

MONITORING THE COMPLIANCE OF  
THE POLICE SERVICE OF NORTHERN IRELAND  
WITH THE HUMAN RIGHTS ACT 1998

# HUMAN RIGHTS

ANNUAL REPORT 2005



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# INTRODUCTION

## INTRODUCTION

The coming into force of the Human Rights Act 1998 marked a turning point in the protection of human rights in the UK. All public authorities - including the police - are now under a duty to act in a way which is compatible with the individual rights and freedoms contained in the European Convention on Human Rights. In Northern Ireland this goes hand in hand with Patten Recommendation 1, which requires the Police Service of Northern Ireland (PSNI) to focus policing in Northern Ireland on a human rights approach.

The Human Rights Act provides individuals with remedies if a public authority breaches their human rights, but it does not set up a mechanism for monitoring compliance with human rights. In most cases, if monitoring occurs at all, it is on a voluntary ad hoc basis. The position for the Police Service of Northern Ireland is different. The Police (Northern Ireland) Act 2000 requires the Policing Board to monitor its performance in complying with the Human Rights Act. As far as we are aware, no similar duty has been placed on any other police oversight body anywhere else in the UK. The monitoring exercise carried out by the Policing Board in Northern Ireland is therefore significant in two respects. First because it is an important aspect of the PSNI's compliance with human rights. Second because the discharge of the Policing Board's statutory duty deserves examination in its own right as an exercise in how human rights can be monitored effectively. This report is very much the first of its kind.

We were appointed in February 2003 to advise the Policing Board how to meet its statutory duty to monitor the compliance of the PSNI with the Human Rights Act. After extensive consultation with Board members, the PSNI and other interested parties, we devised a framework document that was published in December 2003. It committed the Policing Board to an examination of human rights compliance in no less than twelve separate areas of the PSNI's work. We are pleased to report that the examination in each of those areas has been completed. Each chapter in this report covers one of the areas examined.

Human rights monitoring is an ongoing process and it is our intention to add further aspects of the PSNI's work to scrutiny in 2005/6. In particular, the Policing Board is already committed to work in the areas of privacy, data protection and District Policing Partnerships. Our analysis of human rights compliance in these areas has already begun, and will be included in our second annual report. We also intend to expand our examination of the PSNI's work in respect of victims' rights in our second report and to deal with the issue of notifiable memberships.

In the framework document published in December 2003, the Policing Board agreed that the human rights monitoring process should be informed by three broad principles. First that it is the PSNI's performance as a whole that is being monitored. Second that the process of monitoring should be dynamic and one in which the PSNI feels that there is a positive dialogue between it and the Policing Board, which recognises and addresses problems as they arise. Third, that the process of monitoring should not be retrospective: what the legislation requires is monitoring of the PSNI's compliance with the Human Rights Act, not how well the police may or may not have complied with their obligations in the past.

Those principles have served us and, we hope, the PSNI well. During the course of the year (2004), we spent a great deal of time talking to those responsible for the PSNI's work on human rights, examining numerous documents and observing events and incidents as they happened. We have also spent a great deal of time with those affected by the PSNI's work and consulted interested parties regularly. It is a tribute to the PSNI that in carrying out our work, we have not been refused access to any officer or to any incident or event that we have wanted to observe. We have also been given unrestricted access to any documentation we have asked to inspect. Such an open, transparent approach to policing is unprecedented.

This report sets out the details of our findings. It is deliberately comprehensive. Our findings will only command support if those reading this report can follow our working and assess whether we have reached sound conclusions. We hope the detail will also be of assistance to the PSNI. Our shared objective is to ensure the fullest compliance with human rights in everything the PSNI does.

We have made a large number of recommendations. That does not mean that we have found widespread lack

of compliance with the Human Rights Act. We have not. In many respects we have been very impressed with the work the PSNI has undertaken in the human rights field. In our view it has done more than any police service anywhere else in the UK to achieve human rights compliance. The large number of recommendations reflects the principle set out above, namely that the monitoring process should be a dynamic dialogue which recognises and addresses problems as they arise.

The publication of this report was delayed slightly because, in the aftermath of the Ardoyne parades in 2004 (which we observed and examined in depth), we were asked to write a special report for the Policing Board. That report was published in November 2004 and in it we made a number of observations about the scope of the Public Processions (Northern Ireland) Act 1998. The Government has recently announced its intention to lay an Order in Council before Parliament to amend that legislation. We will monitor how this affects the policing of parades when we return to that aspect of the monitoring exercise later this year.

We have already recorded the open way in which the PSNI as a whole facilitated our work. It would be impossible to list all of the individuals who assisted us here. However, we are particularly indebted to ACC Judith Gillespie, Inspector Philip Shepherd and Andrea Hopkins. Without their help the monitoring exercise reflected in this report would not have happened. Their understanding of and commitment to human rights is an asset that the PSNI rightly values. It is also necessary to record the important contribution of ACC Kinkaid, ACC McCausland, ACC Sheridan and ACC Toner. They have each approached our work in the spirit of dialogue that we have been so keen to engender. It goes without saying that the access we have had to these officers could not have happened without the support of the Chief Constable and Deputy Chief Constable. Last, but not least, we owe special thanks to the staff of the Policing Board, for their tireless work assisting us and ensuring the publication of this report.

**Keir Starmer QC**

**Jane Gordon**

# EXECUTIVE SUMMARY

## CHAPTER 1: THE PSNI PROGRAMME OF ACTION

The Police Service of Northern Ireland (“PSNI”) Programme of Action was published on 10th September 2004.<sup>1</sup> The Human Rights Programme of Action is divided into seven sections dealing with basic values, staff, training, management practice, operational policing, structure and accountability. In each section, initiatives that have been completed or that are ongoing are set out. We are very impressed by many of the initiatives taken by the PSNI to promote and protect human rights. These initiatives go well beyond those adopted by most other police services/forces in England, Scotland and Wales, and probably go well beyond any policing initiatives in Europe.

The express purpose of the “Programme of Action” recommended by Patten was to ensure, on an on-going basis, that the police act within the law and respect human rights, both in the technical sense and in the behavioural sense<sup>3</sup>. In our view the intention was that a permanent framework should be set up to ensure that policing in Northern Ireland is and remains focused on a human rights-based approach. The expression “programme of action”, which connotes targets and time-lines for achievement, reflects an obligation to ensure that the framework be set up within a relatively short time frame.

Understood in that way, many aspects of the programme of action envisaged by Patten<sup>2</sup> Recommendation 1 have already been achieved (because the component parts of the framework are in place) and the PSNI Human Rights Programme of Action should be seen for what it is a - report on the implementation of that programme of action, rather than being a separate programme of action as such itself.

Against that background, it is our view that careful consideration has to be given to the appropriate arrangements for ensuring that human rights *remains* the focus for policing in Northern Ireland in the long term. We suggest that the PSNI should consider the following arrangement.

Rather than drawing up further “programmes of action” under Patten Recommendation 1, the PSNI should treat Recommendation 1 as an obligation to put in place and maintain an overall framework for human rights compliance. What would then be most effective in ensuring that human rights remains the focus for policing in Northern Ireland in the long term would be an undertaking by the PSNI to draw up a *specific* programme of action on an annual basis to respond to the Policing Board’s recommendations in respect of the PSNI’s duty to comply with the Human Rights Act 1998 (the “Human Rights Act”). What is needed is a clear set of targets, with equally clear time-lines, designed to tackle the issues identified by the Board as important to the on-going task of achieving a human rights compliant police service in Northern Ireland.

In July 2004, the PSNI indicated its broad agreement to this proposal, whilst reserving the right to take human rights initiatives going beyond those recommended by the Policing Board. We welcome that indication, which marks a very positive step in the dialogue between the Policing Board and the PSNI that we hope to achieve through the process of monitoring the performance of the PSNI in complying with the Human Rights Act.

### The Performance Indicators of the Oversight Commissioner

The Board’s Monitoring Framework<sup>4</sup> commits it to consideration of the PSNI Human Rights Programme against the four performance indicators drawn up by the Office of the Oversight Commissioner.

Performance indicator (1) appears to us to have been satisfied. Responsibility has been assigned to ACC Criminal Justice as the Human Rights Champion. Performance indicator (2) requires some thought. In our view, the PSNI should assign responsibility internally for reviewing its Programme of Action and drawing up the programme for responding to the Policing Board’s recommendations in respect of the PSNI’s duty to comply

#### NOTES

- 1 It is now available electronically on the PSNI website and intranet.
- 2 Recommendation 1 of the Report of the Independent Commission for Northern Ireland. *A New Beginning: Policing in Northern Ireland*, September 1999 (the “Patten Report”). The Independent Commission was established on 3rd June 1998 as part of the Agreement reached in Belfast on 10th April 1998. Its Terms of Reference are set out in the Agreement. The Patten Report made in total 175 Recommendations regarding policing in Northern Ireland.
- 3 Patten Report, paragraph 4.13.
- 4 Northern Ireland Policing Board, *Monitoring PSNI Compliance with the Human Rights Act 1998*, December 2003 (the “Monitoring Framework”) published pursuant to the Policing Board’s monitoring duty under s.3(3)(b)(ii) of the Police (Northern Ireland) Act 2000. The Monitoring Framework is available at [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk).

with the Human Rights Act. Performance indicator (3) appears to us to have been satisfied, if the programme of action is treated, as we suggest, as an obligation to put in place and maintain an overall framework for human rights compliance. As regards the fourth performance indicator, it may be appropriate for the PSNI to raise with the Oversight Commissioner the question of whether this performance indicator has been met or, more fundamentally, whether it remains a useful benchmark.

## CHAPTER 2: TRAINING

The PSNI introduced some initial human rights training before the Human Rights Act came into force, including a two-day seminar for PSNI training staff in December 2001 at Queen's University Belfast. Since then, there has been a specific one-day human rights module on the PSNI trainers' course, which is now delivered by the PSNI human rights legal adviser. During 2001, human rights training was also delivered to all police officers and 'front line' support staff as a one-day course. A human rights module was also included in the training for student officers and part time reserve officers.

More fundamentally, as a direct response to Patten Recommendation 142, the PSNI devised the *Course for All*, which was delivered to all members of the PSNI, both police and civilian, between November 2002 and 29 April 2003. Apart from the now-concluded *Course for All*, the PSNI has no human rights specific courses, nor does it run any refresher human rights training courses. Recruit training includes a distinct human rights element.

PSNI training has been subjected to both external and internal evaluation. The most comprehensive external evaluation has been carried out by the Northern Ireland Human Rights Commission (the "Human Rights Commission"). We have not been able to conduct our own comprehensive monitoring of the actual delivery of human rights training for the purposes of this report.

For the purpose of our scrutiny of human rights training we had a number of in-depth and informative meetings with PSNI Training, Education and Development. We were also provided with the course material for the *Course for All*, course material for the training of new recruits, and course material for on-going training on selected issues to assess how effective this process has been.

### HUMAN RIGHTS SPECIFIC TRAINING: THE COURSE FOR ALL

The *Course for All* met the target set by Training, Education and Development that 85% of all officers should be trained on the course. Taking police officers and civilian staff together, over 11,000 individuals attended the course from its commencement in November 2002 to its conclusion in April 2003.

The *Course for All* was externally evaluated by the Human Rights Commission. Its report was published in April 2004. In the overview to its report, the Human Rights Commission noted that the *Course for All* was a bold venture, requiring a firm commitment from the organisation and its trainers. However, the Human Rights Commission was concerned that human rights awareness was not fully integrated into the course. It was also concerned that the coverage of the Code of Ethics lacked depth. Few, if any, examples of potential breaches of the Code were given, and the European Convention on Human Rights was barely mentioned.

We agree that the *Course for All* was a bold venture. However, we are concerned about how effective the *Course for All* was in achieving its objectives, particularly since the PSNI has no plans to re-run the course either in its original format or in an updated format. Nor has the PSNI any plans to run any similar course and, as noted above, the PSNI has no human rights specific courses.

### INTEGRATED HUMAN RIGHTS TRAINING: RECRUIT TRAINING

#### Student Officer Training

The Student Officer Training Programme represents the first stage in a four stage training process, which extends over a period of 125 weeks. Overall, the Student Officer Training Programme covers a period of 21 weeks and comprises the following six modules: (1) Police and Community Relationships; (2) Criminal Justice System; (3) Crime; (4) Traffic; (5) General Police Duties and; (6) Organisational Effectiveness. We were provided

with the course materials for the Student Officer Personal Safety Programme.

In March 2002, the Human Rights Commission was invited to evaluate the human rights elements of the Student Officer Training Programme. It reported in November 2002, making a number of recommendations<sup>5</sup>. In April 2003, the PSNI responded positively to most of the recommendations made by the Human Rights Commission. In March 2004, the Human Rights Commission reported, "in general, those recommendations have met with a positive reaction from the PSNI".<sup>6</sup>

### **Probationary training**

The probationary period commences with a nine-week Operational Development Programme. Subject areas include the use of firearms, tactics, driver, search and communications training.

In March 2004, the Human Rights Commission published its report on the Probationer Constable Training Programme<sup>7</sup>. One concern the Human Rights Commission had was that trainees were not being offered practical guidance to assist them to judge the degree of force which might be proportionate to particular circumstances. This is an important issue that needs to be tackled by the PSNI as soon as possible. The Human Rights Commission also made the point that only passing reference was made to positional asphyxia in the conflict resolution skills course.

### **INTEGRATED HUMAN RIGHTS TRAINING: OTHER AREAS**

As part of our scrutiny of the effectiveness of the PSNI's integration of human rights principles in other course materials, we examined the training material for the following courses: (1) the use of firearms and force; (2) baton gun training; (3) public order training; (4) crime training (interviewing); (5) crime training (advanced interviewing); (6) custody officer training and (7) observation skills.

Our analysis of the course material for new recruits and ongoing training demonstrates that some of the PSNI's training material has integrated human rights principles effectively. Other training material falls far short of what is required. It is clear that the integration of human rights principles requires more work.

### **EXTERNAL AND INTERNAL EVALUATION OF TRAINING**

The need for proper auditing has been emphasised several times in recent years. When the Human Rights Commission published its report on the Probationary Constables course in March 2004, it was concerned that PSNI internal evaluation of learning events was merely a paper exercise. We have been informed that a Human Rights Audit and Observation Project Team has now been established to observe and assess, through random spot checks, training delivery and to identify good and bad teaching practices. We have been instructed that an initial schedule of lessons has been agreed by the Project Team for observation as part of its human rights audit. Observation sessions are due to commence in early Spring 2005. This is a welcome initiative.

However, in our view, there continues to be a need for external evaluation of the delivery of training.

## **CHAPTER 3: POLICY**

When the Human Rights Act came into force in 2000, an initial audit of PSNI policies was conducted by the PSNI Human Rights Unit. Having discussed the audit carried out in 2000 and the subsequent working arrangements, we consider that the audit was satisfactory for the purposes of identifying and remedying significant non-compliance with the Human Rights Act. Since then, it has been the duty of policy writers to ensure that any new or amended policy is human rights compatible. The task has been regulated by the General Order on Policy, Procedure and Guidance since June 2004 (discussed further below).

The vast majority of general orders have now been added to the PSNI intranet site, where they are

#### **NOTES**

<sup>5</sup> *An Evaluation of Human Rights Training for Student Police Officers in the Police Service of Northern Ireland*, November 2002.

<sup>6</sup> *Human Rights in Police Training, Report Three, Probationer Constables and Student Officers*, March 2004.

<sup>7</sup> *Human Rights in Police Training, Report Three, Probationer Constables and Student Officers*, March 2004.

electronically indexed and accessible through a search facility. By April 2004, 841 general orders were available on the intranet. This is a significant achievement. There are, however, several issues that still need to be addressed. First is the question of updating. At the moment there is no automatic system by which the policies on the intranet are updated when changes are made. The second issue that needs to be addressed relates to policies that are considered too sensitive to be generally available on the PSNI intranet, for example some of the policies on covert policing.<sup>8</sup> Thought needs to be given to how these are to be indexed, updated and kept. The final issue that needs to be addressed is whether some of the policies currently available on the PSNI intranet site could not be made available to the public, perhaps on the PSNI website. We note, for example, that the PSNI's policy on the use of force is now available on its website. We can see no reason in principle why many more of the PSNI's core policies should not be available to the public.

## **CURRENT ARRANGEMENTS: PSNI GENERAL ORDER ON POLICY**

The General Order on Policy, Procedure and Guidance was adopted in June 2004. PSNI policy is defined as a "statement of principle defining expected organisational behaviour, promoting PSNI values, the Chief Constable's Vision Statement and policing objectives. Policy is the framework from which procedure or guidance flows." Procedure and guidance form the second tier in the framework.

The General Order on Policy, Procedure and Guidance sets up a rigorous and impressive framework for ensuring that all PSNI policy is clear, consistent and human rights compliant. It is an excellent initiative. The intention is that all PSNI policy and associated procedures and guidance "will be created, disseminated and reviewed" in accordance with it.

## **The Policy Writers Course**

The Human Rights Auditing for Policy Writers Course is run by an external trainer. Four courses have so far been held, in February 2002, April 2003, March 2004 and February 2005. This training is intended to equip policy makers with the necessary skills to audit policies for human rights compliance. This course is currently the only human rights training provided for policy drafters. We observed the Course held on 10th and 11th March 2004.

## **POLICY AUDIT**

We have audited all PSNI policies concerning public order, the use of force and covert policing. Our findings in respect of those policies are set out in the chapters of this report dealing with those issues.<sup>9</sup> We have also audited policies on the following twelve randomly selected subject areas:

- (a) deaths in custody;
- (b) investigations into unexplained deaths;
- (c) bail and arrest;
- (d) disclosure;
- (e) relations with the military;
- (f) complaints;
- (g) transparency;
- (h) equalities;
- (i) children;
- (j) victims;
- (k) the role of defence lawyers;
- (l) operational briefing.

We recognise that the PSNI has embarked on a major exercise in adopting the General Order on Policy, Procedure and Guidance and that many of the policies that we audited will be reviewed under the General Order in the near future. For this reason, we do not make detailed findings on the human rights compliance of

### **NOTES**

<sup>8</sup> Discussed further in chapter 9 of this report.

<sup>9</sup> Public order is discussed in chapter 7, the use of force is discussed in chapter 8 and covert policing is discussed in chapter 9.

these policies. However, our audit confirms the need for the review of all policies against the General Order on Policy, Procedure and Guidance.

## **CHAPTER 4: OPERATIONS**

In the context of our work on public order, we observed the planning and execution of three live operations – the 2004 policing operations for the 1st July Short Strand parade, the 4th July Drumcree parade and the 12th July Ardoyne parades. Each of these involved a great deal of long-term planning and our findings in respect of them are set out in Chapter 7. We also observed the final stages of an operation involving covert surveillance of a small team of counterfeiters.

### **INVOLVEMENT OF THE PSNI LAWYERS IN OPERATIONAL MATTERS**

There is no system in the PSNI whereby human rights issues that arise during the planning and control of operations are automatically referred to the legal services department. The system is essentially ad hoc, with PSNI officers contacting the legal services department and the PSNI human rights legal adviser as and when they consider that they need advice on a specific matter. On some occasions, however, referrals to the legal services department are more formalised. This is particularly so for operations which involve a great deal of long-term planning such as the policing operations for parades.

Having discussed the current arrangements with PSNI officers responsible for planning and controlling operations and with various members of the PSNI legal services department, it seems that the arrangements work well. However, in our view the arrangements could be improved if relevant operational policies gave clearer guidance to PSNI officers about when they should refer matters to the PSNI legal services department.

### **MONITORING OF LIVE OPERATIONS**

As noted above, we observed a total of four live operations. Three of those operations arose in the context of our work on public order and we set out our findings in relation to them in Chapter 7. The fourth live operation we observed involved covert surveillance of a small team of counterfeiters.

In respect of this fourth operation, we attended the operational briefing given to officers before they were deployed on surveillance duties. The briefing was clear and comprehensive. The coverage of human rights issues was impressive. If all operational briefings are to this standard, that would be a considerable achievement within the PSNI. We also reviewed all the Regulation of Investigatory Powers Act 2000 (“RIPA”) authorisation forms relating to the fourth operation. These had been obtained for covert video surveillance. Subject to the limitations already referred to, we were satisfied that, in terms of the operational documentation reviewed, the briefing attended and our observance of the initial stages of this operation, that human rights considerations were properly taken into account in the planning and execution of the operation. However, we are not in a position to comment on the human rights compliance of the completion of the operation.

The fact that we were unable to carry out random and unannounced observations of live operations this year prevents us from commenting on that wider issue.

### **AFTER THE EVENT PRESENTATIONS ON OPERATIONS**

As noted above, as part of our work on operations, we were given short presentations by PSNI officers responsible for four covert operations. The nature of those operations, and the fact that legal proceedings are outstanding in relation to some of them, prevent us from disclosing anything but the general nature of the operation in this respect.

#### **Operation 1**

The first operation included alleged paramilitary intimidation and extortion. A PSNI undercover agent carried out the operation with a back-up group of officers located close to him to provide protection. The undercover agent was equipped with CCTV and audio surveillance. We viewed some of the resulting CCTV footage, listened to some of the exchanges recorded and reviewed all the RIPA authorisation forms relating to the operation. We were also briefed by one of the officers involved in the planning and implementation of the operation. Acknowledging as we do the limitations on our evaluation of this operation, we are satisfied that human rights considerations

appear to have been taken into account at the relevant steps of the planning and control of this operation.

## Operation 2

This operation related to the importation of illegal drugs into Northern Ireland, raising potential issues of national security, public safety and public health. The operation involved PSNI liaison with law enforcement agencies in other jurisdictions as well as other law enforcement agencies in Northern Ireland. Directed visual and audio surveillance was employed. We reviewed all the RIPA authorisation forms relating to the operation. We reviewed excerpts from the covert video and audio surveillance obtained as a result of the operation and were briefed by one of the officers involved in the planning and implementation of the operation. Again acknowledging the limitations of our evaluation, we are satisfied that human rights considerations appear to have been taken into account at the relevant stages of the planning and control of this operation.

## Operation 3

This operation involved the movement of firearms. It also involved the military and required close liaison between the military and the PSNI surveillance teams. Directed surveillance was authorised and took the form of visual and audio surveillance. Interference with property for the purposes of direct surveillance was also authorised. We reviewed all the RIPA authorisation forms relating to the operation and were briefed by one of the officers involved in the planning and implementation of the operation. Again acknowledging the limitations of our evaluation, we are satisfied that human rights considerations appear to have been taken into account at the relevant stages of the planning and control of this operation.

## Operation 4

This was a covert surveillance operation against paramilitaries operating close to the border with the Republic of Ireland. It was a large-scale operation, with overt and covert sources. Covert direct surveillance was authorised, as was interference with property. Again, we reviewed all the RIPA authorisation forms relating to the operation and were briefed on the execution of the operation by one of the officers involved in the planning and implementation of the operation. Again acknowledging the limitations of our evaluation, we are satisfied that human rights considerations appear to have been taken into account at the relevant stages of the planning and control of this operation.

We are grateful to the PSNI for facilitating this aspect of our work. However, we are very aware that after-the-event presentations are no substitute for the unannounced observation of live operations.

## PSNI STOP AND SEARCH POWERS

While not an 'operation' as such, the Policing Board examined the PSNI policy on stops and searches and other such actions taken under emergency powers in accordance with Patten Recommendation 61. We examined the procedures in place for ensuring consistency of approach and standards amongst PSNI officers.

In October 2004,<sup>10</sup> the PSNI issued a new policy on monitoring the use of emergency powers under the Terrorism Act 2000. In addition, the PSNI has introduced a standard form to record the use of stop and search powers under the Police and Criminal Evidence (NI) Order and both the s.84 stop and search and s.89 stop and question powers of the Terrorism Act. District Commanders are responsible for monitoring the use of the powers. They are also required to make a quarterly statistical Terrorism Act return to Central Statistics.

We consider that this comprehensive reporting procedure is critical to protect the human rights of individuals on whom powers are exercised, as well as those of officers involved in stops and searches.

## INTEGRITY TESTING

The Board's Human Rights Advisors undertook to monitor the results of any random checks to monitor the behaviour of PSNI officers in dealing with the public and their integrity in accordance with Patten Recommendation 81. The PSNI has no general integrity policy or standard system of integrity testing. Officers in relation to whom a concern has been raised are integrity tested on an individual and ad hoc basis.

### NOTES

<sup>10</sup> In response to Patten Recommendation 61, section 104 of Part VII of the Terrorism Act 2000 and the Stephen Lawrence Inquiry (MacPherson report).

## CHAPTER 5: ADHERENCE TO CODE OF ETHICS

A Code of Ethics was agreed and brought into force on 14 March 2003.<sup>11</sup> It governs all police conduct on or after 14 March 2003. The Code of Ethics sets out the principles that are intended to govern the conduct of all police officers. It applies to all members of the PSNI, whether on or off duty, and regardless of rank, as well as all members of the PSNI Reserve, whether part-time or full-time. Any breach of the principles set out in the Code of Ethics can give rise to a disciplinary investigation.

The Code of Ethics is unique as a police disciplinary code based entirely on human rights principles. From a human rights perspective, the Code of Ethics is an important and significant initiative. The PSNI is the first police service or force anywhere in Europe to have adopted such an overtly human rights based approach to conduct and discipline.

However, the Code of Ethics will be totally ineffective if it fails in its stated intentions of laying down standards of conduct and practice for police officers and making police officers aware of the rights and obligations arising under the European Convention on Human Rights. That raises the question of enforcement.

Awareness of the requirements of the Code of Ethics is the first step towards enforcement. It is the duty of the Chief Constable<sup>12</sup> to take such steps as he considers necessary to ensure that all officers have read and understood the Code of Ethics.<sup>13</sup>

As we note in Chapter 12, many PSNI officers appear to be reasonably familiar with the basic human rights principles that underpin the Code of Ethics. However, when police officers discussed the Code of Ethics in the focus groups that we set up to gauge human rights awareness in the PSNI,<sup>14</sup> they were vague about its contents and requirements. While all officers say they are familiar with the Code of Ethics, few were able to demonstrate that they had read and understood it.

## CHAPTER 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS

### The complaint and disciplinary framework

In relation to complaints about, and discipline of, PSNI officers, different procedures exist according to the type of misconduct alleged and the origins of the complaint. Any complaint about the conduct of a member of the PSNI, which is made by or on behalf of a member of the public, is referred to the Police Ombudsman, whereas internal allegations of misconduct are dealt with by line managers in the PSNI and, where necessary, by the Internal Investigations Branch of the PSNI. Where, after investigation of a complaint, the Police Ombudsman recommends that disciplinary proceedings should be brought, responsibility for implementing those recommendations lies with the Internal Investigations Branch.

The Police Ombudsman also has power to investigate certain matters where there has been no complaint from a member of the public, including where it is in the public interest that there is an investigation. Whenever a case is investigated as a result of these referral powers, the Police Ombudsman produces a Regulation 20 report<sup>15</sup> on completion of her investigation.

### THE NUMBER AND PATTERN OF COMPLAINTS

In the period April 2003 to March 2004, 2,976 complaints were made, which shows a downward trend from 3,590 in 2001 and 3,340 in 2002.<sup>16</sup> There has also been a change in the seriousness of the nature of the

#### NOTES

- 11 Further to s.52 (1) of the Police (Northern Ireland) Act 2000, which required the Policing Board to issue a Code of Ethics laying down standards of conduct and practice for police officers and making them aware of the rights and obligations arising under the Human Rights Act.
- 12 Under Section 52(f) of the Police (Northern Ireland) Act 2000.
- 13 And that a record is made and kept of the steps taken in relation to each officer.
- 14 See Chapter 12.
- 15 So called because the duty to submit them arises under Regulation 20 of the Royal Ulster Constabulary (Northern Ireland) Act Regulations 2000.
- 16 Police Ombudsman's Annual Report, April 2003 to March 2004, p.5.

allegations made about police conduct and a reduction in the use of force allegations from 50% to 34%.<sup>17</sup>

The total number of allegations made in the complaints received in the period April 2003 to March 2004 was 4,196. While this number of allegations is very similar to that of previous years,<sup>18</sup> there are discernable patterns. As with complaints, the trend for allegations of oppressive behaviour is downward: 49% in 2000-2001, 48% in 2001-2002, 40% in 2002-2003 and 37.4% in 2003-2004. But the trend for failure of duty allegations is upward: 23% in 2000-2001, 23% in 2001-2002, 26% in 2002-2003 and 31% in 2003-2004. Figures supplied to the Policing Board by the Police Ombudsman for the period April-June 2004 confirm these trends.<sup>19</sup>

## OUTCOMES

When a complaint is made to the Police Ombudsman's office, there are a range of possible outcomes, which will depend on the nature of the complaint and on evidence gathered by the Police Ombudsman's investigators during their enquiries.

### Prosecutions

A total of 174 files were submitted to the Director of Prosecutions in the period April 2003 to March 2004. 164 of those recommended that no further action be taken. In 10 other cases involving 8 officers, 10 charges were recommended. The level of seriousness of the offences recommended has dropped.

### Formal disciplinary action

If formal disciplinary proceedings result in a police officer being found guilty of misconduct, the disciplinary tribunal can recommend a number of sanctions varying in gravity. In the period April 2003 to March 2004, the Police Ombudsman recommended that formal disciplinary hearings be held in 11 cases involving 12 officers and 15 misconduct charges.

### Informal disciplinary action: advice and guidance

In the period April 2003 to March 2004, the Police Ombudsman recommended that advice and guidance be given in 39 cases, involving 58 officers. Advice and guidance was given to 52 officers and rejected in relation to one officer.

### Informal disciplinary action: Superintendent's written warning

In the period April 2003 to March 2004, the Police Ombudsman recommended that Superintendent's written warnings be given in 8 cases, involving 10 officers and 12 warnings.

### Informal resolution

Complaints about less serious matters may be resolved by informal resolution, but only if the complainant agrees. In the period March 2003 to April 2004, 400 complaints were informally resolved.<sup>20</sup>

### Not substantiated, ill-founded or vexatious complaints

In the period April 2003 to March 2004, 360 complaints were closed following investigation because they were not substantiated, 269 complaints were dismissed as ill-founded<sup>21</sup> and 66 complaints were dismissed on the basis that they were vexatious, anonymous or repetitive, or an abuse of process (2% of all complaints).<sup>22</sup>

### Extracting information about human rights compliance

The vast majority of complaints and allegations do not result in adverse findings. As noted above, of the 3,077 complaints closed in the period April 2003 to March 2004, only ten cases resulted in a recommendation by the Police Ombudsman that criminal charges should be brought, and a recommendation that formal disciplinary proceedings be brought was only made in eleven cases. Even allowing for an element of double counting, that

#### NOTES

<sup>17</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.5.

<sup>18</sup> Police Ombudsman's Annual Report, April 2002 to March 2003, p.18

<sup>19</sup> Statistics provided in June 2004.

<sup>20</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

<sup>21</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

<sup>22</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

represents no more than 0.7% of all the complaints closed in that period.

Lesser measures such as informal disciplinary action were recommended in a larger number of cases, but the figures are still low. In the period April 2003 to March 2004, the cases resulting in a recommendation of (1) advice and guidance or (2) a Superintendent's written warning together only represented 1.7% of all the complaints closed in that period.

The Police Ombudsman has concerns about cases where allegations of misconduct are substantiated but the particular PSNI officer involved in the incident remains unidentified. These cases constitute a small number of complaints that indicate definite breaches of human rights.

## **PSNI TRACKING OF COMPLAINTS AND ALLEGATIONS**

Patten Recommendation 79 requires the PSNI to adopt an automated trend identification system for complaints and Patten Recommendation 80 requires the PSNI to track this information and use it for management purposes. To comply with these recommendations the PSNI has adopted a policy on trending and tracking complaints.<sup>23</sup> This is an important initiative.

## **REGULATION 20 REPORTS**

The PSNI has set up a Committee for the oversight of PSNI responses to Regulation 20 reports produced by the Police Ombudsman (the "Regulation 20 Committee"). The Regulation 20 Committee is tasked to review all of the Regulation 20 reports made by the Police Ombudsman and to ensure that all actions, recommendations or other matters raised in the reports are properly considered and discharged.

Drawing this material together, it is clear that the Regulation 20 reporting system works well on the whole. The positive findings of the Police Ombudsman are welcome; the negative findings have been met with acceptable responses from the PSNI Regulation 20 Committee. In monitoring the performance of the PSNI in complying with the Human Rights Act, it is important that the Policing Board keeps itself fully informed of the issues being raised by the Police Ombudsman and of the adequacy of the PSNI responses.

However, of particular concern in relation to the Regulation 20 reports into the discharge of personal issue firearms is the fact that, in two cases, the Police Ombudsman recorded that the police officer in question had not attended the firearms refresher training required by PSNI policy.<sup>24</sup> The Regulation 20 reports also indicate that there has been at least one occasion where no misconduct proceedings were brought in respect of serious adverse findings by the Police Ombudsman (in this instance, the unjustified discharge of personal firearms) because the officer in question retired from the PSNI before such proceedings could be commenced or completed. Such instances are obvious causes of concern.

## **PSNI: INTERNAL DISCIPLINE**

Internal allegations of misconduct are dealt with by line managers in the PSNI and, where necessary, by the Internal Investigations Branch.

The statistics showing the outcomes of internal disciplinary proceedings for the years, 2001-2002, 2002-2003 and 2003-2004 indicate that full-time constables face more disciplinary charges than other officers, followed reasonably closely by reserve constables. They also disclose that the most common sanctions imposed are fines or reprimands, and that a small number of officers are either dismissed or required to resign every year. Since March 2003, a breach of the PSNI Code of Ethics can lead to disciplinary proceedings. To date, only two disciplinary hearings have been completed based on breaches of the Code of Ethics. There were adverse findings in both cases.

### **NOTES**

<sup>23</sup> General Order on Trending and Tracking of Complaints against Police, 38/2004 issued on 28th June 2004.

<sup>24</sup> The Use of Firearms Policy, General Order 61/2001, analysed at pages 107-108 of this report.

## CIVIL CLAIMS AGAINST THE POLICE

The usefulness of statistical information relating to civil cases against the police in assessing the performance of the PSNI in complying with the Human Rights Act in the period covered by this report is limited by the long delay in legal proceedings.

In our view, all civil cases against the PSNI that are lost or settled should be reviewed, whether they raise important issues of policing policy/practice or not. In addition to straightforward civil cases, there are a growing number of judicial review cases being brought against the PSNI. Often these involve important questions of policy and practice.

## CHAPTER 7: PUBLIC ORDER

In monitoring the performance of the PSNI in complying with the Human Rights Act, the Policing Board undertook to review all PSNI policies relating to public order. In addition, it committed itself to an after-the-event review of several parades that had taken place in 2003, and to a first-hand review of several parades in 2004. As a result of the very serious concerns raised by a number of individuals and groups about certain aspects of the 12th July Ardoyne parades in 2004, we were asked by the Policing Board to produce a special report on the policing of these parades in advance of this full report on the performance of the PSNI on complying with the Human Rights Act.

As part of our first hand review of parades in 2004, we attended the planning meetings for the 2004 parades at Ardoyne, Drumcree, Dunloy, Short Strand and Whiterock. We attended selected parades at Ardoyne, Drumcree and Short Strand, observing police operations from the ground and from the command rooms. We also attended the PSNI Debrief for the 2004 parades season 2004 on 6th September 2004.

### PUBLIC ORDER POLICIES

The Human Rights Policy in Relation to Public Events (the “Public Order Policy”)<sup>25</sup> was issued on 6 June 2000. Its purpose is to establish PSNI policy in relation to public events, including public processions, in compliance with the principles of the Human Rights Act and other international human rights instruments. The Code of Practice<sup>26</sup> for Public Events provides the framework for the strategy and planning of public events and an accountable audit trail in respect of strategic, planning and implementation processes.

The PSNI General Order on Protest Activity in Public Thoroughfares (the “Protest Activity Policy”) issued on 2 May 2003<sup>27</sup> sets out PSNI policy on policing protest activity that involves the obstruction of public thoroughfares. We were impressed by the Protest Activity Policy. It is clear and comprehensive.

The PSNI General Order on Public Processions (Northern Ireland) Act 1998 and the Parades Commission issued on 30 May 2000<sup>28</sup> sets out the revised arrangements for the interaction between the PSNI and the Parades Commission.

The PSNI General Order on Public Order Tactical Advisers issued on 18 March 2004 (the “Tactical Advisers Policy”)<sup>29</sup> sets out PSNI policy in relation to the use of Public Order Tactical Advisers in the planning and control of public order events.

## MONITORING OF PARADES 2004

### The 12th July Ardoyne Parades

The main issue addressed by us in our monitoring of the 12th July Ardoyne Parades was whether the policing

#### NOTES

25 General Order 44/2000.

26 Devised by the Operational Support Department at Headquarters following internal consultation.

27 General Order 15/2003.

28 General Order 43/2000.

29 General Order 12/2004.

of the 12th July Ardoyne parades this year complied with requirements of the Human Rights Act. Since it is a fundamental principle of the Human Rights Act that any action taken by the police must be lawful, this raised two further issues, namely: (i) whether the PSNI properly policed the determinations made by the Parades Commission in respect of the 12th July Ardoyne parades and took appropriate operational decisions to that end within the framework of the applicable law, including the Human Rights Act; and (ii) whether any use of force by PSNI officers was justified.

At all stages of the planning of the policing operation until 9th/10th July, those responsible for the policing of the 12th July Ardoyne parades genuinely considered that the determinations of the Parades Commission applied to followers/supporters of the parades and planned the operation on that basis. We are satisfied that it was legitimate for them to have done so during that period.

The decision of Mr. Justice Weatherup on 9th July 2004 had a profound effect on the policing operation because, from then on, the PSNI could not lawfully rely on the determinations of the Parades Commission as a basis for preventing followers/supporters of the parades from proceeding through the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road, unless the behaviour of those followers/supporters went beyond that of following, proceeding with or accompanying the lodges and/or bands on 12th July.

There is no evidence that the behaviour of those followers/supporters on 12th July as they moved up the Woodvale Road in the evening went beyond that of following, proceeding with or accompanying the lodges and/or bands. Accordingly the PSNI had no power under the determinations of the Parades Commission to prevent them proceeding along the contentious part of the route.

It follows that the decision of the PSNI to allow the followers/supporters to move up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road as they did during the evening of 12th July did not breach the determinations of the Parades Commission as interpreted by Mr Justice Weatherup. It also follows that the PSNI policed those determinations lawfully, in accordance with the requirements of the Public Processions (Northern Ireland) Act 1998.

Thereafter the PSNI only had power to prevent the followers/supporters proceeding along that part of the route if they presented a threat to the peace sufficient to trigger police powers to deal with a breach of the peace. Those powers could not be relied upon as a legal basis for holding the group of followers/supporters who had been separated from the lodges at the junction of Woodvale Road and Woodvale Parade for a prolonged period if that group itself presented no threat to the peace. We have pressed the police about the behaviour of the crowd of followers/supporters at the road blocks on Woodvale Road just before they were taken up the road. There was no violence or threat of violence, nor was there any physical pressure on the police line.

Against that background, we are satisfied that the PSNI properly took all the relevant factors into account in deciding that they could not lawfully exercise their breach of the peace powers to prevent the group of followers/supporters from moving up the contentious part of the route. It follows that the PSNI decision to allow the followers/supporters up the contentious part of the route was lawful because their judgment that the behaviour of the followers/supporters did not justify holding them for a prolonged period at the junction of Woodvale Road and Woodvale Parade cannot be faulted.

Force was used by the PSNI on five separate occasions. In respect of three of those occasions, we are satisfied that, as a general tactic, the use of force was justified. In respect of the other two occasions, we are not able to make any assessment without access to a great deal of further evidence. If individual complaints are made about the use of force, those complaints would fall within the remit of the Police Ombudsman for Northern Ireland.

Notwithstanding the conclusions set out above, we have a number of serious concerns. Most importantly, they include a concern that the interpretation by the Parades Commission and in the judgment of Mr. Justice Weatherup on 9th July 2004 in the case of JR.1 of those participating in a public procession as excluding those who follow, proceed with or accompany lodges and bands along an entire parade route will have a

profound and detrimental effect on the ability of the PSNI to police parades in the future. In our view, it is critical that the implications of this are fully realised and resolved as soon as possible.

A linked concern relates to the question of communications between the Parades Commission and the PSNI. While we recognise the need for both bodies to maintain their independence, it is essential that the PSNI know and understand the basis upon which the Parades Commission is issuing its determinations. Clear and agreed lines of communication are required.

We are also concerned that two roadblocks under the responsibility of the military were ineffective during the evening of 12th July. This raises a serious issue about the effectiveness of the arrangements in place for joint operations between the PSNI and the military. In the circumstances, we consider that the arrangements in place for joint operations between the PSNI and the military should be reviewed as soon as possible and amended if necessary.

Notwithstanding these concerns, we are satisfied that the policing operation as a whole complied with the requirements of the Human Rights Act 1998.

### **The 4th July Drumcree Parade**

We attended the Gold Command Strategy Meeting on 6th May 2004. The Silver Command planning meeting took place on 12th May 2004. A Silver/Bronze Command Study Day was held on 21st June 2004. Part of the planning for the Drumcree parade, which we attended, included a joint PSNI/military mission rehearsal at Ballykinlar on 30th June 2004, and a full briefing on 2nd July 2004. On 3rd and 4th July 2004, we attended on the ground and in the command rooms. We were also given unrestricted access to all strategy and operational planning documents.

The policing of the 4th July Drumcree parade was operationally effective. The determination issued by the Parades Commission was upheld, and there were no outbreaks of violence. This success was largely the result of careful planning, both long-term and short-term, which involved, so far as was possible, consultation with all interested parties. PSNI community consultation was impressive, as was the de-escalation operation following the event. In the circumstances, we are satisfied that the policing operation as a whole complied with the requirements of the Human Rights Act.

### **The 12th July Dunloy Parade**

As part of our work monitoring this parade, we attended the Gold Command strategy meeting on 4th May 2004, and were given unrestricted access to all strategy and operational planning documents. The Gold Strategy Meeting followed the Gold strategy document, and to that extent was similar to the Gold strategy meeting for Drumcree. The Silver planning meeting took place on 19th May 2004.

Controversy subsequently arose over the legality of the service and ceremony outside Dunloy Presbyterian Church. The PSNI sought legal advice as to whether the ceremony at the Church constituted part of the parade and was, as such, a breach of the Parades Commission determination and therefore unlawful. The view was taken that the ceremony constituted a separate activity falling outside the definition of a "public procession" within the meaning of the Public Processions (Northern Ireland) Act 1998 and was therefore not unlawful.

Although we attended some of the planning meetings for the Dunloy parade, we were not able to attend the parade itself because of our work at Ardoyne. However, we are satisfied that the planning of the Dunloy parade was careful, and took account of all key human rights principles.

### **The 1st July Short Strand Parade**

The Gold Meeting for the 1st July Short Strand parade followed the Gold strategy document and was similar to the Gold strategy meeting for Drumcree and Dunloy.<sup>30</sup> The Silver Strategy Meeting took place on 16th June

#### **NOTES**

<sup>30</sup> See page 101.

2004. It too followed much the same approach as that outlined in respect of the Drumcree and Dunloy parades<sup>31</sup>. The same is true of the operational order provided to Bronze commanders and their units.<sup>32</sup> To facilitate our observation of the Short Strand parade, we were provided with all strategy, planning and operational documents relating to the policing operation. We were also briefed in the Silver Command Room on 1st July 2004 at about 5.30pm before the deployment of police and military personnel on the ground.

The policing of the Short Strand parade on 1st July 2004 was operationally effective. As with the Drumcree and Dunloy parades, that was largely the result of very careful long-term and short-term planning. In relation to all three parades, the PSNI integrated human rights principles into every stage of the planning and control of the policing operation.

### **Public Order Debrief**

Since 2001, the PSNI has convened an annual Public Order Debrief at the end of the main parades season. The aim of the debrief is to identify and discuss strategic and operational issues of concern arising in relation to the policing of parades in that year. We have reviewed the debrief reports drawn up for 2001, 2002 and 2003. We also attended the Public Order Debrief 2004 held on 6th September 2004. The Public Order Debrief is a welcome initiative. However, we are concerned about follow through, particularly in relation to points identified in the debrief report which require further action or investigation.

## **CHAPTER 8: USE OF FORCE**

In monitoring the PSNI's compliance with the Human Rights Act 1998, we reviewed PSNI policies on the use of force and the use of firearms and reviewed PSNI training and guidance material on the use of force and the use of firearms. We also reviewed the post-operational mechanisms in place for recording and reporting on the use of force and firearms. In addition, we attended and observed PSNI joint public order planning and training sessions carried out by the PSNI and military at Ballykinlar in June 2004. We have considered the equipment available to the PSNI for public order purposes, auditing PSNI policies on baton rounds, water cannon and hand-held personal incapacitant sprays and evaluating PSNI training on the use of water cannon and hand-held personal incapacitant sprays.

### **PSNI Policy on the Use of Force**

The PSNI General Order on Human Rights and Police Use of Force ("Use of Force Policy")<sup>34</sup> provides practical guidance on the use of force by police officers and is intended as the principal reference document on which all applications of force are based. The Use of Force Policy is comprehensive and clear. We consider it to be a model of its kind, which is rightly used as a core document in PSNI training material on the use of force.

### **PSNI Policy on the Use of Firearms**

The PSNI General Order on Human Rights and Police Use of Firearms ("Use of Firearms Policy") provides practical guidance on the legal implications surrounding the use of firearms and sets out the training requirements for police officers issued with firearms. Like the policy on the Use of Force, the policy on the Use of Firearms is comprehensive and clear. It too is a model of its kind.

### **PSNI Policy on Vehicle Mounted Water Cannon**

The PSNI introduced six RCV9000 vehicle mounted water cannon in late 2003/early 2004.<sup>35</sup> The PSNI General Order on the Deployment and Use of RCV9000 Vehicle Mounted Water Cannon (the "Water Cannon Policy")<sup>36</sup> sets out PSNI policy in respect of the deployment and use of vehicle mounted water cannon.

#### **NOTES**

31 See p101 and p103 respectively.

32 Ibid.

33 No. 34/2001 issued on 14th June 2001.

34 No. 61/2001.

35 The first two vehicles were delivered to the PSNI in September 2003. The remaining four vehicles were delivered in early 2004.

36 General Order 29/2004.

### **Training in the Deployment and Use of Water Cannon**

The PSNI has introduced three courses on the deployment and use of water cannon, one for water cannon drivers, one for water cannon cannoneers (operators) and the third for water cannon commanders. We have reviewed the course material, including pre-read material, and lesson plans for both the water cannon cannoneers' and commanders' courses. In general, the course materials were comprehensive and clear.

### **CS Incapacitant Spray**

As at 18th November 2004, CS Incapacitant Spray ("CS spray") had been deployed on 39 occasions, and discharged 23 times. All 23 discharges have been referred to the Police Ombudsman under an arrangement agreed on 5th August 2004 that every discharge of CS spray must be reported to the Police Ombudsman. The PSNI General Order on CS Incapacitant Spray<sup>37</sup> is clear and comprehensive.

### **Training in the use of CS spray**

The PSNI personal safety training programme has now been updated to include a CS spray training element. We reviewed the lesson plans for this training. We are satisfied that the training on CS spray accords with PSNI policy on the deployment and use of CS spray and addresses the critical issues surrounding the use of CS spray.

### **PSNI Policy on Post-Incident Procedures**

The PSNI General Order on the Discharge of Firearms by Police - Post-Incident Procedures was approved by the Chief Constable's Forum on 6th September 2004. The policy sets out the guidelines for post-incident procedures (in particular investigative procedures) to be implemented following discharge of a firearm (including a baton gun) by a police officer.<sup>38</sup> This is an important and clear policy. Comprehensive investigations into all deaths, whatever the cause, are an essential element of European Convention on Human Rights Article 2.

### **PSNI monitoring of uses of force**

PSNI officers are required to record all incidents involving the use of force. However, this information is not currently monitored. A generic Use of Force Monitoring Form is currently the subject of internal consultation. This is an important initiative, which we consider should be put in place as soon as possible.

## **CHAPTER 9: COVERT POLICING**

In keeping with the Policing Board's duty to co-ordinate its activities with other public bodies,<sup>39</sup> we have not sought to replicate the work of the Commissioners or the Tribunal established under the Regulation of Investigatory Powers Act 2000 ("RIPA"). Instead, we have examined all of the reports of the Chief Surveillance Commissioner to the PSNI and (equally important) the PSNI's response to those reports. We have also examined the PSNI policies on covert policing and have reviewed the PSNI's training material for special operations.

Any review of covert policing inevitably raises delicate issues of confidentiality. Often there can be a tension between the requirements of effective scrutiny and the need to maintain the secrecy of covert operations. We are happy to report that the approach of the PSNI to our work in this area has kept that tension to a minimum and it is important that we record and acknowledge the access that the PSNI has given us to the material set out above. Much of it is sensitive and has been treated by us accordingly.

### **The reports of the Chief Surveillance Commissioner**

In the period 2002 to 2004, there were four inspections of the PSNI by the Chief Surveillance Commissioner's team of inspectors. Typically these were eight day inspections during which period the inspection team examined the arrangements in place in respect of covert policing, including the command structures and accountability mechanisms within the PSNI, and all relevant policies and procedures. The inspection team also interviewed a number of authorising officers and examined the records relating to a number of covert policing

#### **NOTES**

<sup>37</sup> General Order 28/2004.

<sup>38</sup> The roles and responsibilities of key police personnel are set out as an Annex to the policy.

<sup>39</sup> Police (Northern Ireland) Act 2000, s.3(4)(d).

operations. That involved looking at applications, authorisations, associated files, contact sheets, participating informant authorisations, tasking sheets and operations logs.

We have had access to and read the reports prepared by the Chief Surveillance Commissioner's inspection team after each visit. The detailed contents contain sensitive information that cannot be set out or summarised in this report. The pattern that emerges is mixed. In some respects the Chief Surveillance Commissioner was satisfied with the performance of the PSNI and noted the good progress being made. In other respects he raised issues of concern. Most of these were procedural, but nonetheless important. The most serious concern was that, on one occasion, the PSNI was dilatory in responding effectively to the Chief Surveillance Commissioner's recommendations. The significance of this should not be overlooked. Implementation of the recommendations of the Chief Surveillance Commissioner made following an inspection goes to the heart of the oversight mechanism intended by RIPA. The PSNI has fully explained to us how and why this happened and, given the steps that have now been taken, we consider that this problem is unlikely to reoccur. It is important to record that the PSNI has now fully implemented all of the Chief Surveillance Commissioner recommendations.

Since the scrutiny provided by the Chief Surveillance Commissioner is (and should remain) confidential, it is of the first importance that the PSNI should respond quickly and fully with any recommendations made after an inspection. We have discussed this with the Chairman and Vice-Chairman of the Policing Board and drawn to their attention the specific concerns we have. Having reviewed the most recent report, it is clear that the work now being undertaken by the PSNI in this field, including the policies, procedures and mechanisms recently adopted, greatly impressed the Chief Surveillance Commissioner and his team of inspectors during their last visit. That provides a very sound platform for the future.

## **Policies and procedures**

The adoption by the PSNI of a manual for the management of covert human intelligence sources, a procedure for the dissemination of intelligence to serious crime investigators, and a procedure for handling confidential information supplied by members of the public is an important initiative. All three documents are extremely clear and comprehensive. As the Chief Surveillance Commissioner observed, they should result in even higher standards of compliance with the requirements of RIPA. They should also result in even higher standards of compliance with the Human Rights Act.

## **Specialist operations training**

We were provided with training material for special operations training and intelligence training. This included training in relation to a number of covert operations, in some cases with redaction of sensitive material. The training material relating to the use of covert human intelligence sources is the most sensitive, and thus redacted.

Although we are satisfied that the quality of the training material for specialist operations is generally good, our assessment was restricted by the redactions in the material provided to us. In addition, we did not observe the training being delivered. That places limitations on our ability to assess how well the PSNI is complying with the Human Rights Act in this area.

## **CHAPTER 10: VICTIMS RIGHTS**

PSNI Community Safety Branch has policy responsibility for victims of crime on behalf of the ACC Criminal Justice. The PSNI have appointed a number of specialist officers to support victims of specific crimes, including:

- (1) Child Abuse and Rape Enquiry Units.<sup>40</sup>
- (2) Domestic Violence Officers.
- (3) Minority Liaison Officers.

### **NOTES**

<sup>40</sup> The PSNI have issued several policies relating to Child Abuse and Rape Enquiry Units. These Units investigate all reported cases of child abuse and sudden unexplained deaths of infants. They also investigate allegations of serious sexual offences.

- (4) Family Liaison Officers.
- (5) Youth Diversion Officers (restorative Cautions).

The PSNI monitors homophobic crimes. Its homophobic incident monitoring policy<sup>41</sup> sets out the procedure for recording crimes specifically directed at lesbians and gay men. It also creates the position of PSNI minority liaison officer.

The PSNI also monitors racial harassment and racial attacks/incidents. PSNI racial monitoring policies define what constitutes a racial incident and the duties of the investigating officer in receipt of a report of a racial incident and create the position of PSNI ethnic minority liaison officer

The PSNI has not, to date, developed a comprehensive policy on the treatment of victims.

### **PSNI relationship with Victim Support Northern Ireland**

A long-standing partnership exists between the PSNI and Victim Support Northern Ireland<sup>42</sup> and the PSNI has a dedicated policy on victim support in Northern Ireland.<sup>43</sup> The PSNI automatically refers victims of reportable crime to a relevant Victim Support branch,<sup>44</sup> unless the victim specifically requests otherwise.

### **PSNI attitudes to victims**

The results the Policing Board's focus groups<sup>45</sup> provided some useful insights into police officers' own perceptions on the role and treatment of victims. It appears that the majority of police officers feel that victims are not protected adequately.

## **CHAPTER 11: TREATMENT OF SUSPECTS**

The total number of people detained as suspects in Northern Ireland decreased by 2.6% from 26,297 in 1998/1999 to 25,613 in 2002/2003. The PSNI plans to reduce the current number of Custody Suites from 22 to 16 over the next eight to ten years.

In keeping with the Policing Board's duty to co-ordinate its activities with other public bodies,<sup>46</sup> we have not sought to replicate the work of those bodies charged with reviewing and inspecting places of detention and conditions under which suspects are detained. Instead, we have reviewed the reports of the Independent Commissioner for Detained Terrorist Suspects, analysed the reports of the Board's Custody Visiting teams, made two random visits to detention facilities at Antrim police station and Antrim Road police station respectively and considered the overall system in place for the detention of suspects in assessing the PSNI's compliance with the Human Rights Act.

### **Antrim Road PACE Custody Suite**

We visited Antrim Road Custody Suite in November 2004. The Antrim Road Custody Suite received 2,250 detainees in the 2004 calendar year up to 5 November 2004. There are at least four Custody Sergeants at Antrim Road police station. Two detainees were held at the Custody Suite at the time of our visit.

Having reviewed the systems in place in Antrim Road Custody Suite, we are satisfied that, in theory at least, detainees should be afforded the protection required by the provisions of the Human Rights Act. It is more difficult to assess whether the rights of detainees are always protected in practice.

### **Antrim Custody Suite**

We visited the Custody Suite at Antrim Police Station in November 2004. Three detainees were being held in

#### **NOTES**

41 General Order 42/2000.

42 The PSNI has given a clear commitment to supporting the development of Victim Support Northern Ireland in its Strategic Plan.

43 General Order 20/96 issued on 5th April 1996.

44 This is known as automatic referral and is a nationally agreed practice subject to protocols on confidentiality.

45 See Chapter 12.

46 Police (Northern Ireland) Act 2000, s3(4)(d).

the serious crime suite at the time. The Custody Suite opened in April 2003 and is dual purpose; one section is designed for the investigation of suspects arrested on non-terrorist matters (the PACE suite), the other is designed for the investigation of suspects arrested on terrorist matters (the serious crime suite). The only other Custody Suite designated to receive detainees arrested on terrorist matters is Grosvenor Road Custody Suite. The detention facilities at Antrim are impressive and the surveillance, communications and custody record keeping systems are as advanced as anywhere in the UK. They provide a setting in which the rights of detainees should be effectively protected.

### **The Independent Commissioner for Detained Terrorist Suspects**

The main functions of the Independent Commissioner for detained terrorist suspects are to observe, comment and report upon the conditions under which persons are detained.<sup>47</sup> His oversight does not include the investigation of complaints made by detained individuals, which is the function of the Police Ombudsman. We met with the Commissioner in August 2004 to discuss his oversight responsibilities. The Commissioner visits Antrim Custody Suite on a frequent and unannounced basis. The Commissioner is satisfied that effective lines of communication between him and the PSNI are in place.

### **Independent Custody Visiting Scheme**

In accordance with its duty under the Police (Northern Ireland) Act 2000, s.73,<sup>48</sup> the Policing Board has set up the Independent Custody Visiting Scheme. Custody visitors are community volunteers who make unannounced visits to police Custody Suites. There are five custody visiting teams, covering Antrim, Belfast, Down/Armagh, North-West and Tyrone/Fermanagh. A report on each visit is made to the Policing Board, the District Commander for the area and the Chief Constable.

We have reviewed the Independent Custody Visitors Scheme and have examined the reports of the custody visiting teams. We are satisfied that the Policing Board's custody visiting scheme fulfils an important function in monitoring the condition and treatment of detained suspects and ensuring PSNI compliance with the Human Rights Act in relation to its treatment of detained persons. The custody visiting teams carry out a high number of visits each year and see roughly half of all detainees. A very high percentage of visits (80%) are satisfactory and the number of complaints (to the custody visiting teams at least) is very low.

In the circumstances we do not recommend any substantial changes to the scheme. However, it is important that the targets set by the Policing Board for each custody visiting team are met on a consistent basis. In addition, we note that in the six months between April and September 2004, less than 20% of visits took place over the weekend, the time that Custody Suites are usually busiest.

## **CHAPTER 12: HUMAN RIGHTS AWARENESS IN THE PSNI**

In seeking to assess the level of human rights awareness in the PSNI as a whole, we devised a human rights questionnaire which was sent to all PSNI officers, including full-time and part-time reserves. In addition, we set up a number of focus groups in Foyle, Newry/Lurgan, Belfast and Fermanagh, in which PSNI officers from different ranks participated in discussions about human rights. We also examined the PSNI officer appraisal system.

### **The Human Rights Questionnaire**

We devised the Human Rights Questionnaire in early 2004 with the assistance of the PSNI Human Rights Champion, ACC Criminal Justice, and members of her staff.<sup>49</sup> The questionnaire was sent out in March 2004 as a joint initiative of the Policing Board and the PSNI. The total sample for the survey was 2,739, which represents a response rate of around 28%.

#### **NOTES**

47 Secretary of State's Terms of Reference.

48 Which obliges the Policing Board to make and keep under review arrangements for designated places of detention to be visited by lay visitors (implementing Patten Recommendation 64).

49 See Appendix 4 to this Report.

## Closed question results

Over 82% of respondents correctly identified that the prohibition against inhuman and degrading treatment is an absolute right. These are good results, although the total percentage of constables getting the question wrong or nearly wrong (4% and 6%: 10% in total) is a concern that needs to be addressed.

Over 85% of respondents incorrectly identified that in the course of their duties, police officers should never treat people differently on grounds such as race, colour, gender, religion, political or other opinion. The correct response, which was “Where such different treatment can be reasonably and objectively justified”, was identified by over 10% of respondents. The fact that the vast majority of police officers thought that different groups of people should never be treated differently should be regarded as positive, even if, strictly speaking, it is not correct. That belief may, in part, be engendered by the PSNI Code of Ethics.<sup>50</sup>

There was a fairly even split between officers who correctly thought that (1) police officers can use lethal force where it is absolutely necessary to do so (46%) and those who incorrectly thought that (2) police officers can use lethal force where such force is necessary and appropriate (52%). This is a concern.

Over 89% of respondents correctly identified that members of the public have a right to protest, march and hold meetings but that right can be restricted if the restriction is necessary and proportionate. No other response category was identified by over 10% of respondents. This is a good result.

Over 96% of respondents correctly identified that police surveillance is an interference with privacy and therefore must be lawfully authorised, necessary and proportionate. Again, this is a very positive response.

Over 95% of respondents correctly identified that police officers can arrest individuals where they have reasonable grounds to suspect that an individual has committed an offence. This is a positive result, but on an issue where a very high percentage of correct results would have been expected.

Over 87% of respondents correctly identified that police officers are under a duty to take steps to protect life “if there is a real and imminent risk that someone will lose his or her life”. The response category “If someone could possibly be killed” was identified by 10% of respondents. This is a very positive result in relation to a human rights principle that is not straightforward, and which has only emerged clearly in recent years.

There was a fairly even split between officers who incorrectly thought (1) firearms can be used only where necessary and proportionate (55%) and officers who correctly thought (2) firearms can be used only where absolutely necessary (43%). This is a concern that needs to be addressed.

83% of respondents correctly identified that informants/covert human intelligence sources can be used, but only if they do not incite criminal offences. The relatively high percentage of officers who think that informants/covert human intelligence sources can be used, even where they incite crime, is a concern that needs to be addressed.

71% of respondents correctly identified that access to a lawyer “can be delayed, but only in exceptional circumstances, such as where access to a lawyer would frustrate the arrest of another.” The results are positive if the over-protective wrong answer (access to a lawyer should never be delayed) is put with the correct answer. The results are not good, however, insofar as they show that a relatively high percentage of Constables and Sergeants think that access to a lawyer can be delayed if waiting for a lawyer will inconvenience an investigation.

### NOTES

<sup>50</sup> Article 6.2 of the Code of Ethics.

## Open question results

48% of respondents thought that their knowledge of human rights was adequate, 32% thought it was good, whilst 15% of respondents thought that their knowledge was good in some respects but poor in others. Only 5% of respondents felt that their knowledge of human rights was poor. These results are an important insight into the perception of PSNI officers of their own state of knowledge. The perception is realistic when the results of Questions 1-10 are taken into account.

90% of respondents considered that the training that they received in human rights had either greatly assisted (30%) or partially assisted (60%) them in answering Questions 1-10. However, the fact that a number of officers either have not had human rights training, or do not appreciate that they have had human rights training, is worrying.

The majority of police officers consider that human rights issues crop up in their work most days (78%).

A large percentage of Constables rely on their colleagues when they have a difficult human rights issue to deal with, whilst there is heavy dependence by more senior officers on policy documents. It is significant that a high percentage of officers of the rank of Chief Inspector or above, rely on the PSNI human rights legal adviser. The fact that over a third of all officers (fairly uniformly across the ranks) rely on their training material when they have to deal with a difficult human rights problem, underlines the importance of making available specific human rights material of good quality.

## The Focus Groups

Eleven mini-focus groups were conducted across the four locations of Foyle, Newry/Lurgan, Belfast and Fermanagh, with differing ranks of officers. MORI Ireland worked closely with the Policing Board and the PSNI in developing the relevant topic guide.

Generally, officers believed that they have an adequate foundational knowledge of human rights, although they acknowledge that it is a large, constantly changing field. Officers understand human rights in terms of the different rights available to individuals e.g. the right to life, freedom of assembly etc. Absolute and qualified rights were understood by definition. However, there was some confusion regarding the right to life because it is seen as absolute, but also as capable of being breached in life threatening circumstances.

In contrast to the results of the human rights questionnaire, the test for the use of lethal force appeared to be well understood by the mini-groups. 'Absolutely necessary' was seen as related only to lethal force, while 'necessary and appropriate' was held not to apply to the same 'life-threatening' situation.

The Code of Ethics was viewed as a set of 'common sense' rules but few officers could specify the exact contents. Higher-ranking officers were more familiar with the content. All officers were aware that breaches of the Code would result in disciplinary action.

General training in human rights was largely perceived to be adequate. However, officers would like training to be approached differently and called for a move away from the old classroom style of teaching to a more interactive style, with case studies and scenario based lesson plans.

# CHAPTER 1: THE PSNI PROGRAMME OF ACTION

## CHAPTER 1: THE PSNI PROGRAMME OF ACTION

### Introduction

Patten Recommendation 1<sup>1</sup> requires the Chief Constable and the Policing Board to publish a programme of action to “focus policing in Northern Ireland on a human rights-based approach”. A consultation paper on the Human Rights Programme of Action was published by the Police Service of Northern Ireland (“PSNI”) in January 2002. This included a draft Programme of Action. The Office of the Oversight Commissioner provided four performance indicators for the implementation of Patten Recommendation 1, which includes evidence of responsibility assigned, not just for planning, but also for continual monitoring, of the comprehensive programme.

In the Monitoring Framework,<sup>2</sup> the Policing Board committed itself to providing the PSNI with comments on the January 2002 draft Programme of Action and to examining the revised Programme of Action. The January 2002 draft Programme of Action was intended to illustrate what work had been carried out by the PSNI at that stage, as well as identifying the work that the PSNI envisaged was necessary to comply with Patten Recommendation 1. It was a comprehensive document dealing not only with Patten Recommendations 1 to 7, but also with Patten Recommendations 37 (transparency in the police service), 44 (community policing) and 156 (neutral working environment). The draft was sent out to numerous interested bodies for consultation and we have reviewed the responses. During our review of the draft, it became apparent that many of the targets set out in the document had already been achieved or superseded by events, for example an expert human rights lawyer had already been appointed by the PSNI, the new Code of Ethics had been implemented and human rights training was well under way. Therefore we took the view that giving the PSNI our comments on that draft would be a fairly pointless exercise, and that it would be of greater benefit to give the PSNI our comments on the draft of what became the PSNI Human Rights Programme of Action.

The PSNI Programme of Action was published on 10th September 2004. A summary of the Programme was published in the PSNI newsletter, Callsign, in September 2004. The full Programme of Action is now available electronically on the PSNI website and intranet.

The Programme of Action is a comprehensive document, which we have attached to this report as Appendix 3. In the foreword to the Programme of Action, the Chief Constable acknowledges that human rights are fundamental to effective police work and that they must underpin everything the PSNI does. He rightly points out that some of the processes introduced by the PSNI are “innovations in policing” and gives as examples the attestation, the Code of Ethics, the appointment of the human rights legal adviser and initiatives such as annual human rights conferences. We agree with this observation and deal with each of those innovations elsewhere in this Report.

The introduction to the Human Rights Programme of Action sets out its intention, namely to demonstrate the progress that the PSNI has made towards focusing on “a human rights based” approach to policing, and to indicate future projects intended to further that aim.<sup>3</sup> The introduction also makes the important observation that the Programme of Action should not be seen as an isolated initiative. It makes clear that the model used in the Programme of Action is based on the Council of Europe Guide, *Policing in a Democratic Society - Is Your Police Service a Human Rights Champion?*<sup>4</sup>

The Human Rights Programme of Action is divided into seven sections dealing with basic values, staff, training, management practice, operational policing, structure and accountability. In each section, initiatives that have

#### NOTES

- 1 Recommendation 1 of the Report of the Independent Commission for Northern Ireland. *A New Beginning: Policing in Northern Ireland*, September 1999 (the “Patten Report”). The Independent Commission was established on 3rd June 1998 as part of the Agreement reached in Belfast on 10th April 1998. Its Terms of Reference are set out in the Agreement. The Patten Report made in total 175 Recommendations regarding policing in Northern Ireland.
- 2 Northern Ireland Policing Board, *Monitoring PSNI Compliance with the Human Rights Act 1998*, December 2003 (the “Monitoring Framework”) published pursuant to the Policing Board’s monitoring duty under s.3(3)(b)(ii) of the Police (Northern Ireland) Act 2000. The Monitoring Framework is available at [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk).
- 3 Human Rights Programme of Action, Appendix 3, Page3.
- 4 *Ibid*, Page 3.

been completed or that are ongoing are set out. Inevitably there is a great deal of overlap between the issues dealt with in the Programme of Action and those dealt with in this Report and, for that reason, we intend to address those issues as they arise in this Report rather than attempting any summary here. As will become clear in this Report, we have been very impressed by many of the initiatives taken by the PSNI to promote and protect human rights. These initiatives go well beyond those adopted by most other police services/forces in England, Scotland and Wales, and probably go well beyond any policing initiatives in Europe.

When we started the exercise of monitoring the performance of the PSNI in complying with the Human Rights Act 1998 (the "Human Rights Act"), we wrote to every police force in England, Scotland and Wales enquiring as to what steps they had taken, or were taking, to ensure that their force was complying with the Human Rights Act. Inevitably the replies varied, but none had in place the number, range or depth of the initiatives put in place by the PSNI. That is not to say that we are satisfied that each of the PSNI initiatives has fulfilled, or is fulfilling, its intended aim. Some do, others do not. But it is important to put the work of the PSNI in this area into context, and the drawing up of a comprehensive Human Rights Programme of Action is a notable achievement in its own right.

### **The Role of the Programme of Action**

Our review of the PSNI Human Rights Programme of Action caused us to reflect very carefully on its role. Having formed some preliminary views on this, we discussed the matter with the PSNI and a representative from the Office of the Oversight Commissioner. We also consulted a number of interested bodies such as the Northern Ireland Human Rights Commission, the Committee for the Administration of Justice and British Irish Rights Watch. Our conclusions on the role of the Programme of Action are as follows.

Patten Recommendation 1 requires there to be a comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach. Lead responsibility for this programme lies with the Chief Constable and the Policing Board. Patten included a number of specific recommendations for the programme of action, set out in Patten Recommendations 2 to 7:

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.
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.

Patten also indicated that the achievement of a human rights-based approach to policing should go beyond a

series of specific actions and should be more a matter of “the philosophy of policing, and should inspire everything that a police service does”.<sup>5</sup>

Although some of the specific Patten Recommendations were couched in terms of one-off actions (e.g. the new police oath, the new Code of Ethics, human rights training of all police officers, and the appointment of a lawyer with human rights experience <sup>6</sup>) - it is clear that *all* of the recommendations were intended to have continuing effect; some expressly so (e.g. integrating human rights dimensions into every module of police training, appraisal of human rights performance and monitoring the performance of the PSNI in complying with human rights requirements.)

The express purpose of the “programme of action” recommended by Patten was to ensure, on an on-going basis, that the police act within the law and respect human rights, both in the technical sense and in the behavioural sense.<sup>8</sup> Hence the continuing nature of the specific recommendations underpinning the programme of action - in particular, monitoring the PSNI’s compliance with human rights standards. In our view, the intention was that a permanent framework should be set up to ensure that policing in Northern Ireland is and remains focused on a human rights-based approach. The expression “programme of action”, which connotes targets and time-lines for achievement, reflects an obligation to ensure that the framework be set up within a relatively short timescale.

Understood in that way, many aspects of the programme of action envisaged by Patten Recommendation 1 have already been achieved (because the component parts of the framework are in place), and the PSNI Human Rights Programme of Action should be seen for what it is - a report on the implementation of that programme of action, rather than being a separate programme of action as such itself. Thus paragraph 2.3 of the Programme of Action rightly sets out Patten Recommendations 2, 3, 4, 5, 6, 37 and 156 and reports on progress to date. The only comment we would make on this part of the current Human Rights Programme of Action is that a commitment should be added to review the progress of these steps against the performance indicators set by the Oversight Commissioner. For some of the Recommendations, e.g. Recommendations 2, 3 and 6, it appears to us that the performance indicators have all been met. For others, e.g. Recommendations 4 and 5, it appears to us that some of the performance indicators have not yet been met. It would make sense for a time-line to be included for this review.

In our view, having set up the framework envisaged in Patten Recommendation 1, the programme of action should include a commitment to periodically review that framework to ensure its effectiveness. The Board will obviously be carrying out a similar exercise as part of its monitoring duty under s.3(3)(b)(ii) of the Police (Northern Ireland) Act 2000, but we think it is important for the PSNI to perform its own review given the central importance of the programme of action to policing in Northern Ireland. To avoid duplication of work, the PSNI may wish to wait until the Board has completed its first report (which will inevitably identify strengths and weaknesses in the framework) before embarking on its own review.

Against that background, we think that careful consideration has to be given to the appropriate arrangements for ensuring that human rights remains the focus for policing in Northern Ireland in the long term. We suggest that the PSNI should consider the following arrangement.

As the Policing Board’s Monitoring Framework<sup>9</sup> makes clear, it intends to conduct a detailed and comprehensive monitoring exercise of the PSNI’s compliance with the Human Rights Act on an ongoing basis, and to report its findings regularly.

This Report is the first to do so. Inevitably, that process will identify strengths and weaknesses in the

## NOTES

5 Patten, paragraph 4.6.

6 Patten Recommendations 2, 3, 4 and 6.

7 Patten Recommendations 4, 5 and 7.

8 Patten, paragraph 4.13.

9 Northern Ireland Policing Board, *Monitoring PSNI Compliance with the Human Rights Act 1998*, December 2003 available at [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk).

mechanisms intended to ensure that human rights remains the focus for policing in Northern Ireland, and the report will make specific recommendations in response to its findings. The question of how the PSNI responds to this Report is critical to the integrity of the monitoring process.

The Policing Board is committed by the second of the three principles set out in the Introduction of its Monitoring Framework to an undertaking that the “process of monitoring should be dynamic and one in which the PSNI feels that there is a positive dialogue between it and the Policing Board, which recognises and addresses problems as they arise”. In keeping with that principle, we suggest that rather than drawing up further “programmes of action” under Patten Recommendation 1, for the reasons set out above, the PSNI should treat Recommendation 1 as an obligation to put in place and maintain an overall framework for human rights compliance. What would then be most effective in ensuring that human rights remains the focus for policing in Northern Ireland in the long term would be an undertaking by the PSNI to draw up a *specific* programme of action on an annual basis to respond to the Policing Board’s recommendations in respect of the PSNI’s duty to comply with the Human Rights Act.

Whether “programme of action” is the appropriate description for the commitment intended by such an exercise is not important. What is needed is a clear set of targets, with equally clear time-lines, designed to tackle the issues identified by the Board as important to the ongoing task of achieving a human rights compliant police service in Northern Ireland. The process of reporting and responding would fit neatly into the dialogue intended by the monitoring process. It would also strengthen and give effect to the Board’s statutory duty under s.3(3)(b)(ii) to monitor the performance of the police in complying with the Human Rights Act.

While the programme should deal with all of the issues raised by the Board and respond to each of the Board’s recommendations, there is no reason for it to be limited to those issues and recommendations. There may well be additional issues identified by the PSNI’s Human Rights Unit that could be included in the programme. Equally there may be new initiatives.

We consider that this arrangement is central to the relationship between the PSNI and the Policing Board on the critical issue of ensuring that the police should act within the law and respect human rights, both in the technical sense and in the behavioural sense. In July 2004, the PSNI indicated its broad agreement to this proposal, whilst reserving the right to take human rights initiatives going beyond those recommended by the Policing Board. We welcome that indication, which marks a very positive step in the dialogue between the Policing Board and the PSNI that we hope to achieve through the process of monitoring the performance of the PSNI in complying with the Human Rights Act.

Against that background we make the following recommendations:

- That the PSNI should treat Patten Recommendation 1 as an obligation to put in place and maintain an overall framework for human rights compliance and periodically review that framework to ensure its effectiveness.
- That the PSNI should set timelines for the achievements of the initiatives set out in its Human Rights Programme of Action that go beyond Patten recommendations.
- That the PSNI should draw up a specific programme of action on an annual basis to respond to the Policing Board’s recommendations in respect of the PSNI’s duty to comply with the Human Rights Act.

## **The Performance Indicators of the Oversight Commissioner**

As noted above, we intend to address most of the issues dealt with in the PSNI Human Rights Programme as they arise in this Report. However, the Board’s Monitoring Framework commits it to consideration of the PSNI Human Rights Programme against the four performance indicators drawn up by the Office of the Oversight Commissioner. It is convenient to conduct that analysis at this stage.

The Oversight Commissioner's performance indicators require the following:

- (1) Evidence of assignment of responsibility, to include the name(s) and position(s), for the implementation of this recommendation.
- (2) Evidence of responsibility assigned, not just for planning but also for continual monitoring of the comprehensive programme.
- (3) Evidence of Human Rights plan, including a schedule for achievement of constituent parts.
- (4) Evidence that Police Service has drawn on "best practices" from other departments concerning content of such a plan.

There are separate performance indicators for each of the linked Recommendations 2 to 7.

Performance indicator (1) appears to us to have been fully satisfied. Responsibility has been assigned to ACC Criminal Justice as the Human Rights Champion. Performance indicator (2) requires some thought. In our view, the PSNI should assign responsibility internally for reviewing its Programme of Action and drawing up the programme for responding to the Policing Board's recommendations in respect of the PSNI's duty to comply with the Human Rights Act.

Performance indicator (3) appears to us to have been satisfied, if the programme of action is treated, as we suggest, as an obligation to put in place and maintain an overall framework for human rights compliance. Where some of the performance indicators for the other Patten Recommendations referred to in the programme of action have not yet been fully met, we suggest that a schedule for achievement be set. Where the programme of actions goes beyond the Patten Recommendations, we also suggest that time-lines be set.

The fourth performance indicator - evidence that the PSNI has drawn on "best practices" from other departments - also requires some thought. The example given by the Oversight Commissioner is of the ACPO "compliance plan" for the Human Rights Act. The same "compliance plan" is mentioned as a performance indicator in relation to Patten Recommendation 7, which deals with monitoring the performance of the PSNI in complying with human rights. In our view, while "best practice" codes from other departments and/or other public authorities are useful tools for measuring the implementation of Patten Recommendations 1 and 7, too great a reliance should not be placed upon them. The programme of action devised by the PSNI goes well beyond most (if not all) "best practice" codes and the monitoring exercise the Policing Board has devised is more exacting than that used to gauge the human rights performance of any other public authority in the United Kingdom. In addition, the ACPO "compliance plan" proved to be of limited practical use and was soon replaced with a shorter "toolkit" document, which was used by the PSNI as a model. In the circumstances, it may be appropriate for the PSNI to raise with the Oversight Commissioner the question of whether this performance indicator has been met, or, more fundamentally, whether it remains a useful benchmark.

Against that background, we make the following further recommendations:

- That the PSNI should review the progress of the initiatives set out in its Human Rights Programme of Action against the performance indicators of the Oversight Commissioner and devise a schedule for achieving those performance indicators where its Human Rights Programme of Action indicates that they have not yet been achieved.
- That the PSNI should assign responsibility internally for reviewing the Human Rights Programme of Action and for drawing up its programme responding to the Policing Board's recommendations in respect of the PSNI's duty to comply with the Human Rights Act.

# CHAPTER 2: TRAINING

## CHAPTER 2: TRAINING

### Introduction

Effective training in human rights principles and practice is fundamental to any organisation committed to compliance with the Human Rights Act. That was recognised in the Patten Report where it was observed, “training will be one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel”.<sup>10</sup> For that reason, Patten recommended, “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”.<sup>11</sup> Patten also recommended that, as a matter of priority, all members of the police service should be instructed in the implications for policing of the Human Rights Act, and the wider context of the European Convention on Human Rights and the Universal Declaration of Human Rights.<sup>12</sup>

In the last few years, the PSNI has taken a number of steps intended to fulfil these requirements. Some initial work was done before the Human Rights Act came into force, including a two-day seminar for PSNI training staff in December 2001 at the Human Rights Centre, Queen’s University Belfast, which included an introduction to the Human Rights Act and explored the relationship between human rights and other laws. Since then, there has been a specific one-day human rights module on the PSNI trainers’ course. This was initially delivered by the Human Rights Centre, Queen’s University Belfast, but is now delivered by the PSNI human rights legal adviser.

During 2001, human rights training was also delivered to all police officers and ‘front line’ support staff as a one-day course, which included a human rights workbook. An *aide memoir* and distance learning pack were issued to all officers. A human rights module was also included in the training for student officers and part time reserve officers.

More fundamentally, as a direct response to the Patten recommendation that all members of the police service should be instructed in the implications for policing of the Human Rights Act, and the wider context of the European Convention on Human Rights and the Universal Declaration of Human Rights, the PSNI devised the *Course for All*, which was then delivered to all members of the PSNI, both police and civilian, between November 2002 and 29th April 2003. This course was evaluated by the Northern Ireland Human Rights Commission (“Human Rights Commission”), which published its report in April 2004.

Apart from the now-concluded *Course for All*, the PSNI has no human rights specific courses, nor does it run any refresher human rights training courses. Recruit training includes a distinct human rights element. Thereafter, it is the intention that human rights training should be integrated into all courses. A number of the annual core refresher courses also contain an integral human rights element.

Training at District Command Unit level is not the responsibility of Training, Education and Development. District Command Unit trainers report to their District Commander, who identifies local training needs. Training, Education and Development is kept aware of District Command Unit training needs through its liaison officer.

So far, PSNI training has been subjected both to external and internal evaluation. The most comprehensive external evaluation has been carried out by the Human Rights Commission, which has published four reports: (i) *Report on the RUC’s Training on the Human Rights Act* (2000), (ii) *An Evaluation of Human Rights Training for Student Police Officers in the Police Service of Northern Ireland* (2002), (iii) *Probationer Constables and Student Officers* (2004), and (iv) *Course for All* (2004). We have drawn on these reports in evaluating the effectiveness of PSNI training on human rights issues.

In April 2003, the PSNI published its own review of human rights training within the PSNI. The aim of this research was to produce an evaluation status report in keeping with the needs of the Oversight Commissioner.

#### NOTES

<sup>10</sup> Paragraph 4.9.

<sup>11</sup> Paragraph 4.9.

<sup>12</sup> Paragraph 16.21.

A variety of methodologies were used including content analysis, stakeholder interviews, focus groups and questionnaires. Results were clustered under the 11 performance indicators set out by the Oversight Commission.

In this report, we examine the effectiveness of the PSNI's human rights specific training, the *Course for All*. We also examine the human rights training provided to new recruits and how well human rights training has been integrated into other training within the PSNI. As we made clear in the Policing Board's framework document, we have not been able to conduct our own comprehensive monitoring of the actual delivery of human rights training for the purposes of this report. That raises questions which we address in the final section of this chapter where we deal with the question of evaluating human rights training.

For the purpose of our scrutiny of human rights training, we had a number of in-depth and informative meetings with Training, Education and Development. We were also provided with the course material for the *Course for All*, course material for the training of new recruits, and course material for on-going training on selected issues to assess how effective this process has been. The material for new recruits included: (1) student officer training, (2) probationary training, (3) tutorship, and (4) post-foundation training. The training material on the selected issues we examined included the course material for the following courses: (1) the use of firearms and force, (2) baton gun training, (3) public order training, (4) crime training (interviewing), (5) crime training (advanced interviewing), (6) custody officer training and (7) observation skills.

### **Human rights specific training: the *Course for All***

Although as indicated above, the *Course for All* has now been completed, we considered that an evaluation of its effectiveness was important. *The Course for All* was intended to meet Patten Recommendation 142 and its effectiveness in doing so is a critical factor in determining the future needs and objectives of human rights training in the PSNI.

In terms of numbers, the *Course for All* met the target set by Training, Education and Development that 85% of all officers should be trained on the course. Taking police officers and civilian staff together, over 11,000 individuals attended the course from its commencement in November 2002 to its conclusion in April 2003.

The course ran for two days. It covered: (1) the change process as it affects individuals and the organisation, (2) the new Code of Ethics and (3) policing with the community and problem solving.

The first session on day one lasted one hour and was purely introductory. The second session lasting 90 minutes provided a very brief introduction to the Code of Ethics, but nothing concrete and certainly nothing to comment on. The accompanying section in the workbook made scant mention of the Human Rights Act. There were then three linked sessions on the Code of Ethics (80 minutes, 85 minutes and 15 minutes), which were much more detailed.

Two of the objectives of the first detailed session were to enable students to (1) identify significant articles within the Code of Ethics and (2) identify links between the Code of Ethics and human rights. Each Article in the Code of Ethics was dealt with in some detail with four questions posed to the students: (1) What is this article about? (2) How might it affect you as a citizen? (3) How might this affect you as a member of the PSNI? and (4) Are you happy you understand this? The accompanying section in the workbook explained the importance of the Code of Ethics and linked its main provisions to relevant international human rights instruments (including the European Convention on Human Rights) and to various PSNI General Orders.

Two of the objectives of the second detailed session were to enable students to (1) explain briefly the sub-Articles in the Code of Ethics and (ii) identify the legislation and directives underpinning the Code of Ethics. The accompanying section of the workbook dealt with the sub-Articles in some detail, occasionally by reference to the case law of the European Court of Human Rights. However, a good deal of the material simply recited the contents of international human rights instruments, without a great deal of guidance for police officers about the applicability of this material. For example, in the section on 'Privacy and Confidentiality' the workbook simply asserted, "This Article seeks to protect the public from excessive intrusive information gathering by the police". And in respect of Article 3.2 of the Code of Ethics ('Police officers shall exercise powers of search and

surveillance only when it is lawful, necessary and proportionate'), the only guidance in the workbook was, "These are basic principles of the Human Rights Act with which you must be familiar."

A little further guidance was given at the end of the workbook in an appendix, which briefly described each of the rights in the Human Rights Act. But for core rights engaged in almost every police investigation, the analysis is very thin. For example, although students were informed that where privacy rights are interfered with, such interference must have a legal basis, be proportionate and for a legitimate reason, nowhere was an attempt made to define these requirements – in particular the unfamiliar concept of proportionality. In addition, neither the main text of the workbook, nor the appendix, included any guidance at all on the issue of freedom of assembly.

The focus of the third session was on the consequences of breaching the Code of Ethics. It was very short (15 mins) and cannot be considered adequate. If the Code of Ethics is to achieve the aim stated by the Chief Constable of "setting out the standards of conduct expected of police officers",<sup>13</sup> more attention needs to be paid to the consequences of breaching it.

As noted above, the *Course for All* was externally evaluated by the Human Rights Commission. Its report<sup>14</sup> was published in April 2004. The Human Rights Commission noted that the course organisers were ambitious in their expectations and that the volume of material to be covered was far in excess of what could be delivered in a two-day course. There were also gaps. Most particularly, the Human Rights Commission was concerned that human rights awareness was not fully integrated into the course. Little or no use appeared to have been made of the extensive policing and human rights training materials produced by the Council of Europe. Instead the course workbook contained some limited and dated commentary on the European Convention on Human Rights.

The Human Rights Commission was particularly concerned that the coverage of the Code of Ethics lacked depth. Few, if any, examples of potential breaches of the Code were given, and the European Convention on Human Rights was barely mentioned. Even the examples provided in the handbook were sparingly used.

The Human Rights Commission also noted that although all trainers were competent and established a good rapport with participants, few had the required knowledge of human rights and equality issues: "A significant problem for the trainers was that they had not received sufficient training on the issues being addressed. They would have required further training on the European Convention On Human Rights and the Northern Ireland Act 1998 and on human rights law to deal with specific difficult issues associated with policing in Northern Ireland".<sup>15</sup>

In the overview to its Report, the Human Rights Commission noted that the Course for All was a bold venture, requiring a firm commitment from the organisation and its trainers. It also noted that this commitment was manifest on many occasions from management and staff. We agree that the Course for All was a bold venture, and we accept the observations of the Human Rights Commission about the commitment made by PSNI management and staff in delivering it to so many individuals in such a relatively short time. As many other public authorities have found, instruction in human rights principles is a time-consuming and difficult task. However, we are concerned about how effective the Course for All was in achieving its objectives, particularly since the PSNI has no plans to re-run the course either in its original format or in an updated format. Nor has the PSNI any plans to run any similar course and, as noted above, apart from the Course for All, the PSNI has no human rights specific courses.

Against that background we have carefully considered the recommendations made by the Human Rights Commission in its Report.

#### NOTES

<sup>13</sup> Introduction to Code of Ethics.

<sup>14</sup> Human Rights in Police Training, Report 4, Course for All, April 2004.

<sup>15</sup> Ibid at chapter 4, p 47.

Three were of particular interest: (1) human rights needs to be integrated at every level of training (2) human rights training for trainers should be given a much higher priority and (3) independent monitoring and evaluation should be factored in at every stage of all training processes so that valuable learning is not missed in future.

The first and second of these recommendations have already been tackled. The PSNI has made a considerable effort to integrate human rights into every level of its training. We deal with how effective that integration is in the next section of this Report. The PSNI has also given human rights training for trainers a much higher priority. The PSNI itself identified the need to improve this aspect of its training in its April 2003 internal evaluation. Responsibility was assigned to the PSNI human rights legal adviser to deliver human rights training in the induction sessions for new trainers. In addition, the in-house training for trainers course was restructured and a series of conferences was set up to allow front-line police officers to come together and share best practice.

These steps are important and deserve proper recognition. Whether they are enough to address the weaknesses in the Course for All identified in this Report and by the Human Rights Commission remains to be seen.

Against that background we make the following recommendations:

- That the PSNI should closely monitor and evaluate how well human rights training has been integrated into every level of its training to ensure consistency in standards and approach.
- That the PSNI should consider whether there remains a need for some form of human rights specific refresher training.
- That the PSNI should closely monitor and evaluate the quality and effectiveness of its human rights training for trainers.

## **INTEGRATED HUMAN RIGHTS TRAINING: RECRUIT TRAINING**

In our evaluation of recruit training, we concentrated on the Student Officer Training Programme, which we examined in detail. Delivery of that programme was subject to external evaluation by the Human Rights Commission, and we consider its observations below. We also examined the Probationary Training Programme, which was also subject to external evaluation by the Human Rights Commission.

### **Student Officers' Training**

#### **Introduction**

The Student Officer Training Programme represents the first stage in a four stage training process, which extends over a period of 125 weeks. The Programme was developed in close conjunction with the University of Ulster and received formal accreditation in June 1999. Each of the four stages, whilst remaining distinct, are nonetheless theoretically integrated and intended to accommodate the continual personal and professional development of student and probationer officers alike.

Overall, the Student Officer Training Programme covers a period of 21 weeks and comprises the following six modules: (1) Police and Community Relationships; (2) Criminal Justice System; (3) Crime; (4) Traffic; (5) General Police Duties; and (6) Organisational Effectiveness.

The Programme is divided into two phases, the first covering the initial seven week period and generally focused on introducing new recruits to the first two modules, with a particular aim of developing a basic understanding and knowledge of policing in general and the role of a police officer in particular. Specific subject areas addressed include Human Rights, Ethics, Police and Community Relationships, Principles of Policing, Evidence, Criminal Justice System, Interviewing and File Preparation.

The second 13 week period concentrates to a greater degree on encouraging student officers to develop their performance, based on the knowledge and behavioural competencies acquired during the earlier seven weeks. Subjects taught represent the final three modules and include instruction on topics such as vulnerable persons, principal crime and traffic legislation, Restorative Justice, Drugs and Youth Diversion.

Upon successful completion of the Student Officer Training programme and resultant attainment of the Certificate in Police Studies, student officers commence their two-year probation. Successful completion of the course is marked by the Student Officer Graduation Ceremony.

### **The materials**

We were provided with the course materials for the Student Officer Personal Safety Programme. Phase I of the Programme is divided into 16 modules. It commences with threat assessment, then the legal framework on the use of force before dealing separately with several techniques involving the use of force.

The section dealing with use of force and human rights is excellent. There are comprehensive references to the European Convention on Human Rights, with extensive extracts from the Blackstone's Police Manual Human Rights section. These references are well thought out and integrated into the course, with careful attention drawn to the different tests in play depending on whether potentially lethal force is to be used (the absolute necessity test) or lesser force (the reasonableness test). There are also extensive references to the PSNI's policy on the use of force (discussed in detail later in this report), which students have to read out and discuss. The course material deals with the difficult issues of what proportionality and necessity actually mean, and the differences between torture, inhuman and degrading treatment are explained.

The sections dealing with several techniques involving the use of force (e.g. blocks, pushes, grappling, the use of batons, weapons restraint, ground defence, escort and restraint and handcuffs) are also very good. Each starts with an emphasis on the human rights issues arising when the technique in question is employed, and this is reinforced later in each lesson. Since students will have already completed the section dealing with the legal framework on the use of force, this is a sensible and focused way of integrating human rights into mainstream training.

Phase II of the Student Officer Personal Safety Programme begins with a refresher on the use of batons and handcuffs, in which appropriate references to the European Convention on Human Rights are made. This is followed by a section on evidence gathering, which makes reference to Articles 8, 10, 11 and 14 of the European Convention on Human Rights, but without much explanation of their requirements.

### **External evaluation**

In March 2002, the Human Rights Commission was invited to evaluate the human rights elements of the Student Officer Training Programme. It reported in November 2002, making a number of recommendations.<sup>16</sup>

Included in the Human Rights Commission's report were recommendations that the time devoted to core human rights lessons should be doubled and that steps be taken to ensure that the contents of the core human rights lessons be reviewed and updated regularly. The Human Rights Commission also highlighted the role of the human rights legal adviser in developing course materials on human rights training for new police officers and recommended that this be enhanced.

The Human Rights Commission was concerned that learning events were 'reviewed/audited' on a paper basis, without observation of the training actually delivered. It noted that, during the 2003 evaluation, conflict resolution skills trainers were found not to be delivering the human rights elements which had been included in their 'audited' lesson plans. This demonstrates the importance of the point made by the Human Rights Commission and is of relevance to the comments on evaluating training that we make later in this Chapter.

In April 2003, the PSNI responded positively to most of the recommendations made by the Human Rights Commission. The PSNI agreed to review whether more time could be devoted to the human rights core lesson and accepted all of the recommendations about reviewing and updating material, with the observation that many of the recommendations had already been adopted in practice. In March 2004, the Human Rights Commission reported, "In general, those recommendations have met with a positive reaction from the PSNI."<sup>17</sup>

#### **NOTES**

<sup>16</sup> *An Evaluation of Human Rights Training for Student Police Officers in the Police Service of Northern Ireland*, November 2002.

<sup>17</sup> *Human Rights in Police Training, Report Three*, Probationer Constables and Student Officers, March 2004.

## Probationary Training

### Introduction

The probationary period commences with a nine-week Operational Development Programme. Subject areas include the use of firearms, tactics, driver, search and communications training.<sup>18</sup> The Firearms element of the Operational Development Programme extends over two weeks and delivers training in the use of the handgun. The course, which is administered by the PSNI Tactical Firearms Unit, reflects a slightly modified version of the ACPO Firearms Manual course on handguns for police officers.

A one-week tactical training course comprises, as the name suggests, instruction on topics such as briefing, use of cover, response drills, tactical patrolling and vehicle checkpoints. The Standard Driving course is of four weeks duration and comprises soft skin vehicle, armoured vehicle and response training. Two days are devoted to communications training on the use of Service IT systems, such as MARS, telephone and barracuda radio training.

### External evaluation

In March 2004, the Human Rights Commission published its report on the Probationer Constable Training Programme. The focus of the evaluation was on police training and the rule of law, openness/transparency and quality assurance/quality enhancement.<sup>19</sup>

The Human Rights Commission found that human rights issues in the search and firearms courses were covered in sufficient detail to equip new police officers to engage with the practical human rights challenges that they may face when carrying out their duties and that trainers were in a position to respond authoritatively to human rights issues raised by those on the course. Its finding in relation to these courses was that “the learning events observed were of high quality.” These findings are welcome. In particular the Human Rights Commission reported that the firearms training sessions observed were “of a uniformly high quality. It was evident that a concerted effort had been made to think through the human rights implications of the practical firearms training, and effectively to mainstream human rights issues into the learning events on judgmental training.”<sup>20</sup>

However, one concern raised by the Human Rights Commission was that trainees were not being offered practical guidance to assist them to judge the degree of force that might be proportionate to particular circumstances.<sup>21</sup> This is an important issue that needs to be tackled by the PSNI as soon as possible.

The Human Rights Commission also found that the coverage of human rights in the tactical patrolling course was inadequate and recommended that the trainers receive further training.<sup>22</sup> In addition, in relation to the conflict resolution course,<sup>23</sup> the Human Rights Commission found that although the lesson plans had been revised to include specific reference to human rights (particularly on the question of the use of force), this material was not included in the teaching that was actually delivered during the learning events observed.<sup>24</sup> The references to the European Convention on Human Rights in the training on public order policing and in the baton refresher training were given as examples of this.

These findings are very important. As noted above, in relation to the Student Officer Training Programme, some of the PSNI training material has successfully integrated human rights principles. However, that achievement is lost if some or all of the integrated material is not delivered. That highlights the very real need for effective scrutiny and evaluation of the actual delivery of training, an issue that we address in the last section of this chapter.

### NOTES

18 The Operational Development Programme historically included conflict resolution skills training which is now included in the initial 21-week Student Officer Training Programme.

19 Human Rights in Police Training, Report Three, Probationer Constables and Student Officers, March 2004.

20 Ibid, chapter III, paragraph 22, p 20.

21 Ibid, chapter III, paragraph 29, p 23.

22 Ibid, chapter III, paragraphs 17 and 18, p 19.

23 Now included in the Student Officer Training Programme, op cit at fn 18.

24 Human Rights in Police Training, Report Three, Probationer Constables and Student Officers, March 2004, chapter III, paragraph 36, p 25.

The Human Rights Commission also made the point that only passing reference was made to positional asphyxia in the conflict resolution skills course<sup>25</sup>. This is extremely important. The risks of positional asphyxia are well documented. Training on this issue is vital if individuals under police restraint are to be protected from that risk, and a failure to deliver adequate training in this area cannot be excused. We therefore recommend:

- That the PSNI should revise its Student Officer Training programme materials as a matter of urgency to include proper training on positional asphyxia.

## INTEGRATED HUMAN RIGHTS TRAINING: OTHER AREAS

As part of our scrutiny of the effectiveness of the PSNI's integration of human rights principles in other course materials, we examined the training material for the following courses: (1) the use of firearms and force, (2) baton gun training, (3) public order training, (4) crime training (interviewing), (5) crime training (advanced interviewing), (6) custody officer training and (7) observation skills.

### Training in the use of firearms and force

All officers must complete the firearms foundation course before undertaking the Human Rights Police Use of Firearms and Force course. No human rights issues are raised in several parts of the course: (1) safety, characteristics and technical data of the Glock Pistol (2) the effective use of the Glock Pistol (3) and techniques for accurate shooting (4) construction and use of firing range (5) effective use of Glock Pistol and ancillary equipment in accordance with safe and correct handling procedures (6) safe handling of firearms (7) body armour and (8) conceal carry. Article 2 of the European Convention on Human Rights is mentioned in the ballistics section of the course in relation to dangerous space and ricochets, but with little (if any) indication of its significance.

Articles 5, 8 and 11 of the European Convention on Human Rights are mentioned in the tactical objectives section, with the intended objective that students will be able to outline the human rights considerations under these Articles. Knowledge of the law and human rights legislation is then a stated "tactic". This section also deals with responding to and assessing threats. Obviously, Articles 5, 8 and 11 of the European Convention on Human Rights may be relevant to these aspects of training, but it is surprising that Article 2 of the Convention and, in particular, the strict rules derived from Article 2 on planning any operation in which firearms may be used, are not dealt with. The same is true of the section of the course dealing with indication codes, where again there is no mention of Article 2. This is an omission that needs to be addressed as soon as possible.

Article 2 of the Convention features much more prominently in the section on low light i.e. difficulties of low light operations. The same is true of the section on use of torch. However, it is of some concern that no express reference is made to Article 2 and, in particular, the case of *Andronicou and Constantinou v Cyprus*,<sup>26</sup> in the section on hostage-taking. *Andronicou v Cyprus* provides useful guidance on the preparatory stages of an operation involving a hostage held at gunpoint in a small building, which would be useful in a lesson the intended aim of which is to "introduce the student to the basic guidelines which should be followed during first line negotiations". The references to the European Convention on Human Rights in the section on building tactics on the other hand is good and well-integrated with other relevant legislation. Also good is the reference back to the European Convention on Human Rights in the part of the section on buildings tactics (i.e. as part of a session working through practical examples and problems).

The section of the course on judgmental training is obviously important and references to the European Convention on Human Rights are prominent. The stated objective is that by the end of the course, students should be able to outline various aspects of Article 2 of the Convention, including, in particular, positive and negative obligations, briefings and planning and the test of absolute necessity before lethal force is used.

#### NOTES

<sup>25</sup> Ibid, chapter III, paragraph 41, p 27.

<sup>26</sup> (1997) 25 EHRR 491.

Human rights are also dealt with in the sections on possession of a firearm and practical shooting skills, but the references here are much more peripheral. More extensive reference is made in the sections on cover.

From our examination of the course material on training in the use of firearms and force, it is clear that the integration of human rights principles requires more work. Understanding the operation of Article 2 of the European Convention on Human Rights is vital in the firearms field and it is clear from the questionnaire sent to all PSNI officers (analysed in detail in Chapter 12 of this Report) that a number of officers still have difficulty understanding its requirements.

Against that background, we recommend:

- That the PSNI should review and revise the course material on training in the use of force and the use of firearms as a matter of urgency, with full reference being made to the requirements of Article 2 of the European Convention on Human Rights, together with an explanation of the relevant legal tests for the use of force.
- That training in the use of force and the use of firearms should conclude with individual assessments of participating officers' knowledge of the Code of Ethics and relevant human rights provisions, in particular, the relevant legal tests for the use of force and the application of Article 2 of the European Convention. The results of these assessments should inform the development of basic and refresher training courses in the use of force and the use of firearms.

## Baton gun training

### Baton Gun Initial

The aim of the baton gun initial training is to introduce participants to the use of baton guns. There is some reference to related PSNI general orders.<sup>27</sup> Most of the training is practical, where references to the European Convention on Human Rights are minimal, limited in the main to observations such as "reinforce human rights implications of firing weapons". However, there is little (if any) explanation in the course material of what that means.

### Baton Gun Refresher

References to the European Convention on Human Rights are greater in this section of the course material. In particular, in the lesson intended to refresh participants' knowledge and understanding on current operational guidelines, human rights and legal constraints in relation to the deployment and use of baton rounds, there is fairly extensive reference to the Convention and PSNI policy incorporating Convention standards. The test for using potentially lethal force under Article 2 (absolute necessity) is set out, with an indication that it must be explained. However, this message may be confused by equally prominent references to the reasonableness test under s.3 of the Criminal Law (NI) Act 1967. The course material indicates that the trainer should explain the relationship between Article 2 of the European Convention on Human Rights and s.3 of the Criminal Law (NI) Act, with a prompt that s.3 must be read and given effect in a way which is compatible with human rights. The impact of this sensible advice is somewhat diminished by the earlier observation that "nothing in the guidelines prevents the use of reasonable force as provided under legislation."

### Operational commanders module

This section of the course is intended to instruct those likely to have an operational command role in the guidelines pertaining to the issue, deployment and use of baton rounds<sup>28</sup> in situations of serious public disorder. It starts by referring to the PSNI General Order on the issue, deployment and use of baton rounds, which it indicates should be read in conjunction with the General Order on Human Rights and Police Use of Firearms<sup>29</sup> and the General Order on Human Rights and Police Use of Force<sup>30</sup>. These policies are examined in detail in Chapter 8 of this Report. They are extremely thorough and provide for all relevant human rights

#### NOTES

- 27 Force Orders 15/95 and 16/95.
- 28 PSNI General Order 46/2000.
- 29 General Order 61/2001.
- 30 General Order 34/2001.

considerations. There are further references to human rights in the course material, but not in any great detail – the indication is that use of force and human rights is to be dealt with in another lesson. That said, the suggested seven-part test for the use of baton rounds includes at question 3, “Is what I am doing absolutely necessary?” In addition, there is clear guidance that baton guns should not be used at short distance and that no higher point of aim should be targeted than below ribcage unless there is “a serious and immediate risk to life.” It is also encouraging that adverse observations by the Police Ombudsman (e.g. on failing to keep adequate records) are noted in the course training material, brought to the attention of participants and corrective action emphasised.

## Public order training

The introduction to this course makes reference to the PSNI General Order on Human Rights and Police Use of Force<sup>31</sup> and the Code of Ethics. The detail in which the policy is discussed is impressive. However, in the course material, the highlighted principles refer to Article 2 of the European Convention on Human Rights but do not make express reference to the test of absolute necessity. Instead the principle “reasonable in all the circumstances” is set out. In relation to the non-lethal use of force, this is understandable, but as the course material rightly recognises, force used in public order situations is often potentially lethal and a reference to the Article 2 test would be helpful. The approach taken in the human rights and use of force course (see above) could easily be integrated here.

The parts of the course dealing with tactics (which start with fairly basic manoeuvres and work through a number of tactics, including the deployment of arrest teams to dealing with petrol bomb attacks) integrate references to the European Convention on Human Rights by asking participants to discuss, in relation to each tactic, what human rights are engaged, indicating that emphasis should be given to Articles 2, 3, 5, 9 and 11 of the European Convention on Human Rights. Although the analysis is thin in places, the integration exercise does underline the constant need for participants to question the implications of each of the tactics being taught and to consider the relevant provisions. In some areas, useful notes accompany the reference to the European Convention. An example is in the section dealing with injured officer drills, where the police responsibility for protecting other agencies is emphasised. There is some room for improvement: for example, the sections dealing with restraint of individuals do not emphasise (or even sometimes mention) article 5 of the European Convention on Human Rights, although all underline the importance of European Convention Articles 2 and 3. In addition, there is clear reference to Article 5 in the section on the use of arrest teams, which makes reference both to the legality of an arrest and the sufficiency of the evidence in support. European Convention Article 8 is also highlighted in the section on entering buildings. The use of debriefs in relation to tactics includes a direction to trainers to highlight and discuss the human rights issues that emerged during the lesson.

The Tactical Support Group/Police Support Unit supervisors’ course is similar to the public order command course (see below) and has many of the same strengths and weaknesses as the general introduction to the public order course. The graduated crowd management (obstructive sitters) includes a fairly full section on the European Convention on Human Rights and helpfully makes express reference to the case of *Steel & others v UK* (the leading Convention case on the relationship between the use of breach of the peace powers and the European Convention on Human Rights). It also emphasises the need for a structured approach to the right of peaceful protest.

## Crime training (interviewing)

In the introductory parts of the course material, there are few references to the European Convention on Human Rights. However the seven principles of investigative interviewing do emphasise that vulnerable people, whether victims, witnesses or suspects, must be treated with particular consideration at all times. Also the objectives of the course include equipping the participants to comply with Police and Criminal Evidence (NI) Order and to identify which human rights are potentially engaged during the interview process. The good practice section states that the course will “keep you right” with regard to the European Convention on Human

### NOTES

31 Ibid.

Rights because by using the PEACE model (Planning and preparation; Engage and explain; Account; Closure, Evaluate), participants will respect the rights of the suspect, comply with the Police and Criminal Evidence (NI) Order and investigate crime in the most efficient manner possible.

References to the European Convention on Human Rights increase in the section on oppression, which includes detailed information on relevant cases and useful guidance. For example, the key cases under European Convention Articles 3 and 6 are identified, with relevant passages quoted, followed by notes to the trainers emphasising the key issues arising. The European Convention on Human Rights is also put to good use in the section on planning and preparation, where various Convention Articles are identified as being engaged, and again in the section dealing with solicitors. One of the objectives of this part of the course is to equip participants to recognise the role of solicitors regarding human rights. Participants deal in some detail with the rights that solicitors are there to protect including, Articles 3, 5, 6, 8 and 14 of the European Convention on Human Rights, and there are useful references to the European Court of Human Rights case law on drawing adverse inferences from silence where a suspect's access to a solicitor has been denied.

Overall, the training material for the crime training (interviewing) course provides a good example of the European Convention on Human Rights being integrated into training.

### **Crime training (advanced interviewing)**

There are references to the European Convention on Human Rights in the introductory passages of the advanced interview Part I course, with an indication that many Articles are "particularly relevant to the field of interview and investigation". European Convention Articles 2 to 8 are then listed, with the advice that what the participant will learn on the course will keep them "entirely Police and Criminal Evidence (NI) Order and HR compliant." Dealing with individuals and respecting their human rights are included in the performance criteria for conducting specialist interviews with victims and witnesses. The section on knowledge and understanding makes clear that the interviewer must know and understand current legislation and organisational requirements on human rights. Otherwise, there is no specific mention of human rights in the remainder of Part I of the course material. Save for the section on legal advisors and disclosure, there are similarly few express references to the European Convention in Part II of the course material on advanced interviews. However, the section on vulnerable and intimidated witnesses gives a fairly detailed account of the Criminal Evidence (NI) Order 1999, which is useful for those involved in taking statements from witnesses, rather than interviewing suspects. Otherwise, there are only one or two bland references to the need to know and understand current legislation on human rights. No express reference is made to the European Convention on Human Rights in the best practice guidelines, which merely state the need to "conform with the Police and Criminal Evidence (NI) Order and other relevant legislation".

It is recognised that human rights issues and standards have been integrated well into the standard criminal training interviewing course (see above) and that the assumption that if Police and Criminal Evidence (NI) Order requirements are met, few separate human rights issues should arise. However, it is of some concern that the references to the European Convention on Human Rights in the advanced interview courses are brief and not expanded. The failure to integrate human rights issues is most acute in the section in Part II of the advanced course dealing with the drawing of adverse inferences and the decisions which have to be taken where a detainee is young/immature or there is substantive cause for concern about his/her psychological vulnerability. This is an area in which the requirements of Article 6 of the European Convention on Human Rights are crucial and merely requiring that the interviewer know and understand current legislation and organisational requirements on human rights (in a very general sense) with no guidance is insufficient. On the other hand, the section on legal advisors and disclosure is good because it draws special attention to the PSNI General Order on the Role of Defence Lawyers,<sup>32</sup> which gives clear and detailed advice about the requirements not only of the European Convention on Human Rights but also the UN Basic Principles on the Role of Lawyers.

#### **NOTES**

<sup>32</sup> General Order 23/2003.

## **Custody Officer training**

There are four introductory sections to this course, followed by two case studies. One of the objectives of the introductory sections is to explain the implications of the European Convention on Human Rights for custody officers. The emphasis, however, is very firmly on the requirements of the Police and Criminal Evidence (NI) Order. Although human rights are highlighted several times, the clear message is that compliance with the Police and Criminal Evidence (NI) Order and the current Codes of Practice will ensure compliance with the European Convention on Human Rights. To a large extent this approach can be justified. The Police and Criminal Evidence (NI) Order and the Codes of Practice do comply with Article 5 of the European Convention on Human Rights, but provide a much clearer and more comprehensive template for custody officers. More extensive reference is made to the European Convention in the section dealing with ethnic groups and minorities, where Article 14 is dealt with sensitively, emphasising that while equal treatment is required, treating all those received into custody in exactly the same way may not comply with Article 14.

The case studies equally emphasise that compliance with the Police and Criminal Evidence (NI) Order and the current Codes of Practice will ensure compliance with the European Convention on Human Rights. However, as the case study rolls out, the question of which human rights are in play is repeatedly asked.

## **Observation skills training**

### **Observation skills training course**

The observation skills training course material starts with a section on surveillance management. Although human rights compliance is not listed as an objective (whilst the PSNI pro-active policing strategy as a whole is), reference is made to Article 8 of the European Convention on Human Rights at an early stage (with a reference to pre-reading material). The need to protect informants/sources is also specifically highlighted at an early stage of the materials dealing with surveillance management.

One section of the course is devoted to legal standing. The aim of this section is to ensure that participants are aware of the legal implications and PSNI policy in relation to static observation post sites and surveillance. The objectives include that participants should be able to explain Article 8 of the European Convention and relevant case law. Soon after this in the training material is a question for the participants about Article 8. It is indicated that the pre-read for the course is the European Convention on Human Rights aide memoire and a printout of the accompanying slide is included in the materials. While the early reference to and importance attached to Article 8 is good, it is doubtful whether the limited analysis of Article 8 in the aide memoire and the slide (which broadly sets out the terms of Article 8) is sufficient to achieve the stated objective. The following section on the Regulation of Investigatory Powers Act 2000 ("RIPA") is, however, fairly detailed and to some extent covers the Article 8 ground (as was intended by RIPA). The rest of the course is devoted to practical issues relating to low-level surveillance and does not include any further references to the European Convention on Human Rights.

### **District observation team course**

This course also has a section devoted to legal standing. Again, the aim of this section is to ensure that participants are aware of the legal implications and PSNI policy in relation to static observation post sites and surveillance. It is similar to, but not as extensive as, the similar section in the observation skills training course. In particular, it lacks the detailed analysis of RIPA.

The section on surveillance logs and records has a specific human rights compliance objective and the material deals with Article 8 of the European Convention at an early stage. As with the observation skills training course, it is doubtful whether the limited analysis of Article 8 in this part of the course material is sufficient to achieve the stated objective in relation to Article 8. There are further references to Article 8 in the section on reactionary observation posts, cross-referenced to the human rights workbook. These references suffer from similar limitations and consideration should be given to rewriting this part of the course material, or to the adoption of a free standing Article 8 part for use in all these sections.

## EXTERNAL AND INTERNAL EVALUATION OF TRAINING

In this section of the Report, we deal with two aspects relating to the evaluation of training. First we consider the way in which the PSNI audits its training material. Then we consider the need for, and adequacy of, ongoing external and internal evaluation.

The need for proper auditing has been emphasised several times in recent years. When the Human Rights Commission reported on its evaluation of the Student Officer Training Programme, it was concerned that all training material for the Programme should be audited as soon as possible. The PSNI responded positively to this. In its April 2003 internal evaluation of human rights training, the PSNI indicated that all lesson plans should have been reviewed for human rights compatibility and integration and be available for inspection by the end of May 2003. Thereafter, it indicated, "there will be ongoing review and updating of lesson plans to take account of legislative changes, course adjustments and good practice". Responsibility for devising an assessment/reporting mechanism was also assigned at that time.

When, in March 2004, the Human Rights Commission published its report on the Probationary Constables Training Programme, it was concerned that internal evaluation of learning events was merely a paper exercise, with the obvious lacuna that this method would not detect where human rights references in the training materials were not actually delivered. It commended, "if an auditing process has been completed - it may have been an exercise of form rather than substance". It recommended that the PSNI conduct a systematic and fully substantiated audit of all probationary learning events.

The Head of the PSNI Police College has informed us that an audit and observation system has been introduced which requires *all* instructional staff to demonstrate the integration of human rights into their delivery of lessons across the police college. This was introduced in response to the Oversight Commissioner's finding in his April 2004 report<sup>33</sup> that there was little or no progress on the development of new instructional staff in human rights development.

We have been informed that a Human Rights Audit and Observation Project Team has now been established to observe and assess, through random spot checks, training delivery and to identify good and bad teaching practices. This is a welcome initiative. We have been instructed that an initial schedule of lessons was agreed by the Project Team for observation as part of its human rights audit in February 2005. Observation sessions are due to commence in early Spring 2005.

As our analysis of the course material for new recruits and ongoing training demonstrates, some of the PSNI's training material has integrated human rights principles extremely thoughtfully and extremely well. Other training material, however, falls far short of what is required. In the circumstances, there is a clear need for a thorough audit of all PSNI training material to ensure that human rights principles are effectively integrated. If that exercise is conducted by a small team, consistency can be ensured and effective use can be made of the excellent material already in existence.

Against that background, we recommend:

- That the PSNI conduct a thorough audit of all PSNI training materials within the next six months and thereafter on a bi-annual basis to ensure that human rights principles are effectively integrated and developments in human rights law and practice incorporated.
- That the PSNI should set timelines for its Human Rights Audit and Observation Project Team to conduct a comprehensive evaluation of human rights training delivery.

Turning to the question of internal and external evaluation, we note that one of the performance indicators set by the Oversight Commissioner in this area was evidence that the PSNI has been open to the evaluation of

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training by responsible non-governmental organisations. So far, most external evaluation has been carried out by the Human Rights Commission, and we have noted some of their observations in this report. However, the PSNI currently has no plans for ongoing external evaluation. In our view, there continues to be a need for external evaluation of the delivery of training. In light of the Human Rights Commission's observations that some course material, while excellent on paper, is not always delivered, this evaluation must be of an expert nature and it must be comprehensive. If the PSNI is not persuaded of the need for such evaluation, the Policing Board should consider putting in place a scheme for the expert and comprehensive external evaluation of the delivery of PSNI training itself.

Against that background, we recommend:

- That the PSNI should put in place a scheme for the expert and comprehensive external evaluation of the delivery of PSNI training on human rights.
- That if the PSNI does not put in place a scheme for the expert and comprehensive external evaluation of the delivery of PSNI training on human rights, the Policing Board should do so.

# CHAPTER 3: POLICY

## CHAPTER 3: POLICY

### Introduction

It is fundamental that all of the PSNI's policies should set a framework for police decision-making and conduct that requires, and seeks to ensure, human rights compatibility in all areas of police work. The PSNI has taken a number of important steps intended to achieve this objective. When the Human Rights Act came into force in 2000, an initial audit was carried out by the PSNI Human Rights Unit. We assess the effectiveness of that exercise below. Since then, it has been the duty of policy writers to ensure that any new or amended policy is human rights compatible. This task is now regulated by the General Order on Policy, Procedure and Guidance, which we assess in detail in this chapter of our report. We also consider the training given to policy-writers, having attended and observed the delivery of that training in March 2004.

As for the policies themselves, we have audited all PSNI policies concerning public order, the use of force and covert policing. Our findings in respect of those policies are set out in the chapters of this report dealing with those issues.<sup>34</sup> We have also audited policies relating to twelve randomly selected subject areas. Our findings in respect of those policies are set out at the end of this chapter.

Before turning to the analysis outlined above, we first address the question of definition and accessibility.

### Definition and Accessibility

For many years the PSNI, and the Royal Ulster Constabulary before it, operated with only the loosest definition of what constitutes policy. That led to ambiguity and confusion, which are not the hallmarks of a police service that complies with the requirements of the Human Rights Act. One of the fundamental requirements of the European Convention on Human Rights is that measures governing the restriction of rights should be clear and accessible. But for the recently adopted General Order on Policy, Procedure and Guidance, which we analyse below,<sup>35</sup> the lack of clarity about what constitutes 'policy' within the PSNI would have constituted a major failing in any assessment of the PSNI's performance in complying with the Human Rights Act. Fortunately, the General Order on Policy, Procedure and Guidance now provides a clear definition and distinguishes between policy, procedure and guidance.

PSNI policy is defined as a "statement of principle defining expected organisational behaviour, promoting PSNI values, the Chief Constable's Vision Statement and policing objectives. Policy is the framework from which procedure or guidance flows." Procedure and guidance form the second tier in the framework. Procedure is defined as "a course of actions, tasks or steps to be followed, which outline how PSNI policy will achieve its aims". Guidance is defined in the Policy Document as setting "minimal standards as a suggested course of action, which assist in the implementation of Policy while permitting flexibility in interpretation" and is non-binding.

The General Order's clear definition of policy is a welcome and important step, which should remove the ambiguity and confusion that dogged this important aspect of police work in the past. The accessibility of PSNI policies has also been a problem in the past. Although a manual index was kept and faithfully updated, it was by no means adequate for a police service of the size and complexity of the PSNI, with the result that identifying and obtaining up to date versions of some policies was a frustrating and time consuming exercise. Again, we are pleased to report that there have been significant improvements on this front as well.

The vast majority of general orders have now been added to the PSNI intranet site, where they are electronically indexed and accessible either by title or subject matter through a search facility. The operation of this system was demonstrated to us in April 2004, by which time 841 general orders were available on the intranet. At that stage, it was anticipated that there would soon be over 6,500 intranet terminals available throughout the PSNI, providing access for about 15,000 individuals (including civilian staff). This is a significant achievement that should radically improve this aspect of the PSNI's work.

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<sup>34</sup> Public Order is dealt with in chapter 7, the use of force is dealt with in chapter 8 and covert policing is dealt with in chapter 9.

<sup>35</sup> See pp 44-45.

There are, however, several issues that still need to be addressed. First is the question of updating. At the moment there is no automatic system by which the policies on the intranet are updated when changes are made. Although updates are separately circulated and available, the lack of automatic updating of the policy on the system means that many users may be unaware that changes to the policy have been made. That carries with it the inevitable risk that decision-making and conduct will not be compatible with the updated policy. Where a policy has been changed because problems were identified with its original form, e.g. policies changed as a result of a recommendation from the Police Ombudsman, that presents obvious difficulties. The second issue that needs to be addressed relates to policies that are considered too sensitive to be generally available on the PSNI intranet, for example some of the policies on covert policing.<sup>36</sup> Thought needs to be given to how these are to be indexed, updated and kept.

The final issue that needs to be addressed is whether some of the policies currently available on the PSNI intranet site could not be made available to the public, perhaps on the PSNI website. We note, for example, that the PSNI's policy on the use of force is now available on its website. Many police forces have published some of their more important policies and, having read and considered many of the PSNI's policies, we can see no reason in principle why many of these should not be available to the public.

Against that background, we make the following recommendations:

- That the PSNI should review all the material currently constituting 'policy' in the loose sense of the word and classify it as policy, procedure or guidance according to the definition in the General Order on Policy, Procedure and Guidance.
- That the PSNI should devise a system for ensuring that all policies available on the intranet are effectively updated when changes are made to them and review how those policies considered too sensitive to be generally available on the PSNI intranet site are to be indexed, updated and kept.
- That the PSNI should consider whether some or most of its policies can be made available to the public, either on the PSNI website or by some other means.

## The Internal Human Rights Audit in 2000

The PSNI Human Rights Unit conducted an initial audit of all PSNI policies and general orders for compliance with the Human Rights Act. Altogether about 580 policies were reviewed. The Human Rights Unit also devised a framework for internal auditing of PSNI policies, practices and procedures for human rights compliance. The audit document was based on an ACPO model. It set out 12 questions designed to act as "prompts to ensure compliance with the key principles of human rights legislation." It was disseminated to all departments who were required to complete audits of all policies for which they were responsible and return the completed audit document for each to the Human Rights Unit within twelve months. In addition, the PSNI Human Rights Unit sought external legal advice regarding issues of particular concern, such as the amendment of policies on the use of force.

Although this audit document remained in place for some time after the initial audit by the PSNI Human Rights Unit, responsibility for ensuring that policies were human rights compliant passed to policy-writers. As a result, a specific human rights training programme for policy-writers was set up and delivered in February 2002, April 2003 and March 2004. We attended the March 2004 training and comment on it later in this chapter.<sup>37</sup> This training was intended to equip policy-writers with the necessary skills to audit policies for human rights compliance.

The Oversight Commissioner noted in his Fifth Report (September 2002), "the lawyer employed by the Police Service to provide advice on human rights has verified the process that was used to audit compliance of all policies for conformity with the Human Rights Act 1998. She advises the Police Service about the human rights implications of new policies, and is extensively consulted about the human rights implications of operational practices."

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<sup>36</sup> Dealt with in chapter 9 of this report

<sup>37</sup> See pp 45-47

During the period 2000-2004, there was no system whereby policy writers automatically referred to the PSNI's internal lawyers during the drafting or updating of policy. However, under an ad hoc scheme, most policy-writers referred any legal difficulties they encountered to the PSNI legal services department. Human rights issues were invariably raised with the PSNI's human rights legal adviser and this system appears to have worked fairly well.

Having discussed the audit carried out in 2000 and the subsequent working arrangements, we consider that the audit was satisfactory for the purposes of identifying and remedying significant non-compliance with the Human Rights Act. It also provided a safe foundation for the more comprehensive overhaul of the procedures for policy making that has now been put in place. We therefore turn to consider the current arrangements.

## **CURRENT ARRANGEMENTS: THE GENERAL ORDER ON POLICY, PROCEDURE AND GUIDANCE**

The General Order on Policy, Procedure and Guidance was adopted in June 2004. It sets up a rigorous and impressive framework for ensuring that all PSNI policy is clear, consistent and human rights compliant. It is an excellent initiative. The intention is that all PSNI policy and associated procedures and guidance "will be created, disseminated and reviewed in accordance with it."

The aims of the General Order are to:

- (a) define what constitutes PSNI Policy;
- (b) differentiate between PSNI policy, procedure and guidance;
- (c) standardise the creation, dissemination and review of PSNI policy;
- (d) ensure PSNI policy complies with legislative and internal requirements such as the Human Rights Act 1998, the Freedom of Information Act 2000, section 75 of the Northern Ireland Act 1998, PSNI Transparency Policy (discussed further below)<sup>39</sup> and the PSNI Code of Ethics.
- (e) establish an electronic Policy Index.

The General Order requires that each new policy have an identified policy owner, usually the Head of the Department responsible for the creation of the policy, as well as a policy author, who will be the particular PSNI officer responsible for drafting the policy. The General Order contains a Policy Template and a Policy Audit Tool. All PSNI policy must be prepared using the Policy Template.

The Policy Template requires each policy to set out the following:

- (1) the policy title, ownership, approval, implementation and review date;
- (2) a policy statement setting out what the policy aims to achieve and why it is needed;
- (3) the origins or background to the policy;
- (4) the aims and objectives of the policy;
- (5) the application of the policy;
- (6) the legal basis for the policy;
- (7) the implications of the policy for the PSNI (e.g. financial, training; human resources; related PSNI policies; risks associated with the policy);
- (8) a summary of the internal and external consultation carried out regarding the policy;
- (9) a section on human rights, equality, integrity and freedom of information and, in particular, an explanation of the impact of the Human Rights Act 1998, the Northern Ireland Act section 75, Freedom of Information Act 2000 and other relevant legislation on the policy.

The Policy Audit Tool must be completed for each new policy. The Audit Tool sets out a series of issues, broken down into detailed questions to be answered by policy owners and authors when writing, auditing, drafting or amending policy. The questions act as prompts to ensure compliance with human rights and equality legislation. A written response must be recorded for each question and the completed Audit Tool attached to the new policy.

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<sup>39</sup> At pp 49-50.

An explanation of relevant European Convention on Human Rights principles is attached as an appendix to the General Order. The appendix addresses the concepts of legality, proportionality and necessity, and sets out the operational policing areas covered by key provisions of the European Convention on Human Rights.

The significance of the adoption of the General Order on Policy, Procedures and guidance should not be underestimated. It provides a clear and straightforward framework for ensuring that all PSNI policies are human rights compliant. It will be an invaluable tool for those writing, amending or reviewing policies.

It is the intention that all PSNI policy will be reviewed using the General Order on Policy, Procedure and guidance and in the circumstances the only recommendation we make in this section of the report is as follows:

- That all PSNI policy should be reviewed using the General Order on Policy, Procedures and Guidance within twelve months of this report.

## The Policy Writers Course

The Human Rights Auditing for Policy Writers course is run by an external trainer. Four courses have so far been held, in February 2002, April 2003, March 2004 and February 2005. This training is intended to equip policy makers with the necessary skills to audit policies for human rights compliance. This course is currently the only human rights training provided for policy drafters. Five places are offered to each PSNI Department in Headquarters. The course is not compulsory. We observed the Course held on 10th & 11th March 2004.

The stated objectives of the course were to train delegates to:

- (1) Identify European Convention on Human Rights points and apply them to the decision making process.
- (2) Prepare reasoned arguments to justify decisions relating to European Convention on Human Rights points, taking into account relevant judgments.
- (3) Implement the Human Rights Act (HRA) in a manner compatible with the European Convention on Human Rights.
- (4) Identify the sources of relevant law.
- (5) Mainstream human rights into their operational role.

The course was devised with the expectation of a relatively basic level of human rights knowledge amongst delegates, although the trainer was aware that some delegates would have a significant amount of experience in human rights matters. The sixteen delegates attending the course had varying levels of human rights training, ranging from those with no specialist knowledge to those who had attended the course the previous year and were conversant in core human rights principles. The intention was to make human rights part and parcel of their everyday thinking. The PSNI human rights legal adviser attended the opening session of the course and introduced herself, encouraging delegates to contact her should they need human rights advice. At least half of the delegates indicated that they referred to the PSNI Human Rights Adviser regarding human rights issues on a regular basis.

In the first session, the trainer provided a brief summary of the historical background to the European Convention on Human Rights. The trainer explained the impact of the Human Rights Act and European Convention on Human Rights case law. Delegates were aware of most Convention Articles incorporated by the Human Rights Act. Although the trainer referred to the general framework of the European Convention, the substantive content and application of each of the rights was not outlined to ensure delegates were aware of the meaning, scope and operation of each of the Articles. This would have been a valuable use of training time.

The trainer explained the structure of the European Convention, dealing with the following issues:

- (1) Interpretation: the role of the Vienna Convention and the 'object and purpose' requirement.
- (2) The role of the European Convention on Human Rights as an instrument for the protection and promotion of human rights.
- (3) The dynamic nature of the European Convention and its role as a 'living instrument'.
- (4) Categories of Rights. The trainer spent some time discussing the possible hierarchy of rights and the difficulties of balancing the rights of different people or groups of people, although no clear distinction was made between absolute, qualified and special rights.

In the second session the trainer outlined the analytical approach to identifying and making decisions regarding human rights issues. The trainer reminded the delegates of the generous approach to legislative interpretation required under the Human Rights Act. The trainer provided a flow chart demonstrating the analytical approach to adopt when analysing issues involving the European Convention on Human Rights. The chart referred to the 'engagement' of Convention rights. Many of the delegates were confused about the distinction between 'engagement' of Convention rights and 'interference' of Convention rights. The trainer did not satisfactorily define these terms during the session with the result that doubt remained in the minds of some of the delegates. The trainer used case law to illustrate the constant balancing exercise conducted between the demands of the general interests of the community and the requirements of the protection of an individual's fundamental freedoms.

In the third session, the trainer provided delegates with a short note on relevant case law and then introduced a case study. The case study described the policing of a public order event. Groups of delegates were asked to:

- (1) Identify the human rights issues arising from the facts of the case study and any possible violations of the European Convention on Human Rights.
- (2) The competing rights and demands of each of the groups in the case study.
- (3) The adequacy of the police response to the public event, and
- (4) Recommendations it would make to relevant public authorities to prevent human rights violations occurring in the future.

Each of the groups identified the core human rights issues and isolated the majority of possible violations of the European Convention. This was a useful exercise illustrating the practical application of the teaching of the first day. Delegates demonstrated a high degree of knowledge of policing public order events, a high level of sensitivity in their approach to handling different groups with competing demands and a high degree of competency in using the human rights materials provided to them. The trainer referred to recent relevant case law at the close of the session.

In the fourth session, the trainer outlined admissibility of evidence in court proceedings and the final part of the course was devoted to a practical group exercise to outline the approach delegates should take when drafting a policy to ensure its compliance with the Human Rights Act (HRA). Delegates were encouraged to identify policy topics on which they were currently working or with which they had had difficulties in the past. The delegates demonstrated a high degree of awareness of the core human rights issues arising in relation to each topic. The approach to construction of a draft policy appeared in the main to be analytical and methodical.

The trainer perceived the strength of the course to be the introduction, repetition and distillation of a clear analytical approach to considering the practical application of human rights in everyday policing. Delegates agreed that they found the practical approach of the course attractive. The trainer perceived the weaknesses of the course to be a lack of pre-course reading, that it was potentially too repetitive and too long. Delegates did not agree that the course was too long.

Having a course specifically on human rights for policy writers is an important initiative. The length and content of the programme are good, but we recommend that part of the programme be spent defining the scope and application of the individual European Convention on Human Rights by reference to examples/case studies relevant to everyday policing. Core terms, such as 'engagement', 'interference', 'absolute' and 'qualified' should be more precisely explained. The materials provided to delegates to accompany the course, however, were inadequate. We brought this to the trainer's attention, recommending that the trainer provide a pack of materials for each delegate which could act as an aide memoire following completion of the course and return to police duties. It is clear from the results of the questionnaire we conducted as part of our work on human rights awareness in the PSNI that many officers refer to their training material when confronting human rights issues in their everyday work. The trainer accepted our observation and has agreed to provide a pack of materials for the next course.

The course we observed was run before the new General Order on Policy, Procedure and Guidance was adopted. Now this General Order is in force we recommend that the policy-writers training programme should be re-created and based on the policy template introduced by the General Order. This will provide a clearer focus and direction to the training.

Once the course is redesigned, it will be important for all policy-writers to attend the course. In the circumstances the course should become mandatory for all policy-writers.

Against that background, we make the following recommendations:

- That the policy-writers human rights training course should be redesigned, based on the policy template in the General Order on Policy, Procedure and Guidance.
- That the policy-writers human rights training course should be compulsory for all PSNI policy writers.

## Policies on the Human Rights Act

The PSNI issued a policy on the Human Rights Act and the Northern Ireland Human Rights Commission on 23rd November 2000. This policy sets out the scope and application of the Human Rights Act and the European Convention on Human Rights. Schedule 1 of the Human Rights Act is appended. The Policy identifies and explains the substantive human rights incorporated under the Human Rights Act by specific reference to the European Convention Articles 2-12, 14 and Protocol 1. Key legal principles are explained, including proportionality, incompatibility, necessity and legality. The policy also sets out the role, functions and powers of the Human Rights Commission. A list of United Nations instruments relating to law enforcement is appended to the policy.

In addition, there are a number of policies setting out the impact of the Human Rights Act on other areas of police practice, including the use of anti-terrorist powers (discussed further in Chapter 4 below). The policies set out the general human rights principles which should be applied to decision-making processes, the application of particular European Convention Articles in defined circumstances and the requirement for monitoring and recording the use of police anti-terrorist powers. Pro-forma documents for use by District Commanders are appended to the policy.

We are satisfied that these policies are accurate and provide useful explanatory tools for officers.

## PSNI POLICY AUDIT

As part of our work evaluating the performance of the PSNI in complying with the Human Rights Act, we audited PSNI policies on the following twelve randomly selected subject areas:

- (1) deaths in custody;
- (2) investigations into unexplained deaths;
- (3) bail and arrests;
- (4) disclosure;
- (5) relations with the military;
- (6) complaints;
- (7) transparency;
- (8) equality;
- (9) children;
- (10) victims;
- (11) the role of defence lawyers;
- (12) operational briefing.

For information and completeness, we set out overleaf a short summary of the content of the key PSNI policies in each subject area. However, as we discussed earlier in the chapter, we recognise that the PSNI has embarked on a major exercise in adopting the General Order on Policy, Procedure and Guidance and that many of the policies that we audited will be reviewed under the General Order in the near future. For this reason, we do not make detailed findings on the human rights compliance of these policies but instead offer some general observations. However, we would comment that our random audit confirms the need for the review of all policies against the General Order on Policy, Procedure and Guidance.

## **(1) Deaths in Custody**

Under s 55(2) of the Police (Northern Ireland) Act 1998, the Chief Constable has a duty to refer any matter appearing to him to indicate that conduct of a member of the police may have resulted in the death of some person to the Police Ombudsman. The Police Ombudsman is under a duty to investigate all deaths in police custody.<sup>40</sup> The PSNI issued Guidelines for dealing with deaths in police custody in September 2001.<sup>41</sup> The policy sets out the initial action to be carried out by the senior officer on duty, the role of the District Commander for the area where the death occurred and the evidence-to-be-gathered-at-the-post-mortem.

## **(2) Investigations and unexplained deaths**

A revised policy on police investigations into unexpected, unexplained or suspicious deaths issued in June 2004<sup>42</sup> sets out guidance for officers on how to investigate those deaths where the cause is not immediately known. The police conduct a preliminary investigation to allow decisions to be made on whether a post mortem and/or inquest should take place. The policy sets out officers' obligations under European Convention on Human Rights Article 2 to carry out an effective investigation where there is reason to believe an individual has died or sustained life-threatening injuries in suspicious circumstances, reminding officers that an investigation will only be considered effective where the authorities can demonstrate that they took all reasonable steps to secure the evidence concerning the incident. The key principle of the policy is that officers should treat all suspicious deaths as potential murder investigations until the contrary is established, with officers giving due consideration for the feelings of the next of kin.

## **(3) Bail and arrest**

The policies relating to bail and arrests can be grouped into two main types. The first type of policies are those which inform police officers of the content of legislation which directly impacts upon their role, responsibilities and the manner in which they carry out their duties. These include policies providing notice of new legislation and amendments to existing legislation. The policies advise officers of the meaning and application of the legislation and the consequent practice and procedure to be adopted by officers to comply with the legislation. The second type of policies instruct police officers more generally regarding PSNI standard operating protocols, practice and procedure, appending ACPO Guidelines where relevant and/or PSNI standard forms for use by all officers.

## **(4) Disclosure**

Fair disclosure to an accused is an inseparable part of the right to a fair, trial guaranteed under European Convention on Human Rights Article 6. We reviewed all PSNI policies relating to disclosure. The policies provide guidance on the meaning and application of the Criminal Procedure and Investigations Act 1996 and the Code of Practice issued under section 23 of that Act, including the procedures introduced under the Act, the duties of the police under the Act and how officers are to fulfil their duties to meet the requirements of the Code of Practice.

## **(5) Relations with the military**

The military, in providing 'Aid to the Civil Power', has its own command and control structures which operate independently from the police. Nevertheless, agreed liaison procedures apply. We have reviewed all PSNI policies and protocols relating to the roles of the military, royal military police and the ministry of defence police and the liaison procedures in place for joint operations between the PSNI and the military.

There are policies in place setting out the organisation and role of the Royal Military Police and a co-ordinated policing protocol defining the respective responsibilities of the Ministry of Defence Police<sup>43</sup> and the PSNI. However, there is currently no generic policy on the PSNI's relationship with the military and the liaison procedures in place for joint operations between the PSNI and the military. The Principles of Police Operations for Contentious Parades, issued annually by PSNI Operational Policy and Support, includes a section on

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40 Police (Northern Ireland) Act 1998, s 55(3).

41 General Order 55/2001.

42 General Order 30/2004.

43 Established under the Ministry of Defence Police Act 1987.

military support. The Appendix to the 2004 Principles defines the key elements of, and guiding principles for, joint PSNI/military conduct of public order operations during the marching season. It identifies the circumstances where the military may be deployed in support of the police, setting out the various levels of military support, categories of additional troops which might be deployed, command and control arrangements, liaison and co-ordination procedures and requirements for the recording of decision-making.

Similarly, the Urban Region Generic Gold Strategy for Parades July 2004 contains a Joint Protocol for the Conduct of Joint Police and Military Operations as an Appendix. The Protocol sets out a number of overarching key principles agreed between the PSNI and military which provide the strategic framework for all joint operations, including the principle that all operations will enshrine the principles of human rights and be both necessary and proportionate to the identified objective. The Protocol also sets out the agreed liaison procedures between the PSNI and the military at regional and district levels. We suggest that these are useful models, which should be more widely adopted.

Against this background, we recommend:

- That the PSNI should review all policies and protocols on PSNI relations with the military and/or bodies exercising policing powers.
- That the PSNI should formulate, in collaboration with the military, a policy setting out (i) its relationship with the military and (ii) the agreed liaison procedures in place for joint operations between the PSNI and the military.

## (6) Complaints

PSNI policies on complaints establish the internal procedures for the monitoring of complaints and the external process of notification of complaints received by the Police Ombudsman. These processes and procedures are analysed in detail in Chapter 6 of this report. In line with Patten Recommendations 79 and 80, a recent policy issued in June 2004<sup>44</sup> sets out the responsibilities of District Commanders for monitoring and dealing with complaints against officers within their geographical area. The policy sets out the procedure in relation to trending and tracking of police complaints and outlines the main courses of action available to District Commanders to deal with officers where complaints of misconduct have been substantiated.

## (7) Transparency

Patten Recommendation 37 stated that the police should take steps to improve its transparency: “The presumption should be that everything should be available for public scrutiny unless it is in the public interest – not the police interest – to hold it back.” The Oversight Commissioner identified five performance indicators for Recommendation 37:

- (a) Evidence of assignment of responsibility.
- (b) Freedom of Information Act 2000 provisions and application.
- (c) Evidence of PSNI plans for publication.
- (d) Comparison with best practice in the regard in the UK, Ireland, Europe, Canada and the USA.
- (e) Examination of review arrangements for communication.

In developing its transparency policy, the PSNI consulted internally with police commanders and department heads and externally with the Northern Ireland Office, the Police Ombudsman, the Equality Commission, the Human Rights Commission, the Committee on the Administration of Justice and British Irish Rights Watch. It issued its Transparency Policy<sup>45</sup> on 18th June 2003. The introductory policy statement provides, “Within the police service there must be a dynamic culture of accountability, which supports and underpins the principles of openness and transparency.” In order to improve public knowledge and understanding about policing, the policy commits the PSNI to giving the community “access to a wide range of information on their local police,

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44 General Order 38/2004.

45 General Order 23/2003.

policies, processes and performance”. However, it states “confidential material and more sensitive data of a restricted nature will not generally be made publicly available”.

The policy is intended to reflect the provisions of the Freedom of Information Act 2000. It reminds officers that applications for disclosure of information are most likely to be raised in the context of criminal or civil proceedings under European Convention on Human Rights Article 6. The policy includes guidance on circumstances when it may be necessary to withhold certain information from the public in the protection of the rights of other individuals under Articles 2 and 8.

## **(8) Equality**

The PSNI was designated as a public authority under Section 75 and Schedule 9 of the Northern Ireland Act 1998 on 4th November 2001. As such, in carrying out its functions, the PSNI must comply with these provisions of the Act. The PSNI Equality Scheme was submitted to the Equality Commission for Northern Ireland in May 2002. It sets out how the PSNI is going to meet its obligations under Section 75 of the Northern Ireland Act 1998 and is kept under review by the Equality Commission.

In order to comply with its statutory duties under the Northern Ireland Act 1998, the PSNI issued a policy on its Equality Duties in October 2002. The policy requires all new and existing PSNI policies to be screened to assess whether they have any diverse impact in relation to any of the nine equality dimensions identified under the Act.<sup>46</sup> A comprehensive screening tool has been devised for this purpose. If an adverse impact is identified, the policy will become subject to a full Equality Impact Assessment.

We recognise that there is an overlap between the statutory duty of the PSNI to have due regard to the need to promote equality of opportunity under Section 75 of the Northern Ireland Act 1998 and the non-discrimination provisions of the European Convention of Human Rights. In addition, we recognise that further overlap arises between those provisions and the Policing Board's statutory duty to include in its annual report an assessment of the extent to which the membership of the police and the police support staff is representative of the community of Northern Ireland (Section 57(2)(f) of the Police (NI) Act 2000).

In these circumstances, we consider that to include an assessment of the policies relating to the PSNI's statutory obligations under Section 75 of the Northern Ireland Act 1998 or the recruitment and membership of the PSNI in this report would unnecessarily duplicate work already being done. We have therefore limited ourselves to reviewing those policies dealing with issues of equality and non-discrimination arising in the course of officers carrying out their duties. These policies can be grouped into two core types. The first type of policies are those which inform police officers of the content of equality legislation, such as section 75 of the Northern Ireland Act 1998 (see above), the Fair Employment (NI) Act 1989, the Sex Discrimination (NI) Orders 1976 and 1988 and the Race Relation (NI) Order 1997, which directly impact upon the manner in which the police carry out their duties. The policies advise officers of the meaning and application of the legislation and the consequent practice and procedure to be adopted by officers to comply with the legislation. We discuss police officer's understanding of the meaning and application of the legislation and their duty not to discriminate under Article 14 of the European Convention of Human Rights in more detail in Chapter 12 of this report.

The second type of policies instruct police officers more generally regarding PSNI equality procedures and practices, setting out monitoring schemes and Codes of Practice. The PSNI Code of Practice on equal opportunities<sup>47</sup> sets out the equal opportunities monitoring scheme and the rules governing the confidentiality of information on community background of applicants and members of the PSNI.<sup>48</sup>

## **(9) Children**

The treatment of children<sup>49</sup> by the police raises human rights considerations under domestic legislation and

### **NOTES**

46 Age, gender, marital status, sexual orientation, religious belief, political opinion, race, persons with/without disability, persons with/ without dependants.

47 General Order 72/99 issued on 15 October 1999.

48 As required by the Fair Employment (Monitoring) Regulations (Northern Ireland) 1989 (as amended).

49 For the purposes of our report, a child means any person under the age of 18.

international instruments, including the UN Convention on the Rights of the Child. The underlying principle of the legislation is that the welfare of the child is paramount. The PSNI has issued a number of core policies in relation to children, covering the general duties on the police regarding the welfare and protection of children, the treatment of children within the criminal justice system (in particular treatment on arrest and during interviewing), the position of child witnesses, the investigation of child abuse and issues surrounding adoption.

In common with other policy areas already analysed, policies relating to children can be grouped largely into two core types. The first type comprises those policies which inform police officers of the content of relevant legislation, including the Children (NI) Order 1995 and the Children's Evidence (Northern Ireland) Order 1995. The second type comprises those policies which set out the procedures to be followed by police officers, and guidance on police conduct and behaviour, in particular circumstances relating to children, such as during investigations into child abuse, notification of allegations of sexual assault and child abuse and the role of the PSNI Child Abuse and Rape Enquiry Units.

## **(10) Victims**

We are aware that the PSNI is redrafting its policies on victims. We discuss this further in Chapter 10.

## **(11) Role of defence lawyers**

The PSNI issued a policy on the role of defence lawyers in April 2002.<sup>50</sup> The purpose of the policy is to explain to officers the role of defence lawyers. The policy instructs officers that the suspect in any police investigation has the right to legal advice under European Convention on Human Rights Article 6(3). The policy refers to the United Nations Basic Principles on the Role of Lawyers and sets out the pertinent principles relating to the lawyer/police relationship.

## **(12) Operational briefing**

The PSNI have adopted a standard briefing system in the formulation of all operational documents. It issued a policy in August 2002,<sup>51</sup> which included templates for use in briefings in both major and small events. This means that whilst the information content of briefing documents changes depending on the type and circumstances of a particular operation, the standard structure of the (oral and written) briefing materials provided to officers is much the same. Briefing officers are required, when preparing for and delivering briefings, to draw attention to those European Convention on Human Rights likely to be engaged as a result of the policing operation and provide justification for police action by reference to the tests of legality, necessity and proportionality.

## **General Observations**

Most of the policies we audited were informative and detailed. In general those drafted most recently are better than those that are older. The transparency policy and the equality policies are good examples of recently drafted policies that are clear and comprehensive. Notably, each involved (and appear to have benefited from) a fairly extensive consultation exercise. Another good example is the policy on the role of defence lawyers, which draws well on all the relevant international human rights instruments. By way of contrast, in some other policies where reference is made to human rights, the contents of various European Convention on Human Rights Articles are merely recited without a great deal of guidance to police officers about the applicability of the relevant human rights standards and principles in the context of the particular subject area of the policy in question. Some policies are too thin and fail to deal with human rights principles in any structural way at all. An example is the current policy on victims. It highlights the need for all policies to be reviewed under the General Order on Policy, Procedure and Guidance. Elsewhere in this chapter we have recommended that all PSNI policies should be reviewed under that General Order within 12 months and we re-emphasise that recommendation here.

### **NOTES**

50 General Order 23/2002.

51 General Order 49/2002.

In addition, some policies need to be reviewed against some of our specific findings in this report. Foremost among those policies requiring such review are the policies on relations with the military.

In the circumstances, it will be necessary for the Policing Board to carry out a further audit of PSNI policies in the future for human rights compliance. We therefore recommend:

- That the Policing Board commits itself to a further audit of PSNI policies once the review of policies under the General Order on Policy, Procedure and Guidance has been completed by the PSNI.

# CHAPTER 4: OPERATIONS

## CHAPTER 4: OPERATIONS

### Introduction

In its framework document, the Policing Board committed itself to reviewing the changes that had been made to operational documents by the PSNI Human Rights Unit in 2000, which was intended to ensure that they were human rights compliant. The Policing Board also committed itself to an examination of the working relationship between PSNI officers who plan and control operations and the PSNI lawyers, the focus of that examination being the extent to which PSNI officers seek and obtain legal advice on human rights issues when they are in the course of operations. To facilitate this, we were provided with core operational documents and discussed these with members of the Human Rights Unit responsible for the revisions in 2000. We also had in-depth discussions with PSNI officers responsible for planning and controlling operations and with various members of the PSNI legal services department, including the PSNI human rights legal adviser. We set out our findings below.

In its framework document, the Policing Board committed itself to observe and monitor the planning and execution of six operations, three in Belfast and the remainder in Londonderry, Newry and Fermanagh. In addition, the Policing Board undertook to conduct an after-the-event paper audit of six further operations chosen at random. It has not been possible for us to meet these commitments for various reasons. Uppermost was the difficulty of logistics. We took the view that effective monitoring of PSNI operations for human rights compliance required us to observe the planning and execution of live operations on a random basis to ensure that our presence affected the operation as little as possible. However, observing six live operations on a random basis would have required us to be on stand by for long periods of time. Pressures on our time simply did not allow for that.

In the context of our work on public order, we did observe the planning and execution of three live operations in 2004 – the policing operations for the 1st July Short Strand parade, the 4th July Drumcree parade and the 12th July Ardoyne parade. Each of these involved a great deal of long-term planning and our findings in respect of them are set out in Chapter 7. We also observed the final stages of an operation involving covert surveillance of a small team of counterfeiters and were given short presentations by PSNI officers responsible for four covert operations that had been concluded. During these presentations, we were provided with an opportunity of reviewing some of the operational documents that had been generated, including the documents relating to the authorisation process required under the RIPA.

### The involvement of the PSNI lawyers in operational matters

We met with the head of the PSNI legal services department and the PSNI human rights legal adviser to discuss the extent to which operational officers seek and obtain legal advice, including specialist human rights advice, in the planning and control of the operations for which they are responsible.

There is no system in the PSNI whereby human rights issues that arise during the planning and control of operations are automatically referred to the legal services department. The system is essentially ad hoc, with PSNI officers contacting the legal services department as and when they consider that they need advice on a specific matter. Many issues are raised with the PSNI human rights legal adviser, but other PSNI lawyers also give advice, particularly when, for example, national security matters are raised.

On some occasions, referrals to the legal services department are more formalised. This is particularly so for operations which involve a great deal of long-term planning such as the policing operations for parades. As noted in Chapter 7, the PSNI human rights legal adviser very often attends the strategic planning meetings for the policing of parades and recently the PSNI has set up small meetings to discuss specific legal issues with the PSNI lawyers during the final stages of preparation.

The ad hoc nature of these arrangements makes it difficult for us to gauge how well they work in practice. Having discussed the current arrangements with PSNI officers responsible for planning and controlling operations and with various members of the PSNI legal services department, it seems that the arrangements work well. Most officers, particularly the more senior officers, seek advice whenever a difficulty arises. They value the advice given to them and follow it. Our special report on the policing of the 12th July 2004 Ardoyne

parades details this process in relation to that operation.<sup>52</sup> This view is also reflected in the answers to the questionnaire we sent to all officers as part of our evaluation of human rights awareness in the PSNI. The full results of that exercise are set out in Chapter 12. Included is Table 30, which shows that a high percentage of senior officers refer to the PSNI human rights legal adviser when they have difficult human rights questions to deal with.<sup>53</sup>

However, in our view the arrangements could be improved if relevant operational policies, particularly those relating to public order, gave clearer guidance to PSNI officers about when they should refer matters to the PSNI legal services department. Officers should be encouraged to refer to the legal services department at as early a stage in the planning of an operation as possible, particularly in relation to human rights issues arising. Consideration should be given to include a member of the PSNI Legal Services Department as a member of some or all of the strategy and planning groups set up in accordance with existing PSNI policy. Hopefully that will encourage more regular recourse to the expertise available from the PSNI legal services department in general and the human rights legal adviser in particular.

In addition, we noted in our special report on the policing of the 12th July 2004 Ardoyne parades some concern that no formal 'on-call' system appears to exist within the PSNI Legal Services Department. Although it is apparently reasonably easy to contact one of the PSNI lawyers, out of hours, either at home or on his/her mobile telephone, we recommended in that special report that the system needs to be more formalised, if only to ensure that police officers needing advice know how the system operates.<sup>54</sup>

As there is no formal referral system in place, it is difficult to quantify the number of referrals to Legal Services for advice in connection with operations. Advice given by Legal Services is recorded by way of individual lawyer's attendance notes. These are used in the event of a follow-up investigation regarding a certain operation or officer's conduct initiated by the Internal Investigating Branch or the Police Ombudsman.

Against that background we make the following recommendations:

- That relevant PSNI operational policies, particularly those relating to public order, should give clearer advice to PSNI officers about when they should refer matters to the PSNI legal services department.
- That the PSNI should establish a formal 'on-call' system within the PSNI legal services department and ensure that all officers who require legal advice in the run up to, and during, operations are aware of this system.

## Monitoring of live operations

As noted above, we observed a total of four live operations. Three of those operations arose in the context of our work on public order and we set out our findings in relation to them in Chapter 7. The fourth live operation we observed involved covert surveillance of a small team of counterfeiters.

In respect of this fourth operation, we attended the operational briefing given to officers before they were deployed on surveillance duties. The background to the operation was set out. Officers were reminded of their relevant police powers under Police and Criminal Evidence (NI) Order and the Terrorism Act. They were instructed on the human rights considerations of the operation, with direct reference made to the PSNI Code of Ethics Article 4, European Convention on Human Rights Article 2, the Police and Criminal Evidence (NI) Order Section 88, the Criminal Law (NI) Act 1967, Section 3, as well as the common law. Reference was also made to PSNI General Orders on the Use of Force and the Use of Firearms and officers were reminded that these general orders provided the legal framework for the police operation. The deployment and use of baton guns had been authorised but officers were instructed to consider less lethal options. The command and control

### NOTES

<sup>52</sup> At pp 97-100.

<sup>53</sup> See p157.

<sup>54</sup> Paragraphs 119-122.

structures for the operation were identified and officers were informed of the communications strategy and provided with co-ordinating instructions for deployment.

The outline of the operation was divided into three phases. Phase 1 comprised briefing and deployment. All officers were instructed to collect their weapons and equipment and move to their deployment areas as instructed. Phase 2 centred on reacting to surveillance received. Officers were instructed to monitor activity closely and be prepared to provide assistance in reaction to any disorder. Officers were tasked in detail as regards their particular responsibilities for the operation. The operational debrief constituted Phase 3.

Risk assessments had been carried out regarding the operation, including a generic health and safety assessment and more specific assessments on key issues for consideration in relation to the operation itself as well as the target of the operation. Officers were briefed on post-event procedures following the use of force, in particular the need to secure the scene for the purposes of investigation by the Police Ombudsman and the PSNI Senior Investigating Officer and to provide first-aid/emergency medical assistance to any injured parties.

The briefing was clear and comprehensive. The coverage of human rights issues was impressive. If all operational briefings are to this standard, that would be a considerable achievement within the PSNI. The fact that we were unable this year to carry out random and unannounced observations of live operations prevents us from commenting on that wider issue. However monitoring the quality of operational briefings will no doubt be one of the issues covered in the arrangements made between the Policing Board and the PSNI for more effective monitoring of the PSNI's performance in complying with the Human Rights Act, on which we make a core recommendation.<sup>55</sup>

We also reviewed all the RIPA authorisation forms relating to the fourth operation. These had been obtained for covert video surveillance. We were also told that the PSNI human rights legal adviser had signed-off the operational orders as human rights compliant.

Subject to the limitations already referred to, we were satisfied that, in terms of the operational documentation reviewed, the briefing attended and our observance of the initial stages of this operation, that human rights considerations were properly taken into account in the planning and execution of the operation. However, we are not in a position to comment on the human rights compliance of the completion of the operation.

## **After the event presentations on operations**

As noted above, as part of our work on operations, we were given short presentations by PSNI officers responsible for four covert operations. The nature of those operations, and the fact that legal proceedings are outstanding in relation to some of them, prevent us from disclosing anything but the general nature of the operation in this respect. However, we are able to record the video and documentary material seen by us and to conduct a limited assessment of that material.

### **Operation 1**

The first operation included alleged paramilitary intimidation and extortion. In respect of this operation the PSNI had conducted a risk assessment, which included human rights considerations. It had also considered the necessity and proportionality of the operation. An undercover operation was considered the only method likely to be successful in the circumstances of the particular case.

A PSNI undercover agent carried out the operation with a back-up group of officers located close to the undercover agent to offer protection. The undercover agent was equipped with CCTV and audio surveillance. We viewed some of the resulting CCTV footage and listened to some of the exchanges recorded.

We reviewed all the RIPA authorisation forms relating to the operation. These were used to obtain authorisation for CCTV and audio surveillance. There was an issue of collateral intrusion, in that the nature of the undercover

## **NOTES**

<sup>55</sup> See p58.

operation was such that ordinary members of the public were likely as a consequence of the covert surveillance to be recorded on CCTV and audio equipment. The RIPA authorisation forms acknowledged the possibility of collateral intrusion and recorded that steps would be taken to minimise any such intrusion. We were briefed on the execution of the operation by one of the officers involved in the planning and implementation of the operation. Acknowledging as we do the limitations on our evaluation of this operation, we are satisfied that human rights considerations appear to have been taken into account at the relevant steps of the planning and control of this operation.

### **Operation 2**

This operation related to the importation of illegal drugs into Northern Ireland, raising potential issues of national security, public safety and public health. Extensive informant intelligence had been provided regarding the core targets of the operation. The operation involved PSNI liaison with law enforcement agencies in other jurisdictions as well as other law enforcement agencies in Northern Ireland, such as Customs and Excise. Directed visual and audio surveillance was employed, including static, mobile, aerial and photographic surveillance. The international elements of the covert operation were registered with the National Criminal Intelligence Service.

The covert operation was carried out over a six-month time period and involved two undercover police officers infiltrating the target group. Dedicated welfare officers were assigned to these undercover officers to address their concerns. The issue of collateral intrusion arose, as did issues of entrapment.

We reviewed all the RIPA authorisation forms relating to the operation. These were used to obtain authorisation for each type of covert surveillance. The RIPA authorisations acknowledged the possibility of collateral intrusion and recorded that steps would be taken to minimise any such intrusion.

We reviewed excerpts from the covert video and audio surveillance obtained as a result of the undercover operation. We were also briefed on the execution of the operation by one of the officers involved in the planning and implementation of the operation.

Again acknowledging the limitations of our evaluation, we are satisfied that human rights considerations appear to have been taken into account at the relevant stages of the planning and control of this operation.

### **Operation 3**

This operation involved the movement of firearms. It also involved the military and required close liaison between the military and the PSNI surveillance teams. A risk assessment of the operation indicated a serious risk to security force personnel, the public in and around the area of the operation, the potential targets and the suspected criminals, raising human rights considerations under ECHR Articles 2, 3 and 8. A PSNI firearms tactical adviser was part of the operational planning team.

Directed surveillance was authorised and took the form of visual and audio surveillance, including static, mobile and photographic surveillance. Interference with property for the purposes of direct surveillance was also authorised.

We reviewed all the RIPA authorisation forms relating to the operation. We were briefed on the execution of the operation by one of the officers involved in the planning and implementation of the operation. This included an intelligence briefing.

Again acknowledging the limitations of our evaluation, we are satisfied that human rights considerations appear to have been taken into account at the relevant stages of the planning and control of this operation.

### **Operation 4**

This was a covert surveillance operation against paramilitaries operating close to the border with the Republic of Ireland. It was a large-scale operation, with overt and covert sources. Covert direct surveillance was authorised, as was interference with property.

Again we reviewed all the RIPA authorisation forms relating to the operation. We were briefed on the execution of the operation by one of the officers involved in the planning and implementation of the operation.

Again acknowledging the limitations of our evaluation, we are satisfied that human rights considerations appear to have been taken into account at the relevant stages of the planning and control of this operation.

We are grateful to the PSNI for facilitating this aspect of our work. However, we are keenly aware that after-the-event presentations are no substitute for the unannounced observation of live operations.

In the circumstances we make the following recommendation:

- That the Policing Board and the PSNI should make arrangements for more effective monitoring of the PSNI's performance in complying with the Human Rights Act in relation to the planning and execution of policing operations.

## PSNI Stop and Search Powers

While not an 'operation' as such, the Policing Board examined the PSNI policy on stops and searches and other such actions taken under emergency powers in accordance with Patten Recommendation 61. We examined the procedures in place for ensuring consistency of approach and standards amongst PSNI officers. The policy relating to stop and search powers has recently been revised in light of concerns raised by the Oversight Commissioner regarding a lack of any standard corporate approach.

In October 2004,<sup>56</sup> the PSNI issued a new policy on monitoring the use of emergency powers under the Terrorism Act 2000. The policy explicitly refers to the Human Rights Act. It instructs officers that any potential interference with human rights arising through the exercise of police powers under Part VII of the Terrorism Act must satisfy the principles of legality, necessity, proportionality and accountability. The policy sets out questions as prompts for officers when considering whether these principles have been complied with. The policy attaches templates for the recording of all uses of stop and search powers under the Police and Criminal Evidence (NI) Order and the Terrorism Act, Sections 84 and 89. A human rights checklist is printed in the inside back cover of the Police and Criminal Evidence booklet to assist officers. It requires officers to be satisfied that they have a lawful power to act, that their proposed objective is legitimate, relevant and necessary, that they are acting proportionately, that there is no less intrusive alternative, that there is a need to act urgently and that there is a record for the basis the officer's decision.

The PSNI has introduced a standard form to record the use of stop and search powers under the Police and Criminal Evidence (NI) Order and both the Section 84 stop and search and Section 89 stop and question powers of the Terrorism Act. Supervisors are required to examine and countersign properly completed forms. The forms are stored at the local District Command Unit where the exercise of the power took place as directed by the District Commander. District Commanders are responsible for monitoring the use of the powers in light of the actual crime/terrorist activity or intelligence reports in their districts. District Commanders are also required to make a quarterly statistical Terrorism Act return to Central Statistics. We consider that this comprehensive reporting procedure is critical to protect the human rights of individuals on whom powers are exercised, as well as those of officers involved in stops and searches. Whilst in its infancy, the local system of accountability and collation of statistics centrally will allow the PSNI in the future to identify trends and address any disproportionate number of stops and searches in any particular area.

## NOTES

<sup>56</sup> In response to Patten Recommendation 61, section 104 of Part VII of the Terrorism Act 2000 and the Stephen Lawrence Inquiry (MacPherson Report).

Against this background, we recommend:

- That the PSNI should supply the Policing Board with data collated by PSNI Central Statistics on stops and searches under Police and Criminal Evidence and terrorism legislation on a six monthly basis. That data should identify any District Command Unit where there has been a significant increase in stops and searches and provide details of action taken by the PSNI to investigate the reasons for any such increases.

## Integrity Testing

The Board's Human Rights Advisors undertook to monitor the results of any random checks to monitor the behaviour of PSNI officers in dealing with the public and their integrity in accordance with Patten Recommendation 81, to see whether these gave rise any concerns about the PSNI's compliance with the Human Rights Act. Article 7.10 of the Code of Ethics requires police officers to "act with integrity towards the public and their colleagues" and "avoid all forms of behaviour that may reasonably be perceived to be abuse, bullying, harassment or victimisation." The PSNI has no general integrity policy or standard system of integrity testing. Officers in relation to whom a concern has been raised are integrity tested on an individual and ad hoc basis to monitor their behaviour in dealings with the public and their integrity. We note from the PSNI's Programme of Action<sup>57</sup> that the PSNI has formulated an Integrity and Professional Standards Strategy and intends to implement a comprehensive policy on Professional Standards "to engender trust in the community and pride in the organisation".

Against that background, we recommend:

- That the PSNI should develop its policy on integrity testing as a matter of priority.
- That the PSNI should track the effectiveness of its integrity testing procedures through the collation of data on the number, frequency, type and results of its integrity tests.
- That the PSNI should supply the Policing Board with aggregated data regarding its integrity testing procedures on a six-monthly basis.

## NOTES

57 Appendix 4.

# CHAPTER 5: ADHERENCE TO CODE OF ETHICS

## CHAPTER 5: ADHERENCE TO CODE OF ETHICS

### Introduction

Under section 52(1) of the Police (Northern Ireland) Act 2000, the Policing Board is required to issue a Code of Ethics laying down standards of conduct and practice for police officers and making them aware of the rights and obligations arising under the Human Rights Act. After an extensive consultation exercise, a Code of Ethics was agreed and brought into force on 14th March 2003. It replaced the Code of Conduct, which had been in place since November 2000.<sup>58</sup> The Code of Ethics governs all police conduct on or after 14th March 2003. It is attached to this Report as Appendix 1.

The Code of Ethics sets out the principles that are intended to govern the conduct of all police officers. It applies to all members of the PSNI, whether on or off-duty, and regardless of rank, as well as all members of the PSNI Reserve, whether part-time or full-time. Any breach of the principles set out in the Code of Ethics can give rise to a disciplinary investigation. So far, very few cases involving police conduct after 14th March 2003 have completed the disciplinary process, which is considered in detail in Chapter 6 of this Report. However, to date two disciplinary hearings have taken place based on breaches of the Code of Ethics. There were adverse findings in each one.

### The Relevance of the Code of Ethics to Human Rights

The Code of Ethics is unique as a police disciplinary code based entirely on human rights principles. It is drawn from standards found in the European Convention on Human Rights and in other relevant international human rights instruments, such as the UN Declaration of Human Rights, the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Body of Principles for the Protection of all persons under any form of Detention or Imprisonment and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Article 1.1 of the Code of Ethics requires that all PSNI officers protect human dignity and uphold the human rights of all person as enshrined in the European Convention of Human Rights and other relevant international instruments. Where the Code of Ethics conflicts with an instruction, policy or guideline of the PSNI, officers must comply with the Code of Ethics (Preamble to Code of Ethics, paragraph (k)).

Article 1.3 of the Code of Ethics sets out the declaration, which every police officer, on appointment, must make before a justice of the peace to be attested as a constable.<sup>59</sup> The declaration states:

*"I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according to equal respect to all individuals and their traditions and beliefs; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof according to law."*

This attestation is an integral part of being a police officer in Northern Ireland. All new and existing officers are required to sign up to the attestation and comply with it.

Article 2 of the Code of Ethics deals with police investigations. It requires police officers to treat victims of crime sensitively and to respect their confidentiality. It also reinforces the presumption of innocence and the requirement for reasonable suspicion before an arrest is made.

Article 3 deals with privacy and confidentiality. It requires police officers to gather, retain and use information only in accordance with Article 8 of the European Convention on Human Rights. It also requires any search or

#### NOTES

<sup>58</sup> Which itself replaced the Royal Ulster Constabulary Discipline Code.

<sup>59</sup> In accordance with section 38(1) of the Police (Northern Ireland) Act 2000.

surveillance operation to be carried out only when it is lawful, necessary or proportionate. The explanatory notes bring the provisions of the Human Rights Act, the Regulation of Investigatory Powers Act 2000, the Data Protection Act 1998 and the Freedom of Information Act 2000 to the attention of police officers.

Article 4 governs the use of force. It is an important part of the Code of Ethics because it makes clear some human rights aspects of the use of force which are not expressly set out in legislation. Included are the important principles that police officers should use non-violent methods in carrying out their duties before resorting to the use of force of firearms, and that those officers planning or controlling operations where the use of force is a possibility should do so in a way which minimises recourse to the use of force. Article 4 only permits police officers to discharge firearms where the officer honestly believes that it is absolutely necessary to do so to save life or prevent serious injury.

Article 5 of the Code of Ethics deals with detained persons, who must be treated with humanity and respect. It also puts a positive duty on police officers to protect the health and safety of those who have been arrested or are in detention.

Article 6 of the Code of Ethics requires all police officers to act with fairness, self-control, tolerance and impartiality in carrying out their duties. It specifically provides that police officers should not discriminate on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, disability, age, sexual orientation, property, birth or other status. This goes further than the requirements of Article 14 of the European Convention on Human Rights and may need some clarification. If the prohibition on discrimination is treated as a prohibition on unjustified difference in treatment, it presents no difficulties. If it is treated as a prohibition on any difference in treatment between individuals or groups of individuals, it needs amendment. This is an important distinction that needs to be brought to the attention of officers. The human rights questionnaire sent to all PSNI officers, analysed in Chapter 12 of this report, revealed that over 85% of respondents incorrectly identified that in the course of their duties, police officers should never treat people differently on grounds such as race, colour, gender, religion, political or other opinion.<sup>60</sup>

In these circumstances, we recommend:

- That the results of the part of the human rights questionnaire dealing with discrimination should be carefully studied by the PSNI and consideration given to revision or clarification of this Article of the Code of Ethics.

Article 7 of the Code of Ethics requires police officers to act with integrity towards the public and their colleagues. It also requires police officers to report violations of the Code of Ethics. This is an important provision. An independent confidential reporting line has been set up to allow police officers to report wrong doing confidentially, but anonymous reporting is not sufficient to comply with the Code of Ethics.

Article 8 of the Code of Ethics requires police officers to ensure that property entrusted to them is handled and maintained lawfully. It also emphasises that any gifts or gratuities should only be accepted in accordance with the Chief Constable's policy.

Article 9 deals with fitness for duty and Article 10 sets out the duties of supervisors. These include a duty to "challenge and address" any behaviour that violates the Code of Ethics, reporting such where appropriate.

From a human rights perspective, the Code of Ethics is an important and significant initiative. The PSNI is the first police service or force anywhere in Europe to have adopted such an overtly human rights based approach to conduct and discipline. The Code of Ethics has correctly been applauded by all interested bodies in Northern Ireland, and by many others elsewhere. It is right that we should record our recognition that the Code

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60 For further analysis, see pp144-145.

of Ethics is a bold initiative intended to ensure that police officers in Northern Ireland carry out their duties in accordance with the requirements of human rights principles in general and the Human Rights Act in particular.

## Enforcing the Code of Ethics

Having recorded our recognition of the Code of Ethics as a tool to ensure that the PSNI complies with its duties under the Human Rights Act, it is important that we also recognise that it will be totally ineffective if it fails in its stated intentions of laying down standards of conduct and practice for police officers and making police officers aware of the rights and obligations arising under the European Convention on Human Rights. That raises the question of enforcement.

Awareness of the requirements of the Code of Ethics is the first step towards enforcement. Under Section 52(f) of the Police (Northern Ireland) Act 2000, it is the duty of the Chief Constable to take such steps as he considers necessary to ensure that all officers have read and understood the Code of Ethics and that a record is made and kept of the steps taken in relation to each officer.

To fulfil this duty, the Chief Constable has required all PSNI officers to acknowledge receipt and understanding of the Code of Ethics by signing a form to that effect. In addition, since April 2003, the Annual Performance Review for all officers up to the rank of Chief Superintendent has included a section designed to assess officers' awareness of and compliance with human rights issues. This assessment reflects the standards contained in the Code of Ethics.

We have seen the form that police officers are required to sign to acknowledge receipt and understanding of the Code of Ethics. It has now been signed by over 7,500 PSNI officers, which allowing for long term sickness and absence, means that virtually all active officers have signed it. That is an important achievement. However, as an exercise, it only has meaning if acknowledgement of the Code of Ethics indicates some substantive understanding of it as well as formal receipt. Evidence of this varies.

As we note in Chapter 12 of this Report, many PSNI officers appear to be reasonably familiar with the basic human rights principles that underpin the Code of Ethics. That familiarity extends through the ranks and does not appear to be overly dependent on length of service. As an indicator that police officers understand the Code of Ethics, this is positive.

However, when police officers discussed the Code of Ethics in the focus groups that we set up to gauge human rights awareness in the PSNI,<sup>61</sup> they were vague about its contents and requirements. While all officers say they are familiar with the Code of Ethics, few were able to demonstrate that they had read and understood it.

Constables saw the Code of Ethics as 'common sense' but were not very specific about its contents. They felt that it relates to what they can do on a daily basis, professionalism and integrity (on and off duty), as well as respect and courtesy:

*'It's something that you couldn't quote chapter and verse but I am sure we abide by those principles anyway, you know.'* (Constables)

*'I can't think of anything but I am sure that if I flicked through the brochure I would say 'oh I remember that now!' you know.'* (Constables)

*'I suppose it's a bridge to how you should implement your Human Rights. As for exactly how it is word for word I don't know.'* (Constables)

*'Code of Ethics covers what we should do on a daily basis. None of us would be here if we were breaching any part of the Code of Ethics.'* (Constables)

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61 See Chapter 12, pp161-164.

Higher-ranking officers mentioned the same fundamental principles as Constables, but they also spoke in more detail about standards of behaviour on and off duty so as not to bring the organisation into disrepute (e.g. politics, receiving gifts). They understood that the Code includes how to deal with the community, how to conduct patrols or investigations, how to use force, how to protect life and property, how to supervise staff as well as issues of confidentiality.

*'It is actually much more generalised...it is an enforceable guide as to the conduct of the professional Police service including the conduct of the patrol, conducting of investigations.'* (Sergeants and Inspectors)

*'It has much to do with the honest, impartiality and integrity of Police Officers and it also to do with our efficiency in their practical use.'* (Chief Inspectors and above)

All officers were aware that if the Code of Ethics is breached, some form of reprimand will follow. They mentioned a range of possible disciplinary actions based on the severity of the breach from a warning, fine, reduction of rank, loss of pay through to request for resignation, dismissal, criminal proceedings and ultimately, jail.

*'The sentence would obviously depend on the way that you infringed it and how hard you infringed it and did it involve criminal proceedings as well? The result would probably go from dismissal, imprisonment, to loss of pay, reduction of rank...'* (Sergeants and Inspectors)

*'Part of the whole discipline or misconduct system is now the Code of Ethics so as supervisors we have to know what the Code of Ethics says and breaches of it look like and what our obligations... encompass.'* (Chief Inspectors and above)

*'It might just be a case of speaking to them and talking to them about it.... Far scale of the disciplinary side, it could very well go to court, Crown Magistrates or whatever.'* (Sergeants and Inspectors)

There is also the evidence, dealt with elsewhere in this Report, that the Course for All, the training programme intended to familiarise all PSNI officers with the Code of Ethics, was not as effective as it might have been.<sup>62</sup>

The Policing Board is under a duty to assess the effectiveness of the Code of Ethics . It is also under a duty to keep under review the steps taken by the Chief Constable to ensure that all officers have read and understood the Code of Ethics.<sup>63</sup>

Against that background, we make the following recommendations:

- That the Policing Board should require the PSNI to provide evidence of the effectiveness of the Code of Ethics, and then assess that evidence. In particular, the Policing Board should require the Chief Constable to set out what further steps he intends to take to ensure that all officers have read and understood the Code of Ethics.<sup>63</sup>
- That the PSNI should consider including an assessment of individual officers' knowledge of the Code of Ethics as a specific component of the Annual Performance Review.<sup>64</sup>

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<sup>62</sup> See pp 29-31.

<sup>63</sup> Police (Northern Ireland) Act 2000, Section 3(3)(d)(iv).

<sup>64</sup> Police (Northern Ireland) Act 2000, Section 52(g).

# CHAPTER 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS

## CHAPTER 6: COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS

### Introduction

Complaints, discipline and civil actions against the police provide an important means of monitoring the performance of the PSNI in complying with the Human Rights Act. That is because they each subject the behaviour of individual police officers to scrutiny, either external or internal. The PSNI Code of Ethics, which includes international human rights standards drawn from the European Convention on Human Rights and other relevant international human rights instruments, provides the disciplinary framework to which the PSNI now works.

As will be seen, thousands of complaints of one sort or another are made against the PSNI every year and are investigated by the appropriate body - very often the Police Ombudsman. The Policing Board has no jurisdiction to investigate (individual) complaints itself and, in keeping with its duty to co-ordinate its activities with those of other public bodies,<sup>65</sup> in preparing this report we have not replicated the work of those bodies that are charged with investigating complaints. Instead, we have reviewed the outcomes of all complaints, disciplinary action and civil actions against the police and considered how they affect the overall pattern of compliance by the PSNI with the Human Rights Act. Particular attention has been paid to the way in which the PSNI has responded to adverse findings and/or recommendations.

### The complaint and disciplinary framework

In relation to complaints about, and discipline of, PSNI officers, different procedures exist according to the type of misconduct alleged and the origins of the complaint. Any complaint about the conduct of a member of the PSNI, which is made by or on behalf of a member of the public, is referred to the Police Ombudsman. Internal allegations of misconduct are dealt with by line managers in the PSNI and, where necessary, by the Internal Investigations Branch of the PSNI. Where, after investigation of a complaint, the Police Ombudsman recommends that disciplinary proceedings, either formal or informal, should be brought, responsibility for implementing those recommendations lies with the Internal Investigations Branch.

Any allegation that a criminal offence has been committed is referred to the Police Ombudsman. In the event that the Police Ombudsman conducts a full investigation following the complaint, a file is sent to the Director of Public Prosecutions with a recommendation either that charges should be brought or that no further action should be taken. The Director of Public Prosecutions then decides whether to prosecute. Whether the Director of Public Prosecutions decides to prosecute or not, the Police Ombudsman goes on to consider whether disciplinary proceedings should be brought.

The Police Ombudsman has power to investigate certain matters where there has been no complaint from a member of the public.<sup>66</sup> These matters can be referred to her by the Secretary of State, the Policing Board or the Chief Constable and some are initiated by the Police Ombudsman herself where it is in the public interest that there be an investigation.<sup>67</sup> Any cases where it appears that someone may have died as a result of the conduct of a police officer (e.g. deaths in custody or fatal road accidents) and any cases involving the discharge of firearms or the firing of baton rounds are automatically referred to the Police Ombudsman. In addition, the PSNI have agreed to refer all uses of CS incapacitant spray resulting in "serious injury or of great public interest"<sup>68</sup> to the Police Ombudsman for investigation. Whenever a case is investigated as a result of these referral powers, the Police Ombudsman produces a report on completion of her investigation. Her report is sent to the Secretary of State, the Policing Board and the Chief Constable. These reports are called "Regulation 20" reports because the duty to submit them arises under Regulation 20 of the Royal Ulster Constabulary (Complaints etc.) Regulations 2000.

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<sup>65</sup> Police (Northern Ireland) Act 2000, Section 3(4)(d).

<sup>66</sup> Police (Northern Ireland) Act 1998, Section 55.

<sup>67</sup> That is, where no complaint has been made but it appears to the Police Ombudsman that a member of the PSNI may have committed a criminal offence or behaved in a manner that would justify disciplinary proceedings.

<sup>68</sup> February 2005. Until 31 December 2004, an agreement was in place whereby the PSNI voluntarily referred all uses of CS incapacitant spray.

In addition, the Police Ombudsman has had power since 8 April 2003<sup>69</sup> to investigate PSNI practice and policy<sup>70</sup> where she has reason to believe that it is in the public interest to do so. To date, the Police Ombudsman has only exercised this power once.<sup>71</sup>

Both the Police Ombudsman and the PSNI Internal Investigations Branch provide information to the Policing Board about complaints and discipline. This information is considered by the Human Rights and Professional Standards Committee.<sup>72</sup> The Police Ombudsman also provides copies of all Regulation 20 reports to the Committee. Statistics and information are also provided by the PSNI's legal department in respect of civil claims brought against the PSNI in the courts. In addition, representatives from the Police Ombudsman's office and representatives from the Internal Investigations Branch regularly attend meetings of the Human Rights and Professional Standards Committee and the Police Ombudsman occasionally attends meetings of the Policing Board.

## NUMBER AND PATTERN OF COMPLAINTS

In the period April 2003 to March 2004, 2,976 complaints were made, which shows a downward trend from 3,590 in 2001 and 3,340 in 2002.<sup>73</sup> There has also been a change in the seriousness of the nature of the allegations made about police conduct, for example, by the reduction from 50% to 37% of allegations relating to oppressive behaviour (assault, harassment and intimidation) and a reduction in the use of force allegations from 50% to 34%.<sup>74</sup> In her third Annual Report, the Police Ombudsman also observed a significant reduction in allegations of misuse of batons: 419 in the period from November 2000 to March 2002, 240 in 2003 and 148 in 2004.<sup>75</sup> Complaints may include more than one allegation of misconduct and the total number of allegations made in the complaints received in the period April 2003 to March 2004 was 4,196. These were classified by the Police Ombudsman as follows:

ALLEGATION TYPE	ALLEGATION SUB-TYPE	NO.	%
Failure of duty	Exercise of stop and search powers	18	0.4
	Irregularity in identification procedures	2	0.0
	Irregularity in Detention, treatment and questioning	66	1.6
	Irregularity in search/seizure	126	3
	Irregularity in tape recording	3	0.1
	Other irregularity in procedure.	71	1.7
	General failure of duty	1003	23.9
	Unspecific or multiple failure of duty	12	0.3
Incivility	Incivility	637	15.2
	Sectarian abuse	3	0.1
	Racial Discrimination	18	0.5
Malpractice	Corrupt practice <sup>33</sup>	33	0.8
	Irregularity in relation to evidence/perjury	40	1
	Mishandling of property	41	1
	Traffic offences	46	1.1
Oppressive behaviour	Serious assault	19	0.5
	Sexual assault	8	0.2
	Other assault	949	22.6
	Oppressive conduct/harassment	487	11.6
	Unlawful arrest/detention	108	2.6
Unclassified	Other Non-classifiable Allegations	505	12.0

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69 Pursuant to the coming into force of the Police (Northern Ireland) Act 2003.

70 Which comes to her attention under the Police (Northern Ireland) Act 1998.

71 See the Police Ombudsman's presentation to the Policing Board's Human Rights and Professional Standards Committee in February 2004.

72 Formerly the Complaints Monitoring Committee.

73 Police Ombudsman's Annual Report, April 2003 to March 2004, p.5.

74 Police Ombudsman's Annual Report, April 2003 to March 2004, p.5.

75 Police Ombudsman's Annual Report, April 2003 to March 2004, p.5.

While the number of allegations over the period is similar to that of previous years,<sup>76</sup> there are discernable patterns. As with complaints, the trend for allegations of oppressive behaviour is downward: 49% in 2000-2001, 48% in 2001-2002, 40% in 2002-2003 and 37.4% in 2003-2004. However, the trend for failure of duty allegations is upward: 23% in 2000-2001, 23% in 2001-2002, 26% in 2002-2003 and 31% in 2003-2004. Allegations of incivility have remained fairly constant: 13% in 2000-2001, 14% in 2001-2002, 16% in 2002-2003 and 15.3% in 2003-2004. Figures disclosed to the Policing Board by the Police Ombudsman for the period April-June 2004 confirm these trends: 35% of allegations related to oppressive behaviour and 38% to failure of duty.<sup>77</sup>

In many cases, factors underlying a complaint cannot be ascertained. However, where they can, they suggest that most complaints relate either to an arrest or some other aspect of a criminal investigation: in the period April 2003 to March 2004, 39% of cases where the factor underlying the complaint could be discerned related to arrest and 29% to some other aspect of a criminal investigation. The location of complaints is unclear in many instances. However, it appears that most complaints originate from incidents either in a police station or on the street (34% and 30% respectively of those cases in which location can be discerned).

In her third annual report, the Police Ombudsman also noted a reduction in the number of occasions on which live fire has been used by police officers in Northern Ireland: 21 in the period from February 2001 to March 2002, 11 in 2003, and 5 in 2004. The number of complaints about other uses of firearms (such as the use of a firearm to assault a complainant) has reduced from 40 in 2002, to 25 in 2003, and to 12 in 2004. The Police Ombudsman observes that these reductions have been achieved through the process of investigation, during which problems have been identified and specific recommendations made for improvement. There has been no evidence of a corresponding increase in injuries to police officers during this period. This led the Police Ombudsman to conclude that "combined with the overall drop in the volume of complaints, this constitutes a major shift in the pattern and nature of the complaints".<sup>78</sup>

## OUTCOMES

When a complaint is made to the Police Ombudsman's office, there are a range of possible outcomes, which will depend on the nature of the complaint and on evidence gathered by the Police Ombudsman's investigators during their enquiries. The various categories are grouped together by the Police Ombudsman under three main headings:<sup>79</sup>

- (a) complaints that were upheld or informally resolved - these recommendations for prosecution, recommendations that formal and informal disciplinary proceedings be brought and complaints informally resolved.
- (b) complaints that were not substantiated – these include those cases where there is insufficient evidence of misconduct, ill-founded cases and cases which are vexatious or amount to an abuse of process.
- (c) other outcomes – these include cases in which the complainant fails to co-operate or withdraws the complaint, cases that are incapable of investigation and those which are outside the remit of the Police Ombudsman.

It is convenient to use adopt these broad categories for the purposes of this report.

## Prosecutions

As noted earlier in this chapter,<sup>80</sup> all allegations that police officers may have committed criminal offences are referred to the Police Ombudsman. At the conclusion of any investigations resulting from these allegations, a file is sent to the Director of Public Prosecutions, which includes recommendations as to whether the Police Ombudsman, having considered all the evidence, believes officers should face criminal charges. The Director of

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<sup>76</sup> Police Ombudsman's Annual Report, April 2002 to March 2003, p.18.

<sup>77</sup> Statistics provided in June 2004.

<sup>78</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.5.

<sup>79</sup> Police Ombudsman's website: <http://www.policeombudsman.org>.

<sup>80</sup> At p68.

Public Prosecutions will then consider the evidence in the Police Ombudsman's file and make the final decision about whether the officer(s) involved should be prosecuted.

A total of 174 files were submitted to the Director of Public Prosecutions in the period April 2003 to March 2004. 164 of those recommended that no further action be taken. In ten other cases involving eight officers, ten charges were recommended: three for common assault, two for dangerous driving, and one for each of the following offences: intimidation; causing harassment, alarm or distress; unlawful imprisonment; breach of the Data Protection Act and breach of Section 17 of the Criminal Procedure Act.<sup>81</sup> In two of the three common assault cases, no further action was taken. In both dangerous driving offences, convictions were secured (albeit one was for the lesser offence of driving without due care and attention). In all other cases, the proceedings are ongoing.<sup>82</sup>

The corresponding figures for other years show that recommendations for prosecution were made in twelve cases involving twelve offences in 2001-2002, and that recommendations for prosecution were made in 16 cases involving 24 offences in 2002-2003.<sup>83</sup> The level of seriousness of the offences recommended has also dropped, five cases in 2001-2002 and four cases in 2002-2003 involved offences of assault occasioning grievous bodily harm or actual bodily harm, where none fell into that category for 2003-2004.

## Formal disciplinary action

If an investigation by the Police Ombudsman's Office concludes that a police officer has acted improperly, the Police Ombudsman may recommend that the Chief Constable should bring disciplinary proceedings against the officers involved. If the Chief Constable declines to bring such proceedings, the Police Ombudsman can direct that they be brought. To date, the Police Ombudsman has given one direction for disciplinary action.<sup>85</sup>

If formal disciplinary proceedings result in a police officer being found guilty of misconduct, the disciplinary tribunal can recommend any of the following sanctions:

- **Dismissal** - effective immediately.
- **Required to resign** - takes effect one month from the date of the decision.
- **Reduction in rank** - takes effect immediately.
- **Reduction in pay** - takes effect immediately and for a maximum of twelve months.
- **Fine** - a maximum of 13 days pay recoverable over a minimum of thirteen weeks, taking effect immediately.
- **Reprimand.**
- **Caution.**
- **No sanction.**

Sanctions of reprimand, fine or reduction in pay are recorded on an officer's personal file for a period of three years and are expunged thereafter, provided the officer remains free from any further misconduct sanction within that three year period. Officers receiving such sanctions are also prohibited from applying for promotion or specialist posts for a period of two years. Cautions are not recorded on an officer's personal file.

In the period April 2003 to March 2004, the Police Ombudsman recommended that formal disciplinary hearings be held in 11 cases involving 12 officers and 15 misconduct charges. Of the three charges heard by June 2004, one officer was dismissed, one officer was fined and cautioned and one officer received two cautions.<sup>86</sup>

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81 Police Ombudsman's Annual Report, April 2003 to March 2004, p.34.

82 Statistics provided by the Police Ombudsman to the Policing Board in April 2004. Statistics for the period April 2004 to March 2005 are due to be available at the end of March 2005.

84 Police Ombudsman's Annual Report, April 2003 to March 2004, p.33.

85 The Police Ombudsman had not exercised this power before 31 March 2004.

86 Police Ombudsman's Annual Report, April 2003 to March 2004, p 35.

## **Informal disciplinary action: advice and guidance**

Advice and guidance is intended for use at the lowest level of misconduct. It is not recorded on the officer's personnel record and the Police Ombudsman cannot direct that recommendations for informal disciplinary action be administered should the PSNI refuse to do so.

In the period April 2003 to March 2004, the Police Ombudsman recommended that advice and guidance be given in 39 cases, involving 58 officers. Advice and guidance was given to 52 officers and rejected in relation to one officer. In June 2004, the Chief Constable's response was awaited in respect of the other five officers.<sup>87</sup> The Chief Constable has subsequently accepted these five outstanding recommendations.

In a further 18 cases of complaint, the Police Ombudsman made recommendations in respect of police policy, practice or training or that officers would benefit from a management discussion.<sup>88</sup>

## **Informal disciplinary action: Superintendent's written warning**

A written warning is appropriate where an officer's misconduct is too serious to be dealt with by advice and guidance, but not serious enough to warrant formal disciplinary proceedings. It is normally administered by a Superintendent and hence called a Superintendent's written warning. It is an informal sanction recorded on the officer's personal file. The written warning can result either from an internal allegation of misconduct or because of a recommendation from the Police Ombudsman. A Superintendent's written warning is used when an officer admits a failure to meet required standards of behaviour or conduct. Where an officer fails to admit the misbehaviour or misconduct in question, the case is referred for formal investigation. Moreover, if the officer has already received two Superintendent's written warnings within the previous 12 months, the sanction cannot be imposed and the matter must be referred for formal hearing.

In the period April 2003 to March 2004, the Police Ombudsman recommended that Superintendent' written warnings be given in 8 cases, involving 10 officers and 12 warnings. By June 2004, the written warning had been given in 4 cases. In another 3 cases, it was agreed not to proceed with the written warning and in 5 cases the outcome was still being awaited.<sup>89</sup> The Chief Constable has subsequently accepted these 5 outstanding recommendations.

## **Informal resolution**

Complaints about less serious matters may be resolved by informal resolution, but only if the complainant agrees. The Police Ombudsman asks the police to appoint a senior police officer to meet the complainant and hear the details of the complaint. The officer will also speak to the police officer that has been complained about and will then try to reach a solution that is acceptable to both parties.

In the period March 2003 to April 2004, 400 complaints were informally resolved.<sup>90</sup>

## **Complaints not substantiated**

The Police Ombudsman will close a complaint as not substantiated if, following investigation, there is insufficient evidence that a police officer has been guilty of misconduct. In the period April 2003 to March 2004, 360 complaints were closed following investigation because they were not substantiated.

## **Ill-founded Complaints**

During the period April 2003 to March 2004, the Police Ombudsman's Office dismissed as ill-founded 269 complaints.<sup>91</sup> Such complaints are dismissed when it becomes clear to the Ombudsman's Office, either prior to or during an investigation, that the complaint is totally without basis.

### **NOTES**

<sup>87</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.35.

<sup>88</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.35.

<sup>89</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.35.

<sup>90</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

<sup>91</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

## Vexatious complaints/abuse of process

A complaint will be closed as vexatious if it becomes apparent during investigation that the complaint is without foundation and that the complainant has had a vested interest or malicious intent in making the complaint. A complaint is categorised as an abuse of process when the Police Ombudsman determines that the person making the complaint is using the system for a purpose other than the resolution of the complaint. During the period April 2003 to March 2004, 66 complaints were closed on the basis that they were vexatious, anonymous or repetitive, or an abuse of process (2% of all complaints).<sup>92</sup>

## Failure to co-operate/withdrawal of complaint

When a complaint is received at the Police Ombudsman's Office, it is often necessary to ask the complainant for further details of the circumstances that gave rise to it. In such cases the Police Ombudsman will write to the complainant asking him or her to contact the office within seven days to provide the necessary information. If there is no response to this letter, a second letter is sent by recorded delivery advising the complainant that unless "their co-operation is forthcoming, the complaint will be closed due to their failure to provide reasonable assistance for the purpose of conducting a meaningful investigation."<sup>93</sup> If no response is received to this letter, the Police Ombudsman sends a further letter to confirm that the complaint has been closed. Cases may also be closed for failure to co-operate at a later stage if the complainant withdraws from the process or fails to provide information required by the investigation.

A total of 1,214 cases were closed as a result of non-cooperation during the period April 2003 to March 2004.<sup>94</sup>

On occasions, complainants may formally withdraw their complaints. Complaints are recorded as being withdrawn only when the Police Ombudsman's Office receives written confirmation to that effect. A total of 184 cases were closed as a result of withdrawal during the period April 2003 to March 2004.<sup>95</sup>

## Incapable of investigation

In the period April 2003 to March 2004, the Police Ombudsman's Office closed 21 complaints as being incapable of investigation.<sup>96</sup> There may be a variety of reasons for closing a complaint in this way: it may not have been possible to communicate with the injured party, that person may have refused to cooperate with the investigation or there may have been such a lapse of time since the alleged incident that a meaningful investigation would be impractical.<sup>97</sup>

## Outside remit

Every complaint received by the Police Ombudsman's Office is assessed to establish whether the Ombudsman has the legal authority to investigate it. Complaints about matters that are not covered by the Ombudsman's powers are closed as being "outside remit". In the period April 2003 to March 2004, 278 complaints were closed on this basis.<sup>98</sup>

## Extracting information about human rights compliance

Extracting meaningful information about the compliance of the police with the Human Rights Act from the statistics relating to complaints is not straightforward. The vast majority of complaints and allegations do not result in adverse findings. As noted above, of the 3,077 complaints closed in the period April 2003 to March 2004, only ten cases resulted in a recommendation by the Police Ombudsman that criminal charges should be brought, and a recommendation that formal disciplinary proceedings be brought was only made in 11 cases. Even allowing for an element of double counting (some cases in which criminal proceedings are recommended also result in formal disciplinary proceedings), that represents no more than 0.7% of all the complaints closed in

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<sup>92</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

<sup>93</sup> Per the Police Ombudsman, February 2005.

<sup>94</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

<sup>95</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

<sup>96</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

<sup>97</sup> Police Ombudsman's website: <http://www.policeombudsman.org>.

<sup>98</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.27.

that period. Any one case may include more than one criminal charge or misconduct charge, but even taking that into account the percentage figure only rises to 0.8%.

Lesser measures such as informal disciplinary action were recommended in a larger number of cases, but the figures are still low. In the period April 2003 to March 2004, eight cases resulted in a recommendation that a Superintendent's written warning be given (within which twelve warnings were recommended), and in 39 cases advice and guidance was recommended. Taken together that only represents 1.7% of all the complaints closed in that period.

Although these figures are low, the conduct leading to such recommendations by the Police Ombudsman is highly relevant to the Policing Board in discharging its duty to monitor the compliance of the PSNI with the Human Rights Act. Where criminal proceedings are actually brought, the conduct in question is put into the public domain. However, where the Director of Public Prosecutions decides not to prosecute, that is not the case and the Policing Board will not necessarily have access to the details of the conduct in question.

Where formal disciplinary proceedings are brought, the PSNI now publishes internally the results of misconduct hearings.<sup>99</sup> This is in line with a recommendation from Her Majesty's Inspectorate of Constabulary. The PSNI's stated purpose in publishing these results is to educate officers as to the standards of behaviour required of them. These reports include the details of the exact nature of the charge faced and how the officer breached the relevant standard of conduct required, an outline of the facts and the sanction imposed. Officers are not named in these reports, save where the officer has been dismissed, required to resign or reduced in rank, and no report is published until any rights of appeal have been exhausted or elapsed. However, these reports are not currently provided to the Policing Board.

Where disciplinary proceedings do not result in a guilty finding, no details of the conduct in question are published. Superintendents' written warnings are recorded on a prescribed form that summarises the misconduct admitted by the officer in question. Advice and guidance, however, is not recorded on an officer's personnel record.

Against that background, we make the following recommendations:

- That the Policing Board should request that the Police Ombudsman supplies summary details of those cases in which a recommendation for prosecution is made.
- That the PSNI should supply the Policing Board with summary details of all cases that resulted in formal disciplinary hearings on a six monthly basis.
- That the PSNI should supply the Policing Board with details of all conduct leading to a Superintendent's written warning on a six monthly basis.
- That the Policing Board should review how best to collate details of the conduct leading to advice and guidance in twelve months when the PSNI's new case management system should be up and running.

Cases which are informally resolved are much harder to deal with. They may well disclose conduct which involves a breach of the Human Rights Act, albeit that by the very nature of the informal resolution procedure, any such breaches are likely to be minor. The Police Ombudsman has advised us that it is unlikely that any meaningful human rights compliance data can be obtained from analysing these results and we accept that advice.

Cases closed as a result of complainant non-cooperation can also disclose breaches of human rights. Such cases may indicate a general lack of willingness to pursue the complaint as opposed to a conclusion that the alleged misconduct did not in fact occur. The Police Ombudsman informed us that cases which are categorised as incapable of investigation are limited in their human rights relevance. The majority of cases comprise complaints where the Police Ombudsman's investigating officers have been unable to ascertain hard

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<sup>99</sup> A policy that has been in place since March 2003.

evidence. Only such cases closed under this category as a result of questionable internal procedures, e.g. the destruction of all files relating to a particular case, will be of interest from a human rights perspective.

Against that background, we recommend:

- That the Policing Board should review whether any data on human rights compliance can be obtained from cases which are informally resolved or closed as a result of complainant non-cooperation and, if so, how best to collate that data.

The Police Ombudsman has concerns about cases where allegations of misconduct are substantiated but the particular PSNI officer involved in the incident remains unidentified. In those cases, the Police Ombudsman writes to the complainant informing them that the allegation of misconduct has been substantiated but not against any particular PSNI officer. The Police Ombudsman has recently introduced a new category of 'Substantiated Other' for such cases. These cases constitute a small number of complaints that indicate definite breaches of human rights but do not result in disciplinary action.

We therefore recommend:

- That the Policing Board should review the category of 'Substantiated Other' in twelve months.

## COMPLAINTS AND ALLEGATIONS

Although, as we note above, the vast majority of complaints and allegations do not result in adverse findings, the number, type and trend of complaints and allegation are important.

As the Police Ombudsman observes in her Third Annual Report, a complaints system in any sector exists to fulfil many functions. In the context of policing, it is a primary accountability mechanism and the law requires that the breaking of the law or the Code of Ethics applying to the police should be independently and impartially investigated.<sup>100</sup>

Patten Recommendation 79 requires the PSNI to adopt an automated trend identification system for complaints and Patten Recommendation 80 requires the PSNI to track this information and use it for management purposes. To comply with these recommendations the PSNI has adopted a policy on trending and tracking complaints.<sup>101</sup> Under this policy District Commanders receive statistical data<sup>102</sup> about complaints that have been made about matters in their area of command. The District Commander is then required to consider whether any action should be taken, taking into account any welfare or related issues that may be relevant. Initially any officer with three complaints in a rolling twelve-month period must be reviewed.<sup>103</sup> Any action taken must be reported to the PSNI Internal Investigations Branch. The individual complaint should not be discussed.

This is an important initiative and in March 2004, the Policing Board's Human Rights and Professional Standards Committee asked the PSNI to supply it with details of any District Command Unit in which there was a significant increase in allegations.

We endorse this but go further in making the following recommendations:

- That the PSNI should supply the Policing Board with details of any action taken by District Commanders under the PSNI Trending and Tracking Policy.

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<sup>100</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.5.

<sup>101</sup> Trending and Tracking of Complaints against Police, General Order 38/2004 (28th June 2004).

<sup>102</sup> Provided by the Police Ombudsman, via the PSNI Internal Investigations Branch.

<sup>103</sup> This figure was agreed after consultation with the Police Ombudsman.

- That the PSNI should supply details (anonymised if appropriate) of the number of police officers in respect of whom there have been three or more complaints in a rolling twelve-month period, along with details of the types of complaint made on a quarterly basis.

In her Third Annual Report, the Police Ombudsman noted that co-operation from the PSNI in investigations is “generally very good” and that officers are more prepared, as time has gone by, to provide evidence against colleagues who have acted inappropriately.<sup>104</sup>

On a less positive note, the Police Ombudsman also observed that there are still police officers who have retired, some very recently, and who have information as witnesses about incidents being investigated, but who refuse to give statements to investigators or to assist with particular investigations.<sup>105</sup> There are also a few officers who have not retired and who are the subject of investigation who simply refuse to answer questions. Whilst respecting their right not to incriminate themselves, the Police Ombudsman questions why some of these officers take this course.<sup>106</sup>

### Referrals to the Police Ombudsman

The Police Ombudsman has a duty to investigate certain matters referred to her by the Policing Board or the Director of Public Prosecutions<sup>107</sup> or the Chief Constable,<sup>108</sup> including cases where it appears that someone may have died as a result of the conduct of a police officer (e.g. deaths in custody or fatal road accidents)<sup>109</sup> and any cases involving the discharge of firearms, the firing of baton rounds or the use of CS incapacitant spray. In addition, as noted above, the Police Ombudsman also has power to investigate certain matters, even where there has been no complaint from a member of the public.<sup>110</sup> At the end of the investigation into these matters, a Regulation 20 report is sent to the Secretary of State, the Policing Board and the Chief Constable.

In the period April 2003 to March 2004, the Police Ombudsman’s Office made twenty Regulation twenty reports.<sup>111</sup> They covered the following matters:<sup>112</sup>

INCIDENT	REFERRAL	LOCATION
Death in custody	1	South Down
Fatal road collision	2	Newry/M2
Discharge of firearms	4	Armagh West Belfast (2) Coleraine
Serious assault	1	East Belfast
Discharge of baton rounds (all relating to investigations arising from incidents in 2002)	12	East Belfast (5) North Belfast (4) South Belfast (1) West Belfast (1) Portadown (1)

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- 104 Police Ombudsman’s Annual Report, April 2003 to March 2004, p.9.
- 105 Police Ombudsman’s Annual Report, April 2003 to March 2004, p.17.
- 106 Police Ombudsman’s Annual Report, April 2003 to March 2004, p.17.
- 107 Police (Northern Ireland) Act 1998, s. 55(1).
- 108 Police (Northern Ireland) Act 1998, s. 55(4).
- 109 Police (Northern Ireland) Act 1998, s. 55(2).
- 110 Police (Northern Ireland) Act 1998, s. 55(6).
- 111 Police Ombudsman’s Annual Report, April 2003 to March 2004, p.27.
- 112 Police Ombudsman’s Annual Report, April 2003 to March 2004, p.8.

The PSNI has set up a Committee for the oversight of PSNI responses to Regulation 20 reports produced by the Police Ombudsman (the "Regulation 20 Committee"). We have been provided with this committee's terms of reference, its operating protocol and the minutes of the committee's meetings from September 2003 to February 2004.

The following PSNI personnel sit on the Regulation 20 Committee:

- Head of Operational Support.
- Head of Internal Investigations Branch.
- Head of PSNI Legal Services.
- PSNI human rights legal adviser.
- Head of Operational Development Programmes (Training, Education and Development).
- Internal Investigations Branch staff.
- Other personnel co-opted as required

The Regulation 20 Committee is tasked to review all of the Regulation 20 reports made by the Police Ombudsman and to ensure that all actions, recommendations or other matters raised in the reports are properly considered and discharged. Once that is done, the Deputy Chief Constable closes the matter by a formal letter to the Police Ombudsman setting out PSNI action taken in response to the Regulation 20 report. The Deputy Chief Constable's letters have been copied to the Policing Board since March 2004. We welcome this initiative and have reviewed all letters received by the Policing Board for the period March 2004 to August 2004. After closure of individual Regulation 20 reports, the PSNI Regulation 20 Committee has responsibility for monitoring any on going research and/or (internal) reviews.

Against this background, we recommend:

- That the PSNI provide to the Policing Board on a quarterly basis a schedule setting out the number of Regulation 20 reports received in the previous quarter, a summary of all substantive issues raised in the reports, PSNI action in response to those issues and to any recommendations made and details of any internal research or reviews instigated.

In her Third Annual Report, the Police Ombudsman reported that in the period April 2003 to March 2004, all of her Regulation 20 reports to the PSNI had been accepted, even where they were difficult, and that the Regulation 20 Committee had acted effectively to ensure that the recommendations flowing from the reports were both implemented and brought to the attention of officers.<sup>113</sup>

The Regulation 20 reports are also examined by the Policing Board's Human Rights and Professional Standards Committee. We have reviewed each of the reports received by this Committee, paying particular attention to those received in the period covered by this report (April 2003 to November 2004), a total of 29 reports. Twelve of those reports deal with the discharge of baton rounds, six deal with the discharge of personal issue firearms, six with fatalities and one with allegations of police officers pressurising a forensic scientist to compromise her scientific evidence arising from the case of *R v Abernethy*.<sup>114</sup>

So far as the Regulation 20 reports into the discharge of baton rounds are concerned, the first important observation is that no police officer has fired a baton round in Northern Ireland since 11th September 2002. The second important observation is that in each of the twelve Regulation 20 reports into the discharge of baton rounds, the Police Ombudsman concludes that their deployment and use was lawful, proportionate and compatible with the requirements of the Human Rights Act. These are very positive aspects of the Policing Board's evaluation of the performance of the PSNI in complying with the Human Rights Act.

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<sup>113</sup> Police Ombudsman's Annual Report, April 2003 to March 2004, p.18.

<sup>114</sup> Discussed in more detail at p79 below.

However, the Police Ombudsman did raise a number of concerns in her reports on the discharge of baton rounds. One of the most important of these was that on occasion, baton rounds were discharged by police officers who were not at the time classified as baton gunners (usually because they had not attended refresher training). As the Police Ombudsman observed in a Regulation 20 report issued in August 2003, "This is not first time that unauthorised officers have been found to have discharged baton guns".<sup>115</sup> The Police Ombudsman recommended that all officers currently classified in the use of baton guns be issued with authorisation cards, which must be presented before baton guns and baton rounds are issued.<sup>116</sup> The Police Ombudsman has also made a number of comments about the use of evidence gatherers when baton rounds are discharged, particularly from vehicles. This culminated in a recommendation that the PSNI carry out research in to the feasibility of video recording baton rounds discharges, which is currently being piloted by the PSNI. However, as the Police Ombudsman points out, since baton rounds have not been discharged since 11th September 2002, the pilot has not been operational.<sup>117</sup> The Police Ombudsman also recommended that PSNI policy be amended to require the deployment of baton gun assistants on all occasions on which baton guns are used.<sup>118</sup> In September 2003, the Police Ombudsman reported that this was being considered by the PSNI.<sup>119</sup> This recommendation remains outstanding.<sup>120</sup>

Another concern raised by the Police Ombudsman included failures to give oral warnings before baton rounds were discharged. On some occasions it was accepted that it was not practicable to give a warning, however, on other occasions there are findings that warnings should have been given. That led the Police Ombudsman to recommend in September 2003 that the PSNI should re-iterate the terms of the general order giving guidance on warnings and that officers should document any reasons for not giving warnings, and fully record the terms and circumstances of any warnings given.<sup>121</sup> The Police Ombudsman has also commented on failures of record keeping on several occasions. As the Police Ombudsman has observed, failure to keep accurate records undermines the integrity of the PSNI's regulatory framework for the deployment and use of baton rounds and ultimately leaves the service open to criticism.<sup>122</sup>

Of more concern is the fact that during the enquiry into the discharge of baton rounds in one of the Regulation 20 reports, the Police Ombudsman reviewed CCTV footage from a military helicopter showing a police landrover mounting a footpath and accelerating towards a number of individuals, putting them at risk of serious injury or loss of life. Despite enhancement of the footage, it was impossible to identify the marking on the landrover and hence impossible to identify the driver. However, the Police Ombudsman commented that if the driver had been identified, a recommendation to prosecute for dangerous driving would have been made to the Director of Public Prosecutions.<sup>123</sup> A recommendation was made that all police vehicles used for general patrol and public order situations should have markings on their roof making them identifiable from the air.<sup>124</sup>

The six Regulation 20 reports of the Police Ombudsman into the discharge of personal issue firearms received by the Policing Board between April 2003 and September 2004 are not so positive. The discharge of the firearms in question was only found to be lawful, proportionate and compatible with the Human Rights Act in three of the six reports. In two reports, the Police Ombudsman concluded that the use of potentially lethal force was neither justified nor proportionate; and in one report a lack of co-operation by An Garda Síochána prevented any finding one way or the other. In one of the two cases in which the use of potentially lethal force was found to be neither justified nor proportionate, the PSNI accepted the Police Ombudsman's recommendation that the police officer in question receive advice, guidance and training. In the other case in which the use of potentially lethal force was found to be neither justified nor proportionate, the police officer in

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115 Report into Discharge of Baton Round at Ardoyne, Belfast, 21st April 2002, paragraph.6.9.

116 Ibid, paragraph 7.5.

117 Report into Discharge of Baton Round at Lower Newtownards Road, Belfast, 3rd/4th June 2002, paragraph 15.1.

118 Report into Discharge of Baton Rounds at Mount Vernon, Belfast, 11th September 2002, paragraph 11.6.

119 Ibid, paragraph 15.3.

120 Per the Police Ombudsman, February 2005.

121 Report into Discharge of baton rounds at Mount Vernon, Belfast, 11th September 2002, paragraph 15.4.

122 Report into Discharge of Baton Rounds at Short Strand, Belfast, 12th May 2002, paragraph 11.1.

123 Regulation 20 report, 3rd December 2003, paragraph 8.2.

124 Ibid, paragraph 9.3.

question retired from the force on medical grounds which made it impossible to proceed with the full misconduct hearing recommended by the Police Ombudsman.

Also of concern in relation to the Regulation 20 reports of the Police Ombudsman into the discharge of personal issue firearms is the fact that in two cases (one where the use of potentially lethal force was found to be neither justified nor proportionate; the other where no finding could be made on that issue) the Police Ombudsman recorded that the police officer in question had not attended the firearms refresher training required by PSNI policy.<sup>125</sup> In August 2001, the Police Ombudsman recorded that the matter of PSNI lapses in training had been brought to the attention of the Chief Constable and that there had been indications that it had been addressed.<sup>126</sup> These criticisms have to be seen in the context of the positive comments of the Police Ombudsman in her annual report for the period April 2003 to March 2004 about the recent reduction in the number of occasions on which live fire has been used by police officers in Northern Ireland. However, in the circumstances, we recommend:

- That the PSNI should introduce a strict monitoring system to ensure that all officers attend and satisfactorily complete firearms refresher training at appropriate intervals as required by PSNI Policy on the Use of Firearms.

Finally on the issue of the discharge of personal firearms is the concern noted by the Police Ombudsman that on a number of occasions the conduct of police officers, albeit in good faith, put them in danger and placed them in a position where they felt they were forced to use firearms. Most of the cases drawing this comment concerned hot pursuit of stolen cars.

The six Regulation 20 reports of the Police Ombudsman concerning fatalities are generally positive. In five of the six reports the Police Ombudsman found no fault whatsoever in the behaviour of the police. In the sixth case, a file detailing an allegation of death by dangerous driving was submitted to the Director of Public Prosecutions. However, following the Director of Public Prosecutions' decision not to prosecute, the Police Ombudsman found that there was insufficient evidence to support any misconduct allegations against the officer concerned.

The Regulation 20 report dealing with allegations of police officers pressurising a forensic scientist to compromise her scientific evidence arising from the case of *R v Abernethy* deals first with the critical question of whether PSNI officers put inappropriate demands on the scientist in question requiring her to "compromise her science". Taking into account the opinions provided by three forensic science experts, and the purpose for which the forensic analysis was sought, the Police Ombudsman concluded that the demands made were not inappropriate and that the scientist in question was not asked to compromise her science. That is an important finding on that point. However, the Police Ombudsman did find a number of important failures during the investigation. These include a failure to set a forensic strategy for the crime scene, a failure to appoint a crime scene manager to ensure that the crime scene was properly examined, a failure to recover evidence at the scene, a failure to take measures to avoid contamination of evidence, and reliance on unsupervised and insufficiently trained individuals during the investigation. These findings are serious not only because they compromised the criminal investigation in question but also because they are so basic. They led to a series of recommendations by the Police Ombudsman that were discussed with PSNI forensic support staff. By June 2004 several of them had already been actioned.<sup>128</sup> The Police Ombudsman has observed,

*"The procedure, policy and training recommendations as a whole will professionalise the approach to such scenes and it is critical to public confidence that these are implemented fully."* <sup>129</sup>

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<sup>125</sup> The use of firearms policy, 61/2001, analysed at pp107-108 of this report.

<sup>126</sup> Report on discharge of firearm, Monagh Bylass, 10th May 2001, para.6.2.

<sup>128</sup> Regulation 20 report, 25th June 2004, paragraph 16.1.

<sup>129</sup> Ibid, paragraph 16.2.

In addition, we note that the PSNI introduced a general policy on post-incident procedures in September 2004, which sets out guidelines for post-incident procedures, in particular investigative procedures, to be implemented following discharge of a firearm (including a baton gun) by a police officer. We discuss this policy further in Chapter 8.

Drawing this material together, it is clear that the Regulation 20 reporting system works well. The positive findings of the Police Ombudsman are welcome; the negative findings have been met with acceptable responses from the PSNI Regulation 20 committee. In monitoring the performance of the PSNI in complying with the Human Rights Act, it is important that the Policing Board keeps itself fully informed of the issues being raised by the Police Ombudsman and of the adequacy of the PSNI responses. To that end, we make the following recommendations:

- That in addition to considering each Regulation 20 report as it arises, the Policing Board should track all of the issues raised by the Police Ombudsman on a yearly basis and analyse any trends that emerge.

The Regulation 20 reports indicate that there has been at least one occasion where no misconduct proceedings were brought in respect of serious adverse findings by the Police Ombudsman (in this instance, the unjustified discharge of personal firearms) on the ground that the officer in question retired from the PSNI before such proceedings could be commenced or completed. Such instances are obvious causes of concern. The fact that an officer retires may obviate the need for disciplinary proceedings, but his or her behaviour *before* retirement cannot be left out of account by the Policing Board in discharging its duty to monitor the performance of the PSNI in complying with the Human Rights Act. Against that background we recommend:

- That the PSNI should provide the Policing Board with details of those cases where disciplinary proceedings are either not commenced or not concluded because the officer in question retires or otherwise leaves the PSNI before that stage is reached.
- That the PSNI should review the arrangements in place regarding severance or retirement of officers and consider whether these should be amended to take into account ongoing disciplinary proceedings against individual officers.

## PSNI: INTERNAL DISCIPLINE

Internal allegations of misconduct are dealt with by line managers in the PSNI and, where necessary, by the Internal Investigations Branch. In addition, where the Police Ombudsman recommends that disciplinary proceedings - either formal or informal - should be brought, responsibility for implementing those recommendations lies with the Internal Investigations Branch.

In relation to minor matters, line managers can take informal steps to advise and guide those for whom they are responsible. When they do so they are required to record the misconduct in question and the advice and guidance given. However, this is not recorded on the personnel record of the officer concerned.

If, after preliminary enquiries, the line manager considers that the matter justifies greater action, the case can be referred to a more senior police officer. That officer can issue advice and guidance or recommend that a written warning be given. If advice and guidance is given, it is recorded, but not on the personnel record of the police officer concerned.

As noted above,<sup>130</sup> Superintendent's written warnings are appropriate where the conduct in question is too serious to be dealt with by advice and guidance, but not serious enough to warrant formal disciplinary proceedings. A Superintendent's written warning constitutes an informal disciplinary sanction. The police officer

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130 At p72.

concerned must acknowledge his misconduct and respond in an appropriate manner and the warning results in the loss of any entitlement to a performance bonus.

Superintendents' written warnings are recorded on a PSNI standard document, with copies provided to the officer who is the subject of the sanction, the Internal Investigations Branch and PSNI personnel department.<sup>131</sup> The written warning is recorded on the personal record of the officer concerned, but expunged after twelve months unless a further written warning is administered during that period. Where two written warnings are currently in force, any further allegations of misconduct have to be referred to the Internal Investigation Branch and will be subject to formal disciplinary proceedings.

We have been provided by the PSNI Internal Investigations Branch with the figures for Superintendents' written warnings for the years 2001 to September 2004. They are set out in the tables below.

#### No. of warnings administered annually

2001	40
2002	55
2003	110
2004	66 (up to 28th September)

#### Rank of officer warned

Student officer <sup>132</sup>	1
Reserve constable	47
Constable	214
Sergeant	25
Inspector	2

It is clear from these tables that a significant number of Superintendent's written warnings are given every year. These may involve conduct that amounts to a violation of the Human Rights Act. For that reason the details of the conduct resulting in a Superintendent's written warning would be extremely helpful to the Policing Board in discharging its duty to monitor the performance of the PSNI in complying with the Human Rights Act.

Against that background, we recommend:

- That the PSNI should supply the Policing Board with details of all conduct that led to a Superintendent's written warning on a six monthly basis.
- That the Policing Board should review how best to collate details of the conduct that led to the giving of advice and guidance in twelve months time when the new PSNI case management system is up and running.

Where an allegation of misconduct is serious, it is the duty of the Superintendent with line management responsibility to refer the case to the Internal Investigation Branch for formal investigation.

About 250 matters are referred to the Internal Investigations Branch every year. Approximately 30% of these are internal references by supervising officers indicating that appropriate remedial action has already been taken. In most of those cases, no further investigation is needed. The remaining 70% are formally investigated.

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<sup>131</sup> A copy of the Superintendent's written warning remains in the Superintendent's written warning book completed at District level.

<sup>132</sup> We have been instructed that student officers should not normally receive Superintendent's written warnings as they are not subject to PSNI conduct regulations until they are attested.

## Discipline Outcomes 2001-2002 by category of charge, rank of officer and sanction

### Category of disciplinary charges

Disobedience to orders	5
Criminal conduct	23 (5)
Misconduct towards a member	1
Discreditable conduct	4 <sup>133</sup>
Neglect of duty	3
Damage to police property	1
Politeness and tolerance	2
Criminal offences	1
Performance of duties	1
Lawful orders	1
Honesty and Integrity	1
<b>TOTAL</b> <sup>134</sup>	<b>43 (5)</b>

### Rank of officer charged

Constable	20 (2)
Reserve Constable Full Time	14 (2)
Sergeant	4 (1)
Reserve Constable Part Time	1
Inspector	3
Chief Inspector	1
<b>TOTAL</b>	<b>43 (5)</b>

### Sanction

	Officers	Charges
Dismissed from force	7 (2)	12 (2)
Required to resign	2 (1)	3 (1)
Reduced pay	1	2
Fined	7	10
Reprimand	17(2)	24 (2)
Caution	3	3
Not guilty	5	13
<b>TOTAL</b>	<b>43 (5)</b>	<b>67 (5)</b>

(Note: Figures in brackets indicate that the proceedings were initiated on the recommendation of the Police Ombudsman)

#### NOTES

<sup>133</sup> One officer had charges of discreditable conduct stayed at his disciplinary hearing, but is included in the figures.

<sup>134</sup> One officer resigned before his disciplinary hearing in which he faced 12 charges which, are not included in the figures.

## Discipline Outcomes 2002-2003 by category of charge, rank of officer and sanction

### Category of disciplinary charges

Criminal conduct	3
Discreditable conduct	3
Neglect of duty	3 (1)
Willful/careless falsehood	1
Misconduct to members	1
Politeness and tolerance	2
Criminal offences	10
General conduct	2
Performance of duties	2
Lawful orders	1
Honesty and Integrity	1
<b>TOTAL</b> <sup>135</sup>	<b>29 (1)</b>

### Rank of officer charged

Constable	21 (1)
Reserve Constable Full Time	4
Sergeant	1
Reserve Constable Part Time	1
Inspector	2
Chief Inspector	1
<b>TOTAL</b> <sup>136</sup>	<b>29 (1)</b>

### Sanction

	Officers	Charges
Dismissed from force	1	1
Required to resign	1	3
Required in rank	1	2
Reduced pay	3	6
Fined	8	11
Reprimand	7	14
Caution	5 (1)	6 (1)
Not guilty	3	16
<b>TOTAL</b>	<b>29 (1)</b>	<b>59 (1)</b>

(Note: Figures in brackets indicate that the proceedings were initiated on the recommendation of the Police Ombudsman)

#### NOTES

<sup>135</sup> The charges against two officers were stayed at their disciplinary hearing, but are included in the figures.

<sup>136</sup> Two officers resigned before their disciplinary hearing and are not included in the figures.

## Discipline Outcomes 2003-2004 by category of charge, rank of officer and sanction

### Category of disciplinary charges

Criminal conduct	2
Neglect of duty	1
Willful/careless falsehood	1
Improper disclosure of information	1
Criminal offences	20
General conduct	8 (2)
Lawful orders	3 (1)
Politeness and tolerance	2
Honesty and integrity	1
Performance of duties	1
Property	1
<b>TOTAL</b> <sup>137</sup>	<b>41 (3)</b>

### Rank of officer charged

Constable	26 (2)
Reserve Constable Full Time	7 (1)
Sergeant	5
Inspector	1
Reserve Constable Part Time	1
<b>TOTAL</b>	<b>41 (1)</b>

### Sanction

	Officers	Charges
Dismissed from force	1	1
Required to resign	4	5
Reduced in rank	0	0
Reduced pay	7	12
Fined	19	28
Reprimand	5 (1)	12 (1)
Caution	3 (1)	8 (2)
Not guilty	2 (1)	8 (1)
<b>TOTAL</b>	<b>41 (3)</b>	<b>74 (4)</b>

(Note: Figures in brackets indicate that the proceedings were initiated on the recommendation of the Police Ombudsman)

#### NOTES

<sup>137</sup> These figures do not include charges against officers who resigned or retired before disciplinary proceedings were completed, or cases in which judicial review proceedings were being pursued.

They include referrals where an allegation of misconduct is too serious for informal resolution.

At the end of the investigation, the investigating officer may recommend that there be no further action, that advice and guidance be given, that a written warning be administered or that formal disciplinary proceedings be commenced. In appropriate cases, the investigating officer can also recommend that criminal proceedings should be issued. In such cases the matter is referred to the Director of Public Prosecutions who will decide whether to prosecute. Whether the Director of Public Prosecutions decides to prosecute or not, the investigating officer goes on to consider whether disciplinary proceedings should be brought.

We have been provided with the statistics showing the outcomes of internal disciplinary proceedings for the years 2001-2002, 2002-2003 and 2003-2004. They are set out in the following tables.

### **Discipline Outcomes 2001-2002 by category of charge, rank of officer and sanction**

These figures indicate that full-time constables face more disciplinary charges than other officers, followed reasonably closely by reserve constables. They also disclose that the most common sanctions imposed are fines or reprimands, and that a handful of officers are either dismissed or required to resign every year. The percentage of officers facing disciplinary charges who are subsequently found not guilty is low: 12% in 2001-2002, 10% in 2002-2003 and 5% in 2003-2004. These figures include cases where there was a stay in proceedings, the charge was withdrawn or where the charge was dismissed.

Since March 2003, a breach of the PSNI Code of Ethics can lead to disciplinary proceedings. Since the Code is based on international standards drawn from the European Convention on Human Rights and other relevant human rights instruments, statistics showing the outcomes of internal disciplinary proceedings in the future will provide valuable information on the performance of the PSNI in complying with the Human Rights Act. That information cannot be gleaned from the statistics set out in the tables above because most of the conduct that led to the initiation pre-dated the adoption of the Code of Ethics. To date, only two disciplinary hearings have been completed based on breaches of the Code of Ethics. There were adverse findings in both cases.

In the light of this analysis, we make the following recommendations:

- That in future, the PSNI correlate its statistics on disciplinary matters against specific articles in the Code of Ethics.
- That the Policing Board track breaches of the Code of Ethics disclosed by the PSNI's statistics and identify any discernable trends.
- That the PSNI Internal Investigations Branch should report to the Policing Board on a quarterly basis on current internal investigations of misconduct and disciplinary action arising as a result of completed investigations.

The tables set out above do not include police officers who resign or retire before the completion of the disciplinary process. This presents a difficulty in the Policing Board's evaluation of the performance of the PSNI in complying with the Human Rights Act. That is because the conduct of officers who resign or retire before the completion of the disciplinary process may well disclose human rights violations. As we have already highlighted, at present the Policing Board does not know the number of officers who resign or retire before the completion of the disciplinary process, or the details of the conduct that led to the initiation of the process. This is a serious gap in the effective discharge by the Policing Board of its oversight duties.

Earlier in this chapter we dealt with this difficulty where it arose in relation to the Regulation 20 reports issued by the Police Ombudsman. Here we re-emphasise the importance of the recommendation we made there that the PSNI should provide the Policing Board with details of those cases where disciplinary proceedings are either not commenced or not concluded because the officer in question retires or otherwise leave the PSNI before that stage is reached.

## CIVIL CLAIMS AGAINST THE POLICE

Legal claims brought by individuals against the police alleging unlawful conduct are obviously relevant to the Policing Board in discharging its duty to monitor the performance of the PSNI in complying with the Human Rights Act. Every judgment against the PSNI is evidence of unlawful conduct, which needs to be considered not only because of the finding that the conduct in question was unlawful, but also because an adverse court judgment often carries with it the additional feature that a judge disbelieved the evidence put forward by police officers on oath.

Every month the Professional Standards and Human Rights Committee of the Policing Board receives statistical information from the PSNI relating to civil cases against the police that have been concluded that month. The statistics record, among other things, how many cases were contested (and whether the complainant or the police won) and how many were otherwise disposed of – usually because the case was settled or withdrawn. The Committee is provided with a summary of every case concluded that month, which includes the date of the incident in question, the compensation paid (if any) and brief details of the incident giving rise to the claim.

In addition, each month the Policing Board is provided with a summary of civil cases which have been lost or settled the previous month. These summaries include a brief description of the conduct giving rise to the claim. We have been provided with the summaries for the period July 2003 to December 2004 and we have studied them carefully.

### Cases concluded April 2003 - December 2004

Month	Closed	Won	Lost	Settled	Withdrawn
July 2003	128	1	1	33	93
Aug 2003	62	0	0	29	32
Sept 2003	69	1	0	61	7
Oct 2003	109	2	0	45	62
Nov 2003	43	0	1	40	2
Dec 2003	32	0	0	32	0
Jan 2004	49	2	2	44	1
Feb 2004	56	1	1	51	3
Mar 2004	47	1	5	40	1
April 2004	18	1	2	14	1
May 2004	28	0	1	27	0
June 2004	58	2	1	47	8
July 2004	35	0	0	34	1
Aug 2004	32	0	0	31	1
Sept 2004	43	3	3	33	4
Oct 2004	68	3	0	60	5
Nov 2004	47	8	2	33	4
Dec 2004	36	51	1	29	1

It should be noted that this table includes all claims against the police except industrial tribunal cases. It therefore includes cases relating to personal injury and minor damage to property which do not usually raise human rights issues (at least not directly). It should also be noted that, because legal proceedings tend to take several years before they reach court or are otherwise concluded, many of the cases arise from incidents many years ago. For example, some cases settled in the period July 2003 to November 2004 related to incidents as long ago as the early 1990s.

The second table provides more insight because it records those cases concluded each month where compensation was paid to the complainant either because of an adverse court judgment or (more usually) because the case was settled on the advice of counsel. This table excludes cases relating to personal injury and minor damage to property and focuses instead on conduct which more obviously raises human rights issues.

### Cases concluded where compensation paid to claimant July 2003 - November 2004

Month	Assault	False Imprisonment	Settled	Other
July 2003	6 (1 by court order)	4	0	0
Aug 2003	0	1	3	0
Sept 2003	11	7	2	0
Oct 2003	5	3	0	0
Nov 2003	6	8	0	0
Dec 2003	6	10	0	0
Jan 2004	9	10	0	0
Feb 2004	6 (1 by court order)	6	8	0
Mar 2004	9 (1 by court order)	3 (1 by court order)	6 (1 by court order)	0
April 2004	3	3	0	0
May 2004	4 (1 by court order)	2	0	0
June 2004	10	4	1	0
July 2004	6	5	0	0
Aug 2004	7	5	3	0
Sept 2004	2	4	1	0
Oct 2004	12	7	6	0
Nov 2004	6	4	4	0

The information these tables provide about the performance of the PSNI in complying with the Human Rights Act in the period covered by this report is limited by the long delay in legal proceedings noted above. However, a number of observations can be made.

The first observation is that the response of the PSNI to an adverse court judgment or a case settled because counsel advises that it cannot be successfully defended is relevant to any assessment of the performance of the PSNI in complying with the Human Rights Act. The relevance varies from case to case. It is obvious that limited use can be made of cases which are settled because of witness unavailability, or minor cases which are settled on a purely financial basis. However, more use can be made of cases where there is a clear allegation, e.g. of assault by a PSNI officer, and counsel advises that the case is unlikely to be successfully defended because there is objective medical evidence supporting the complainant's case, because the police cannot explain the injuries or because there are inconsistencies in the police evidence (or sometimes a combination of these reasons). There are clear examples of this type of case in the summaries provided to the Human Rights and Professional Standards Committee of the Policing Board each month. Many of these involve relatively recent events (i.e. in the last 2 to 3 years). The Policing Board cannot leave these cases out of account when monitoring the performance of the PSNI in complying with the Human Rights Act.

Equally the response of the PSNI to adverse court judgments is relevant to any human rights assessment. As noted above, an adverse court judgment not only carries with it an inevitable finding that the conduct in question was unlawful but also it very often carries with it the additional feature that a judge disbelieved the evidence put forward by police officers on oath.

We have been informed that where cases are lost by the PSNI, or settlements are made in cases raising important issues of policing policy and/or practice, the PSNI legal services department produces a report on the lessons that can be learnt from the litigation. This is then disseminated to the Internal Investigations Branch, Training, Education and Development or any other relevant PSNI department. It is for the particular department to decide the manner in which it will address the concerns highlighted. These reports are also submitted to the Chief Constable's policy forum.

This is an important exercise and no doubt it leads to changes in training and guidance, where appropriate. However, it does not go far enough. In our view, all civil cases against the PSNI that are lost or settled should be reviewed, whether they raise important issues of policing policy/practice or not. Where the details are sufficiently clear, consideration should be given to the institution of disciplinary proceedings. Clearly there may be some cases where long delay may provide a reason for not bringing disciplinary proceedings, but it cannot provide a reason for not considering whether disciplinary proceedings would be appropriate. Moreover, there are clear examples in the summaries we have examined of cases where it would have been appropriate for the PSNI to have brought disciplinary proceedings where cases were lost or settled. Against that background, we make the following recommendations:

- That the PSNI should review all civil cases that are either lost or settled with a view to bringing disciplinary proceedings where it is appropriate to do so and should provide the Policing Board with details of this review on a quarterly basis.
- That the PSNI should provide the Policing Board with details of its review of all civil cases that are either lost or settled.

In addition to straightforward civil cases, there are a growing number of judicial review cases being brought against the PSNI. Often these involve important questions of policy and practice. However, there is no comprehensive system currently in place for collating the judgments in these cases, still less for reviewing those cases that are settled by some sort of agreement with the applicant. In the circumstances, we recommend:

- That the PSNI should supply the Policing Board with details of all judicial review cases brought against the PSNI on a six monthly basis, indicating which cases were won, which were lost and the terms of any agreement under which any of them were settled.
- That the PSNI should supply the Policing Board with details of any action taken or proposed in response to any judicial review cases brought against the PSNI which the Policing Board should track these cases and analyse any discernible trends.

# CHAPTER 7: PUBLIC ORDER

## CHAPTER 7: PUBLIC ORDER

### Introduction

Public order policing in Northern Ireland is inevitably bound up with the question of parades and that can raise difficult human rights issues. Those who want to parade have recognised human rights, including the right to freedom of expression and freedom of assembly. They also have the right to expect the police, in carefully defined circumstances, to protect their exercise of these rights so long as they themselves remain peaceful.<sup>138</sup> But equally, others who do not want parades which they consider to be offensive to pass through the area in which they live, have recognised human rights, including the right to protest should they wish to do so (so long as their protest is peaceful) or simply to peaceful enjoyment of their home environment. Balancing these, often competing, rights and interests is never easy, and the policing of parades has been the subject of strong criticism for many years, both from those who want to parade and those who do not want parades to pass through the area in which they live.

In monitoring the performance of the PSNI in complying with the Human Rights Act, the Policing Board undertook to review all PSNI policies relating to public order. It committed itself to an after-the-event review of several parades that had taken place in 2003, and to a first hand review of several parades in 2004. As a result of the very serious concerns raised by a number of individuals and groups about certain aspects of the 12th July Ardoyne parades in 2004, we were asked by the Policing Board to produce a special report on the policing of these parades in advance of this full report on the performance of the PSNI on complying with the Human Rights Act. That special report was published in November 2004, when the Policing Board adopted the recommendations we set out in it.<sup>139</sup> In this chapter we only include a summary of it.<sup>140</sup>

As a result of our intensive work on the 12th July Ardoyne parades in 2004, our after-the-event review of several parades that had taken place in 2003 was fairly cursory. We were provided with, and examined, all the PSNI strategy, planning and implementation documents for the parades at Ardoyne, Drumcree, Dunloy and Short Strand in 2003, but were unable to follow this up with any more in depth analysis. In the event, we treated that material as useful background material for our first-hand review of several parades in 2004.

As part of our first hand review of parades in 2004, we attended the planning meetings for selected 2004 parades at Ardoyne, Drumcree, Dunloy, Short Strand and Whiterock. We also attended parades at Ardoyne, Drumcree and Short Strand, observing police operations from the ground and from the command rooms. In the course of our work, we spoke to all PSNI officers with responsibility for planning and controlling the policing of those parades,<sup>141</sup> and attended the PSNI Debrief for the parades season 2004 on 6th September 2004. We set out our findings in respect of these parades after the summary of our special report on the 12th July Ardoyne parades.

It is important at the outset to record that in relation to each of the parades we chose to monitor in 2004, we were given unrestricted access to PSNI documents, materials and officers to enable us to compile this report. No limitations were placed on our attendance at preparatory meetings, nor was any restriction imposed on our attendance as observers on the ground or in the various command rooms. No request by us for information was refused.

Before setting out our findings in relation to the policing of the selected parades at Ardoyne, Drumcree, Dunloy and Short Strand in 2004, we deal first with the general requirements of the Human Rights Act in respect of parades, the legal relationship between the PSNI and the Parades Commission and the relevant PSNI policies on public order/parades.

#### NOTES

<sup>138</sup> See the principles articulated in the case of *Plattform Artze Fur Das Leben v Austria* [1988] EHRR 204.

<sup>139</sup> The report is available on the Policing Board's website: [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk).

<sup>140</sup> In the preparation of this chapter of our report, we have given consideration to the responses of both Ulster Human Rights Watch and the SDLP to our special report on the 12th July Ardoyne parades.

<sup>141</sup> At Gold, Silver and Bronze Command level.

## The requirements of the Human Rights Act

The Human Rights Act requires all public authorities to act in a way which is compatible with the rights set out in Schedule 1 of the Act, which are taken from the European Convention on Human Rights, unless primary legislation requires them to act otherwise.<sup>142</sup> A public authority includes any body exercising functions of a public nature, which includes the PSNI and the Parades Commission. Individuals who consider that their human rights have been breached can bring legal proceedings against the public authority in question.<sup>143</sup> Courts then have power to grant various types of relief as and when appropriate.<sup>144</sup>

The human rights incorporated into our law by this means include the following, which are relevant to this chapter: Article 8 (the right to respect for private and family life and to a home), Articles 9, 10 and 11 (freedom of religion, expression and assembly respectively) and Article 14 (the prohibition on discrimination).

Article 8 of the European Convention on Human Rights protects the right to respect for private and family life of individuals and the right to a home. It extends to the right of peaceful enjoyment of the home, but like Articles 9, 10 and 11, it is not absolute. That means that it can be restricted so long as any restriction is lawful, legitimate, necessary and proportionate.

Articles 9, 10 and 11 of the European Convention on Human Rights protect the right to manifest a religion, to expression and to freedom of assembly, respectively. Taken together, they provide a right of protest, but like Article 8 of the European Convention, this right is a qualified right and can be restricted so long as any restriction is lawful, legitimate, necessary and proportionate. The right of protest includes a right to march or process,<sup>145</sup> so long as the purpose is peaceful.<sup>146</sup> The mere fact that a protest, march or procession may annoy others, or even offend them, is not a sufficient basis for restricting it.<sup>147</sup> And where there is a threat of disruption or disorder from others, the relevant authorities (including the police) are under a duty to take reasonable steps to protect those who want to exercise their rights peacefully.<sup>148</sup> That does not mean that there is an absolute duty to protect those who want to protest, march or process.<sup>149</sup> However, banning a protest, march or procession would only be justified if there was a real threat of disorder that could not be prevented by other reasonable measures.<sup>150</sup>

The prohibition on discrimination in Article 14 of the European Convention on Human Rights does not mean that everyone must necessarily be treated the same. It simply means that any differentiation in treatment between two groups of individuals must be reasonable and objectively justified. To establish differential treatment, individuals must show that they have been treated less favourably than others who are in the same or a similar position to them.

## The legal relationship between the PSNI and the Parades Commission

Any assessment of whether the policing of parades complies with the Human Rights Act must distinguish between those decisions for which the PSNI has legal responsibility and those decisions for which the Parades Commission has responsibility. That is because the Public Processions (Northern Ireland) Act 1998 places a duty on the Parades Commission to take key decisions affecting the human rights of those wishing to parade and those who live in the vicinity of those parades. In respect of those decisions, no criticism can properly be levelled at the police for carrying them into effect, even if some individuals or groups may consider the decision in question to be wrong. For that reason, it is necessary to briefly set out the functions of the Parades Commission.

### NOTES

142 Human Rights Act, Sections 6(1) and 6(2).

143 Human Rights Act, Section 7(1).

144 Human Rights Act, Section 8(1).

145 *Rassemblement Jarussien and Unite Jurassienne v Switzerland* (1979) 17 DR 138; *Christians Against racism and Facism v UK* (1980) 21 DR 138.

146 *Christians Against Racism and Fascism v UK* (1980) 21 DR 138.

147 *Refah Partisi v Turkey* [2002] 35 EHRR 56.

148 *Plattform Artze Fur das Leben v Austria* (1988) EHRR 204.

149 *Ibid.*

150 *Christians Against Racism and Fascism v UK* (1980) 21 DR 138.

The Public Processions (Northern Ireland) Act 1998 came into force on the 16th February 1998. It requires anyone proposing to organise a public procession to give notice of that proposal to the police.<sup>151</sup> Notice should be given in writing and in such form as the Secretary of State prescribes<sup>152</sup> not less than 28 days before the date of the proposed procession or as soon as is reasonably practicable.<sup>153</sup> The notice must specify the date and time of the proposed procession,<sup>154</sup> its route, the numbers of people likely to take part, the names of any bands which are to take part in it and the arrangements being made by the organiser to control the proposed procession. The Chief Constable is under a duty to ensure that a copy of the notice is given immediately to the Parades Commission.<sup>155</sup> The only processions exempt from these notice requirements are funeral processions and processions of a class or description specified by the Secretary of State.

Anyone who organises or takes part in a public procession in respect of which no notice has been given, or which is held on a date, at a time or along a route which differs from the date, time or route specified in the notice, is guilty of a criminal offence.<sup>156</sup> But a defence is provided to those who did not know and had no reason to suspect that no notice had been given, or that they were taking part in a public procession on a date, at a time or along a route which differs from the date, time or route specified in the notice<sup>157</sup> and/or to those who can show that what they did was agreed with, or directed by, a police officer not below the rank of inspector, or that circumstances were beyond their control.<sup>158</sup>

The Parades Commission has power to issue a determination in respect of any proposed public procession, imposing on the persons organising or taking part in it such conditions as the Commission considers necessary.<sup>159</sup> There is no express limit on the power of the Commission to impose conditions, but it is clear that the Commission can include conditions as to the route of the procession or prohibit it from entering any place.<sup>160</sup> The Commission has a power to amend or revoke any determination.<sup>161</sup>

It is the duty of the Parades Commission to have regard to its guidelines when considering whether to issue or review a determination.<sup>162</sup> The guidelines require the Commission to have regard to any public disorder or damage to property which may result from the procession, any disruption to the life of the community that the procession may cause, any impact the procession may have on relationships within the community, any failure to comply with the Code of Conduct and the desirability of allowing a procession customarily held along a particular route to be held along that route.<sup>163</sup> The requirement to have regard to these matters is intended to ensure that decisions of the Parades Commission comply with the requirements of the Human Rights Act and this is made clear in the guidelines themselves.<sup>164</sup> Furthermore, the Parades Commission is itself a public authority and thus under a duty to act compatibly with European Convention rights.

Thus it is the Parades Commission that has primary responsibility for ensuring that an appropriate human rights balance is achieved between those wishing to parade, those who oppose any such parade and those who live in the vicinity of those parades, by issuing determinations as and when it is appropriate to do so. The responsibility of the PSNI is to police any determination of the Parades Commission and to take appropriate operational decisions to that end within the framework of the applicable law, including the Human Rights Act.

## NOTES

- 151 Public Processions (NI) Act 1998, section 6(1).
- 152 Public Processions (NI) Act 1998, section 6(3).
- 153 Public Processions (NI) Act 1998, section 6(2).
- 154 Public Processions (NI) Act 1998, section 6(4).
- 155 Public Processions (NI) Act 1998, section 6(6).
- 156 Public Processions (NI) Act 1998, section 6(7).
- 157 Public Processions (NI) Act 1998, section 6(8).
- 158 Public Processions (NI) Act 1998, section 6(9).
- 159 Public Processions (NI) Act 1998, section 8(1).
- 160 Public Processions (NI) Act 1998, section 8(2).
- 161 Public Processions (NI) Act 1998, section 8(4).
- 162 Public Processions (NI) Act 1998, section 8(5).
- 163 Public Processions (NI) Act 1998, section 8(6).
- 164 Parades Commission, Guidelines, paragraphs 1.4 and 1.5.

Protest meetings are dealt with differently. Where notice has been given of a proposed public procession, anyone proposing to organise a related protest meeting is required to give notice of that proposal to the police.<sup>165</sup> Notice should be given in writing and in such form as the Secretary of State prescribes<sup>166</sup> not less than 14 days before the date of the proposed meeting or, if that is not reasonably practicable, as soon as is reasonably practicable.<sup>167</sup> The notice must specify the date and time of the proposed meeting, its place, the numbers of people likely to take part and the arrangements being made by the organiser to control the meeting.<sup>168</sup> The Chief Constable is under a duty to ensure that a copy of the notice is given immediately to the Parades Commission.<sup>169</sup> There are no exemptions from these notice requirements.

Power to impose conditions on open-air public meetings, whether they are protest meetings or not, is conferred on the PSNI (not the Parades Commission) by the Public Order (Northern Ireland) Order 1987. It allows a senior police officer to impose conditions on an open-air public meeting if s/he reasonably believes that it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or if s/he reasonably believes that the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have no right to do.<sup>170</sup> The conditions can be imposed on the organisers or those taking part in the meeting and can relate to the place of the meeting, its maximum duration and the maximum number of participants. Such conditions must be given in writing.<sup>171</sup> Anyone who knowingly fails to comply with any such conditions commits a criminal offence.<sup>172</sup>

## AUDIT OF PUBLIC ORDER POLICIES

### Human Rights Policy in Relation to Public Events

The Human Rights Policy in Relation to Public Events (the “Public Order Policy”)<sup>173</sup> was issued on 6th June 2000. Its purpose is to establish PSNI policy in relation to public events, including public processions, in compliance with the principles of the Human Rights Act and other international human rights instruments. The Public Order Policy notes by way of background, “the application of Human Rights legislation to the issue of parades highlights a number of issues for the police service. These issues arise as the conflict surrounding parades is essentially a conflict over competing human rights.” The Public Order Policy identifies that activities such as protests, demonstrations and marches engage Articles 10 and 11 of the European Convention on Human Rights and notes that “the inter-relationship between Articles 10 and 11 is itself very close and in many cases freedom of assembly amounts to the collective expression of an opinion.” In addition, the policy states that Articles 5, 8 and 9 of the European Convention on Human Rights may be engaged as a result of police actions in relation to parades.

The Code of Practice<sup>174</sup> for Public Events provides the framework for the strategy and planning of public events and an accountable audit trail in respect of strategic, planning and implementation processes. It specifically addresses the following:

- (1) Police submissions to the Parades Commission. Submissions must be human rights compliant. Where police action in relation to a parade impinges on human rights, “restrictions can only be imposed within the provisions of (European Convention On Human Rights) Articles 5, 8(2), 9(2), 10(2) and 11(2)”. Where a parade has previously taken place in a particular area, police must advise the Parades Commission of “the impact of the human rights of the participants, residents and the general public, by both the parade

#### NOTES

165 Public Processions (NI) Act 1998, Section 7(1).

166 Public Processions (NI) Act 1998, section 7(3).

167 Public Processions (NI) Act 1998, section 7(2).

168 Public Processions (NI) Act 1998, section 7(4).

169 Public Processions (NI) Act 1998, section 7(5).

170 Public Order (NI) Order 1987, Article 4(2).

171 Public Order (NI) Order 1987, Article 4(4).

172 Public Order (NI) Order 1987, Article 4(5).

173 General Order 44/2000.

174 Devised by PSNI Operational Policy and Support at Headquarters following internal consultation.

itself and the strategy employed by the police.” A template is attached to assist preparation and delivery of verbal briefings to the Parades Commission to ensure human rights compliance.

- (2) Pre-event planning of police operations. The policy notes that implementation of the Human Rights Act requires fundamental changes to public order policy and strategic decision-making processes, operational planning processes, real-time review of tactics, briefing and de-briefing processes. It reminds officers of the need to document decisions and maintain an audit trail and sets out a list of measures to ensure (i) human rights compliance and (ii) a fully accountable audit trail of the strategy, planning and implementation processes.
- (3) Command and control of the operation. The policy sets out the command structure for the policing of public events, defining roles, responsibilities and accountability of commanders. Decisions to use baton rounds “must be made within the provisions of the common law, section 3 of the Criminal Law Act and (European Convention On Human Rights) Article 2.” The policy refers to PSNI Policy in Relation to the Issue, Deployment and Use of Baton Rounds in Situations of Serious Public Disorder<sup>175</sup>. The policy requires briefings to be accurate and to the point, with officers briefed on specific legal powers relating to offences they are likely to encounter during the operation. Any combined operations, including joint operations with military forces, are subject to scrutiny for human rights compliance and the military are to be briefed by police prior to deployment. The policy for arrests on the day of the operation and prisoner handling procedures subject are also subject to the Human Rights Act. The Event Policy Book must include any issues or decisions impinging on human rights that have not been addressed in the event strategy.
- (4) Post event de-briefing processes. The policy requires the random selection of operations for internal audit. A structured debrief (command and operational) must be completed to identify any necessary improvements to systems, equipment and resources. This debrief should constitute the foundation for planning future events and the evaluation of the impact of the police operation should include consideration of information from local communities, as well as participants and organisers.

There is direct reference to the Human Rights Act throughout the Public Order Policy. However, the policy does not define the individual Articles of the European Convention on Human Rights or explain their application and scope in the public order context. This is obviously critical given the complex balancing of rights required by many public order events. The template documents attached to the policy, which aim to ensure consistency and standardisation of strategy, planning and record-keeping in relation to the policing of public events, are very good. Although there is limited reference to human rights in the document template themselves, our review of operational documents for parades in 2003 and 2004 suggests that a more developed assessment of human rights is conducted in practice.

Against that background, we make the following recommendation:

- That the PSNI Public Order Policy be amended to include: (1) a summary of the relevant provisions of the European Convention on Human Rights, (2) a short commentary on the application of these provisions in the public order context, and (3) some guidance on factors likely to be relevant in balancing human rights in the public order context.

## Policing of Protest Activity

The PSNI General Order on Protest Activity in Public Thoroughfares (the “Protest Activity Policy”) issued on 2nd May 2003 sets out PSNI policy on policing protest activity that involves the obstruction of public thoroughfares. Its purpose is “to provide a consistent and corporate approach” to policing such protest activity. The policy is

### NOTES

- 175 General Order 46/2000.  
176 General Order 15/2003.

intended to be read in conjunction with the Use of Force Policy,<sup>177</sup> the Public Order Policy<sup>178</sup> and the General Order on the Public Processions (Northern Ireland) Act 1998 and the Parades Commission.<sup>179</sup> The policy statement at the beginning of the general order underlines a commitment on the part of the PSNI to work “in partnership with the community” and explicitly states that the “human rights of all those affected by such events will be central to all stages of police preparations and subsequent actions. It is recognised that not all human rights are absolute rights and in some instances the rights of individuals must be balanced with those of others, including those of differing and wider communities.”

The Protest Activity Policy states that (i) protest activity in a democratic society is a legitimate means of expressing views and opinions and (ii) protesters and counter-protesters have a fundamental right to peaceful assembly and to demonstrate without fear of physical violence from those who oppose their ideas. It requires police officers to use mediation and negotiation skills in balancing the rights of protesters with others in the wider community before recourse to the application of force.

A section of the policy is dedicated to protest activity and human rights.<sup>180</sup> The section deals directly and comprehensively with relevant European Convention rights (specifically Articles 5, 8, 9, 10 and 11) and provides an accurate explanation as to their application and scope. In particular, the general order explains that restrictions may be placed on some of the rights providing that (a) such restrictions are in accordance with the law, (b) in respect of Articles 8 to 11, the aim of the restriction is legitimate, (c) there is a ‘pressing social need’ for the restriction and (d) any restriction is both necessary and proportionate. The policy states that proportionality “includes balancing competing rights. The rights of a protest group need to be balanced against the rights of the wider community.”

The policy includes an expanded paragraph on European Convention Article 11 (the right to freedom of assembly). It instructs officers that this right “is not to be restrictively interpreted” and that so long as protesters have a peaceful intent, they should be able to exercise this right without interference from police or other persons. The policy correctly states, “[p]rotesters who do not have a peaceful intent cannot claim the protection of Article 11.” The policy indicates that some obstruction is legitimate if considered reasonable in the circumstances, but that officers should respond promptly to obstructions on main arterial routes, and obstructions in the vicinity of airports, ports, hospitals and sectarian interfaces.

Police objectives in respect of protest activity are defined as including:

- (a) Maintenance of public safety;
- (b) Maintenance of officer safety;
- (c) Protection of the right to freedom of assembly and association;
- (d) Protection of the right to freedom of expression;
- (e) Protection of the right to respect for private and family life;
- (f) Protection of the right to liberty and security;
- (g) Protection of right to freedom of thought, conscience and religion.

We were impressed by the Protest Activity Policy. It is clear and comprehensive and gives proper weight to, and guidance on, the applicable human rights standards. It also cross-refers very effectively to other relevant PSNI policies.

## **Policy on PSNI Relations with the Parades Commission**

The PSNI General Order on the Public Processions (Northern Ireland) Act 1998 and the Parades Commission issued on 30th May 2000<sup>181</sup> sets out the arrangements for the interaction between the PSNI and the Parades Commission. The policy explains the statutory structure, duties and powers of the Parades Commission and makes explicit reference to (1) the Code of Conduct, (2) the Procedural Rules and (3) the Guidelines issued by

### **NOTES**

<sup>177</sup> See above at pp108-109.

<sup>178</sup> See above at pp93-94.

<sup>179</sup> See below.

<sup>180</sup> Protest Activity Policy, paragraph 3.

<sup>181</sup> General Order 43/2000.

the Parades Commission, which have been disseminated across the PSNI.

Of particular note is the procedure for providing formal evidence to the Parades Commission. Here the policy requires submissions to be “a professional assessment of the evidence and intelligence available to the officer compiling the report”, supported by factual evidence where available. A community impact assessment must also be provided, which includes an assessment of the human rights impact both of the parade or protest and of any police strategy to deal with them.

Although the policy on public processions is good, as our special report on the policing of the 12th July Ardoyne parades<sup>182</sup> makes clear, arrangements between the PSNI and the Parades Commission need to be reviewed, in particular arrangements relating to communications.

We therefore recommend:

- That the PSNI review its General Order on the Public Processions (Northern Ireland) Act 1998 and the Parades Commission in so far as it relates to the arrangements between the PSNI and the Parades Commission, ensuring that all officers know and understand (i) the basis upon which the Parades Commission issues its determinations and (ii) the agreed protocols for communication between the PSNI and the Parades Commission.

## PSNI Public Order Tactical Advisers

The PSNI General Order on Public Order Tactical Advisers issued on 18th March 2004<sup>183</sup> sets out PSNI policy in relation to the use of public order tactical advisers in the planning and control of public order events. Public order tactical advisers<sup>184</sup> are available to advise commanders during the planning and operational implementation of public order events.<sup>185</sup> The role of the tactical adviser does not usurp the role, responsibilities and functions of commanders at the respective levels - tactical advisers do not make operational decisions or take any action.<sup>186</sup> The responsibility for the validity and reliability of the advice rests with the public order tactical adviser whilst the responsibility for the use of the advice and for specific actions rests with the operational commander. Their use is intended to assist officers to comply with PSNI Code of Ethics Article 4, in particular Article 4.2.<sup>187</sup>

The Public Order Tactical Advisers Policy requires consideration to be given to the use of tactical advisers at the outset of the planning stage of every policing operation that may present public order concerns.<sup>188</sup> When tactical advice is requested, the tactical advisor must be involved in all relevant planning meetings, including those at Gold and Silver level. The decision not to involve a tactical adviser must be documented by the commander in charge, along with the reasons for that decision. Tactical advisers will advise operational commanders on the tactical options available at each stage of the operation and should be involved in any post-event review that is conducted.

The Public Order Tactical Advisers policy is clear and thorough. It links well to the Code of Ethics and, in particular, the obligation on police officers who plan and control operations to minimise any resort or potential resort to force. The policy makes specific reference to the Human Rights Act. It also gives clear advice about command structures and the need for clear and comprehensive record keeping and audit trails. The only weakness we perceived in the policy was that the key concepts of legality, necessity and proportionality, while referred to, were not adequately explained. For this reason, we recommend:

### NOTES

<sup>182</sup> Discussed further below at pp97-100.

<sup>183</sup> General Order 12/2004.

<sup>184</sup> Accredited to the national standard.

<sup>185</sup> Tactical advisers provide advice on a wide range of tactical issues including risk assessment procedures, use of legislation and policy, baton gun deployment, development of strategy and tactics, health and safety issues, gold/silver/bronze command structure and post-event review: Tactical Adviser Policy, paragraph. 4(2).

<sup>186</sup> Tactical Advisers Policy, paragraphs 4(3) and 4(4).

Which states that “police officers responsible for the planning and control of operations where the use of force is a possibility, shall so plan and control them to minimise, to the greatest extent possible, recourse to force and, in particular, potentially lethal force.”

<sup>188</sup> Tactical Advisers Policy, paragraph. 3(1).

- That the PSNI Public Order Tactical Advisors Policy should be amended to include explanations of the key concepts of legality, necessity and proportionality.

## PSNI Evidence Gathering Policy

The PSNI General Order on Evidence Gathering – Public Order Events issued on 27th February 1998<sup>189</sup> provides information concerning evidence gathering procedures associated with public order events. The objective of the evidence gathering team is to obtain the best evidence of criminal offences occurring at any public order event. The policy defines the composition of an evidence gathering team and the evidence gathering equipment with which they will be deployed.

The evidence gathering policy is comprehensive. Evidence gatherers must be fully trained, authorisation must be obtained from District Commanders before evidence gathering equipment is issued, records must be kept of the date, time and purpose of issue and the date and time of return of all equipment, including discs-used and unused. Discs and video footage must be removed from recording equipment at the termination of the evidence gathering deployment, labelled and overwrite protected to safeguard the material.

## MONITORING OF PARADES 2004

### The 12th July Ardoyne Parades

As part of its review of public order policing, the Policing Board committed itself in its Framework Document to monitoring the policing of certain parades in 2004, including the 12th July parades that passed the Ardoyne shop fronts (referred to in shorthand in this report as the 12th July Ardoyne parades).<sup>190</sup> To that end, we had in-depth meetings with senior officers responsible for the planning, preparation and execution of the policing operation at Ardoyne on 12th July 2004 this year. We were provided with all the briefing material generated by the PSNI in preparation for the operation and attended briefings at Gold, Silver and Bronze command level. We also attended the Ardoyne shop fronts on 12th July as observers on the ground while the parades passed through the area, both on the way out in the morning and on the way back in the evening; at other times on 12th July we observed the policing operation for these parades from the Silver Command room.

As noted above, as a result of the very serious concerns raised by a number of individuals and groups about certain aspects of the 12th July 2004 Ardoyne parades, we were asked by the Policing Board to produce a special report on the policing of these parades. To fulfil that task we were given access to a great deal of material requested by us from the PSNI. This included: (1) the briefing documents, operational orders and minutes of all briefing meetings from Gold Command level down; (2) the 11/1, 11/4 and 11/9 forms giving notice of intention to hold the parades and the police response respectively; (3) the minutes of the PSNI's meeting with the Parades Commission, and its records of other communications with the Parades Commission; (4) the Parades Commission determinations and related documents; (4) PSNI schedules of contentious parades and deployment sheets; (5) the PSNI intelligence picture relating to the 12th July Ardoyne parades; and (5) the Gold and Silver Command logs for the 12th July which record all decisions made in relation to the policing operation in question. We were also shown the legal advice provided to the PSNI on human rights issues, including the policing of the 12th July Ardoyne parades. We were given unrestricted access to the PSNI's video footage of the parades. Much of this material is rightly classified as sensitive and has been treated by us accordingly.

The main issue addressed by us was whether the policing of the 12th July Ardoyne parades this year complied with requirements of the Human Rights Act. Since it is a fundamental principle of the Human Rights Act that

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<sup>189</sup> Monitoring General Order 19/98.

<sup>190</sup> Framework, Document, paragraph 7.7.

any action taken by the police must be lawful, this raised two further issues, namely: (i) whether the PSNI properly policed the determinations made by the Parades Commission in respect of the 12th July Ardoyne parades and took appropriate operational decisions to that end within the framework of the applicable law, including the Human Rights Act; and (ii) whether any use of force by PSNI officers was justified.

In compiling our findings, we took account of any and all concerns raised with us by those we met. We attempted to address those concerns objectively within the limits of the Policing Board's remit under Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000.

However, it is important to point out that some individuals and groups declined to meet us to discuss their concerns about the policing of the 12th July Ardoyne parades.

At all stages of the planning of the policing operation until 9th/10th July, those responsible for the policing of the 12th July Ardoyne parades genuinely considered that the determinations of the Parades Commission applied to followers/supporters of the parades and planned the operation on that basis. We are satisfied that it was legitimate for them to have done so during that period. There are four reasons for this:

- a. First, the Parades Commission has issued determinations in the past which were clearly intended to apply to followers/supporters, and the police have policed those determinations. The determinations for the 12th July Ardoyne parades and the Tour of the North parades in 2003 are examples.
- b. Second, all of the briefing material from Gold Command down refers to scenarios, which include a scenario in which supporters/followers breach a determination that applies to them. It seems unlikely that the PSNI would use time and resources to plan for a scenario that could never happen.
- c. Third, when the PSNI met the Parades Commission on 1st July 2004, Chief Superintendent Lindsay-White was asked, "how it would be if the lodges were allowed without supporters or followers?" The exchange that followed would not have alerted the PSNI to the fact that the Parades Commission may have considered that it had no jurisdiction to issue determinations applying to followers/supporters.
- d. Fourth, the PSNI had legal advice based on an assumption that the Parades Commission determinations applied to followers/supporters. The PSNI acted on that advice.

The decision of Mr. Justice Weatherup on 9th July 2004 had a profound effect on the policing operation because, from then on, the PSNI could not lawfully rely on the determinations of the Parades Commission as a basis for preventing followers/supporters of the parades from proceeding through the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road, unless the behaviour of those followers/supporters went beyond that of following, proceeding with or accompanying the lodges and/or bands on 12th July. The Judge did not give examples of what behaviour might constitute participation rather than following/supporting, but presumably mingling in with the lodges and bands would be behaviour going beyond following, proceeding with or accompanying the lodges and/or bands.

Thereafter the PSNI only had power to prevent the followers/supporters proceeding along that part of the route if they presented a threat to the peace sufficient to trigger police powers to deal with a breach of the peace. Those powers could not be relied on as a legal basis for holding the group of followers/supporters who had been separated from the lodges at the junction of Woodvale Road and Woodvale Parade for a prolonged period if that group itself presented no threat to the peace.

There is no evidence that the behaviour of those followers/supporters on 12th July as they moved up the Woodvale Road in the evening went beyond that of following, proceeding with or accompanying the lodges and/or bands. Accordingly, the PSNI had no power, under the determinations of the Parades Commission, to prevent them proceeding along the contentious part of the route.

It follows that the decision of the PSNI to allow the followers/supporters to move up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road as they did during the evening of 12th July 2004 did not breach the determinations of the Parades Commission as interpreted by Mr. Justice Weatherup. It also follows that the PSNI policed those

determinations lawfully in accordance with the requirements of the Public Processions (Northern Ireland) Act 1998 and in accordance with the objectives the police set themselves in every briefing from Gold Command down.

As a matter of law, that disposes of the matter. But for completeness, we have recorded the evidence of *how* and *when* the group of followers/supporters was moved through the contentious part of the route between that junction and the junction of Crumlin Road and Hesketh Road. The position is as follows: Five police vehicles preceded the group of followers/supporters along with a number of police officers on foot wearing protective public order clothing. The group of followers/supporters numbered about 250 and were closely bunched together. There were police officers walking alongside them on the Ardoyne shop fronts side. At the rear of the group were a number of police officers with dogs, and then about 10 to 12 police vehicles. There were no banners, ceremonial clothes or colours that we could see. However, we did see two flags, which appeared to be union jack flags, or versions thereof. We did not see any paramilitary flags. In addition a number of individuals were wearing novelty union jack hats and there was a union jack umbrella in view. The group was pressed closer together as it went past the screens in front of the Ardoyne shop fronts.

The followers/supporters were moved up the contentious part of the route eight minutes after the lodges had proceeded up that part of the route. They did not come into our view, standing at the roundabout at the junction of Woodvale Road, Crumlin Road and Twaddell Avenue until the lodges had completed their journey and reached the junction of Crumlin Road and Hesketh Road.

On the question of the exercise by the PSNI of their powers to deal with an actual or apprehended breach of the peace, we have pressed the police about the behaviour of the crowd of followers/supporters at the roadblocks on Woodvale Road just before they were taken up the road. Chief Inspector Maguire who was on duty at the roadblock described the crowd as well-behaved, but impatient. There was no violence or threat of violence, nor was there any physical pressure on the police line. The only possible evidence to the contrary is an entry in the PSNI serial 464 record, which suggests that some stones were thrown at the police by band supporters in the vicinity of Cambrai Street at about 7.12pm. We asked the PSNI whether this was taken into account and were told that Silver Command attempted to verify the information received at 7.12pm, but the incident was not confirmed.

There were also other factors. First, that the police were concerned to ensure that police officers, vehicles and equipment were in place in front of the Ardoyne shop fronts for as short a period as possible. If the followers/supporters were taken through the contentious part of the route as soon as possible after the parade passed the second junction most, if not all, police officers, vehicles and equipment could be removed as soon as possible thereafter minimising disruption. Second, there was the duty on the police to protect, as far as they were able to do so, the followers/supporters from attack if at some stage in the evening of 12th July they were to be allowed to move through the contentious part of the route. Assistant Chief Constable McCausland explained to us that a large group of those protesting in front of the Ardoyne shop fronts moved up the Ardoyne Road when the lodges went past. A window of opportunity to move the followers/supporters up the road in relative safety therefore presented itself and influenced the decision-making. Third was a concern that if the police held the followers/supporters at the junction of Woodvale Road and Woodvale Parade until after most of the police and military officers and equipment had been removed, protestors would occupy the road in front of the Ardoyne shop fronts to prevent the group of followers/supporters moving up the road at some later stage. That had happened in not dissimilar circumstances in 2003.

There was also a concern that holding back the group for a prolonged period might increase the risk of disorder at least, or serious violence at worst, if followers/supporters from other parades joined those at the junction of Woodvale Road and Woodvale Parade swelling the numbers from the 200 or so, who originally presented at the Woodvale Road/Woodvale Parade junction, to a much larger number, possibly even 1,000. It has been suggested to us that the PSNI over-stated this concern, but we have seen a leaflet recovered by the police that urges East Belfast Orangemen to "delay their return to Templemore Avenue until all Brethren, bands and loyal supporters return safely to Ligoneil Orange Hall". We have also been shown other material which supports the concerns of the PSNI. In addition, the North and West Belfast Parades Forum accepted that there was a distinct possibility that the number of followers/supporters at the junction of Woodvale Road and Woodvale Parade might increase if the original group were prevented from moving through the contentious part

of the route and that there might have been a 'stand-off'.

We recognise, of course, that if too much emphasis were placed on this last factor, the argument could be made that those who present the greatest threat of violence will ultimately get their way. However, so long as it remained only one factor, in our view it was perfectly legitimate for the PSNI to take it into account. Against that background, we are satisfied that the PSNI properly took all the relevant factors into account in deciding that they could not lawfully exercise their breach of the peace powers to prevent the group of followers/supporters from moving up the contentious part of the route between the junction of Woodvale Road and Woodvale Parade and the junction of Crumlin Road and Hesketh Road on 12th July.

It follows that the PSNI decision to allow the followers/supporters up the contentious part of the route was lawful because their judgment that the behaviour of the followers/supporters did not justify holding them for a prolonged period at the junction of Woodvale Road and Woodvale Parade cannot be faulted.

On a different question, we are satisfied, having regard to the policing operation overall, and to the resources available to the PSNI on 12th July to police the Ardoyne parades, that the legal duty on the PSNI to take reasonable steps to protect the lodge members and followers/supporters was fulfilled. Notwithstanding the episodes of violence that broke out when the lodges and followers/supporters moved through the contentious part of the route, it would have been virtually impossible for the PSNI to have protected them from any possibility of attack without disproportionately interfering with the rights of those who legitimately wanted to protest against the parades.

Force was used by the PSNI on five separate occasions. In respect of three of those occasions we are satisfied that, as a general tactic, the use of force was justified. In respect of the other two occasions, we are not able to make any assessment without access to a great deal of further evidence. If individual complaints are made about the use of force, those complaints would fall within the remit of the Police Ombudsman for Northern Ireland.

Notwithstanding the conclusions set out above, we have a number of serious concerns. Most importantly, they include a concern that the interpretation by the Parades Commission and in the judgment of Mr. Justice Weatherup on 9th July 2004 in the case of JR.1 of those participating in a public procession as excluding those who follow, proceed with or accompany lodges and bands along an entire parade route will have a profound and detrimental effect on the ability of the PSNI to police parades in the future. The significance of this conclusion cannot be underestimated. It goes to the heart of the legal framework for policing parades in Northern Ireland. In our view, it is critical that the implications of this are fully realised and resolved as soon as possible.

A linked concern relates to the question of communications between the Parades Commission and the PSNI. While we recognise the need for both bodies to maintain their independence, it is essential that the PSNI know and understand the basis upon which the Parades Commission is issuing its determinations. If uncertainties arise, it is important that both bodies seek to resolve them as quickly as possible. That requires clear and agreed lines of communication.

We are also concerned that two roadblocks under the responsibility of the military were ineffective during the evening of 12th July. This raises a serious issue about the effectiveness of the arrangements in place for joint operations between the PSNI and the military. In the circumstances, we consider that the arrangements in place for joint operations between the PSNI and the military should be reviewed as soon as possible and amended, if amendment is considered necessary.

Notwithstanding these concerns, we are satisfied that the policing operation as a whole complied with the requirements of the Human Rights Act 1998.

### **The 4th July Drumcree Parade**

The Parades Commission made one determination in respect of the Drumcree Parade in 2004. This related to the Portadown District LOL No 1 parade. The determination was made on 25th June 2004, i.e. just over one week before the parade on Sunday 4th July 2004.

In its determination, the Parades Commission placed conditions on the organisers and participants of the Drumcree Parade. On the outward route, the parade was prohibited from entering that part of the notified route between the junction of High Street and Woodhouse Street and the junction of Obins Street and Charles Street, or any part of that route. In respect of the return route, the parade was prohibited from proceeding beyond Drumcree Parish Church, Drumcree Road, or entering that part of the route which included the entire length of the Garvagh Road, including Parkmount and Victoria Terrace. The parade participants were required to disperse no later than 2.30pm from Drumcree Parish Church.

We attended the Gold Command Strategy Meeting on 6th May 2004. This took place before the Parades Commission had issued its determination. The meeting identified the strategy for the policing operation and was attended by the PSNI human rights legal adviser, who clarified human rights points as they arose during the course of the discussions.

The strategy document used at the Gold Command Strategy meeting provided the historical context to the Drumcree parade, and current information received by the police regarding the 2004 parade. It addressed a number of issues, including: (1) police intentions, which included policing the Parades Commission's determination and ensuring the operation's "compatibility and compliance in every regard with the Convention Rights contained in the Human Rights Act with particular emphasis on the concepts of proportionality and necessity"; (2) policing options, setting out the strategy for each of a number of possible parade scenarios; (3) policing method, identifying responsible police personnel and the possible sectors of the operation; (4) administration, setting out, amongst other things, the criminal justice strategy, public relations strategy, officer safety strategy, military support strategy and critical incident strategy and (5) communication, identifying police strategy as well as liaison with military forces. Full references were made to the Human Rights Act and to relevant Articles of the European Convention On Human Rights.

The Silver Command planning meeting took place on 12th May 2004. It identified planning issues as well as tactical considerations arising from previous or similar events of the same type. The planning document set out (i) the tactical options for each of the possible parade scenarios and (ii) general comments on the tactical options. It also contained full references to the Human Rights Act and relevant Articles of the European Convention On Human Rights.

A Silver/Bronze Command Study Day was held on 21st June 2004. This included a presentation to Silver and Bronze Commanders on (i) PSNI policy in relation to the issue, deployment and use of baton rounds in situations of serious public disorder and (ii) human rights and the police use of force. The first part of the presentation included an explanation of the legal authority for the deployment and use of baton rounds, the need for proportionate use of baton rounds, the implications of the Human Rights Act where lethal force has been used, the role of baton gun commanders, the use of baton rounds by military forces, recording of command decisions in respect of the issue, deployment and use of baton rounds, criteria for the use of baton rounds at Drumcree Parade 2004 and on the deployment and use of baton rounds made by the Police Ombudsman. The second part of the presentation referred directly to the PSNI General Order on Human Rights and Police Use of Force, and to the PSNI Code of Ethics, Articles 1.1, 1.5, 4.1, 4.3 and 6.1. It set out the relevant legislation relating to the use of force and made specific reference to Articles 2, 3, 5, 8, 9, 10 and 11 of the European Convention and the key concepts of legality, proportionality etc. Bronze Commanders were provided with a briefing pack designed to provide them with additional information/explanation regarding the Drumcree 2004 operation to "assist them to discharge their responsibilities in a manner consistent with the Gold Commander's strategic intentions and in a way which is compatible with obligations under the Human Rights Act."

Part of the planning for the Drumcree parade included a joint PSNI/military mission rehearsal at Ballykinlar on 30th June 2004, which we attended, together with a full operational briefing on 2nd July 2004, which we also attended. The mission rehearsal involved officers physically rehearsing the operational options at Drumcree Bridge, including exercises in the deployment and use of water cannon. At the 2nd July briefing, the operational order and the operational method document were provided to officers. These documents contained accurate and relevant summaries of the key human rights provisions engaged in the planned policing operation, including the principles relating to the use of force and baton rounds. These principles were

emphasised in the oral briefing itself.

On 3rd and 4th July 2004, we attended on the ground and in the command rooms. Access to both the Silver Command room and the operational planning team was unrestricted and we were able to observe decisions being made about the conduct of the policing operation, the deployment of PSNI officers and the use of force. We attended all briefings relating to the policing operation over the 3rd and 4th July 2004, including the briefing at 7pm on 3 July 2004 before police officers were deployed on the ground overnight in advance of the parade on 4th July 2004.

On 4th July, we were present in the Operational Planning Room and the Silver Command Room at Mahon Road from about 7.00am. We attended on the ground along the route of the parade from about 9.45am as the parade assembled and proceeded along the route. The parade was made up of two bands and about 600 lodge members, with groups of supporters standing at various points of the parade. About 390 police officers were involved in the policing operation. After a brief spell in the Silver command room, we returned to the ground at around 12.45pm, attending at Drumcree Bridge at the time the parade church service ended and the parade marched to the bridge to protest against the imposed restriction on the route of the march. The protest was presented by the Orange Lodge to Chief Superintendent McIvor. In an effort to reduce tension, local police officers were placed in front of the barrier in standard police uniform with high visibility jackets. The parade's own marshals were also present at the barrier.

Only a small minority of police officers were in full public order uniform and were located out of sight of the parade. The parade protest passed off peacefully and the parade dispersed by around 1.30pm. At no point was there any threat or use of force from those parading or protesting or from the police. Nor were there any breaches of the Parade Commission's determination.

Once the parade had dispersed, we returned to Mahon Road and attended meetings to discuss de-escalation of the policing operation. The PSNI consulted community leaders between 2 and 3pm. A Gold Command briefing was held jointly with the military at 3.45pm. The decision was taken to dismantle all obstacles, except the barrier at Drumcree Bridge, immediately. Numbers of police personnel and military forces were significantly reduced with immediate effect. Water cannon were withdrawn at 8pm. The barrier at Drumcree Bridge was dismantled at daybreak. By Monday evening, things had pretty much returned to normal.

The policing of the 4th July Drumcree parade was operationally effective. The determination issued by the Parades Commission was upheld, and there were no outbreaks of violence. This success was largely the result of careful planning, both long-term and short-term, which involved, so far as was possible, consultation with all interested parties. PSNI community consultation was impressive, as was the de-escalation operation following the event. Human rights were taken into account in the planning and appropriate use was made of the PSNI human rights legal adviser when difficulties or queries arose. In the circumstances, we are satisfied that the policing operation as a whole complied with the requirements of the Human Rights Act.

### **The 12th July Dunloy Parade**

The Parades Commission made one determination in respect of the Dunloy LOL 496 12th July 2004 parade. The determination was made on 1st July 2004. It placed conditions on the organisers and participants of the parade. The parade, on emerging from the grounds of the Orange Hall, was required to turn right and proceed along Station Road to the limit of the perimeter fence marking the edge of the Orange Hall. It was required to turn around at this point and return along Station Road as far as the limit of the perimeter fence marking the other boundary of the grounds of the Orange Hall. It was then required to return to the gates of the Orange Hall for dispersal. The parade participants were required to disperse by 5.45pm.

As part of our work monitoring this parade, we attended the Gold Command strategy meeting on 4th May 2004, and were given unrestricted access to all PSNI strategy and operational planning documents. The Gold Strategy Meeting identified the strategy in respect of the planned policing operation. It was attended by the PSNI human rights legal adviser. The meeting followed the Gold strategy document, and to that extent was

similar to the Gold strategy meeting for the 4th July Drumcree parade.<sup>191</sup> Most of the meeting was spent discussing the various parade scenarios and the policing options in relation to each of them. The overarching aim was to maintain a low level policing operation. The impact of each scenario on human rights was considered. The PSNI human rights legal adviser provided clarification on a number of points and proposed some minor amendments to the human rights commentary in the document, which were accepted.

The Silver planning meeting for Dunloy took place on 19th May 2004. The meeting identified the planning in respect of the parade as well as tactical actions arising from previous or similar events of the same type. The planning document set out police intentions, which included respecting and upholding the individual human rights of all and upholding the Parades Commission's determinations. An operational order provided Bronze Commanders and their units with information relating to the Chief Constable's Policy in respect of public processions, namely "to ensure that every individual's rights, as are enshrined in the Human Rights Act, are upheld in so far as this is consistent with any determination issued by the Parades Commission as is provided for in the Public Processions Act (as amended by any judicial process) and that all Police action complies with the Police Code of Ethics." The operational order also included the intention to enforce the Parades Commission determination and to "uphold the Human Rights Act as far as possible".

The police operation commenced at approximately 8pm on 11th July 2004 as lodge members had indicated their intention to put up a union flag. Officers were deployed to patrol the area around the Orange Hall. At about 4am on 12th July 2004, police observed that the Orange Hall had been "paint-bombed" to part of its front.

The parade, comprising approximately 48 participants, including one band of 25 members, assembled at the Orange Hall at 9am on 12th July 2004. Approximately 43 police officers policed the parade. The parade formed up and walked onto the section of Station Road in compliance with the Parades Commission's determination. A letter of protest was read out. The parade then dispersed and parade members travelled by private vehicles to Dunloy Presbyterian Church<sup>192</sup> for a wreath laying ceremony. Members assembled on the roadway outside the Church, occupying almost half of the roadway. They held a short religious service and the band played one hymn before the wreath laying ceremony. A number of residents, including the Secretary of the Residents Association, made verbal protests to the PSNI and the authorized officer of the Parades Commission that "a parade had been permitted on the roadway". The PSNI informed the Parade organiser that members were causing an obstruction and PSNI evidence gathering teams were deployed. During the service, a number of vehicles passed on the remaining section of the road. In total, the service and the ceremony lasted approximately seven minutes, with members dispersing at 9.45am. There was no disorder and no arrests were made.

Controversy arose over the legality of the service and ceremony outside Dunloy Presbyterian Church. The PSNI sought legal advice as to whether the ceremony at the Church constituted part of the parade and was, as such, a breach of the Parades Commission determination and therefore unlawful. The view was taken that the ceremony constituted a separate activity falling outside the definition of a "public procession" within the meaning of the Public Processions (Northern Ireland) Act 1998 and was, therefore, not unlawful.

The return parade gathered at the Orange Hall at about 5.50pm. The parade formed up in the grounds of the Orange Hall and processed to the gate where the band played the National Anthem. The parade dispersed at around 6.30pm. There was no disorder and no arrests were made. At no point was there any threat or use of force from the police.

Although we attended some of the planning meetings for the Dunloy parade, we were not able to attend the parade itself because of our work at Ardoyne. However, we are satisfied that the planning of the Dunloy parade was careful, and took account of key human rights principles.

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<sup>191</sup> See page 101.

<sup>192</sup> Approximately 300 metres from the Orange Hall.

## The 1st July Short Strand Parade

The Parades Commission made one determination in respect of the Short Strand Parade on 1st July 2004. This related to the annual Ballymacarrett District LOL No 6 parade. The determination was made on 24th June 2004. The Parades Commission placed standard conditions on the organisers and participants of the Short Strand parade.<sup>193</sup> The Commission reiterated to parade organisers the two general conditions of (1) “the importance of respectful behaviour in the vicinity of interface areas” and (2) the need to “refrain from using words or behaviour that could reasonably be perceived as being intentionally sectarian, provocative, threatening, abusive, insulting or lewd”. Singing, chanting and excessively loud drumming were prohibited and parade participants were required to disperse by 10.30pm.

To facilitate our observation of the Short Strand parade, we were provided with all strategy, planning and operational documents relating to the policing operation.

The Gold Meeting for the Short Strand parade was attended by the PSNI human rights legal adviser. Again, this meeting followed the Gold strategy document and was similar to the Gold Strategy Meeting for Drumcree and Dunloy.<sup>194</sup> The Silver Strategy Meeting took place on 16th June 2004. It too followed much the same approach as that outlined in respect of the Drumcree and Dunloy parades dealt with earlier in this chapter.<sup>195</sup> The same is true of the operational order provided to Bronze commanders and their units.<sup>196</sup>

We were briefed in the Silver Command Room on 1st July 2004 at about 5.30pm before the deployment of police and military personnel on the ground between 6pm and 8.30pm. No restrictions were placed on our ability to monitor the policing operation and we were given unrestricted access to all PSNI personnel.

There was an extensive security operation in place for the parade, focusing on the interface area at the Albertbridge Road. There were about 245 police officers involved in the policing operation, with military personnel providing support. Police officers were deployed at about 6.15pm. Military personnel were deployed in military vehicles with large fold out screens to take up position in the central reservation of the Albertbridge Road at around 6.30pm. The screens were fully extended and secured by 7.15pm. Police land rovers flanked the army vehicles on both sides. Other police land rovers were located at other points around the interface area. The main parade commenced at 7.45pm and took the notified route.

The parade assembled in Templemore Avenue and followed its traditional route via the Albertbridge Road interface with Short Strand. Approximately 3,000 members of the Order took part in the parade, accompanied by 33 bands. The parade passed the Albertbridge Road interface at around 8pm. There were somewhere in the region of 1,000 supporters at the Albertbridge Road interface, including a large number of young people. A group of about 100 individuals staged a notified protest against the parade at Madrid Court/Madrid Street. Some bands played traditional loyalist anthems whilst passing the interface area. Complaints were made that some parade participants were wearing paramilitary regalia and/or parading with paramilitary flags.<sup>197</sup> However, whilst there was some jeering both from (younger) supporters of the parade and protesters, the parade passed through the area uneventfully. Both the parade supporters and protesters were strictly stewarded by their own community marshals. There was no threat or use of force from the police. The parade had passed the Albertbridge interface by about 8.15pm and the police put de-escalation measures into effect immediately. The Albertbridge Road was re-opened to traffic almost straight away. All military vehicles were removed by about 8.45pm.

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193 For example, that the parade organiser ensure that the parade began and dispersed promptly, that only the bands notified on Form 11/1 participated in the parade, that once the parade was in progress, there be no undue stoppages, and that an adequate number of stewards were present to ensure that parade participants acted in an orderly manner.

194 See page 101

195 See page 100-103.

196 See pages 103.

197 Police evidence was subsequently examined and interviews conducted to ascertain if the Parade Commission's determination was breached. The Police ultimately concluded that it had insufficient evidence to prosecute.

The parade halted for approximately fifteen minutes at Belmont Road to hold a short remembrance service and lay a wreath at the Unionist Office Party Memorial. The parade then re-commenced, walking via Holywood Road and Newtownards Road to disperse in Templemore Avenue. The parade dispersed at about 10.15pm.

The policing of the Short Strand parade on 1st July 2004 was operationally effective. As with the Drumcree and Dunloy parades, that was largely the result of careful long-term and short-term planning. In relation to all three parades, the PSNI integrated human rights principles into every stage of the planning and control of the policing operation.

In the light of our first hand review of the 1st July Short Strand parade, the 4th July Drumcree parade and the 12th July Ardoyne parade, we make the following recommendations:

- That the PSNI should review its arrangements with the Parades Commission and agree protocols for effective communication between itself and the Parades Commission as a matter of priority.
- That the PSNI should review the arrangements in place for joint public order operations between itself and the military and make such amendments as it considers necessary. In particular, we re-emphasise the recommendation we made in chapter 3 that the PSNI should formulate, in collaboration with the military, a policy setting out its relationship with the military and the agreed liaison procedures in place for joint operations.

## Public Order Debrief 2004

Since 2001, the PSNI has convened an annual Public Order Debrief at the end of the main parades season. Gold, Silver and Bronze level commanders and other key decision-making personnel involving in the policing of parades are invited to attend. The aim of the debrief is to identify and discuss strategic and operational issues of concern arising in relation to the policing of parades in that year. A report is drawn up following the debrief. This process is designed to facilitate consideration of issues of concern by Operational Planning in Headquarters to allow any alternations to planning, procedure and practice to be effected at Service level in advance of the parades season of the coming year. We have reviewed the debrief reports drawn up for 2001, 2002 and 2003. We also attended the Public Order Debrief on the parades season 2004 held on 6th September 2004.

The Public Order Debrief 2004 was attended by about 70 police officers. The debrief was organised by PSNI Operational Planning, supported by PSNI Training Branch who provided qualified trainers to act as facilitators. The attendees were split into five groups:

- (1) command band;
- (2) senior investigating officers;
- (3) operational planners;
- (4) District personnel and
- (5) tactical support groups.

Each group was tasked with identifying key issues, both positive and negative, impacting on:

- (1) the effective operational policing of the parade with which they were involved as a whole and
- (2) their specific roles in the policing operation in particular. The facilitators were then charged with linking the core issues together and a debrief report would be drafted reflecting the action points identified.

The discussions were well informed and wide-ranging, and concluded with a number of points requiring further action or follow up. Particular issues of concern raised at command level included uncertainties surrounding Parades Commission determinations, the deployment and use of water cannon, the role and use of the tactical advisors, the involvement of the PSNI Human Rights Legal Adviser in the planning and operational process, adequacy of public order training and various resource issues.

The annual Public Order Debrief is a welcome initiative, and has the potential to make an important contribution towards ensuring the policing of public order events meets the requirements of the Human Rights Act. The debrief process provides the opportunity to those in operational command of the policing operation and other

key decision-makers, to share their experiences, allowing the PSNI to learn lessons about best practice, which can be put into effect in the policing of parades in subsequent years. However, we are concerned about follow through, particularly in relation to points identified in the debrief report which require further action or investigation. Against this background, we make the following recommendations:

- That the PSNI should assign responsibility internally for reviewing the annual Public Order Debrief Reports, for liaising with the relevant departments within PSNI responsible for considering or investigating particular problems identified and for overseeing any changes proposed as a result of this exercise.
- That the PSNI should conduct an internal after-the-event audit of a random selection of public order operations as part of its annual debrief process. In particular, the PSNI should include consideration of community responses and parade organisers' and participants' views on the policing of parades over the marching season as part of its annual debrief process.

# CHAPTER 8: USE OF FORCE

## CHAPTER 8: USE OF FORCE

### Introduction

The PSNI General Order on Human Rights and the Police Use of Force, issued in June 2001<sup>198</sup> provides that “(i)n carrying out our duties, police officers shall, as far as possible, apply non-violent means before resorting to the use of force. Police officers shall only resort to the use of force if other means remain ineffective and there is no realistic promise 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”. Police officers are required under the General Order to apply the test of ‘no more than absolutely necessary’ when considering the use of potentially lethal force<sup>199</sup> and to have in mind the positive duties to protect life and not to take life<sup>200</sup> in planned operations.<sup>201</sup> Written reports must be made on the use of plastic baton rounds and firearms.<sup>202</sup>

From 14th March 2003, the use of force by PSNI officers has been further regulated by Article 4 of the Code of Ethics, which sets out a number of provisions regarding the use of force, including the requirement to apply non-violent methods before resorting to the use of force or firearms<sup>203</sup>, to exercise restraint in the lawful use of force, to act in a manner proportionate to the seriousness of the offence, to minimise damage and injury, to secure medical aid for any injured person and to report any incident involving the use of force or firearms promptly<sup>204</sup>.

Complaints from members of the public about the use of force can be investigated in the ordinary way by the Police Ombudsman.<sup>205</sup> In addition, from February 2001, all discharges of firearms and the firing of baton rounds are automatically referred to the Police Ombudsman for investigation.

In monitoring the PSNI’s compliance with the Human Rights Act, we reviewed PSNI policies on the use of force and the use of firearms and PSNI training and guidance material on the use of force and the use of firearms. We reviewed the post-operational mechanisms in place for recording and reporting on the use of force and firearms. We also attended and observed joint public order planning and training sessions carried out by the PSNI and military at Ballykinlar in June 2004.

In addition, we considered the equipment available to the PSNI for public order purposes, auditing the policies on plastic baton rounds, water cannon and hand-held personal incapacitant sprays. In Chapter 2, we evaluated PSNI training on the use of baton rounds. In this Chapter, we evaluate PSNI training on water cannon and hand-held personal incapacitant sprays.

### AUDIT OF POLICIES ON THE USE OF FORCE

#### PSNI Policy on the Use of Force

The PSNI General Order on Human Rights and the Police Use of Force (“Use of Force Policy”) provides practical guidance on the use of force by police officers and is intended as the principal reference document on which all applications of force are based.

In accordance with the PSNI Code of Ethics, Article 4.1, the United Nations Code of Conduct for Law Enforcement Officials, Article 3, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“UN Principles on the Use of Force”) Principles 4 and 13 and *McCann v UK*<sup>207</sup>, the Use of Force Policy explicitly states that in carrying out their duties, PSNI officers ‘shall, so far as possible, apply

#### NOTES

198 General Order No. 34/2001 discussed further below.

199 Paragraph 7(2).

200 *McCann v UK* (1995) 21 EHRR 97.

201 Paragraph 8(1).

202 Paragraph 10(1).

203 Article 4.1.

204 Article 4.3.

205 Police (NI) Act 1998, s.52.

non-violent means before resorting to the use of force.’ The policy instructs police to resort to the use of force only if other means remain ineffective and there is no realistic promise 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.

The policy also sets out the legal basis for the use of force. Where non-lethal force is used, the test is that any force used must be ‘reasonable in the circumstances’ as laid down in the Criminal Law (NI) Act 1967, the Police and Criminal Evidence (NI) Order 1989, Article 88 and the common law. Where lethal or potentially lethal force is used, there is a strict test of absolute necessity as set out in Article 2 of the European Convention on Human Rights. The policy states that lethal or potentially lethal force will include but will not be restricted to the use of firearms and reminds officers that the use of less lethal alternatives, e.g. baton rounds, create ‘as with all applications of force, a potential for unintended serious injury or loss of life’.

The Policy identifies the European Convention on Human Rights which ‘police officers who use force will, intentionally or not, restrict or infringe’, referring to Convention Articles 2, 3, 5, 8, 9, 10, 11 and Article 1 of Protocol 1. Article 2 (the right to life), Article 3 (the prohibition on torture and human treatment) and Article 8 (the protection of personal integrity) are highlighted as of particular significance and are each considered in more depth. The consideration of Article 2 is accurate and detailed. It refers to European Convention case law and provides a list of considerations for officers by way of a prompt to ensure that the degree of force used in any given situation is compliant with the requirements of Article 2. The reference to Article 3 also refers to European Convention case law and usefully sets out the definitions of:

- torture
- inhuman treatment and
- degrading treatment.

The policy instructs officers to have in mind the positive duty to protect life in planned operations and refers to *McCann v UK*<sup>208</sup> in some detail. The policy contains a separate section on recording and reporting requirements, which mirror United Nations Principles on the Use of Force, Principles 6 and 22, and also includes a section on training.

The PSNI Use of Force Policy is comprehensive and clear. We consider it to be a model of its kind, which is rightly used as a core document in PSNI training material on the use of force. We have a number of minor recommendations:

- That the legal basis section of the policy be amended to include reference to Article 2 of the European Convention on Human Rights and set out explicitly both tests on the use of force.
- That the policy should set out the requirement for an effective official investigation when an individual is killed as a result of the use of force and/or when it is arguable that there has been a breach of Article 2 or Article 3 of the European Convention on Human Rights and outline the requirements for such an investigation (cross-referring to the General Order on Post-Incident Procedures).
- That policy should cross-refer to the PSNI Code of Ethics, particularly Article 4.
- That a review date should be inserted into the policy, in line with the Policy Template in the General Order on Policy, Procedure and Guidance, to ensure legal developments, including human rights, are incorporated into the policy on an ongoing basis.<sup>209</sup>

## PSNI Policy on the Use of Firearms

The PSNI General Order on Human Rights and Police Use of Firearms (“Use of Firearms Policy”)<sup>210</sup> provides practical guidance on the legal implications surrounding the use of firearms and sets out the training requirements for police officers issued with firearms.

### NOTES

<sup>208</sup> Ibid.

<sup>209</sup> Discussed in detail in chapter 3 of this report, p44-45

<sup>210</sup> No. 61/2001.

The policy sets out the law governing the use of force, referring to Article 2 of the European Convention on Human Rights, the Criminal Law (NI) Act 1967, Section 3, the Police and Criminal Evidence (NI) Order 1989, Article 88 and the common law. It refers police officers to the Use of Force Policy, as well as to policies on the issue, deployment and use of baton rounds; the use of weapons and post-incident procedures. It states that ‘firearms are only to be fired by police officers when their use is absolutely necessary’, setting out prompts to ensure compliance with the test in like manner to the Use of Force Policy. It instructs police officers that the ‘circumstances in which lethal/potentially lethal force can be used within the terms of UK law are likely to be very limited, being restricted to situations involving self-defence or defence of others and then only where absolutely necessary.’

The policy provides clear instructions on the use of oral warnings, reflecting Principle 10 of the United Nations Principles on the Use of Force and sets out recording and reporting requirements, reflecting United Nations Principles on the Use of Force, Principles 6 and 22. It makes firearms training compulsory for all officers issued with a personal issue handgun, and requires officers to attend re-qualification training at least twice a year.

Like the policy on the Use of Force, the policy on the Use of Firearms is comprehensive and clear. It too is a model of its kind. We suggest the following minor recommendations:

- That the policy should cross-refer to the Code of Ethics, particularly Article 4.
- That a review date should be inserted into the policy, in line with the Policy Template in the General Order on Policy, Procedure and Guidance, to ensure legal developments, including human rights, are incorporated into the policy on an ongoing basis.

## **PSNI Policy on the Issue of Weapons**

The PSNI General Order on Heckler and Koch Weapons<sup>211</sup> sets out instructions relating to safety precautions, authorisation for issue, carriage and maintenance procedures and use of the Heckler and Koch weapons currently issued to police officers. The policy is short and factual. It states that police officers must only use firearms in the course of their duty as a last resort when all other options have been exhausted or discounted and as part of a graduated response to a known threat. The policy states that the use of force must be in accordance with the Policy on the Use of Firearms and the Policy on the Use of Force. The policy reminds officers that any use of firearms by police will be reported to the Police Ombudsman regardless of whether or not a complaint has been made by a member of the public.

## **PSNI Policy on Firearms Tactical Advisers**

Firearms tactical advisers offer tactical advice “on any operation or incident in which an armed police response is required or anticipated, or intelligence indicates firearms may be involved or used, including both planned operations and spontaneous incidents.” The PSNI General Order on Firearms Tactical Advisers states that the use of firearms tactical advisers “will be crucial in both the planning and implementation stages of any planned operation or prolonged spontaneous incident” to meet the PSNI’s obligations under human rights legislation, referring explicitly to *McCann v UK*.<sup>212</sup> The policy relies on cross-references to other policies, such as the Use of Force Policy and the Use of Firearms Policy, rather than setting out human rights obligations in the policy itself. While we understand that cross-referencing can be a useful tool, it is unsuitable for fundamental human rights obligations.

When tasked and briefed, the firearms tactical adviser completes an assessment of all the tactical options available to the commander, highlighting the preferred option. The adviser will make additional tactical assessments as circumstances or information change during the operation or incident. A firearms tactical adviser does not make any decisions or take any independent action in relation to the operation. The

### **NOTES**

<sup>211</sup> General Order 8/2002.

<sup>212</sup> (1995) 21 EHRR 97.

responsibility for the validity and reliability of the advice lies with the adviser, whilst the use of the advice lies with the commander in charge of the operation.

We make the following minor recommendations regarding the policy:

- That the policy should set out the relevant human rights obligations in, and cross-refer to, the general policy on public order tactical advisers.<sup>213</sup>
- That a review date should be inserted into the policy, in line with the Policy Template in the General Order on Policy, Procedure and Guidance, to ensure legal developments, including human rights, are incorporated into the policy on an ongoing basis.

## PSNI Policy on Use of Forced Entry Techniques

PSNI General Order on the Method of Entry Equipment and the Tiered Response to the Use of Forced Entry Techniques by Police<sup>214</sup> defines the structured and tiered response<sup>215</sup> to be applied according to the requirements of each situation, highlighting the official issue equipment that will be used at each level of the tiered response and the associated training required for police officers.<sup>216</sup> The policy provides specific guidance on the tiered response to the use of forced entry techniques by police concerning potentially lethal weapons searches.

The legal basis for the policy is set out, with explicit reference to the Police and Criminal Evidence (NI) Order 1989 and the Terrorism Act 2000. It also contains a section on human rights considerations, making specific reference to Articles 2, 8 and 14 and Article 1, Protocol 1 of the European Convention on Human Rights. The policy refers generally to the PSNI Code of Ethics. More specifically the policy states, “all forcible entries made during a search or otherwise should have a legal basis and be both necessary and proportional to the legitimate aim pursued” and emphasises that police officers should adopt the least intrusive means available to affect entry to the premises. The policy highlights that incidents may arise where “there is a serious and immediate risk to life to someone inside the premises” and makes additional reference to European Convention Article 2 and to police officers’ duty to protect life. The policy requires officers to record all uses of forced entry and the circumstances surrounding such use.

This policy provides clear guidance on forced entry, emphasising that it must be necessary and justified. Relevant European Convention provisions are mentioned, but their requirements are not analysed. Nor is any reference made to specific provisions in the PSNI Code of Ethics. We therefore recommend:

- That the policy should set out explicitly the requirements of the European Convention Articles identified as relevant to the policy.
- That the policy should cross-refer to the relevant provisions in the PSNI Code of Ethics.

## PSNI MONITORING OF USES OF FORCE

PSNI officers are required to record all incidents involving the use of force. However this information is not currently monitored. A generic Use of Force Monitoring Form is currently the subject of internal consultation. It has been designed to enable the PSNI to monitor all uses of force and collate statistics for purposes of comparison. It requires officers to provide details of the location of the incident, the incident type, the reason for the use of force, the type of force used and various other details in all cases involving the use of force. Additional sections must be completed following the use of firearms, batons, CS Spray, water cannon and police dogs. Forms are then forwarded from District Command Units to PSNI Central Statistics.

### NOTES

213 Discussed in Chapter 7 p96.

214 General Order 20/2004.

215 Defining three levels of response – basic, intermediate and advanced level.

216 Combined Operational training is responsible for Method of Entry training for basic and intermediate levels. Training is competency based and only personnel who demonstrate evidence of predetermined competency levels during training will be licensed for operational deployment.

This is an important initiative, which we consider should be put in place as soon as possible. Once the system is in place, we recommend:

- That the PSNI should provide statistics collated on the use of force to the Policing Board on a quarterly basis.

## TRAINING ON THE USE OF FORCE

In chapter 2 of this report, we have assessed the training material provided to new recruits in the use of baton rounds and other public order equipment. Later in this chapter, we assess the adequacy of training provided to officers in public order equipment, in particular training in the use of water cannon and CS incapacitant spray.

## PSNI USE OF PUBLIC ORDER EQUIPMENT

As part of our work on public order, we reviewed all PSNI policies and guidelines on the use of public order equipment for human rights compatibility. We set out our findings below.

### PSNI Use of Batons

The Police Ombudsman has a statutory power to research matters concerning the practices and policies of the police which come to her attention.<sup>218</sup> In March 2003, the Police Ombudsman published a report on the use of batons by the PSNI.<sup>219</sup> The report looked at the number and nature of complaints involving the use of batons between 6th November 2000 and 31st March 2002. 419 complaints involving baton use were reported to the Police Ombudsman over the period. The report made a number of recommendations, including the following:

- The PSNI should review its training in Conflict Resolution Skills with reference to its content, timing, level of resources devoted to it and lack of refresher training.
- Completion and promulgation of the updated Police Code on baton use should be expedited;
- Clear and consistent recording of the use of physical force by police officers should be encouraged.

### PSNI Policy on deployment and use of baton rounds

PSNI General Order on the Issue, Deployment and Use of Baton Rounds<sup>220</sup> sets out PSNI policy in respect of the use of baton guns in situations of serious public disorder. The policy is based upon ACPO National Guidelines.<sup>221</sup> The policy states that the tactical option of baton rounds is governed by certain overarching principles, which include the following:

- Baton rounds will only be used in accordance with ACPO Guidelines and where other methods of policing to restore or sustain public order have tried or failed or must from the nature of the circumstances be unlikely to succeed if tried.
- The issue, deployment and use of baton rounds will be subject to command and control measures of the highest integrity.
- Whenever possible, baton gun teams should be deployed in a two person team structure. The minimum number of baton gun teams will be deployed and the minimum number of rounds will be fired in order to achieve the lawful objectives of the operation.
- Baton guns will only be deployed in open view of the public when their use is imminent. Otherwise, baton guns should remain in vehicles or kept discretely behind front line officers.
- Where baton rounds are fired, the facts will be promptly reported.

The PSNI Code of Practice on the issue, deployment and use of baton rounds in situations of serious public disorder is appended to the policy. The purpose of the Code is to advise officers regarding PSNI policy on the issue, deployment and use of baton rounds and to clarify the issues and terminology used in the ACPO Guidelines. The Code contains a section on human rights and the use of force. It states that baton rounds are

#### NOTES

<sup>218</sup> Police (NI) Act 2003.

<sup>219</sup> Research Report 2/2003, A Study of complaints involving the use of batons by the police in Northern Ireland.

<sup>220</sup> General Order 46/2000.

<sup>221</sup> ACPO published revised instructions on the use of baton rounds in situations of serious public disorder in 1999. The ACPO Guidelines came into effect on 1st August 1999.

designed to provide a less than lethal option in dealing with threats of serious violence and provide an effective means by which rioters armed with petrol bombs or other weapons can be kept at a distance, contained or dispersed. The Code acknowledges that the use of baton rounds can cause serious injuries and “as with all applications of force there remains a potential for unintended serious and even fatal injury. Therefore the potential consequences of this tactical option must be given due consideration before the issue, deployment or use is authorised.”

The Code instructs officers “everything must be done to ensure those engaged in rioting are made aware of the potential use of baton rounds in order that they have the opportunity to desist or leave the area and that onlookers and innocent bystanders are also aware of the risk.” The Code sets out a clear procedure for the use of baton rounds, including the requirement that warnings be given before their use. The Code also refers to the legal basis for the use of force. It specifically refers officers to the requirements under Article 2 of the European Convention that the degree of force must be (i) no more than absolutely necessary, (ii) intended to achieve one of the aims defined in Article 2(2) of the European Convention and (iii) strictly proportional to the achievement of that aim. The Code makes clear that the use of baton rounds to protect property cannot be justified unless life is endangered.

The Code sets out criteria for the selection of baton gunners, which include previous public order training, attitude and approach to work, temperament and physical suitability. The training criterion for baton gunners is appended to the policy and requires refresher training every 12 months.

Against this background, we recommend:

- That the requirements of Article 2 of the European Convention on Human Rights be set out for officers to consider before baton guns are deployed and used.
- That concepts such as lawful and proportionate should be defined on the face of the policy and the application of the relevant Articles of the European Convention on Human Rights explained in the particular context.
- That the policy should be reviewed in light of the recent policies on other alternatives to use of lethal force, in particular the water cannon and CS Spray policies issued in 2004<sup>222</sup>, with appropriate cross-references made to ensure consistency of approach.

## Police Ombudsman’s reports on the use of baton rounds

In 2001, the Police Ombudsman exercised the general power under Section 55(5) of the Police (NI) Act 1998 to investigate the use of baton rounds. The resulting Research Report (1/2002) reviewed seven incidents where 36 plastic baton rounds were discharged between April 2001 and March 2002. In six of the seven incidents, the Police Ombudsman found the use of baton rounds to be justified and lawful. In one incident, the Police Ombudsman found that the target may not have been 20 metres away and thus should not have been fired at “unless there is a serious and immediate risk to life which cannot otherwise be countered” (ACPO guidelines). No recommendations in respect of criminal or disciplinary action were made as a consequence of these investigations. However, recommendations on policy and practice were made in the Regulation 20 reports relating to the seven incidents in question.

## PSNI reports to the Policing Board

Patten Recommendation 13 provides that the Policing Board should monitor police performance in situations of public disorder. Patten Recommendations 71, 73 and 74 additionally provide that the use of baton rounds should be justified in a report to the Policing Board. The PSNI has provided the Policing Board with reports of incidents where baton rounds have been discharged by the PSNI (PB1 reports) and incidents of serious public disorder<sup>223</sup> (PB2 reports) since 13th May 2002. The reports are completed by

### NOTES

<sup>222</sup> In particular, paragraph 3(1) of the policy needs to indicate that a range of other alternatives should be considered by the operational commander.

<sup>223</sup> Defined as “a tumultuous disturbance of the peace by persons (200 or more) assembled together with an intent to assist each other in the execution of some common purpose and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, where the act intended were of itself lawful or unlawful.”

the relevant PSNI District Command Unit Commander and submitted to the Policing Board usually within 24 hours of the incident.<sup>224</sup>

Information provided in the PB1 reports includes location, time, date and summary of incident, number of baton rounds discharged, number of persons struck by baton rounds, injuries sustained by police and civilians, damage to property, authority for the deployment and use of baton rounds and estimated police and military resources deployed. Information provided in the PB2 reports includes location, time, date and summary of incident, injuries sustained by police and civilians, damage to property, estimated number of persons involved in the incident/disorder and estimated police and military resources deployed.

No PB1s were submitted to the Policing Board between April 2003 and November 2004 (no baton rounds have been discharged by the PSNI since 11th September 2002). Four PB2s were submitted during that period, two relating to disorder arising out of the 12th July 2004 parades in North Belfast, one relating to disorder arising out of the 13th July 2004 parade in Lurgan and one relating to disorder in Ballymena in August 2004. We are not convinced that PB2s are submitted to the Policing Board in a timely and consistent manner following incidents of serious public disorder. We therefore recommend:

- That the PSNI submits PB2s to the Policing Board within 7 days following every incident of serious public disorder.

Further, in light of the expansion of the PSNI's range of public order equipment, with the introduction of water cannon and CS incapacitant spray in 2003 and 2004 respectively,<sup>225</sup> we make additional recommendations below regarding the submission of reports to the Policing Board on the deployment and use of water cannon and CS incapacitant spray.<sup>226</sup>

## Steering Group on Alternative Policing Approaches to the Management of Conflict

Following Patten Recommendations 69 and 70, a steering group was set up in June 2000 by the Secretary of State for Northern Ireland to take forward a research programme into alternative policing approaches towards the management of conflict. The Steering Group is chaired by the Northern Ireland Office and consists of representatives of the Policing Board, the PSNI, representatives of police services in Great Britain, HM Inspectorate of Constabulary, the Home Office, the Association of Chief Police Officers, ACPO (Scotland) the Ministry of Defence, the Home Office Police Scientific Development Branch and the Defence Science and Technology Laboratories. It is tasked to (i) establish whether an acceptable, effective and less potentially lethal alternative to baton rounds<sup>227</sup> is available and (ii) review the public order equipment which is presently available or which could be developed in order to expand the range of tactical options available to operational commanders.

The Steering Group's phase 1 report<sup>228</sup> was published in April 2001. The phase 2 report<sup>229</sup> was published in November 2001. The third phase of its research programme was completed at the end of 2002 and its third report published in December 2002. That Report concluded that "there is no single, available, item of equipment that could at this stage replace the current baton round".<sup>230</sup> The Steering Group reported that the

### NOTES

<sup>224</sup> If the incident is protracted, an initial report is submitted to the Board after the first 24 hours of the incident followed by a further update every subsequent 12 hours until the incident ends. Information given in this instance is provisional and subject to later amendment.

<sup>225</sup> Discussed further below at pp113-119.

<sup>226</sup> At p115 for water cannon and p118 for CS incapacitant spray.

<sup>227</sup> In June 2001, a new L21A1 baton round was introduced in Northern Ireland. The Northern Ireland Human Rights Commission published a report by the Omega Foundation, 'A review of the human rights implications of the introduction and use of the L21A1 baton round in Northern Ireland and proposed alternatives to the baton round', in March 2003. The report concluded, "the new baton round is potentially a more lethal weapon than that which it replaced". The Northern Ireland Office did not accept the report as fair or accurate.

<sup>228</sup> Which defined the operational objectives against which less potentially lethal weapons must be tested and prepared a literature review of less potentially lethal weapons available or under research.

<sup>229</sup> Which evaluated the literature review, formulated proposals for further research and set out a business case.

<sup>230</sup> Third Report, p.123.

Northern Ireland Office had commissioned a programme of research into (1) an attenuating energy projectile (AEP) with a reduced injury potential compared to the L21A1 baton rounds and (2) a discriminating Irritant Projectile (DIP) that delivers a cloud of sensory irritant in a discriminatory manner to an individual.

The Steering Group's fourth report was published in January 2004. It provides an update on the work to advance the development of the AEP and the DIP and concludes that these represent the best opportunity to get an alternative to the L21A1 baton round into service as rapidly as possible. The Steering Group reported that there are a significant number of issues to resolve in relation to the AEP and DIP programmes and development work is ongoing. The projected timetable forecasts the availability of the AEP for full operational use by summer 2005. The development of DIP as a new system is classified as a longer term project.

The Steering Group recently conducted a peer review of its research programme. The conclusion of this review was an endorsement by the International Law Enforcement Forum (ILEF) that the programme was comprehensive and thorough, particularly in relation to methodology, scientific and medical evaluation and the issuing of ACPO operational guidance on the issue of technologies.<sup>231</sup>

The Steering Group intends to publish a phase 5 report in early spring 2005 providing an update on progress in relation to the operational use of the AEP and the DIP. The report will also discuss international developments, including steps taken by the steering group to widen its network on less lethal technologies through the ILEF and the European Working Group on non-lethal weapons.

## **Vehicle mounted water cannon and CS incapacitant spray**

At the time of the Patten Report (1999), the police had three types of public order equipment: the baton, plastic baton rounds and firearms. The Patten Report recommended that the police be equipped with a broader range of public order equipment to provide operational commanders with a number of options at their disposal which might reduce reliance on, or defer resort to, plastic baton rounds.<sup>232</sup> Patten suggested that if an officer "could use, say, a personal protection CS spray...that would provide an effective non-lethal alternative to plastic baton rounds... Another alternative worth exploring is the water cannon... A range of equipment would allow a more graduated response to a public order situation, with plastic baton rounds used only as a last resort, short of the use of firearms."<sup>233</sup>

## **PSNI Policy on Deployment and Use of Water Cannon**

Following trial deployments of water cannon vehicles between 1999 and 2003, the PSNI introduced six RCV9000 vehicle mounted water cannon in late 2003/early 2004.<sup>234</sup> The water cannon can discharge water in a variety of modes including spray or diffused mode, short bursts of water jets and continuous water jets. The vehicles are equipped with a public address system, distinctive audible sirens and blue flashing lights. They are also equipped with video cameras mounted beside each cannon, behind the front windscreen and on a telescopic mast mounted to the rear of the cab. We were given a demonstration on the operation of the water cannon, including the video recording system in July 2004.

The PSNI General Order on the Deployment and Use of RCV9000 Vehicle Mounted Water Cannon (the "Water Cannon Policy")<sup>235</sup> sets out PSNI policy in respect of the deployment and use of vehicle mounted water cannon. It explains how water cannon should be deployed and used as a public order tactical option to extend and complement the range of existing tactical options. It was developed in accordance with the ACPO National Guidelines on the Deployment and use of water cannon and the DSAC Sub-Committee on the Medical Implications of less lethal weapons statement on medical implications of use of vehicle mounted water cannon.

The use of water cannon "is intended to provide police commanders with a broader range of public order tactical options that might reduce reliance on, or defer resort to baton rounds" in accordance with

### **NOTES**

<sup>231</sup> The full report of this review is available on the NIO website at [www.nio.gov.uk](http://www.nio.gov.uk)

<sup>232</sup> Patten Recommendation 70.

<sup>233</sup> Patten Report, paragraph 9.16 and 9.17.

<sup>234</sup> The first two vehicles were delivered to the PSNI in September 2003. The remaining four vehicles were delivered in early 2004.

<sup>235</sup> General Order 29/2004.

Recommendation 70 of the Patten Report and Article 2 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the “UN Principles on the Use of Force”).<sup>236</sup> PSNI strategic policy in respect of the deployment and use of water cannon is that they should be deployed and used only when properly authorised by appropriate officers, in accordance with the guidance in PSNI policy documents, by officers who are trained and qualified in their use. Water cannon require a crew of four persons. The policy states that water cannon should only be operated by trained personnel who have successfully completed a training course with combined operational training. It also requires Gold, Silver and Bronze Commanders, operational planners, water cannon crews, tactical advisers and others involved in the deployment and/or use of water cannon to be familiar with it and to have “a professional knowledge and understanding of these documents and the principles contained therein”.

The policy states that it has been audited to ensure that it complies with the provisions of the Human Rights Act, the United Nations Principles on the Use of Force and the PSNI Code of Ethics. Particular reference is made to police obligations under Article 2 of the European Convention on Human Rights, Section 32 of the Police (NI) Act 2000 and the ACPO Guidance on the Deployment and Use of Water Cannon.

The policy includes a section on human rights. It states that whilst the use of water cannon is intended to constitute less lethal force, in common with all use of force options, the use of water cannon may have unintended (potentially lethal) outcomes which engage a number of Articles under the European Convention, in particular Articles 2, 3, 5, 8, 9, 10, 11 and Article 1 of Protocol 1. It refers officers to the Use of Force Policy for detailed guidance on these Articles. It also refers officers to the ACPO guidelines (attached as an Appendix to the policy) which set out the legal parameters regarding the use of force by police (discussed further below).

The review date for the policy was 15th January 2005. The review addressed:

- the ongoing need for the policy,
- an assessment of the impact of the policy, and
- any necessary updates to the policy.

Procedure and guidance in respect of the deployment and use of water cannon is contained in the Appendices to the policy. The ACPO guidance states that water cannon are one tactical option within a range of tactics available to police when responding to “unlawful protest, disorder and threats of violence”. It reminds officers that they should as far as possible apply non-violent means before resorting to the use of force. The ACPO Guidance instructs “water cannon provide an effective means by which persons using violence towards the police or others involved in the destruction of property, or who are engaged in unlawful assemblies, protests or demonstrations, can be kept at a distance, contained or dispersed.”

The ACPO Guidance sets out in detail the law relating to the use of force by reference to relevant domestic legislation<sup>237</sup> and the European Convention on Human Rights, referring explicitly to Article 2, relevant European Convention case law, the test of absolute necessity and the principle of proportionality. The ACPO guidance emphasises that justification for the mode (spray or jet), the pressure and duration of use should always be dependant on each situation and based on the principles of legality, necessity and proportionality. Different scenarios are presented to illustrate the need for responses proportionate to the public order threat faced by the police. The ACPO guidance states that training on the use of water cannon will take into consideration the potential for direct and indirect injury to persons arising from the use of water cannon. It sets out criteria for the selection of water cannon commanders and crew, which include length of service and relevant experience; temperament, maturity and personality; personal skills and competencies; attitudes and approach to work and previous public order training. The guidance defines the role of water cannon commanders and the role of crew commanders. Water cannon commanders brief and instruct the crew commanders. Crew commanders direct and command the water cannon crew and determine the appropriate mode of use of the water cannon.

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<sup>236</sup> Which states that governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differential use of force and firearms.

<sup>237</sup> Including the Criminal Law (NI) Act 1967 and the Police and Criminal Evidence (NI) Order 1984.

The guidance details authorisation and command procedures for the deployment and use of water cannon, together with requirements to provide warnings to alert a crowd to the presence of the water cannon and police intentions regarding its use. The warning clearly states that water cannon will be used if the crowd fails to disperse. Reference is made to the maintenance and use of the electronic recording data with which the water cannon are equipped. Additionally, crew commanders are required to submit a report following the use of the water cannon to the operational commander.

The specific section on human rights merely sets out the relevant articles of the European Convention on Human Rights but is supported by detailed reference to the application of these provisions in the ACPO guidance appended to the policy, which is comprehensive and illustrated with operational scenarios. Against that background, we make the following recommendations:

- That the policy's recording procedure should be revised to include a requirement that officers record the justification for the deployment of the water cannon, the objective to be achieved through deployment and use, the mode of use, the consequences of use and the effectiveness of achieving the stated objective.
- That the policy should be amended to require a post-event review of each deployment and use of water cannon by the relevant District Command Unit Commander to determine whether the use of water cannon was justified, the objective of deployment was achieved and to identify improvements that could be made in future deployment and use.
- That the PSNI provide reports to the Policing Board on a quarterly basis of all incidents where water cannon have been deployed and used, setting out details of the incident, including the location, time and date, a summary of events, the authority for deployment and use and details of injuries sustained and/or damage to property.
- That the PSNI assign responsibility internally for reviewing, on a six-monthly basis, all instances where water cannon have been deployed and used and for issuing guidelines on best practice to PSNI senior command further to these internal reviews. Further, that the PSNI provide the Policing Board with a summary of the conclusions of this six-monthly internal review.

## **Training in the deployment and use of water cannon**

The PSNI has recently introduced three courses on the deployment and use of water cannon, one for water cannon drivers (introduced in March 2004), one for water cannon cannoneers (operators) (introduced in March 2004), and the third for water cannon commanders (commenced in June 2004). We have reviewed the course material, including pre-read material, and lesson plans for both the water cannon cannoneers' and commanders' courses. We set out our findings below.

In general, the course materials were comprehensive and clear. The water cannon cannoneer programme is a one-day course. The pre-read includes tactics on the use of water cannon, the general order on the deployment and use of the water cannon and a risk assessment which lists the hazards related to the deployment and use of the water cannon and the control measures required to avert these risks. Officers must satisfy a suitability test as a pre-requisite to completing the course. The suitability test does not include an assessment of the officer's knowledge on the law relating to the use of force, human rights or public order policing generally. However, the one day programme contains a human rights and use of force element and this element includes a ten question human rights knowledge check which assesses officers' knowledge on the law relating to the use of force, including the European Convention on Human Rights and the Code of Ethics. This is a sound assessment tool, which highlights the core principles on the use of force, European Convention on Human Rights Article 2 and the Code of Ethics within the operational context.

The human rights and use of force element is based on the PSNI's policy on Human Rights and the Use of Force. The lesson plan sets out the legal basis for the use of force, the reasonableness test required by the Criminal Law (NI) Act 1967 and the Police and Criminal Evidence (NI) Order 1989 and identifies Articles 2, 3, 5, 8, 9, 10 and 11 of the European Convention on Human Rights as those Articles which may be engaged by the use of water cannon. It appears to cover the core principles on the use of force. However, in line with our recommendations on the Use of Force Policy,<sup>238</sup> we recommend:

- That the legal basis section in the human rights and use of force element should be amended to include reference to Article 2 of the European Convention on Human Rights and the absolute necessity test applied where lethal or potentially lethal force is used. Officers should be reminded that water cannon, like all applications of force, have the potential for unintended serious injury or loss of life.

We note that the course competencies do not include a competency assessing the officer's knowledge of the law on the use of force and/or human rights and we therefore recommend:

- That the competency form should be amended to include a competency assessing the officer's knowledge of the law on the use of force and human rights as a core course competency.

The water cannon commander's course is a five-day course. Officers must satisfy a suitability test as a pre-requisite to completing the course. The suitability test does not include an assessment of the officer's knowledge on the law relating to the use of force, human rights or public order policing generally. The lesson plan on command structure includes the objective of identifying the "Human Rights and Code of Ethics impact on commanders' responsibilities" and includes reference to the general order on Human Rights Policy in relation to Public Order Events. It does not, however, set out the law relating to the use of force and human rights as a core component of the lesson. Likewise, the lesson plan on the water cannon general order and ACPO guidelines (which both make reference to the relevant human rights principles and law relating to the use of force) fails to identify explicitly human rights as a core part of the lesson. We therefore recommend:

- That the lesson plans for the commanders' course should be amended to explicitly include human rights and the use of force as core components.
- That the water cannon commanders' course should include the human rights knowledge check included within the water cannon cannoners' course as a tool to assess officers' knowledge on the law relating to the use of force, including the European Convention on Human Rights and the Code of Ethics.

We note that in similar fashion to the water cannon cannoners' course, the water cannon commander's course competencies do not include a competency assessing the officer's knowledge of the law on the use of force and/or human rights. We again recommend:

- That the competency form should be amended to include a competency assessing the officer's knowledge of the law on the use of force and human rights as a core course competency.

## PSNI Policy on CS Incapacitant Spray

In the 1998/1999 Her Majesty's Inspector of Constabulary's Inspection of the Royal Ulster Constabulary, it was noted that when faced with a violent situation, police officers had no means of defensive action between the inadequacies of the short baton and the potentially lethal use of the revolver. HMIC proposed "filling the gap by issuing the more versatile long baton (fixed or extending) and even the issue of CS spray as in England and Wales". 40 of the 43 forces in England and Wales have equipped their officers with personal CS incapacitant sprays since October 1998, as have forces in Scotland. The Chief Constable notified the Policing Board by letter on 31st December 2002 of his intention to equip all officers with hand-held CS incapacitant spray ("CS spray").<sup>239</sup> At its January 2003 meeting, the Policing Board's Corporate Policy Committee received a presentation on the proposal to introduce CS spray and, following consideration, endorsed the Chief Constable's recommendation to equip officers with CS spray. On 5th March 2003, the Policing Board

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<sup>238</sup> At p109 above.

unanimously confirmed the Committee's endorsement. The Police Ombudsman's 2003 report on the use of batons by the PSNI<sup>240</sup> also supported the introduction of CS spray.

As at 18th November 2004, CS spray had been deployed on 39 occasions, and discharged 23 times. All 23 discharges have been referred to the Police Ombudsman under an arrangement agreed on 5th August 2004 that every discharge of CS spray must be reported to the Police Ombudsman.

The PSNI General Order on CS Incapacitant Spray<sup>241</sup> states that officers will carry CS spray while on duty and as part of their normal patrol equipment when on duty at public order situations. The policy states that the use of or threat to use CS spray is a use of force and therefore falls under Article 4 of the PSNI Code of Ethics, specifically Articles 4.1, 4.2 and 4.3 which are each set out in full in the policy. These Articles set out the standard of conduct and practice required of police officers when using force. The intention is to provide additional protection to officers who become isolated or otherwise vulnerable.

The policy states that CS spray will be issued to all officers who have been trained in the Personal Safety Programme. It instructs officers that CS spray should not be seen as a replacement for other use of force options, "rather it increases the range of options available to officers" and officers should not rely on CS to the exclusion of other control methods. The policy states that the use of CS spray may be appropriate against (1) those offering a level of violence which cannot be appropriately dealt with by lower levels of force and (2) violent offenders, other than those armed with firearms or similar weapons, where failure to induce 'immediate' incapacitation would increase risks to all present.

The policy sets out when CS spray should not be used. CS spray should not be used at a distance of less than one metre, in an enclosed area (e.g. a car) or on a subject who is restrained or handcuffed "unless the nature of the risk to the officers is such that this cannot be avoided." The policy advises that since CS spray is designed to cause incapacitation "its use against a subject armed with a firearm is not appropriate."

The policy also sets out the legal authorities for the use of force by police officers to achieve a lawful objective.<sup>242</sup> The policy states that misuse of CS spray may amount to an assault in breach of European Convention on Human Rights Article 8 or in extreme cases to breach of European Convention on Human Rights Articles 2 and 3, necessitating an effective investigation of any such claim by either the PSNI or the Police Ombudsman. The policy states that "any action taken must be necessary, lawful, proportionate, accountable and open to scrutiny."

Police officers are required to give a clear warning of their intent to use CS spray "unless to do so would compromise the safety of any person, or a warning would be clearly inappropriate or pointless in the circumstances of the incident." Any officer drawing or discharging the CS spray device must record the use and any warning given in their personal notebook. If a warning is not issued, the reasons for this must be noted. The use of the device must be brought to the attention of a supervisor as soon as possible after the device has been used and the supervisor is required to record the number and weight of the CS spray canister. In addition, the officer using the CS spray must complete an occurrence report in the form appended to the policy.

The policy also sets out the physical effects of CS spray<sup>243</sup> and the aftercare required for any person sprayed with it and advises that officers should use short bursts of CS spray bearing in mind that the effects of the spray may be delayed for up to twenty seconds. The policy highlights the risks associated

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239 CS Spray is an irritant dispensed from a hand held aerosol canister in a liquid steam, which contains a 5% solution of CS in the solvent Methyl Isobutyl Ketone.

240 Police Ombudsman Report 2/2003: A Study of Complaints involving the use of Batons by the Police in Northern Ireland.

241 General Order 28/2004.

242 Common law, for example, defence of self or another/breach of the peace; the Police and Criminal Evidence (NI) Order 1989, Article 88 and Criminal Law (NI) Act 1967, Section 3(1).

243 The effects of being sprayed are pain and discomfort in the eyes, involuntary spasm of the eyelids, blinking/closure of the eyes, burning sensation on the skin, excess salivation, constriction of the chest, sneezing, coughing and retching.

with using the spray “on those who are vulnerable through age (including children), mental illness, alcohol and drugs.” It states that if a detained person is exhibiting signs of severe distress, breathlessness or lapses of consciousness, they must be taken to hospital straight away and that the provision of medical assistance “must be given precedence over conveying the subject to the police station.”

All operational officers<sup>244</sup> up to Inspector rank will receive training in the use of CS spray, including instruction in aftercare procedures. Initial training is currently being provided to operational officers by regional officer safety trainers through a three year programme, with priority given to those officers most likely to be faced with violent individuals. Thereafter, training in the use of CS spray will be provided annually as part of the personal safety programme refresher training.

The CS spray policy is clear and comprehensive. It explicitly acknowledges that use of, or threat to use, CS spray is a use of force and sets out the relevant legislation relating to the use of force. Specific reference is made to European Convention on Human Rights Articles 2, 3 and 8, although the policy does not set out the scope or application of the Articles in this context which would be helpful. The policy emphasises the need for a proportionate response. The affects of CS spray are set out in detail and officers instructed to use caution in using CS spray on certain types of vulnerable persons. Aftercare is explicitly addressed in detail in the policy and robust procedures have been put in place to ensure detailed recording of any use of CS spray and referral to the Police Ombudsman for investigation. The training requirements set out in the policy are rigorous.

In the circumstances, we make the following recommendations:

- That the policy should underline that CS spray is not intended for large scale public order use but rather is for use in individual incidents of disorder, in line with the ACPO Guidance.
- That the policy be should be amended to include a requirement that each use of CS spray be reviewed by the relevant District Command Unit Commander.
- That the PSNI provide reports to the Policing Board on a quarterly basis of all incidents involving the deployment and discharge of CS spray, setting out details of the incident, including the location, time and date, a summary of events, the authority for deployment and details of injuries sustained and/or damage to property.
- That the PSNI assign responsibility internally for reviewing on a six-monthly basis all uses of CS spray and for issuing guidelines on best practice to police officers further to these internal reviews. Further, that the PSNI provide the Policing Board with a summary of the conclusions of this six-monthly internal review.

## Training in the use of CS spray

The PSNI personal safety training programme has now been updated to include a CS spray training element. We reviewed the lesson plans for this training. The course is 75 minutes long and is comprehensive. It aims to teach officers the correct drills for using CS spray, making officers aware of the effects of the use of CS spray, the necessary aftercare required and the restrictions on the use of CS spray. The course content includes a session on when officers are entitled to use force under the European Convention on Human Rights and how to ensure compliance with the European Convention when force is used. Lawful objective, the absolute necessity test and proportionality are highlighted as key elements. The relevant legal provisions relating to the use of force are set out, including references to the Criminal Law (NI) Act 1967, Police and Criminal Evidence (NI) Order, common law and case law. The lesson plan includes section on the circumstances where CS spray would and would not be appropriate to use (discussing in particular why it is not appropriate in public order situations), persons at risk and procedures to be followed after arrest and during custody. The recording requirements following the use of CS spray are also set out. We are satisfied that the training on CS spray accords with PSNI policy on the deployment and use of CS spray and addresses the critical issues surrounding the use of CS spray.

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<sup>244</sup> Including part-time reserve officers.

## PSNI POST-INCIDENT PROCEDURES

The PSNI General Order on the Discharge of Firearms by Police – Post-Incident Procedures was approved by the Chief Constable’s Forum on 6th September 2004 and will be issued service-wide once post-incident managers<sup>246</sup> have been appointed and their training completed. The policy sets out the guidelines for post-incident procedures (in particular investigative procedures) to be implemented following discharge of a firearm (including a baton gun) by a police officer and provides guidance to officers with key responsibilities.<sup>247</sup> It reminds officers that actions of police officers are subject to both the criminal and civil law. The policy states that comprehensive investigations into all deaths, whatever the cause, are an essential element of European Convention on Human Rights Article 2. Any instance where police officers discharge a firearm under operational conditions is referred immediately to the Police Ombudsman under Part VII of the Police (NI) Act 1998 and any use of force resulting in death should standardly lead to a public inquest. The policy refers to the legal duty of care owed by PSNI management/command to PSNI staff and those affected by their actions.

The policy establishes Post-Incident Management Teams (PIM Teams) to act as an interface between those officers involved in an incident involving a discharge of a firearm on the one hand and PSNI and Police Ombudsman investigators on the other. The role of the PIM Team is to facilitate the investigation while insuring the welfare of the officers involved.

The policy requires Post-Incident Managers to be deployed following the discharge of a firearm (including a baton gun), other than in training or where the discharge was accidental or within police premises and resulted in no injuries. PIM Teams may also be deployed in other situations such as deaths in custody, fatal road traffic collisions involving police officers on or off duty and other incidents resulting in the death or serious injury of an individual due to the actions of a police officer.

The policy has been drafted with reference to the ACPO Manual of Guidance on Police Use of Firearms. It refers police officers to other relevant policy, including the Policy on the Use of Force and the Policy on the Use of Firearms (see above) and makes explicit reference to the Code of Ethics, Article 4. The policy sets out the requirements for internal recording procedures. Police officers are required, as a matter of duty to make full notebook entries after every incident and the policy includes as an annex a list of many of the areas that will fall to be investigated following the discharge of a firearm in operational circumstances. This aide memoir is a useful guide, although no explicit reference to human rights is made.

This is an important and clear policy. Comprehensive investigations into all deaths whatever the cause are an essential element of Article 2 of the European Convention on Human Rights. For this reason, we recommend:

- That the policy should set out explicitly the requirements of investigations into deaths howsoever caused.
- That the policy should refer to victims and victims’ families and require police officers to notify relatives/close friends of an injured or affected person at the earliest opportunity (in compliance with the Code of Ethics Article 4.3 (iv)).
- That the policy should set out the rights of police officers who are the subject of investigation following a death.

## JOINT OPERATIONS WITH THE MILITARY

The army has also been involved in the policing of Northern Ireland for many years. Responsibility for security passed to the police in 1976 and since then the role of the army has been a subordinate one of providing ‘Military Aid to the Civil Power’. It is the police who decide what needs to be done and whether they need to ask the military to help achieve it (Patten paragraph 8.11). The military, in providing ‘Aid to the Civil Power’ has its own command and control structures which operate independently from the police.

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<sup>246</sup> Officers of the rank of Inspector and above.

<sup>247</sup> The roles and responsibilities of key police personnel are set out as an Annex to the policy.

In his Review of Military use of Baton Rounds (Jan 2001-Oct 2002),<sup>248</sup> the Independent Assessor of Military Complaints Procedures in Northern Ireland stated that “(a)lthough Police have primacy they do not direct or control the military; rather the military are set a task and employ such tactics and resources which the military commander deems necessary to complete the task or achieve the objective”. Difficulties of assessing the human rights compliance of joint operations with the military have already been identified in the chapter on public order and certain recommendations made.<sup>249</sup>

We met with the Independent Assessor of Military Complaints Procedures in August 2004. The Independent Assessor keeps under review the procedures adopted by the General Officer Commanding Northern Ireland for receiving, investigating and responding to complaints and has the power to investigate the operation of those procedures and make recommendations in relation to any perceived inadequacies.<sup>250</sup> His remit does not cover reviewing the general liaison procedures between the military and PSNI. The military has no direct equivalent to the PSNI Code of Ethics. It does, however, have an established Code of Values and Standards, as well as statutory powers, to deal with internal disciplinary matters. The Independent Assessor considers these to be rigorous and effective. The Independent Assessor stated that whilst the vast majority of military training is practical in nature (i.e. non-classroom based), it is informed by human rights legislation and the criminal law.

In his Tenth Annual Report (2002), the Independent Assessor of Military Complaints Procedures in Northern Ireland recorded 17 baton rounds fired by the military and 91 fired by the police in 2001 and 85 baton rounds fired by the military and 255 fired by the police in 2002 (up to 31st October 2002). All but one of those fired by the military in 2002 were in the Belfast area as a result of several episodes of street disorder.

In his Review of Military Use of Baton Rounds, the Independent Assessor recommended the development of the guidelines on the use of baton rounds issued to the military by the Ministry of Defence in tandem with those of ACPO to achieve mutual best practice. The Independent Assessor informed the Board’s Human Rights Advisors that these guidelines are now in place and are in line with the ACPO guidelines. He will be including an analysis of the guidelines and hopes to sign off this recommendation in his report for 2004, which is due to be published in spring 2005.

The Independent Assessor has investigated all discharges of baton rounds for 2001 and 2002, taking statements and reviewing internal reports and situational files. He has seen no evidence to support the claim that the PSNI direct the military to fire baton rounds in order to avoid firing baton rounds themselves.

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<sup>248</sup> Submitted under para. 4(3) of Schedule 11 to the Terrorism Act 2000.

<sup>249</sup> At pp105-106.

<sup>250</sup> Terrorism Act 2000, Section 98 and Schedule 11.

# CHAPTER 9: COVERT POLICING

## CHAPTER 9: COVERT POLICING

### Introduction

The interception of communications, surveillance and the use of covert human intelligence sources by the police raise obvious issues in terms of the PSNI's compliance with the Human Rights Act. The scheme adopted by Parliament to ensure human rights compliance was the enactment of the Regulation of Investigatory Powers Act 2000 ("RIPA"), which extends to Northern Ireland. That Act has very specific rules (and accompanying Codes of Practice) relating to the authorisation of such policing methods, which are intended to fulfil the requirements of the European Convention on Human Rights (in particular, Article 8, the right to privacy). Only certain persons are entitled to grant authorisation and (save in urgent cases) any police authorisation of intrusive surveillance must be approved by a Surveillance Commissioner.

Scrutiny of the interception of communications, surveillance and the use of covert human intelligence sources is provided for in Part IV of RIPA. This puts in place an Interception of Communications Commissioner to replace the Commissioner appointed under the Interception of Communications Act 1985, an Intelligence Services Commissioner to replace the Commissioner appointed under the Security Services Act 1989 and the Intelligence Services Act 1994, and a Chief Surveillance Commissioner to review the use of surveillance, agents, informants, undercover officers and decryption. Each Commissioner has specific duties to report to the Prime Minister and there are provisions for such reports to be laid before Parliament. However, if it appears to the Prime Minister that the publication of any matter might be contrary to the public interest, or prejudicial to the prevention or detection of serious crime or the continued discharge of the functions of any public authority (whose activities include activities that are subject to review by a Commissioner), that matter can be excluded from publication.

Part IV of RIPA also establishes a Tribunal for dealing with complaints arising from the interception of communications, surveillance and the use of covert human intelligence sources. The Tribunal is the designated (and only) forum in which individuals can raise a complaint that their rights under the European Convention on Human Rights have been breached. The Tribunal can hear, consider and investigate complaints and has a power to award compensation and to quash an interception warrant or an authorisation for surveillance or the use of a covert human intelligence source. However, once the Tribunal has determined a complaint, the only information it is authorised to provide to the complainant is a statement either that a determination has been made in his/her favour, or a statement that no determination has been made in his/her favour.

In keeping with the Policing Board's duty to co-ordinate its activities with other public bodies,<sup>251</sup> we have not sought to replicate the work of the Commissioners or the Tribunal established under RIPA. Instead, we have examined all of the reports of the Chief Surveillance Commissioner to the PSNI and (equally important) the PSNI's response to those reports. We have also examined the PSNI policies on covert policing. We have also reviewed the PSNI's training material for special operations.

Any review of covert policing inevitably raises delicate issues of confidentiality. Often there can be a tension between the requirements of effective scrutiny and the need to maintain the secrecy of covert operations. We are happy to report that the approach of the PSNI to our work in this area has kept that tension to a minimum and, before setting out our findings in this chapter, it is important that we record and acknowledge the access that the PSNI has given us to the material set out above. Much of it is sensitive and has been treated by us accordingly. The fact that the PSNI has allowed us access to this material to enable us to monitor its compliance with the Human Rights Act is welcome and hopefully should inspire confidence in the exercise that we have undertaken.

### The reports of the Chief Surveillance Commissioner

The function of the Chief Surveillance Commissioner is to review the use of surveillance, agents, informants, undercover officers and decryption. To that end, a team of Commissioners and specialist inspectors periodically carries out inspections.<sup>252</sup> That team has access to all police officers working in this field. It also has access to

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<sup>251</sup> Police (Northern Ireland) Act 2000, Section 3(4)(d).

<sup>252</sup> Usually, but not always, annually.

all relevant materials, including policies, case-files and records. It can, and does, carry out random checks on many case-files and records. The team, through the Chief Surveillance Commissioner, then presents its report to the Chief Constable. The report usually identifies strengths and weaknesses in the work of the PSNI in this area, and makes specific recommendations for improvement.

In the period 2002 to 2004, there were four inspections of the PSNI by the Chief Surveillance Commissioner's team of inspectors. Typically these were eight day inspections during which period the inspection team examined the arrangements in place in respect of covert policing, including the command structures and accountability mechanisms within the PSNI, and all relevant policies and procedures. The inspection team also interviewed a number of authorising officers and examined the records relating to a number of covert policing operations. That involved looking at applications, authorisations, associated files, contact sheets, participating informant authorisations, tasking sheets and operations logs.

We have had access to and read the reports prepared by the Chief Surveillance Commissioner's inspection team after each visit. The detailed contents contain sensitive information that cannot be set out or summarised in this report. The pattern that emerges is mixed. In some respects the Chief Surveillance Commissioner was satisfied with the performance of the PSNI and noted the good progress being made. In other respects he raised issues of concern. Most of these were procedural, but nonetheless important. The most serious concern was that, on one occasion, the PSNI was dilatory in responding effectively to the Chief Surveillance Commissioner's recommendations. The significance of this should not be overlooked. Implementation of the recommendations of the Chief Surveillance Commissioner made following an inspection goes to the heart of the oversight mechanism intended by RIPA. The PSNI has fully explained to us how and why this happened and, given the steps that have now been taken, we consider that this problem is unlikely to reoccur. It is important to record that the PSNI has now fully implemented all of the Chief Surveillance Commissioner's recommendations.

Since the scrutiny provided by the Chief Surveillance Commissioner is (and should remain) confidential, it is of the first importance that the PSNI should respond quickly and fully with any recommendations made after an inspection. We have discussed this with the Chairman and Vice-Chairman of the Policing Board and drawn to their attention the specific concerns we have. Having reviewed the most recent report, it is clear that the work now being undertaken by the PSNI in this field, including the policies, procedures and mechanisms recently adopted, greatly impressed the Chief Surveillance Commissioner and his team of inspectors during their last visit. That provides a very sound platform for the future.

Against that background, we make the following recommendations:

- That the PSNI and the Policing Board agree a protocol for the disclosure to the Chairman and Vice-Chairman of the Policing Board of an effective summary of the Surveillance Commissioner's reports, including recommendations made by the Commissioner and the PSNI's response thereto.
- That consideration should be given by the PSNI and the Policing Board to the possibility of the Surveillance Commissioner meeting the Chairman and Vice-Chairman of the Policing Board on at least an annual basis.
- That the Surveillance Commissioner's reports and the PSNI responses to those reports should continue to be made available to the Policing Board's human rights advisors.
- That the Policing Board's human rights advisors should provide a detailed briefing to the Chairman and Vice-Chairman of the Policing Board setting out any specific concerns they have about the PSNI's response to the Chief Surveillance Commissioner's recommendations

## **Policies and procedures**

One of the major features in the impressive turn around by the PSNI in relation to covert policing between March and October 2004 was the adoption of three important policies and procedures. These are a manual for the management of covert human intelligence sources, a procedure for the dissemination of intelligence to serious crime investigators, and a procedure for handling confidential information supplied by members of the public. We have examined these documents and, like the Chief Surveillance Commissioner, were very

impressed with them.

The manual for the management of covert human intelligence sources was adopted in July 2004. It is to be read in conjunction with the ACPO manual on minimum standards, RIPA and the Codes of Practice made under RIPA. It is a comprehensive document setting out the procedures to be followed across the PSNI by all staff managing covert human intelligence sources.

References to the European Convention on Human Rights are made in various sections of the manual, with the advice that if RIPA is applied properly, the authorisation and control of covert human intelligence sources should comply with the requirements of the European Convention. There are clear and comprehensive sections on the management responsibilities for the authorisation and control of covert human intelligence sources, and the structural mechanisms in place to ensure compliance with RIPA. There are also clear and comprehensive sections on the authorisation process, risk assessment, record keeping and management. In addition, there is a detailed section on juvenile sources.

The procedure for the dissemination of intelligence to serious crime investigators was also adopted in July 2004. It is intended to comply with the third recommendation of the Stevens Inquiry. It should ensure that intelligence officers and crime investigators work effectively to exploit available intelligence in serious cases. It sets out what information must be disclosed, when and to whom. It is intended to achieve the balance required under Article 2 of the European Convention of Human Rights between the duty to investigate suspicious deaths and the duty to take reasonable steps to preserve life.

The procedures for handling confidential information supplied by members of the public applies where members of the public contact the police to volunteer information in circumstances where they expect that information to be handled in a confidential manner. It does not apply to those individuals who are either covert human intelligence sources within the meaning of RIPA or being recruited as such a source. It sets out a clear framework for handling confidential information supplied by members of the public and has in-built review mechanisms.

The adoption by the PSNI of these policies on covert policing is an important initiative. All three documents are extremely clear and comprehensive. As the Chief Surveillance Commissioner observed, they should result in even higher standards of compliance with the requirements of RIPA. They should also result in even higher standards of compliance with the Human Rights Act.

Against that background we make the following recommendations:

- That the PSNI should review the effectiveness of its recent policies on covert policing in 12 months.
- That the PSNI policies on covert policing should continue to be made available to the Policing Board's human rights advisors.
- That the Policing Board's human rights advisors should provide a detailed briefing to the Chairman and Vice-Chairman of the Policing Board about any specific concerns that they have in relation to the PSNI policies on covert policing.

## Specialist operations training

We were provided with training material for special operations training and intelligence training. This included training in relation to a number of covert operations, in some cases with redaction of sensitive material. In many instances, a stated objective of the training is knowledge and understanding by participants of the human rights implications of the operation in question, together with knowledge of the relevant general order(s). Most sections of the material have introductory remarks dealing with issues such as diversity and the rules under Article 2 of the European Convention governing the use of lethal and potentially lethal force. Most of the material is well structured and thorough.

The training material relating to the use of covert human intelligence sources is the most sensitive, and thus redacted. However, the sixty-minute lesson on applying human rights provides comprehensive guidance on the Human Rights

Act and RIPA. Sensible advice is given about the relevance and applicability of cases such as *Osman v UK*,<sup>253</sup> but some sections (e.g. the section on the fine line between the exercise of police powers and a voluntary approach to potential covert human intelligence sources) are obscure.

Although we are satisfied that the quality of the training material for specialist operations is generally good, our assessment was restricted by the redactions in the material provided to us. In addition, we did not observe the training being delivered. That too places limitations on our ability to assess how well the PSNI is complying with the Human Rights Act in this area.

Against that background, we make the following recommendations:

- That the PSNI should make available to the Policing Board's human rights advisors unredacted copies of PSNI covert policing training material (so far as possible)
- That the PSNI consider how best to evaluate the actual delivery of covert policing training.

## NOTES

<sup>253</sup> *Osman v UK* (1998) 29 EHRR 245.

# CHAPTER 10: VICTIMS RIGHTS

## CHAPTER 10: VICTIMS RIGHTS

### Introduction

The Belfast Agreement 1998 specifically referred to the need to ‘acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation’ (para.11). A number of significant reports have been published by a wide range of independent bodies, such as the Human Rights Commission, the REAL Programme and the Conflict Trauma Response Centre, which seek to evaluate the provision and support for victims of crime in Northern Ireland. The PSNI Code of Ethics includes a duty to “treat all victims of crime and disorder with sensitivity and respect their dignity” and requires police officers to consider the special needs, vulnerabilities and concerns victims have (Article 2.1).

As part of our monitoring exercise, we undertook to review of the mechanisms in place for the treatment of victims by police officers, as well as to assess the direction and guidance given to officers in relation to the treatment of victims. To this end, we audited PSNI policies relating to the treatment of victims and conducted an initial assessment of specialist PSNI units established to support victims of crime and specialist officers appointed with specific responsibilities for victims. This is an area of our monitoring programme which we intend to develop in year two, in tandem with a more detailed investigation into community policing initiatives. The manner in which the PSNI treats victims of crime is perhaps one of the most potentially transforming elements of community policing.

### PSNI Policy on Victims

The PSNI Community Safety Branch has policy responsibility for victims of crime on behalf of the ACC Criminal Justice. Prior to August 2003, the PSNI provided all victims of crime at three, six and nine monthly intervals with updates on the progress of the investigation of their reported crime. In August 2003, the PSNI introduced a new procedure for the treatment of victims of crime. A letter is now sent to all victims of crime following report of a crime. This letter identifies the PSNI investigating officer, the relevant District Command Unit and the unique crime reference number and provides contact details for the PSNI Crime Management Unit, information on the role of Victim Support and the availability of crime prevention advice. The letter explains that the victim will be kept informed of any positive developments by the PSNI.

The PSNI has established a number of specialist units and appointed a number of specialist officers to support victims of crimes, including:

- Child Abuse and Rape Enquiry Units.
- Domestic Violence Officers.
- Minority Liaison Officers.
- Family Liaison Officers.
- Youth Diversion Officers (restorative Cautions).

The PSNI has issued several policies relating to its Child Abuse and Rape Enquiry Units. These Units investigate all reported cases of child abuse and sudden unexplained deaths of infants. They also investigate allegations of serious sexual offences. The policies define the principle functions of the Units, their command and control structures and PSNI liaison procedures.

### Monitoring crime directed against particular victim groups

The PSNI monitors crimes specifically directed at lesbians and gay men. The PSNI’s homophobic incident monitoring policy<sup>254</sup> sets out the procedure for recording crimes specifically directed at lesbians and gay men. It created the position of PSNI minority liaison officer who has the responsibility to establish links with the gay and lesbian community to build confidence and trust and to promote the PSNI homophobic incident monitoring policy internally in order to maintain a collation system in relation to homophobic incidents.

The PSNI also monitors racial harassment and racial attacks/incidents. PSNI racial monitoring policies define

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<sup>254</sup> General Order 42/2000.

what constitutes a racial incident and the duties of the investigating officer on receipt of a report of a racial incident. The PSNI ethnic minority liaison officer has responsibility to establish links with local ethnic and racial groups and key members of the local ethnic minority community. The liaison officer has the duty to inform District Commanders of serious racial incidents and analyse possible patterns of racially motivated incidents.

## **PSNI relationship with Victim Support Northern Ireland**

A long-standing partnership exists between the PSNI and Victim Support Northern Ireland.<sup>255</sup> The PSNI has a dedicated policy on victim support in Northern Ireland<sup>256</sup>, which sets out the organisational structure and management of Victim Support Northern Ireland at regional and local levels and defines the procedure for referral of victims by police officers to Victim Support Northern Ireland. The PSNI automatically refers victims of reportable crime to a relevant Victim Support branch<sup>257</sup> unless the victim specifically requests otherwise.

## **PSNI Human Rights Conference on Supporting Victims**

On 1st and 2nd March 2004, the PSNI held a conference on policing and victims, Supporting Victims, Delivering Justice, as part of its series of human rights conferences. We attended the first day of the conference, when a number of national and local speakers, including PSNI officers, gave an account of policy, policing developments and partnership initiatives to support victims of crime. A number of victims of crime interviewed prior to the conference provided video testimonies of their experiences. The workshops in the later part of the day enabled PSNI officers and representatives from statutory and voluntary agencies to meet and discuss issues of concern. The second day of the conference was dedicated to considering the impact of crime on older people.

A number of issues flowed out of the workshops, including the proposals that (i) the PSNI develops a training programme for officers, setting out the PSNI's policies and strategies on advising and supporting victims of crime, and (ii) the PSNI appoints Victim Liaison Officers with direct responsibility for victims' issues in each District Command Unit. The workshops concluded that greater communication is required both between the PSNI and the voluntary and statutory agencies that work to support victims and between the PSNI and victims themselves.

## **PSNI attitudes to victims**

The results of the Policing Board's focus groups<sup>258</sup> provided some useful insights into police officers' own perceptions on the role and treatment of victims. It appears that the majority of police officers feel that victims are not protected adequately, although some suggest that a certain degree of protection is provided when criminals are jailed granted bail, or through full and thorough police investigations. However, generally, the view appears to be that the protection of victims is limited to how far the police are able to act:

*'I think they get a raw deal to be honest because we aren't allowed to pursue criminals, as we should.'*

(Constables)

*'The victim is only protected as far as we can protect them and if we can successfully arrest this person and bring them to the court and have them convicted. But sometimes you can't even get as far as the court.'*

(Constables)

Police officers taking part in the focus group offered some suggestions for improving the protection of victims, such as allowing victims to make representations at trial and/or regarding sentencing:

*'If I were a victim, I would like to see that person go to court and receive a reasonable sentence.'* (Constables)

*'The victim doesn't have any Rights... no right to go to court, no right to say what they like, they just have to take what is handed out.'* (Sergeants and Inspectors)

### **NOTES**

<sup>255</sup> The PSNI has given a clear commitment to supporting the development of Victim Support Northern Ireland in its Strategic Plan.

<sup>256</sup> General Order 20/96 issued on 5th April 1996.

<sup>257</sup> This is known as automatic referral and is a nationally agreed practice subject to protocols on confidentiality.

<sup>258</sup> See Chapter 12.

Officers generally feel that more support should be offered to victims. The point was made that there are many agencies which protect the suspect whilst there are a much smaller number which offer support and protection to the victim:

*'I mean the defendant will have a Barrister attached to him who will ensure that he gets everything entitled to him... should that mean re-housing or new clothing because you put on three stone with stress.'* (Constables)

This is contrasted to the fact that many victims feel they do not have rights and have to manage the aftermath of crime alone:

*'I don't think victims feel they have any Human Rights.'* (Constables)

*'Victims are generally left to fend for themselves.'* (Constables)

Our general review of PSNI policies indicates that the PSNI has included in many of its core policies reference to the treatment of victims and PSNI responsibilities to victims. However, the PSNI has not to date developed a comprehensive policy on the treatment of victims. We note that the PSNI's Programme of Action indicates that the PSNI is developing a new policy on victims with the aim of providing "consolidated guidance and required standards for officers."<sup>259</sup> Against this background, we make the following recommendations:

- That the PSNI's policy on victims should provide a standard approach across the PSNI to the treatment of victims, establishing clear procedures for communicating with (i) victims and/or their families and (ii) voluntary and statutory agencies working with victims.
- That the PSNI's policy on victims should provide guidance on the need to treat victims according to their particular needs, both as victims (i.e. identifying vulnerable victims<sup>260</sup>) and as individuals (with particular cultural, racial, sexual identities).
- That the PSNI's policy on victims should reflect the new role of victims following changes in the youth justice system as regards restorative justice schemes.
- That the PSNI should develop, in conjunction with Victim Support and other relevant agencies, training on the treatment of victims to be integrated as a core component of the Student Officer Training Programme.

As part of the development of this area of the Policing Board's monitoring programme in year two, we make the following recommendations:

- That the Policing Board should review PSNI policies and procedures relating to the investigation of crimes committed against particular victim groups, such as domestic violence, homophobic crime and racist crime.
- That the Policing Board should review the adequacy of the training of officers on the treatment of victims.
- That the Policing Board should investigate the adequacy of the numbers of specialist officers appointed to support victims of specific crimes and the specialist training they receive.
- That the Policing Board conduct an audit of the work of the Child Abuse and Rape Enquiry Units, Domestic Violence Officers, Minority Liaison Officers, Family Liaison Officers and Youth Diversion Officers.

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<sup>259</sup> PSNI Human Rights Programme of Action, Chapter 1 at paragraph 1.4.

<sup>260</sup> A vulnerable victim is a person vulnerable by virtue of their personal circumstances or by the circumstances of the offence. Vulnerable victims include those under the age of 17, those suffering from mental disorder, those who have been the subject of incidents of harassment and those alleging they have been the victims of a criminal conduct which constitutes a sexual offence or offences which are racially aggravated or aggravated on religious or homophobic grounds.

# CHAPTER 11: TREATMENT OF SUSPECTS

## CHAPTER 11: TREATMENT OF SUSPECTS

### Introduction

The treatment of suspects inevitably raises human rights issues, most particularly in relation to Articles 3, 5 and 8 of the European Convention on Human Rights. In the 1970s, allegations of abuse, threats and intimidation of detained terrorist suspects in Northern Ireland culminated in the Report of the Committee of Inquiry into Police Interrogation Procedures for Northern Ireland chaired by Judge Bennett. This led to the introduction of a number of safeguards for detainees, including the establishment of the office of the Independent Commissioner for the Holding Centres by the Secretary of State in January 1993. The Patten Report subsequently recommended that the three holding centres at Castlereagh, Gough barracks and Strand Road be closed and all suspects detained in Custody Suites based in police stations.<sup>261</sup> In 2001, following the closure of Gough Holding Centre,<sup>262</sup> then the only remaining holding centre, the title of the office was amended to Independent Commissioner for Detained Terrorist Suspects.

The PSNI Code of Ethics specifically refers to the treatment of detained persons by police officers at Article 5.

The total number of detainees in Northern Ireland decreased by 2.6% from 26,297 in 1998/1999 to 25,613 in 2002/2003. The PSNI plans to reduce the current number of Custody Suites from 22 to 16 over the next eight to ten years. The PSNI has identified Antrim, Musgrave Street, Craigavon and Foyle as enhanced designated stations and intends to construct 'Super Custody Suites' similar in design to Antrim Custody Suite at these sites. Twelve other designated stations<sup>263</sup> throughout Northern Ireland will remain as standard Custody Suites.

In keeping with the Policing Board's duty to co-ordinate its activities with other public bodies,<sup>264</sup> we have not sought to replicate the work of those bodies charged with reviewing and inspecting places of detention and conditions under which suspects are detained. Instead, we have reviewed the reports of the Independent Commissioner for Detained Terrorist Suspects, assessed the Policing Board's Custody Visiting Scheme and analysed the reports of the custody visiting teams, made two random visits to detention facilities at Antrim police station and Antrim Road police station respectively and considered the overall system in place for the detention of suspects in assessing the PSNI's compliance with the Human Rights Act.

### DETENTION FACILITIES

There are currently 22 PSNI Custody Suites in Northern Ireland. We made two unannounced visits to detention facilities to monitor the treatment of detainees and the conditions in which detainees are held, in particular detainees' access to lawyers, the questioning of detainees, the treatment of juvenile detainees and the bail process.

#### Antrim Road PACE Custody Suite

We visited Antrim Road Custody Suite in November 2004. The Custody Suite comprises nine ordinary cells, two 'drunk lock-ups', one female cell and one juvenile holding cell. Each cell consists of a painted cement floor and cement bench/bed with mattress, pillow and blanket. There is a built-in heater on the ceiling of each cell and a call button to attract attention (connected to the Custody Sergeant's office) located by the door. There are two consultation rooms, two interview rooms with audio tape recording equipment, a breath test room, a medical room, a room for investigating officers, a female toilet (containing basin, toilet, shower, wooden bench, sanitary unit and bin), two male toilets (containing two basins, toilet, shower and bin) and a locked store room. There is no secure yard or exercise area for detainees. A consultation phone is available in the corridor.

The Antrim Road Custody Suite received 2,250 detainees in the 2004 calendar year up to 5th November 2004. There are at least four Custody Sergeants at Antrim Road police station. Two detainees were held at the

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<sup>261</sup> Recommendation 62.

<sup>262</sup> Reported in the Commissioner's Ninth Annual Report (2001) to the Secretary of State. Gough Holding Centre has been reopened on at least two occasions since 2001 and used as an overflow from Lisburn Custody Suite. However, since the opening of the Antrim Custody Suite and the refurbishment of Grosvenor Road Custody Suite, Gough has not been used and the PSNI have plans to convert the building for other purposes.

<sup>263</sup> At Bangor, Ballymena, Coleraine, Downpatrick, Dungannon, Enniskillen, Limavady, Lisburn, Magherafelt, Newry, Omagh and Strabane.

<sup>264</sup> Police (NI) Act 2000, Section 3(4)(d).

Custody Suite at the time of our visit. We reviewed the Persons Detained Register, which is held in the Custody Sergeant's office and should record basic information about all detained persons, including name, address, time and date of arrest, time and date of medical examination, relevant additional information and particulars of discharge (including signed authorisation).

A detainee should be informed of the reason for his/her arrest at reception to the Custody Suite and the Custody Sergeant should complete the Custody Record, recording the time and place of arrest, the circumstances of the arrest, the time of arrival of the suspect at the police station, the details of the arresting officer, the officer delivering the detained person (if different) and the officer in charge of the case, the detained person's details and his/her condition on arrival. It is the Custody Officer's duty to decide whether there is sufficient evidence to charge the arrested person and/or authorise detention. The Custody Sergeant should record all items of property retained by the police and all reviews of detention should be recorded in the custody record, along with all actions/occurrences involving the detainee whilst he/she is in Custody.

Special procedures are in place for child suspects. On arrival at the Custody Suite, the child should go through the standard reception process.<sup>265</sup> The child should then be placed in the juvenile holding cell and no further action should be taken until the arrival of an 'appropriate adult'.<sup>266</sup> On the arrival of the appropriate adult, the entire reception process should be repeated, with the appropriate adult countersigning the child's signatures.

Independent Custody Visitors visit once or twice weekly to inspect the Antrim Road Custody Suite. They complete a report of their visit on site at the end of the inspection, highlighting any immediate concerns with the Custody Sergeant. Copies of this written report are given to the Custody Sergeant, the District Commander and the Policing Board.

Having reviewed the systems in place in Antrim Road Custody Suite, we are satisfied that, in theory at least, detainees should be afforded the protection required by the provisions of the Human Rights Act. It is more difficult to assess whether the rights of detainees are always protected in practice. We return to this later in this Chapter when we deal with the effectiveness of the Independent Custody Visiting Scheme.<sup>267</sup>

## **Antrim Custody Suite**

We visited the Custody Suite at Antrim Police Station in November 2004. Three detainees were being held in the serious crime suite at the time. The Custody Suite opened in April 2003 and is dual purpose; one section is designed for the investigation of suspects arrested on non-terrorist matters (the PACE suite), the other is designed for the investigation of suspects arrested on terrorist matters (the serious crime suite). The only other Custody Suite designated to receive detainees arrested on terrorist matters is Grosvenor Road Custody Suite, which has recently been refurbished. Its facilities are similar to those at Antrim Road.

Both suites at Antrim Police Station incorporate advanced computerised electronic surveillance and communications systems throughout.

There are four forms of monitoring facility:

- CCTV monitoring all corridors, cells and interview rooms;
- downstream remote monitoring by senior investigating officers, which enables them to monitor the progress of investigations and to brief investigation teams;
- video monitoring of interviews (without audio); and
- standard audio monitoring of interviews.

Clearly worded notices advise those entering and moving around the building that CCTV video and audio recording is in operation throughout the Custody Suite. Painted warnings are also provided in each cell. The system has proved a useful tool in the investigation of allegations of mistreatment made by detainees. Patten

### **NOTES**

<sup>265</sup> That is, told of the reason for his/her arrest and detention, informed of his/her rights and given the opportunity to notify a relevant person. A parent, guardian or social/care worker.

<sup>266</sup> A parent, guardian or social/care worker.

<sup>267</sup> See pp137-140.

Recommendation 63 proposed that video recording should be introduced into all PACE Custody Suites. CCTV monitoring systems have been introduced at Musgrave Street and Grosvenor Road Custody Suites in Belfast and at Custody Suites in Antrim, Coleraine and Enniskillen. The PSNI has long term plans to introduce CCTV monitoring systems in all PSNI Custody Suites across Northern Ireland and has submitted a business case to the Northern Ireland Office, on which it awaits a response.

The 21 cells at Antrim are built to a standard specification, air-conditioned and monitored by CCTV from a central point.<sup>268</sup> Each cell contains a low level built-in bed with mattress and pillow, toilet, wash hand basin, drinking water facility and a call button to attract attention. Four of the cells contain Live Scan, a monitoring system designed to monitor detainees deemed to be a suicide risk. There are twelve interview rooms and 6 consultation rooms. There is also a room with a dedicated video-link to the courts (used two or three times a month to obtain extensions to detention). A medical room is located within each of the two suites, as are shower and additional toilet facilities.<sup>269</sup> There is a small open-air exercise area for use by terrorist detainees.

Detainees arrested on terrorist matters should be referred for a medical check on arrival at the serious crime suite and given the opportunity to attend a further medical check on release. Those detained for other offences should be referred for a medical check either at their own request or as required under PACE.

The detention facilities at Antrim are impressive and the surveillance, communications and custody record keeping systems are as advanced as anywhere in the UK. They provide a setting in which the rights of detainees should be effectively protected.

## THE INDEPENDENT COMMISSIONER FOR DETAINED TERRORIST SUSPECTS

The main functions of the Independent Commissioner for detained terrorist suspects are to observe, comment and report upon the conditions under which persons are detained.<sup>270</sup> He inspects detention facilities, scrutinises custody records and conducts interviews with detained persons. His oversight responsibilities operate from the time of a suspect's arrest until she/he is charged or released. He interviews arresting officers, detainees, custody sergeants and occasionally meets with suspects' solicitors at their request. The Commissioner keeps under review the codes of practice governing the detention, treatment, questioning and identification of persons detained and may make recommendations to the Secretary of State for their revision. In 1994, the Secretary of State extended the Commissioner's role, giving him permission to attend as an observer at police interviews with suspects.<sup>271</sup> His oversight does not include the investigation of complaints made by detained individuals, which is the function of the Police Ombudsman.

In his Tenth Annual Report (2002),<sup>272</sup> the Commissioner recorded that during the 2002 calendar year, 236 terrorist suspects were detained at Lisburn Custody Suite. The Commissioner met with 170 of those detained over the period, several on more than one occasion. The Commissioner reported that 80 detainees were subsequently charged. Seven complaints by detainees were recorded over the year.

In his Eleventh Annual Report (2003),<sup>273</sup> the Commissioner recorded that over the 2003 calendar year, a total of 366 terrorist suspects were detained at the PSNI detention facilities at Lisburn and Antrim. This constituted an increase of 55% on the total of the previous year. The Commissioner made 111 visits to those facilities, meeting with detainees on 216 occasions. He monitored 92 interviews by investigating officers, observing 87 through the CCTV remote monitoring system and sitting in on five interviews.<sup>274</sup>

### NOTES

268 Except the toilet area which is pixelated to protect the privacy of detainees.

269 In his Eleventh Report, the Independent Commissioner noted that initial operating difficulties have largely been rectified but highlighted concern regarding the shower facilities at the Custody Suite. These concerns have now been addressed.

270 See the Secretary of State's Terms of Reference.

271 Subject to certain conditions including the consent of the suspect.

272 Laid before Parliament on 18th June 2003.

273 Laid before Parliament on 31st March 2004.

274 With the consent of the detainee.

We met with the Commissioner in August 2004 to discuss his oversight responsibilities. He explained to us that he meets with senior officers, including the ACC for Operational Policy and Support and the Chief Superintendent and Superintendent of Antrim District Command Unit, on a quarterly basis to raise issues of concern. He also meets with the Chief Constable annually. In addition, the Commissioner meets with the Police Ombudsman to ensure that he has been notified by the PSNI of all complaints made by detainees regarding detention and/or treatment. He also meets with the Chairman of the Policing Board in relation to the Board's Independent Custody Visiting Scheme. The Commissioner has an arrangement with the PSNI whereby he is notified every time a suspect is brought to Antrim Custody Suite. The Commissioner visits the Custody Suite on a frequent and unannounced basis. The Commissioner is satisfied that effective lines of communication between him and the PSNI are in place and that issues of concern raised by him with the PSNI, at both District Command Unit and more senior levels, are given serious consideration and addressed in an appropriate manner.

The Commissioner explained to us that the Custody Suite at Grosvenor Road police station was currently being upgraded to act as a support facility to Antrim Custody Suite at times when Antrim is non-operational. The Commissioner welcomed this development, noting that the new Custody Suite was similar in design to Antrim Custody Suite. The Commissioner stated that in 2001, he raised concerns with the Chief Constable about the lack of a sufficient number of properly trained custody inspectors. He was concerned about the rapid turnover of custody inspectors and pointed out the need for a cadre of properly trained officers. The Commissioner reported that whilst there is a programme of training for custody sergeants, training for custody inspectors has yet to be realised. It is the case, though, that custody inspectors are now remaining in post for longer periods.

The Independent Commissioner plans to publish his report for the 2004 calendar year in spring 2005.

## **INDEPENDENT CUSTODY VISITING SCHEME**

The Police (Northern Ireland) Act 2000, Section 73 obliges the Policing Board to make and keep under review arrangements for designated places of detention to be visited by lay visitors (implementing Patten Recommendation 64). In accordance with this duty, the Policing Board has set up the Independent Custody Visiting Scheme. Custody visitors are volunteers from the community who make unannounced visits to police Custody Suites to report on the welfare and treatment of persons detained in custody. All custody visitors are required to complete initial and refresher training. In June 2003, the Policing Board, in conjunction with PSNI, delivered a refresher-training course for custody visitors, incorporating Police and Criminal Evidence training and scenario-based training in Custody Suites. 75% of all custody visitors have completed this refresher training.

There are five custody visiting teams, covering Antrim, Belfast, Down/Armagh, North-West and Tyrone/Fermanagh. Each custody team has four or five designated police stations to visit. A report on each visit is made to the Policing Board, the District Commander for the area and the Chief Constable. These reports deal with matters including the conditions in which persons are held in places of detention, the welfare and treatment of detained persons and the adequacy of facilities of the places of detention. The Policing Board's Community Involvement Committee monitors the reports of custody visitors on a monthly basis and raises any serious issues of concern with the PSNI.

From August 2002, the Policing Board's Custody Visiting Scheme was extended to include visits to detained terrorist suspects.<sup>275</sup> The Commissioner for Detained Terrorist Suspects liaises with the five custody visiting teams and is pleased with the work and operation of the custody visitor scheme and its complementary relationship with his own role.

We have reviewed the Policing Board's Custody Visiting Scheme and have examined the reports of the custody visiting teams. The Policing Board sets targets for each custody visiting team. These are based on the average number of people detained in the Custody Suites over a period of time. The table below shows the

### **NOTES**

<sup>275</sup> Further to the decision of the Policing Board in February 2002.

target and actual number of visits made by each custody visiting team during 2003/2004.

## Numbers of visits by custody visiting teams 2003/2004

Custody visiting team	Target number of visits for 2003/2004	Actual number of visits in 2003/2004
Belfast	264 <sup>276</sup>	258
Antrim	156	209
Down/Armagh	192	175
North-West	144	163
Tyrone/Fermanagh	120	168
Total	876	973

The number of custody visits made is steadily increasing year on year. Custody visitors made 973 visits in 2003/2004<sup>277</sup> compared to 912 visits during the same period in 2002/2003 and 810 visits in 2001/2002. In the six months between April and September 2004, custody visitors made a total of 491 visits. In 2003/2004, at least one detainee was being held during 462 (47%) of the 973 visits and at least one detainee was interviewed during 297 (31%) of visits.

The table below provides a break down of the number of visits and the number of detainees seen by each custody visiting team in 2003/2004.

## Number of visits and number of detainees seen by custody visiting teams 2003/2004

Custody visiting team	No. of visits	No. of detainees held	No. of detainees seen	detainees refusing to be seen	detainees refusing note seen for another reason	refusal rate
Belfast	258	482	240	103	139	21%
Antrim	209	145	65	37	43	26%
Down/Armagh	175	130	80	22	28	17%
North-West	163	115	45	33	37	29%
Tyrone/ Fermanagh	168	75	36	18	21	24%
Total	973	947	466	213	268	22%

In total in 2003/2004, there were 947 detainees held at the time of the custody visits, of which visitors saw 466 or 49%. Detainees can choose whether they wish to see the custody visitors. The Policing Board monitors the refusal rate. This is calculated as the number of detainees who refused to be seen as a percentage of the

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<sup>276</sup> The target number of visits for the Belfast area reduced in this period to reflect the closure of Grosvenor Road Custody Suite for 9 months.

<sup>277</sup> Between April 2003 and March 2004.

<sup>278</sup> Broken down into 16 categories relating to all aspects of the detainees' treatment, including access to legal advice, being informed of their rights, requiring medical attention, access to toilets/washing, adequate food/drink and dietary needs.

number available to be seen. In 2003/2004, 213 detainees refused to be seen. This constituted an overall refusal rate of 22% compared to a 21% refusal rate in 2002/2003 and a 27% refusal rate in 2001/2002. 268 detainees were not seen for other reasons, for example because they were asleep, intoxicated, being processed or interviewed, or meeting their lawyer.

The Policing Board monitors the treatment of detainees in accordance with Code C of the Police and Criminal Evidence (Northern Ireland) Order 1989, the Human Rights Act and the PSNI Code of Ethics, collating statistics on satisfactory/unsatisfactory visits and reasons for concern raised by custody visitors regarding the treatment of detainees. It monitors the effectiveness of the scheme by collating data on the number of visits made by each custody visiting team (including day, time and length of visit), the number of detainees seen by custody visitors, the reasons for custody visitors not being able to see detainees and the numbers of custody records reviewed by custody visitors.

Custody visitors classified 781 out of the 973 visits (80%) in 2003/2004 as satisfactory. In the six months between April and September 2004, 406 out of the 491 (83%) were classified as satisfactory, raising no issues in relation to either the treatment of detainees or the conditions in which they were held. The majority of visits classified as unsatisfactory were for reasons of cleanliness/condition of cells, repairs needed/ safety hazards identified, ventilation and adequacy of food and drink. Five complaints were received regarding the treatment of detainees in 2003/2004, comprising one allegation of mistreatment by an arresting officer and four allegations of rough handling by police officers whilst in custody. Three complaints of mistreatment were received for the six months between April and September 2004, comprising two allegations of mistreatment by arresting officers and one allegation of inappropriate strip-searching. All these complaints were brought to the attention of the Custody Sergeant and the District Commander for further action.

We are satisfied that the Policing Board's custody visiting scheme fulfils an important function in monitoring the condition and treatment of detained suspects and ensuring PSNI compliance with the Human Rights Act in relation to its treatment of detained persons.

The custody visiting teams carry out a high number of visits each year and see roughly half of all detainees held at the time of the custody visits. A very high percentage of visits (80%) are satisfactory and the number of complaints (to the custody visiting teams at least) is very low.

Bearing in mind that custody visitors are volunteers (an important aspect of this form of oversight), the scheme provides an important human rights safeguard for detainees. In the circumstances we do not recommend any substantial changes to the scheme.

However, it is important that the targets set by the Policing Board for each custody visiting team are met on a consistent basis. We note that the number of actual visits by the Belfast and Down/Armagh custody visiting teams in 2003/2004 were lower than the targets set. This is a matter of concern and the Policing Board should monitor the number of visits of each custody team to ensure that this pattern is not repeated in 2004/2005. In addition, we note that in the six months between April and September 2004, over 50% of custody visits took place on Mondays, Tuesdays or Wednesdays whereas less than 20% of visits took place over the weekend, the time that Custody Suites are usually busiest. Custody visiting teams must be encouraged to visit Custody Suites during peak periods when PSNI staff and facilities are under pressure to monitor the consistency of the standard of treatment and condition of detainees.

## NOTES

276 The target number of visits for the Belfast area reduced in this period to reflect the closure of Grosvenor Road Custody Suite for 9 months.

277 Between April 2003 and March 2004.

278 Broken down into 16 categories relating to all aspects of the detainees' treatment, including access to legal advice, being informed of their rights, requiring medical attention, access to toilets/washing, adequate food/drink and dietary needs.

Against that background, we make the following recommendations:

- The Policing Board should ensure that the targets set for each of the custody visiting teams in 2004/2005 are met.
- The Policing Board should set targets for a higher number of visits by the custody visiting teams to take place at weekends.

# CHAPTER 12: HUMAN RIGHTS AWARENESS IN THE PSNI

## CHAPTER 12: HUMAN RIGHTS AWARENESS IN THE PSNI

### Introduction

The culture and ethos of an organisation include both the way in which it sees itself and manages itself internally and the way in which it sees and interacts with its clients and others outside the organisation (Patten, paragraph.17.1). The promotion of human rights awareness of PSNI officers at all levels is vital not only to facilitate the development of a tangible human rights culture within the PSNI but also to demonstrate the PSNI's commitment to the human rights agenda in its dealings with others external to it.

Elsewhere in this Report we have dealt with the PSNI Human Rights Programme of Action<sup>279</sup>, Human Rights training<sup>280</sup> and adherence to the Code of Ethics<sup>281</sup>. Here we seek to address the level of human rights awareness in the PSNI as a whole. To that end, we devised a human rights questionnaire, which was sent to all PSNI officers, including full-time and part-time reserves. It was intended to gauge basic human rights knowledge and to give some indication across the service of the extent to which a human rights culture existed, if at all. The questionnaire is reproduced in Appendix 4 of this Report. In this chapter, we set out the results and our analysis of those results.

In addition, we set up a number of focus groups in Foyle, Newry/Lurgan, Belfast and Fermanagh, in which PSNI officers from different ranks participated in discussions about human rights. To some extent we were able to pick up on issues that emerged from the questionnaire results. A summary of the work undertaken in the focus groups is set out in this chapter. The full Report is set out in Appendix 5 to this Report.

Finally, on the question of human rights awareness, we examined the PSNI officer appraisal system. This system includes a human rights element devised by the PSNI Human Rights Unit. Our observations on this system are set out in the last section of this chapter.

### THE HUMAN RIGHTS QUESTIONNAIRE

The Human Rights Questionnaire was devised by us in early 2004 with the assistance of the PSNI Human Rights Champion, ACC Criminal Justice, and members of her staff<sup>282</sup>. It comprised 17 questions. The first ten questions were designed to gauge basic human rights knowledge within the PSNI. Each of the ten questions was multiple choice, with four possible answers: one right, one nearly right, one clearly wrong and one nearly wrong. That, we hoped, would allow us to evaluate not only the number of right answers, but also how far wrong officers were when they failed to provide the right answer, with a view to cross-referencing the results to issues of training, policy etc.

Questions 11-15 were open ended questions intended to gauge police officers attitudes to human rights more generally. There were no right or wrong answers. They dealt with how officers perceived their own human rights knowledge, how useful they found their training, and how they dealt with human rights issues when they arose in their day to day policing. Finally, the questionnaire, although anonymous, asked the officers responding to indicate their rank and length of service to enable us to make an assessment of the level of human rights awareness against these factors.

The questionnaire was sent out in March 2004 as a joint initiative between the Policing Board and the PSNI. An accompanying letter from the Chief Constable urged all officers to complete the questionnaire with as full a response as possible.

### The sample

Tables 1 and 2 show that the total sample for the survey was 2,739, which represents a response rate of around 28%. Full-time and part-time reserves were included in the questionnaire exercise. We were a little

#### NOTES

<sup>279</sup> Chapter 1.

<sup>280</sup> Chapter 2.

<sup>281</sup> Chapter 5.

<sup>282</sup> See Appendix 4 to this report.

disappointed with the return rate, although it was perhaps unsurprising given the high levels of 'survey fatigue' amongst officers and the relatively short time scale for returning the questionnaire, which presented some unavoidable difficulties for part-time officers, those officers on long term sick leave and those officers on secondment abroad. In addition, there was no obligation on any officer to fill in the questionnaire and return it. Table 1 shows that over 70% of respondents were Constables. Table 3 shows that over 70% of respondents were officers with over 11 years of service.

**Table 1 Sample Characteristics by Rank**

	Constable	Sergeant	Inspector	Chief Inspector and above	FTR/PTR/ Student	Total
Respondents	1926 (70%)	458 (17%)	184 (7%)	120 (4%)	Not Stated 51 (2%)	2739

**Table 2 Questionnaires Issued by Status**

	Regular Officers	Full-Time Reserve	Part-Time Reserve	Student Officers	Total
Issued	7141 (72%)	1582 (16%)	845 (9%)	304 (3%)	9872

**Table 3 Sample Characteristics by Length of Service**

	Less than 4 years	5-10 years	11-20 years	21 years +	Not Stated	Total
Respondents	321 (12%)	429 (16%)	967 (35%)	968 (35%)	54 (2%)	2739

## 1. CLOSED QUESTION RESULTS

### Question 1 The prohibition against inhuman and degrading treatment:

#### Options

- Is an absolute right.
- Is a qualified right that can be restricted so long as the qualification is necessary and proportionate.
- Is a right that can be restricted if there are sound reasons for doing so.
- Is no different to other rights under the European Convention on Human Rights.

Tables 4 and 5 show that over 82% of respondents correctly identified that the prohibition against inhuman and degrading treatment is an absolute right. No other response category was selected by over 10% of respondents. These are good results, although the total percentage of constables getting the question wrong or nearly wrong (4% and 6%: 10% in total) is a concern that needs to be addressed.

**Table 4 Question 1 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and above	Total
Is an absolute right.	80%	86%	90%	89%	82%
Is a qualified right that can be restricted so long as the qualification is necessary and proportionate.	8%	7%	7%	6%	8%
Is a right that can be restricted if there are sound reasons for doing so.	4%	2%	1%	2%	3%
Is no different to other rights under the European Convention on Human Rights.	6%	4%	2%	2%	5%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 4 shows that as rank increased, so did knowledge of the correct response - from 80% for Constables to 90% for Inspectors and 89% for Chief Inspectors and above.

**Table 5 Question 1 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Is an absolute right.	77%	83%	82%	84%	82%
Is a qualified right that can be restricted so long as the qualification is necessary and proportionate.	11%	7%	8%	7%	8%
Is a right that can be restricted if there are sound reasons for doing so.	6%	3%	3%	2%	3%
Is no different to other rights under the European Convention on Human Rights.	4%	4%	6%	5%	5%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 5 shows that knowledge of the correct response was generally higher for officers with longer service - from 77% for officers with under 4 years service to 84% for officers with over 21 years experience. The fact that over 20% of officers with less than 4 years length of service failed to answer correctly (11%, 6% and 4%: total 21%) needs to be reviewed by those responsible for the Student Officer Training programme.

## **Question 2 In the course of their duties, police officers should treat people differently on grounds such as race, colour, gender, religion, political or other opinion:**

### **Options**

- As they see fit.
- Where there is a public demand in doing so.
- Where such different treatment can be reasonably and objectively justified.
- Never.

Tables 6 and 7 show that over 85% of respondents incorrectly identified that in the course of their duties, police officers should never treat people differently on grounds such as race, colour, gender, religion, political or other opinion. The correct response, which was “Where such different treatment can be reasonably and objectively justified”, was identified by over 10% of respondents. This raises a number of important issues. On one level, the fact that the vast majority of police officers thought that different groups of people should never be treated differently should be regarded as positive, even if, strictly speaking, it is not correct. That belief may, in part, be engendered by the PSNI Code of Ethics which instructs officers that they “shall not discriminate” on grounds such as race, colour, gender, religion, political or other opinion. There is, of course, a difference between the word “discrimination” used in the Code of Ethics and “treat differently”, the words used in the questionnaire: “discrimination” can connote (unlawfully) treat differently. Nonetheless, we do recommend that the results of this part of the questionnaire be carefully studied by those responsible for training, policy drafting and ultimately revision (or possibly clarification) of the Code of Ethics.

**Table 6 Question 2 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and Above	Total
As they see fit.	2%	1%	1%	3%	2%
Where there is a public demand in doing so.	0%	0%	0%	0%	0%
Where such different treatment can be reasonably and objectively justified.	12%	12%	15%	18%	12%
Never.	85%	87%	84%	78%	85%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 6 shows that as rank increased, knowledge of the correct response “Where such different treatment can be reasonably and objectively justified” also increased from 12% for Sergeants to 18% for Chief Inspectors and above.

**Table 7 Question 2 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
As they see fit.	3%	2%	2%	1%	2%
Where there is a public demand in doing so.	1%	0%	0%	0%	0%
Where such different treatment can be reasonably and objectively justified.	13%	12%	10%	14%	12%
Never.	83%	86%	88%	84%	85%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 7 shows that knowledge of the incorrect response “Never” was higher for officers with service between 5 to 20 years experience. The correct response was highest among officers with more than 20 years experience.

## NOTES

283 Article 6.2 of the Code of Ethics.

### Question 3 Police officers can use lethal force where:

#### Options

- They feel threatened.
- They feel political instability.
- The force is necessary and appropriate.
- It is absolutely necessary to do so.

Tables 8 and 9 show that there was a fairly even split between officers who correctly thought that **(i)** police officers can use lethal force where it is absolutely necessary to do so (46%) and those who incorrectly thought that **(ii)** police officers can use lethal force where such force is necessary and appropriate (52%). This is a concern. The test for the use of lethal force under the European Convention on Human Rights is clear: it can only be used where it is absolutely necessary. That test is now the law and the high level of officers indicating that lethal force can be used where necessary and appropriate calls for an urgent review of training on this issue. We have made comments on the training material relating to the use of force in Chapter 2 to which the PSNI should refer, but clearly more work is needed in this important area.

**Table 8 Question 3 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and above	Total
They feel threatened.	1%	0%	0%	1%	1%
They feel political instability.	1%	0%	0%	2%	1%
The force is necessary and appropriate.	54%	52%	43%	52%	52%
It is absolutely necessary to do so.	44%	48%	55%	45%	46%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 8 shows that the correct response “It is absolutely necessary to do so” increased with rank, from 44% for Constables to 55% for Inspectors, but then dropped to 45% for Chief Inspector and above. As rank increased from Constable to Inspector, the incorrect response decreased from 54% for Constable to 43% for Inspectors, but increased to 52% for Chief Inspector and above.

**Table 9 Question 3 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
They feel threatened.	2%	1%	1%	1%	1%
They feel political instability.	2%	1%	0%	0%	1%
The force is necessary and appropriate.	49%	51%	50%	56%	52%
It is absolutely necessary to do so.	47%	48%	48%	43%	46%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 9 shows that knowledge of the correct response “It is absolutely necessary to do so” was lowest among officers with more than 20 years experience.

## Question 4 Members of the public:

### Options

- Have an absolute right to protest, march and hold meetings.
- Have a right to protest, march and hold meetings but that right can be restricted if the restriction is necessary and proportionate.
- Have a right to protest, march and hold meetings but not if that right offends others.
- Have no right to protest, march and hold meetings.

Tables 10 and 11 show that over 89% of respondents correctly identified that members of the public have a right to protest, march and hold meetings but that right can be restricted if the restriction is necessary and proportionate. No other response category was identified by over 10% of respondents. This is a good result.

**Table 10 Question 4 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and above	Total
Have an absolute right to protest, march and hold meetings.	4%	2%	1%	1%	3%
Have a right to protest, march and hold meetings but that right can be restricted if the restriction is necessary and proportionate.	88%	93%	95%	92%	89%
Have a right to protest, march and hold meetings but not if that right offends others.	7%	4%	2%	3%	6%
Have no right to protest, march and hold meetings.	1%	1%	1%	4%	1%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 10 shows that as rank increased from constable to inspector, knowledge of the correct response increased - from 88% for Constables to 95% for Inspectors but decreased to 92% for Chief Inspectors and above. However, the variations are small, and the overall correct responses are very high.

**Table 11 Question 4 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Have an absolute right to protest, march and hold meetings.	3%	3%	3%	3%	3%
Have a right to protest, march and hold meetings but that right can be restricted if the restriction is necessary and proportionate.	87%	93%	88%	90%	89%
Have a right to protest, march and hold meetings but not if that right offends others.	7%	4%	7%	6%	6%
Have no right to protest, march and hold meetings.	3%	1%	1%	0%	1%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 11 shows that knowledge of the correct response was highest for officers with 5 to 10 years experience and lowest for those officers with under 4 years experience (87%). Although the variations are slightly larger here, the overall percentages of correct responses are still very high across the categories.

### Question 5 Police surveillance is an interference with privacy and therefore:

#### Options

- Is suitable in public places, but never in private places, such as the home.
- Can be justified so long as it is recorded.
- Must be lawfully authorized, necessary and proportionate.
- Can never be justified.

Tables 12 and 13 show that over 96% of respondents correctly identified that police surveillance is an interference with privacy and therefore must be lawfully authorised, necessary and proportionate. No other response category was identified by over 10% of respondents. Again, this is a very positive response.

**Table 12 Question 5 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and above	Total
Is suitable in public places, but never in private places, such as the home.	2%	1%	0%	2%	2%
Can be justified so long as it is recorded.	2%	2%	1%	0%	2%
Must be lawfully authorised, necessary and proportionate.	95%	97%	100%	96%	96%
Can never be justified.	1%	0%	0%	2%	0%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 12 shows that as rank increased from Constable to Inspector, knowledge of the correct response increased - from 95% for Constables to 100% for Inspectors, but decreased to 96% for Chief Inspectors and above.

**Table 13 Question 5 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Is suitable in public places, but never in private places, such as the home.	2%	1%	1%	2%	2%
Can be justified so long as it is recorded.	2%	0%	3%	2%	2%
Must be lawfully authorised, necessary and proportionate.	94%	97%	95%	96%	96%
Can never be justified.	2%	1%	0%	0%	0%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 13 shows that knowledge of the correct response was highest for officers with 5 to 10 years experience and lowest for those officers with under 4 years' experience (94%). However, the variations are very small, and the overall percentages of correct responses are very high across the categories.

## Question 6 Police officers can arrest individuals where:

### Options

- The arrest may assist a police investigation.
- They have reasonable grounds to suspect that an individual has committed an offence.
- The arrest is properly documented.
- The arrest might reveal useful information.

Tables 14 and 15 show that over 95% of respondents correctly identified that police officers can arrest individuals where they have reasonable grounds to suspect that an individual has committed an offence. No other response category was identified by over 10% of respondents. This is a positive result, but on an issue where a very high percentage of correct results would have been expected. The test for a lawful arrest under the Human Rights Act is the same as that under the Police and Criminal Evidence (NI) Order, which has been in place for many years.

**Table 14 Question 6 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and Above	Total
The arrest may assist a police investigation.	3%	3%	1%	2%	2%
They have reasonable grounds to suspect that an individual has committed an offence.	95%	95%	96%	94%	95%
The arrest is properly documented.	1%	1%	1%	1%	1%
The arrest might reveal useful information.	1%	1%	1%	2%	1%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 14 shows that there is little variation across the ranks in knowledge of the correct response.

**Table 15 Question 6 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
The arrest may assist a police investigation.	2%	3%	2%	3%	2%
They have reasonable grounds to suspect that an individual has committed an offence.	93%	95%	96%	94%	95%
The arrest is properly documented.	1%	1%	1%	2%	1%
The arrest might reveal useful information.	3%	1%	1%	0%	1%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 15 shows that knowledge of the correct response was highest for officers with 11 to 20 years experience and lowest for those officers with under 4 years' experience (93%). However, the variations are minimal.

## Question 7 Police officers are under a duty to take steps to protect life:

### Options

- If resources permit.
- If someone could possibly be killed.
- If there is a real and imminent risk that someone will lose his or her life.
- Unless the risk to life is self-imposed (e.g. suicide).

Tables 16 and 17 show that over 87% of respondents correctly identified that police officers are under a duty to take steps to protect life “If there is a real and imminent risk that someone will lose his or her life”. The response category “If someone could possibly be killed” was identified by 10% of respondents. This is a very positive result in relation to a human rights principle that is not straightforward, and which has only emerged clearly in recent years. It reflects well on those responsible for training and policy drafting in the PSNI.

**Table 16 Question 7 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and Above	Total
If resources permit.	2%	1%	1%	3%	1%
If someone could possibly be killed.	9%	11%	18%	13%	10%
If there is a real and imminent risk that someone will lose his or her life.	89%	87%	81%	81%	87%
Unless the risk to life is self-imposed (e.g. suicide).	0%	0%	0%	0%	0%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 16 shows that as rank increased, knowledge of the correct response decreased - from 89% for Constables to 81% for Inspectors and above. Although the overall percentage of correct responses is high across all the categories, this is of concern. Those responsible for taking operational decisions to protect individuals whose lives are at risk will often be higher ranking officers, and an increased percentage of such officers returning the correct response would have been expected. However, the fact that 13% of officers of Chief Inspector rank or above thought that police officers are under a duty to take steps to protect life “If someone could possibly be killed” shows a broader protection for human life than is strictly required.

**Table 17 Question 7 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
If resources permit.	4%	2%	1%	1%	1%
If someone could possibly be killed.	9%	7%	10%	11%	10%
If there is a real and imminent risk that someone will lose his or her life.	86%	90%	88%	88%	88%
Unless the risk to life is self-imposed (e.g. suicide).	1%	0%	0%	0%	0%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 17 shows that knowledge of the correct response was highest for officers with 5 to 10 years experience and lowest for those officers with under 4 years experience (86%). However, the variations are small and the overall percentages of correct responses are high.

## Question 8 Firearms can be used only:

### Options

- To protect property.
- Where necessary and proportionate.
- Where absolutely necessary.
- In exceptional circumstances, such as political instability.

Tables 18 and 19 show that there was a fairly even split between officers who incorrectly thought (i) firearms can be used only where necessary and proportionate (55%) and officers who correctly thought (ii) firearms can be used only where absolutely necessary (43%). This is an important result for two reasons. First, because Question 8 was deliberately designed to be very similar to Question 3 so that we could track consistency within the questionnaire. Secondly, because, like Question 3, it shows that a large percentage of the sample does not understand the test for the use of lethal force properly. This is a concern that needs to be addressed as we recommend in our observations on Question 3.

### Table 18 Question 8 Responses by Rank

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and Above	Total
To protect property.	1%	0%	1%	3%	1%
Where necessary and proportionate.	56%	57%	52%	50%	55%
Where absolutely necessary.	43%	42%	47%	45%	43%
In exceptional circumstances, such as political instability.	1%	0%	1%	2%	1%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 18 shows that the correct response “Where absolutely necessary” was more likely to be associated with Inspectors (47%).

### Table 19 Question 8 Responses by Length of Service

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
To protect property.	2%	0%	0%	0%	1%
Where necessary and proportionate.	53%	54%	55%	57%	55%
Where absolutely necessary.	45%	45%	44%	42%	43%
In exceptional circumstances, such as political instability.	0%	1%	1%	0%	1%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 19 shows that knowledge of the correct response was highest for officers with less than 10 years experience (45%) and lowest for those officers with more than 20 years experience (42%). These match the trends for Question 3.

## Question 9 Informants/covert human intelligence sources:

### Options

- Can be used, even where they incite criminal offences, so long as they further the police investigation.
- Can be used, but only if they do not incite criminal offences.
- Should only be used as a last resort.
- Should never be used.

Tables 20 and 21 show that 83% of respondents correctly identified that informants/covert human intelligence sources can be used, but only if they do not incite criminal offences. "Informants/covert human intelligence sources can be used, even when they incite criminal offences, so long as they further the police investigation" response category was identified by 11% of respondents. Here the high percentage of officers responding correctly is positive in an area where issues are seldom straightforward. However, the relatively high percentage of officers who think that informants/covert human intelligence sources can be used, even where they incite crime, is a concern that needs to be addressed. It may be that many officers responding have little (if any) dealings with informants, and are therefore not fully familiar with the appropriate tests for their use. However, this justification only puts the results into context, it does not meet our concern.

**Table 20 Question 9 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and above	Total
Can be used, even where they incite criminal offences, so long as they further the police investigation.	13%	6%	5%	5%	11%
Can be used, but only if they do not incite criminal offences.	80%	89%	91%	91%	83%
Should only be used as a last resort.	5%	4%	3%	3%	5%
Should never be used.	1%	0%	0%	0%	0%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 20 shows that as rank increased, the response "Can be used, but only if they do not incite criminal offences" increased from 80% for Constables to 91% for Inspectors and above. Conversely, as rank increased the response "Can be used, even where they incite criminal offences, so long as they further the police investigation" decreased from 13% for constables to 5% for Inspectors and above.

**Table 21 Question 9 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Can be used, even where they incite criminal offences, so long as they further the police investigation.	21%	14%	9%	8%	11%
Can be used, but only if they do not incite criminal offences.	73%	82%	85%	84%	84%
Should only be used as a last resort.	4%	3%	4%	6%	5%
Should never be used.	0%	0%	0%	1%	0%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 21 shows that knowledge of the correct response was highest for officers with 11 to 20 years experience. The response “Can be used, even where they incite criminal offences, so long as they further the police investigation” was lowest among officers with more than 20 years experience and highest among officers with under 4 years experience. This means that over one in every five officers within two years of their student officer training does not know the correct test in this area. This needs to be addressed by those responsible for student officer and refresher training.

## Question 10 Access to a lawyer:

### Options

- Should never be delayed in any circumstances.
- Can be delayed until after questioning.
- Can be delayed if waiting for a lawyer will inconvenience an investigation.
- Can be delayed, but only in exceptional circumstances, such as where access to a lawyer would frustrate the arrest of another.

Tables 22 and 23 show that 71% of respondents correctly identified that access to a lawyer “can be delayed, but only in exceptional circumstances, such as where access to a lawyer would frustrate the arrest of another”. Access to a lawyer “can be delayed if waiting for a lawyer will inconvenience an investigation” response category was identified by 14% of respondents and access to a lawyer “should never be delayed in any circumstances” response category was identified by 12% of respondents. These results are positive if the over-protective wrong answer (access to a lawyer should never be delayed) are put with the correct answer. On that basis, over 80% of all officers responded correctly, or in a way which gave greater protection to the rights of suspects. The results are not good, however, insofar as they show that a relatively high percentage of Constables and Sergeants think that access to a lawyer can be delayed if waiting for a lawyer will inconvenience an investigation. However, it may be that officers in those ranks have little (if any) experience of decision-making on this issue. Under the Police and Criminal Evidence (Northern Ireland) Order, access to a lawyer can only be delayed by an officer of at least the rank of Superintendent.

**Table 22 Question 10 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and Above	Total
Should never be delayed in any circumstances.	16%	3%	4%	2%	12%
Can be delayed until after questioning.	2%	2%	0%	3%	2%
Can be delayed if waiting for a lawyer will inconvenience an investigation.	15%	13%	8%	6%	14%
Can be delayed, but only in exceptional circumstances, such as where access to a lawyer would frustrate the arrest of another.	67%	81%	88%	88%	71%

**Note:** Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 22 shows that as rank increased, knowledge of the response “Can be delayed, but only in exceptional circumstances, such as where access to a lawyer would frustrate the arrest of another” increased from 67% for Constables to 88% for Inspectors and above. Conversely, as rank increased, the response “Can be delayed if waiting for a lawyer will inconvenience an investigation” decreased from 15% for Constables to 6% for Chief Inspectors and above. Similarly, as rank increased, the response “Should never be delayed in any circumstances” decreased from 16% for Constables to 2% for Chief Inspectors and above.

**Table 23 Question 10 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Should never be delayed in any circumstances.	20%	11%	12%	11%	12%
Can be delayed until after questioning.	3%	2%	2%	1%	2%
Can be delayed if waiting for a lawyer will inconvenience an investigation.	16%	13%	13%	14%	14%
Can be delayed, but only in exceptional circumstances, such as where access to a lawyer would frustrate the arrest of another.	61%	75%	73%	73%	71%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 23 shows that knowledge of the correct response was highest for officers with 5 to 10 years experience. The responses “Can be delayed if waiting for a lawyer will inconvenience an investigation” and “Should never be delayed in any circumstances” were highest among officers with under 4 years experience.

## 2. QUESTION RESULTS

### Question 11 Officers’ assessment of their own knowledge of human rights

#### I would say my knowledge of human rights is:

#### Options

- Good
- Adequate
- Poor
- Good in some respects but poor in others.

Tables 24 and 25 show that 48% of respondents thought that their knowledge of human rights was adequate, 32% thought it was good, whilst 15% of respondents thought that their knowledge was good in some respects but poor in others. Only 5% of respondents felt that their knowledge of human rights was poor. These results are an important insight into the perception of PSNI officers of their own state of knowledge. The perception is realistic when the results of Questions 1-10 are taken into account. We recommend that these results should be carefully considered by those responsible for integrating human rights into all aspects of PSNI training.

**Table 24 Question 11 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and above	Total
Good	29%	36%	38%	54%	32%
Adequate	50%	44%	45%	33%	48%
Good in some respects but poor in others.	15%	14%	13%	10%	15%
Poor	5%	6%	4%	3%	5%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 24 shows that as rank increased, so respondents considered their knowledge of human rights to be adequate/good - from 79% for Constables to 87% for Chief Inspectors and above. Those officers who defined themselves as having a poor level of human rights knowledge declined with rank – from 5% for Constables and 6% for Sergeants to 3% for Chief Inspectors and above.

Although 29% of Constables rated their knowledge of human rights as good, there was no discernable difference in actual knowledge of human rights (judged by correct answers to most questions) between this group of officers and Chief Inspectors and above, 54% of whom rated their knowledge of human rights as good. Indeed, there was a higher level of accuracy amongst Constables regarding Questions 6 and 7 than to Chief Inspectors and above.

**Table 25 Question 11 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Good	41%	28%	28%	34%	32%
Adequate	44%	52%	51%	45%	48%
Good in some respects but poor in others.	13%	14%	15%	15%	15%
Poor	2%	6%	5%	6%	5%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 25 shows that officers with less than 4 years service were more likely to think that their knowledge of human rights was good/adequate (85%), whereas officers with more than 11 years service were less likely to think that their knowledge of human rights was good/adequate (79%).

## Question 12 Officers' views on the training they have received on human rights

### The training I have received in human rights:

#### Options

- Has greatly assisted me in answering questions 1-10.
- Has partially assisted me in answering questions 1-10.
- Has not helped me at all in answering questions 1-10.
- I have not received any human rights training.

Tables 26 and 27 show that 90% of respondents considered that the training that they received in human rights had either greatly assisted (30%) or partially assisted (60%) them in answering Questions 1-10.

**Table 26 Question 12 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and above	Total
Has greatly assisted me in answering questions 1-10.	32%	24%	25%	33%	30%
Has partially assisted me in answering questions 1-10.	59%	64%	63%	61%	60%
Has not helped me at all in answering questions 1-10.	7%	9%	10%	3%	7%
I have not received any human rights training.	2%	3%	2%	3%	2%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 26 shows that a higher percentage of Constables (32%) and Chief Inspectors and above (33%) thought that the training they had received in human rights had greatly assisted them in answering Questions 1-10, whereas a higher percentage of Sergeants (64%) and Inspectors (63%) thought that the training they had received in human rights had only partially assisted them in answering Questions 1-10. The fact that a number of officers either have not had human rights training, or do not appreciate that they have had human rights training, is worrying. The percentage is small, but nonetheless cannot be disregarded.

**Table 27 Question 12 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Has greatly assisted me in answering questions 1-10.	56%	27%	24%	29%	30%
Has partially assisted me in answering questions 1-10.	42%	64%	64%	61%	60%
Has not helped me at all in answering questions 1-10.	2%	7%	9%	7%	7%
I have not received any human rights training.	0%	3%	3%	3%	2%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 27 shows that officers of less than 4 years service were most likely to state that the training they received in human rights had greatly assisted them in answering Questions 1-10 (56%) whereas officers with 5-20 years' service were more likely to state that the training they received in human rights had only partially assisted them in answering questions 1-10 (64%).

**Question 13 Officers' assessment of the frequency of human rights issues arising in their work.**

**Human rights issues crop up in my work:**

**Options**

- Most days.
- Only when I am involved in serious investigations.
- Very seldom.
- Not at all.

Tables 28 and 29 show that the majority of police officers consider that human rights issues crop up in their work most days (78%).

**Table 28 Question 13 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and above	Total
Most days.	76%	79%	85%	84%	78%
Only when I am involved in serious investigations.	2%	2%	2%	2%	2%
Very seldom.	20%	18%	13%	11%	19%
Not at all.	2%	1%	1%	3%	1%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 28 shows that as rank increased from Constable to Inspector, the response "Most days" increased from 76% to 85%. Conversely, the response "Very seldom" decreased from 20% for Constables to 11% for Chief Inspectors and above.

**Table 29 Question 13 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Most days.	88%	82%	76%	74%	78%
Only when I am involved in serious investigations.	2%	2%	2%	2%	2%
Very seldom.	9%	15%	20%	22%	19%
Not at all.	2%	1%	2%	1%	1%

Note: Not all figures total 100% due to rounding or failure of respondents to complete particular questions.

Table 29 shows that as length of service increased, the response “Most days” decreased from 88% for officers under 4 years service to 74% for officers with more than 20 years service. Conversely, the response “Very seldom” increased from 9% for officers under 4 years service to 22% for officers with more than 20 years service.

### Question 14 Officers’ referral to human rights sources.

#### Question 14 When I have a difficult human rights question to deal with, I refer to:

##### Options

- The PSNI intranet.
- PSNI service documents, such as general orders and policy documents.
- My PSNI training material.
- Other colleagues who are usually able to assist me.
- The PSNI legal department.
- The PSNI human rights legal adviser.
- External resources, including the internet.
- Other answers.
- I don’t know who to refer to.

**Table 30 Question 14 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and Above	Total
Other colleagues who are usually able to assist me.	58%	42%	44%	40%	53%
PSNI service documents, such as general orders and policy documents.	31%	57%	63%	58%	39%
My PSNI training material.	35%	32%	36%	33%	35%
The PSNI intranet.	27%	35%	36%	26%	29%
The PSNI human rights legal adviser.	9%	16%	30%	58%	14%
The PSNI legal department.	7%	16%	30%	44%	12%
Other answers.	7%	6%	12%	8%	7%
External resources, including the internet.	5%	7%	11%	18%	6%
I don’t know who to refer to.	4%	3%	1%	2%	3%

Note: The figures are in excess of 100% due to multiple responses.

The results set out in Table 30 are informative. A large percentage of Constables rely on their colleagues when they have a difficult human rights issue to deal with, whilst there is heavy dependence by more senior officers on policy documents. It is significant that a high percentage of officers of the rank of Chief Inspector or above rely on the PSNI human rights legal adviser. The fact that over a third of all officers (fairly uniformly across the ranks) rely on their training material when they have to deal with a difficult human rights problem, underlines the importance of making available specific human rights material of good quality. A significant percentage of officers also rely on the PSNI intranet. We note in this regard that the PSNI human rights legal adviser has made available a number of human rights materials on the PSNI intranet which are informative and accessible.

**Table 31 Question 14 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
Other colleagues who are usually able to assist me.	48%	56%	55%	53%	53%
PSNI service documents, such as general orders and policy documents.	25%	38%	40%	43%	39%
My PSNI training material.	63%	35%	29%	31%	35%
The PSNI intranet.	31%	36%	30%	24%	29%
The PSNI human rights legal adviser.	2%	9%	13%	23%	14%
The PSNI legal department.	2%	8%	12%	18%	12%
Other answers.	9%	7%	7%	7%	7%
External resources, including the internet.	2%	6%	7%	7%	6%
I don't know who to refer to.	3%	3%	3%	3%	3%

**Note:** The figures are in excess of 100% due to multiple responses.

Table 31 shows that officers with less than 4 years service would either consult their PSNI training manual (63%), ask other colleagues (48%) or refer to the PSNI intranet (31%) when they have a difficult human rights question to deal with. Officers with more than 20 years service would ask other colleagues (53%), consult PSNI service documents, such as general orders and policy documents (43%) and/or consult their PSNI training manual (31%).

Table 32 shows that 155 respondents gave answers other than those stated. We were able to group these responses into 4 separate categories. Of these, 69 respondents stated that they used the PSNI Human Rights Aide Memoire, the PSNI Code of Ethics or other literature such as the Human Rights Act itself or training material when they have a difficult human rights question to deal with. A further 50 respondents indicated that they consulted their Line Manager or a more senior colleague. 23 respondents said that they used common sense and 13 respondents said that they asked Training Branch or their District Trainer.

**Table 32 Open Ended Responses for the "Other... Please Specify" Category**

Response Type	Number of Respondents Stating
Human Rights Aide Memoire/ HR Literature/Code of Ethics.	69
Line Manager/ Supervisor/Duty Sergeant etc.	50
Common Sense.	23
Police Training Branch/District Trainer.	13

## Question 15 Officers' views on human rights.

### Question 15 As a police officer I believe:

#### Options

- I have a duty to respect and protect the human rights of all persons.
- Not enough emphasis is placed on respecting and protecting the human rights of victims.
- There is too much emphasis placed on respecting and protecting human rights in the PSNI.
- I can breach the human rights of those suspected of serious offences.
- Respecting and protecting human rights is not as important as criminal investigations.
- There is too little emphasis on respecting and protecting human rights in the PSNI.

Table 33 below shows that the vast majority (87%) of all officers considered that they have a duty to respect and protect the human rights of all persons. Over a quarter of all respondents (29%) thought that not enough emphasis is placed on respecting and protecting the human rights of victims. Nearly one quarter of all Constable respondents (22%) felt that too much emphasis is placed on respecting and protecting human rights in the PSNI, compared to 8% of Chief Inspectors and above.

**Table 33 Question 15 Responses by Rank**

Response (%)	Constable	Sergeant	Inspector	Chief Inspector and Above	Total
I have a duty to respect and protect the human rights of all persons.	86%	90%	92%	92%	87%
Not enough emphasis is placed on respecting and protecting the human rights of victims.	28%	29%	38%	28%	29%
There is too much emphasis placed on respecting and protecting human rights in the PSNI.	22%	17%	10%	8%	19%
I can breach the human rights of those suspected of serious offences.	7%	7%	11%	8%	7%
Respecting and protecting human rights is not as important as criminal investigations.	3%	3%	2%	2%	3%
There is too little emphasis on respecting and protecting human rights in the PSNI.	2%	3%	2%	2%	2%

Note: The figures are in excess of 100% due to multiple responses.

**Table 34 Question 15 Responses by Length of Service**

Response (%)	Under 4 years	5-10 years	11-20 years	21 years +	Total
I have a duty to respect and protect the human rights of all persons.	84%	86%	85%	90%	87%
Not enough emphasis is placed on respecting and protecting the human rights of victims.	19%	31%	30%	30%	29%
There is too much emphasis placed on respecting and protecting human rights in the PSNI.	22%	21%	22%	15%	19%
I can breach the human rights of those suspected of serious offences.	10%	9%	7%	6%	7%
Respecting and protecting human rights is not as important as criminal investigations.	3%	4%	3%	2%	3%
There is too little emphasis on respecting and protecting human rights in the PSNI.	0%	2%	2%	2%	2%

**Note:** The figures are in excess of 100% due to multiple responses.

Table 34 shows that just under a quarter of officers with less than 4 years service (22%) felt that there is too much emphasis placed on respecting and protecting human rights in the PSNI. This compared to 15% of officers with more than 20 years service. Conversely, 30% of officers with more than 20 years service thought that not enough emphasis is placed on respecting and protecting the human rights of victims compared to 19% of officers with less than 4 years service.

Table 35 below provides a summary of the 618 responses (out of a total of 847 comments) which were able to be classed into 10 substantive categories. Of these, almost 50% (304 respondents) thought that more regard is paid to the human rights of criminals than to the human rights of victims or police officers.

**Table 35 Open Ended Responses for the question “I would like the NIPB/PSNI to take into account the following comments when monitoring how well officers comply with the Human Rights Act”.**

Response Type	Number of Respondents Stating
Police Officers have Human Rights as well as Criminals.	254
Police Officers and Victims have Human Rights as well as Criminals.	50
People should understand that HR are complex and PSNI are work under difficult conditions and make instant decisions.	65
Officers need more/better HR training.	62
PSNI breaches of Human Rights not an issue as neither self nor colleagues breach Human Rights.	55
Too much legislation/Too much emphasis on HR/ Too many resources used to monitor HR.	39
Human Rights is common sense.	33
Criminals should not have any Human Rights.	32
HR monitoring can sometimes hinder police actions/ investigations.	28

Drawing out the conclusions of our analysis, we make the following recommendations:

- That the results of the questionnaire should be reviewed and carefully considered by those responsible for integrating human rights within training and policy in the PSNI.
- That the results of Question 1 should be reviewed by those responsible for the Student Officer Training programme and amendments made where necessary to remedy the identified gap in knowledge.
- That the results of Question 2 should be carefully studied and consideration given to revision or clarification of Article 6 of the Code of Ethics.
- That PSNI Training, Education and Development should audit PSNI training on the use of force (materials and delivery) to remedy the failings identified in Questions 3 and 8 regarding police officers’ knowledge on the test for the use of lethal force.
- That the results of Question 9 should be carefully considered by those responsible for the Student Officer Training programme and for training and policy drafting on the use of informants/covert human intelligence sources and amendments made, where necessary, to ensure that all officers fully comprehend that informants/covert human intelligence sources can be used only if they do not incite criminal offences.
- That PSNI Training, Education and Development should analyse the results of Questions 11-14 in its design and development of training programmes and materials in the future.
- That those responsible for revising the PSNI’s policy on victims should consider the results of Question 15 in their formulation of the new policy.

## THE FOCUS GROUPS

As part of our work to gauge human rights awareness in the PSNI, we commissioned MORI Ireland to set up and conduct a series of focus groups in different areas of Northern Ireland, involving officers of differing ranks. The full Report produced by MORI is set out in Appendix 5. Here we summarise the findings.

### Research design

Rather than the four core focus groups specified in the Policing Board’s framework document, MORI Ireland

recommended that mini focus groups of different ranking officers be conducted in each geographical area identified. In the event, this provided us with more insight, particularly because mixing ranks in a full focus group would have potentially hindered the group dynamic. The mini-groups were made up of 4-5 participants and normally lasted 45 minutes to one hour.

Eleven mini-groups were conducted across the four locations of Foyle, Newry/Lurgan, Belfast and Fermanagh, with differing ranks of officers as shown in the table below:

	Foyle	Newry/Lurgan	Belfast	Fermanagh
Chief Inspectors and above	1	1	1	*
Sergeants and Inspectors	1	1	1	1
Constables	1	1	1	1

\*There were insufficient officers of the rank of Chief Inspectors and above in Fermanagh to allow us to conduct a mini-group of this rank of officer.

Recruitment for the mini-groups was carried out by the PSNI. No cash incentives were offered to participants since the research took place during daytime work hours. No quotas were placed in relation to age, gender or years of service, but as good a spread as possible was recommended.

## Venue and fieldwork

All the mini-groups took place in police establishments and were conducted in June 2004.

## Moderation and design of the topic guide

The moderators used a topic guide as an “aide memoire” to stimulate, but not lead, the discussion. MORI Ireland worked closely with the Policing Board and the PSNI in developing the relevant topic guide. This ensured that important areas were not left uncovered at the same time as allowing the moderator to depart from the outline to follow up promising leads, with special care taken to ensure that new ideas not previously considered had full opportunity to emerge.

## Analysis

All discussions were taped and fully transcribed. Anonymised copies of transcriptions were made available to the Policing Board and the PSNI. Care was taken not to identify individuals: names were replaced with an ‘x’ or taken out altogether. Place names were also removed to ensure full anonymity.

These transcripts were used as the ‘raw data’ for analysis, along with notes taken by moderators during and immediately after the mini-groups. A matrix was drawn up from the raw data specific to each category of mini-group to enable comparisons to be made across groups. The project team ‘brainstormed’ key findings and developed the main themes for analysis. A database of all verbatim comments was provided to the Policing Board and the PSNI.

Generally, officers believed that they have an adequate foundational knowledge of human rights, although they acknowledge that it is a large, constantly changing field. Officers understand human rights in terms of the different rights available to individuals e.g. the right to life, freedom of assembly etc. Initially when officers were asked about the principle of non-discrimination – that ‘they should never treat people differently on grounds of race, colour, gender, religion, political or other opinion’ – they thought in terms of equality. However, when probed, they related a number of circumstances under which the principle does not hold (positive discrimination, criminals, war etc.).

Absolute and qualified rights were understood by definition. The right not to be tortured was unanimously seen as an absolute right. However, there was some confusion regarding the right to life because it is seen as absolute, but also as capable of being breached in life threatening circumstances. Qualified rights were well understood. The main impact of human rights on officers’ jobs was perceived to be the increased paperwork and documentation, whether by way of notebook entries for Constables, or detailed applications to the Parades

Commission, or documented surveillance procedures for Sergeants and Inspectors. Many officers felt a tension between human rights and fighting crime, although higher ranking Officers were more likely to see this as a 'constructive tension' than Constables. Most officers still think in relation to the Police and Criminal Evidence (NI) Order (as it is seen to cover human rights), although some higher-ranking Officers incorporate both the Police and Criminal Evidence (NI) Order and the Human Rights Act.

In terms of the protection afforded by human rights, there was general consensus that criminals are given most protection, specifically because they are calling into question their human rights through their actions. Most officers felt that victims should be awarded more protection. Officers did not perceive themselves to be protected in the same way as other groups. Constables, particularly those out 'on the beat', felt that their human rights are constantly being breached and indicated an uncertainty about when they can act.

In contrast to the results of the human rights questionnaire, lethal force, and appropriate approaches towards it, appeared to be well understood by the mini-groups. 'Absolutely necessary' was seen as related only to lethal force, while 'necessary and appropriate' was held not to apply to the same 'life-threatening' situation.

The Code of Ethics was viewed as a set of 'common sense' rules but few officers could specify the exact contents. Higher-ranking officers were more familiar with the content. All officers were aware that breaches of the Code would result in disciplinary action.

The main source of information for officers is the PSNI Intranet, except for Constables 'on the ground'. Written documentation is still seen as necessary, in particular by those officers who do not use the Intranet. The Aide Memoire did not spring to mind immediately as a human rights information source - most officers remembered having received it, some had thrown it in the drawer, and a few had actually used it. Higher-ranking officers were more prone to accessing human rights information from a variety of sources (e.g. press) and obtained more direct information (e.g. from headquarters) than Constables, largely because they have more time. Officers suggested disseminating human rights information through the PSNI Intranet, booklets, supervisor briefing sessions, information packs and posters around the police stations.

General training in human rights was largely perceived to be adequate. Some officers were sceptical that a motivation for training was so that managers or the organisation itself could 'cover their backs' if an officer was found to be breaching human rights. Officers would like training to be approached differently and called for a move away from the old classroom style of teaching to a more interactive style, with less jargon. This new style should involve situational construction, using case studies, scenario based training, guest speakers etc. There is a sense that rather than providing refresher training sessions on human rights, human rights should be incorporated into all other training courses and become 'part and parcel' of the training, rather than an addendum as it has been historically. It should also be specific to the officer's role and rank. Some officers also queried the extent of human rights training provided to new recruits, sometimes at the expense of other aspects of training.

Compliance with human rights was seen as easiest to monitor by looking at the level of complaints against the PSNI, although other suggestions were made, such as continuing with audits and spot checks, as well as introducing public surveys.

Participants in the mini-focus groups suggested that the human rights questionnaire was not filled-in for reasons such as survey fatigue - frustration with receiving too many questionnaires as well as perceived difficulty and lack of time. The main reasons for completing the questionnaire were to assist the organisation and to give their individual viewpoints. Most of those participants in the mini-groups who completed the questionnaire thought it was easy, although considered that it contained some ambiguous questions.

Those who participated in the mini-focus groups felt that, in the future, the PSNI as an organisation needs to address training, the perception of the PSNI by the public at large and to find a method to imbed human rights within the PSNI culture and promote its positive side. Particularly for Chief Inspectors and above, there was a need to keep human rights in the forefront of the PSNI culture:

*'If we maintain the same attitude and culture towards it that we have and not lose touch with it and not lose sight with it and not to let it get watered down. Keep it to the forefront as we always have.'* (Chief Inspectors and above)

*'Human Rights is not a bogeyman...everybody is entitled to it including us.'*  
(Sergeants and Inspectors)

Some officers identified a key benefit of human rights as being able to speak to people they would not have been able to speak to in the past. Officers identified this new engagement as a positive method of increasing support and respect for the PSNI from the public.

*'I can back up and be confident in everything that I do... I am confident that I can release everything that I do. That probably in-turn gains confidence from other people. I am speaking to people now that I never would have done five years ago. It has originated in Human Rights because of the openness. I can be open and fair with them...transparency of the police service.'* (Chief Inspectors and above)

Drawing out the conclusions from the analysis of the mini-focus groups, we make the following recommendations:

- That Training, Education and Development should incorporate the suggestions made by officers regarding the delivery of training. In particular we recommend the following changes to training:
  - Training should be more interactive and relevant to duties, rank and role.
  - More scenario-based case studies should be included in training materials and programmes.
  - The Code of Ethics should be taught by using practical examples.
  - Officers' confusion regarding the right to life should be clarified.
  - Officers should be taught how human rights legislation protects them.
- That the PSNI should carefully review the concerns raised by officers that the general public often do not understand the responsibilities of the police, or that they have to adhere to certain codes and regulations and consider how best to educate the public as to the PSNI's role and responsibilities.
- That the PSNI should disseminate human rights information to officers using the specified channels identified earlier in this chapter (whilst being sensitive to the volume of information disseminated to officers). Specifically, officers should be kept up to date on human rights developments and provided with updates on changes in legislation
- That Training, Education and Development should review how to encourage officers to look at human rights more positively.

## **MORI recommendations**

At the end of their Report, MORI made a number of recommendations based on observations and the interpretation of the moderators. In line with MORI's recommendations, we make the following additional recommendations:

- That the PSNI should indicate how it has incorporated the results of the questionnaire and focus groups in its next programme of action in answer to the criticism that officers felt their voices were not being heard.

## **APPRAISALS WITHIN THE PSNI: HUMAN RIGHTS**

In response to Patten Recommendation 5, which stated that 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, the PSNI introduced a new appraisal system on 1st April 2003 for all regular officers up to and including the rank of Chief Superintendent. The Annual Performance Review now includes an appraisal of human rights awareness and compliance at Part 5. The Appraisal Form has been modelled on the ACPO National Competency Framework for police officers. It contains a distinct human rights assessment element, which was not included within the National Competency Framework, but was devised by the PSNI Human Rights Unit. Gradings are made against the standards set in the Annual Performance Review assessment guide, itself based upon the PSNI Code of Ethics. Shortcomings in awareness are addressed through a development plan for the individual PSNI officer. If an officer is not assessed as competent following his appraisal, he will not be entitled to a Competency Based Threshold Payment.

Appraisals are carried out by an officer's immediate supervisor. Behavioural or disciplinary issues arising in respect of an individual officer may be informally resolved internally through 'Advice and Guidance' or in more serious disciplinary matters, through formal Written Warnings. We have been informed by the PSNI Personnel Department that internal disciplinary matters relating to an individual officer should be recorded on Appraisal Forms as a matter of practice.

PSNI promotional competitions are also based on the ACPO National Competency Framework. We have been informed that comparisons with other UK police services demonstrate that PSNI officers consistently score significantly higher than their counterparts in Great Britain in competencies relating to human rights and respect for diversity.

Having reviewed the appraisal arrangements, we are not satisfied that there is an effective appraisal process to monitor the human rights performance of PSNI officers or that good human rights performance is rewarded in any tangible manner, or given due consideration in promotional competitions. While the Appraisal Form includes a discrete human rights element, this is not adequate. In light of this analysis, we recommend:

- That the human rights element of the appraisal process be reviewed and revised to provide a more productive and effective tool to monitor and assess the human rights performance of individual officers.
- That the behavioural statements within each of the competencies formally assessed in the appraisal process and promotional competitions should be reconsidered and amended to include a human rights component, thereby integrating human rights standards.