reduction from 41 in 2015 with a mixed composition of gender, age and community backgrounds based in three Custody Visiting Teams regionally across Northern Ireland. The Board keeps under review the arrangements for the ICV Scheme and where issues are raised in respect of PSNI’s compliance with the Human Rights Act 1998, these are discussed with the Board’s Human Rights Advisor to assess the adequacy of the PSNI response. At March 2023, there are 29 ICV’s 65.5% female and 34.5% male. 3 Members have identified as having a disability. 96.5% stated their community background with 58.6% Protestant and 37.9% Catholic. There are currently 3 Custody Visiting Teams covering the North West, South East including Musgrave & Antrim Serious Crime Suite (SCS) and Tyrone/Fermanagh.

PSNI advised that 21,595 detained persons were processed through custody during the period April 2022 to March 2023 with a total of 1136 detainees at the time of the ICVs’ visits. There was a total of 489 visits made by ICVs across Northern Ireland between April 2022 and March 2023. During this time 473 valid visits were conducted, of which ICVs saw 549 detainees. The length of visits ranged from 6 minutes to two hours 42 minutes, with the average length of time spent on a visit being 34 minutes. The overall refusal rate for April 2022 - March 2023 was 1.6%, which is a 0.1% increase of that recorded in the previous year’s Annual Report.<sup>179</sup>

There were 38 visits made to detainees held under the Terrorism Act 2000 (TACT), with zero invalid visit. 48 detainees were held during these visits (compared to 65 in the previous year). ICVs saw 17 of the 48 detainees (35%), which is a 3% decrease from the previous year. No TACT visits were classified as unsatisfactory. Five out of

<sup>178</sup> Para 936 of Jonathan Hall KC’s report for 2021. The report sets out the ethnic minority breakdown of those examined and detained at para 938.

<sup>179</sup> [Independent Custody Visitors Annual Report 2022-2023 | Northern Ireland Policing Board \(nipolicingboard.org.uk\)](https://www.nipolicingboard.org.uk)

48 detainees refused an interview with ICVs (10.6%) in 2022/23 compared to 8% in the previous reporting year.

ICVs are also trained to inspect the custody record of any detainee who has consented to the inspection. The custody records for 29 of the 48 detainees were checked representing 60.4%.

This is a vital part of being an ICV and the central importance of this role has been emphasised in previous Annual Reports. Having access to these records allows the volunteer to check that: detainees have been afforded their rights and entitlements to have someone informed of their arrest, to consult with a solicitor, and to consult the PACE Codes of Practice; that medication, injuries, medical examinations, meals and diet are recorded and if treatment was required whether it was given; that the procedures to assess special risks or vulnerabilities have been properly recorded and implemented; that rules concerning the timing and frequency of cell inspections, particularly for inebriated or otherwise vulnerable detainees, have been complied with; and that reviews of the continuing requirement for detention have been conducted.

Jonathan Hall KC's Annual Report for (2020) was published in April 2022 and in it he stated:

'9.50. I have remarked in previous reports that the number of detainees who consent to being visited by an independent custody visitor in Northern Ireland is low. The Policing Board has acknowledged that the rate remains low, despite a change in policy to allow self-introduction to individuals who are detained under section 41 of the Terrorism Act 2000.'

As mentioned, in 2022/23 only five out of 48 detainees refused an interview with ICVS (10.6%) in 2022/23 compared to (8%) in 2021/22 and (16%) in the previous reporting year which Mr Hall looked at. This reflects a slight increase on the previous year but still significantly lower than the high of 16%. Furthermore, the Human Rights Advisor has discussed the issue with the Law Society of Northern Ireland and promoted the work of the ICVs with several online training events.

The Human Rights Advisor has highlighted issues around confidentiality and ICVs with PSNI. The first issue concerns confidentiality and the importance of ICVs'

private conversations with detained persons, which is a requirement set out by the United Nations Optional Protocol to the Convention Against Torture (OPCAT).<sup>180</sup> This has been translated in the practice of officers and Custody Detention Officers remaining within sight but out of hearing when the ICVs introduce themselves to detainees and start discussion. The Human Rights Advisor asked PSNI to ensure that, within custody suites, everyone complies with these arrangements (subject, of course, to any exceptional risks that particular detainees may pose). The second point regarding confidentiality is the PSNI's (relatively) new CCTV and recording system within custody suites, which cannot be switched off at this time, but which will pick up conversations held at the cell door. Current Police Service Custody CCTV policy clearly states:

'Officers must ensure that, during an inspection by Custody Visitors, there is no possibility of the visitors' conversations with the prisoners being monitored or overheard by custody staff through the CCTV system. Should the Custody Visitors express concern about privacy of their inspection, they should be offered the use of the consultation room if available'.

### **Viewing Interviews**

The general objective of the visiting system - preventing ill-treatment (and OPCAT) - should mean that visitors are entitled to watch interviews and view recordings of interviews, including hearing what is said during those interviews. This would allow visitors to check that there is no evidence of ill-treatment from those interviews. For practical reasons, it might only be worthwhile visitors accessing the interview if a person was being interviewed at the time of the visit or because there was some reason to believe that a past interview would be helpful in checking that there was (or was not) any ill-treatment. Often for people who are ill-treated on arrest or in custody, the interview is the first time they feel able to complain about treatment.

Currently custody visitors only have access to live TACT interviews. This exception was recommended in the Patten Report, however this still requires the detained person's consent. In the past, TACT detainees were asked at the 'booking-in' stage (when they first arrive at the police station) whether they would permit a visitor to

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<sup>180</sup> This is the international treaty, ratified by the UK Government, and which provided the basis for the designation with the United Nations of the ICVs scheme in Northern Ireland.

view the live interview. This procedure was ended because the detainee was also asked at the same time by the police officer whether they also consented to speak to a visitor if one was available (rather than by the preferred process of ‘self-introduction’). It is difficult to understand the logic of allowing live TACT interviews but not recordings or not allowing PACE interviews to be watched at all (or for the recording of the PACE interview to be viewed by the visitor).<sup>181</sup> It is suggested that these restrictions are discussed in the first instance with the PSNI. The Home Office’s Code for Custody Visitors, para. 66, allows access to recordings only in TACT detentions either on the basis of a request by the detained person or because the custody visitor has particular concerns about the conduct of the interview.

## DISCRIMINATION AND COMMUNITY BACKGROUND/RELIGION

During the last few years statistics have been published which raise some questions about fairness in policing the two main communities of Northern Ireland (see section in Stop and Search chapter]. In December 2021 the Detail obtained Freedom of Information responses from the PSNI which suggested that over the previous five years, twice as many people who self-identify as coming from the Catholic community as come from the Protestant community were arrested and twice as many Catholics were subsequently charged after arrest.<sup>182</sup>

It is understood that these figures were derived from the standard question asked by PSNI custody staff of all those arrested and who are taken into custody. It is also understood that a significant number of those asked declined to answer this question. It should be noted that the 2021 census shows Catholics make up 42.3% of the population of Northern Ireland and ‘other’ Christian denominations 37.4% and the PSNI list given to those taken to custody includes options of ‘Protestant’ and ‘Other Christian’. There may be a number of different reasons for this disparity. Over

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<sup>181</sup> Some interviews of people who voluntarily attend the police station for interview are subject only to audio recording.

<sup>182</sup> ‘Almost twice the number of Catholics as Protestants arrested and charged by PSNI’

‘From the start of 2016 until the end of 2020, over 57,000 Catholics were recorded as being arrested with almost 27,000 charged. By contrast, nearly 31,000 Protestants were recorded as being arrested with under 15,000 charged,’ The Detail, 9 December 2021, <https://www.thedetail.tv/articles/almost-twice-the-number-of-catholics-than-protestants-arrested-and-charged-by-psni>. [The charge rate between the two communities following arrest reflects the population proportions of those arrested.](https://www.thedetail.tv/articles/almost-twice-the-number-of-catholics-than-protestants-arrested-and-charged-by-psni)

the last ten years (see tables below) the proportion of records where this information is available has fallen from three-quarters to less than two-thirds.

What is surprising, however, is that, despite these statistics being collected by PSNI for the last few years, they were never published and the Policing Board was apparently not aware of them. It is also surprising that the PSNI took no action to investigate the basis of these statistics and whether or not this possible disproportionality constituted discrimination. However, it is understood that the PSNI's Police Powers Development Group in March 2022 was asked to investigate this issue. It is now nearly two years on from the publication of these figures but no results from any of this work seems to have emerged.

## Ten years figures

Religions as a % of all custody records aggregated for Census Comparison

Calendar years 2011 – 2022

Religions as a percentage of all custody records aggregated for Census comparison, calendar years 2011 to 2022

	Calendar Years 2011 to 2022											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Roman Catholic	42	42	43	42	42	43	40	39	39	39	37	37
Protestant and Other Christian <sup>1</sup>	30	29	29	28	26	25	25	25	25	23	22	23
Other religions <sup>2</sup>	3	3	3	3	3	3	3	3	3	3	4	3
No religion/None <sup>3</sup>	15	16	16	17	18	18	20	22	23	23	25	26
Refused/Unknown/Missing (blank)	10	10	10	10	10	10	11	10	10	11	11	11
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

<sup>1</sup> includes Hist - Anglican, Hist - Baptist, Hist - Church of England, Hist - Congregational, Hist - Evangelical, Hist - Lutheran, Hist - Methodist, Hist - Pentecostal, Hist - Presbyterian, Mormon, Other Christian, Protestant

<sup>2</sup> includes Buddhist, Hindu, Hist - Agnostic, Hist - Atheist, Hist - Islam, Hist - Rastafarian, Jewish, Muslim, Other, Sikh

<sup>3</sup> includes Hist - Agnostic, Hist - Atheist, No religion, None

## New recommendation 11

The PSNI should report to the Board on progress on the changed approach to data collection in relation to community background, the data that has resulted, and any proposed substantive action it intends to take and publish the data in due course.

## CHAPTER 4 PUBLIC ORDER<sup>183</sup>

### Introduction

‘A major and controversial feature of policing in Northern Ireland has been public order policing. Failings in public order policing in the 1960s were partly responsible for the Troubles of the following thirty years, and for deepening nationalist estrangement from the RUC. There have been changes for the better in public order policing since then, and we have ourselves witnessed skilful police handling of potentially difficult public order events. But the problem remains one of the greatest challenges in the policing of Northern Ireland, particularly during the so-called marching season. It is hugely demanding of police resources and draws heavily on army support. It presents the unwelcome spectacle of police in riot gear and armoured vehicles and involves the use of a controversial weapon – plastic baton rounds (PBRs). It pits the police against people from both the nationalist/republican and the unionist/loyalist communities (the most recent police officer to be killed, Constable Francis O’Reilly, was killed by a blast bomb thrown by loyalist demonstrators at Portadown during the work of the Commission).’

*The Pattern Report, The report of the Independent Commission on Policing for Northern Ireland.*<sup>184</sup>

Public order policing inevitably engages a number of rights enshrined in the European Convention on Human Rights and Fundamental Freedoms (ECHR). In the context of public processions and protest meetings a number of articles of the ECHR are engaged such as the right to freedom of thought, conscience and religion (Article 9 ECHR), the right to freedom of expression (Article 10 ECHR), the right to freedom of peaceful assembly and freedom of association with others (Article 11 ECHR) and the right to respect for private and family life (Article 8 ECHR). Where there is potential for disorder, the right to life (Article 2 ECHR) and the right not to be subjected to torture, or inhuman or degrading treatment or punishment (Article 3) are

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<sup>183</sup> This Chapter includes extracts from the Policing Board’s 2015 Human Rights Annual Report.

<sup>184</sup> Para 9.1, A new beginning: policing in Northern Ireland: The report of the Independent Commission on Policing for Northern Ireland.

also engaged. Finally, it includes a provision in Article 14 to try to ensure that public bodies do not discriminate in relation to exercise of those other rights.

The PSNI's duty to balance those often competing rights calls for careful consideration of a number of complex issues.<sup>185</sup> The PSNI operates within an environment in which it is not responsible solely for the management of parades and protests. Parades and associated protest meetings are considered by the Parades Commission which decides whether to issue a determination and/or impose conditions under the Public Processions (Northern Ireland) Act 1998. Of course, as a public authority the Parades Commission must itself take into account the ECHR rights of all involved before reaching a decision. However, it clearly is the responsibility of the PSNI to *police* parades, protests and other public assemblies and to deal with any outbreaks of disorder.<sup>186</sup>

The exercise of police public order powers<sup>187</sup> and the duties to protect life and property, to preserve order, to prevent the commission of offences and, where an offence has been committed, to take measures to bring the offender to justice<sup>188</sup> must comply with the Human Rights Act 1998.<sup>189</sup>

## Unnotified protests

In *DB v Chief Constable of PSNI* (2017) the Supreme Court examined the police's legal powers to stop unnotified flag protest parades. After initially not permitting protestors to march to the city centre, the police changed its approach and sought to

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<sup>185</sup> For an excellent guide see, *How Public Order Policing Works in Northern Ireland: Standards and Accountability*, CAJ, 2016. See also for England and Wales (a lot of which is relevant to policing in Northern Ireland), *Public order public safety, Authorised Professional Practice Consultation*, College of Policing, 2022. The most up to date advice from the College is available at <https://www.college.police.uk/app/public-order-public-safety>.

<sup>186</sup> For an interesting experiment and the establishment of an advisory panel on protests see *A balance of rights and protections in public order policing: A case study on Rotherham*, Jamie Grace, 2018, Sheffield Hallam University Research Archive.

<sup>187</sup> Primarily contained within the Public Order (NI) Order 1987, although there are also relevant powers contained within the Police (NI) Act 1998, the Roads (NI) Order 1983, the Road Traffic (NI) Order 1995, the Protection from Harassment (NI) Order 1997 and a power of arrest contained within the Police and Criminal Evidence (NI) Order 1989.

<sup>188</sup> By Section 32(1) of the Police (NI) Act 2000.

<sup>189</sup> For more details of PSNI's approach see 'Public Order', chapter 13 of the PSNI Manual of Policy, Procedure and Guidance on Conflict Management. The PSNI have adopted the College of Policing Authorised Professional Practice – Public Order guidance on keeping the peace. The guidance contains legal and procedural variations for Northern Ireland. Unfortunately, there are no details on any human rights issues that public order operations might encounter.

facilitate the protest to ease community tension. A local resident challenged the change of approach of the PSNI.

The Supreme Court held that PSNI had misconstrued its legal powers to stop the demonstrations. While the police had approached the extremely difficult, almost impossible task with diligence, they had a duty to prevent the commissioning of offences. Taking part in unnotified parades is a criminal offence and the police had powers to prevent the parades. The PSNI had erroneously assumed it only had the power to prevent the commissioning of general public order offences. Moreover, the PSNI believed it had an obligation under Article 11 to facilitate peaceful protests even though illegal. In fact, it was held that there was a duty to prevent, where possible, illegal parades in order to protect the right to private life of others under Article 8 subject to operational constraints. In general, therefore a decision to disperse a parade or protest which has not been lawfully notified will not infringe Article 11.

Where there is the possibility of violence and disorder the police are required to respond so as to protect the Article 2, Article 3 and Article 8 ECHR rights of those in the immediate vicinity of the disorder and those of the wider community. Article 11 ECHR (the right to peaceful assembly) does not require the police to facilitate the assembly if doing so would expose the community to a real risk of serious violence. Police are obliged to take all steps that are reasonable in the circumstances to avoid a real and immediate risk to life once they have or ought to have knowledge of the existence of the risk. The standard of reasonableness brings into consideration the circumstances of the case, the ease or difficulty of taking preventative measures and the resources available.

The police are entitled, bearing in mind their experience of managing disorder and their access to intelligence, to exercise judgment to balance the competing rights and obligations. Within that the police may decide not to apprehend and arrest perpetrators of violence and disorder who had a means of retreat and instead concentrate on dealing with the disorder as it arises. The police are obliged, by section 32 of the Police (Northern Ireland) Act 2000 to prevent crime but that does not impose a requirement on them to intervene on every occasion when an offence is in the course of commission: the police have a wide area of discretionary judgment as to the appropriate response.



The PSNI, in responding to large scale public order incidents in which unlawful acts have been, or are likely to be, carried out and where community tensions are running high, are faced with an enormous challenge. The PSNI's decision making process must be well documented and must stand up to scrutiny. Importantly, the PSNI must also be prepared to account for any decisions made.<sup>190</sup> Generally speaking, the PSNI has repeatedly demonstrated its willingness to do so. However, recently, the PSNI used the very old common law offence of Unlawful Assembly in dealing with a public order event. The use of this vague provision (abolished in England and Wales many years ago) raises some human rights issues that need proper consideration by the courts.<sup>191</sup>

## Protests

The restriction of activities during the pandemic in 2020 was very significant and many police forces in the UK did not do very well in their implementation of the rules. Unfortunately, the depth of PSNI's understanding of human rights was also sorely stretched. The protest in Northern Ireland following the killing by police officers of George Floyd in the United States was not dealt with very well. The Policing Board's special COVID report noted:

'CCTV and body worn videos provided by the PSNI from the two events on 6 June reflect the absence of any careful consideration of the right to protest. Protesters who raised their rights were told that the Regulations were the law and/or that Article 2 (the right to life) trumped their rights to freedom of assembly and expression. None of the police officers in the clips viewed appeared to consider the delicate balance required by the ECHR or the attempts by the protesters to obey the social distancing guidance and instead seemed to follow the approach dictated by senior officers in advance.

Furthermore, the approach sent the wrong message to protesters and damaged the reputation of the PSNI and the confidence of some members of the public. Whatever the rights and wrongs of going ahead with the protests and the

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<sup>190</sup> In *DB's Application* [2014] NICA 56 for example the Court of Appeal was assisted in reaching its decision through a consideration of PSNI's Criminal Justice Strategy documents and revisions, the relevant operational strategy and the decisions recorded within the Events Policy Book. The Supreme Court judgment was published in 2017.

<sup>191</sup> See page 61, Human Rights Annual Report, 2020/21.

difficulty of social distancing given the transmission rates for the virus at the time, this approach was not lawful.’<sup>192</sup>

‘It was also not the approach taken by other police services, for instance, in London.’<sup>193</sup> The Metropolitan Police was careful to ensure that senior officers clearly supported the Black Lives Matter movement<sup>194</sup> and few enforcement actions were taken.<sup>195</sup>

This ... raised questions about the lawfulness of the PSNI’s actions but most human rights judgments also raise ethical issues and many people will have their own assessment of the balance between the right to protest and the wider public interest. A court is likely to take into account the urgent nature of the protests and any possible alternative ways of assembling that do not involve large crowds or the possibilities of using media to get the message out. On the other hand a court will also want to see evidence that this difficult balancing exercise was carried out by the PSNI and was regularly reviewed during the run up to the 6 June and during the event. In the absence of this evidence a court might rule that the actions of PSNI were unlawful.’

The PSNI accepted the majority of recommendations from that report and did its best to remedy the errors and to apologise to those affected.

It was unfortunate that this failure to support freedom of expression and association in early June was followed by a completely opposite approach to those who gathered on the day of Bobby Storey’s funeral. However, the review of the PSNI approach on that day by HMICFRS made a number of recommendations:<sup>196</sup>

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<sup>192</sup> It is understood that there may be some five applications for judicial review from those involved pending, ultimately the courts will have to decide whether the PSNI took the correct approach in law.

<sup>193</sup> See the following link for pictures of the protest in London <https://metro.co.uk/2020/06/06/10-police-officers-injured-clashes-black-lives-matter-protest-12815320/>

<sup>194</sup> See the statement from the Assistant Commissioner <http://news.met.police.uk/news/message-from-assistant-commissioner-neil-basu-404272>

<sup>195</sup> The Met Police statement said: "Officers engaged with those taking part, and on the whole the demonstration passed without event, and only a small number of arrests were made."

<https://www.mylondon.news/news/zone-1-news/metropolitan-police-issue-statement-black-18376521>

<sup>196</sup> The Human Rights Advisor should, perhaps, declare an interest in that the Report states ‘...we quote extensively from Mr John Wadham’s report for the Northern Ireland Policing Board. We support his conclusions and recommendations wholeheartedly.’ Page 73.

‘In our view, and the view of the PPS in its public statement, it would have been extremely challenging for the police to interpret and apply the relevant provisions of the Regulations in order to identify what conduct was and was not permitted as at 30 June 2020.’<sup>197</sup>

‘The Regulations in force in Northern Ireland at the time of the Mr Storey’s funeral must equally be interpreted and applied in a way that protects and gives effect to human rights. When considering whether to take enforcement action in respect of apparent breaches of restrictions in the Regulations, the police had to consider whether, in all the circumstances, enforcing the restrictions would be a disproportionate interference with the relevant individuals’ human rights, such that, if prosecuted for an offence under the Regulations, they would be able to establish a “reasonable excuse” defence.’<sup>198</sup>

The Public Prosecution Service set out its reasons for not prosecuting those involved in the organisation of the funeral and said this about PSNI’s role:

‘Having regard to the nature and extent of the engagement between the organisers and the police in the lead up to the event, there was a strong argument that those who participated in accordance with the plan would have been able to avail of the reasonable excuse defence.

(vii) In the context of that prior engagement, the approach of police on the day was capable of reinforcing the perception amongst those who attended the funeral that their conduct fell within the specific terms of the Regulations, or that they otherwise had a reasonable excuse to participate in the manner and circumstances in which they did. Police who were on the ground and came into contact with participants did not seek to engage with any of those attending to explain potential breaches, or encourage persons to alter their behaviour.’<sup>199</sup>

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<sup>197</sup> Page 15, The Police Service of Northern Ireland: An inspection into the Police Service of Northern Ireland’s handling of the Bobby Storey funeral on 30 June 2020, 17<sup>th</sup> May 2021.

<sup>198</sup> Page 18.

<sup>199</sup> Section 22, Public statement relating to decisions not to prosecute 24 individuals reported for breaches of the Coronavirus Regulations in connection with attendance at the funeral of Bobby Storey on 30<sup>th</sup> June 2020.

The report by HMICFRS, was, however, itself the subject of a number of criticisms by politicians and journalists.<sup>200</sup>

Perhaps even more problematic was the comparison with the absolute lack of activity by PSNI in investigating follow the ‘Protect our Monuments’ protest exactly a week after the Black Lives Matter protest.

‘Confidence in policing of some within the Black, Asian and Minority Ethnic Communities of Northern Ireland was damaged by the PSNI’s policing of the ‘Black Lives Matter’ protests. The shortcomings that I have identified in the PSNI’s investigation of ‘Protect our Monuments’ when compared to the ‘Black Lives Matter’ protests shows a lack of consistency and is likely to compound damage in confidence in policing within Black, Asian and Minority Ethnic community.’<sup>201</sup>

However, that is not to say the PSNI’s approach – which was not to interfere at the time of the protest – was wrong. In practice, its approach to the ‘Protect or Monuments’ assembly demonstrated the proper approach to Convention rights.

## Monitoring the Policing of Public Order Events

The Policing Board’s Human Rights Advisor, in addition to occasionally attending some live operations, is briefed by PSNI on its public order strategy, its planning of public order events and the operational decisions that are taken.<sup>202</sup> This has always occurred in the run up to the events on 11<sup>th</sup> and 12<sup>th</sup> July.<sup>203</sup>

There are now a series of annual regional debriefing exercises for Bronze Commanders looking back over the previous year – particularly for the events in June and July. These are facilitated by district trainers using a set debriefing protocol and script. The Human Rights Advisor attended one of these in October 2019. Not surprisingly, it was reported that one of the key issues over the last year has been

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<sup>200</sup> For instance, being the main subject for discussion over several days after publication on the ‘Nolan Show’ on BBC Radio Ulster.

<sup>201</sup> Failure to investigate the Protect our Monuments protest in Belfast on 13 June 2020, Regulation 20 report, Police Ombudsman for Northern Ireland, 21 October 2022.

<sup>202</sup> The previous Human Rights Advisor was involved in more public order monitoring than the current Advisor. The public order situation in Northern Ireland now being a little less problematic.

<sup>203</sup> The current Human Rights Advisor was present in Gold or Silver command positions on 11<sup>th</sup> and 12<sup>th</sup> in 2020, 2021 and 2022. In 2023 the information available in advance was such that it was unlikely that any serious public order issues would arise.

dealing with the bonfires. Discussion on the substance concerned the role of police, role of local authorities and contractors and the difficulty of dismantling bonfires whilst people are sitting on top of them.

The majority of the discussion concerned feedback on logistics. In particular, the need to extract Bronze Commanders for the public order events, and the need for trained land-rover drivers, AEP experts etc. Additional concerns were ensuring that officers' training was up to date. There was some concern about Bronze Commanders being deployed without much notice, resulting in a lack of local knowledge and no time to make plans. The lack of advance planning could result in a lack of confidence, reluctance to take a more passive role and the inability to embed human rights into the plan.

### **Summer 2019**

An example of the careful consideration that can often be needed was set out in the 2019/20 Annual report, of an 'after the event' monitoring of public order issues concerned the Apprentice Boys of Derry Band and the events of 10th August 2019. In brief, the Apprentice Boys of Derry carried out their annual parade through Derry/Londonderry. On that day the Clyde Valley Flute Band paraded in a uniform which included a Parachute Regiment emblem and the letter 'F' - a reference to the soldier being prosecuted for murder in Derry/Londonderry on 'Bloody Sunday' in 1972. This was assessed by the PSNI's officers as a potentially provocative act that was likely to lead to a serious breach of the peace, contrary to Article 19(1) of the Public Order (Northern Ireland) Order 1987. As a result, the officers prevented the Band from continuing as part of the annual parade. There were then a series of unsuccessful negotiations with the organisers and others. During these negotiations pressure began to build from other bands behind the Band who were unable to join the parade and the PSNI feared that the situation would lead to violence. The PSNI therefore allowed the Band to join the parade, but decided to flank the band with police officers dressed in high visibility uniform to ensure the safety of the Band and to provide a visible barrier between the Band and the local community.

Much later, the bus transporting the Band away from the venue was stopped by the PSNI and officers asked the members of the Band (which included a number of young people) to give them their names and addresses in order that consideration

could be given to investigating and, possibly, prosecuting them. The Band members refused to give their names and negotiations continued for over two hours.

Eventually the bus was released after three of the organisers had supplied the PSNI with their own names and addresses.

Some weeks later the (then) Chief Constable asked Police Scotland to review these events and the actions of PSNI and that written report was provided to the Human Rights Advisor. Following discussion at the Performance Committee, the Human Rights Advisor was given access to the PSNI's background documents for this event, the same copy documents which, earlier, had been previously provided by the PSNI to the reviewers from Police Scotland. The review concluded that the PSNI in general terms delivered a well-planned, safe and secure event which involved some 24,000 people. The parade was policed in line with the Gold Commander's Strategy and the wider Strategy and Vision that the PSNI seeks to achieve. However, the review also made eight recommendations for PSNI to consider.

### **Summer 2020**

North Queen Street was closed for a period the night before 11<sup>th</sup> July to allow debris to be cleared and there were two reports of criminal damage caused to two vehicles. Over the course of Friday evening, a piece of furniture was also set on fire in the middle of North Queen Street.

Petrol bombs and stones were thrown at the police in North Belfast and Officers were attacked in the North Queen Street area near the New Lodge flats and a small fire was started in the middle of the road. Officers dressed in public order uniform carried out searches of the area on Saturday but were targeted along with police vehicles. Many bonfires were lit across Northern Ireland late on Saturday 11 July, but the number of gatherings were significantly smaller than previous years. While the majority passed off without incident, some were the source of community tension where the bonfires are built close to nationalist areas. A number of bonfires in East Belfast were cleared with the co-operation of the community.

There was a bonfire built at Adam Street, near to the Duncairn Gardens peace line, for the first time in nine years. In the previous two months there were requests for the PSNI to ensure the removal of the bonfire. The Department for Communities

Minister Carál Ní Chuilín sought a judicial review of the PSNI decision not to have the bonfire removed. The case being heard in court late on the Saturday night but eventually being refused. This case required the PSNI to put significant police resources on standby for early the following morning to ensure it was ready to deal with the consequences if the court required them to take action.

There were also a number of late requests to the Parades Commission for permission to hold parades, some refused and some too late to be decided and police officers had then to decide how these should be dealt with.

The Belfast Telegraph reported that there had been a surge in the number of bonfires being organised by loyalists following the West Belfast funeral of former IRA member Bobby Storey in June 2020. Some bonfires included messages mocking Bobby Storey along with tricolour flags that were burned. Pictures also emerged in social media of an anti-Black Lives Matter placard at Whitehill bonfire in Bangor. PSNI investigated a separate loyalist banner as a hate crime because it ridiculed the funeral of Bobby Storey.

Overall, the PSNI appeared to act properly that evening taking into account the key human rights principles and making proportionate decisions.<sup>204</sup> There was, however, one gap in the understanding of how the Coronavirus Regulations and the Human Rights Act needed to be reconciled. The restrictions in the Regulations was taken by police officers (and leading politicians) as the 'last word' on what was or was not allowed. This is not quite accurate as the Human Rights Act applies despite other legislation, particularly, secondary legislation, such as these Regulations.<sup>205</sup> Thus if, for instance, the right to assemble or protest can only be banned if such a restriction complies with Articles 10 and 11 of the ECHR. In the context of the provisions of the Regulations a key issue is likely to be whether the event be held without creating a significant danger of the transmission of the virus. This will be important if the organisers of the event intend (and are likely to succeed with) measures, including

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<sup>204</sup> The Human Rights Advisor obviously only witnessed a few of the many events that occurred and from the PSNI vantage point.

<sup>205</sup> *RR v Secretary of State for Work and Pensions* [2019] UKSC 52. The Supreme Court found that there is "nothing unconstitutional about a public authority, court or tribunal disapplying a provision of subordinate legislation which would otherwise result in their acting incompatibly with a Convention right, where this is necessary in order to comply with the HRA."

social-distancing, that will significantly reduce the possible transmission of the virus despite the proposed 'gathering'. In practice, many of the decisions made by the PSNI, on the 11 July would probably not have been any different. However, a deeper understanding of the law and being able to explain this more nuanced understanding might have enabled a few organisers to have complied with the law more easily.

The Human Rights Advisor attended the annual review of public order with a senior officer and a number of officers, including inspectors and trainers (and Federation Representatives) and the debrief co-ordinators. One key issue raised was that some Public Order Unit Level 2 officers may have lacked experience because they did not get together frequently for training. Ironically the higher levels of public order issues in Northern Ireland in the past would have ensured they did have this experience.

## 2021

In 2021 over 100 police officers were hurt in late March and early April, possibly the worst public order seen for many years and the PSNI fired a number of Attenuated Energy Projectiles (AEPs or baton rounds) and used water cannon for the first time in six years. The BBC reported that eighteen people have been arrested and 15 charged after crowds of predominantly loyalist youths attacked lines of riot police officers and vehicles with bricks, fireworks and petrol bombs.<sup>206</sup> The subsequent investigation resulted in 26 convictions, which included 4 custodial and 6 suspended sentences being issued by the courts for a range of offences.<sup>207</sup>

## 2022

In 2022 on 10<sup>th</sup> July AEPs (baton rounds) and the water cannon were authorised for use and were available but were subsequently not actually used.

It is clear that the issues of bonfires remains very problematic. On a Friday evening two days before 11<sup>th</sup> July 2022 the High Court heard an application for judicial review taken against a number public authorities, including PSNI, seeking action over the bonfire in Adam Street opposite her estate. There was also separate judicial review litigation by two Ministers against PSNI which also concerned the bonfire. The cases

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<sup>206</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-56664378>

<sup>207</sup> Information provided when this report was 'fact checked' by PSNI.



were not joined and were heard one after the other in early evening by different judges. The order for interim relief requiring PSNI to take action to assist with the removal of the bonfire in the first case was refused but no decision was made on the leave application. The second case was also refused on the basis that the first case had concluded the issue.

## 2023

In 2021 there was a public order incident that had considerable ramifications for the PSNI, in particular, contributed to the resignation of Simon Byrne, the then Chief Constable. What follows are extracts from the judgment of Mr Justice Scoffield:<sup>208</sup>

'The issues at the heart of these proceedings arise from an incident which occurred on 5 February 2021. That date was the 29th anniversary of a notorious shooting attack which occurred at Sean Graham's Bookmakers on the Ormeau Road in Belfast in which five people were tragically killed and nine others seriously injured. On the anniversary in 2021 a commemoration event was held at the scene. This was, however, also a time at which legal restrictions were in place (referred to generally as a 'lock-down') regulating the gathering of individuals in order to combat the Covid-19 pandemic which was then in course. Police officers came upon the commemorative gathering and concern arose as to whether those in attendance were, or may have been, acting in breach of the coronavirus restrictions.'<sup>209</sup>

'In these proceedings, they seek to challenge a variety of actions on the part of the PSNI following an arrest made by the first applicant on 5 February 2021, namely (i) the decision to suspend the first applicant, (ii) the decision to re-position the second applicant, and (iii) a determination that the applicants had misconducted themselves, which was then publicly announced.'<sup>210</sup>

'I have been persuaded that the respondent [PSNI] imposed suspension in the first applicant's case because of the threat (whether real or perceived) that, if it did not do so, republican support for policing would be withdrawn.

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<sup>208</sup> In the matter of an application by JR168 and JR168A, 29 August 2023.

<sup>209</sup> Para 4.

<sup>210</sup> Para 1.

When that threat arose in the circumstances described in the preceding paragraph, to reach a decision on that basis was in my view unlawful.’<sup>211</sup>

‘The present case is not, classically, one involving operational decision-making in relation to on-the-ground policing. As discussed above, the statutory scheme calls for an assessment of the public interest. But it remains important that the (then) Chief Constable (or the appropriate authority delegated by him) should be free to make such decisions free from undue external pressures from the executive branch. In Northern Ireland that is perhaps particularly so, given the often contentious nature of policing in this jurisdiction and the risk of paralysis in the event that political representatives of each traditional community in Northern Ireland sought to exercise a veto over a particular police action by mutual threat of withdrawal of support for policing. In our system the (then) Chief Constable is held to account for the exercise of his functions and those of the police by the Policing Board, in accordance with the provisions of the Police (Northern Ireland) Act 2000. That is the appropriate forum for requiring justification of decisions made independently by or on behalf of the police, after appropriate challenge and explanation, rather than seeking to dictate the outcome of such decisions in advance.’<sup>212</sup>

## Flags, Posters and Effigies

A continuing issue in Northern Ireland, particularly over the summer, is the display of flags and other emblems.<sup>213</sup> Also of concern is placing flags, emblems, political posters and pictures and effigies of politicians on bonfires. Dealing first with flags and emblems the following provisions could be used by PSNI:<sup>214</sup>

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<sup>211</sup> Para 89.

<sup>212</sup> Para 92.

<sup>213</sup> Obviously this issue was dealt with in considerable detail in the report from the Commission on Flags, Identity, Culture and Tradition, December 2021 but there is not space to consider the recommendations from that report here.

<sup>214</sup>

1. Section 13 of the 2000 Act provides that it is a criminal offence for a person in a public place to carry or display an article *“in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation”*.
2. Section 13(4) authorises a constable to seize an item of clothing *or any other article* if the constable reasonable suspects that it is evidence in relation to the subject offence and is satisfied it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.
3. Section 12 of the 2000 Act provides that it is a criminal offence for a person to invite support for a proscribed organisation and/or to express an opinion or belief that is supportive of a proscribed organisation.
4. The Protection from Harassment (Northern Ireland) Order 1997 makes it an offence for a person to pursue a course of conduct which he knows, or ought to know, amounts to harassment of another. Harassment is defined to include alarming a person, or causing them distress.
5. Section 1 of the Protection of Person and Property Act (NI) 1969 creates the offence of unlawfully causing, by force, threats menaces, or in any way whatsoever, a person–
  - (a) to leave any place where that other person is for the time being resident or in occupation; or
  - (b) to leave his employment; or
  - (c) to terminate the service or employment of any person; or
  - (d) to do or refrain from doing any act.
6. Article 10 of the Public Order (Northern Ireland) Order 1987 (the 1987 Order) creates the offence of displaying any written material which is threatening, abuse or insulting if the intent thereby is to stir up hatred or arouse fear or having regard to all the circumstances hatred is likely to be stirred up or fear is likely to be aroused.
7. Article 18 of the 1987 Order creates the offences of using disorderly behaviour or behaviour whereby a breach of the peace is likely to be occasioned. The offence is summary only and carries a maximum sentence of 12 months.

8. Article 19 of the 1987 Order provides the following list of conduct, which amounts to an offence if conducted with intent to provoke a breach of the peace or where public disorder is likely to be occasioned immediately or at any time –
9. Article 87 of the Roads (Northern Ireland) Order 1993 creates the offence of, without lawful authority, painting or otherwise ascribes or affixes any picture, letter, sign or mark upon the surface of the road or upon any tree, structure or other works in or on a road.
10. Article 73 of the 1993 Order creates the offence of, without consent, fixing or placing over, along or across a road an overhead beam, rail, arch, pipe, cable, wire or other similar apparatus.
11. Article 33 of the Road Traffic Regulation (Northern Ireland) Order 1997 creates the offence of, without lawful authority, intentionally interfering with or causing damage to a traffic sign. This offence could be interpreted as covering the fixing of a flag to a road sign only.<sup>215</sup>

The general duty of PSNI officers is set out in section 32 of the Police (Northern Ireland) Act 2000. It imposes target obligations on the police to protect life and property, preserve order, prevent the commission of offences, and to take measures to bring offenders to justice.

The most recent position of the PSNI on flags was in reply to a question from the Policing Board:<sup>216</sup>

- Within the current statutory framework, the removal of flags is not the responsibility of the Police Service nor do we have a specific power to do so and we will only act to remove flags where there are assessed risks to public safety owing to their erection. It is essential that we are able to demonstrate our commitment to proportionate, lawful, accountable and necessary action if we are to rely on the support of our communities, politicians and partners.

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<sup>215</sup> Summary developed from more a more detail note helpfully provided by the legal advisors of the PSNI. In 2023. PSNI consulted a number of stakeholders, including CAJ to inform policy development, recognising positive obligations to take action which may arise from the engagement of human rights in this area of policing. However, the PSNI requires cooperation from all public bodies to allow for the proper discharge of its statutory functions.

<sup>216</sup> July 2023.

- There is no community or political consensus on the flags issue and ultimately this requires a political, not a policing resolution. Our experience shows the most effective solution to this issue is negotiation, mediation and engagement between local communities working with agencies including local police.
- Responsibility for the removal of flags rests primarily with the land and property owner, for example, the Department for Infrastructure are responsible for street lighting and are responsible for the removal of flags on lamp posts, during which the Police Service will support them in carrying out their statutory duty as required.
- A flag cannot itself be illegal, rather its possession and use, results in the item potentially constituting a piece of evidence as part of a police investigation in relation to a number of potential offences which might be engaged.'

The PSNI's internal policy has slightly more detail:

'Where we receive reports of banners being erected, we will attend to ascertain proof of permission for erecting a banner and gather evidence in the event that any offence is committed. We will then pass details to the relevant land or property owner who will decide on the appropriate course of action which may include the matter being reported for prosecution....

'The forcible removal of flags is seen by some as an erosion of liberties and cultures. It also creates a risk for confidence in policing. Equally, community confidence in policing can be affected by the perception that police are not acting to remove an offensive flag or banner or other display. The likelihood of damaging community confidence is high if we are unable to clearly and quickly demonstrate our decision making rationale. We must clearly understand the relevant legislation and the importance of effective record keeping....

Some may interpret the 2005 Flags Protocol as in some way **requiring** police to act regarding flags and inferring that we have an automatic power to do so. The legal advice is clear that while we are **empowered** under Common Law and the Protocol to act (if the circumstances are right), we are not **obliged** to

do so. There are two very important words within the Flags Protocol, which are easily overlooked – **'If Necessary'**.<sup>217</sup>

The PSNI's position on flags has been consistent for some time but the Human Rights Advisor does not accept that the above policy reflects the current legal position and, whilst the PSNI's reluctance to set into a political sensitive area, is understandable, it can no longer be justified.<sup>218</sup> The justified but general concern to avoid disorder does not allow the PSNI to take no action. CAJ have cogently argued that:

'The general duties of the PSNI are set out in section 32 of the Police (NI) Act 2000 and go beyond bringing offenders to justice to encompass a duty to prevent the commission of criminal offences.

Therefore the PSNI has both a permissive power and positive duties to intervene to remove hate expression from public space, *when that expression constitutes a criminal offence*. Not to do so permits the commission of a criminal offence to continue.<sup>219</sup>

The reluctance to enforce the law by PSNI has, in the past, resulted in litigation, requiring the Supreme Court to set out the PSNI's duty.<sup>220</sup> Hate crime in Northern Ireland remains a real issue and, unfortunately, recent research found that between 2017 and 2022, hate crimes in Northern Ireland had a lower charge rate than any other serious offenses including historically undercharged sex crimes.<sup>221</sup>

## New Recommendation 12

**Hate crime in Northern Ireland remains a real issue and, unfortunately, recent research found that between 2017 and 2022, hate crimes in Northern Ireland had a lower charge rate than any other serious offences including historically**

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<sup>217</sup> Flags and emblems: Operational Guidance, June 2022.

<sup>218</sup> For instance, there appears to have been no change in the position despite detailed and authoritative critiques, including *'Dealing with hate expression in public space in Northern Ireland Public authorities' duties and practice towards removing racist, sectarian, homophobic, and other hate expression from public space'*, CAJ, May 2022.

<sup>219</sup> Para 2.2.3, CAJ 2022.

<sup>220</sup> In *DB's Application*, 2017, see para ?? above.

<sup>221</sup> The Detail, 25 October 2023.

**undercharged sex crimes. PSNI should report to the Board on how it is going to tackle this issue.**

### **Restrictions On Protest: Contraception Services Safe Access Zones**

Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 imposes some restrictions on some activities within safe access zones. ‘The Act establishes ‘safe access zones’ around abortion clinics in order to protect the women using those clinics as well as the people who work in them. It will be a criminal offence to harass people in a safe access zone around those clinics. The topic of the Act is health.’

‘The Act has six policy objectives.

a) to ensure that buildings which house organisations offering sexual and reproductive health services have a safe access zone appropriate to their specific location and environment;

b) to ensure women and others visiting or working in the premises with legitimate reason (and those accompanying them) are not approached in an unsolicited manner within this zone;

c) to prevent activities designed to cause distress or to deter a person from approaching a building – e.g., filming, recording, unsolicited ‘counselling’ and pamphlet distribution;

d) to place an obligation on the Department of Health to publish and maintain a list of all protected premises and the extent of the safe access zone for each premise, in such manner as it deems appropriate;

e) to create a series of obligations on constables in relation to the monitoring and enforcing of safe access zones; and

f) to require the Department of Health to publish an annual report highlighting the effectiveness of the safe access zones in protecting people attending protected premises.’<sup>222</sup>

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<sup>222</sup> Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023, Explanatory Notes.

Section 5(2) of the Act provides:

‘(2) It is an offence for D to do an act in a safe access zone with the intent of, or reckless as to whether it has the effect of—

(a) influencing a protected person, whether directly or indirectly,

(b) preventing or impeding access by a protected person, or

(c) causing harassment, alarm or distress to a protected person, in connection with the protected person attending protected premises for a purpose mentioned in section 3.

(3) It is an offence for D to record a protected person who is in a safe access zone without the consent of that person, with the intent of, or reckless as to whether it has the effect of—

(a) influencing a protected person, whether directly or indirectly,

(b) preventing or impeding access by a protected person, or

(c) causing harassment, alarm or distress to a protected person,

in connection with the protected person attending protected premises for a purpose mentioned in section 3.

Note that the Act does not restrict peaceful protest as such but makes it an offence to intentionally or recklessly influence, harass, impede or record one of a restricted group of people (protected persons).

The Act gives power to a police officer:

‘Where a constable has reasonable grounds to believe that a person has committed, is committing, or is about to commit an offence under section 5(2), the constable may—

(a) direct the person to leave the safe access zone,



(b) remove the person from the safe access zone.’<sup>223</sup>

The Attorney General of Northern Ireland referred the Act to the Supreme Court<sup>224</sup> and that Court said as follows:

‘121. Putting the matter broadly, clause 5(2) as whole prohibits behaviour in the immediate vicinity of abortion clinics which, intentionally or recklessly, is liable to cause women not to access the health care services available there. The behaviour is prohibited whether it takes the form of influencing the behaviour of protected persons, physically obstructing their access to the premises where the services are provided, or causing them harassment, alarm or distress. Influencing the behaviour of patients, visitors and staff, or attempting to do so, is one way of stopping women from accessing the health care services in question. It is therefore rational for it to be prohibited...

156. The right of women in Northern Ireland to access abortion services has now been established in law through the processes of democracy. That legal right should not be obstructed or impaired by the accommodation of claims by opponents of the legislation based, some might think ironically, on the liberal values protected by the Convention. A legal system which enabled those who had lost the political debate to undermine the legislation permitting abortion, by relying on freedom of conscience, freedom of expression and freedom of assembly, would in practice align the law with the values of the opponents of reform and deprive women of the protection of rights which have been legislatively enacted.’<sup>225</sup>

The Act came into force on 29<sup>th</sup> September 2023 and the campaigning group ‘Abolish Abortion NI’<sup>226</sup> notified the Parades Commission of their intention to hold a parade in and around the area of Craigavon Area Hospital, Portadown on

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<sup>223</sup> Section 6.

<sup>224</sup> For advice as to whether the Bill would be outside the legislative competence of the Assembly, under section 11(1) of the Northern Ireland Act 1998.

<sup>225</sup> *In Re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32.

<sup>226</sup> ‘We, as an abolitionist organisation, agree with the pro-life position that abortion is bad, but further, we believe abortion is murder and ought to be treated as such. While many who call themselves pro-life agree with us that abortion is murder, abortion has not been opposed by the pro-life political establishment in a manner consistent with its being murder.’

Saturday 30<sup>th</sup> September. The Parades Commission website indicated that the expected number of participants was likely to be some 300 people.

The PSNI initiated an operation with a 'soft police presence' and a small number of cones were placed to mark the safe zone. About six people entered zone and were given warnings by the PSNI and most of them left within a few minutes of the warning being given. As a result the PSNI made a decision that it was not proportionate or necessary to arrest any of those people. Since then the media has reported that PSNI is investigating 'up to 50 potential breaches' of the law.<sup>227</sup>

## Preaching and Proselytism

During the Pride march in 2023 issues were raised for the PSNI about the balance between freedom of expression and the freedom to manifest religious beliefs and incitement to violence and hatred. The PSNI set out in some detail the human rights issues in its 'Practical Peeler' to help officers deal with the issues on the street.

Practical Peeler is an online practical information system designed to assist officers to do their job. The advice appears to be both accurate and helpful:

'Courts have held that the right to free speech should not be restricted simply because it may be offensive or insulting to others. In essence, a democratic society depends on the freedom to express, debate, challenge and even ridicule opposing viewpoints. There is no right not to be offended.

In contrast, freedom of speech does not protect statements that incite hatred or violence against, other persons and groups, particularly by reference to their race, religious belief, gender identity or sexual orientation.'<sup>228</sup>

The advice goes on to reference the laws on breach of the peace, disorderly behaviour, stirring up hatred, provocative conduct in a public place. See also Police Advice on Public Preaching and Protests.

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<sup>227</sup> Abortion: PSNI investigate safe access zone protest law breaches, BBC NI, 19 December 2023.

<sup>228</sup> PSNI Website, August 2023

## CHAPTER 5 USE OF FORCE

### Introduction

This chapter assesses the PSNI's use of force over the last five years, taking into account all the types of force and weapons that PSNI has available, and the trends or challenges during that period. Currently PSNI uses:

- AEPs (baton rounds),
- personal batons,
- irritant spray (PAVA),
- firearms,
- police dogs,
- Conducted Energy Devices (CED),
- handcuffs,
- limb restraints,
- unarmed physical tactics,
- spit and bite guards,
- stun grenades, and
- water cannon.

The chapter provides an overview of how these different kinds of force are used, PSNI policy, any potential medical implications, and statistics.

Very often the use of force by officers against a member occurs on the street, often without independent witnesses, and is not always recorded by Body Worn Video or CCTV systems. Police officers in Northern Ireland are tasked with preventing assaults and protecting the public and many of them put themselves in harm's way nearly every day. There has been an increase in the number of assaults on police officers on duty recently, this has increased from 2,714 in 2018/19 to 2,823 to 2019/20 and then again to 3,020 reported assaults against officers in 2020/21. Between April 2022 and February 2023, there were 923 assaults resulting in injury.

As is well known, in February 2023, a number of masked men attempted to murder to Detective Chief Inspector John Caldwell and he was shot and seriously injured as

he was packing away football equipment into the boot of his car at his local football club.

In general, most encounters with the police are resolved without resorting to weapons, by using unarmed physical tactics (58% in 22/23) and handcuffs or limb restraints (31% in 22/23). The use of force by police officers is one of their most significant and symbolic powers. The use of force by one person against another is ordinarily both a crime and a tort (a civil wrong) and, when used by law enforcement officials without justification, violation of the prohibition against ill-treatment in international human rights law (and therefore the Human Rights Act). The use of the powers given to police officers to use force and the inevitable vulnerability of those arrested or in custody necessitates that any use of force must be justified by the particular circumstances. Once a person is in custody and/or restrained and is not able to escape, using force is very rarely likely to be justified unless officers continued to be threatened and cannot move away to a safe distance.

Throughout the past five years, the Board has worked with PSNI to try to make the use of force statistics produced by the PSNI and the Northern Ireland Statistics and Research Agency more comprehensive and transparent, such as publishing statistics on use of force by gender, age and ethnic minority.<sup>229</sup> Since 2017/18, PSNI also publishes statistics on how often officers use limb restraints or unarmed physical tactics.

## The Legal Basis For The Use Of Force

The use of force by police officers engages in a direct and fundamental way the rights protected by the ECHR - Article 2, Article 3, and Article 14. Police officers have the authority to use force in order to defend themselves or another person (as does any member of the public), to effect an arrest, to secure and preserve evidence or to uphold the peace. Any such use must be justified on each and every occasion and the test for its use may be slightly different depending on the force used. For instance, the justification for the use of lethal force will be very different than the justification needed to ensure lawful orders by police officers are followed. The more significant the likely effect on the victim of the force the greater the justification. For

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<sup>229</sup> See for example Recommendation 11 of the 2019/20 Annual Human Rights Report

example, the high pain levels and dangers to life and health associated with CED use require significant justification.

Consideration must always be given to whether there is a viable alternative to the use of force. As a rule, force and restraints must only be used if and when necessary and where all other means to contain a specific situation have failed and only when alternatives involving not using force or using less force are not possible.

While some weapons might be classified as 'less lethal', they still ought to be subject to strict scrutiny.<sup>230</sup>

When the police need to use force to achieve a lawful objective (such as making a lawful arrest, acting in self-defence, or protecting others) the legal bases are to be found in:

- Common law.
- Section 3 Criminal Law Act (NI) 1967.
- Article 88 Police and Criminal Evidence (NI) Order 1989 (PACE)
- The Public Order (Northern Ireland) Order 1987
- The Human Rights Act 1998

Any force used must not be greater than was reasonable in the circumstances. If force used is not reasonable it may leave the officer open to criminal or misconduct proceedings. In addition, it may constitute a violation of the human rights of the person against whom the force was used.

Article 4 of the PSNI Code of Ethics, which draws upon the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, states:

'Police officers, in carrying out their duties, shall as far as possible apply non-violent methods before resorting to any use of force. Any use of force shall be the minimum appropriate in the circumstances and shall reflect a graduated and

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<sup>230</sup> 'State parties should ensure that 'less lethal' weapons are subject to strict independent testing and evaluate and monitor the impact on the right to life of weapons such as electro-muscular disruption devices (Tasers), rubber or foam bullets, and other attenuating energy projectiles.' 'States parties should not resort to 'less-lethal' weapons in situations of crowd control which can be addressed through less harmful means, especially situations involving the exercise of the right to peaceful assembly.' UN CCPR General comment No. 36 (2018), para. 14, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)

flexible response to the threat. Police officers may use force only if other means remain ineffective or have no realistic chance of achieving the intended result.’

Police officers should not use force against persons in custody or detention except where necessary for the maintenance of security and order within the institution or when personal safety is threatened [PSNI Code of Ethics, Article 5.2] (UN Principles on the Use of Force, Principle 15).

Article 130 of the Mental Health (NI) Order 1986 provides the legal basis for police officers who find a person in a public place who appears to be suffering from a mental disorder or is in immediate need of care or control to remove that person to a place of safety.

### Avoiding The Use Of Force And De-Escalation Techniques

De-escalation can be defined as a reduction of the level of intensity of stress and tension in adverse circumstances, particularly through scenarios involving authorities with coercive power.<sup>231</sup> It can be achieved through the employment of tactics that aim to reduce tension or conflict between individuals and reduce the need to rely on physical control and force. Authorities, and the police, have many legitimate reasons to ensure individuals comply with lawful orders or act peacefully when being arrested. However, should there be any difficulty with compliance or arrest, de-escalation should be the starting point. Officers tasked with administering force should be properly trained in de-escalation techniques so that they can avoid the use of force wherever possible. The varying forms of de-escalation are underpinned by the notion that officers should be genuinely committed to minimising harm and avoiding violence where it is not absolutely necessary to use force.<sup>232</sup> This does form part of officer training but there is often a need to move quickly from escalation

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<sup>231</sup> 101 John Monahan et al., Coercive Treatment in Psychiatry: Clinical, Legal and Ethical Aspects, pp. 57-79 in How To De-escalate a Risk Situation to Avoid the Use of Coercion (Web Page, March 2011) <https://www.researchgatenet/publication/230218830HowtoDe-EscalateaRiskSituationtoAvoidtheUseofCoercion>

<sup>232</sup> 103 Victoria Police. (Melbourne, 2003) ‘Victoria Police Manual’, <https://www.police.vic.gov.au/policies-procedures-and-legislation#code-of-conduct>

techniques to assist officers with learning how to effectively and safely use force and importance of the former can often get lost in practice.<sup>233</sup>

It is suggested that de-escalation is particularly important and possibly more necessary when the person likely to be subject to the force has mental health or other vulnerabilities. Further information on de-escalation is provided in the Human Rights Advisor's Review of PSNI's Use of Spit and Bite Guards<sup>234</sup> and this is particularly important because according to the PSNI's own EQIA consultation document showing that 81% of uses of Spit and Bite Guards had been on people with a disability and included people with mental health disabilities and incidents where drugs and/or alcohol were a factor.<sup>235</sup>

## Training

During 2019-2023 the Board's Human Rights Advisor has observed a range of public order training across PSNI and engaged regularly with the PSNI Human Rights Trainer. Since the publication of Dr Richard Martin's research<sup>236</sup> in which specifically relates to Public Order Command Courses delivered by Combined Operational Training, the PSNI reviewed and amended the Human Rights and Use of Force

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<sup>233</sup> The Human Rights Advisor and staff from the Policing Board attended refresher training on the use of force in June 2022.

<sup>234</sup> [A Review of PSNI's Use of Spit and Bite Guards by the NI Policing Board's Human Rights Advisor](#) pages 56-58

<sup>235</sup> However, in the latest six-monthly report to the Policing Board the PSNI have said 'In gathering the data for the EQIA consultation document, we examined the custody records of each individual who had had a Spit and Bite Guard applied. Anyone under the influence of drink/drugs was categorised as having a vulnerability at the time of application. In reviewing these figures at 15 June 2023, 26.2% of all deployments (total 416) were on individuals with a disability.' Page 30, The Use of Spit and Bite Guards by the Police Service of Northern Ireland Bi-Annual Report to the Northern Ireland Policing Board, August 2023.

<sup>236</sup> A 'CULTURE OF JUSTIFICATION'? POLICE INTERPRETATION AND APPLICATION OF THE HUMAN RIGHTS ACT 1998 IN WHICH HE EXAMINES THE LEGAL TRAINING AND ADVICE PSNI POLICE COMMANDERS ARE GIVEN TO PROMOTE A RIGHTS-BASED APPROACH TO PUBLIC ORDER POLICING. IT PROCEEDS TO EXPLORE HOW HUMAN RIGHTS LAW IS PRACTISED BY COMMANDERS, REVEALING HOW THEY USE HUMAN RIGHTS TO MANAGE POSITIVE DUTIES, AS WELL AS 'TROUBLE' FROM POLICE OVERSIGHT BODIES. MARTIN, RICHARD, A 'CULTURE OF JUSTIFICATION'? POLICE INTERPRETATION AND APPLICATION OF THE HUMAN RIGHTS ACT 1998 (JULY 1, 2019). THE FRONTIERS OF PUBLIC LAW (HART, 2019), LSE LEGAL STUDIES WORKING PAPER NO. 13/2019, AVAILABLE AT

SSRN: [HTTPS://SSRN.COM/ABSTRACT=3412794](https://ssrn.com/abstract=3412794) OR [HTTP://DX.DOI.ORG/10.2139/SSRN.341279](http://dx.doi.org/10.2139/ssrn.341279)

lessons in both the Bronze and Silver Command Courses. Proportionality assessments/discussions take place throughout the Public Order and Public Safety training material and additional material on policing of peaceful protest is now included in the course. The College human rights training audit in 2019<sup>237</sup> made three recommendations which the Board endorses: firstly, that COT training and its associated disciplines, consider introducing human rights screening for courses; secondly, that COT trainers should consider the inclusion of Adverse Childhood Experience (ACE) input for TSG teams in relation to identifying and communicating with children in crisis; and thirdly, that COT trainers should review their search courses in light of the implications of Ramsey v Chief Constable judgment in respect of the Justice & Security Act inputs.

The Tactical Training Faculty (TTF) of the Police College provides training to operational and student officers in a variety of specialisms ranging from public order policing, search, PSP and firearms. TTF training is heavily influenced by the National Decision Model which affects decisions regarding use of force (including the use of firearms and less lethal options) and the use of public order policing tactics and command related decisions. This review took the form of a snapshot review of a number of lesson plans, documents and assessment schemes including PSNI policies, procedures and service orders such as spit and bite guard online training, PSP in respect of use of pava, hand restraints, batons, public order training, and training for officers for dealing with individuals with acute behavioural disturbance. The College Advisor recommended that the trainers take account of any new College of Policing guidance, recommendations from the Policing Board's Use of Force Report and the PSNI's Children and Young People's Strategy. It is encouraging that the training used vulnerability scenarios giving officers an opportunity to practice de-escalation/communication as an important safeguard for resolving situations in a nonviolent way particularly where the subject is in mental distress and threatening self-harm or harm to others.

According to the Independent Office for Police Conduct (IOPC - the police complaints and conduct body in England and Wales), it is imperative that police forces ensure a greater focus in training and guidance on communication and de-

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<sup>237</sup> PSNI are bound by licence to deliver college of policing national courses.



escalation skills. In particular, they must provide officers with the knowledge and skills needed to manage and de-escalate incidents involving vulnerable people, such as those who are under the influence of alcohol or drugs, have mental health concerns or learning disabilities, or who are displaying signs of acute behavioural disturbance. The introduction of the College of Policing's (COP) new conflict management guidelines and the proposed training to support it will hopefully have a positive impact on officers' use of de-escalation. Training at the COP covers individuals with Learning Difficulties, neurodivergent individuals, medical conditions such as epilepsy, emotionally or mentally distressed individuals, and how these conditions may impact communication and de-escalation in different situations. The COP provides guidance on how to assess an individual's vulnerability and how to respond to it.<sup>238</sup> Furthermore, the COP provides thorough guidance on non-physical conflict management skills and de-escalation.<sup>239</sup>

## Firearms

In Northern Ireland, the (then) Chief Constable has given standing authority for all officers, subject to successful training, to be issued with a personal issue handgun which may be carried when officers are both on and off duty. In the rest of the UK, only specially trained Authorised Firearms Officers (AFO) carry firearms.<sup>240</sup>

In Northern Ireland, all police officers carry Glock handguns. PSNI policy on the use of handguns states:

'In recognition of the special circumstances prevailing in Northern Ireland, the (then) Chief Constable has given standing authority for all officers, subject to successful training, to be issued with a personal issue handgun which may be carried when officers are both on and off duty.'<sup>241</sup>

The Human Rights Review of PSNI's Use of Force recommended:

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<sup>238</sup> College of Policing, Authorised Professional Practice, Mental vulnerability and illness, accessed at <https://www.college.police.uk/app/mental-health/mental-vulnerability-and-illness>

<sup>239</sup> College of Policing, Conflict management skills, accessed at <https://www.college.police.uk/guidance/conflict-management/conflict-management-skills>

<sup>240</sup> Chapter 9 PSNI Conflict Manual 'Police Use of Firearms', <https://www.psnipolice.uk/sites/default/files/2022-09/Chapter%209%20Police%20Use%20of%20Firearms.pdf>

<sup>241</sup> Ibid., para 9.2

‘The reduction in the security threat level in Northern Ireland and the fact that officers very rarely have to fire their firearms raises a question about what the criteria should be for issuing firearms to all officers rather than, as in the rest of the UK and the Republic of Ireland, only to those special trained in their use, The PSNI should consider this issue as part of its longer-term plans.’

The PSNI responded:

“This is now built into the annual APSTRA process (Armed Policing Strategic Threat and Risk Assessment) and therefore features in our long term plans in a structured fashion.

The Strategic Management Board agrees that the question of arming / disarming officers is important and it remains under review. Although there is a low use of firearms (PPWs) it does not undermine the importance of being armed. The PSNI is an armed police force, given the indigenous threat from terrorists and the threat from organised crime gangs, PSNI will remain armed. It is believed that the removal of PPWs would impact in confidence in policing internally and externally.

The fallout from political representatives cannot be measured at this time. The matter of arming PSNI is under review, therefore no change is foreseen for the next 24 to 36 months so this Recommendation will remain “Under Review”. This Recommendation should be reviewed every 12 months as opposed to the present review status period because of the threat level being at SEVERE.”

A police officer will be deemed to have used a firearm or less lethal weapon when it is:

- Pointed or aimed at another person.
- Fired at another person.
- Discharged in any other operational circumstances, including an unintentional discharge.<sup>242</sup>

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<sup>242</sup> Chapter 9 PSNI Conflict Manual ‘Police Use of Firearms’, para 9.36

Human rights considerations place particular restrictions on the use of firearms. A police officer can lawfully discharge a firearm only when they believe it is absolutely necessary to do so in order to save life or prevent serious injury.

‘Police officers must only resort to the use of force or firearms if other means remain ineffective or there is no realistic prospect of achieving the lawful objective without exposing police officers, or anyone whom it is their duty to protect, to a real risk of harm or injury’<sup>243</sup>

In Great Britain, very few police officers carry firearms; that duty is carried out only by specially trained authorised firearms officers (AFO). Given that officers armed with firearms have the potential to inflict lethal force, it is important to highlight the test of absolute necessity that applies here. Lethal force may be used only where it is *absolutely necessary* to do so, in pursuit of a specified aim. Article 2 of the ECHR makes reference to 3 specified aims. The question of whether a use of force was ‘absolutely necessary’ in the circumstances is one that depends to a very large degree on the facts of the individual case. There is a requirement of strict proportionality between (a) the objective and (b) the force used to achieve it. Key issues to consider include the nature of the aim pursued, the risks to others and options that were considered before resorting to the use of force.<sup>244</sup> The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials lays out when force can be used against persons, where their use is strictly proportionate:

- (i) in self-defence; or in defence of others against the imminent threat of death or serious injury; or
- (ii) to prevent a particularly serious crime involving great threat to life; or
- (iii) to arrest a person presenting a danger to life or of serious injury and who is resisting authority; or
- (iv) to prevent his or her escape where he or she is about to commit a particularly serious crime that involves grave threat to life.<sup>245</sup>

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<sup>243</sup> Ibid., para 9.4

<sup>244</sup> Ibid para. 9.4; ECtHR Guide on Article 2 - Right to life, [https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf)

<sup>245</sup> OHCHR, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>

However, in UK law the strict test is mitigated by the fact that the need for objective justification is based on the subjective (the officer's) assessment of the fact and circumstances.<sup>246</sup>

Officers are accountable for all rounds they discharge, and they should be aimed so as to minimise risk (either directly or by ricochet) to any person other. Whether on or off duty, officers will be responsible for the safe custody of handguns, magazines and ammunition on personal issue to them.

Officers must attend firearms refresher training once or twice a year, depending on their primary duties.<sup>247</sup> All discharges of a firearm must be referred to the Police Ombudsman.

In practice, where the PSNI assess that a firearm will be necessary to deal with an incident the specially trained Armed Response Unit (ARU) will be dispatched. Each ARU team is based in a different location around Northern Ireland and currently being reorganised to seek to reduce the travelling times of the teams in emergencies. There were 1565 deployments in 2022/23, approximately 130 each month and at higher levels than over the last three years when they were at around 116 a month. Over half of all deployments were in A District (Belfast). The PSNI assessed that the main threat that resulted in deployment (50%) results from possession of a bladed weapon and 13% concerned the involvement of a firearm. Of these incidents, 34% (or 44 incidents per month) were noted as being linked to a mental health related illness.

Chapter 9 of PSNI's Conflict Manual, Police Use of Firearms states:

'Where circumstances permit, officers should identify themselves as armed and give a clear direction to the subject, giving sufficient time for the directions to be observed unless to do so would unduly place any person at risk, or would be clearly inappropriate or pointless in the circumstances of the incident. Oral

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<sup>246</sup> 'The subjective reasonableness of that belief (or the existence of subjective good reasons for it) is principally relevant to the question of whether it was in fact honestly and genuinely held. Once that question has been addressed, the domestic authorities have to ask whether the force used was "absolutely necessary". This question is essentially one of proportionality, which requires the authorities to again address the question of reasonableness, that is, whether the degree of force used was reasonable, having regard to what the person honestly and genuinely believed.' Para 251, *Armani Da Silva v. the United Kingdom*.

<sup>247</sup> PSNI Conflict Manual Chapter 9, Use of Firearms

or visual warnings should make the subject aware of the nature of the armed police intervention, these should serve as a clear warning to them and make it clear that force and/or firearms may be used.

All AFOs should receive training in communicating with subjects. On first verbal contact, officers should normally:

- Identify themselves as police officers and state that they are armed.
- Clarify who it is they are seeking to communicate with.,
- Communicate in a clear and appropriate manner.<sup>248</sup>

## Statistics

The use of firearms has fluctuated over the course of the past 10 years. Firearms were drawn 419 times in 2013/14, compared to 440 times in 2021/22 and in 2022/23 a firearm was drawn 527 times. Firearms have only been discharged five times over the past 10 years: in 2015/16, 2016/17, 2017/18, 2021/22 and in 22/23.<sup>249</sup>

## New Research And Reviews

The Home Office has announced a 'Home Office-led' review to 'assess the existing legal frameworks and guidance on practice that underpin police use of force and police driving, and the subsequent framework for investigation of any incidents that may occur. It will examine:

- whether use of force or police driving frameworks provide clear, understandable and well understood guidance for officers
- whether a lack of clarity or the frameworks themselves in any way inhibit or prevent the police from carrying out their role to protect life
- whether they serve to maintain public confidence in the police, in particular for those impacted by police use of force

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<sup>248</sup> PSNI Conflict Manual Chapter 9, Police Use of Firearms para. 9.78 and 9.79

<sup>249</sup> Investigation launched after PSNI officer 'unintentionally' fires gun, Belfast Telegraph (29 June 2022) <https://www.belfasttelegraph.co.uk/news/northern-ireland/investigation-launched-after-psni-officer-unintentionally-fires-gun-41802175.html>

- how the UK meets its obligation to independently investigate situations where a death or serious injury (DSI) results from an incident involving law enforcement
- whether necessary lessons have previously been understood and acted upon after historic incidents; and
- whether individuals are held to account appropriately...

Separately to the Home Office review, the Attorney General will exercise her superintendence functions to consider CPS guidance and decision-making processes, to ensure they take appropriate account of the role and actions of police officers including whether the latter are in accordance with their training. In undertaking this exercise, the Attorney General will not consider live or ongoing cases or proceedings and will prioritise the need to ensure that it does not in any way prejudice or interfere with ongoing or concluded investigations, cases or proceedings.<sup>250</sup>

These reviews followed the fact that a Metropolitan Police officer was being charged with the murder of Chris Kaba which resulted in ‘hundreds of officers stepped back from firearms duties.’<sup>251</sup>

Also at the time of writing, and following one of the recommendations (recommendation 15) in the Human Rights Annual Report for 2020/21, the PSNI has approached University of Central Lancashire and University of Maynooth to collaborate on research on de-escalation and the frequency (see above) of officers drawing their personal protection firearms.

### Use of Attenuating Energy Projectiles (AEP)

AEP are a type of baton round, also known as kinetic impact projectiles, which are designed to impact on rather than penetrate a subject. According to the College of Policing, AEP forms part of the common weapon system approved for use by members of the police service or Armed Forces in the UK. The projectiles used in

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<sup>250</sup> 13 November 2023.

<sup>251</sup> ‘Chris Kaba: Army stood down as armed Met Police officers return to duty’ BBC, 25 September 2023.

Northern Ireland are described as a '37 mm soft-nosed impact projectile, designated the L60A2.'<sup>252</sup> It is 1063.7 cm long and weighs 98g. The mean velocity is 72 m/s.<sup>253</sup>

It is 'intended for use as a less lethal kinetic energy device. The approved AEP (designated as L60A2) is fired from a 37 mm breech-loaded weapon. The approved launcher is the Heckler and Koch L104A2, equipped with an approved L18A2 optical sight. The projectile has been designed with a nose cap that encloses a void. This design feature is intended to attenuate the delivery of the impact energy by extending the duration of the impact and minimising the peak forces. It thereby delivers a high amount of energy to maximise its effectiveness, while reducing the potential for life-threatening injury.'<sup>254</sup>

The launcher is a specially designed gun, larger than a handgun, and the projectile is intended to minimise the most acute impact, but to 'deliver a high amount of energy over an extended period.'<sup>255</sup> Rubber and plastic bullets can be considered the predecessors of the AEP; however, the weapon has changed significantly since its first introduction.<sup>256</sup>

Operational use of the AEP in the UK police service is limited to authorised officers who have been specifically trained in use of the system. The AEP has been designed for use as a *less lethal weapon* in situations where officers are faced with *individual* aggressors whether acting on their own or as part of a group. In Northern Ireland, AEP are used by Authorised Firearms Officers (AFO). This is a police officer attached to an Armed Response Unit (ARU) who has been selected and trained in the use of firearms in policing operations in serious public order situations to fire at selected individuals or as a less lethal option at firearms incidents or non-public

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<sup>252</sup> Attenuating energy projectiles, Authorised Professional Practice, College of Policing <https://www.college.police.uk/app/armed-policing/attenuating-energy-projectiles>

<sup>253</sup> Maguire et al., Injuries caused by the attenuated energy projectile: the latest less lethal option, *Emerg Med J* 2007;24:103–105

<sup>254</sup> Ibid.

<sup>255</sup> Definition of types of force, Warwickshire Police, <https://www.warwickshire.police.uk/police-forces/warwickshire-police/areas/warwickshire-police/sd/stats-and-data/use-of-force/definition-of-types-of-force/>

<sup>256</sup> A short history of AEPs and more detailed research links are provided in Human Rights Review of PSNIs Use of Force, Policing Board, 18 January 2023.

order incidents. The officer will need to have reached the required level of competency in weapon handling, tactical knowledge, shooting skills and judgement. A Specialist Firearms Officer (SFO) is an AFO attached to Specialist Operations Branch (SOB) who has received additional training in the use of firearms in pre-planned policing operations, counter terrorism (CTSFO) and specialist entry and search techniques. There are also authorised users of AEP in Tactical Support Groups (TSG) and Diamond Teams, which consist of trained Response and Neighbourhood officers, for possible deployment in situations of serious public disorder.

In recognition of the very serious and potentially lethal effects of AEP, the threshold that must be met before AEP are used is that of absolute necessity, as is required for the use of firearms. There is a requirement of strict proportionality between (a) the objective and (b) the force used to achieve it. The person using the force must honestly believe that it is absolutely necessary to use lethal or potentially lethal force to avert a real and immediate risk to the lives of themselves, and/or others.<sup>257</sup> (This is the test provided for in Article 2 ECHR).

According to PSNI policy, AEPs will only be deployed following authorisation from the ACC and used following authorisation from the Silver Commander in public order situations, except where there is an immediate risk to life.<sup>258</sup> A Gold - Silver – Bronze (GSB) command structure is used by police and emergency services in the UK to establish a hierarchical framework for the command and control of major incidents. This in itself constitutes a safeguard, as AEP can therefore only be deployed when a major public order incident has developed that requires a GSB command structure. AEPs must only be used in public order situations:

- 'Where other methods of policing to restore or sustain public order have been tried and failed, or must from the nature of the circumstances be unlikely to succeed if tried; and
- Where their use is judged to be absolutely necessary to reduce a serious risk of:
  - Loss of life or serious injury; or

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<sup>257</sup> PSNI Conflict Manual Chapter 1, Legal Basis and Human Rights

<sup>258</sup> PSNI Conflict Manual Chapter 14 AEP (Public Disorder), para. 14.21



- Substantial and serious damage to property, which is likely to cause or is judged to be likely to cause a serious risk of loss of life or serious injury.<sup>259</sup>

AEPs should be fired at selected individuals and not indiscriminately at the crowd. AEPs should be aimed to strike directly (i.e., without bouncing) the lower part of the subject's body i.e. below the rib cage. This policy is also endorsed by the UN Office of the High Commissioner for Human Rights:

'Kinetic impact projectiles should generally be used only in direct fire with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a law enforcement official or a member of the public.'<sup>260</sup>

Furthermore, once rounds are fired, the following reporting mechanisms come into play:

'Where rounds are fired the facts will be promptly reported via the Electronic Use of Force monitoring system. A separate report from the officers performing the roles of Silver and Bronze Commanders, setting out the circumstances and reason for using AEPs will be completed . District Commanders will make an immediate report to the Policing Board ..., providing the detailed circumstances and reasons why it was necessary to discharge the weapon system.'<sup>261</sup> All incidents where AEPs have been discharged by police must be reported.<sup>262</sup>

## Medical Evidence<sup>263</sup>

The Defence Scientific Advisory Council (DSAC) sub-committee on the Medical Implications of Less-Lethal Weapons (DOMILL) has provided an independent view for the UK government on the medical implications of using the AEP L60A2 system in 2005 at the time of its introduction:

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<sup>259</sup> Ibid.

<sup>260</sup> UN OHCHR Guidance on Less-Lethal Weapons in Law Enforcement, p. 35, [https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW\\_Guidance.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/LLW_Guidance.pdf)

<sup>261</sup> PSNI Conflict Manual, Appendix J Requirements for the Early Reporting to NIPB on Police Discharge of AEP

<sup>262</sup> PSNI Conflict Manual Chapter 14 AEP (Public Disorder)

<sup>263</sup> More detailed research links are provided in Human Rights Review of PSNIs Use of Force, Policing Board, 18 January 2023.

'The risk of serious and life-threatening injury to the head from the AEP will be less than that from the L21A1 Baton Round, which already has a low risk of such injury.'<sup>264</sup>

The clinical impact of the reduction in damage to the brain and overlying skull from the AEP cannot be assessed confidently because of limitations in current models for this type of impact. Notwithstanding the uncertainties in the actual clinical consequences, the AEP certainly demonstrates the potential for less severe clinical outcomes, compared to the L21A1.'<sup>265</sup>

The College of Policing Guidance also sets out the necessity of medical aftercare, for example by having officers ready who are trained in appropriate first aid and/or placing an ambulance on standby.

## Statistics

AEPs were discharged by PSNI 4 times in 22/23 and pointed 67 times. AEPs discharged was a 50% reduction on 21/22. <sup>266</sup> When officers record the use of force, they can also record circumstances which contributed to the use of force, such as the subject being under the influence of alcohol, drugs or experiencing mental ill-health. The impact factors for each use of force recorded by PSNI for AEP use in 22/23 were persons under the influence of alcohol (56%), drugs (49%), mental health (75%) and other (23%). Out of those 67 instances, 43 instances occurred in a dwelling or garden/driveway, the rest occurred on a road or public park or other location. Reasons given for the use of AEPs were to protect self and other officers (99% and 96%, respectively prevent an offence (82%), prevent harm to subject (87%), protect the public (73%) effect arrest (62%), protect property (18%) and secure or protect evidence (27%).

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<sup>264</sup> DOMILL statement on the comparative injury potential of the Attenuating Energy Projectile (AEP) L60A1, and the L21A1 Baton Round, para. 23, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445112/20150714-DOMIL06-AEP01-O.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/445112/20150714-DOMIL06-AEP01-O.PDF)

<sup>265</sup> Ibid. para. 22

<sup>266</sup> PSNI Use of Force Statistical Report 1 Apr 2022 - 31 Mar 2023

PSNI guidance states that ‘every effort should be made to ensure that children or members of other vulnerable groups are not placed at risk by the firing of an AEP.’<sup>267</sup> In the reporting period, AEP was not used on under 12-year-olds.<sup>268</sup> However, on three occasions an AEP was pointed at a 13- to 17-year-old in 22/23. No AEPs were fired at this age group. 13- to 17-year-old. AEP was pointed at an 18- to 24-year-old 8 times and fired once at an 18- to 24-year-old.<sup>269</sup>

## Hand Held Batons

Hand held batons are usually made of rubber or plastic. PSNI use the Bonowi Friction Lock 26’ as the standard issue baton. The baton is opened or ‘racked’ by a ‘flicking’ movement that in turn causes the baton to extend and lock out. Batons may be used against individuals and during public order incidents.<sup>270</sup> Officers are trained in the use of batons during the Personal Safety Programme (PSP), which is refreshed every year. Training includes practice on mannequins and practice in pairs with pads. Furthermore, training includes discussion of potential medical implications and the public’s perception of that use.

Baton strikes may cause injury and the actual impact on a person’s health will depend on the way it is used. High-risk areas, on which the baton should not be used, are the head, throat, neck, spine, chest, and groin.<sup>271</sup>

A complaint was raised against PSNI that concerned the use of a baton in 2018. A man struck with baton in March 2018 had their complaint upheld by Ombudsman. Police Ombudsman investigators concluded that the officer had resorted to the use of force too quickly without issuing a warning.<sup>272</sup> Allegations in regard to baton use reported to the Police Ombudsman have halved since 2018/19 from 14 to 6 in 22/23.

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<sup>267</sup> PSNI Conflict Manual Chapter 14 AEP (Public Disorder)

<sup>268</sup> Age may be officer perceived.

<sup>269</sup> Table 9, PSNI Use of Force Statistical Report 1 April 2022 – 31 March 2023

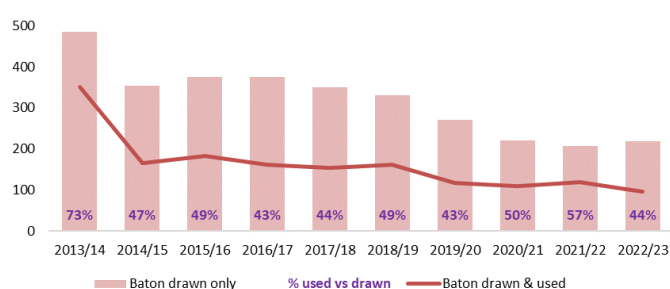
<sup>270</sup> Tactical options, Authorised Professional Practice, College of Policing  
<https://www.college.police.uk/app/public-order/tactical-options#batons-considerations>

<sup>271</sup> Position Paper on Striking Weapons, Amnesty International (2022)  
<https://www.amnesty.nl/content/uploads/2022/06/Position-paper-striking-weapons-final.pdf>

<sup>272</sup> Office of the Police Ombudsman for Northern Ireland, Media Release (7 February 2022)  
<https://www.policeombudsman.org/Media-Releases/Man-struck-with-baton-has-complaint-against-police>

## Statistics

The use of batons has steadily dropped over the past ten years, from 485 (baton drawn) and 352 (baton used) in 2013/14 to 218 (baton drawn) and 95 (baton used) in 2022/23.<sup>273</sup> In 2022/23, 80% of instances a baton was drawn by local or neighbourhood policing, in 15% of instances by a Tactical Support Group. Batons drawn and used on 13-17 year olds increased from 3% in 2021/22 to 10% in 2022/23.



Once drawn, the proportion of times a baton has been used has varied between 43% and 57% over the last 5 years.

## Use of PAVA (irritant spray)

PSNI currently use PAVA TW1000 irritant spray. PAVA stands for Pelargonic Acid Vanillylamide, which is an irritant and when it comes into contact with the subject, especially their eyes, it can be described like 'wet fire'.<sup>274</sup> PAVA is a synthetic variant of capsaicin, the active ingredient of natural pepper, dispensed from a hand-held aerosol canister in a liquid stream which contains a 0.3% solution of PAVA pepper spray in alcohol-based solvent and water, with a nitrogen propellant.

Misuse of irritant spray engages Article 3 of the ECHR (Prohibition of Inhuman or Degrading Treatment) and Article 8 (Right to Respect for Private and Family Life). This will necessitate an effective investigation by the Police Ombudsman. In any event, every use of irritant spray will be reviewed by the relevant District Commander or Head of Branch as with other uses of force.

Irritant spray is not intended for use in large-scale incidents of public disorder, but officers will carry their irritant spray whilst on duty and as part of their normal patrol

<sup>273</sup> PSNI Use of Force Statistical Report 1 Apr 2021 - 31 Mar 2022

<sup>274</sup> How we use PAVA spray, Lincolnshire Police (2022)

<https://www.lincolnshire.police.uk/news/lincolnshire/news/2022/apr-2022/op-explain-how-we-use-pava-spray/>

equipment when on duty at public order situations. The guidance states that any use of irritant spray at a public order situation may have a profound impact on crowd dynamics with implications for public safety and order.<sup>275</sup>

### Medical evidence

Chemical irritants used in crowd control, such as tear gases and pepper sprays, are generally considered to be safe and to cause only transient pain and lacrimation. However, there are numerous reports that use, and misuse of these chemicals may cause serious injuries.<sup>276</sup> According to Haar et al., there is limited knowledge about the burden of injury from chemical irritants. In their recommendations for healthcare professionals, the Faculty of Forensic & Legal Medicine of the Royal College of Physicians note that the true incidence of morbidity (and possible mortality) of irritant spray remains unknown in the absence of prospective clinical studies of appropriate statistical power.<sup>277</sup>

Chemical irritants, especially those deployed in aerosol forms, are inherently indiscriminate and can affect not only the intended targets but also peaceful demonstrators, bystanders, nearby communities and residences, and law enforcement officers themselves. Children are more vulnerable to severe injuries from chemical toxicity. The elderly and those with chronic diseases are also prone to worse outcomes from chemical irritants. Because of the indiscriminate nature of chemical irritants, limiting the exposure to individuals or small groups is difficult. Most often a large, diverse, and differentially susceptible group will be exposed, posing the risk of unnecessarily injuring nonviolent, potentially vulnerable people.<sup>278</sup>

The Police Ombudsman identified ‘multiple failings’ in relation to the PSNI’s treatment of a man who died as a result of cardiac arrest after being sprayed with CS gas and restrained by officers (handcuffed and held in a face down prone position)

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<sup>275</sup> Ibid. para. 4.45

<sup>276</sup> Haar, R. J., Iacopino, V., Ranadive, N., Weiser, S. D., & Dandu, M. (2017). Health impacts of chemical irritants used for crowd control: a systematic review of the injuries and deaths caused by tear gas and pepper spray. *BMC public health*, 17(1), 831. <https://doi.org/10.1186/s12889-017-4814-6>

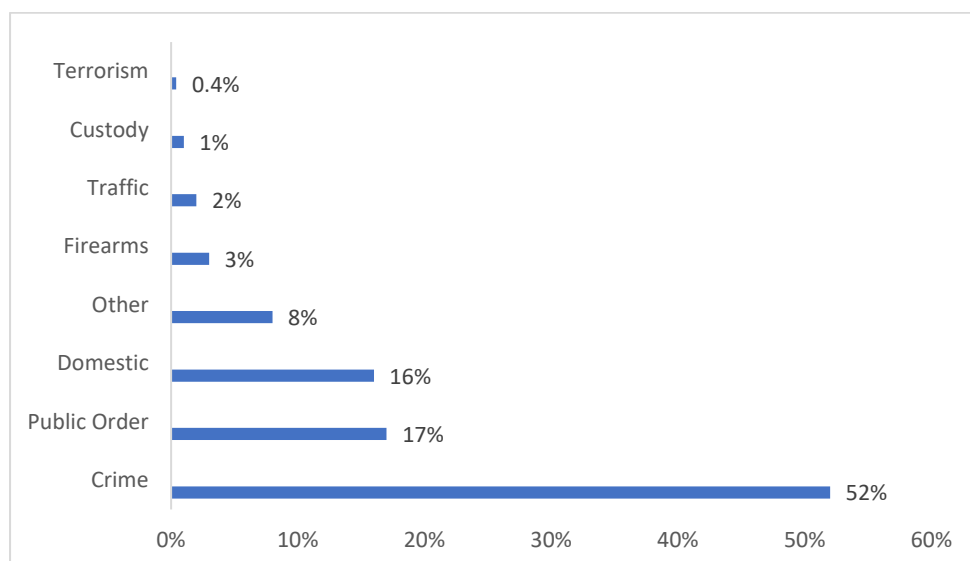
<sup>277</sup> McGorrigan, Jeanette & Payne-James, Jason, Faculty of Forensic & Legal Medicine Irritant sprays: clinical effects and management. Recommendations for Healthcare Professionals (Forensic Physicians, Custody Nurses and Paramedics) (2021) <https://fflm.ac.uk/wp-content/uploads/2021/02/Irritant-sprays-clinical-effects-and-management-Dr-J-McGorrigan-Prof-J-Payne-James-Jan-2021.pdf>

<sup>278</sup> [Health impacts of chemical irritants used for crowd control: a systematic review of the injuries and deaths caused by tear gas and pepper spray - PMC \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/35811111/)

while he was under the influence of cocaine. The man died in hospital in 2016. The officers were criticised for failing to summon an ambulance more quickly and one of them for the use of CS spray. The Ombudsman also criticised the PSNI for its decision not to hold misconduct hearings in relation to the officers as she had recommended,<sup>279</sup>

## Statistics

The use of irritant spray has remained consistent over the past ten years.<sup>280</sup> In 2013/14, irritant spray was drawn 154 times, and used 274 times. In 2022/23, it was drawn 274 times and used 240 times, with some minor fluctuations over the years. In 2022/23, the most common location in which irritant spray was either drawn or used were roadways and dwellings. Furthermore, irritant spray was mostly used during incidents of crime, in roughly 50% of instances where irritant spray was drawn and used, respectively. In over 90% of cases, it was used by local and neighbourhood policing.



## Water cannon

The UK currently possesses vehicle-mounted water cannons of the type Somati RCV 9000 (numbers 001-006). These vehicles, which have been deployed and used in serious public disorder in Northern Ireland over the past years, are owned,

<sup>279</sup> Police Ombudsman, 30 November 2023.

<sup>280</sup> [PSNI Use of Force Statistical Report April 2022 – March 2023pdf](#)

maintained and operated by PSNI.<sup>281</sup> The water cannon vehicle consists of a heavy duty permanent six-wheel drive chassis on which is mounted a superstructure consisting of a pump compartment, a water tank and a crew cabin. Each vehicle has two water cannons mounted on the roof of the cab, which are controlled by the Cannon Operators by means of an electronic joystick control. The Crew Commander controls the overall water pressure.<sup>282</sup> Northern Ireland is the only region of the UK which uses water cannon in public order situations. The former Prime Minister Theresa May banned the use of the vehicles in England and Wales when she was Home Secretary in 2015.<sup>283</sup>

According to the PSNI conflict manual guidance, the water cannon 'demonstrates that force is about to be/may be used, keeps crowds at a distance, supports a police cordon, and assists in the dispersal of groups.'<sup>284</sup> The APP guidance on water cannons outlines the criteria for use:

- 'When conventional methods of policing have been tried and failed or, because of the circumstances, are unlikely to succeed if tried.
- In situations of serious public disorder where there is the potential for loss of life, serious injury or widespread destruction and whether such action is likely to reduce that risk.
- Must only be used by trained officers.'<sup>285</sup>

It also highlights the potential impact on the community, and media impact and interpretation.<sup>286</sup>

During the serious public disorder in Belfast in April 2021, water cannons were deployed<sup>287</sup> for the first time in five years.<sup>288</sup> Water cannons have not been used in 2022/23.

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<sup>281</sup> [2013 11 18 SACMILL Interim Statement WaWe 9 U.pdf \(publishing.service.gov.uk\)](#)

<sup>282</sup> [Chapter 15 Water Cannon.pdf \(psni.police.uk\)](#)

<sup>283</sup> [Home Secretary's oral statement on water cannon - GOV.UK \(www.gov.uk\)](#)

<sup>284</sup> [Chapter 15 Water Cannon.pdf \(psni.police.uk\)](#)

<sup>285</sup> [Tactical options | College of Policing](#)

<sup>286</sup> [Tactical options | College of Policing](#)

<sup>287</sup> Note that the Use of Force statistics reflect the activation of water cannon (meaning the water jets were activated), not the mere presence of a water cannon vehicle.

<sup>288</sup> [Belfast disorder update on Thursday 8th April | PSNI, Northern Ireland: Police blast rioters with water cannon in seventh night of unrest - YouTube](#)

On the evening of April 8, 2021, PSNI used water cannons. In a review of the deployment and use of water cannon sent to the Policing Board, PSNI concluded that;

‘It is the assessment of the Silver Commander that the use of Water Cannon was particularly effective during this disorder, that its use was effectively controlled within the parameters described by law and policy and that its use was subject to constant review. It is the assessment that the availability and use of Water Cannon during this deployment mitigated in part the necessity to revert to the use of Attenuated Energy Projectiles and prevented further police casualties.’<sup>289</sup>

The Human Rights Advisor attended the review meeting, which is required by the College of Policing guidelines. Key senior officers attended the review and were taken through the decision-making log by a Superintendent. Additionally, the Human Rights Advisor attended PSNI headquarters on and viewed extracts from CCTV and PSNI evidence gathering cameras. The video material confirmed the account given at the review.

### **Medical evidence**

In their statement on the medical implications of the use of the Somati water cannon, The Defence Scientific Advisory Council (DSAC) sub-committee on the Medical Implications of Less-Lethal Weapons (DOMILL) states that there is a very low risk of death or life-threatening injury.<sup>290</sup> As with all uses of force, there is a risk of injury however, especially to vulnerable areas such as the eye. The risk may be increased by the impact of glass, plastic or other material from broken spectacles. Furthermore, a predictable risk of secondary injuries results from tissue damage produced by the impact of street furniture and debris energised by the water cannon jet.<sup>291</sup>

DOMILL’s successor, the Scientific Advisory Committee on the Medical Implications of Less-Lethal Weapons (SACMILL) also highlights that there is a risk of inducing

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<sup>289</sup> PSNI Review of the deployment and use of Water Cannon in Belfast in April 2021.

<sup>290</sup> [Statement on the medical implications of the use of the Somati RCV9000 Vehicle Mounted Water Canon \(3 March 2004\) \(publishing.service.gov.uk\)](#)

<sup>291</sup> [150223 SACMILL STATEMENT WATERCANNON March 2015.pdf](#), p.3



immediate or delayed psychological or mental health sequelae (for example acute panic reaction, disorientation or post-event distress).<sup>292293</sup>

## Police Dogs

As of September 2022, PSNI have 61 police dogs.<sup>294</sup> The Dog Section of the PSNI consists of two Sergeants and thirty Constables, all of whom handle and patrol with at least one police dog across Northern Ireland. Police dogs are multi-disciplined and are trained to work under a variety of conditions. Their depth of skills includes; searching for missing persons, tracking suspects from crime scene, support in firearms incidents, and recovery of recently discarded articles of an evidential nature. Police use a variety of proven dog breeds for general patrol duties, those being German Shepherd, Belgian Shepherd (Malinois) and Dutch Herder dogs.<sup>295</sup>

## PSNI policy

‘Police dogs can be an invaluable resource in public disorder and provide a positive, flexible and professional response to a wide variety of situations. The deployment of dogs can at times be a sensitive subject. It is therefore of paramount importance that those requesting their assistance fully understand their capability. Their deployment provides a stand-off between the crowd and police lines, affording protection to officers from direct attack. The deployment of a Dog Section Serial (DSS) working in conjunction with a Tactical Support Group or Police Support Unit (TSG/PSU) in shield formations can increase the effectiveness of the TSG/PSU in order to achieve the objectives of containment, dispersal and arrest.’<sup>296</sup>

## Medical evidence

Police dog bite injuries are more serious than domestic dog bites. Police dog bites result in higher rates of hospitalisation, multiple bites, operations, and angiograms than

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<sup>292</sup> [150223 SACMILL STATEMENT WATERCANNON March 2015.pdf \(publishing.service.gov.uk\)](#)

<sup>293</sup> In view of the disturbance in Dublin on 23 November 2023 the PSNI loaned a water cannon to Garda Siochana

<sup>294</sup> [FOI Request - 00981 Police Dogs.pdf \(psni.police.uk\)](#)

<sup>295</sup> [Dog Section | PSNI](#), This overview is not looking at Specialist Search Dogs or Passive Scanning Drugs Dogs.

<sup>296</sup> [Appendix H Tactics with Public Order Dogs.pdf \(psni.police.uk\)](#)

domestic dog bites. Furthermore, police dog bites tend towards higher numbers of bites in the central areas of the body: the head, the upper arms, and chest.<sup>297</sup> In the US, dog bites cause more hospital visits than any other use of force by police, according to a 2008 analysis.<sup>298</sup> No figures for police dog injuries are currently available for Northern Ireland.

## Statistics

The use of police dogs has increased in the last ten years, from 49 instances where a dog was used in 2013/14 to 153 in 2022/23. This can be partly explained by PSNI's increase in dogs. The highest recorded use of police dog force was 244 times in 2019/20.

The main types of force that are recorded for dog use include:

- Indirect Deployment – where the dog and handler are deployed at the periphery of an incident, with the dog in the police vehicle, providing a visible deterrent and with the handler observing the incident developing.
- Interim Deployment – where the dog and handler are deployed from the vehicle on foot, remaining at a safe distance.
- Direct Deployment – these are circumstances where the dog is deployed and is likely to, or instructed to, bite a suspect. At this point a verbal warning should be given by the handler if circumstances allow. This category can be further broken down into dog bites (commanded, provoked, accidental) and non-bites.<sup>299</sup>

Police dogs were mostly used on roadways (37%), garden/driveway (24%) or dwellings (20%). They were used in instances involving crime (36%), public order (14%) and firearms incidents (36%).<sup>300</sup> In 6% of instances in 2022/23, a police dog was used on children between 13 and 17.

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<sup>297</sup> Peter C. Meade, Police and domestic dog bite injuries: What are the differences? What are the implications about police dog use?, Injury Extra, Volume 37, Issue 11, 2006, available at: [Police and domestic dog bite injuries](#)

<sup>298</sup> [When Police Violence Is a Dog Bite | The Marshall Project](#)

<sup>299</sup> [use-of-force-user-guide-2021.pdf \(psni.police.uk\)](#)

<sup>300</sup> [PSNI Use of Force Statistical Report 1 Apr 2021 - 31 Mar 2022v2.pdf](#)

## Stun grenades

Stun grenade is a non-lethal explosive device that emits an extremely loud bang and bright lights in an attempt to disorient people as it goes off, a distraction device. It was most recently used in a PSNI operation in West Belfast as part of an investigation into the Irish National Liberation Army (INLA) in August 2022.<sup>301</sup>

### PSNI policy

PSNI follow the Authorised Professional Practice (APP) of the College of Policing, which states that use of percussion grenades may create a risk of fire, blast, and fragmentation.<sup>302</sup> The noise created by these devices is more than the safe level under health and safety legislation. Furthermore, 'the operational use of percussion grenades must also be subject of statutory risk assessment. It may also be necessary to undertake a dynamic risk assessment relevant to the operational circumstances and/or where it is not practicable to adopt all identified control measures.'<sup>303</sup>

They can cause temporary blindness and shifts in hearing, and when used in public order situation, can carry the risk of hearing loss.<sup>304</sup> The use of stun grenades is not recorded in the use of force statistics. However, distraction devices have only once been used by specialist firearms officers in the last 20 years.

### Handcuffs and limb restraints/ Use of Unarmed Physical Tactics

From 1st April 2017 the PSNI started to report the number of uses of force involving restraints (handcuffs, flexi cuffs and limb restraints) and unarmed physical tactics (blocks/strikes, take downs, pressure points, physical restraints and other/improvised). Use of unarmed physical tactics has increased from 40% since April – September 2017 to 58% during April 2022 to March 2023

Handcuffs and restraints are among the most used items by officers when it comes to use of force. Handcuffing is only lawful where it can be justified as necessary and

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<sup>301</sup> [Police use stun grenades in Belfast operation arresting six men | UTV | ITV News](#)

<sup>302</sup> APP is the official source of professional practice for policing developed by the College of Policing.

<sup>303</sup> [Weapons and equipment | College of Policing](#)

<sup>304</sup> Wang, H., Burgei, W.A. and Zhou, H. (2018) Risk of Hearing Loss Injury Caused by Multiple Flash Bangs on a Crowd. American Journal of Operations Research, 8, 239-265.  
<https://doi.org/10.4236/ajor.2018.84014>

proportionate in the particular circumstances and having assessed the risk posed by the detained person.<sup>305</sup>

## PSNI policy

The term 'limb restraint' refers to Velcro straps that are used to restrict the range of movement of the arms and/or legs. Their application is designed to prevent a person from kicking and/or punching and significant use of their legs or arms. According to PSNI policy, by effectively restraining a potentially violent, individual officers and staff are also reducing the likelihood of having to resort to the use of other tactical options, escalating the use of force and therefore reducing the risk of injury to the subject.<sup>306</sup>

Using restraints is part of the PSNI Personal Safety Programme (PSP) training for officers and includes yearly refresher training. Apart from training the techniques, officers are expected to be able to explain the risks and considerations in relation to dealing with a subject whilst applying a restraint or a takedown, including medical implications, public perception and how it relates to the National Decision-making Model.

When using handcuffs and restraints, the risk of Positional Asphyxia is present. This is a form of asphyxia (a state of deficient supply of oxygen to the body that arises from abnormal breathing) which occurs when someone's position prevents the person from breathing adequately. There is a risk of Positional Asphyxia when restraining a person (in prone restraint). There is a risk also in a seated position pushed forward with the chest on or close to the knees, reducing the ability to breathe.<sup>307</sup>

## Statistics

Handcuffs and limb restraints were used 5455 times in 2022/23.<sup>308</sup> In most cases, they were used by local or neighbourhood policing (83%), followed by custody setting (5%) and armed response (6%). In 10% of cases, they were used on children under 18. Officers cited alcohol (61%), drugs (37%), mental health (35%) and other (25%) as

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<sup>305</sup> Raninen v Finland (1997)

<sup>306</sup> [Handcuffs \(psni.police.uk\)](https://psni.police.uk)

<sup>307</sup> *ibid.*

<sup>308</sup> Recording of use of handcuffs/restraints and unarmed physical tactics began in April 2017.

impact factors. In roughly half of all instances, they were used in a situation involving a crime (50%), followed by domestic and other (12%) and public order (9%).

## Unarmed physical tactics

Unarmed physical tactics employed by police are push, block/strike, take downs, pressure points and physical restraints. They form part of officers' Personal Safety Programme (PSP) training. Out of 17,742 total instances involving the use of force in 2022/23, 10,259 involved unarmed physical tactics (58%). Unarmed physical tactics are practiced annually in refresher training. Officers are expected to explain medical implications, such as mental ill health and positional/restraint asphyxia. As with limb restraints, using physical restraints can result in the risk of asphyxia.

## Statistics

Unarmed physical tactics were used in incidents involving a crime (43%), custody (17%), public order (12%) and domestic incidents (10%). Officers cited alcohol (66%), drugs (43%) mental health (40%) and other (23%) as impact factors. Since PSNI started recording the use of unarmed physical tactics in April 2017, the use of these tactics increased from 5,954 in 2017/18 to 10,259 in 2022/23.

## CED

The CED or TASER

9. ...'is a pistol-like device which shoots two probes from an attached cartridge. Wires are attached to the probes. When the trigger is pulled an electric charge of some 50,000 volts is passed through the wires and, if the probes have become attached to the subject, through his body. The electric pulse lasts for some 5 seconds, or longer if the trigger is held down. The Taser can also be operated by holding it against the body of the subject. This is known as the 'drive stun' mode.
10. The electric charge can cause intense pain. It also (and this is said to be its principal attraction for the police) incapacitates its subject. The electrical stimulus causes an uncontrollable skeletal muscle contraction which will make the individual lose control of his body. This lasts as long as the charge is

applied. It stops when the charge stops, although the person concerned may be dazed and confused for a while longer. There may also be small burn marks on the skin nearest to the probes.<sup>309</sup>

This description refers to the Taser® X26 model, which has since been replaced by the X2 model. In this current model, the cycle is automatically terminated after 5 seconds, and additional action is required from the officer to extend the cycle by depressing a switch.<sup>310</sup> The PSNI are currently considering purchasing a new version – TASER 10, which, according to the manufacturers has a greater range, ten shot cartridges, individually targeted probes, audible and visual alerts, and many improved features.<sup>311</sup> Board Members have been invited to attend a demonstration of the new weapon in early 2024.

### New Recommendation 13

**The PSNI should provide the Policing Board with a detailed paper setting out the advantages and risks associated with the new weapon Taser10® and this should include the results of any independent assessments of its capacity and dangers before any commitments to purchase.**

One of the key attributes of CEDs is the ability to track the details of their use (the date and time the weapon was armed and made safe is recorded, when it was discharged, and for how long) – something that is much more difficult with more traditional uses of force as such hand-held baton, etc. Much of this information can then be collated and published in the PSNI's use of force statistics. This includes figures on the number of times a CED was drawn and used, as well as the number of times people were 'red-dotted' (when the laser dot was aimed at a person and was ready to fire).

The College of Policing describes CED, and their impact as follows:

'A CED is a less lethal weapon system designed to temporarily incapacitate a subject through use of an electrical current that temporarily interferes with

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<sup>309</sup> Morrison v Independent Police Complaints Commission, [2009] EWHC, para 9 to 11.

<sup>310</sup> <https://www.college.police.uk/app/armed-policing/conducted-energy-devices-taser>

<sup>311</sup> TASER 10, AXON website.

the body's neuromuscular system and produces a sensation of intense pain'<sup>312</sup> .

In September 2020 HMICFRS stated in its report on the PSNI on use of force:

'Most frontline PSNI officers aren't issued with conducted energy devices (CEDs, such as Tasers). Those devices are less lethal than the firearms issued to all PSNI officers for personal protection purposes. Without immediate access to CEDs, frontline PSNI officers who respond to serious incidents involving dangerous people have fewer options available to them to resolve the incident with the minimum use of force.

CEDs could be made available to more officers in the PSNI, but that would attract a high level of interest from communities. So, we recommend that the (then) Chief Constable consult widely on any proposed changes and communicate the public safety benefits of such an approach, before any changes are made.'<sup>313</sup>

PSNI responded that they:

'Note the inspectorate's comments around the use of Conducted Energy Devices (CED), such as Tasers. The availability of CEDs, as a tactical option, is one that we do not take for granted and their issue and use is subject to rigorous accountability and limited to a small group of specialist officers trained and accredited to national standards in its carriage and use.'<sup>314</sup>

### **CED and the Question Of 'Less Lethal' Weapons**

The use of CED by PSNI is restricted to the officers in ARUs, officers in SOB and to CTSFO and this is a very sensible restriction, reducing the likelihood of them being used, in practice, outside 'less-lethal' situations. CPU Officers have recently been trained to carry CED, but approval has not yet been given to carry them operationally. It is those officers that are most likely to have to consider the use of

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<sup>312</sup> The College of Policing (2013) '*Conducted Energy Devices (Taser)*' (Updated 1 March 2022). Accessed at: [Conducted energy devices \(Taser\) | College of Policing](#).

<sup>313</sup> HMICFRS (2020) [The Police Service in Northern Ireland. An inspection of how well the service treats its workforce and the people of Northern Ireland](#)

<sup>314</sup> [\[10/09/20\] Police Service of Northern Ireland response to HMICFRS report \(psni.police.uk\)](#)

actual lethal force and it is those officers who have the most need for a genuine less lethal option. The training of those officers in relation to firearms and CEDs is the most focused and detailed. Whilst firearms are carried by most other officers, those officers are rarely in a situation where the use of lethal force is necessary. Where there is a threat, those officers call on the experts in an ARU.

Secondly, given the issues that specialist firearms officers are regularly confronted with, the command and control arrangements are significantly more robust. The officers will be in teams and the mere fact of multiple officers arriving at a scene together, announcing their presence loudly – ‘Armed officers, put down your weapon!’ has the effect of reducing the threat to them. The team will be led by more senior officers and the chances of errors been made by officer on their own and justifiably frightened, significantly reduced.

There is no clear evidence of firearms deaths and incidents being reduced since the introduction of CED.<sup>315</sup> In practice, projectile electric-shock weapons are not actually used when lethal force is justified. They have a much shorter range than firearms and officers do not trust them to be effective when their lives are at risk.<sup>316</sup> Secondly, and perhaps more importantly, officers tend to use them in response to lower levels of threat – when lethal force is *not* justified. Use of Force statistics from England and Wales 2021/22 show that in 43% of cases where CED was fired, the person was unarmed.<sup>317</sup>

The use of CED by the PSNI obviously engages a number of possible human rights issues: threats to life (Article 2), issues of torture and ill-treatment (Article 3), and the right to freedom from discrimination (Article 14). When examining the UK record with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment the relevant United Nations Treaty stated:

26. While taking note of the guidance for England and Wales, which seeks to limit the use of electrical discharge weapons to situations where there is a

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<sup>315</sup> See Electric-Shock Weapons, Tasers and Policing: Myths and Realities, Abi Dymond, 2022, Routledge, page 36.

<sup>316</sup> Ibid., page 39.

<sup>317</sup> 6.5 CED use by impact factor and personal characteristics, [Police use of force statistics, England and Wales: April 2020 to March 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/police-use-of-force-statistics-england-and-wales-april-2020-to-march-2021)



serious threat of violence, the Committee expresses concern that the use of electrical discharge weapons almost doubled in 2011 and that the State party intends to further extend their use in the Metropolitan Police area. In addition, it is deeply concerned at instances where electrical discharge weapons have been used on children, persons with disabilities and in recent policing operations where the serious threat of violence was questioned (arts. 2 and 16). The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide detailed instructions and adequate training to law enforcement personnel entitled to use electric discharge weapons, and to strictly monitor and supervise their use.’<sup>318</sup>

The test for CED is contained within PSNI’s Conflict Management Manual at Chapter 12.79 and states:

‘The use of Taser will be justified where the officer honestly and reasonably believes that it is necessary in order to prevent a risk of death or serious injury’.<sup>319</sup>

And in response to the Policing Board, PSNI advise that:

*‘Only an officer trained in the use of Taser will know if this tactic may or may not have been a potential option in these 250 incidents. Therefore, the use of a*

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<sup>318</sup> Concluding Observations on the fifth periodic report of the UK, CAT/C/GBR/CO/5, 24 June 2013, para 26.

<sup>319</sup> PSNI Conflict Management Manual, Chapter 12, Conductive Energy Devices, available at: [Conflict Management Manual | PSNI](#)

*Personal Protection Weapon (PPW) instead of a CED is not recorded and without interviewing each of the officers involved in the specific incidents; it would be extremely difficult to assess each specific case.*<sup>320</sup>

The danger to life and the consequential issues involved in the use of CED were comprehensively set out for the Policing Board in 'The PSNI's Proposed Introduction of TASER: Human Rights Advice', by Keir Starmer KC and Jane Gordon, May 2007.<sup>321</sup>

### **Current use of CED in Northern Ireland**

CED is used in a relatively small number of incidents: Out of 17,742 total incidents that involved the use of force in 2022/23, 58% were resolved by using unarmed physical tactics, and 31% through handcuffs or limb restraints. 1.7% of incidents were resolved drawing CED, and in 15 incidents out of 17,742 incidents CED were fired. In 83% of cases of CED use, the incident was declared as a firearms incident. Of the 15 incidents where a CED was fired, 5 of those were on females at 33% this was the highest use of force recorded on females.

PSNI data ((March 22 April 23) shows that CED is most commonly used in dwellings (72%), followed by roadway (13%) and garden/driveway (11%). It is encouraging that CED was drawn in less than 1% of cases in a medical setting and there were no cases of CED use in a custody setting.

The Human Rights Advisor watched a small random sample of body worn video footage relating to CED use, descriptions of which can be found in Annex A. All incidents involved people in a mental health crisis and in clear distress. In all but one incident the subjects were carrying a weapon, such as a knife, and were either threatening self-harm or people around them during or before the ARU arrived on scene. This report further considers the use of CED on people experiencing mental ill-health below in Chapter 'Impact'.

All police services across the UK use CED. CED were first introduced into police forces in England and Wales in 2003. Initially trialled with specialist firearms officers

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<sup>320</sup> Written answer to question by Mike Nesbitt, Member of the Policing Board, 1 October 2020.

<sup>321</sup> <https://www.nipolicingboard.org.uk/files/nipolicingboard/media-files/HR-Report-on-taser.pdf>

in five forces, the weapon was made available in 2008 to non-firearms officers and subsequently rolled out to all 43 police forces in England and Wales in 2013.<sup>322</sup>

In England and Wales, in a one year-period in,2021/22 CED was used in 34276 incidents (the weapon was drawn), although not actually discharged in 92% (29983) of incidents representing a 2% increase on the previous period. .<sup>323</sup> In comparison, in Northern Ireland, in the same time period, CED were drawn in 288 incidents and were fired in 21 incidents. This represented no change and a decrease of 12.5% respectively from the previous year.

There are particular concerns about the extent of compliance with the United Nations Convention on the Rights of the Child and the use of CEDs. In particular, the duty to act in the best interests of the child (Article 3) and the prohibition against ill-treatment in the CRC itself (Article 37). It is difficult to see how the use of a CED will ever be in the interests of a child. Furthermore, children may also be additionally vulnerable because of physical or mental health issues (or following the use of drink or drugs).

In the period April 2022 – March 2023 PSNI officers have drawn CED in 2% of instances (out of 332 total incidents) and have discharged CED in 0% of instances (out of 15 total incidents) on children aged 13 to 17. This represents a decrease on the previous year were CED was discharged in 5% of incidents.

The below table details the number of times a CED has been a) drawn b) fired and c) used in total by officers over the period of March 2022 to April 2023 compared to the year before.<sup>324</sup>

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<sup>322</sup> [A Growing Threat to Life: Taser Usage by Greater Manchester Police | Resistance Lab](#)

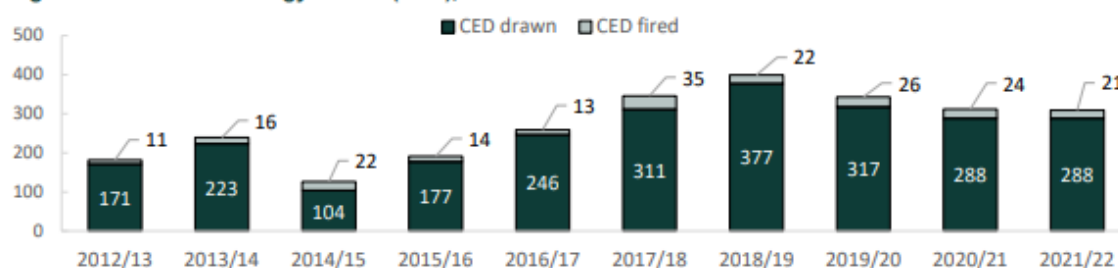
<sup>323</sup> Home Office (2021) '6. CED (conducted energy device) use: 6.1 Incidents involving CEDs' in 'Police use of force statistics, England and Wales: April 2020 to March 2021'. Accessed at: [Police use of force statistics, England and Wales: April 2020 to March 2021 - GOV.UK \(www.gov.uk\)](#)

<sup>324</sup> All figures are taken from PSNI Use of Force by the Police in Northern Ireland 1 April2022 to 31 March 2023, Accessed at: <https://www.psni.police.uk/sites/default/files/2022-09/PSNI%20Use%20of%20Force%20Statistical%20Report%201%20Apr%202021%20-%2031%20Mar%202022v2.pdf>

CED Use	Apr 21 – March 22	Apr 22 – March 23	% Change
CED Drawn	288	301	5%
CED Fired	21	15	-29%
CED Total	309	316	2%

It will be interesting to observe whether this downward trend continues in terms of CED Fired. More broadly, below is a bar chart detailing the yearly use of CEDs by PSNI (drawing and firing) covering the period from 2012/12 to 2021/22<sup>325</sup>.

**Figure 6: Conductive Energy Device (CED), 2012/13 - 2021/22**



## Spit and Bite Guards

Spit and bite guards (SBGs) are devices intended to cover the mouth, face and sometimes the head of a restrained person in order to prevent them spitting at or biting others.

### History of Spit and Bite Guards in Northern Ireland

The Policing Board were first aware of the possibility of PSNI officers being issued with SBGs when there was a trial of visors for officers in Musgrave Custody Suite in 2015. The visors were designed to protect officers from spitting and biting. However,

<sup>325</sup> Ibid. p. 6

this approach was assessed by PSNI to be of limited value due to the cumbersome nature of the visors. The Board advised PSNI at the time that it was of the view that, given the societal impact of the use of a spit and bite guard in Northern Ireland, more information was necessary on alternative options that have been considered by PSNI and if so, the reason why they were not pursued.

There were then recommendations in the Human Rights Annual Report 2016/17 raising concerns about their possible introduction:

“In the event that the PSNI considers introducing spit guards or hoods for use by officers it should first report to the Performance Committee outlining the need and the capability gap to be filled; whether there is potential for death or injury; a tactical and medical needs assessment; and an equality impact assessment.”

“In the event that the PSNI intends to issue spit guards or hoods to officers it should report to the Performance Committee on the policy guidance in place; training developed (for all officers and civilian detention officers); the monitoring framework for the use of hoods; and the commitment to report on the use of hoods to the Board by the electronic use of force monitoring form.”

Following new indications that the PSNI intended to introduce SBGs, the Board's current Human Rights Advisor provided a briefing on his assessment of PSNI's proposals at a Board meeting in October 2019. Following this, the Board wrote again setting out its concerns over the use of the guards on vulnerable people and seeking further information on the number of officers who have contracted an infectious disease as a result of a spit or a bite. A PSNI Assistant Chief Constable provided an update to the Board in November 2019 on the training required for officers to have the guards and a demonstration of the guard, following this the Board wrote yet again to PSNI to raise a number of concerns including: the guidance for officers, alternative options to guards to be explored, restriction on their use in respect of age, recording their use, supervision of officers using the guards, equality considerations taken, evidence base from other UK police forces and an update on the assault by spitting/biting figures for the service.

The PSNI informed the Board in February 2020, that PSNI were committed to ensuring that thorough consideration is given to children and young people when developing the guidance and training. It stated that the guard will only be used in circumstances which pose significant risk to officers and where there is no other way to prevent spitting or biting. The Board requested further detail on the evidence base which established the perceived requirement for PSNI to introduce spit and bite guards. In respect of the data provided at that time, no officer had contracted an infectious disease as a result of these types of assaults. A meeting of the Board in February 2020 was followed by a discussion with the Police Federation on this issue, in which they strongly advocated for the introduction of the guards. It is understood that the Federation had indicated sometime before this meeting that it was willing to take legal action against the (then) Chief Constable should SBGs not be issued to officers.

### **COVID Pandemic**

On 16 March 2020, in advance of his briefing to the Board, the (then) Chief Constable advised, that as part of PSNI's operational contingencies, the decision had been taken to issue spit and bite guards for use in custody suites. This was based on the risks associated with the COVID pandemic and to the mitigate Article 2 and Article 3<sup>326</sup> risks faced by officers and staff. He further advised that the decision would be kept under continual review and the issuing of the guards would be accompanied by appropriate training and guidance.

He reviewed his decision on 31 March following a discussion at the COVID Platinum Group meeting and extended their to deployment to include COVID response crews and cell vans.<sup>327</sup> The Platinum Group were informed that:

“As well as the obvious potential injuries that could be sustained from biting, there is also the risk associated with the transfer of body fluids from both biting and spitting. The spread of saliva, particularly when it enters the eyes, mouth or an open wound of the victim has the potential to contaminate the victim with

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<sup>326</sup> Article 2 is the right to life; Article 3 is the right not to be subjected to torture, inhuman or degrading treatment or punishment (European Convention on Human Rights (ECHR)).

<sup>327</sup> The Board was, at the same time, provided with a paper for the Platinum Group – ‘Proposed Introduction of Spit and Bite Guards: Briefing for the Senior Executive Team’ and a draft of Chapter 16, ‘Police Use of Spit and Bite Guards’ of the ‘PSNI Manual of Policy, Procedure and Guidance on Conflict Management’.

blood borne viruses carried by the subject. This is particularly relevant at this present time with the risk of contraction of COVID during the current pandemic.”

The Board provided feedback to the PSNI from the Human Rights Advisor in respect to the draft guidance for officers on the use of SBGs. In considering this guidance in April 2020, the Board’s Human Rights Advisor reiterated the concerns of the Board suggesting that further information was necessary in relation mental health factors. PSNI has since advised that the training video used asks officers to consider the vulnerability of the subject including apparent mental health. The Human Rights Advisor was also provided with a DVD which was used by the PSNI to deliver online training to officers. Later in April the (then) Chief Constable advised that he had decided to extend the deployment of SBGs to the Armed Response Units.

The Human Rights Advisor met with the Police Federation and it continued to urge the Board to support the deployment of SBGs both during the pandemic and after that threat has subsided. The Federation also encouraged the wider availability of the devices to all front line officers and, at the time of writing, had taken the first steps towards seeking judicial review of the PSNI to force the (then) Chief Constable to take this action, had been given leave by Judge McAlinden on 9 July 2020 with the full hearing due to occur on 4 November 2020.<sup>328</sup>

The use of SBGs from April 2020 was automatically referred to the Police Ombudsman for Northern Ireland (OPONI). OPONI staff viewed the Body Worn Video for every use of a SBG this has since discontinued. This has continued for uses on children.

In November 2020, the Board published the Thematic Review of PSNI’s Response to COVID<sup>329</sup> within which it explores the use of Spit and Bite Guards and makes a recommendation. In May 2021 the PSNI launched its Equality Impact Assessment<sup>330</sup> into their use and in October 2021, the Police Ombudsman, having

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<sup>328</sup> It is understood that the first formal threat of legal action was by letter of 1 May 2020.

<sup>329</sup> <https://www.nipolicingboard.org.uk/sites/nipb/files/publications/report-on-the-thematic-review-of-the-policing-responser-to-covid-19.PDF>

<sup>330</sup> <https://www.psnipolice.uk/globalassets/inside-the-psni/our-policies-and-procedures/equality-diversity--good-relations/documents/stage-1-4-report-draft-amendments-v5-final-003-002-002.pdf>

reviewed Body Worn Video (BWV) of a sample of Spit and Bite Guards, published her Report.

The Policing Board then requested that the independent Human Rights Advisor conduct a human rights based review on the use of Spit and Bite Guards to allow the Board to come to an evidence-based position on their use in advance of the (then) Chief Constable making his decision on their permanent introduction into the PSNI. This report provided detailed and comprehensive evidence of the Human Rights implications of using Spit and Bite Guards. The Human Rights Advisor also identified what the PSNI needed to do in order to avoid using Spit and Bite Guards unlawfully. The use of the Guards is a use of force which engages in a direct and fundamental way the rights protected by the European Convention of Human Rights (ECHR), specifically Article 2, Article 3 and Article 14 and the Report considered the issues of proportionately, de-escalation and possible alternatives to Spit and Bite Guards.

The report also considered the Safeguards and Protections necessary if Spit and Bite Guards were to be introduced on a permanent basis and it set out in detail what was required of the service in relation to training and Guidance.

The risks associated with using a Spit and Bite Guard on a person with mental health issues, physical disabilities or subject to drug or alcohol intoxication are considerable but there is also a wider issue. Although the Human Rights Advisor only viewed five BWV recordings of the use of the Guard it was clear that the constant factor in all the cases was that the person appeared to be disconnected from reality and not acting in their own best interests (let alone treating the officers properly). Any actions by officers to further restrain them appeared to make their disconnected state worse. This is not to excuse the behaviour witnessed, but to underline the fact that their actions were not rational and they needed help. Expert help from medical personnel might, if they had been available, have made a significant difference but equally likely to have helped would be de-escalation and calming measures. In this context it is important to note that suspects have to be restrained properly before a Guard is applied and in all of those incidents viewed on BWV, officers could have safely taken a step back. The driver to take action, to resolve the situation and, therefore, to apply a Guard appeared partially as a result of the need to take control and to



resolve the situation quickly rather than to take time and to avoid the use of yet another restraint measure (the application of a Guard).

### **Current use of Spit and Bite Guards by the PSNI**

The Police Service adopted Spit and Bite Guards as a permanent tactic to counter assaults by spitting and biting on 13th June 2022. At that stage, Spit and Bite Guards were on issue to approximately 4000 frontline officers and staff in the following roles:

- Local Policing Teams
- Neighbourhood Policing Teams
- Tactical Support Group
- Roads Policing Unit
- Custody Staff
- Armed Response Unit
- Officers deployed in cell vans.

In June 2023 the PSNI increased the range of officers with authority to use SBGs so that any officer who had undertaken training in the use of Spit and Bite Guards to carry one. This would include Air Transit officers and officers who occasionally carry out frontline duties.

‘The Service Accountability Panel (SAP) continues to governance for the use of Spit and Bite Guards. This governance structure focuses on effective data collection and analysis around all Section 75 equality categories. Data relating to the use of Spit and Bite Guards on children and other vulnerable people is a particular focus for this governance framework. The panel brings forward wider public consultation on matters, where and when appropriate, creates working groups to ensure external accountability for the use of police powers. It is a point of contact for oversight bodies submitting recommendations on the use of police powers and works to identify any adverse differential impact they may have on the protected groups under Section 75

of the Northern Ireland Act 1998. The SAP is ultimately accountable to the Northern Ireland Policing Board and reports accordingly through established structures.<sup>331</sup>

Following publication of the Stage 7 EQIA report, the PSNI will continue to review data on the Section 75 groups on an annual basis. The Service Accountability Panel (SAP) will provide governance for the use of Spit and Bite Guards and will consider quarterly data reports on Spit and Bite Guard deployments, to include deployment on the nine equality categories.

From 16 March 2020 – 07 August 2023, there have been 434 reports of use of a Spit and Bite Guard by an officer or staff member:

- 356 Spit and Bite Guards applied were applied on males, the remaining 78 were applied to females.
- Individuals ranged in age from 14 years to 74 years old. 33 applications were made on 26 individuals aged under 18. Of these, 23 were applied to male children. Seven children have had the guard applied twice during an incident.
- Of the incidents of use of a Spit and Bite Guard involving youths aged under 18, nine were a looked after child at the time of the incident.
- The majority of individuals who had had a Spit or Bite Guard applied was recorded on Niche as white (353); six individuals were recorded as members of the Irish Travelling community, three as Roma, six as Black, one as mixed, and three as other
- Spit and Bite Guards have been applied across all Districts with A District reporting the highest number (136), followed by E District (56).<sup>332</sup>

42.4% of people from a Catholic background compared with 17.5% of those from a Protestant background were subjected to a SBG.<sup>333</sup>

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<sup>331</sup> The Use of Spit and Bite Guards by the Police Service of Northern Ireland: Bi-Annual Report to the Northern Ireland Policing Board, August 2023 V1.2.

<sup>332</sup> The Use of Spit and Bite Guards by the Police Service of Northern Ireland: Bi-Annual Report to the Northern Ireland Policing Board, August 2023 V1.2.

<sup>333</sup> 'There may be a significant impact on our data on religious belief from the "unknown" figure of 34.6%. If there is a trend towards individuals from one particular background towards this category, the proportionality could look entirely different and this is something we need to understand better. Hypothesis testing of what

Data from Use of Force forms shows that 41% of incidents were linked to mental health. 67% of those who had a Spit and Bite Guard applied were flagged as having a mental health issue. From 16th March 2020 to 3rd August 2023, there were 1572 reports of spitting/biting affecting 1123 police staff (1089 police officers and 34 Civilian Detention Officers). There were 40 reports where officers deemed the subject COVID-19 suspicious and 327 reports where injured parties may have absorbed saliva i.e., eyes, mouth.

In the autumn of 2023 the Human Rights Advisor attended the PSNI's Service Accountability Panel meeting and, in advance of that meeting, he and the External Reference Group Members, were shown a very distressing extract of a body worn video of Spit and Bite Guard being used on a very distressed twelve year old girl. The Performance Committee members had an opportunity to view this video and a report from the PSNI and discussed the incident itself and the wider issues of the PSNI having to deal with situations that are, perhaps, better handled by health and social services.

### **Spit and Bite Guards**

This issue was further noted when the PSNI undertook an Equality Impact Assessment in relation to the introduction of Spit and Bite Guards in May 2021. At the time PSNI's EQIA stated that 84 individuals had been subjected to a Spit and Bite Guard up to 31 December 2020.

The PSNI found that in respect of Religion:

'On the basis of the available data and the extensive engagement conducted, it has been concluded that differential / adverse impacts on people of different religions are unlikely to arise from the introduction of Spit & Bite Guards.

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the "unknown" group contains would help in this area of apparent disproportionality and we are exploring the possibility of securing academic support to develop this testing.' The Use of Spit and Bite Guards by the Police Service of Northern Ireland: Bi-Annual Report to the Northern Ireland Policing Board, August 2023 V1.2 pg 28.

'The religious breakdown recorded on Niche for the 84 individuals on whom a Spit and Bite Guard was deployed between 16 March 2020 and 31 December 2020 is shown below:

<b>Religion</b>	<b>No of applications</b>
Roman Catholic	40 or 48%
Protestant	17 or 20%
None	13 or 16%
Refused/ Unknown	11 or 16%
Other Christian	2 or 3%
Buddhist	1 or 3% <sup>334</sup>

It is assumed that these figures were collated from the answers to the question set out above, asked when the person arrives in custody.

A similar disproportionality was revealed by PSNI in relation to the special stop and search power under the Justice and Security Act (an anti-terrorism power) used in relation to searching for 'munitions and wireless apparatus':

'The estimated religious composition of those persons stopped and searched/questioned under JSA powers between August 2020 and July 2021 across Northern Ireland was as follows:

- 45% Catholic
- 24% Protestant
- 4% Other/None

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<sup>334</sup> The Use of Spit & Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment 2021, <https://www.psni.police.uk/sites/default/files/2022-09/Spit%20and%20Bite%20Guards%20Equality%20Impact%20Assessment.pdf>

- 28% Missing'<sup>335</sup>

As is well known, the issue of discrimination on the grounds of religion has been an important one in Northern Ireland for many years and the positive duty on institutions set out in Section 75 of the Northern Ireland Act 1998 is important provision as a result.

The Equality Commission's Guidance on section 75 states:

'Public authorities need to consider equality in all aspects of their organisation. This includes how they plan and deliver a service, to policies on employing people, enforcing the law, buying services, approving budgets and regulating others.'<sup>336</sup>

'If you are a public authority you are required to:

- Monitor any adverse impacts of policies adopted and publish this information as per equality scheme commitments.'<sup>337</sup>

As the PSNI itself said in relation to Spit and Bite Guards:

'In discharging its Section 75 responsibilities, PSNI must assess how the impact of deploying Spit and Bite Guards as a tactical option can or might be reduced against any of the protected Section 75 groups. This assessment includes how an alternative policy might lessen any impact and serve to promote equality of opportunity and good relations.'<sup>338</sup>

In addition, section 76 of the Northern Ireland Act specifically states:

'Discrimination by public authorities:

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<sup>335</sup> Modelling 2011 Census Small Area Religious Composition onto Justice and Security Act Stop & Search postcode data from August 2020 to July 2021, PSNI, <https://www.psnipolice.uk/globalassets/inside-the-psni/our-statistics/stop-and-search-statistics/documents/religious-composition-isa-aug20-jul21.pdf>

<sup>336</sup> Emphasis added, <https://www.equalityni.org/S75duties>

<sup>337</sup> Section 75 Using Evidence in Policy Making, NI Equality Commission, <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75DataSignpostingGuide.pdf>

<sup>338</sup> The Use of Spit & Bite Guards by the Police Service of Northern Ireland Equality Impact Assessment 2021.

(1) It shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion...

(7) The following are public authorities for the purposes of this section—

(e) the Police Service of Northern Ireland, the Police Service of Northern Ireland Reserve and the Police Ombudsman for Northern Ireland.’

The fact that the statistics indicate some kind of disproportionality does not necessarily mean that PSNI or its officers are involved in any intentional or unconscious discrimination (which are obviously unlawful), but rather it might suggest unconscious unlawful indirect discrimination. The Equality Commission defines indirect discrimination as follows:

‘There are three definitions of indirect discrimination:

- 1) A provision, criterion or practice is applied or would apply equally in a situation which puts certain people at a disadvantage and which cannot be shown to be a proportionate means of achieving a legitimate aim;
- 2) A requirement or condition is applied or would apply equally in a situation: where a considerably smaller proportion of certain people can comply with it; which is not justifiable; and which is to the detriment of the individual because they cannot comply with it;
- 3) It covers not only individuals who are put at an actual disadvantage by a provision, criterion or practice but also individuals who would be put at such a disadvantage. This will therefore cover individuals who are deterred from trying to access a service because of a provision, criterion or practice.

Like direct discrimination, indirect discrimination can be unlawful even if it is not intentional. For any comparisons to take place under indirect discrimination, the circumstances in the case should be the same or not materially different.’<sup>339</sup>

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<sup>339</sup> Emphasis added, <https://www.equalityni.org/Employers-Service-Providers/What-is-discrimination>

## Recommendations, Responses and Assessments

The Office Police Ombudsman for Northern Ireland also makes recommendations to the PSNI in relation to their investigations into the area of Use of Force.

Office Police Ombudsman Northern Ireland (OPONI) has made 5 recommendations over the past five years, in which 2 have been implemented by the PSNI, 1 not actioned and 3 being considered. The recommendations that have been actioned are the provision of a clear and effective PA system for delivering warnings in public order situation (use of water cannon) and training must be completed before an officer is provided with a spit and bite guard. Body worn video must be used when applying spit and bite guards outside of the custody suite.

The OPONI have produced 16 Regulation 20 reports in relation to use of force. 5 relating to use of taser, 4 CS Spray, 2 firearms, 5 use of AEPS including water cannon. 10 related to incidents between 2011 and 2017. From 2019 to 2023 tasers and AEP use are the focus of investigation.

7 reports have been received in relation to Children and Young People with 4 incidents relating to events in 2021. 5 relate to Use of Force including CS Spray and Bite and Spit Guards.

In relation to spit and bite guards, in 2022 OPONI requested that the PSNI inform OPONI when a Spit & Bite Guard has been deployed on a child or young person and this has been complied with.

The table below outlines the allegations made to Office Police Ombudsman Northern Ireland (OPONI) in regard to the various methods of Use of Force that have been used by the PSNI over the past ten years. The total number of allegations has declined over the period especially in relation to police equipment used. Handcuff and baton allegations have significantly decreased.

## Allegations regarding the use of police equipment, 2013/14 to 2022/23

Police equipment	2013/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23
Handcuffs	214	149	115	82	58	57	37	10	61	55
Spit and bite guards	n/a	n/a	n/a	n/a	n/a	n/a	n/a	97	45	5
Taser	19	18	14	10	11	15	24	24	22	9
CS / PAVA Spray	48	34	36	20	16	22	17	17	19	26
Baton	62	35	23	19	10	14	5	9	8	6
PAEP/Baton Round/Riot Gun	14	2	6	0	0	2	5	6	9	5
Misuse/Discharge of Firearm	12	2	5	4	2	5	6	4	5	5
Other	17	9	12	3	2	1	1	4	2	4
<b>Police Equipment Total</b>	<b>386</b>	<b>249</b>	<b>211</b>	<b>138</b>	<b>99</b>	<b>116</b>	<b>95</b>	<b>171</b>	<b>171</b>	<b>115</b>
No weapon involved	5790	5392	4758	4687	4190	4037	3857	3574	5036	5070
<b>Total</b>	<b>6175</b>	<b>5641</b>	<b>4969</b>	<b>4,825</b>	<b>4289</b>	<b>4153</b>	<b>3952</b>	<b>3745</b>	<b>5207</b>	<b>5185</b>

In the last 5 years there have been a number of recommendations across annual reports and the specific thematic review on use of force. 14 recommendations have been made in the past five years relating to the use of force, including 10 in the recent Use of Force Review, published in January 2023. Of these, the PSNI have indicated 1 has been accepted, 1 under review, 4 not accepted and 6 have been discharged.

However, looking at figure 1 below the argument can be made that the PSNI are making progress in this area: demonstrates the PSNI response to the incidents that have occurred over the past 6 years. For example:

- There has been a significant increase in the use of unarmed physical tactics which could suggest a change in PSNI guidance in de-escalating a situation rather than a more threatening use of force.

In the instances of Baton, Police Dogs there is a significant decrease over the total 6 year period in the above tactics being drawn or used.



- There was however an increase in the use of AEP being drawn and pointed (note AEP are mainly used in public order disturbances and can only use by specialist trained officers)
- There was an increase in the use of CS Spray (drawn and used), however, this is a less lethal use of force out of all the tactical options available to a police officer. (excluding tactical withdrawals)

**Figure 1: Statistics from 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2023 with % variance across last 3 and 6 year**

Use of Force	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	3 year (2020)	6 Year (2017)
AEP Pointed	41	37	41	39	49	75	68	67	-11%	63%
AEP Discharged	4	0	0	4	4	9	8	4	-56%	N/A
<b>AEP Total</b>	<b>45</b>	<b>37</b>	<b>41</b>	<b>43</b>	<b>53</b>	<b>84</b>	<b>76</b>	<b>71</b>	<b>-15%</b>	<b>73%</b>
Baton Drawn Only	375	376	351	330	271	220	206	218	-1%	-38%
Baton Drawn & Used	183	162	154	162	117	109	118	95	-13%	-38%
<b>Baton Total</b>	<b>558</b>	<b>538</b>	<b>505</b>	<b>492</b>	<b>388</b>	<b>329</b>	<b>324</b>	<b>313</b>	<b>-5%</b>	<b>-38%</b>
Irritant spray drawn only	176	166	178	219	186	191	229	274	43%	54%
Irritant spray used	209	187	195	199	172	193	220	240	24%	23%
<b>Irritant spray Total</b>	<b>385</b>	<b>353</b>	<b>373</b>	<b>418</b>	<b>358</b>	<b>384</b>	<b>449</b>	<b>514</b>	<b>34%</b>	<b>38%</b>

Firearm Drawn or Pointed	358	431	499	520	505	490	440	527	-13%	-14%
Firearm Discharged	1	1	1	0	0	0	1	1	N/A	0%
<b>Firearm Total</b>	<b>359</b>	<b>432</b>	<b>500</b>	<b>520</b>	<b>505</b>	<b>490</b>	<b>441</b>	<b>528</b>	-13%	-14%
Police Dog Used	116	75	225	165	244	190	146	153	-19%	-32%
CED Drawn(a)	177	246	311	377	317	288	288	301	5%	-3%
CED Fired(b)	14	13	35	22	26	24	21	15	-38%	-57%
<b>CED Total</b>	<b>191</b>	<b>259</b>	<b>346</b>	<b>399</b>	<b>343</b>	<b>312</b>	<b>319</b>	<b>316</b>	1%	-9%
Spit and Bite Guard							112	133	N/A	N/A
Handcuffs / Limb Restraints	N/A	N/A	5,191	5,064	4,348	4,657	5,397	5,455	17%	5%
Unarmed Physical Tactics	N/A	N/A	5,954	6,537	7,189	7,743	10,035	10,259	32%	72%
Water Cannon Deployment	26	15	0	0	0	0	2	0	N/A	N/A
Water Cannon Used	4	0	0	0	0	0	2	0	N/A	N/A
<b>Water Cannon Total</b>	<b>30</b>	<b>15</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	N/A	N/A
<b>TOTAL</b>	<b>1,684</b>	<b>1,712</b>	<b>13,141</b>	<b>13,641</b>	<b>13,422</b>	<b>14,301</b>	<b>17,304</b>	<b>17,742</b>	24%	35%

6 Year

3 Year

## Oversight and Scrutiny

All PSNI decision making, including the decision to use force, use the National Police Chiefs' Council (NPCC) and the National Decision Model (NDM) as a template to provide guidance and best practice, although the PSNI are not bound to take accordance of their directions. The NDM is an established approach to managing conflict and it can be applied to spontaneous incidents or planned operations, by an individual or a team of people. The NDM has a central statement of mission and values which recognises the need to protect and respect the human rights of all, surrounded by 5 key steps which should be continually assessed as a situation develops: (i) gather information and intelligence; (ii) assess threat and risk and develop a working strategy; (iii) consider powers and policy; (iv) identify options and contingencies; and (v) take action and review what happened. Any tactical option chosen must be proportionate to the threat faced in any set of circumstances, which includes any decision to use force, be it through use of hands-on restraint techniques or use of a weapon which can encompass the physical, moral and psychological integrity of a person.<sup>340</sup>

Before using any of the number of technologies at their disposal, a police officer should identify him/herself and give a clear warning of the intent to use force affording sufficient time for the warning to be observed unless affording time would put the officer or another person at risk of death or serious harm. Even where the use of lethal or potentially lethal force is unavoidable the police must continue to exercise restraint in the use of that force, minimise damage and injury caused, render assistance and medical aid at the earliest opportunity and notify relatives or other persons if a person has been injured or killed.

Any incident that involves the use of force by a police officer must be recorded in the police officer's notebook and reported to the relevant supervisor. Any such incident may be the subject of a Police Ombudsman investigation regardless of whether or not a complaint has been made. The Ombudsman will, in every case where death has occurred following contact with the police, investigate the death. Where a firearm, an AEP or a CED has been discharged, the Ombudsman will investigate the

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<sup>340</sup> Botta v Italy 1998

incident. Where a CED has been drawn or aimed at a subject, but not discharged, the Ombudsman must be notified, but will usually investigate only if a complaint is made.

At the conclusion of the Police Ombudsman investigation, a Regulation 20 report on the investigation is completed. The Board receives a copy of all Regulation 20 reports and considers any findings or recommendations, particularly to identify systemic or frequently occurring issues, contained within them.

Every police officer is responsible personally for his or her decision to use force. If it appears to the PSNI or to the Police Ombudsman that force may have been used unlawfully, the police officer involved will be subject to a criminal investigation and may be prosecuted. Obedience to the orders of a supervisor is no defence for unlawful use of force if that police officer knew that the order to use force was unlawful and the officer had a reasonable opportunity to refuse to obey it.

Responsibility lies, additionally, with the officer's supervisor who issued the unlawful order. The use of force by police officers is reviewed regularly by PSNI. Any issues that arise are addressed by senior officers with whom the Board has a direct line of communication.

Ultimately, the (then) Chief Constable is accountable to the Board for all uses of force by the PSNI. It is an important element of oversight and accountability that officers using force record the use on an electronic use of force monitoring form. The following uses of force must be recorded on the electronic monitoring form and are considered by the Board for consideration: AEP; Baton; CS Irritant Spray; PAVA Irritant Spray; Personal Firearms; Police Dog; CED; and Water Cannon. Police officers have the authority to use force to defend themselves or another person, to affect an arrest, to secure and preserve evidence or to uphold the peace, but any such use must be justified on each and every occasion. Consideration must always be given to whether there is a viable alternative to the use of force. Any issues identified during the reporting period continue to be raised directly with PSNI's senior command team. The Board's role and that of the Human Rights Advisor is to try to ensure that the use of lawful force is proportionate and justified and one method of doing this is to scrutinise the evidence of the use of force.

## **New Recommendation 14**

**A recent report on the potential causes of racial and ethnic disparities in the use of Taser in England and Wales has been published by a number of universities. A similar initiative, but extended to both the use of all weapons by PSNI officers and to include community background, should be taken in Northern Ireland.**

## CHAPTER 6 LEGACY

The Legacy and Disclosure (L & D) Branch of the PSNI is responsible for the delivery in this sensitive and complex area. The Branch is comprised of a number of sub-units:

- a) Legacy investigation Branch (LIB)
- b) Legacy Support Unit
- c) Sensitive Civil Litigation
- d) Victim Payment Schemes

Legacy Investigations Branch's (LIB) is the part of PSNI's which investigates legacy issues. Its role was primarily to investigate homicide and security forces related deaths arising from the Northern Ireland 'Troubles' between 1969 and 2004. LIB were also responsible for investigating unsolved 'non-troubles' related deaths between 1969 and 2004. When the Historical Enquiries Team (HET) closed their caseload was passed to the LIB (2015).

### Caseload and Sequencing

There are 1112 cases relating to 1398 deaths on the Case Sequencing Model, 21 cases currently under investigation, and 13 cases are awaiting decisions from the Public Prosecution Service. The PSNI have assessed that 200 or so of these cases will not be within the remit of the proposed ICRIR (see below).

The LIB currently has 'Case Sequencing Model'<sup>341</sup> which the courts have accepted is in line with its duties as set out in section 32 of the Police (Northern Ireland) Act 2000 and Article 2 of the ECHR gives the highest priority for investigation is those cases which involve 'individuals that are considered by the police service to pose a potential threat to citizen's safety today'. The other priority categories relate to 'Forensic Potential'; 'Criminal Justice Status'; and 'Case Progression'.

The Case Sequencing Model has recently been reprioritised to take account of the PSNI's legal obligations in respect of legacy investigations as clarified in the

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<sup>341</sup> PSNI Legacy Investigation Branch, Case Sequencing Model Version 3 – January 2018 available at <https://www.psni.police.uk/globalassets/inside-the-psni/our-departments/legacy-investigation-branch/documents/case-sequencing-model-updated-19012018-v03.pdf>

December 2021 UK Supreme Court judgement in McQuillan, McGuigan, McKenna (see below).

In June and July 2021 LIB conducted its own engagement feedback surveys with families and advocacy groups who have engaged with LIB as part of ongoing reviews and investigations. The purpose of the survey was to identify areas for improvement to the service LIB provides.

All of the families who responded strongly agreed or agreed that LIB treated them with dignity and respect. The majority of the families who responded strongly agreed or agreed:

1. They had a better understanding of the role and remit of LIB;
2. LIB listened to what they had to say; and
3. LIB were approachable and professional.

Two thirds of families who responded indicated they were satisfied with how LIB dealt with their case or enquiry. Some families stated LIB were respectful and sympathetic to their case and had sensitivity in dealing with families' frustrations.

All advocacy groups who responded strongly agreed or agreed that overall LIB were approachable and professional. Two thirds agreed that LIB dealt with cases in an open and transparent way and that personnel were sufficiently trained to deal with legacy cases. All strongly agreed or agreed that LIB dealt with their enquiries/requests in a timely and professional manner. Additionally, they agreed or strongly agreed that LIB valued them and their roles as an advocate. One advocacy group said that LIB officers treat people with genuine empathy and try to be as co-operative as possible in difficult circumstances.

## Litigation and Inquests

PSNI's Legacy Support Unit (LSU) is based primarily at Seapark, with a small number of staff working at PSNI Headquarters. The Unit is comprised solely of police staff and is lawyer-led. Legacy Support has a multidisciplinary workforce with a wealth of experience and expertise with many of the staff are highly qualified academics and professionals.

The legacy legal work conducted by LSU is varied and includes legacy inquests arising from the Lady Chief Justice's five-year legacy inquest plan, of which in January 2024 there were 33 inquests being worked on or being heard. The Legacy and Disclosure Branch currently has carriage of 300 civil actions relating to legacy inquests and around 100 non-legacy contemporary sensitive litigation cases.

LSU also have carriage of 23 judicial reviews. These relate to allegations of delay in providing Article 2 (ECHR) compliance investigations and inquests, alleged failure to investigate and cases involving other state agencies awaiting settlement.<sup>342</sup>

The unit also has a team of staff that service requests for information from the Victim's Pension Scheme (VPS), which is fast moving and high-volume work. Further to this, LSU has carriage of all contemporary core sensitive inquests.

In a recent legacy inquest case there was an allegation that PSNI might be not delivering the support necessary as quickly as it should and Mr Justice McAlinden made it clear that there should be no "downing of tools" by the state over the Loughgall inquest, in light of legal challenges and a UK election before a key part of the new Act comes into force on 1<sup>st</sup> May 2024.<sup>343</sup>

### Sensitive Litigation Team (SLT)

The SLT is a lawyer-led function with the L&D Branch and has a blend of police staff and officers who work on legacy litigation and a small number of more contemporary sensitive claims.

The SLT have a multidisciplinary workforce with a wealth of experience and expertise with many of the staff highly qualified academics.

The SLT have carriage of approximately 900 civil litigation cases a number of which are highly complex, will attract significant community interest and relate to sensitive case papers and materials.

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<sup>342</sup> As of March 2023.

<sup>343</sup> BBC, 27 October 2023.



## Victim Payment Scheme (VPS)

Legacy and Disclosure Branch has a team of staff that service requests for information from the Victims' Payments Scheme, pursuant to the statutory obligations set out in the Victims Payments Regulations 2020. This team consists of 18 persons and is lawyer-led.

The PSNI Victims' Payment Scheme team manages a high volume and fast-moving case-load, servicing approximately 200 requests every month received from the Victims' Payments Board, with each request containing multiple incidents to be researched. At any one time, individual researchers can be carrying a case load of 30-50 separate incidents to research. A summary of the information retrieved by the team is returned to the Victims' Payments Board via a pro-forma document, within a 28 day period. The research role includes searching a vast amount of both electronic and hard copy records and can often require researchers to travel to police stations around the jurisdiction to search for information in the course of their role.

## Northern Ireland Troubles (Legacy and Reconciliation) Act 2023

Under this legislation, from 1 May 2024 a new body to be known as the Independent Commission for Reconciliation and Information Recovery (ICRIR), will assume responsibility for all 'Troubles' related legacy investigations relating to deaths occurring between 1969 and the signing of the Good Friday Agreement (GFA) on 10 April 1998. In addition to this, the ICRIR will also assume responsibility for the review and investigation of 'Troubles' related serious injuries.

From 1 May 2024, PSNI will be required to stop all ongoing work on cases falling within the remit of the legislation with the exception of those going through criminal court proceedings, or at the verdict stage of inquest.

Of the 1112 cases (relating to 1398 deaths), legacy inquests and related litigation currently within Legacy and Disclosure Branch remit and following implementation of the new legislation, the PSNI will retain responsibility for the following residual caseload:

- 197 cases (relating to 234 deaths) remaining on the Legacy Investigation Branch (LIB) Case Sequencing Model (CSM) that fall outside the new legislation.
- Cases currently progressing through the Criminal Courts will remain the responsibility of Legacy and Disclosure Branch, at present this includes 6 ongoing prosecutions, with further prosecutorial decisions expected before 1 May 2024.
- 17 inquests
  - 6 post GFA cases not within the remit of the legislation.
  - 11 non legacy sensitive inquests.
- Approximately 800 legacy inquest related litigation cases.

The Head of Legacy & Disclosure Branch has established a programme board to manage the transition processes that will be required as the organisation prepares for the establishment of the ICRIR.

The programme board are supported by colleagues in the PMO and CDT areas and have established links into the ICRIR programme management team and strategic leadership.

The programme board are focussing its planning upon three primary areas;

1. How the PSNI will continue to discharge its statutory, judicial and organisational legacy responsibilities during the transition period up to 1 May 2024
2. How the PSNI will support the ICRIR in its delivery of their statutory functions and responsibilities
3. The design and implementation of a new legacy operating model that will continue to facilitate the PSNI's statutory, judicial and organisational legacy responsibilities that will remain after 1 May 2024 whilst also supporting the ICRIR.

The programme board have identified four key work stream areas through which the change processes will be delivered:

- I. Legacy Investigation Branch
- II. Legacy Support Unit (legacy inquests and linked litigation)
- III. Sensitive civil litigation
- IV. Information

Each work stream lead has established a tactical working group where a number of supporting/enabling functional leads are engaged to support the development of options for a new PSNI legacy model e.g. HR, Finance and IST.

Already in September 2023 there were a number of applications for judicial review challenging the lawfulness of the way the Act will shut down prosecutions, investigations, inquests and civil actions.<sup>344</sup> The Republic of Ireland has also initiated an ‘inter-state’ case against the UK in the European Court of Human Rights to challenge compliance with human rights.

On 28 February 2024 the High Court gave judgment in relation to the lawfulness of this Act and decided:

‘...in light of the analysis above, the court concludes that the bar on the criminal investigation, prosecution, and punishment of offenders under section 41 contravenes articles 2 and 3 ECHR.<sup>345</sup>

The Court also found violations in relation to article 2 (right to life), 3(freedom from torture, inhuman and degrading treatment), article 6 (the right to a fair trial) and article 1 of Protocol 1, (the right to peaceful enjoyment of property).<sup>346</sup> This judgment is being appealed.

## Supreme Court: McQuillan and Others

The Supreme Court gave judgment in the McQuillan and others case in December 2021.<sup>347</sup>

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<sup>344</sup> Troubles legacy: Controversial bill facing more legal challenges, BBC, 19 September 2023.

<sup>345</sup> Para 208, In the Matter of an Application by Martina Dillon, John McEvoy, and Lynda McManus.

<sup>346</sup> The judgment is over 200 pages long and space does not permit a detailed analysis.

<sup>347</sup> In the matter of an application by Margaret McQuillan for Judicial Review (Northern Ireland) No 1, 15<sup>th</sup> December 2021.

The details of the factual basis of the cases and the consequences were set out in the Human Rights Annual Report for 2021/22. However, the PSNI has now agreed to investigate the cases of the ‘Hooded Men’ which was one of the many cases considered in Supreme Court and one of the few that was successful.<sup>348</sup>

## Operation Kenova

Operation Kenova was launched to investigate allegations of murder, kidnap and torture dating back to the 1970s:

‘The focus of this investigation is to ascertain whether there is evidence of the commission of criminal offences by the alleged agent including, but not limited to, murders, attempted murders or unlawful imprisonments attributed to the Provisional IRA. It will also look at whether there is evidence of criminal offences having been committed by members of the British Army, the Security Services or other government personnel.’<sup>349</sup>

Mr Jon Boutcher<sup>350</sup>, previously Chief Constable of Bedfordshire Police until 2019, has taken on further investigations from PSNI. This has provided a process which avoids any conflicts of interest for PSNI officers and complies with the strictures of Article 2.<sup>351</sup> In October 2023 he became the Interim Chief Constable of the PSNI and his role in Kenova was taken over by Sir Iain Livingstone (the previous Chief Constable of the Scottish Police).

By March 2023 34 files had been submitted to the Public Prosecution Service and the report on this investigation was due to be published in the Autumn of 2023.

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<sup>348</sup> See the Belfast Telegraph, 18 January 2024.

<sup>349</sup> <https://www.opkenova.co.uk>.

<sup>350</sup> Jon Boutcher took up role as Chief Constable of PSNI on 7 November 2023

<sup>351</sup> The previous interim report focused on the findings of Operation Kenova, the investigation into the alleged activities of the person known as Stakeknife. ‘Jon Boutcher said: “I am pleased to announce that the Kenova interim report has now passed national security checking with no changes or redactions. It has now been provided to the Public Prosecution Service of Northern Ireland (PPS NI) to assess whether the report is prejudicial to any possible future prosecutions. I anticipate this will be a relatively expeditious process and, once complete, will be able to provide a further update on the progress of the report to publication.” Operation Mizzenmast, the murder of Jean Smyth-Campbell in 1972 and Operation Turma, the murder of three RUC officers on Kinnego Embankment in 1982 and The Barnard Review – a review into what has become known as the Glenanne Gang series – will each be reported on separately in the future.’ 14 August 2023.

The investigation report was passed to the PSNI in Autumn of 2023 and was published on 8<sup>th</sup> March 2024. On 6<sup>th</sup> December 2023 the Public Prosecution Service announced:

The Public Prosecution Service (PPS) has today taken decisions not to prosecute 15 individuals reported by Operation Kenova in relation to its investigation into an alleged agent known as Stakeknife...

The decisions not to prosecute were taken in relation to:

- Three civilian suspects in connection with a murder in 1981;
- Two civilian suspects in connection with a murder in 1987;
- One civilian suspect in connection with a murder in 1993;
- Two civilian suspects in connection with the false imprisonment of, and conspiracy to murder, one victim in January 1990;

One police officer and six military personnel in connection with allegations of perverting the course of justice and misconduct in public office.'

## CHAPTER 7 NATIONAL SECURITY AND POLICING

### Introduction

The Board has a statutory duty under the Police (Northern Ireland) Act 2000 to maintain and secure an efficient and effective police service. Amongst other things, the Board must monitor the performance of the police in carrying out their general duties (to protect life and property, to prevent the commission of offences etc.) and in doing so must monitor police compliance with the Human Rights Act 1998. The Board must also monitor the performance of the police in carrying out their functions with the aim of (a) securing the support of the local community; and (b) acting in co-operation with the local community.

The Board must make arrangements for obtaining the co-operation of the public with the police in the prevention of crime. In discharging those duties, the Board has retained oversight of and held the (then) Chief Constable to account in respect of all aspects of police work, including that which relates to National Security. However, the Board has no remit over the Security Service (MI5); although the (then) Chief Constable remains responsible for and accountable to the Board in respect of all PSNI officers and staff including those working alongside the Security Service.

MI5 is accountable only to politicians – directly to the Home Secretary<sup>352</sup> and to the Security and Intelligence Committee of the Westminster Parliament. Although, as with all other agencies, its surveillance powers are regulated by the Regulation of Investigatory Powers Act and the Investigatory Powers Act 2016 and complaints about its activities can be made to the Investigatory Powers Tribunal.

MI5 objectives are:

‘The function of the Service shall be the protection of national security and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means;

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<sup>352</sup> The Security Service Act 1989.

It shall also be the function of the Service to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions of persons outside the British Islands; and

It shall also be the function of the Service to act in support of the activities of police forces, the National Crime Agency and other law enforcement agencies in the prevention and detection of serious crime.<sup>353</sup>

The assessment of the need for MI5 to continue its work in Northern Ireland:

‘In 2009, MI5 had planned to reduce resources allocated to Northern Ireland work, but a sudden spike in activity by Dissident Republican (DR) groups meant they had to reverse the decision, saying they had *“had to reinforce in Northern Ireland in order to keep ourselves in a position where we had a reasonable prospect of being able to stop planned attacks.”* This re-prioritisation had a *“disruptive effect”* on MI5’s overall plans. In the Committee’s 2016–2017 Annual Report, we noted that, even with sustained and significant pressure from MI5 and the police, the threat from DRs remained resilient.

42. As at 31 March 2018, allocation of effort on Northern Ireland Related Terrorism (NIRT) accounted for approximately 20% of MI5’s operational and investigative resources. \*\*\*. \*\*\*. We were told that, as HMG reviews its strategic approach to NIRT, there is likely to be greater focus on preventing individuals turning to terrorist activity in order to diminish the flow of new recruits to dissident organisations, which should \*\*\*.

43. MI5’s overarching strategy also reflects this strategic focus on diverting individuals away from becoming involved with terrorist groups, alongside steady suppression of the existing threat by degrading the capabilities of DR groups and disrupting their activities. However, MI5 does not view total suppression as realistic: they *“do not proceed with an assumption that we can continue to drive [NIRT attacks] down to zero. That looks to us to be an undeliverable goal, albeit one we should always strive towards.”*<sup>354</sup>

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<sup>353</sup> Section 1, as amended.

<sup>354</sup> Para 41 to 43, footnotes in original text have been removed. The \* in the text indicates that words in the original ISC report to Parliament have been removed before the report was published.

There is considerable debate on the focus and priorities of MI5 in Northern Ireland.<sup>355</sup>

In respect of the exercise of specific counter-terrorism powers and security powers, the Performance Committee considers PSNI statistics on police use of stop and search and stop and question powers. The Board also takes account of the work carried out by other relevant oversight authorities. The Performance Committee meets regularly with the Independent Reviewer of Terrorism Legislation, the Independent Reviewer of the Justice and Security Act and the Independent Reviewer of National Security Arrangements in Northern Ireland, but not the Security Service.

Given the nature of covert and national security policing, there are limitations in respect of the amount of information that can be provided to Members of the Policing Board or to the public. Section 33A(1) of the Police (Northern Ireland) Act 2000 requires the (then) Chief Constable to provide the Board with such documents and information that it requires for the purposes of, or in connection with, the exercise of any of its functions. Section 33A(2) qualifies that obligation and permits the (then) Chief Constable to refuse to provide any information that falls within specified categories; the (then) Chief Constable may refuse to provide information if it is not in the interests of national security to disclose the information to the Board or disclosure of the information would likely put an individual in danger.

The (then) Chief Constable is not *prohibited* from providing the Policing Board with such information; but neither is he *obliged* to provide it. In the event of any dispute about whether the information is properly withheld there is a mechanism (both statutory and by an agreed protocol) for that dispute to be resolved. There are some examples of the PSNI seeking not to disclose sensitive material to Board Members (all of which were accepted by the Board) but in nearly all cases that material has been provided to the Board's (security vetted) Human Rights Advisors.

There is close liaison between MI5 staff and PSNI officers and MI5 will provide substantial intelligence to PSNI which helps to identify criminal activities. MI5 has other objectives however and does not have a duty to investigate crime or to ensure suspects are taken through the criminal justice process. However, it would be a

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<sup>355</sup> See the Human Rights Annual Report 2021/22, chapter 7, National Security, Covert Policing and Terrorism.



mistake to exaggerate this difference – MI5 has stated that criminal justice outcomes are its ‘preferred course of action whenever achievable’.<sup>356</sup> Inevitably there is tension given the difference in primary objectives<sup>357</sup> but the Human Rights Advisor has been reassured by PSNI that this tension is dealt with productively and those PSNI officers liaising with MI5 have the support, where necessary, of the Assistant Chief Constable responsible for crime. Those PSNI officers are also content that they have visibility of MI5 operations in NI (including the use of CHIS) and that the regular joint tasking meetings allow any differences to be quickly resolved. The Human Rights Advisor met with the Director of the Security Service for Northern Ireland, and some of her staff in September 2021, alongside the relevant ACC and his officers. The Human Rights Advisor then had other meetings with senior representatives of PSNI and MI5

in the period September 2021 to February 2022 to examine human rights compliance of PSNI’s joint work with MI5 in Northern Ireland. Whilst noting that MI5 are subject to separate national oversight arrangements outside of the Policing Board’s remit, conversations were wide ranging, open and constructive with contributors content to engage and share experience of joint work.<sup>358</sup> Despite the fact that MI5 are not accountable to the Policing Board, in the course of the Human Rights Advisor’s engagement he was able to examine and probe how PSNI works with MI5 to conduct collaborative counter terrorism investigations in NI with the following observations:

‘Whilst primarily related to Northern Ireland Related Terrorism (NIRT), the scope of joint terrorism work covers the full range of threats including International Counter Terrorism and Extreme Left/Right Wing Terrorism;

While the NIRT threat primarily comes from violent dissident republicans, joint work recognises the persistent threat to communities posed by loyalist paramilitaries and continued tension around European Union (EU) exit outcomes;

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<sup>356</sup> Para 21, Northern Ireland-related terrorism, Intelligence and Security Committee, October 2020.

<sup>357</sup> The PSNI’s functions are ‘to protect life and property, to preserve order, to prevent the commission of offences’ and ‘where an offence has been committed to take measures to bring the offender to justice’, section 32(1), the Police (Northern Ireland) Act 2000.

<sup>358</sup> See page 5, Northern Ireland-related terrorism, Intelligence and Security Committee of Parliament, 5 October 2020.

Ways of working, developed over many years, are founded on the Principles of the St Andrews Agreement and are aligned to wider GB practice wherever possible (recognising NI policing structures, terminology, specific threat and operating environment differ and that the St Andrew's Agreement demands closer joint working than might be the case in GB);

The partnership approach aims to facilitate both organisations (and wider partners) to bring their capabilities and expertise to bear against shared challenges whilst respecting operational independence, legal frameworks and oversight arrangements. Critically it recognises that:

- The (then) Chief Constable is responsible for the policing of NI and nothing in the joint ways of working affects this responsibility;
- MI5 has a statutory responsibility to ensure the protection of national security from a number of threats, including terrorism, under the Security Services Act 1989;
- That success in tackling NIRT requires PSNI and MI5 to work in partnership throughout the investigative process;
- That both organisations have a statutory duty to protect life (Police Act (Northern Ireland) 2000 and Human Rights Act 1998);

There appears to be a joint commitment to criminal justice outcomes as a means to achieving long term successful outcomes against the threat. It recognises the need for MI5 to operate with regard to PSNI's interests (for instance gathering of evidence to support criminal justice outcomes) and PSNI's regard to MI5's requirements (for instance protecting national security);

Human rights appear to be properly recognised and a persistent thread to the partnership and the ways of working adopted;

Partnership working extends to all levels across both organisations via regular joint meetings and staff working alongside one another; and

Shared ways of working appear to emphasise a culture of continuous learning and improvement.’<sup>359</sup>

The Human Rights Advisor was shown material setting out the roles and working together processes and also discussed the use and procedures for authorising CHIS (and CCAs).

## Covert Policing

Not all covert policing operations will involve a national security element, but national security policing is one area in which covert techniques are frequently deployed. MI5 use of CHIS has been described as follows:

‘27. Agents – also known as Covert Human Intelligence Sources (CHIS) – are individuals who enter into a covert relationship with MI5 and provide information to assist MI5 in their investigations. MI5 runs agents against \*\*\* its target areas – in an average month, agent reporting contributes to \*\*\*% of MI5’s highest priority investigations;

28. We have previously reported on the importance of CHIS to MI5’s work: in 2014, we noted that the Director General of MI5 had told us that their agents “acquire the intelligence we would otherwise never get, that leads us to prevent really serious things happening.”

- a point he repeated in 2016, saying:

“they are the intelligence collection asset that we could not operate without. They give you insight that technical intelligence cannot give”, and again during this Inquiry when he explained: a well-placed CHIS \*\*\* can provide valuable intelligence \*\*\* ... Alongside reporting on investigations, agents provide critical leads to discover new threats \*\*\*

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<sup>359</sup> These comments which represent the views of the Human Rights Advisor were discussed and agreed with the Security Service in advance of publication.

29. Agents across all areas of MI5's work can put themselves at risk in reporting to MI5. As such, it is essential that an agent is able to maintain their cover to avoid being found out...'<sup>360</sup>

In all circumstances, including where national security is an issue, it is the PSNI which mounts and is responsible for executive policing operations. Therefore, oversight through, for example, the Board is important, but complex. To clarify the oversight arrangements, Annex E to the St. Andrews Agreement was intended to provide a clear line of oversight and accountability following transfer of primacy. It includes a commitment by the British Government in relation to future national security arrangements in Northern Ireland. It was drafted in anticipation of the transfer of responsibility to the Security Services. The UK Government confirmed that it accepted five key principles. Adherence to those principles is crucial to the effective operation of national security arrangements. Those principles are:

1. All Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI;
2. PSNI will be informed of all Security Service counter-terrorist investigations and operations relating to Northern Ireland;
3. Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy, and using police procedures;
4. The great majority of national security CHIS in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols; and
5. There will be no diminution of the PSNI's ability to comply with the Human Rights Act 1998 or the Policing Board's ability to monitor that compliance.

Annex E to the St. Andrews Agreement states regarding the role of the Board;

'There will be no diminution in police accountability. The role and responsibilities of the Policing Board and the Police Ombudsman *vis-a-vis* the Police will not change... The Policing Board will, as now, have the power to require the (then) Chief Constable to report on any issue pertaining to his functions or those of

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<sup>360</sup> Paras 28 onwards, National Ireland-related terrorism, Intelligence and Security Committee of Parliament, 5 October 2020. Footnotes removed for clarity \*\*\* indicates redactions in the original report.

the police service. All aspects of policing will continue to be subject to the same scrutiny as now. To ensure the (then) Chief Constable can be fully accountable for the PSNI's policing operations, the Security Service will participate in briefings to closed sessions of the Policing Board to provide appropriate intelligence background about national security related policing operations. On policing that touches on national security the (then) Chief Constable's main accountability will be to the Secretary of State, as it is now.'

## The National Security Situation

The threat level in Northern Ireland (NI) from Dissident Republican (DR) groups remains unchanged at SEVERE, meaning an attack is highly likely. This has remained at the same level since 2009 and requires constant security force pressure to keep it suppressed. The trajectory of the threat is now broadly stable after several years of gradual decline. DR and Loyalist paramilitary groups remain a feature of life in NI. The most serious threat in NI remains that posed by violent DR groups: New IRA and Continuity IRA (CIRA) continue to drive the threat picture. Whilst other DR groups still exist, such as Arm na Poblachta (ANP) and Oglagh na h'Eireman (ONH), the threat they pose to national security has reduced. As well as their direct threat to national security, all of these groups are involved in the same types of harmful serious criminal activity, violence and intimidation as those currently on ceasefire. There remains a minority who aim to destabilise the peace settlement and their activity causes harm to communities across NI. Loyalist paramilitary groups have in recent years been predominantly involved in criminality, but there is a clear and rising risk that discontent in the Loyalist community, which has already given rise to episodes of violent disorder, could escalate further and translate into a renewed national security threat.'<sup>361</sup>

Jonathan Hall KC, in his report for 2021<sup>362</sup> assesses the position as follows:

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<sup>361</sup> Page 26, Intelligence and Security Committee of Parliament, Annual Report 2019–2021.

<sup>362</sup> The Terrorism Acts in 2021: Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006, and the Terrorism Prevention and Investigation Measures Act 2011. Footnotes removed for clarity.

9.7. In 2021 the threat level in Northern Ireland from Northern Ireland-related terrorism remained at “*severe*” (meaning that an attack is highly likely), although it was to be reduced to an unprecedented level of “*substantial*” in March 2022. The threat posed specifically by Northern Ireland-related terrorism to Great Britain, as opposed to other forms of terrorism, is no longer published separately.

9.8. The principal terrorist threat in Northern Ireland emanates from two groups – the new IRA (nIRA) and the Continuity IRA (CIRA). Other smaller groups, such as Arm naPoblachta (ANP) and Oglagh na h/Eireann (ONH) may retain the intent to carry out attacks but are likely to lack the capability to do so.

9.9. So far as the calendar year 2021 was concerned:

- There were no “*national security attacks*”.
- Two civilians were killed as a result of “*deaths attributable to the security situation*”.
- There were 27 shooting incidents (12 less than the previous year) and 5 bombing incidents, in which 5 bombing devices were used in connection with the “*security situation*” (17 less than the previous year).
- There was a total of 51 casualties as a result of “*paramilitary-style attacks*”.
- These paramilitary attacks were made up of 14 “*paramilitary style shootings*” (4 committed by Loyalist groups and 10 by Republican groups) and 37 “*paramilitary style assaults*” (33 committed by Loyalist groups and 4 by Republican groups).
- The PSNI recovered 39 firearms, 1,002 rounds of ammunition, and 0kg of explosives.

9.10. The weapons generally used by nIRA and CIRA include firearms or small improvised explosive devices (such as pipe bombs), but they have also deployed larger and potentially more destructive devices such as vehicle borne improvised explosive devices and explosive projectiles. In 2021, pipe bombs were found during investigations into terrorism-related offences, and in other cases where a link to terrorism could not be confirmed.

9.11. In mid-March 2021, a shooting was directed at Enniskillen police station using a homemade firearm. No casualties were reported. It was believed that CIRA were responsible for this incident. In April 2021, an improvised explosive device was deployed targeting an off duty police officer in Dungiven, however the device failed to function. This attack is believed to have been conducted by nIRA.

9.12. PSNI's concerted action against nIRA, under the umbrella of Operation Arbacia, led to yet further arrests during 2021. By March 2021 8 men and 2 women had been charged. Criminal proceedings are ongoing.

9.13. In 2021 there was no change to the list of 14 proscribed organisations in Northern Ireland, a list that has remained unaltered since before the enactment of the Terrorism Act 2000. I continue to be of the view that the failure to weed out defunct groups such as Cumann na mBan demonstrates that the proscription regime as it applies in Northern Ireland is wanting.'

What follows is a summary of the main findings from the report by Professor Breen Smyth, the Independent Reviewer of National Security Arrangements in Northern Ireland, covering the period from 1 January 2022 to 31 December 2022 presented to the Secretary of State for Northern Ireland:<sup>363</sup>

“My contact with MI5 and the PSNI was largely conducted in person. I was given a clear insight of both the current direction, the prevailing budgetary conditions and the interaction between both organisations. The policy of wider collaboration and further community initiatives has continued.

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<sup>363</sup> Hansard, 18 May 2023.

During the COVID-19 pandemic, due to the restrictions introduced by the UK government, the level of activity amongst terrorist and paramilitary groups abated somewhat. With the ending of restrictions and a return to previous levels of mobility and freedom of movement, that suppressive effect has ended and these groups have returned to their previous levels of operational activity.

Although the threat assessment for Northern Ireland was lowered in 2022 from Severe to Substantial, in their Fifth Report the Independent Reporting Commission pointed out that paramilitarism remains a clear and present danger. The threat from Dissident Republican (DR) groups remains a concern for law enforcement.

The two main loyalist groups, the Ulster Defence Association (UDA) and the Ulster Volunteer Force (UVF) continue to operate, and sections of both groups, largely in the Belfast area, are involved in intimidation, criminality and violence.

The PSNI reported that work continued on broader communication and improving protocols between PSNI and MI5 in order to increase cooperation in releasing information whilst maintaining security protocols. Dialogue between the Human Rights Advisor to the Policing Board and MI5 has established a relationship of mutual understanding. Regular meetings and exchanges at a high level between PSNI and MI5 are noticeable and commendable.”

*“My conclusions in relation to Annex E of the St Andrews agreement are as follows.”*

To reinforce this comprehensive set of safeguards, the UK Government confirm that they accept and will ensure that effect is given to the five key principles, which the (then) Chief Constable has identified as crucial to the effective operation of the arrangement:

*a: All Security Service intelligence relating to terrorism in Northern Ireland will be visible to the PSNI.*



I am informed that the PSNI continues to have sight of all security service intelligence relating to NIRT. There is compliance.

*b: PSNI will be informed of all Security Service counter terrorist activities relating to Northern Ireland.*

There are a number of processes in place to ensure that the PSNI is fully informed. There is compliance.

*c: Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy and using police procedures.*

This continues to be organisational practice. There is compliance.

*d: The great majority of national security CHIS in Northern Ireland will continue to be run by PSNI officers under existing handling protocols.*

The PSNI and security service continue to work jointly on cases and arrangements for this continue to be jointly negotiated and agreed. There is compliance.

*e: There will be no diminution of the PSNI's responsibility to comply with the Human Rights Act or the Policing.*

PSNI continues to operate within the National Security arena in strict compliance with ECHR. There is compliance.'

The Policing Board's Human Rights Advisor has discussed the national security assessment and the role of MI5 and PSNI with Professor Breen-Smyth who has said that she has no reason to believe that MI5 has put pressure on the PSNI to act in violation of human rights. The Human Rights Advisor has been permitted to read the full version of her report which raises no human rights issues.

Regarding the oversight of specific counter-terrorism and security powers, the Government's appointed Independent Reviewer of Terrorism Legislation reviews and reports annually on the operation of the Terrorism Act 2000 (TACT) and Part 1 of the Terrorism Act 2006 across the UK. The powers provided to police officers within TACT include, amongst others, powers to stop and search persons and vehicles and

the section 41 power to arrest and detain (which can last for up to 14 days on judicial authority).

Mr Jonathan Hall KC took over as the Independent Reviewer of Terrorism in May 2019. The Board Chair, the Performance Committee and the Human Rights Advisor have met with Mr Hall to discuss the findings from Mr Hall's annual report. Jonathan Hall KC's second Annual Report for (2019) was published in March 2021, and this helpfully contains a separate chapter on Northern Ireland (Chapter 9) raising key issues for the PSNI and for the Board to consider. Jonathan Hall KC commented on the national security arrangements as follows in his report for 2019:

9.15...the treatment of national security matters cannot be separated from its broader legal and operational environment. PSNI, who are principally accountable to the Northern Ireland Policing Board, continue to provide the operational policing response to terrorism. Since 2010, criminal justice in Northern Ireland has been devolved: so criminal procedure, sentencing, prisons and probation are all matters for the devolved legislature and executive (in particular, the Northern Ireland Department of Justice, overseen by the Minister of Justice). To the extent that social policy measures may reduce the recruitment of terrorists or lessen the impact of terrorism, these are all matters for the devolved authorities.

9.16 Discourse between the Northern Ireland Executive and those bodies with responsibility for national security in Northern Ireland is achieved through what are known as security interface meetings. These meetings, which take place on a quarterly basis, are attended by the Minister for Justice, the Northern Ireland Office and MI5 among others.

9.17 There is however less in the way of interaction between the devolved legislature and those responsible for national security in Northern Ireland. Local understanding of national security priorities is relevant:

- Firstly, because terrorism legislation passed by the Westminster Parliament often touches on devolved matters, as illustrated by the Counter-Terrorism and Sentencing Bill, which at the time of writing is

being debated in the Westminster Parliament. Although the Westminster Parliament is ultimately free to legislate on a devolved matter such as sentencing, as a matter of convention it will not do so in the absence of a legislative consent motion from the devolved legislature.

- Secondly, because the devolved legislature has competence over matters, particularly those relating to criminal justice, that have huge consequences for how terrorism legislation operates in practice.

9.18 Both these reasons place a premium on elected members of the Assembly having some understanding of terrorism and national security in Northern Ireland, notwithstanding that national security on its own falls outside their legislative competence.

9.19 Standing in the way of greater engagement with elected representatives, and greater public openness, is the legacy of distrust for the institutions of national security, in particular MI5. There are individuals and communities within Northern Ireland who view the security services and the national security apparatus with a strong degree of suspicion, and Dissident Republicans have threatened attacks against politicians for little more than supporting recruitment campaigns to the PSNI.<sup>364</sup>

Jonathan Hall KC also notes a degree of asymmetry in classifications with only one:

9.23 ...type of violence that is considered “terrorist” or relating to national security: there is no other way to understand the assessment of PSNI and MI5 in 2015 that none of the groups in third category was “planning or conducting terrorist attacks” despite continuing to engage in violent activity including murder. It is a distinction that explains how violence is recorded for statistical purposes. For example, in 2019 the statistics record that there were two deaths “*attributable to the security situation*”: the murder of Ian Ogle by the Ulster Volunteer Force in January 2019; and the murder of Lyra McKee by the new IRA in April 2019. However, only the murder of Lyra McKee, arising out of shots fired by the new IRA on the police, is regarded as a “*national security attack*”.

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<sup>364</sup> Paras 9.15 to 9.19, footnotes omitted.

Two Independent Reviewers of the Justice and Security (Northern Ireland) Act 2007 have noted this type of classification which is peculiar to Northern Ireland.

9.24. As a rule of thumb, Dissident Republicans, who reject the Belfast/Good Friday Agreement and are assessed to direct violence against police officers and other emanations of the state, are investigated as terrorists (leading to the term 'national security terrorists'). The PSNI's Terrorism Investigation Unit primarily uses Terrorism Act powers in conducting its investigations and, in accordance with the St Andrews Agreement, MI5 has an important intelligence gathering function.

9.25. By contrast, the activities of groups whose violence is assessed to be directed otherwise than at emanations of the state, are considered "paramilitary" and are investigated differently.

9.26. In general, the responsibility for tackling the threat and harm from paramilitarism and organised crime is devolved and rests with the Northern Ireland Executive...

9.38. Accepting, as I do, that Dissident Republicans continue to pose the greatest terrorist threat in terms of their capability and intent, there is still a significant persuasive burden on the authorities in Northern Ireland (or at least one of them) to explain directly to the public why the current division of labour has been adopted. In this way terrorism legislation in Northern Ireland will be used in a way that best commands public confidence; and the use of non-terrorism legislation and measures, which is to be welcomed, is also accepted as a legitimate means of addressing the legacy of violent groups.'

## CHAPTER 8 PRIVACY AND SURVEILLANCE

This chapter is concerned with the PSNI's powers to investigate crime and protect the public where that impacts on the right to privacy of people of Northern Ireland. However, because the Policing Board's report 'Privacy and Policing' was published very recently (July 2023) and was the first assessment of privacy and policing in Northern Ireland, in general, it is not possible to look back over the last six years and much of this chapter is a summary of that report. However, at the end of this chapter a number of longer term issues, particularly in relation to covert surveillance, are examined in the context of the July 2023 recommendations and any progress on those recommendations is reported.

More and more of our private life is online and we can be tracked and monitored in ever greater detail. As a result, the police can access, collect and retain a mass of data about our private lives. Therefore, we need greater transparency, tighter controls and a detailed discussion of what is or is not justified.

The report, published in July 2023, was concerned with the PSNI's use of surveillance equipment; listening devices; informants (Covert Human Intelligence Sources); surveillance of social media and the websites that people visit; databases and the collection, retention, sharing and access to data about a person (including their fingerprints, DNA profiles and facial images); access to other UK databases; the increase in closed-circuit television (CCTV), cameras on drones and helicopters, automatic number plate recognition; extraction of information from digital devices; and facial recognition systems. It also reviewed the systems in place for the police to access all this information. Finally, it attempted to consider the systems of governance, control and regulation and the protections and remedies that need to be in place to try to prevent abuse of this important right.

The report set out particular concerns with what appears to be an absence of significant consultation by the police, the Department of Justice, or the Northern Ireland Office on issues of privacy. The driver for new facial recognition systems, biometric data retention, CCTV and ANPR is the Home Office and the College of Policing, which are often adopted in Northern Ireland without any public consultation. Transparency in policing is difficult when techniques of targeted surveillance are concerned. Nevertheless, what techniques are actually used by PSNI in secret is

often exaggerated and distorted. However, it is precisely these factors which continue to undermine confidence in PSNI, especially in some communities. A service which would wish the public to believe that it is solidly built on the basis of 'policing by consent' must continue to strive to become more transparent as these techniques have greater and greater impacts on privacy.

Police services across the UK have approached emerging data-driven technologies in policing such as facial recognition in different ways, from adopting them very quickly without public consultation to implementing a data ethics governance framework. Police Scotland are a positive example when it comes to governing emerging technologies in policing and PSNI are in the advantageous position of being able to learn from mistakes and experiences of other police forces.

Police Scotland have developed a data ethics framework which can be used across the policing system. The framework proposes new checks and governance tools embedded into the existing change process and will seek both internal and independent advice to ensure that the adoption of new technologies is proportionate, ethically justifiable and aligned with Police Scotland and the Scottish Police Authority's (SPA) commitment to policing by consent. The Data Ethics Framework has been endorsed by Police Scotland and will be considered by the SPA for use across the Policing System in the coming months.

The report considered criminal, intelligence, and other databases that PSNI have access to. The chapter also considers the Home Office's National Law Enforcement Data Service (NLEDS). The NLEDS is a unified, common interface to a new database currently being developed by the Home Office. The current biometric collections that are used by law enforcement and immigration agencies will be unified in a single database, the Home Office Biometrics Programme.

The report also considered the collection, searching and retention of biometric data and its impacts on privacy rights. This involves biometrics taken on arrest, such as DNA and fingerprints, but also the use of live-time facial recognition technology and the legal landscape regarding biometrics and PSNI's approach to facial recognition technology.

PSNI employ some tools that make use of artificial intelligence, such as a software tool used for online research purposes. However, PSNI has stated that AI technology would not be involved in decision making and that these technological advances are challenges that all law enforcement agencies are grappling with.

The report also considered general public surveillance, also known as passive data collection, in particular the use of public space CCTV and Automated Numberplate Recognition (ANPR), Body Worn Video, and the role of the Biometrics and Surveillance Camera Commissioner. Most CCTV cameras present throughout Northern Ireland and Great Britain are not operated by the police, but rather by the private sector and public authorities, such as councils and transport authorities, and PSNI rely on these CCTV networks when investigating crimes.

Since that Report was published a UK Home Office minister has stated that he intends to integrate the semi-automated facial search capability within the UK Police National Database (PND) with the UK Passport Office database containing images of 45 million UK passport holders.<sup>365</sup> He also intends to allow Home Office forces to use facial recognition to compare CCTV images of suspects from volume crime scenes such as shoplifting against the UK passport database. The Scottish Biometrics Commissioner stated in response that :

“I view this egregious proposal as unethical and potential unlawful. I also wish to align myself with those who have condemned this proposal as a gross violation of British privacy principles.”<sup>366</sup>

The UK government has recently introduced a provision in the UK Parliament which would allow the police service to run facial recognition systems against the photographs in the driving licence data base - some 50 million license holders.<sup>367</sup>

As noted in the Policing Board Report, Northern Ireland does not have its own commissioner to assess whether PSNI should be included in these plans.

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<sup>365</sup> The Guardian, 2 October 2023, <https://www.theguardian.com/uk-news/2023/oct/02/uk-passport-images-database-could-be-used-to-catch-shoplifters>

<sup>366</sup> Scottish Biometric Commissioner, 13 October 2023.

<sup>367</sup> Criminal Justice Bill, clause 21. See also ‘Police to be able to run face recognition searches on 50m driving licence holders’, the Guardian, 20 December 2023.

In another development the Office of the Police Scientific Advisor has published a set of principles on how Artificial Intelligence should be used in policing.<sup>368</sup> The Centre for Research into Information Surveillance and Privacy has published a report pointing to a ‘worrying vacuum’ in Government plans to safeguard the public in relation to biometrics and surveillance.<sup>369</sup>

The use of targeted surveillance<sup>370</sup> and privacy rights, such as telephone interception, directed surveillance, communications data, and undercover policing was analysed. The report assessed the safeguards currently in place, including, the role of the Investigatory Powers Tribunal and the role of the Investigatory Powers Commissioner.

Data extraction from digital devices by PSNI provided a new wealth of information and is both a challenge and opportunity for policing, posing new challenges to the regulation of intrusive policing powers. The PSNI has a Cyber Support Unit (CSU) that provides forensic mobile phone extraction capability and the report considered PSNI guidance regarding taking a device from a witness, victim or suspect.

Finally, the report laid out how PSNI manage data protection and privacy in their organisation. Clear data protection principles and well-functioning data governance in an organisation are key to making sure that Article 8 rights are protected – in any organisation that holds sensitive data about people’s lives, but especially police services. Only someone who needs to access certain data to discharge their duties should be allowed to access certain data, about witnesses or suspects for example.

Key facts about the PSNI privacy remit include:

1. PSNI can access databases with millions of peoples records.
  - the UK Police National Computer has 58.5 million driver records, and 62.6 million vehicle records (figures are from 2017)
  - PSNI can also seek matches with the 18.5 million custody images on the Police National Database (PND).
  - The PND system handles more than 1.5 billion records.

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<sup>368</sup> UK Authority, 25 October 2023.

<sup>369</sup> 25 October 2023.

<sup>370</sup> Note that RIPA uses the term ‘directed surveillance’.



- Routine searches are also made by many forces against the Home Office Immigration database even when the person has approached the police for help as a victim of a crime or modern slavery.
2. A particular issue with intelligence databases is that people often cannot check what is held about them.
- Sometimes what is held about them can be wrong and unnecessary - for instance - data on protesters is collected even when they have not committed offences.
  - Data retention becomes even problematic when images or other data are not deleted from databases, for example when a person is not arrested, charged or is subsequently acquitted.
3. Police officers also have lawful access to information held on all the other databases that have information about you: store cards, NHS, employer, bank accounts etc. (obviously 'only' in order to prevent crime or identify offenders).
4. The PSNI can extract data from our phones and other devices which automatically record our movements and communications data. Now most modern cars even have embedded tracking devices.
5. Biometric databases
- Biometrics held by PSNI include not just fingerprints and DNA but isometric technology also makes a person's face machine-readable.
  - The PSNI hold biometric data on hundreds of people in NI which is being unlawfully held and has been since 2008 (the judgment in *S and Marper v UK*, ECtHR). Legislation agreed by the Northern Ireland Assembly but is not in force.
  - Live facial recognition technology, powered by AI has the potential to be discriminatory, as the image databanks that the technology is trained on often contains more white faces but so far PSNI has held off using this.

## 6. Open surveillance

- There are 120 CCTV cameras installed in Belfast City Centre, monitored around the clock and PSNI can respond quickly to incidents.
- Most CCTV cameras in Northern Ireland and Great Britain are not operated by the police, but rather by the private sector and public authorities, such as councils and transport authorities.
- Automatic Number Plate Recognition (ANPR). In Northern Ireland there are already 234 active sites
- ANPR systems across the UK will read 100m vehicle number plates by 2023/24
- There is also masses of material recorded by private home CCTV systems, dashcams, all of which is regularly obtained by PSNI.

Also since the Report was published there has been very considerable data breach by the PSNI in the summer of 2023. This involved the disclosure of the details of nearly ten thousand officers and staff. The data concerned their surnames and initials alongside their location and the department where they work. The breach resulted from information included in error in response to a Freedom of Information Request. The disclosure was investigated by an independent team jointly set up by the Policing Board and PSNI and its findings and recommendations were published in December 2023.<sup>371</sup>

A second data protection violation occurred when the PSNI shared the personal data of 174 people with a law enforcement agency in the United States. The Information Commissioner's Office investigated this breach and found the infringements occurred between 2018 and late 2020.<sup>372</sup>

## 7. Targeted Surveillance

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<sup>371</sup> [A review commissioned by the Police Service of Northern Ireland \(PSNI\) and the Northern Ireland Policing Board \(NIPB\), into the PSNI data breach of 8th August 2023](#), 11 December 2023

<sup>372</sup> 30 October 2023.

- Transparency in policing is difficult where targeted, covert, secret surveillance is concerned and accountability and control requires special measures, which are, inevitably, complex – the Investigatory Powers Commissioner’s Office, the Investigatory Powers Tribunal, Policing Board, Human Rights Advisor. However, the more intrusive the surveillance, the higher level of authorization that is required. Currently, the PSNI has the following techniques available to it:
  - Listening in to telephone calls and reading messages
  - Communications data – who a person called or messaged, when and where
  - Targeted equipment interference – accessing material on computers and other devices
  - Directed surveillance – following or tracking a person
  - Intrusive surveillance – putting a camera or listening device in a home, car or office
  - Property Interference - Entering homes and businesses covertly
  - Using informants (or Covert Human Intelligence Sources) and authorising them to undertake criminal conduct in line with legislation.

Interestingly, the police service can use and have used many of these techniques on their own officers and staff to investigate alleged misconduct (but not crime) without the usual legal safeguards.<sup>373</sup> There are obvious issues of the human rights of police officers and staff that the Board will need to consider.

## Recommendation 15 – Privacy and Surveillance

**As reported in recent Human Rights Annual Reports, the PSNI continue to hold biometric data (fingerprints, photographs, and DNA profiles) on hundreds of thousands of people in Northern Ireland unlawfully and has been doing so since 2008. This is despite the fact that the Assembly drafted legislation to deal with this issue a few years ago (although never implemented). The PSNI, supported by the Policing Board, should request that the assembly legislate urgently on this issue.**

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<sup>373</sup>. That is in ‘employment related’ cases, see para 75 onwards, C v The Police and Secretary of State, IPT/03/32/H, 14 November 2006.

## New Recommendation 16

**The PSNI should provide a report to the Policing Board on the rules and procedure on how the covert surveillance of officers and staff is used when individuals are being investigated for misconduct (rather than crime).**

The first IPT case involving the PSNI was heard in the summer of 2022 and resulted in a settlement. It concerned a complicated investigation into corruption, including an investigation into PSNI personnel. The case was settled and, at the time of writing there was no public judgment. However, the case involved a member of the public assisting the PSNI with the investigation without being properly authorised as a Covert Human Intelligence Source. The Board considered the wider details and consequences of this case at meetings in June and July 2023 (see para 175 of the Privacy and Policing Report).

The second case in the IPT against PSNI concerned Barry McCaffrey and Trevor Birney who produced the documentary ‘No Stone Unturned’ concerning the murder of six people on 18 June 1994 in a public house in Loughinisland and the subsequent investigation by the then Police Ombudsman. The film was released in September 2017. The Ombudsman determined that ‘collusion is a significant feature of the Loughinisland murders.’<sup>374</sup>

A year after the release of the film the journalists were arrested by the PSNI and Durham Constabulary and a warrant to search their properties was executed on 31<sup>st</sup> August 2018. This action by those forces was subsequently severely criticised by the Lord Chief Justice<sup>375</sup> and led, in turn, to payments of compensation and a review of PSNI’s actions by a senior KC. A report was produced following this review and shared with the Human Rights Advisor and a letter from the Deputy Chief Constable was sent to the Board setting out the recommendations and the PSNI’s response to those.

The Deputy Chief Constable wrote to the Board on 26<sup>th</sup> May 2023 providing an update of progress and one section is relevant:

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<sup>374</sup> This finding has subsequently led to its own litigation involving challenges to the power of the Ombudsman to make such findings.

<sup>375</sup> 31<sup>st</sup> May 2019.

‘III. Specifically in cases involving journalism, it is insufficient to passively await the outcome of a journalists work before assessing relevant risks.

Update: Investigations involving journalists or investigations linked to their materials, will be challenged by the appointed designated officer (from the cadre of subject matter experts) to ensure that any risk assessment is conducted expeditiously and is ongoing throughout the enquiry. This will be an additional role and safeguard to all parties.’

These same two journalists made a general complaint to the Investigatory Powers Tribunal (IPT) in 2019 suggesting that a variety of law enforcement agencies might have deployed surveillance techniques against them. In the PSNI’s response to this general claim an issue from 2013 in relation to Barry McCaffrey was identified. This issue appears to have come to light in 2019, soon after the IPT contacted the PSNI about this complaint, but senior officers appear to have not been aware of this and neither the Human Rights Advisor nor the Board were informed at the time.

In 2013 Barry McCaffrey sought information from the PSNI Communications Department about an anti-corruption investigation being undertaken by PSNI into its own officers. As a result, an application for his communication data was sought by PSNI. Communication data is data concerning the details of calls, emails, texts etc. or internet connection data,<sup>376</sup> but not the content of the communications. The internal PSNI application for this data acknowledges that the search would access journalistic material and was designed to identify those in contact with him i.e., his source.

In July 2023, there was considerable coverage in the media about use of surveillance against this journalist and concerns were raised by the NUJ and others about the possibility of there being a general practice by PSNI of covert surveillance of journalists. Amnesty International also published a note ‘Journalists: What to do if you think the PSNI has spied on you’. Amnesty and CAJ also asked the Policing Board to initiate a formal inquiry:

‘make a formal report to the Board on PSNI use of surveillance powers against journalists, lawyers and other human rights defenders with a view to conduct a

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<sup>376</sup> There are some additional restrictions that apply to this, IPA section 62.

subsequent inquiry, under the powers vested in you under the Police (Northern Ireland) Act 2000.'

In September 2023 the Board requested a formal report on the subject from PSNI and also wrote to the Investigatory Powers Commissioner requesting any information that his office held on the PSNI's approach to the surveillance of journalists in the past and requesting an enhanced scrutiny when the PSNI was next inspected by his Office. The Investigatory Powers Commissioner replied as follows:

'Thank you for your letter of 13 September 2023 requesting information regarding the surveillance of journalists by PSNI from 2013 onwards following the complaint made by Barry McCaffrey and Trevor Birney to the Investigatory Powers Tribunal.

These allegations of course pre-date both IPCO, which was created in 2017, and our sister organisation, the Office for Communications Data Authorisations, which was established in 2019. As you may be aware, today's legal framework governing the acquisition of communications data relating to journalists includes significantly enhanced safeguards: not only must any authorisation for communications data for the prevention and detection of crime be subject to independent authorisation by OCDA, any application which seeks to identify a journalist's source must also be approved personally by a Judicial Commissioner (see s.77 Investigation Powers Act 2016).

The enhanced framework that has applied since 2019, should mean that the risk of PSNI inappropriately obtaining journalists' communications data today is lower. This is also, in part, due to IPCO's programme of regular inspections. I can confirm that it is already part of IPCO's inspection methodology to focus on the surveillance of journalists. In respect of inspections of PSNI's use communications data, IPCO selects all applications relating to journalists for audit. This includes not simply applications which have already been approved by both OCDA and a Judicial Commissioner where the purpose is to identify a journalistic source (i.e. those engaging s.77 Investigatory Powers Act 2016), but any which relate to a journalist. For example, this might include where the journalist is a victim of crime, such as harassment.

Notwithstanding the current safeguards which apply today, I fully appreciate the concerns that have been raised in the media (and reflected in your letter) as to whether there might be evidence to suggest other possible instances of the historical misuse of powers to acquire journalists' communications data by PSNI. Therefore, I hope it will be of some assurance that IPCO inspectors have reviewed the relevant IPCO inspection reports and have not identified any references to concerns regarding the acquisition of journalists' communications data by PSNI. It is understood that these reports are already routinely shared by PSNI with the NI Policing Board Human Rights Advisor ('the Advisor').

IPCO's ability to search legacy IT holdings of its precursor organisation is not straightforward. Prior to 2017, the acquisition of communications data by PSNI was overseen by the Office of the Interception of Communications Commissioner ('IOCCO'). If there were any issues of concern identified by IOCCO, I anticipate that these would have been referred to in the relevant inspection reports which would have been issued to PSNI. Again, I understand that the NI Policing Board Human Rights Advisor ('the Advisor') has access to such reports. (Even if that is not the case, I see no reason why PSNI could not, in principle, provide the Advisor with any extracts covering communications data). It is of course a matter for PSNI as to what information it provides to the Advisor and Board. I would flag that IOCCO's annual reports and a February 2015 report of a specific IOCCO investigation into the acquisition of communications data to identify journalistic sources (under the legal framework that applied at the time) is available on IPCO's website <https://www.ipco.org.uk/publications/archive/iocco-publications>.

Historical matters are, of course, capable of investigation by the Investigatory Powers Tribunal and it is open to any journalist with such concerns to make a complaint to it (in the same way that Mr Birney and Mr McCaffrey have done).<sup>377</sup>

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<sup>377</sup> Dated 14 November 2023.

## Surveillance And Accessing Communication Data From Journalists In 2013

In 2013, the rules governing the process of PSNI seeking communications data from telecoms providers were set out in the original version of Regulation of Investigatory Powers Act (RIPA) 2000, were pretty simple and contained very few safe guards. A request could be made to the telecoms company, authorised by a middle ranking police officer, on the basis of a number of grounds, including the ground most likely to be relevant to PSNI requests:

‘for the purpose of preventing or detecting crime or preventing disorder’<sup>378</sup>

However, some element of the key human rights principles relevant to this interference with privacy (Article 8) were set out in the legislation and in particular, a request should only be made if it is:

‘proportionate to what is sought to be achieved by so obtaining the data.’

At that time there were no additional protections in the domestic legislation or in the codes of practice to protect journalists communications data despite their key freedom of expression role in society (Article 10). However, in 2013, should the PSNI officers have sought legal advice about using RIPA to obtain a journalist’s communications data in order to identify that journalist’s source about a story involving corrupt police officers, then they should have been told that such action was likely to be unlawful and a breach of the Human Rights Act. Therefore, despite the inadequate nature of the system and the code at the time, the PSNI are likely to have acted unlawfully – see, for instance, a similar case heard by the IPT involving surveillance of journalists in 2012 set out below.<sup>379</sup>

In fact, around that same time in 2013, PSNI had itself raised concerns about the lack of clarity of the rules that covered the surveillance of journalists. The Human Rights Advisor has been advised that PSNI was involved in discussions with academics, lawyers and others to try to establish a better procedure for covert

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<sup>378</sup> Section 22 RIPA (as in 2013).

<sup>379</sup> The first of those judgments sets out in detail the jurisprudence from the European Court of Human Rights which makes it clear that enhanced protection for journalists is a requirement of the European Convention on Human Rights.



surveillance that reflected the important role of journalists and the media (and the principles of Article 10 of the ECHR).

The relevant RIPA code at the time, the Acquisition and Disclosure of Communications Data, Code of Practice of 2007, had no reference to any particular issues in law enforcement agencies seeking access to journalists' data. There were three bodies in 2013 dealing with covert surveillance. The Interception of Communications Commissioner (ICC) dealt with communication interception and communication data requests. In his 80-page report on the activities of law enforcement agencies in 2013 there is no reference to journalists or journalistic material. There were some 6,395 communication data authorisations by the PSNI, the PSNI was inspected that year but no recommendations were made by the inspection team regarding journalistic material.

### Increased Protection For Journalists In 2015

Litigation, including judgments of the IPT in 2015 drove changes to the RIPA legislation and resulted in a new code of practice in 2015. In one of the leading IPT case taken by Times Newspapers against the Metropolitan Police the Tribunal set out the facts as follows:

'The communications data was sought and obtained by the police in the course of an investigation into allegations arising out of an incident which took place on 19th September 2012 when Mr Andrew Mitchell MP, then the Government Chief Whip, was prevented by police officers of the Diplomatic Protection Group ("DPG") from leaving Downing Street on his bicycle through the main gate.'<sup>380</sup>

In the final judgment the IPT stated:

'...we concluded that applications by the RIPA route, rather than by the route of seeking judicial pre- authorisation pursuant to s.9 of the Police and Criminal Evidence Act 1994 ("PACE"), paid insufficient regard to the protection of journalist sources, and was thus an infringement of those journalists' Article 8/10 rights. For the future there is now in place a new 2015 Code, not in

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<sup>380</sup> Para 1, Times v Metropolitan Police, 17 December 2015.

existence at the time, which prescribes the taking of such latter course, save in exceptional circumstances.’<sup>381</sup>

The new 2015 Code stated:

‘3.76. Issues surrounding the infringement of the right to freedom of expression may arise where a request is made for the communications data of a journalist. There is a strong public interest in protecting a free press and freedom of expression in a democratic society, including the willingness of sources to provide information to journalists anonymously...

3.78. In the specific case of an application for communications data, which is made in order to identify a journalist’s source, and until such time as there is specific legislation to provide judicial authorisation for such applications, those law enforcement agencies, including the police, National Crime Agency and Her Majesty’s Revenue and Customs, in England and Wales with powers under the Police and Criminal Evidence Act 1984 (PACE) must use the procedures of PACE to apply to a court for a production order to obtain this data. Relevant law enforcement agencies in Northern Ireland must apply for a production order under the PACE (Northern Ireland Order) 1989.’

Subsequently there were also changes to the RIPA regime which were set out in the Investigatory Powers Act 2016. This Act provided much greater protections for journalists, requiring a judicial commissioner’s approval of an authorisation for communications data.<sup>382</sup>

One of the key roles of the latest oversight body, which deals with every type of surveillance activity by law enforcement agencies, the Investigatory Powers Commissioner’s Office (IPCO), is to inspect the procedures and processes of all the institutions that authorise and use surveillance powers. Each year IPCO inspects the activities of PSNI over a four-day period, often involving five or six inspectors and one of the IPCO Commissioners and, subsequently, provides the PSNI with a detailed written report. This report provides information about mistakes and failures

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<sup>381</sup> Para 3, *Times v Metropolitan Police*, 4 February 2016.

<sup>382</sup> Section 77. The procedure is slightly more complicated but the detail is not relevant for the purposes of this paper.

to follow the proper procedures, recommendations which must be complied with and suggestions for improvement which are not obligatory. The reports also highlight good practice and compliance. These are also used as learning or guidance for other agencies. These are all followed up at the next annual inspection by IPCO.

Up until 2016, however, the Office of the Surveillance Commissioner (OSC) dealt with most of the other types of surveillance (but not communications data which was dealt with by the ICC). After 2013, the Assistant Chief Constable Crime Operations provided Board Members with a redacted version of OSC inspection reports and provided confidential briefings about those reports. This does not seem to have happened since the last Human Rights Advisor left in 2015.

The IPT fixed a hearing for this case for February 2024 but it could not go ahead because in the days immediately before the hearing there were further disclosures by PSNI and Durham Police relating to other surveillance of the journalists in 2018 involving ‘Directed Surveillance’ and the passing over to PSNI of previous communication data surveillance in 2011 by the Metropolitan Police.<sup>383</sup>

### IPCO Inspection 2023

For the first time in April 2023 the Human Rights Advisor was allowed to attend the end of inspection oral report by the IPCO inspection team. The report was both detailed and comprehensive. A few weeks later the Advisor was able to read the written report and the following extracts provide a true reflection (although the report itself is nearly twenty pages long):

‘Overall, the levels of compliance with the relevant Acts and Codes of practice shown by PSNI are of a high standard. Staff involved in the end to end process were found to be diligent, conscientious, and strive to deliver a successful and legally compliant outcome.

There is one area of non-compliance which is extant from previous years and relates to lack of progress made regarding records and product management (Safeguards).

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<sup>383</sup> ‘Court case on alleged PSNI spying branded “a shambles”’, BBC NI website, 28 February 2024.

## **Errors**

One error related to a package which was removed in transit with the postal service before delivery to a suspect. This was seized in a local post office without the appropriate authority. IPCO were informed at the time and IPCO are content with the remedial action taken by PSNI.

No other errors have been highlighted.

## **Confidential Information**

No confidential information has been deliberately sought.

The overall standard of applications was good. The necessity was clearly set out.

The 2022 inspection report highlighted the volume of written work provided and it is therefore pleasing to note that the input was not limited to confirming the accuracy and compliance with legislation.

It was pleasing to note that cancellations were completed promptly.

All applications viewed were well informed, contained relevant information and intelligence to assist authorising officers making informed decisions to consider authorising or, as was noted with several applications, to decide to refuse the requested activity.

The PSNI operations that attract a higher level of authorisation have been subject to interim IPCO Inspector reviews prior to renewal. It is pleasing to note that the findings from those reviews have been incorporated into the processes and practices.

As a result applications and authorisations are carefully crafted and delivered to a high standard. Applications are supported by strong risk assessments.

No juvenile CHIS have been authorised during the inspection period.

## **Conclusion**

The inspection has demonstrated that PSNI has once again attained high levels of compliance with the legislative requirements. It is noted that there are several

Observations made which highlight areas that although not seen as areas of Non-compliance require improvements to be made.

One area of non-compliance remains extant from the previous inspection. This is regarding records and product management it is disappointing to note that the timescale on which the previous objective of full compliance was set was disregarded, and that much of the work did not re commence until October 2022. Work since then has made much progress and the impetus to continue must remain if full compliance is to be achieved.’ The Criminal Justice Inspectorate Northern Ireland (CJINI),<sup>384</sup> in November 2023, published a follow up review into how the Criminal Justice System deals with cybercrime in Northern Ireland. In 2017, seven recommendations were made. 3 have been achieved, 3 not achieved and one has been partially achieved. CJINI commented on the positive introduction of Cyber Support Units who work in conjunction with Cyber Crime Centres. Cyber Support Units main function is to analyse digital forensics, servicing mobile phones and CCTV. CJINI inspectors noted that the PSNI have made considerable investment into technology and training in this area. There is still however, as use of mobile technology increases, a backlog in digital forensic examination.

In the Human Rights Review of Privacy and Policing stated that in September 2022, PSNI published Mobile Phone Extraction Data guidance and this gave Officers clear instructions as to how the device can be obtained, the capabilities of technology, information required by CSU for investigation. In spite of this updated guidance, CJINI inspectors noted further training of front line police officers could assist in the reduction of the backlog as correct information would be forwarded to the forensic teams at the first point of contact. A further CJINI recommendation was that the PSNI should review where cyber crime is strategically positioned and this could improve recording and reporting.

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<sup>384</sup> [CJINI - Criminal Justice Inspection Northern Ireland - Cyber crime Follow-Up Review](#)

## Privacy and Policing Report (July 2023) recommendations

Overall Recommendation:

There should be an open and public debate about data driven technology in policing including developments in and use of Artificial Intelligence and Algorithms, Biometrics, Digital Forensics, Surveillance, and Investigatory Powers. PSNI should aim to become an organisation driven by effective and efficient use of data in an ethical way. The ethical use of data is about responsible and trustworthy use of data to ensure public trust and confidence rather than constraining its potential.

To this end, it is recommended that:

1. PSNI and the Board agree a Memorandum of Understanding (MoU) to ensure early visibility and oversight of any new strategy, policy or practice under consideration by PSNI. The MoU would cover all novel deployment, use of technologies and focus on human rights, privacy, ethical and equality considerations alongside any issues having an impact on public perception or confidence. This MoU should be in place by November 2023.

PSNI response:

“Any organisational decisions or policies remain with PSNI and accountability, engagement and information will be through the usual governance structures of the Board. i.e. Performance Committee.”

2. The Policing Board and PSNI should hold a round-table in January 2024 with key external stakeholders to examine the developments in data-driven technology in policing, its value and the need for effective governance. Stakeholders might include the Minister of Justice, the Department of Justice, Information Commissioner’s Office, the Police Ombudsman of Northern Ireland, the Northern Ireland Human Rights Commission, the Equality Commission of Northern Ireland, the Attorney General, local academics, human rights NGOs and key voluntary sector organizations.

PSNI response:

Any new data driven policies will require a Section 75 screening, which will involve formal consultation and engagement and evaluation prior to introduction. It is PSNI

viewpoint that NIPB, as the hosts should lead in the administration of this round table discussion which PSNI will attend.

3. Once a year, starting in November 2023 PSNI should present to the Performance Committee an update on developments in data driven technology including what systems have been implemented, what systems are being considered. This should include how those system assist PSNI with objectives, the human rights implications and any additional necessary governance arrangements.

PSNI response:

NIPB HR advisor confirmed that his intention is that PSNI only report in where we are using data led technology for support associated with investigation, evidence or identification. There is no requirement for reporting around our wider business function.

4. By January 2024 the PSNI should develop a Data Ethics Governance Framework to ensure policing is driven by effective and efficient use of data in an ethical way.

PSNI response:

An interim Data Board convened in January 2024. Once fully established the Board will consider the development of a Data Ethics Governance Framework, looking to do so in parallel with NPCC.

5. By April 2024 PSNI should produce a Data Ethics Strategy engaging with external stakeholders and the wider public on the value of data driven technology, its development and use and how ethical and privacy safeguards will be effectively addressed.

PSNI response:

A Data Ethics Strategy will be developed by the Police Services' Data Board.

6. In this context the PSNI should give more immediate consideration to the following specific issues:
  - a. The PSNI should set out its current use and future proposals on facial recognition systems in a special report to the Policing Board. Any proposals should consider the protections that the Metropolitan Police and other police forces are likely to put in place. This should also include privacy, equality and human rights impact assessments and the PSNI's plans to consult the public on its proposals.

PSNI response:

PSNI should set out its current use and future proposals on facial recognition systems in a special report to the Policing Board. Any proposals should consider the protections that the Metropolitan Police and other police forces are likely to put in place. This should also include privacy, equality and human rights impact assessments and the PSNI's plans to consult the public on its proposals.

A report on the use of the Police National Database (PND) facial recognition facility by PSNI has been completed and presented to the Northern Ireland Policing Board. The NIPB response was to inform PSNI that the decision whether or not to use this facility on PND was a PSNI operational matter and not for the NIPB to comment on. The decision on whether to use this PND facility was then taken to Service Executive Team and a definitive decision from SET is pending. Once this decision is taken the result will be communicated to the NIPB. The Head of Biometrics sits on the Home Office Biometrics Strategic Facial Matcher Project Board and is aware of national initiatives with respect to Retrospective Facial Recognition, Live Facial Recognition and Operator Initiated Facial Recognition. Decisions on when and how to implement these within PSNI will be taken at the PSNI Facial Recognition Project Board and the NIPB Human Rights Advisor is a standing member of this Board.

The Head of Biometrics continues to engage with the Home Office Biometrics Strategic Facial Matcher Project Board, the next meeting of which takes place on 24 January 2024. To date, no firm decision has yet been taken by PSNI on the future use of facial recognition technology using the national facial recognition technology currently being developed by the Home Office. No decision has been made yet by SET on whether to recommence facial recognition searching using the Police



National Database (PND). PSNI has committed to fully engage with NIPB on any future development or deployment of facial recognition technology

- b. The Policing Board should invite the Biometric and Surveillance Camera Commissioner to visit Northern Ireland and to give evidence about his work generally and particularly his assessment of the PSNI and the issues more generally in Northern Ireland.
  
- c. As there is currently no College of Policing guidance available around artificial intelligence systems the PSNI should develop both internal guidance and a public facing document that explains PSNI's approach to the technology.

PSNI response:

The PSNI will continue to abide by the NPCC guidance.

- d. The PSNI should consider using and adapting the Home Office's proposals for maintaining public trust<sup>385</sup> in CCTV systems by:
  - i. Undertaking Data Protection Impact Assessments (DPIAs) prior to the use of a new biometric technology or a new application of an existing biometric technology, inviting scrutiny from an independent ethics panel, regulators and the Board
  - ii. As a matter of transparency, PSNI should publish all their Data Protection Impact Assessments and their Privacy Impact Assessments
  - iii. Follow all the relevant Codes including Surveillance Camera Code of Practice

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<sup>385</sup> Biometrics Strategy: Better public services Maintaining public trust, Home Office, June 2018.

- iv. Consider the findings of the Home Office's Custody Image Review and ensure that the Commissioner's and ICO's guidance on the use of images is followed.

PSNI Response:

Public Space CCTV across different Local Government areas in NI is provided through a number of different models with different funding streams. In light of continuing pressure on police budgets a SPOC has been appointed and will take a holistic view of CCTV provision, including an examination of existing policy and practice which will include consideration of the Home Office proposals for maintaining public trust in CCTV systems.

PSNI has engaged with both the Home Office and the ICO in its exploration of facial recognition technology and will continue to do so. We are committed to ensuring it meets all its human rights and data protection commitments and engagement with the Home Office and ICO will continue as this technology evolves.

- e. In view of the fundamental issues of ECHR compliance with the continued retention of biometric samples by the PSNI it is essential that there is Biometric Commissioner for Northern Ireland. This would also be an opportunity to appoint an Investigatory Powers Commissioner for Northern Ireland.
- f. Given the fact that there is almost no public information available on how to challenge the retention of DNA and other identity data held by the PSNI, the PSNI should consider how to increase public awareness of the procedures.

PSNI response:

An Interim Service Instruction on Biometric Retention was published on the PSNI website on 7 November 2023. This public facing document informs members of the public how to seek deletion of their biometrics taken by PSNI under the provisions in the Police and Criminal Evidence (Northern Ireland) Order 1989 in the absence of any Northern Ireland specific biometric retention legislation.

The Biometric Ratification Committee adjudicates on applications and if successful, applicants will have their biometrics deleted from local and national databases. The retention periods applied have been devised from the biometric retention rules in

the un-commenced biometric provisions in Criminal Justice Act 2013 in respect of non-conviction material and the Department of Justice NI proposals in their 2020 public consultation on biometric retention legislation in respect of conviction material.

## CHAPTER 9 THE LEVERS OF CHANGE

### Introduction

This chapter is a new departure for the Policing Board's Human Rights Annual Reports. It is designed to be a more reflective attempt to try to understand and outline the institutions, processes and procedures that can and do promote compliance by the PSNI with human rights. This itself is a difficult task and assessing the effectiveness or otherwise of any of these, considerably more difficult.

Its second objective is to assess the extent to which the operations of PSNI comply with human rights. This second objective is difficult to measure particularly in the absence of an independent research study. Instead, we have to use an inadequate proxy for this, the compliance with the human rights recommendations made over the last five years. There was originally a third objective (at least in the mind of the Human Rights Advisor): to assess the relative success of the Policing Board compared with other processes in ensuring this compliance but this is too difficult to do without, again, independent research assistance but it is hoped that glimmers of an answer to this may be found in the text below.

The task of assessing compliance is a difficult one as there are thousands of officers actively involved in the life of thousands of people across Northern Ireland every day of the year. Most of those interactions never come to the notice of the Policing Board or any other statutory body or other interested institution. A more detailed and objective analysis will have to be carried out by others.<sup>386</sup> However, a very useful set of objectives for any police service wanting to ensure compliance has been articulated by the Board's previous Human Rights Advisor<sup>387</sup> and the current Policing Board's Human Rights Monitoring Framework.<sup>388</sup>

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<sup>386</sup> For the early history of the Policing Board's approach to human rights see, Chapter 10, Policing in Northern Ireland: Delivering a New Beginning, Desmond Rae and Robin Masefield, 2014, Liverpool University Press.

<sup>387</sup> See A Human Rights-based Approach to Policing in Ireland, Irish Council for Civil Liberties, Alyson Kilpatrick, 2018.

<sup>388</sup> <https://www.nipolicingboard.org.uk/files/nipolicingboard/2023-04/human-rights-monitoring-framework.pdf>

## History and Principles for Policing in Northern Ireland

It is obviously sensible to start this journey beginning before the PSNI was even created – with the Good Friday/Belfast Agreement:

‘The participants believe it essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices and operates within a coherent and co-operative criminal justice system, which **conforms with human rights norms**. The participants also believe that those structures and arrangements must be capable of maintaining law and order including responding effectively to crime and to any terrorist threat and to public order problems. A police service which cannot do so will fail to win public confidence and acceptance. They believe that any such structures and arrangements should be capable of delivering a policing service, in constructive and inclusive partnerships with the community at all levels, and with the maximum delegation of authority and responsibility, consistent with the foregoing principles. These arrangements should be based on **principles of protection of human rights** and professional integrity and should be unambiguously accepted and actively supported by the entire community.’<sup>389</sup>

The Patten Report, set up as a result of this Agreement, set out its approach as follows:

‘It is a central proposition of this report that the fundamental purpose of policing should be, in the words of the Agreement, the protection and vindication of the human rights of all. Our consultations showed clear agreement across the communities in Northern Ireland that people want the police to protect their human rights from infringement by others, and to respect their human rights in the exercise of that duty. Article 28 of the Universal Declaration of Human Rights states: “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised”. The role of the police is to help achieve that social and international order. They must, for example, uphold the laws that safeguard the lives of citizens. There

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<sup>389</sup> Para 2, Policing and Justice, 1998, emphasis added.

should be no conflict between human rights and policing. Policing means protecting human rights.’<sup>390</sup>

Patten’s first set of recommendations directly concerned human rights and policing:

**1** There should be a comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach.

**2** There should be a new oath, taken individually by all new and existing police officers, expressing an explicit commitment to upholding human rights. The text might be as follows –

“I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, and that in so doing I will act with fairness, integrity, diligence and impartiality, uphold fundamental human rights and accord equal respect to all individuals and to their traditions and beliefs.”

**3** A new Code of Ethics should replace the existing, largely procedural code, integrating the European Convention on Human Rights into police practice. Codes of practice on all aspects of policing, including covert law enforcement techniques, should be strictly in accordance with the European Convention on Human Rights.

**4** All police officers, and police civilians, should be trained (and updated as required) in the fundamental principles and standards of human rights and the practical implications for policing. The human rights dimension should be integrated into every module of police training.

**5** Awareness of human rights issues and respect for human rights in the performance of duty should be an important element in the appraisal of individuals in the police service.

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<sup>390</sup> Para 4.2.

6 A lawyer with specific expertise in the field of human rights should be appointed to the staff of the police legal services.

7 The performance of the police service as a whole in respect of human rights, as in other respects, should be monitored closely by the Policing Board.<sup>391</sup>

The Policing Board's role, particularly in relation to human rights compliance, was very significantly enhanced when compared to its predecessor, the Police Authority.<sup>392</sup> The Board's role was set out in the Police (Northern Ireland) Act 2000, section 3, as follows:

**'General functions of the Board.**

(1) The Board shall secure the maintenance of the police in Northern Ireland.

(2) The Board shall secure that—

(a) the police,

(b) the police support staff, and

(c) traffic wardens appointed by the Board under section 71,

are efficient and effective.

(3) In carrying out its functions under subsections (1) and (2) the Board shall -

(a) in accordance with the following provisions of this Act, hold the (then) Chief Constable to account for the exercise of his functions and those of the police, the police support staff and traffic wardens;

(b) monitor the performance of the police in—

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<sup>391</sup> A new beginning: Policing in Northern Ireland: The Report of the Independent Commission on Policing for Northern Ireland. The expression 'human rights' occurs at least once and often several times on 31 pages of the report.

<sup>392</sup> The Human Rights Act 1998, came into force earlier in Northern Ireland than it did in England and Wales and the Northern Ireland Act 1998, section 6(2)(c), required the Assembly to comply with Convention Rights.

- (ia) complying with section 31A(1);
- (i) carrying out the general duty under section 32(1);
- (ii) complying with the Human Rights Act 1998;
- (iii) carrying out the policing plan;'

## The Human Rights Monitoring Framework

The Policing Board's approach to human rights was developed by its first Human Rights Advisors in the first Human Rights Monitoring Framework. This original framework has survived the test of time but was updated recently:<sup>393</sup>

'The Framework, which is set out in greater detail in each of the later sections of this document, uses four structural indicators to assess the adequacy and effectiveness of the PSNI's implementation and enforcement of human rights standards through its internal governance mechanisms. As below;

- 1) Practical Policing;
- 2) Policy;
- 3) Training and Human Rights Culture; and
- 4) Complaints and Adherence to the Code of Ethics.

These core indicators set the foundations for measuring the PSNI's efforts to implement its human rights commitments throughout its policies, planning and practice.'<sup>394</sup>

The extent to which this process picks up the key issues, raises them with PSNI and succeeds improving compliance is set out in the other chapters of this report, particularly in the recommendations in the Human Rights Advisor's reports and the subsequent responses by PSNI. Often the issues set out in the recommendations are the subject of a series of discussions with PSNI both during the researching and drafting of the reports and once the recommendations are published and the PSNI will be influenced by the process and not just the final report.

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<sup>393</sup> [Human Rights Monitoring Framework \(nipolicingboard.org.uk\)](http://nipolicingboard.org.uk)

<sup>394</sup> Page 5.



However, many other human rights issues are dealt with by:

- The Board in its monthly meetings with the (then) Chief Constable and his team (some of which are dealt with in the public sessions);
- The Performance Committee (which has the responsibility for dealing with human rights compliance) in meetings with the PSNI senior team;
- Individual Board Members with PSNI officers;
- Dedicated Board officials; and
- The Human Rights Advisor.

Finally, the Board receives a great number of reports from the PSNI on a variety of subjects, including human rights. Many of these reports are not published. Most of these, more detailed issues, cannot even be recorded in the Human Rights Annual Reports for reasons of space.

The human rights annual reports follow a pattern and cover the topics established by the first human rights annual report published in 2005.<sup>395</sup> Annual reports have been published for every year except 2017 and 2019 when no Human Rights Advisor was in post.<sup>396</sup>

Human rights reports on particular subjects are also regularly published; for instance, the recent reports on Privacy and Policing, Strip Searching of Children and Young People, Use of Force, and Human Rights of Police Officers. They are also influential and follow the same consultation processes and contain both assessments and recommendations. The selection of the topics for special reports is decided by the Policing Board and reflect Member and public concerns.<sup>397</sup> Over the last few years the special topics chosen were agreed by the Board and published in the [Human Rights Three Year Programme of Work 2021-2024](#). Although other topics, such as the Strip Searching of Children and Young People, were selected on the basis of urgent contemporary concerns.

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<sup>395</sup> Monitoring the compliance of the Police Service of Northern Ireland with the Human Rights Act 1998: Human Rights Annual Report 2005, Keir Starmer KC and Jane Gordon.

<sup>396</sup> However, a Human Rights Assurance Report was written covering those years, agreed by the Board and published.

<sup>397</sup> For instance, concern about how the PSNI would deal with the Covid pandemic, Report on the Thematic Review of the Policing Response to COVID-19, November 2020.

The human rights work of the Advisor and officials is obviously constrained by resources that are made available generally to the Board and by the Board Members' choice in the allocation of resources. When the current Advisor was appointed obviously a budget had to be set but this was lower than for previous appointments to this role. The fact that the output in relation to reports etc. did not significantly diminish is due to the dedicated support from officials working directly for the Board. However, compliance with human rights by the PSNI is one of the important tasks of the Board and the resources available, is, fundamentally, a policy for the Board as a whole.

The success or otherwise of the Board's human rights compliance function is something that should be investigated but, for obvious reasons, would need to be undertaken independently.<sup>398</sup>

### The human rights of police officers and staff

Police officers and staff have human rights and those rights need to be properly protected. A review of those rights following discussions with all of PSNI's staff associations was set out in a report from the Policing Board and the recommendations and PSNI's responses are set out at the end of this chapter. Unfortunately, those rights were severely undermined and damaged by the data breach in the summer of 2023. The recommendations in the subsequent independent investigation are crucial in protecting those rights in the future.<sup>399</sup>

### Other Players

The Board and its human rights compliance team are not the only ones trying to promote human rights compliance. What follows is a brief list of these important other players.

#### PSNI Management and Officers' Engagement

Senior officers and managers within PSNI are generally very committed to ensuring human rights compliance. This is both because of their personal commitment but

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<sup>398</sup> The Human Rights Advisor role has always been semi-independent of the Board and is a consultant and not an employee. However, his reports are usually endorsed by the Board (or at least a majority of the Board). Occasionally, as with the report on the use of Spit and Bite Guards, a report is published by the Board but in name of the Human Rights Advisor.

<sup>399</sup> A review commissioned by the Police Service of Northern Ireland and the Northern Ireland Policing Board into the PSNI data breach of 8<sup>th</sup> August 2023.

also because it is a duty under the law. Compliance failure is often a subject of criticism by the Board and, sometimes, leads to criticism in the media. It is likely that that this commitment has a greater affect as a driver of compliance than many of the other levers set out below. The Human Rights Advisor regularly observes the leadership on this issue provided by senior officers and the commitment is very often, but not always, reflected down the ranks.

Human rights awareness of PSNI officers and staff was first assessed in 2004, when the PSNI conducted a survey of all its officers to assess the level of human rights awareness in the PSNI following a recommendation by the then Human Rights Advisor to the Policing Board. In 2021, the PSNI accepted a recommendation in the Human Rights Report 2020/21 to re-assess the human rights culture within the organisation and measure how it has changed.

In January 2023, an online survey link was emailed to all 9,407 officers and staff within the PSNI inviting them to complete and submit an anonymous response electronically to the human rights awareness survey. A total of 1,203 responses were, giving a response rate of 13%. 61% of respondents were constables and the majority were from local policing teams or crime teams. The majority of respondents had 11+ years of service in PSNI.

The survey was also issued externally, to a total of 1,054 persons in the police officer recruitment pool. A total of 270 responses were received, giving a response rate of 26%. 32% of respondents were administrative support grades.

This first stage of the project has been completed and it has been agreed that it would be useful to further consider a range of themes in workshop style meetings. Unfortunately, this has not progressed, however the Human Rights Advisor is hopeful that this will continue in 2024.

Of course, the commitment of officers varies as does the depth of understanding and is linked to the other priorities of PSNI officers – preventing crime, tracking down and arresting perpetrators, protecting victims and getting on with the job. What the Human Rights Advisor has observed however is the important role of experts within the PSNI itself, particularly by the Legal Department and the Human Rights Legal

Advisors, officers who are human rights advocates and other experts, for instance, the dedicated Data Protection Officer.

Dr. Richard Martin conducted a large research report on PSNI exploring how officers of varying ranks understand, interpret and apply human rights in their daily work.<sup>400</sup>

He suggests that the key factors are:

- Socialisation – officers inducted into the norms of police work, a combination of the promotion of principles through informal and formal sources,
- Opportunities for officers to become participants in a dialogue on human rights (rather than the object of that dialogue),
- Training, policies and briefings – human rights as part of core expectations and imparting values,
- Paying close attention to how officers’ engage with human rights law,
- Organisational and bureaucratic processes and procedures,
- Proximity of PSNI commanders to the in-house human rights lawyers,
- Checklists and computer drop-down menus,
- Routine decision making should be disrupted by insights from a diversity of community groups, and
- Institutional dialogue around human rights principles, including dialogue with the Board’s human rights reports.<sup>401</sup>

As an example from Richard Martin’s work, here is an extract from his assessment on Human Rights and Public Order:

‘Crucially, Commanders would benefit from the human rights expertise of what one Silver Commander referred to as the PSNI’s ‘bridgers’ – those with knowledge and expertise of both human rights law and police practice, who were able, therefore, to bridge the two. The most significant bridger is the PSNI’s human rights lawyer

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<sup>400</sup> See A Culture of Justification? Police Interpretation and Application of the Human Rights Act 1998, in *The Frontiers of Public Law*, J.Varubas and S.Stark (eds.) Hart, 2020 and *Ethno-Political Tenors of Human Rights: The Case of the Northern Irish Policing Board*, *Modern Law Review*, 2019, Vol 83, Issue 1. Finally for a very significant dive into the PSNI and its compliance issues see, *Policing Human Rights: Law, Narratives, and Practice*, Richard Martin, 2021, Clarendon.

<sup>401</sup> Page 360 onwards.

who acts as the authoritative voice of translation of human rights law within the PSNI.’

‘Commanders have made a determined effort to write human rights standards into the police ‘script’ to manage contentious parades and protests. In its material form, the script was the strategic and operational plans devised by Commanders, the content of which were an amalgamation of policies, law, information about the event and ‘community intelligence.’

‘The strategic deployment of ECHR verbiage was a technique used by Commanders to manage ‘trouble’ emanating from their intensely-scrutinised working environment; it was deemed prudent to ‘copper fasten’ decisions in case legal challenges arose...

‘Commanders used human rights to reason their way to a decision, not merely rationalise it to appeal to oversight bodies. Given what is at stake for protestors, residents, business owners and police officers themselves, PSNI Commanders – equipped with bespoke training and legal advice – saw the Convention principles and standards as offering a practical guide that made such difficult decisions more, not less, manageable.’

‘The empirical findings in this paper demonstrate that the technical grasp of the Convention that seasoned Commanders became familiar with through their training, legal advice and operational experience did not, in fact, produce either a thoughtless ‘tick-box’ exercise or excess judicialization of decision-making.’

‘...Commanders seemed to find Article 2 a useful basis for justifying their less interventionist approach, albeit – as the High Court held – this can be deleterious consequences for the rights of nearby residents affected by sustained protests.’

## **Training**

Police trainers have the capacity to play an important role in promoting and maintaining a positive culture of human rights within PSNI by ensuring that teaching on the delivery of core policing functions (e.g. use of force) successfully and effectively integrates human rights considerations as a core element of police decision-making. As such, police trainers assist learners in transforming human rights theory into effective learned behaviour.

In 2017, following a recommendation by the Board's previous Human Rights Advisor, the role of the PSNI Human Rights Trainer was reinstated. Their role is to ensure that human rights processes and compliance outcomes are identified and delivered in an understandable way to assist PSNI learners to integrate human rights considerations within their decision-making and to contribute to organisational and operational performance. The College advisor ensures adherence to PSNI's human rights obligations and audits a number of courses making recommendations.

Historically, training has been a principal component of human rights monitoring by the Policing Board and is recognised as one of the keys to instilling a human rights-based approach in new and existing officers. The Board has continued its engagement with the PSNI Human Rights Training Advisor in the Police College which has provided the Board with a level of oversight. It is of concern that this post remains vacant.

### **New Recommendation 17 - The post of the Human Rights Training Advisor should be filled at the earliest opportunity.**

During 2018/19 the Training Advisor delivered training to over 30 PSNI Trainers on integrating and developing human rights content into training and lesson plans and provided follow-up support and checked content for awareness and understanding of human rights by reviewing or attending over 100 courses. He had additionally developed and maintained an internal system of human rights training monitoring and auditing. The Board's Human Rights Advisor noted the delivery of a specific human rights lesson led by the PSNI Human Rights Training Advisor in the PSNI Trainer Development Programme (Advanced Diploma in Professional Teaching) was achieving real results by addressing concerns over the quality of training delivery.

On Public Order Command training specifically, Martin commented:

'Certified public order Commanders must pass specialist command courses based on the College of Policing's standardised curriculum and assessment. In the wake of critical findings by HMCIC, efforts have been made to remedy the knowledge deficit identified amongst Commanders in England and Wales. Key

learning outcomes for courses now include consideration of powers and policies relating to human rights, alongside an understanding of the human rights framework.'

'In most instances, trainers managed to summarise the law accurately. The ambit of the right to peaceful protest (discussed below) – comprised of clear core principles – proved straightforward to convey to trainee Command...'

And

'For more technical aspects of the law, like the formula to be applied for qualified rights, trainers seemed less comfortable and relied heavily on the College of Policing curriculum. On the concept of proportionality, for instance, trainers explained the need for a link between the measures and the legitimate aim, reading out the considerations verbatim from the public order manual.

'The trainers turned to the expertise of the PSNI's human rights lawyer, showing the trainees a copy of the lawyer's email, which identified the factors police ought to consider in light of the House of Lord's discussion of 'imminence' (e.g. whether it was the last opportunity police had to take preventative action). Officers were told to write down the lawyer's number: 'If you have any questions phone him and he'll get back to you, he's been very supportive in putting together the training.'

'More critically, in the absence of a closer analysis of the substantive scope of human rights, the aspiring Commanders seemed to be left relying on a 'gut feeling' of the ambit of the Convention.'

## **Policy**

PSNI policy governs the conduct of police officers and police staff and sets out the framework within which decisions may be made. PSNI policy is primarily contained within Service Policy documents, which PSNI describes as being "principles to

govern the organisation”, and Service Instruction documents which are defined as “practical instructions for service delivery to inform decision making in line with Service Policy.” Combined, these policy documents should inform every officer or staff member what principles they must embrace, what procedure they must follow and what standards are expected of them. Crucially for the Board, they provide a measure by which police practice can be monitored and assessed. As part of the human rights monitoring framework, the Board has evaluated the extent to which particular police policies ensure operational compliance with human rights standards.

All police services across the United Kingdom are expected to publish their written policies, protocols and procedures.<sup>402</sup> It is accepted that some documents should not be published, for example, if publication is likely to impact adversely upon operational activity or if the information is classified. However, even if a policy document contains classified information which cannot be published, a summary of the policy with the restricted information redacted from it can, and should, be published. These documents should be published in formats that enable persons with disabilities equal access to the information.<sup>403</sup>

In 2020 the Board requested the PSNI to ensure that all of its policies and procedures set out clearly any human rights issues that are relevant and to publish those policies and procedures. It was expected, however, that this process will take some time to complete. The PSNI was also asked to undertake a similar approach to new and, particularly, controversial operational and policy matters.

By 2022 the Human Rights Advisor learnt that PSNI policy was contained within five sets of documents which vary in the level of detailed guidance that they provide to officers.<sup>404</sup> At the highest level is ‘Corporate Policy’ which lists PSNI’s services and high-level corporate decisions and secondly, there is the ‘Service Policy’ described as being “principles to govern the organisation”. Thirdly, there are over fifty ‘Service Instructions’, which are defined as “practical instructions for service delivery to inform decision making in line with Service Policy.” Fourthly, there are three ‘Service

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<sup>402</sup> The Information Commissioner’s Office has produced guidance for police services on the types of information that they should publish: [https://ico.org.uk/media/for-organisations/documents/1280/definition\\_document\\_for\\_police\\_forces.pdf](https://ico.org.uk/media/for-organisations/documents/1280/definition_document_for_police_forces.pdf)

<sup>403</sup> As required by for example the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), articles 2, 9 and 21.

<sup>404</sup> <https://www.psnipolice.uk/advice-information/our-publications/corporate-policy/>



Procedures' on sick pay, alcohol misuse and policing with children and young people. Finally, there is the detailed Conflict Management Model, which sets out guidance on the use of force by police officers.

Recommendation two of the Human Rights Annual Report for 2019/20 stated:

'The PSNI should develop and publish a plan and timetable to ensure that all of its policies are published and, where relevant, they set out the human rights issues involved in sufficient detail to allow a member of the public to be reassured that proper consideration has been given to them. It is accepted that there may be some policies that contain sensitive issues and in those cases the Policing Board or its Human Rights Advisor should be consulted on what can or cannot be disclosed to the public.'

Recommendation 3 of the Human Rights Annual Report for 2020/21 stated:

'Given the delay in taking action on recommendation 3 from the 2019/20 report (albeit the delay was partly during the Pandemic) the PSNI should prioritise this work and, where necessary, provide the resources that are needed to take action without unnecessary delay.

As a result of these recommendations the PSNI produced 'Guidance relating to Human Rights for use in creating Service Policies/Service Instructions within the PSNI' and required authors of new policies to complete a standard template 'Police Service of Northern Ireland Human Rights Assessment – Screening Checklist'. Whilst many of these templates have not been as detailed as they need to be, in other cases they have been excellent. One of the best new Service Instructions (SI) that has benefitted from this new procedure being the Missing Persons Investigations service instruction.<sup>405</sup> In other cases new SI's have not picked up on the obvious human rights issues that would assist officers to carry out their important roles and duties in compliance with human rights.<sup>406</sup>

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<sup>405</sup> SI 0423, July 2023.

<sup>406</sup> Including the Policing Board's Human Rights Monitoring Framework.

## New recommendation 18

**The PSNI need to provide the resources to deliver human rights content for policy materials and it is suggested that responsibility for delivering this should be given to the PSNI's Human Rights Legal Advisor who should be provided with the necessary additional resources to ensure that this happens.**

**The above guidance should also be updated to include more information linking policing practices and human rights principles and more up to date sources of information. In the event of any delay in producing a new version the current version should be published by July 2024.**

## Operational and Legal Restrictions

In many cases the principles and details of human rights compliance is set out in key policing legislation itself. Similarly, for instance, the law on the use of covert surveillance – Covert Human Intelligence Sources (informants) is, itself, based on privacy principles derived from Article 8 of the European Convention on Human Rights:

'(2) A person shall not grant an authorisation for the conduct or the use of a covert human intelligence source unless he believes:

(a) that the authorisation is necessary on grounds falling within subsection (3);

(b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use...'<sup>407</sup>

In addition, it may also be the case that, for instance, evidence is not admissible in court if legislation based on human rights principles not complied with. An example might be that the Police and Criminal Evidence Order 1989 includes the right to consult a lawyer if a person is detained in custody,<sup>408</sup> there are also limits on the length of detention, access to a court<sup>409</sup> and rules to prevent ill-treatment during interviews.<sup>410</sup>

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<sup>407</sup> Section 29, the Regulation of Investigatory Powers Act 2000. That is not to say that that Act or the principles of human rights are always followed.

<sup>408</sup> A positive right set out in Article 6(3).

<sup>409</sup> Both derived from Article 5 and the jurisprudence of the European Court of Human Rights,

<sup>410</sup> Set out by the prohibition of ill-treatment and torture contained in Article 3.

## Code Of Ethics, Complaints And Discipline

Professional Standards for policing must adhere to legal and ethical guidelines, training and continuous improvement and it plays an important role in building trust and confidence in policing. The Policing Board has a statutory duty to keep informed of complaints and disciplinary proceedings brought in respect of police officers and to monitor any trends and patterns emerging. This work is carried out by the Performance Committee, which is also tasked with monitoring the PSNI's compliance with the Human Rights Act 1998 and monitoring the effectiveness of the Code of Ethics.

Communication with the public can be measured by evaluating the police's formal complaint process, as well as the ongoing contacts between the police and the public. By monitoring PSNI internal disciplinary proceedings and alleged breaches of the Code of Ethics, the Board can assess the effectiveness of the Code and the extent to which individual officers (and the police service as a whole) adhere to the human rights principles.

The Committee meets formally with the OPONI officials at least once a year to discuss a range of issues, including trends and patterns of complaints against police officers and Section 3(3)(c)(i) of the Police (Northern Ireland) Act 2000, Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 and Section 3(3)(d)(iv) of the Police (Northern Ireland) Act 2000. The Code of Ethics defines the standards of conduct and practice of police officers, and its purpose is to make police officers aware of their rights and obligations arising from their police activities. To carry out its oversight role effectively, the Board relies on the PSNI and OPONI to share information with it.

The Police Oracle<sup>411</sup> recently released a statement on social media confirming the Home Office will be introducing changes to misconduct and vetting, which will be implemented from April 2024. The first stage will be amendments to the Police (Conduct) regulations regarding the composition of misconduct panels (the composition of panels differ in Northern Ireland from England and Wales). The second stage, due to be implemented in June 2024 will deal with wider misconduct, vetting and performance measures and the final stage will enable Chiefs to appeal to the Police Appeals Tribunal and will come into force via the Criminal Justice Bill.

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<sup>411</sup> [Changes to misconduct regulations to be rolled out in three stages | UK Police News - Police Oracle](#)

While these changes will not transfer to Northern Ireland, the Board's Professional Standards Review<sup>412</sup> called for a range of changes to the conduct regulations to ensure the right to a fair trial is upheld for officers and staff under investigation by professional standards and to build trust with the public. This work is ongoing with the PSNI, OPONI and DOJ.

The content of the PSNI's Code of Ethics for officers is primarily based on human rights law and principles, the content is for the independent Policing Board (following consultation with PSNI and others) to agree and, unsurprisingly, is peppered with human rights principles and rules:

### **'Code of Ethics**

(b) (1) The Board shall issue, and may from time to time revise, a code of ethics for the purpose of:

(b) (a) laying down standards of conduct and practice for police officers;

(b) making police officers aware of the rights and obligations arising out of the Convention rights (within the meaning of the Human Rights Act 1998).<sup>413</sup>

The Foreword by the Chair of the Northern Ireland Policing Board to the current code states:

'While police conduct, or misconduct, will be judged against the standards set out in the Code of Ethics 2008, the Code is not merely a disciplinary tool. It is a comprehensive human rights document which draws upon the European Convention on Human Rights and other relevant human rights instruments. The Board believes that by carrying out their duties whilst paying strict attention to the ethical framework of the Code, the public can be sure that police officers have acted in an honourable, effective and human rights compliant manner.'

George Hamilton, the then Chief Constable says in his introduction to the Code:

'The Code describes a framework of ethical standards, along with an accountable, Human Rights approach to policing that demands the very best

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<sup>412</sup> [Review of PSNI Professional Standards: Recommendations for Improvement \(nipolicingboard.org.uk\)](https://www.nipolicingboard.org.uk/review-of-psni-professional-standards-recommendations-for-improvement)

<sup>413</sup> Section 52, Police (Northern Ireland) Act 2000.

from our officers and provides the context within which we deliver an effective policing service to all communities.’

Finally, Article 1 of the Code includes the following words:

‘When carrying out these duties, police officers shall obey and uphold the law, protect human dignity and uphold the human rights and fundamental freedoms of all persons as enshrined in the Human Rights Act 1998, the European Convention on Human Rights and other relevant international human rights instruments.’

This Code is the guidance tool for officers in their work. The Code, if breached, is the necessary basis of successful complaints by members of the public, investigations by the Police Ombudsman, and leads to disciplinary action (including the sanction of dismissal) against officers.

Proposals to improve and update the rules on misconduct were set out in the report *Review of the Human Rights of Police Officers and Staff*<sup>414</sup> and the report *Professional Standards Review: Recommendations for Improvement*.<sup>415</sup> However, the PSNI is yet to respond to these recommendations.

However, the Code itself needs updating, having been agreed fifteen years ago and a new version was being discussed in 2019 before the current Human Rights Advisor was in post. One obvious improvement would be to add a ‘duty of candour’ such as that which is currently set out in clause 73 of the Criminal Justice Bill currently before the Westminster Parliament. A number of new versions have circulated and one was actually subject to consideration by the Police Ombudsman and others.<sup>416</sup> It is hoped that a new version can be considered by the Policing Board and put out for consultation in 2024.

At the time of writing the provisions requiring officers to notify the (then) Chief Constable if they are members of a number of specific organisations is being reviewed and there is the possibility of a different system being put in place.<sup>417</sup>

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<sup>414</sup> 8 December 2022.

<sup>415</sup> 30 November 2022.

<sup>416</sup> As required by section 52 of the Police (Northern Ireland) Act 2000.

<sup>417</sup> Section 51, Police (Northern Ireland) Act 2000.

It should also be noted that the PSNI has recently changed its approach of allowing PSNI officers attending the annual Pride march in Northern Ireland.<sup>418</sup>

## The Police Federation

The Police Federation of Northern Ireland came into being on 15 July 1971 by virtue of the Police Act (NI) 1970. 'We are a representative body, similar to a trade union, but without the right to resort to industrial action.'<sup>419</sup>

## Police Staff Associations

There are also a number of staff associations also concerned to protect the human rights of police officers: The Police Officer Disability Network, The Northern Ireland Public Service Alliance (NIPSA), The Christian Police Association, The Superintendents Association, Senior Officers, Student Officers, Lesbian, Gay, Bisexual and Transgender (LGBT)+ Staff Association, The Women's Police Association, The Ethnic Minority Police Association and The Catholic Guild of Police Officers.

## Police Ombudsman

'This Office provides an independent, impartial system for the handling of complaints about the conduct of police officers. We will deal with those complaints in a manner which is free from any police, governmental or sectional community interest and which is of the highest standard.'<sup>420</sup>

Many investigations and reports concern issues of human rights compliance and obviously because the principles are contained within the PSNI's Code of Ethics.<sup>421</sup>

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<sup>418</sup> Police Service statement regarding Pride participation, 14 July 2023, <https://www.psni.police.uk/latest-news/police-service-statement-regarding-pride-participation#:~:text=As%20a%20Police%20Service%2C%20we,and%20according%20equal%20respect%20to>

<sup>419</sup> From its website. The Federation advocates for the rights of police officers, see <https://www.policefed-ni.org.uk/media-centre/2020/november/spit-and-bite-guards-will-give-vital-protection-to-frontline-officers>. See also the Policing Board's Report on the Human Rights of Police Officers, December 2022.

<sup>420</sup> [Police Ombudsman, Police Complaints, Police Ombudsman for Northern Ireland - Police Ombudsman for Northern Ireland](#)

<sup>421</sup> See for instance the 'Failure to investigate the Protect our Monuments protest in Belfast on 13 June 2020, Regulation 20 report', Police Ombudsman for Northern Ireland, 21 October 2022, referred to in the chapter on public order.

Where a complaint or matter has been investigated by the Police Ombudsman, it must then determine whether a criminal offence has been committed and if so must submit recommendations to the Public Prosecution Service (PPS). In cases in which no recommendation is submitted to the PPS, the Police Ombudsman must consider whether a recommendation should be made for disciplinary proceedings. It is difficult but not impossible, for the PSNI to take discipline action until the PPS decides whether to prosecute or not (to ensure that the discipline process does not prejudice any criminal trial). The Police Ombudsman is restricted in how much information she can disclose to anyone, including the PSNI, during an investigation.

The number of complaints received and matters referred for independent investigations by the Police Ombudsman during 2022/23 was 3,185, an increase of 8% from the previous year, the highest number of complaints received since 2015/16.

Criminal investigations undertaken by officers are the most common situation that gave rise to complaints during 2022/23. This accounts for 32% of all complaints received. Complaints relating to arrests increased by 9% followed by traffic related incidents which increased by 8%, Domestic Incidents (such as neighbourhood disputes) decreased by 3%, police searches, increased by 26% and police enquiries decreased by 20%.

During 2022/23, the Police Ombudsman received 5,185 allegations, this is almost the same number of allegations as received the previous year. The most frequent allegations are failures in duty such as during the conduct of police investigations or the police response to incidents; oppressive behaviour (oppressive conduct not involving an assault) or serious or sexual assaults. PSNI are currently reviewing all sexual misconduct allegations and investigations over the last ten years in order to identify areas for improvement and any investigative opportunities that remain outstanding. There are 158 investigations involving 137 officers that have been identified for review.

The number of complaints made to the Ombudsman's Office connected to the period known as 'the Troubles' were considered by the Historical Investigations Directorate. There was a reduction from 46 complaints received in 2021/22 to 17 during 2022/23. This sees the number of complaints related to 'the Troubles' return to figures in the

previous five years. There were 12 complaints relating to parades or demonstrations during 2022/23.

During 2022/23, the Police Ombudsman made 183 recommendations to the PSNI that an officer or staff member should receive either discipline or take action to improve performance. Of the 183 recommendations made, 48 recommended a misconduct meeting and 17 recommended a misconduct hearing (with the option of dismissal).

During 2022/23, 49 policy recommendations were sent to PSNI which comprised of 11 at strategic level and 31 at an operational level with seven areas for minor improvement. This is the second highest number of recommendations that the Office has made in the last five years. These include recommendations around the handling and dissemination of intelligence, seizure of drugs within custody suites, training all custody staff, training for all call handlers, completion of search records, completion of collision report forms, use of body worn video, oversight of complex investigations within Public Protection Branch and the use of dedicated and specifically trained community/diversity officers to work with Belfast Multi Cultural Association (BMCA) and other groups/communities.<sup>422</sup>

The Police Ombudsman has further power under Police (NI) Act 1998, s55(6), to investigate a matter in the public interest, even where no complaints have been made, where it appears to the Police Ombudsman that a police officer may have committed a public offence or may have behaved in such a manner as to justify disciplinary proceedings.

Following any such an investigation, a report is sent to the Department of Justice, the Policing Board and the (then) Chief Constable. In 2022, the Board received 12 such (Regulation 20) reports relating to such matters as; death following police contact, death in custody, making false records, failure to properly examine electronic device, theft, police behaviour, injury sustained whilst in custody,

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<sup>422</sup> Report on the number of recommendations made by the Ombudsman which were accepted by PSNI was made to the Board. PSNI accepted 80% of the 144 disciplinary recommendations made. Of the 35 matters rejected the PSNI took no disciplinary action in 9 cases and some alternative action in 26 cases. See Recommendations Review: Report compiled for the Northern Ireland Policing Board, 1 December 2023.



investigation issues, assault on a youth, death of a civilian at the time of a police pursuit, protests and historical investigations.

In September 2023, the Police Ombudsman published a recommendation in relation to body worn video cameras. The Police Ombudsman had completed an investigation in which the Police Officer's body worn camera was mounted on their shoulder resulting in an obstruction of the view of the incident. The Ombudsman has recommended that body worn video should be head mounted to ensure that incidents are clearly recorded. The Metropolitan Police's guidance states that Body worn cameras in most circumstances are chest mounted.

The PSNI responded to a Committee question regarding the Ombudsman's recommendation in October 2023. They stated that the current head mounted cameras have proved difficult to use and they are working with Information and Communication Services to develop a solution for a camera to be mounted on a helmet with no restrictions for the user.

The Police Ombudsman comment in the conclusion of the most recent Regulation 20 report, which was received by the Board in September 2023 as follows:

"I am once again disappointed at the response from PSD to my recommendations for a misconduct meeting in respect of the police officers... In light of these and other similar cases where PSD have disagreed with my recommendations, I believe a review of the PSNI Misconduct Regulations is necessary."

Unlike the position of the Independent Office for Police Conduct in England and Wales, responses to recommendations for changes of PSNI policies made by the Ombudsman following her investigations are not subject to any time limit.

## Data And Independent Research

Research and reports from reputable institutions and academics are often important in ensuring monitoring, compliance and policy change. Reference has already made to the seminal work by Richard Martin and of the influence of John Topping in

relation to stop and search,<sup>423</sup> and Jonny Byrne and Lisa Monaghan<sup>424</sup> but to some extent, perhaps, no longer contemporary? However, consideration of the Northern Ireland Life and Times Survey provides robust social scientific data on areas relating to criminal justice and policing.<sup>425</sup>

The Northern Ireland Statistics and Research Agency (NISRA) also have an important role in producing independent information and statistics, for instance, on stop and search and on the use of force by PSNI referred to in previous chapters.

## Statutory Oversight Bodies

There are a number of oversight bodies which also make significant contributions to the work of the PSNI and its compliance with human rights:

- Criminal Justice Inspectorate of Northern Ireland

‘CJI is an independent statutory inspectorate with responsibility for inspecting all aspects of the criminal justice system in Northern Ireland apart from the judiciary. It also inspects a number of other agencies and organisations that link into the criminal justice system.

It endeavours through its work to secure improvement and promote greater co-operation between the various statutory and voluntary organisations to provide a better justice system for the whole community in Northern Ireland.’<sup>426</sup>

- His Majesty’s Inspector of Constabulary, Fire and Rescue Service

‘The public want the police and fire and rescue services (FRSs) to succeed in their duties to keep people safe and secure. It is in the public interest that the quality of policing England, Wales and Northern Ireland and fire and rescue in England keeps improving.

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<sup>423</sup> See Chapter 2 Stop & Search

<sup>424</sup> For instance, Policing Loyalist and Republican Communities: Understanding key issues for local communities and the PSNI, Institute for Conflict Research, 2008,

<sup>425</sup> [NI Life and Times Survey - Criminal Justice \(ark.ac.uk\)](http://ark.ac.uk).

<sup>426</sup> Extract from its website. As an example see, Police Custody: the Detention of Persons in Police Custody in Northern Ireland, 2020.

At HMICFRS, we inspect, monitor and report on the efficiency and effectiveness of the police and FRSs with the aim of encouraging improvement.<sup>427</sup>

- Investigatory Powers Commissioner

‘At IPCO, we oversee the use of covert investigatory powers by more than 600 public authorities, including the UK’s intelligence agencies, law enforcement agencies, police, councils and prisons.

This means that we independently review applications from public authorities to use the most intrusive of these powers and check that all the powers are used in accordance with the law.<sup>428</sup>

- The Independent Reviewer of the Justice and Security Act

The function of the Reviewer is to review the operation of sections 21 to 32 of the Justice and Security (NI) Act 2007 and report annually to the Secretary of State for Northern Ireland.<sup>429</sup>

- The Independent Reviewer of Terrorist Legislation

‘The Independent Reviewer’s role is to inform the public and political debate on anti-terrorism law in the United Kingdom. I do this in the regular [reports](#) that are prepared for the Home Secretary or Treasury and then laid before Parliament, in [evidence to parliamentary committees](#), in [articles and speeches](#), in media interviews and debates, in [posts](#) on this website and via [twitter](#) (@terrorwatchdog).<sup>430</sup>

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<sup>427</sup> Extract from its website. As an example of its work see ‘Getting the balance right? An inspection of how effectively the police deal with protests, March 2021.

<sup>428</sup> Taken from its website. As an example see, Annual Report of the Investigatory Powers Commissioner for 2021, 2023.

<sup>429</sup> Taken from the Northern Ireland Office’s website. As an example see Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, 14<sup>th</sup> report, 1 August 2020 – 31 July 2021, June 2022.

<sup>430</sup> Taken from his website. As an example see his latest report, The Terrorism Acts: Report of the Independent Reviewer of Terrorism Legislation on the operation of The Terrorism Acts 2000 and 2006, and the Terrorism Prevention and Investigation Measures Act 2011.

- The Northern Ireland Human Rights Commission

‘The Northern Ireland Human Rights Commission (NIHRC) is a national human rights institution with A status accreditation from the [United Nations \(UN\)](#). NIHRC is funded by United Kingdom government, but is an independent public body that operates in full accordance with the [UN Paris Principles](#). Established on the basis of the [Belfast \(Good Friday\) Agreement](#), we play a central role in supporting a society that, as it rebuilds following conflict, respects and upholds human rights standards and responsibilities. We champion and guard the rights of all those who live in Northern Ireland.’<sup>431</sup>

- The Equality Commission

‘The Equality Commission for Northern Ireland is a non departmental public body established by the Northern Ireland Act 1998. Our powers and duties derive from a number of statutes which have been enacted over the last decades, providing protection against discrimination on the grounds of age, disability, race, religion and political opinion, sex and sexual orientation. We also have responsibilities arising from the Northern Ireland Act 1998 in respect of the statutory equality and good relations duties which apply to public authorities.’<sup>432</sup>

- The Commissioner for Children and Young People Children’s Commissioner

‘The Commissioner’s role is safeguard and promote the rights and best interests of children and young people.’<sup>433</sup>

- The Commission for Victims and Survivors Northern Ireland

‘Promoting the interest of victims and survivors of the Northern Ireland Troubles/Conflict.’<sup>434</sup>

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<sup>431</sup> Taken from the NIHRC website. As an example see ‘Response to the Department of Health and Department of Justice’s Consultation on a Draft Domestic and Sexual Abuse Strategy’ May 2023.

<sup>432</sup> From its website. See its human rights approach <https://www.equalityni.org/HumanRights>.

<sup>433</sup> Taken from its website. See as an example, ‘Consultation on Increasing the Minimum Age of Criminal Responsibility in Northern Ireland’.

<sup>434</sup> Taken from its website. See as an example the work on the current Legacy Bill.

- Victims of Crime Commissioner

‘The Commissioner will use victims’ experiences of the criminal justice system in Northern Ireland to improve services for victims.

The Commissioner will work closely with victims, their families and support agencies to record their experiences. This will be used as evidence to provide advice to government on changes that are needed for a better victim centred criminal justice system.’<sup>435</sup>

- Commissioner for Older People

‘The Commissioner is an independent champion for older people, who safeguards and promotes their interests.’<sup>436</sup>

- UK Joint Human Rights Committee

‘The Joint Committee on Human Rights consists of twelve members, appointed from both the House of Commons and the House of Lords, to examine matters relating to human rights within the United Kingdom, as well as scrutinising every Government Bill for its compatibility with human rights.’<sup>437</sup>

## Other democratic institutions

The UK Parliament, the Northern Ireland Affairs Committee, the Northern Ireland Assembly and its Justice Committee, the Department of Justice and the Northern Ireland Office are also concerned with PSNI human rights compliance. For instance, the Northern Ireland Affairs Committee recently investigated the leaks of personal data that ‘have exposed thousands of Northern Ireland’s police and intelligence officers and civilian staff to potential reprisals’.<sup>438</sup> This investigation took evidence from the Police Federation, the Northern Ireland Public Service Alliance, the Police Superintendents Association of Northern Ireland, the Chairperson of the Catholic

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<sup>435</sup> Taken from its website. See the concern about the disproportionate impact of COVID on older people <https://www.copni.org/news/2020/may/article-by-eddie-lynch-commissioner-for-older-people-for-northern-ireland-and-les-allamby-chief-commissioner-northern-ireland-human-rights-commission>

<sup>436</sup> From its website.

<sup>437</sup> Taken from its website. See as an example, Human Rights Act Reform: Thirteenth Report of Session 2021–22, March 2022.

<sup>438</sup> 4 September 2023.

Police Guild of Northern Ireland, ACC Chris Todd, and the Chair, Vice Chair and Chief Executive of the Policing Board.

## The Courts, Litigation And Lawyers

The work of the PSNI is also subject to the supervision of the courts and to the advocacy of lawyers raising questions about human rights on behalf of their clients.

For instance:

‘The Legacy and Disclosure Branch currently has carriage of over 1000 civil litigation cases including approximately 200 civil actions relating to legacy inquests and around 100 non legacy contemporary sensitive litigation cases. This caseload includes several high-profile cases with the potential to bring reputational damage and critique. In addition, many of these cases arise from some of the worst atrocities of "the Troubles" and involve the research and disclosure of voluminous materials. The number and potential value of these claims will see an increasing demand on financial resources in respect of both damages and related costs.’<sup>439</sup>

The PSNI is also a party to significant numbers of judicial reviews, many of which, go on to the Court of Appeal and the Supreme Court.<sup>440</sup>

## Non-governmental Organisations (NGOs)

There are several NGOs who advocate on behalf of their clients or the constituencies they serve and many who are concerned with PSNI compliance. For instance:

### The Committee on the Administration of Justice (CAJ):

‘The Committee on the Administration of Justice (CAJ) is an independent, non-governmental human rights organisation that works to ensure that the administration of justice in Northern Ireland is compatible with the highest

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<sup>439</sup> Legacy and Disclosure Branch Report to NIPB March 2023.

<sup>440</sup> For instance, (1) *McQuillan and others*, Supreme Court, 15 December 2021, which concerned the duty on the PSNI and others to investigate deaths which occurred during the troubles and the torture of a number of people during internment in the early 1970s, or (2) *DB v PSNI*, Supreme Court, 1 February 2017, which concerned a successful challenge to the failure of the PSNI to take action to prevent the parades from taking place.

international human rights standards. We aim to be a ‘thinktank with teeth’ – we monitor rights and equality in Northern Ireland and develop and advocate for tangible, rights-based solutions to ongoing and emerging problems.’<sup>441</sup>

### **Amnesty International**

‘Our Belfast office provides a focus for our human rights campaigning, educational work, media and fundraising in Northern Ireland.

We work on regional, national & international human rights issues, giving people in Northern Ireland a way to make their voices heard for justice here & around the world.

Current issues include campaigning to scrap the Northern Ireland Troubles bill, as well as ensure safe routes and mechanisms to access abortion in Northern Ireland.’<sup>442</sup>

### **The Children’s Law Centre**

‘It is founded upon the principles laid down in the United Nations Convention on the Rights of the Child. The Centre works to protect the rights of all children living in NI particularly those who are the most disadvantaged, e.g. children with disabilities, special educational needs, mental ill health, homeless young people.’<sup>443</sup>

### **The Public Interest Law Service Northern Ireland**

We bring local human rights organisations and legal professionals together to ‘Change the world using legal tools.’<sup>444</sup>

### **International Bodies**

There are a number of international bodies that are particularly influential in ensuring the compliance of PSNI (and public bodies more generally) with human rights.

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<sup>441</sup> From their website.

<sup>442</sup> From its website.

<sup>443</sup> From its website. For example, see, Rights Here, Right Now: Children and Young People’s Report to the UN Committee on the Rights of the Child about Children’s Rights in Northern Ireland, January 2023.

<sup>444</sup> From its website. For example, see, ‘judicial review challenged the six-month life expectancy rule for terminally ill social security claimants.’ <https://pilsni.org/casework/lorraine-cox/>. Declaration of interest, the Human Rights Advisor is a Board member of this NGO.

## United Nations Treaty Bodies

There are several key human rights treaties ratified by the United Kingdom that bind the activities of public bodies in Northern Ireland (and throughout the UK):

- [The International Covenant on Civil and Political Rights](#)
- [The International Covenant on Economic, Social and Cultural Rights](#)
- The [International Convention on the Elimination of All Forms of Racial Discrimination](#))
- The [Convention on the Elimination of All Forms of Discrimination against Women](#))
- The [Convention on the Rights of the Child](#)) and
- The [Convention on the Rights of Persons with Disabilities](#))
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>445</sup>

Each of them requires the UK to report on its compliance with the particular treaty every few years, allow civil society to send in their own views on compliance, hold an oral examination session with senior government officials in Geneva and set out their concluding observations on the state's compliance with the treaty. They also allow individual victims of violations to make complaints about the state's compliance with the treaty but the UK only allows this for the treaties concerning women and people with disabilities. There are also several UN officials (Special Rapporteurs) and a Human Rights Commissioner that also can comment on the human rights situations in particular countries.

## Council of Europe

The Council of Europe (COE) is made up of 46 countries from all over Europe (Russia was expelled following its invasion of Ukraine), was set up immediately after the Second World War to promote peace, democracy and human rights in Europe. It has set up a number of important human rights procedures and agreed a number of key human rights treaties. The European Convention on Human Rights and the

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<sup>445</sup> The UK has also ratified a special protocol to this treaty (OPCAT) to prevent ill-treatment and torture in every place of detention and to ensure that every place of detention is regularly visited, monitored and inspected to try to prevent ill-treatment. The Policing Board's Independent Custody Visitors provide part of this function for police custody in Northern Ireland.



European Court of Human Rights<sup>446</sup> are part of this institution. The COE also has a Human Rights Commissioner with powers to investigate and publish reports.

The COE has also set up the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT regularly visits COE countries and inspects their places of detention, publishes reports on conditions and makes recommendations designed to prevent future ill-treatment.

The latest COE key human rights treaty to be ratified by the UK is the Istanbul Convention: Preventing and combating violence against women and domestic violence. This convention also requires the UK to produce reports on compliance with the treaty and is particularly focused on the role of law enforcement agencies (including PSNI) in preventing violence and protecting victims. The UK provided its first report to the GREVIO Committee in June 2023 and the Committee visited Northern Ireland and met with a number of NGOs and others to explore compliance in January 2024.<sup>447</sup>

## Transparency

The media play a key role in holding the PSNI to account and creating pressure on the bodies that hold it to account to initiate action or to require those bodies (including the Policing Board) to act, and this includes the Policing Board.<sup>448</sup> The media organisation 'The Detail' has played a key role in this, focusing as it does on detailed research and freedom of information requests.<sup>449</sup>

Perhaps, as importantly, video recording by members of the public, CCTV and police officers Body Worn Video (BWV) help to ensure human rights compliance and

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<sup>446</sup> There are significant numbers of cases that have found violations of the ECHR involving Northern Ireland in the past and many others that concern the whole of the UK which have yet to be remedied in Northern Ireland. See, for instance, *The European Convention on Human Rights and the Conflict in Northern Ireland*, Prof Brice Dickson, 2009, OUP.

<sup>447</sup> Report submitted by the UK pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report), 30 June 2023. Policing in NI does not feature particularly prominently but is referenced on pages: 4, 11, 22, 25, 44, 49, 54, & 65.

<sup>448</sup> See for example the recent widespread media concern over the covert surveillance of a journalist by PSNI even though this occurred over ten years ago, July 2023 or the unintentional disclosure of the details of PSNI staff and officers in August 2023 and the subsequent independent review of the PSNI's systems.

<sup>449</sup> For instance, 'Almost twice the number of Catholics as Protestants arrested and charged by PSNI', 9 December 2021. The FOI request appeared to provide evidence for the first time of community background 'disproportionality' to senior officers and the Policing Board.

increase the understanding of the public about the difficult role of officers.<sup>450</sup> The Human Rights Advisor, officials and Board Members acknowledged a shift in their attitudes and, perhaps a more in depth understanding, following the viewing of the BWV of a sample of applications of Spit and Bite Guards<sup>451</sup> and use of CEDs<sup>452</sup>

Unfortunately, the capture of partial recordings of officers' actions may or may not show the whole picture and/or the context of the police operation or can result in unjustified pressure on senior officers or others.<sup>453</sup>

An Executive Summary and Table of Recommendations and Responses from 2015 to 2023 have been published on the 2<sup>nd</sup> July 2024 to supplement this report.<sup>454</sup>

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<sup>450</sup> For more information on the use of BWV by PSNI see the Human Rights Annual Report 2019/20, page 33.

<sup>451</sup> A Review of PSNI's use of Spit and Bite Guards by the Policing Board, February 2022.

<sup>452</sup> [Human Rights Review of PSNI's Use of Force](#), January 2023.

<sup>453</sup> See the media controversy and subsequent actions by the PSNI overturned by the High Court, In the Matter of an application by 'JR168' and 'JR168a'.

for Judicial Review, the officers suspended and re-positioned, 29 August 2023.

- <sup>454</sup> [The summary document can be found here.](#)
- [The table of human rights recommendations from 2015 to 2023 and PSNI responses can be found here.](#)



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**Northern Ireland Policing Board  
5 Year Human Rights Review**

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